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Paper for the House Committee meeting on 25 June 2004

Report of the Subcommittee on juvenile justice system

Purpose

This paper reports on the deliberation of the Subcommittee on juvenile justice system (the Subcommittee).

Background

2. The Law Reform Commission (LRC) in its Report on "Minimum Age of Criminal Responsibility in Hong Kong" recommended, among other things, that the age of criminal responsibility should be raised from seven to 10, and that the Administration should conduct a general review on the juvenile justice system in Hong Kong. The purpose of the review is to ensure that there are effective alternatives to prosecution that on the one hand provide adequate security to the community, and on the other hand prevent errant youngsters from degenerating into hardened criminals.

3. On 12 November 2001, the Juvenile Offenders (Amendment) Bill 2001 was introduced into the Legislative Council (LegCo) to implement the recommendation of the LRC to raise the minimum age of criminal responsibility from seven years of age to 10 years of age. A Bills Committee was formed to study the Bill and its report was tabled in LegCo on 12 March 2003. The Bill was passed by LegCo on the same day. A copy of the report of the Bills Committee is in **Appendix I**.

4. Members of the Bills Committee had different views on the proposal in the Bill to raise the minimum age to 10 years. Some members were in support of the proposal, while some other members were in favour of raising the minimum age of criminal responsibility to 12 years, pending the outcome of the review on the juvenile justice system recommended by LRC. The Administration advised the Bills Committee that City University of Hong Kong

had been commissioned to conduct a consultancy study on the measures adopted by overseas countries in handling unruly children below, and juveniles above, the minimum age of criminal responsibility. The information would facilitate the Administration to identify measures to fill the gap of provision of services for children and juveniles at risk after the minimum age is raised to 10 years. The Administration maintained the view that the minimum age should be raised to 10 years in the first instance, and would propose raising the age further from 10 to 12 after taking into account the findings of the consultancy study.

5. The Bills Committee suggested that the Panel on Administration of Justice and Legal Services should follow up -

- (a) improvements, if any, to the existing juvenile court system and proceedings; and
- (b) the recommendations of the consultancy study.

6. The Consultancy Report entitled "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong" (the Consultancy Report) was published in August 2003. It examined the systems in six overseas jurisdictions, namely, Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand, and put forward certain recommendations on measures alternative to prosecution for handling unruly children and young offenders in Hong Kong. The Administration has set up an inter-departmental group comprising representatives from the Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau (EMB), Social Welfare Department (SWD), the Police and Department of Justice (DoJ) to consider how to take forward the recommendations in the Consultancy Report.

7. To follow up the recommendations of the Bills Committee in paragraph 5 above, the Panel on Administration of Justice and Legal Services and the Panel on Security held a joint meeting on 27 October 2003 to receive a briefing by the Administration on the Consultancy Report. As the policy issues arising from the Consultancy Report straddle the policy portfolios of a number of bureaux, the two Panels recommended that the House Committee should set up a subcommittee to follow up the relevant issues.

The Subcommittee

8. At the meeting of the House Committee on 7 November 2003, Members agreed to form a subcommittee to follow up the policy issues arising from the review on juvenile justice system. A membership list of the Subcommittee is in **Appendix II**. A list of the papers considered by the Subcommittee is in **Appendix III**.

9. Under the chairmanship of Hon Margaret NG, the Subcommittee has held five meetings to discuss relevant issues. At two of these meetings, the Subcommittee received views from deputations on the Consultancy Report, as well as the Administration's overall responses to the recommendations of the Consultancy Report and the issues raised by the Subcommittee and deputations respectively. A list of the deputations together with the 16 written submissions received from them is in **Appendix IV**.

Deliberation of the Subcommittee

The Consultancy Report

10. The Administration and a Consultant from the research team briefed the Subcommittee on the Consultancy Report which covers the following major aspects -

- (a) in-depth research on the measures alternative to prosecution adopted in the six selected overseas jurisdictions for handling unruly children and young persons;
- (b) an assessment of the effectiveness of such measures in preventing and diverting children and young persons from going astray;
- (c) the case for introducing new measures alternative to prosecution of unruly children and young persons in Hong Kong; and
- (d) six specific options proposed for Hong Kong.

Chapter 12 of the Consultancy Report on "A summary of the research findings and recommendations" is in **Appendix V**.

11. The Consultancy Report suggests that there is a general trend in juvenile justice systems overseas to shift from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices. Restorative and reintegrative practices involve the offenders taking responsibility for offending; repairing harm; reintegrating offenders, victims and the community; and the empowerment of all those affected by what has happened including the offenders, families, victims and the communities. The objectives are to provide for more effective means for addressing the needs of the offenders and the victims as well as their families, preventing re-offending and achieving reintegration of the offenders into the society.

12. The Consultancy Report recommends six options on diversionary measures alternative to the prosecution of children and young persons in Hong Kong. The Consultants hope that the report can provide a road map for Hong

Kong which will lead to the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

13. The Administration has considered the Consultants' recommendations and proposed to implement a number of enhanced measures to further strengthen the support to unruly children and young offenders. The deliberation of the Subcommittee on the six options recommended in the Consultancy Report and the enhanced support measures proposed by the Administration is summarized in paragraphs 14 to 44 below.

Four options recommended for children below the minimum age of criminal responsibility of 10

Police Child Support Service (PCSS)

14. The Consultancy Report proposes that a PCSS be launched to assist unruly children with the consent of the parents. Frontline Police officers should give immediate support to children-at-risk. Sometimes, suitable diversionary actions of a fairly minimal kind can be taken, e.g. arranging for the parent/child to make an apology or to help the victim. Where more difficulties are encountered, the Police may refer the child, through SWD, to attend an Empowerment Programme organized by an Integrated Children and Youth Services Centre (ICYSC) or a Family Support Conference organized by an Integrated Family Service Centre. The Police may also initiate a Care or Protection Order if a child or family is uncooperative in the process.

15. The deputations generally support the introduction of a PCSS. Some deputations have expressed the view that since frontline Police officers play a key role in handling cases of unruly children who came to their attention, they should receive relevant training such as in child psychology and basic counselling skills. Some deputations are of the view that the Police should not act passively in handling unruly children below the age of 10 despite the fact that the minimum age of criminal responsibility has been raised, as this could send a wrong message to unruly children and their families that the Police can do nothing until the offenders have reached the age of 10. The deputations consider that the role of the Police in referring children and young offenders to seek follow-up support services should be strengthened, and that there should be greater collaboration between the Police, the educational sector and non-government organizations (NGOs).

16. The Administration has explained that with the raising of the minimum age of criminal responsibility to 10, children over seven but below 10 can no longer be prosecuted. In its view, any formalized programmes initiated and arranged by the Police to target at children in this age group may be criticized as tantamount to lowering the age of criminal responsibility to below 10, or for implicating such children. However, the Police are prepared to extend their

Juvenile Protection Section (JPS) service, currently only available to youngsters over 10 years of age, to those below 10 if the circumstances of the case so justify. Subject to parental consent, JPS supervision visits would be made to the unruly children for a maximum of two years. With parental consent, the case can also be referred to SWD for assessing and following up the support services required. The need for a Care or Protection Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family.

17. The Administration has informed the Subcommittee that since 1 October 2003, it has strengthened police referrals of unruly children below 10 and juveniles to service providers for follow-up support services with parental consent. District Social Welfare Officers of SWD and School Development Officers of the Careers Guidance and Home School Cooperation Section of EMB are designated as contact points at the district level to take up referrals from the Police. Moreover, as recently confirmed by legal advice, the Police can refer personal data of unruly children under 10 to SWD for follow up on the children's well-being, when prevention of injury to life is at issue, even in the absence of parental consent. Hence, the Police will make cross-departmental referrals for unruly children and young offenders even without parental consent if the Police assess that there is a need to do so.

18. The Administration has further advised the Subcommittee that since October 2003, the Police have enhanced the accessibility of professional support services for unruly children below 10 who have come to Police attention by providing them and their parents with an information leaflet containing useful information on a wide range of services provided by both Government departments and NGOs. Such services include counselling for those with emotional problems, hotlines to seek information and immediate help, advice on education and career opportunities, and assistance for those with drug-related problems. The Administration has pointed out that the content of the information leaflet would be further enriched to include website addresses of major youth-related NGOs which organize programmes for juveniles and their families.

19. Some members of the Subcommittee have pointed out that there is a gap in the provision of services for unruly children who have committed minor offences where the parents take no proper action to rectify the children's behaviour and do not consent to receiving follow-up support services. They are of the view that the Government should have a role to play in dealing with such cases.

20. The Administration considers that in all cases, even when the offence is considered to be minor and isolated, and there are no other factors justifying a referral without parental consent, the child and the parents/guardians would be given information on how to obtain support services. There are a wide range of

programmes provided under the various schemes run by Government and NGOs for unruly children and young offenders. The Administration would continue to enhance services in this regard to provide assistance to parents and their children including those who have committed minor offences and not been referred to SWD for follow-up services. The Administration has also explained that a balance has to be carefully struck between rendering assistance to children under the minimum age of criminal responsibility and their parents, and avoiding "excessive" intervention targeted at them against their wish when the wrongful act is considered to be trivial.

Family Support Conferences (FSCs)

21. The Consultancy Report recommends that upon referral by the Juvenile Court in processing an application for a Care or Protection Order or by the Police with parental consent, SWD may organize a FSC to draw together an unruly child aged below 10 (but not with the victim), the child's family and representatives of potential professional service providers to formulate welfare plans and provide greater support to the unruly child to prevent re-offending. A Care or Protection Order may be issued if the child and his family members disagreed or failed to attend the conference.

22. The Administration considers that the recommendation is worth pursuing. The Administration advises that it has introduced, since October 2003, a pilot scheme on Family Conferences (FCs) for juveniles aged between 10 and below 18 to bring together the offenders cautioned under the Police Superintendent's Discretion Scheme (PSDS), their family members and professionals from the relevant Government departments/NGOs to assess the needs of the offenders and draw up a follow-up action plan to address the needs identified. The criteria for convening a FC are as follows -

- (a) the Police Superintendent exercising the caution under the PSDS considers that the juvenile is in need of the services of three or more parties, e.g. the Police (JPS), SWD, EMB, NGOs, Department of Health, Hospital Authority etc; or
- (b) the juvenile is given a second or further caution under PSDS.

The FCs operate on a voluntary basis with the consent of the parents/guardians of the juveniles. The decision as to whether a FC should be convened in a particular case is vested in SWD, subject to the case-in-question meeting the criteria of conducting FC.

23. The Administration has further informed the Subcommittee that subject to a positive outcome of a review to assess the effectiveness of FCs one year after the implementation of the scheme, and the feasibility of extending FCs to children under 10 years of age within the existing legal framework, the

Administration stands ready to launch FCs for unruly children under 10 years of age who are assessed to be in need of services of three or more parties and whose parents consent to this course of action. Besides, the need for a Care or Protection Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family. The disagreement or non-attendance of the child and/or his/her parent(s) at the FC alone may not necessitate the application for a Care or Protection Order.

24. While generally in support of the consultants' proposal to introduce FSCs, some deputations opine that detailed guidelines and criteria for assessing the need for holding FSCs should be developed, and the roles and responsibilities of the participating parties should be clearly defined. Adequate specialized training should be provided to the persons who chair the FSCs.

Empowerment programmes for unruly children

25. The Consultancy Report suggests that the Police may, with parental consent, refer an unruly child to SWD to receive empowerment programmes provided through the established network of selected ICYSCs with an aim to reducing offending and anti-social behaviour. Under the empowerment programmes, which would be coordinated and monitored by SWD, the unruly children will be provided with a range of purposeful activities that combine recreational activities, social group and life skills training including anti-theft awareness, enhancement of self-esteem and resistance to peer pressure. The Police or SWD could revert to initiate a Care or Protection Order if the parents disagree or the child fails to attend the programme.

26. The deputations generally support the proposal. Some deputations have suggested that the empowerment programmes could be incorporated into the existing programmes of ICYSCs so as to avoid an undesirable labelling effect on the children receiving the empowerment programmes. Some deputations have stressed that it is necessary to ensure that the social workers involved will be adequately equipped with the knowledge and skills for assessing the children's needs and counselling them.

27. The Administration has explained that the proposal to organize tailor-made programmes solely for unruly children would be difficult to implement as the children may reside in different areas and display behavioural problems at different times. The proposal may not be the best way of using scarce public resources. The Administration supports some deputations' suggestion to incorporate empowerment programmes for unruly children into the existing programmes run by various agencies, including the programmes of ICYSCs/Integrated Family Service Centres/outreaching social work teams, etc. The Administration considers that it would be more practicable and cost-effective for the social worker concerned to decide what programmes would best meet the needs of the children. Besides, instead of issuing a Care or Protection Order

whenever the parents or the child fails to attend the programme, the need for such an Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family.

Community alternatives to institutional placements

28. The Consultancy Report proposes that when parents have difficulties in providing care of adequate standard for their children, suitable placements with kin or in foster families should be explored as an alternative to the larger residential homes that are currently being used for many children in such cases.

29. The deputations support the proposal and consider that adequate support should be provided to help foster families deal with the problems of unruly children.

30. According to the Administration, SWD will continue with its present approach that children should remain with their own families as far as possible. Where out-of-home care has to be considered, the children should be placed in a home-like environment, e.g. with relatives, in foster homes or small group homes. SWD has increased the number of foster care places and small group homes over the years and it is not in lack of such provision. A total of 165 foster care places (including 45 emergency foster care places) were introduced in 2002-03 and 2003-04. As at June 2004, the total number of subvented foster care places and small group home places was 745 and 952 respectively. Placement of unruly children in a foster home is assessed against the children's needs, the extent of their behavioural problems, the readiness and acceptance of the foster parents and their ability to cope with the children's problems, etc.

Two options recommended for young offenders aged between 10 to below 18

Family Group Conferences (FGCs)

31. The Consultancy Report proposes that legislative amendments should be introduced for the setting up of a separate unit attached to SWD with its own field staff with adequate training to organize FGCs for juveniles aged 10 to 17 years in cases where the offence committed is a serious one. The basic purpose of a FGC is to consider ways to make the offender accountable for his acts, repair harm done to the victim and develop follow-up plan to guard against re-offending. Under the proposal, a FGC would be held upon referral by -

- (a) the Police and the DoJ as a pre-charge diversion (in lieu of prosecution) for offences which are relatively serious and for juveniles who have a history of previous offending. If no agreement could be reached on the follow-up plan or the agreed tasks are not completed, the Police and DoJ may consider prosecution; or

- (b) the court as a pre-sentence diversion (not as an alternative to prosecution but to provide an opportunity for the offender to be accountable for their behaviour before the Court makes a decision).

32. On the composition of FGCs, the Consultancy Report suggests that it should include the conference facilitator, the offender and offender's family members, the victim and the victim's supporters, a Police Youth Officer, and any significant persons related to both the victim and the offender.

33. The deputations generally support the recommended introduction of FGCs as a restorative measure for young offenders, with involvement of the victims and other relevant parties. Some deputations suggest that -

- (a) mandatory participation in FGCs should be imposed on the offenders and their parents under special circumstances;
- (b) there should be legislative provisions providing that the offenders may be brought back to criminal justice system if they fail to behave or complete the tasks assigned by FGCs;
- (c) FGCs may be implemented by phases with development of clear guidelines and specialized training to the personnel concerned including the facilitator of the conference; and
- (d) assessment panels could be established on a regional basis to assess the needs of young offenders and recommend follow-up services and measures to deal with them.

34. The Administration has responded that the voluntary FC pilot scheme for cautioned juveniles implemented since October 2003 (paragraph 22 above) is similar to the proposed FGCs in that both seek to provide more comprehensive and professional assessment of service needs and make recommendations on support programmes for young offenders. The needs of the families would also be looked into. The participation of the parents is a prerequisite for convening FCs and parents' involvement is emphasized throughout the process of FCs. With regard to training in the operation of FCs, SWD will be organizing sharing sessions for social workers taking part in FCs.

35. Concerning the deputations' suggestion to set up regional assessment panels, the Administration takes the view that the functions of the proposed assessment panels are similar to those of the existing FCs or the proposed FGCs, which seek to provide a forum for cross-sectoral and inter-disciplinary assessment of the needs of unruly children/young offenders and make recommendations on the appropriate follow-up services or programmes. The establishment of assessment panels would therefore be a duplication of efforts,

and may unnecessarily prolong the process that unruly children/young offenders will have to go through before they and their parents will receive appropriate services or participate in suitable programmes.

36. Some deputations have pointed out that the FGCs proposed in the Consultancy Report are intended to be developed as a pre-charge/pre-sentence diversionary option to deal with offenders who have committed more serious and persistent offences. The proposal incorporates a restorative justice approach aimed at making the offenders accountable and taking responsibility for their conduct and repairing the harm done to the victims. The process of FGCs also involves the participation of the victims or their representatives among others, and may well include other concerned parties in the community, in agreeing on the remedial tasks to be performed by the offenders. FGCs also serve as a forum for making recommendations for the consideration of the court. In the views of the deputations, the proposed FGCs differ significantly from the pilot FC scheme in that FCs operate on an entirely voluntary basis, deal with relatively minor offences committed by cautioned juveniles, and do not involve participation of the victims and their families. The pilot FC scheme, therefore, cannot fulfil the functions of FGCs. The deputations consider that the option of FGCs should be actively explored.

37. With regard to the pilot FC scheme, some deputations agree that FCs could be used to deal with relatively minor offences, and welcome the Administration's plan to extend the scheme to unruly children under 10. They opine that to maximize the effectiveness of the scheme, enhanced efforts should be made to explain clearly to the children/young offenders and their parents the purpose and operation of FCs and to encourage them to participate actively in the process. The procedures for convening FCs and making referrals should be simplified so that appropriate assistance and services could be provided speedily, and the follow-up actions should be effectively reviewed and monitored. Some deputations consider that regardless of the decision on whether a FC should be held, the case in question should be referred to social workers of the Community Support Services Scheme for follow-up. Non-governmental social service organizations should also be allowed to make recommendations to SWD on the necessity of holding FCs for specific cases as they see fit.

38. Some deputations have also suggested that for those offenders who have committed a second offence, the Police should refer the case to SWD for assessing the need for a FC, prior to issuing a caution under the PSDS. In their view, this would make the offenders and their parents more cooperative and more willing to participate in FCs. One deputation has suggested that the welfare sector be involved in the review of the pilot FC scheme.

39. The Subcommittee has noted that section 15(1) of the Juvenile Offenders Ordinance (Cap. 226) provides for a variety of alternatives with which the court may deal with children or young persons found guilty, including dismissing the

charge and discharging the offender on his entering into a recognizance. Some members have suggested that the Administration and the Judiciary should review, as a legal policy issue, whether the court should make use of such alternatives more frequently in disposing cases in appropriate circumstances. The possibility of introducing legislative means to provide the court with additional alternative measures to deal with young offenders should also be explored.

40. Some other members have suggested that the Administration should consider implementing a pilot scheme to test the effectiveness of FGCs. They propose that the Police, SWD and DoJ should jointly decide whether an offender should be referred to a FGC or be prosecuted. Some members have expressed concern about the possibility of Police officers exercising excessive power in view of the important role they play in referring offence cases for follow-up action. The members consider that it is important that frontline Police officers should be made well aware of their responsibilities and powers to ensure that they can handle cases in a proper manner. Some members have urged the Administration to strengthen the referral and follow-up mechanism, particularly the systematic liaison between the Police, SWD and NGOs.

41. The Administration has explained that the suggestions regarding restorative justice and the proposed FGCs as a diversionary measure would impact on the current juvenile justice system. The Administration would consider the relevant issues in the light of -

- (a) the review on the pilot FC scheme for cautioned offenders (paragraph 22 above); and
- (b) the feedback from the Judiciary Administration and DoJ on the development of a new juvenile justice system (paragraph 49 below).

As regards the role of the Police, the Administration advises that it would be carefully assessed in implementing any new alternative measures.

Empowerment programmes for young offenders

42. The Consultancy Report proposes that as a pre-prosecution diversion, the Prosecution may refer young offenders aged from 10 to 17 to receive skills training and perform voluntary services. Young offenders may also be asked to undergo empowerment programmes as referred by FGCs. The programme will focus on training (60 hours) and community service (for three months). If the offender fails to complete the programme, the case will be referred back to DoJ for consideration of prosecution, or to FGCs for consideration of further options, including referring the case to the court. The Consultancy Report recommends that the empowerment programmes be run by ICYSCs and be coordinated by SWD.

43. Some deputations have suggested that specialized agencies should be set up to provide the empowerment programmes. Some deputations consider that existing youth services can be utilized to provide support to the offenders, and that empowerment programmes should be provided to all young offenders and their parents. The Administration has responded that it would be more cost-effective for social workers to arrange for the programmes which are most suitable to the young offenders, making use of existing support services including the programmes of ICYSCs/Integrated Family Service Centres/District Youth Outreaching Social Work Teams etc. These services are available to all young offenders and their parents if they agree to take part in them.

44. Some deputations are of the view that empowerment programmes should be made mandatory for the young offenders, who may be subject to prosecution if they fail to complete the programmes satisfactorily. The Administration considers that the proposal is linked to the concept of restorative justice and may be examined in the context of the coming review on the development of a new juvenile justice system.

Development of a new juvenile justice system

45. Members have expressed disappointment that the Administration has only proposed the following enhanced support measures targeted at unruly children and young offenders, in response to the recommendations of the Consultancy Report -

- (a) extension of JPS to unruly children below the age of 10 if the circumstances of the case so justify (paragraph 16 above);
- (b) further enhanced referral mechanism between the Police and SWD/EMB (paragraph 17 above);
- (c) improved information leaflet (paragraph 18 above); and
- (d) introduction of the pilot FC scheme for those aged between 10 and below 18 and possible extension of the pilot scheme to those aged below 10 (paragraphs 22 and 23 above).

46. Members consider that the Administration has made little progress in the direction of the development of a new juvenile justice system. This is contrary to the advice given by the Administration to the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 that it would consider the findings and recommendations of the consultancy study in reviewing the juvenile justice system. Members urge the Administration to take early and positive steps to take forward the development of a new juvenile justice system featuring restorative and reintegrative principles and practices, taking into account

developments in overseas jurisdictions and the views expressed by members and the deputations.

47. The deputations are supportive of the move to develop new measures alternative to prosecution under a restorative justice approach. They consider that with the increase in the minimum age of criminal responsibility to 10 years, new options should be explored to prevent early criminalization of young offenders, and to help to divert them from going further astray. They support the longer-term development of a new juvenile justice system, which involves the participation of all concerned parties, based on the underlying principles of restorative justice. One deputation has cautioned that in contemplating changes to the existing juvenile justice system, the impact of any new measures on the rights of the victims, the rights of the accused persons and their families, and the observance of due process have to be carefully assessed.

48. Some deputations have also referred to the recommendation of DoJ to promote the interests of victims of crime and witnesses by introducing a limited system of restorative justice as an alternative to prosecution for young offenders aged 10 to 17 (statement made by the Director of Public Prosecutions in his statement made in April 2004 on "The Yearly Review of the Prosecutions Division 2003" refers). Under the recommendation, victims and offenders can meet with the assistance of a trained mediator as part of a healing process. The deputations urge the Administration to widely consult and involve the relevant NGOs providing support services to young offenders in taking forward the recommendation.

49. The Administration has advised the Subcommittee that it is necessary to approach the findings and recommendations of the Consultancy Report with cautions because of the far-reaching implications. The Administration considers that the relatively limited overseas experience to demonstrate the effectiveness of the proposed alternative measures would have to be examined in the light of the existing services already in place as well as the social and legal situations in Hong Kong. The Administration has agreed that it would review the effectiveness of the pilot FC scheme before deciding on the development of a new juvenile justice system in consultation with DoJ and the Judiciary Administration, and report to LegCo in the next term.

Recommendation

50. The Subcommittee recommends that the Administration should consult the NGOs in the welfare sector on the review of the juvenile justice system in Hong Kong.

51. The Subcommittee recommends that the Administration should report to LegCo in the new term on the following matters -

- (a) the effectiveness of the enhanced support measures introduced by the Administration since October 2003; and
- (b) the outcome of the review on the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

52. The Subcommittee also recommends that the Administration should submit its report(s) for the consideration of the relevant Panel(s). Where considered appropriate, the Panel(s) may recommend to the House Committee for the setting up of a subcommittee to follow up the relevant issues.

Advice sought

53. Members are invited to note the recommendation of the Subcommittee.

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Report of the Bills Committee on Juvenile Offenders (Amendment) Bill 2001

Purpose

This paper reports on the deliberations of the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001.

Background

2. Under the Juvenile Offenders Ordinance (Cap 226), it is conclusively presumed that no child under the age of seven can be guilty of an offence. Between the age of seven and 14, there is a presumption of *doli incapax* under the common law, that is, a child is presumed to be incapable of committing a crime, unless the presumption is rebutted by the prosecution on proof beyond reasonable doubt that, at the time of the offence, the child is well aware that his act is seriously wrong as distinct from an act of naughtiness or childish mischief. If this presumption is rebutted, full criminal responsibility will be imposed on the child who can then be charged, prosecuted and convicted for any offence allegedly committed.

3. In recent years, there have been calls in Hong Kong for the minimum age of criminal responsibility to be raised. Those favouring a change argue that it is undesirable to subject young children who are still socially and mentally immature to the full panoply of criminal proceedings, with their attendant sanctions and stigma. These demands have been echoed by the United Nations Committee on the Rights of the Child (UNCRC), and by the United Nations Committee on the International Covenant on Civil and Political Rights (ICCPR). These bodies have called for a review of the law in Hong Kong in the light of the principles and provisions of the United Nations Convention on the Rights of the Child and the ICCPR.

4. In 1998, the Law Reform Commission (LRC) was asked to review the law regarding the minimum age of criminal responsibility and the presumption of *doli incapax* and to consider such reforms as might be necessary. Following a public consultation exercise on the subject in 1999, LRC published its "Report on the Age of Criminal Responsibility in Hong Kong" in May 2000.

5. The LRC Report recommends, inter alia, that –
 - (a) the minimum age of criminal responsibility should be raised from seven to 10 years of age; and
 - (b) the rebuttable presumption of *doli incapax* should continue to apply to children of 10 and below 14 years of age.

The Bill

6. The Bill seeks to implement LRC's recommendation by amending section 3 of the Juvenile Offenders Ordinance (Cap. 226) to raise the minimum age of criminal responsibility from seven years of age to 10 years of age. It also introduces consequential amendments to the Reformatory Schools Ordinance (Cap. 225).

The Bills Committee

7. At the House Committee meeting on 14 November 2001, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Margaret NG, the Bills Committee has held seven meetings, including one meeting to listen to views of deputations. The Bills Committee has also visited the Central District Police Station and received a briefing on the operation of the Police Superintendent's Discretion Scheme (PSDS).

8. The Bills Committee has invited the public, and those individuals and organisations that had previously made submissions to LRC, to give views on the Bill. A total of 21 organisations /individuals have made submissions to the Bills Committee, and 12 of them have also made oral representations at a meeting of the Bills Committee.

9. To assist the Bills Committee in its deliberation, the Research and Library Services Division has prepared two information notes on the legislation and practices in dealing with juvenile offenders in Canada, the United Kingdom (UK) and Singapore.

10. The membership list of the Bills Committee is in **Appendix I**. The list of organisations and individuals that have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Minimum age of criminal responsibility

11. The Bills Committee has discussed the policy considerations for the legislative proposal of setting the minimum age of criminal responsibility at 10 years, and retaining the rebuttable presumption of *doli incapax* for children aged 10 to below 14 years. While the Bills Committee and deputations generally agree that the existing minimum age of criminal responsibility should be raised, they have different views on whether the minimum age should be set at 10, 12 or 14 years.

Minimum age of criminal responsibility in other jurisdictions

12. The Bills Committee has noted that there is no authoritative research or study on what should be the minimum age of criminal responsibility, as it depends on the social and cultural background of different communities, and the degree of maturity among children. During its deliberation, the Bills Committee has made reference to the minimum age of criminal responsibility in other jurisdictions and their experience.

13. The LRC Report on the Age of Criminal Responsibility in Hong Kong has pointed out that there is considerable disparity among different jurisdictions as to the minimum age of criminal responsibility, ranging from seven to 18 years, and Hong Kong's current minimum age of seven is at the lowest end.

14. The Bills Committee has noted that in Canada, the minimum age of criminal responsibility has recently been raised from the established common law rule of seven to 12 years of age. In the UK, the minimum age of criminal responsibility is 10 years in England and Wales, and there are a number of options available to the police and the court for handling a juvenile offender aged between 10 and 14 years.

15. In Mainland China, a child who has not attained the age of 14 is exempt from criminal responsibility. Under Article 17, Chapter 2 of the Criminal Law of the People's Republic of China, a person who has attained the age of 16 shall be criminally responsible for the crime committed. However, for a person who is 14 years of age but is below 16 years, and has committed serious offences such as intentional killing, rape, arson drug trafficking, etc., he will be criminally responsible for the offence committed.

16. In Taiwan, a child who has not attained the age of 14 years will not be punished for his act. An order will instead be made for him to be sent to a rehabilitation centre where rehabilitative education will be provided.

17. In Singapore, the minimum age of criminal responsibility is seven years. The Children and Young Persons Act 1993 in Singapore provides a legal basis for the protection and intervention by relevant authorities if a child (below the

age of 14) or young person (from 14 years to below 16 years) is found to be abused or neglected.

18. The Administration is of the view that any attempt to draw conclusions from comparisons with other jurisdictions in respect of the age of criminal responsibility should be treated with care. The Administration considers that the underlying legal framework to which the age of criminal responsibility applies is of greater significance. In this connection, the Administration has pointed out that the majority of common law jurisdictions maintain an age of criminal responsibility of 10 years or less.

19. A list of the age of criminal responsibility in other jurisdictions is given in **Appendix III**.

Views of organisations and individuals

20. All the 21 organisations/individuals that have given views on the Bill support raising the minimum age of criminal responsibility. Of these, 14 support raising it to 10 years, one (the Hong Kong Bar Association) supports raising it to 12 years, and six are in favour of raising it to 14 years. Some of them have pointed out that it is the international trend to raise the minimum age of criminal responsibility.

21. For those organisations and individuals that support raising the minimum age of criminal responsibility to 14 years, they are of the view that the development process of children is such that a child under the age of 14 is unable to appreciate the gravity and consequences of his actions, nor is the child capable to comprehend criminal proceedings. The traumatic experience of being criminally prosecuted and convicted at such a young age will impose a stigma on a child and destroy his self-esteem which will not do any good to the effective rehabilitation of the child. Some have also said that the UNCRC has criticised jurisdictions in which the minimum age is 12 years or less.

22. These deputations have also pointed out that in other jurisdictions including the People's Republic of China and Taiwan, the minimum age of criminal responsibility is set at 14 years. Moreover, other legislation in Hong Kong such as the Evidence Ordinance and the Criminal Procedure Ordinance recognise the age of 14 being the age at which a child can reliably be said to have reached maturity.

23. Some other organisations and individuals support raising the minimum age to 10. Among them, some opine that it is acceptable for the Administration to adopt a step-by-step approach in raising the minimum age to 10 years in the first instance, and subsequently raising it to 12 or 14 years after a comprehensive review on the existing measures for dealing with unruly children. Some of them consider the Administration's proposal a pragmatic approach, with a few consider this a very modest step in the right direction. These organisations and individuals agree that the present approach strikes a balance between

safeguarding the interests of children and those of the community, and they also urge for the provision of more comprehensive support/rehabilitative services for juvenile offenders. Some of these organisation have expressed the view that further raising the minimum age to 12 or 14 years in the absence of adequate support services for those below the minimum age will increase the possibility of exploitation of children by adult criminals.

24. The Hong Kong Bar Association has given the view that while raising the minimum age of criminal responsibility to 10 years is the minimum step in the right direction, it will be more appropriate to raise it to 12 years.

Members' views

25. Members of the Bills Committee generally share the view that it is the responsibility of society and parents to teach children right from wrong and to assist children in their development. The approach should be to rehabilitate rather than to punish juvenile offenders, particularly when most of the offences they committed were of a relatively minor nature (such as shop theft). In this connection, members consider it important to provide adequate support and rehabilitative services for juvenile offenders, and not merely amend the law to raise the minimum age of criminal responsibility.

26. Members have expressed concern whether it is appropriate to bring a child between 10 and 14 years to formal court proceedings which have adverse effects on his emotional and psychological development. They consider that criminal proceedings cannot help a child understand his wrongdoings, and some parents may advise their children not to admit their wrongdoings for fear of creating a criminal record of the child. Some members propose that there should be an alternative mechanism to the criminal court proceedings to facilitate the re-integration of juvenile offenders into the community.

27. The majority of members are in favour of raising the minimum age to 12 years, as an interim measure pending the comprehensive review as recommended by LRC (paragraph 61). These members consider that a child of 10 years old cannot possibly distinguish the right from wrong, and even for those more mature children, they cannot fully appreciate the consequences of their wrongdoings and that of criminal proceedings. They have also noted that very few children below 10 years of age were arrested and charged for crime in past years, and most of the offences committed by children below 12 years of age were not serious in nature. These members consider that the minimum age should be set at 12 years, which is the usual age when a child has completed primary school education and acquired some understanding of the consequences of their acts.

28. Members who support raising the minimum age of criminal responsibility to 12 years have stressed the importance for children to receive proper guidance and services to enable them to re-integrate into the community. They are of the view that merely raising the minimum age to 10 years in law is too modest a step and will not bring much improvement to the current systems or render more

protection to the children. They have also urged the Administration to expedite actions to improve the existing mechanisms for the care and protection of children below the revised minimum age.

29. Hon TSANG Yok-sing and Hon LAU Hon-chuen, however, consider that the Administration's proposal of raising the minimum age to 10 years acceptable, given that the presumption of *doli incapax* will be retained for children aged between 10 and 14, and the Administration has undertaken to conduct a review on ways to bridge the gap in the provision of services for children below the revised minimum age. They consider it necessary to ensure adequate services are available for children below the minimum age of criminal responsibility before it is raised further. They share the view that without adequate support services for children at risk and those below the minimum age, there will be a lower chance for these children to be brought to the attention of professionals and social workers, as compared with children above the minimum age who are subject to the existing PSDS and referral systems.

30. At the meeting on 2 December 2002, the Bills Committee took a vote on whether the minimum age of criminal responsibility should be raised to 10 or 12 years. Six out of the eight members present at the meeting voted in favour of raising the minimum age to 12 years. The Administration was subsequently requested to consider whether it would propose the amendments.

31. At the Bills Committee meeting on 22 January 2003, the Administration informed members that it maintained its view that the minimum age should be raised to 10 years in the first instance, pending a review to be conducted on the measures to deal with unruly children. The Administration advised that raising the minimum age to 12 years could result in possible loss of opportunities for intervention regarding children at risk, as those below 12 years would be excluded from the PSDS. The Administration pointed out that according to past years' statistics, there had been a considerable increase in the number of arrested children aged from 10 years onwards. On average, 478 children aged between 10-11, which was about three times of those aged below 10 (between 7-9), were arrested for crime in a year during the period 1993-2001. The figure for those aged 12-13 rose even more significantly to an average of 1 934 during that period, representing more than 10 times of that for children aged below 10. The number of juvenile offenders (age 7 to 14) prosecuted and convicted in 1993 to 2001 is provided in **Appendix IV**.

32. The Administration also advised that it had commissioned a consultancy study on measures in handling unruly children with a view to filling the gap of provision of services for children and juveniles at risk after raising the minimum age to 10 years (paragraph 62). The Administration also undertook to propose raising the age further from 10 to 12 years after completion of the consultancy study, when putting forward proposals to provide additional supportive measures for unruly children below the minimum age after taking into account the findings of the consultancy study (paragraph 62).

33. The Bills Committee took a vote at the meeting on whether Committee Stage amendments (CSAs) should be moved by the Bills Committee to raise the minimum age to 12 years. Three out of the four members present voted in favour of the Chairman of the Bills Committee moving CSAs to raise the minimum age to 12 years.

34. Hon TSANG Yok-sing indicated at the meeting on 22 January 2003 that while Members belonging to the Democratic Alliance for Betterment of Hong Kong (DAB) agreed that the existing system(s) in dealing with juvenile offenders needed improvements, they were concerned that further raising the minimum age of criminal responsibility to 12 years might not bring any real benefits to the young offenders if there were inadequate supportive measures for those below the minimum age. Members belonging to DAB were therefore in favour of the Administration's proposal of raising the revised minimum age to 10 years.

Impact on existing services if the minimum age is raised to 10 years

35. The Bills Committee has asked about the impact on existing services if the minimum age is raised. The Administration has advised that raising the minimum age to 10 years will only have minimal effect on the probation service and reformatory school service, because no offender aged under 10 years has been placed on such services in the past few years. In fact, where appropriate, offenders under the age of 10 years would mostly be put under care or protection order due to their tender age.

Rebuttable presumption of *doli incapax*

36. At present, for children who have reached the minimum age of criminal responsibility and are under 14 years old, there is a rebuttable presumption of *doli incapax* under the common law, i.e. a child within this age range is presumed to be incapable of committing a crime unless the presumption is rebutted by evidence.

37. The Administration has proposed to retain this presumption of *doli incapax* for children aged between 10 and 14 years after revising the minimum age to 10 years. This means after the enactment of the Bill, prosecution will not be instituted against children aged between 10 and 14 years unless the presumption of *doli incapax* can be rebutted. The Administration believes that the arrangement will safeguard the interests of the children by allowing discretion whether to prosecute after considering the individual child's level of maturity, and also provide adequate flexibility to take care of those children who have reached the minimum age but are insufficiently mature. Retention of the presumption also ensures that only children who are able to appreciate that their criminal acts are seriously wrong will be made criminally responsible.

38. Some depositions are of the view that the presumption of *doli incapax* is conceptually obscure. However, as the Bill only proposes raising the minimum age to 10 years, most depositions consider that it is necessary to retain the

presumption of *doli incapax* for children aged between the revised age and 14 years, until the minimum age is raised to 14 years. They also consider that the burden of rebutting the presumption should continue to rest with the prosecution because children aged under 14 years have only limited ability to defend themselves and limited understanding of court proceedings.

39. The Bills Committee supports retaining the presumption of *doli incapax* for children aged between the revised age and below 14 years, in order to safeguard the interests of the children who are above the revised minimum age but are below 14 years of age. This will ensure that only mature children are held criminally responsible for their acts.

Police Superintendents' Discretion Scheme

Effectiveness of the scheme

40. In discussing measures other than the criminal justice system in dealing with juvenile offenders, the Bills Committee has noted that PSDS is frequently used as an alternative to criminal prosecution in respect of a young offender below the age of 18 years. Instead of subjecting the child to criminal prosecution, a formal caution or warning as to his conduct is given by a Police Superintendent to the child.

41. The Administration has informed the Bills Committee that one important criterion for giving a caution under PSDS is that there is sufficient evidence to support prosecution and that prosecution is the only alternative course of action. The offender must voluntarily and unequivocally admit the offence and has no previous criminal record. Moreover, a caution will only be given with the agreement of the offender and his parents or guardian. As regards the concern about possible inconsistency among different police officers in deciding whether to prosecute a juvenile offender or caution him under PSDS, the Administration has assured members that there are established guidelines for the administration of cautions under PSDS and the decision is taken by a Police Superintendent.

42. The Bills Committee has noted that a total of 3 585 juvenile offenders (41% of those arrested) were cautioned in 2001. About 70% and 46% respectively of those children aged 7-12 years and 13-15 years arrested in 2001 were cautioned under PSDS. The re-arrest rates of children cautioned under PSDS in 2001 are 2.5%, 7.1% and 15.5% respectively for children within the age brackets of 7-9 years, 10-11 years and 12-13 years.

43. The Administration is of the view that PSDS is a very effective mechanism in dealing with juvenile offenders. Under PSDS, a child can be warned of the serious consequences of having committed an offence, without having to go through the traumatic experience of being prosecuted and convicted at a young age, and the possible stigma of a criminal record.

Keeping of records

44. Some members have expressed concern about the keeping of records of cautions made under the PSDS. The Administration has explained that these records are only kept for two years or until the child cautioned has reached 18 years of age, whichever is the later. The purpose of keeping such record is to enable the Police to have a better assessment of the background of a young person and also his needs for support services, if he is re-arrested before reaching the age of 18 years or the expiry of the two-year period.

Offenders' participation in follow-up services

45. Members have expressed concern that there is no mandatory requirement for an offender cautioned under PSDS to participate in support and rehabilitative programmes. These children may again go astray if there is no effective monitoring of their performance and behaviour after release. Some members consider that the Administration should put in place more effective measures to ensure active participation of the cautioned offenders and monitoring by their parents or guardian.

46. The Administration has explained that depending on the needs of the juveniles, the Police Superintendent administering the caution may refer the case to the Social Welfare Department (SWD), Education and Manpower Bureau (EMB) and non-government organisations (NGOs) for after-care services. Participation of the cautioned offender and/or his parents in supportive/rehabilitative programmes is entirely voluntary. However, the Police Superintendent will encourage the offender to participate in such programmes and also persuade their parents to cooperate and get involved in monitoring their participation. In addition, the Juvenile Protection Section (JPS) of the Police will conduct follow-up visits to the cautioned offenders' homes to monitor their participation in supportive services. The JPS also liaises with the SWD, EMB and NGOs to follow up on problematic cases.

Conditional release

47. Some members have suggested that a "conditional release" mechanism should be put in place, so that the young offender must successfully complete the support/rehabilitative programmes before a decision is taken on whether to prosecute him or not. Under this proposal, if a young offender refuses to participate or does not complete satisfactorily the support/rehabilitative programmes, he may be prosecuted instead of cautioned under PSDS. Members have pointed out that Canada has implemented a similar measure.

48. The Administration has responded that the proposal requires thorough consideration as it provides a new option in lieu of prosecution. It has also advised that the decision to prosecute involves a consideration of the evidence and public interest. Whether the juvenile offender admits the offence or shows genuine remorse and a willingness to make amends, such as participation in

rehabilitative programmes, are only some of the factors which will be taken into consideration. The Administration is of the view that whether a juvenile offender participates in the rehabilitative programmes satisfactorily can only be judged after a reasonable period of time. Should it be subsequently confirmed that the juvenile offender failed to perform satisfactorily, extra caution will be required as to whether to charge and bring him to court, as his right to trial without delay is guaranteed under Article 11 of the Hong Kong Bill of Rights as well as Article 87 of the Basic Law.

49. In view of the wide implications of the proposal on conditional release of juvenile offenders, the Administration has advised that it will consider the feasibility of the proposal comprehensively, taking into account overseas experience in implementing similar schemes and their effectiveness.

Support services for juvenile offenders and children at risk

Family group conference

50. Members of the Bills Committee have suggested that a formalised system should be put in place requiring the Police, as soon as a child is arrested, to involve the parents and professionals (such as social workers, teachers and psychologists), in the process of determining the appropriate course of action for the child. Some members have further suggested that a mechanism of family group conferencing should be provided in law or through administrative means, as similar systems have been implemented in overseas jurisdictions such as Canada. The purpose of holding a family group conference is to ensure that the child's needs and welfare are fully assessed and appropriate services are rendered immediately. These members are concerned that these children, particularly those below minimum age, will go astray again after release.

51. The Administration has advised that the Police has no power to arrest a child below the minimum age as the latter cannot be held liable for having committed criminal acts. When the Police is informed that a young child is suspected of having committed an offence, the police officer will investigate the case and inform the parents of the child and try to ascertain the age of the suspected child. Once it is confirmed that a child suspected of having committed a crime is below the minimum age, the child will be released unconditionally. The Administration has stressed that the cooperation of the parents of those children below the minimum age is necessary in making assessments on the child's needs and for holding a family group conference.

52. The Administration has also informed members that for children below the minimum age, the Police can apply to the court for care or protection orders (paragraph 54), or make referrals to SWD, EMB and NGOs (paragraphs 56-60). However, to address members' concerns, the Police will take the following new measures to persuade the parents of such children to receive the necessary support services -

- (a) issuing information leaflet on available services to parents of children who come to the attention of the Police;
- (b) setting up direct liaison points between the Police and SWD and EMB to ensure timely referral; and
- (c) drawing up separate guidelines for the Police to refer cases to SWD and EMB with parents' consent.

53. The Administration has also proposed that family group conference can be held for juveniles cautioned under the PSDS, subject to the parents' consent, when either of the following criteria is met-

- (a) the Superintendent exercising the caution considers that the juvenile cautioned is in need of services of three or more parties; or
- (b) the juvenile is given the second or further caution.

The Administration's target is to hold the conference within 10 working days from the date of juvenile's caution. The conference will discuss and draw up a plan of services or programmes to be given to the juvenile. Subsequent conference will be called on a need basis.

Care or protection order

54. The Administration has informed members that a care or protection order may be made under section 34 of the Protection of Children and Juveniles Ordinance (Cap. 213) in respect of any person below the age of 18 years who is in need of care or protection. The objective of subjecting a child to a care or protection order is to ensure that the child will be put under proper guidance and care. Such orders may be made by a juvenile court on its own motion, or on the application of the Director of Social Welfare (DSW) or any police officer, or on the application of any person authorised by DSW. Circumstances for a care or protection order to be made include cases where a child's health, development or welfare has been or appears to be likely to be neglected or avoidably impaired, or he is beyond control to the extent that harm may be caused to him or others.

55. Some members of the Bills Committee have expressed concern that the scope of care or protection order may not be able to cover those who are at risk but have not committed any offence. The Administration has advised that a children at risk include those who have not committed criminal offences but are likely to commit criminal offences. There have been cases in which SWD recommended a care or protection order where a criminal charge against a child for minor offences was dismissed by the court. The Administration is of the view that the present scope for application of care or protection orders as specified under section 34 of the Protection of Children and Juveniles Ordinance is sufficiently broad and general in justified cases to cover children and juveniles at risk, including those who have been convicted, those who are likely to commit

criminal offences and those who are under the minimum age of criminal responsibility.

Referral for services

56. The Administration has informed members that if the circumstances surrounding a child arrested for crime are less serious and do not warrant a care or protection order, and yet the Police consider that the child is in need of assistance in order to prevent them from going astray, the Police will refer the case to the appropriate parties, including SWD and EMB, for follow-up actions under the existing multi-agency strategy in tackling juvenile crimes.

57. Some members have expressed concern that different police officers may apply different standards in making referrals for services, and they may not have the necessary training for evaluating the needs of a juvenile. Members have urged the Administration to provide clear guidelines to police officers on referral for services.

58. To address members' concerns, the Administration has provided information on the existing referral system and the different services provided by SWD, EMB and NGOs. To make the referral system more systematic, the Police has agreed to draw up criteria for referrals to be made to other departments or agencies for follow-up action. To ensure referrals will be made in an efficient and timely manner, the Police will establish a direct liaison point with SWD at the district level. When any child who is below the minimum age and is considered to be in need of services comes to the attention of the Police, frontline police officers handling the cases will directly refer the cases to the relevant District Social Welfare Offices of SWD. Officers in the District Social Welfare Offices will assess the needs of the children, render services to them or refer them to appropriate agencies for follow-up.

59. The Administration has also advised that children and youth who are found to be school drop-outs will be referred to EMB. To help children to overcome their adjustment and development problems, EMB has also launched programmes involving schools, teachers, parents and the community.

60. For those children who have been cautioned under PSDS, the Administration has advised that a range of after care services are provided through the Police Juvenile Protection Section, the Community Support Service Scheme (run by the NGOs), the SWD and the EMB. In the years 1999, 2000 and 2001, the numbers of referrals made under PSDS were 2 724, 3 702, and 3 500 respectively.

Review on the juvenile justice system and the consultancy study

61. Members have noted that LRC recommended in its "Report on the Age of Criminal Responsibility in Hong Kong" that the Administration should conduct a general review on the juvenile justice system. The purpose of the review is to

ensure that there are effective alternatives to prosecution which on the one hand provide adequate security to the community, and on the other hand prevent errant youngsters from degenerating into hardened criminals.

62. The Administration has informed the Bills Committee that it has commissioned a consultancy study to provide information on measures adopted by overseas countries in handling unruly children below the minimum age of criminal responsibility and mischievous juveniles above the minimum age. The information will facilitate the Administration to identify measures to fill the gap of provision of services for children and juveniles at risk after the minimum age is raised to 10 years.

63. In response to members, the Administration has advised that the consultancy study commenced in September 2002 and is expected to complete in mid-2003. When the consultancy report is available, the Administration will consider the findings therein and conduct consultation as necessary before putting forward proposals for consideration by LegCo.

64. Some members of the Bills Committee have expressed concern that the present proceedings and procedures in juvenile courts would have adverse impact on the development of a child. They consider that the juvenile justice system should aim at re-integration and rehabilitation rather than criminalisation and punishment.

65. The Administration has provided information on the present proceedings 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. The Administration has advised that the juvenile court has jurisdiction to hear charges against children (aged between 7-14) and young persons (aged over 14 and under 16) for any offence other than homicide. The juvenile court also has power to deal with care or protection cases involving children and young persons under the age of 18. Procedure in a juvenile court is less formal than in a magistrate's court, and the juvenile court has the duty to put to the witness such questions as appear to be necessary in the interests of the child or young person.

66. According to information provided by the Administration, in determining the method of dealing with a child or young person who has admitted an offence or the court is satisfied of his guilt, the juvenile court will 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 interest of the child or the young person. Where a child or 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 as DSW may determine.

67. As the review of juvenile justice system involves policy matters which are outside the scope of the Bill, the Bills Committee suggests that the Panel on Administration of Justice and Legal Services should be invited to consider what improvements should be made to the juvenile court system, and follow up on the findings of the consultancy study commissioned by the Administration.

Transitional arrangements

68. The Administration has informed members that it will move a CSA to the effect that no prosecution will be instituted against a child in respect of an offence committed before the Bill comes into operation, if at the time the offence was committed the child was of an age which would not be liable to prosecution had the offence been committed after the commencement of the Bill.

Consequential amendments

69. Under existing section 19(2) of the Reformatory School Ordinance (Cap.225), a young offender under the age of 10 who is sentenced to a Reformatory School may be boarded out of the School under specified conditions until he reaches the age of 10 years. Since the enactment of the Bill will irrebuttably presume children aged under 10 to be incapable of committing crime and therefore cannot be prosecuted, no children under the age of 10 will be admitted to a Reformatory School thereafter. The Administration has advised that section 19(2) of the Reformatory School Ordinance will become obsolete when the enacted Bill comes into operation, and a CSA will be made to repeal this section as a consequential amendment.

Committee Stage Amendments

70. The Administration has proposed Committee Stage amendments (CSAs) as described in paragraphs 68 and 69 above.

71. Hon Margaret NG will also move CSAs, on behalf of the Bills Committee, to raise the minimum age of criminal responsibility to 12 years (paragraph 33 above).

Follow up actions required

72. The Administration has undertaken to propose raising the age further from 10 to 12 years of age when it puts forward proposals to provide additional suggestion measures for unruly children below the minimum age (paragraph 32).

73. The Bills Committee has suggested that the Panel on Administration of Justice and Legal Services should follow up -

- (a) what improvements should be made to the existing juvenile court system and proceedings (paragraphs 64-67); and
- (b) the recommendations of the consultancy study on the review of services for juvenile offenders (paragraphs 61-63).

Recommendation

74. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 12 March 2003.

Consultation with the House Committee

75. The Bills Committee consulted the House Committee on 28 February 2003 and obtained its support for the Second Reading debate on the Bill to be resumed.

Council Business Division 2
Legislative Council Secretariat
3 March 2003

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

Membership list

Chairman Hon Margaret NG

Members Hon Cyd HO Sau-lan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon LAW Chi-kwong, JP
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

(Total : 9 Members)

Clerk Mrs Constance LI

Legal Adviser Mr LEE Yu-sung

Date 26 September 2002

**Organisations / individuals that have given views to the
Bills Committee on
Juvenile Offenders (Amendment) Bill 2001**

- * 1. Against Child Abuse
- * 2. The Boys' & Girls' Clubs Association of Hong Kong
- * 3. Caritas Outreaching Social Work Team - Aberdeen
- * 4. Hong Kong Christian Service
- * 5. Hong Kong Committee on Children's Rights
- * 6. The Hong Kong Family Law Association
- * 7. Hong Kong Family Welfare Society
- * 8. The Hong Kong Federation of Youth Groups
- * 9. The Hong Kong Psychological Society Limited
- * 10. Wong Tai Sin District Council
- 11. The Hong Kong Council of Social Service
- 12. Fight Crime Committee
- 13. Home Affairs Bureau
- 14. Hong Kong Bar Association
- 15. The Law Society of Hong Kong
- 16. St John's Cathedral Counselling Service
- 17. Tai Po District Fight Crime Committee
- * 18. Mr Andrew Bruce, SC
- * 19. Dr Nirmala Rao
- * 20. Ms Corinne Remedios
- 21. Mr YEUNG Wai-sing, Eastern District Councillor

* Organisations/individuals that have also given oral representations to the Bills Committee.

Appendix III

The age of criminal responsibility in other jurisdictions

<i>Jurisdiction</i>	<i>Age of criminal responsibility</i>
Belize	7
Cyprus	7
Ghana	7
India	7
Ireland	7
Liechtenstein	7
Malawi	7
Nigeria	7
Papua New Guinea	7
Singapore	7
South Africa	7
Switzerland	7
Tasmania (Australia)	7
Bermuda	8
Cayman Islands	8
Gibraltar	8
Kenya	8
Northern Ireland (UK)	8
Scotland (UK)	8
Sri Lanka	8
Western Samoa	8
Zambia	8
Malta	9
Australia (other than Tasmania)	10
England and Wales (UK)	10
Fiji	10
Guyana	10
Kiribati	10
Malaysia	10
New Zealand	10
Vanuatu	10
Canada	12
Greece	12
Jamaica	12
Netherlands	12
San Marino	12
Turkey	12
Uganda	12
France	13

<i>Jurisdiction</i>	<i>Age of criminal responsibility</i>
Austria	14
Bulgaria	14
Germany	14
Hungary	14
Italy	14
Latvia	14
Lithuania	14
The People's Republic of China	14
Mauritius	14
Romania	14
Slovenia	14
Taiwan	14
Connecticut (USA)	15
Czech Republic	15
Denmark	15
Estonia	15
Finland	15
Iceland	15
New York (USA)	15
Norway	15
Slovakia	15
South Carolina (USA)	15
Sweden	15
Andorra	16
Georgia (USA)	16
Illinois (USA)	16
Japan	16
Louisiana (USA)	16
Macau	16
Massachusetts (USA)	16
Michigan (USA)	16
Missouri (USA)	16
Poland	16
Portugal	16
South Carolina (USA)	16
Spain	16
Texas (USA)	16
Belgium	18
Luxembourg	18
United States of America (most other states)	18

**Number of Juvenile Offenders (age 7 to 14) Prosecuted and Convicted
for year 1993 to 2001**

Year	Number	Age 7	Age 8	Age 9	Age 10	Age 11	Age 12	Age 13	Age 14	Total
1993	arrested	26	51	101	198	358	664	1 368	1 896	4 662
	prosecuted	0	1	4	25	40	141	397	674	1 282
	convicted	0	0	0	3	8	58	196	390	655
1994	arrested	27	67	107	187	386	674	1 508	1 994	4 950
	prosecuted	1	3	9	23	53	152	507	782	1 530
	convicted	0	0	1	2	11	59	247	460	780
1995	arrested	24	52	100	207	324	680	1 436	1 957	4 780
	prosecuted	0	0	6	17	48	152	420	776	1 419
	convicted	0	0	0	2	12	55	233	464	766
1996	arrested	29	46	101	183	327	665	1 345	1 881	4 577
	prosecuted	1	2	3	11	40	139	381	633	1 210
	convicted	0	1	0	4	18	54	194	408	679
1997	arrested	22	52	74	154	273	614	1 248	1 828	4 265
	prosecuted	0	1	2	9	28	81	253	565	939
	convicted	0	0	0	0	10	33	129	319	491
1998	arrested	28	38	93	160	310	609	1 161	1 701	4 100
	prosecuted	0	3	5	12	16	68	215	429	748
	convicted	0	1	0	5	4	28	147	285	470
1999	arrested	23	39	77	140	251	454	1 165	1 674	3 823
	prosecuted	1	1	2	5	15	59	195	414	692
	convicted	0	0	0	1	6	22	112	261	402
2000	arrested	16	64	88	148	277	588	1 338	1 914	4 433
	prosecuted	0	0	3	3	27	76	257	500	866
	convicted	0	0	0	1	1	18	104	264	388
2001	arrested	16	33	63	148	274	607	1 281	1 759	4 181
	prosecuted	0	0	3	4	13	83	263	500	866
	convicted	0	0	0	0	6	46	156	284	492

Subcommittee on juvenile justice system

Membership List

Chairman

Hon Margaret NG

Members

Hon Cyd HO Sau-lan

Hon LEUNG Yiu-chung (up to 23 February 2004)

Hon Miriam LAU Kin-yee, JP

Hon Emily LAU Wai-hing, JP

Hon LI Fung-ying, JP

Hon Michael MAK Kwok-fung

Hon WONG Sing-chi

Hon Audrey EU Yuet-mee, SC, JP

(Total : 8 Members)

Clerk

Mrs Percy MA

Legal Adviser

Mr LEE Yu-sung

Date

26 November 2003

List of papers considered by Subcommittee on juvenile justice system

Papers provided by the Administration

Consultancy Report on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong"

LC Paper No. CB(2)735/03-04(01) -- Administration's paper on the Consultancy Report

LC Paper No. CB(2)1237/03-04(02) -- Paper from Dr LO Tit-wing, the Consultant, on issues raised at the meeting on 18 December 2003

LC Paper No. CB(2)1659/03-04(01) -- Administration's paper on the recommendations of the Consultancy Report

LC Paper No. CB(2)2291/03-04(01) -- Administration's paper on the views put forward by the Subcommittee and deputations

LC Paper No. CB(2)2339/03-04(01) -- Administration's paper on issues raised at the meeting on 12 March 2004

LC Paper No. CB(2)1721/03-04(01) -- Information leaflet on services provided by Government departments and non-government organizations for unruly children and young persons

Papers prepared by the Legislative Council Secretariat

LC Paper No. CB(2)246/03-04 -- Report of the Panel on Administration of Justice and Legal Services and Panel on Security to the House Committee meeting on 7 November 2003

LC Paper No. CB(2)429/03-04(02) -- Background paper prepared by the Secretariat

Submissions from deputations

LC Paper No. CB(2)1128/03-04(01) -- Submission from The Boys' & Girls' Clubs Association of Hong Kong

- LC Paper No. CB(2)1128/03-04(02) -- Submission from Evangelical Lutheran Church Social Service Hong Kong
- LC Paper No. CB(2)1128/03-04(03) -- Submission from The Hong Kong Federation of Youth Groups
- LC Paper No. CB(2)1128/03-04(04) -- Submission from Hong Kong Playground Association
- LC Paper No. CB(2)1128/03-04(05) -- Submission from Hong Kong Committee on Children' Rights
- LC Paper No. CB(2)1128/03-04(06) -- Submission from Against Child Abuse Ltd.
- LC Papers Nos. CB(2)1128/03-04(07) and CB(2)2369/03-04(01) -- Submissions from The Hong Kong Bar Association
- LC Paper No. CB(2)1128/03-04(08) -- Submission from The Law Society of Hong Kong
- LC Paper No. CB(2)1158/03-04(01) -- Submission from Hong Kong Family Law Association
- LC Paper No. CB(2)1158/03-04(02) -- Submission from The Chinese Rhenish Church Hong Kong Synod
- LC Paper No. CB(2)1158/03-04(03) -- Submission from Hong Kong Family Welfare Society
- LC Papers Nos. CB(2)1158/03-04(04) and CB(2)2339/03-04(02) -- Submissions from The Hong Kong Council of Social Service
- LC Paper No. CB(2)1158/03-04(05) -- Submission from The Neighbourhood Advice-Action Council, Eastern/Wan Chai District Youth Outreaching Social Work Team
- LC Paper No. CB(2)1196/03-04(01) -- Submission from Caritas District Youth Outreaching Social Work Team - Southern

Appendix IV

Subcommittee on juvenile justice system List of deputations and written submissions

<u>Name of organization</u>	<u>Submission at Annex</u>
*1. The Hong Kong Council of Social Service	A & B
*2. Hong Kong Family Law Association	C
*3. Hong Kong Family Welfare Society	D
*4. The Boys' & Girls' Clubs Association of Hong Kong	E
*5. Evangelical Lutheran Church Social Service Hong Kong	F
*6. The Hong Kong Federation of Youth Groups	G
*7. Hong Kong Playground Association	H
*8. Hong Kong Committee on Children's Rights	I
*9. The Hong Kong Bar Association	J & K
10. Against Child Abuse Ltd	L
11. The Chinese Rhenish Church Hong Kong Synod	M
12. The Neighbourhood Advice-Action Council, Eastern/Wan Chai District Youth Outreaching Social Work Team	N
13. Caritas District Youth Outreaching Social Work Team - Southern	O
14. The Law Society of Hong Kong	P

Note

- * Organizations which have made oral representations to the Subcommittee

修訂版

二〇〇四年一月

香港社會服務聯會
用檢控以外措施處理違規兒童及違法青少年
顧問研究報告

(一)前言：

立法會於 2003 年 3 月三讀通過 2001 少年犯(修訂)條例草案，將青少年刑事責任最低年齡由原本的 7 歲提升至 10 歲。本會當時就此議題與關注的社會服務機構作出討論，機構普遍認為無論將刑事責任年齡提升至那一個年歲，政府都必須重新檢視和改革整個青少年司法制度，避免讓有關兒童及青少年過早進入刑事司法系統，並且需正視改善配套措施，加強保障兒童權益與福祉、協助違規兒童及違法青少年改過自身、融入社會。

本會歡迎保安局委託城市大學就此課題進行探討及研究，由於改革將會直接影響違規兒童及違法青少年日後處理和跟進程序，故本會和有關機構對是次諮詢甚表關注，並對報告提出的措施作出初步的討論和建議。本會得悉當局已成立了跨部門的工作小組詳細研究報告擬定之建議，同時，會進一步與海外國家的政府聯絡，以深入了解各項措施的運作和成效，本會深盼當局在制定各項措施的實際流程時，能進一步諮詢社會服務機構及各界意見，讓改革後之系統能在多專業的合作下有效推行。

(二)新措施的基本原則和概念：

本會及關注機構整體認同報告對制定新措施所提出的基本原則，包括：提供更多檢控以外的選擇，避免讓違法青少年太早進入刑事司法程序；加強違規兒童及違法青少年、其家庭、以至受害人的參與，並對他們提供足夠的支援，以至違規兒童及青少年能對其行為負責及作出補償、或低再犯機會、並透過各種社區服務扶助其身心發展。我們相信上述原則有助指引制定出一套更彈性、有效、符合人道及公平的司法制度。

(三)制定有關係統時必須考慮的因素：

3.1. 照顧所有刑責年齡之上及之下的違規兒童及違法青少年

我們認為只要有兒童及青少年的行為被警方介定為違法，則無論他們是否已達刑事責任年齡，所犯的罪行屬輕微或嚴重，都必須得到適當的跟進。我們相信，及早介入能有效引導有關兒童及青少年踏上正軌；足夠的支援和教育，能增強他們抵禦不良社會風氣的能力，讓其身心得以健康發展。

3.2. 整個系統需互相緊扣、有效銜接

我們相信提供更多檢控以外的措施和支援服務並不代表縱容兒童及青少年犯事，所以，整個系統必須清楚界定分流原則，以及各負責單位的職能，確保被轉介至檢控以外措施的兒童及青少年能得到適當的處理、支援和保障，如過程中違規兒童及違法青少年不合作，或未能達到指定要求，亦需要有渠道作出跟進，讓他們為自己的行為負責。

3.3. 制定清晰工作指引和守則

由於整個分流轉介和提供配套支援措施的過程牽涉不同部門專業的參與，故此，各部門的角色、功能、權責、執执行程序等都必須清晰釐定，並詳列於指引文件內，讓所有參與的專業人員都了解整套流程和分工，以便作出更快速、有效的行動。

3.4. 定期檢討和監察、立法執行各項措施

我們相信要使系統有效運作，除了措施的內容可行、角色分工的釐定、指引的制定，作出定期的檢討和監察、並且有法理的支持也是十分重要的，紐西蘭《1989年兒童、青少年及其家庭法令》便清楚列明了各方的權能、職責與及工作程序，並規定成立監察部門對機構作出檢討和監察，以確保措施切實執行。故此，我們認為必須立法執行各項措施、並需盡早將檢討機制建立於系統內，才能有效評估各項措施成效。

3.5. 培訓及支援

我們認為在系統推行前，必須為所有牽涉的工作人員提供專業培訓、並詳細解說系統整體運作，讓各方為新措施的推行作好準備、並對青少年身心成長發展及犯罪行為掌握一定的專業知識和技巧。

(四)未屆刑責年齡年之違規兒童 (10 歲以下)：

隨着刑事責任最低年齡由 7 歲提升至 10 歲後，「警司警誡」及「社區支援服務計劃」等措施將不再適用於 7 至 9 歲的違規兒童，我們參考顧問報告後，對處理 10 歲以下違規兒童的措施提出以下意見 (參圖一)：

4.1. 所有未達刑責年齡的違規兒童都必須得到處理和跟進

如圖一所示，我們認為當警方接觸到 10 歲以下的違規兒童，而該兒童的行為足以被界定為違法，則必須作出跟進或轉介，讓違規兒童及其家庭及早得到適當的輔導和支援。

4.2. 簡化轉介機制、有效運用各項社區服務

必須盡量簡化轉介機制，以便個案可以盡早得到處理和跟進。如圖一所示，如非嚴重罪行、而警方亦決定不直接向法庭申請保護令，則必需將該兒童轉介至

警方的「支援兒童服務」跟進、或轉介至社署及社會服務機構負責的「評估委員會」進行多專業評估，評估後由社會署單位協調和統籌地區服務的提供，並決定個案需要以「家庭支援會議」、「自強計劃」或是其他社區服務跟進。我們同意報告提出的，如在過程中違規兒童及其家庭不合作，社會署可向法庭申請保護令，以對其作出法定的監管。「評估委員會」亦有權召開會議檢討個案進展、並決定個案需繼續接受服務、終結、或是向法庭申請保護令。

4.3. 強化現存服務功能、有效配合新措施推行

現時，社會上有不同的福利機構為違法或邊緣兒童及青少年提供不同的社會服務，就機構經驗所得，現時「社區支援服務計劃」的模式十分有效及可取，他們亦與全港各區警署建立了良好的合作關係，在跨專業合作上已累積了相當的經驗和默契；此外，部份社會服務單位過去亦與警方進行了不同的合作計劃，為身處危機的兒童及青少年提供了適當的訓練和發展機會；同時，亦有機構過去致力為刑滿及違法人士提供康復輔導服務。故此，我們認為可以強化現存服務功能，揀選合適的服務單位參與個案評估工作或提供自強計劃服務。但是，如上述 3.5 項所指，在推行服務前，這些服務單位的工作人員必須得到適當培訓及支援，讓其能提供專業的輔導服務及特別剪裁的發展性活動。

4.4. 鼓勵家庭參與

由於 10 歲以下兒童的身心發展極需要得到指引和支援，而在過程中父母的角色和參與尤為重要，故此，我們認為必須讓父母在整個跟進過程中的都有積極的參與，鼓勵他們承擔父母的責任、並且讓他們了解各項措施背後的目的和意義。

4.5. 必須設立機構監察和檢討機制、確保措施切實執行

由於刑責年齡提升後，警方將不能對 10 歲以下違規兒童作出檢控，有關措施亦不在法例規管之下，故此，我們認為必須立法執行各項措施，並且對各參與的專業部門作出監察，以確保各項措施切實執行。

4.6. 警方推行的新措施

雖然，現時警方已開始向 10 歲以下違規兒童和他們的父母提供社區服務資料單張，介紹各種社區服務，但是，我們認為這方式較為被動，因為，我們不能夠期望警方和當事人都對社區服務十分熟悉、並懂得如何選擇。漫長的求助過程往往可以使當事人十分沮喪、以致減低求助動機、使問題進一步惡化。故此，我們支持顧問報告提出設立「警方兒童支援服務」處理證明進行輕微違法行為的兒童，而對於處理較嚴重違規行為的兒童，我們認為警方應扮演轉介者的角色，在證明有關兒童進行了較嚴重的違規行為後，如決定不向法庭申請照顧保護令，便須於指定的期限內將其轉介至「評估委員會」跟進。

此外，雖然現時警方已和教統局分區辦事處及社會署地區辦事署建立了聯絡點，以便轉介 10 歲以下違規兒童，但由於我們未有詳細資料了解有關運作，故未能探討此機制如何與新措互相配合、警方作為第一個介入點如何決定個案應

轉介至教統局或是社會署的分區辦事處、有關聯絡點接收個案後又如何作出評估和跟進。事實上，警方在整個青少年司法系統中扮演着十分重要的角色，所以，我們認為可以進一步加強警方的職能，讓一組經特別訓練的警務人員專責處理違規兒童。但是，有鑑現時各政府部門正面對資源緊縮，我們憂慮警方未必能在短期內推展有關措施，故此，我們認為必須加強各方的合作、並且更有效運用現存的社會服務以推展各項評估及跟進工作。

(五) 已達刑責年齡之違法青少年(10 歲至 17 歲)

現時，警方對於違法青少年檢控以外的安排，主要是警司警誡、警司警誡計劃下的善後措施（如：「社區支援服務計劃」）、及照顧保護令。雖然，「社區支援服務計劃」發揮一定成效，但是，由於參與計劃者屬自願性質，所以，若犯事少年不合作，服務計劃亦難以再跟進。此外，雖然現時社區存在各項社會服務以支援有需要的青少年及其家庭，但是由於缺乏統一的轉介機制，服務並未獲得充分的運用。我們歡迎顧問報告提出更多檢控以外的措施，避免讓違法青少年太早進入刑事司法系統，對於有關措施，我們提出以下意見（參圖二）：

5.1. 清晰界定處理的準則

我們認為必須清晰界定處理違法青少年的準則，為警方提供清晰指以決定個案需作檢控、分流轉介作多專業個案評估、或是警司警誡跟進，例如：初犯者如非屬謀殺、縱火等嚴重罪行，則應盡量使用檢控以外的措施代替檢控。過去，由於缺乏檢控以外的選擇，所以，「社區支援服務計劃」有時會接到已兩度甚或三度警司警誡的犯事少年，而當遇上部份不合作的個案時，又因權力及其他配套措施有限，而無法跟進。所以，我們亦同意如犯事少年在檢控以外各項措施中表現不合作，則可由跟進單位轉介回警方或法庭處理。

5.2. 設立一站式的轉介及評估機制、有效運用各項社區服務

如上述 4.4 項所述，我們認為個案可先由「評估委員會」召開多專業個案會議作評估，評估後由指定之社會署單位協調和統籌地區服務的提供，並決定是否需召開「家庭小組會議」、或轉介至「自強計劃」及其他社區服務。我們相信透過社區服務推展有關跟進措施，能有效協助違法青少年重新融入社會、並且減低標籤效應。此外，社會署亦有權檢討個案進展，並決定個案需繼續接受服務、終結、交還警方提出檢控或是向法庭申請保護令。

5.3. 強調違法少年、其家庭及受害人的參與

我們歡迎報告建議設立的「家庭小組會議」，作為檢控以外的分流措施或判刑前轉介，讓違法少年有機會為自己的行為負上責任、並讓其家庭甚或受害人一起決定解決的方案，協助犯事少年改過自身、融入社會。我們認為「家庭小組會議」必須強調家人的參與，以致能整體了解違法青少年及其家庭的需要、為其提供適當的支援、並讓該家庭積極參與會議所訂立的跟進計劃。而海外國家推行家庭小組會議時，會引入受害人的參與以達致復和的果效，但是，由於「復

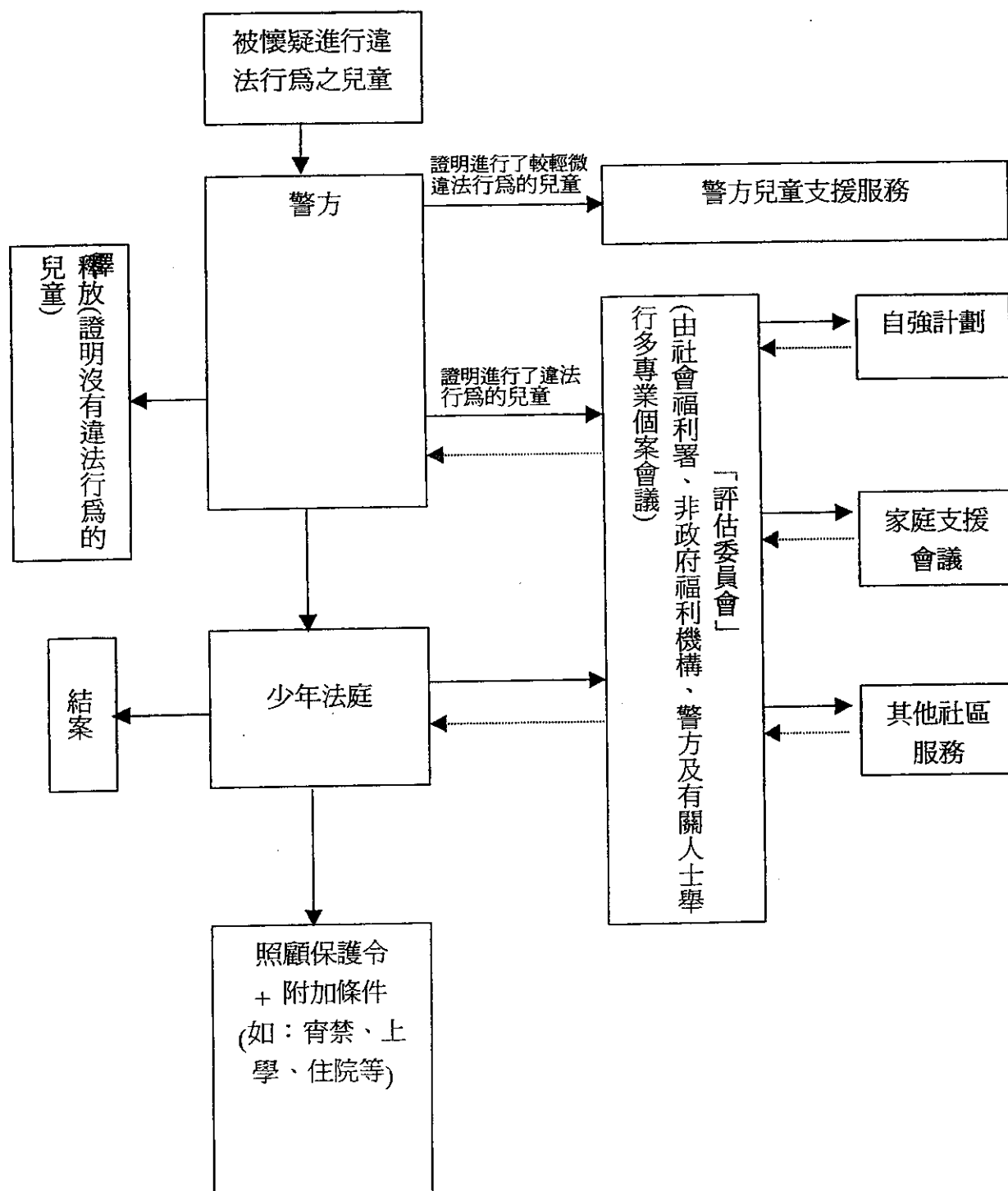
和司法」對香港來說是一種新概念，而不同國家的文化背景和價值觀亦存在一定差異，故此，我們建議必須進一步了解及研究復和概念的在不同個案的應用成效。

此外，現時社會署已開展了一項「家庭會議」的試驗計劃，此計劃有別於報告所指的「家庭小組會議」，主要是處理已接受警司警誡兩次或以上、並需要三方或以上專業服務之違法少年、受害人並不會出席會議。我們歡迎當局設立是項措施作為警司警誡計劃下的其中一項善後服務，讓違法少年及其家庭參與決定跟進計劃，不過是項措施並不能取代「家庭小組會議」之功能，而由於參與屬自願性質，故此，約束力有限，同樣需面對現時「社區支援服務計劃」的限制，個案未必願意合作，我們建議如違法少年及其家庭不合作，警方有權決定是否考慮作出檢控或向法庭申請保護令。由於是項措施剛開始試驗，我們有待當局一年後作出詳細檢討時再對此措施表達意見。不過，我們認為現階段必須先仔細研究已開始試驗推行的「家庭會議」如何與新措施互相配合，同時，也需避免將「家庭會議」、「家庭小組會議」及「家庭支援會議」三者的角色和功能混淆。

(六) 總結：

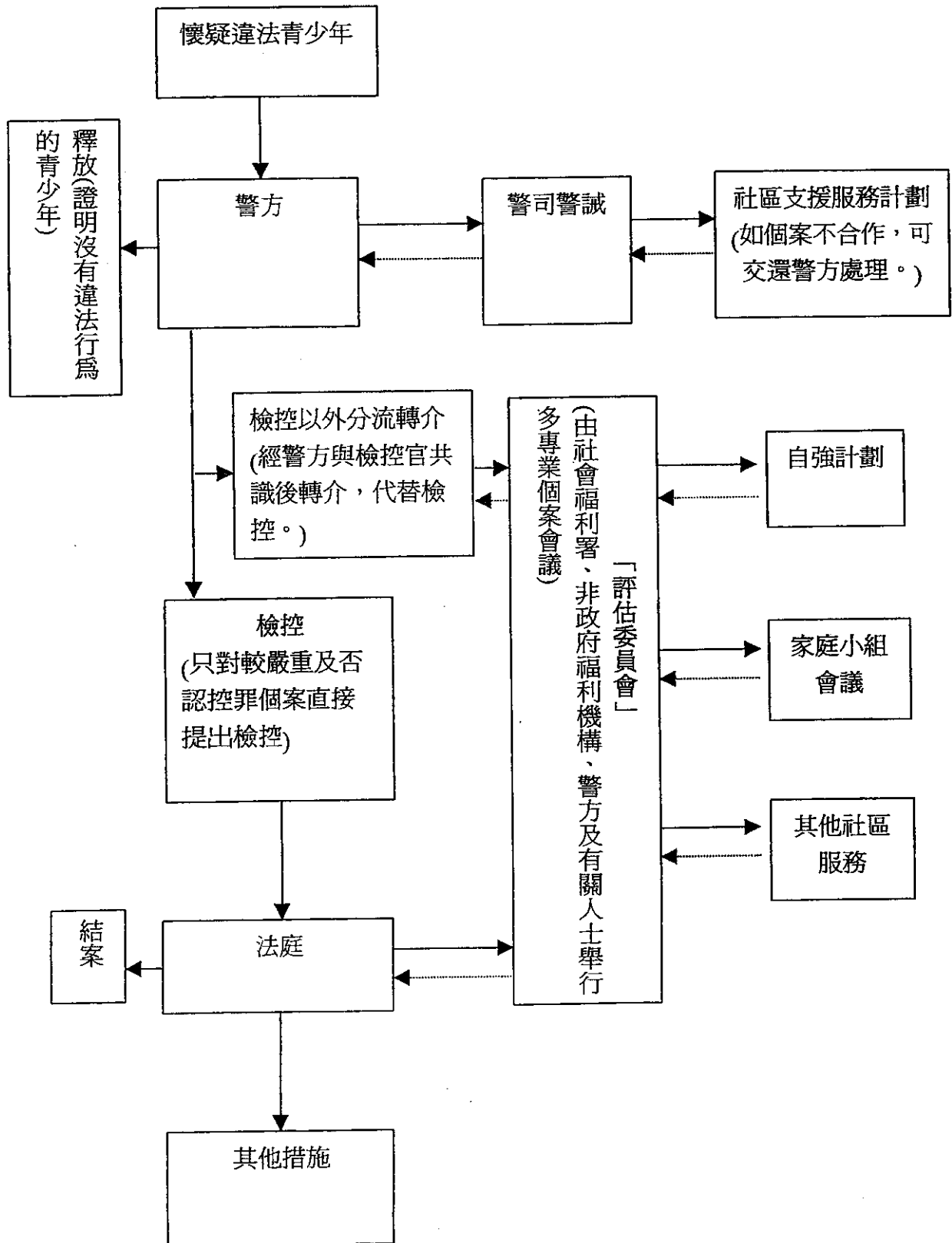
總括而言，我們同意違規兒童及違法青少年亦需要為他們的行為負責，但是，從保障兒童權益、協助有關兒童及青少年改過自身、增強其抗逆力、助其融入社會等角度出發，我們必須為他們設立更公平完善的機制，為他們提供更多檢控以外的措施、並配合足夠的社區支援服務，以免過早讓他們進入刑事司法系統，對其身心帶來長遠的負面影響。此外，有鑑“頑劣”兒童一詞過於負面，我們建議改用“違規”或其他較能形容客觀事實的詞語。

處理刑事責任年齡以下的違規兒童 (10 歲以下)



圖二

處理已達刑責年齡之違法青少年 (10 至 17 歲)



二〇〇四年五月

香港社會服務聯會
違規兒童及違法青少年檢控以外的措施

(一)前言：

就政府跨部門工作小組於二〇〇四年三月十二日立法會「青少年司法制度小組委員會」會議回應顧問報告的建議，本會及關注之社會服務機構歡迎政府提出加強處理十歲以下違規兒童的措施，讓有關兒童及其家庭得到適當的支援和跟進。此外，我們近日得悉律政司刑事檢控科在《2003 年刑事檢控科工作回顧》報告中提出將會繼續改革司法制度及檢討檢控的常規和程序。其中，更成立了不同委員會跟進各項改革建議，包括研究引入一套具「修復作用」的司法措施，代替檢控十至十七歲的違法少年，讓受害者與犯罪者在受過訓練的「調停員」的協助下會面，作為修復過程的一部份。事實上，法律改革委員會於一九九八年的檢討報告中，不單建議將刑事責任年齡提高，更重要的是建議當局全面檢討少年司法制度，以確保在檢控以外有其他有效的方法，在保障社會治安的同時，也防止誤入歧途少年泥足深陷、淪為慣犯。

我們期望在制訂清晰的流程指引、並配合適當的專業培訓下，有關措施能盡快落實推行，一方面，使十歲以下的違規兒童及其家庭得到適當跟進和支援；另一方面，為已達刑責年齡的違法少年提供更多檢控以外的選擇，避免讓他們過早進入刑事司法程序，並且讓他們在得到適當的協助下積極改過自身、融入社會。社會服務機構十分願意配合和支援有關措施的推行，期望有關青少年能盡早得到所需協助。本會經進一步向各青少年服務機構收集意見和討論後，現就有關處理十歲以下違規兒童的轉介機制、「家庭會議」運作模式、違法少年檢控以外措施幾方面提出具體建議。

(二) 十歲以下違規兒童的轉介機制及跟進措施：(參圖一)

對於處理刑責年齡以下的違規兒童，我們歡迎當局擴展警務處青少年保護組的職能、計劃擴展「家庭會議」的措施、加強地區服務轉介機制及盡量以社區住宿代替院舍以助其融入社會。我們現就十歲以下違規兒童的轉介機制提出以下建議：

2.1. 轉介目的和原則

對於十歲以下的違規兒童，我們認為最重要是警方接觸有關兒童後能成功將他們及其家長連結社區服務，讓地區社會服務單位的社工可作出適當的輔導和跟進，避免問題惡化。所以，任何違規兒童，只要被警方判定其行為屬違法，便應立即作出轉介。

2.2. 轉介程序

由於警方並非受訓社工，故此，我們不能要求警方判斷個案需要何種社會服務跟進，所以，社署的地區福利專員在協調個案轉介方面扮演十分重要的角色。警方在取得家長同意後，將個案直接轉介地區福利專員，再由有關專員將個案轉介至地區有關的青少年或家庭服務單位跟進、及考慮是否需要召開「家庭會議」。我們認為無論家長是否願意接受轉介，也需簽署表示同意或不同意，以便警方清楚紀錄願意和不願意接受轉介的個案數目，在有需要時作出跟進，同時，也確保家長已知悉可以求助的途徑。上述程序宜盡量精簡，以便警方盡快作出轉介，讓有關兒童及其家庭盡快得到所需服務。

2.3. 協調和培訓

由於轉介機制需要警方、社署及地區社會服務單位的互相配合，所以，我們建議社署加強地區層面的溝通協調，以確保各方面掌握彼此的角色分工，讓轉介機制能有效運作。此外，由於部份家長求助動機較低，或會抗拒轉介，我們建議加強警方有關方面培訓，讓其了解社會服務的角色功能及掌握提升家長求助動機的基本技巧，以增加成功轉介的機會，進而及早預防和減低有關兒童再次在社區進行違規行為的機會。

2.4. 將現時在警司警誡計劃下設立的「家庭會議」措施推展至十歲以下違規兒童
我們歡迎當局將「家庭會議」措施推展至十歲以下之違規兒童，讓他們及其家庭及早得到適當的支援和跟進，有關運作可參考現時「家庭會議」措施和下列 3.1 項適用之改善建議，但是，由於有關兒童尚屬年幼，故必須加強鼓勵其家長參與和支援，過程中亦必須注意有關兒童的認知能力和實際需要，有關程序宜盡量簡化，以避免導致負面影響。而由於有關兒童未屆刑責年齡，並非「社區支援服務計劃」之主要服務對象，故此，在召開「家庭會議」後，個案可由區內綜合青少年服務、家庭服務或有關之社區服務單位跟進。對於處理嚴重的違規行為或家庭問題，雖然，警方在現行法例上無權強制要求有關兒童及其家庭參與「家庭會議」，但在需要的情況下，可考慮由警方或社署申請「照顧保護令」，讓有關兒童得到適當的監護和照顧。

(三) 十歲以上違法少年檢控以外的措施：(參圖二)

3.1 檢控以外的分流措施

現時，警方處理已達刑責年齡之違法少年，主要按有關少年的年齡、所犯罪行、是否有悔意、受害人意願等而決定是否對其作出警司警誡、起訴或申請照顧保護令。雖然，現時大部份違法少年都是以警司警誡計劃處理，而在計劃下亦設有善後服務，但是，在現存機制下「警司警誡計劃」是檢控以外的唯一的選擇，同時，如該違法少年接受警誡後表現不合作，警方亦不能以同一罪名作出檢控，故此，是項措施存在一定限制。所以，我們十分同意保安局顧問研報告建議加強違法少年檢控以外的分流措施，以避免違法少年太早進入刑事司法程序。

如圖二所指，我們建議建立「檢控以外的評估委員會」，以評估有關少年及其家庭需要、擬定跟進計劃、結連有關的社區配套服務提供跟進、並按個案需要而加強有關少年、其家庭及受害人的參與。有關措施需立法推行，具有法定權力代替檢控，但如過程中個案表現不合作，可交回法庭作出檢控。

此外，我們歡迎律政司正積極研究以一套具「修復作用」的措施，以代替檢控十至十七歲的違法少年。我們期望能進一步了解有關措施的內容，亦盼望有關委員會能進一步探討復和概念在本地社會的應用、並帶動各有關專業和公眾的討論，進而將有關概念延伸至相關措施，如：十歲以下的違規兒童的「家庭會議」。

3.2.警司警誡計劃下的「家庭會議」(十歲以上違法少年)

雖然，現時試驗中的「家庭會議」(警司警誡計劃下其中一項自願參與的跟進措施)並不同於保安局顧問報告中建議的「家庭小組會議」(作為檢控前或判決前的分流，並會邀請受害人參與)，但是，我們歡迎「家庭會議」這項措施的增設，以加強十歲以上違法少年及其家庭的參與，並且更有效連結社區服務，以提供適當的支援和跟進。我們參考過去半年的個案經驗後，*初步提出以下改善建議，期望此措施能更有效推行*(根據社會服務機構提供的數字，至本年四月中，社署共為十六個個案召開了「家庭會議」)。

3.2.1. 轉介原則

現時，如「警司警誡」的警司認為個案符合召開「家庭會議」的基本原則，便會將其轉介社署地區福利專員，再由福利專員委任一名社會工作主任級人員作「專責主任」評估個案是否需召開有關會議。如社署最終決定個案無需召開「家庭會議」，警方會考慮將個案轉介往社署、教統局或社區支援計劃跟進。我們建議，凡警方提出符合召開會議的個案，*無論社署最後決定是否召開，都需通知「社區支援服務計劃」，以便有關社工更掌握詳細資料、作出跟進。*

而由於參與此會議屬自願性質，並無實際約束力，如有關少年或家長表現不合作，或沒有履行有關承諾，並無需要承擔任何後果。故此，我們建議當局將有關措施安排在警司警誡前舉行，即是在第二次犯事、給予其警誡前先轉介往社署評估是否需召開「家庭會議」，因為警方具有法定權力，我們相信這有助推動有關少年及其家庭履行更大責任，不過這項改革必須配合法例修訂，我們亦期望進一步完善的「家庭會議」能發揮顧問報告所指「家庭小組會議」的功能。

我們建議除了由警方和社署啟動召開家庭會議，*社會服務機構在處理有關個案過程中，也可按需要向社署提出召開會議。*因為，社工經過評估後，較掌握個案背景及需要，可更切實考慮「家庭會議」對個案的幫助。但是，我們認為並非所有個案都需要召開「家庭會議」，故此，待累積一定數量的個案經驗後，可再進一步檢討召開有關會議的準則，切實考慮個案需要，並在「專業評估」和「個案意願」兩者中取得平衡，以達致預期效果。

3.2.2. 運作模式

我們建議個案主席事前**適當預備有關少年及其家庭**，簡介會議情況和目的、並鼓勵其表達感受和意見，讓其感到被聆聽和尊重，並了解會議是協助其得到支援、聽取其他人的意見和分析後，按個人的能力和情況為自己的過犯承擔責任，而非著重懲處和倉卒擬訂跟進計劃。

社署宜盡早與警方**擬定出席名單**，讓出席會議成員盡早被知會及收到個案背景資料，也讓會議主席先掌握各出席成員的角色功能，以便各方作充足準備。我們並建議在會議舉行前先進行「**預備會議**」(只需在召開家庭會議前約一小時舉行便可)，讓各參與專業代表初步交流個案觀點，事實上，部份曾召開「預備會議」的個案，效果更見理想和暢順。

我們建議為個案定下**跟進計劃時限**，各跟進單位需依時限(如：三個月、半年)，向主要社工簡報個案進展及計劃完成情況，如個案進展不理想、並且需要其他專業協助，可召開「**檢討會議**」。相信這有助監察和檢討個案進展，更有效協調各專業合作。

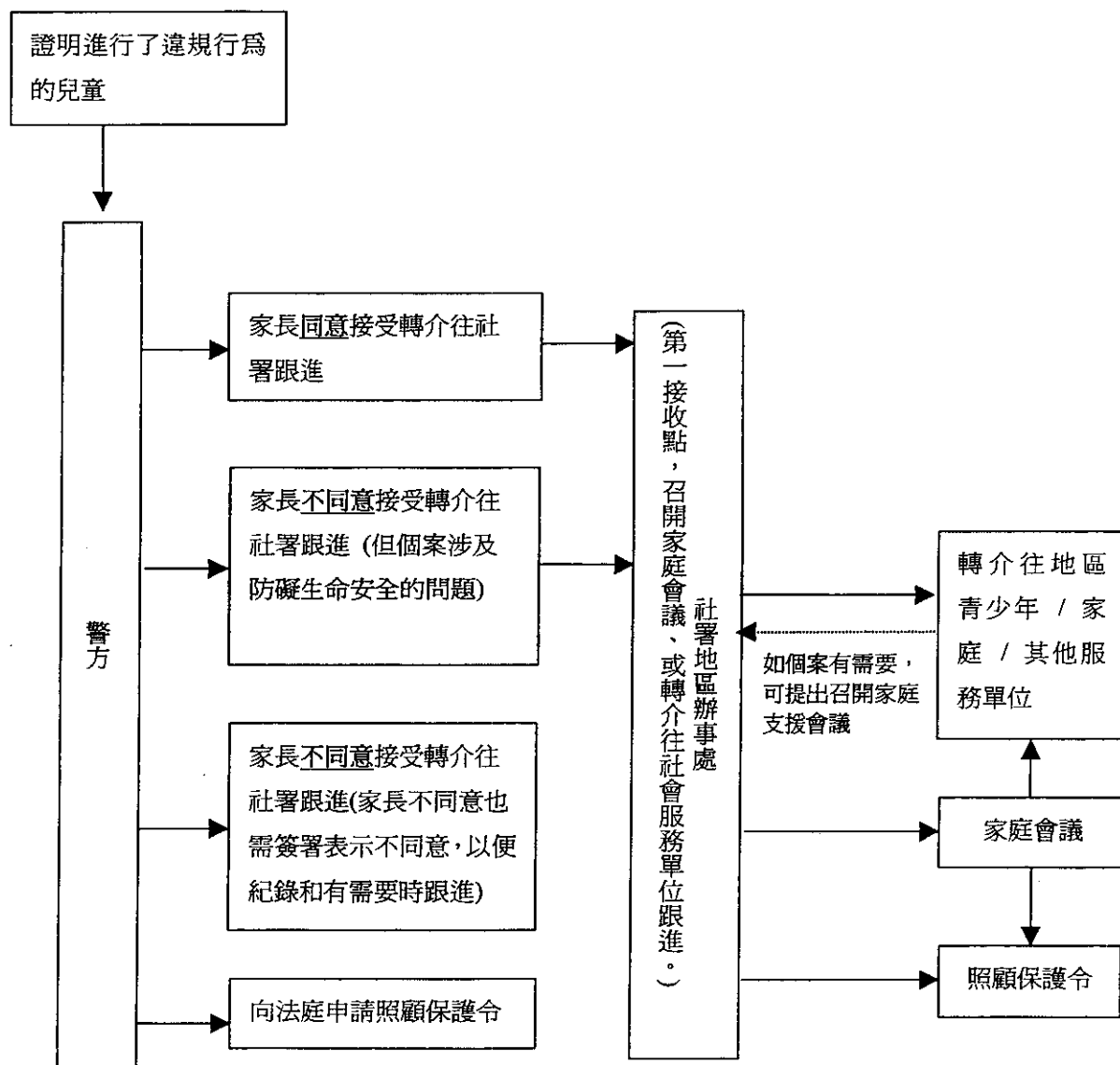
(四) 總結和跟進：

由於上述「家庭會議」將於明年十月完成一年的試驗期，屆時並會作出檢討，我們亦相信稍後需檢視有關違規兒童的個案轉介機制和跟進措施的實行情況，故此，我們**希望能參與上述兩部份的檢討工作，就社會服務機構的實際經驗對評估方式、服務功能和運作模式提出更具體的意見。**

事實上，青少年司法制度改革是長線工作，我們亦了解有關制度的改革和設立更多檢控以外的分流措施，**必須配合法例修訂、訂立清晰的指引和監察機制、並提供相關的專業培訓才能使措施有效推行**，所以，我們現階段先就上述已實行和將會實行的措施提出具體建議，希望有關措施能盡快推行和繼續完善。下一步，我們亦希望來年**立法會相關的事務委員會能跟進討論有關的改革**，而社會服務界亦會就檢控以外措施和復和司法作出更多討論和探討。我們期望政府的「**跨部門工作小組**」**能進一步與律政司跟進協調**，並由律政司帶動整個少年司法制度的改革。觀海外如紐西蘭的經驗，少年司法制度的改革必須得到司法和福利部門合作推動，才能促進各專業界別，如：警方、法官、律師、社工、公眾人士等參與，使改革能更全面有效和逐步完善。

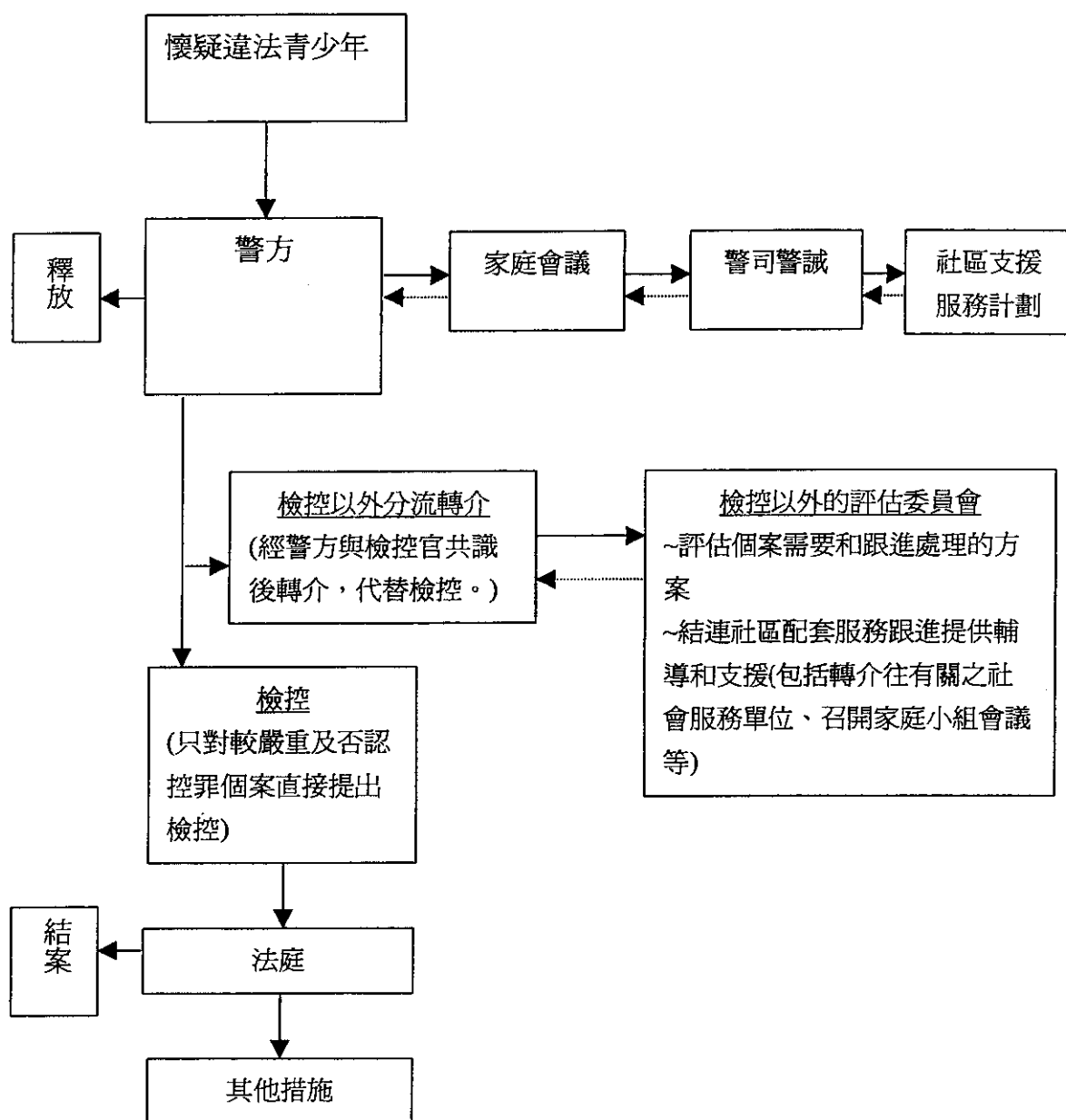


10 歲以下違規兒童的轉介流程



圖二

處理已達刑責年齡之違法青少年 (10 至 17 歲)



香港家庭法律協會

THE HONG KONG FAMILY LAW ASSOCIATION

G.P.O. Box No.11417, Hong Kong

Submission on Measures Alternative to Prosecution for
Handling Unruly Children and Young Persons

1. The Hong Kong Family Law Association ("HKFLA") comprises professionals
- lawyers, psychologists, mediators and counsellors, social workers and others
- who are involved in the practice of family law and family related issues.
2. The HKFLA welcomes the opportunity for NGOs involved with family issues
to contribute to the debate in this area of such vital importance for children,
families and the community.
3. These brief remarks do not attempt to comment on the Consultancy Report
prepared by City University in any depth but highlight some important
aspects.
4. The Report was commissioned following legislative amendments to the age of
criminal responsibility. We maintain that the current age of criminal
responsibility (10) is unrealistically low. The HKFLA holds to its previous
submission that the appropriate age at which young people should be held
criminally responsible for their wrongful actions is 14. The contention that
the age of 10 is too low has the support of the UN Committee on the Rights of
the Child.

5. It is accepted by all that prosecution for young people should be the last resort, not the first. Statistics on prosecutions and convictions of young people below the age of 12 previously made available to the Legislative Council supported the raising of the age to at least 12. The Administration undertook to propose raising the minimum age of criminal responsibility to 12 years after the consultancy study. We hope that at least this further step will be taken.
6. The debate on measures to assist in the diversion from crime of young persons should bear in mind the reality (whether or not supported by law) that young people under the age of 12 are rarely brought to court and more rarely convicted.

The available options and the Administration's initial response

7. Hong Kong has fewer legislatively-supported alternatives for dealing with unruly youth compared with other jurisdictions around the world.
8. The response to the proposals from the Administration is less than enthusiastic. The underlying theme appears to be that the introduction of change in this area will inevitably require additional funding, at a time of budgetary cutbacks.
9. However, the cost of doing nothing must be kept firmly in mind. It is difficult to overestimate the true cost financial and otherwise, of crime and a criminal life to the community. The Sub-committee will be well aware for example, of the high cost of incarcerating prisoners. The aim of all of those involved in a responsive system of juvenile justice and juvenile social support

must be to prevent recidivistic patterns of behaviour, and the descent from minor to serious criminal conduct.

10. The Administration says that reform overseas has attracted considerable controversy. But this will always be the case. Indeed, it could be argued that debate is a healthy attribute of strong and democratically minded communities such as Hong Kong.
11. The administration has informed the Subcommittee of its initial views on the proposals made in the Report. In doing so, it has suggested that the overseas experience of the initiatives supported by the recommendations is "relatively limited" and that further time is needed before legislative change can be proposed.
12. The conclusion that the overseas experience is "relatively limited" might be supportable if the model of England and Wales was to be looked at in isolation from other jurisdictions.
13. It is simply not accurate to assert, as the Administration does, that the experience of, for example, multi-disciplinary management of unruly youth has been in place for a limited time and therefore more study needs to be done before any firm conclusions can be reached. Family Group Conferences have been operating in New Zealand for many years, as have Community Conferences in Queensland. (see Chart 12.1 on page 194 of the Consultancy Report).
14. The Administration reports on the introduction since October last year of

Family Conferences for youth of 10 and older dealt with under the Police Superintendents' Discretion Scheme. But the Superintendent's Scheme only deals with relatively minor offences, and cases where there has been no previous caution.

15. For a pilot scheme (if it can properly be so termed) to be of benefit in pointing to possible permanent implementation of reform processes, it must at least be targeted at the perceived need. Without more information as to the nature of these conferences it is difficult to know whether the Administration is right when it asserts a similarity between these group meetings and the models recommended by the August Report.
16. There is a substantial number of services for youth which the Administration may consider for the trial of the measures outlined e.g. family conferencing. The ability and feasibility of the some of these measures being undertaken in the NGO sector, e.g. Family Group Conferencing by NGO Family Service Centres, with authority delegated by government, needs consideration and examination.
17. The link between family problems and unruly or delinquent behaviour in children has long been identified. The issue is whether or not the current measures are adequate or appropriate, bearing in mind that the overall objective must be to prevent the early criminalizing of children by the system. This is an urgent problem, and deserves the enthusiasm, creative thinking and speedy implementation of changes by the Administration.

29 January 2004

香港家庭福利會

(本會為註冊之有限公司)

HONG KONG FAMILY WELFARE SOCIETY

(Incorporated with Limited Liability)

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附件 D
Annex D

President

Miss Maria Wai-Chu Tam, G.B.S., J.P.

Chairman

Mr. Christopher Law

Vice-Chairman

Mrs. Betty Cheng

Hon. Treasurer

Mr. Patrick S.S. Cheng

Executive Director

Mrs. Cecilia Kwan



Submission of Hong Kong Family Welfare Society

Feedback on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong"

The Hong Kong Family Welfare Society supports raising the "Age of Criminal Responsibility".

In response to the Report on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong" prepared by Youth Studies Net, City University of Hong Kong. Hong Kong Family Welfare Society here submitted our views for the implementation and improvement of the practices proposed in the report.

1. Our views about the objectives and principles

1.1 Objectives

To strengthen functioning of individuals and families and advocate for a caring community, we support the adoption of restorative justice for juvenile. We also recommends to further apply this approach in justice system for the betterment of social cohesion.

1.2 Principle

To actualize a restorative justice for juvenile, we here emphasize the following principles:

- Young people should be accountable and responsible for their actions
- Young people should be given the opportunities and support for shouldering the responsibilities.
- Alternatives should be given to avoid getting young people to enter criminal justice system too early.
- Family support and participation are significant in the rehabilitation of young people.
- Support and training can be an effective alternative to institutionalization in prevention of re-offence.

... Cont'd/P.2



香港公益金資助機構
A Beneficiary of The Community Chest

香港家庭福利會

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- P.2 -



1.3 Hence, we support the following features of options proposed in the report:

- a) introduction of measures to support unruly children aged under 10 including empowerment programmes, establishment of child support service and referral services for the children in need of care and protection.
- b) introduction of measures to strengthen supports to family. Family support conference and family group conference are forums for the family members to work out the welfare plan for the children together with professional support.
- c) introduction of pre-charge and pre-sentence diversions
- d) introduction of alternative measures to prosecution, apart from the present available measures.

2. Our views about Implementation

To actualize the objectives and principles and to make the implementation feasible, we have deep concern over the effectiveness of the implementation plan that proposed in the paper. We have identified some gaps between conceptualization and implementation which may become problems for implementation. Here we put forwards possible solutions for consideration:

2.1 To establish clear and comprehensive referral mechanism and supportive programme plan to ensure that all children under 10 who have committed anti-social behaviors are being protected.

- this will include a clearly and openly stated guideline laying down what, how and where these children will be referred; what are the roles and responsibilities of different involving parties and specific implementation time frame
- under the coordination of SWD, it is necessary to establish a district-level net of supportive services (e.g. empowerment programmes), in ensuring receipt of needy children for protection.

... Cont'd/P.3



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- P. 3 -



2.2 To ensure continuous review and evaluation over the effectiveness of the design and implementation of the said mechanism

- it is necessary to set up a **review body**, carrying the function to regularly collect data and feedback, e.g. no. of children referred/not referred, drop-out rate; inviting feedback from relevant government departments, NGOs service providers, and youth concern groups etc in reviewing the mechanism and identifying areas for improvements.

2.3 To ensure that different related personnels are properly trained to implement the proposed mechanism effectively

We propose:

- Police officers, who will take up the key role in the assessment of diversion, should receive specific training on rationale of MAP, options available, referral mechanism, knowledge on community resources for the children, as well as understanding on the needs of children and adequacy of family support etc.
- Social workers of IFSC (SWD and NGOs), who will take up the role in chairing Family Support conference or Family Group Conference, should be trained on the understanding of the role of the conference in MAP, and equipped with needed skills to conduct an effective conference, especially when "victims" will be involved.
- Social workers of ICYSC, who will take up the role in offering community based empowerment programmes, should be trained to understand the functions of empowerment programmes in MAP, identify needed service components and equipped with needed skills to conduct such programmes.

... Cont'd/P.4



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2.4 By-phase implementation of involving victims in Family Group Conference

- Our concern:

- The application have to be done with care to avoid additional harm to victims. We concern about the level of social acceptance over this practice. We consider it worth a trial with special care.

- Our suggestion:

- To start with, cases suitable for victim participation have to be carefully selected, participants have to be fully briefed and prepared, and chairperson, who will also be the facilitators, have to be fully trained so that the purpose of FGC could be achieved.
- Full implementation is only recommendable when there are enough trained chairpersons and also there are positive response obtained in the trial run.

2.5 Strengthening the use of "Supervision Order"

- From the feedback of CSSS social workers, it is found that children being referred did not obtain proper care since many parents only gave "pseudo-consent" to the referral when they are cautioned under the PSDS. The children soon dropped out from the service without parents' cooperation. It is thus recommendable to consider overseas experiences, in application of orders, like "supervision order", to secure that children will receive proper care and protection, and subjected to proper control in the local community.

Considering the strengthening services and the proposed improvement of mechanism and practices, we like the government to consider raising the minimum age of criminal responsibility from 10 to 14 in the near future.

Submission 30/01/2004



香港公益金資助機構
A Beneficiary of The Community Chest

香港小童群益會

就「用檢控以外的措施處理頑劣兒童和少年-顧問報告」的回應及建議

1. 香港小童群益會多年來致力兒童及青少年服務，關注兒童及青少年的培育、成長和福祉。往年亦就提升刑責年齡表達意見，對於當局提升刑責年齡至十歲後，全面檢討少年司法制度，考慮於檢控以外設立其他有效方法，以保障社會治安之餘，也同時防止誤入歧途的少年泥足深陷之舉，本會表示贊同及支持。
2. 基於兒童福祉的前提，本會對顧問報告所提出的改革精神及六項方案，有以下意見：
 - 2.1. 兒童及青少年犯事，應以免其過早進入司法系統內，而應以儘早介入及預防為原則，減免重犯，使其重投社會。
 - 2.2. 少年司法制度應着重重投社會及社會融合(Reintegration)為基本原則，其中復和司法亦是一個可取的概念。復和司法的好處是既協助犯事青少年為自己所作的行為負責，亦讓其修補對社會或受害者作過的傷害，並明白及感受這些傷害對受害者的影響。
 - 2.3. 應增加檢控以外的措施，該等措施可建基於現時行之有效的服務，並試驗套用海外成功的措施，包括家庭支援小組會議等，於社區中設立機制為犯案兒童及少年評估及制定更新計劃，讓其與社會及受害者重建關係。
3. 就處理十歲以下兒童犯事問題，本會建議：
 - 3.1. 最低刑事檢控年齡由七歲提升到十歲，十歲以下犯事兒童不需付上刑責。然而，基於預防和儘早介入的原則，可考慮提供法理依據，讓社區內有關服務得到認受性及正式介入渠道，確保犯案兒童及家長得到適切的協助。
 - 3.2. 有鑑於現時為十歲以下違規兒童提供服務或介入的法理依據只有保護兒童令，本會建議深入研究其他國家的措施，包括對一些曾犯過兩次或以上案件的兒童之家長／監護人頒布家長指令 (parental order) 的可行性。家長指令主要為要求家長履行對兒童應有的照顧及教導，並允許專業社工的介入及協助。
 - 3.3. 對於十歲以下兒童犯案後的處理流程，本會建議建立恆常的步驟與機制評估此類兒童之需要，讓社區及青少年服務儘早接觸這些兒童，旨在提供適切服務，減免日後犯案的機會。
 - 3.3.1 處理流程：

本會建議警察接獲有關方面或受害者報警後，當抵達現場調查及錄取口

P. 1

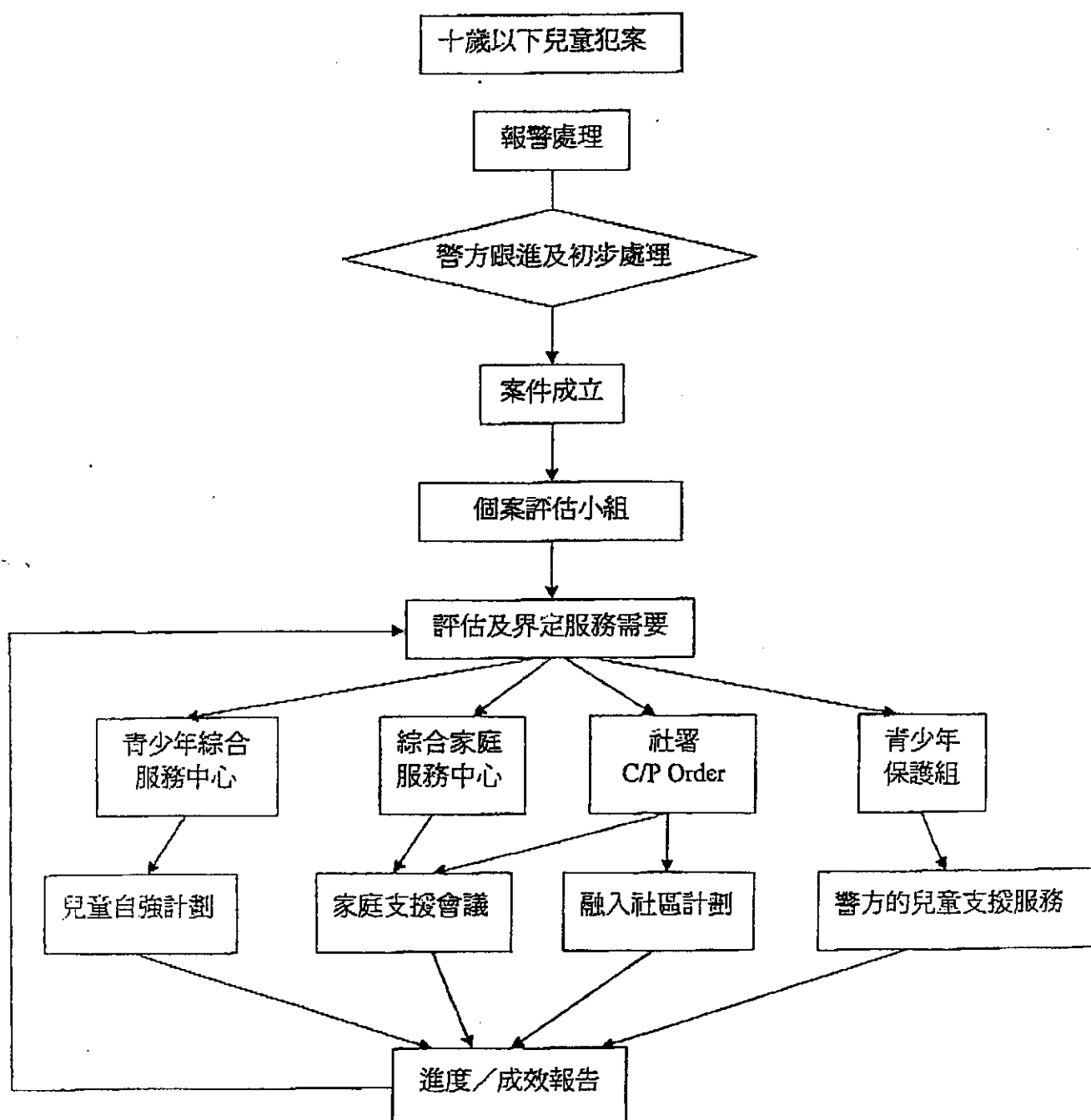
供之餘，必須將十歲以下犯案兒童背景資料轉介至適切的機制，以作評估。

3.3.2 本會建議由地區福利專員負責成立個案評估小組（Assessment Panel），統一評估區內十歲以下犯案兒童的需要及跟進工作。

3.3.3 評估小組應包括社區人士、警方代表、教育界人士及青少年服務機構代表等。

3.3.4 評估小組需按犯案兒童及其家庭的需要及情況，建議合適的輔導或跟進工作。跟進方案可包括兒童自強計劃、家庭支持會議等。

4. 處理十歲以下犯案兒童程序流程圖



5. 為兒童及其家庭提供的支援、服務或輔導日新月異，因此更需要評估機制訂立合適的跟進工作。有關方面訂定跟進工作時可考慮以下原則：

- 5.1. 使有關兒童為自己的行為負責及使其重投社會。
- 5.2. 為有關兒童家庭提供基本的生活條件，如綜援、居屋等。
- 5.3. 為有關兒童提供強化其個人成長、抗逆力等的個人及小組輔導訓練活動。
- 5.4. 為有關家庭提供家庭輔導服務。

6. 顧問報告建議對十歲以下犯案兒童提出以下四項方案，本會意見如下：

6.1. 警方的兒童支援服務

基本上可考慮由各大警區屬下之青少年保護組繼續擔任此項工作。並加強警方與學校及地區的非政府組織合作，如青少年綜合服務隊、地區外展隊等，讓學校及非政府組織為犯案兒童作出合適的支援。過程避免對犯案兒童有負面標籤，作變相懲處。

6.2. 家庭支援會議

評估小組可以考慮由社區或地區滅罪委員會召開小組會議，訂立清晰及客觀執行標準，就個別情況，除了為犯案兒童提供服務或更新計劃，其他家庭成員，包括家長／監護人亦需要履行一些義務，或參加親職教育課程。

6.3. 自強計劃

建議計劃融入於犯案兒童居住區域的青少年綜合服務中心提供服務，自強計劃不宜獨立運作，以避免出現強烈標籤效應。

6.4. 以融入社區代替入住院舍

支持及認同顧問提出的方向及精神。亦可考慮召開家庭支援會議，協商整合服務計劃代替入住院舍，進一步強化家庭支援會議這項措施及效用。

本會認為顧問報告所提出的四項方案是可行。但在政府資源緊拙下，可盡量善用及於現有的不同社會服務的基礎上發展，各項方案可由社署督導，並與地區上不同社會服務機構作出協調。各項的方案均需要設立機制進行評估及提交進度報告。

7. 就處理十至十七歲青少年犯事，本會建議：

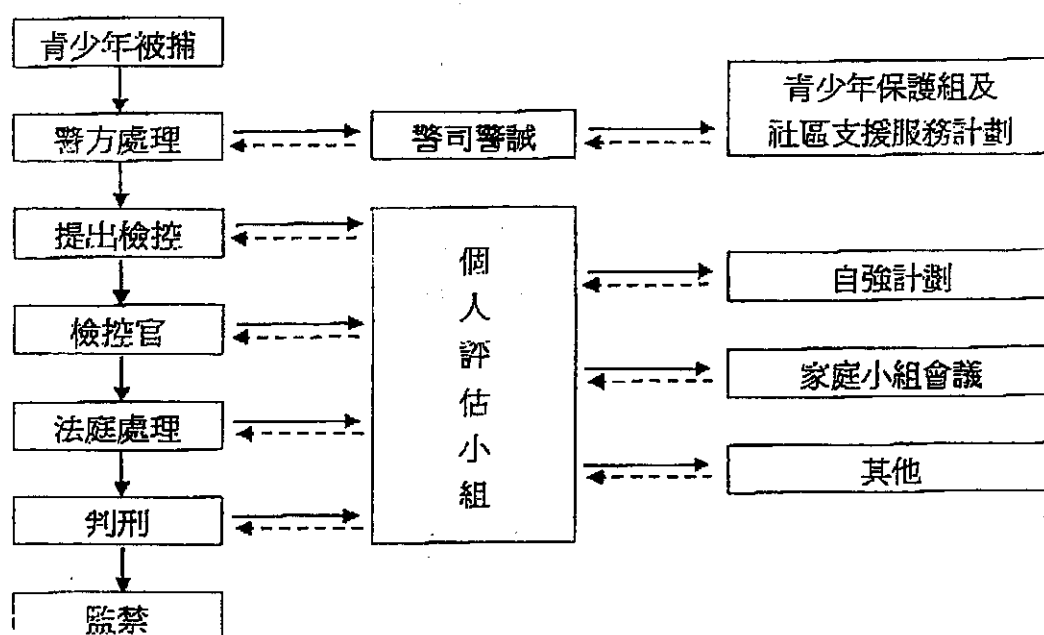
7.1. 增加檢控以外的措施

除了現時沿用的警司警誡令可繼續外，應增加更多可行措施，包括警方提出檢控後、檢控官接案後、審訊前及判案前後，均可提出其他措施代替檢控。

7.2. 建立評估制度及機制

青少年被捕後，決定是否採用檢控以外的措施協助他們重投社會，應由警務人員及司法人員決定。而作出有關決定後，個案應轉由統一的評估機制作個人心理、社會因素及家庭背景等評估，並作合適的跟進工作。有關評估機制可與 3.3.2 至 3.3.4 建議的相同。

7.3. 處理十至十七歲犯案青少年程序流程圖



因十至十七歲青少年犯事應負上刑責，經評估後的計劃只是判刑以外的改過自新計劃，因此，如青少年未能完成經評估小組建議的計劃，應再進行評估。甚至應重新進入檢控的流程，為個人行為負責。同樣，接受警司警誡的青少年如進展未如理想，亦應重新考慮以其他措施協助更新或進行檢控。

7.4. 對顧問建議十歲至十七歲違法少年於檢控以外的措施，本會有以下意見：

7.4.1 違法少年自強計劃

計劃的內容應包含協助青少年悔改的措施、自我更新的經驗。現行合乎資格接受警司警誡並已接受警司警誡的青少年，可繼續接受青少年保護組（JPS）的服務，由各區的社區支援服務計劃（CSSS）提供服務。當中包含自強的元素，其他未獲安排 CSSS 服務的個案可由評估小組評估，並轉介至合適的綜合服務隊，由綜合服務隊提供合適的自強計劃。

7.4.2 家庭小組會議

縱觀海外多國設立之家庭小組會議，目標在修復和調解犯案青少年與受害者之間之關係，修復所受之傷害，本會贊成設立家庭小組會議作為檢控以外的一項措施。除受害人、警方及社區人士，家長的參與亦甚為重要，應為小組會議必然的成員。

8. 其他建議

- 8.1. 社區調解亦可考慮作為其他檢控之外的選擇。為犯案青少年與受害者設立調解服務，由經驗的調解員協助雙方作出協議，簽定有法定效力之協議書，以作緩解。若中途未達協議，可返回原有檢控程序。
- 8.2. 此外，文件中將「unruly children」譯作「頑劣兒童」，「頑劣」一詞帶有強烈負面的含意，建議採用「違規」取代。

21.01.2004

基督教香港信義會
Evangelical Lutheran Church Social Service Hong Kong

致：青少年司法制度小組委員會

由：基督教香港信義會青少年服務 胡鄭素芳女士(27108313)

事由：就「用檢控以外的措施處理頑劣兒童及少年顧問研究報告」提交意見

日期：14-1-2004

基督教香港信義會一向關心青少年的成長需要，特別是協助年青人處理成長上的危機及偏差行為。自 1997 年開始，本會為回應青少年初探違法行為後的服務需要，於本會服務範圍內與區內警署合作開展「社區青少年自強計劃」，在沒有政府額外財政資助下，先後在水圍、北區、屯門及大埔區開展「社區青少年自強計劃」，為一班由警署轉介而要接受警司警誡令的青少年(或經警署、學校及家長轉介的區內學生)提供服務。後於 2001 年 10 月起得到社會福利署津助，遂把「社區青少年自強計劃」擴展至整個新界東地區，包括元朗、北區、大埔及沙田，並改名為「青少年自強計劃」(新界東社區支援服務計劃)。

在推行「青少年自強計劃」時，同工曾嘗試以不同的介入手法及服務模式輔導青少年。在 1999 年及 2001 年分別於上水警署及水圍警署推行「和解會議」，這個會議與報告書建議的「家庭小組會議」之目的相同，透過安排青少年犯事者與受害者見面，協助青少年犯事者對自己的行為負責，修補對受害者的傷害等。我們曾為 25 個個案舉行「和解會議」，其詳細推行方法、內容及成效可參照附件一內容及附件二「和解會議」個案一覽表。

就著「用檢控以外的措施處理頑劣兒童和青少年」的顧問研究報告，本會有以下的觀點及建議：

首先，本會贊同研究報告中提出以下列信念來處理頑劣兒童違規行為：

- 以復和司法取代懲罰及懲處，協助犯事者對自己的行為負責
- 司法制度需關注受害者的需要
- 提供多項分流措施以取代立即檢控
- 以融入社區取代替住院舍
- 跨專業合作取代單一的服務

另本會對報告書之建議有以下的意見：

1. 針對處理 10 歲以下頑劣兒童的新措施：

1.1 報告書 10.7.1 建議為 10 歲以下犯較輕微罪行的頑劣兒童設立兒童支援

服務，本會基本上認同這項措施。根據本會經驗，讓犯事者為自己的行為負責並作出補償行為，有助減低兒童再犯事的機會，達致防止罪案及預防的措施。

1.2 本會建議兒童支援會議的召集人需要一定程度熟悉「和解會議」的內容及理念，並了解頑劣兒童的特性、懂得評估兒童的服務需要。

1.3 本會建議兒童支援會議的召集人可由青少年防止罪案組（青少年保護組的警務人員）或由社會服務機構，如社區支援服務機構擔任，因他們具備所需的專業知識。

1.4 本會建議對於在甚麼條件下要召開支援會議，需制定清晰而明確的指引，避免出現不同的準則。

2. 針對處理 10 歲至 17 歲以下違法少年的處理新措施的意見：

2.1 本會贊同增加檢控以外的分流措施，如增加家庭小組會議，以家庭小組會議代替即時檢控。

2.2 根據報告書 11.4.1，現行對一些初次觸犯輕微罪行而願意認罪的青少年，警方不會提出檢控而會給予警司警誡令，然後當事人可按意願參加「社區支援服務計劃」，本會建議在警司警誡程序後，增設家庭小組會議（family Group Conference），這個安排既有助探討犯事者及其家庭的服務需要，亦可透過會議讓青少年明白其違規行為對別人的傷害，並作出修補行動，有助增加其悔改的決心，達致真正減少其重犯的機會。

2.3 建議家庭小組會議的召集人可由(社會福利署)CSSS 擔任，會議後轉介至 CSSS 服務，(且由他們) 在作個案(的)評估後如有需要，分流至其他的青少年服務或家庭服務機構跟進。

2.4 本會建議每次「家庭小組會議」均應有「和解協議」部分，讓犯事者表達對受害人的歉意，並作出適當之補償；受害人亦可表達罪行對其之傷害。根據本會處理「和解會議」的經驗所得，某些犯事者犯事前原來亦曾是受害者，而是次犯事可能與上次受害有關。其中以毆打傷人的案件較多這種情況，犯事者在被毆打後選擇以毆打傷人來宣洩或報復。因此，「和解會議」能助犯事者及受害者表達其心中困擾，並學習適當之(宣洩)處理方法，更要為自己的行為負責。這是一個好好的預防教育的措施，能減低青少年犯案的機會。

一、 復和公義在香港的調解模式及試點個案摘錄：

1999 年：基督教香港信義會「復和公義」的刑事調解模式：警司警戒令後(Post-Superintendent Cautioning Scheme)+家庭小組會議(Family Group Conferencing)

「和解會議」計劃的背景

「信義會」一向關心青少年的成長需要，特別是協助年青人處理成長上的危機及偏差行為。當城市理工大學黃成榮博士介紹「復和司法」的概念，我們同意這做法較「懲罰」手法更能鼓勵青少年在犯錯後改過。因此，本會在 1999 與上水警署及在 2001 與天水圍警署合作推行「和解會議」。這是本港就青少年犯事者首創的「和解會議」計劃。

「和解會議」的計劃

本計劃是一個「警戒後的和解會議」(Post-cautioning mediation)。當一名青少年犯事者(18 歲以下)因觸犯輕微罪行而被警司警戒後，本會社工—「和解員」，會評估該個案是否合適進行「和解會議」，從而安排作出適切的安排。在初期，此計劃先集中處理有關「盜竊」的案件，如店鋪盜竊、偷單車、校內偷竊等。期後，此計劃嘗試處理青少年的人際衝突。經過兩年多的嘗試，總共進行了 26 次「和解會議」，當中曾協助過 35 位青少年犯事者及 25 位受害人。(見附頁)

「和解會議」的設計

此計劃是以「復和」理論作基礎，在設計計劃名稱時，為著讓青少年及其家長容易明白及掌握此計劃，本會曾諮詢數名青少年，最後放棄較難了解的名稱「復和」，而採用「和解」一詞，他們表示「和解」一詞代表「和好」及「解疑」。

「和解會議」的形式以澳紐的「家庭會議」(Family Conferencing) 作基礎，而非歐美的「復和」會議 (Mediation Meeting)。因為考慮到在警司警戒的過程中犯事者的家長或監護人均需出席，故此，在安排「警戒後的和解會議」時，亦尊重家長或監護人的參與。一方面，青少年在中國文化中仍習慣有家長的照顧，家長的參與可視之為「當然」。再者，犯事者及受害者均可邀請有關人士到場支持，以加強「重新」的作用。此外，由於計劃是與警方合作，所以警方代表亦應出席「和解會議」。警方代表的出席可作出三方面的功能，一方面可見証青少年的改變；第二方面可向雙方講解「警司警戒」的安排及意義；最後，警方可代表社區鼓勵及支持犯事者重投社區。

和解員的心聲

「和解會議」以「會議」(Conferencing) 的形式進行，實比較只有犯事者及受害者出席的「復和會議」(Mediation Meeting) 有更多層面向的「和解」，除讓犯事者與受害者外，可就案情需要而處理犯事者與其家長；雙方家長之間；青少年及或家長與學校；犯事者與社區；甚至受害者之間等的「和解」服務。促使人與人之間的關係得以改善，加深「重投」(Reintegration) 的效果。在初期建議就著「店鋪盜竊」而進行的「和解會議」時間中多受到各方的質疑，但經檢討試行後的成果，社工發現就著這類案件性質的「和解會議」，更能發揮「重投社區」(Community Reintegration) 的作用，特別是店鋪的代表或負責人以「街坊」或「家長」的心態接受犯事者，和解員多表示感到被支持及鼓勵。

遇見困難

在缺乏額外資源的支持下提供「和解會議」服務，確實面對人手及時間的限制。因此每星期只能處理一至兩個個案。再者，在「會議」(Conferencing) 的形式下，進行「和解會議」前需要作出更多的準備工作，因而進一步限制了可處理的個案數目。為青少年犯事者所提供的「和解會議」是首次在本港推行，由於缺乏本土經驗作參考，故此，在設計「和解會議」上，作出「雙和解員」(Co-mediator) 的安排，以確保和解會議能順利及有效進行，而服務對象的利益得到保障。

計劃成果

1 犯事者

「和解會議」能協助犯事的青少年明白及「看到」犯事行為對受害者及社區所引發的後果，這有助他們改過自新，如「做任何事都三思」(個案 8)；「因為爲了自己的事而連累到別人的工資，覺得好壞」(個案 9)；「不會再犯」(個案 14)；「不再做，因為不想父母擔心」(個案 23)。另一方面，犯事者期望能被原諒及接受，本會曾以不記名形式發問卷給 367 名在上水分區警署被警誡的青少年犯事者，結果顯示當犯事者能被受害者所原諒，能加強他/她們改過，如「很高興，心裡想著不可以再犯錯」(問卷 051)；「很傷心、後悔，不希望再有這些事發生」(問卷 019)；「感激，會將勤補拙，不再犯錯」(問卷 129) 等。

2 受害者

在一般的司法程序中，受害者的利益最被忽視的。因此，透過參與「和解會議」，受害者的聲音能被尊重及重視，更能帶到犯事者面前，肯定受害者的感受，甚至協助受害者與其它受害者「和解」。就是因為現在的司法制度下，受害者只是舉証作用，因而輕看受害者承受因事件所引致的負面影響及心理上需要表達之感受。相反，在「和解會議」上，受害者成為主角之一，所以受害者多半樂意出席「會議」，及在會上表達自己的感受及後果。

3 家長

在「家庭會議」形式下的「和解會議」中，犯事者多能更明白父母的感受及支持，另一方面，促進家長能肯定子女改過的動機及加強家長與子女的關係，如「感覺到媽媽好疼愛我」（個案 9）。

4 社區

透過「和解會議」，能鼓勵社區內人士支持青少年改過，共建和諧社區。在過去的經驗中，很多小商戶都願意出席會議，一方面想為自己發言，另一方面鼓勵犯事者改過。因此，「和解會議」能促進犯事者及受害者與社區「和好」。

個案分享（個人資料均作修改及使用假名，以保護服務對象的身份。）

會議日期：二零零零年十二月

會議地點：天水圍分區警署會議室

會議時間：下午二時至三時

出席者：亞思(犯事者) 及其母和負責社工、亞文(受害者) 及其母、學校訓導主任、警長、兩位「和解員」

事件經過：

亞文與同學在放學後在飯堂遇見亞思及其朋友。因亞文與亞思在昨天曾在校內有少許爭執，故當他們再次碰上，再起爭吵起來。在你言我語之中，亞思曾以「恐嚇」的語氣，「挑戰」亞文，「叫」他「收聲」，如不，她會「打」他。亞文並不相信亞思會「出手」傷人，故他繼續破口大罵。這刻，亞思隨手拿起一張椅子拋向亞文。亞文亦欲還手，但遭同學阻止。正當他們在爭吵時，老師從遠處走近，同學們因而立即散去。事後，亞文感到不適而去院求助，警方因此而就此事調查。經過警司了解案情後，決定以警誡代替起訴及轉介予本會社工跟進。社工在研究案情後，建議以「和解會議」處理此同學間的衝突。事後，亞思及亞文均被校方處罰。因此亞文感到不憤。

事前準備

1) 受害者

- 1.1) 警方邀請受害者參與「和解會議」服務及轉介予社工跟進。
- 1.2) 電話聯絡作家訪。
- 1.3) 家訪中先簡述「和解會議」的目的及內容。及重申「和解會議」不是「警司警誡」的附帶條件，是犯事者與受害者自願參與的服務。
- 1.4) 然後從受害者及其家人方面了解案件的經過，案件對受害者及其家人的影響。
- 1.5) 了解受害者對犯事者的看法及不明白的地方。
- 1.6) 邀請受害者及其家人出席「和解會議」處理是次案件。
- 1.7) 當受害者及其家人表示願意參與「和解會議」後，與他們處理出席者的名單。

2) 犯事者

- 2.1) 警方邀請犯事者及其家長參與「和解會議」服務及轉介予社工跟進。期間響警方表明參與「和解會議」是絕無附帶條件。
- 2.2) 電話聯絡作家訪。
- 2.3) 家訪中先簡述「和解會議」的目的及內容，及重申「和解會議」不是「警司警誡」的附帶條件，是自願參與的服務。
- 2.4) 然後從犯事者及其家人方面了解案件的經過，案件對犯事者及其家人的影響，及其反省。
- 2.5) 促進犯事者思考案件對受害者的影響，及其回應方法。
- 2.6) 鼓勵犯事者透過「和解會議」處理是次案件。
- 2.7) 邀請受害者及其家人出席「和解會議」，處理是次案件。
- 2.8) 當犯事者及其家人表示願意參與「和解會議」後，與他們處理出席者的名單。

3) 學校

- 3.1) 電話聯絡作會面
- 3.2) 因為案件在校內發生，及校方在過程中及事後對犯事者及受害者作出處罰，故聯絡校方的訓導主任了解事件。
- 3.3) 簡述「和解會議」的目的及內容，及重申「和解會議」不是「警司警誡」的附帶條件，是自願參與的服務。
- 3.3) 從學校方面了解案件的經過，案件對學校其他人士的影響，及校方處理處理是次事件的方法及原因。
- 3.4) 邀請校方出席「和解會議」，協助犯事學生及受害學生處理是次案件。

會議過程：

- 1) 首先由「和解員」作簡介及讓與會人士認識各出席者。2) 受害者在「和解員」

的支持下分享覆述事件經過及箇中感受，特別是因事件所引發的負面情緒。3)「和解員」協助犯事者「見到」(visualize) 她犯事行為所引致的後果，特別是受害者事後的經歷。然後，犯事者在「和解員」的支持下，分享她在此事件上的想法、感受及影響。4)「和解員」協助犯事者與受害者處理此事件。最後，犯事者向受害者道歉。5)老師在聆聽相方講述對事件的反省後，向他們解釋學校處罰雙方同學的原因及對兩位同學的期望。經過一翻的了解後，亞文最後能明白及同意校方的處理方法。6)警方向雙方講解警司警誡的意義，及鼓勵同學積極投入學校生活。7)最後受害者表示接受犯事者的道歉，及就自己曾經出手打人一事向犯事者表示歉意。老師及家長鼓勵犯事者重新投入學校生活。

犯事者的心聲：

亞思表示經過此會議後，更明白「打人」對自己及對方的影響。她更表示以後不會再犯同樣的錯誤。另一方面，她明白自己需改善情緒控制。

受害者的心聲：

經過在會議上雙方交流事件對自己的影響後，亞文能接受亞思的道歉，及表示明白到亞思當時的心情及想法。因此，他表示不會作出任何的報仇。

個案處理一覽表

和解會議—1999-2000

案件 號碼	案件	個案 編號	犯事者 人數	犯事者 性別	犯事者 年齡	犯事者 職業	受害 人數	受害人 性別	受害人年 齡	受害人 職業	受害人与 犯事者關係	會議 地點
1	普通傷人	001	1	男	14	學生	4	女	14	學生	同學	學校
								女	14	學生	同學	
								女	14	學生	同學	
2	企圖偷竊	002	2	男	17	學生	1	公司	/	東主	無	警署
		003		男	17	無業					無	
3	偷竊	004	2	女	14	學生	1	公司	/	東主	無	警署
		005		女	14	學生						
4	普通毆打	006	4	男	13	學生	1	男	13	學生	同學	警署
		007		男	13	學生						
		008		男	13	學生						
		009		男	13	學生						
5	偷單車	010	2	男	12	學生	1	男	13	學生	同學	警署
		011		男	12	學生						
6	偷竊	012	1	女	15	學生	1	公司	/	東主	無	警署
7	偷竊	013	1	女	15	學生	1	公司	/	東主	無	不適合
8	偷竊	014	1	女	15	學生	1	公司	/	東主	無	警署
9	偷竊	015	2	女	14	學生	1	公司	/	東主	無	警署
		016		女	14	學生						
10	偷竊	017	1	男	13	學生	1	公司	/	東主	無	警署
11	偷竊	018	1	女	14	學生	1	公司	/	東主	無	取消
12	偷竊	019	1	女	14	學生	1	公司	/	東主	無	取消
13	偷竊	020	1	女	14	學生	1	公司	/	東主	無	警署
14	偷竊	021	1	女	16	學生	1	公司	/	東主	無	警署
15	偷竊	022	1	女	13	學生	1	公司	/	東主	無	警署
16	偷竊	023	2	男	14	學生	1	公司	/	東主	無	警署
		024		男	14	學生						
17	偷竊	025	1	男	11	學生	1	公司	/	東主	無	警署
18	偷竊	026	1	男	12	學生	1	女	30+	家庭主婦	無	不適合
19	行劫	027	1	女	14	學生	4	女	10	學生	無	警署
								女	10	學生	無	
								女	10	學生	無	
								女	10	學生	無	
20	浪費警力	028	1	女	10	學生	1	政府	/	警方	無	警署
21	偷竊	029	1	女	15	學生	1	公司	/	東主	無	警署
22	普通傷人	030	2	女	14	學生	2	女	10	學生	無	警署
		031		女	10	學生		女	10	學生	無	
23	偷竊	032	1	男	11	學生	1	公司	/	東主	無	警署
24	偷竊	033	1	男	13	學生	1	公司	/	東主	無	警署
25	偷竊	034	1	男	11	學生	1	公司	/	東主	無	警署
26	普通傷人	035	1	女	15	學生	1	男	15	學生	無	警署

香港青年協會
就特區立法會「青少年司法制度小組委員會」
對《用檢控以外的措施處理頑劣兒童和少年》顧問研究報告
進行諮詢之回應

1. 引言

- 1.1 香港青年協會（下簡稱「青協」）一向關注青少年犯罪問題及其處理方法和取向。青協於一九九三、九六及九八年先後就「青少年犯罪的非刑事化處理」、「被提控青少年在司法過程中的經歷」，以及「香港刑事責任年齡」三項專題進行研究。
- 1.2 青協歡迎及支持當局在落實提升本港刑責年齡（由 7 歲提高至 10 歲）之同時，積極研究「用檢控以外的措施去處理頑劣兒童和少年」。青協亦認為，這是切合國際社會對保護兒童的發展趨勢，同時符合大多數社會人士支持少年犯事者改過自新的取態。

2. 處理頑劣兒童和青少年的基本原則

- 2.1 青協認同政府設立非刑事化機制，處理犯事青少年及未達最低刑責年齡的犯事兒童，免除兒童及青少年面對不必要的檢控或司法等程序，以致對其身心造成損害。
- 2.2 青協同意政府及社會大眾，包括執法與司法部門、有關之社會服務機構、教育工作者、地區人士及家長等，必須、並有責任輔助每一位犯事兒童及青少年改過自新，對他們給予最大的接納和關懷。
- 2.3 青協認同，所有處理涉及犯事兒童及青少年的司法制度和檢控以外的措施，必須照顧成長中青少年的社會心理特點，並在各執行環節中，獲得充份體現和貫徹。
- 2.4 犯事兒童、青少年及其家庭的復康跟進工作，往往涉及多個不同專業服務系統間之協作；因此青協認為在中央政策、服務協調及前線工作配合等各個層面，均需要有明確的協調機制和專責的工作隊伍，進行檢視、執行和管理有關為犯事兒童、青少年及其家庭提供之復康跟進及輔導計劃。

3. 就顧問研究報告的回應

青協就《用檢控以外的措施處理頑劣兒童和少年》顧問研究報告（下簡稱「顧問研究報告」），希望提出三點回應，包括有關：1. 服務的提供方面（Service Delivery）；2. 服務供應者方面（Service Provider）；以及 3. 針對未達最低刑責年齡的犯事兒童（10 歲以下）的措施。

3.1 服務的提供方面（Service Delivery）

青協認為有關之顧問研究報告，內容全訴諸海外國家經驗，欠缺對香港既有相關經驗之探討；對香港處理犯事兒童及青少年之本土特色，亦未有詳加分析。其所作出之有關建議，與香港現有相關服務系統之間的銜接存有缺口，並欠缺清晰明確的協調機制。

根據青協多年來輔導青少年的經驗，青少年及其家長在前者因犯事而被執法人員拘捕時，將處於極度困擾、迷惘和渴望支援的危機狀態。如果在他們這時候得到適切的輔導服務，包括協助犯事青少年及其家長處理情緒上之困擾，以及讓他們了解處理事件的程序，紓緩他們面對事件的壓力，則將有較大機會在家人的支持和合作下，共同協助犯事的青少年改過自新，同時亦讓家長增強日後管教其子女的能力和動機。

有鑑於此，青協建議在犯事青少年被拘捕和帶進警署的一刻開始，便應有專責的社會服務單位提供「危機介入」的輔導服務，並就「家庭支援會議」的需要作出評估。在確立「家庭支援會議」的需要時，有關單位亦須協助聯繫各有關人士、部門和社會服務機構，共同參與「家庭支援會議」，以及為「家庭支援會議」提供足夠的後勤支援。

對於安排犯事兒童參與選定的綜合青少年服務中心和「青少年 / 兒童自強計劃」，青協並無異議。然而，為確保轉介服務的有效性，我們認為先要由專責機構之社工處理好上述的危機輔導，並且由有關的綜合青少年服務中心參與「家庭支援會議」，協助制訂有關青少年或兒童的福利計劃（Welfare Plan），以及相關的支援服務；在處理過程中，更要力求減免標籤的效應（Labelling Effect）。

3.2 服務供應者方面 (Service Provider)

為進一步照顧年輕犯事者的服務需要，並盡力協助他們改過自新，青協認為政府應成立專責工作單位，為所有犯事而被警方接觸的 18 歲以下青少年，提供「危機介入」的評估和跟進。而這些專責單位內的專業社會工作者，必須對有關刑事、法律及青少年輔導方面，具備較深入和專門的知識與技能。此外，負責提供「青少年 / 兒童自強計劃」的前線社會工作者，就有關評估和輔導曾犯事青少年和兒童的專業知識及技巧訓練，亦需要進一步加強，以提高有關服務的成效。

另一方面，青協認為負責處理少年犯事者的前線警務人員，在處理 10 歲以下的兒童及少年時，應多從輔導及照顧之角度出發，以貫徹協助他們改過自新的精神。

3.3 針對未達最低刑責年齡的犯事兒童（10 歲以下）的措施

青協同意政府以非刑事化機制，處理犯事兒童及未達最低刑責年齡的犯事青少年，同時亦認同有關的輔導服務，應由家長及有關青少年自願參與。青協認為，在保障兒童健康成長的前提下，當家長及其支援網絡不足以有效監管或健康地培育有關兒童時，有關的警務人員或社會工作者必須善用保護令，以期讓有關家長及兒童得到最適切的服務及跟進。在有需要時，才向法庭建議強制召開「家庭支援會議」和提供其他支援服務。

4. 結語

總括而言，香港青年協會對採用檢控以外的措施，處理頑劣兒童和少年的方向和原則表示贊同。這一方面符合國際發展趨勢，是社會進步的體現；另方面亦貫徹社會致力協助年輕犯事者改過自新的原則。然而，我們強調在執行的層面上，特別在個案轉介的有效性、及早進行危機介入，以至各專業人員間的清晰分工與協調等，必須作出充份配合，方可發揮理想的效益。此外，有關的專業人士如前線警務人員及社會工作者，亦須加強相關專門知識與技能的裝備；而在協助有關年輕犯事者及其家長的過程中，更應以鼓勵自願參與勝於強制執行。

二零零四年一月十二日



有關「用檢控以外的措施處理頑劣兒童和少年」意見書

2004/1/14

本會收到《用檢控以外的措施處理頑劣兒童和少年顧問研究報告》後，諮詢轄下有
關青少年輔導服務單位就香港檢討少年司法制度改革方面，有下列意見。

警方在現時處理未被檢控的違法青少年時，可選擇的措施非常有限，最主要的仍是
警司警誡令，而提供跟進輔導服務的則為同屬警務人員的「保護青少年組」，以及由
非政府機構負責的「社區支援服務計劃」。

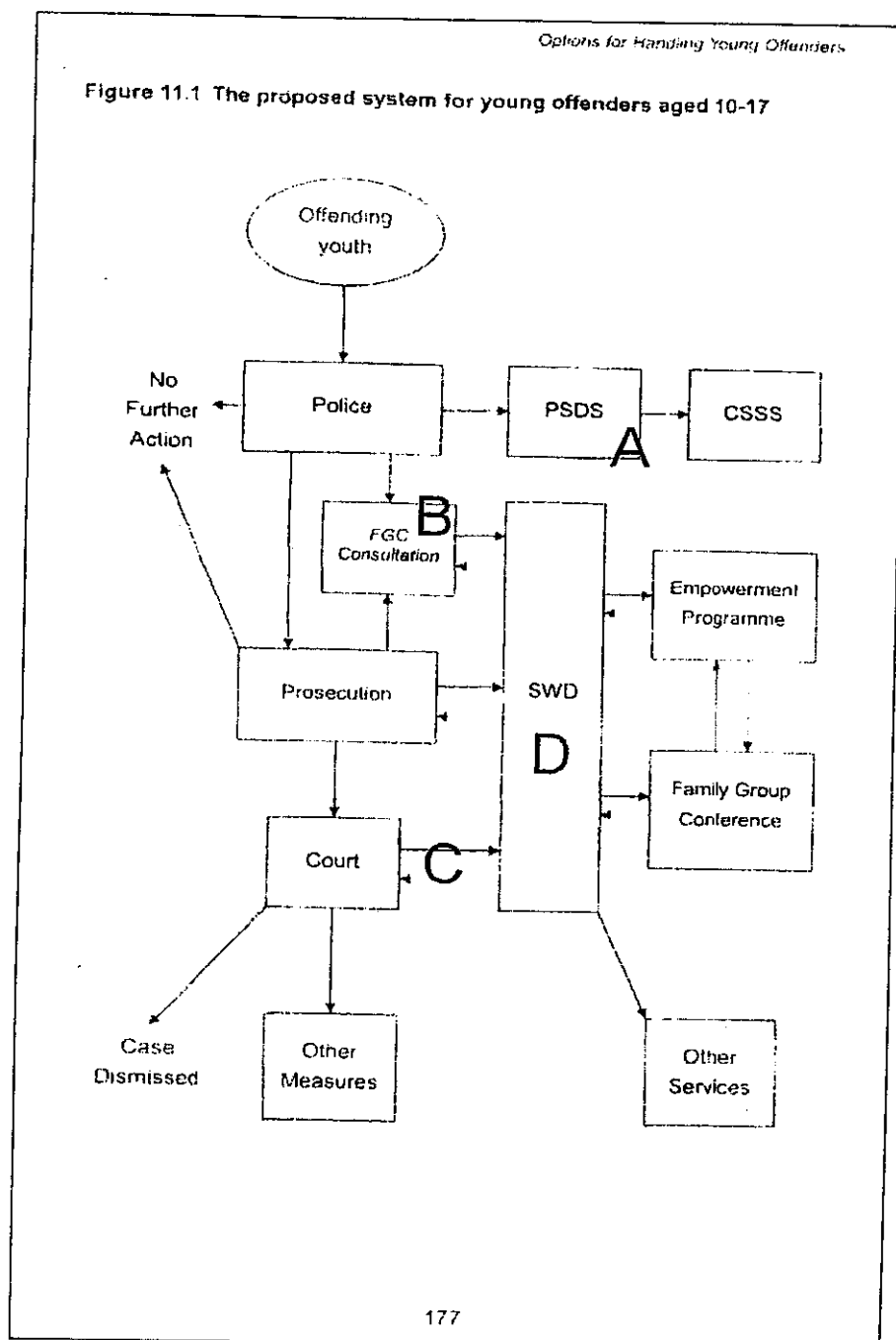
然而，此項警誡令並未具有法定約束力，被警誡的青少年對於可以拒絕安排接受跟
進輔導服務；縱使他們當時同意，日後若失約、失去聯絡、不參與任何活動及訓練，
甚至先同意、後拒絕服務，仍毋須負上任何責任。在這種情況下，部份被警誡青少
年未能從跟進輔導服務中學習、反省，更不懂得珍惜是次不被檢控的機會，甚至屢
次違法。

本會完全同意當局應全面檢討少年司法制度，以確保尚有檢控以外的其他有效方
法，既足以保障社會治安，又可防止誤入歧途的青少年淪為慣犯。

從本會輔導邊緣青少年的工作經驗所得，過早使青少年負上刑事責任，會構成標籤
作用，促使該青少年慢慢泥足深陷，增加將來再犯更嚴重罪案的機會；而沒有過早
進入司法制度的青少年則較為容易拋開不良習慣，重投正軌。

與此同時，有關方面亦需避免讓此項改革被青少年濫用、或被不法分子利用，從而
使違法青少年避免責任，於犯錯後變本加厲，使其犯罪行為更有恃無恐。因此，在
提供改過自新機會及承擔刑事責任方面應作出謹慎、平衡的考慮。

就《用檢控以外的措施處理頑劣兒童和少年顧問研究報告》177頁中對年屆10歲至18歲以下的違法少年的建議方面，本會有下列A至D項意見。



新建議方案中，警方在整個決定如何處理違法青少年的過程當中，仍然擔當着重要的角色，警方可選擇

- (i) 不作任何行動；
- (ii) 警司警誡；
- (iii) 檢控；
- (iv) 「檢控以外的其他措施」MAP。

A 爲了使青少年珍惜警司警誡所給予的機會，本會建議警方可根據內部指引考慮給予初次犯案、案件性質較輕微的違法青少年警司警誡令。如違法青少年已經曾接受過警司警誡令，警方應考慮運用「檢控以外的其他措施」或檢控。

B 本會建議下列違法青少年均適合運用「檢控以外的其他措施」以取代檢控：

- (i) 並非首次犯案，而且已經接受過警司警誡令；
- (ii) 所犯案件涉及明顯的受害人，以及有金錢、或人身傷害。

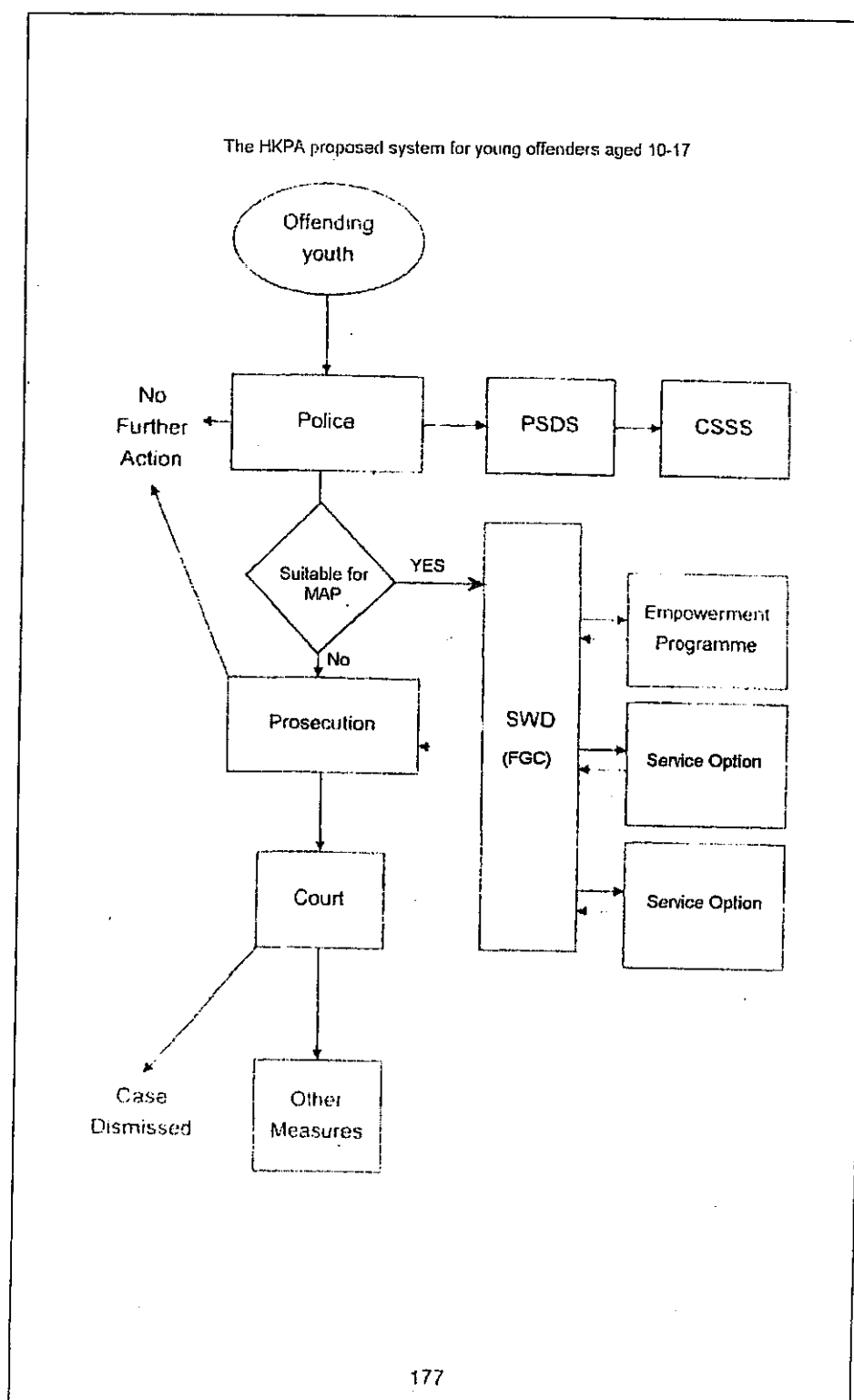
警方在考慮運用「檢控以外的其他措施」以取代檢控時，可徵詢地區社會福利署之意見。如有關青少年未能出席或完成在家庭小組會議(Family Group Conference, FGC)內協議的任務，社會福利署可以將該名青少年帶回警方，繼續進行檢控。

C 《顧問研究報告》建議青少年於判刑前仍可有機會接受「檢控以外的措施」以取代判刑。本會認為有關措施容易引致青少年誤解，無論檢控與否，都只是運用「檢控以外的措施」對待青少年，直接影響檢控及法庭的阻嚇性。因此，如有關青少年於較早前已接受「檢控以外的措施」以取代檢控，最後卻因不能完成有關措施安排之任務而最終被檢控的話，法庭於判刑前不應再次運用「檢控以外的措施」以取代判刑。

我們相信，如有關青少年真正希望改過自新，「警司警誡令」及「檢控以外的措施」等安排，已經提供充份的自新機會；過多機會可能反被犯罪分子或少數屢勸不改的青少年濫用。

D 社會福利署從警方接獲青少年接受「檢控以外的措施」後，應為每一位青少年召開家庭小組會議(FGC)或家庭支援會議讓青少年、父母/監護人、與青少年福利有關的人仕，共同商議有助該名青少年改過、成長的一切安排，包括有規定時限的訓練活動。如有需要，更會邀請案件中的受害人/其家長出席，參與復和工作。而有關措施，例如自強計劃及其他服務等，可考慮動員現有青少年服務提供，至於實際措施內容可留待業界詳細商討，提供最有效的培訓。

綜合以上意見，本會對年屆 10 歲至 18 歲以下的違法少年的建議如下圖所示：



—完—

香港遊樂場協會及其轄下有關青少年輔導服務單位：

「新境界」社區支援服務計劃(東九龍區)
油尖旺區青少年外展社會工作隊
油尖旺深宵外展社會工作服務
葵青區深宵外展社會工作服務
慈雲山／瓊富青少年綜合服務
賽馬會上葵涌青少年綜合服務
北角青少年綜合服務
竹園青少年綜合服務
旺角青少年綜合服務
青衣青少年綜合服務
理想校園支援計劃
非常學堂

聯絡及查詢

香港遊樂場協會
聯絡人：溫立文先生
職務：社會工作主任(策略及發展)
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香港兒童權利委員會

回應

用檢控以外措施處理頑劣兒童和青少年顧問研究報告

1. 本會支持研究報告建議青少年司法制度由懲罰和懲處，以及純福利模式，改為著重以復和司法和融入社會的模式處理。我們相信懲罰並不能阻止他們犯案或改變他們的頑劣行為，相反只會增加他們對社會的敵視。但經過復康的過程，犯事者停止頑劣行為的機會或許會較高。
2. 在復和的措施之中應該設立一個轉介制度。犯事者為其行為負責並對受害者彌補所造成的傷害。犯事者的家庭成員參與整個過程是必須的，家庭成員介定為犯事者的父母、兄弟姊妹，及與他/她有密切關係的親屬等。他們的參與對犯事者態度的改變有著重大影響。以上所述皆為事後的補救方法，更多的預防性措施才是我們渴望看到的，例如家長教育。
3. 受害者參與復和計劃是十分重要的，但並不應強制執行。應鼓勵受害人參與過程，使他/她有機會講出及處理被傷害後的感受和看法，並忘記或原諒犯事者對他/她所作的行為。輔導服務在這種情況下是必須的。他□她的參與不一定要面對面接觸犯事者（他□她可能害怕或極憎恨再見犯事者，又或者因為再見犯事者而感到十分沮喪），應該以一些較有創意的方式讓雙方面接觸，如透過書信、圖畫、錄音帶、錄影帶或視像會議等等。
4. 有關設立直接的專業支援服務，政府在立法會 CB(2)735/03-04(01)號文件(10a)內提到的初步回應，指警方現時已向可接觸到的頑劣兒童和他們的父母提供資料單張，本會認為此舉並不足夠。資料可透過網頁，舉辦一些由警方或校本的專業人士主持的講座，或家校合作的活動等等更有效。這些資料和資源的對象不單只是犯事者，對學生及家長亦然，因為這些資料和資源的主要目的是知識性和預防性的。
- 5.1 本會支持顧問報告內提出在警務處和社會福利署之間設立轉介機制，將

頑劣兒童在取得父母的同意後轉介至一些現已提供不同青少年服務的機構。一站式服務機制是要確保頑劣兒童得到適當的跟進輔導，以防止再犯錯誤，作出違法或對抗社會的行為。本會並不贊同政府在立法會 CB(2)735/03-04(01) 號文件(9)內提到的初步回應，暗示不值得向未屆刑事責任最低年齡的小眾推出新支援服務，新制度是要保證頑劣兒童得到適當的指引和教導，否則為時已晚。

5.2 對於文件中同段內提到「警務處如針對未屆刑事責任最低年齡的兒童所犯的錯誤行為推行或安排任何正式計劃，可能會遭批評為將刑事責任年齡降至 10 歲以下」，本會作出保留。相反，警方採取被動的態度可能會給那些頑劣兒童發出一個錯誤的訊息：只要他們未屆刑事責任年齡，即使犯法警方也無能為力。如警方就此讓那些頑劣兒童離開警署，無論對社會或兒童本身都會造成危險和傷害，這一點已有很多的前線青少年工作者重複地強調過。我們明白警方對沒有牽涉檢控性質的個案要小心處理，但一個良好的轉介機制，無論對兒童的利益或社會的福祉，都是最負責任的行動。

香港兒童權利委員會

二〇〇四年一月十四日

HONG KONG COMMITTEE ON CHILDREN'S RIGHTS
RESPONDING TO THE CONSULTANCY REPORT
ON
MEASURES ALTERNATIVE TO PROSECUTION FOR UNRULY
CHILDREN AND YOUNG PERSONS

1. The Committee supports the Consultancy Report's stance to shift from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices. We believe that the punitive approach would not stop the offenders from committing offences or correct their unruly behaviour. Instead it would heighten their hostility to the society. But through experiencing a reflective, rehabilitative process the chance of the offenders stopping the unruly behaviours may be higher.
2. Restorative practices should be made through a built in referral system. The offenders would take responsibility for repairing harm done to the victims. The family members of the offenders should go through the process with the offenders. The family members are defined as the parents of the offender and significant family member(s) such as the sibling(s) or the kin that have close relationship with the offender. They are influential in helping the victims to change their behaviours. As the above-mentioned is remedial, we wish to see more preventive measures being promoted, such as parent education.
3. Involvement of the victim in the restorative process is important. However, that should not be made compulsory. The victim should be encouraged to take part in the process, so that he/she has a chance to deal with his/her feelings resulting from what has been done to him/her, and to forget and forgive the offender. Counselling services are a necessity in such circumstances. But the victim's involvement does not necessarily mean a face-to-face contact with the offender (he/she may be afraid of seeing the offender again or be too upset and angry), there should be other creative ways suggested for bridging between the two parties, such as letter, picture, cassette tape, videotape, or televised conferences.
4. Regarding enhancement of the accessibility of professional support services in the Administration's Initial Response (10a) of the LC Paper

No.CB(2)735/03-04(01), providing information leaflets on youth services whenever these unruly children and their parents come to police attention is not enough. Information posted on the internet, seminars by police and school-based professionals and home-school collaborative activities are more effective means. This information and these resources are useful not only for those who have committed the offence, but also for students and their parents in general. The purpose is informative and preventative.

5.1 The Committee supports the Consultancy Report's suggestion of establishing a built-in mechanism between Police and the Social Welfare Department for a centralized referral to youth services for unruly children, with parental consent. These services could be provided by various already available agencies. But the one-stop mechanism would ensure that these unruly children are followed up properly, with the aim of reducing further offending and anti-social behaviour. We do not agree with the Administration's Initial Response (9) to the LC Paper No.CB(2)735/03-04(01) implying the introduction of new support services to deal with a small group of unruly young children is not worthwhile. The mechanism would ensure that unruly young children get appropriate guidance and training before it is too late.

5.2 We also have a reservation in regard to the Administration's Initial Response in the same paragraph. This states that any formalized programmes initiated and arranged by the Police that are specifically targeted at the wrongful acts by children under the age of 10 may be criticized as tantamount to lowering the age of criminal responsibility. Instead, the passive manner adopted by the police sends a wrong message to unruly children that the police are powerless until they have reached the age of 10. Sending them away from the police station is also dangerous and harmful both to society and to the children themselves. This point has been emphasized repeatedly by many frontline youth workers. While we understand the police concern that they must act cautiously in relation to cases where there is no prosecution, we believe that a built-in referral system is in the best interests of the child, as well as a responsible move as the part of society as a whole.

Prepared by : Hong Kong Committee on Children's Rights

Date : 14 January 2004

**Submission by the Hong Kong Bar Association
to Subcommittee on Juvenile Justice System**

**Consultancy Report on Measures Alternatives to Prosecution
For Handling Unruly Children and Young Persons**

Background

1. The “Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Oversea Experiences and Options for Hong Kong” (the Consultancy Report) commissioned by the Administration had its genesis in the decision to increase the criminal age of responsibility to 10 years. It was considered that there may be the need for the diversification of treatment of unruly children (under 10) and young offenders (over 10 but below 17) from courts. As a result, measures taken in 6 countries including Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand were considered.

Main Reasons for the Consultancy Report

2. There are a number of reasons which the Administration considers to be important in commissioning the Consultancy Report:
 - (1) Recent and ongoing development in the philosophy and practice of youth justice throughout the world in shifting from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices – involving offenders taking responsibility for offending, repairing harm, reintegrating offenders, victims and the communities; and the empowerment of all those affected by what has happened, including the offenders, families, victims and the communities.
 - (2) There are fewer options responding to the needs of victims and for ensuring that young offenders are encouraged to repair the harm they have caused.
 - (3) Restorative processes have benefits for victims, families and children as well as efficiency and costs saving in the justice system is evidenced.
 - (4) Diversionary options were effective in reducing re-offending.

Recommendations by the Consultancy Report

3. The Consultancy Report recommends the following 6 main options:

For unruly children under 10 years old:

- (1) Police Child Support Service
- (2) Family Support Conference

- (3) Empowerment Programme (for Unruly Children)
- (4) Community Alternative to Institutional Placements

For young persons aged 10-17 years old:

- (5) Family Group Conference
- (6) Empowerment Programme (for Young Offenders)

View

- 4. The Bar takes the view that the idea and recommendations as enshrined in the Consultancy Report as to the measures in diversifying unruly children and/or young person from prosecution (summarized herein in paragraphs 1 & 2) should be warmly welcomed.
- 5. However, the recommendations contained in the Consultancy Report will have wide implications for the juvenile justice system in Hong Kong as a whole and thus have an impact on the administration of justice in our society.
- 6. Therefore, the Bar takes the view that recommendation(s) should not be implemented on a piece-meal basis. Instead there should be a study to consider a structured implementation to ensure that there would have been full discussion and assessment before any or all of the option(s) is put into operation by way of legislation.
- 7. The Bar notes that the Administration has set up an interdepartmental working group comprising representatives from Security Bureau, Social Welfare Department, the Police and Department of Justice to consider how to take the other recommendations forward, the Bar has so far not received any information regarding the progress of the deliberations of the working group.
- 8. The Bar considers that the success of the options/scheme involves inter-disciplinary collaboration and would depend on sufficient training and resources be provided to all personnel involved e.g. police, SWD officers and it is therefore of paramount importance that the Administration would have to provide sufficient resources, support and training to the appropriate department(s) and/or personnel and/or profession.

On the recommendations in the Consultancy Report

Unruly Children

- 9. The Bar notes that the Consultancy Report recommends that for unruly children under 10 years, Child Support Services by the Police be developed for responding to the needs identified when offending of children occurs. However, the Administration has not been seen to have taking any initiative in implementing any pilot scheme in this regard, nor has any reason been given as to the absence of such an initiative.

10. Whilst the Bar notes that the number of offenders below 10 years is 142 in 1998, which is a small group and who commit relatively minor offences (82% of them were involved in shop theft or snatching)[p.146 para. 10.2 of the Report], the number of unruly children is not insignificant. The Bar considers that there are therefore good reasons to ensure that their needs are being taken care of.

Young Offenders

11. The Bar notes that only the option of Family Group Conference is put in place in the form of a pilot scheme starting from October 2003 by the Administration. Under the scheme, Family Conferences are conducted for those who was cautioned under the Police Superintendent Discretion Scheme (PSDS),
12. However, the Bar is concerned that since the scheme is operated on a voluntary basis with final decision by SWD, and there appears no indication from the Administration as to the objective criteria to be applied by the SWD in making such decision. The Bar considers and recommends that there should be clear guidelines by the SWD for such a purpose. Further, the Bar considers that sufficient resources and training are vital and will have to be provided by the Administration.
13. At the same time, whilst the implementation of the pilot scheme is welcomed, the Bar has to point out that the scheme has to be carefully monitored and managed so that data and information can be provided to the Sub-committee for consideration. The Bar further recommends that regular progress report(s) of the pilot scheme should be submitted to the Sub-committee at fixed interval.
14. As the pilot scheme has only been implemented since October 2003 and there is so far no information or data provided to the Bar, it would be premature at this stage to make any responsible comment on the pilot scheme.

Dated this 19th January 2004

附件 K

Annex K

**Hong Kong Bar Association's comments on
Subcommittee on Juvenile Justice System:
Consultancy Report on Measures Alternative to Prosecution for
Handling Unruly Children and Young Persons**

1. The Hong Kong Bar Association ("HKBA") has considered the Administration's Response to the Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons ("the Consultancy Report").
2. The HKBA recalls its earlier views that the recommendations contained in the Consultancy Report will have wide implications for the juvenile justice system in Hong Kong as a whole and thus have an impact on the administration of justice in our society; and that they should not be implemented on a piece-meal basis. Instead there should be a study to consider a structured implementation.
3. The HKBA welcomes the Administration's proposal to introduce enhanced measures to strengthen publicly-funded support to unruly children and young offenders to help prevent them from developing behavioural problems again or re-offending. The HKBA agrees with the proposals to extend the existing support services to unruly children under 10 and to sanction references by the police of cases of unruly children under 10 to the Social Welfare Department for follow-up in the absence of parental consent.
4. The HKBA notes that the Sub-committee is in favour of the introduction of a "new juvenile justice system". The Administration's response is to emphasize the existing alternatives to prosecution (such as the Police Superintendent Discretion Scheme and the pilot Family Conference scheme) and to review the effectiveness of the pilot Family Conference scheme before deciding the way forward in consultation with the Department of Justice and the Judiciary.

5. The HKBA considers that the present juvenile justice system has incorporated a significant degree of flexibility. Changes to it should not be lightly contemplated. That said, it is important to consider from time to time whether the present juvenile justice system can be improved.
6. With respect to any proposed improvements, the HKBA's primary areas of concern are the impact of any new system or measure on the rights of the accused person, the rights of the accused person's family and the rights of the victim and on the proper observance of due process. At present, however, there do not appear to be any concrete proposals on the table for comment. Given the primary focus of the HKBA's interest in this matter, only when there are concrete proposals on the table would the HKBA consider that it can make a real contribution to the development of the juvenile justice system of the HKSAR. The HKBA would like to be kept informed of any timetable and details of such proposed improvements so that timely comments can be provided.

Dated 13th May 2004.

Hong Kong Bar Association

防止虐待兒童會
回應
青少年司法制度小組委員會
用檢控以外措施處理頑劣兒童和少年顧問研究報告

引言

一直以來，本會遵照兒童權利公約的精神，認為十八歲以下的人士在生存、發展、保護和參與方面的權利，必須獲得整個社會各方的尊重和維護。而在刑責方面，本會一直倡議把最低刑責年齡訂為十四歲，把保護兒童的原則衡切化，與其他法例背後精神一致化。

必須強調，本會對兒童違規的行為絕不縱容，亦反對姑息。犯事的兒童必須獲得悉心誘導、正視行為的惡果、肩負自己的責任。

不過，本會認為目前刑事檢控的過程和後果，為兒童帶來不必要的壓力和傷害，有的甚致影響深遠。在可以避免的情況下，以檢控以外的措施處理更符合公約的精神，把兒童的利益優先考慮。所以，本會認為香港必須馬上訂立檢控以外的政策和措施，有效處理誤入歧途的兒童和少年。就以上研究報告，本會有以下的意見：

1. 把兒童界訂為「頑劣」有標籤之嫌，這類兒童誤入歧途，但本質未必頑劣。本會建議用誤入歧途或無標籤意識的辭彙取代「頑劣」一辭。
2. 本會認同復和司法融入社會的處理模式，而懲罰和懲處的模式消極而欠徹底，而且治標不治本。福利的模式也只會使犯事者以為被容忍。不但鼓勵倚靠性的行為，也容易容忍再犯。相反地，復和司法和融入社會的處理模式，透徹地幫助犯事者及受害人：

了解偏差行為的成因對受害人及社會的影響。
使犯事者正視事件，面對受害者和自己的責任，並彌補損害，強化有關人士以防止再犯同樣錯誤，是更積極徹底的處理模式。
3. 本會認為使家庭參與，使犯事者甚至受害者參與在事件的處理和決策中這個方向是正確的
 - 3.1 政府在初步回應中提到未知有關的家庭和受害人是否願意參與其中。
 - 3.2 本會認為正因為有關的家庭和受害人在事件的了解和審議中扮演十分重要的角色，他們的參與對擬訂有效處理方案和跟進有重大影響。
 - 3.3 亦正因為此，本會支持強制性的法例，取代現有自願參與的安排。規定犯事者及其家人參與指定的計劃。至於受害人可能只可鼓勵參與，但如較明確界定參與，不單指“面對面使犯事者進行復和行動”，（因受害人可能不想見犯事者，或怕、極憎他/她），而有促使復和的其他方法則可接

- 3.4 因為有關家庭及受害人，往往由於事件引致傷痛、敏感性或恐懼而傾向置身度外，或不了了之，故此往往對已發生的事件未能公正處理，使犯事者有機可乘，有恃無恐。
- 3.5 再者如果在適當的支援下，受害人參與在面對犯事人及事件和處理中，對受害人的康復亦可能有更正面的影響。因為在悉心輔導下，受害人能講出對犯事人及其行為看法，避免把感受和看法藏在心中而引致的鬱結。
- 3.6 不過在整個強制性的參與過程中，輔導支援的工作人員，無論是警方、社工或心理學家，都扮演極重要的角色，他們的嚴格挑選和悉心培訓往往決定個案處理的成敗。當事人有效的參與和康復都有賴這些有經驗而機靈的專業人士悉心引導，以人性化和敏銳方法處理。
4. 本會認為顧問研究報告的建議，比政府初步回應中提及的方案更徹底和更仔細，因此值得支持。
- 4.1 而顧問報告中(a)警方的兒童支援服務亦值得支持。雖然支援的警方由於法例規定刑責最低年齡而無權提出檢控，但一方面仍可扮演阻嚇的角色，比社工或心理學家的形象更具權威性，亦較有效地使犯事者正視行為引致的後果。亦由於法律規定不合作者，警方可考慮申請發出保護令，而獲得家人協助監管子女及子女實際參與避免再犯的機會亦相應提高。
- 4.2 不過，本會認為警方在處理此類問題中的權力不宜過大，免得使市民憂慮警權濫用。
- 4.3 正如上文所提及，警方在執行這方面工作上，必須審慎徹底，不宜表面化和形式化，口頭警告和機械化處理後草草了事。單使犯事者向受害人道歉，有時流於表面化，真正悔改和心存歉意，往往需要經過輔導的過程，使有關人等深入反思，過中需要適當的技巧和知識。
- 4.4 本會建議這新成立的警方兒童支援服務並考慮應為警方兒童政策組監管及督導。
- 4.5 報告建議多是事後補救辦法，預防性的如家長教育，透過網頁、家校合作活動、警校（學校和警方）活動去提供資訊和德育指引也是重要的。
- 政府的初步回應中 10(a)提供資料單張．．．
並不足夠，這些家庭及兒童需要面對面較直接和深入的接觸，及適當的推動和提醒方才會採取進一步的行動。可以在網上提供資訊及可考慮學校/教師/訓導主任之參與及合作（例如透過警方和學校合辦講座給家長及學生，是資料性及預防性，對象不單是頑劣兒童及其家長）。
- 4.6 10(b)提到於十月一日起已採取轉介的行動。本會希望政府提供轉介個案的數字、提供的機構和提供服務的類別。
而其他非警方機構是否可以直接作出轉介，一方面把有關家庭第一時間轉介給有關部門！

- 4.7 11(b)提到已進行家庭會議，請政府提供個案數字，而在這些會議中有關的成員及出席率是否理想？
在這個做法中，不願參與的兒童及家庭，警方會否考慮以保護令方式監管？
- 4.8 本會對 12(b)(c)(d)等安排十分歡迎，亦深信在不同崗位必須分擔保護兒童的責任，故此對不同崗位員工這方面的培訓必須加強，只靠一次半次會報會並不足夠。
- 4.9 12(e)未有針對性，社工要肩顧各類家庭的需要和特色。誤入歧途的少年及家庭必須獲得足夠及深入關注和跟進，才能避免問題深化或者惡化。顧問報告建議以指定的中心或機構專門跟進的方法十分可取，亦相信較能引致成效。
- 4.10 12(f)少年警訊的服務為青少年帶來參與和教育的機會，相當值得欣賞和繼續。
不過，少年警訊過往接觸的邊緣青少年人為數多少？成效又如何？則較難估計。
本會以為該系列的活動預防性較深，而針對有危機的、無動機的誤入歧途者則較多困難，他們參與的障礙較多，而參與的動機薄弱，必須配合法例和行政方法，家長教育全面進行。
- 4.11 12(h)提到寄養服務
本會的經驗顯示為行為偏差的兒童提供寄養服務的家庭需要小心的支援。他們會面對各樣困難和磨擦，故此要轉換寄養家庭的次數也提高，對這類兒童的康復和融和出現問題，有關當局必須正視。

5. 總結

最後，本會認為要避免社會爭議，最重要的是市民的充權和參與。在處理這類問題上，市民需要深入了解社會、家長、政府的立場和政策，有責任去尊重並維護每一位兒童在生存、發展、保護及參與方面的權利。當然，包括誤入歧途的兒童，使他們在年輕性格並不成熟的階段，要因行為的偏差而面對嚴謹的司法制度及犯事而引致的記錄是過重的懲罰。再者，未必會使他們改過而使社會得益，何況認為被社會早早定罪和放棄的會變本加厲、一錯再錯、遺害社會、誤己誤人！

本會基於以上論據，支持復和司法，融入社會的處理模式。呼籲整個社會參與落實兒童公約的精神，在法例、行政守則，教育和服務方面而作出深入配合，使犯事的兒童、受害的人士和有關家庭在整個問題的處理過程中適當參與，在社會悉心誘導和支援下承擔自己的責任，重獲新生的機會！

防止虐待兒童會總幹事
雷張慎佳女士撰寫
二〇〇四年一月十二日

To: Mrs Percy Ma

Clerk to Subcommittee on Juvenile Justice System

Legislative Council Secretariat

From: The Chinese Rhenish Church Hong Kong Synod

(中華基督教禮禮賢會香港區會)

**Comment and suggestions on the consultancy report on Measures
Alternative to prosecution for handling unruly children and young
person**

Views on the consultancy report

Overall

1. We strongly agree that the Government and the Criminal Justice System (CJS) take a restorative and integrative practice to handle the unruly children and young person.
2. In our daily experience, we witness the phenomena that the children and the young person though attempting to break the rules and norms, many of them were the victims in social senses. They need the social support and regulation from the helping professionals to foster their development on becoming a responsible person in the society. Thus, to target on the unruly children and young person individually or punish them for all is getting to prove ineffective in one sense and expensive for the deterrent and punitive approaches in another.
3. Measures alternative to prosecution to divert the young person from going astray should be fully explored and reviewed form time to time. Since ‘Early Detection’ and ‘Early Intervention’ is our progressive social philosophy in HKSAR, such

diversion can reduce the numbers of the young persons to fall into the 'net' of the criminal justice system. This conveys a positive message of the supportive attitude of the government and society on the wrongdoers. It also breaks the hostile cycle of aggravation and prevents young person become re-offensive.

4. According to the philosophy of the 'Reintegrative Shaming', we welcome measures to involve the victims where possible. In our experience to work with juvenile offender, most of them are not fully understood what they have done to other people in the first trial. As they were caught, they fell into the judicial procedures and met other problems in the CJS; it may lead them to focus on other things like their human right, whether they are maltreated by police or other law enforcement agents. This process might teach them to be 'smarter' but is not enough for them to review what they have done and realize the meaning to other related parties especially to the victims. We believe that this is one of the effective steps to handle unruly youngster, as they need to face the victim and have a chance to compensate what they did.
5. We suggest to use the Chinese term “違規兒童” and “違法青少年” instead of “頑劣兒童”. The terms reflect a closer picture as their behaviors violate the rules or the Law.
6. We treasure the sincerity of the government to review the CJS to explore measures alternative to prosecution for handling unruly children and young person. Since this is a very important move for our youngsters, we request the consultation period should be extended three months so that all practitioners and NGO can have a thorough discussion on the direction and details of the proposed alternatives.
7. Since this review affect the young person population, the government should try her best to initiate discussion and arouse public concern on the measures alternative to prosecutions. We suggest that the welfare agencies and the public will be consulted

once the detail or the concrete practice is proposed. And there will be a second round consultation as the details of the measures is operationalized.

8. The full report of Measures Alternative to prosecution for handling unruly children and young person in Chinese and English version should be provided to all the agencies and the public for full range of consultation.
9. With the consideration of the following alternatives, we suggest that the department should consider a flexible and buffer mechanism to provide short term follow up service, say six months, for some difficult cases or the families in need as they have fulfilled the minimal requirement of the measures.

Alternatives

10. In general, we support the four alternatives for handling unruly children and young person under 10 and the two alternatives for handling unruly children and young person from 10-17 mentioned in the report.
11. These alternatives are not mutually exclusive; rather it is considered as kinds of supplementary options to prevent young persons' reoffending behavior.
12. Besides, we would like to mention the following points under each alternative, which may make a big difference in practice.

Police child support service (unruly children under 10)

1. As police as a key main figure to handle children, the skill and knowledge level of the police officers should be polished, supported, monitored and enhanced. Since children are not hard-core criminals, it is not appropriate to use the traditional skill to lobby their cooperation. It would be better if the police officers have received training of child psychology or basic counseling skill or have a sufficient understanding of children to have unruly behavior.
2. On the make up activities for the victims, a second advice of a welfare officer from

SWD or NGO is fruitful to ensure that the 'supportive response' or activities are appropriate and leading to a desirable outcome.

Family support conference (unruly children under 10)

1. Concerning the facilitator, it would be better to state clear the requirement and quality of the social worker, the channel to figure out this person and the flexibility of this arrangement.
2. SWD taking up the role of monitoring the operation should be guided with a clear and well-defined guideline, including general steps of the family support conference. Further, SWD is preferred to monitor the agency to exercise according to the guideline and the administrative event, except the professional area in order to avoid conflict in the follow-up plan and any delay of service due to this reason. SWD also take up the role of coordinator and look after complaint of the service if any.

Empowerment programme (unruly children under 10)

1. It is better to state clear whether only police can refer the unruly children to SWD to receive the empowerment programme.
2. The programme should consider to involve children, who have been cautioned before by police but their behavior have no improvement, we suggest any NGO identify them can refer them to the SWD or the case assessment unit to make an assessment. SWD then coordinate where they can receive training in their nearby area or have a channel to be referred back to Court or Police.

Community alternative to institutional placements

1. The direction to explore alternatives to institutional placements is welcomed.

2. If the placement with kin or foster family is assessed as a good choice, a reasonably allowance should be paid for the family to cater the daily expenses. It would reduce the potential conflict between the child and other members in the family due to economic reason. The subsidy can make reference to the social security standard.
3. Adequate support, including consultation and counseling, should be provided to help the family deal with the unruly children.

Family group conference (unruly children and young person 10 to 17)

1. To launch a family group conference, there should be a manual or guideline, which states clear the role, stage task, principles for practice reference. It should include the steps to ensure the involved parties are ready to meet each other and the conference is working for the benefit of the child.
2. To make sure the agreed tasks are fully explored, the conference should not be fixed on a one-time basis. Besides, for the case of pre-charge diversion, the professional parties should aware to balance the benefit of different parties. The social worker or conference in charge should prevent victims or other parties to destroy the dignity of the unruly young person and help to negotiate reasonable and workable tasks.

Empowerment programme (for young offender).

1. All young offenders should be offered this kind of programme.

~ The End ~

Thank you for your attention!

Neighbourhood Advice-Action Council
Eastern/ Wanchai District Youth Outreaching Social Work Team
Opinions Concerning “MAP for Handling Unruly Children & Young Persons”

Based on our past experience in working with youth-at-risk, we have come up with the following opinions regarding the MAP for young offenders aged 10-17:

1. We basically welcome the introduction of alternative measures for handling young offenders. The availability of choices with social work or therapeutic elements facilitates better tailor-made rehabilitation for them. However, we think that “institutionalization” may not be necessarily ineffective to some very unruly young offenders. The problems facing HK or other countries now may be the lack of package services (such as in-depth counseling during their institutionalized period) side by side with institutionalization. It is a pity that there are not many researches about how “institutionalization” is implemented and the different effects with different package services.
2. So the next point, a very significant point, is that, enough (or even extra because of the possible decrease of cost put in institutionalization) resources must be put in the welfare services provided in MAP. Although at first sight it seems that the programs to be provided for the targets are just what welfare agencies are operating routinely, there must be some tailor-made components; follow-up work in a more intensive manner is needed too. With inadequate resources, any good ideas will turn out to be ineffective or even harmful because such youth may turn out to be left unattended outside institutions.
3. Another crucial point next to the above is monitoring. The current problem of measures like the Police Superintendents’ Discretion Scheme (PSDS), where its initial rationale is good, is the lack of monitoring on the young offenders who are supervised under the scheme. Some of our service-users told us that they have received only several short calls from the police during the PSDS period of one year or more. They could still behave like what they used to be, such as hanging out late in the street with undesirable peers. Without adequate monitoring, not only is MAP not conducive to positive changes on the part of youth, it may even be abused by them or even by the triad society members who would utilize youth for crimes.

4. We suggest therefore that a mandatory, compulsory system be adopted when they are granted MAP. At present, the offending young persons who are subject to PSDS could voluntarily choose whether to join the Community Support Service Scheme (CSSS) or not. Also, even if some have joined it because of mistakenly thinking it as mandatory, they may not have turned up from time to time. So it is recommended to set up a mechanism similar to, say, Community Service Order in benchmarking the number of hours and attendance, and so on.

5. It thus follows that to set up a mechanism of taking them back to the police, prosecution or court is a must when they do not meet the requirements set. This could be equally applied to PSDS since at present there is no such mechanism.

6. Although the concept of victim offender mediation (as introduced in 11.5.3 in the research report) is new to Hong Kong and to the Chinese, and although it should not be a must in MAP, it is considered to be a good direction. In our experience in working with youth-at-risk, similar measures have been tried when working with youth having conflicts with each other and the results are not bad. Perhaps more studies could be made in the near future about the details in trying out this kind of restorative measures.

7. Clear guidelines and regulations should be set up for all parties involved, including the NGOs that provide the services for MAP and the youth subject to MAP. Unclear guidelines and regulations would lead to loopholes and unattended areas.



明愛南區青少年外展社會工作隊
明愛青少年及社區服務

Caritas District Youth Outreaching Social Work Team - Southern
Caritas Youth & Community Service

敬啟者：

有關用檢控以外措施處理違規兒童及違法青少年顧問研究報告之意見

去年立法會通過了將刑事責任最低年齡提升至 10 歲後，同時也接納了我們社福界不少朋友的意見，立刻檢討有關的跟進及配套服務，這實令我們非常欣賞。

去年年底有關的研究報告亦已出版，就著報告及我們對少年犯的跟進情況之觀察，我們有以下之意見：

1. 原則上，我們希望盡量能給予司法者或執法者空間，可以檢控青少年以外有其他選擇，使一些干犯了輕微罪行的無知青少年，有機會從刑事檢控系統中分流出來，予他們一個改過自新的機會。因此，我們同意報告書中讓警方在逮捕初階段、甚致在考慮檢控的過程中，也可把少年犯分流到其他服務，不予檢控。不過我們還希望當少年犯真的被帶到上法庭時，法官也擁有空間將該青少年分流至其他服務，不予檢控，而不是只能把那些配套服務視作其中一種判刑選擇。
2. 我們相信若青少年有參與刑事罪行行為，不論他的年齡在十歲以下或以上，其實也反映了他們的成長可能出現某些情況，需要我們特別予以協助。因此，我們希望當有青少年被捕而沒有被檢控，但警方有理由相信他有參予某些刑事罪行行為時，這青少年便必定可獲得轉介及獲得有關的配套服務。我們不希望錯過任何一個可協助青少年轉危為機、獲得更佳成長條件的契機。
3. 家庭對青少年的成長有著極大的影響力，因此我們建議那些分流或配套服務，家長必須參與。而為確保他們的參與，某些情況下也可考慮以法例強制。

以上之意見，敬請 貴會垂注。如有任何疑問或查詢，請電 2552 0797 與本人聯絡。

此致
立法會秘書處

明愛南區青少年外展社會工作隊隊長
(舊稱：香港仔明愛外展社會工作隊)



陳子陞

2004 年 1 月 30 日



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BY FAX (25099055) AND BY POST

28 January 2004

Mrs. Percy Ma
Clerk to Subcommittee
Legislative Council
Legislative Council Building
8 Jackson Road,
Central, Hong Kong

Dear Mrs. Ma,

Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons

Thank you for your letters dated 20 November and 22 December 2003 to Mr. Patrick Moss, our Secretary General.

The Society's Criminal Law & Procedure Committee has considered the above Consultancy Report. It is noted that the many recommendations put forward in the Report concern social rather than legal policy and as such, the Committee would like to reserve its comments when the relevant legislation shall be introduced.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

P.2

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Chapter 12

Summary of Research Findings and Recommendations

12.1 Introduction

In this report, the research team has considered:

- Measures for responding to juvenile offenders in six selected overseas jurisdictions;
- The effectiveness of these measures;
- The case for introducing new alternatives to the prosecution of unruly children and young people in Hong Kong; and
- Specific proposals for options for Hong Kong.

Finally, this chapter provides a summary of the above research findings and recommendations, and examines the issues of implementation. Key to the success of any innovation is the process through which new measures are introduced and the nature of the structures that are set up to support the new initiatives. Such issues are likely to be particularly relevant with the proposed alternatives as they represent quite a large departure in both philosophy and practice from the past. If new measures are to be trialed and eventually introduced as permanent features of the juvenile justice system, a number of specific questions need to be answered:

- What type of new professionals will need to be recruited and what qualities should they be selected for?
- How will those involved in providing the new services be trained?
- How will the new measures be monitored?
- What standards should be set for practice and reporting?

- How will the new system be financed?
- What body will be given responsibility for developing standards and guidelines and reviewing progress during the early phases of development and implementation?

12.2 Measures Alternative to Prosecution in Selected Overseas Jurisdictions for Responding to Unruly Children and Young People

12.2.1 The Objectives of the Measures

In juvenile justice systems overseas, there has been a move away from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices. Different kinds of intervention models and innovative measures have been adopted to offer adequate legal safeguards for children or encourage them to take responsibility for their offending. Police alternative actions, victim offender mediation, community service and family group conferencing are now being used more widely to respond to offending.

In Canada, Queensland and New Zealand where the legislation is relatively recent, principles are explicitly included in the law which emphasize the protection of children and young people who are investigated in connection with an offence, diversion from Courts, fair and just procedures, making young offenders accountable and responsible, providing opportunities for their development, the inclusion of victims, the strengthening of families and their participation in proceedings, and the relevance of age, maturity and culture. These objects and principles are given effect by the inclusion in legislation of alternatives to prosecution including alternative actions by the Police and the use of Family Group Conferences and/or by the use of Family Group Conferences to aid decision making in the Court.

England has also recently made changes to its legislation and the objects and principles included share many features in common with the other three jurisdictions above. It too emphasizes legal protections, a separation of justice

and welfare, proceedings that are fair and just, opportunities for development and achieving shorter time frames for resolution. It too makes some provisions for victim inclusion and the participation of families through alternative actions and Family Group Conferences. But in England, there is also a more punitive theme with repeat and serious offenders being given fewer chances to change and the option of parents being made responsible by court orders for their children's offending.

Belgium, which currently operates on a primarily welfare model, is currently considering changes to its legislation. Singapore, where law is similar in many respects to Hong Kong, amended its law in 2001. In both these jurisdictions, as well as in Canada, Family Group Conferences are currently being used as an option by the Courts to aid decision making.

12.2.2 *The Effectiveness of the Measures*

A summary of research evidence on the results of moving to more diversionary, participatory and restorative outcomes by using new alternatives to prosecution is set out in Table 12.1. New Zealand, Queensland, Canada and England have all passed new legislation since the late 1980s. All of these jurisdictions have expanded the alternatives available to prosecution. All four have developed restorative options: in particular they have provided for alternative actions by the Police and have included Family Group Conferencing among the alternatives to prosecution or court orders. In both New Zealand and Queensland the systems have been in operation for long enough to show that these systems work well; reoffending can be decreased, victims can benefit from actions that repair harm and all involved in these systems are more satisfied with the outcomes. In Canada, the changes to the legislation are too recent for information to be available on the impact of the changes.

In England, the situation is more complex as the legislation not only made some restorative and diversionary options available but it also increased the number and type of restrictive and punitive options. Furthermore, relatively limited information is yet available on the impact of the variety of measures

Table 12.1 Measures alternative to prosecution in overseas countries

Law Enacted	Jurisdictions/ Measures	Targets	Effectiveness
2001	Singapore		
	Streetwise Programme	13-19	Yes
	Guidance Programme	Under 16	Yes
	Measures for Children Beyond Parental Control	Under 16	Service too new for evaluation
1998	England and Wales		
	Reprimand & Final Warning	10-17	Unproven
	Referral Order (since April 2002)	10-17	Service too new for evaluation
	Child Curfew Order	Under 16	Unproven
	Child Safety Order	Under 10	Too few cases for evaluation
	Anti-social Behaviour Order	Over 10	Unproven
	Parental order	Parents	Unproven
1965	Belgium		
	Community Service	Under 18	Yes
	Victim Offender Mediation	Under 18	No systematic evaluation
	Family Group Conferences	Under 18	Too early to conclude
1992	Queensland, Australia		
	Community Conferences	10-16	Yes
	Police Cautioning	10-16	Absence of research
	Drug Diversion	10-16	Service too new for evaluation
	Police Counsel	Under 10	Too few cases for evaluation
1989	New Zealand		
	Police Youth Aid Diversion	10-16	Yes
	Family Group Conferences	10-16	Yes
2003	Canada		
	Extra-judicial Measures - police cautioning - voluntary referral for counselling - pre-charge extra-judicial sanctions, e.g. restitution, apology - post-charge extra-judicial sanctions, e.g. restitution, apology - Family Group Conferences	12-17	Services too new for evaluation
	Earls court Outreach Project	Under 12	Further research needed

introduced. But what information is available suggests that the more restrictive measures are not being widely taken up and do not necessarily appear to have beneficial impacts when they are used. The verdict of Dignan (2003) is that the effectiveness of the changes in England is currently "not proven".

In the remaining four jurisdictions, new diversionary alternatives to prosecution, the use of restorative approaches and provisions for victims' views to be considered in decisions have not been incorporated in legislation or, as is the case in Singapore, are not being widely used. However, Belgium and Singapore have both adopted some new measures and, in particular, have successfully experimented with Family Group Conferencing.

Thus the conclusion to be reached on the basis of an analysis of the experiences of the six countries considered here is that there are real gains to be made through adopting new alternatives to prosecution and court orders based on a restorative philosophy. The particular measures that appear to be successful are increased police diversion of young people who agree to repair the harm they have caused, the use of community service placements where offenders are reintegrated into the society through volunteer services, and the use of Family Group Conferences for more serious offending when the views of families, victims and young people can be used to develop a plan that will allow both for the repair of harm and the reintegration of offenders and victims. Such schemes can reduce the involvement of young people in the criminal justice system, provide increased support to young people and families, provide some redress to victims, reduce the probability of reoffending and result in cost savings to the criminal justice system.

12.2.3 Summary of the Six Jurisdictions

The following provides a summary of the diversionary measures and their effectiveness in the six jurisdictions:

Singapore

1. Singapore's juvenile justice system tries to find a balance between justice and restorative models of rehabilitation.



2. Streetwise Programme targets gang youth to leave the gangs or secret societies. The youth had displayed more respect for authority, higher self-esteem, better problem-solving abilities and improved family relationships.
3. Guidance Programme helps first time youth offenders who committed minor offences to enrol in rehabilitation programmes in lieu of prosecution. The offenders were found to be more responsive and cooperative. Parents' attendance in the programme was high and the rate of re-offending was low.
4. The Children and Young Persons (Amendment) Act of 20 April 2001 makes provision to bond parents who have children beyond parental control to comply with court orders to exercise proper care and supervision of their children. There is no evidence yet on the extent of the use of this new measure or of its value.

England and Wales

Alternatives to prosecution

1. A Police Reprimand is a formal verbal warning issued to a first time juvenile offender aged 10-17 who has committed a minor offence. If he or she reoffends, the Police will issue a Final Warning, whereby the Police are required to refer the case to the local youth offending team to attend a compulsory "rehabilitation" or "change" programme.

Orders of the Court

2. A Referral Order can be applied to young offenders who are prosecuted for the first time and plead guilty as charged in the Youth Court and in respect of whom the Court does not consider it appropriate to impose either a custodial sentence or an absolute discharge. Young persons in receipt of such an order are obliged to attend meetings of the Youth Offender Panel. It involves the participation of offender and his/her parents, and the victims (if willing) to devise a contractual agreement to bind the offender to an agreed "programme of behaviour". If no agreement can be reached, or a contract is agreed but subsequently

breached, the young offender is then returned to Court to be sentenced for the original offence.

3. A Child Curfew Order involves placing a ban on young children under the age of sixteen to prevent them from being on the streets or other public places at night unless supervised by a responsible adult.
4. A Child Safety Order may be imposed for a child below the age of ten who commits an offence or causes harassment, alarm or distress to others. The child is placed under the supervision of a social worker and is required to comply with any specific conditions imposed by the Court, such as receiving appropriate care, protection and support, subject to proper control, or preventing any repetition of undesirable behaviour.
5. Anti-social Behaviour Orders may be used against any person aged 10 or over whose behaviour puts people in fear of crime. They may consist of a variety of prohibitions to protect people from further anti-social acts committed by the defendant. Conviction for breach carries the normal maximum sentence of a 24-month detention and training order, half of which is spent in custody and half under supervision in the community.
6. Parenting Orders are available in connection with Child Safety Order and Anti-social Behaviour Order, or where a young person has been convicted of an offence. Parenting Orders may require parents to attend counselling or guidance sessions, or require them to exercise a measure of control over their child. Failure to comply with the order constitutes a criminal offence punishable with a fine of up to £1000.

Referral Orders and Child Safety Orders were introduced in April 2002 and thus they are too new for evaluation. The effectiveness of the other four measures is also still unproven.

Belgium

1. Community service is being used as an alternative to residential placement. Research comparing 214 cases with a control group of 200 shows less reoffending as a consequence of the use of community service.
2. Victim Offender Mediation is being trialed on a small scale. Participants express satisfaction with the programme. However, currently most of the cases involve only minor offending and there are concerns about net widening – especially as the Public Prosecutor may still send these cases to Court.
3. Family Group Conferencing is being experimented within four arrondissements. Cases are referred by the Youth Court Judge to the mediation service and the recommended plan is brought to the Youth Court which translates the result into a judgement. Currently results from the pilot project (first 40 cases) indicate agreements are being reached, the Youth Court is confirming the "declaration of intention" and the plans are being carried out. There are high levels of satisfaction expressed by all participants.

Queensland, Australia

1. Legislation sees the intended benefits of community conferencing for offenders (in taking responsibility, repairing harm and diversion from criminal justice processes), victims (in understanding why the offence was committed and in expressing their concerns) and the community (in the increased use of informal dispute resolution without legal proceedings). Research reports high levels of satisfaction among participants in conferences, compliance with agreements by young people and victim satisfaction with outcomes. In Australia generally, the levels of satisfaction, perceived fairness and repair of harm in conferences compare favourably with experiences in the Courts. Victims report more understanding of reasons for offence, are less fearful of the offenders and better able to put the offending behind them. Research on

reoffending is limited but one study in New South Wales demonstrated a 15-20% reduction in offending compared to court cases.

2. Police cautioning is used for first time juvenile offenders who commit minor offences. The caution is administered in the presence of their parents or chosen adults. The offender must admit committing the offences and consent to being cautioned. If there are further offences that are separated by time and the circumstances warrant it, the child may receive more than one caution. Systematic evaluative research has not yet been undertaken.
3. Police Counsel targets erring children under ten years old. Police Youth Aid Officers explain to them why it is wrong to have committed an offence. This occurs in the presence of a child's parent or guardian or a responsible adult. Police Counsel also requires the child's consent and admission of the facts. Systematic evaluative research has not yet been undertaken.
4. An option for the Police and Magistrates to handle drug offenders is the Drug Diversion programme. Offenders are required to admit guilt and agree to undertake a drug assessment and a brief intervention which includes an educational programme. The measure is still too new for evaluation results to be available.

Canada

1. For young people aged 12-17, Extra-judicial Measures are provided, including police cautioning, voluntary referral for counseling, pre-charge or post-charge extra-judicial sanctions, e.g. restitution, apology, and Family Group Conferences.
2. The results of evaluation on outcomes from research are not yet available, as the new provisions for this 12-17 age group have only recently been implemented.

3. When offences are committed by children under 12 years of age who have significant behavioural or offending problems, community support programmes, such as the Earls Court Outreach Project, are provided for both the children and their families. The result seems to be very promising although further research to assess its effectiveness is still necessary.

New Zealand

1. The system in New Zealand has been highly effective in diverting young people from Courts and custody. Rates of appearances in the Youth Court are now about a third of what they were prior to 1989 and the use of custodial sentences has diminished even further.
2. High levels of participation and involvement in the process are reported for families and young people. Victims participate in about half of all Family Group Conferences. The participants generally express high levels of satisfaction with outcomes. Young people often express appreciation of the support of family and the opportunity to apologise. Families feel treated with respect and also appreciate the opportunity to apologise. Victims appreciate the opportunity to express their feelings and to meet the young person and understand why the offending occurred.
3. Outcomes are almost always likely to involve restorative elements, about half also involve restrictive elements, but outcomes for a smaller proportion of cases have included reintegrative and rehabilitative elements, reflecting the relatively low levels of services that have been available for children, young people and families in New Zealand.
4. Although police youth diversion has not been formally evaluated, it has received widespread endorsement informally within communities and among professionals. Research is currently underway to provide further information on the impact of diversionary procedures on reoffending and the results should be available later this year.

12.3 The Case for Introducing New Measures Alternative to Prosecution to Hong Kong

As already suggested in the introduction, it seems timely for Hong Kong to consider re-examining the legislative options available as alternatives to prosecution. There are a number of reasons for this.

1. Amendments have already taken place in Hong Kong to the age of criminal responsibility specified in the Juvenile Offenders Ordinance but proposals about raising the age also need to be accompanied by a consideration of possible additional options for responding to children who will no longer be eligible for prosecution.
2. Internationally, countries in Europe, Asia and Australasia that have recently updated their legislation, or are currently considering doing so are developing new objectives and new processes.
3. While Hong Kong compares favourably with other countries in the strength and organization of its services and programmes for young people and families, it has fewer options for responding to the needs of victims and for ensuring that young offenders are encouraged to repair the harm they have caused.
4. Further, there is an international trend favouring the adoption of restorative justice options in order to respond more effectively to both victims and offenders.
5. There is evidence that restorative processes have benefits for victims, families and children as well as the potential to increase efficiency and reduce costs in the justice system by diverting children and young persons from prosecution.



6. Reoffending certainly does not appear to increase as a result of increasing diversionary options and, if the processes are well managed, the probability of reoffending is reduced.

12.4 Options for Implementing Such Measures

While particular models in overseas jurisdictions have been used as examples, it is not the position of the research team that Hong Kong should necessarily adopt any of these models without modification. Rather, the research team proposes that Hong Kong develops its own systems and processes to meet the needs of the people of Hong Kong and, as much as possible, build on existing systems and practices.

Six main options have been proposed for implementing an improved and up-to-date approach to offending by children and young persons. For unruly children under ten years old, four recommendations have been made:

- Police Child Support Service
- Family Support Conference
- Empowerment Programme
- Community Alternatives to Institutional Placements

Another two main options are recommended for young persons aged 10-17:

- Family Group Conference
- Empowerment Programme

12.4.1 Police Child Support Service

It is proposed that the Police should give frontline and immediate support to children at risk of offending. They would talk informally to the child to arrange some way that the child would make up for what was done by apologizing or helping the victim in some small way. The Police would also make sure that the school responds to any problems such as bullying, and that the parents

know where to get help with child care or after school supervision or for a child with specific difficulties. The Police would consult with the victim and the child's family before deciding which tasks to be undertaken if necessary. The police officer arranging this should be one who specializes in working with young people.

12.4.2 Family Support Conference

The Family Support Conference could be used for a variety of purposes:

1. A primary purpose would be to consider the need for family support and/or a change of care when the present quality of care is considered insufficient to meet the needs of the child.
2. A second purpose would be to consider programmes and services and other options that could assist a child under the age of 10 years who has been involved in offending, especially when the problem has been persistent or moderately serious.
3. A third purpose could be to review the placement of a child who has already been placed away from home or in residential care with the goals of returning the child to the community, placing the child or young person in a more family-like setting or developing a more effective plan to provide the support that is needed by the child and the caregiver.

It is recommended that there be two sources of referral. First, the Police could make a referral with the consent of the child's parents or guardian. The Police might wish to revert to initiate a C/P Order if the parents disagreed or failed to attend the conference. Second, the Juvenile Court could also make a referral to the conference to aid its decision on the case.

Normally those present at a Family Support Conference would be the child, the child's current caregivers, other members of the child's immediate and extended family, any other family friends or members of the local community who could provide ongoing support, social workers, teachers and other

professionals who have already been or may potentially be involved in providing support to the child and the child's caregivers. The plan could be acted on after the agreement of all parties or be part of a C/P Order made in the Juvenile Court. The responsibility for managing arrangements for Family Support Conferences would be located with the Social Welfare Department who may decide to contract out the responsibility for actually arranging and convening the conference through local Integrated Family Services Centres.

12.4.3 Empowerment Programme (for Unruly Children)

It is recommended that Empowerment Programmes be provided through the established network of selected Integrated Children and Youth Services Centres, and coordinated and monitored by the Social Welfare Department. The Police might wish to refer an unruly child to the Programme upon parental consent, but the Police (or the Social Welfare Department) could revert to initiate a C/P Order if the parents disagreed or the child failed to attend the Programme. The goals would be to reduce offending and anti-social behaviour by providing the children with a range of purposeful activities that combine recreational activities, social group and life skills training, including anti-theft awareness, enhancement of self-esteem, and resistance of peer pressure. Appropriate support and educational services would be provided to the children's families if appropriate.

12.4.4 Community Alternatives to Institutional Placements

It is proposed that, when parents are experiencing difficulties in providing an adequate standard of care for their children, the option of placement with kin or in foster families be explored. Suitable alternative placements with kin, foster families or in small group homes should be used as an alternative to the larger residential homes that are currently being used for many children in these situations. When an out of home placement is agreed to, the plan should also include provision for the child to maintain links with all family members that are important to him or her and support for the new caregivers should be examined to ensure that it will be adequate. In some cases, special services may need to be provided for the children, parents or caregivers, and provisions made for reviewing the arrangements regularly.

12.4.5 Family Group Conference

The purpose of Family Group Conference would be to respond to the offending of children aged 10-17 years in ways that make the young person accountable for offending, repair the harm to victims and develop a plan to prevent further reoffending. It is proposed that when the offence is of sufficient seriousness to be considered for referral to the Prosecution, a Police Youth Officer should review the case and, whenever possible, make a referral for a Family Group Conference in consultation with the Prosecution. If the Family Group Conference failed to agree or if the agreed tasks were not completed and one of those present requested a review, the matter would be returned to the Police for consideration of pressing charge. As a pre-sentence diversion, the Court could refer suitable cases for a recommendation from a Family Group Conference before making a decision. Members of the conference includes the conference facilitator, the offender and the offender's family members, the victim and the victim's supporter, a Police Youth Officer, and any significant persons related to both victim and offender.

12.4.6 Empowerment Programme (for Young Offenders)

It is recommended that Empowerment Programmes, with an emphasis on life skills training and voluntary services, be provided through Integrated Children and Youth Services Centres for youth offenders aged 10-17, either in lieu of prosecution or as an outcome recommended by the Family Group Conference. The offenders would be required to consent to complete up to sixty hours of training and voluntary services within three months.

As regards referral routes, the Prosecution could make referrals to the Empowerment Programme in lieu of prosecution. In cases where the young persons agreed to undertake the Programme but failed to complete the requirements, the matter would be referred back to the Prosecution for consideration of prosecution.

Another route of referral to the Empowerment Programme would be the Family Group Conference. Young offenders might like to accept attending the Empowerment Programme as part of a plan agreed to by a Family Group

Conference. In cases where the young persons failed to complete the requirements, the matter would be referred back to the Family Group Conference for consideration of further options, including the option of referring the matters to the Court.

12.5 Roles, Recruitment and Training of Professionals

Historically, in Hong Kong, a variety of government departments have been involved in providing responses to juvenile offending. The Departments of Justice, Correctional Services, Social Welfare, and Health, and the Police Force, the Security Bureau, and the Juvenile Court have all had a role to play. A large number of NGOs have also been involved in providing a wide variety of services. It is not anticipated that the basic functions of these various groups will change but specific changes will be inevitable if there is a shift from institutional to community responses and if the proposed alternative measures are adopted.

Other implementation issues to be considered here are around recruitment and training of those who will be occupying the new roles. Those primarily involved will include the Police, those managing and facilitating diversionary measures, and the legal professionals: Magistrates and lawyers. Each of these groups is considered in turn.

12.5.1 The New Role of the Police

In Hong Kong, the Police, as in all other jurisdictions, make decisions about which young offenders will be dealt with and whether or not they will be dealt with by warnings or other actions or referred for prosecution. With the development of Police Superintendent Discretion Scheme, the Police have been able to develop a variety of strategies that include making referrals, talking to parents or teachers and giving a warning to the young offenders along with certain other sanctions.

In the future it is proposed that the Police should be given additional responsibility for managing a variety of supportive actions and diversionary

measures. It is further proposed that these new responsibilities be undertaken by a new group within the Police who will receive special training. Some of the leaders of this new group should receive the opportunity to train overseas and observe procedures there.

Currently there is a Juvenile Protection Section within each police region. The Police in this section have developed special skills in working with young people. These staff can provide a core who would be capable of developing new protocols, training and practice standards for the new roles. They can also provide the core for the new group of Police Youth Officers.

Recruitment criteria for additional officers should include experience and interest in working with youth while on the frontline and a willingness and interest in specializing in the field of youth work. The role could also include preventive work in schools and in the community, liaison with crime prevention initiatives in the community, being involved in patrol work targeted at crime prevention, processing files on young people reported as offending and making decisions about responses, attending Family Group Conferences and working as part of inter-disciplinary teams of youth justice professionals to improve local processes and practice. Ongoing training should be arranged through the police training schools and also through special courses arranged from time to time, in conjunction with other professionals in the juvenile justice system.

12.5.2 The New Role of Welfare Services and Professionals

In Hong Kong, the Social Welfare Department has had the major overall responsibility for providing rehabilitation and reintegrative services for children, young people and their families when offending has occurred or when they were seen to be at risk. But much of the actual service provision is increasingly being provided by NGOs through a contractual subvention system. The future emphasis should continue to be placed on developing inter-agency cooperation at both Government and NGO levels. At the service implementation level, the integrated service structure may serve as focus for



developing further inter-agency cooperation around the new procedures or alternatively, new structures may be developed.

As already noted, Hong Kong will be starting afresh if it wishes to consider developing conferencing processes for children and young persons who offend. New Zealand and the Australian states of Queensland, New South Wales and South Australia offer the most well developed models to be considered. In each of them, the management, recruitment and training processes differ and the model operates differently. Rather than provide additional detail on how these aspects operate in each of the jurisdictions, it is recommended that a team charged with the development of processes for Hong Kong should study each of the jurisdictions and study further the way in which they are currently operating. Suitable points of contact can readily be arranged through people already identified as collaborating experts in the course of preparing this report. The outcome will be the development of detailed descriptions of the roles of youth justice practitioners and managers of the new processes and training packages for them. In addition there will also need to be new guidelines around practice and the development of new structures for delivering the new services.

12.5.3 The New Role of Prosecution, Lawyers, Court Staff and the Judiciary

Prosecutors, lawyers, court staff and Magistrates will also have new roles within the system – both because of the extended powers given to the Courts and Prosecution, and also because of the new philosophy underpinning the proposed new measures. Hong Kong already has a number of Magistrates who specialize in work and/or have received special training to work in the Juvenile Court. However, this does not apply to lawyers and prosecutors. Some of these professionals, and particularly the Magistrates, will be key members who can provide leadership and guidance to other professionals in understanding their new roles in the new juvenile justice system. It is therefore of crucial importance that these groups should also be committed to the changes, receive training which will enable them to respond appropriately to the new focus and to implement the proposals appropriately, and that they

should understand their critical role in providing support to other members of the youth justice teams as proposed below.

12.6 Further Issues in Implementation

12.6.1 Inter-disciplinary Collaboration—The Youth Justice Committee

Measures should be developed to bring together all those involved in the juvenile justice system: Juvenile Court magistrates, lawyers, court staff, prosecutors, youth justice practitioners, Police Youth Officers and staff of relevant community agencies and government departments. These members of the Youth Justice Committee could meet regularly to focus on finding ways to improve practice and in particular, to find solutions to the problems that are likely to occur from time to time. Inevitably there will be problems around inter-disciplinary collaboration, the transmission of information between departments and agencies, the follow up and monitoring of young people, ensuring that responses are timely and that outcomes are effective. Inter-disciplinary meetings are an effective way of not only arriving at constructive solutions but also at making arrangements to implement the solutions. In addition, these meetings are effective in building supportive relationships across agency and professional boundaries, developing and promoting the shared understanding among the various different professionals about the system as a whole and an appreciation of one another's viewpoints. All of this is likely to lead to increased collaboration at all points and more effective outcomes for the young people involved.

12.6.2 Monitoring and Standards for New Measures

Currently Hong Kong has no comprehensive set of explicit statements about the objects and principles underlying its juvenile justice processes. However, there is ample incentive for doing so given the trend internationally to clarify the reasons underlying the adoption of specific practices and the adoption in the United Nations of specific rules and guidelines intended to assist member states in such a task.

The research team recommends that a set of objects, principles and standards be developed for Hong Kong. It is proposed that such a document could serve to guide those responsible for developing new measures alternative to the prosecution of young offenders but that, in the longer term, these be included in new legislation for juvenile justice in Hong Kong.

In putting such a recommendation into practice, the research team notes that Chapter 9 has already reviewed the objects, principles and standards that could be considered for adoption were Hong Kong to move to a new system that makes explicit the basic principles underlying its juvenile justice system. It is our view that these documents provide an excellent initial basis for discussion. Fuller detail on potential options from both the United Nations and from specific jurisdictions have been gathered in connection with this research and can be made available to any task force or working party set up to consider such matters.

12.6.3 Financial Issues

It has already been noted that there will be considerable costs, especially in the short term, around developing and setting up new measures alternative to prosecution. In the longer term, it is anticipated that these costs will be undoubtedly offset by savings in other parts of the juvenile justice system, and particular in the area of residential care and correctional services. However, the research team recommends that it is important that full costings be done before major changes are made so that cost targets can be set for all aspects of the system and budgets can be allocated.

12.6.4 Interim Planning and Management

Much that is currently done in response to children and young persons who offend in Hong Kong is appropriate and is likely to contribute to their rehabilitation and reintegration into the community. However, it has already been recognized by Government that changes need to be considered to Hong Kong's *Juvenile Offenders Ordinance* that goes back to 1932 (though amended in subsequent years). Furthermore, new philosophies, new practices and new research in other jurisdictions suggest that it is timely to



make changes. The proposals made in this report have examined options for alternatives to prosecution and proposed a selection of these as the basis for a new juvenile justice system that build on the experiences in other jurisdictions which have already responded to new options.

The next step is for the Government to consider how to proceed in determining the suitability of these recommendations. The research team proposes that this be done in a number of stages, as follows:

- Fund a project to pilot the new options proposed here under the guidance of a steering committee to oversee their initiation and development.
- Set up a Task Force to develop new objects, principles and standards for juvenile justice in Hong Kong.
- Set up a working party to develop detailed proposals for law and practice with a goal of introducing new legislation in the next few years.

12.7 Conclusion

This report has considered options for new measures that can be alternatives to the prosecution of children and young persons in Hong Kong. The impetus for this comes largely from the increase in the minimum age of criminal responsibility of children to 10 years. But another compelling factor is the need to consider change in the light of the major recent and ongoing developments in philosophy and practice of youth justice throughout the world. After considering the experience of six jurisdictions from around the world and the rationale for and effectiveness of their measures alternative to prosecution, proposals have been made for the development of six new options for Hong Kong.

For unruly children under 10 years, it has been recommended that Child Support Services by the Police be developed for responding to needs identified when offending of children occurs; Family Support Conferences be



developed to reach agreements about changes in care and appropriate supports to prevent further offending of children; services be extended to children at risk by the development of Empowerment Programmes in Integrated Children and Youth Services Centres; and community placements be encouraged as an alternative to residential care.

For those aged 10 to 17 years, it is recommended that Family Group Conferences be developed as a diversionary option and as a forum for making recommendations to the Courts for more serious and persistent offending; and that Empowerment Programmes be organised as a way of responding constructively to the need to make young people accountable for the harm that they have done. The emphasis in these new measures should be on increased empowerment of families and young people; acceptance of responsibility for offending and repair of the harm that has been caused; and measures that will increase the support for, and rehabilitation and reintegration of the children and young people into the community.

These new measures will require the development of new roles, new structures, new standards and new training packages. Issues of the costs of the changes have been considered. Proposals have been made for how the development of these new options can be undertaken, the next steps that can be taken, and how ongoing evaluation of new measures can be made to ensure that they are successful in achieving their goals.

Hopefully this report can provide a road map for Hong Kong which will lead to the development of a new juvenile justice system which is effective in responding to young offenders by enabling them to move some way to repairing the harm they have done, encouraging them to take responsibility for their offending, preventing their reoffending and reintegrating them into society. Members of the research team have the confidence that Hong Kong has, at this point in time, the ability to build on current strengths to develop a new system that will make it a world leader in juvenile justice and, at the same time, make it a safer society with valuable social capital.