

REHABILITATION CENTRES ORDINANCE

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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 11 OF 2001**A circular stamp containing the letters "L.S." in a bold, serif font.

TUNG Chee-hwa
Chief Executive
10 May 2001

An Ordinance to 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.

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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, in the opinion of the court, not less than 14 but under 21 years of age on the day of his conviction;
 - (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) is certified medically to be not drug dependent at the time of his conviction.

(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 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 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

(1) 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 dealt with in the manner referred to in subsection (2) or (3).

(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. 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) Subject to section 12, 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) 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”) 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 (including the regulations) and the applicable provisions, the former 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 (11 of 2001).”;
- (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)(l) 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 (11 of 2001)” 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 (11 of 2001), 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 (11 of 2001), 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 (11 of 2001);”.