

For information

Legislative Council
Panel on Administration of Justice and Legal Services

Restorative Justice for Juvenile Offenders

Purpose

This paper reports on the progress made in the Administration's review of the proposal to incorporate the principles and practices of restorative justice in dealing with juvenile offenders. It should be read in conjunction with the earlier report in August 2005 (ref. CB(2)2508/04-05(01)).

Principles and Practices of Restorative Justice - Overseas

2. Restorative justice is a relatively new concept and is still evolving. We are not aware of a universally adopted exhaustive list of the principles and practices of restorative justice. Nonetheless, from our research into the experiences of overseas jurisdictions practising restorative justice, the more common principles are as follows –

- Accountability : holding the juvenile offender accountable for his behaviour and giving him an opportunity to accept his responsibility, understand the consequences of his offending behaviour and make amends.
- Reparation : providing an opportunity for both the victim and the juvenile offender to take part in repairing the harm caused by the offender;
- Reintegration : facilitating the juvenile offender's integration into his family and the wider community;
- Family and victim participation : involving the family of the juvenile offender as well as the victim in the process of deciding an appropriate response to the offending behaviour; and
- Diversion : diverting the juvenile offender from the court as far as possible.

3. The concept of restorative justice is implemented overseas through a variety of measures at different stages of the criminal justice process.

Examples include –

- family group or community conferences to discuss the juvenile offender's behaviour;
- apology by the juvenile offender to the victim, the victim's family or a wider group representing "the community";
- carrying out of service by the juvenile offender for the victim or the community; and
- payment of compensation by the juvenile offender or his family to the victim or the victim's family.

Existing Measures for Handling Juvenile Offenders - Hong Kong

4. At present, Hong Kong already has a number of measures in place for handling juvenile offenders. The key ones are as follows.

(a) Alternative to Prosecution : The Police Superintendents' Discretion Scheme (PSDS) and Subsequent Referrals

5. If the offence in which a juvenile offender is involved is of a less serious nature (such as shop theft), a police officer of the rank of Superintendent of Police or above may issue a caution to the juvenile under the PSDS. Under the existing guidelines of the Department of Justice, a juvenile offender is suitable for PSDS if –

- at the time the caution is administered, he is under the age of 18;
- the evidence available is sufficient to support a prosecution;
- he voluntarily and unequivocally admits the offence; and
- he and his parents or guardian agree to the caution.

6. After administering the caution, the Superintendent of Police will assess if any referrals are required. These may take the form of post-caution visits by the Police Juvenile Protection Section (JPS) on the juvenile offender and / or referral to the Social Welfare Department (SWD), the Education and Manpower Bureau (EMB) and / or Non-Governmental Organizations (NGOs) running the Community Support Service Scheme (CSSS), as appropriate.

Post-caution visits by JPS

7. If supervision is required after the caution is administered, JPS visits are arranged. In these cases, the respective JPS of the region in which the juvenile lives will conduct visits at his home regularly. The visits may last for a maximum of two years from the date of caution or until the juvenile's 18th birthday, whichever is earlier. The purpose of the visits is to ensure that the juvenile does not lapse into crime or associate with undesirable characters.

Community Support Service Scheme (CSSS)

8. If the juvenile is a school drop-out, unemployed or not participating in any youth activities and is likely to benefit from such participation, a referral to the CSSS may be made. The CSSS is run by NGOs on SWD's subvention. The scheme aims at helping juveniles cautioned under the PSDS to improve their interpersonal relationships, develop their sense of social responsibility, reintegrate them into mainstream education or work force, and hence reduce their likelihood of re-offending. The scope of service includes personal guidance and counselling, treatment groups, skills training/education groups, adventure groups, recreational activities and community services. Currently, there are five CSSS teams providing territory-wide services. During the period of 2005-06, SWD has increased recurrent resources for the five CSSS teams with a view to providing additional manpower and programme expenses. This would facilitate the teams' provision of more timely crisis intervention and services to the target juveniles.

Referrals to SWD and EMB

9. For PSDS cases, apart from the CSSS, SWD may conduct a Family Conference (FC) for a juvenile aged 10 to 18 when it is assessed that his problems/needs require the intervention of three parties or more, or the juvenile has been cautioned under the PSDS twice or more. The FC aims at bringing together the cautioned juvenile, his family members and professionals from different disciplines to assess his needs and devise comprehensive follow-up action plans. The key social worker appointed by the FC will follow up the action plans endorsed at the meeting, by means of -

- making the necessary referral(s) for the juvenile and his family to relevant service units; and
- performing post-conference liaison with JPS and other stakeholders concerned on implementation of the action plan.

EMB is also represented at the FC to advise on the schooling and school adjustment needs of the juvenile.

10. If the juvenile is under 15 years of age and is a school drop-out or has schooling problems or is known to associate with undesirable elements from the school he is attending, he will be referred to EMB. EMB will assist him to resume schooling and adjust to school life as soon as possible.

(b) *Post-prosecution/Pre-sentencing stage : The “Offering No Evidence” (ONE) bind-over arrangements*

11. Although less commonly used for offending juveniles (mainly due to the availability of PSDS as an alternative), the ONE / Bind-over procedure is a possible form of preventive justice which allows the juvenile defendant to avoid conviction but nevertheless help keep him “on the straight and narrow”, by requiring him to enter into a recognizance to be of good behaviour and / or keep the peace for the period of one year.

12. As a follow up to bind-over cases involving juveniles, where appropriate, referrals may be made to SWD / NGOs. Social workers will then see to the needs of the juveniles and their families and render follow up services accordingly.

(c) *Sentencing Options*

13. For young offenders who are prosecuted and convicted, sentences by the court may include unconditional discharge, conditional discharge of the offenders on their entering a recognizance, fines, confiscation of equipment and money related to the crime, compensation order, hospital order or suspended sentence. Where statutory intervention for offenders provided by SWD is necessary, options such as Care or Protection Order¹, probation service² and

¹ The Juvenile Court may, under section 34 of the Protection of Children and Juveniles Ordinance (Cap.213), appoint the Director of Social Welfare to be the legal guardian of such child or juvenile; commit the child / juvenile to the care of any person who is willing to undertake the care of him, or of any institution which is so willing; order his parent or guardian to enter into recognizances to exercise proper care and guardianship; or make an order placing him for a specified period, not exceeding 3 years under the supervision of a person appointed for the purpose of the court.

² Probation service is a community-based programme whereby, in accordance with the Probation of Offenders Ordinance (Cap.298), an offender is placed under statutory supervision of a probation officer for a period of 1 to 3 years. The ultimate goal is to assist offenders to re-integrate into the community as law-abiding citizens. Should a probationer perform unsatisfactorily and is found no longer suitable for probation supervision, the court may discharge the Probation Order and re-sentence him for the original offence.

Community Service Orders Scheme³ may also be considered. These services aim at helping the juveniles through counselling, supervision and participation in social services for the community.

14. In the event that the court considers custodial arrangement appropriate, a host of services provided by SWD and the Correctional Services Department (CSD) are available to suit offending juveniles with different needs. The various custodian options include prison, Training Centre, Detention Centre, Rehabilitation Centre, Drug Addiction Treatment Centre, Reformatory School and Probation Home. SWD, through statutory supervision, counselling and education/vocational training, equips the young offenders with the necessary skills to cope with life challenges and reintegrate into the community. CSD also strives to correct the delinquent behaviour of young offenders through a series of programmes including education, vocational training and counselling. These programmes aim to help young offenders develop socially acceptable behaviour, improve their interpersonal skills, strengthen their confidence and abilities in coping with stress and difficulties arising from their re-integration into society, and increase the likelihood of their finding suitable employment after release.

Further Review

15. The above summary indicates that many elements and practices of the existing measures in Hong Kong are similar to those of restorative justice practised overseas, e.g., diversion of the juvenile offender from the court where possible, holding him accountable for his behaviour, facilitating his reintegration into the society and involving his family where appropriate. The main element absent is perhaps victim participation.

16. We have not been able to find clear empirical proof demonstrating the long-term positive effects of victim participation in overseas jurisdictions. Nonetheless, we are currently considering the pros and cons of introducing some limited form of victim participation on top of the existing measures. In taking the matter forward, we need to consider such factors as the likely receptiveness of the victims and the offenders to participate in the cultural context of Hong Kong and how such participation should interface with the existing measures for juvenile offenders. For example, currently, the majority of crimes for which juveniles are arrested are shop thefts, miscellaneous thefts

³ Offenders aged 14 and above and convicted of an offence punishable by imprisonment may be placed on Community Service Orders which require offenders to perform unpaid work of benefit to the community for not exceeding 240 hours within twelve months and to receive guidance from Probation Officers. The Scheme is both reparative and rehabilitative in nature. Through participation in community services, offenders are helped to observe rules and regulations, take up own responsibility, cultivate a regular life pattern and contribute to the community.

and assaults. Where the victims are large companies or shop owners, they might not be inclined to participate in a scheme that require the victims' participation. Similarly, in assault cases, some victims might be reluctant to revisit an unpleasant event. In addition, should the proposed scheme with victims' participation be introduced as an alternative to prosecution in parallel to PSDS, the incentive for offenders to take up the scheme could be low due to the existence of a fall-back option to prosecution. Given the usefulness of the PSDS over the years, any move to scrap it in favour of a new scheme involving victim participation should not be taken lightly.

Security Bureau
Health, Welfare and Food Bureau
Education and Manpower Bureau
Department of Justice
Hong Kong Police Force
Correctional Services Department
Social Welfare Department

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