

**Bills Committee on  
Juvenile Offenders (Amendments) Bill 2001**

**Minimum Age of Criminal Responsibility  
in Mainland China and Taiwan**

**Introduction**

At the Bills Committee meeting held on 13 November 2002, Members asked why the Administration proposed to set the minimum age of criminal responsibility at a lower level than Mainland China and Taiwan.

**Minimum Age in Mainland China and Taiwan**

2. Article 17 of the Criminal Law of the PRC provided for the minimum age of criminal responsibility. By Article 17, a person who has attained the age of 16 shall be criminally responsible. A person who has attained the age of 14 but is below the age of 16 shall be criminally liable for the crime of intentional killing of another, intentional injuring of another causing serious injury or death, robbery, drug trafficking, arson, explosion or poisoning.

3. Article 18 of the Criminal Law of Taiwan provides that a child who has not attained the age of 14 will not be punished for his act.

4. As regards Hong Kong, while the Administration is proposing to raise the minimum age of criminal responsibility to ten years of age, we also propose to retain the common law presumption of *doli incapax* for children aged from ten to below 14, which may be rebutted upon proof beyond reasonable doubt not only that the child caused an *actus reus* with *mens rea*, but also he knew that the particular act was not merely naughty or mischievous, but seriously wrong. The effect is that all children below the age of 14 will be presumed incapable of committing a crime.

## **Interpretation of Minimum Age in Other Jurisdictions**

5. We would like to emphasize that any attempt to draw conclusions from comparisons with other jurisdictions in respect of the age of criminal responsibility should be treated with the utmost caution.

6. There is no universal consensus on what the minimum age of criminal responsibility should be. The United Nations Convention on the Rights of the Child (UNCRC), which was extended to Hong Kong in 1994, is silent as to what should be the appropriate minimum age. Article 4 of the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) says that the minimum age of criminal responsibility should be determined having taken into consideration the fact of emotional, mental and intellectual maturity of juveniles. The Article reads,

*"In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the fact of emotional, mental and intellectual maturity."*

7. While some may perceive that Hong Kong's similar ethnic background with the Mainland and Taiwan lends support to the application of a similar age of criminal responsibility locally, we must bear in mind that Hong Kong legal's system and our policing and prosecution practices are based on very different premises. While ethnic and cultural similarities may have some relevance, the underlying legal framework to which the age of criminal responsibility applies is of greater significance. For example, although the minimum age of criminal responsibility a child in Taiwan is 14, Article 86 of the Criminal Law of Taiwan provides that a person who has not attained the age of 14 and not been punished for his act will be sent to a rehabilitation centre. In Mainland, for children under the age of 16 and is not given criminal punishment, he may be taken in by the government for shelter and

rehabilitation when necessary under Article 17 of the Criminal Law of the PRC. In this regard, the age of criminal responsibility in other jurisdictions quoted in Annex 2 of the Law Reform Commission's Report (LRC) on the subject suggest that the majority of common law jurisdictions maintain an age of criminal responsibility of 10 or less.

8. The LRC report also stressed the need to treat comparisons with other jurisdictions with care. Without adequate information on precisely how young offenders below the age of criminal responsibility are dealt with in a particular jurisdiction, it would be unwise to place too much reliance on comparisons. The most that LRC felt safely able to conclude from the comparative figures was that there was an international trend towards raising the minimum age of criminal responsibility.

9. We would also like to reiterate the importance to adopt a prudent and step-by-step approach in reforming the minimum age, given the number of persons arrested for crimes increases noticeably starting from the age of ten. For years 1993 to 2001, the average figure for those aged 10 to 11 arrested for crime in a year during 1993 to 2001 is about 3 times of the figure for those aged below 10. The figure for those aged 12 to 14 rose even more significantly to more than 10 times of that for children aged below ten for the same period. We consider that there is a justifiable case to take a cautious approach, as suggested by the LRC, in raising the minimum age.

**Security Bureau**

**January 2003**