

C045eon

REHABILITATION CENTRES BILL

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Provide for the appointment of rehabilitation centres for the reformation and training of offenders of or over 14 and under 21 years of age, and for other related matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Rehabilitation Centres Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires---

"addiction treatment centre" (戒毒所) means a place or building appointed to be an addiction treatment centre under section 3 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);

"approved" (獲允許) means approved by the Commissioner;

"Commissioner" (署長) means the Commissioner of Correctional Services;

"correctional services officer" (懲教人員) means an officer of the Correctional Services Department;

"court" (法庭) includes a magistrate;

"detention" (羈留) means detention in a rehabilitation centre;

"detention centre" (勞教中心) means a place or building appointed to be a detention centre under section 3 of the Detention Centres Ordinance (Cap. 239);

"detention order" (羈留令) means an order of detention made under section 4(1);

"initial detention period" (前段羈留期), in relation to a young offender, means the period referred to in section 4(5)(a);

"person unlawfully at large" (非法地不受羈留的人) means---

(a) an escapee from a rehabilitation centre;

(b) a person who fails to return to a rehabilitation centre at the expiration of the period for which permission under section 5(1) or leave of absence for whatever purposes has been granted; or

(c) a person who, being the subject of a recall order, fails to return to a rehabilitation centre after having been required to do so by the Commissioner,

and "unlawfully at large" (非法地不受羈留) shall be construed accordingly;

"recall order" (召回令) means an order made under section 7(1) requiring a person to return to a rehabilitation centre;

"regulations" (《規例》) means regulations made under section 13;

"rehabilitation centre" (更生中心) means a place or building appointed under section

3 to be a rehabilitation centre;

"relevant offence" (有關罪行) means an offence punishable by imprisonment, other than for non-payment of a fine, but not an offence the sentence for which is fixed by law;

"subsequent period of residence" (後段居住期), in relation to a young offender, means the period referred to in section 4(5)(b);

"supervision order" (監管令) means an order for supervision made under section 6(1);

"training centre" (教導所) means an institution established as a training centre under section 3 of the Training Centres Ordinance (Cap. 280);

"young offender" (青少年犯) means an offender of or over 14 and under 21 years of age.

3. Rehabilitation centres

The Secretary for Security may, by order published in the Gazette, appoint a place or building to be a rehabilitation centre for the purposes of being---

- (a) a place of confinement in which a young offender may be detained in custody; or
- (b) an institution in which a young offender may be required to reside after studying, working or engaging in other approved activities.

4. Detention order

(1) Subject to subsection (2), where a person who is apparently a young offender is found guilty of a relevant offence, the court may, in lieu of any other sentence, make a detention order against him if the court is satisfied that having regard to the character and conduct of the person and the circumstances of the case, it would be in the interest of the community and the person himself that he should undergo a period of detention.

(2) A detention order shall only be made against a person who---

- (a) is a young offender;
- (b) is not serving and has not previously served a sentence of imprisonment;
- (c) is not serving and has not previously served a sentence of detention in---
 - (i) a detention centre;
 - (ii) a training centre; or
 - (iii) an addiction treatment centre;
- (d) is physically, mentally and medically fit to be detained in a rehabilitation centre;
- (e) is apparently an offender for whom a short-term custodial sentence is appropriate; and
- (f) on the date of conviction, is certified medically to be not drug dependent.

(3) A court may, after conviction of a young offender, remand him in the custody of the Commissioner for such period, not exceeding 3 weeks, as the court thinks necessary to enable the Commissioner to ascertain the suitability of the offender

for detention and the availability of a place for the offender in a rehabilitation centre.

(4) A young offender against whom a detention order is in force shall be detained in a rehabilitation centre for such period, being a period in aggregate of not less than 3 months and not exceeding 9 months, as the Commissioner may determine.

(5) The period referred to in subsection (4) shall comprise the following---

(a) the initial detention period of not less than 2 months and not exceeding 5 months at a rehabilitation centre referred to in section 3(a); and

(b) the subsequent period of residence at a rehabilitation centre referred to in section 3(b) for a duration of not less than 1 month and not exceeding 4 months.

(6) In determining the whole period of detention, the Commissioner shall take into consideration---

(a) in relation to the initial detention period, the conduct and progress of the young offender;

(b) in relation to the subsequent period of residence, the needs and progress of the young offender.

(7) The references to "young offender" in subsections (4) and (6) do not affect the power of the Commissioner to detain an offender in a rehabilitation centre notwithstanding that the offender has reached the age of 21 years or more whilst a detention order is in force against him.

5. Leave for approved activities

(1) The Commissioner may grant to a young offender who is in his subsequent period of residence permission to study, work or engage in any other approved activities outside the rehabilitation centre concerned for such period and at such place as the Commissioner thinks fit.

(2) A young offender who, without reasonable excuse, fails to return to the rehabilitation centre concerned at or before the expiration of the period for which permission has been granted under subsection (1) commits an offence and is liable to a fine at level 2 and to imprisonment for 12 months.

6. Supervision order

(1) The Commissioner shall make a supervision order, that is to say, an order which requires a person to be under the supervision of a correctional services officer and to comply with conditions imposed in the order, for a fixed term of 1 year against a person who is released from a rehabilitation centre after having served a sentence of detention under a detention order.

(2) A supervision order shall specify---

(a) particulars of a correctional services officer whom the Commissioner designates to supervise the person;

- (b) the date of release of the person from the rehabilitation centre concerned and the date on which the supervision order shall expire; and
- (c) such conditions as the Commissioner thinks fit.

(3) The Commissioner may at any time vary or cancel a supervision order.

(4) A person who fails to comply with a condition of a supervision order which has been made against him commits an offence and is liable to a fine at level 2 and to imprisonment for 12 months.

(5) A person against whom a recall order has been made shall not be liable to be prosecuted or convicted under subsection (4).

(6) A court may, instead of imposing a sentence under subsection (4), order that the case be referred to the Commissioner and that a recall order be made against the person by the Commissioner.

7. Recall order

(1) Subject to subsection (4), the Commissioner may, if he is satisfied that a person against whom a supervision order is in force has failed to comply with any condition of the order, make a recall order against the person requiring him to return to a rehabilitation centre.

(2) A person taken to a rehabilitation centre under subsection (1) may be detained until the expiration of 9 months from the date of the coming into operation of the detention order, or 3 months from the date of his being arrested under the recall order, whichever is the later.

(3) The Commissioner may at any time release a person against whom the recall order is in force.

(4) A recall order may not be made against a person who has been charged with an offence under section 6(4) unless the court orders that such an order be made under section 6(6).

8. Effect of imprisonment or further sentence of detention

(1) If a person against whom a detention order, a supervision order or a recall order is in force is on conviction of another offence---

(a) subject to a new detention order;

(b) sentenced to a term of imprisonment which is not suspended;

(c) sentenced to detention in a detention centre;

(d) sentenced to detention in a training centre; or

(e) sentenced to detention in an addiction treatment centre,

then the first-mentioned detention order, or the supervision order or recall order, as the case may be, shall lapse.

(2) A detention order, a supervision order or a recall order made against any person on whom a suspended sentence has been passed (whether made before or after

the suspended sentence was passed) shall lapse if that suspended sentence is ordered to take effect.

9. Arrest, etc. of persons unlawfully at large

(1) Any police officer or correctional services officer may, if he reasonably suspects that a detention order or recall order is in force against a person and that the person is unlawfully at large, arrest, without warrant, the person and take him to a rehabilitation centre.

(2) If a person who is liable to be arrested under this section forcibly resists the attempt of a police officer or correctional services officer to arrest him, the officer (and any person assisting the officer) may use all reasonable means necessary to make the arrest.

(3) If a police officer or correctional services officer reasonably believes that a person unlawfully at large is on particular premises, the person residing at or in charge of the premises must, if the officer so requests, allow the officer to enter the premises to search for the person unlawfully at large.

(4) Subject to subsection (5), if entry to premises cannot be obtained as a result of a request under subsection (3) or if no person appears to be on the premises, a police officer or correctional services officer may enter the premises and search them and, for that purpose, the officer may break open any outer or inner door or window of the premises.

(5) The power conferred by subsection (4) may be exercised without a warrant only if a warrant cannot be obtained without giving the person unlawfully at large an opportunity to evade arrest.

(6) If a person residing at or in charge of premises that a police officer or correctional services officer seeks to enter under subsection (3) requests the officer to produce evidence of the officer's authority or to specify the purpose of the entry, the officer may exercise the powers conferred by that subsection only after complying with the request.

(7) Any period during which a person against whom a detention order or recall order is in force is unlawfully at large shall be disregarded in calculating the period for which he may be detained under the detention order or recall order, as the case may be.

(8) Any person who obstructs a police officer or correctional services officer in the exercise of any power under this section commits an offence and is liable to a fine at level 2 and to imprisonment for 3 months.

10. Transfers from rehabilitation centre to training centre or prison

If a young offender against whom a detention order is in force is reported to the Chief Executive by the Commissioner to be---

(a) exercising a bad influence on other young offenders in the rehabilitation centre;
or

(b) incorrigible,

the Chief Executive may, if satisfied that the young offender could not be suitably dealt with by any disciplinary proceedings provided by or under the regulations, direct that the young offender be---

(i) transferred to a training centre; or

(ii) 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 relevant 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 offender is directed to be detained in a training centre or in prison, 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 or, as the case may be, to imprisonment for the term so determined by the Chief Executive.

11. Visiting justices

(1) The Chief Executive may appoint visiting justices for the purpose of visiting rehabilitation centres.

(2) A rehabilitation centre shall be visited by 2 visiting justices together at least once a month.

(3) Visiting justices shall exercise and perform in relation to rehabilitation centres the powers and duties conferred on visiting justices and visiting committees under the Prisons Ordinance (Cap. 234).

12. Application of Prisons Ordinance

(1) Subject to subsection (2) and the regulations, sections 9 to 12 inclusive, 17 to 21 inclusive and 24 of the Prisons Ordinance (Cap. 234) as set out in the Schedule, and the Prison Rules (Cap. 234 sub. leg.) (except rules 22, 51, 69 and 144(k)), shall apply to a rehabilitation centre and to its staff and to persons detained in them in the manner as if such persons were prisoners and a rehabilitation centre were a prison, and such provisions shall be read with such alterations and modifications not affecting their substance as are necessary to render the same applicable.

(2) Notwithstanding subsection (1), in the event of conflict between this Ordinance and the Prisons Ordinance (Cap. 234), this Ordinance shall apply.

13. Regulations

The Chief Executive in Council may make regulations for all or any of the following matters---

- (a) the regulation and management of rehabilitation centres;
- (b) the treatment, employment, discipline, control and welfare of persons detained in rehabilitation centres;
- (c) conditions which may be specified in a supervision order;
- (d) forms required for the purposes of this Ordinance; and
- (e) generally for the better carrying out of the purposes of this Ordinance.

Consequential Amendments

Reformatory Schools Ordinance

14. Power to order detention in training centre etc. or imprisonment

Section 28 of the Reformatory Schools Ordinance (Cap. 225) is amended---

- (a) in subsection (1), by repealing "or in a detention centre" and substituting ", a detention centre or a rehabilitation centre";
- (b) by adding after subsection (3A)---
"(3AA) An order under subsection (1) for the detention of a youthful offender in a rehabilitation centre shall take effect as if it had been made under the Rehabilitation Centres Ordinance (of).";
- (c) in subsection (3B)---
 - (i) by repealing "or detention centre" and substituting ", a detention centre or a rehabilitation centre,";
 - (ii) by repealing "or a detention centre" and substituting ", a detention centre or a rehabilitation centre";
 - (iii) by repealing "or detention centres" and substituting ", detention centres or rehabilitation centres";
- (d) in subsection (3C), by repealing "or in a detention centre" and substituting ", a detention centre or a rehabilitation centre".

Juvenile Offenders Ordinance

15. Methods of dealing with children or young persons charged with offences

Section 15(1)(1) of the Juvenile Offenders Ordinance (Cap. 226) is amended by adding "or to detention in a rehabilitation centre within the meaning of the Rehabilitation Centres Ordinance (of)" after "(Cap. 280)".

Public Order Ordinance

16. Possession of offensive weapon in public place

Section 33(2) of the Public Order Ordinance (Cap. 245) is amended---

- (a) in paragraph (b)---
 - (i) in subparagraph (ii), by repealing "or";
 - (ii) in subparagraph (iv), by adding "or" at the end;
 - (iii) by adding---
- "(v) subject to the provisions of the Rehabilitation Centres Ordinance

(of), to detention in a rehabilitation centre within the meaning of that Ordinance;"

(b) in paragraph (c)---

(i) in subparagraph (i), by repealing "or";

(ii) in subparagraph (ii), by adding "or" at the end;

(iii) by adding---

"(iv) subject to the provisions of the Rehabilitation Centres Ordinance (of), to detention in a rehabilitation centre within the meaning of that Ordinance;"

Rehabilitation of Offenders Ordinance

17. Protection of rehabilitated individual

Section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) is amended---

(a) in subsection (2), by repealing "or detention" and substituting ", detention or rehabilitation";

(b) in subsection (4)(a), by repealing "or in a training centre" and substituting ", in a training centre or in a rehabilitation centre".

Post-Release Supervision of

Prisoners Ordinance

18. Interpretation

Section 2 of the Post-Release Supervision of Prisoners Ordinance (Cap. 475) is amended, in the definition of "detention facility"---

(a) in paragraph (c), by repealing "or" where it secondly appears;

(b) in paragraph (d), by adding "or" at the end;

(c) by adding---

"(e) any place or building appointed to be a rehabilitation centre under section 3 of the Rehabilitation Centres Ordinance (of);".

SCHEDULE [s. 12(1)]

Provisions of Prisons Ordinance (Cap. 234) Applied

Section Provision

9 Prisoners shall be under the control of the Commissioner who may---

(a) allocate them to suitable institutions under his control;

(b) classify them according to the classifications laid down by the Chief Executive in Council from time to time under section 25.

10 (1) A person shall be deemed to be a prisoner and in legal custody whenever he is being taken to or from, or is confined in, any prison in which he may be lawfully confined, whether under criminal or civil process, or whenever he is working outside or is otherwise outside any such prison in the custody or under the control of an officer of the Correctional Services Department.

(2) Any police officer or other officer acting under the order of any judge or magistrate or other officer having power to commit a prisoner to prison may convey a prisoner to or from any prison to or from which he may be legally committed or removed.

11 The Commissioner on being satisfied that a prisoner is suffering from a disease and cannot properly be treated in a prison, or that he should undergo and desires to undergo a surgical operation which cannot properly be performed in a prison, or that a female prisoner is pregnant and that a birth may be imminent, may order that the prisoner be taken to a Government hospital or other suitable place for the purpose of treatment or such operation or such birth, and while absent from a prison in pursuance of such order the prisoner shall be deemed to be in legal custody.

12 (1) When the attendance of any prisoner at any place is required by a court, tribunal or other body performing judicial functions or for the purposes of any enactment, the Commissioner shall arrange for his transfer in custody to and from such place, and during any such transfer the prisoner shall be deemed to be in legal custody.

(2) Without prejudice to subsection (1), if the Chief Executive, after consultation with the Commissioner, is satisfied that the attendance of a prisoner at any place is desirable in the interests of justice or for the purposes of any public inquiry, the Chief Executive may by order direct that prisoner to be taken to that place in pursuance of such interests or for such purposes and while absent from a prison in pursuance of such order the prisoner shall be deemed to be in legal custody.

17 Any person who---

(a) escapes from any prison or from legal custody; or
(b) aids any prisoner in escaping from prison or from legal custody; or
(c) with intent to facilitate the escape of any prisoner, conveys or causes to be conveyed anything into a prison or to a prisoner or places anything anywhere outside a prison with a view to its coming into the possession of a prisoner, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years.

18 (1) Any person who brings, throws or in any manner introduces or conveys into any prison, or conveys to any prisoner while in custody outside the prison, or deposits in any place outside a prison with intent that it shall come into the possession of a prisoner, or carries out of a prison any arms, ammunition, weapon, instrument, intoxicating liquor, opium or other drugs, tobacco, money, clothing, provisions, letters, papers, books or any other article whatsoever shall, unless so authorized by the rules made under section 25 or by the Commissioner, be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 3 years.

(2) Any officer of the Correctional Services Department or other person employed in the prisons who contravenes or permits any contravention of the provisions of subsection (1) shall be liable, in addition to the above punishment and any other punishment, to forfeit his office.

19 Any person who---

(a) in any prison sells any intoxicating liquor, opium or other drug, tobacco or any other unauthorized article; or

(b) being an officer of the Correctional Services Department or other person employed in the prisons---

(i) permits any such article to be sold in any prison;

(ii) permits any such article to be used by any prisoner, unless such use be authorized by rules made under section 25 or by the Commissioner;

(iii) contrary to the rules made under section 25 gives or causes to be given anything of whatsoever nature to any prisoner,

shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months and, if he be an officer of the Correctional Services Department or other person employed in the prisons, he shall be liable, in addition to such punishment and any other punishment, to forfeit his office.

20 The Commissioner shall cause to be affixed in a conspicuous place outside every prison a notice, in English and in Chinese, setting forth the penalties that will be incurred by persons who contravene the provisions of sections 17, 18 and 19.

21 Any officer of the Correctional Services Department or other person employed in the prisons who---

(a) after having duly engaged to serve as such absents himself from his duties; or

(b) on being dismissed or permitted to resign from or ceasing to belong to the Correctional Services Department, does not deliver up all arms, accoutrements, appointments and things entrusted to him for the performance of his duty,

shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months, and shall be liable to forfeit his office upon conviction.

24 (1) Save where the contrary intention appears from the context of this or any other Ordinance and subject to any special instructions of the Commissioner, the Deputy Commissioner may exercise and perform any of the powers, functions and duties which are conferred or imposed upon the Commissioner by this or any other Ordinance except any power to dismiss a subordinate officer which may be conferred on the Commissioner by or under this Ordinance.

(2) Save where the contrary intention appears from the context of this or

any other Ordinance and subject to any special instructions of the Chief Executive, the Commissioner may authorize any senior officer by name, office or appointment to exercise and perform any of the powers, functions and duties which are conferred or imposed upon the Commissioner by this or any other Ordinance except any power to dismiss a subordinate officer which may be conferred on the Commissioner by or under this Ordinance.

Explanatory Memorandum

The object of this Bill is to provide for the appointment of rehabilitation centres for the detention and rehabilitation of offenders of or over 14 and under 21 years of age.

2. Clauses 1 and 2 deal with preliminary matters, including the definition of terms used in the Bill.

3. Clause 3 provides for the appointment of rehabilitation centres by the Secretary for Security.

4. Clause 4 defines the circumstances under which a detention order may be made and the duration of such order.

5. Clause 5 empowers the Commissioner of Correctional Services to grant permission to young offenders to study, work, etc. outside a rehabilitation centre.

6. Clauses 6 and 7 provide for the making of supervision orders and recall orders to facilitate the aftercare of offenders.

7. Clause 8 sets out the effect of an offender's subsequent conviction of another offence on a subsisting detention order, supervision order and recall order.

8. Clause 9 empowers police officers and correctional services officers to arrest persons who are unlawfully at large.

9. Clause 10 empowers the Chief Executive to direct the transfer of an offender from a rehabilitation centre to a training centre or prison where certain circumstances arise.

10. Clause 11 makes provision for rehabilitation centres to be visited by visiting justices.

11. Clause 12 allows certain provisions of the Prisons Ordinance (Cap. 234) to apply to rehabilitation centres *mutatis mutandis*.

12. Clause 13 empowers the Chief Executive in Council to make regulations for the purposes of the Ordinance.

13. Clauses 14 to 18 make consequential amendments to other Ordinances.

14. The Schedule sets out the relevant provisions of the Prisons Ordinance (Cap. 234) which are applicable, with modifications, to the operation of a rehabilitation centre.