

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

**Measures adopted by Overseas Jurisdictions
in Handling Children below
the Minimum Age of Criminal Responsibility**

Purpose

This paper provides Members with information on the measures adopted by some overseas jurisdictions in handling children below the minimum age of criminal responsibility.

Background

2. At the first Bills Committee meeting held on 17 July 2002, Members indicated interest to have more information on how overseas countries deal with children under the minimum age of criminal responsibility, if they have committed crimes, and the effectiveness of the measures.

3. We have obtained the requested information from the following countries - Singapore, Canada, the United States, England and Wales and New Zealand. Information received is set out in the following paragraphs.

Singapore

4. The minimum age of criminal responsibility in Singapore is seven years old. If a child aged below seven years old commits a criminal act or

any anti-social acts, the police may refer the matter to a social officer to arrange counseling for the child or conduct social investigation into the child's family background. Subject to the results of the investigation, the social officer will make necessary recommendations, including requesting the child to consult psychiatrist.

5. The Children and Young Persons Act (Chapter 38) (CYPA) in Singapore provides the legal basis for the protection and intervention by relevant authorities if a child (below the age of 14) or young person (from 14 years to below 16 years of age) is found to be abused or neglected.

6. In case parents of delinquent children are in need of assistance, the Ministry of Community Developments and Sports (MCDS) in Singapore will provide advice on the suitable talks, seminars and workshops run by voluntary welfare organisations for parents. The MCDS also manages a hotline to provide advice on managing children to needy parents. Parents may also seek admission of their children to a Voluntary Children's Home for temporary accommodation if they want to help their children get away from negative peer influence. However, this is considered as a more drastic approach and institutionalisation is suggested to be the last resort.

7. If all alternatives fail, parents of delinquent children can lay a complaint in the Juvenile Court under Section 49 of the CYPA. This section empowers the parents/guardians to bring the child before the Juvenile Court if the child is beyond parental control. The Court will direct MCDS to submit a social report and could remand a child in either a Boys' or Girls' Home for up to five weeks. Upon submission of the social report, the Court can make an order with the parent's consent to place the child under statutory supervision or admit him/her into a Home gazetted under the CYPA for a period not less than

two years and not more than three years.

Canada

8. In Ontario, Canada, children under 12 are not criminally liable for their behaviour, and fall under the purview of provincial child welfare legislation. Under the Ontario Child and Family Services Act (CFSA), a peace officer who believes on reasonable and probable grounds that a child actually or apparently under 12 years of age has committed an act in respect of which a person 12 years of age or older could be found guilty of an offence may apprehend the child without a warrant. On doing so, the peace officer shall return the child to the child's parent or other person having charge of the child as soon as practicable. Where it is not possible to return the child to the parent or other person within a reasonable time, he shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

9. The Police, when come into contact with a child under 12 who is committing an offence, will usually take the child home to his/her parent. If at the time the child is suspected to be in need of protection under the CFSA, the police officer is obligated to bring the child to the attention of child welfare officials. If not, the police officer will inform the child's parents that resources are available within their community to assist them with their child's difficulties. If the parent consents, the police officer will refer the child and family to welfare centers for services.

10. In cases where a child under 12 has committed a serious offence (including murder, seriously injured another person, caused serious property

damage, or has engaged more than once in behaviour injurious to others or which result in serious property damage), an assessment of the child and family is conducted to ensure that the child's misbehavior is not caused by a lack of parental supervision or parental incapacity in managing the child. Otherwise, the child will be brought to the attention of child welfare officials.

The United States

11. In the United States, the treatment of children who commit crimes, like most criminal law, is handled at the state level. Consequently, whether and when children are held criminally responsible for their actions differ among states.

12. In general, a differentiation is made between children who commit crime and adults who commit crime. Children who commit an act that would be considered a crime if committed by an adult are called "delinquents" rather than "criminals". Their act is called a "delinquent act" rather than a "crime". Children who are found to be delinquent are punished in a separate correctional system (i.e. the juvenile court) from adult offenders. The purpose of such punishment is usually more oriented toward rehabilitation than it would be for adult offenders. The records relating to the delinquent's offence are often sealed or unavailable to the public and eventually destroyed when the delinquent becomes an adult.

13. In view of the above, in understanding the concept of criminal responsibility in the United States, consideration have to be given to both statutes determining whether a child can be held criminally responsible and statutes determining whether a child can be held responsible as a delinquent.

We have looked into how the issue is being dealt with in New York, Massachusetts, and California.

New York

14. In New York, with certain exception, a person less than 16 years old is not criminally responsible for his/her conduct. Exceptions to this provision relate to the conduct involved. For example, a 13-year-old may be held criminally liable for intentional or depraved indifference murder, but not felony murder. Persons aged 14 and 15 may be held criminally responsible for murder as well as several serious felonies, including kidnapping, arson, assault, manslaughter, rape and burglary.

15. "Juvenile delinquent" is defined in New York to be person over seven and less than 16 years of age who has committed an act that would constitute a crime if committed by an adult.

16. When both statutes are taken into account, children under seven years of age cannot be held responsible in any court for conduct that would otherwise constitute a crime.

Massachusetts

17. In Massachusetts, a "delinquent child" is defined to be "a child between seven and 17 who violates any city ordinance or town-by-law or who commits any offence against the law of commonwealth". Thus, a court cannot find that a child less than seven years of age is a delinquent child. Such child is beyond the jurisdiction of both the adult and juvenile justice systems.

California

18. California has not specified a minimum age of responsibility. Any person who is under 18 years of age when he/she violates any law is within the jurisdiction of the juvenile court, which may adjudge such person to be a delinquent. Separately, under the California Penal Code 26, a child under 14 years of age is presumed incapable of committing a crime. However, such presumption holds only in the absence of clear proof that the child knew the wrongfulness of the act at the time it was committed. Hence, children of all ages in California are within the jurisdiction of the juvenile or adult court if the presumption cannot hold. There is no minimum age below which they are immune from prosecution.

19. According to our research, neither New York nor Massachusetts provide any official treatment programmes for children who are not within the jurisdiction of juvenile or adult courts. Presumably, very young children are permitted to remain at home without any state-administered punishment or rehabilitation.

20. If any state-administered services are provided for children under the minimum age of responsibility in the light of their delinquent conduct, they are provided under dependency, rather than delinquency, laws. Dependency laws are intended to protect and care for children who are neglected, abused, or otherwise in need of services. Depending on the situation of the child offender's home, the child may be removed from the home and placed in a facility or with foster caregivers. Alternatively, the child may remain in the home with supervision or monitoring, or the child may receive treatment, such as counseling. If any young offenders are processed through the dependency

system, it is done informally without any official or publicly available record of their "criminal" conduct.

England and Wales

21. The minimum age of criminal responsibility is ten years in England and Wales. On the basis of the belief that early targeted intervention with children who are particularly at risk of drifting into crime can help prevent later offending, two powers to help local authorities¹ and the police to intervene effectively with at-risk children are provided for in the Crime and Disorder Act 1998. They are the Local Child Curfew Scheme and the Child Safety Order.

22. The Government believes that children under the age of 10 being out late at night unsupervised may place them at risk and can create problems for the local community because such children may become involved in anti-social or potentially criminal behaviour. The purpose of the local child curfew is to help address particular problems of unsupervised children under the age of 10 out on the streets late at night. The local child curfew will apply to unsupervised children under 10 who are not under the effective control of their parent or a responsible person aged 18 or over. The curfew may begin no earlier than 9 p.m. and may last no later 6.a.m, but it will be a matter for local decision as to the appropriate time for the local child curfew in each area, and the ages of children under 10 to whom the local child curfew should apply. The local curfew notice can apply for a maximum duration of

¹ "local authority" means –

(a) in relation to England, the council of a district or London borough, the Common Council of the City of London, the Council of the Isle of Wight and the Council of the Isles of Scilly;
(b) in relation to Wales, the council of a county or county borough.

90 days at a time. Any curfew imposed under a curfew notice will be enforced by the police (supported as necessary by local agencies) as part of their policing of the area to which the curfew applies.

23. The social services will play an important role in the successful operation of a curfew notice. The local authority should ensure that effective liaison and dialogue exists between the police and social services department particularly on the need for the social services department to support the process. The department will receive children found in breach of a curfew who are not returned to their home.

24. If the police found any child in breach of a local child curfew, they have to inform the local authority as soon as practicable. Once the social services department has been informed that a child in their area has been found in breach of a local child curfew, they are statutorily required to investigate the circumstances behind the breach as soon as practicable and, in any event, within 48 hours of being informed by the police. This is likely to involve a visit to the family to establish why the child has been found in breach of a local child curfew, and to find out whether there are problems which can be helped by appropriate intervention.

25. The Child Safety Order is a preventive measure aimed at children below the age of 10, who behave in a disruptive or anti-social manner. The magistrate court may make the order on the application of a local authority in respect of a child if one or more of the following conditions are fulfilled –

- (a) the child has committed an act which, if he had been aged 10 or over, would have constituted an offence;
- (b) a child safety order is necessary for the purpose of preventing the

commission by the child of such an act as is mentioned in paragraph (a) above;

- (c) the child has contravened a ban imposed by a curfew notice; and
- (d) the child has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.

26. The order entitles the courts to place the child under the supervision of the responsible officer for a specified period, and impose requirements that are intended to ensure that the child received appropriate care, protection and support, and is subject to proper control in order to prevent any repetition of the behaviour that precipitated the order.

27. Apart from the Local Child Curfew Scheme and the Child Safety Order, which are specifically provided for children under 10, the Crime and Disorder Act 1998 also provides the issuance of parenting order in any court proceedings. Parenting order applies to cases, amongst others, where -

- (a) a child safety order is made in respect of a child; or
- (b) a person is convicted of an offence of failing to comply with school attendance order or failing to secure regular attendance at school of registered pupil under Education Act 1996. (School attendance order can be made against children aged between five and 16 years old.)

28. The aim of the parenting order is to reinforce or ensure the exercise of appropriate responsibility on the part of parents, with a view to prevent offending by their children. Parenting orders are normally expected to contain a compulsory requirement to attend counseling or guidance sessions, at

which they will receive help and support in dealing with their child. In addition, courts are entitled to require parents or guardian to exercise control over their child's behavior, for example, by ensuring that they attend school every day or that they return home by a certain time at night.

New Zealand

29. In New Zealand, children under the age of 10 cannot be prosecuted for any offence. There are no special programme or measure to deal with children under 10 who commit crimes. Offending by children (10 to 13 years) and young persons (14 to 16 years) is dealt with under the provisions of the Children, Young Persons, and Their Families Act 1989 (the CYPF Act 1989). While offending by young persons is dealt with in the Youth Court, children aged from 10 to 13 may not be charged with criminal offences other than murder or manslaughter. If charged for the latter offences, children will be processed in the Family Court. The following paragraphs examine how child offenders, i.e. those aged from 10 to 13 who commit offences for which they cannot be charged, are handled in New Zealand.

30. Child offenders are not required to accept criminal responsibility but must be held accountable for their offending. A police officer may deal with child offenders in the following ways –

- (a) give the child offender a warning;
- (b) report the child to the Police Youth Aid Section if a warning is not sufficient. The youth aid officer may consider alternative actions such as making the child write a letter of apology, or undertake community work;

- (c) apply for a place of safety warrant if it is suspected that a child offender is suffering, or is likely to suffer, ill-treatment, neglect, deprivation, abuse or harm if he/she is returned to, or remains at, home;
- (d) apply for an interim custody order to the Family Court if the child offender is declared to be "in need of care or protection" under the CYPF Act 1989 so as to remove him/her from unsatisfactory living arrangement;
- (e) refer the child to a Youth Justice Coordinator who may convene a Family Group Conference (FGC). The FGC, taking into account the child's health, education and family situation, may make decision, recommendations, and plans as it considered necessary or desirable in relation to the care or protection of the child; or
- (f) arrest the child if it appears to be in the public interest to do so. Arrest is merely a mechanism to bring the child before a Family Court so that immediate placement options can be explored. The child may not be charged unless he has committed manslaughter or murder.

Effectiveness of the Measures adopted by Overseas Jurisdictions

31. While the above briefly informs Members of the measures adopted by some overseas countries outside their criminal justice systems in handling children who have committed offences but could not be charged due to their tender age, we have not been able to obtain systematic information on the effectiveness of such measures. Having said the above, the Administration have commissioned a consultancy study which will examine, amongst other things, how effective the systems in other jurisdictions are in dealing with

unruly children below the minimum age of criminal responsibility. We will carefully consider the findings of the study when assessing whether and how new measures should be introduced domestically, after the minimum age of criminal responsibility has been raised.

Security Bureau

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