

HONG KONG COMMITTEE ON CHILDREN'S RIGHTS
RESPONDING TO THE PROPOSED BILL
TO
RAISE THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY
FROM SEVEN TO TEN YEARS OF AGE

Preamble

No one will deny the notion that children are entitled to the fundamental necessities of life: love and nurturance, food and shelter, health care and education. When young people are in conflict with law, regardless of the reasons for their offences, they are entitled to fair treatment at the hands of juvenile justice systems that are designed to aid youngsters' return to productive society as quickly as possible. We need a new youth justice system that promote values such as accountability and responsibility and is more effective in supporting delinquents to return to community.

Facts about juvenile crime

1. The problem

- In recent years, juvenile rates have been quite steady and not going up.
- Young children at or below the age of 12 pose no substantial threat to society and should not incur criminal responsibility for their actions. The offences committed were mainly theft and were not of a serious nature. – Duty Lawyer service.
- Many of known causes of delinquency remain rampant in Hong Kong – change in social values, child abuse and neglect, exposure to drugs and gangs, truancy and school failure, poor parenting skills, unemployment and others remain widespread.

2. Causes of Delinquency

- There is no single cause of delinquency and violence.
- Most delinquents especially chronic ones have risk factors stemming from breakdowns in five influential domains in juveniles' lives: neighborhood (community disorganization, availability of drugs and firearms, and persistent poverty), family (family life is filled with violence, problem behaviors, poor

parental monitoring, and inconsistent disciplinary practices or maltreatment), school (school bullying), peers, and individual characteristics.

- Youth exhibiting combinations of these deficits in multiple domains of their lives are at highest risk of delinquency.
- In sum, delinquency and violence have multiple causes, which often occur simultaneously, exacerbating one another and making them more difficult to ameliorate. Identifying those factors most prevalent in a community is the essential first step toward developing effective programs to prevent or control delinquent behavior.
- Rather than incriminating youth for their wrongs, we adults including parents, community leaders and government, do have a duty to them in providing a healthy environment optimal for their growth and development. Delinquent youths are not problems to be targeted but partners in solving the many problems we have.

3. What works in Juvenile justice system

In the past decade, we have learnt that:-

- i. Transfer to criminal court increases criminality of youthful offenders.
- ii. The threat of adult time does not deter youth from crime.
- iii. Transfer to criminal court does not ensure tougher punishment.
- iv. Transfer to adult court is expensive and wastes funds needed to implement what works.

Hence:-

- No matter what age are set for age of criminal responsibility, it is most important to establish a humane and constructive juvenile justice system which is designed to deal with young offenders until they reach the age of adulthood.
- The system should be based on knowledge of child development helping them learn a sense of responsibility for their actions and promoting their sense of dignity
- At the same time the system should protect society from potentially dangerous criminals and children from being exploited by adult criminals.
- Cruel, inhumane or degrading procedures and punishment should be prohibited and detention should only be a measure of last resort and only for the shortest period of time.
- The best interest of the child must be the basis of juvenile system. For those young people found guilty of criminal behaviour, the emphasis should be on

reintegration not retribution.

- The balanced and restorative justice approach to juvenile justice consists of three related objectives: community protection, accountability, and competency development.

Based on intensive research, recommendations from American Youth Policy Forum on effective Juvenile Justice Systems were:-

- Intensive family-oriented and home-based counseling services for delinquent youth as an alternative to incarceration, standard probation, and placement into residential treatment centres or group homes.
- Objective screening of first-time and second-time offenders, followed by intensive counseling and treatment services for those at high risk to become chronic delinquents.
- Short-term foster care combined with counseling and parent management training for parents, is an alternative to incarceration or group home placement for chronic but non-dangerous youth offenders.
- Intensive advocacy services as an alternative-to-detention for non-violent youthful offenders who would otherwise be locked up pending trial.
- Intensive programming aimed at social competence promotion and re-socialization for youth in juvenile corrections.
- Empowering community organizations and volunteers to sanction and supervise many delinquent youth and ensure a swift and proportionate response for less-serious offending.
- Coordinated, appropriate and cost-effective care for adolescent with serious emotional disabilities.
- **JUVENILE JUSTICE INITIATIVES THAT REDUCE CRIME WILL SAVE MONEY.**

4. What works in preventing juvenile crime

The UN Guidelines for the Prevention of Juvenile Delinquency (Rivadh Guidelines) recognize the importance of preventing young people from being stigmatized by the justice system. The Guidelines call for the development of measures that “avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others”. It aims to help children overcome their misdeeds and fulfill their full potentials as we are dealing with human beings who are still developing. Our goal must be to help mend what has gone wrong and prepare them for later success – not simply to punish them.

The fears that raising the age of criminal responsibility will encourage exploitation of young children by adult criminals is defying the right of the child – victimizing children for the wrong doing of adults. Rather, adult criminals exploiting children for crime should be more heavily punished

Table 1: Summary of Program Economics (All Monetary Values in 2000 Dollars)

	Number of Program Effects in the Statistical Summary	Average Size of the Crime Reduction Effect* & (Standard Error) *note that a negative effect size means lower crime	Net Direct Cost of the Program, Per Participant	Net Benefits Per Participant (i.e., Benefits minus Costs)	
				Lower End of Range: Includes Taxpayer Benefits Only	Upper End of Range: Includes Taxpayer and Crime Victim Benefits
	(1)	(2)	(3)	(4)	(5)
Early Childhood Programs					
Nurse Home Visitation (for low income single mothers)	2	-0.29 (0.21)	\$7,733	-\$2,067	to \$15,918
Early Childhood Education for Disadvantaged Youth	6	-0.10 (0.04)	\$8,936	-\$4,754	to \$6,972
Middle Childhood & Adolescent (Non-Juvenile Offender) Programs					
Seattle Social Development Project	1	-0.13 (0.11)	\$4,355	-\$456	to \$14,169
Quantum Opportunities Program	1	-0.31 (0.20)	\$18,954	-\$8,955	to \$16,428
Mentoring	2	-0.04 (0.06)	\$1,054	\$225	to \$4,524
National Job Corps	1	-0.08 (0.03)	\$6,123	-\$3,818	to \$1,719
Job Training Partnership Act	1	0.10 (0.06)	\$1,431	-\$4,662	to -\$12,082
Juvenile Offender Programs					
Specific "Off the Shelf" Programs					
Multi-Systemic Therapy	3	-0.31 (0.10)	\$4,743	\$31,661	to \$131,918
Functional Family Therapy	7	-0.25 (0.10)	\$2,161	\$14,149	to \$59,067
Aggression Replacement Training	4	-0.18 (0.14)	\$738	\$8,287	to \$33,143
Multidimensional Treatment Foster Care	2	-0.37 (0.19)	\$2,052	\$21,836	to \$87,622
Adolescent Diversion Project	5	-0.27 (0.07)	\$1,138	\$5,720	to \$27,212
General Types of Treatment Programs					
Diversion with Services (vs. regular juvenile court processing)	13	-0.05 (0.02)	-\$127	\$1,470	to \$6,679
Intensive Probation (vs. regular probation caseloads)	7	-0.05 (0.06)	\$2,234	\$176	to \$6,812
Intensive Probation (as alternative to incarceration)	6	0.00 (0.06)	-\$18,478	\$18,586	to \$18,854
Intensive Parole Supervision (vs. regular parole caseloads)	7	-0.04 (0.06)	\$2,635	-\$117	to \$6,128
Coordinated Services	4	-0.14 (0.10)	\$603	\$3,131	to \$14,831
Soared Straight Type Programs	8	0.13 (0.06)	\$81	-\$6,572	to -\$24,531
Other Family-Based Therapy Approaches	6	-0.17 (0.04)	\$1,537	\$7,113	to \$30,936
Juvenile Sex Offender Treatment	5	-0.12 (0.10)	\$8,920	-\$3,119	to \$23,602
Juvenile Boot Camps	10	0.10 (0.04)	-\$15,424	\$10,360	to -\$3,587

THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME Version 4.0 Steve Aos, Polly Phipps, Robert Barnoski, Roxanne Lieb **Washington State Institute for Public Policy** May 2001

Evidence from studies have demonstrated what works in prevention:-

- Strong and family-oriented early childhood interventions
- Well-designed and carefully-implemented school-based prevention programming
- State-of-the-art treatment of children with conduct disorders and their families
- Positive youth development opportunities

5. What doesn't work in juvenile justice system

- Over-reliance on incarceration and other out-of-home placements
- Under-investment in community based services
- Inattention to research and results
- Aggressive punishment for low-level offending and adolescent mischief

6. What doesn't work in delinquency prevention

- Failure to invest in early childhood services for infants and toddlers in high-risk families
- Case management rather than direct services for infants and toddlers and their families
- Narrowly-focused and disconnected school-based prevention curricula
- Undermanned child welfare systems and services
- Inadequate mental health services and over-reliance on hospitalization and residential treatment

When responsibility begins

The Convention on the Rights of the Child calls for establishment of a minimum age below which young people “shall be presumed not to have the capacity to infringe the penal law” – in other words, an age below which they are too young to be responsible for their actions and therefore too young to face criminal sanctions. It differs widely owing to history and culture

1. At what age are children too young to be responsible for their actions?
 - The Beijing Rules for juvenile justices recommend that the age of criminal responsibility be based on emotional, mental and intellectual maturity and that it not be fixed too low.
 - The Committee on the Rights of the Child has recommended that the age be guided by the best interests of the child.
 - In Japan, offenders below age 20 are tried in a family court, rather than in the criminal court system.
 - In China, children from age 14 to 18 are dealt with by the juvenile justice system and may be sentenced to life imprisonment for particularly serious crimes.
 - In Taiwan and Macau it was set at 14 and 16 years of age respectively.
 - In all Scandinavian countries, the age of criminal responsibility is 15, and adolescent under 18 are subject to a system of justice that is geared mostly towards social service, with incarceration as the last resort.
 - Lohberg’s theory suggests that a child under the age of 13 may not fully appreciate what is seriously wrong and may not understand the subsequence or implications of their act. They are easily influenced by peer pressure and temptation especially when there is lack of guidance or support from families or communities.

- HKCCR survey did confirm that most children and many adults did not understand what is age of criminal responsibility and implications of criminal procedures.
- UNCRC does not specify any particular minimal age of criminal responsibility, but the United Nations Committee responsible for monitoring compliance with it has criticized jurisdictions in which the minimum age is 12 or less (JUSTICE 1996, p7)

2. At what age are children too young to face criminal proceedings and sanctions?

Young people who commit offences should bear the responsibility for their actions – but they must be held accountable in a manner appropriate to their level of maturity and in a meaningful way. Most children do not understand the very complex and prosecution justice system and may be stigmatized and seriously harmed by criminal procedures. Treating few serious offenders fairly but firmly will take the heat off the many who are unfairly labeled as delinquents or worse.

Age of criminal responsibility

Minimum age at which children are subject to penal law in countries with 10 million or more children under 18 years old

Mexico	*6–12	Indonesia	8	Korea, Rep.	12	Russian Fed.	14
Bangladesh	7	Kenya	8	Morocco	12	Viet Nam	14
India	7	UK (Scotland)	8	Uganda	12	Egypt	15
Myanmar	7	Ethiopia	9	Algeria	13	Argentina	16
Nigeria	7	Iran	***9	France	13	Brazil	****18
Pakistan	7	Philippines	9	Poland	13	Colombia	****18
South Africa	7	Nepal	10	Uzbekistan	13	Peru	****18
Sudan	7	UK (England)	10	China	14	Congo, D. Rep.	–
Tanzania	7	UK (Wales)	10	Germany	14		
Thailand	7	Ukraine	10	Italy	14		
United States	**7	Turkey	11	Japan	14		

* Most states 11 or 12 years; age 11 for federal crimes.

** Age determined by state; minimum age is 7 in most states under common law.

*** Age 9 for girls, 15 for boys.

**** Official age of criminal responsibility; from age 12 children's actions are subject to juvenile legal proceedings.

Sources: CRC Country Reports (1992–1996); *Juvenile Justice and Juvenile Delinquency in Central and Eastern Europe*, 1995; United Nations, *Implementation of UN Mandates on Juvenile Justice in ESCAP*, 1994; Geert Cappelaere, Children's Rights Centre, University of Gent, Belgium.

The wide variation in age of criminal responsibility reflects a lack of international consensus, and the number of countries with low ages indicated that many juvenile systems do not adequately consider the child's best interest.

Conclusion

Basing on

- 1) autonomous morality in an individual does not truly begin to develop until 12 or 13 years;
- 2) appreciation of seriousness of their wrong and consequence or implications of their act till 12 to 13 years;
- 3) intensive family and community rehabilitative programmes works much better than incarceration and punishment;
- 4) criminal procedures are expensive and crime preventive programme works;
- 5) leaving decision whether to institute criminal proceedings against a child aged 7 and 14 to the discretion of police and/or the Prosecution, subject to the doli incapax presumption, is unsatisfactory, inconsistently applied and capable of producing inconsistent results;
- 6) subject a child under 14 years of age to criminal procedures is unfair and traumatic, criminalize stigmatizing the child and increases criminality -

WE STRONGLY SUPPORT RAISING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY, CURRENTLY 7 YEARS TO UNDER 14 YEARS.

“THERE IS NO NEED TO PUSH CHILDREN INTO A CRIMINAL SYSTEM. THEY SHOULD BE GUIDED, RETRAINED, TAUGHT RIGHT FROM WRONG VIA SOCIAL & EDUCATION SYSTEM”

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