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Legislative Council

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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 23 April 2007

Juvenile justice system

Purpose

This paper gives an account of the past discussions of Members of the Legislative Council (LegCo) concerning the review of juvenile justice system and related issues.

Background

2. The Juvenile Offenders (Amendment) Bill 2001, which sought to implement the recommendation of the Law Reform Commission (LRC) by raising the minimum age of criminal responsibility from seven to 10, was passed by LegCo on 12 March 2003.

3. During the deliberation of the Bills Committee, some members expressed support for the proposal of raising the minimum age of criminal responsibility from seven to 10, and 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 Bill Committee, the House Committee agreed at its meeting on 28 February 2003 that the Panel on Administration of Justice and Legal Services (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.

Work of the AJLS Panel

Visit to juvenile courts

5. In March 2003, the AJLS Panel paid a visit to the respective juvenile courts at the Eastern Magistrates' Courts and the Kowloon City Magistrates' Courts to better understand the existing operation of juvenile courts. The Panel discussed how the setting of the juvenile courts and the detention facilities at the two Magistrates' Courts could be improved. The Administration agreed 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.

Research report on operation of juvenile courts in overseas countries

6. At the request of the AJLS Panel, the Research and Library Services Division (RLSD) of the LegCo Secretariat undertook a research study and presented the Research Report on "Operation of Youth Courts in Selected Overseas Places" (RP07/02-03) to the Panel at its meeting on 26 May 2003. 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.

Establishment of the Subcommittee on Juvenile Justice System

7. The consultancy study (paragraph 3 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 Report examined a total of six countries, namely, Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand.

8. The Consultancy Report recommended six options on diversionary measures alternative to prosecution of children and young persons. The Consultants hoped that the report could provide a road map for Hong Kong and led 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.

9. 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.

10. Under the chairmanship of Hon Margaret NG, the Subcommittee on Juvenile Justice System held five meetings to discuss relevant issues with the Administration and received views from deputations. At the end of the second term LegCo, the Subcommittee reported its deliberations to the House Committee on 25 June 2004. A copy of the report is in **Annex I**.

11. The Subcommittee recommended that the Administration should report to the LegCo in the new LegCo term on the following matters -

- (a) the effectiveness of the enhanced support measures 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.

Subsequent developments

LegCo questions raised by Members

12. At the Council meeting on 9 March 2005, Dr Hon Fernando CHEUNG raised a written question concerning the development of a juvenile justice system. An extract from the Official Record of Proceedings is in **Annex II**.

13. At the Council meeting on 10 May 2006, Hon Audrey EU raised a written question concerning support services provided to unruly children below the age of 10 after the minimum age of criminal liability had been raised to 10 and related issues. An extract from the Official Record of Proceedings is in **Annex III**.

Progress of work of the Administration

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

15. In January 2005, the Administration reported progress on the enhanced measures introduced since 2003. As regards the suggestion for the development of a new juvenile justice system incorporating principles and practices of restorative justice, it advised that the relevant bureaux and departments were still at an early stage of deliberations. As the subject matter was a complex one, it was not able to commit to a firm time frame for concluding the discussions.

Latest position

16. In August 2005, the Administration provided a paper on the progress and effectiveness of the enhanced measures introduced since October 2003 targeting at unruly children and young offenders (LC Paper No. CB(2)2508/04-05 (01)).

17. In December 2006, the Administration provided a paper on the progress made in its review of the proposal to incorporate the principles and practices of restorative justice in dealing with juvenile offenders (LC Paper No. CB(2)765/06-07(01)).

18. The AJLS Panel agreed to follow up the relevant issues at the meeting on 23 April 2007. Members of the Panel on Security and the Panel on Welfare Services, as well as other LegCo Members, have been invited to join the discussion. The deputations which had given views to the Subcommittee on Juvenile Justice System have also be invited to give views to the Panel.

Relevant papers

19. A list of relevant papers available on the LegCo website is in **Annex IV**.

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LC Paper No. CB(2)2895/03-04

Ref : CB2/HS/2/03

**Paper for the House Committee meeting
on 25 June 2004**

Report of the Subcommittee on juvenile justice system

Purpose

This paper reports on the deliberation of the Subcommittee on juvenile justice system (the Subcommittee).

Background

2. The Law Reform Commission (LRC) in its Report on "Minimum Age of Criminal Responsibility in Hong Kong" recommended, among other things, that the age of criminal responsibility should be raised from seven to 10, and that the Administration should conduct a general review on the juvenile justice system in Hong Kong. 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. On 12 November 2001, the Juvenile Offenders (Amendment) Bill 2001 was introduced into the Legislative Council (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 its report was tabled in LegCo on 12 March 2003. The Bill was passed by LegCo on the same day. A copy of the report of the Bills Committee is in **Appendix I**.

4. Members of the Bills Committee had different views on the proposal in the Bill to raise the minimum age to 10 years. Some members were in support of the proposal, while some other members were in favour of raising the minimum age of criminal responsibility to 12 years, pending the outcome of the review on the juvenile justice system recommended by LRC. The Administration advised the Bills Committee that 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 is raised to 10 years. The Administration maintained the view that the minimum age should be raised to 10 years in the first instance, and would propose raising the age further from 10 to 12 after taking into account the findings of the consultancy study.

5. The Bills Committee suggested that the Panel on Administration of Justice and Legal Services should follow up -

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

6. The Consultancy Report entitled "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong" (the Consultancy Report) was published in August 2003. It examined the systems in six overseas jurisdictions, namely, Singapore, England and Wales, Belgium, Canada, Australia (Queensland) and New Zealand, and put forward certain recommendations on measures alternative to prosecution for handling unruly children and young offenders in Hong Kong. The Administration has set up an inter-departmental group comprising representatives from the Security Bureau, Health, Welfare and Food Bureau, Education and Manpower Bureau (EMB), Social Welfare Department (SWD), the Police and Department of Justice (DoJ) to consider how to take forward the recommendations in the Consultancy Report.

7. To follow up the recommendations of the Bills Committee in paragraph 5 above, the Panel on Administration of Justice and Legal Services and the Panel on Security held a joint meeting on 27 October 2003 to receive a briefing by the Administration on the Consultancy Report. As the policy issues arising from the Consultancy Report straddle the policy portfolios of a number of bureaux, the two Panels recommended that the House Committee should set up a subcommittee to follow up the relevant issues.

The Subcommittee

8. At the meeting of the House Committee on 7 November 2003, Members agreed to form a subcommittee to follow up the policy issues arising from the review on juvenile justice system. A membership list of the Subcommittee is in **Appendix II**. A list of the papers considered by the Subcommittee is in **Appendix III**.

9. Under the chairmanship of Hon Margaret NG, the Subcommittee has held five meetings to discuss relevant issues. At two of these meetings, the Subcommittee received views from deputations on the Consultancy Report, as well as the Administration's overall responses to the recommendations of the Consultancy Report and the issues raised by the Subcommittee and deputations respectively. A list of the deputations together with the 16 written submissions received from them is in **Appendix IV**.

Deliberation of the Subcommittee

The Consultancy Report

10. The Administration and a Consultant from the research team briefed the Subcommittee on the Consultancy Report which covers the following major aspects -

- (a) in-depth research on the measures alternative to prosecution adopted in the six selected overseas jurisdictions for handling unruly children and young persons;
- (b) an assessment of the effectiveness of such measures in preventing and diverting children and young persons from going astray;
- (c) the case for introducing new measures alternative to prosecution of unruly children and young persons in Hong Kong; and
- (d) six specific options proposed for Hong Kong.

Chapter 12 of the Consultancy Report on "A summary of the research findings and recommendations" is in **Appendix V**.

11. The Consultancy Report suggests that there is a general trend in 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 community; and the empowerment of all those affected by what has happened including the offenders, families, victims and the communities. The objectives are 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.

12. The Consultancy Report recommends six options on diversionary measures alternative to the prosecution of children and young persons in Hong Kong. The Consultants hope that the report can provide a road map for Hong

Kong which will lead to the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

13. The Administration has considered the Consultants' recommendations and proposed to implement a number of enhanced measures to further strengthen the support to unruly children and young offenders. The deliberation of the Subcommittee on the six options recommended in the Consultancy Report and the enhanced support measures proposed by the Administration is summarized in paragraphs 14 to 44 below.

Four options recommended for children below the minimum age of criminal responsibility of 10

Police Child Support Service (PCSS)

14. The Consultancy Report proposes that a PCSS be launched to assist unruly children with the consent of the parents. Frontline Police officers should give immediate support to children-at-risk. Sometimes, suitable diversionary actions of a fairly minimal kind can be taken, e.g. arranging for the parent/child to make an apology or to help the victim. Where more difficulties are encountered, the Police may refer the child, through SWD, to attend an Empowerment Programme organized by an Integrated Children and Youth Services Centre (ICYSC) or a Family Support Conference organized by an Integrated Family Service Centre. The Police may also initiate a Care or Protection Order if a child or family is uncooperative in the process.

15. The deputations generally support the introduction of a PCSS. Some deputations have expressed the view that since frontline Police officers play a key role in handling cases of unruly children who came to their attention, they should receive relevant training such as in child psychology and basic counselling skills. Some deputations are of the view that the Police should not act passively in handling unruly children below the age of 10 despite the fact that the minimum age of criminal responsibility has been raised, as this could send a wrong message to unruly children and their families that the Police can do nothing until the offenders have reached the age of 10. The deputations consider that the role of the Police in referring children and young offenders to seek follow-up support services should be strengthened, and that there should be greater collaboration between the Police, the educational sector and non-government organizations (NGOs).

16. The Administration has explained that with the raising of the minimum age of criminal responsibility to 10, children over seven but below 10 can no longer be prosecuted. In its view, any formalized programmes initiated and arranged by the Police to target at children in this age group may be criticized as tantamount to lowering the age of criminal responsibility to below 10, or for implicating such children. However, the Police are prepared to extend their

Juvenile Protection Section (JPS) service, currently only available to youngsters over 10 years of age, to those below 10 if the circumstances of the case so justify. Subject to parental consent, JPS supervision visits would be made to the unruly children for a maximum of two years. With parental consent, the case can also be referred to SWD for assessing and following up the support services required. The need for a Care or Protection Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family.

17. The Administration has informed the Subcommittee that since 1 October 2003, it has strengthened police referrals of unruly children below 10 and juveniles to service providers for follow-up support services with parental consent. District Social Welfare Officers of SWD and School Development Officers of the Careers Guidance and Home School Cooperation Section of EMB are designated as contact points at the district level to take up referrals from the Police. Moreover, as recently confirmed by legal advice, the Police can refer personal data of unruly children under 10 to SWD for follow up on the children's well-being, when prevention of injury to life is at issue, even in the absence of parental consent. Hence, the Police will make cross-departmental referrals for unruly children and young offenders even without parental consent if the Police assess that there is a need to do so.

18. The Administration has further advised the Subcommittee that since October 2003, the Police have enhanced the accessibility of professional support services for unruly children below 10 who have come to Police attention by providing them and their parents with an information leaflet containing useful information on a wide range of services provided by both Government departments and NGOs. Such services include counselling for those with emotional problems, hotlines to seek information and immediate help, advice on education and career opportunities, and assistance for those with drug-related problems. The Administration has pointed out that the content of the information leaflet would be further enriched to include website addresses of major youth-related NGOs which organize programmes for juveniles and their families.

19. Some members of the Subcommittee have pointed out that there is a gap in the provision of services for unruly children who have committed minor offences where the parents take no proper action to rectify the children's behaviour and do not consent to receiving follow-up support services. They are of the view that the Government should have a role to play in dealing with such cases.

20. The Administration considers that in all cases, even when the offence is considered to be minor and isolated, and there are no other factors justifying a referral without parental consent, the child and the parents/guardians would be given information on how to obtain support services. There are a wide range of

programmes provided under the various schemes run by Government and NGOs for unruly children and young offenders. The Administration would continue to enhance services in this regard to provide assistance to parents and their children including those who have committed minor offences and not been referred to SWD for follow-up services. The Administration has also explained that a balance has to be carefully struck between rendering assistance to children under the minimum age of criminal responsibility and their parents, and avoiding "excessive" intervention targeted at them against their wish when the wrongful act is considered to be trivial.

Family Support Conferences (FSCs)

21. The Consultancy Report recommends that upon referral by the Juvenile Court in processing an application for a Care or Protection Order or by the Police with parental consent, SWD may organize a FSC to draw together an unruly child aged below 10 (but not with the victim), the child's family and representatives of potential professional service providers to formulate welfare plans and provide greater support to the unruly child to prevent re-offending. A Care or Protection Order may be issued if the child and his family members disagreed or failed to attend the conference.

22. The Administration considers that the recommendation is worth pursuing. The Administration advises that it has introduced, since October 2003, a pilot scheme on Family Conferences (FCs) for juveniles aged between 10 and below 18 to bring together the offenders cautioned under the Police Superintendent's Discretion Scheme (PSDS), their family members and professionals from the relevant Government departments/NGOs to assess the needs of the offenders and draw up a follow-up action plan to address the needs identified. The criteria for convening a FC are as follows -

- (a) the Police Superintendent exercising the caution under the PSDS considers that the juvenile is in need of the services of three or more parties, e.g. the Police (JPS), SWD, EMB, NGOs, Department of Health, Hospital Authority etc; or
- (b) the juvenile is given a second or further caution under PSDS.

The FCs operate on a voluntary basis with the consent of the parents/guardians of the juveniles. The decision as to whether a FC should be convened in a particular case is vested in SWD, subject to the case-in-question meeting the criteria of conducting FC.

23. The Administration has further informed the Subcommittee that subject to a positive outcome of a review to assess the effectiveness of FCs one year after the implementation of the scheme, and the feasibility of extending FCs to children under 10 years of age within the existing legal framework, the

Administration stands ready to launch FCs for unruly children under 10 years of age who are assessed to be in need of services of three or more parties and whose parents consent to this course of action. Besides, the need for a Care or Protection Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family. The disagreement or non-attendance of the child and/or his/her parent(s) at the FC alone may not necessitate the application for a Care or Protection Order.

24. While generally in support of the consultants' proposal to introduce FSCs, some deputations opine that detailed guidelines and criteria for assessing the need for holding FSCs should be developed, and the roles and responsibilities of the participating parties should be clearly defined. Adequate specialized training should be provided to the persons who chair the FSCs.

Empowerment programmes for unruly children

25. The Consultancy Report suggests that the Police may, with parental consent, refer an unruly child to SWD to receive empowerment programmes provided through the established network of selected ICYSCs with an aim to reducing offending and anti-social behaviour. Under the empowerment programmes, which would be coordinated and monitored by SWD, the unruly children 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 revert to initiate a Care or Protection Order if the parents disagree or the child fails to attend the programme.

26. The deputations generally support the proposal. Some deputations have suggested that the empowerment programmes could be incorporated into the existing programmes of ICYSCs so as to avoid an undesirable labelling effect on the children receiving the empowerment programmes. Some deputations have stressed that it is necessary to ensure that the social workers involved will be adequately equipped with the knowledge and skills for assessing the children's needs and counselling them.

27. The Administration has explained that the proposal to organize tailor-made programmes solely for unruly children would be difficult to implement as the children may reside in different areas and display behavioural problems at different times. The proposal may not be the best way of using scarce public resources. The Administration supports some deputations' suggestion to incorporate empowerment programmes for unruly children into the existing programmes run by various agencies, including the programmes of ICYSCs/Integrated Family Service Centres/outreaching social work teams, etc. The Administration considers that it would be more practicable and cost-effective for the social worker concerned to decide what programmes would best meet the needs of the children. Besides, instead of issuing a Care or Protection Order

whenever the parents or the child fails to attend the programme, the need for such an Order will be thoroughly assessed by social workers having regard to the individual circumstances of the child concerned and his/her family.

Community alternatives to institutional placements

28. The Consultancy Report proposes that when parents have difficulties in providing care of adequate standard for their children, suitable placements with kin or in foster families should be explored as an alternative to the larger residential homes that are currently being used for many children in such cases.

29. The deputations support the proposal and consider that adequate support should be provided to help foster families deal with the problems of unruly children.

30. According to the Administration, SWD will continue with its present approach that children should remain with their own families as far as possible. Where out-of-home care has to be considered, the children should be placed in a home-like environment, e.g. with relatives, in foster homes or small group homes. SWD has increased the number of foster care places and small group homes over the years and it is not in lack of such provision. A total of 165 foster care places (including 45 emergency foster care places) were introduced in 2002-03 and 2003-04. As at June 2004, the total number of subvented foster care places and small group home places was 745 and 952 respectively. Placement of unruly children in a foster home is assessed against the children's needs, the extent of their behavioural problems, the readiness and acceptance of the foster parents and their ability to cope with the children's problems, etc.

Two options recommended for young offenders aged between 10 to below 18

Family Group Conferences (FGCs)

31. The Consultancy Report proposes that legislative amendments should be introduced for the setting up of a separate unit attached to SWD with its own field staff with adequate training to organize FGCs for juveniles aged 10 to 17 years in cases where the offence committed is a serious one. The basic purpose of a FGC is to consider ways to make the offender accountable for his acts, repair harm done to the victim and develop follow-up plan to guard against re-offending. Under the proposal, a FGC would be held upon referral by -

- (a) the Police and the DoJ as a pre-charge diversion (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 are not completed, the Police and DoJ may consider prosecution; or

- (b) the court as a pre-sentence diversion (not as an alternative to prosecution but to provide an opportunity for the offender to be accountable for their behaviour before the Court makes a decision).

32. On the composition of FGCs, the Consultancy Report suggests that it should include the conference facilitator, the offender and offender's family members, the victim and the victim's supporters, a Police Youth Officer, and any significant persons related to both the victim and the offender.

33. The deputations generally support the recommended introduction of FGCs as a restorative measure for young offenders, with involvement of the victims and other relevant parties. Some deputations suggest that -

- (a) mandatory participation in FGCs should be imposed on the offenders and their parents under special circumstances;
- (b) there should be legislative provisions providing that the offenders may be brought back to criminal justice system if they fail to behave or complete the tasks assigned by FGCs;
- (c) FGCs may be implemented by phases with development of clear guidelines and specialized training to the personnel concerned including the facilitator of the conference; and
- (d) assessment panels could be established on a regional basis to assess the needs of young offenders and recommend follow-up services and measures to deal with them.

34. The Administration has responded that the voluntary FC pilot scheme for cautioned juveniles implemented since October 2003 (paragraph 22 above) is similar to the proposed FGCs in that both seek to provide more comprehensive and professional assessment of service needs and make recommendations on support programmes for young offenders. The needs of the families would also be looked into. The participation of the parents is a prerequisite for convening FCs and parents' involvement is emphasized throughout the process of FCs. With regard to training in the operation of FCs, SWD will be organizing sharing sessions for social workers taking part in FCs.

35. Concerning the deputations' suggestion to set up regional assessment panels, the Administration takes the view that the functions of the proposed assessment panels are similar to those of the existing FCs or the proposed FGCs, which seek to provide a forum for cross-sectoral and inter-disciplinary assessment of the needs of unruly children/young offenders and make recommendations on the appropriate follow-up services or programmes. The establishment of assessment panels would therefore be a duplication of efforts,

and may unnecessarily prolong the process that unruly children/young offenders will have to go through before they and their parents will receive appropriate services or participate in suitable programmes.

36. Some deputations have pointed out that the FGCs proposed in the Consultancy Report are intended to be developed as a pre-charge/pre-sentence diversionary option to deal with offenders who have committed more serious and persistent offences. The proposal incorporates a restorative justice approach aimed at making the offenders accountable and taking responsibility for their conduct and repairing the harm done to the victims. The process of FGCs also involves the participation of the victims or their representatives among others, and may well include other concerned parties in the community, in agreeing on the remedial tasks to be performed by the offenders. FGCs also serve as a forum for making recommendations for the consideration of the court. In the views of the deputations, the proposed FGCs differ significantly from the pilot FC scheme in that FCs operate on an entirely voluntary basis, deal with relatively minor offences committed by cautioned juveniles, and do not involve participation of the victims and their families. The pilot FC scheme, therefore, cannot fulfil the functions of FGCs. The deputations consider that the option of FGCs should be actively explored.

37. With regard to the pilot FC scheme, some deputations agree that FCs could be used to deal with relatively minor offences, and welcome the Administration's plan to extend the scheme to unruly children under 10. They opine that to maximize the effectiveness of the scheme, enhanced efforts should be made to explain clearly to the children/young offenders and their parents the purpose and operation of FCs and to encourage them to participate actively in the process. The procedures for convening FCs and making referrals should be simplified so that appropriate assistance and services could be provided speedily, and the follow-up actions should be effectively reviewed and monitored. Some deputations consider that regardless of the decision on whether a FC should be held, the case in question should be referred to social workers of the Community Support Services Scheme for follow-up. Non-governmental social service organizations should also be allowed to make recommendations to SWD on the necessity of holding FCs for specific cases as they see fit.

38. Some deputations have also suggested that for those offenders who have committed a second offence, the Police should refer the case to SWD for assessing the need for a FC, prior to issuing a caution under the PSDS. In their view, this would make the offenders and their parents more cooperative and more willing to participate in FCs. One deputation has suggested that the welfare sector be involved in the review of the pilot FC scheme.

39. The Subcommittee has noted that section 15(1) of the Juvenile Offenders Ordinance (Cap. 226) provides for a variety of alternatives with which the court may deal with children or young persons found guilty, including dismissing the

charge and discharging the offender on his entering into a recognizance. Some members have suggested that the Administration and the Judiciary should review, as a legal policy issue, whether the court should make use of such alternatives more frequently in disposing cases in appropriate circumstances. The possibility of introducing legislative means to provide the court with additional alternative measures to deal with young offenders should also be explored.

40. Some other members have suggested that the Administration should consider implementing a pilot scheme to test the effectiveness of FGCs. They propose that the Police, SWD and DoJ should jointly decide whether an offender should be referred to a FGC or be prosecuted. Some members have expressed concern about the possibility of Police officers exercising excessive power in view of the important role they play in referring offence cases for follow-up action. The members consider that it is important that frontline Police officers should be made well aware of their responsibilities and powers to ensure that they can handle cases in a proper manner. Some members have urged the Administration to strengthen the referral and follow-up mechanism, particularly the systematic liaison between the Police, SWD and NGOs.

41. The Administration has explained that the suggestions regarding restorative justice and the proposed FGCs as a diversionary measure would impact on the current juvenile justice system. The Administration would consider the relevant issues in the light of -

- (a) the review on the pilot FC scheme for cautioned offenders (paragraph 22 above); and
- (b) the feedback from the Judiciary Administration and DoJ on the development of a new juvenile justice system (paragraph 49 below).

As regards the role of the Police, the Administration advises that it would be carefully assessed in implementing any new alternative measures.

Empowerment programmes for young offenders

42. The Consultancy Report proposes that as a pre-prosecution diversion, the Prosecution may refer young offenders aged from 10 to 17 to receive skills training and perform voluntary services. Young offenders may also be asked to undergo empowerment programmes as referred by FGCs. The programme will focus on training (60 hours) and community service (for three months). If the offender fails to complete the programme, the case will be referred back to DoJ for consideration of prosecution, or to FGCs for consideration of further options, including referring the case to the court. The Consultancy Report recommends that the empowerment programmes be run by ICYSCs and be coordinated by SWD.

43. Some deputations have suggested that specialized agencies should be set up to provide the empowerment programmes. Some deputations consider that existing youth services can be utilized to provide support to the offenders, and that empowerment programmes should be provided to all young offenders and their parents. The Administration has responded that it would be more cost-effective for social workers to arrange for the programmes which are most suitable to the young offenders, making use of existing support services including the programmes of ICYSCs/Integrated Family Service Centres/District Youth Outreaching Social Work Teams etc. These services are available to all young offenders and their parents if they agree to take part in them.

44. Some deputations are of the view that empowerment programmes should be made mandatory for the young offenders, who may be subject to prosecution if they fail to complete the programmes satisfactorily. The Administration considers that the proposal is linked to the concept of restorative justice and may be examined in the context of the coming review on the development of a new juvenile justice system.

Development of a new juvenile justice system

45. Members have expressed disappointment that the Administration has only proposed the following enhanced support measures targeted at unruly children and young offenders, in response to the recommendations of the Consultancy Report -

- (a) extension of JPS to unruly children below the age of 10 if the circumstances of the case so justify (paragraph 16 above);
- (b) further enhanced referral mechanism between the Police and SWD/EMB (paragraph 17 above);
- (c) improved information leaflet (paragraph 18 above); and
- (d) introduction of the pilot FC scheme for those aged between 10 and below 18 and possible extension of the pilot scheme to those aged below 10 (paragraphs 22 and 23 above).

46. Members consider that the Administration has made little progress in the direction of the development of a new juvenile justice system. This is contrary to the advice given by the Administration to the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 that it would consider the findings and recommendations of the consultancy study in reviewing the juvenile justice system. Members urge the Administration to take early and positive steps to take forward the development of a new juvenile justice system featuring restorative and reintegrative principles and practices, taking into account

developments in overseas jurisdictions and the views expressed by members and the deputations.

47. The deputations are supportive of the move to develop new measures alternative to prosecution under a restorative justice approach. They consider that with the increase in the minimum age of criminal responsibility to 10 years, new options should be explored to prevent early criminalization of young offenders, and to help to divert them from going further astray. They support the longer-term development of a new juvenile justice system, which involves the participation of all concerned parties, based on the underlying principles of restorative justice. One deputation has cautioned that in contemplating changes to the existing juvenile justice system, the impact of any new measures on the rights of the victims, the rights of the accused persons and their families, and the observance of due process have to be carefully assessed.

48. Some deputations have also referred to the recommendation of DoJ to promote the interests of victims of crime and witnesses by introducing a limited system of restorative justice as an alternative to prosecution for young offenders aged 10 to 17 (statement made by the Director of Public Prosecutions in his statement made in April 2004 on "The Yearly Review of the Prosecutions Division 2003" refers). Under the recommendation, victims and offenders can meet with the assistance of a trained mediator as part of a healing process. The deputations urge the Administration to widely consult and involve the relevant NGOs providing support services to young offenders in taking forward the recommendation.

49. The Administration has advised the Subcommittee that it is necessary to approach the findings and recommendations of the Consultancy Report with cautions because of the far-reaching implications. The Administration considers that the relatively limited overseas experience to demonstrate the effectiveness of the proposed alternative measures would have to be examined in the light of the existing services already in place as well as the social and legal situations in Hong Kong. The Administration has agreed that it would review the effectiveness of the pilot FC scheme before deciding on the development of a new juvenile justice system in consultation with DoJ and the Judiciary Administration, and report to LegCo in the next term.

Recommendation

50. The Subcommittee recommends that the Administration should consult the NGOs in the welfare sector on the review of the juvenile justice system in Hong Kong.

51. The Subcommittee recommends that the Administration should report to LegCo in the new term on the following matters -

- (a) the effectiveness of the enhanced support measures 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.

52. The Subcommittee also recommends that the Administration should submit its report(s) for the consideration of the relevant Panel(s). Where considered appropriate, the Panel(s) may recommend to the House Committee for the setting up of a subcommittee to follow up the relevant issues.

Advice sought

53. Members are invited to note the recommendation of the Subcommittee.

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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 depositions 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 organisation 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 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.

Appendix III

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

<i>Jurisdiction</i>	<i>Age of criminal responsibility</i>
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	1530
	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

Subcommittee on juvenile justice system

Membership List

Chairman

Hon Margaret NG

Members

Hon Cyd HO Sau-lan

Hon LEUNG Yiu-chung (up to 23 February 2004)

Hon Miriam LAU Kin-yee, JP

Hon Emily LAU Wai-hing, JP

Hon LI Fung-ying, JP

Hon Michael MAK Kwok-fung

Hon WONG Sing-chi

Hon Audrey EU Yuet-mee, SC, JP

(Total : 8 Members)

Clerk

Mrs Percy MA

Legal Adviser

Mr LEE Yu-sung

Date

26 November 2003

List of papers considered by Subcommittee on juvenile justice system

Papers provided by the Administration

Consultancy Report on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong"

LC Paper No. CB(2)735/03-04(01) -- Administration's paper on the Consultancy Report

LC Paper No. CB(2)1237/03-04(02) -- Paper from Dr LO Tit-wing, the Consultant, on issues raised at the meeting on 18 December 2003

LC Paper No. CB(2)1659/03-04(01) -- Administration's paper on the recommendations of the Consultancy Report

LC Paper No. CB(2)2291/03-04(01) -- Administration's paper on the views put forward by the Subcommittee and deputations

LC Paper No. CB(2)2339/03-04(01) -- Administration's paper on issues raised at the meeting on 12 March 2004

LC Paper No. CB(2)1721/03-04(01) -- Information leaflet on services provided by Government departments and non-government organizations for unruly children and young persons

Papers prepared by the Legislative Council Secretariat

LC Paper No. CB(2)246/03-04 -- Report of the Panel on Administration of Justice and Legal Services and Panel on Security to the House Committee meeting on 7 November 2003

LC Paper No. CB(2)429/03-04(02) -- Background paper prepared by the Secretariat

Submissions from deputations

LC Paper No. CB(2)1128/03-04(01) -- Submission from The Boys' & Girls' Clubs Association of Hong Kong

- LC Paper No. CB(2)1128/03-04(02) -- Submission from Evangelical Lutheran Church Social Service Hong Kong
- LC Paper No. CB(2)1128/03-04(03) -- Submission from The Hong Kong Federation of Youth Groups
- LC Paper No. CB(2)1128/03-04(04) -- Submission from Hong Kong Playground Association
- LC Paper No. CB(2)1128/03-04(05) -- Submission from Hong Kong Committee on Children' Rights
- LC Paper No. CB(2)1128/03-04(06) -- Submission from Against Child Abuse Ltd.
- LC Papers Nos. CB(2)1128/03-04(07) and CB(2)2369/03-04(01) -- Submissions from The Hong Kong Bar Association
- LC Paper No. CB(2)1128/03-04(08) -- Submission from The Law Society of Hong Kong
- LC Paper No. CB(2)1158/03-04(01) -- Submission from Hong Kong Family Law Association
- LC Paper No. CB(2)1158/03-04(02) -- Submission from The Chinese Rhenish Church Hong Kong Synod
- LC Paper No. CB(2)1158/03-04(03) -- Submission from Hong Kong Family Welfare Society
- LC Papers Nos. CB(2)1158/03-04(04) and CB(2)2339/03-04(02) -- Submissions from The Hong Kong Council of Social Service
- LC Paper No. CB(2)1158/03-04(05) -- Submission from The Neighbourhood Advice-Action Council, Eastern/Wan Chai District Youth Outreaching Social Work Team
- LC Paper No. CB(2)1196/03-04(01) -- Submission from Caritas District Youth Outreaching Social Work Team - Southern

Chapter 12

Summary of Research Findings and Recommendations

12.1 Introduction

In this report, the research team has considered:

- Measures for responding to juvenile offenders in six selected overseas jurisdictions;
- The effectiveness of these measures;
- The case for introducing new alternatives to the prosecution of unruly children and young people in Hong Kong; and
- Specific proposals for options for Hong Kong.

Finally, this chapter provides a summary of the above research findings and recommendations, and examines the issues of implementation. Key to the success of any innovation is the process through which new measures are introduced and the nature of the structures that are set up to support the new initiatives. Such issues are likely to be particularly relevant with the proposed alternatives as they represent quite a large departure in both philosophy and practice from the past. If new measures are to be trialed and eventually introduced as permanent features of the juvenile justice system, a number of specific questions need to be answered:

- What type of new professionals will need to be recruited and what qualities should they be selected for?
- How will those involved in providing the new services be trained?
- How will the new measures be monitored?
- What standards should be set for practice and reporting?

- How will the new system be financed?
- What body will be given responsibility for developing standards and guidelines and reviewing progress during the early phases of development and implementation?

12.2 Measures Alternative to Prosecution in Selected Overseas Jurisdictions for Responding to Unruly Children and Young People

12.2.1 The Objectives of the Measures

In juvenile justice systems overseas, there has been a move away from punitive and retributive approaches and from purely welfare models to a new emphasis on restorative and reintegrative practices. Different kinds of intervention models and innovative measures have been adopted to offer adequate legal safeguards for children or encourage them to take responsibility for their offending. Police alternative actions, victim offender mediation, community service and family group conferencing are now being used more widely to respond to offending.

In Canada, Queensland and New Zealand where the legislation is relatively recent, principles are explicitly included in the law which emphasize the protection of children and young people who are investigated in connection with an offence, diversion from Courts, fair and just procedures, making young offenders accountable and responsible, providing opportunities for their development, the inclusion of victims, the strengthening of families and their participation in proceedings, and the relevance of age, maturity and culture. These objects and principles are given effect by the inclusion in legislation of alternatives to prosecution including alternative actions by the Police and the use of Family Group Conferences and/or by the use of Family Group Conferences to aid decision making in the Court.

England has also recently made changes to its legislation and the objects and principles included share many features in common with the other three jurisdictions above. It too emphasizes legal protections, a separation of justice

and welfare, proceedings that are fair and just, opportunities for development and achieving shorter time frames for resolution. It too makes some provisions for victim inclusion and the participation of families through alternative actions and Family Group Conferences. But in England, there is also a more punitive theme with repeat and serious offenders being given fewer chances to change and the option of parents being made responsible by court orders for their children's offending.

Belgium, which currently operates on a primarily welfare model, is currently considering changes to its legislation. Singapore, where law is similar in many respects to Hong Kong, amended its law in 2001. In both these jurisdictions, as well as in Canada, Family Group Conferences are currently being used as an option by the Courts to aid decision making.

12.2.2 *The Effectiveness of the Measures*

A summary of research evidence on the results of moving to more diversionary, participatory and restorative outcomes by using new alternatives to prosecution is set out in Table 12.1. New Zealand, Queensland, Canada and England have all passed new legislation since the late 1980s. All of these jurisdictions have expanded the alternatives available to prosecution. All four have developed restorative options: in particular they have provided for alternative actions by the Police and have included Family Group Conferencing among the alternatives to prosecution or court orders. In both New Zealand and Queensland the systems have been in operation for long enough to show that these systems work well; reoffending can be decreased, victims can benefit from actions that repair harm and all involved in these systems are more satisfied with the outcomes. In Canada, the changes to the legislation are too recent for information to be available on the impact of the changes.

In England, the situation is more complex as the legislation not only made some restorative and diversionary options available but it also increased the number and type of restrictive and punitive options. Furthermore, relatively limited information is yet available on the impact of the variety of measures

Table 12.1 Measures alternative to prosecution in overseas countries

Law Enacted	Jurisdictions/ Measures	Targets	Effectiveness
2001	Singapore		
	Streetwise Programme	13-19	Yes
	Guidance Programme	Under 16	Yes
	Measures for Children Beyond Parental Control	Under 16	Service too new for evaluation
1998	England and Wales		
	Reprimand & Final Warning	10-17	Unproven
	Referral Order (since April 2002)	10-17	Service too new for evaluation
	Child Curfew Order	Under 16	Unproven
	Child Safety Order	Under 10	Too few cases for evaluation
	Anti-social Behaviour Order	Over 10	Unproven
	Parental order	Parents	Unproven
1965	Belgium		
	Community Service	Under 18	Yes
	Victim Offender Mediation	Under 18	No systematic evaluation
	Family Group Conferences	Under 18	Too early to conclude
1992	Queensland, Australia		
	Community Conferences	10-16	Yes
	Police Cautioning	10-16	Absence of research
	Drug Diversion	10-16	Service too new for evaluation
	Police Counsel	Under 10	Too few cases for evaluation
1989	New Zealand		
	Police Youth Aid Diversion	10-16	Yes
	Family Group Conferences	10-16	Yes
2003	Canada		
	Extra-judicial Measures - police cautioning - voluntary referral for counselling - pre-charge extra-judicial sanctions, e.g. restitution, apology - post-charge extra-judicial sanctions, e.g. restitution, apology - Family Group Conferences	12-17	Services too new for evaluation
	Earls Court Outreach Project	Under 12	Further research needed

introduced. But what information is available suggests that the more restrictive measures are not being widely taken up and do not necessarily appear to have beneficial impacts when they are used. The verdict of Dignan (2003) is that the effectiveness of the changes in England is currently "not proven".

In the remaining four jurisdictions, new diversionary alternatives to prosecution, the use of restorative approaches and provisions for victims' views to be considered in decisions have not been incorporated in legislation or, as is the case in Singapore, are not being widely used. However, Belgium and Singapore have both adopted some new measures and, in particular, have successfully experimented with Family Group Conferencing.

Thus the conclusion to be reached on the basis of an analysis of the experiences of the six countries considered here is that there are real gains to be made through adopting new alternatives to prosecution and court orders based on a restorative philosophy. The particular measures that appear to be successful are increased police diversion of young people who agree to repair the harm they have caused, the use of community service placements where offenders are reintegrated into the society through volunteer services, and the use of Family Group Conferences for more serious offending when the views of families, victims and young people can be used to develop a plan that will allow both for the repair of harm and the reintegration of offenders and victims. Such schemes can reduce the involvement of young people in the criminal justice system, provide increased support to young people and families, provide some redress to victims, reduce the probability of reoffending and result in cost savings to the criminal justice system.

12.2.3 Summary of the Six Jurisdictions

The following provides a summary of the diversionary measures and their effectiveness in the six jurisdictions:

Singapore

1. Singapore's juvenile justice system tries to find a balance between justice and restorative models of rehabilitation.



2. Streetwise Programme targets gang youth to leave the gangs or secret societies. The youth had displayed more respect for authority, higher self-esteem, better problem-solving abilities and improved family relationships.
3. Guidance Programme helps first time youth offenders who committed minor offences to enrol in rehabilitation programmes in lieu of prosecution. The offenders were found to be more responsive and cooperative. Parents' attendance in the programme was high and the rate of re-offending was low.
4. The Children and Young Persons (Amendment) Act of 20 April 2001 makes provision to bond parents who have children beyond parental control to comply with court orders to exercise proper care and supervision of their children. There is no evidence yet on the extent of the use of this new measure or of its value.

England and Wales

Alternatives to prosecution

1. A Police Reprimand is a formal verbal warning issued to a first time juvenile offender aged 10-17 who has committed a minor offence. If he or she reoffends, the Police will issue a Final Warning, whereby the Police are required to refer the case to the local youth offending team to attend a compulsory "rehabilitation" or "change" programme.

Orders of the Court

2. A Referral Order can be applied to young offenders who are prosecuted for the first time and plead guilty as charged in the Youth Court and in respect of whom the Court does not consider it appropriate to impose either a custodial sentence or an absolute discharge. Young persons in receipt of such an order are obliged to attend meetings of the Youth Offender Panel. It involves the participation of offender and his/her parents, and the victims (if willing) to devise a contractual agreement to bind the offender to an agreed "programme of behaviour". If no agreement can be reached, or a contract is agreed but subsequently

breached, the young offender is then returned to Court to be sentenced for the original offence.

3. A Child Curfew Order involves placing a ban on young children under the age of sixteen to prevent them from being on the streets or other public places at night unless supervised by a responsible adult.
4. A Child Safety Order may be imposed for a child below the age of ten who commits an offence or causes harassment, alarm or distress to others. The child is placed under the supervision of a social worker and is required to comply with any specific conditions imposed by the Court, such as receiving appropriate care, protection and support, subject to proper control, or preventing any repetition of undesirable behaviour.
5. Anti-social Behaviour Orders may be used against any person aged 10 or over whose behaviour puts people in fear of crime. They may consist of a variety of prohibitions to protect people from further anti-social acts committed by the defendant. Conviction for breach carries the normal maximum sentence of a 24-month detention and training order, half of which is spent in custody and half under supervision in the community.
6. Parenting Orders are available in connection with Child Safety Order and Anti-social Behaviour Order, or where a young person has been convicted of an offence. Parenting Orders may require parents to attend counselling or guidance sessions, or require them to exercise a measure of control over their child. Failure to comply with the order constitutes a criminal offence punishable with a fine of up to £1000.

Referral Orders and Child Safety Orders were introduced in April 2002 and thus they are too new for evaluation. The effectiveness of the other four measures is also still unproven.

Belgium

1. Community service is being used as an alternative to residential placement. Research comparing 214 cases with a control group of 200 shows less reoffending as a consequence of the use of community service.
2. Victim Offender Mediation is being trialed on a small scale. Participants express satisfaction with the programme. However, currently most of the cases involve only minor offending and there are concerns about net widening – especially as the Public Prosecutor may still send these cases to Court.
3. Family Group Conferencing is being experimented within four arrondissements. Cases are referred by the Youth Court Judge to the mediation service and the recommended plan is brought to the Youth Court which translates the result into a judgement. Currently results from the pilot project (first 40 cases) indicate agreements are being reached, the Youth Court is confirming the "declaration of intention" and the plans are being carried out. There are high levels of satisfaction expressed by all participants.

Queensland, Australia

1. Legislation sees the intended benefits of community conferencing for offenders (in taking responsibility, repairing harm and diversion from criminal justice processes), victims (in understanding why the offence was committed and in expressing their concerns) and the community (in the increased use of informal dispute resolution without legal proceedings). Research reports high levels of satisfaction among participants in conferences, compliance with agreements by young people and victim satisfaction with outcomes. In Australia generally, the levels of satisfaction, perceived fairness and repair of harm in conferences compare favourably with experiences in the Courts. Victims report more understanding of reasons for offence, are less fearful of the offenders and better able to put the offending behind them. Research on

reoffending is limited but one study in New South Wales demonstrated a 15-20% reduction in offending compared to court cases.

2. Police cautioning is used for first time juvenile offenders who commit minor offences. The caution is administered in the presence of their parents or chosen adults. The offender must admit committing the offences and consent to being cautioned. If there are further offences that are separated by time and the circumstances warrant it, the child may receive more than one caution. Systematic evaluative research has not yet been undertaken.
3. Police Counsel targets erring children under ten years old. Police Youth Aid Officers explain to them why it is wrong to have committed an offence. This occurs in the presence of a child's parent or guardian or a responsible adult. Police Counsel also requires the child's consent and admission of the facts. Systematic evaluative research has not yet been undertaken.
4. An option for the Police and Magistrates to handle drug offenders is the Drug Diversion programme. Offenders are required to admit guilt and agree to undertake a drug assessment and a brief intervention which includes an educational programme. The measure is still too new for evaluation results to be available.

Canada

1. For young people aged 12-17, Extra-judicial Measures are provided, including police cautioning, voluntary referral for counseling, pre-charge or post-charge extra-judicial sanctions, e.g. restitution, apology, and Family Group Conferences.
2. The results of evaluation on outcomes from research are not yet available, as the new provisions for this 12-17 age group have only recently been implemented.

3. When offences are committed by children under 12 years of age who have significant behavioural or offending problems, community support programmes, such as the Earls Court Outreach Project, are provided for both the children and their families. The result seems to be very promising although further research to assess its effectiveness is still necessary.

New Zealand

1. The system in New Zealand has been highly effective in diverting young people from Courts and custody. Rates of appearances in the Youth Court are now about a third of what they were prior to 1989 and the use of custodial sentences has diminished even further.
2. High levels of participation and involvement in the process are reported for families and young people. Victims participate in about half of all Family Group Conferences. The participants generally express high levels of satisfaction with outcomes. Young people often express appreciation of the support of family and the opportunity to apologise. Families feel treated with respect and also appreciate the opportunity to apologise. Victims appreciate the opportunity to express their feelings and to meet the young person and understand why the offending occurred.
3. Outcomes are almost always likely to involve restorative elements, about half also involve restrictive elements, but outcomes for a smaller proportion of cases have included reintegrative and rehabilitative elements, reflecting the relatively low levels of services that have been available for children, young people and families in New Zealand.
4. Although police youth diversion has not been formally evaluated, it has received widespread endorsement informally within communities and among professionals. Research is currently underway to provide further information on the impact of diversionary procedures on reoffending and the results should be available later this year.

12.3 The Case for Introducing New Measures Alternative to Prosecution to Hong Kong

As already suggested in the introduction, it seems timely for Hong Kong to consider re-examining the legislative options available as alternatives to prosecution. There are a number of reasons for this.

1. Amendments have already taken place in Hong Kong to the age of criminal responsibility specified in the Juvenile Offenders Ordinance but proposals about raising the age also need to be accompanied by a consideration of possible additional options for responding to children who will no longer be eligible for prosecution.
2. Internationally, countries in Europe, Asia and Australasia that have recently updated their legislation, or are currently considering doing so are developing new objectives and new processes.
3. While Hong Kong compares favourably with other countries in the strength and organization of its services and programmes for young people and families, it has fewer options for responding to the needs of victims and for ensuring that young offenders are encouraged to repair the harm they have caused.
4. Further, there is an international trend favouring the adoption of restorative justice options in order to respond more effectively to both victims and offenders.
5. There is evidence that restorative processes have benefits for victims, families and children as well as the potential to increase efficiency and reduce costs in the justice system by diverting children and young persons from prosecution.



6. Reoffending certainly does not appear to increase as a result of increasing diversionary options and, if the processes are well managed, the probability of reoffending is reduced.

12.4 Options for Implementing Such Measures

While particular models in overseas jurisdictions have been used as examples, it is not the position of the research team that Hong Kong should necessarily adopt any of these models without modification. Rather, the research team proposes that Hong Kong develops its own systems and processes to meet the needs of the people of Hong Kong and, as much as possible, build on existing systems and practices.

Six main options have been proposed for implementing an improved and up-to-date approach to offending by children and young persons. For unruly children under ten years old, four recommendations have been made:

- Police Child Support Service
- Family Support Conference
- Empowerment Programme
- Community Alternatives to Institutional Placements

Another two main options are recommended for young persons aged 10-17:

- Family Group Conference
- Empowerment Programme

12.4.1 Police Child Support Service

It is proposed that the Police should give frontline and immediate support to children at risk of offending. They would talk informally to the child to arrange some way that the child would make up for what was done by apologizing or helping the victim in some small way. The Police would also make sure that the school responds to any problems such as bullying, and that the parents

know where to get help with child care or after school supervision or for a child with specific difficulties. The Police would consult with the victim and the child's family before deciding which tasks to be undertaken if necessary. The police officer arranging this should be one who specializes in working with young people.

12.4.2 Family Support Conference

The Family Support Conference could be used for a variety of purposes:

1. A primary purpose would be to consider the need for family support and/or a change of care when the present quality of care is considered insufficient to meet the needs of the child.
2. A second purpose would be to consider programmes and services and other options that could assist a child under the age of 10 years who has been involved in offending, especially when the problem has been persistent or moderately serious.
3. A third purpose could be to review the placement of a child who has already been placed away from home or in residential care with the goals of returning the child to the community, placing the child or young person in a more family-like setting or developing a more effective plan to provide the support that is needed by the child and the caregiver.

It is recommended that there be two sources of referral. First, the Police could make a referral with the consent of the child's parents or guardian. The Police might wish to revert to initiate a C/P Order if the parents disagreed or failed to attend the conference. Second, the Juvenile Court could also make a referral to the conference to aid its decision on the case.

Normally those present at a Family Support Conference would be the child, the child's current caregivers, other members of the child's immediate and extended family, any other family friends or members of the local community who could provide ongoing support, social workers, teachers and other

professionals who have already been or may potentially be involved in providing support to the child and the child's caregivers. The plan could be acted on after the agreement of all parties or be part of a C/P Order made in the Juvenile Court. The responsibility for managing arrangements for Family Support Conferences would be located with the Social Welfare Department who may decide to contract out the responsibility for actually arranging and convening the conference through local Integrated Family Services Centres.

12.4.3 Empowerment Programme (for Unruly Children)

It is recommended that Empowerment Programmes be provided through the established network of selected Integrated Children and Youth Services Centres, and coordinated and monitored by the Social Welfare Department. The Police might wish to refer an unruly child to the Programme upon parental consent, but the Police (or the Social Welfare Department) could revert to initiate a C/P Order if the parents disagreed or the child failed to attend the Programme. The goals would be to reduce offending and anti-social behaviour by providing the children 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. Appropriate support and educational services would be provided to the children's families if appropriate.

12.4.4 Community Alternatives to Institutional Placements

It is proposed that, when parents are experiencing difficulties in providing an adequate standard of care for their children, the option of placement with kin or in foster families be explored. Suitable alternative placements with kin, foster families or in small group homes should be used as an alternative to the larger residential homes that are currently being used for many children in these situations. When an out of home placement is agreed to, the plan should also include provision for the child to maintain links with all family members that are important to him or her and support for the new caregivers should be examined to ensure that it will be adequate. In some cases, special services may need to be provided for the children, parents or caregivers, and provisions made for reviewing the arrangements regularly.

12.4.5 Family Group Conference

The purpose of Family Group Conference would be to respond to the offending of children aged 10-17 years in ways that make the young person accountable for offending, repair the harm to victims and develop a plan to prevent further reoffending. It is proposed that when the offence is of sufficient seriousness to be considered for referral to the Prosecution, a Police Youth Officer should review the case and, whenever possible, make a referral for a Family Group Conference in consultation with the Prosecution. If the Family Group Conference failed to agree or if the agreed tasks were not completed and one of those present requested a review, the matter would be returned to the Police for consideration of pressing charge. As a pre-sentence diversion, the Court could refer suitable cases for a recommendation from a Family Group Conference before making a decision. Members of the conference includes the conference facilitator, the offender and the offender's family members, the victim and the victim's supporter, a Police Youth Officer, and any significant persons related to both victim and offender.

12.4.6 Empowerment Programme (for Young Offenders)

It is recommended that Empowerment Programmes, with an emphasis on life skills training and voluntary services, be provided through Integrated Children and Youth Services Centres for youth offenders aged 10-17, either in lieu of prosecution or as an outcome recommended by the Family Group Conference. The offenders would be required to consent to complete up to sixty hours of training and voluntary services within three months.

As regards referral routes, the Prosecution could make referrals to the Empowerment Programme in lieu of prosecution. In cases where the young persons agreed to undertake the Programme but failed to complete the requirements, the matter would be referred back to the Prosecution for consideration of prosecution.

Another route of referral to the Empowerment Programme would be the Family Group Conference. Young offenders might like to accept attending the Empowerment Programme as part of a plan agreed to by a Family Group

Conference. In cases where the young persons failed to complete the requirements, the matter would be referred back to the Family Group Conference for consideration of further options, including the option of referring the matters to the Court.

12.5 Roles, Recruitment and Training of Professionals

Historically, in Hong Kong, a variety of government departments have been involved in providing responses to juvenile offending. The Departments of Justice, Correctional Services, Social Welfare, and Health, and the Police Force, the Security Bureau, and the Juvenile Court have all had a role to play. A large number of NGOs have also been involved in providing a wide variety of services. It is not anticipated that the basic functions of these various groups will change but specific changes will be inevitable if there is a shift from institutional to community responses and if the proposed alternative measures are adopted.

Other implementation issues to be considered here are around recruitment and training of those who will be occupying the new roles. Those primarily involved will include the Police, those managing and facilitating diversionary measures, and the legal professionals: Magistrates and lawyers. Each of these groups is considered in turn.

12.5.1 The New Role of the Police

In Hong Kong, the Police, as in all other jurisdictions, make decisions about which young offenders will be dealt with and whether or not they will be dealt with by warnings or other actions or referred for prosecution. With the development of Police Superintendent Discretion Scheme, the Police have been able to develop a variety of strategies that include making referrals, talking to parents or teachers and giving a warning to the young offenders along with certain other sanctions.

In the future it is proposed that the Police should be given additional responsibility for managing a variety of supportive actions and diversionary

measures. It is further proposed that these new responsibilities be undertaken by a new group within the Police who will receive special training. Some of the leaders of this new group should receive the opportunity to train overseas and observe procedures there.

Currently there is a Juvenile Protection Section within each police region. The Police in this section have developed special skills in working with young people. These staff can provide a core who would be capable of developing new protocols, training and practice standards for the new roles. They can also provide the core for the new group of Police Youth Officers.

Recruitment criteria for additional officers should include experience and interest in working with youth while on the frontline and a willingness and interest in specializing in the field of youth work. The role could also include preventive work in schools and in the community, liaison with crime prevention initiatives in the community, being involved in patrol work targeted at crime prevention, processing files on young people reported as offending and making decisions about responses, attending Family Group Conferences and working as part of inter-disciplinary teams of youth justice professionals to improve local processes and practice. Ongoing training should be arranged through the police training schools and also through special courses arranged from time to time, in conjunction with other professionals in the juvenile justice system.

12.5.2 The New Role of Welfare Services and Professionals

In Hong Kong, the Social Welfare Department has had the major overall responsibility for providing rehabilitation and reintegrative services for children, young people and their families when offending has occurred or when they were seen to be at risk. But much of the actual service provision is increasingly being provided by NGOs through a contractual subvention system. The future emphasis should continue to be placed on developing inter-agency cooperation at both Government and NGO levels. At the service implementation level, the integrated service structure may serve as focus for



developing further inter-agency cooperation around the new procedures or alternatively, new structures may be developed.

As already noted, Hong Kong will be starting afresh if it wishes to consider developing conferencing processes for children and young persons who offend. New Zealand and the Australian states of Queensland, New South Wales and South Australia offer the most well developed models to be considered. In each of them, the management, recruitment and training processes differ and the model operates differently. Rather than provide additional detail on how these aspects operate in each of the jurisdictions, it is recommended that a team charged with the development of processes for Hong Kong should study each of the jurisdictions and study further the way in which they are currently operating. Suitable points of contact can readily be arranged through people already identified as collaborating experts in the course of preparing this report. The outcome will be the development of detailed descriptions of the roles of youth justice practitioners and managers of the new processes and training packages for them. In addition there will also need to be new guidelines around practice and the development of new structures for delivering the new services.

12.5.3 The New Role of Prosecution, Lawyers, Court Staff and the Judiciary

Prosecutors, lawyers, court staff and Magistrates will also have new roles within the system – both because of the extended powers given to the Courts and Prosecution, and also because of the new philosophy underpinning the proposed new measures. Hong Kong already has a number of Magistrates who specialize in work and/or have received special training to work in the Juvenile Court. However, this does not apply to lawyers and prosecutors. Some of these professionals, and particularly the Magistrates, will be key members who can provide leadership and guidance to other professionals in understanding their new roles in the new juvenile justice system. It is therefore of crucial importance that these groups should also be committed to the changes, receive training which will enable them to respond appropriately to the new focus and to implement the proposals appropriately, and that they

should understand their critical role in providing support to other members of the youth justice teams as proposed below.

12.6 Further Issues in Implementation

12.6.1 Inter-disciplinary Collaboration—The Youth Justice Committee

Measures should be developed to bring together all those involved in the juvenile justice system: Juvenile Court magistrates, lawyers, court staff, prosecutors, youth justice practitioners, Police Youth Officers and staff of relevant community agencies and government departments. These members of the Youth Justice Committee could meet regularly to focus on finding ways to improve practice and in particular, to find solutions to the problems that are likely to occur from time to time. Inevitably there will be problems around inter-disciplinary collaboration, the transmission of information between departments and agencies, the follow up and monitoring of young people, ensuring that responses are timely and that outcomes are effective. Inter-disciplinary meetings are an effective way of not only arriving at constructive solutions but also at making arrangements to implement the solutions. In addition, these meetings are effective in building supportive relationships across agency and professional boundaries, developing and promoting the shared understanding among the various different professionals about the system as a whole and an appreciation of one another's viewpoints. All of this is likely to lead to increased collaboration at all points and more effective outcomes for the young people involved.

12.6.2 Monitoring and Standards for New Measures

Currently Hong Kong has no comprehensive set of explicit statements about the objects and principles underlying its juvenile justice processes. However, there is ample incentive for doing so given the trend internationally to clarify the reasons underlying the adoption of specific practices and the adoption in the United Nations of specific rules and guidelines intended to assist member states in such a task.

The research team recommends that a set of objects, principles and standards be developed for Hong Kong. It is proposed that such a document could serve to guide those responsible for developing new measures alternative to the prosecution of young offenders but that, in the longer term, these be included in new legislation for juvenile justice in Hong Kong.

In putting such a recommendation into practice, the research team notes that Chapter 9 has already reviewed the objects, principles and standards that could be considered for adoption were Hong Kong to move to a new system that makes explicit the basic principles underlying its juvenile justice system. It is our view that these documents provide an excellent initial basis for discussion. Fuller detail on potential options from both the United Nations and from specific jurisdictions have been gathered in connection with this research and can be made available to any task force or working party set up to consider such matters.

12.6.3 *Financial Issues*

It has already been noted that there will be considerable costs, especially in the short term, around developing and setting up new measures alternative to prosecution. In the longer term, it is anticipated that these costs will be undoubtedly offset by savings in other parts of the juvenile justice system, and particular in the area of residential care and correctional services. However, the research team recommends that it is important that full costings be done before major changes are made so that cost targets can be set for all aspects of the system and budgets can be allocated.

12.6.4 *Interim Planning and Management*

Much that is currently done in response to children and young persons who offend in Hong Kong is appropriate and is likely to contribute to their rehabilitation and reintegration into the community. However, it has already been recognized by Government that changes need to be considered to Hong Kong's *Juvenile Offenders Ordinance* that goes back to 1932 (though amended in subsequent years). Furthermore, new philosophies, new practices and new research in other jurisdictions suggest that it is timely to



make changes. The proposals made in this report have examined options for alternatives to prosecution and proposed a selection of these as the basis for a new juvenile justice system that build on the experiences in other jurisdictions which have already responded to new options.

The next step is for the Government to consider how to proceed in determining the suitability of these recommendations. The research team proposes that this be done in a number of stages, as follows:

- Fund a project to pilot the new options proposed here under the guidance of a steering committee to oversee their initiation and development.
- Set up a Task Force to develop new objects, principles and standards for juvenile justice in Hong Kong.
- Set up a working party to develop detailed proposals for law and practice with a goal of introducing new legislation in the next few years.

12.7 Conclusion

This report has considered options for new measures that can be alternatives to the prosecution of children and young persons in Hong Kong. The impetus for this comes largely from the increase in the minimum age of criminal responsibility of children to 10 years. But another compelling factor is the need to consider change in the light of the major recent and ongoing developments in philosophy and practice of youth justice throughout the world. After considering the experience of six jurisdictions from around the world and the rationale for and effectiveness of their measures alternative to prosecution, proposals have been made for the development of six new options for Hong Kong.

For unruly children under 10 years, it has been recommended that Child Support Services by the Police be developed for responding to needs identified when offending of children occurs; Family Support Conferences be



developed to reach agreements about changes in care and appropriate supports to prevent further offending of children; services be extended to children at risk by the development of Empowerment Programmes in Integrated Children and Youth Services Centres; and community placements be encouraged as an alternative to residential care.

For those aged 10 to 17 years, it is recommended that Family Group Conferences be developed as a diversionary option and as a forum for making recommendations to the Courts for more serious and persistent offending; and that Empowerment Programmes be organised as a way of responding constructively to the need to make young people accountable for the harm that they have done. The emphasis in these new measures should be on increased empowerment of families and young people; acceptance of responsibility for offending and repair of the harm that has been caused; and measures that will increase the support for, and rehabilitation and reintegration of the children and young people into the community.

These new measures will require the development of new roles, new structures, new standards and new training packages. Issues of the costs of the changes have been considered. Proposals have been made for how the development of these new options can be undertaken, the next steps that can be taken, and how ongoing evaluation of new measures can be made to ensure that they are successful in achieving their goals.

Hopefully this report can provide a road map for Hong Kong which will lead to the development of a new juvenile justice system which is effective in responding to young offenders by enabling them to move some way to repairing the harm they have done, encouraging them to take responsibility for their offending, preventing their reoffending and reintegrating them into society. Members of the research team have the confidence that Hong Kong has, at this point in time, the ability to build on current strengths to develop a new system that will make it a world leader in juvenile justice and, at the same time, make it a safer society with valuable social capital.

**Extract from the Official Record of
Proceedings of the Council meeting on 9 March 2005**

Development of New Juvenile Justice System

18. **DR FERNANDO CHEUNG** (in Chinese): *Madam President, the Government informed the Subcommittee on juvenile justice system of the last Legislative Council term that it would enhance the support measures targeted at unruly children and young offenders, and would report to the Legislative Council of the current term the development of a new juvenile justice system. In this connection, will the Government inform this Council:*

- (a) *of the implementation details and effectiveness of the following enhanced support measures undertaken by the Government:*
 - (i) *extension of the service of the police's Juvenile Protection Section (JPS) to unruly children below the age of 10, and of the number of these cases handled last year;*
 - (ii) *enhanced referral mechanism between the police and the Social Welfare Department (SWD)/Education and Manpower Bureau regarding cases involving unruly children, and of the number of cases so referred by the police last year;*
 - (iii) *improved information leaflet on the provision of professional support services for distribution by the police to unruly children and their parents; and*
 - (iv) *introduction of the Pilot Scheme on Family Conferences (PSFC) for those aged above 10 but below 18;*
- (b) *whether it has provided enforcement guidelines and relevant training for front-line police officers in implementing the measures mentioned in items (i), (ii) and (iii) above; if it has, of the details;*

- (c) *of the outcome of the Government's review on the PSFC, and whether the Government will put forward improvement proposals in the light of the outcome of the above review and when it will consult non-governmental social service organizations on the relevant proposals; and*
- (d) *whether it has conducted any studies on the development of a new juvenile justice system; if it has, of the results of the study and whether it will consult non-governmental social service organizations?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) (i) Since 13 September 2004, the services of the police's JPS have been extended to children below the age of 10. Each child offender under 10 is assessed for suitability for referral to the JPS, and his/her parents/guardians are provided with information on available support services. So far, however, no cases involving children under 10 have been assessed to be suitable for referral to the JPS.
- (ii) The enhanced direct referral mechanism between the police and the SWD/Education and Manpower Bureau has been operational since 1 July 2003. From July 2003 to December 2004, the police referred close to 2 000 cases to the SWD and the Education and Manpower Bureau for necessary follow-up services.
- (iii) The police have recently enriched the contents of a leaflet containing information on support services available for juveniles in need. The leaflet now includes website addresses of major youth-related non-governmental organizations (NGOs) which organize programmes for juveniles and their families. Apart from the English and Chinese versions, the leaflet is now also available in two other languages to cater for the needs of young offenders who are ethnic minorities.

- (iv) The Pilot Scheme on Family Conferences for those aged 10 or above but below 18 was launched in October 2003. Up to end September 2004, 44 conferences had been held.

As the measures in (i) to (iii) have been introduced for a relatively short time, we will continue to monitor their effectiveness. As for (iv), it is a pilot scheme. Part (c) below is relevant.

- (b) The police have put in place procedures and referral guidelines for front-line police officers in respect of cases involving children and juveniles at risk. Most recently, in September 2004, a new set of procedures for front-line officers for handling those below the age of 10 has been put in place.

Moreover, from time to time training materials and seminars are arranged for police officers to enhance their skills in handling cases involving children and youth at risk, such as the two-month "Intensive Mentoring Scheme" introduced in 2004.

- (c) The SWD, with the assistance of the police, is currently reviewing the effectiveness of the Scheme. Based on the overall observations and recommendations of the review, the SWD will consult the various stakeholders including Hong Kong Council of Social Service and NGOs concerned. If the Scheme is assessed to be effective, we will continue with its operation and consider extending it to cover children aged below 10.
- (d) The relevant bureaux and departments have been considering how best to take forward the suggestion for the development of a new juvenile justice system incorporating principles and practices of restorative justice in Hong Kong. In the process, they have taken stock of the considerable number of measures already available for dealing with young offenders in Hong Kong. They also note that the introduction of even a limited form of restorative justice would have far-reaching implications for our juvenile justice system. The Administration has to take into account our existing prosecution policy, the possible need for legislation, society's general receptiveness of restorative justice, overseas experience, the differences in social and cultural contexts between Hong Kong and other places, resource implications, availability of expertise and

other relevant considerations. The discussions are still continuing and no conclusions have been reached. We will consider how best to consult the NGOs in the welfare sector and other stakeholders at an appropriate time.

~~Pumping Seawater to Flush Shenzhen River~~

19. **MISS CHOY SO-YUK** (in Chinese): *Madam President, last year, the Shenzhen Municipal Government proposed to pump seawater to flush the Shenzhen River in order to improve the water quality there. In this connection, will the Government inform this Council whether it has assessed the impacts of such flushing on the ecosystems of the RAMSAR site around Mai Po and Inner Deep Bay as well as other waters in Hong Kong; if it has, of the results and the remedial measures to be adopted; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): Madam President, the Government of the Hong Kong Special Administrative Region (SAR) has all along been working with the Shenzhen authorities on improving the water quality and pollution control of the Shenzhen River through the Shenzhen-Hong Kong Joint Working Group on the Shenzhen River Regulation Project (JWG). The scope of work included the Shenzhen River Regulation Project at the beginning and gradually extended to cover pollution control and cleaning-up operations, such as the scavenging of floating refuse of the river in recent years.

At the first meeting of the Environmental Management Special Panel under the JWG in August 2003, the Shenzhen side proposed the "Shenzhen River Flushing Project" to improve the environmental quality of the Shenzhen River and its catchment. By constructing a pumping station at Mirs Bay, seawater will be used to flush the river aiming at increasing the base flow, diluting the pollutant levels and reducing the retention time of the river. At the meeting, the Environmental Protection Department (EPD) and the Agriculture, Fisheries and Conservation Department (AFCD) of the SAR Government expressed great concern over the proposal's impacts on Deep Bay, in particular, the RAMSAR site at Mai Po. The Shenzhen side had also expressed their understanding of our concern. Recognizing the complexity of the "Shenzhen River Flushing Project" and the impact on the environment, both sides agreed

**Extract from the Official Record of
Proceedings of the Council meeting on 10 May 2006**

~~No. of Student Places⁽¹⁾ of Full-time Sub-degree⁽²⁾ Programmes, 2000-01 to 2005-06~~

Higher Education Institutions	Programme Type	2000-01		2001-02		2002-03		2003-04		2004-05		2005-06 ⁽³⁾	
		No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
UGC-funded Institutions ⁽⁴⁾		4 070	(43.3%)	4 241	(34.6%)	4 342	(28.6%)	4 218	(23.3%)	4 163	(17.5%)	3 543	(12.6%)
VTC ⁽⁵⁾	Higher Diploma	2 824	(30.1%)	2 938	(24.0%)	4 140	(27.3%)	5 270	(29.1%)	5 190	(21.9%)	5 340	(19.0%)
Other Higher Education Institutions	AD	940	(10.0%)	2 242	(18.3%)	3 812	(25.1%)	5 354	(29.5%)	7 805	(32.9%)	10 652	(37.9%)
	Higher Diploma	450	(4.8%)	2 036	(16.6%)	2 198	(14.5%)	2 730	(15.1%)	6 391	(26.9%)	8 482	(30.2%)
	Others ⁽⁶⁾	1 113	(11.8%)	793	(6.5%)	669	(4.4%)	559	(3.1%)	183	(0.8%)	87	(0.3%)
Sub-total		2 503	(26.6%)	5 071	(41.4%)	6 679	(44.1%)	8 643	(47.7%)	14 379	(60.6%)	19 221	(68.4%)
Total		9 397	(100.0%)	12 250	(100.0%)	15 161	(100.0%)	18 131	(100.0%)	23 732	(100.0%)	28 104	(100.0%)

Notes:

- (1) UGC-funded programmes are calculated on full-time-equivalent-basis, while other programmes are based on headcount.
- (2) "Sub-degree" includes "AD", "Higher Diploma", "Honours Diploma" and "Professional Diploma" programmes.
- (3) 2005-06 figures are based on Institution's returns in early 2006.
- (4) No breakdown of programme type in UGC-funded institutions.
- (5) Including Publicly-funded programmes only.
- (6) "Others" includes "Honours Diploma" and "Professional Diploma", and so on.
- (7) Owing to rounding, there may be a slight discrepancy between the sum of individual items and the total as shown in the tables.

Higher Education Division

Date: 8 May 2006

Child and Juvenile Delinquency in Hong Kong

9. **MS AUDREY EU** (in Chinese): *President, regarding child and juvenile delinquency in Hong Kong, will the Government inform this Council:*

- (a) *of the respective numbers of juveniles aged between 10 and 14 who were arrested, prosecuted and convicted since 2002, together with a breakdown by their age (in five age groups) and the category of offences allegedly committed by them;*
- (b) *of the details of the additional support services provided by the authorities to enable the rehabilitation of unruly children below the age of 10 after the minimum age of criminal liability has been raised to 10; and*
- (c) *whether the authorities plan to raise the minimum age of criminal liability to 12 or 14 years of age; if they have, of the details and the timetable of the plan; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) The number of juveniles aged between 10 and 14 who were arrested, prosecuted and convicted, with breakdown by their age (in five age groups) and the category of offences allegedly committed, in 2002 to 2005 is set out at Annex.
- (b) Since raising the minimum age of criminal responsibility from seven to 10 in July 2003, the Government has enhanced the support measures for unruly children below the age of 10. The details are as follows:
 - (i) *Extension of the service of the Juvenile Protection Section (JPS) aftercare service to unruly children below the age of 10*

The JPS of the police arranges visits to the residence of juveniles who have been cautioned under the Police Superintendents' Discretion Scheme. The purpose of the visits is to ensure that the juveniles under caution do not lapse into crime or become associated with undesirable characters again. If juveniles in this category are deemed to be in need of support services, the police will, with parental consent, refer them to the Social Welfare Department (SWD). Under special circumstances, non-consensual referral of the information on these juveniles' to the SWD may also be made for follow-up. Such referral mechanism has been extended to children below the age of 10 since September 2004.

- (ii) *Enhanced referral mechanism between the police and the SWD/Education and Manpower Bureau (the Bureau)*

From 1 July 2003, the police have enhanced their referral mechanism with the SWD/Bureau for unruly children and juveniles. Under this mechanism, District Social Welfare Officers of the SWD and inspectors of the Non-attendance Cases Team and the Education Psychology Service (Professional Support) Section of the Bureau act as contact point at the district level to take up police referrals that require direct and prompt follow-up. The mechanism is currently working well.

(iii) *Provision of Youth Information Services Leaflet*

Since 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-governmental organizations (NGOs). Such services include counselling for those with emotional problems, advice on education and career opportunities, and assistance for those with drug-related problems.

In September 2004, the contents of the leaflet were further enriched to include website addresses of major NGOs targeted at serving the youths. Apart from Chinese and English, the leaflet is available in other languages to cater for the needs of ethnic minorities.

- (c) The Administration has followed the recommendation in the report of the Law Reform Commission (LRC) on "The Age of Criminal Responsibility in Hong Kong" published in 2000 and raised the minimum age of criminal responsibility from seven to 10 years of age. The LRC arrived at its recommendation after thorough consideration of responses to public consultations, the findings of a telephone survey as well as the minimum ages adopted in overseas jurisdictions. The recommendation was implemented in 2003.

In practice, children aged under 14 who are arrested on criminal charges are mostly dealt with under the Police Superintendents' Discretion Scheme, rather than being subject to the full force of the criminal justice system. And the common law presumption of *doli incapax* for children aged from 10 to below 14 provides adequate protection for children within that age range, as the burden of proof of criminal intent is on the prosecution. Moreover, the standard of proof that the prosecution must adduce in such cases is high. It must be proven beyond reasonable doubt that not only was there *actus reus* with *mens rea*, but also that the child knew that the particular act was not merely naughty or mischievous, but seriously wrong. In view of the above, the Administration does not plan to further raise the criminal age of responsibility for the time being.

The number of juveniles aged between 10 and 14 who were arrested, prosecuted and convicted from 2002 to 2005, (with breakdown in five age groups) and the category of offences allegedly committed by them

<i>Offences</i>	<i>2002</i>																	
	<i>Numbers arrested</i>						<i>Numbers prosecuted</i>						<i>Numbers convicted</i>					
	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>
Shop Theft	129	238	267	437	352	1 423	1	7	14	24	29	75	0	0	3	13	16	32
Miscellaneous Thefts	17	34	97	187	250	585	4	9	30	72	98	213	1	4	11	44	63	123
Serious Assault	4	13	33	128	187	365	0	1	7	43	54	105	0	0	2	29	31	62
Robbery	2	12	33	116	148	311	0	2	12	56	80	150	0	0	6	29	53	88
Unlawful Society Offences	0	0	2	20	62	84	0	0	0	6	16	22	0	0	0	4	6	10
Serious Narcotics Offences	0	0	0	5	19	24	0	1	0	1	12	14	0	1	0	1	11	13
Other Offences ^{Note 1}	19	36	81	231	384	751	3	10	20	95	194	322	1	7	12	57	140	217
Total Number ^{Note 2}	171	333	513	1 124	1 402	3 543	7	26	78	274	452	837	1	10	32	162	303	508

^{Note 1} Other offences include arson, criminal intimidation, burglary, criminal damage, disorder/fighting in public place, indecent assault, possession of offensive weapon, murder and manslaughter, unlawful sexual intercourse, and so on.

^{Note 2} Since the individuals concerned may be prosecuted/convicted in respect of more than one type of offences at the same time, the total number of persons prosecuted/convicted is not the sum of the individual figure for different types of offences.

<i>Offences</i>	<i>2003</i>																	
	<i>Numbers arrested</i>						<i>Numbers prosecuted</i>						<i>Numbers convicted</i>					
	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>
Shop Theft	142	171	207	306	385	1 211	3	7	13	32	54	109	0	1	4	21	42	68
Miscellaneous Thefts	23	50	109	194	256	632	0	3	18	40	76	137	0	1	4	30	49	84
Serious Assault	3	7	43	106	198	357	0	0	15	29	62	106	0	0	9	21	43	73
Robbery	2	3	33	67	120	225	0	1	21	39	73	134	0	0	12	27	57	96
Unlawful Society Offences	0	0	5	22	52	79	0	0	1	3	7	11	0	0	1	2	3	6
Serious Narcotics Offences	0	0	1	2	13	16	0	0	0	2	4	6	0	0	0	0	2	2
Other Offences ^{Note 1}	18	32	104	257	462	873	2	7	21	77	111	218	0	6	16	47	77	146
Total Number ^{Note 2}	188	263	502	954	1 486	3 393	5	18	80	205	357	665	0	8	42	138	256	444

^{Note 1} Other offences include arson, criminal intimidation, burglary, criminal damage, disorder/fighting in public place, indecent assault, possession of offensive weapon, murder and manslaughter, unlawful sexual intercourse, and so on.

^{Note 2} Since the individuals concerned may be prosecuted/convicted in respect of more than one type of offences at the same time, the total number of persons prosecuted/convicted is not the sum of the individual figure for different types of offences.

<i>Offences</i>	<i>2004</i>																	
	<i>Numbers arrested</i>						<i>Numbers prosecuted</i>						<i>Numbers convicted</i>					
	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>
Shop Theft	155	182	235	313	311	1 196	1	7	16	38	49	111	0	3	6	19	34	62
Miscellaneous Thefts	28	54	107	211	273	673	0	10	19	61	81	171	0	8	10	43	61	122
Serious Assault	7	11	33	92	189	332	0	0	8	30	71	109	0	0	7	19	47	73
Robbery	1	10	21	74	116	222	0	3	8	29	61	101	0	0	4	23	55	82
Unlawful Society Offences	0	0	3	26	55	84	0	0	2	9	32	43	0	0	1	4	18	23
Serious Narcotics Offences	0	0	0	2	7	9	0	0	0	0	5	5	0	0	0	0	5	5
Other Offences ^{Note 1}	28	35	111	243	420	837	0	5	12	58	148	223	0	1	9	36	105	151
Total Number ^{Note 2}	219	292	510	961	1 371	3 353	1	25	63	204	409	702	0	12	36	130	303	481

^{Note 1} Other offences include arson, criminal intimidation, burglary, criminal damage, disorder/fighting in public place, indecent assault, possession of offensive weapon, murder and manslaughter, unlawful sexual intercourse, and so on.

^{Note 2} Since the individuals concerned may be prosecuted/convicted in respect of more than one type of offences at the same time, the total number of persons prosecuted/convicted is not the sum of the individual figure for different types of offences.

<i>Offences</i>	<i>2005</i>																	
	<i>Numbers arrested</i>						<i>Numbers prosecuted</i>						<i>Numbers convicted</i>					
	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>	<i>Aged 10</i>	<i>Aged 11</i>	<i>Aged 12</i>	<i>Aged 13</i>	<i>Aged 14</i>	<i>Total</i>
Shop Theft	117	159	209	323	312	1 120	3	9	23	41	45	121	1	1	10	22	35	69
Miscellaneous Thefts	29	59	142	228	300	758	1	2	25	55	84	167	0	2	10	43	64	119
Serious Assault	9	20	42	122	153	346	0	3	8	33	64	108	0	1	4	19	46	70
Robbery	2	8	22	44	61	137	3	3	10	22	29	67	2	1	6	14	20	43
Unlawful Society Offences	0	0	1	15	47	63	0	0	1	6	19	26	0	0	1	3	8	12
Serious Narcotics Offences	0	0	1	8	11	20	0	0	0	2	2	4	0	0	0	2	2	4
Other Offences ^{Note 1}	26	42	103	251	371	793	1	4	16	64	141	226	0	0	4	37	80	121
Total Number ^{Note 2}	183	288	520	991	1 255	3 237	7	20	74	207	351	659	3	4	31	128	239	405

^{Note 1} Other offences include arson, criminal intimidation, burglary, criminal damage, disorder/fighting in public place, indecent assault, possession of offensive weapon, murder and manslaughter, unlawful sexual intercourse, and so on.

^{Note 2} Since the individuals concerned may be prosecuted/convicted in respect of more than one type of offences at the same time, the total number of persons prosecuted/convicted is not the sum of the individual figure for different types of offences.

Juvenile justice system

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Joint Panels on Administration of Justice and Legal Services and Security	27 October 2003	<p>Administration's paper on "Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons" [LC Paper No. CB(2)160/03-04(01)]</p> <p>Relevant extract from the Report of the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 [LC Paper No. CB(2)160/03-04(02)]</p> <p>Research Report on "Operation of Youth Courts in Selected Places" considered by the Panel on Administration of Justice and Legal Services at the meeting on 26 May 2003 [RP07/02-03]</p> <p>Supplementary Information on Research Report on "Operation of Youth Courts in Selected Places" [IN31/02-03]</p> <p>Minutes of meeting [LC Paper No. CB(2)519/03-04]</p>
House Committee	7 November 2003	<p>Report of the Panel on Administration of Justice and Legal Services and Panel on Security [LC Paper No. CB(2)246/03-04]</p>
Subcommittee on juvenile justice system	26 November 2003	<p>Consultancy Report on "Measures Alternative to Prosecution for handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong" [Not available in LegCo website]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		Background paper prepared by the Legislative Council Secretariat [LC Paper No. CB(2)429/03-04(02)] Minutes of meeting [LC Paper No. CB(2)726/03-04]
	18 December 2003	Administration's paper on "Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons" [LC Paper No. CB(2)735/03-04(01)] Minutes of meeting [LC Paper No. CB(2)1173/03-04]
	5 February 2004	Submissions from deputations [LC Paper No. CB(2)1128/03-04(01)] (Chinese version only) [LC Paper No. CB(2)1128/03-04(02)] (Chinese version only) [LC Paper No. CB(2)1128/03-04(03)] (Chinese version only) [LC Paper No. CB(2)1128/03-04(04)] (Chinese version only) [LC Paper No. CB(2)1128/03-04(05)] [LC Paper No. CB(2)1128/03-04(06)] (Chinese version only) [LC Papers Nos. CB(2)1128/03-04(07) and CB(2)2369/03-04(01)] [LC Paper No. CB(2)1128/03-04(08)] [LC Paper No. CB(2)1158/03-04(01)] [LC Paper No. CB(2)1158/03-04(02)] [LC Paper No. CB(2)1158/03-04(03)] [LC Papers Nos. CB(2)1158/03-04(04) and CB(2)2339/03-04(02)] (Chinese version only) [LC Paper No. CB(2)1158/03-04(05)] [LC Paper No. CB(2)1196/03-04(01)] (Chinese version only) Minutes of meeting [LC Paper No. CB(2)2100/03-04]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
	12 March 2004	<p>Paper from Dr LO Tit-wing, the Consultant, on issues raised at the meeting on 18 December 2003 [LC Paper No. CB(2)1237/03-04(02)]</p> <p>Administration's responses to the recommendations of the Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons and issues raised at the meeting on 5 February 2004 [LC Paper No. CB(2)1659/03-04(01)]</p> <p>Information leaflet on services provided by Government departments and non-government organizations for unruly children and young persons [LC Paper No. CB(2)1721/03-04(01)] (Chinese version only)</p> <p>Minutes of meeting [LC Paper No. CB(2)2274/03-04]</p>
	14 May 2004	<p>Administration's responses to the views put forward by the Subcommittee and deputations on the Consultancy Report on Measures Alternative to Prosecution for Handling Unruly Children and Young Persons [LC Paper No. CB(2)2291/03-04(01)]</p> <p>Administration's responses to issues raised at the meeting on 12 March 2004 [LC Paper No. CB(2)2339/03-04(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)3113/03-04]</p>
House Committee	25 June 2004	<p>Report of the Subcommittee on juvenile justice system [LC Paper No. CB(2)2895/03-04]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Legislative Council	9 March 2005	Official Record of Proceedings of the Council on a written question raised by Dr Hon Fernando CHEUNG on "Development of New Juvenile Justice System"
	10 May 2006	Official Record of Proceedings of the Council on a written question raised by Hon Audrey EU on "Child and Juvenile Delinquency in Hong Kong"
Panel on Administration of Justice and Legal Services	--	<p>Administration's letter dated 26 January 2005 concerning the latest position of the development of a new juvenile justice system [LC Paper No. CB(2)783/04-05(01)]</p> <p>Administration's letter dated 30 May 2005 on progress of review of juvenile justice system [LC Paper No. CB(2)1760/04-05(01)]</p> <p>Administration's paper on "Juvenile Justice System : Enhanced Support Measures for Unruly Children and Young Offenders" [LC Paper No. CB(2)2508/04-05(01)]</p> <p>Administration's paper on "Restorative Justice for Juvenile Offenders" [LC Paper No. CB(2)765/06-07(01)]</p>