

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 16 November 2001**

**Legal Service Division Report on
Juvenile Offenders (Amendment) Bill 2001**

Object of the Bill

To raise the age of criminal responsibility from 7 years of age to 10 years of age.

LegCo Brief Reference

2. TC 40/2000 Pt. 4 dated 31 October 2001 issued by the Security Bureau .

Date of First Reading

3. 14 November 2001.

Comments

4. In law, there is a minimum age of criminal responsibility below which a child could not be guilty of an offence because he is considered too young to distinguish right from wrong, and therefore unable to form the necessary criminal mind. In Hong Kong this minimum age of criminal responsibility is prescribed in section 3 of the Juvenile Offenders Ordinance (Cap. 226) ("the Ordinance"), which provides that "It shall be conclusively presumed that no child under the age of 7 years can be guilty of an offence".

5. In relation to criminal responsibility of children between 7 and under 14 years of age, the position is governed by the common law, at which there is a rebuttable presumption that a child in this age group is incapable of committing a crime. This presumption is "rebuttable" in the sense that the prosecution may rebut the presumption by adducing evidence to prove beyond reasonable doubt that at the time of doing the act the child knew that it was a wrong act as distinct from an act of mere naughtiness or childish mischief. If such knowledge is proved, the child is criminally responsible for his act.

6. The Bill proposes to amend section 3 of the Ordinance so as to raise the age of criminal responsibility from 7 to 10 years of age. The proposal is a result of the recommendation made by the Law Reform Commission of Hong Kong ("LRC") in its "Report on The Age of Criminal Responsibility in Hong Kong" published in May 2000. In that report the LRC recommended, inter alia, that the minimum age of criminal responsibility be increased to 10 years of age and that the common law rebuttable presumption should continue to apply to children of 10 and below 14 years of age.

Public Consultation

7. The LRC has conducted a public consultation exercise in 1999 on the minimum age of criminal responsibility before making its recommendation.

Consultation with Panel

8. The Administration briefed the Panel on Administration of Justice and Legal Services on 18 September 2001. At the meeting members of the Panel had different views regarding the minimum age of criminal responsibility. Some preferred it to be raised to 14.

Conclusion

9. The determination of the minimum age of criminal responsibility is an important policy decision to be made with social and cultural considerations. We recommend Members to form a Bills Committee to consider the policy aspects of the Bill.

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