

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

**Administration's Responses to
Suggestions raised by the Bills Committee**

Purpose

This paper sets out the Administration's responses to several suggestions raised by the Bills Committee regarding the handling of children and young persons who have offended the law.

Measures to improve the Police Superintendent's Discretion Scheme and referral for support services

2. Members of the Bills Committee suggested enlarging the scope of the Police Superintendent's Discretion Scheme (PSDS) to cover juvenile offenders who are below the revised minimum age of criminal responsibility so that they may be referred to the relevant parties for follow-up services. It was also suggested that more effective measures should be introduced to ensure active participation of the cautioned offenders and their parents/guardian in the supportive or rehabilitative programmes.

3. As we have informed the Bills Committee earlier, the PSDS was introduced in 1963 when the then Attorney General authorised police officers of or above the Superintendent rank the power to caution, rather than prosecute, young offenders under a specified age. Under such authorization, cautioning is an alternative to prosecution. The PSDS is therefore only applicable to persons against whom criminal prosecution may be initiated and who can meet the guiding principles for a Superintendent to exercise his discretion to issue a caution. As children under the minimum age of criminal responsibility cannot be prosecuted since they are conclusively presumed to be incapable of committing crimes, the PSDS cannot be extended to cover them.

4. Having said the above, possible measures to enhance the system for the Police to refer arrested juveniles to other parties to receive supportive services have still been examined. In this regard, careful considerations have been given to the importance to adhere to the Personal Data (Privacy) Ordinance (Cap 486) (PDPO). Information on the arrested child is the child's personal data and is subject to regulation under the PDPO. Save where an exemption in Part VIII of the PDPO applies, transfer of such data from the Police to other agencies for purposes different from those for which the data were to be used at the time of its collection requires consent of the data subject.

5. The Police will strengthen the existing measures to refer children who come to Police's attention due to their non-law abiding behavior but have yet to reach the minimum age of criminal responsibility to relevant parties for services. Preliminary proposals operate in the following manner –

- (a) Upon the arrest of a juvenile, an information leaflet will be given to the child's parents. The leaflet will detail the circumstances under which a juvenile requires follow-up services. It will also list the available supportive programmes and follow-up services provided by the relevant government departments and non-government agencies. The objectives of the production and distribution of the leaflet are to bring to the parents' attention the problems of their children, enable them to better assess the seriousness of their children's problems, and encourage them to seek professional assistance, if needed.
- (b) Investigations involving juveniles arrested will continue to be conducted swiftly to minimize tension and adverse impact on the juveniles. Depending on the findings of the investigations and police enquiries, the arrested juveniles may be prosecuted, cautioned under the PSDS or released (for reasons of insufficient evidence, the juvenile being below the minimum age of criminal responsibility, or the presumption of doli incapax not being rebutted) as soon as practicable.

- (c) For those juveniles who are charged to court or cautioned under the PSDS and are in need of supportive services and follow-up actions, there are established mechanisms to refer them to the relevant government departments and/or agencies, as explained to the Bills Committee at previous meetings.
- (d) For those juveniles who are released after police enquiries, including those who are released because they have not attained the minimum age of criminal responsibility, police officers handling the cases will, before releasing the juvenile, brief the parents on the services available and encourage them and the juveniles who appear to be in need of services to seek assistance from the relevant government departments and/or agencies. If consent of the parents is given, the Police will then refer the cases to appropriate departments or agencies to follow up. Conditions under which a child/juvenile is in need of referral will mirror those of the PSDS. They are set out in Annex A.

6. Having taken into account the fact that released juveniles are not offenders and in order to avoid any stigmatisation on them, it is considered appropriate for the Police to minimize their involvement in the follow-up contacts with juveniles who are released after police enquiries. In such cases, after care services will mainly be provided by the Social Welfare Department (SWD), Education and Manpower Bureau (EMB), and/or non-governmental organisations (NGOs).

7. District Social Welfare Officers (DSWOs) of SWD or officers designated by them, and inspectors of the Student Guidance Section (SGS) of the EMB would act as contact points at the district level to take up referrals from Police of children/juveniles below the minimum age. Upon receipt of referrals, DSWOs or inspectors of SGS would assess the needs and service demands of individual children/juveniles for referrals to appropriate service units. Those handled by DSWOs might be referred to SWD's Integrated Family Service Centres, Family

Service Centres or youth welfare service units for follow up services as appropriate. Regarding those dealt with by inspectors of SGS, the children will be referred to appropriate sections of EMB or schools via the relevant school heads, depending on the needs of the children in question, where they will be taken care of by students guidance professionals.

8. While the consent of parents is required for referral, the cooperation and involvement of the parents are vital to ensuring the children/juveniles' participation and the effectiveness of the supportive services. The Superintendents exercising the cautions always actively identify the needs of juveniles who are cautioned under PSDS, encourage them to take part in relevant supportive programmes and after care services, and persuade their parents to cooperate and get involved in monitoring their participation.

9. Besides, staff of the Juvenile Protection Section (JPS) of the Police have received training on counselling and they will liaise with both the juveniles cautioned and their parents during their follow-up visits. The visits help monitor, and persuade if necessary, the juvenile's participation in the programmes. The JPS will increase the frequency of their follow-up visits if the cautioned juveniles do not respond well in participating the supportive services. Besides, officer-in-charge of the JPS is responsible for maintaining post-referral liaison with SWD, EMB and NGOs. Joint visits or assessment will be conducted regarding problematic cases so as to ensure that the services being rendered are suitable to the juveniles concerned.

Introduction of a Formalised System (e.g. Family Conferencing) to decide the appropriate actions to deal with young offenders

10. The Bills Committee proposed that a formalised system similar to family conferencing should be put in place for deciding the most appropriate actions to deal with arrested children. Under the system, the Police will be required to consult, at an early stage, the SWD, EMB, parents of the child and other relevant parties on the measures to be taken.

11. To make sure that the proposed mechanism for holding the conference is practicable and effective, it is intended that the family group conference is applicable to juveniles cautioned under the PSDS who meet the criteria below, subject to their parents' consent –

- (a) the Superintendent exercising the caution considers the juvenile is in need of the services of three or more parties, e.g. Police (Juvenile Protection Section), SWD, EMB, NGOs, Department of Health, Hospital Authority (the services of the last two parties may be required in some cases); or
- (b) the juvenile is given the second or further caution.

12. Our target is, as far as possible, to hold the conference within 10 working days from the date of juvenile's caution. The conference will discuss and draw up a plan of services or programmes to be given to the juvenile. Subsequent conferences will be called on need basis.

Expansion of Scope of Care or Protection Orders

13. Another suggestion of the Bills Committee is to expand the scope of the care or protection order to provide greater flexibility for the issue of such orders to those children who are at risk and are below the revised minimum age of criminal responsibility.

14. The issue of care or protection orders is provided for under the Protection of Children and Juveniles Ordinance (the PCJO) (Cap 213). The PCJO applies to children and juveniles. Section 2 of the PCJO stipulates that a "child" has the meaning assigned to them by the Juvenile Offenders Ordinance (the JOO) (Cap. 226), and "juvenile" means a person who is, in the opinion of a court or a person exercising any power under this Ordinance, 14 years of age or upwards and under the age of 18 years. According to Section 2 of the JOO, "child" means a person who is,

in the opinion of the court having cognizance of any case in relation to such person, under the age of 14 years. In sum, this means that as far as age is concerned, the PCJO applies to persons aged under 18.

15. Given the above coverage of the PCJO, care or protection orders may be issued to both children below the existing minimum age of criminal responsibility, i.e. seven, and children under the revised minimum age, i.e. ten as proposed in the Juvenile Offenders (Amendment) Bill 2001.

16. As regards "children at risk" who are taken to include –

- (a) those who have committed criminal offences, and
- (b) those who does not have any criminal conviction records but are likely to commit criminal offences,

even though they may not be prosecuted or be cautioned under the PSDS for being below minimum age of criminal responsibility.

It is considered that section 34(2) of the PCJO is able to cover the above two categories of “children at risk”.

17. According to section 34(2) of the PCJO, a child or juvenile in need of care or protection means a child or juvenile -

- (a) who has been or is being assaulted, ill-treated, neglected or sexually abused;
or
- (b) whose health, development or welfare has been or is being neglected or avoidably impaired; or
- (c) whose health, development or welfare appears likely to be neglected or avoidably impaired; or
- (d) who is beyond control, to the extent that harm may be caused to him or to others,

and who requires care or protection.

18. As advised by the Health, Welfare and Food Bureau (HWFB), the policy bureau responsible for the PCJO, the legislative intent is to cast the scope of section 34(2) in a very broad sense. The wide definition of a child or juvenile in need of care or protection reflects the legislative intent to introduce more general criteria for considering the need for care or protection of a child/juvenile and impose greater discretion on the Juvenile Court in granting care or protection orders with a view to affording better protection for such children/juveniles at risk. It had been considered inappropriate to attempt to specify every circumstance in which a child or juvenile might require care or protection.

19. A child or juvenile who shows a propensity to offend the law but has not reached the minimum age of criminal responsibility is likely to meet the definition of a child or juvenile in need of care or protection under section 34(2)(d) of the PCJO.

20. SWD's operational experience also shows that their probation officers do recommend the child or juvenile having committed minor offences be made a subject of care or protection order in accordance with section 34(2)(b) or (d) of the PCJO, if criminal charge against such child or juvenile was dismissed by the Court.

21. We consider that the present scope for application of care or protection orders as defined under section 34(2) of PCJO is sufficiently broad and general to cover children and juveniles at risk, including those who have been convicted, those who are likely to commit criminal offences and those who are under the minimum age of criminal responsibility.

Raise the Minimum Age of Criminal Responsibility to 12 years instead of ten

22. We have carefully considered the suggestion of the Bills Committee to raise the minimum age of criminal responsibility to 12 instead of ten as proposed in the Juvenile Offenders (Amendment) Bill 2001. The following factors are considered relevant –

- (a) The number of arrested persons increases noticeably starting from the age of ten. On average, 478 children aged from 10 to 11, which is about 3 times of the figures for those aged below ten, were arrested for crimes in a year during the period from 1993 to 2001. The figure for those aged 12 to 13 rose even more significantly to an average of 1 934, representing more than 10 times of the figure for children aged below ten.
- (b) Under the existing practice, most of the children and juveniles arrested for crimes are cautioned under the PSDS instead of prosecuted. Children and juveniles cautioned, who are found in need of further services, will be referred to relevant agencies for supportive programmes with their parents' consent.
- (c) Raising the minimum age of criminal responsibility to the age of 12 will exclude children under 12 years from the PSDS, which is well-recognised as an effective scheme in rehabilitating problematic children through a formal cautioning procedure administered by a senior Police officer.
- (d) Given the restrictions provided under the PDPO, changing the minimum age to 12 years may result in possible loss of opportunities for intervention regarding children at risk. The Police can no longer caution nor prosecute children aged below 12 because of the conclusive presumption that they cannot commit crimes. The need to comply with the PDPO also makes it impossible for other departments and youth agencies to provide supportive services if the parents do not consent to referral.
- (e) The Administration has commissioned a consultancy study on measures in handling unruly children with a view to filling the gap of provision of services for children and juveniles at risk after the minimum age has been raised. Hence, proposals for additional supportive services for children and juveniles are pending the completion of the consultancy study which forms part of the review of the juvenile justice system.

23. In view of the fact that the number of arrested children aged from 10 years onwards increases considerably, the possible loss of opportunities for intervention for children aged from 10 to under 12 is highly undesirable. It is considered more appropriate to raise the minimum age of criminal responsibility to ten, before additional services for children aged from ten to 12 are properly put in place. This is in line with the prudent and step-by-step approach recommended by the Law Reform Commission.

Advice Sought

24. We hope that Members of the Bills Committee will support raising the minimum age for criminal responsibility from seven to ten at this stage. We undertake to propose raising the age further from ten to 12 years of age when we put forward proposals to provide additional supportive measures for unruly children below the minimum age.

Security Bureau
January 2003

**Guidelines for referring children/juveniles who are released
or under the minimum age of criminal responsibility**

Guidelines for referral to the Social Welfare Department

- (a) A juvenile who has family or behavioural problems which require the assistance of a social worker; or
- (b) A juvenile without parents or guardians to look after his/her interests; or
- (c) A juvenile whose family is in hardship and requires social welfare assistance; or
- (d) A juvenile who is a school drop-out; or
- (e) A young offender who has completed Secondary 3 level education and is unemployed; or
- (f) A juvenile or young offender who is not participating in any youth activities, such as Junior Police Call, Boy Scout or Girl Guide etc.; or
- (g) A juvenile or young offender who is likely to benefit from community activities, taking into consideration the family background and personal temperament of the offender, such as insufficient family and financial support, lack of sibling or friend, poor interpersonal skills, poor family relationship, problematic behaviour, association with street gangs, low sense of achievement or self-esteem, unsatisfactory academic results etc.

Guidelines for referral to the Education and Manpower Bureau

- (a) A juvenile who is under the age of 15 and is a school drop-out, or one who has not completed Secondary 3 level education; or
- (b) A juvenile who has committed the offence for which he/she has been cautioned due to association with bad elements from the same school and it is considered that a transfer to a new school would benefit the juvenile; or
- (c) A juvenile who has schooling problems.