

LEGISLATIVE COUNCIL BRIEF

REHABILITATION CENTRES BILL

INTRODUCTION

At the meeting of the Executive Council on 5 September 2000, the Council ADVISED and the Chief Executive ORDERED that the Rehabilitation Centres Bill, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Introduction into the previous Legislative Council

2. On 12 October 1999, the Chief Executive in Council directed that the Rehabilitation Centres Bill should be introduced into the then Legislative Council. The Bill was accordingly introduced on 10 November 1999, but has lapsed at the end of the 1999/2000 legislative session before the previous Legislative Council had time to scrutinize it. Re-introduction of the Bill is necessary. The Bill at Annex A (and the Regulation at Annex B) to this brief is the same as the one introduced in November 1999, except for some minor technical revisions, notably to clauses 4, 6 and 7 of the Bill to confirm the continuous application of the programme to young offenders who only reach the age of 21 after admission.

General Background

3. In 1996, the Standing Committee on Young Offenders (SCOYO) of the Fight Crime Committee (FCC) commissioned the City University of Hong Kong to conduct research into the effectiveness of rehabilitation programmes for young offenders operated by the Correctional Services Department (CSD) and the Social Welfare Department (SWD). The research found the existing

rehabilitation programmes effective, but noted that there was a service gap for young male offenders who are physically unfit for the Detention Centre programme, and for young female offenders who are not involved in vice-related offences. At present, the court has no alternative but to sentence them to Training Centres run by the CSD, which may be too harsh in terms of the length of detention, or put them on probation under the supervision of the SWD, which may be too lenient.

4. The research recommended, inter alia, that a new short-term residential rehabilitation programme be introduced. An action plan drawn up to implement the recommendations of the research, which includes the development of the said short-term rehabilitation programme, was endorsed by the FCC in March 1998 in order to improve rehabilitation services for young offenders.

5. The proposed short-term residential programme, which will provide an additional sentencing option for the court in dealing with young offenders, has the support of the Judiciary.

Programme Objective

6. The proposed short-term residential rehabilitation programme aims to -

- (a) deter young offenders from committing further crimes;
- (b) correct their delinquent values and behaviour;
- (c) help them develop socially acceptable behaviour and respect for law;
- (d) equip them with necessary social and life skills to enhance their problem solving capacity; and
- (e) provide them with opportunities to learn the necessary skills for reintegration into society.

Programme Content

7. The proposed programme is a short-term correctional and rehabilitation programme with emphasis on community-based measures. It is physically less demanding than the Detention Centre programme, and provides an intermediate sanction between the longer term Training Centre programme run by the CSD and non-custodial measures administered by the SWD. The programme, to be operated in institutions named as Rehabilitation Centres, will consist of two phases -

- (a) The first phase of the programme will provide two to five months' training in a correctional facility which focuses on discipline training and aims to help the young offenders learn to exercise better self-control and develop a regular living pattern. Counselling, social skills training and basic work skills training such as commercial study and computer aided design will also be provided.
- (b) During the second phase, young offenders will be accommodated in a hostel with a half-way house setting for a period of one to four months on a mandatory basis. They may go out for work, attend vocational training and educational courses, and participate in community service programmes. They would also be encouraged and assisted to maintain contacts with their family members and friends.

The total period of detention would range from a minimum of three months to a maximum of nine months. The actual period of detention served by a young offender will depend on the offender's progress, improvement in behaviour, self-care ability, response towards counselling, etc.

8. On-going assessment will be made on the conduct and progress of each young offender to determine the appropriate time to transfer the young offender from the first phase to the second phase of the programme and to release him from the rehabilitation centre. Discharged young offenders will be subject to one year's statutory supervision by CSD aftercare officers.

9. An earning scheme which is similar to that provided to young offenders of Detention Centres will apply to young offenders detained in rehabilitation centres. Upon release from a rehabilitation centre, a young offender may receive a cash grant in accordance with the scheme.

Potential Inmates

10. The proposed programme targets young offenders who are aged from 14 to below 21 and whose crimes call for a short-term custodial sentence. They are those who do not have a long string of previous convictions and whose offences are punishable by imprisonment other than for non-payment of a fine. Examples of such offences are shoplifting and minor assault offences. The new programme will cater for cases where a long period of detention in a Training Centre (of six to 36 months) is not justified by the nature of the offence, but where rehabilitation may not be effectively achieved through non-custodial measures such as probation. The City University's research recommended that the potential young offenders should also include young male offenders who are physically unfit for detention in a Detention Centre, and female offenders who are not involved in vice-related offences.

THE BILL

11. The Bill provides for the establishment of rehabilitation centres for the detention and rehabilitation of offenders of or over 14 and under 21 years of age. **Clauses 1 and 2** deal with preliminary matters, including the definition of terms used in the Bill. **Clause 3** provides for the appointment of rehabilitation centres by the Secretary for Security.

12. **Clause 4** defines the circumstances under which a detention order may be made and the duration of such order. **Clause 5** empowers the Commissioner to grant permission to young offenders to study, work, etc. outside a rehabilitation centre. **Clauses 6 and 7** provide for the making of supervision orders and recall orders to facilitate the aftercare of offenders. **Clause 8** sets out the effect of an offender's subsequent conviction of another offence on a subsisting detention order, supervision order and recall order.

13. **Clause 9** empowers the police officers and correctional services officers to arrest persons who are unlawfully at large. **Clause 10** empowers the

Chief Executive to direct the transfer of an offender from a rehabilitation centre to a training centre or prison in certain circumstances.

14. **Clause 11** makes provision for the rehabilitation centres to be visited by visiting justices. **Clause 12** allows certain provisions of the Prisons Ordinance to apply to rehabilitation centres mutatis mutandis. **Clause 13** empowers the Chief Executive in Council to make regulations for the purposes of the Ordinance. **Clauses 14 to 18** make consequential amendments to other Ordinances.

THE REGULATION

15. The Regulation proposed to be made under Clause 13 of the Bill is set out at Annex B for Members' information. It sets out the practical aspects of rehabilitation centres. **Sections 1 and 2** deal with preliminary matters, including the definition of terms used in the Regulation. **Section 3** provides for the administration of rehabilitation centres. **Sections 4 to 8** provide for the treatment of young offenders detained in a rehabilitation centre, including reception (Clause 4), medical examination (Clause 5), personal record (Clause 6), classification (Clause 7) and grades (Clause 8) of young offenders. **Sections 9 and 11** provide for the diet and religious services and instructions of the offender respectively. **Section 10** provides for training of the offenders. **Sections 12 and 13** deal with the appointment of Board of Review to assess each young offender's behaviour and progress in order to make recommendation for promotion and discharge. **Sections 14 to 16** relate to supervision order and conditions that may be imposed under the order. Leave of absence may be granted to young offenders under **Section 17**. **Sections 18 to 22** govern disciplinary offences committed by young offenders. **Section 23** provides for forms to be adopted.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice has advised that there could be a risk that section 21 of the proposed Regulation may be challenged on the ground that separate confinement of young offender constitutes inhuman treatment prohibited by Article 3 of the Hong Kong Bill of Rights Ordinance (HKBOR). Article 3 of HKBOR is not subject to any exception. The solitary confinement of a juvenile is capable of amounting to inhuman treatment, depending on the particular condition, the stringency of the measure, its duration, the objective

pursued and its effects on the person concerned. Under the proposed section 21, a young offender can only be kept apart from other young offenders –

- (a) pending the adjudication of a disciplinary offence reported against him; if and only if
- (b) this is necessary to prevent collusion or to protect a young offender.

Under Section 19 of the proposed Regulation, a disciplinary offence is to be investigated either on the day of the report or the following day (unless that day is a public holiday). The separate confinement is therefore unlikely to last more than 48 hours.

17. Provided that the confinement is short and in humane circumstances, the Department of Justice advises that a challenge to it under the HKBOR is not likely to succeed.

BASIC LAW IMPLICATIONS

18. The proposed legislation does not conflict with those provisions of the Basic Law carrying no human rights implications.

BINDING EFFECT OF THE LEGISLATION

19. The Bill does not contain any express binding effect provision.

FINANCIAL AND STAFFING IMPLICATIONS

20. The CSD will require 22 additional posts at a cost of \$12.5 million to implement rehabilitative services, including counselling, vocational training and programme administration under the new programme. This additional recurrent resource requirement will be absorbed from within the global allocation of the Security Bureau's policy area.

PUBLIC CONSULTATION

21. We have consulted the previous LegCo Panel on Security on the proposed programme. The Panel was generally supportive of the new programme as an additional sentencing option for young offenders. Some panel members suggested that the new programme be absorbed within the CSD's existing institutional set-up and that additional staffing requirements should be minimised.

LEGISLATIVE TIMETABLE

22. The legislative timetable is -

Publication in the Gazette	5 October 2000
First Reading and commencement of Second Reading debate	18 October 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

23. A press release will be issued on 5 October 2000. A spokesman will be available for answering media enquiries.

ENQUIRIES

24. Enquiries concerning the Bill may be directed to Mr David Wong, Principal Assistant Secretary of the Security Bureau at 2810 3435.

Security Bureau

5 October 2000

THE REHABILITATION CENTRES BILL

ANNEXES

Annex A - Rehabilitation Centres Bill

Annex B - Rehabilitation Centres Regulation

REHABILITATION CENTRES BILL

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A BILL

To

Provide for the appointment of rehabilitation centres for the reformation and training of offenders of or over 14 and under 21 years of age, and for other related matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Rehabilitation Centres Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires -

"addiction treatment centre" (戒毒所) means a place or building appointed to be an addiction treatment centre under section 3 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);

"approved" (獲允許) means approved by the Commissioner;

"Commissioner" (署長) means the Commissioner of Correctional Services;

"correctional services officer" (懲教人員) means an officer of the Correctional Services Department;

"court" (法庭) includes a magistrate;

"detention" (羈留) means detention in a rehabilitation centre;

"detention centre" (勞教中心) means a place or building appointed to be a detention centre under section 3 of the Detention Centres Ordinance (Cap. 239);

"detention order" (羈留令) means an order of detention made under section 4(1);

"initial detention period" (前段羈留期), in relation to a young offender, means the period referred to in section 4(5) (a);

"person unlawfully at large" (非法地不受羈留的人) means -

- (a) an escapee from a rehabilitation centre;
- (b) a person who fails to return to a rehabilitation centre at the expiration of the period for which permission under section 5(1) or leave of absence for whatever purposes has been granted; or
- (c) a person who, being the subject of a recall order, fails to return to a rehabilitation centre after having been required to do so by the Commissioner,

and "unlawfully at large" (非法地不受羈留) shall be construed accordingly;

"recall order" (召回令) means an order made under section 7(1) requiring a person to return to a rehabilitation centre;

"regulations" (《規例》) means regulations made under section 13;

"rehabilitation centre" (更生中心) means a place or building appointed under section 3 to be a rehabilitation centre;

"relevant offence" (有關罪行) means an offence punishable by imprisonment, other than for non-payment of a fine, but not an offence the sentence for which is fixed by law;

"subsequent period of residence" (後段居住期), in relation to a young offender, means the period referred to in section 4(5) (b);

"supervision order" (監管令) means an order for supervision made under section 6(1);

"training centre" (教導所) means an institution established as a training centre under section 3 of the Training Centres Ordinance (Cap. 280);

"young offender" (青少年犯) means an offender of or over 14 and under 21 years of age.

3. Rehabilitation centres

The Secretary for Security may, by order published in the Gazette, appoint a place or building to be a rehabilitation centre for the purposes of being -

- (a) a place of confinement in which a young offender may be detained in custody; or
- (b) an institution in which a young offender may be required to reside after studying, working or engaging in other approved activities.

4. Detention order

(1) Subject to subsection (2), where a person who is apparently a young offender is found guilty of a relevant offence, the court may, in lieu of any other sentence, make a detention order against him if the court is satisfied that having regard to the character and conduct of the person and the circumstances of the case, it would be in the interest of the community and the person himself that he should undergo a period of detention.

(2) A detention order shall only be made against a person who -

- (a) is a young offender;

- (b) is not serving and has not previously served a sentence of imprisonment;
- (c) is not serving and has not previously served a sentence of detention in -
 - (i) a detention centre;
 - (ii) a training centre; or
 - (iii) an addiction treatment centre;
- (d) is physically, mentally and medically fit to be detained in a rehabilitation centre;
- (e) is apparently an offender for whom a short-term custodial sentence is appropriate; and
- (f) on the date of conviction, is certified medically to be not drug dependent.

(3) A court may, after conviction of a young offender, remand him in the custody of the Commissioner for such period, not exceeding 3 weeks, as the court thinks necessary to enable the Commissioner to ascertain the suitability of the offender for detention and the availability of a place for the offender in a rehabilitation centre.

(4) A young offender against whom a detention order is in force shall be detained in a rehabilitation centre for such period, being a period in aggregate of not less than 3 months and not exceeding 9 months, as the Commissioner may determine.

(5) The period referred to in subsection (4) shall comprise the following -

- (a) the initial detention period of not less than 2 months and not exceeding 5 months at a rehabilitation centre referred to in section 3(a); and

- (b) the subsequent period of residence at a rehabilitation centre referred to in section 3(b) for a duration of not less than 1 month and not exceeding 4 months.

(6) In determining the whole period of detention, the Commissioner shall take into consideration -

- (a) in relation to the initial detention period, the conduct and progress of the young offender;
- (b) in relation to the subsequent period of residence, the needs and progress of the young offender.

(7) The references to "young offender" in subsections (4) and (6) do not affect the power of the Commissioner to detain an offender in a rehabilitation centre notwithstanding that the offender has reached the age of 21 years or more whilst a detention order is in force against him.

5. Leave for approved activities

(1) The Commissioner may grant to a young offender who is in his subsequent period of residence permission to study, work or engage in any other approved activities outside the rehabilitation centre concerned for such period and at such place as the Commissioner thinks fit.

(2) A young offender who, without reasonable excuse, fails to return to the rehabilitation centre concerned at or before the expiration of the period for which permission has been granted under subsection (1) commits an offence and is liable to a fine at level 2 and to imprisonment for 12 months.

6. Supervision order

(1) The Commissioner shall make a supervision order, that is to say, an order which requires a person to be under the supervision of a correctional services officer and to comply with conditions imposed in the order, for a fixed term of 1 year against a person who is released from a rehabilitation centre after having served a sentence of detention under a detention order.

(2) A supervision order shall specify -

- (a) particulars of a correctional services officer whom the Commissioner designates to supervise the person;
- (b) the date of release of the person from the rehabilitation centre concerned and the date on which the supervision order shall expire; and
- (c) such conditions as the Commissioner thinks fit.

(3) The Commissioner may at any time vary or cancel a supervision order.

(4) A person who fails to comply with a condition of a supervision order which has been made against him commits an offence and is liable to a fine at level 2 and to imprisonment for 12 months.

(5) A person against whom a recall order has been made shall not be liable to be prosecuted or convicted under subsection (4).

(6) A court may, instead of imposing a sentence under subsection (4), order that the case be referred to the Commissioner and that a recall order be made against the person by the Commissioner.

7. Recall order

(1) Subject to subsection (4), the Commissioner may, if he is satisfied that a person against whom a supervision order is in force has failed to comply with any condition of the order, make a recall order against the offender requiring him to return to a rehabilitation centre.

(2) A person taken to a rehabilitation centre under subsection (1) may be detained until the expiration of 9 months from the date of the coming into operation of the detention order, or 3 months from the date of his being arrested under the recall order, whichever is the later.

(3) The Commissioner may at any time release a person against whom the recall order is in force.

(4) A recall order may not be made against a person who has been charged with an offence under section 6(4) unless the court orders that such an order be made under section 6(6).

8. Effect of imprisonment or further sentence of detention

(1) If a person against whom a detention order, a supervision order or a recall order is in force is on conviction of another offence -

- (a) subject to a new detention order;
- (b) sentenced to a term of imprisonment which is not suspended;
- (c) sentenced to detention in a detention centre;
- (d) sentenced to detention in a training centre; or
- (e) sentenced to detention in an addiction treatment centre,

then the first-mentioned detention order, or the supervision order or recall order, as the case may be, shall lapse.

(2) A detention order, a supervision order or a recall order made against any person on whom a suspended sentence has been passed (whether made before or after the suspended sentence was passed) shall lapse if that suspended sentence is ordered to take effect.

9. Arrest, etc. of persons unlawfully at large

(1) Any police officer or correctional services officer may, if he reasonably suspects that a detention order or recall order is in force against a person and that the person is unlawfully at large, arrest, without warrant, the person and take him to a rehabilitation centre.

(2) If a person who is liable to be arrested under this section forcibly resists the attempt of a police officer or correctional services officer to arrest him, the officer (and any person assisting the officer) may use all reasonable means necessary to make the arrest.

(3) If a police officer or correctional services officer reasonably believes that a person unlawfully at large is on particular premises, the person residing at or in charge of the premises must, if the officer so requests, allow the officer to enter the premises to search for the person unlawfully at large.

(4) Subject to subsection (5), if entry to premises cannot be obtained as a result of a request under subsection (3) or if no person appears to be on the premises, a police officer or correctional services officer may enter the premises and search them and, for that purpose,

the officer may break open any outer or inner door or window of the premises.

(5) The power conferred by subsection (4) may be exercised without a warrant only if a warrant cannot be obtained without giving the person unlawfully at large an opportunity to evade arrest.

(6) If a person residing at or in charge of premises that a police officer or correctional services officer seeks to enter under subsection (3) requests the officer to produce evidence of the officer's authority or to specify the purpose of the entry, the officer may exercise the powers conferred by that subsection only after complying with the request.

(7) Any period during which a person against whom a detention order or recall order is in force is unlawfully at large shall be disregarded in calculating the period for which he may be detained under the detention order or recall order, as the case may be.

(8) Any person who obstructs a police officer or correctional services officer in the exercise of any power under this section commits an offence and is liable to a fine at level 2 and to imprisonment for 3 months.

10. Transfers from rehabilitation centre to training centre or prison

If a young offender against whom a detention order is in force is reported to the Chief Executive by the Commissioner to be -

- (a) exercising a bad influence on other young offenders in the rehabilitation centre; or
- (b) incorrigible,

the Chief Executive may, if satisfied that the young offender could not be suitably dealt with by any disciplinary proceedings provided by or under the regulations, direct that the young offender be -

- (i) transferred to a training centre; or
- (ii) detained in prison for such term as the Chief Executive may, after consultation where practicable with the judge or magistrate who made the detention order, determine, not exceeding the maximum term of imprisonment to which he was liable for the relevant offence of which he was convicted,

and for the purposes of this Ordinance and for the purposes of the Training Centres Ordinance (Cap. 280) or the Prisons Ordinance (Cap. 234), according to whether such offender is directed to be detained in a training centre or in prison, he shall be deemed to be a young offender who, on the day on which the detention order was made against him, had instead been sentenced to detention in a training centre or, as the case may be, to imprisonment for the term so determined by the Chief Executive.

11. Visiting justices

(1) The Chief Executive may appoint visiting justices for the purpose of visiting rehabilitation centres.

(2) A rehabilitation centre shall be visited by 2 visiting justices together at least once a month.

(3) Visiting justices shall exercise and perform in relation to rehabilitation centres the powers and duties conferred on visiting

justices and visiting committees under the Prisons Ordinance (Cap. 234).

12. Application of Prisons Ordinance

(1) Subject to subsection (2) and the regulations, sections 9 to 12 inclusive, 17 to 21 inclusive and 24 of the Prisons Ordinance (Cap. 234) as set out in the Schedule, and the Prison Rules (Cap. 234 sub. leg.) (except rules 22, 51, 69 and 144(k)), shall apply to a rehabilitation centre and to its staff and to persons detained in them in the manner as if such persons were prisoners and a rehabilitation centre were a prison, and such provisions shall be read with such alterations and modifications not affecting their substance as are necessary to render the same applicable.

(2) Notwithstanding subsection (1), in the event of conflict between this Ordinance and the Prisons Ordinance (Cap. 234), this Ordinance shall apply.

13. Regulations

The Chief Executive in Council may make regulations for all or any of the following matters -

- (a) the regulation and management of rehabilitation centres;
- (b) the treatment, employment, discipline, control and welfare of persons detained in rehabilitation centres;
- (c) conditions which may be specified in a supervision order;
- (d) forms required for the purposes of this Ordinance; and

- (e) generally for the better carrying out of the purposes of this Ordinance.

Consequential Amendments

Reformatory Schools Ordinance

14. Power to order detention in training centre etc. or imprisonment

Section 28 of the Reformatory Schools Ordinance (Cap. 225) is amended -

- (a) in subsection (1), by repealing "or in a detention centre" and substituting ", a detention centre or a rehabilitation centre";

- (b) by adding after subsection (3A) -

"(3AA) An order under subsection (1) for the detention of a youthful offender in a rehabilitation centre shall take effect as if it had been made under the Rehabilitation Centres Ordinance (of).";

- (c) in subsection (3B) -

- (i) by repealing "or detention centre" and substituting ", a detention centre or a rehabilitation centre,";
- (ii) by repealing "or a detention centre" and substituting ", a detention centre or a rehabilitation centre";

- (iii) by repealing "or detention centres" and substituting ", detention centres or rehabilitation centres";
- (d) in subsection (3C), by repealing "or in a detention centre" and substituting ", a detention centre or a rehabilitation centre".

Juvenile Offenders Ordinance

15. Methods of dealing with children or young persons charged with offences

Section 15(1) (1) of the Juvenile Offenders Ordinance (Cap. 226) is amended by adding "or to detention in a rehabilitation centre within the meaning of the Rehabilitation Centres Ordinance (of)" after "(Cap. 280)".

Public Order Ordinance

16. Possession of offensive weapon in public place

Section 33(2) of the Public Order Ordinance (Cap. 245) is amended -

- (a) in paragraph (b) -
 - (i) in subparagraph (ii), by repealing "or";
 - (ii) in subparagraph (iv), by adding "or" at the end;
 - (iii) by adding -

"(v) subject to the provisions of the Rehabilitation Centres Ordinance (of), to detention in a rehabilitation centre within the meaning of that Ordinance;"

(b) in paragraph (c) -

(i) in subparagraph (i), by repealing "or";

(ii) in subparagraph (ii), by adding "or" at the end;

(iii) by adding -

"(iv) subject to the provisions of the Rehabilitation Centres Ordinance (of), to detention in a rehabilitation centre within the meaning of that Ordinance;"

Rehabilitation of Offenders Ordinance

17. Protection of rehabilitated individual

Section 2 of the Rehabilitation of Offenders Ordinance (Cap. 297) is amended -

(a) in subsection (2), by repealing "or detention" and substituting ", detention or rehabilitation";

(b) in subsection (4) (a), by repealing "or in a training centre" and substituting ", in a training centre or in a rehabilitation centre".

Post-Release Supervision of Prisoners Ordinance

18. Interpretation

Section 2 of the Post-Release Supervision of Prisoners Ordinance (Cap. 475) is amended, in the definition of "detention facility" -

- (a) in paragraph (c), by repealing "or" where it secondly appears;
- (b) in paragraph (d), by adding "or" at the end;
- (c) by adding -
 - "(e) any place or building appointed to be a rehabilitation centre under section 3 of the Rehabilitation Centres Ordinance (of);".

SCHEDULE

[s. 12(1)]

PROVISIONS OF PRISONS ORDINANCE (CAP. 234) APPLIED

Section

Provision

9

Prisoners shall be under the control of the Commissioner who may -

- (a) allocate them to suitable institutions under his control;
- (b) classify them according to the classifications laid down by the Chief Executive in Council from time to time under section 25.

10 (1) A person shall be deemed to be a prisoner and in legal custody whenever he is being taken to or from, or is confined in, any prison in which he may be lawfully confined, whether under criminal or civil process, or whenever he is working outside or is otherwise outside any such prison in the custody or under the control of an officer of the Correctional Services Department.

 (2) Any police officer or other officer acting under the order of any judge or magistrate or other officer having power to commit a prisoner to prison may convey a prisoner to or from any prison to or from which he may be legally committed or removed.

11 The Commissioner on being satisfied that a prisoner is suffering from a disease and cannot properly be treated in a prison, or that he should undergo and desires to undergo a surgical operation which cannot properly be performed in a prison, or that a female prisoner is pregnant and that a birth may be imminent, may order that the prisoner be taken to a Government hospital or other suitable place for the purpose of treatment or such operation or such birth, and while absent from a prison in pursuance of such order the prisoner shall be deemed to be in legal custody.

12 (1) When the attendance of any prisoner at any place is required by a court, tribunal or other body performing judicial functions or for the purposes of any enactment, the Commissioner shall arrange for his transfer in custody to and from such place, and during any such transfer the prisoner shall be deemed to be in legal custody.

 (2) Without prejudice to subsection (1), if the Chief Executive, after consultation with the Commissioner, is satisfied that the attendance of a prisoner at any place is desirable in the interests of justice or for the purposes of any public inquiry, the Chief Executive may by order direct that prisoner to be taken to that place in pursuance of such interests or for such purposes and while absent from a prison in pursuance of such order the prisoner shall be deemed to be in legal custody.

17 Any person who -

- (a) escapes from any prison or from legal custody; or
- (b) aids any prisoner in escaping from prison or from legal custody; or
- (c) with intent to facilitate the escape of any prisoner, conveys or causes to be conveyed anything into a prison or

to a prisoner or places anything anywhere outside a prison with a view to its coming into the possession of a prisoner,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years.

18 (1) Any person who brings, throws or in any manner introduces or conveys into any prison, or conveys to any prisoner while in custody outside the prison, or deposits in any place outside a prison with intent that it shall come into the possession of a prisoner, or carries out of a prison any arms, ammunition, weapon, instrument, intoxicating liquor, opium or other drugs, tobacco, money, clothing, provisions, letters, papers, books or any other article whatsoever shall, unless so authorized by the rules made under section 25 or by the Commissioner, be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 3 years.

 (2) Any officer of the Correctional Services Department or other person employed in the prisons who contravenes or permits any contravention of the provisions of subsection (1) shall be liable, in addition to the above punishment and any other

punishment, to forfeit his office.

19

Any person who -

- (a) in any prison sells any intoxicating liquor, opium or other drug, tobacco or any other unauthorized article; or
- (b) being an officer of the Correctional Services Department or other person employed in the prisons -
 - (i) permits any such article to be sold in any prison;
 - (ii) permits any such article to be used by any prisoner, unless such use be authorized by rules made under section 25 or by the Commissioner;
 - (iii) contrary to the rules made under section 25 gives or causes to be given anything of whatsoever nature to any prisoner,

shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months and, if he be an officer of the Correctional Services Department or other person employed in the prisons, he shall be liable, in addition to such punishment and any other punishment, to forfeit his

office.

20 The Commissioner shall cause to be affixed in a conspicuous place outside every prison a notice, in English and in Chinese, setting forth the penalties that will be incurred by persons who contravene the provisions of sections 17, 18 and 19.

21 Any officer of the Correctional Services Department or other person employed in the prisons who -

(a) after having duly engaged to serve as such absents himself from his duties; or

(b) on being dismissed or permitted to resign from or ceasing to belong to the Correctional Services Department, does not deliver up all arms, accoutrements, appointments and things entrusted to him for the performance of his duty,

shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months, and shall be liable to forfeit his office upon conviction.

24 (1) Save where the contrary intention appears

from the context of this or any other Ordinance and subject to any special instructions of the Commissioner, the Deputy Commissioner may exercise and perform any of the powers, functions and duties which are conferred or imposed upon the Commissioner by this or any other Ordinance except any power to dismiss a subordinate officer which may be conferred on the Commissioner by or under this Ordinance.

(2) Save where the contrary intention appears from the context of this or any other Ordinance and subject to any special instructions of the Chief Executive, the Commissioner may authorize any senior officer by name, office or appointment to exercise and perform any of the powers, functions and duties which are conferred or imposed upon the Commissioner by this or any other Ordinance except any power to dismiss a subordinate officer which may be conferred on the Commissioner by or under this Ordinance.

Explanatory Memorandum

The object of this Bill is to provide for the appointment of rehabilitation centres for the detention and rehabilitation of offenders of or over 14 and under 21 years of age.

2. Clauses 1 and 2 deal with preliminary matters, including the definition of terms used in the Bill.

3. Clause 3 provides for the appointment of rehabilitation centres by the Secretary for Security.

4. Clause 4 defines the circumstances under which a detention order may be made and the duration of such order.
5. Clause 5 empowers the Commissioner of Correctional Services to grant permission to young offenders to study, work, etc. outside a rehabilitation centre.
6. Clauses 6 and 7 provide for the making of supervision orders and recall orders to facilitate the aftercare of offenders.
7. Clause 8 sets out the effect of an offender's subsequent conviction of another offence on a subsisting detention order, supervision order and recall order.
8. Clause 9 empowers police officers and correctional services officers to arrest persons who are unlawfully at large.
9. Clause 10 empowers the Chief Executive to direct the transfer of an offender from a rehabilitation centre to a training centre or prison where certain circumstances arise.
10. Clause 11 makes provision for rehabilitation centres to be visited by visiting justices.
11. Clause 12 allows certain provisions of the Prisons Ordinance (Cap. 234) to apply to rehabilitation centres *mutatis mutandis*.
12. Clause 13 empowers the Chief Executive in Council to make regulations for the purposes of the Ordinance.
13. Clauses 14 to 18 make consequential amendments to other Ordinances.
14. The Schedule sets out the relevant provisions of the Prisons Ordinance (Cap. 234) which are applicable, with modifications, to the operation of a rehabilitation centre.

REHABILITATION CENTRES REGULATION**CONTENTS**

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REHABILITATION CENTRES REGULATION

(Made by the Chief Executive in Council under section 13
of the Rehabilitation Centres
Ordinance (of))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -

"Board" (委員會) means a Board of Review appointed under section 12(1);

"dangerous drug" (危險藥物) means a dangerous drug within the meaning of the Dangerous Drugs Ordinance (Cap. 134);

"disciplinary offence" (違紀行爲) means a disciplinary offence under section 17(3) or 18;

"officer" (人員) means a correctional services officer;

"Officer-in-charge" (主管人員) means an officer appointed under section 3(2) (b) to be in charge of a rehabilitation centre;

"Superintendent" (監督) means an officer appointed under section 3(2) (a) to assist the Commissioner in the administration of rehabilitation centres.

3. Administration of rehabilitation centres

(1) The Commissioner shall have the general charge and control of all rehabilitation centres.

(2) The Commissioner shall appoint -

- (a) an officer to assist him in the administration of rehabilitation centres, who shall be known as the Superintendent of rehabilitation centres;
- (b) an officer to be Officer-in-charge of each rehabilitation centre; and
- (c) such officers as he may consider necessary for services in rehabilitation centres.

4. Reception of young offenders

The Commissioner shall, upon delivery to him of a detention order, cause to be made all necessary arrangements for the reception of the young offender named in the detention order.

5. Medical examination

Every young offender shall, on the day of his admission or as soon as possible after his admission to a rehabilitation centre, be separately examined by a medical officer.

6. Personal record of young offenders

Every young offender shall, as soon as possible after his admission, be interviewed by the Officer-in-charge, who shall, with reference to rule 12 of the Prison Rules (Cap. 234 sub. leg.), cause to enter in the young offender's record such personal particulars as the Officer-in-charge considers necessary.

7. Classification

The Commissioner shall classify all young offenders, having regard to their character, previous history and other relevant circumstances and shall arrange for each young offender to receive his training at the rehabilitation centre which is, in the opinion of the Commissioner, most suitable.

8. Grades

(1) Young offenders shall be divided into such grades as the Commissioner may approve.

(2) The privileges of each grade shall be specified by the Commissioner.

9. Diet

Every young offender shall be supplied with food in accordance with scales of diet as the Chief Executive may approve from time to time.

10. Training

(1) Every young offender, unless excused by a medical officer on medical grounds, shall from the beginning of his sentence be engaged in suitable work calculated to assist his reintegration into the society on discharge.

(2) No young offender shall be engaged in any work unless he has been certified by a medical officer to be fit for work of that description.

(3) A young offender upon his release from a rehabilitation centre, may receive a cash grant in accordance with an earnings scheme approved by the Commissioner.

11. Religious services and instruction

The Officer-in-charge may, if satisfied that a young offender belongs to a religious denomination, if the young offender so desires and it is reasonably practicable to do so, make arrangements for the young offender to attend appropriate religious services or instruction.

12. Board to make recommendations for young offender's promotion and discharge

(1) The Commissioner shall appoint for each rehabilitation centre a Board of Review consisting of the Superintendent, the Officer-in-charge of that centre and such other officers as he may select, to watch the behaviour of each young offender and to make recommendations for his promotion to a higher grade and discharge.

(2) The Board shall cause a young offender to be brought before it at least once a month or as frequently as the Board considers necessary during his detention.

13. Functions of Board

The functions of a Board shall be -

- (a) to assess each young offender's progress and make recommendations to the Commissioner concerning the young offender's promotion to a higher grade;

- (b) to make recommendations to the Commissioner in respect of the transfer of a young offender to a training centre or prison;
- (c) to make recommendations to the Commissioner relating to the release of any young offender having regard to the result of securing the young offender's rehabilitation and his reintegration into society, and the need to protect the public from potential harm from the young offender.

14. Supervision order

A supervision order shall be read and explained to a young offender by the Officer-in-charge before the release of the young offender from the rehabilitation centre.

15. Conditions of a supervision order

Conditions that may be specified for inclusion in a supervision order may relate to matters referred to in Schedule 1.

16. Procedures relating to drug tests

Where a young offender is required under a condition of a supervision order to supply a urine specimen for drug test, the procedures to be followed by officers are those set out in Schedule 2.

17. Leave of absence

(1) The Commissioner may grant to a young offender permission to be absent from a rehabilitation centre for a period not exceeding 5 consecutive days at any one time.

(2) A young offender permitted to be absent under subsection (1) shall be given a pass signed by the Commissioner stating the period during which the young offender is permitted to be absent from the rehabilitation centre and the address at which the young offender is required to reside during his absence.

(3) A young offender who, without reasonable excuse, fails to return to the rehabilitation centre at or before the expiration of the period for which he has been granted leave shall be guilty of a disciplinary offence.

18. Disciplinary offences

A young offender who commits any of the offences enumerated in rule 61 of the Prison Rules (Cap. 234 sub. leg.) as applied by section 12 of the Ordinance shall be guilty of a disciplinary offence.

19. Investigation of disciplinary offences, and awards, by Superintendent

(1) Every allegation of a disciplinary offence shall be reported forthwith to the Superintendent and the Superintendent shall investigate every report of such an offence not later than the following day, unless that day is a public holiday.

(2) If, upon investigation, the Superintendent determines that the disciplinary offence is proved, he shall make one or more of the following awards -

- (a) caution;

- (b) forfeiture of privileges for a period not exceeding 1 month;
- (c) demotion of grade;
- (d) deduction from earnings of the cost of any Government property lost or wilfully damaged.

(3) For the purpose of subsection (2), "privileges" (特惠) shall be taken to include association, games and entertainment.

(4) A young offender may appeal to the Commissioner against a determination or an award made by the Superintendent under subsection (2) within 48 hours after the making of the determination or award, as the case may be, by giving notice in writing to the Superintendent, who shall forthwith notify the Commissioner and stay execution of the determination or award pending the outcome of the appeal.

(5) The Commissioner may confirm, vary or reverse the determination or award against which the appeal is made or may substitute for such award any other award which the Superintendent was competent to make under subsection (2).

20. Report

No report under section 19 against a young offender shall be dealt with by an officer of the rehabilitation centre except the Superintendent.

21. Young offenders may be kept apart pending adjudication of disciplinary offence

When a young offender has been reported for a disciplinary offence, the Officer-in-charge may order him to be kept apart from other young offenders, pending adjudication if and only if he is satisfied -

- (a) that such order is necessary to prevent collusion between the young offender concerned and other young offenders in respect of the disciplinary offence in the interest of the administration of justice; or
- (b) that such order is necessary to protect the young offender concerned from potential harm from other young offenders, or vice versa.

22. Young offenders given opportunity to defend against allegation of a disciplinary offence

A young offender shall, before a report is dealt with, be informed of the disciplinary offence for which he has been reported and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.

23. Forms

The forms set out in Schedule 3 shall be used for the purposes specified therein.

SCHEDULE 1

[s. 15]

CONDITIONS OF A SUPERVISION ORDER

Conditions in a supervision order may include conditions relating to the young offender's -

- (a) reporting requirements under the order;
- (b) employment;
- (c) schooling;
- (d) place of residence;

- (e) remaining within any geographical area;
- (f) attendance for medical treatment;
- (g) supplying his urine specimen for drug test if required;
- (h) being or not being at a specified place at certain days or time of a day;
- (i) refraining from abusing dangerous drugs;
- (j) refraining from associating with persons who have any connection with the offence for which he was sentenced; and
- (k) refraining from visiting any place connected with the offence for which he was sentenced.

SCHEDULE 2

[s. 16]

PROCEDURES RELATING TO DRUG TESTS

1. Where a young offender is reasonably suspected to have abused any dangerous drugs during the period when he is subject of a supervision order, the officer who has been designated to supervise him may, after obtaining endorsement from the Superintendent, require the young offender to supply a urine specimen for drug test.
2. The officer shall serve a notice in Form 8 of Schedule 3 on the young offender in the presence of a witness who may include a family member of the young offender or another officer.
3. If the young offender upon whom a notice has been served does not wish to give consent for supplying a urine specimen, he may indicate

so in the acknowledgment form attached to the notice and make written representations to the Commissioner stating his reasons why the request is considered not justified within 48 hours after his receipt of the notice.

4. The Commissioner shall decide, having regard to all relevant circumstances, whether the young offender is required to supply his urine specimen and the decision of the Commissioner shall be final.

5. The young offender shall be informed of the decision of the Commissioner.

SCHEDULE 3

[s. 23 & Sch. 2]

FORM 1

[s. 4(3) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

WARRANT OF REMAND IN CUSTODY PENDING RECEIPT OF REPORT AS TO SUITABILITY FOR A SENTENCE OF DETENTION

(For Magistrate's Court only)

In the Magistrate's Court of the Hong Kong Special Administrative

Region held at

Case No. of

To each and all of the police officers of the Hong Kong Special Administrative Region and to the Commissioner of Correctional Services (hereinafter called "the Commissioner").

[*Name of defendant*]

.....
(hereinafter called "the defendant") being apparently of or over 14 but under 21 years of age, has this day been convicted of a relevant offence:

- (1)
- (2)

The further hearing of the case being adjourned pending receipt of a report from the Commissioner as to the suitability of the defendant for a sentence of detention.

YOU, the police officers are therefore required to convey the defendant and deliver him to the Commissioner together with this warrant; and you, the Commissioner to receive the defendant into your custody and keep him until the day of 20, and on that day you, the said police officers are required to convey him before the Magistrate's Court sitting at Court No. at the hour of in the noon to be further dealt with according to law, unless otherwise ordered in the meantime.

Dated this day of 20

Charge sheet, summary of facts, prosecution opening and criminal record attached.

.....
Magistrate

- Note:* (1) State the substance of the offence.
(2) Specify the Ordinance and the relevant section.

FORM 2

[s. 4(3) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

WARRANT OF REMAND IN CUSTODY PENDING RECEIPT OF REPORT
AS TO SUITABILITY FOR A SENTENCE OF DETENTION

(For District/High Court*only)

In the District Court/Court of First Instance of the High Court* of the Hong Kong Special
Administrative Region held

At

Case No. of

To the Commissioner of Correctional Services of the Hong Kong Special
Administrative Region (hereinafter called "the Commissioner").

[Name of defendant]
.....

(hereinafter called "the defendant") being apparently of or over 14 but under 21 years of age, has this day been convicted of a relevant offence:

- (1)
- (2)

The further hearing of the case being adjourned pending receipt of a report from the Commissioner as to the suitability of the defendant for a sentence of detention.

YOU, the Commissioner are therefore required to receive the defendant into your custody and keep him until the day of 20, and on that day you, the Commissioner are required to convey him before the District Court/Court of First Instance of the High Court* sitting at Court No. at the hour of in the noon to be further dealt with according to law, unless otherwise ordered in the meantime.

Dated this day of 20

Charge sheet, summary of facts, prosecution opening and criminal record attached.

.....
*Judge/District Judge**

Note: (1) State the substance of the offence.

(2) Specify the Ordinance and the relevant section.

* Delete where applicable.

FORM 3

[s. 4(1) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

DETENTION ORDER

(For Magistrate's Court only)

In the Magistrate's Court of the Hong Kong Special Administrative

Region held at

Case No. of

To each and all of the police officers of the Hong Kong Special Administrative Region
and to the Commissioner of Correctional Services (hereinafter called "the Commissioner").

[*Name of defendant*]

.....
(hereinafter called "the young offender") being apparently of or over 14 and under 21 years of
age, was on the day of 20 duly found guilty of a relevant
offence, for that he on the day of 20 in the Hong Kong
Special Administrative Region did ⁽¹⁾

..... contrary to
(2)

and a detention order has been made against him under section of the
Rehabilitation Centres Ordinance.

This order therefore commands you, the police officers to take the young offender and deliver him to the Commissioner together with this order; and you, the Commissioner to receive the young offender and keep him in your custody in accordance with the provisions of the Ordinance, and this shall be your authority to do so.

Dated this day of 20

.....
Magistrate

- Note:* (1) State the substance of the offence.
(2) Specify the Ordinance and the relevant section.

FORM 4

[s. 4(1) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

DETENTION ORDER

(For District/High Court* only)

In the District Court/Court of First Instance of the High Court* of the Hong Kong Special
Administrative Region held

At

Case No. of

To the Commissioner of Correctional Services of the Hong Kong Special
Administrative Region and to (hereinafter called "the Commissioner").

[Name of defendant]

.....
(hereinafter called "the young offender") being apparently of or over 14 and under 21 years of
age, was on the day of 20 duly found guilty of a relevant
offence, for that he on the day of 20 in the Hong Kong
Special Administrative Region did ⁽¹⁾
..... contrary to ⁽²⁾
..... and a detention order has been made against him
under section of the Rehabilitation Centres Ordinance.

This order therefore commands you, the Commissioner to receive the young offender
and keep him in your custody in accordance with the provisions of the Ordinance, and this
shall be your authority to do so.

Dated this day of 20

.....
*Judge/District Judge**

- Note:* (1) State the substance of the offence.
(2) Specify the Ordinance and the relevant section.

* Delete where applicable.

FORM 5

[s. 6(1) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

SUPERVISION ORDER

To (1).....
I HEREBY ORDER that upon your release from Rehabilitation Centre
on day of 20, you shall be subject to supervision by officers
on aftercare duties of Rehabilitation Centre, until the day
of 20 and during such period of supervision you shall comply
with the following conditions:

.....

.....

.....

.....

.....

.....

Dated this day of 20

.....
Commissioner of Correctional Services

Note: (1) Insert name of young offender detained in rehabilitation centre.

FORM 6

[s. 6(5) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

RECALL ORDER

To ⁽¹⁾

⁽²⁾

Being satisfied that ⁽¹⁾
 a person against whom a supervision order was made
 dated and who was released subject to supervision
 by ⁽²⁾ has been
 ordered by (Magistrate/District Judge/ Judge*) in the Magistrate's
 Court/District Court/Court of First Instance of the High Court* of the Hong Kong Special
 Administrative Region held at on to be made subject of a
 recall order, I do hereby order the recall of ⁽¹⁾
 to
 Rehabilitation Centre.

Dated this day of 20

.....
Commissioner of Correctional Services

Note: (1) Insert name of young offender detained in rehabilitation centre.

(2) Insert name(s) of officer(s) designated by the Commissioner of Correctional Services.

* Delete where applicable.

FORM 7

[s. 7(1) of the
Ordinance]

REHABILITATION CENTRES ORDINANCE

(of)

RECALL ORDER

To ⁽¹⁾
⁽²⁾

Being satisfied that ⁽¹⁾
..... a person against whom a supervision order was made
dated and who was released subject to supervision
by ⁽²⁾ has
failed to comply with the requirements of the supervision order, I do hereby order the recall of
⁽¹⁾
..... to
..... Rehabilitation Centre.

Dated this day of 20

.....
Commissioner of Correctional Services

- Note:* (1) Insert name of young offender detained in rehabilitation centre.
(2) Insert name(s) of officer(s) designated by the Commissioner of Correctional Services.

FORM 8

[s. 16 & Sch. 2]

REHABILITATION CENTRES REGULATION

(L.N. of)

NOTICE TO SUPPLY URINE SPECIMEN FOR TESTING

1. By virtue of section 16 of the Rehabilitation Centres Regulation (L.N. of), you,
..... (name of young offender) are required to supply your urine specimen to (name of officer) for testing upon receipt of this notice.
2. If you do not consent to supply a urine specimen for testing, you may make a written representation to the Commissioner of Correctional Services within 48 hours after receipt of this notice.
3. The Commissioner of Correctional Services will decide whether you are required to act in accordance with this notice and his decision is final. You will be informed of the decision.

4. You will be in breach of a condition of the supervision order if you refuse to act in accordance with the decision of the Commissioner of Correctional Services.

Dated this day of 20

.....
Superintendent of Rehabilitation Centres

.....

ACKNOWLEDGMENT OF NOTICE TO SUPPLY

URINE SPECIMEN FOR TESTING

1. I (name of young offender) acknowledge receipt of a copy of the notice requiring me to supply a urine specimen for testing and I am fully aware of my rights set out in the notice.
2. I consent/do not consent* to supply a urine specimen for testing.
3. I wish/do not wish* to make a written representation to the Commissioner of Correctional Services in this regard.

.....
(Signature)

Name:

Date:

Time:

Witnessed by:

Name:

Date:

* Delete where applicable.

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation is made under the Rehabilitation Centres Ordinance (of) ("the principal Ordinance") and provides for -

- (a) the operation and management of rehabilitation centres;
- (b) the treatment, employment, discipline, control and welfare of offenders detained in a rehabilitation centre;
- (c) conditions that may be imposed under a supervision order and the related procedures to be followed by officers; and
- (d) forms to be adopted for the purposes of the principal Ordinance.