

香港家庭法律協會

THE HONG KONG FAMILY LAW ASSOCIATION

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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