



立法會福利事務委員會
主席
鄭俊宇議員

立法會CB(2)58/19-20(01)號文件
LC Paper No. CB(2)58/19-20(01)

鄭議員：

要求討論「立法保障兒童最佳權利」

世界上有不少國家已立法強制通報懷疑虐兒個案，包括美國、加拿大、瑞士、澳洲和日本。但香港現時亦未有制訂任何虐兒強制通報機制，亦未就虐待兒童訂定法律定義，只有以社會福利署的《處理虐待兒童個案程序指引》的虐兒定義為參考指引，並不直接應用在刑事法。另外，全球亦有多個國家立法禁止體罰，如歐盟 28 個成員國中已有 22 國推行禁止體罰兒童的法例。而香港雖已立法保護兒童在學校及幼兒中心內免受體罰。但仍沒有指定法例禁止家長向子女施行體罰。故此，我將會向立法會提交《2019 年保護兒童法例(修訂)條例草案》，修訂《保護兒童及少年條例》(第 213 章) (《保護兒童及少年條例》)及《少年犯條例》(第 226 章) (《少年犯條例》)，冀能保障兒童最佳利益。附件為有關條例草案。

就此，我希望閣下在福利事務委員會能盡快討論立法能夠如何保障兒童最佳利益，使香港人權法案條例第 20 條得以實施，進一步賦予 1989 年聯合國兒童權利公約第 3 及 20 條的權力，以及保護兒童免受虐待和忽略。如有問題，請聯絡我的助理蔡頌惠 (電話: 3523 1727/ 2613 9200)。肅此奉覆，敬頌

公祺！

立法會議員

張超雄

張超雄
二零一九年十月二十二日

《2019年保護兒童法例(修訂)條例草案》

目錄

條次		頁次
第 1 部		
導言		
1.	簡稱	1
2.	修訂成文法則	1
第 2 部		
修訂《保護兒童及少年條例》		
3.	修訂第 2 條(釋義).....	2
4.	加入第 2B 及 2C 條.....	2
	2B. 通則	3
	2C. 檢視兒童福利計劃	5
5.	修訂第 34 條(少年法庭有關監護、看管及控制需要受照顧及保護的兒童及少年的權力).....	6
6.	加入第 49 至 52 條	6
	49. 法律程序移交原訟法庭	7
	50. 申報虐兒	7
	51. 合理懲罰	8
	52. 違法的歧視罪行	9
第 3 部		

條次		頁次
修訂《少年犯條例》		
7.	取代第 3 條	10
3.	刑事責任的年齡	10
8.	修訂第 11 條(對兒童及少年人懲罰的限制).....	10

本條例草案

旨在

修訂《保護兒童及少年條例》及《少年犯條例》，為兒童提供最佳的利益；賦予《1989年聯合國兒童權利公約》的權力；以及提供其他相關事務的保障。

由立法會制定。

第1部

導言

1. 簡稱

本條例可引稱為《2019年保護兒童法例(修訂)條例》。

2. 修訂成文法則

- (1) 《保護兒童及少年條例》(第213章)現予修訂，修訂方式列於第2部。
- (2) 《少年犯條例》(第226章)現予修訂，修訂方式列於第3部。

第2部

修訂《保護兒童及少年條例》

3. 修訂第2條(釋義)

- (1) 第2條，中文文本，**監管令**的定義 ——
廢除句號
代以分號。

- (2) 第2條 ——

按筆劃數目順序加入

“**幼兒中心** (child care centre)的涵義與《幼兒服務條例》(第243章)中該詞的涵義相同；

幼兒托管人 (childminder)的涵義與《幼兒服務條例》(第243章)中該詞的涵義相同；

虐待兒童 (child abuse)指對18歲以下人士作出某些行為，包括身體或情感上虐待、性虐待、忽略、故意或疏忽的作為、商業利用或其他剝削，引致兒童在生理或心理健康上，以及在生存、發展、尊嚴上受到嚴重傷害，或令其在責任、信任或權力關係背景上有迫切風險；

註冊社會工作者 (registered social worker)的涵義與《社會工作者註冊條例》(第505章)中該詞的涵義相同；

註冊醫生 (registered medical practitioner)的涵義與《醫生註冊條例》(第161章)中該詞的涵義相同；

檢定教員 (registered teacher)的涵義與《教育條例》(第279章)第2條中該詞的涵義相同。”。

4. 加入第2B及2C條

在第2A條之後 ——

加入

“2B. 通則

- (1) 法庭當決定在本條例下的任何事項時須以兒童的最大利益為首要考慮。
- (2) 社會福利署署長不論是否及如何根據本條例行使權力，應以兒童的最大利益為首要考慮。
- (3) 法庭及社會福利署署長應時刻緊記，任何延遲的決定都會影響兒童的最大利益及福祉。
- (4) 當決定何為兒童的最大利益，法庭須從實際上考慮——
 - (a) 《1989年聯合國兒童權利公約》下的兒童權利；
 - (b) 兒童可確定的意見（根據兒童的年齡及理解能力）；
 - (c) 兒童在身體上、情感上、發展上及教育上的需要；
 - (d) 對兒童有可能造成的影響；
 - (e) 兒童的年齡、成熟度、性別、宗教、社會及文化背景，及其他法庭認為有關的因素；
 - (f) 該兒童過往曾受的傷害及其可能承受的風險；
 - (g) 兒童與其父母、同居者、親戚、或其他家人及社區成員的關係及情感聯繫；
 - (h) 兒童與父母的關係對其發展的重要性；
 - (i) 持續照顧的重要性，以及喪失持續照顧對兒童的影響；
 - (j) 涉及該兒童或兒童的其他家庭成員的家暴事件；

- (k) 兒童父母、或其他法庭認為相關的其他人士的能力，以採取措施回應兒童的需要。法庭亦會考慮兒童如被帶往其他照顧地方、與原先照顧者隔離、或是返回或維持在原先照顧下的可能受的風險或傷害；
 - (l) 兒童與父母接觸的實際困難及成本，以及這些困難及成本是否影響兒童恆常地與父母保持關係或直接聯系之權利；
 - (m) 法庭可行使的權力範圍；以及
 - (n) 法庭認為其他任何有關係的因素或情況。
- (5) 當決定何為兒童最佳利益法庭須考慮——
- (a) 所有資料包括任何社會福利署署長提供予法庭聆聽的報告；
 - (b) 兒童父母的意見；及
 - (c) 註冊社工、註冊醫生、檢定教員或其他與該兒童有關的專業人士及專職人員的意見。
- (6) 所有身在香港的兒童都有權利受本條例保障，並不因自身或其父母及法定監護人的種族、膚色、性別、語言、宗教、政治、或其他見解、民族、族裔或社會出身、財富、傷殘、出生或其他身分而有任何差別。
- (7) 行使本條例權力的人須時刻注意到到受保護的兒童並不因其父母、法定監護人及家庭成員的身分、行為、見解或信念而受到任何歧視或處罰。
- (8) 法庭在考慮任何在第34及35條的申請須一併考慮所有跟申請人同住或有親屬關係的兒童或少年的情況。
- (9) 在本條中——
- 父母 (parent)指包括所有母親、父親、養父母及監護人；
- 兒童 (child)指所有18歲以下的人。

2C. 檢視兒童福利計劃

- (1) 任何受本條例給予任何權力的兒童只要仍留在收容所、機構、醫院或受親戚及永久法定監管以外的人士照顧，或在最近 12 個月中受社會福利署超過 9 個月的監護，法院須傳召命令社會福利署署長向其遞交兒童福利計劃及於 1 個月內檢視該計劃。
- (2) 任何兒童在最近 12 個月在法定監護人同意下接受資助的兒童住宿照顧服務(例如留宿育嬰園、留宿幼兒園、兒童收容中心、兒童院、男/女童院、男/女童宿舍、兒童之家及寄養服務)超過 9 個月的照顧，社會福利署署長向少年法庭遞交兒童福利計劃以作檢視。
- (3) 在本條中 ——
兒童福利計劃 (care plan)包括 ——
 - (a) 福利計劃以確保兒童接受安全而適當的照顧，該服務是提供給家長、兒童、暫託家長以提升家長的家居環境從而有助兒童重返安全家中或永久住所，以及解決兒童在機構或寄養照顧的需要，包括討論在福利計劃下提供給兒童的服務的適切性；或
 - (b) 福利計劃以安排領養或其他永久住所的宿位，以及尋找領養家庭或其他永久住屋安排，把兒童安置於領養家庭，或安置於其合適及願意的親戚、法定監護人，或其他計劃內的永久住屋安排，以及完成領養或法定監護令手續上的所須文件。
- (4) 法庭須每 6 個月檢視本條下的兒童福利計劃，直至該兒童已屆 18 歲或已不再受社會福利署署長監護，或不受社會福利署署長、收容所、機構、醫院或受親戚及永久法定監管以外的人士照顧。

- (5) 一經法庭檢視兒童福利計劃，如法庭並不滿意兒童福利計劃有充分措施去保障兒童最佳利益，法庭為兒童最佳利益起見，於有需要時將會作出進一步的命令。
- (6) 若少年法庭認為在本條例下兒童福利計劃缺乏足夠的司法管轄權，或有其他條例可確保兒童最佳利益，法庭會在第 49 條下將法律程序轉往高等法院原訟法庭。
- (7) 在本條中 ——
父母 (parent)指包括所有母親、父親、養父母及監護人；
兒童 (child)指所有 18 歲以下的人。”。

5. 修訂第 34 條(少年法庭有關監護、看管及控制需要受照顧及保護的兒童及少年的權力)

- (1) 在第 34(1)條，在“任何警務人員”之後 ——
加入
“或任何與該兒童有關的專業人士及專職人員”。
- (2) 在第 34(1B)條之後 ——
加入
“(1C) 當少年法庭信納在第(1)款下該兒童或少年要照顧或保護，就原本申請的兒童或少年的其他同住或兄弟姊妹兒童或少年的有關情況，少年法庭將向社會福利署署長及各方查究。”。

6. 加入第 49 至 52 條

- 在第 48 條之後 ——
加入

“49. 法律程序移交原訟法庭

- (1) 少年法庭在自行動議下，或任何先於其動議的人，在進行任何法律程序的任何階段，如果是出於任何原因認為該事項需要由原訟法庭法官聆訊和裁定，該事項的相關法律程序則移交原訟法庭。
- (2) 根據本條例移交，原訟法庭法官具有本條例賦予及行使任何權力。
- (3) 根據本條例作出命令將案件移交少年法庭的法庭。
- (4) 於不損害第 39 條的情況下，首席法官可透過法院規則，作出符合本條的規定。
- (5) 本條的規定，不得剝奪任何賦予原訟法庭的審裁權。

50. 申報虐兒

- (1) 任何註冊醫生、註冊社會工作者、檢定教員、幼兒托管人、或幼兒中心的擁有人或經營者合理地懷疑並相信該兒童或少年人受襲擊、虐待、忽略、性侵犯或觀察到該兒童或少年人遭受的條件或情況將會合理地導致該兒童或少年人受襲擊、虐待、忽略、性侵犯時有責任自行或委派人員在切實可行範圍內盡快向警務處或社會福利署申報相關的條件或情況。除非基於兒童或少年人最佳的利益的情況下不應作出上述申報。當註冊醫生、註冊社會工作者、檢定教員或幼兒托管人的出席是基於其履行作為醫院或機構職員的職責時，他或她應通知該機構負責人，或該機構負責人的指定代表以提交需要的報告。
- (2) 任何父母有合理理由相信其子女或少年人已經或正在受襲擊、虐待、忽略、性侵犯或觀察到該兒童或少年人受到的條件或情況會合理地導致該兒童或少年人受襲擊、虐待、忽略、性侵犯時有責任自行或委派人員向警務處或社會福利署申報相關的條件或

情況。除非基於兒童或少年人最佳的利益的情況下不應作出上述申報。

- (3) 在第(2)款中 ——

父母 (parent)包括生父或生母、領養父母、監護人、寄養父母，或擔當代理監護人的角色（如保姆）。

- (4) 任何僱主作出歧視或處罰任何本着真誠地申報虐待兒童(包括根據本條作出申報)情況的僱員或僱主認為可能或已經申報虐待兒童(包括根據本條作出申報)情況的僱員，均屬違法行為，其中歧視或處罰包括 ——
 - (a) 有關獲得晉升、轉移、培訓、提供的任何其他利益或設施或服務的機會，或拒絕或故意忽略向該僱員提供以上機會；
 - (b) 有關為該僱員提供的僱傭待遇；或
 - (c) 解僱或使該僱員遭受任何其他損害。
- (5) 任何非法歧視僱員及違反第 5 分部的人，即屬犯罪，一經循公訴程序定罪，可處第 6 級罰款及監禁 2 年，並須承擔侵權的法律責任。
- (6) 警務處處長或社會福利署署長須確保能迅速調查根據本條所作出的申報。

51. 合理懲罰

- (1) 就任何造成非短暫性或非微不足道傷害的罪行，任何向兒童作出攻擊或毆打的行為，不得以該行為構成合理懲罰作為辯護理由。
- (2) 就任何人向兒童作出襲擊或毆打的行為的法律責任，不得以該行為構成合理懲罰作為民事訴訟的辯護理由。

52. 違法的歧視罪行

- (1) 任何人違反第 50(4)條而非法歧視該名僱員，即屬犯罪。
- (2) 任何人犯第(1)款所訂罪行 ——
 - (a) 一經循簡易程序定罪——可處第 6 級罰款及監禁 12 個月；或
 - (b) 一經循公訴程序定罪——可處罰款及監禁 2 年。”。

第3部

修訂《少年犯條例》

7. 取代第3條
第3條 ——

廢除該條
代以

“3. 刑事責任的年齡

- (1) 現訂立一項不可推翻的推定，10 歲以下的人不能犯罪。
- (2) 現訂立一項不可推翻的推定，10 歲以上及 16 歲以下的人不能犯罪，犯嚴重的人身暴力行為則除外。
- (3) 未滿 18 歲的人不可被控以循簡易程序審訊的任何罪行。”。

8. 修訂第11條(對兒童及少年人懲罰的限制)

在第11條的末處 ——

加入

- “(5) 任何未滿 18 歲的人不能判處超過 10 年的監禁刑罰。
- (6) 未滿 18 歲的人所犯的任何罪行判處無期徒刑，法院須判處 10 年或以下的監禁刑罰，裁定判刑的法院將判定公正的刑期。”。

摘要說明

本條例草案的目的，是修訂《保護兒童及少年條例》(第 213 章)(《保護兒童及少年條例》)及《少年犯條例》(第 226 章)(《少年犯條例》)，以——

- (a) 使香港人權法案第二十條得以實施；
 - (b) 進一步賦予《1989 年聯合國兒童權利公約》第 3 及 20 條的權力；及
 - (c) 保護兒童免受虐待和忽略。
2. 本條例草案共有 3 部、8 項條文。
 3. 草案第 3 條在《保護兒童及少年條例》第 2 條中加入*幼兒中心、幼兒托管人、虐待兒童、註冊社會工作者、註冊醫生及檢定教員*的定義。
 4. 草案第 4 條在《保護兒童及少年條例》中加入新訂第 2B 及 2C 條，新訂第 2B 條規定法庭及社會福利署署長在根據該條例行使權力時，必須顧及兒童的最佳利益。
 5. 新訂第 2C 條規定法庭須為在上一年度內多於 9 個月受機構照顧或受社會福利署管養的兒童檢視兒童福利計劃。
 6. 草案第 5 條修訂《保護兒童及少年條例》第 34 條，給予特定專業人士(例如社會工作者、教員及醫生)資格去處理兒童照顧或相關保護程序。
 7. 草案第 6 條在《保護兒童及少年條例》中加入新訂第 49、50、51 及 52 條，新訂第 49 條提供法律程序移交原訟法庭。
 8. 新訂第 50 條，就負責兒童照顧和福利的人士申報虐兒事件制定新的法定義務。
 9. 新訂第 51 條，向兒童作出攻擊或毆打是不能作為合理懲罰的辯護理由。
 10. 新訂第 52 條，非法歧視僱員申報虐兒，即屬犯罪。

11. 草案第 7 條取代《少年犯條例》第 3 條，為刑事責任年齡引入 3 項標準。
12. 草案第 8 條在《少年犯條例》第 11 條加入新訂第(5)及(6)款。第(5)款訂定任何未滿 18 歲的人不能判處超過 10 年的監禁刑罰。第(6)款以較短的監禁期限(有期徒刑 10 年或以下)取代原訂的終身監禁，並保留法院的權力。

**Protection of Children Legislation (Amendments) Bill
2019**

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title.....	1
2. Enactments amended.....	1
Part 2	
Amendments to Protection of Children and Juveniles Ordinance	
3. Section 2 amended (interpretation)	2
4. Sections 2B and 2C added	3
2B. General principles.....	3
2C. Review of care plans	6
5. Section 34 amended (powers of juvenile courts in relation to guardianship and custody and control of children and juveniles in need of care and protection)	8
6. Sections 49 to 52 added	8
49. Transfer of proceedings to Court of First Instance	8
50. Reporting of child abuse	9

Clause	Page
51. Reasonable chastisement.....	11
52. Offence of unlawful discrimination	11
Part 3	
Amendments to Juvenile Offenders Ordinance	
7. Section 3 substituted.....	12
3. Age of criminal responsibility	12
8. Section 11 amended (restrictions on punishment of children and young persons).....	12

A BILL

To

Amend the Protection of Children and Juveniles Ordinance and the Juvenile Offenders Ordinance to make provision for the best interests of the child; to give effect to and implement the United Nations Convention on the Rights of the Child of 1989; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Protection of Children Legislation (Amendments) Ordinance 2019.

2. Enactments amended

- (1) The Protection of Children and Juveniles Ordinance (Cap. 213) is amended as set out in Part 2.
- (2) The Juvenile Offenders Ordinance (Cap. 226) is amended as set out in Part 3.

Part 2

Amendments to Protection of Children and Juveniles Ordinance

3. Section 2 amended (interpretation)

- (1) Section 2, Chinese text, definition of ~~監管令~~

Repeal the full stop

Substitute a semicolon.

- (2) Section 2—

Add in alphabetical order

“child abuse (虐待兒童) means any act of commission or omission of physical or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in serious harm to the physical or mental health, survival, development or dignity of an individual under the age of 18 or imminent risk of such harm in the context of a relationship of responsibility, trust or power;

child care centre (幼兒中心) has the same meaning as in the Child Care Services Ordinance (Cap. 243);

childminder (幼兒托管人) has the same meaning as in the Child Care Services Ordinance (Cap. 243);

registered medical practitioner (註冊醫生) has the same meaning as in the Medical Registration Ordinance (Cap. 161);

registered social worker (註冊社會工作者) has the same meaning as in the Social Workers Registration Ordinance (Cap. 505);

registered teacher (検定教員) has the same meaning as in the Education Ordinance (Cap. 279);”.

4. Sections 2B and 2C added

After section 2A—

Add

“2B. General principles

- (1) In determining a question concerning any of the matters arising under this Ordinance, a court must regard the best interests of a child as the paramount consideration.
- (2) In considering whether and how to exercise any power under this Ordinance, the Director of Social Welfare must regard the best interests of a child as the paramount consideration.
- (3) The court and the Director of Social Welfare must at all times bear in mind that, in general, any delay in coming to a decision is likely to prejudice the child’s best interests and welfare.
- (4) In determining what is in the best interests of a child, the court must have regard, in particular, to—
 - (a) the rights of the child under the United Nations Convention on the Rights of the Child 1989;
 - (b) the ascertainable views of the child concerned (considered in the light of the child’s age and understanding);
 - (c) the child’s physical, emotional, developmental and educational needs;
 - (d) the likely effect on the child of any change in the child’s circumstances;

- (e) the child’s age, maturity, sex, religious faith, social and cultural background and any other characteristics of the child that the court considers relevant;
- (f) any harm or child abuse that the child has suffered or is at risk of suffering;
- (g) the nature and quality of the child’s relationships with and emotional ties to a parent, sibling, relative, or other member of the child’s extended family or member of the child’s community;
- (h) the importance for the child’s development of a relationship with a parent;
- (i) the importance of continuity in the child’s care and the effects, if any, on the child of disruption to that continuity;
- (j) any family violence involving the child or a member of the child’s family;
- (k) how capable each of the child’s parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child’s needs and the risk, if any, that the child may suffer through being removed, kept away from, returned to or allowed to remain in the care of such persons;
- (l) the practical difficulty and expense of the child having contact with a parent, and whether that difficulty or expense will substantially affect the child’s right to maintain personal relations and direct contact with his or her parents on a regular basis;
- (m) the range of powers available to the court; and

- (n) any other facts or circumstances that the court considers relevant.
- (5) In determining what is in the best interests of a child, the court may have regard to—
- (a) any material information including any report of the Director of Social Welfare available to the court at the hearing;
 - (b) the views of the child's parents; and
 - (c) the views of any registered social worker or registered medical practitioner or registered teacher or of any person who performs professional or official duties with respect to the child.
- (6) All children within Hong Kong must be entitled to the protective measures under this Ordinance without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- (7) Persons exercising powers under this Ordinance must at all times take into account the need to take measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.
- (8) In considering any application made under sections 34 and 35, a court must have regard to the circumstances of any other child or juvenile living with or the sibling of the child or juvenile who is the subject of such application.
- (9) For the purpose of this section—

child (兒童) means any person under the age of 18;

parent (父母) means any mother, father, adoptive parent or guardian.

2C. Review of care plans

- (1) Where any child, under any power granted by this Ordinance, has remained in the care of any place of refuge, institution, hospital, or any person other than a relative or permanent legal guardian pursuant to any power granted by this Ordinance or has been a ward of the Director of Social Welfare for more than 9 months during the most recent 12 month period, the court must call for the Director of Social Welfare to submit a care plan and review the said care plan within 1 month.
- (2) Where any child has remained in the care of subvented residential child care services (for example, residential crèches, residential nurseries, children's reception centres, children's homes, boys or girls homes, boys or girls hostels, small group homes and foster care services) by consent of his or her legal guardian for more than 9 months during the most recent 12 month period, the Director of Social Welfare must submit a care plan for the review to a juvenile court within 1 month.
- (3) In this section—

care plan (兒童福利計畫) includes—

 - (a) a plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his or her own safe home or the permanent placement of the child, and address the needs of the child while in institutional

or foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan; or

- (b) a plan for the adoption or placement in another permanent home, documentation of the steps being taken to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship.
- (4) The court must review care plans submitted under this section every 6 months until the child reaches the age of 18 or is no longer a ward of the Director of Social Welfare or in the care of the Director of Social Welfare or any place of refuge, institution, hospital, or any person other than a relative or permanent legal guardian.
- (5) Upon review of a care plan, if the court is not satisfied that sufficient steps will be taken in the best interests of the child, the court must make any further orders as are necessary in the best interests of the child.
- (6) If a juvenile court considers that it lacks sufficient jurisdiction under this Ordinance or any other Ordinance to secure the best interests of the child, the court must transfer proceedings to the Court of First Instance under section 49.
- (7) For the purpose of this section—

child (兒童) means any person under the age of 18;

parent (父母) includes any mother, father, adoptive parent or guardian.”.

5. Section 34 amended (powers of juvenile courts in relation to guardianship and custody and control of children and juveniles in need of care and protection)

- (1) Section 34(1), after “of any police officer”—

Add

“or of any person who performs professional or official duties with respect to children”.

- (2) After section 34(1B)—

Add

“(1C) Where a juvenile court is satisfied that a child or juvenile is in need of care or protection under subsection (1), it must make inquiries of the Director of Social Welfare and the parties as to the circumstances of any other child or juvenile living with or the sibling of the child or juvenile who is the subject of the original application.”.

6. Sections 49 to 52 added

After section 48—

Add

“49. Transfer of proceedings to Court of First Instance

- (1) A juvenile court may, on its own motion or upon the application of any person before it, at any stage of proceedings, if it is of the opinion that for any reason the matter should be heard and determined by a judge of the Court of First Instance, transfer proceedings to the Court of First Instance.
- (2) Upon transfer under this section, a judge of the Court of First Instance may exercise any power conferred on the juvenile court under this Ordinance.

- (3) The Court of First Instance may order that proceedings under this Ordinance must be retransferred back to a juvenile court.
- (4) Despite section 39, the Chief Justice may provide through the rules of court for the procedures to be complied with under this section.
- (5) Nothing in this section should be interpreted as removing any jurisdiction vested in the Court of First Instance.

50. Reporting of child abuse

- (1) Any registered medical practitioner, registered social worker, registered teacher, childminder, or owner or operator of a child care centre having reasonable cause to believe that a child or juvenile has been or is being assaulted, ill-treated, neglected or sexually abused or who observes the child or juvenile being subjected to conditions or circumstances which would reasonably result in that child or juvenile being assaulted, ill-treated, neglected or sexually abused has a duty to report or cause to be reported as soon as practicable such conditions or circumstances to the Police Force or the Social Welfare Department unless it is in the best interests of the child or juvenile not to do so. When the attendance of a registered medical practitioner, registered social worker, registered teacher or childminder is pursuant to the performance of services as a member of the staff of a hospital or institution, he or she must notify the person in charge of the institution or his or her designated delegate who must make the necessary reports.
- (2) Any parent having reasonable cause to believe that his or her child or juvenile has been or is being assaulted, ill-

treated, neglected or sexually abused or who observes the child or juvenile being subjected to conditions or circumstances which would reasonably result in that child or juvenile being assaulted, ill-treated, neglected or sexually abused has a duty to report or cause to be reported such conditions or circumstances to the Police Force or the Social Welfare Department unless it is in the best interests of the child or juvenile not to do so.

- (3) In subsection (2)—
parent (父母) includes any mother, father, adoptive parent, guardian, foster parent, or any other person acting in loco parentis, such as a babysitter.
- (4) It is unlawful for any employer to discriminate against or victimize any employee who, in good faith, has made a report of suspected child abuse (including a report under this section) or who the employer believes may make or has made a report of child abuse (including a report under this section)—
 - (a) in access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services afforded, or by refusing or deliberately omitting to afford access to them to that employee;
 - (b) in the terms of employment afforded to that employee; or
 - (c) by dismissing, or subjecting that employee to any other detriment.
- (5) Any person who unlawfully discriminates against an employee contrary to subsection (4) is liable to an action in tort.

- (6) The Commissioner of Police or the Director of Social Welfare must ensure that reports under this section are investigated promptly.

51. Reasonable chastisement

- (1) In relation to any offence where the injury or harm caused is more than transient or trifling, assault or battery of a child cannot be justified on the ground that it constituted reasonable chastisement.
- (2) The liability of any person for assault or battery of a child cannot be justified in any civil proceedings on the ground that it constituted reasonable chastisement.

52. Offence of unlawful discrimination

- (1) A person commits an offence if the person unlawfully discriminates against an employee contrary to section 50(4).
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction—to a fine at level 6 and to imprisonment for 12 months; or
- (b) on conviction on indictment—to a fine and to imprisonment for 2 years.”.

Part 3

Amendments to Juvenile Offenders Ordinance

7. Section 3 substituted

Section 3—

Repeal the section

Substitute

“3. Age of criminal responsibility

- (1) No person under the age of 10 can be guilty of any offence.
- (2) No person over the age of 10 and under the age of 16 can be guilty of any offence except an offence of serious personal violence.
- (3) No person under the age of 18 may be charged with any offence only triable summarily.”.

8. Section 11 amended (restrictions on punishment of children and young persons)

At the end of section 11—

Add

- “(5) No person may receive a sentence of imprisonment in excess of 10 years for an offence committed before they reach the age of 18.

- (6) Any sentence of life imprisonment for any offence committed by a person under the age of 18 must be treated as a sentence of 10 years imprisonment or any shorter term as may be determined to be just by the sentencing court.”

Explanatory Memorandum

The object of this Bill is to amend the Protection of Children and Juveniles Ordinance (Cap. 213) (*PCJO*) and the Juvenile Offenders Ordinance (Cap. 226) (*JOO*) to—

- (a) give effect to Article 20 of the Hong Kong Bill of Rights by introducing reforms to the PCJO;
- (b) further give effect to Articles 3 and 20 of the United Nations Convention on the Rights of the Child of 1989; and
- (c) provide protection for children from child abuse and neglect.

2. The Bill has 3 parts with 8 clauses.
3. Clause 3 adds the definitions of *child abuse*, *child care centre*, *childminder*, *registered medical practitioner*, *registered social worker* and *registered teacher* to section 2 of the PCJO.
4. Clause 4 adds new sections 2B and 2C to the PCJO. The new section 2B provides that a court and the Director of Social Welfare are required to have regard to the best interests of the child as the paramount consideration when exercising powers under that Ordinance.
5. The new section 2C provides that the courts are required to review the care plan of children who have remained in institutional care or in the custody of the Director of Social Welfare for more than 9 months within the preceding year.
6. Clause 5 amends section 34 of the PCJO, by granting standing to certain professionals dealing with children (for example, social workers, teachers and medical practitioners) to bring care or protection proceedings.

7. Clause 6 adds new sections 49, 50, 51 and 52 to the PCJO. The new section 49 provides for transfer of proceedings to the Court of First Instance.
8. The new section 50 creates a new statutory duty to report child abuse for those responsible for the care and welfare of children.
9. The new section 51 excludes the defence of reasonable chastisement in cases of serious assault or battery to a child.
10. The new section 52 makes it an offence to unlawfully discriminate against an employee who reports suspected child abuse.
11. Clause 7 substitutes section 3 of the JOO, by introducing 3 standards for the age of criminal responsibility.
12. Clause 8 adds new subsections (5) and (6) to section 11 of the JOO. Subsection (5) provides that no person may receive a sentence of imprisonment longer than 10 years for an offence committed during their infancy. Subsection (6) replaces life sentences previously imposed with sentences of 10 years imprisonment and retains the powers of sentencing courts to replace such sentences with shorter periods where it is considered just to do so.