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Paper for the House Committee meeting on 30 March 2001

Report of the Bills Committee on Rehabilitation Centres Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Rehabilitation Centres Bill.

Background

2. In 1996, the Standing Committee on Young Offenders (SCOYO) of the Fight Crime Committee (FCC) commissioned the City University of Hong Kong to conduct research into the effectiveness of rehabilitation programmes for young offenders operated by the Correctional Services Department (CSD) and the Social Welfare Department (SWD). The research found the existing rehabilitation programmes effective, but noted that there was a service gap for young male offenders who are physically unfit for the Detention Centre (DC) programme, and for young female offenders who are not involved in vice-related offences. At present, the court has no alternative but to sentence them to Training Centres (TC) run by CSD, which may be too harsh in terms of the length of detention, or put them on probation under the supervision of the SWD, which may be too lenient.

3. The research recommended, inter alia, that a new short-term residential rehabilitation programme be introduced. The proposed programme, which will provide an additional sentencing option for the court in dealing with young offenders, was endorsed by the FCC in March 1998 and has the support of the Judiciary.

4. The Rehabilitation Centres Bill was introduced into the Council on 12 October 1999 in the 1999/2000 legislative session. The Bill lapsed at the end of the first term before LegCo had time to scrutinize it. The Bill, with minor technical revisions, was re-introduced in the current term on 18 October 2000.

The Bill

5. The Bill provides for the establishment of rehabilitation centres for the detention and rehabilitation of offenders aged from 14 to below 21 and related matters.

The Bills Committee

6. At the House Committee meeting on 20 October 2000, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon CHOY So-yuk, the Bills Committee has held four meetings with the Administration. A membership list of the Bills Committee is in **Appendix I**.

7. In order to obtain first-hand information on the rehabilitation and correctional programmes for young offenders, members of the Bills Committee have made a visit to the O Pui Shan Boys' Home of SWD, as well as the Lai King Training Centre and Sha Tsui Detention Centre of CSD. The Bills Committee has also considered a written submission from the Law Society of Hong Kong.

Deliberations of the Bills Committee

Rehabilitation programmes for young offenders

8. Noting that the proposed RC programme is meant to cater for young offenders who are considered unsuitable for the DC and TC programmes, members have requested the Administration to explain the main features of the three types of programme.

DC and TC programmes

9. Members note that young offenders aged between 14 and 20 sentenced to a DC can be detained for a minimum period of one month to a maximum period of six months. The DC programme provides young offenders with "short, shock, sharp" treatment with emphasis on strict discipline and hard work such as foot drill. Offenders must be certified as physically and mentally fit to take part in vigorous physical exercise.

10. The TC programme provides for young offenders, aged between 14 and 20, an indeterminate sentence ranging from a minimum of six months to a maximum of three years. The programme focuses on character reformation and vocational training.

Proposed RC programme

11. The RC programme targets young offenders who are aged from 14 to

below 21 and whose crimes call for a short-term custodial sentence. The programme is divided into two phases. Phase I of the programme will provide two to five months' training in a correctional facility which focuses on discipline training. Apart from the daily educational courses and vocational training, individual and group counselling programmes will be held extensively. In Phase II, the inmates will be accommodated in a penal facility with a half-way house setting for a period of one to four months on a mandatory basis. They may go out for work, attend classes and participate in community service activities during daytime. They may be granted home leave for family reunion. Throughout the two phases, on-going assessment will be made on each inmate's progress, say in respect of improvement in behaviour, attitude, appearance, self-care ability, work performance, response towards counselling, etc. On-going assessment will be made on the conduct and progress of each inmate to determine the appropriate time to transfer the inmate from Phase I to Phase II of the programme and to release him from the RC.

12. Members note that unlike the DC programme, the proposed RC programme will place less emphasis on strenuous physical exercise and hard work, and more on positive training such as civic education and development of social and life skills. While the TC programme aims to rehabilitate offenders through a longer period of education and vocational training, the RC programme will seek to help the participants develop self-discipline, confidence and practical skills to cope with life situations and problems, within a relatively shorter duration.

Location of RCs

13. The Administration has explained that under the proposed programme, four RCs will be set up to provide a total of 224 places as follows –

- (i) 90 places for male inmates at Sha Tsui Detention Centre (STDC) on Lantau Island (Phase I);
- (ii) 70 places for male inmates at Phoenix House at Lung Cheung Road, Wong Tai Sin (Phase II);
- (iii) 40 places for female inmates at Chi Ma Wan Drug Addiction Treatment Centre on Lantau Island (Phase I); and
- (iv) 24 places for female inmates at New Life House in Tai Lam, Tuen Mun (Phase II).

To provide the required accommodation and minimize the resource implications, the Administration will set aside certain parts of the existing penal facilities and carry out necessary refurbishment works.

14. Some members have expressed concern about the desirability of setting up Phase I of the proposed RCs at existing penal institutions such as the STDC. As detainees in DCs are generally offenders who have committed more serious offences and therefore subject to a more rigorous correctional programme, this might cause the public to associate the RC inmates with those detained in the STDC and have a bad impression of them. The Administration has explained that the option of establishing RCs in some other locations had been considered, but found to be not feasible. The Administration has assured members that detainees in the new RC and those in STDC would be physically segregated and effectively supervised.

15. Members have suggested that the new RCs should be given a distinct name so as to dissociate them from nearby correctional institutions. The Administration has agreed to consider.

Duration of detention

16. Under clause 4(5), the total period of detention under the RC programme is proposed to range from a minimum of three months to a maximum of nine months. As the City University's report recommended a maximum detention period of six months, members have requested the Administration to explain the rationale for its proposal.

17. According to the Administration, it has taken into account the following factors in setting the length of detention in RCs -

- (a) With a comparatively softer regime than the DC programme, the proposed RC programme should attract a period of detention longer than that of DC (which lasts from one to six months for young offenders) in order to create a considerable deterrent impact.
- (b) On the other hand, as an intermediate sentencing option between non-custodial sentence and the TC programme, the proposed RC programme should have a detention period shorter than that of TC (which is between six and 36 months).
- (c) In 1999, the average length of detention of young offenders in DC was 4.8 months and the average period of stay in Phoenix House (a half-way house for young offenders discharged from CSD's custodial institutions) was two months, thus making a total of 6.8 months. Given the two phases of the proposed RC programme, i.e. a period of disciplinary training and subsequent mandatory residency in a "half-way house", a detention period from three to nine months is considered appropriate.

Detention order

18. Clause 4 of the Bill defines the circumstances under which a detention order may be made. In response to members' queries, the Administration has explained that as provided under clause 4(2), the "cut off" date to determine the eligibility of a young offender for the proposed RC programme is the date of sentencing, i.e. the date on which a detention order is made by the court against a young offender. By virtue of clause 4(2), the definition of "Young offender" is defined in clause 2 as a person aged between 14 and under 21 on that date. An offender who attains the age of 21 during the remand period and pending sentencing by the court would not be eligible for the RC programme.

19. As both the DC and TC programmes have adopted the date of conviction as the "cut-off" date, members have requested the Administration to reconsider the matter in the light of consistency with other similar CSD programmes. While the Administration is of the view that no significant policy or operational issues would arise from adopting either "cut-off" date, it nevertheless agrees that for the sake of consistency, the "cut-off" date for the proposed RC programme should desirably be set at the date of conviction. A CSA will be moved by the Administration to this effect.

20. Members have also noted that under clause 4(2)(f), a detention order shall only be made against a person who, on the date of conviction, is certified medically to be not drug dependent. Members have expressed concern as to whether the reference to "on the date of conviction" might be too rigid and restrictive and could create practical difficulties to medical officers.

21. The Administration has explained that the policy intent of the clause is to preclude the admission of active drug dependents into a RC, as opposed to those with past drug experience only. It is therefore necessary to make reference to a certain point of time to determine the drug dependency of an offender. Having regard to members' view, the Administration has agreed that certain flexibility could be provided without prejudice to the policy intent. The Administration has proposed that the reference to "on the date of conviction" be revised to "at the time of conviction" by way of a CSA.

Remand period

22. Under clause 4(3) of the Bill, a court may remand a young offender in the custody of the Commissioner of Correctional Services for a maximum period of three weeks after conviction, in order to ascertain the suitability of the offender for detention and the availability of a place for the offender in a RC. In view of the comment of the Law Society that such a period is considered to be excessive, members have sought an explanation from the Administration.

23. The Administration has explained that it is operationally necessary to

have such a remand period. Before the court imposes a sentence, it may call for a Probation Officer's Report prepared by SWD and suitability reports prepared by CSD. This is usually done in two weeks' time. However, a suitability report required for the purposes of clause 4(2)(d) and 4(2)(f) will have to include the result of medical examination of the young offenders. 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.

24. The Administration has further explained that in case of a need for the court to call for a report from the Young Offender Assessment Panel (YOAP), the whole process will take more than two weeks to complete. This is because YOAP needs to consider SWD's Probation Officer's Report and CSD's suitability reports and also to interview the young offender in question before it completes its own report.

25. Members note that the provision of a maximum three-week remand period is in line with the arrangements for existing programmes in respect of DCs, TCs and Drug Addiction Treatment Centres.

Arrest of persons unlawfully at large

26. Clause 9 empowers police officers and correctional service officers to arrest persons who are unlawfully at large. Members note that under clause 9(3), if an enforcement officer reasonably believes that a person unlawfully at large is on particular premises, he could enter into the premises to search for the person. However, the requirement of "a reasonable belief" on the part of the enforcement officer that a person unlawfully at large is on particular premises is absent in clause 9(4).

27. The Administration has explained that clause 9(3) empowers a law enforcement officer to enter particular premises to search for a person unlawfully at large where there is a person residing at or in charge of the premises. Clause 9(4) deals with a different situation where no person appears to be present or in charge of the premises. The legislative intent of clause 9(4) is to enable the officer to take prompt actions to arrest a person unlawfully at large as called for by the circumstances. The exercising of the power conferred under clause 9(4) is subject to clause 9(5), i.e. the officer must obtain a court warrant to enter and search the premises unless it would give the person unlawfully at large an opportunity to evade arrest. Thus, in most of the cases, it is unlikely that the officer could exercise the power without court warrant when no person appears to be on the premises.

28. Some members have expressed concern that the power under clause 9(4) could be subject to abuse easily and that the safeguard provided in clause 9(5) is inadequate. Having considered members' views, the Administration has agreed

to move a CSA to clause 9(4) to the effect that an enforcement officer may enter the premises for the purpose of search and arrest if he reasonably believes that a person unlawfully at large is on particular premises but no person appears to be on the premises.

Transfer from rehabilitation centre to training centre or prison

29. Clause 10 empowers the Chief Executive (CE) to direct the transfer of an offender from a RC to a training centre or prison where circumstances arise.

Authority to order transfer

30. Some members consider it inappropriate for CE to be the authority to order a transfer under clause 10. These members consider that the authority to order the transfer should vest with the court instead of CE.

31. The Administration has explained that the provisions for such a transfer are necessary as a last resort for a number of reasons. First, if an inmate is found incorrigible under the RC programme, it would only be in his own interest to transfer him to another rehabilitation programme which may better benefit him. Secondly, if an inmate who is found to be exercising a bad influence on other inmates in the RC is not removed, the rehabilitation of the other inmates would be compromised. In considering making such transfers, CE must exercise reasonable discretion and, in the case of a transfer to a prison, consult where practicable the judge or magistrate who made the RC detention order in the first place.

32. As regards members' suggestion that the authority to order transfer should be vested with the court, the Administration considers that the judicial process should come to an end after a sentence has been passed by the court (subject to appeal, if any). It appears that ordering a change of the original sentence based on post-sentence development - as opposed to determining the sentence after conviction having regard to all the circumstances - is not within the customary sentencing purview of a court.

33. The Administration has also drawn members' attention to the fact that there is substantial precedent for CE, rather than the court, to be given such authority. For example, CE may replace indeterminate sentences (such as life imprisonment or detention at Executive discretion) with determinate sentences on recommendation of the Long-term Prison Sentences Review Board. He may grant sentence remission upon prisoners' petitions, on grounds of poor health, assistance rendered to prosecution, etc. In particular, CE is given the authority to transfer a detainee of a DC, TC or Drug Addiction Treatment Centre to another CSD programme, because of the institutional (as opposed to criminal) behaviour of the detainee. These authorities are provided in Article 48(12) of the Basic Law and in various ordinances.

34. In response to members' request for information on overseas practices, the Administration has advised that similar arrangement can be found in the United Kingdom law. Under sections 98 and 99 of the Powers of Criminal Courts (Sentencing) Act 2000, the Secretary of State has the power to direct that an inmate of a youth offender institution be transferred to a prison, if he has attained the age of 18 and has 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.

35. The Administration maintains that it is appropriate to vest with CE the authority to order the transfer of problematic RC inmates to other programmes.

Detention period upon transfer

36. Clause 10 stipulates that in directing the transfer of a RC inmate to a prison, CE may determine the length of a prison sentence which should not exceed the maximum term of imprisonment to which the RC inmate was liable for the relevant offence of which he was convicted.

37. Members have expressed concern about the situation where an inmate could be given a term of imprisonment which far exceeds the length of detention for which he is liable under the RC or TC programmes. Citing the offence of theft as an example, members have pointed out an offender is liable for a maximum imprisonment of 10 years. Under clause 10 as presently drafted, there is nothing to prevent CE from directing a RC inmate who was convicted of the offence of theft for a prison term of up to 10 years. Given the objective of the RC programme, members consider that any prison sentence exceeding the maximum detention period in a RC or TC, which is nine months and 36 months respectively, is unacceptable.

38. Having reviewed the matter in the light of members' concerns and the rehabilitation purposes of such transfers, the Administration has agreed to introduce CSAs. For an inmate transferred to a prison, the Administration considers that the total period that he should remain in CSD's custody should not exceed the maximum detention period in a RC, i.e. nine months. Hence, the Administration proposes 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.

39. A member has expressed serious concern as to whether an inmate might be subject to possible arbitrary re-sentencing by CE regarding his original offence on account of his post-sentence institutional behaviour. In the view of the Administration, with the proposed CSAs on the maximum period of detention in prison upon transfer from a RC (paragraph 38 above), the question

of empowering the executive authority to increase a sentence should not arise. Nevertheless, the member has requested the Administration to consider revising the wording of the proposed CSAs to the effect that in determining the length of a prison sentence in the case of a transfer to a prison, CE is required not only to consult, but also to take into consideration, as far as possible, the recommendations of the trial judge who made the original RC detention order.

40. After consideration, the Administration has agreed to revise the CSAs to address the member's concern. The Administration has also explained the operation of the proposed provisions. The Commissioner of Correctional Services will regularly review the progress of each and every inmate in the RC. If he is satisfied that an inmate is found to be incorrigible or exercising bad influence on other RC inmates and the inmate cannot be suitably dealt with by any disciplinary proceedings provided under the law, he will submit a report with recommendation on how to deal with the inmate to CE for consideration. Before CE can make a determination of the length of a prison sentence in the case of a transfer to prison, he will consult, where practicable, the trial judge or magistrate who made the original RC detention order. Specifically, the judge or magistrate will be invited to give his opinion as to the appropriate term of imprisonment. In determination of the length of prison sentence under clause 10(3), CE must take into consideration, as far as possible, the recommendation made by the judge or magistrate.

41. The Administration has assured members that CE could not lightly disregard a recommendation made by the judge or magistrate, and if he were to do so by taking irrelevant considerations into account then his determination would be susceptible to judicial review. In exercise of the discretionary power under clause 10, CE must not act contrary to the fundamental principles governing the administration of justice. Members find the revised CSAs acceptable.

Committee Stage amendments (CSAs)

42. Apart from the major CSAs detailed above, the Administration will also move certain minor and technical CSAs. A full set of the CSAs to be moved by the Administration and agreed by the Bills Committee is in **Appendix II**.

Recommendation

43. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed at the Council meeting on 2 May 2001.

Advice sought

44. Members are invited to support the recommendation of the Bills Committee in paragraph 43 above.

Legislative Council Secretariat
28 March 2001

Appendix I

Bills Committee on Rehabilitation Centres Bill

Membership list

Chairman Hon CHOY So-yuk

Members 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 Mrs Miriam LAU Kin-ye, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Henry WU King-cheong, BBS
Hon WONG Sing-chi

(Total : 11 Members)

Clerk Mrs Percy MA

Legal Adviser Mr KAU Kin-wah

Date 2 November 2000

REHABILITATION CENTRES BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4(2)	<p>(a) By deleting paragraph (a) and substituting -</p> <p>"(a) is, in the opinion of the court, not less than 14 but under 21 years of age on the day of his conviction;".</p> <p>(b) In paragraph (f) -</p> <p>(i) by deleting "on the date of conviction,";</p> <p>(ii) by adding "at the time of his conviction" after "dependent".</p>
9(4)	<p>By deleting everything from "entry to" to "correctional services" and substituting -</p> <p>"a police officer or correctional services officer -</p> <p>(a) cannot obtain entry to premises as a result of a request under subsection (3); or</p> <p>(b) reasonably believes that a person unlawfully at large is</p>

on particular premises but no person appears to be on the premises,

the".

- 10
- (a) By renumbering the clause 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 subsection (2) or (3).".
 - (c) By adding -

"(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, subject to subsection (4), 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.

(4) The Chief Executive shall, before making a determination under subsection (3) -

- (a) consult, where practicable, with the judge or magistrate who made the detention order; and
- (b) take into consideration, so far as possible, the recommendations made by the judge or magistrate, as the case may be."

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

12 (a) In subclause (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 subclause (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.