

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

Existing Arrangements for Juvenile Offenders

Purpose

This paper informs Members of the existing measures in handling juvenile offenders.

Background

2. At the first Bills Committee meeting held on 17 July 2002, Members asked whether the Administration would consider providing alternative arrangements, other than prosecution, for juvenile offenders after the minimum age of criminal responsibility has been raised from seven to ten.

Measures Alternative to Prosecution

Presumption of Doli Incapax

3. At present, for children who have reached the minimum age of criminal responsibility and are under 14 years old, there is a legal presumption of doli incapax, i.e. a child within this age range is presumed to be incapable of committing a crime. This presumption can be rebutted by the prosecution on proof beyond reasonable doubt that, at the time of the offence, the child is well aware that his act is seriously wrong, and not merely naughty or mischievous. If this presumption is rebutted, full criminal responsibility will be imposed on the child who can then be charged, prosecuted and convicted for any offence

allegedly committed.

4. The Administration proposes to retain this presumption of doli incapax for children aged between ten and 14 years after the minimum age of criminal responsibility has been raised from seven to ten. This will mean that after the enactment of the Bill, although the minimum age of criminal responsibility is raised to ten, prosecution will still not be instituted against children aged between 10 and 14 unless the presumption of doli incapax can be rebutted.

5. We believe that this arrangement will safeguard the interests of the children by allowing discretion so as to take account of the individual child's level of maturity and provides adequate flexibility to take care of those children who have reached the minimum age but are insufficiently mature. Retention of the presumption also ensures that only children who are able to appreciate that their criminal acts are seriously wrong will be made criminally responsible.

6. In case the presumption of doli incapax cannot be rebutted and thus no prosecution could be instituted against the child aged below 14, consideration will still be given to see if the child is in need of care or protection as defined under the Protection of Children and Juveniles Ordinance (Cap 213) (the PCJO).

7. According to the PCJO, a care or protection order may be made in respect of any person below the age of 18 years, including those under the minimum age of criminal responsibility, who is in need of care or protection. The objective of subjecting the child to a care or protection order is to ensure that the child will be put under proper guidance and care.

8. Care or protection order may be made by a juvenile court on its own motion, or on the application of the Director of Social Welfare (DSW) or any police officer, or on the application of any person authorized by the DSW. If it is concluded that a child's health, development or welfare has been or appears likely to be neglected or avoidably impaired, or he/she is beyond control to the extent that harm may be caused to him or others, a care or protection order may be applied for in respect of that child.

9. The range of orders a juvenile court can make in respect of a child or juvenile in need of care or protection include –

- (a) appoint the DSW to be the legal guardian of the child or juvenile; or
- (b) commit the child/juvenile to the care of any person whether a relative or not, who is willing to undertake the care of him, or of any institution which is so willing; or
- (c) order his parent or guardian to enter into recognizance to exercise proper care and guardianship; or
- (d) with or without making an order under paragraph (b) or (c), make an order placing him for a specified period not exceeding 3 years under the supervision of person appointed for the purpose by the court.

10. Where the circumstances surrounding a child arrested for crime are less serious and do not warrant a care or protection order, and yet the Police consider that the child is in need of assistance in order to prevent them from going astray, the Police will refer the case to the appropriate parties, including the SWD and Education Department, for follow-up actions under the existing

multi-agency strategy in tackling juvenile crimes.

11. Like other family cases, social workers of Family Services Centres/ Integrated Family Service Centres address the children/juveniles' needs and their family problems in a holistic manner. The possible causes and their social circumstances leading to their law-breaking behaviour are carefully assessed to facilitate goal-directed professional intervention. In the initial phases of intervention, effort is made to engage the children/juveniles and their parents in formulating the mutually agreed treatment plan with focus on improving parent-child communication and fostering positive behavioural changes. Counselling service, group work programme, community-based supportive services and other forms of practical assistance are arranged according to individual needs. During the helping process, social workers keep regular contacts with the children/juveniles and their parents through home visits and interviews, and collateral contacts with their carers, teachers and other significant parties to ensure adequate care and supervision to the children/juveniles.

Police Superintendent's Discretion Scheme

12. In spite of the presumption of doli incapax the rebuttal of which will allow the instigation of prosecution against a child under 14, it does not necessarily mean that prosecution will be instituted in each and every case even if the presumption may be successfully rebutted. If certain criteria are met, the child may be cautioned under the Police Superintendent's Discretion Scheme (PSDS) as an alternative measure to prosecution.

13. The existing PSDS applies to juvenile offenders aged seven and under 18 years of age. When a juvenile offender is arrested for an offence, a police

officer of the rank of Superintendent or above may, at his discretion, issue a caution to the offender rather than initiating a criminal prosecution against him.

14. The existing guidelines for assessing the eligibility of juvenile offenders for the PSDS are –

- (a) at the time of the caution is administered, the offender is under the age of 18 years;
- (b) the offender has no previous criminal record;
- (c) the evidence available is sufficient to support a prosecution, and that a prosecution would be the only alternative course of action;
- (d) the offender voluntarily and unequivocally admits the offences; and
- (e) the offender and his parents or guardian agree to the caution.

15. In general, unless there are exceptional circumstances such as seriousness of the offence, the offender's previous record or prevalence of the offence, juveniles are dealt with under the PSDS without appearing before a court whenever possible. The PSDS, thus, is an effective avenue through which a child can be warned of the serious consequences of having committed an offence, and at the same time the child can circumvent the traumatic experience of being prosecuted and convicted at a young age and the possible stigma of criminal record resulted by such conviction.

16. Altogether a total of 3,585 juvenile offenders were cautioned in 2001. This gives a caution rate of 41.1% out of the juveniles arrested in the year, compared with 41% and 37.2% in 2000 and 1999 respectively. Below is a

comparison of the number of juveniles cautioned between 1999 and 2001 –

Year	No. of juvenile (aged 7-17) arrested	% of juveniles eligible for PSDS	No. of juveniles cautioned	Caution rate of juveniles arrested
1999	8 646	54.7%	3 216	37.2%
2000	9 173	54.5%	3 760	41.0%
2001	8 732	53.5%	3 585	41.1%

17. The number of persons aged below 16 cautioned under the PSDS in 2001, broken down into age groups, is set out below –

Age	No. of juvenile arrested	No. of juveniles cautioned	Caution rate of juveniles arrested
7-9	1 12	79	70.5%
10-12	1 029	711	69.1%
13-15	4 768	2 190	45.9%
Overall	5 909	2 980	50.4%

18. The above figures showed that out of the children who aged 7 and under 14 and young persons who aged 14 and under 16 as defined in the Juvenile Offenders Ordinance (Cap 226) arrested for crimes in 2001, about 50% were dealt with by the PSDS, instead of by prosecution. The others were either charged or released.

Aftercare Services under the PSDS

19. For those cases in which the Police Superintendents consider that aftercare service is necessary in addition to caution, they will be referred to

one or more than one of the following organizations for follow-up –

Name of Organisation	PSDS Referrals in 2001	
	No.	%
Police's Juvenile Protection Section (JPS)	2 561	73.2
Community Support Service Scheme (CSSS)	757	21.6
Social Welfare Department (SWD)	180	5.1
Education Department (ED)	2	0.1
Total	3 500	100.0

20. Juveniles who have been referred to the JPS for supervision will be subject to regular visits by a member of the JPS team who will have an informal interview with the juvenile in the presence of his or her parents at their home. Such visits will normally last for two years or until the juvenile's 18th birthday, whichever is earlier.

21. The usual interval of such visits is once a month, but may vary from, say, every two weeks for juveniles assessed as being at very high risk, to once every three months for those at low risk. Subjects covered during the interview include –

- (a) the juvenile's academic progress;
- (b) leisure activities; and
- (c) friends and associates, etc.

22. The JPS maintains regular liaison with the SWD, ED and the non-governmental organization that runs the CSSS, and often consults them about problems in the juveniles' families. The JPS also encourages juveniles under supervision to join the Junior Police Call, HK Award for Young People

or other organizations, as appropriate, so as to provide them with opportunities to take part in more meaningful leisure activities.

23. Since mid-1997 the Police has referred increasing numbers of juveniles to the CSSS, sometimes as an alternative and sometimes as a supplement to the JPS. The purpose of the CSSS is to encourage juveniles who have infringed the law to return to a decent law-abiding life-style, by means of -

- (a) counseling or supportive groups;
- (b) job training and placement;
- (c) skill learning classes;
- (d) adventure and outdoor activities;
- (e) volunteer and community service projects;
- (f) programs for parents/guardians; and
- (g) education and vocational guidance.

24. After the minimum age of criminal responsibility has been raised from seven to ten, the PSDS will continue to be applicable to those of ten and under 18 years of age. Hence, instead of being prosecuted, children and young persons aged between ten and 18 arrested for crime may be cautioned under the PSDS. Appropriate aftercare services will also be rendered to the cautioned children and young persons, in order to prevent them from going astray again.

Measures to handle children and young persons charged and are convicted of criminal offence

25. For those children and young persons who are charged for having

committed an offence, due consideration and care are given to uphold their interests when a criminal proceeding is being instituted against them and when sentences are imposed on them.

26. A charge against a child or young person aged under 16 of any offence, other than homicide, may be heard at a Juvenile Court in the Magistrates' Court established under the Juvenile Offenders Ordinance (Cap 226). The Juvenile Court also has jurisdiction to make care or protection orders in respect of children or juveniles.

27. Under the Juvenile Offenders Ordinance (Cap 226), if the court is satisfied that the child or young person is guilty of an offence, the court may deal with the case in the following manner –

- (a) by dismissing the charge;
- (b) by discharging the offender on his entering into a recognizance;
- (c) by dealing with the offender under the provision of the Probation of Offenders Ordinance (Cap 298). The court may make a probation order requiring the offender to be under the supervision of a probation officer for a period of not less than 1 year or more than 3 years;
- (d) by dealing with the offender under section 96(b) of the Magistrates Ordinance (Cap 227), i.e. to deliver the offender to an appropriate person such as his parents, guardian, person in charge of the school at which the offender is attending, executing a bond with or without sureties, that the person will be responsible for the good behaviour and also, if the magistrate thinks it necessary, for the proper education of the offender for any period not exceeding 12 months;

- (e) if the offender is in need of care and protection, by dealing with him under section 34 of the Protection of Children and Juveniles Ordinance (Cap 213);
- (f) by sending the offender to a reformatory school for a period of not less than 1 year and not more than 3 years, and in any case not longer than until the offender attained the age of 18 years;
- (g) by ordering the offender to pay a fine, damages, or costs;
- (h) by ordering the parent or guardian of the offender to pay a fine, damages, or costs;
- (i) by ordering the parent or guardian of the offender to give security for his good behaviour;
- (j) by committing the offender to custody in a place of detention;
- (k) where the offender is a young person aged over 14 and under 21, by sentencing him to imprisonment or to detention in a training centre established under the Training Centres Ordinance (Cap 280) or to detention in a rehabilitation centre within the meaning of the Rehabilitation Centres Ordinance (Cap 567). The period of detention in a training centre is from 6 months to 3 years, and that in a rehabilitation centre is from 3 months to 9 months;
- (l) where the offender is a male person, by dealing with him under the provisions of the Detention Centres Ordinance (Cap 239). For those aged over 14 and under 25, the period of detention is from 1 to 6 months; and
- (m) by dealing with the case in any other manner in which it may be legally dealt with.

28. Many of the above sentencing options opened to the court aim at rehabilitating and reforming, instead of imposing harsh punishment on, the

young offenders. Moreover, the Juvenile Offenders Ordinance (Cap 226) specifies that no child, i.e. person under the age of 14, shall be sentenced to detention and no young person, i.e. person above the age of 14 but is below 16, shall be sentenced to detention if he can be suitably dealt with in any other way.

29. When handing down sentences on children and young persons convicted of an offence, it is a usual practice for the court to take due consideration of the circumstances of the case, including the nature of the offence, the age and character of the offender, the previous conduct of the offender, in order to ensure the sentence to be imposed is in the interest of the offender and the interest of the community.

30. With the existing alternative measures to prosecution and the wide range of sentencing options available to the court in respect of children and young persons, we consider there are sufficient safeguards to protect the interests and welfare of children and young persons who have committed crimes while public safety and the administration of justice are not compromised.

**Security Bureau
September 2002**