

6th November 2002

Your Ref.: CB2/BC/2/01

Mrs. Constance Li
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear

**Bills Committee on
Juvenile Offenders (Amendment) Bill 2002**

With reference to your letter of the 25th October please find attached some additional information which I hope may address aspects of your enquiry.

I regret that I do not have more detailed information available and that I need to rush this response. I do think that efforts should be made to visit those countries which have much higher ages for criminal responsibility and which address the issues for young people who commit crimes under the age of 21. Apart from Taiwan and the mainland, places such as the European countries like Spain, France and Italy may have programmes of interest.

Unfortunately I was unable to follow up my initial contacts with the European Union for assistance in this respect, but the UK may welcome visits to their community based youth programmes which target juvenile “delinquents”.

Yours sincerely,

Thomas J. Mulvey
Director

/Enclosure

TJM/ac
Ltr-3194

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

- Many of the services which exist for children under the age of 14 could be used for non-criminalised 'delinquents', under the auspices of the Social Welfare Department, and perhaps with the co-operation of the police, the ED and non-governmental organizations. There appears to be no good reason why social workers, suitably trained, should not be able to incorporate elements of the Police Superintendents Discretion Scheme (PSDS), with visits and subjects as outlined in Paras. 20 and 21 of the paper 'Existing Arrangements for Juvenile Offenders' L.C. Paper No. CB(2)2775/01-02(01).

- All Integrated Teams (I.T.s) for young people (previously Children & Youth Centres, and Youth Outreaching Services which targeted delinquent youth) can be involved or represented at District Co-ordination of Services for young people, together with representatives of children's homes, ED etc. to identify the youth needs in a district and to propose programmes for crime prevention as well as programmes of 'support' or 'rehabilitation' for young people involved in or at risk of delinquency. The co-operation of schools, including teachers, with these programmes could offer a comprehensive preventive and treatment service. The use of amended legislation, to give authority for specific young people (and perhaps parents) to be obliged to participate in the programmes (because of their behaviour) would be helpful, and flexible use of residential services in daytime with the support of the ED and Health Department (CP service etc.) should be possible.

- Note: In England provision is made for multi-disciplinary co-operation. The framework for joint work with police and protection services is set out in the Crime and Disorder Act 1998 and every local authority must have a youth justice plan containing a strategy for reducing crime and disorder. This should include performance targets. The teams set up are multi-disciplinary.

- The work of I.T.s can be refocused to give particular attention to these children through expansion of the existing Community Support Services, which are mentioned in background papers, linked to I.T.s, and with the support of Children's Homes whose roles could be further explored and developed as a community resource. (see page 6.)

Legislation in Hong Kong could address the situation where children under the age of criminal responsibility (say 14) commit acts which would be criminal for a person aged 14 and over.

In England applications can be made under the Crime and Disorder Act 1998 in respect of a child under the age of criminal responsibility.

→ For a child under the age of criminal responsibility a Child Safety Order (C.S.O.) can be made under section 11(3) of the 1998 Crime & Disorder Act. The grounds are that the behaviour would be criminal if committed by a person over the age of criminal responsibility. The conditions for the CSO would be:

- (a) That the child has committed an act which, if he had been aged 10* or over, would have constituted an offence;
- (b) That 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) That the child has contravened a ban imposed by a curfew notice; and
- (d) That 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.

‘Offence’ in s.11(3)(a) means any criminal offence ranging from murder to dropping litter.

* In Hong Kong this could be aged 14 or over.

The application for the CSO is to the Family Proceedings Court in the UK.

→ What may be in the order? Section 11(1) of the 1998 Act places the child under the supervision of a responsible officer (who will either be a social worker or a probation officer) for a minimum period of three months, or exceptionally up to 12 months. The court may specify any requirements which the court considers desirable in the interests of:

- (a) Securing that the child receives appropriate care, protection and support and is subject to proper control; or
- (b) Preventing any repetition of the kind of behaviour which led to the CSO being made.

→ The Act is silent on the actual requirements. The draft guidance issued by the Home Office in 1998 gives examples, such as:

- Attendance at school or extra curricula activities such as sporting activities or homework clubs
- Avoiding contact with disruptive and possibly older children
- Not visiting area, such as shopping centres, unsupervised
- Being home during certain hours, probably the evenings or

- Attending particular courses / sessions to address specific problems (for example educational support, behavioural management).

→ The procedure for making a CSO Section 12 of the Crime and Disorder Act 1998 imposes specific requirements on the court before it can make an order. The court must:

- (a) Obtain and consider information about the child's family circumstances and the likely effect of the order on those circumstances (this information can be either in oral or written form);
- (b) Explain to the parent or guardian of the child in ordinary language-
 - (i). The effect of the order and of the requirements proposed to be included in it,
 - (ii). The consequences which may follow if the child fails to comply with any of those requirements, and
 - (iii). That the court has power to review the order on the application either of the parent or guardian or of the responsible officer (this normally would be done at court, although the draft guidance does suggest that it could be done in the form of a letter sent by the court); and
- (c) Avoid, as far as practicable, imposing requirements which would either conflict with the parent's religious beliefs, or interfere with the times at which the child normally attends school.

→ When making a CSO the court could make a Parenting Order under s.9 of the Crime and Disorder Act 1998. (see below)

[Note: This could be somewhat similar to what Singapore provides for, under Sect. 49 of the CYPA for a child aged below 14.]

→ While there is provision for an Emergency Protection Order under Section 44 of the Children Act it mainly refers to the welfare of a child and his protection. However it should not be too difficult to widen the scope for removal of a child who is in need of Care or Protection because of his behaviour and / or the ability of his parents to exercise proper control. There are provisions for a Child Assessment Order by a social worker and removal by Police (with safeguards for the child's welfare).

→ In the UK an application for a Child Protection Order is made before a family panel of magistrates. In the UK magistrates are unpaid by people. A Care Order or Supervision Order can be made. A Guardian Ad Litem may be appointed for the child. The Court can decide not to make an order.

→ A Care Order (C.O.):

The Court decides that the Authority needs to have effective parental control over the child. Grounds include the child being beyond parental control.

Application can be made for a C.O. by the local authority or authorized person and the Court may make an Order:

- (a) Placing the child with respect to whom the application is made in the care of a designated local authority; or
- (b) Putting the child under the supervision of a designated local authority or a probation officer.

→ A Supervision Order is an alternative to a Care Order. However the Court, under a supervision order, can require the supervised person to obey certain directions given by the supervisor. Amongst these are that the supervised child:

- (a) Be required to live at a specified address for a specified period.
- (b) Present themselves to a specified person at a specified time and place.
- (c) Participate in specified activities.

In addition, the “responsible person” can be required to:

- (a) Take all reasonable steps to ensure that the supervised child complies with directions given by the supervisor or contained in the order.
- (b) Keep the supervisor informed of the supervised child’s address.
- (c) Attend at a specified place to take part in any specified activities.

Note: The ‘responsible person’ may be a parent or someone with whom the child is living and will have duties imposed by the court, to which the person has to consent.

The order can require the child to keep the supervisor informed of his or her address.

There are time limits on the supervision order.

Any particular supervision order may not last, initially, for more than a period of one year, but the supervisor can apply to the court to have it extended for up to three years from the date on which the order was first made.

→ The Court can make a Parenting Order under Section 8 of the Crime and Disorder Act 1998.

The grounds under s.8

- (1) This section applies where, in any court proceedings-
 - (a) a child safety order is made in respect of a child; (see page 121)
 - (b) an anti-social behaviour order or sex offender order is made in respect of a child or young person; (see pages 259 and 261)
 - (c) a child or young person is convicted of an offence; or
 - (d) a person is convicted of an offence under section 443 (failure to comply with school attendance order) or section 444 (failure to secure regular attendance at school of registered pupil) of the Education Act 1996.

If any of the above conditions is met the court can decide to make a PO. There is no need for anybody to make an application. The behaviour of the child or young person may either be criminal or merely anti-social.

The order can be made in:

- (a) a Family Proceedings Court;
- (b) a magistrates' court acting under civil jurisdiction;
- (c) all criminal courts, i.e. a youth court, an adult magistrates' court or the Crown Court.

→ What may be in the order? An order under s.8(4) has two elements:

- (a) compulsory attendance by the parent, once a week, at counselling or guidance sessions for a period not exceeding three months. (This need not be required if the unfortunate parent already has attended counselling or guidance sessions because of being previously subject to a PO order (s.8(5)). That fact appears to throw some doubt on the value of the sessions!)
- (b) to comply with such requirements as may be contained in the order. These requirements have to be designed to stop the repetition of the behaviour of the child that led to the PO being made. This requirement can last up to 12 months.

→ As the order must include the compulsory counselling and guidance, it follows that facilities have to exist. Therefore under s.8(3) a court may make a PO only if it has been notified by the Secretary of State that those facilities exist in the area where the parent lives.

The draft guidance gives the following suggestions as to what might be included:

- the parent ensuring that the child attends school or any extra-curricular activities, such as sporting activities or homework clubs, that might be specified in any order directed at the child;
- the parent ensuring that the child avoids contact with disruptive and possibly older children;
- the parent ensuring that the child avoids visiting certain areas, such as shopping centres, unsupervised;
- the parent ensuring that the child is at home during certain hours, probably the evening, and is effectively supervised; or
- the parent attending or ensuring that the child attends a particular course or session to address specific problems.

→ Community Support Services Scheme in Hong Kong at present encourages juveniles to return to a decent law-abiding life-style, by means of –

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

This scheme could be adopted for children to be handled under a Care Order etc. There is no good reason why residential establishments for young people should not be able to offer the services described in LC Paper No. CB(2)2775/01-02(02) Protection Service and Reformatory School Services. These are:

- (a) School Training
 - Academic and pre-vocational training, e.g. languages, social studies, computer programmes and applications, workshop training, etc.;
- (b) Social Work Programmes
 - Casework Counselling – counselling on individual needs to help the residents formulating discharge plans;

- Developmental and Therapeutic Groups – to meet the development needs, the home organised various kind of developmental groups like self-understanding, temper management, sex education, etc.. Therapeutic groups geared to the residents' behavioural problem are also arranged regularly;
 - Community service project – to help the residents develop a sense of responsibility and to help them reintegrate into the society through serving the community;
 - Recreational activities – various interest groups, outdoor activities and mass programmes are organised to develop the potentials and cultivate healthy life of the residents;
 - Parent's liaison – parent's groups and workshops are organised to strengthen the parent-child relationship and enhance the parent's parenting skills;
 - Aftercare service – to assist the residents on placement leave to have satisfactory conduct and progress in the community until the expiry of the order. Guidance on study and employment are given.
- The Security Bureau has outlined provisions in its submission LCP CB(2)2775/01-02(03) Measures adopted by Overseas Jurisdictions in Handling Children below the Minimum Age of Criminal Responsibility which could be equally considered in the Hong Kong context for children under the age of 14.
- It is not unusual in the UK for legislation to come into force some years after it has been enacted, to allow time for changes to Rules of Court and Regulations to be issued e.g. the Bill which became the Children Act 1989. Similarly legislation implementation in Hong Kong could allow for preparation of the changes to services mentioned.

Reference: Law for Social Workers (1999) 6th Edition. Authors: Hugh Brayne and Gerry Martin. Publisher: Blackstone Press Ltd.