

**For discussion on
18 December 2003**

LEGCO SUB-COMMITTEE ON JUVENILE JUSTICE SYSTEM

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

PURPOSE

This paper informs Members of the findings and recommendations of the consultancy report on measures alternative to prosecution for handling unruly children and young persons, as well as the Administration's initial response to those recommendations.

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 gather 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 August 2003 and we briefed the Joint Legislative Council Panel on Security as well

as Administration of Justice and Legal Services on 27 October 2003 (LC Paper No. CB(2)160/03-04(01)). As the Joint Panel considered that the purview of the consultancy study went beyond the ambit of the two Panels, a Sub-Committee on Juvenile Justice System has been set up to follow up the consultancy study and other relevant issues relating to the review of the juvenile justice system.

FINDINGS AND RECOMMENDATIONS OF THE CONSULTANCY STUDY

4. The study suggests that there is a general trend in the juvenile justice systems in the six countries studied 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. A summary of the findings is at the Annex.

5. 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.

6. Specifically, the consultants have put forward the following six recommendations :

For Children below the minimum age of criminal responsibility of 10

- (a) Police Child Support Service: according to the consultancy report, research indicates that “the most effective contribution [the Police] can make is in implementing diversionary and restorative principles in making decisions

about prosecution, diversionary referrals, warnings or taking no further action.”. The consultants suggest that, if diversionary referrals are adopted, the Police may with parental consent arrange for minimal follow-up actions to quickly divert them from the juvenile justice or support system, e.g. arranging for the parent / child to make an apology or repair harm for the victim. The Police might initiate a Care or Protection Order¹ if a child or family was uncooperative in the helping process;

- (b) Family Support Conferences for Unruly Children: the consultants propose that upon referral by the Juvenile Court when processing an application for a Care or Protection Order or by the Police with parental consent, the Social Welfare Department (SWD) may organize a family support conference to draw together an unruly child, the family and representatives of potential professional service providers (but not victims) to formulate a follow-up service plan to provide greater support for prevention of any reoffending behaviour. A Care or Protection Order might be issued or applied for if the family disagreed or failed to attend the conference;

- (c) Empowerment Programmes for Unruly Children: the consultants suggest that the Police may upon parental consent refer an unruly child to SWD to provide empowerment programmes at selected Integrated Children and Youth Services Centres (ICYSCs) with an aim to reducing offending and anti-social behaviour. The child will be provided with a range of purposeful activities that combine recreational activities, social group and life skills training including anti-theft awareness, enhancement of self-esteem and resistance to peer pressure. The Police or SWD could

¹ The Police or the Director of Social Welfare can consider applying for a Care or Protection Order from the Juvenile Court under section 34 of the Protection of Children and Juveniles Ordinance (Cap.213) for any child or juvenile in need of care or protection, including unruly children under the minimum age of criminal responsibility. The Juvenile Court may appoint the Director of Social Welfare to be the legal guardian of such child or juvenile; commit the child / juvenile to the care of any person who is willing to undertake the care of him / her, or of any institution which is so willing; order his / her parent or guardian to enter into recognizances to exercise proper care and guardianship; or make an order placing him / her for a specified period, not exceeding 3 years under the supervision of a person appointed for the purpose of the court.

revert to initiate a Care or Protection Order if the parents disagreed or the child failed to attend the programme;

- (d) Community Alternatives to Institutional Placements: the consultants endorse SWD's present approach that as far as possible, children (including those under Care or Protection Orders) should be placed in their own families or familiar environment, and if such is not possible or not desirable, and that out-of-home care has to be considered, they should be placed in a family-like environment. However, the consultants consider that some extra support from the Government and the community is needed to sustain the growth of small family-like group care for these children;

For Young Offenders aged between 10 to below 18

- (e) Family Group Conferences for Young Offenders: the consultants suggest introducing legislative amendments to allow a separate unit to be attached to SWD to organize such conferences for young offenders upon referral by:
- (i) the Police and the Department of Justice (DoJ) as a pre-charge diversion (i.e. in lieu of prosecution) for offences which are relatively serious and for juveniles who have a history of previous offending. If no agreement could be reached on the follow-up plan or the agreed tasks were not completed, the Police and DoJ might consider prosecuting the offender; or
 - (ii) by the Court as a pre-sentence diversion (i.e. to provide an opportunity for the offender to be accountable for their behaviour before the Court makes a decision).

Such conferences are similar to those in the recommendation (b) above though victims are also suggested to be included.

- (f) Empowerment Programmes for Young Offenders – similar empowerment programmes as those in recommendation (c) above but with different features are recommended by the consultants for young offenders as a pre-prosecution diversion or as referred by the Family Group Conferences in recommendation (e) above. The programme will focus on training (60 hours) and community service (for 3 months) that would increase the offenders’ resilience and develop their positive values. If the offender failed to complete the programme, DoJ might consider initiating prosecution action or the Family Group Conference might consider further options, including the option of referring the matters to the Court.

ADMINISTRATION’S INITIAL RESPONSE

7. To examine the recommendations of the consultancy study in detail, an inter-departmental working group comprising representatives from Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau, the Police, DoJ and SWD has been put in place.

8. While we would positively consider any meritorious measures effective in reducing crime rates, and that the consultants’ report provides us an opportunity to reflect on the existing measures, we are mindful of the relatively limited overseas experience available to demonstrate the effectiveness of the proposed alternative measures. The social and legal context in which those measures have been adopted should also be examined. As a first step, we would liaise with our overseas counterparts, to better understand how the proposed measures have been operating, in particular to obtain empirical data and objective assessment of the effectiveness of these alternative measures in reducing re-offending rates or reversing the errant behaviour or such tendency of unruly children and young offenders.

9. In considering the introduction of new support services for children below the minimum age of criminal responsibility, we have to take into account the extent of the behavioral problems demonstrated by this group of children. Members may

wish to note that from 1996 to 2001, the number of children aged between 7 and 9 that had been arrested for crime per year is less than 200. Moreover, after the minimum age of criminal responsibility was raised from seven to ten, this group of children can no longer be prosecuted. It is therefore not appropriate to argue, as proposed under the Police Child Support Service, that the Police should make decisions about 'prosecution', 'warnings', or to provide 'a mid-level alternative to prosecution' for children of this age group. We should be mindful that any formalized programmes initiated and arranged by the Police which are specifically targeted at the 'wrongful' acts by children under the minimum age of criminal responsibility may be criticized as tantamount to lowering the age of criminal responsibility to below 10, or for implicating such children.

10. Notwithstanding the above, we have recently enhanced support services targeted at unruly children below the minimum age of criminal responsibility. For example, from 1 October 2003, we have :

- (a) enhanced the accessibility of professional support services for unruly children below 10 by providing them and their parents with an information leaflet on youth services which list out the full range of services whenever they come to police attention; and
- (b) strengthened police referrals of unruly children below 10 to service providers for follow-up support services with parental consent, by establishing direct points of contact between the Police and the SWD/EMB. District Social Welfare Officers of SWD and inspectors of the Students Guidance Section of EMB are designated as contact points at the district level to take up referrals from the Police.

The above enhancement ensures cases involving children under the age of 10 who are in need of assistance are being followed up expeditiously by agencies with the expertise to advise on the most appropriate support services.

11. Specifically for those aged between 10 and below 18, we have introduced since October 2003 Family Conferences to bring together relevant professionals, the juveniles cautioned under the Police Superintendents' Discretion Scheme (PSDS) and their family members to draw up a follow-up action plan to address the needs of the juveniles. These are similar to the two types of conferences proposed by the consultants.

12. Besides, a wide range of other existing services for unruly children and young offenders have already been in place. Continuous improvements are also made where necessary. For example :

- (a) Integrated Children and Youth Services Centres (ICYSCs) as well as other community youth welfare units are providing suitable programmes for unruly children and young offenders referred to them by the the education, health and law enforcement sectors;
- (b) eighteen ICYSCs have been provided with additional new resources to operate over-night outreaching services for young night drifters over the territory. Besides, SWD has strengthened crisis residential centre service, set up a pilot all-night drop-in centre and work in collaboration with the Leisure and Cultural Services Department in opening late-night recreational facilities to address the needs of unruly children and juvenile delinquents. The purpose of these services is to provide timely intervention for youth-at-risk with a view to minimizing their risk of coming under negative influence;
- (c) outreaching social work service has been restructured into 16 District Youth Outreaching Social Work Teams with a view to better addressing the needs of high-risk youth and handle issues of juvenile gang;
- (d) two additional Counselling Centres for Psychotropic Substance Abusers have been set up to achieve full and even coverage of the service over the

territory as an initiative to enhance support services for substance abusers including young drug abusers. These Counselling Centres have also been provided with additional resources to provide one-stop services as well as strengthened drug preventive programmes for secondary schools;

- (e) an extensive network of 66 Family Services Centres / Integrated Family Service Centres (FSCs / IFSCs) located over the territory to provide counselling, community-based support services and other forms of practical assistance to the needy, including unruly children, young people and their families, according to their needs. SWD has completed the Review of Family Services in May 2001. One of the recommendations is the formation of IFSCs to meet the changing needs of families through provision of a continuum of preventive, supportive and remedial services. SWD is making preparation to transform all FSCs into IFSCs. Provision of services for families of unruly children and young person will be further enhanced with this new service delivery mode;
- (f) The Junior Police Call and 43 multi-agency programmes run by the Police at the district level in collaboration with other parties such as schools, NGOs and parent-teacher associations engage juveniles and youth at risk in worthwhile activities and prevent them from associating with bad elements;
- (g) there is a wide range of aftercare services for young offenders cautioned under the PSDS. These include follow-up supervisory visits by the Police and referrals to the SWD, EMB, Community Support Service Scheme (CSSS)² and other NGOs depending on the needs of the cautioned juveniles concerned; and

2 When young offenders are cautioned by the Police, they may be referred by the Police to the CSSS teams attached to ICYSCs. Social workers would help them cope with problems in life, correct wayward behaviour, and strengthen family and peer support. They provide counselling and organize structured groups and special activities to meet their personal needs, improve inter-personal relationships, and develop a sense of social responsibility through participation in community service. As an initiative to enhance support services for young offenders, SWD has set up two additional CSSS teams in September 2001; thus achieving full coverage of the service over the territory.

(h) to provide a family-like environment for children in need, SWD has increased the number of foster care places and small group homes over the years and we are not in lack of such provision. In fact, a total of 165 foster care places (including 45 emergency foster care places) were just introduced in 2002-03 and 2003-04. As a result, the total number of subvented foster care places and small group home places in 2003-04 are 745 and 952 respectively. Placement of unruly children or young offenders in a foster home will be assessed against a number of factors including the children's needs, the extent of the children's behavioural problems, the readiness / acceptance of the foster parents and their ability to cope with the children's problems, etc.

13. Some of these programmes above, particularly programmes run by ICYSCs and the CSSS, are similar to the two types of empowerment programmes proposed by the consultants. Moreover, we note that with services like those provided by the CSSS, the re-offending rate for young offenders cautioned under the PSDS is maintained at a low level, ranging from 13% to 17% in the period from 1997 to 2001.

14. The above shows that there are already in place administrative arrangements in rendering services for unruly children below the minimum age of criminal responsibility and diverting young offenders above the minimum age of criminal responsibility from prosecution, including the services provided by SWD and other community youth welfare units and the PSDS. A number of new initiatives have also been introduced recently to further strengthen our service delivery. During the course of the consultancy study and upon receipt of the final report, we have examined the purpose, key features and mode of delivery of our existing services above for unruly children and young offenders. Their nature largely resembles the recommendations put forward by the consultants though the mode of delivery, scope and details of implementation may not be identical.

15. Whether the proposed options raised by the consultants should be

implemented require further consideration. Issues involved include how the new options, if adopted, interface with the existing services already in place, the community's acceptance of the concept of restorative justice, willingness of family and victims to get involved in the process, and whether the present administrative arrangements of services for unruly children and young offenders including programmes run by ICYSCs, Family Conferences and referrals for professional support services, the participation of which is currently on a voluntary basis on the part of those children and their parents, should be made mandatory by legislative amendments. Nonetheless, we are mindful that the local community might also have strong views on mandatory requirements by way of legislative amendments, as we are aware of the sensitivity of such moves, which have attracted considerable controversy in countries like the UK.

16. As mentioned in paragraph 8 above, we will liaise with our overseas counterparts to assess the effectiveness of the measures introduced in other countries. Moreover, as the enhanced measures referred to in paragraphs 10(b) and 11 above were just introduced in October 2003, we will conduct a review of their effectiveness one year after their implementation.

**Health, Welfare and Food Bureau
Security Bureau
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Scope and Findings of the Consultancy Study on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons

Scope of the Study

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.

2. 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

3. 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.

4. 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.

5. England is similar to the three above-mentioned countries in many respects as far as handling of unruly children is concerned. England has in recent years 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.

6. 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, Singapore also uses family group as an option by the Court to aid decision making when handling young offenders.

7. The Report suggests that increased police support for and 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 re-offending. However, the report suggests caution when interpreting the effectiveness of various alternative measures because effectiveness of measures put in place in some of the countries examined has yet to be proven.