

立法會
Legislative Council

LC Paper No. CB(2)1169/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/00

**Legislative Council
Bills Committee on Rehabilitation Centres Bill**

**Minutes of the third meeting
held on Tuesday, 4 January 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon CHOY So-yuk (Chairman)
Hon Cyd HO Sau-lan
Hon Eric LI Ka-cheung, JP
Hon James TO Kun-sun
Hon YEUNG Yiu-chung
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Henry WU King-cheong, BBS
Hon WONG Sing-chi

Member Absent : Hon Andrew WONG Wang-fat, JP

Public Officers Attending : Mr David WONG
Principal Assistant Secretary for Security

Miss Bonnie WONG
Assistant Commissioner of Correctional Services
(Rehabilitation)

Miss Miranda NG
Senior Assistant Law Draftsman

Miss Stoney POON
Assistant Secretary for Security

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meeting

The minutes of the meeting held on 2 November 2000 (LC Paper No. CB(2)471/00-01) were confirmed.

II. Meeting with the Administration
(LC Paper Nos. CB(2)594/00-01(01) & (02))

2. Principal Assistant Secretary for Security (PAS/S) took members through the Administration's paper (LC Paper No. CB(2)594/00-01(02)) which detailed the Administration's response to the issues raised by the Bills Committee and the Law Society of Hong Kong on the Bill. The Annex to the paper set out the Administration's proposed draft Committee Stage amendments (CSA) to the Bill.

Clause 4(1)

3. In reply to a question raised by Ms Cyd HO, PAS/S explained that the "cut-off" date for the proposed Rehabilitation Centre (RC) programme was set at the date of sentencing, i.e. the date on which a detention order under clause 4(1) was made by the court against a young offender. By virtue of clause 4(2)(a) and the definition of "young offender" in clause 2, such offender should be a person aged between 14 and under 21 on that date. An offender who attained the age of 21 during the period of remand in custody and pending sentencing by the court would not be eligible for the proposed RC programme.

4. Mrs Miriam LAU pointed out that under the Detention Centres Ordinance and the Training Centres Ordinance, the "cut-off" date was set at the date of conviction. She opined that the Administration should consider, in the light of policy and consistency with other similar ordinances, whether or not it was desirable to amend the Bill so that the proposed programme would target young offenders aged between 14 and under 21 on the date of conviction. Ms Cyd HO supported her suggestion.

5. Mr James TO expressed the view that although there should be a "cut-off" in terms of age, the court should have a discretionary power to deviate from that requirement when making an order, having regard to all the relevant factors and circumstances of the case.

6. Referring to the reference to "in lieu of any other sentence" in clause 4(1), Mr James TO said that a possible legal implication of such reference was that the court should explain what other possible sentencing options it had also considered so as to justify its decision to make a detention order under clause 4(1).

7. PAS/S responded that the use of the reference to "in lieu of any other sentence" was intended to denote the "alternative" nature of a detention order vis-à-vis other sentencing options available to the court. He added that the same reference could be found in other ordinances.

Adm 8. In view of members' concerns, the Administration agreed to provide a written response after the meeting.

Clause 4(2)(f)

9. Mr James TO opined that the reference to "on the date of conviction" was too specific and rigid and hence might create practical difficulties for medical officers in certifying that an offender was medically not drug dependent. Mrs Miriam LAU suggested that "on the date of conviction" might be substituted with "at the time of conviction" to provide more flexibility.

Adm 10. The Administration explained that the intent of clause 4(2)(f) was to preclude the admission of active drug dependents into a RC, as opposed to those with past drug experience only. Therefore, it was necessary to make reference to a certain point in time to determine the drug dependency of the offender. In view of members' comments, the Administration undertook to review the drafting of this subclause and to revert to the Bills Committee at the next meeting.

Clause 4(3)

11. Mrs Miriam LAU said that clause 4(3) provided for a maximum three-week period for the court to remand a young offender in custody to enable the Commissioner of Correctional Services (the Commissioner) to ascertain the suitability of the offender for detention in a RC. As explained in the Administration's paper, before the court sentenced a young offender, it might call for a Probation Officer's Report prepared by the Social Welfare Department and suitability reports prepared by the Correctional Services Department. She asked whether the situation of a young offender being

remanded for more than three weeks as a result of the court having called for suitability reports at different times could arise.

12. The Administration responded that in practice, the Commissioner would provide all the requisite reports to the court generally in two weeks' time together with recommendations on what sentencing option would best serve the purpose of rehabilitation of the offender. In some cases, the court might in addition call for a report from the Young Offender Assessment Panel (YOAP) on the offender. In such cases, the whole process would take more than two weeks to complete. However, it was envisaged that the court, in exercising the power under clause 4(3), would have to abide by the maximum three-week requirement and to ensure that such period would not be exceeded. Hence, the situation of the three-week remand period having elapsed before the court made its sentence should not arise.

13. For the information of members, PAS/S advised that YOAP had prepared 367 reports in 1999 and 457 reports in 2000 (January to November) respectively.

14. In further response to Mrs Miriam LAU, the Administration confirmed that the policy intent was that the remand period under clause 4(3) did not form part of the detention period under clause 4(4).

Clause 4(6)

15. Assistant Legal Adviser in response to the Chairman's enquiry informed members that in his previous correspondence to the Administration, he had sought the Administration's view on whether it was necessary to clarify the meaning of the word "progress" in clause 4(6) which was considered as equivocal. The Administration had replied that the present drafting was appropriate, and similar provisions in other ordinances containing the same reference operated satisfactorily.

16. Mr James TO said that the whole period of detention in a RC was the aggregate of the two periods specified in clause 4(5). Clause 4(6) required the Commissioner to take into consideration certain factors in determining the "whole period of detention". Under clause 4(6), the Commissioner was only able to consider the initial detention period and the subsequent residence period separately. Mr TO requested the Administration to review the drafting of clause 4(6).

17. The Administration undertook to revisit the drafting of the clause having regard to the above comments.

Proposed draft CSAs

Clause 9(4)

18. Members noted that the Administration had proposed a new clause 9(4)(b) to the effect that a police officer or correctional services officer was required to have a reasonable belief that a person unlawfully at large was on particular premises before he could exercise the power to break open and enter the premises for the purposes of search and arrest. PAS/S said that the proposed amendment was to address the concern expressed by members that there should be safeguard against possible abuse of the power of a police officer or correctional services officer.

19. Senior Assistant Law Draftsman stressed that the drafting approach of the original clause 9(3) was consistent with that of other similar legislation, for example the Detention Centres Ordinance and the Training Centres Ordinance and that the provisions were not in contravention of the Bill of Rights.

20. The Chairman and Mrs Miriam LAU considered that the proposed CSA was acceptable.

Clause 10

21. Members noted that the Administration had proposed to revise clause 10 to the effect that the maximum period of detention of a problematic offender in prison after transfer from a RC should not exceed the unexpired part of the maximum nine-month term in a RC (proposed new clause 10(3)(a)), or the maximum term of imprisonment to which the offender was liable for the relevant offence of which he was convicted (proposed new clause 10(3)(b)), whichever was the less.

22. Ms Cyd HO reiterated her concern that clause 10 should not provide a power to enable the Chief Executive (CE) to increase a sentence imposed by the court when directing a transfer of a young offender from a RC to a prison. Mr James TO said that he objected in principle to the executive authority having the power to impose a term of imprisonment under clause 10.

23. PAS/S responded that the Administration had considered the appropriate authority to order transfers under clause 10. In the view of the Administration, with the proposed reduction of the maximum period of detention in prison upon transfer from a RC, the question of empowering the executive authority to increase a sentence should not arise. In considering making a transfer to a prison, CE must consult where practicable the judge or magistrate who made the RC detention order in the first place. The Administration remained of the view that it was appropriate to vest such authority in CE, in line with similar arrangement in respect of Training Centres, Detention Centres and Drug Addiction Treatment Centres.

24. Mr James TO opined that the power of transfer under clause 10 should vest with the judge or magistrate who made the original detention order. In his view, clause 10 should provide the court with the widest possible power to reconsider other possible sentencing options, having regard to the relevant offence of which the offender was convicted. He pointed out that a convicted person who breached a bind over order in force against him would be recalled and subject to imposition of a sentence by the court.

25. PAS/S explained that the Administration had observed that transfers under clause 10 would be made fundamentally on grounds of the problematic inmates' institutional behaviour (or misbehaviour) in a RC. The Administration was of the view that the judicial process should come to an end after a sentence had been passed by the court. It appeared that the monitoring and assessment of post-sentence institutional behaviour for the purpose of determining such transfers, as opposed to determining the sentence in respect of an offence committed having regard to all the circumstances, was not within the customary sentencing purview of the court. Hence, it would not be appropriate to "turn the clock back" and let the court impose another sentence when the original RC detention order was found to be ineffective.

26. PAS/S further advised that the power of CE under clause 10 to order a change of the original sentence based on post-sentence development was not a new power as such. He pointed out that there was substantial precedent for CE to be given such authority. For example, CE might replace indeterminate sentences with determinate sentences on the recommendation of the Long-term Prison Sentences Review Board. CE might grant sentence remission upon prisoners' petitions, on grounds of poor health or assistance rendered to prosecution etc. Such authorities were provided for in the Basic Law or in various ordinances.

27. Referring to the example given by Mr James TO of offenders in breach of bind over orders, Mrs Miriam LAU said that such cases appeared to be different from those intended to be dealt with by clause 10 of the Bill. In the former scenario, the judicial process in respect of the relevant offence was not over yet when a bind over order was issued, whereas in the latter the judicial process had ended at the time when the court made the detention order.

28. Assistant Commissioner of Correctional Services (Rehabilitation) said that empowering the court to order transfers under clause 10 might give rise to the concern as to whether such orders would amount to a double-sentence of the same offence. Ms Cyd HO suggested that the Administration should seek legal advice on this point.

29. Mrs Miriam LAU suggested that the Administration should conduct some research on the arrangements in place in the United Kingdom to deal with similar situation.

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30. The Administration agreed to provide a written response for discussion at the next meeting.

(Post-meeting note - The Administration's response to the issues raised at the meeting was circulated to members vide LC Paper No. CB(2)839/00-01(01)).

III. Date of next meeting

31. The next meeting was scheduled for 13 February 2001 at 10:45 am.

32. The meeting ended at 6:45 pm.

Legislative Council Secretariat
26 March 2001