

# 立法會

## *Legislative Council*

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### **Report of the Bills Committee on Juvenile Offenders (Amendment) Bill 2001**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001.

#### **Background**

2. Under the Juvenile Offenders Ordinance (Cap 226), it is conclusively presumed that no child under the age of seven can be guilty of an offence. Between the age of seven and 14, there is a presumption of *doli incapax* under the common law, that is, a child is presumed to be incapable of committing a crime, unless the presumption is rebutted by the prosecution on proof beyond reasonable doubt that, at the time of the offence, the child is well aware that his act is seriously wrong as distinct from an act of naughtiness or childish mischief. If this presumption is rebutted, full criminal responsibility will be imposed on the child who can then be charged, prosecuted and convicted for any offence allegedly committed.

3. In recent years, there have been calls in Hong Kong for the minimum age of criminal responsibility to be raised. Those favouring a change argue that it is undesirable to subject young children who are still socially and mentally immature to the full panoply of criminal proceedings, with their attendant sanctions and stigma. These demands have been echoed by the United Nations Committee on the Rights of the Child (UNCRC), and by the United Nations Committee on the International Covenant on Civil and Political Rights (ICCPR). These bodies have called for a review of the law in Hong Kong in the light of the principles and provisions of the United Nations Convention on the Rights of the Child and the ICCPR.

4. In 1998, the Law Reform Commission (LRC) was asked to review the law regarding the minimum age of criminal responsibility and the presumption of *doli incapax* and to consider such reforms as might be necessary. Following a public consultation exercise on the subject in 1999, LRC published its "Report on the Age of Criminal Responsibility in Hong Kong" in May 2000.

5. The LRC Report recommends, inter alia, that –
  - (a) the minimum age of criminal responsibility should be raised from seven to 10 years of age; and
  - (b) the rebuttable presumption of *doli incapax* should continue to apply to children of 10 and below 14 years of age.

### **The Bill**

6. The Bill seeks to implement LRC's recommendation by amending section 3 of the Juvenile Offenders Ordinance (Cap. 226) to raise the minimum age of criminal responsibility from seven years of age to 10 years of age. It also introduces consequential amendments to the Reformatory Schools Ordinance (Cap. 225).

### **The Bills Committee**

7. At the House Committee meeting on 14 November 2001, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Margaret NG, the Bills Committee has held seven meetings, including one meeting to listen to views of deputations. The Bills Committee has also visited the Central District Police Station and received a briefing on the operation of the Police Superintendent's Discretion Scheme (PSDS).

8. The Bills Committee has invited the public, and those individuals and organisations that had previously made submissions to LRC, to give views on the Bill. A total of 21 organisations /individuals have made submissions to the Bills Committee, and 12 of them have also made oral representations at a meeting of the Bills Committee.

9. To assist the Bills Committee in its deliberation, the Research and Library Services Division has prepared two information notes on the legislation and practices in dealing with juvenile offenders in Canada, the United Kingdom (UK) and Singapore.

10. The membership list of the Bills Committee is in **Appendix I**. The list of organisations and individuals that have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

### Minimum age of criminal responsibility

11. The Bills Committee has discussed the policy considerations for the legislative proposal of setting the minimum age of criminal responsibility at 10 years, and retaining the rebuttable presumption of *doli incapax* for children aged 10 to below 14 years. While the Bills Committee and deputations generally agree that the existing minimum age of criminal responsibility should be raised, they have different views on whether the minimum age should be set at 10, 12 or 14 years.

### *Minimum age of criminal responsibility in other jurisdictions*

12. The Bills Committee has noted that there is no authoritative research or study on what should be the minimum age of criminal responsibility, as it depends on the social and cultural background of different communities, and the degree of maturity among children. During its deliberation, the Bills Committee has made reference to the minimum age of criminal responsibility in other jurisdictions and their experience.

13. The LRC Report on the Age of Criminal Responsibility in Hong Kong has pointed out that there is considerable disparity among different jurisdictions as to the minimum age of criminal responsibility, ranging from seven to 18 years, and Hong Kong's current minimum age of seven is at the lowest end.

14. The Bills Committee has noted that in Canada, the minimum age of criminal responsibility has recently been raised from the established common law rule of seven to 12 years of age. In the UK, the minimum age of criminal responsibility is 10 years in England and Wales, and there are a number of options available to the police and the court for handling a juvenile offender aged between 10 and 14 years.

15. In Mainland China, a child who has not attained the age of 14 is exempt from criminal responsibility. Under Article 17, Chapter 2 of the Criminal Law of the People's Republic of China, a person who has attained the age of 16 shall be criminally responsible for the crime committed. However, for a person who is 14 years of age but is below 16 years, and has committed serious offences such as intentional killing, rape, arson drug trafficking, etc., he will be criminally responsible for the offence committed.

16. In Taiwan, a child who has not attained the age of 14 years will not be punished for his act. An order will instead be made for him to be sent to a rehabilitation centre where rehabilitative education will be provided.

17. In Singapore, the minimum age of criminal responsibility is seven years. The Children and Young Persons Act 1993 in Singapore provides a legal basis for the protection and intervention by relevant authorities if a child (below the

age of 14) or young person (from 14 years to below 16 years) is found to be abused or neglected.

18. The Administration is of the view that any attempt to draw conclusions from comparisons with other jurisdictions in respect of the age of criminal responsibility should be treated with care. The Administration considers that the underlying legal framework to which the age of criminal responsibility applies is of greater significance. In this connection, the Administration has pointed out that the majority of common law jurisdictions maintain an age of criminal responsibility of 10 years or less.

19. A list of the age of criminal responsibility in other jurisdictions is given in **Appendix III**.

*Views of organisations and individuals*

20. All the 21 organisations/individuals that have given views on the Bill support raising the minimum age of criminal responsibility. Of these, 14 support raising it to 10 years, one (the Hong Kong Bar Association) supports raising it to 12 years, and six are in favour of raising it to 14 years. Some of them have pointed out that it is the international trend to raise the minimum age of criminal responsibility.

21. For those organisations and individuals that support raising the minimum age of criminal responsibility to 14 years, they are of the view that the development process of children is such that a child under the age of 14 is unable to appreciate the gravity and consequences of his actions, nor is the child capable to comprehend criminal proceedings. The traumatic experience of being criminally prosecuted and convicted at such a young age will impose a stigma on a child and destroy his self-esteem which will not do any good to the effective rehabilitation of the child. Some have also said that the UNCRC has criticised jurisdictions in which the minimum age is 12 years or less.

22. These deputations have also pointed out that in other jurisdictions including the People's Republic of China and Taiwan, the minimum age of criminal responsibility is set at 14 years. Moreover, other legislation in Hong Kong such as the Evidence Ordinance and the Criminal Procedure Ordinance recognise the age of 14 being the age at which a child can reliably be said to have reached maturity.

23. Some other organisations and individuals support raising the minimum age to 10. Among them, some opine that it is acceptable for the Administration to adopt a step-by-step approach in raising the minimum age to 10 years in the first instance, and subsequently raising it to 12 or 14 years after a comprehensive review on the existing measures for dealing with unruly children. Some of them consider the Administration's proposal a pragmatic approach, with a few consider this a very modest step in the right direction. These organisations and individuals agree that the present approach strikes a balance between

safeguarding the interests of children and those of the community, and they also urge for the provision of more comprehensive support/rehabilitative services for juvenile offenders. Some of these organisations have expressed the view that further raising the minimum age to 12 or 14 years in the absence of adequate support services for those below the minimum age will increase the possibility of exploitation of children by adult criminals.

24. The Hong Kong Bar Association has given the view that while raising the minimum age of criminal responsibility to 10 years is the minimum step in the right direction, it will be more appropriate to raise it to 12 years.

*Members' views*

25. Members of the Bills Committee generally share the view that it is the responsibility of society and parents to teach children right from wrong and to assist children in their development. The approach should be to rehabilitate rather than to punish juvenile offenders, particularly when most of the offences they committed were of a relatively minor nature (such as shop theft). In this connection, members consider it important to provide adequate support and rehabilitative services for juvenile offenders, and not merely amend the law to raise the minimum age of criminal responsibility.

26. Members have expressed concern whether it is appropriate to bring a child between 10 and 14 years to formal court proceedings which have adverse effects on his emotional and psychological development. They consider that criminal proceedings cannot help a child understand his wrongdoings, and some parents may advise their children not to admit their wrongdoings for fear of creating a criminal record of the child. Some members propose that there should be an alternative mechanism to the criminal court proceedings to facilitate the re-integration of juvenile offenders into the community.

27. The majority of members are in favour of raising the minimum age to 12 years, as an interim measure pending the comprehensive review as recommended by LRC (paragraph 61). These members consider that a child of 10 years old cannot possibly distinguish the right from wrong, and even for those more mature children, they cannot fully appreciate the consequences of their wrongdoings and that of criminal proceedings. They have also noted that very few children below 10 years of age were arrested and charged for crime in past years, and most of the offences committed by children below 12 years of age were not serious in nature. These members consider that the minimum age should be set at 12 years, which is the usual age when a child has completed primary school education and acquired some understanding of the consequences of their acts.

28. Members who support raising the minimum age of criminal responsibility to 12 years have stressed the importance for children to receive proper guidance and services to enable them to re-integrate into the community. They are of the view that merely raising the minimum age to 10 years in law is too modest a step and will not bring much improvement to the current systems or render more

protection to the children. They have also urged the Administration to expedite actions to improve the existing mechanisms for the care and protection of children below the revised minimum age.

29. Hon TSANG Yok-sing and Hon LAU Hon-chuen, however, consider that the Administration's proposal of raising the minimum age to 10 years acceptable, given that the presumption of *doli incapax* will be retained for children aged between 10 and 14, and the Administration has undertaken to conduct a review on ways to bridge the gap in the provision of services for children below the revised minimum age. They consider it necessary to ensure adequate services are available for children below the minimum age of criminal responsibility before it is raised further. They share the view that without adequate support services for children at risk and those below the minimum age, there will be a lower chance for these children to be brought to the attention of professionals and social workers, as compared with children above the minimum age who are subject to the existing PSDS and referral systems.

30. At the meeting on 2 December 2002, the Bills Committee took a vote on whether the minimum age of criminal responsibility should be raised to 10 or 12 years. Six out of the eight members present at the meeting voted in favour of raising the minimum age to 12 years. The Administration was subsequently requested to consider whether it would propose the amendments.

31. At the Bills Committee meeting on 22 January 2003, the Administration informed members that it maintained its view that the minimum age should be raised to 10 years in the first instance, pending a review to be conducted on the measures to deal with unruly children. The Administration advised that raising the minimum age to 12 years could result in possible loss of opportunities for intervention regarding children at risk, as those below 12 years would be excluded from the PSDS. The Administration pointed out that according to past years' statistics, there had been a considerable increase in the number of arrested children aged from 10 years onwards. On average, 478 children aged between 10-11, which was about three times of those aged below 10 (between 7-9), were arrested for crime in a year during the period 1993-2001. The figure for those aged 12-13 rose even more significantly to an average of 1 934 during that period, representing more than 10 times of that for children aged below 10. The number of juvenile offenders (age 7 to 14) prosecuted and convicted in 1993 to 2001 is provided in **Appendix IV**.

32. The Administration also advised that it had commissioned a consultancy study on measures in handling unruly children with a view to filling the gap of provision of services for children and juveniles at risk after raising the minimum age to 10 years (paragraph 62). The Administration also undertook to propose raising the age further from 10 to 12 years after completion of the consultancy study, when putting forward proposals to provide additional supportive measures for unruly children below the minimum age after taking into account the findings of the consultancy study (paragraph 62).

33. The Bills Committee took a vote at the meeting on whether Committee Stage amendments (CSAs) should be moved by the Bills Committee to raise the minimum age to 12 years. Three out of the four members present voted in favour of the Chairman of the Bills Committee moving CSAs to raise the minimum age to 12 years.

34. Hon TSANG Yok-sing indicated at the meeting on 22 January 2003 that while Members belonging to the Democratic Alliance for Betterment of Hong Kong (DAB) agreed that the existing system(s) in dealing with juvenile offenders needed improvements, they were concerned that further raising the minimum age of criminal responsibility to 12 years might not bring any real benefits to the young offenders if there were inadequate supportive measures for those below the minimum age. Members belonging to DAB were therefore in favour of the Administration's proposal of raising the revised minimum age to 10 years.

*Impact on existing services if the minimum age is raised to 10 years*

35. The Bills Committee has asked about the impact on existing services if the minimum age is raised. The Administration has advised that raising the minimum age to 10 years will only have minimal effect on the probation service and reformatory school service, because no offender aged under 10 years has been placed on such services in the past few years. In fact, where appropriate, offenders under the age of 10 years would mostly be put under care or protection order due to their tender age.

Rebuttable presumption of *doli incapax*

36. At present, for children who have reached the minimum age of criminal responsibility and are under 14 years old, there is a rebuttable presumption of *doli incapax* under the common law, i.e. a child within this age range is presumed to be incapable of committing a crime unless the presumption is rebutted by evidence.

37. The Administration has proposed to retain this presumption of *doli incapax* for children aged between 10 and 14 years after revising the minimum age to 10 years. This means after the enactment of the Bill, prosecution will not be instituted against children aged between 10 and 14 years unless the presumption of *doli incapax* can be rebutted. The Administration believes that the arrangement will safeguard the interests of the children by allowing discretion whether to prosecute after considering the individual child's level of maturity, and also provide adequate flexibility to take care of those children who have reached the minimum age but are insufficiently mature. Retention of the presumption also ensures that only children who are able to appreciate that their criminal acts are seriously wrong will be made criminally responsible.

38. Some deputations are of the view that the presumption of *doli incapax* is conceptually obscure. However, as the Bill only proposes raising the minimum age to 10 years, most deputations consider that it is necessary to retain the

presumption of *doli incapax* for children aged between the revised age and 14 years, until the minimum age is raised to 14 years. They also consider that the burden of rebutting the presumption should continue to rest with the prosecution because children aged under 14 years have only limited ability to defend themselves and limited understanding of court proceedings.

39. The Bills Committee supports retaining the presumption of *doli incapax* for children aged between the revised age and below 14 years, in order to safeguard the interests of the children who are above the revised minimum age but are below 14 years of age. This will ensure that only mature children are held criminally responsible for their acts.

### Police Superintendents' Discretion Scheme

#### *Effectiveness of the scheme*

40. In discussing measures other than the criminal justice system in dealing with juvenile offenders, the Bills Committee has noted that PSDS is frequently used as an alternative to criminal prosecution in respect of a young offender below the age of 18 years. Instead of subjecting the child to criminal prosecution, a formal caution or warning as to his conduct is given by a Police Superintendent to the child.

41. The Administration has informed the Bills Committee that one important criterion for giving a caution under PSDS is that there is sufficient evidence to support prosecution and that prosecution is the only alternative course of action. The offender must voluntarily and unequivocally admit the offence and has no previous criminal record. Moreover, a caution will only be given with the agreement of the offender and his parents or guardian. As regards the concern about possible inconsistency among different police officers in deciding whether to prosecute a juvenile offender or caution him under PSDS, the Administration has assured members that there are established guidelines for the administration of cautions under PSDS and the decision is taken by a Police Superintendent.

42. The Bills Committee has noted that a total of 3 585 juvenile offenders (41% of those arrested) were cautioned in 2001. About 70% and 46% respectively of those children aged 7-12 years and 13-15 years arrested in 2001 were cautioned under PSDS. The re-arrest rates of children cautioned under PSDS in 2001 are 2.5%, 7.1% and 15.5% respectively for children within the age brackets of 7-9 years, 10-11 years and 12-13 years.

43. The Administration is of the view that PSDS is a very effective mechanism in dealing with juvenile offenders. Under PSDS, a child can be warned of the serious consequences of having committed an offence, without having to go through the traumatic experience of being prosecuted and convicted at a young age, and the possible stigma of a criminal record.

### *Keeping of records*

44. Some members have expressed concern about the keeping of records of cautions made under the PSDS. The Administration has explained that these records are only kept for two years or until the child cautioned has reached 18 years of age, whichever is the later. The purpose of keeping such record is to enable the Police to have a better assessment of the background of a young person and also his needs for support services, if he is re-arrested before reaching the age of 18 years or the expiry of the two-year period.

### *Offenders' participation in follow-up services*

45. Members have expressed concern that there is no mandatory requirement for an offender cautioned under PSDS to participate in support and rehabilitative programmes. These children may again go astray if there is no effective monitoring of their performance and behaviour after release. Some members consider that the Administration should put in place more effective measures to ensure active participation of the cautioned offenders and monitoring by their parents or guardian.

46. The Administration has explained that depending on the needs of the juveniles, the Police Superintendent administering the caution may refer the case to the Social Welfare Department (SWD), Education and Manpower Bureau (EMB) and non-government organisations (NGOs) for after-care services. Participation of the cautioned offender and/or his parents in supportive/rehabilitative programmes is entirely voluntary. However, the Police Superintendent will encourage the offender to participate in such programmes and also persuade their parents to cooperate and get involved in monitoring their participation. In addition, the Juvenile Protection Section (JPS) of the Police will conduct follow-up visits to the cautioned offenders' homes to monitor their participation in supportive services. The JPS also liaises with the SWD, EMB and NGOs to follow up on problematic cases.

### Conditional release

47. Some members have suggested that a "conditional release" mechanism should be put in place, so that the young offender must successfully complete the support/rehabilitative programmes before a decision is taken on whether to prosecute him or not. Under this proposal, if a young offender refuses to participate or does not complete satisfactorily the support/rehabilitative programmes, he may be prosecuted instead of cautioned under PSDS. Members have pointed out that Canada has implemented a similar measure.

48. The Administration has responded that the proposal requires thorough consideration as it provides a new option in lieu of prosecution. It has also advised that the decision to prosecute involves a consideration of the evidence and public interest. Whether the juvenile offender admits the offence or shows genuine remorse and a willingness to make amends, such as participation in

rehabilitative programmes, are only some of the factors which will be taken into consideration. The Administration is of the view that whether a juvenile offender participates in the rehabilitative programmes satisfactorily can only be judged after a reasonable period of time. Should it be subsequently confirmed that the juvenile offender failed to perform satisfactorily, extra caution will be required as to whether to charge and bring him to court, as his right to trial without delay is guaranteed under Article 11 of the Hong Kong Bill of Rights as well as Article 87 of the Basic Law.

49. In view of the wide implications of the proposal on conditional release of juvenile offenders, the Administration has advised that it will consider the feasibility of the proposal comprehensively, taking into account overseas experience in implementing similar schemes and their effectiveness.

#### Support services for juvenile offenders and children at risk

##### *Family group conference*

50. Members of the Bills Committee have suggested that a formalised system should be put in place requiring the Police, as soon as a child is arrested, to involve the parents and professionals (such as social workers, teachers and psychologists), in the process of determining the appropriate course of action for the child. Some members have further suggested that a mechanism of family group conferencing should be provided in law or through administrative means, as similar systems have been implemented in overseas jurisdictions such as Canada. The purpose of holding a family group conference is to ensure that the child's needs and welfare are fully assessed and appropriate services are rendered immediately. These members are concerned that these children, particularly those below minimum age, will go astray again after release.

51. The Administration has advised that the Police has no power to arrest a child below the minimum age as the latter cannot be held liable for having committed criminal acts. When the Police is informed that a young child is suspected of having committed an offence, the police officer will investigate the case and inform the parents of the child and try to ascertain the age of the suspected child. Once it is confirmed that a child suspected of having committed a crime is below the minimum age, the child will be released unconditionally. The Administration has stressed that the cooperation of the parents of those children below the minimum age is necessary in making assessments on the child's needs and for holding a family group conference.

52. The Administration has also informed members that for children below the minimum age, the Police can apply to the court for care or protection orders (paragraph 54), or make referrals to SWD, EMB and NGOs (paragraphs 56-60). However, to address members' concerns, the Police will take the following new measures to persuade the parents of such children to receive the necessary support services -

- (a) issuing information leaflet on available services to parents of children who come to the attention of the Police;
- (b) setting up direct liaison points between the Police and SWD and EMB to ensure timely referral; and
- (c) drawing up separate guidelines for the Police to refer cases to SWD and EMB with parents' consent.

53. The Administration has also proposed that family group conference can be held for juveniles cautioned under the PSDS, subject to the parents' consent, when either of the following criteria is met-

- (a) the Superintendent exercising the caution considers that the juvenile cautioned is in need of services of three or more parties; or
- (b) the juvenile is given the second or further caution.

The Administration's target is to hold the conference within 10 working days from the date of juvenile's caution. The conference will discuss and draw up a plan of services or programmes to be given to the juvenile. Subsequent conference will be called on a need basis.

#### *Care or protection order*

54. The Administration has informed members that a care or protection order may be made under section 34 of the Protection of Children and Juveniles Ordinance (Cap. 213) in respect of any person below the age of 18 years who is in need of care or protection. The objective of subjecting a child to a care or protection order is to ensure that the child will be put under proper guidance and care. Such orders may be made by a juvenile court on its own motion, or on the application of the Director of Social Welfare (DSW) or any police officer, or on the application of any person authorised by DSW. Circumstances for a care or protection order to be made include cases where a child's health, development or welfare has been or appears to be likely to be neglected or avoidably impaired, or he is beyond control to the extent that harm may be caused to him or others.

55. Some members of the Bills Committee have expressed concern that the scope of care or protection order may not be able to cover those who are at risk but have not committed any offence. The Administration has advised that children at risk include those who have not committed criminal offences but are likely to commit criminal offences. There have been cases in which SWD recommended a care or protection order where a criminal charge against a child for minor offences was dismissed by the court. The Administration is of the view that the present scope for application of care or protection orders as specified under section 34 of the Protection of Children and Juveniles Ordinance is sufficiently broad and general in justified cases to cover children and juveniles at risk, including those who have been convicted, those who are likely to commit

criminal offences and those who are under the minimum age of criminal responsibility.

*Referral for services*

56. The Administration has informed members that if the circumstances surrounding a child arrested for crime are less serious and do not warrant a care or protection order, and yet the Police consider that the child is in need of assistance in order to prevent them from going astray, the Police will refer the case to the appropriate parties, including SWD and EMB, for follow-up actions under the existing multi-agency strategy in tackling juvenile crimes.

57. Some members have expressed concern that different police officers may apply different standards in making referrals for services, and they may not have the necessary training for evaluating the needs of a juvenile. Members have urged the Administration to provide clear guidelines to police officers on referral for services.

58. To address members' concerns, the Administration has provided information on the existing referral system and the different services provided by SWD, EMB and NGOs. To make the referral system more systematic, the Police has agreed to draw up criteria for referrals to be made to other departments or agencies for follow-up action. To ensure referrals will be made in an efficient and timely manner, the Police will establish a direct liaison point with SWD at the district level. When any child who is below the minimum age and is considered to be in need of services comes to the attention of the Police, frontline police officers handling the cases will directly refer the cases to the relevant District Social Welfare Offices of SWD. Officers in the District Social Welfare Offices will assess the needs of the children, render services to them or refer them to appropriate agencies for follow-up.

59. The Administration has also advised that children and youth who are found to be school drop-outs will be referred to EMB. To help children to overcome their adjustment and development problems, EMB has also launched programmes involving schools, teachers, parents and the community.

60. For those children who have been cautioned under PSDS, the Administration has advised that a range of after care services are provided through the Police Juvenile Protection Section, the Community Support Service Scheme (run by the NGOs), the SWD and the EMB. In the years 1999, 2000 and 2001, the numbers of referrals made under PSDS were 2 724, 3 702, and 3 500 respectively.

Review on the juvenile justice system and the consultancy study

61. Members have noted that LRC recommended in its "Report on the Age of Criminal Responsibility in Hong Kong" that the Administration should conduct a general review on the juvenile justice system. The purpose of the review is to

ensure that there are effective alternatives to prosecution which on the one hand provide adequate security to the community, and on the other hand prevent errant youngsters from degenerating into hardened criminals.

62. The Administration has informed the Bills Committee that it has commissioned a consultancy study to provide information on measures adopted by overseas countries in handling unruly children below the minimum age of criminal responsibility and mischievous juveniles above the minimum age. The information will facilitate the Administration to identify measures to fill the gap of provision of services for children and juveniles at risk after the minimum age is raised to 10 years.

63. In response to members, the Administration has advised that the consultancy study commenced in September 2002 and is expected to complete in mid-2003. When the consultancy report is available, the Administration will consider the findings therein and conduct consultation as necessary before putting forward proposals for consideration by LegCo.

64. Some members of the Bills Committee have expressed concern that the present proceedings and procedures in juvenile courts would have adverse impact on the development of a child. They consider that the juvenile justice system should aim at re-integration and rehabilitation rather than criminalisation and punishment.

65. The Administration has provided information on the present proceedings of juvenile courts, in particular, how the interests of children and young persons who have to appear in courts are taken care of during court proceedings. The Administration has advised that the juvenile court has jurisdiction to hear charges against children (aged between 7-14) and young persons (aged over 14 and under 16) for any offence other than homicide. The juvenile court also has power to deal with care or protection cases involving children and young persons under the age of 18. Procedure in a juvenile court is less formal than in a magistrate's court, and the juvenile court has the duty to put to the witness such questions as appear to be necessary in the interests of the child or young person.

66. According to information provided by the Administration, in determining the method of dealing with a child or young person who has admitted an offence or the court is satisfied of his guilt, the juvenile court will obtain such information, may be by way of calling pre-sentencing reports, as to the defendant's general conduct, home surroundings, school record and medical history. The objective is to enable the court to deal with the case in the best interest of the child or the young person. Where a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment and the court considers that no other method is suitable, the court may order the child or young person to be detained in a place of detention as DSW may determine.

67. As the review of juvenile justice system involves policy matters which are outside the scope of the Bill, the Bills Committee suggests that the Panel on Administration of Justice and Legal Services should be invited to consider what improvements should be made to the juvenile court system, and follow up on the findings of the consultancy study commissioned by the Administration.

#### Transitional arrangements

68. The Administration has informed members that it will move a CSA to the effect that no prosecution will be instituted against a child in respect of an offence committed before the Bill comes into operation, if at the time the offence was committed the child was of an age which would not be liable to prosecution had the offence been committed after the commencement of the Bill.

#### Consequential amendments

69. Under existing section 19(2) of the Reformatory School Ordinance (Cap.225), a young offender under the age of 10 who is sentenced to a Reformatory School may be boarded out of the School under specified conditions until he reaches the age of 10 years. Since the enactment of the Bill will irrebuttably presume children aged under 10 to be incapable of committing crime and therefore cannot be prosecuted, no children under the age of 10 will be admitted to a Reformatory School thereafter. The Administration has advised that section 19(2) of the Reformatory School Ordinance will become obsolete when the enacted Bill comes into operation, and a CSA will be made to repeal this section as a consequential amendment.

#### **Committee Stage Amendments**

70. The Administration has proposed Committee Stage amendments (CSAs) as described in paragraphs 68 and 69 above.

71. Hon Margaret NG will also move CSAs, on behalf of the Bills Committee, to raise the minimum age of criminal responsibility to 12 years (paragraph 33 above).

#### **Follow up actions required**

72. The Administration has undertaken to propose raising the age further from 10 to 12 years of age when it puts forward proposals to provide additional suggestion measures for unruly children below the minimum age (paragraph 32).

73. The Bills Committee has suggested that the Panel on Administration of Justice and Legal Services should follow up -

- (a) what improvements should be made to the existing juvenile court system and proceedings (paragraphs 64-67); and
- (b) the recommendations of the consultancy study on the review of services for juvenile offenders (paragraphs 61-63).

### **Recommendation**

74. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 12 March 2003.

### **Consultation with the House Committee**

75. The Bills Committee consulted the House Committee on 28 February 2003 and obtained its support for the Second Reading debate on the Bill to be resumed.

Council Business Division 2  
Legislative Council Secretariat  
3 March 2003

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

**Membership list**

**Chairman** Hon Margaret NG

**Members** Hon Cyd HO Sau-lan  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Miriam LAU Kin-yee, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon LAW Chi-kwong, JP  
Hon Michael MAK Kwok-fung  
Hon WONG Sing-chi  
Hon Audrey EU Yuet-mee, SC, JP

(Total : 9 Members)

**Clerk** Mrs Constance LI

**Legal Adviser** Mr LEE Yu-sung

**Date** 26 September 2002

**Organisations / individuals that have given views to the  
Bills Committee on  
Juvenile Offenders (Amendment) Bill 2001**

- \* 1. Against Child Abuse
- \* 2. The Boys' & Girls' Clubs Association of Hong Kong
- \* 3. Caritas Outreaching Social Work Team - Aberdeen
- \* 4. Hong Kong Christian Service
- \* 5. Hong Kong Committee on Children's Rights
- \* 6. The Hong Kong Family Law Association
- \* 7. Hong Kong Family Welfare Society
- \* 8. The Hong Kong Federation of Youth Groups
- \* 9. The Hong Kong Psychological Society Limited
- \* 10. Wong Tai Sin District Council
- 11. The Hong Kong Council of Social Service
- 12. Fight Crime Committee
- 13. Home Affairs Bureau
- 14. Hong Kong Bar Association
- 15. The Law Society of Hong Kong
- 16. St John's Cathedral Counselling Service
- 17. Tai Po District Fight Crime Committee
- \* 18. Mr Andrew Bruce, SC
- \* 19. Dr Nirmala Rao
- \* 20. Ms Corinne Remedios
- 21. Mr YEUNG Wai-sing, Eastern District Councillor

\* Organisations/individuals that have also given oral representations to the Bills Committee.

## The age of criminal responsibility in other jurisdictions

| <i>Jurisdiction</i>             | <i>Age of criminal responsibility</i> |
|---------------------------------|---------------------------------------|
| Belize                          | 7                                     |
| Cyprus                          | 7                                     |
| Ghana                           | 7                                     |
| India                           | 7                                     |
| Ireland                         | 7                                     |
| Liechtenstein                   | 7                                     |
| Malawi                          | 7                                     |
| Nigeria                         | 7                                     |
| Papua New Guinea                | 7                                     |
| Singapore                       | 7                                     |
| South Africa                    | 7                                     |
| Switzerland                     | 7                                     |
| Tasmania (Australia)            | 7                                     |
| Bermuda                         | 8                                     |
| Cayman Islands                  | 8                                     |
| Gibraltar                       | 8                                     |
| Kenya                           | 8                                     |
| Northern Ireland (UK)           | 8                                     |
| Scotland (UK)                   | 8                                     |
| Sri Lanka                       | 8                                     |
| Western Samoa                   | 8                                     |
| Zambia                          | 8                                     |
| Malta                           | 9                                     |
| Australia (other than Tasmania) | 10                                    |
| England and Wales (UK)          | 10                                    |
| Fiji                            | 10                                    |
| Guyana                          | 10                                    |
| Kiribati                        | 10                                    |
| Malaysia                        | 10                                    |
| New Zealand                     | 10                                    |
| Vanuatu                         | 10                                    |
| Canada                          | 12                                    |
| Greece                          | 12                                    |
| Jamaica                         | 12                                    |
| Netherlands                     | 12                                    |
| San Marino                      | 12                                    |
| Turkey                          | 12                                    |
| Uganda                          | 12                                    |
| France                          | 13                                    |

| <b>Jurisdiction</b>                          | <b>Age of criminal responsibility</b> |
|--|---------------------------------------|
| Austria                                      | 14                                    |
| Bulgaria                                     | 14                                    |
| Germany                                      | 14                                    |
| Hungary                                      | 14                                    |
| Italy  | 14                                    |
| Latvia                                       | 14                                    |
| Lithuania                                    | 14                                    |
| The People's Republic of China               | 14                                    |
| Mauritius                                    | 14                                    |
| Romania                                      | 14                                    |
| Slovenia                                     | 14                                    |
| Taiwan                                       | 14                                    |
| Connecticut (USA)                            | 15                                    |
| Czech Republic                               | 15                                    |
| Denmark                                      | 15                                    |
| Estonia                                      | 15                                    |
| Finland                                      | 15                                    |
| Iceland                                      | 15                                    |
| New York (USA)                               | 15                                    |
| Norway                                       | 15                                    |
| Slovakia                                     | 15                                    |
| South Carolina (USA)                         | 15                                    |
| Sweden                                       | 15                                    |
| Andorra                                      | 16                                    |
| Georgia (USA)                                | 16                                    |
| Illinois (USA)                               | 16                                    |
| Japan  | 16                                    |
| Louisiana (USA)                              | 16                                    |
| Macau  | 16                                    |
| Massachusetts (USA)                          | 16                                    |
| Michigan (USA)                               | 16                                    |
| Missouri (USA)                               | 16                                    |
| Poland                                       | 16                                    |
| Portugal                                     | 16                                    |
| South Carolina (USA)                         | 16                                    |
| Spain  | 16                                    |
| Texas (USA)                                  | 16                                    |
| Belgium                                      | 18                                    |
| Luxembourg                                   | 18                                    |
| United States of America (most other states) | 18                                    |

**Number of Juvenile Offenders (age 7 to 14) Prosecuted and Convicted  
for year 1993 to 2001**

| Year | Number     | Age 7 | Age 8 | Age 9 | Age 10 | Age 11 | Age 12 | Age 13 | Age 14 | Total |
|------|------------|-------|-------|-------|--------|--------|--------|--------|--------|-------|
| 1993 | arrested   | 26    | 51    | 101   | 198    | 358    | 664    | 1 368  | 1 896  | 4 662 |
|      | prosecuted | 0     | 1     | 4     | 25     | 40     | 141    | 397    | 674    | 1 282 |
|      | convicted  | 0     | 0     | 0     | 3      | 8      | 58     | 196    | 390    | 655   |
| 1994 | arrested   | 27    | 67    | 107   | 187    | 386    | 674    | 1 508  | 1 994  | 4 950 |
|      | prosecuted | 1     | 3     | 9     | 23     | 53     | 152    | 507    | 782    | 1 530 |
|      | convicted  | 0     | 0     | 1     | 2      | 11     | 59     | 247    | 460    | 780   |
| 1995 | arrested   | 24    | 52    | 100   | 207    | 324    | 680    | 1 436  | 1 957  | 4 780 |
|      | prosecuted | 0     | 0     | 6     | 17     | 48     | 152    | 420    | 776    | 1 419 |
|      | convicted  | 0     | 0     | 0     | 2      | 12     | 55     | 233    | 464    | 766   |
| 1996 | arrested   | 29    | 46    | 101   | 183    | 327    | 665    | 1 345  | 1 881  | 4 577 |
|      | prosecuted | 1     | 2     | 3     | 11     | 40     | 139    | 381    | 633    | 1 210 |
|      | convicted  | 0     | 1     | 0     | 4      | 18     | 54     | 194    | 408    | 679   |
| 1997 | arrested   | 22    | 52    | 74    | 154    | 273    | 614    | 1 248  | 1 828  | 4 265 |
|      | prosecuted | 0     | 1     | 2     | 9      | 28     | 81     | 253    | 565    | 939   |
|      | convicted  | 0     | 0     | 0     | 0      | 10     | 33     | 129    | 319    | 491   |
| 1998 | arrested   | 28    | 38    | 93    | 160    | 310    | 609    | 1 161  | 1 701  | 4 100 |
|      | prosecuted | 0     | 3     | 5     | 12     | 16     | 68     | 215    | 429    | 748   |
|      | convicted  | 0     | 1     | 0     | 5      | 4      | 28     | 147    | 285    | 470   |
| 1999 | arrested   | 23    | 39    | 77    | 140    | 251    | 454    | 1 165  | 1 674  | 3 823 |
|      | prosecuted | 1     | 1     | 2     | 5      | 15     | 59     | 195    | 414    | 692   |
|      | convicted  | 0     | 0     | 0     | 1      | 6      | 22     | 112    | 261    | 402   |
| 2000 | arrested   | 16    | 64    | 88    | 148    | 277    | 588    | 1 338  | 1 914  | 4 433 |
|      | prosecuted | 0     | 0     | 3     | 3      | 27     | 76     | 257    | 500    | 866   |
|      | convicted  | 0     | 0     | 0     | 1      | 1      | 18     | 104    | 264    | 388   |
| 2001 | arrested   | 16    | 33    | 63    | 148    | 274    | 607    | 1 281  | 1 759  | 4 181 |
|      | prosecuted | 0     | 0     | 3     | 4      | 13     | 83     | 263    | 500    | 866   |
|      | convicted  | 0     | 0     | 0     | 0      | 6      | 46     | 156    | 284    | 492   |