

**Administration's Response to Issues Raised by  
the Bills Committee and the Law Society of Hong Kong on  
the Rehabilitation Centres Bill**

**Clause 4(3)**

It is operationally necessary to empower the court to remand a young offender for a maximum period of three weeks. Before the court sentences a young offender, it may call for a Probation Officer's Report prepared by the Social Welfare Department (SWD) and suitability reports prepared by the Correctional Services Department (CSD) usually in two weeks' time. A suitability report required under Clause 4(3) in respect of a Rehabilitation Centre (RC) will have to include the result of medical examination of the young offenders for the purposes of Clause 4(2)(d) and 4(2)(f). Occasionally, it may take more than two weeks to complete the medical examination (including necessary laboratory tests), and CSD will have to apply for an extension of time from the court.

2. More importantly, in some cases, the court may in addition call for a report from the Young Offender Assessment Panel (YOAP) and remand the young offender for more than two weeks. YOAP is a joint venture between SWD and CSD comprising professional staff from both departments. SWD's Probation Officer's Report and CSD's suitability reports will first be completed and submitted to YOAP for consideration. YOAP also needs to interview the young offender in question before it completes its own report. The whole process will take more than two weeks to complete.

3. It is also observed that the provision of a maximum three-week remand period will be in line with the arrangements for existing programmes in respect of Detention Centres, Training Centres and Drug Addiction Treatment Centres (cf s.4(5) of Cap 239, s.4(3) of Cap 280 and s.4(3) of Cap 244).

**Clause 9(4)**

4. We have revisited the drafting of Clause 9(4) and would like to propose Committee Stage Amendments as shown at Annex A.

## **Clause 10**

5. Although we only expect rare, if any, applicable cases, the provisions for transferring a problematic RC inmate to a Training Centre (TC) or a prison is necessary as a last resort for a number of reasons –

- (a) effective rehabilitation of the inmate in question - if the inmate is found incorrigible under the RC programme, it would only be in the inmate's own interest to transfer him or her to another rehabilitation programme (such as the Training Centre programme) which may better benefit him or her;
- (b) effective rehabilitation of other inmates in the RC programme – if the inmate is found exercising a bad influence on other inmates in the RC and not removed, the rehabilitation of the other inmates would be compromised.

Similar provisions can 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) (see Annex B).

6. In the case of a transfer of a problematic young offender to a prison, we have critically reviewed the maximum period of detention in view of Members' concerns and the rehabilitation purposes of such transfers. We observe that the maximum period of detention in a RC is nine months. It appears appropriate that the total period that a young offender should remain in CSD's custody, taking into account the detention period in a RC before transfer and the detention period in a prison after transfer, should not exceed nine months. We therefore propose that Clause 10 be revised to the effect that the maximum period of detention of such an offender in prison after transfer from a RC should not exceed the unexpired part of the maximum nine-month term in a RC, or the maximum term of imprisonment to which he was liable for the relevant offence of which he was convicted, whichever is the less. We would like to propose Committee Stage Amendments as shown at Annex A.

7. We have also critically considered the appropriate authority to order such transfers. Now that we have 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 such transfers, the Chief Executive (CE) must exercise reasonable discretion and,

in the case of a transfer to prison, consult where practicable the judge or magistrate who made the RC detention order in the first place. We also observe that such transfers will be made fundamentally on grounds of the inmates' institutional behaviour (or misbehaviour). It appears that the monitoring and assessment of purely institutional behaviour for the purposes of determining such transfers - as opposed to determining the sentence in respect of an offence committed having regard to all its circumstances - is not within the customary sentencing purview of a court. We remain of the view that it is appropriate to vest such authority in CE, in line with similar arrangements in respect of Training Centres, Detention Centres and Drug Addiction Treatment Centres.

8. Regarding the reference made by the Law Society to the handling of breach of a probation order, a distinction has to be drawn between breach of a probation order and misbehaviour in the course of detention in a RC. A probation order is comparable to a supervision order referred to in Clause 6 in which provisions have been made for the court to deal with breach of a supervision order as an offence.

### **Clause 11(2), (3) and 12**

9. Please see proposed Committee Stage Amendments at Annex A.

### **Others**

10. When we proceed with our detailed planning and implementation of the new RC programme, we will give due consideration to various suggestions raised by Members regarding -

- (a) the naming of the RCs;
- (b) the age of aftercare officers of CSD assigned to take care of RC inmates; and
- (c) implementation of necessary arrangements to ensure the segregation of RC inmates from those of nearby penal institutions.

# ***DRAFT***

## REHABILITATION CENTRES BILL

### COMMITTEE STAGE

#### Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
9(4)	By deleting everything from "entry to" to "correctional services" and substituting - "a police officer or correctional services officer - (a) cannot obtain entry to premises as a result of a request under subsection (3); or (b) reasonably believes that a person unlawfully at large is on particular premises but no person appears to be on the premises, the".
10	(a) By renumbering it as clause 10(1).  (b) In subclause 1, by deleting everything after "direct that the" and substituting "young offender be dealt with in the manner referred to in <u>subsection (2) or (3)</u> ".

(c) By adding -

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"(2) The young offender may be transferred to a training centre; and for the purposes of this Ordinance and the Training Centres Ordinance (Cap. 280), he shall be deemed to be a young offender who, on the day on which the detention order was made against him, had instead been sentenced to detention in a training centre.

(3) The young offender may be detained in prison for such term as the Chief Executive may, after consultation where practicable with the judge or magistrate who made the detention order, determine, not exceeding -

- (a) the unexpired part of the maximum period during which he might have been detained in a rehabilitation centre; or
- (b) the term of imprisonment to which he was liable for the relevant offence of which he was convicted,

whichever be the less; and for the purposes of this Ordinance and the Prisons Ordinance (Cap. 234), such offender shall be treated as if he had

been sentenced to imprisonment for the term so determined by the Chief Executive."

11(3) By deleting "Visiting" and substituting "Subject to section 12, visiting".

12 (a) In subsection (1), by deleting everything from "Subject to" to "144(k)" and substituting "The Prisons Ordinance (Cap. 234) (except sections 3, 4, 6, 7, 12A, 22A, 24A, 24B and 25), and the Prison Rules (Cap. 234 sub. leg.)(except rules 22, 51, 69, 144(j) and (k) and 222(1))("the applicable provisions")".

(b) By deleting subsection (2) and substituting -

"(2) Notwithstanding subsection (1), in the event of conflict between this Ordinance (including the regulations) and the applicable provisions, the former shall apply."

Schedule By deleting the Schedule.

# BLIS ON

## Internet

Annex B



Chapter: 280      Title:      TRAINING      CENTRES      Gazette Number: 15 of 1999  
ORDINANCE  
Section: 7      Heading:      **Transfers from prison to**      Version Date:      01/07/1997  
**training centre and vice**  
**versa**

Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

(1) If the Chief Executive is satisfied that a person serving a sentence of imprisonment is under 21 years of age and might with advantage be detained in a training centre, he may, after consultation where practicable with the judge or magistrate who passed the sentence, authorize the Commissioner to transfer such person to a training centre; and the provisions of this Ordinance shall thereupon apply to such person as if he had on the date of the transfer been sentenced to detention in a training centre: (Amended 52 of 1954 s. 2)

Provided that if on that date the unexpired term of his sentence is less than 3 years, those provisions shall apply to him as if he had been sentenced to detention in a training centre 3 years before the expiration of that term.

(2) If a person in respect of whom a sentence of detention in a training centre is in force is reported to the Chief Executive by the Commissioner to be incorrigible, or to be exercising a bad influence on the other inmates of the training centre, the Chief Executive may commute the unexpired part of the term for which the said person is then liable to be detained in a training centre to such term of imprisonment as the Chief Executive may determine, not exceeding the said unexpired part or the term to which the said person was liable for the offence of which he was convicted, whichever be the less; and for the purpose of this Ordinance, the said person shall be treated as if he had been sentenced to imprisonment for the term so determined by the Chief Executive. (Amended 4 of 1974 s. 6)

(Amended 15 of 1999 s. 3)  
[cf. 1948 c. 58 s. 59 U.K.]

# BLIS ON INTERNET



Chapter: 239      Title:      DETENTION CENTRES      Gazette Number: 15 of 1999  
ORDINANCE  
Section: 8A      Heading:      **Transfers from detention  
centre to prison or  
training centre**      Version Date:      01/07/1997

Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

If a detainee is reported to the Chief Executive by the Commissioner to be-

(a) physically or mentally incapable of full participation in the programme of a detention centre;

(b) exercising a bad influence on the other inmates of the detention centre; or

(c) incorrigible,

the Chief Executive may direct-

(i) that such detainee be detained in a training centre; or

(ii) that he be detained in prison for such term as the Chief Executive may, after consultation where practicable with the judge or magistrate who made the detention order, determine, not exceeding the maximum term of imprisonment to which he was liable for the offence of which he was convicted, and for the purposes of this Ordinance and for the purposes of the Training Centres Ordinance (Cap 280) or the Prisons Ordinance (Cap 234), according to whether such detainee is directed to be detained in a training centre or in prison, he shall be deemed to be a person who, on the day on which the detention order was made against him, had instead been sentenced to detention in a training centre or, as the case may be, to imprisonment for the term so determined by the Chief Executive.

(Added 84 of 1976 s. 8. Amended 15 of 1999 s. 3)



# BLIS ON INTERNET



Chapter: 225      Title: REFORMATORY      Gazette Number:  
SCHOOLS ORDINANCE  
Section: 28      Heading: **Power to order detention  
in training centre etc. or  
imprisonment**      Version Date: 30/06/1997

(1) On an application being made on behalf of the Director of Social Welfare in respect of a youthful offender who is unsuitable for further detention in a reformatory school, a court or magistrate may order that such youthful offender be detained in a training centre or in a detention centre or may commute the unexpired part of his period of detention to such term of imprisonment as it may see fit not exceeding the said unexpired period of detention. (Amended 30 of 1977 s. 11; 90 of 1988 s. 3)

(2) For the purpose of determining which order, if any, would be the more expedient for the reformation of the youthful offender and for the prevention of crime, the court may conduct such inquiry as it may see fit, including the hearing of the youthful offender.

(3) An order for the detention of a youthful offender in a training centre shall take effect as if it had been made under the provisions of the Training Centres Ordinance (Cap 280).

(3A) An order under subsection (1) for the detention of a youthful offender in a detention centre shall take effect as if it had been made under the Detention Centres Ordinance (Cap 239). (Added 30 of 1977 s. 11) (3B) Before an order is made under subsection (1) for detention of a youthful offender in a training centre or detention centre a court or a magistrate shall consider a report of the Commissioner of Correctional Services on the suitability of the youthful offender for detention in a training centre or a detention centre and on the availability of places at training centres or detention centres. (Replaced 90 of 1988 s. 3)

(3C) On an application made under subsection (1) a court or magistrate shall remand the youthful offender who is the subject of the application in the custody of the Commissioner of Correctional Services for such period, not exceeding 3 weeks, as the court thinks necessary to enable the Commissioner to form an opinion as to whether or not the youthful offender is suitable for detention in a training centre or in a detention centre. (Added 30 of 1977 s. 11)

(4) For the purposes of this section, a youthful offender is unsuitable for further detention if he has attained the age of 14 years and the Director of Social Welfare has certified in writing that, in the opinion of the Director of Social Welfare, he is unsuitable for such further detention by reason of any of the following- (Amended 90 of 1988 s. 3)

(a) absconding;

(b) persistent refusal to conform to the rules of the reformatory school;

(c) wilful insubordination against the discipline of such school;

(d) such other conduct as renders him a bad influence on the other youthful offenders detained in such school.

(5) For the purposes of this section, the definition of "youthful offender" in section 2 shall apply as if the words "under the age of 18 years" were substituted for the words "under the age of 16 years". (Added 90

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of 1988 s. 3)

(Added 32 of 1959 s. 5)