

Bills Committee on Juvenile Offenders (Amendment) Bill 2001

List of concerns raised by members at Bills Committee meetings
(as at 26 November 2002)

Major areas	Concerns raised by members	Administration's response
<p>1. Impact of the criminal justice system on juveniles</p>	<p>(a) Going through the criminal proceedings can be detrimental to the emotional and psychological development of children and young offenders. Criminal proceedings simply cannot help a child understand his wrongdoing. Some parents may advise their children not to admit their wrongdoing, for fear of creating a criminal record for their children.</p> <p>(b) Hong Kong should make reference to the proceedings of the juvenile court in other jurisdictions and improve its own juvenile court proceedings.</p>	<p>The Administration acknowledges that criminal proceedings may have impact on young children's emotional and psychological development. As a safeguard, children under 14 are presumed to be incapable of committing crimes. [LC Paper No. CB(2) 75/02-03(01)]</p> <p>Many sentencing options opened to the court aim at rehabilitating and reforming, instead of imposing harsh punishment on, the young offenders. [Paragraphs 25 - 30 of LC Paper No. CB(2) 2775/01-02(01)]</p> <p>The Administration will provide a paper on the juvenile court proceedings in Hong Kong.</p>
<p>2. Support services / alternative measures for children arrested for committing crimes</p>	<p>(a) A child who has committed crime is showing signs of deviance. When a child is arrested, the opportunity should be taken to provide the child with appropriate services.</p>	<p>The Administration's paper on "Support services for children below and above the minimum age of criminal responsibility who have committed crimes" [LC Paper No. CB(2) 298/02-03(01)]</p>

	<p>(b) There should be alternative measures for, and improvements to the current system of, handling children below or above the minimum age of criminal responsibility who have committed crimes -</p> <p>(i) <i>Family Group Conferencing</i></p> <p>The Administration should make reference to overseas experience (e.g. in Canada, the Youth Criminal Justice Act provides for the use of conferences in making decisions regarding young offenders) and consider providing a similar mechanism of family group conferencing in the law or through administrative means. [Paragraphs 2.4 - 2.5 of IN 05/02-03]</p> <p>In the interim, a formalised procedure should be put in place requiring the Police, on arrest of a child, to involve the Social Welfare Department (SWD) and other concerned parties (the Education Department, the child's parents or guardians, etc.), in the process of determining the appropriate course of actions to be taken for dealing with the child.</p>	<p>The Administration has commissioned a consultancy study on measures alternative to prosecution adopted in selected overseas jurisdictions for handling unruly children and young persons. [LC Paper No. CB(2) 298/02-03(03)]</p> <p>The Administration has agreed to consider the suggestion.</p>
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	<p>(ii) There should be <i>clear guidelines</i> and <i>criteria</i> for referring children to agencies for follow-up action and for determining the course of action to be taken.</p> <p>(iii) Whether the existing measures are effective <i>to ensure the active participation of the child and parents/guardians in the support services / rehabilitative programmes.</i></p> <p>(iv) There should be <i>objective yardsticks for assessment of the effectiveness</i> of the support services / rehabilitative programmes participated by the child.</p>	<p>The Police will draw up criteria for referring a case to other agencies for follow-up action. The Police will also establish direct liaison with SWD at the district level. These new measures can be put in place in a few months' time. [Paragraphs 7&8 of LC Paper No. CB(2) 298/02-03(01)]</p> <p>The support services / rehabilitative programmes are "voluntary" in nature, and have no binding effect on the children / juveniles concerned.</p> <p>Juveniles who have been cautioned under PSDS will be referred to the Police's Juvenile Protection Section (JPS) for follow-up. The JPS staff in plain clothes will pay home visits to the juvenile's residence, to ensure that the juvenile cautioned does not lapse into crime or associate with undesirable characters. [LC Paper No. CB(2) 298/02-03(01)]</p> <p>The Administration considers that the recidivism rates for juveniles cautioned under the Police Superintendent's Discretion Scheme (PSDS) and for juveniles who have been prosecuted are indicators of the effectiveness of the support services / rehabilitative programmes participated by the child.</p>
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<p>3. Impact of the Bill on the provision of probation services</p>	<p>A member has expressed concern that if the minimum age of criminal responsibility is raised to 10, child offenders aged between 7 and below 10 cannot receive the services, because a probation order is only made to children convicted of an offence.</p>	<p>The Administration's paper on "Probation service and reformatory school service" [LC Paper No. CB(2) 2775/01-02(02)]</p>
<p>4. Police Superintendent's Discretion Scheme (PSDS)</p>	<p>(a) The ranking and the qualifications/training of a police officer in determining whether a child arrested for crimes is in need of attention and care, and what referral should be made for the child.</p> <p>(b) An integrated approach (involving social workers and other professionals) should be adopted for determining the course of action to be taken for a juvenile offender.</p> <p>(c) The lack of binding effect of any agreements drawn up with a juvenile offender on his rehabilitation.</p> <p>(d) The operation of PSDS should be reviewed and consideration be given to a "conditional" caution under the PSDS, i.e. the juvenile offender should successfully complete the supportive / rehabilitative programmes, or else prosecution (instead of a caution under PSDS) will be taken against him.</p>	<p>Police inspectors seek the advice of the Superintendent who makes the decisions. If in doubt, the advice of JPS will be sought. Superintendents and frontline police officers have received adequate training for discharging the duty.</p> <p>The Administration agrees to consider the suggestion of adopting an integrated approach into consideration in establishing the referral system between the Police and SWD.</p> <p>The Police do not follow up a case after it has been referred to other agencies for services. Only a juvenile offender who has been cautioned under PSDS will be referred to JPS of the Police Region where the juvenile resides. The JPS will arrange for visits to the juvenile's residence.</p> <p>The Police will seek the advice of the Department of Justice as to whether a Police Superintendent can exercise his discretionary power not to prosecute under certain conditions.</p>

<p>5. Consultancy study on measures in handling unruly children</p>	<p>(a) There is a long time gap between the publication of the LRC Report in May 2000, which recommended the study to be conducted, and the actual commissioning of the study in July 2002.</p> <p>(b) Purpose and scope of the study.</p>	<p>The Administration has provided a paper on "Consultancy study on measures in handling unruly children" [LC Paper No. CB(2) 298/02-03(03)]</p>
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