

立法會

Legislative Council

LC Paper No. CB(2) 473/02-03

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Paper for the Bills Committee on Juvenile Offenders (Amendment) Bill 2001

Purpose

This paper summarises the concerns raised by members and deputations at previous meetings of the Bills Committee, and proposes possible options on the way forward.

The Bill

2. The Bill was introduced into the Council on 14 November 2001. It seeks to implement the recommendation of the Law Reform Commission (LRC) report published in May 2000 that the minimum age of criminal responsibility should be raised from seven years of age to 10 years of age.
3. A Bills Committee was formed at the House Committee meeting on 16 November 2001 to study the Bill. The Bills Committee was activated at the House Committee meeting on 24 June 2002.

Concerns raised at the previous meetings

4. The Bills Committee has held four meetings, including one meeting to listen to the views of deputations.

Views of organisations/individuals on the Bill

5. The Bills Committee has invited the public, as well as the 74 organisations or individuals who have previously made submissions to the Law Reform Commission on its Consultation Paper on "The Age of Criminal Responsibility in Hong Kong", to provide views on the Bill.
6. A total of 21 organisations/individuals have given submissions to the Bills Committee, and all of them are in support of raising the minimum age of criminal responsibility. However, they have different views as to whether the minimum age should be raised to 10, 12 or 14.

7. For those who support raising the minimum age to 10 as proposed in the Bill, they also support the retention of the presumption of *doli incapax* for juvenile offenders between the age of 10 and 14. Some deputations have expressed reservations about further raising the minimum age of criminal responsibility to 12 or 14 in the absence of adequate supporting services for juvenile offenders below the minimum age. Some of them have also expressed concern about the exploitation of children below the minimum age by adult criminals.

8. In addition, representatives of the deputations have expressed the following views -

- (a) there should be alternative measures to formal court proceedings for juvenile offenders to facilitate their rehabilitation and integration into the society;
- (b) there should be rehabilitative/supportive programmes for juvenile offenders irrespective of whether they are above or below the minimum age of criminal responsibility;
- (c) as the Police may apply different standards in deciding whether a juvenile offender should be prosecuted, cautioned or referred to other agencies for services, the professionals (e.g. social workers) should be involved at an early stage; and
- (d) the Government should deploy more resources for the provision of services for juveniles at risk, because prevention is better than cure.

9. A summary of the written submissions received and the views expressed by deputations at the meeting on 19 September 2002 was issued vide LC Paper No. CB(2) 77/02-03(02) on 16 October 2002.

Views expressed by members of the Bills Committee

10. The Bills Committee generally agrees that the existing minimum age of criminal responsibility should be raised. Some members consider the Administration's proposal of raising the minimum age to 10 acceptable, given that the presumption of *doli incapax* will be retained for children aged between 10 and 14. However, some other members are in favour of raising the minimum age to 12, while one member supports raising it to 14.

11. Members of the Bills Committee have also raised the following concerns -

- (a) whether there is any authoritative research on what should be the minimum age of criminal responsibility, and the experience in other jurisdictions in adopting a minimum age of 10 or above;

- (b) the impact of the current criminal justice system on the juvenile offenders;
 - (c) the scope and timeframe of the overall review of the juvenile justice system as recommended by the LRC in May 2000;
 - (d) whether there are adequate support services, and alternative measures (such as family group conferencing) to formal court proceedings, for juvenile offenders;
 - (e) whether there are any objective yardsticks to assess the effectiveness of the Police Superintendent's Discretion Scheme (PSDS) and support programmes currently provided to juvenile offenders;
 - (f) the ranking and qualifications of the police officer(s) responsible for deciding whether prosecution, cautioning or other measures should be taken in cases involving juvenile offenders; and
 - (g) the procedures for dealing with a juvenile offender, and the juvenile court proceedings.
12. The Bills Committee has also requested the Administration to consider -
- (a) putting in place a formalised system requiring the Police to consult and involve, at an early stage, the Social Welfare Department and relevant parties, in deciding the appropriate measure(s) to deal with a young offender; and
 - (b) introducing more effective measures, e.g. under the Police Superintendent's Discretion Scheme (PSDS), to ensure active participation of the young offenders and their parents/guardians in the supportive/rehabilitative programmes.

The Administration's position

13. The Administration has agreed to consider the Bills Committee's suggestions at paragraph 12 and will provide further information as requested by members at the last meeting. A summary of members' concerns and the Administration's response is given in LC Paper No. CB(2) 488/02-03. As regards the Bills Committee's concern about the overall review of the juvenile justice system, the Administration has advised that a consultancy study on alternative measures to handle unruly children has commenced and its findings will throw light on the way forward.

14. The Administration has requested members' support of the Bill as the proposal of raising the minimum age of criminal responsibility to 10 is recommended by LRC after public consultation.

Way forward

15. Some members of the Bills Committee consider that it is necessary to ensure that there are alternative measures and adequate support services for juvenile offenders before a decision is taken on whether the Bill should be supported or not. The Bills Committee also notes that the consultancy study on measures to handle unruly children commenced only in September 2002 and will take nine months to complete.

16. Members may wish to consider the following options on the way forward -

- (a) The Bills Committee to continue discussion with a view to reaching agreement with the Administration on the improvements required for the existing juvenile justice system and the procedures for referral for services and convening "family group conferences", etc.
- (b) The Bills Committee to conclude the scrutiny work after one or more meetings, subject to -
 - (i) the Administration's undertaking that it will review and improve the current procedures and will report further to the relevant Panel(s); or
 - (ii) amendments to be made to revise the minimum age of criminal responsibility as agreed by the Bills Committee.
- (c) The Bills Committee to hold its scrutiny work in abeyance until the report of the consultancy study on measures in handling unruly children is available.