

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

**Suggestions on Family Group Conference
and Conditional Release of Juvenile Offenders**

Purpose

This paper sets out the Administration's responses to the suggestions raised by the Bills Committee regarding the family group conference and conditional release of juvenile offenders.

Arrangement for Family Group Conference

2. At the last meeting of the Bills Committee held on 22 January 2003, we proposed to hold family group conference for juveniles cautioned under the Police Superintendent's Discretion Scheme (PSDS) when either of the following criteria is met, and subject to their parents' consent –

- (a) the Superintendent exercising the caution considers the juvenile is in need of services of three or more parties, e.g. Police (Juvenile Protection Section), Social Welfare Department (SWD), Education and Manpower Bureau (EMB), non-governmental organisations, Department of Health and Hospital Authority; or
- (b) the juvenile is given the second or further caution.

3. Some members suggested that the family group conference should also be made available to arrested children who were below the minimum age

of criminal responsibility.

4. During the earlier discussion of the Bills Committee, we have explained that the Police have no power to arrest children below the minimum age since the latter cannot be held liable for having committed criminal acts. Once it has been confirmed that a child suspected of having committed a crime is below the minimum age, the child will be released unconditionally in the light of the non-rebuttable presumption that he/she is incapable of committing crime.

5. Different from PSDS cases where a "Background Report of Juvenile Offender" covering detailed information on the young offender's education, work, family and social life will be completed to assist the Superintendent to consider whether discretion should be exercised to administer a caution, the Police can obtain similar background information related to children below the minimum age of criminal responsibility only with the cooperation of their parents. In case where the parents do not agree to provide the necessary background information on their child, it would be difficult to assess the service needs of the child and the holding of a family group conference at this stage might not be effective in bringing the expected benefits.

6. Having said the above, we have agreed to take additional measures to persuade the parents of such children to receive the necessary support services. New measures include –

- (a) information leaflet on services available will be produced and distributed to parents of children who come to the attention of the Police;
- (b) direct liaison points between the Police and SWD and EMB will be set up to ensure timely referral can be made; and

- (c) separate guidelines for the Police to refer cases to SWD and EMB with parents' consent have been drawn up.

7. With the implementation of the above measures, it is hoped that parents will be more positive in giving consent to referral and the Police will assist in making the necessary referral to the relevant parties including SWD and EMB. Collaboration among relevant government departments in serving these children will also be further strengthened. Departments taking follow-up actions for children below the minimum age will get in touch with the child and the parents with a view to gaining a better understanding of the case, including the problems encountered by the child or the family in question. If it is discovered during the process of taking follow-up actions that inputs from other departments or service units are required, necessary liaison with parties concerned will be made.

8. In addition to the above referral system, the Police will also assess the cases which come to their attention to see whether any child is in need of care or protection as defined under the Protection of Children and Juveniles Ordinance (Cap 213) (the PCJO). Under the PCJO, police officers are empowered to apply for a care or protection order for children and juveniles in need. In order to address the needs of the child timely, it is considered to be in the interest of the child for police officers to apply direct for a care or protection order under the PCJO in justified cases, instead of pending the holding of a family group conference which may delay the issue of such an order.

Conditional Release of Juvenile Offenders Arrested for Crimes

9. Some members of the Bills Committee suggested putting in place a mechanism of "conditional release", independent from the PSDS, to require a

juvenile offender to participate in rehabilitative or support programmes before a decision was taken on whether to prosecute him or not. Under the proposal, the juvenile offender may be prosecuted if he does not join the supportive programmes as agreed as a condition for his release.

10. We note that some overseas countries, e.g. Canada, have implemented similar measure. While we are open-minded on the proposed new measure, we would like to consider its feasibility comprehensively, pending the results of the consultancy study the Administration has commissioned on the measures alternative to prosecution adopted in overseas countries. The study, which will involve an assessment on the effectiveness of measures in handling unruly children implemented in other countries, is expected to complete in May 2003.

11. The proposal of allowing conditional release of a juvenile offender requires thorough consideration as it provides a new option in lieu of prosecution. Decision to prosecute involves a consideration of the evidence and the public interest. Whether the juvenile offender admits the offence, shows genuine remorse and a willingness to make amends, including participation in rehabilitative or support programmes, are only some of the factors which would be taken into consideration. Whether a juvenile offender participates in the rehabilitative programmes satisfactorily can only be judged after a reasonable period of time. Should it be subsequently confirmed that the juvenile offender failed to perform satisfactorily, extra caution would be required whether to charge and brought him to court as his right to trial without delay is guaranteed under Article 11 of the Hong Kong Bill of Rights as well as Article 87 of the Basic Law. Moreover, how such scheme of "conditional release", if implemented, would affect the operation of the long-existed PSDS have to be examined in detail.

12. In view of the wide implications of the proposal on conditional release of juvenile offenders, we would like to have a more comprehensive understanding of the overseas experience in implementing similar scheme and its effectiveness before we decide whether to introduce a similar mechanism locally.

Security Bureau

February 2003

[C:\Min_Age\BillsCom_Paper_15.doc]