

**Bills Committee on
Juvenile Offenders (Amendments) Bill 2001**

The Police Superintendent's Discretion Scheme

Purpose

This paper presents information on the Police Superintendent's Discretion Scheme (PSDS), the criteria for consideration of referral to other government departments or Non-Governmental Organizations (NGOs) for follow-up services, the problems encountered in the referrals and the recidivism rate under the PSDS.

Background

2. The PSDS was introduced in 1963 when the then Attorney General authorized police officers of Superintendent (SP) rank and above the power to caution, rather than prosecute, young offenders under the age of 14 years. Throughout the years, the PSDS was extended to offenders aged under 16, 17 and then 18 in 1966, 1987 and 1995 respectively.

General Principles

3. The general principles for a SP to exercise his own discretion to issue a caution to an offender, instead of initiating a criminal prosecution, are -

- (a) cautioning applies to offenders under 18 years of age;
- (b) cautioning will normally be conducted within one month of the offender's arrest;
- (c) eligibility for cautioning (pre-requisite conditions) requires -

- (i) sufficient evidence to support prosecution and that prosecution would be the only alternative course of action;
- (ii) voluntary and unequivocal admission of the offence by the offender; and
- (iii) the offender and his parents' agreement to the caution.

4. When determining whether it is appropriate to administer a caution under the PSDS, considerations will also be given to the following factors -

- (a) the nature, seriousness and prevalence of the offence;
- (b) degree of harm suffered by the victim, the value of property stolen or degree of damage to property and whether the offence was committed on impulse or with a degree of malicious planning by the offender;
- (c) the offenders' previous record –
 - (i) an offender with a previous conviction should not normally be considered for a caution;
 - (ii) an offender with a previous caution may be given a second, or subsequent caution depending on the nature of the offender's previous record, the lapse of time since the last offence, the seriousness of the previous and current offence, the impact of any previous caution on the offender, the offender's response to any support and assistance provided by the Police, the Social Welfare Department (SWD), the Education Department (ED) or any other agency and the attitude of the offender and his parents to a further caution.
- (d) complainant/victim's attitude; and
- (e) parental/guardian attitude should be positive and supportive.

5. In cases where opiate drug offences are involved, consideration will be given to the following additional criteria -

- (a) it must be the first offence committed by the offender;

- (b) the offender fully co-operates with police enquiries;
- (c) circumstances/quantities of drugs do not amount to trafficking; and
- (d) the offender is not addicted to opiates and is willing to seek rehabilitation.

6. In order to assist the SP to consider whether discretion should be exercised, the Officer in charge (OC) of the case will complete a “Background Report of Juvenile Offender”, in the format as attached at **Annex A**, which cover background information on the offender's education, work, family and social life, etc..

Fingerprints and Records of Caution

7. Section 59 of the Police Force Ordinance (Cap 232), states that where a person under 18 years of age has not been charged with an offence, but instead dealt with by means of a caution under the PSDS, that person's fingerprints may be retained by the Police. The power to retain such fingerprints lapses once the person has reached 18 years of age or a period of two years has lapsed since the person was cautioned, whichever is the later. The keeping of records of caution will allow the Police to have a better assessment of the background of a young person and also his/her needs for support services, if the young offender cautioned under the PSDS is re-arrested for crime before reaching the age of 18 or the expiry of the 2-year period, as the case is appropriate.

Follow-up Visits

8. Each Police Region has a Juvenile Protection Section (JPS) commanded by the Regional Crime Prevention Officer (RCPO) who is of Chief Inspector rank. A juvenile who has been cautioned under the PSDS will be referred to the JPS of the Police Region where the juvenile resides. The OC JPS will arrange for visits to the juvenile's residence by a police officer in plain clothes, in accordance with the

directive of the SP who exercised discretion. Visits to and supervision of female offenders should only be undertaken by female officers. Frequency of visits will be reviewed by the OC JPS and recommended to the RCPO and the Regional Crime Superintendent for approval. The purpose of the visits is to ensure that the juvenile cautioned does not lapse into crime or associate with undesirable characters.

Referral of Juveniles to the SWD, ED and/or NGOs

9. After a caution has been administered to a juvenile, the SP may consider referring the case to the SWD and/or the ED and/or NGOs for after-care services. Depending on the needs of the juvenile, he or she may be referred to more than one of the agencies.

10. The guidelines for referral to the SWD are as follows -

- (a) a juvenile who has family or behavioural problems which require the assistance of a social worker; or
- (b) a juvenile without parents or guardians to look after his/her interests; or
- (c) a juvenile whose family is in hardship and requires social welfare assistance.

11. The guidelines for referral to the ED are as follows -

- (a) a juvenile who is under the age of 15 and is a school drop-out, or one who has not completed Secondary 3 level education; or
- (b) a juvenile who has committed the offence for which he/she has been cautioned due to association with bad elements from the same school and it is considered that a transfer to a new school would benefit the juvenile; or
- (c) a juvenile who has schooling problems.

12. The guidelines for referral to NGOs running the Community Support Service Scheme (CSSS) under the subvention of the SWD are as follows -

- (a) a juvenile who is a school drop-out; or
- (b) a young offender who has completed Secondary 3 level education and is unemployed; or
- (c) a juvenile or young offender who is not participating in any youth activities, such as Junior Police Call, Boy Scout or Girl Guide etc.; or
- (d) a juvenile or young offender who is likely to benefit from community activities, taking into consideration the family background and personal temperament of the offender, such as insufficient family and financial support, lack of sibling or friend, poor interpersonal skills, poor family relationship, problematic behaviour, association with street gangs, low sense of achievement or self-esteem, unsatisfactory academic results etc.

13. In order to refer the juvenile for after-care measures by SWD, ED and/or NGOs, the consent of the parents or guardian of the juvenile is a prerequisite. Should they agree to the referral, they will be invited to sign a consent form.

14. In case the SP exercising the discretion did not recommend a referral but referral to a particular agency is considered necessary subsequent to JPS visits, OC JPS may directly refer the case to the SWD/ED/NGOs as appropriate after endorsement is sought from the Regional Crime Superintendent. Consent from the juvenile and his parent or guardian to the referral will be obtained by JPS officers.

The Community Support Service Scheme (CSSS)

15. The Community Support Service Scheme (CSSS) was initially set up in September 1994 to provide counselling and assistance to juvenile offenders who were cautioned under the PSDS. It has been expanded to cover the whole territory since

September 2001. There are five service teams established by five NGOs which run the CSSS under the subvention of the SWD -

Name of Project	Covering Police Districts
The Methodist Centre - <i>Project Phoenix</i>	all districts in Hong Kong Island Region and all districts in Marine Region
The Hong Kong Boys' and Girls' Clubs Association – <i>Youth Action Network</i>	all districts in Kowloon West Region
The Hong Kong Playground Association – <i>New Horizon Community Support Services Scheme</i>	all districts in Kowloon East Region
The Hong Kong Federation of Youth Groups – <i>Youth Support Scheme</i>	Tsuen Wan, Kwai Tsing, Tuen Mun and Lantau Districts
The Evangelical Lutheran Church Social Service - <i>Youth Enhancement Scheme</i>	Yuen Long, Tai Po, Border and Shatin Districts

16. The purpose of the CSSS is to assist the targeted juveniles to re-integrate into the community, eliminate their deviant and unlawful behaviour and reduce the likelihood of law infringement. The service offered involved intensive social work oriented case/group programme/activities including the following –

- (a) counseling, either on an individual or group basis, to assist PSDS cases to overcome their difficulties in person and social development in particular their offending behaviour;
- (b) educational or vocational guidance to reintegrate them into the education system or workforce;
- (c) groups and activities to enhance their social skills, interpersonal relationship and life aspiration, and modify their undesirable attitudes and behaviour;
- (d) volunteer and community service activities to develop their sense of social responsibility and civic mindedness, and provide them with chances of getting social recognition; and

- (e) work with relevant system, such as parents/guardians and peers, to strengthen the supporting network for young people.

Post-referral Liaison

17. OC JPS is responsible for the post-referral liaison with the SWD, ED and the respective NGOs. Where case details are referred to either the SWD or ED, post-referral liaison with the department concerned is highly desirable especially in problematic cases which require further police input or intervention, OC JPS will consider conducting follow-up visits, joint visits or assessment with the SWD/ED.

18. As regards to the CSSS, it is not treated as a replacement of services by JPS. Instead, they are considered to be complementary in nature. Joint efforts of CSSS and JPS are essential especially in cases where both counselling services and authoritative supervision are necessary. As such, JPS will normally continue to conduct follow-up visits in respect of cases that are referred to the NGOs who run the CSSS.

19. The number of referrals made under PSDS for the past few years are attached at **Annex B**. Children who are discharged without being cautioned would still be referred to SWD and/or ED for services if they meet the guidelines for consideration of referral as mentioned in paragraphs 10 and 11 above and if their parents consent to the referral. However, they would not be referred to the NGOs for the CSSS as their services are designed particularly to cater for juveniles cautioned under the PSDS.

Parents' Consent for After-care Services

20. As mentioned in paragraph 13 above, the consent of the parents or guardian

of the juvenile is a prerequisite for referring the juvenile for after-care measures by SWD or ED and/or NGOs. Without their consent, the Police could not transfer personal information on the juveniles to departments or NGOs for provision of services in view of the limitations under the Personal Data (Privacy) Ordinance. Furthermore, attendance of the after-care services is on a voluntary basis.

21. Therefore, if parents do not consent to Police's referral, or the juvenile offenders fail to attend the aftercare service programmes, the youth in question might not be properly supervised and no support service could be rendered to them effectively. This is unlike orders issued by the court which may compel children and juveniles who are found guilty of an offence to be subject to mandatory services and timely intervention.

Recidivism

22. A juvenile is regarded as a recidivist if he/she is re-arrested for crime within two years from the date of the last caution, or before he/she reaches the age of 18, whichever comes first. The recidivism rate of persons cautioned under the PSDS since 1997 is presented at **Annex C**. Recidivism rate of juveniles who were prosecuted for crimes since 1997 is shown at **Annex D**.

23. For years 1997 to 1999, the average recidivism rate for juveniles cautioned under the PSDS (15.8%) is found comparable to the average recidivism rate for juveniles who were prosecuted (16.5%). It is therefore wrong to suggest that criminal conviction, despite its need to be recorded, has a negative effect in leading juvenile offenders to reoffend and go down the route of a hardened criminal. In fact, a fair trial in court and the various sentencing options opened to the court will enable juvenile offenders, who have committed relatively serious offences and who demonstrates a higher degree of deviance, to be rendered with mandatory services that best suit their needs and circumstances.

Conclusion

24. The above sets out the criteria for the exercise of the PSDS, the criteria for consideration on referral of the cautioned juvenile to SWD/ED/NGOs for after-care services, the need for parents' consent to such referral and the recidivism rate under the PSDS of different age groups.

25. The PSDS is a well-established system to divert young offenders from prosecution and is generally considered effective. There is also a systematic mechanism to provide follow-up services for children and juveniles cautioned under the PSDS. The Police will continue to implement the PSDS and promote close cooperation between the JPS and SWD, ED and NGOs in providing aftercare services in a multi-agency approach.

Security Bureau

November 2002

個人資料 Personal Data

JPS Ref. No. _____
RN No. _____
CRO No. _____

BACKGROUND REPORT OF JUVENILE OFFENDER

(to be completed by OC Case prior to the consideration of SP's Discretion)

I. DETAILS OF JUVENILE OFFENDER

A. Personal Particulars

Name : _____ (in English)
_____ (in Chinese) C.C.C. _____
Sex : _____ Native Place and Dialect: _____
Date of Birth : _____ Place of Birth: _____
Birth Certificate No. _____ HKID No.: _____
Home Address : _____
_____ Tel.: _____ (Home) _____ (Mobile)

B. Education Background

Is the juvenile offender attending school?

Yes	No
-----	----

If yes, name of school : _____

Address : _____

Class : _____

If no, name of school last attended : _____

Address : _____

Highest level attained : _____

Year of dropout : _____

Has the juvenile offender ever changed schools since primary education? If yes, please fill in the details below :

Yes	No
-----	----

<u>Name of school</u>	<u>Period</u>	<u>Reason</u>

Has the juvenile offender ever repeated the same class since primary education? Yes No

Academic performance at school : Above average Average Below average

Does the juvenile offender have any record of truancy? Yes No

Does truancy happen frequently? Yes No

Reason: _____

Does the juvenile offender's school organize any extra-curricular activities? Yes No

If yes, does the juvenile offender take part in any extra-curricular activities? Yes No

Has the juvenile offender ever consulted a Student Guidance Officer or School Social Worker? (Note: Reference should be made to FPM 34-08 para. 12(c) on police procedures in any contact with the juvenile offender's school) Yes No

Reason: _____

Name of SGO/ SSW: _____ *Tel. No.* _____

C. Work Background

Occupation _____ Full time Part time

Income \$ _____ Daily Weekly Monthly

Length of employment to date _____ *months*

Working address _____

Tel. _____

Has the juvenile offender ever changed jobs in the past six months? Yes No

If yes, please fill in the details below :

<u>Occupation</u>	<u>Period</u>	<u>Reason</u>

D. Social Background

Does the juvenile offender have any close friend?

Yes	No
-----	----

Name _____ *Tel.* _____

Name _____ *Tel.* _____

Name _____ *Tel.* _____

Does the juvenile offender pour out his/her heart to the friend?

Yes	No
-----	----

What are the juvenile offender's hobbies?

Places frequented *Name* _____ *Location* _____

People liked most *Name* _____ *Location* _____

People hated most *Name* _____ *Location* _____

Does the juvenile offender take part in any ground activities such as sports, picnics?

Yes	No
-----	----

Does the juvenile offender receive regular pocket money?

Yes	No
-----	----

Amount _____

Does the juvenile offender have any curfew hour set by parents/guardian?

Yes	No
-----	----

Is the juvenile offender free to leave/return home?

Yes	No
-----	----

Does the juvenile offender often feel boring or unhappy?

Yes	No
-----	----

Does the juvenile offender often feel inferior to others?

Yes	No
-----	----

Does the juvenile offender have any ambition? If yes, please specify.

Yes	No
-----	----

Is the juvenile offender a member of any youth organization?

Yes	No
-----	----

If yes, please fill in the table below :

<u>Name of Organization</u>	<u>District</u>	<u>Membership No.</u>

E. Offence Details and Missing Record

Present offence(s) : _____

Date of offence : _____ **Time of offence :** _____ **hours**

Location of offence : _____

What was the reason for the juvenile offender to commit the offence?

Was the juvenile offender aware of the consequence when he/she committed the offence?

Yes	No
-----	----

Does the juvenile offender feel remorse after committing the offence?

Yes	No
-----	----

Ask the juvenile offender to number the following in order of concern to him/her : (from 1 – most concern to 5 – least concern)

- (a) *known to family/parents as an offender*

--
- (b) *known to teachers, schoolmates and friends as an offender*

--
- (c) *being under the supervision of JPS*

--
- (d) *being tried in court*

--
- (e) *having a criminal record*

--

Ask the juvenile offender to number the following in order of impact to him/her : (from 1 – greatest impact to 5 – lowest impact)

- (a) *being charged to court*

--
- (b) *arrested for committing a crime*

--
- (c) *questioned in a police station*

--
- (d) *warned by a superintendent*

--
- (e) *known to parents/family as an offender*

--

Has the juvenile offender been the subject of any Superintendent's Discretion before? If yes, please fill in the details below :

Yes	No
-----	----

<u>Date</u>	<u>Offence(s)</u>	<u>Frequency of Visit by JPS officer</u>	<u>Period of Visit by JPS officer</u>

Has the juvenile offender been charged with any offence before?
If yes, please fill in the details below :

Yes	No
-----	----

<u>Date</u>	<u>Offence(s)</u>	<u>Result</u>

Has the juvenile offender been reported missing to police before?
If yes, please fill in the details below :

Yes	No
-----	----

<u>Date</u>	<u>RN No.</u>	<u>Reason & Result</u>

II. FAMILY BACKGROUND

A. Parental Relationship :

<i>Married</i>	<i>Divorced</i>	<i>Separated</i>	<i>Widow</i>	<i>Widower</i>
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B. Natural Father / Step Father / Guardian (delete as appropriate)

Name : _____ *(in English)*

_____ *(in Chinese)* **C.C.C.** _____

I/D No. _____ **Date of Birth:** _____

Place of Birth : _____ **Dialect:** _____

Occupation: _____ **Income:** \$ _____

Working Address : _____

_____ **Tel.:** _____ *(Work)* _____ *(Mobile)*

How he sees the juvenile offender : _____

C. Natural Mother / Step Mother / Guardian (delete as appropriate)

Name : _____ *(in English)*

_____ *(in Chinese)* **C.C.C. :** _____

I/D No.: _____ *Date of Birth:* _____
Place of Birth : _____ *Dialect:* _____
Occupation: _____ *Income:* \$ _____
Working Address : _____
 _____ *Tel.:* _____ (*Work*) _____ (*Mobile*)
How she sees the juvenile offender : _____

D. Other family members

<i>Name</i>	<i>Age</i>	<i>Relationship</i>	<i>Occupation</i>	<i>Home Address</i>

E. Non-family Members of the Same Household

Are there any persons other than family members living in the same household with the juvenile offender? *Yes* *No*

Relationship with the juvenile offender:

<i>Relatives</i>	<i>Friends</i>	<i>Co-tenants/landlord</i>	<i>For others, please specify:</i> _____

F. Social Services / Supervision Received

Is the family receiving any services from Social Welfare Department or any voluntary organization or under their supervision? *Yes* *No*

Reason: _____

Type of Services / Supervision : _____
Name of Case Worker: _____ *Tel. No.* _____

The above information has been read by me/to me.

Signature of the interviewee _____
Signature of the parents/guardian _____
Police officer _____
Date _____

Remark: *Please delete as appropriate for the questions with choices.*

Number of Referrals under PSDS from 1997 to 2002 (June)

No. of Referrals Organization	1997	1998	1999	2000	2001	2002 (Jan- Jun)
Juvenile Protection Section	1,936	2,124	2,096	2,736	2,561	1,361
Community Support Service Scheme	256	580	561	832	757	908
Social Welfare Department	61	46	61	119	180	33
Education Department	5	11	6	15	2	16
Total	2,258	2,761	2,724	3,702	3,500	2,318

- Note : (1) Community Support Service Scheme (CSSS) is run by a number of non-governmental organizations.
(2) A cautioned offender may be referred to one or more schemes/departments.

**Persons Aged 7 – 17 Cautioned under the PSDS
and Re-arrested within Two Years**

	1997	1998	1999	2000	2001
Arrested for Crime	8810	8708	8646	9173	8732
Cautioned Under PSDS	3265	3190	3216	3760	3585
Cautioned Under PSDS and Re-arrested within 2 years	555	526	445	651*	474*
Recidivism Rate	17.0%	16.5%	13.8%	17.3%*	13.2%*

* A person is regarded as a recidivist if he/she is re-arrested for crime within two years from the date of the caution, or before he/she reaches 18 years old, whichever comes first. Due to the two-year rule, the recidivist rate for persons arrested in 2000 and 2001 are provisional figures as at 30.6.2002.

**Persons Aged 7 – 17 Convicted
and Re-convicted within Two Years**

	1997	1998	1999	2000	2001
Arrested for Crime	8810	8708	8646	9173	8732
Convicted	1868	1740	1653	1717	1845
Re-convicted within 2 years	300	285	280	214*	114*
Recidivism Rate	16.1%	16.4%	16.9%	12.5%*	6.2%*

* A person is regarded as a recidivist if he/she is re-arrested for crime within two years from the date of the caution, or before he/she reaches 18 years old, whichever comes first. Due to the two-year rule, the recidivist rate for persons arrested in 2000 and 2001 are provisional figures as at 31.5.2002.