

**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 cause.
 - (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