



A RESPONSE TO
THE JUVENILE OFFENDERS (AMENDMENT) BILL 2001
(Raising the Minimum Age of Criminal Responsibility)

(1) Preface

The Against Child Abuse (ACA) considers the current minimum age of criminal responsibility, i.e. seven, to be too low, and therefore welcomes the recent amendment to the bill. The two proposals, however, still have not fulfilled the ultimate goals of the bill – meeting the full interests of the Children and Society. Children aged 10 to 13 who also need proper guidance and protection are still not fairly treated. **The Against Child Abuse therefore proposes to raise the minimum age of criminal responsibility to 14.**

(2) The foci of the Problems

At the discussion to set a minimum age of criminal responsibility that meets the Children and Society's best interests, Government has got to show her standpoint clearly in the followings:

- a. What are the obligations, duties and expectations of the current Hong Kong society towards people under the age of 18, i.e. 'Children'? And in return, what are the rights, responsibilities and duties expected from these 'Children' towards our society?
- b. How can we protect the people and their properties in our society? How can we maintain the stability of the society, deter and punish people who deserve punishment?
- c. Is criminal sanction the only and most effective way to curb crimes?

(3) Our Points of View Regarding Children Committing Crimes

1. We do not tolerate violence or violation of other people's rights. We stress the importance to adopt effective means to prevent such incidents from happening. Furthermore condemning certain acts does not equate to incriminating.
2. We believe that treating Children as Adults when they commit crimes is a violation of the Universal Declaration of Human Rights, in which the United Nations has proclaimed that childhood is entitled to special care and assistance.

3. We do not believe by doing so we are helping to deter similar offences*.
 - a. Studies have found that juveniles convicted in the adult system are more likely to become repeat offenders than those convicted of the same crimes in the juvenile system.
 - b. Studies indicated treatment, counseling, therapy, if necessary provided in a confined setting, is more effective.
 - c. The Children, because of their impulsivity would not have stopped their actions because of fear of longer or stricter sentences.
4. The existing Correctional Service is saturated. At the end of 1995, the number of convicts exceeded the normal capacity for 26%. It was estimated that by 1998 there would still be 1,700 places in short. To include Children in such undesirable adult setting could do more harm than good.

(4) Criminal Sanction Is Not the Only and Most Effective Way

The Against Child Abuse does not believe that criminal sanction is the only and most effective way to protect an individual and his/her property, and the society from being harmed, nor is it so to maintain the stability and deter and punish people who deserve punishment. In fact, criminal sanction, sometimes, is also not the only and most effective way to curb an adult's deviant behaviour. In some overseas countries, mandatory treatment and counselling have been enforced to help eliminate this kind of behaviour.

Of course, Children with deviant behaviour should be punished. However, the punishment should be something s/he can understand and bear. If someone has to bear the consequences sometimes permanently for the fault made in childhood, the punishment is perhaps too much. **We believe that separating the delinquent child from the community under proper circumstances to prevent him/her from repeating the crime, and treating him/her simultaneously with effective counselling and therapy can better meet the full interests of the Children and Society in general.**

** A Story on Sentencing Options for Young Offenders in Hong Kong, The Hong Kong Federation of Youth Groups, 3, 1998.*

(5) Why Raise to 14 Years Old

If the arguments of the Law Reform Commission of Hong Kong for raising the minimum age of criminal responsibility to 10 are established, the following points are equally valid for Children aged from 10 to 13:

- (a) The society also has the responsibility to take care, protect, guide and lead the Children aged from 10 to 13. We should educate them how to distinguish between right and wrong. We should show them the serious consequences of their deviant acts and behavior on other people, the society and most of all themselves.
- (b) Children aged 10 to 13 do not possess the ability to apprehend entirely the criminal law and procedures. (In fact, sometimes, even adults can hardly understand.)
- (c) They can hardly bear the adverse consequence of being convicted and left with a criminal record, which becomes a spot in their life.
- (d) Presently, most of the cases involving Children under 14 are dealt with by ways other than prosecution. It has already implied that it is inappropriate and undesirable to have these Children prosecuted.

No direct relationship exists between the number of people committing crimes (We found that the number of Children convicted of committing crimes increases noticeably after the age of 10)** and criminal sanction and the minimum age of criminal responsibility. No evidence shows that criminal sanction and lowering the minimum age of criminal responsibility can help reduce the crime rate.

As Children aged from 10 and 13 are older, and normally more exposed to the outside world, these increase their chance of getting into trouble than Children of 10 and below. It is also due to this reason that they need more protection and guidance. As these children are young and impulsive, they are not likely to be deterred from doing wrong by the fear of heavy punishment or incriminating. Therefore, criminal sanction as a way to deter Children from doing wrong may not work.

At present, there is no clear and precise delineation of a Child's age in Hong Kong Law. Therefore, age is defined and delineated differently in different laws. This is not appropriate and fair to the Children. As it is not easy to reach a consensus on the age of maturity of Children locally or overseas, the underlying philosophy and belief each Society adopts towards their role and responsibility towards Children become increasingly important.

*** TC40/2000 Pt4 Rows 4 and 5 of para. 10 in page 3 of the extracted reference materials provided by the Legislative Council*

To be in line with the followings:

1. The spirit implied in the Hong Kong Ordinances governing the protection of children and juveniles that a child under 14 is unable to fully apprehend the complicated legal procedures and serious consequences:
 - i) Special procedure for child witnesses – under 14 of the *Criminal Procedure Ordinance, Cap, 221*, evidence in chief by video recording; evidence in court by video link are accepted.
 - ii) Unsworn evidence of a child witness – under 14 of the *Evidence Ordinance, Cap. 8* amended in 1995.
2. The minimum age of criminal responsibility currently enforced in China and Taiwan is 14, and no evidence shows that Hong Kong Children are more mature and devilish than their counterparts in China and Taiwan.

the Against Child Abuse proposes to raise the minimum age of criminal responsibility to 14.

Prepared by: Mrs Priscilla Lui
Director of the Against Child Abuse

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