

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

Proceedings of Juvenile Courts

Purpose

This paper presents information on the proceeding of juvenile courts, in particular, how the interests of children and young persons who have to appear in courts are taken care of during court proceedings.

Background Information

2. There are at present five juvenile courts located at the Eastern, Kowloon City, Tsuen Wan, Shatin and Tuen Mun Magistracies respectively. The Shatin Juvenile Court will be removed to the Fanling Magistrates' Court with effect from 2 December 2002. Each juvenile court is consisted of a permanent magistrate appointed by the Chief Justice.

3. The juvenile court has jurisdiction to hear charges against children (aged over 7 and under 14) and young persons (aged over and under 16) for any offence other than homicide. Section 8 of the Juvenile Offenders Ordinance (Cap 226) conclusively presumes that no child under the age of 7 can be guilty of an offence. The juvenile court also has power to deal with care or protection cases involving children and young persons under the age of 18. The juvenile court may issue care or protection orders to children and young persons who meet the conditions as set out in the Protection of Children and Juveniles Ordinance (Cap 213).

Procedures in Juvenile Courts

4. A juvenile court shall not sit in a court room which has been or will be

used for the hearing of any non-juvenile matters within an hour before or after the sitting of the juvenile court. This measure is to ensure that juveniles will not be mixed with adult offenders.

5. Procedure in a juvenile court is less formal than that in a magistrate's court. The major differences between the two are that in a juvenile court -

- (a) the child or young person, i.e. "the defendant", will not sit in the dock; and
- (b) he shall be accompanied by his parents or guardian during all stages of the proceedings, unless the court finds it necessary in the interests of the defendants to direct otherwise.

6. When a child or young person is brought before a juvenile court for any offence, it is the duty of the court to explain to the child or young person in simple language the substance of the alleged offence. Having satisfied that the defendant understands the nature of the alleged offence, the court will ask the defendant whether he admits the offence. If the court is not satisfied that the defendant understands the nature of the alleged offence, or if he does not admit the offence, the court will proceed to hear evidence. At the close of the examination in chief of each prosecution witness, the court will ask the defendant, or, if it sees fits, the parent or guardian of the defendant, whether he wishes to put any question to the witness. The defendant shall be allowed to make a statement instead of asking a question if he so wishes.

7. If it appears to the court that a prima facie case is made out, witness(es) for the defence and the defendant shall be allowed to give evidence. To assist the child or young person in his defence, the court may put such questions to the defendant as it may think necessary. It shall be the duty of the court to put to the witnesses such questions as appear to be necessary in the interests of the child or young person.

8. In determining the method of dealing with a child or young person who has admitted the offence or the court is satisfied of his guilt, the juvenile

court shall obtain such information, may be by way of calling pre-sentencing reports, as to the defendant's general conduct, home surroundings, school record and medical history. The objective is to enable the court to deal with the case in the best interests of the child or young person. The court may also seek advice from the Juvenile Courts Advisory Panel (JCAP), members of which are appointed by the Chief Justice after consultation with the Secretary for Home Affairs. Irrespective of the information revealed to the court and/or the advice by the JCAP, the Juvenile Offenders Ordinance (Cap 226) specifies that no child (aged over 7 and under 14) shall be sentenced to imprisonment or committed to prison, and no young person (aged over 14 and under 16) shall be sentenced to imprisonment if he can be suitably dealt with in any other way.

9. Where a child or a young person is found guilty of an offence punishable in the case of an adult with imprisonment and the court considers that no other method is suitable, the court may order the child or young person to be detained in a place of detention (not exceeding 6 months from the date of the order) as the Director of Social Welfare may determine.

10. Unlike other courts, juvenile courts are not open to members of the public. Only the following persons can be present when a juvenile court is in session –

- (a) the magistrate and officers of the court;
- (b) parties to the case before the court, their solicitors and counsel and witnesses and other persons directly concerned in that case;
- (c) bona fide representatives of newspaper or news agencies; and
- (d) such other persons as the court may specially authorize to be present.

11. Regarding paragraph 10(c) above, despite the fact that news agency personnel are one of the groups of persons allowed to be present in a juvenile court sitting, the court has the right to exclude any of the media personnel from any sitting if it considers that it is necessary to do so in the interests of the child or young person in question.

12. Report of the proceedings in a juvenile court is also restricted. It is an offence for any person to publish written report or broadcast a report of any proceedings in a juvenile court or on appeal from a juvenile court, revealing the name, address, school or any particulars calculated to lead to the identification of the child, young person or any witness concerned in the proceedings. The court may, if satisfied that it is in the interests of justice so to do, by order dispense with the requirement mentioned above to such an extent as may be specified in the order.

Advice Sought

13. Members are invited to note the general procedures in a juvenile court.

Security Bureau
November 2002

[C:\Min_Age\BillsCom_Paper_10.doc]