

立法會
Legislative Council

LC Paper No. CB(2)1192/00-01
(These minutes have been seen
by the Administration)

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

**Minutes of the fourth meeting
held on Tuesday, 13 February 2001 at 10:45 am
in the Chamber 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 Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung
Hon LAU Kong-wah
Hon Henry WU King-cheong, BBS

Members Absent : Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon WONG Sing-chi

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

Action
Column

I. Meeting with the Administration
(LC Paper Nos. CB(2)839/00-01(01) and (02); 399/00-01(02))

Administration's response to the issues raised at the meeting on 4 January 2001

Principal Assistant Secretary for Security (PAS/S) explained the Administration's response to the issues raised at the last meeting as summarized below.

Clause 4(1)

2. PAS/S said that the Administration had considered the question of whether the date of conviction or the date of sentencing should be used as the "cut-off" date to determine a young offender's eligibility for the proposed Rehabilitation Centres (RC) Programme or otherwise. He advised that the Administration had come to the view that no significant policy or operational issues would arise from adopting either "cut-off" date. For the Detention Centres and Training Centres Programmes, the "cut-off" date was set at the date of conviction. For the sake of consistency, the Administration agreed that the "cut-off" date for the proposed RC Programme should also be set at the date of conviction. A Committee Stage amendment (CSA) to that effect was proposed.

3. PAS/S said that the Administration had also reviewed the use of the reference to "in lieu of any other sentence" and concluded that the drafting was in order. The reference was considered necessary to denote the "alternative" nature of the sentence of a detention order under the Bill in respect of the relevant offence for which imprisonment must be a sentencing option, but it was not meant to create unreasonable burden on the court to exclude all other possible sentencing options. There were similar references in other legislation such as the Detention Centres Ordinance, the Training Centres Ordinance, and the Drug Addiction Treatment Centres Ordinance. The Administration

Action
Column

observed no difficulties of the court in justifying making an order under such legislation in lieu of imposing other sentences.

Clause 4(2)(f)

4. PAS/S advised that the Administration had considered the view that the reference to "on the date of conviction" to determine the drug dependency of an offender might be too rigid and restrictive. To provide greater flexibility without prejudice to policy intent, the Administration agreed to revise "on the date of conviction" to "at the time of conviction". A CSA was proposed.

Clause 4(6)

5. PAS/S said that the Administration had concluded that the drafting was appropriate. Although the Commissioner of Correctional Services could not determine the whole period of detention in a RC at the outset, he was bound to observe the requirements in clause 4(5) in respect of each of the two periods of detention, and subject to the minimum and maximum period of detention as allowed under clause 4(4).

Clause 10

6. PAS/S said that the Administration confirmed the views and justifications adduced at the previous meeting in support of the proposal under clause 10 that the authority for transfer of problematic RC inmates to a Training Centre or a prison should vest with the Chief Executive (CE). Arrangements of a similar nature could be found in the UK law. Under sections 98 and 99 of the Powers of Criminal Courts (Sentencing) Act 2000, the Secretary of State had the power to direct that an inmate of a youth offender institution be transferred to a prison, if the offender had attained the age of 18 and had been reported as exercising a bad influence on the other inmates in the institution or as behaving in a disruptive manner to the detriment of those inmates.

7. Mr James TO said that a problematic RC detainee would receive adverse reports on his behaviour in a RC from correctional services officers. It was desirable to specify in the newly proposed clause 10(3) that CE, in directing a transfer from a RC to a prison and determining the length of imprisonment for that purpose, should make his decision solely on the basis of the circumstances of the offence of which the detainee was originally convicted, rather than the post-sentence institutional behaviour of the detainee in a RC.

8. PAS/S responded that the drafting of the newly proposed clause 10(3) was adequate to address the concern. He said that it was not the policy intention to create new criminal offences on account that the inmate was found incorrigible under the RC Programme or exercising a bad influence on other

RC inmates. Under the clause, the offender could be transferred to a Training Centre or a prison. In the case of the latter, the clause required that CE should consult the judge or magistrate who originally convicted the person for the relevant offence. Furthermore, the period of detention in prison after transfer should not exceed the unexpired part of the maximum period of detention in a RC, or the term of imprisonment to which the offender was liable for the relevant offence of which he was convicted, whichever was the less. Therefore, the question of CE imposing an arbitrary penalty should not occur.

9. Mr James TO said that under the proposed clause 10(3), CE might, after consultation where practicable with the judge or magistrate who made the detention order, determine the length of detention in the case of a transfer to prison. He was of the view that CE should be required to take into consideration, so far as practicable, the opinion of the original sentencing judge or magistrate. Mr TO drew analogy from the arrangement for dealing with the former cases of young offenders detained at Her Majesty's pleasure in which the advice of the Chief Justice was sought on an appropriate determinate sentence. He stressed that the opinion of the judge was an essential yardstick of justice which CE should follow.

10. The Administration replied that clause 10(3) was considered adequate to reflect the policy intent to provide a mechanism for just disposal of a problematic RC inmate. The only issue to be determined under the clause was the length of imprisonment upon transfer of the offender to a prison. It was only reasonable for the judge or magistrate, when consulted by CE, to give careful thought to what an appropriate term of imprisonment to be in the light of all the facts and circumstances of the offence, and then advise CE of such accordingly. On the other hand, it was inconceivable that CE, who was bound by the requirement to consult, would lightly disregard the recommendation of the judge or magistrate, and arbitrarily make his decision based on irrelevant considerations.

11. In response to members, Assistant Legal Adviser pointed out that under the proposed clause 10(3) as presently drafted, the recommendation of the judge or magistrate, who made the original RC detention order, would not be binding on CE.

12. Mr James TO asked whether similar provisions on transfer had been invoked in respect of detainees in a Detention Centre, Training Centre or Drug Addiction Treatment Centre. Assistant Commissioner of Correctional Services (Rehabilitation) replied in the negative. She said that correctional institutions under the Correctional Services Department were least inclined to decide to give up on any detainees by rejecting them as incorrigible offenders. There were effective means within the legislative framework for the relevant correctional programmes to deal with problematic inmates.

Action
Column

13. Mr James TO requested the Administration to consider refining the wording of the proposed clause 10(3) having regard to his earlier comments, or giving a detailed explanation of the policy intent and the operation of the newly proposed clause 10(3) in the Secretary's speech at the resumption of Second Reading debate on the Bill.

Adm

14. The Administration agreed to provide a written response to the views expressed by Mr James TO together with further proposed CSAs, if necessary, as soon as possible after the meeting.

15. Mr James TO said that he would consider whether to propose CSAs to the effect that the authority to order transfer under clause 10 should vest with the court instead of CE, after considering the response from the Administration. Ms Cyd HO suggested that any CSAs proposed by individual members should preferably be submitted to the Bills Committee for discussion at a meeting to see whether the CSAs should be moved in the name of the Bills Committee.

II. Continuing clause-by-clause examination of the Bill

Clause 13

16. Members considered that clause 13 on Regulations was in order.

Clauses 14 to 18

17. Members agreed that clauses 14 to 18 which set out technical amendments to other Ordinances consequential to enactment of the Rehabilitation Centres Ordinance were in order.

III. Next meeting

18. Members agreed to decide whether a further meeting was necessary after considering the Administration's reply to the issues raised at the meeting.

19. The meeting ended at 11:40 am.

(Post-meeting note - The Administration's response to the issues raised at the meeting and an updated list of CSAs proposed by the Administration were circulated to members vide LC Paper No. CB(2)1035/00-01(01) on 9 March 2001. Members of the Bills Committee did not propose any CSAs to the Bill.)

Legislative Council Secretariat
28 March 2001