

立法會
Legislative Council

LC Paper No. CB(2)954/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/00

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

**Minutes of the second meeting
held on Tuesday, 5 December 2000 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 Andrew WONG Wang-fat, JP
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

Members Absent : Hon James TO Kun-sun
Hon YEUNG Yiu-chung

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. Visit to rehabilitation institutions on 30 November 2000

The Chairman thanked the Administration for arranging members of the Bills Committee to visit O Pui Shan Boy's Home, Lai King Training Centre and Sha Tsui Detention Centre on 30 November 2000. She said that the visit had enhanced members' understanding of the various programmes run by these rehabilitation institutions.

II. Meeting with the Administration

(LC Paper No. CB(2)399/00-01(01) - The Administration's response to issues raised at the last meeting on 2 November 2000;
LC Paper No. CB(2)233/00-01 - The Full Report (English only) and Summary Report on the Research on the Effectiveness of Rehabilitation Programmes for Young Offenders prepared by the City University of Hong Kong in August 1997;
LC Paper No. CB(2)233/00-01(01) - A paper on "Action Plan on the Implementation of the Recommendations of the Research on the Effectiveness of Rehabilitation Programmes for Young Offenders" for the Provisional Legislative Council's Panel on Security in April 1998;
LC Paper No. CB(2)233/00-01(02) - A paper on "Development in Rehabilitation Services for Offenders" for the Panel on Security in January 2000)

2. Principal Assistant Secretary for Security (PAS/S) referred members to the above papers which had been provided to the Bills Committee as requested by members at the last meeting. He then took members through LC Paper No. CB(2)399/00-01(01) which detailed the Administration's response to the points raised by members.

3. In response to a query raised by Mrs Miriam LAU, PAS/S said that the first sentence of paragraph 1 of the Administration's paper should be amended to read "We are planning to set up four Rehabilitation Centres (RCs) to provide a total of 224 places (160 for male and 64 for female offenders)".

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4. Mrs Miriam LAU enquired about the reasons for setting up four RCs to share the facilities with the existing penal institutions. She reiterated her view that the RCs should be established at separate locations and away from Sha Tsui Detention Centre (STDC) and Chi Ma Wan Drug Addiction Treatment Centre (CMW DATC) to avoid an undesirable labelling effect. Furthermore, the RCs should be named in such a way as to prevent people from associating the RC detainees with those of the other penal institutions.

5. PAS/S replied that the proposal to set up four RCs which would make use of certain parts of the existing facilities was intended to make the optimal use of available resources and at the same time achieve the objectives of the proposed RC programme (the proposed programme). He explained that four RCs were considered necessary in order to provide rehabilitation services in a residential setting separately for male and female young offenders undergoing phases I and II of the proposed programme. He added that as the focus of phase I of the proposed programme was on discipline training, the Administration considered it appropriate for two RCs, one each for male and female offenders undergoing phase I of the proposed programme, to be set up near STDC and CMW DATC respectively.

6. The Chairman and Mr WONG Sing-chi opined that from what was seen during the visit to STDC on 30 November 2000 where the proposed RC for young male offenders (phase I) was being constructed, it appeared that the facilities currently available at STDC were sufficient to cope with the additional needs of the RC. Mr WONG said that provided that there were good administrative arrangements to ensure the effective segregation of the RC detainees from those of the Detention Centre while they were undertaking the various activities, he had no objection to the Administration's proposal concerning the location of the RC.

Adm

7. PAS/S assured members that the Administration would give careful consideration to the views regarding naming of the RCs and the need to implement necessary measures to segregate RC inmates from those of nearby penal institutions.

Adm

8. Mrs Miriam LAU said that according to her personal experience, young offenders had a tendency to reject supervising officers, e.g. aftercare officers who were much older than them and who did not "speak their language". The lack of trust and confidence of the offenders in the aftercare officers would hamper the effectiveness of any rehabilitation programme. She opined that the Administration should take this factor into consideration in implementing the proposed programme. The Administration noted her view.

Clause-by-clause examination of the Bill

Clause 9 - Arrest, etc. of persons unlawfully at large

9. Assistant Legal Adviser (ALA) informed members that in his earlier correspondence with the Administration, he had pointed out a difference in drafting between clause 9(3) and 9(4) in that the requirement specified in clause 9(3) for the exercise of the power of a police officer or correctional services officer to enter particular premises, i.e. proof of the existence of a reasonable belief that a person unlawfully at large was on the premises, was absent in clause 9(4). He asked whether the same requirement of "reasonable belief" could be incorporated in clause 9(4) as well.

10. Senior Assistant Law Draftsman (SALD) said that clause 9(3) empowered any police officer or correctional services officer to enter particular premises to search for and arrest a person unlawfully at large where there was person residing at or in charge of the premises. Clause 9(4), on the other hand, dealt with a different situation where no person appeared to be present or in charge of the premises. In the latter circumstances, the officer could, without a warrant, break open any outer or inner door or window of the premises and enter the premises. The legislative intent of clause 9(4) was to enable the officer to take prompt actions to arrest a person unlawfully at large as called for by the circumstances. She added that the exercise of the power conferred under clause 9(4) demanded the good judgment of the officer at the time. It was also subject to the constraint of clause 9(5), i.e. where a warrant could not be obtained without giving the person unlawfully at large an opportunity to evade arrest.

11. SALD further informed members that provisions similar to clause 9 also appeared in the Long-term Prison Sentences Review Ordinance (Cap. 524).

12. Mrs Miriam LAU asked whether owners of premises described in clause 9(4) would be entitled to receive compensation. SALD replied that the Bill did not have such a provision.

13. Mrs Miriam LAU considered that the power under clause 9(4) could be easily abused by a law enforcement officer. She said that clause 9(5) was not an adequate safeguard against abuse because in practice the requirement therein could be satisfied in almost any contingent situation of search and arrest. In her opinion, there should be consistency between sub-clauses 9(3) and 9(4) and hence the condition of a reasonable belief that a person unlawfully at large was on particular premises should be included in both sub-clauses.

14. Echoing Mrs Miriam LAU's views, Ms Cyd HO expressed concern that clause 9(4) as it presently stood would give little protection to members of the public.

15. Having regard to members' views, the Administration agreed to reconsider the drafting of clause 9(4) and revert to the Bills Committee at the next meeting.

Clause 10 - Transfers from rehabilitation centre to training centre or prison

16. In response to Ms Cyd HO, SALD advised that provisions similar to clause 10 relating to the power of the Chief Executive (CE) to direct transfer of offenders in certain circumstances could be found in section 7 of the Training Centres Ordinance (Cap. 280), section 8A of the Detention Centres Ordinance (Cap. 239) and section 8 of the Drug Addiction Treatment Centres Ordinance (Cap. 244).

17. Ms Cyd HO pointed out that although CE in exercise of the power of transfer under clause 10 should consult the judge or magistrate who made the detention order, the views of the judge or magistrate would not be binding on CE. Hence, clause 10 could result in a situation where a young offender on transfer from a RC to a prison as directed by CE was given a term of imprisonment which far exceeded the length of detention should the offender be sentenced to a DC or Training Centre (TC) in the first place. She said that in her view, it was not appropriate for the executive authority to have the power to increase a sentence imposed by the court.

18. PAS/S responded that the provisions in clause 10 were necessary as a last resort to deal with problematic RC inmates. In practice, CE, in directing a transfer under clause 10, was required to give due regard to the report prepared by the Commissioner of Correctional Services on the RC inmate and, in case of a transfer to prison, consult where practicable the judge or magistrate who made the original detention order. In exercising this power under Clause 10, CE must exercise reasonable discretion and would need to seek legal advice from the Department of Justice where appropriate.

19. Mrs Miriam LAU said that the objective of the proposed RC programme was to cater for young offenders who were considered unsuitable for the DC and TC programmes. She pointed out that the existing maximum term of imprisonment for certain offences e.g. theft was 10 years. Under clause 10 as presently drafted, there was nothing to prevent CE from directing transfer of a RC detainee who was previously convicted of the offence of theft to a prison for a term of imprisonment of up to 10 years. She opined that such possible consequence was not acceptable, bearing in mind the maximum period of detention in a RC was only nine months, and that in a TC was 36 months.

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20. Mr Eric LI pointed out that as CE was required to consult the judge or magistrate when considering a transfer of an RC inmate under clause 10, it might be more appropriate for the authority to order the transfer to vest with the court rather than CE.

Adm

21. Having regard to members' views, the Administration agreed to revisit the drafting of clause 10 and revert to the Bills Committee at the next meeting.

22. In reply to a further question from Ms Cyd HO, PAS/S advised that a comprehensive review of all the Ordinances in the light of the Bill of Rights implications had been conducted by the Government after the Hong Kong Bill of Rights had been passed.

Adm

23. Ms Cyd HO said that if clause 10 was amended in the end, the relevant provisions in other Ordinances such as the DC Ordinance and the TC Ordinance should accordingly be reviewed. The Administration noted her view.

*Clause 11 - Visiting justices; and
Clause 12 - Application of Prisons Ordinance*

24. ALA pointed out that clause 11(3) imported the powers and duties conferred on visiting justices and visiting committees under the Prisons Ordinance (Cap. 234). Section 23 of the Prisons Ordinance stated that those powers and duties were to be prescribed by rules made under section 25. This meant rules 222 to 235 of the Prison Rules in the present context. Rule 222(1)(a) required visiting justices to visit prisons at least once a fortnight. This conflicted with the express provisions of clause 11(2) which stated that the visits should be conducted once a month.

25. ALA also suggested in his earlier correspondence with the Administration that clause 12(2) should be amended to include the reference to "Prison Rules", in addition to "Prisons Ordinance", to better clarify the overriding power of the Rehabilitation Centres Ordinance.

26. On the points raised by ALA, SALD informed members that the clauses would be refined and draft Committee Stage amendments would be submitted to the Bills Committee for consideration.

27. In response to Ms Cyd HO, PAS/S said that the provisions in Prison Rule 77(9) relating to persons of respectability to view the penal institutions would also apply to a RC by virtue of clause 12(1). Furthermore, clause 11(2) would apply to RCs in both Phase I and II of the proposed RC programme.

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III. Next meeting

28. The third meeting was scheduled for 4 January 2001 at 4:30 pm.
29. There being no other business, the meeting ended at 6:30 pm.

(Post-meeting note - The Administration's response to the issues raised at the meeting was circulated to members vide LC Paper No. CB(2)594/00-01(02) on 2 January 2001)

Legislative Council Secretariat
26 February 2001