

For information

Legislative Council
Panel on Administration of Justice and Legal Services

Restorative Justice for Juveniles Offenders

Victim Participation

Purpose

This paper sets out the outcome of the Administration's consideration of whether to introduce some form of victim participation (VP) on top of the existing measures in the criminal justice system for handling juvenile offenders. It should be read in conjunction with the December 2006 paper on restorative justice (ref. CB(2)765/06-07(01)).

Background

2. In the paper CB(2)765/06-07(01), the Administration reported that many elements and practices of the existing measures in handling juvenile offenders in Hong Kong are similar to those of restorative justice practised overseas. The main element absent is VP. We have now completed our consideration of the desirability of introducing some form of VP on top of the existing measures.

Assessment

3. According to available literature, the VP process seeks to address the emotional needs and tangible losses of the victim, and at the same time allow the offending youth to learn how his / her behaviour has negatively affected others and hold him / her accountable for his / her misdeeds, thus facilitating the rehabilitation of the offending youth and thereby reducing recidivism. Apart from the victim and offender, their family members and support persons may also be participants in the process. All the participants have to take part in the process on an entirely voluntary basis.

4. On the plus side, the victim may find emotional relief from facing the offender and agreeing with the latter the appropriate remedy

such as apology or monetary compensation. On the part of the offender, the process may make him / her realize the harm that he / she has done so that he / she may feel genuinely remorseful and be rehabilitated in the process.

5. The Administration recognizes that the involvement of victims may be considered in certain highly selective circumstances. Indeed, there is some degree of VP in the handling of selected cases involving minor unruly behaviour of students by the school authorities, with fellow students as victims, e.g. where the offenders would likely return to the school after being cautioned by the Police, or where the victims themselves have also been responsible for the discipline problem such as fighting. Where suitable, the school management may also arrange for the parents or other supporters of the two parties to join the process with a view to reaching a consensus on the follow-up actions such as social contract, punishment and apology to the victim. However, not every case would meet these requirements and justify VP arrangements for the offenders.

6. However, bringing together fellow students for reconciliation is obviously very different from adopting VP in the formal criminal justice system. A case has yet to be made that the formal introduction of the VP concept into the criminal justice system will bring about significant benefits over and above those afforded by the many existing measures for juvenile offenders. We are also concerned as to whether society at large would consider such introduction to be tilting the balance too much in favour of the offenders. The main considerations are as follows.

(a) Lack of Empirical Evidence

7. There is still not sufficiently clear empirical proof in overseas jurisdictions demonstrating the long-term positive effects of VP and its effectiveness in reducing recidivism of young offenders.

(b) The offender's needs

8. The existing measures for handling juvenile offenders have been well tested and are effective. For example, the recidivism rate¹ among those cautioned under the Police Superintendents' Discretion

¹ For the purpose of the PSDS, a person is regarded as a recidivist if he/she is re-arrested for crime within two years from the date of caution, or before he/she reaches 18 years of age, whichever occurs first.

Scheme (PSDS) has remained below 20% in recent years. The scheme is generally accepted as a good balance between offering juvenile offenders a second chance and achieving the necessary deterrent effect. The follow-up measures such as family conferences and post-caution visits further address the offender's rehabilitation needs.

9. Similarly, on average, the rate of closed PSDS cases after going through the Community Support Service Scheme having no re-offending behaviour and resuming studies / securing gainful employment during the supervision period was as high as 94% and 95% respectively in 2005-06. For young offenders who have gone through the court process and are put under offender rehabilitation services such as probation orders, community service orders and reformatory schools, the present system is also effective, with a high proportion of cases completing the rehabilitative support satisfactorily.

(c) The victim's needs

10. While we cannot rule out that a few victims might find emotional relief from a VP conference, especially in Hong Kong's cultural context, it is far more likely that the victims are averse to going through the unpleasant experience, even less facing the offender to recount the ordeal. It is not unreasonable for victims and their families to expect that they be given a fair deal. Offering them the chance of being "healed" by meeting the offender is unlikely to be acceptable to most of them. Rather, they would likely see this as being too "lenient" to the offender and having little deterrent effect. They could feel aggrieved that their welfare is being overlooked. Some might even consider that they are under pressure to accept the process or else the offenders might blame them for not giving the offenders a chance.

(d) Striking a balance

11. Following on from para. 10 above, it is important to ensure that the correct message is received by offender, victim and the community at large. We believe that the existing measures already present a right mix of deterrent and rehabilitative effects. Introducing VP in the criminal justice system could risk sending a wrong message to the public that the balance is being tilted too much towards helping the offender, unless the benefits to the victim and the community at large could be clearly demonstrated.

(e) Interface with existing measures

12. If VP was to be introduced into the criminal justice system, it would be necessary to decide whether it should be an additional measure or a replacement measure. If the former, it would be necessary to decide how it should interface with such well-tested schemes as the PSDS. For example, should VP precede or follow PSDS or take place as a parallel scheme? What would be the incentive for opting for VP on the part of both the victim and the offender? If VP was to displace some existing measures, it would be necessary to first demonstrate that it would be more effective than the measures to be phased out. Our deliberations so far have not led to such a conclusion.

(f) Operational considerations

13. The common offences committed by juvenile offenders in Hong Kong also do not lend themselves easily to the VP process. For example, one such common offence is shop theft, which accounts for 20% of all juvenile crimes, with the “victims” usually being department stores and supermarkets. The need to address the latter’s psychological “damage” should not arise. Other common offences committed by juvenile offenders such as gambling and possession of dangerous drugs have no immediately identifiable “victims”. They would not be suitable for VP either. There are also other offences where the victims are unidentified. Given the predominant requirement for voluntary participation on the part of both the victims and the offenders in the VP process, the potential client base suitable for VP would likely be very small. The cost-effectiveness of introducing an elaborate scheme with uncertain results for a few potential “beneficiaries” is doubtful, especially in view of the general effectiveness of the existing measures for dealing with juvenile offenders.

(g) Situation of Juvenile Crime

14. Since the minimum age of criminal responsibility was raised from seven to 10 years in July 2003, the overall situation of juvenile crime has been very stable. The number of juveniles arrested under the age of 18 has ranged between some 6 800 (in 2005) and some 7 900 (in 2003), representing 1% of the juvenile population aged between 10 and 17 in Hong Kong. At the same time, the percentage of arrested juveniles amongst all arrested persons has decreased steadily from 18.8% in 2003 to 16.3% in 2006. With the wide range of measures in place in handling delinquent juveniles, the problem of juvenile crime is under control.

Conclusion

15. There is no single best criminal justice system that suits all jurisdictions. Different communities and societies find their own appropriate ways to express justice as a response to wrongdoing². In the Hong Kong context, the Administration considers that any possible extra benefits that VP in the criminal justice system might bring on top of the existing measures are not apparent. We therefore do not consider that we should seek to introduce it into the system.

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

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² “The Little Book of Restorative Justice” by Howard Zehr (2002) (page 62).