

September 5, 2002

Mrs. Constance Li
Clerk to Bills Committee
Legislative Council Secretariat
3/F., Citibank Tower
3 Garden Road,
Central, Hong Kong

Dear Mrs. Li,

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

I refer to your letter dated July 26 to our Chief Executive, Ms. Christine Fang on the captioned issue. Basically, we support your Committee's proposal which matches our views as stated in the position paper submitted in March 1999 (Appendix I).

We agree to raise the minimum age of criminal responsibility from 7 to 10 and retain the rebuttable presumption of "doli incapax" for persons between the revised age and 14 years. The burden of rebutting the presumption continues to rest with the prosecution. We are also concerned about the provision of rehabilitation service and support service to juvenile delinquency and young offenders as we hope for growth and changes rather than just punishment.

As our views are in line with your Committee's proposal, we shall not send any representative to attend the September 29 meeting. Should you have any questions, please feel free to contact Ms. Klare Chan at 2864 2942.

Thank you for your kind attention.

Yours sincerely,

Ms. Jane Tsuei
Business Director
Service Development

Encl.

THE HONG KONG COUNCIL OF SOCIAL SERVICE

**Comments on the Consultation Paper on
the Age of Criminal Responsibility in Hong Kong**

Executive Summary

1. Comments on the Age of Criminal Responsibility in Hong Kong

Among the 4 options for reform put forward by the Consultation Paper, the Council opts for Option C – Raise the minimum age of criminal responsibility and retain the rebuttable presumption of “doli incapax” for persons between the revised age and 14 years. The burden of rebutting the presumption continues to rest with the prosecution.

2. Fixing the Age of Criminal Responsibility

The Council proposes the raising of the minimum age of criminal responsibility to 10 years, basing on the following rationale:

- (i) With the advancement of the society and the improvement in living standard, the physical and psychological development of children at the age of 10 is generally mature enough to enable them to have moral judgement.
- (ii) General education enables children at the age of 10 to distinguish between right and wrong as well as to know of the responsibility of committing crime.
- (iii) In daily news report on actions against criminals and with the Government’s publicity on fighting crime through the mass media, children at the age of 10 are easy and able to get the message.
- (iv) The spirit and basis of existing legal system in Hong Kong is to protect children’s welfare and their rights rather than punishment. Hence it is unnecessary to raise the minimum age of criminal responsibility to a higher age.
- (v) However, existing rehabilitation service and counselling service for young offenders in Hong Kong are limited and inadequate. We are worried that if the minimum age of criminal responsibility is raised to 14 years and without appropriate support services available, the possibility for young offenders to commit crime again may increase.
- (vi) Statistics showed that the number of arrests of children for specific selected offences increased from age 10. The public is concerned that if the minimum age is raised too high, elder children might be exploited by adult criminals. In light of this, the raising of age to 10 would be a more appropriate option to balance the public interest and the children's right.

3. The Raising of the Minimum Age of Criminal Responsibility Must Come Along with Effective Support Services and Measures

(i) Child Tribunal to Handle Youth Delinquency

It is recommended that the Government should consider, through legislation, establishing a non-criminal mechanism to handle youth delinquency, such as a child tribunal, as well as to make reference to the family court in handling youth criminal cases. The tribunal can formulate welfare plan for young offenders and their parents and assign case managers to follow up the progress of rehabilitation.

(ii) SWD Initiates "Care or Protection Order" for Young Offenders Aged 7-10

It is recommended that the police should refer those young children who commit crime to the SWD's social workers to follow up the case and initiate "Care and Protection Order" when necessary. In this way, more young children can have better rehabilitation services in the community.

(iii) Amendment of Ordinances in Relation to the Protection of Children and Juveniles

If the Government revises the minimum age of criminal responsibility, the Ordinances concerning the protection and criminal responsibility of children and juveniles e.g. Probation of Offenders Ordinance Cap. 298, Reformatory School Ordinance Cap.225 and etc. should be amended accordingly to avoid contradictions in ordinances.

(iv) Study on Youth Delinquency in Hong Kong

It is recommended that the Government and relevant institutions should conduct a comprehensive study on youth delinquency and the age of criminal responsibility.

4. The Rebuttable Presumption of "doli incapax"

The Council supports to retain the rebuttable presumption of "doli incapax" for persons between the revised age and 14 years. The burden of rebutting the presumption continues to rest with the prosecution. Protection for children in the transitional years between the revised minimum age and 14 years should be maintained. As children under 14 have only limited ability to defense, the burden of rebutting the presumption should remain with the prosecution.