

Comments on
Juvenile Offenders (Amendment) Bill 2001

Submitted to

Bills Committee on Juvenile Offenders (Amendment) Bill 2001
of the Legislative Council, HKSAR

by

Hong Kong Psychological Society
(Sep 2002)

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This paper is the result of consultation with the council members of the Hong Kong Psychological Society (including colleagues from the fields of clinical psychology, forensic psychology, educational psychology, social psychology, industrial-organizational psychology, counseling psychology, and academics with research in areas of psychology).

Special thanks are given to the following psychologists for their advice:

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The Hong Kong Psychological Society (HKPS) appreciates the extensive consultation process and the efforts made by the Law Reform Commission of Hong Kong. We also thank the Bills Committee for inviting submissions at this stage.

As a professional organization consisting of various types of psychologists who share a common concern of people's psychological wellbeing, **we support the proposals in the Juvenile Offenders (Amendment) Bill 2001, including:**

- a) raising the minimum age of criminal responsibility from 7 to 10 years of age, and
- b) retaining the rebuttable common law presumption of doli incapax for children aged between the revised minimum age of 10 and below 14. The burden of rebutting the presumption continues to rest with the prosecution.

As the *Report on The Age of Criminal Responsibility in Hong Kong* is well researched and written, listing clearly the background to the original Juvenile Offenders Ordinance and the pros and cons of various options in amendment, **we would focus on the psychological issues pertinent to this Bill.**

Our reasons for supporting the proposals in the Bill are as follows:

1. Strong research evidence has already established that biological maturation of the brain and exposure to an enriched and stimulating environment lays the foundation for progressive age-related maturation of various cognitive abilities, social reasoning and judgment.
2. Cognition refers to the mental activity and behavior through which knowledge of the world (including the social world) is attained and processed, including learning, perception, memory, and thinking. According to well-established theories of cognitive development (Piaget, 1926, 1952) and our current understanding of brain functioning, a child gradually develops the following abilities from early childhood to adolescence:
 - a) grasps the use of language,
 - b) develops a sense of self (as an individual) and in relation with others on an inter-personal, social and societal bases,
 - c) understands the causality of an action and himself as an agent of behavior,
 - d) understands the effect of a behavior on other people and the environment,

- e) grasps the concept of time (beyond the immediate here-and-now),
 - f) appreciates the affect and emotions of himself and others,
 - g) understands social and societal rules and laws,
 - h) reasons in logic (deductive and inductive), and
 - i) evaluates the consequence of a behavior progressively along the spectrum of perspectives: from an egocentric (self-focused), to a self-reflective, reciprocal, mutual, and then societal or in-depth one (Hetherington & Parke, 1986).
3. Even when a person carries out an act (while his consciousness is not clouded by medication, illness, or other factors), at least three elements act in complex interactions inside the brain:
 - a) the cognitive processes described in paragraph 2;
 - b) motivational forces (such as fear of punishment), and
 - c) his affect at that point in time.
 4. Extensive findings have substantiated part of Kohlberg's model (1963, 1964), that children's reasoning abilities progress from Stage 1 to 4 in this sequence, during young childhood to adolescence:
 - Stage 1: rules are obeyed to avoid punishment,
 - Stage 2: conforms to obtain tangible rewards,
 - Stage 3: oriented to win approval and respect of one's immediate group,
 - Stage 4: rightness is judged in terms of one's duty and the social order.
 5. The critical review by Snarey (1985, cited in Ma, 1988) of 45 empirical studies of moral reasoning carried out in 27 countries concluded that Kohlberg's Stages 1 to 4 could be regarded as universal. Local studies of moral reasoning typically involve older students (aged 12-17) (Chan, 1996; Ho, 1994; and Lee, 2001). These studies yielded no findings contradictory to Kohlberg's model.
 6. **A longitudinal study of moral development in Chinese (Lei, 94) shows that the reasoning level of 80% of their subjects aged 7-9 is at Stages 2 to 3, and none has reached the transitional phase between 3 to 4.**
 7. For a child with moral reasoning at Stage 1 to 2, his judgment is based on standards that are external rather than internal. To him, the consequences of the actions determine whether it is right or wrong (Bee, 1995). When there is no immediate negative consequence to him, or no immediate victim, a child may not fully comprehend whether the act is wrong (Hoffman 1982, 1988, cited in Bee, 1995).

8. **An ordinary child below age 10** (grown up with normal developmental milestones) **rarely has competent mastery of affect control and the complex reasoning abilities needed in sound judgment** of whether an act is “wrong” and the seriousness of a behavior. Often judgment of this nature requires analyzing, synthesizing and balancing various factors (described earlier), shifting perspective (self, others, or the society) and dimensions (social, legal, moral).
9. By the same token, **children under 10 years old can hardly comprehend fully the complex legal concepts, language and procedures of litigation** (such as the implications of trials, giving statements etc). In addition, younger children are more suggestible than older children or adults (Ceci & Bruck, 1993, cited in Bee, 1995).
10. Even if a child of age 10 or below has committed an act against the law (because of insufficient cognitive abilities, undue influence of others, insufficient impulse or emotion control etc.), he can be said to be **a victim of crime**. Further victimization in the prosecution procedures should be avoided. He can be helped more effectively by counseling, education, guidance and rehabilitation rather than prosecution, deterrence and punishment.
11. **Going through legal procedures is** one of the top 10 stressful life events for adults. It is definitely **stressful** (and likely to be of a greater or even traumatic degree) for young children to go through the legal procedures.
12. **Therefore, it is unfair and unreasonable for a child below 10 years of age to be held criminally liable and to be prosecuted. As the skills described above are emerging for children aged 10 to 14, it is reasonable to retain the rebuttable common law presumption of doli incapax for such age groups.**

Careful assessment needed

13. Significant individual differences may be found in the development of these skills. For all cases, and especially juvenile suspects aged 10 to 14, careful assessment in the following areas are recommended:
 - a) the cognitive abilities (whether there is developmental delay and/or retardation, psychiatric disorders, neuropsychological problems),
 - b) the affective and mental state during the act,
 - c) his ability to comprehend or evaluate the seriousness of the act,
 - d) his suitability to stand trial,
 - e) the psychosocial and developmental background,
 - f) if convicted, the types of suitable rehabilitative or punitive sentences etc.

14. Assessment of these important aspects requires complex clinical skills and a wide knowledge base in psychology and mental health. Thus, views from professionals (such as psychologists, with sub-specialized training and experience in clinical and forensic issues) would be of value to the court.

Suggestions for early intervention and primary prevention

15. Behind acts of crime are often complex psychosocial factors. A child who acts against the law is, more likely than not, to have grown up in a psychologically deprived environment (with insufficient, inappropriate or inconsistent parenting and/or guidance), has experienced physical and/or psychological abuse (emotional neglect), or has learnt the behaviors from others. Early identification of and provision of services to at-risk juveniles are of paramount importance. Hence, better-coordinated resources and programs to address the psychosocial, developmental and educational needs of this target group would be essential.
16. Certain factors are catalytic and conducive to maturation in emotional, cognitive, social and moral development: a) exposure to educational information in the school and societal realms, b) experience of love, care, and support, c) encouragement of independent, critical and rational thinking. These factors can facilitate development of positive self-esteem, optimism and self-efficacy during the formative years in childhood and adolescence. These characteristics have been proved to be important buffers against development of mental disorders and delinquent behaviors. Programs to enhance these qualities in juveniles can be of a primary prevention nature, and would have lower financial and social costs than conviction and punishment.
17. Psychologists of different subspecialties (e.g. clinical, educational, cognitive etc.) working in different service provision organizations can play important roles in primary prevention, programs to at-risk groups, and rehabilitation services for convicted groups.

- *end of submission* -

REFERENCES

- Bee, H. (1995). **The developing child**. New York: HarperCollins.
- Ceci, S. J., & Bruck, M. (1993). Suggestibility of the child witness: A historical review and synthesis. **Psychological Bulletin**, 113, 403-439.
- Chan, C. Y. (1996). **The Development of Moral Reasoning of Prevocational Students in Hong Kong**. Thesis for M.(Ed), The University of Hong Kong.
- Hetherington, E. M. & Parke, R. D. (1986). **Child Psychology: A Contemporary Viewpoint**. Third edition. NY: McGraw-Hill.
- Ho, C. H. (1994). **The Development of Moral Reasoning of Hong Kong Students**. Master Thesis, The University of Hong Kong
- Hoffman, M. L. (1982). Development of prosocial motivation: Empathy and guilt. In N. Eisenberg (Ed.), **The development of prosocial behavior**. New York: Academic Press.
- Hoffman, M. L. (1988). Moral development. In M. H. Bornstein & M. E. Lamb (Eds.), **Developmental psychology: An advanced textbook**. Hillsdale, NJ: Erlbaum.
- Kohlberg, L. (1963). Moral development and identification. In H.W. Stevenson (Ed.), **Child Psychology**. University of Chicago Press.
- Kohlberg, L. (1964). The development of moral character and moral ideology. In M. Hoffman & L. Hoffman (Eds.), **Review of child development research**, Vol. 1. NY: Russell Sage Foundation.
- Law Reform Commission of Hong Kong (2001). **Report on The Age of Criminal Responsibility in Hong Kong**. HKSAR.
- Lee, K.C. (2001). **Juvenile and Their Moral Reasoning**. Master thesis. The University of Hong Kong.
- Lei, T. (1994). Being and becoming moral in a Chinese culture: Unique or universal? **Cross-Cultural Research**, 28(1), 58-92.
- Ma, H. K. (1988). The Chinese perspectives on moral judgment development. **International Journal of Psychology**, 23, 201-227.
- Piaget, J. (1926). **Judgment and reasoning in the child**. NY: Harcourt, Brace and World.
- Piaget, J. (1952). **The origins of intelligence in children**. NY: International Universities Press.
- Piaget, J. (1964). **The moral judgment of children**. New York: Free Press.
- Snarey, J. R. (1985). Cross-cultural universality of social-moral development: a critical review of Kohlbergian research. **Psychological Bulletin**, 97, 202-232.
- Thomas, R. M. (1997). **An Integrated Theory of Moral Development**. London:

Greenwood.