

**For discussion
27 October 2003**

**Legislative Council Panels on
Administration of Justice and Legal Services and Security**

**Consultancy Report on
Measures Alternative to Prosecution
for Handling Unruly Children and Young Persons**

Purpose

This paper briefs Members on the findings and recommendations made in the consultancy report on “Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong.” (the Report). It also introduces Members to the Family Conference arrangement implemented with effect from 1 October 2003, which addresses one of the recommendations put forward in the Report.

Background

2. The Law Reform Commission (LRC) in its Report on “Minimum Age of Criminal Responsibility in Hong Kong” recommends, amongst other things, 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 that on the one hand provide adequate security to the community, and on the other hand prevent errant youngsters from degenerating into hardened criminals.

3. To take forward the review, we commissioned a consultancy study in July 2002 to provide the Administration with 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 study was completed in end August 2003. We have

deposited copies of the Report with the LegCo Secretariat for Members' reference.

The Consultancy Study

Scope of the Study

4. The consultancy study covers mainly three aspects, namely –
 - (a) in-depth research on the measures alternative to prosecution adopted in selected overseas jurisdictions for handling unruly children and young persons;
 - (b) an assessment on the effectiveness of such measures in preventing and diverting children and young persons from going astray; and
 - (c) recommendations on whether there is a case for introducing new measures alternative to prosecution in Hong Kong to deal with unruly children and juveniles.

5. The consultancy study examined a total of six countries. They are Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand.

Findings of the Study

6. The study suggests that there is a general trend in the juvenile justice systems overseas to shift from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices. Restorative and reintegrative practices involve the offenders taking responsibility for offending; repairing harm; reintegrating offenders, victims and the communities; and the empowerment of all those affected by what has happened, including the offenders, families, victims and the communities.

7. This principle of restorative justice is reflected in the relatively recent

legislation in Canada, Queensland and New Zealand. Such legislation explicitly includes alternatives to prosecution that aim at diverting young offenders from courts, making young offenders accountable and responsible for their offending acts, and strengthening the participation of families and victims in proceedings. Examples of such alternative measures to prosecution include Police cautioning and the use of family group conferences.

8. England is similar to the three above-mentioned countries in many respects as far as handling of unruly children is concerned. England has also recently made changes to its legislation to provide a greater emphasis on legal protection and opportunities for the young offenders' development. There are also provisions for victims inclusion and families participation through alternative actions and family group conferences. Compared to the legislation of the above three jurisdictions, England's legislation has a greater punitive theme for repeat and serious offenders. Moreover, parents might be held responsible for their children's offending by parental order issued by courts.

9. For the remaining two countries, Belgium and Singapore, the former operates a primarily welfare model and the latter is very similar to the situation in Hong Kong. However, family group conferences are more frequently used in Singapore as an option by the Court to aid decision making when handling young offenders.

10. The Report suggests that increased police diversion of young people who agree to repair the harm they have caused, the use of community service placements where offenders are integrated into the society through volunteer services, and the use of family group conferences for more serious offending can reduce the involvement of young people in the criminal justice system. Such measures also provide increased support to young people and their families, provide some redress to victims, and reduce the probability of reoffending. However, the report suggests caution when interpreting the effectiveness of various alternative measures because apart from those adopted in New Zealand and Queensland which are the only ones that have been operated for a reasonably long period of time and have been used frequently enough to allow a meaningful assessment, effectiveness of measures put in place in the other countries examined has yet to be proven.

Recommended Options for Handling Unruly Children and Juveniles

11. Having regard to the international trend towards restorative justice options in order to respond more positively to young offenders and the fact that the minimum age of criminal responsibility has recently been raised from seven to ten years of age in Hong Kong, the Report suggests four options for children below the minimum age of ten years and two options for persons aged from ten to below 18 as improved and up-to-date approaches for handling offending behaviour by children and young persons. While a detailed explanation of the options is set out in Chapters 10 and 11 of the Report, the following summarises each of the options.

(A) Police Child Support Service

12. The Report proposes that the Police should launch a Child Support Service to assist children below the minimum age who display offending behaviour. Under the proposal, the Police will provide assistance to the children and their families so that the necessary support from schools or other agencies could be obtained. Arrangement will be made to require the children to make up for their wrongful acts by supportive responses of a minimal kind, like apologizing or helping the victim in some simple ways.

(B) Family Support Conference

13. The Report recommends that family support conferences be run by selected Integrated Family Services Centres as a pioneer service, and be monitored by the Social Welfare Department (SWD). The purpose of holding a family support conference is to draw together the family and unruly child below the minimum age to find a way in which greater support can be given to the family and the child in order to prevent any reoffending behaviour. The focus of the conference is on the child's and the family's needs instead of on the offending behaviour. The consultant suggests that a conference might be convened upon referral by the Police with parental consent, or by a Juvenile Court when processing applications for care or protection order. A senior social worker will act as facilitator of the conference. With the inputs of potential service providers, the child and his/her parents, options for support services will be fully explored with a view to drawing up a mutually agreed follow-up service plan.

(C) Empowerment Programme (for Unruly Children)

14. The Report proposes that empowerment programmes be provided through the established network of selected Integrated Children and Youth Services Centres, and be coordinated and monitored by SWD. The purpose of such programmes is to empower children at risk so as to prevent them from going astray and engaging in anti-social behavior. Unruly children below the minimum age will be provided with a range of purposeful activities that combine recreational activities, social group and life skills training, including anti-theft awareness, enhancement of self-esteem, and resistance of peer pressure. Children at risk may be referred to SWD for undergoing the Empowerment Programme by the Police upon parental consent.

(D) Community Alternative to Institutional Placements

15. The Report notes that SWD's efforts in converting large residential care institutions into small group homes and foster care places are in the right direction. It recommends extra support from the Government and the community on this front. Specifically, the Report proposes that when an out of home placement is agreed to, say, under a care or protection order, the option of placement with kin or in foster families should be explored as an alternative to the larger residential homes that are currently being used. Arrangements should also be made for the child to maintain links with all family members that are important to him/her. This will allow the children put under placement to remain in the community, maintain contact with those they are already attached to and acquire life skills that are difficult to learn in an institutional environment.

(E) Family Group Conference

16. The Report proposes that a family group conference, to be run by a separate unit attached to SWD, may be convened for young offenders who have reached the minimum age of criminal responsibility for two purposes – one as a pre-charge diversion and the other as a pre-sentence diversion. Only the former will be an alternative to prosecution for dealing with a young offender. Under the proposal, the Police may in consultation with the

Prosecution refer a case to be discussed at a family group conference if the offence committed is a serious one. The conference, which will be participated by the victims or their representatives amongst others, will agree upon the task to be performed by the offenders. The purpose is to help the offender to be accountable for their behaviour and repair the harm they have caused. If no agreement can be reached on the tasks to be completed or the agreed tasks were not completed by the offender, it is suggested that the case would be returned to the Police for consideration of pressing charge against the offender.

(F) Empowerment Programme (for Young Offenders)

17. Under the empowerment programme proposed by the consultant, the Prosecution may refer young offenders aged from 10 to 17 to receive life skills training and perform voluntary services in lieu of prosecution. Young offenders may also be asked to undergo empowerment programme as an outcome recommended by family group conference. The offenders will be required to complete up to 60 hours of training and voluntary services within three months. In case the young offenders failed to complete the programme, the case will be referred back to the Prosecution for consideration of prosecution, or the family group conference for consideration of a further option which might include referring the matter to the court. The Report recommends that the scheme be run by Integrated Children and Youth Services Centres and be coordinated and monitored by SWD.

Family Conference

18. One of the major findings of the consultancy report is the international trend of increasing use of family group conference which incorporates the principle of restorative justice. A similar concept was also floated during the deliberations of the then Bills Committee on Juvenile Offenders (Amendment) Bill 2001, where Members suggested the introduction of a formalized system to decide on the appropriate actions to deal with a young offender. After extensive and thorough discussions among departments concerned, the Administration has, on 1 October 2003, put into trial run a Family Conference system for needy children / juveniles.

19. Under the pilot scheme, Family Conferences are conducted for children / juveniles cautioned under the Police Superintendent Discretion Scheme (PSDS). The Family Conference brings together family members of cautioned juveniles and professionals from relevant Government departments / agencies to –

- (a) assess the needs of the juveniles; and
- (b) draw up a follow-up plan to address the needs identified through the joint efforts of related professionals.

20. The criteria for convening a Family Conference are as follows -

- (a) the Police Superintendent exercising the caution considers that the juvenile is in need of the services of three or more parties, e.g. the Police (Juvenile Protection Section), SWD, Education and Manpower Bureau (EMB), non-governmental organizations (NGOs), Department of Health (DH), Hospital Authority (HA), and so on; or
- (b) the juvenile is given a second or further caution.

21. As Family Conferences are operated on a voluntary basis, the parents / guardian of the juvenile cautioned under PSDS should have given consent for the Police to transfer the personal data of the child / juvenile to all parties concerned and for holding the conference. The final decision as to whether a Family Conference is required will rest with SWD. An SWD officer will chair the Family Conference since the department is the principal agency responsible for support services for youth-at-risk and its officers have the professional knowledge in assessing the needs of and devising welfare plans for this group of young people.

22. If a Family Conference is considered necessary, parties concerned will be invited to attend. It is our target to hold the Family Conference on the same day immediately after the caution and at the same police station as far as possible, so as to facilitate the attendance of the juvenile and his / her parents/guardian. If this is not possible, the conference should be held on a

later date that is convenient to all parties concerned as determined by the Chairperson, normally within ten working days from the date of the juvenile's caution.

23. Upon endorsement of the follow-up plan agreed and recommended by parties taking part in the Family Conference, the Chairperson will appoint a "key worker" to make the necessary referral(s) for the child / juvenile and his / her family to relevant services units for follow-up services. The key worker can be a social worker from SWD or NGO. Unless otherwise agreed in the Family Conference, the key worker would be the main person performing post-conference liaison with the Police's Juvenile Protection Section and other parties concerned with regard to follow-up services for the child / juvenile and his / her family.

24. To ensure that parties concerned have a full understanding of the operation of Family Conferences, SWD and the Police have jointly drawn up a Protocol on Conducting Family Conference for Children / Juveniles Cautioned under the Police Superintendent's Discretion Scheme. Two briefing sessions were held on 15 and 23 September 2003 to familiarize frontline officers, social workers and staff of relevant parties with the objectives and workflow of Family Conferences. A total of 600 participants attended the two briefing sessions.

Way Forward

25. We plan to review the operation of the Family Conference pilot scheme in 12 months' time, when more cases have been processed and there is more local experience in holding the conference.

26. As for other recommendations in the Report, an interdepartmental working group comprising representatives from Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau, Social Welfare Department, the Police and Department of Justice has been formed to consider how to take them forward. The Working Group will also draw up plans to consult relevant parties, in particular providers of children and youth services. We will keep Members informed of progress of our deliberations.

27. Members are invited to comment on the recommendations in the Report, which would facilitate the Administration's consideration of how to take them forward. Views from Members on the Family Conference pilot scheme are also welcome.

Security Bureau
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