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Legislative Council

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Subcommittee on juvenile justice system

Background paper prepared by Legislative Council Secretariat

Juvenile justice system

Purpose

This paper provides background information on past discussions of the Legislative Council (LegCo) on the juvenile justice system.

Background

Recommendations of Law Reform Commission's Report on the Age of Criminal Responsibility in Hong Kong

2. The Law Reform Commission (LRC)'s Report on the Age of Criminal Responsibility in Hong Kong published in May 2000 recommended 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.

3. The LRC also recommended 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.

4. On 12 November 2001, the Juvenile Offenders (Amendment) Bill 2001 was introduced into 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 a report on its

recommendations was tabled in LegCo on 12 March 2003 (**Appendix I**). The Bill was passed by LegCo on the same date.

5. In response to the recommendation of the LRC (paragraph 3 above refers), the Security Bureau had commissioned a consultancy study on measures adopted by overseas countries in handling unruly children below the minimum age of criminal responsibility and mischievous juveniles above the minimum age. At the suggestion of the Bills Committee, the Panel on Administration of Justice and Legal Services (AJLS Panel) agreed to follow up -

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

Visit to juvenile courts

6. On 13 March 2003, members of the AJLS Panel visited the respective juvenile courts at the Eastern Magistrates' Courts and the Kowloon City Magistrates' Courts to better understand the existing operation of juvenile courts.

7. Members also took the opportunity to visit the detention facilities at the two Magistrates' Courts and were briefed on how juvenile offenders were handled before and after they were taken to appear in court.

Research report on operation of juvenile courts in overseas countries

8. The AJLS Panel requested the Research and Library Services Division (RLSD) of the LegCo Secretariat to undertake a research project on the operation of juvenile courts in overseas countries.

9. At its meeting on 26 May 2003, the AJLS Panel received a briefing on the Research Report on "Operation of Youth Courts in Selected Overseas Places" (RP07/02-03). The Research Report provides an overview of the juvenile justice system and the operation of youth courts in the United Kingdom, Canada, and New Zealand, focusing on the jurisdiction and constitution of a youth court, procedures after arrest of a juvenile offender, court procedures, sentencing and court environment.

10. At the request of the AJLS Panel, RLSD also prepared a Supplementary Note (IN31/02-03) on the following issues -

- (a) trial of juvenile(s) committing a serious offence; and
- (b) handling of the case where a juvenile is jointly charged with an adult.

The consultancy study and establishment of a subcommittee under the House Committee

11. The consultancy study (paragraph 5 above refers) was commissioned by the Security Bureau and carried out by the Youth Studies Net, City University of Hong Kong. The Consultancy Report entitled "Measures Alternatives to Prosecution for handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong" was published in August 2003. The consultancy study examined a total of six countries, namely, Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand.

12. The AJLS Panel and the Panel on Security held a joint meeting on 27 October 2003 to receive a briefing on the Consultancy Report. As the policy issues arising from the review on juvenile justice system straddle the policy portfolios of a number of bureaux, the AJLS Panel and the Panel on Security recommended that a subcommittee should be set up under the House Committee to follow up the relevant issues. The recommendation was agreed to at the House Committee meeting on 7 November 2003.

Main points of past discussions

Minimum age of criminal responsibility

13. Some members of the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 were in favour of raising the minimum age of criminal responsibility to 12 years pending the general review on juvenile justice system as recommended by LRC (paragraph 3 above refers). Some other members were in favour of the proposal in the Bill to raise the minimum age to 10 years. They were concerned that raising the minimum age 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.

14. The Administration maintained the 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. However, the Administration undertook to propose raising the age further from 10 to 12 years when it put forward proposals to provide additional measures for unruly children below the minimum age of criminal responsibility after taking into account the findings of the consultancy study (paragraph 5 above refers).

Measures alternative to prosecution for handling young offenders

15. Making reference to the Research Report on "Operation of Youth Courts in Selected Overseas Places" (paragraphs 8 and 9 above refer), some members of the AJLS Panel pointed out that in the UK, Canada and New Zealand, different

diversionary measures were available to deal with young offenders in appropriate cases other than by way of formal judicial proceedings. These measures range from reprimand, warning or caution, referral to rehabilitation/community based programmes, family group conferencing and other extra-judicial sanctions programmes. These members considered that the Administration should introduce measures alternative to prosecution for the purpose of rehabilitation and reintegration of young offenders.

16. The Administration briefed the AJLS Panel and the Panel on Security Panel on the Consultancy Report (paragraph 11 above refers) at the joint meeting on 27 October 2003. The Consultancy Report has recommended four options for handling unruly children below the minimum age of ten years, and two options for handling young offenders aged from ten to below 18. A copy of the English version of the Consultancy Report is in **Appendix II**.

17. To follow up the Consultancy Report, the Administration has -

- (a) on 1 October 2003, implemented a family conference pilot scheme for children/juveniles cautioned under the Police Superintendent Discretion Scheme, one of the recommendations of the Consultancy Report. The Administration will review the operation of the pilot scheme in 12 months' time; and
- (b) set up an interdepartmental working group comprising representatives from Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau, Social Welfare Department, the Police and Department of Justice to consider how to take forward the other recommendations in the Consultancy Report. The working group will also draw up plans to consult relevant parties, in particular providers of children and youth services. The Administration will keep Members informed of progress of deliberations.

A copy of the paper provided by the Security Bureau to the two Panels is in **Appendix III**.

Detention facilities for juveniles

18. During the visit of the AJLS Panel to juvenile courts on 13 March 2003 (paragraph 6 above refers), members expressed concern about the arrangements for handling juvenile offenders in the court building and the conditions and environment of the detention facilities at the Eastern Magistrates' Courts and the Kowloon City Magistrates' Courts. For example, members noted that male juveniles were grouped together in one cell and not individually detained, and male juveniles and adult offenders were mixed in adjacent or opposite cells where they could communicate easily.

19. The Police had advised the AJLS Panel that it would work with the Judiciary Administration and other relevant departments to explore how to improve the present situation, taking into account the physical constraints of existing court buildings, the availability of resources, and the need to avoid disruption to court services. As the Eastern Magistracy was undergoing an amalgamation process with the Western Magistracy, the Police would take the opportunity to liaise with Judiciary Administration to see if general enhancement of detention facilities for the juvenile court could be achieved.

20. A copy of the paper provided by the Hong Kong Police Force to the AJLS Panel in August 2003 is in **Appendix IV**.

Selection of Magistrates to handle juvenile cases

21. Some members of the AJLS Panel have requested the Judiciary Administration to consider the practices adopted by some overseas countries in selection of judges to handle juvenile cases. In the UK, there are statutory requirements providing that youth court judges have to be specially qualified for handling juvenile cases. In New Zealand, judges must have the suitable training, experience and personality, as well as an understanding of different cultures.

22. The Judiciary Administration has advised the AJLS Panel that the laws do not impose additional requirements for a Magistrate handling juvenile cases beyond the basic qualifications for appointment as a permanent Magistrate. However, in assigning a Magistrate to deal with juvenile cases, the Chief Magistrate will take into account -

- (a) the experience and competence of the judicial officer concerned;
- (b) his aptitude in dealing with juvenile issues, in particular his sensitivity towards the needs of young persons going through judicial proceedings; and
- (c) his interest in dealing with juvenile cases.

23. The Judiciary Administration has also provided information on the training programmes, talks, visits and overseas conferences organized for Magistrates. For details, members are invited to refer to the letter dated 17 July 2003 from the Judiciary Administrator to the AJLS Panel in **Appendix V**.

Setting of juvenile courts

24. Some members of the AJLS Panel have expressed concern whether the courtroom setting of juvenile courts should be improved to provide a more informal and approachable atmosphere.

25. The Judiciary Administration has responded that the design of juvenile courts is to minimize the anxiety of the juveniles while maintaining the security and authority of the courts. At present, the juvenile courts have the following features -

- (a) the Magistrate's bench is at the same level as the juvenile;
- (b) there is no dock for the juvenile offenders and parents, guardians and case social workers are allowed to sit with them during the proceedings;
- (c) a probation officer is present to render immediate professional advice;
- (d) the public is excluded from the hearings;
- (e) private waiting rooms and discussion rooms are available for the use of the juveniles, their family members, lawyers, probation officers and social workers involved; and
- (f) the Magistrate has the discretion to dispense with the formality of an ordinary court, e.g. not wearing robes himself; parties can remain seated while addressing the court.

26. For care and protection hearings, apart from the features mentioned in paragraph 25 above, the juvenile Magistrate and the parties sit around a table and the formalities of the proceedings are further minimized.

27. Two improvement measures are also being planned. First, the interior design and the furniture of the waiting rooms and the discussion rooms will be improved to provide a "homely" environment, with sofas and magazines. Second, all juvenile courts will be relocated to separate floors from the adult courts in all Magistrates Court Buildings when the planned merger of existing Magistrates Courts takes place in the next few years.

28. A copy of the letter dated 17 July 2003 from the Judiciary Administrator to the AJLS Panel in **Appendix V**.

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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 organisations 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.

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

Jurisdiction	Age of criminal responsibility
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

**For discussion
27 October 2003**

**Legislative Council Panels on
Administration of Justice and Legal Services and Security**

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

Purpose

This paper briefs Members on the findings and recommendations made in the consultancy report on “Measures Alternative to Prosecution for Handling Unruly Children and Young Persons: Overseas Experiences and Options for Hong Kong.” (the Report). It also introduces Members to the Family Conference arrangement implemented with effect from 1 October 2003, which addresses one of the recommendations put forward in the Report.

Background

2. The Law Reform Commission (LRC) in its Report on “Minimum Age of Criminal Responsibility in Hong Kong” recommends, amongst other things, 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 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. To take forward the review, we commissioned a consultancy study in July 2002 to provide the Administration with 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 study was completed in end August 2003. We have

Appendix II

A copy of this document is kept at the Legislative Council Library.
Please contact the Legislative Council Library if you wish to refer to this document.

deposited copies of the Report with the LegCo Secretariat for Members' reference.

The Consultancy Study

Scope of the Study

4. The consultancy study covers mainly three aspects, namely –
 - (a) in-depth research on the measures alternative to prosecution adopted in selected overseas jurisdictions for handling unruly children and young persons;
 - (b) an assessment on the effectiveness of such measures in preventing and diverting children and young persons from going astray; and
 - (c) recommendations on whether there is a case for introducing new measures alternative to prosecution in Hong Kong to deal with unruly children and juveniles.

5. The consultancy study examined a total of six countries. They are Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand.

Findings of the Study

6. The study suggests that there is a general trend in the 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 communities; and the empowerment of all those affected by what has happened, including the offenders, families, victims and the communities.

7. This principle of restorative justice is reflected in the relatively recent

legislation in Canada, Queensland and New Zealand. Such legislation explicitly includes alternatives to prosecution that aim at diverting young offenders from courts, making young offenders accountable and responsible for their offending acts, and strengthening the participation of families and victims in proceedings. Examples of such alternative measures to prosecution include Police cautioning and the use of family group conferences.

8. England is similar to the three above-mentioned countries in many respects as far as handling of unruly children is concerned. England has also recently made changes to its legislation to provide a greater emphasis on legal protection and opportunities for the young offenders' development. There are also provisions for victims inclusion and families participation through alternative actions and family group conferences. Compared to the legislation of the above three jurisdictions, England's legislation has a greater punitive theme for repeat and serious offenders. Moreover, parents might be held responsible for their children's offending by parental order issued by courts.

9. For the remaining two countries, Belgium and Singapore, the former operates a primarily welfare model and the latter is very similar to the situation in Hong Kong. However, family group conferences are more frequently used in Singapore as an option by the Court to aid decision making when handling young offenders.

10. The Report suggests that increased police diversion of young people who agree to repair the harm they have caused, the use of community service placements where offenders are integrated into the society through volunteer services, and the use of family group conferences for more serious offending can reduce the involvement of young people in the criminal justice system. Such measures also provide increased support to young people and their families, provide some redress to victims, and reduce the probability of reoffending. However, the report suggests caution when interpreting the effectiveness of various alternative measures because apart from those adopted in New Zealand and Queensland which are the only ones that have been operated for a reasonably long period of time and have been used frequently enough to allow a meaningful assessment, effectiveness of measures put in place in the other countries examined has yet to be proven.

Recommended Options for Handling Unruly Children and Juveniles

11. Having regard to the international trend towards restorative justice options in order to respond more positively to young offenders and the fact that the minimum age of criminal responsibility has recently been raised from seven to ten years of age in Hong Kong, the Report suggests four options for children below the minimum age of ten years and two options for persons aged from ten to below 18 as improved and up-to-date approaches for handling offending behaviour by children and young persons. While a detailed explanation of the options is set out in Chapters 10 and 11 of the Report, the following summarises each of the options.

(A) Police Child Support Service

12. The Report proposes that the Police should launch a Child Support Service to assist children below the minimum age who display offending behaviour. Under the proposal, the Police will provide assistance to the children and their families so that the necessary support from schools or other agencies could be obtained. Arrangement will be made to require the children to make up for their wrongful acts by supportive responses of a minimal kind, like apologizing or helping the victim in some simple ways.

(B) Family Support Conference

13. The Report recommends that family support conferences be run by selected Integrated Family Services Centres as a pioneer service, and be monitored by the Social Welfare Department (SWD). The purpose of holding a family support conference is to draw together the family and unruly child below the minimum age to find a way in which greater support can be given to the family and the child in order to prevent any reoffending behaviour. The focus of the conference is on the child's and the family's needs instead of on the offending behaviour. The consultant suggests that a conference might be convened upon referral by the Police with parental consent, or by a Juvenile Court when processing applications for care or protection order. A senior social worker will act as facilitator of the conference. With the inputs of potential service providers, the child and his/her parents, options for support services will be fully explored with a view to drawing up a mutually agreed follow-up service plan.

(C) Empowerment Programme (for Unruly Children)

14. The Report proposes that empowerment programmes be provided through the established network of selected Integrated Children and Youth Services Centres, and be coordinated and monitored by SWD. The purpose of such programmes is to empower children at risk so as to prevent them from going astray and engaging in anti-social behavior. Unruly children below the minimum age 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 of peer pressure. Children at risk may be referred to SWD for undergoing the Empowerment Programme by the Police upon parental consent.

(D) Community Alternative to Institutional Placements

15. The Report notes that SWD's efforts in converting large residential care institutions into small group homes and foster care places are in the right direction. It recommends extra support from the Government and the community on this front. Specifically, the Report proposes that when an out of home placement is agreed to, say, under a care or protection order, the option of placement with kin or in foster families should be explored as an alternative to the larger residential homes that are currently being used. Arrangements should also be made for the child to maintain links with all family members that are important to him/her. This will allow the children put under placement to remain in the community, maintain contact with those they are already attached to and acquire life skills that are difficult to learn in an institutional environment.

(E) Family Group Conference

16. The Report proposes that a family group conference, to be run by a separate unit attached to SWD, may be convened for young offenders who have reached the minimum age of criminal responsibility for two purposes – one as a pre-charge diversion and the other as a pre-sentence diversion. Only the former will be an alternative to prosecution for dealing with a young offender. Under the proposal, the Police may in consultation with the

Prosecution refer a case to be discussed at a family group conference if the offence committed is a serious one. The conference, which will be participated by the victims or their representatives amongst others, will agree upon the task to be performed by the offenders. The purpose is to help the offender to be accountable for their behaviour and repair the harm they have caused. If no agreement can be reached on the tasks to be completed or the agreed tasks were not completed by the offender, it is suggested that the case would be returned to the Police for consideration of pressing charge against the offender.

(F) Empowerment Programme (for Young Offenders)

17. Under the empowerment programme proposed by the consultant, the Prosecution may refer young offenders aged from 10 to 17 to receive life skills training and perform voluntary services in lieu of prosecution. Young offenders may also be asked to undergo empowerment programme as an outcome recommended by family group conference. The offenders will be required to complete up to 60 hours of training and voluntary services within three months. In case the young offenders failed to complete the programme, the case will be referred back to the Prosecution for consideration of prosecution, or the family group conference for consideration of a further option which might include referring the matter to the court. The Report recommends that the scheme be run by Integrated Children and Youth Services Centres and be coordinated and monitored by SWD.

Family Conference

18. One of the major findings of the consultancy report is the international trend of increasing use of family group conference which incorporates the principle of restorative justice. A similar concept was also floated during the deliberations of the then Bills Committee on Juvenile Offenders (Amendment) Bill 2001, where Members suggested the introduction of a formalized system to decide on the appropriate actions to deal with a young offender. After extensive and thorough discussions among departments concerned, the Administration has, on 1 October 2003, put into trial run a Family Conference system for needy children / juveniles.

19. Under the pilot scheme, Family Conferences are conducted for children / juveniles cautioned under the Police Superintendent Discretion Scheme (PSDS). The Family Conference brings together family members of cautioned juveniles and professionals from relevant Government departments / agencies to –

- (a) assess the needs of the juveniles; and
- (b) draw up a follow-up plan to address the needs identified through the joint efforts of related professionals.

20. The criteria for convening a Family Conference are as follows -

- (a) the Police Superintendent exercising the caution considers that the juvenile is in need of the services of three or more parties, e.g. the Police (Juvenile Protection Section), SWD, Education and Manpower Bureau (EMB), non-governmental organizations (NGOs), Department of Health (DH), Hospital Authority (HA), and so on; or
- (b) the juvenile is given a second or further caution.

21. As Family Conferences are operated on a voluntary basis, the parents / guardian of the juvenile cautioned under PSDS should have given consent for the Police to transfer the personal data of the child / juvenile to all parties concerned and for holding the conference. The final decision as to whether a Family Conference is required will rest with SWD. An SWD officer will chair the Family Conference since the department is the principal agency responsible for support services for youth-at-risk and its officers have the professional knowledge in assessing the needs of and devising welfare plans for this group of young people.

22. If a Family Conference is considered necessary, parties concerned will be invited to attend. It is our target to hold the Family Conference on the same day immediately after the caution and at the same police station as far as possible, so as to facilitate the attendance of the juvenile and his / her parents/guardian. If this is not possible, the conference should be held on a

later date that is convenient to all parties concerned as determined by the Chairperson, normally within ten working days from the date of the juvenile's caution.

23. Upon endorsement of the follow-up plan agreed and recommended by parties taking part in the Family Conference, the Chairperson will appoint a "key worker" to make the necessary referral(s) for the child / juvenile and his / her family to relevant services units for follow-up services. The key worker can be a social worker from SWD or NGO. Unless otherwise agreed in the Family Conference, the key worker would be the main person performing post-conference liaison with the Police's Juvenile Protection Section and other parties concerned with regard to follow-up services for the child / juvenile and his / her family.

24. To ensure that parties concerned have a full understanding of the operation of Family Conferences, SWD and the Police have jointly drawn up a Protocol on Conducting Family Conference for Children / Juveniles Cautioned under the Police Superintendent's Discretion Scheme. Two briefing sessions were held on 15 and 23 September 2003 to familiarize frontline officers, social workers and staff of relevant parties with the objectives and workflow of Family Conferences. A total of 600 participants attended the two briefing sessions.

Way Forward

25. We plan to review the operation of the Family Conference pilot scheme in 12 months' time, when more cases have been processed and there is more local experience in holding the conference.

26. As for other recommendations in the Report, an interdepartmental working group comprising representatives from Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau, Social Welfare Department, the Police and Department of Justice has been formed to consider how to take them forward. The Working Group will also draw up plans to consult relevant parties, in particular providers of children and youth services. We will keep Members informed of progress of our deliberations.

27. Members are invited to comment on the recommendations in the Report, which would facilitate the Administration's consideration of how to take them forward. Views from Members on the Family Conference pilot scheme are also welcome.

Security Bureau
October 2003

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For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

Magistrates' Court Detention Facilities for Juveniles

Purpose

This paper sets out the Police's response to Members' comments on the detention facilities for juveniles at the Eastern and Kowloon City Magistracies.

Background

2. The Legislative Council Panel on Administration of Justice and Legal Services (the Panel) visited the respective juvenile court at Eastern and Kowloon City Magistracies on 13 March 2003.

3. Following the visit and at the Panel's meeting on 26 May 2003, some Members commented that the conditions and environment of the police cells for juveniles were less than satisfactory. Specifically for the facilities in the Kowloon City Magistracy, some Members had made the following observations -

(a) male juveniles were grouped together in one cell and not individually detained;

(b) male juveniles and adult offenders were detained in adjacent cells

or cells opposite to each other where they could communicate easily; and

- (c) female juveniles and female offenders were mixed in one cell and not separately detained.

Present Situation

4. There are currently two juvenile cells in each of the Magistracies. One is for male juveniles and the other is for female juveniles. On occasions where more than one juvenile offender of the same sex are scheduled to attend court proceedings at the same time, it is inevitable that the juvenile offenders will be detained together in the same cell for a short period of time.

5. As regards the proximity between juvenile cells and adult cells in Magistrates' Courts, it is constrained by the design and the physical environment of different court buildings. Having said the above, it is a long-standing practice of the Police to detain juvenile offenders and adult offenders in separate cells, irrespective of whether they are detained in Police stations or in court buildings awaiting appearance at court. This is to minimize any possible bad influence on the juveniles. The Police have confirmed that there were in fact no female juvenile under detention during the Panel's visit to the Kowloon City Magistracy on 13 March 2003. If any female juvenile offender has to be detained before attending court proceeding, she will be detained in the cell designated for female juveniles. There is no question of mixing female juveniles and female adult offenders in one single cell in the Kowloon City Magistracy.

Response to Panel's Comments

6. The Police noted the concerns raised by Members as to the design of and usage situation at the detention facilities for juveniles at the Kowloon City Magistracy and agreed that the situation was not ideal.

7. The main function of court buildings is for holding of judicial proceedings. Detention facilities for juveniles are only one of the ancillary facilities in the Magistrates' Courts. Measures to improve the detention cells as well as the handling of detainees should be undertaken where necessary, but any such improvements should not be at the extreme of significantly hampering the operation of the courts and the smooth running of its proceedings.

8. In view of the concerns raised by the Panel regarding detention facilities for juveniles in court buildings, the Police will work together with the Judiciary Administrator (JA) and other relevant departments to explore how to improve the present situation, taking into account the physical constraints of existing court buildings, the availability of resources, and the need to avoid disruption to court services

9. Possible areas of improvement include -

- (a) redesigning and re-devising the existing layout plan of court buildings and workflow with regard to all facilities, including police detention cells, located in the buildings;
- (b) modifying the existing detention facilities to address the concerns raised by Members;

- (c) optimizing the use of detention facilities by re-distributing the caseload involving juvenile offenders amongst the existing juvenile courts, and
- (d) adopting the court facilities which will no longer be in use after the on-going amalgamation of some magistracies as designated juvenile court building(s).

10. Members may wish to know that the Eastern Magistracy is undergoing an amalgamation process with the Western Magistracy as initiated by the JA. Police will take the opportunity to liaise with JA to see if general enhancement of detention facilities for the juvenile court could be achieved.

Hong Kong Police Force

August 2003

Your ref. CB2/PL/AJLS

Our ref. SC(CR) 25/2/1 Pt 10

17 July 2003

Clerk to LegCo AJLS Panel
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Central, Hong Kong
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Dear Mr. Woo,

**LegCo Panel on Administration of Justice and Legal Services
Meeting on 26 May 2003**

1. In paragraph 2 of your letter of 30 June, I was asked to respond in writing to three issues raised in paragraphs 18, 21 and 23 of the draft minutes of the above meeting. My comments are as follows.

Paragraph 18 : Selection of Magistrates to handle juvenile cases

2. The laws do not impose additional requirements for a Magistrate handling juvenile cases beyond the basic qualifications for appointment as a permanent Magistrate. However, in assigning a Magistrate to deal with juvenile cases, the Chief Magistrate will take into account :

- (a) the experience and competence of the judicial officer concerned;
- (b) his aptitude in dealing with juvenile issues, in particular his sensitivity towards the needs of young persons going through judicial proceedings; and
- (c) his interest in dealing with juvenile cases.

3. As far as training is concerned, there are organised training programmes and talks on the operation of the juvenile courts in induction and refresher courses for Magistrates. Issues related to juvenile matters are discussed in regular Sentencing Conferences for Magistrates. Organised visits to institutions for the detention of juvenile offenders, such as boys' home, hostels, reformatory schools and rehabilitation centers are frequently conducted. Talks by clinical psychologists, social workers and government officers on drug abuse, drug treatment programmes and community service order programme are also held.

4. Overseas experience is also a useful source of exposure. In this connection, a Principal Magistrate and a juvenile Magistrate attended the International Conference "Youth Justice 2000 : Managing a New World in Transit" in Singapore in September 2000.

5. Further training in the pipeline includes seminars in late 2003/early 2004 for all Magistrates on 'Problems with juveniles in detention' and 'Psychological aspects of juvenile delinquency'.

Paragraph 21 : Handling of juvenile offenders in police cells

6. Handling of offenders in police cells is a matter not within the purview of the Judiciary. I have written to the Police relaying the concerns of Members and requested them to give you a reply direct.

Paragraph 23 : Plans to improve the setting of juvenile courts

7. In the design of our juvenile courts, the aim is to minimise the anxiety of the juveniles while maintaining the security and authority of the courts.

8. At present, our juvenile courts have the following features :

- (a) the Magistrate's bench is at the same level as the juvenile;
- (b) there is no dock for the juvenile offenders and parents, guardians and case social workers are allowed to sit with them during the proceedings;
- (c) a probation officer is present to render immediate professional advice;

- (d) the public is excluded from the hearings;
- (e) private waiting rooms and discussion rooms are available for the use of the juveniles, their family members, lawyers, probation officers and social workers involved; and
- (f) the Magistrate has the discretion to dispense with the formality of an ordinary court, e.g. not wearing robes himself; parties can remain seated while addressing the court.

9. For care and protection hearings, apart from the above features, the juvenile Magistrate and the parties sit around a table and the formalities of the proceedings are further minimised.

10. Two improvement measures are being planned. The first is to improve the interior design and the furniture of the waiting rooms and the discussion rooms to provide a “homely” environment, with sofas and magazines.

11. Secondly, although due to structural reasons, we may not be able to provide in all Magistrates Court Buildings a separate lift and passage leading directly to the juvenile court, as in the case of the new Fanling Magistrates Court Building, we will relocate all juvenile courts to separate floors from the adult courts in all Magistrates Court Buildings as the planned merger of existing Magistrates Courts take place in the next few years.

Yours sincerely,

(Wilfred Tsui)
Judiciary Administrator