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**Report of the Panel on Administration of Justice and Legal Services on
juvenile justice system**

Purpose

This paper reports on the deliberations of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the review of the juvenile justice system and related issues.

Background

2. The Law Reform Commission (LRC) published its report on "The Age of Criminal Responsibility in Hong Kong" in May 2000. The Report recommended, inter alia, that the minimum age of criminal responsibility should be raised from seven to 10 years of age, and the rebuttable presumption of *doli incapax* should continue to apply to children of 10 and below 14 years of age. The Juvenile Offenders (Amendment) Bill 2001, which sought to implement the LRC recommendation by raising the minimum age of criminal responsibility from seven to 10, was passed by LegCo on 12 March 2003.

3. During the deliberations of the Bills Committee on the Juvenile Offender (Amendment) Bill 2001, some members expressed support for the proposal of raising the minimum age of criminal responsibility from seven to 10, whilst some other members were in favour of raising it to 12, pending the outcome of the review on the juvenile justice system recommended by the LRC. The Administration advised the Bills Committee that the City University of Hong Kong had been commissioned to conduct a consultancy study on the measures adopted by overseas countries in handling unruly children below, and juveniles above, the minimum age of criminal responsibility. The information would facilitate the Administration to identify measures to fill the gap of provision of services for children and juveniles at risk after the minimum age was raised to 10.

4. On the recommendation of the Bills Committee, the House Committee agreed at its meeting on 28 February 2003 that the AJLS Panel should follow up on -

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

5. The consultancy study referred to in paragraph 3 above was commissioned by the Security Bureau and carried out by the Youth Studies Net, City University of Hong Kong. The Consultancy Report entitled "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong" was published in August 2003. The Consultancy Report examined a total of six countries, namely, Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand.

6. The Consultancy Report recommended six options on diversionary measures alternative to the prosecution of children and young persons. The Consultants hoped that the report could provide a road map for Hong Kong and lead to the development of a new juvenile justice system incorporating the principles of practices of restorative justice. Restorative and reintegrative practices involved the offenders taking responsibility for offending; repairing harm; reintegrating offenders, victims and the community; and the empowerment of all those affected by what had happened including the offenders, families, victims and the communities. The objectives were to provide for more effective means for addressing the needs of the offenders and the victims as well as their families, preventing re-offending and achieving reintegration of the offenders into the society.

7. 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 straddled the policy portfolios of a number of bureaux, the two Panels recommended that a subcommittee be set up under the House Committee to follow up the relevant issues. The recommendation was agreed by the House Committee at its meeting on 7 November 2003.

8. Under the chairmanship of Hon Margaret NG, the Subcommittee on Juvenile Justice System held five meetings to follow up the Consultancy Report and other issues related to the juvenile justice system and received views from deputations. At the end of the second term LegCo, the Subcommittee made a report on its deliberations to the House Committee on 25 June 2004 (LC Paper No. CB(2)2895/03-04).

9. The Subcommittee on Juvenile Justice System recommended that the Administration should report to the relevant Panel(s) in the new LegCo term on the following matters -

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

Deliberations of the AJLS Panel

10. The AJLS Panel has been monitoring the progress of the follow up actions by the Administration on the matters referred to in paragraph 9 above.

11. The AJLS Panel has noted the paper provided by the Administration in August 2005 on the progress and effectiveness of the enhanced support measures introduced by the Administration since October 2003 targeting at unruly children and young offenders. In April 2007, the Administration provided another paper to report on the outcome of its review of the proposal to introduce the principles and practices of restorative justice in dealing with juvenile offenders. The AJLS Panel held a meeting on 23 April 2007 to follow up the relevant issues. Members of the Panel on Security and the Panel on Welfare Services, as well as other LegCo Members, were invited to join the discussion. The deputations which had previously given views to the Subcommittee on Juvenile Justice System were also invited to attend the meeting. The main deliberations of the AJLS Panel are summarized below.

Progress and effectiveness of the enhanced support measures

12. The Administration has briefed the AJLS Panel on the progress and effectiveness of the enhanced support measures introduced since October 2003 targeting at unruly children and young offenders as follows -

- (a) since September 2004, the Juvenile Protection Section (JPS) aftercare service of the Police has been extended to unruly children below the age of 10. Children under 10 deemed to be in need of support services will be referred to the Social Welfare Department (SWD) with parental consent. So far, no cases involving children under 10 have been assessed to be suitable for referral to the JPS;
- (b) there are a variety of established mechanisms for referring unruly children between 10 and below 18 coming to the Police's attention to the relevant Government departments and/or other agencies for support services. Since 1 July 2003, an enhanced direct referral mechanism has been established between the Police and SWD/ Education and Manpower Bureau (EMB) so that police referrals could

be dealt with directly and expediently. The Administration considers that the mechanism is effective and functioning smoothly;

- (c) with effect from July 2003, the Police have enhanced the accessibility of professional support services for unruly children and youngsters who have come to the Police's attention by providing them and their parents with a Youth Information Services Leaflet. The leaflet contains useful information on a wide range of services provided by both Government departments and Non-Government Organizations (NGOs). In September 2004, the contents of the leaflet were further enriched to include website addresses of major youth-related NGOs. Apart from Chinese and English, the leaflet is also available in other languages to cater for the needs of ethnic minorities; and
- (d) the pilot scheme of Family Conference (FC) was introduced in October 2003 for children/juveniles aged between 10 and below 18 cautioned under the Police Superintendent's Discretion Scheme (PSDS). A review of the pilot scheme covering the first year of implementation from October 2003 to September 2004 has been conducted by the SWD, with the assistance of the Police and other stakeholders. During this pilot period, FCs for 44 cases were successfully conducted. There is a general consensus in the welfare sector supporting the continuation of the FC scheme. SWD will continue to monitor the implementation of the scheme and review it where necessary. Having regard to the experiences gained, both SWD and the Police are in support of extending the mechanism to children below the age of 10 and will work out the necessary administrative and logistical arrangements accordingly.

13. A Member has asked the Administration to consider the proposal of a deputation for a letter of consent to be attached to the Youth Information Services Leaflet, to facilitate NGOs to follow up these cases. The Administration has advised that it would continue to exchange views with stakeholders on how to improve the mechanism. The deputation's suggestion would be considered in that context.

14. A deputation has suggested that to ensure co-operation from the juvenile's family, consideration could be given to making it a requirement for juveniles under the PSDS who had been cautioned for a second time or more to attend a FC, subject to the recommendation of SWD. A Member has requested the Administration to consider the deputation's suggestion. The Administration is of the view that the FC scheme is operated on a voluntary basis for juveniles aged 10 to below 18 and with the consent of parents/guardians of the juveniles. In the event that an FC is considered necessary after assessment, the Police would make the best effort to encourage participation of family members of the juvenile offenders. Given that there are many support measures other than FC and they are also effective, the

Administration does not consider it necessary to make it a mandatory requirement for young offenders and their parents/guardians to attend FCs.

Juvenile justice system incorporating the principles and practices of restorative justice

15. The Administration has explained that restorative justice is a relatively new concept and is still evolving. It is not aware of a universally-adopted exhaustive list of the principles and practices of restorative justice. Nonetheless, from its research into the experiences of overseas jurisdictions practising restorative justice, the more common principles are as follows -

- (a) Accountability - holding the juvenile offender accountable for his behaviour and giving him an opportunity to accept his responsibility, understand the consequences of his offending behaviour and make amends;
- (b) Reparation - providing an opportunity for both the victim and the juvenile offender to take part in repairing the harm caused by the offender;
- (c) Reintegration - facilitating the juvenile offender's integration into his family and the wider community;
- (d) Family and victim participation - involving the family of the juvenile offender as well as the victim in the process of deciding an appropriate response to the offending behaviour; and
- (e) Diversion - diverting the juvenile offender from the court as far as possible.

16. The concept of restorative justice is implemented overseas through a variety of measures at different stages of the criminal justice process. Examples include -

- (a) family group or community conferences to discuss the juvenile offender's behaviour;
- (b) apology by the juvenile offender to the victim, the victim's family or a wider group representing "the community";
- (c) carrying out of service by the juvenile offender for the victim or the community; and
- (d) payment of compensation by the juvenile offender or his family to the victim or the victim's family.

17. The Administration has advised that many elements and practices of the existing measures in Hong Kong are similar to those of restorative justice practised overseas, e.g. diversion of the juvenile offender from the court where possible, holding him accountable for his behaviour, facilitating his reintegration into the society and involving his family where appropriate. The main element absent is perhaps victim participation (VP). In response to the request of the Subcommittee on Juvenile Justice System, the Administration has considered the desirability of introducing some form of VP on top of the existing measures. Its main considerations are summarized below -

- (a) there is still not sufficiently clear empirical proof in overseas jurisdictions demonstrating the long-term positive effects of VP and its effectiveness in reducing recidivism of young offenders;
- (b) while a few victims might find emotional relief from a VP conference, it is also likely that some victims are averse to going through the unpleasant experience. Some victims may feel that the VP process is too "lenient" to the offender and has little deterrent effect, and some victims may consider that they are under pressure to accept the process;
- (c) the existing measures for handling juvenile offenders have been well tested, effective, and present a right mix of deterrent and rehabilitative effects. Introducing VP in the criminal justice system could risk sending a wrong message to the public that the balance is being tilted too much towards helping the offender;
- (d) if VP was to be introduced into the criminal justice system as an additional measure, it would be necessary to decide how it should interface with such well-tested schemes as the PSDS. If VP was introduced as a replacement measure, it would be necessary to demonstrate that it would be more effective than the measures to be phased out. The deliberations of the Administration so far have not led to such a conclusion;
- (e) the common offences committed by juvenile offenders in Hong Kong also do not lend themselves easily to the VP process. For example, the "victims" of the common offence of shop theft are department stores and supermarkets. Other common offences such as gambling and possession of dangerous drugs have no immediately identifiable "victims". The cost-effectiveness of introducing an elaborate scheme with uncertain results for a few potential "beneficiaries" is doubtful, especially in view of the general effectiveness of the existing measures for dealing with juvenile offenders; and

- (f) since the minimum age of criminal responsibility was raised from seven to 10 years in July 2003, the overall situation of juvenile crime has been very stable. With the wide range of measures in place in handling delinquent juveniles, the problem of juvenile crime is under control.

18. Some members and many deputations in the social sector have cited overseas experience and expressed support for the VP process as it could address the emotional needs and tangible losses of the victim, and at the same time allow the offending youth to learn how his behaviour has negatively affected others and hold him accountable for his misdeeds, thus facilitating the rehabilitation of the offending youth and thereby reducing recidivism.

19. The Administration considers that there is no single best criminal justice system that suits all jurisdictions. Different communities and societies find their own appropriate ways to express justice as a response to wrongdoing. In the Hong Kong context, the Administration considers that any possible extra benefits that VP in the criminal justice system might bring on top of the existing measures are not apparent. The Administration therefore does not consider that it should seek to introduce VP into the system.

Minimum age of criminal responsibility

20. A Member has pointed out that in Asian countries such as China, Taiwan, Macau and Japan, the minimum age of criminal responsibility is 14 to 16; the Member has requested the Administration to review the minimum age of criminal responsibility. A deputation considers that it would be in the best interests of children to raise the minimum age of criminal responsibility to 14, as the United Nations Committee on the Rights of the Child has expressed concern in its Concluding Observations made in 2005 that despite the raising of the minimum age of criminal responsibility in the HKSAR, the age of 10 years is still too low.

21. The Administration has explained that since the LRC's recommendation of raising the minimum age of criminal responsibility from seven to 10 years of age was implemented in 2003, the number of young offenders at the age of 10 and 11, and between 12 and 17 has remained quite stable. On the other hand, the number of unruly children between seven and nine years of age has increased from some 100 in 2004 to over 200 in 2006. The increase in numbers could be due to two reasons. First, some of the services, such as the JPS aftercare service, has been extended to unruly children below the age of 10, resulting in more cases of unruly behaviour coming to the Police's attention. Second, there is also the possibility that raising the minimum age of criminal responsibility from seven to 10 years of age has resulted in more offences committed by this group of children as they are no longer criminally liable. The Administration would continue to monitor the trend of crimes committed by different age groups of youngsters. The Administration does not plan to further raise the criminal age of responsibility for the time being.

Recommendation

22. The AJLS Panel has noted the Administration's progress report on the effectiveness of the enhanced measures introduced to strengthen the support for unruly children and young offenders since October 2003, and the outcome of the Administration's review on the development of a new juvenile justice system incorporating the principles and practices of restorative justice. The Panel has agreed to make a report to the House Committee.

Advice sought

22. Members of the House Committee are invited to note this report.

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