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

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

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Chapter 1
Introduction

1.1 Background to the Study

In 1998, Law Reform Commission began a review of the law governing the minimum age of criminal responsibility and the presumption of dolus incapax, including an examination of the possibility of such reforms if deemed necessary. In January 1999, the Commission published a consultation paper to collect public opinions on what should be the appropriate age at which a person should be held accountable for his or her offending. The consultation was an extensive one, which included the collection of feedback from various community groups, professional bodies, as well as views of the general public collected through a telephone survey conducted by City University of Hong Kong. Based on the results of the consultation, the Commission later confirmed that public opinions were inclined to support a raise of the age of criminal responsibility.

In view of time constraints, the Commission was not able to review the juvenile justice system as a whole. However, because it will no longer be possible to prosecute children below the age of criminal responsibility, it is important to ensure that adequate and appropriate measures alternative to prosecution are available. Thus, during the amendment of the related ordinance, the Government also aimed to ensure that adequate and effective alternative measures to prosecution were or could be put in place to handle unruly children and young people. Against this background, the Government commissioned the Youth Studies Net at City University of Hong Kong to conduct research on this subject. In the years since the pattern of juvenile justice for Hong Kong was set by the Juvenile Offenders Ordinance (Cap. 226), there has been a global trend to move from a fundamentally retributive approach with welfare elements to various blends of welfare, justice and restorative approaches in juvenile justice. New intervention models and measures have been developed to offer legal
safeguards for children, to encourage them to take responsibility for their offending and to reduce the probability that they will offend again. It was, therefore, considered helpful and necessary to obtain information from a range of overseas jurisdictions so as to learn from their experiences.

1.1.1 Objectives of the Study
Against this background, this study has the following specific objectives:

1. To provide in-depth research on the measures alternative to prosecution adopted in the selected overseas jurisdictions for handling unruly children (i.e. those below the minimum age of criminal responsibility) and young persons (i.e. those below the age of majority but above the minimum age of criminal responsibility). Specifically, the study will provide an account of the objectives of the measures, the circumstances in which the measures apply, the groups of persons targeted by the measures, and how the measures operate;

2. To assess the effectiveness of the measures adopted overseas in preventing and diverting children and young persons from going astray; and

3. Having regard to overseas experiences and local circumstances, to examine the case for introducing new measures alternative to prosecution in Hong Kong and to present options for implementing such measures in Hong Kong to deal with unruly children and young persons. The advantages and disadvantages of each of these options will be identified.

1.1.2 The Sample
The research team identified six jurisdictions that represent a variety of alternative practices in their juvenile justice system as the samples of the study. They are England and Wales, Singapore, Canada, Belgium, New Zealand and Queensland, Australia. Subsequent to identifying nations for study, the research team visited some of these nations to search relevant
materials as well as seeking collaborating experts for this research. Eventually, the Team identified the following persons as collaborating experts:

- Professor Jim Dignan from England and Wales
- Dr. Alfred Choi from Singapore
- Professor Nicholas Bala from Canada
- Professor Lode Walgrave from Belgium
- Dr. Gabrielle Maxwell from New Zealand
- Dr. Wing-hong Chui, Mr. Jason Kidd & Mr. Cameron Preston from Queensland

Since then, the research team had been working closely with the collaborating experts to generate a framework for comparison before collecting research materials from each jurisdiction. When this research data was collected, an international symposium was organised in February 2003 to share the information with government officials, social workers and justice practitioners on the recent development of juvenile justice around the world, based on the experiences of these six jurisdictions. The local and overseas participants' opinions collected during and after the symposium were also helpful to the research team in their tasks of examining the case and options for introducing new measures alternative to prosecution to Hong Kong. An overview of the youth justice system and details of measures that are alternatives to prosecution in each of the overseas jurisdiction is provided in chapters 2-7. For a fuller account of these systems, readers can refer to Lo and Wong (2003).

1.2 Youth Services in Hong Kong

Although overseas experiences can suggest new and potentially effective alternatives, the unique nature of local youth services and juvenile justice system should be referred to during the construction and design of culturally specific measures for Hong Kong. In this regard, a brief outline of youth services and the

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1 This section is modified from Choi and Lo (2002). Permission has been obtained from the authors.
responses to offending currently available in the local system is provided. It is
intended that this will help readers compare what is currently available in Hong
Kong in their discussion and examination of the new options proposed.

Hong Kong has a very comprehensive network of youth services, which target
all of the places frequented by young people. Apart from residential homes,
professional social workers provide guidance to young people 7 days a week
and 21 hours a day all over the territory. Youth services come in various forms,
including developmental, preventive and remedial services (see Figure 1.1).
Collaboration among community groups, advocacy and research on youth
problems also provide an infrastructure that supports the development and
maintenance of the quality of the services. The target groups of the services
are diverse, and include ordinary youth, students, young offenders and
parents. There are also services that cater for the needs of specific target
groups such as school dropouts, night drifters, drug abusers, job-seeking
school leavers, and new arrivals from Mainland China. Government
departments involving education, social welfare, correctional services, labour,
home affairs and narcotics control, and the Police Force all provide youth
services of various types, and a large number of non-government welfare
organisations (NGOs) receive government subsidies to provide
complementary services.

To promote alternatives to prosecution of unruly children and young people,
three administrative units have vital roles. They are the Social Welfare
Department, the Police and the Juvenile Court. Their functions in relation to
this subject are outlined below:

1.2.1 Social Welfare Department
The Social Welfare Department has performed a significant role in protecting
and promoting the wellbeing of children and young people in Hong Kong.
About 1.3 billion dollars a year are currently spent on services for young
people alone within Social Welfare Department, that is about 12% of its
welfare budget, excluding the cash payments under social security (Lam,
2003). The Social Welfare Department is in collaboration with other
stakeholders to promote the healthy development of young people through both preventive and remedial measures. The strategic directions in supporting young people include (i) early identification of young people who have problems in their upbringing, (ii) providing them with holistic support and a user-friendly service, and (iii) strengthening support for young at-risk and support for families. In terms of early identification and early prevention, the principle of “prevention is always better than cure” is upheld (Lam, 2003). The following is an outline of some of the preventive measures which are mainly organised by NGOs but subvented, coordinated and monitored by the Social Welfare Department.

Integrated Children and Youth Services Centres
Integrated Children and Youth Services Centres cover all districts in Hong Kong and serve children and young people between 6 and 24 years old, especially those who are facing personal problems or living in adverse situations. Four core programmes are provided, namely (i) guidance and counselling services, (ii) supportive services for young people in disadvantaged circumstances, (iii) socialisation programmes, and (iv) programmes for the development of social responsibility and competences. As of February 2003, there were 115 integrated teams. The number will rise to 132 by the end of the 2003-04 financial year (Lam, 2003).

Integrated Children and Youth Services Centres combine three former youth services, namely (i) children and youth centres, (ii) school social work and (iii) outreach social work, into neighbourhood-wide service centres under the administration of one welfare organisation. As such, social workers continue to employ outreach method to contact youths in the places that they frequent and serve delinquents on street corners. School social workers continue to station in secondary schools to guide students with the support from other centre workers. The centre bases continue to serve as a focal point for social workers to run groups, courses and programmes for young people. The centres also collaborate with local organisations and youth groups to build a social environment conducive to the healthy development of young people.
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Figure 1.1 Services for young people in Hong Kong (Choi and Lo, 2002:191)

Developmental Services
- Home-School Cooperation / Parent-Teacher Associations
- Integrated Family Services Centres

Preventive / Supportive Services
- Community Youth Club
- Youth Hotlines
- Hong Kong Award for Young People
- Mainland China-Hong Kong Exchange

Remedial Services
- Residential Homes
- Boys' & Girls' Home
- Probation Hostel
- Probation Home
- Community Support Service Scheme
- Community Service Orders
- Youth Hostels

Coordination
- Fight Crime Committee
- Concern on Youth
- Committee on Services for Youth at Risk
- Detention Centre
- Training Centre
- Youth Prison
- Rehabilitation Centre
- Personal Encounter with Prisoners
- Support to other Services

Integrated Children & Youth Services Centres
- Substance Abuse Clinics
- Outpatient Methadone Treatment
- Voluntary Residential Drug Treatment Centre
- Drug Addiction Treatment Centre

Services for Young Night Drifters
- Beat Drugs Fund Projects
- Understanding the Adolescence Project
- Peer Counselling

- Support to other Services

Integrated Children & Youth Services Centres
- Outreach Social Work
- School Social Work
- Children & Youth Centres

Services for New Arrivals

Unusual Academy & Unusual Class
- Youth Pre-employment Training

Uniformed Groups
- Police School Liaison
- District Youth Outreach Social Work Teams
- Junior Police Cell
- Police Outreach

Juvenile Court
- Police Superintendent Discretion Scheme

Community Support Service Scheme

Substance Abuse Clinics
- Outpatient Methadone Treatment
- Voluntary Residential Drug Treatment Centre
- Drug Addiction Treatment Centre

Counselling & Education for Drug Abusers

Beat Drugs Fund Projects

Services for Young Night Drifters
- Understanding the Adolescence Project
- Peer Counselling

Support to other Services
School Social Work Services

The Government has implemented the "one social worker for each secondary school" policy since September 2000. While the Government has been arranging for School Social Work Service to be provided by Integrated Children and Youth Services Centres as far as possible for more holistic services, most secondary schools are currently served by an independent school social worker. The school social worker is responsible for making use of community support services in meeting the various needs of the students, parents and school.

In addition, the Education and Manpower Bureau also offers capacity enhancement grants to facilitate primary schools to employ school counsellors or outsource NGOs to provide counselling and supportive services to students in need. The forms of activities are diversified, and include individual guidance, social groups, training workshops, community services and family activities.

Services for Young Night Drifters

Eighteen overnight outreach teams, each of which are staffed by three social workers and attached to the Integrated Children and Youth Services Centres, provide services to young people under 18 years of age who are found loitering on the streets or in nightspots after midnight and are identified by outreach social workers or the Police. The social workers provide crisis intervention on the spot or short-term services for young night drifters. Services include accompanying the drifters home, providing temporary shelter, or referring them to other welfare services. If it is judged that they need some help, they would be engaged and followed up in daytime by social workers of the Integrated Centres.

Another similar service is the All-night Drop-In Centre, the Hangout, which is a 24-hour youth centre for young people, in particular the vulnerable groups, to drop in the centre and use its facilities. The Social Welfare Department also works closely with the Leisure and Cultural Services Department to open some of the indoor game centres on selected nights, normally between 11pm
and 2am, so that NGOs can organise programmes for the young night drifters.

Peer Counselling Scheme
The Peer Counselling Scheme, mainly attached to Integrated Children and Youth Services Centres, is the latest initiative to help young people. Since 2002, around 150 peer counsellors have been engaged on a full time basis to provide peer counselling and support to F.3 secondary school leavers when they finish nine year free and compulsory education (Lam, 2003). Many of them will leave the school system after secondary school but may not be able to enter into full time occupation immediately. When they are at the crossroads, the advice from their seniors with similar experiences is helpful.

Understanding the Adolescent Project
Targeting secondary one students, the project aims to enhance the students' personal competence, sense of belonging, and abilities to counteract adverse situations so that they can face the challenges ahead. By means of an assessment instrument, students identified to be in need of support services will be arranged to participate in a tailor-made primary preventive programme. The original design is a four-month comprehensive guidance program, which may include 27 sessions—19 sessions of student activities, 4 sessions of teachers' workshops and another 4 sessions of parents' workshops. However, individual NGOs and schools have the flexibility to determine the duration as well as the number of programme sessions according to the specific needs of their students. Currently, 255 secondary schools have taken part in the project, which is now being extended to all (about 450) secondary schools in Hong Kong.

At present, the Education and Manpower Bureau is piloting similar project in Primary 4. If the result is satisfactory, they may roll it out to all Primary 4 students in the next three or four years (Lam, 2003).
District Youth Outreach Social Work Teams
Currently, 16 District Youth Outreach Social Work Teams, each staffed with ten professional social workers, serve unattached youth or youth gang members aged between 6 and 24, with majority being 13-17. While outreach workers of the Integrated Centres operate on a neighbourhood level, the outreach workers of these teams operate on a wider district level. They initiate contact with young people who frequent public places, such as parks, karaoke lounges, shopping centres and fast-food outlets. After establishing good working relationships with the youth, the outreach workers provide guidance and counselling to strengthen their problem solving ability and help them establish positive life models.

The Unusual Academy and Unusual Class
The Unusual Academy, organised by an NGO, provides a half-way station for students aged between 6 and 15 who have dropped out of school before completing secondary 3, but are not old enough to engage in formal employment. The service has become an alternative for school dropouts, who for various reasons may not benefit from similar services provided by the education authority. Young people who attend the Academy receive eight weeks of comprehensive training through educational groups, social skills training, voluntary services and adventure-based counselling. Social workers equip the participants with the appropriate knowledge, attitudes and skills to help them rebuild positive life goals and return to the right track of society, either through a return to school or by getting them ready to join the workforce. The Education and Manpower Bureau is also subventing the NGO to run the programme "Unusual Class" for students with learning difficulties in 20 secondary schools.

Services for the Family
To promote the well-being of young people, nothing is more important than to strengthen their families because family is a vital and basic unit to support young people during the upbringing. In tackling youth offending, the primary objective of family services is again prevention—to preserve and to strengthen the family to be more resilient, in view of the challenges ahead. Thus the
family has to fulfill an added role in helping young people or other family members to face individual crises and problems.

This objective is achieved through the services provided by family service centres (FSCs) in the neighbourhoods as well as 15 piloted Integrated Family Services Centres (IFSCs). Implemented between April 2002 and March 2004, the piloted IFSCs were formed by the self-transformation of existing FSCs, merging of FSCs or strategic alliance of FSCs with other community-based service units. Each IFSC comprises a family resource unit, a family support unit and a family counselling unit so that a continuum of preventive, supportive and remedial services can be rendered. Under this new service delivery model, four principles, namely “accessibility”, “early identification”, “integration” and “partnership” are adhered to. Since IFSC is evaluated as a better service delivery model, the Social Welfare Department aims to transform all the existing FSCs into IFSCs to better meet the multifarious needs of families.

Moreover, like youth services, family services have recently taken an outreach mode of service delivery. By adopting a more active and proactive approach, 22 family support networking teams have been set up to reach out to families in trouble, particularly new arrival families, single parents and low income families (Lam, 2003).

1.2.2 The Police

The Police are responsible for the eradication of juvenile crime in Hong Kong. Since the mid-1990s, community policing has become more active. The Police adopt a multi-agency collaborative approach to tap valuable community resources and expertise, thereby enabling them to expediently promote crime prevention in different districts. The approach has strengthened community support and involvement in the fight against youth crime. In joint programmes of this kind, the Police and social workers of NGOs share the responsibility to provide guidance, training and community service opportunities to help young people acquire interpersonal and problem-solving skills, develop the right values in life, appreciate the serious
Introduction

consequences of crime and avoid going astray. Other major crime fighting efforts of the Police include:

Police School Liaison
The Police set up the Police-School Liaison Officers Scheme in all secondary schools, with a team of 33 School Liaison Police Officers. The officers maintain close contacts with schools in the district. Together with teachers and school social workers, they organise various kinds of activities for students, such as forums and day camps, to spread anti-crime messages, to let students understand the role of Police in society, and to arouse their awareness of undesirable elements in the neighbourhood.

Police Superintendents' Discretion Scheme
This scheme diverts young people below the age of 18, who have committed relatively minor offences, from being prosecuted. Police officers who hold the rank of superintendent or above may caution the young people. Before cautioning, the offender must voluntarily and unequivocally admits the offence and the offender and his/her parents or guardian agree to the cautioning. The evidence available is sufficient to support a prosecution, and that a prosecution would be the only alternative course of action. Under normal circumstances, an offender will be cautioned once. Only in extremely justifiable situations will the Police allow a second caution.

Community Support Service Scheme
When young persons are cautioned by the Police, they may be referred by the Police to one of the five Community Support Service Teams attached to the Integrated Children and Youth Services Centres run by NGOs and coordinated by the Social Welfare Department. Social workers help them to cope with problems in life, correct wayward behaviour, and strengthen family and peer support. They provide counselling and organise structured groups and special activities to meet their personal needs, improve inter-personal relationships, and develop a sense of social responsibility through participation in community service.
1.2.3 The Court

In Hong Kong, young people aged between 7 (and 10 starting from 1 July 2003) and 15 who have committed a criminal offence other than homicide are tried in the Juvenile Court. The Juvenile Court is situated in the Magistrate Court. Among the five to six magistrates, one of them specializes in handling juvenile cases and will not normally hear adult cases. Thus in this sense, it can be considered a specialized Juvenile Court in the Magistrate Court. Apart from the trial of juvenile crimes, the Court also handles the protection and welfare of children and young persons, for example, to grant Care or Protection Order to children in need of care.

Sentencing options available to the Juvenile Court and other higher Courts are unconditional discharge, conditional discharge of the offenders on their entering into a recognizance, fines, confiscation of equipment and money related to the crime, compensation order, hospital order, suspended sentence, supervision order, and Care or Protection Order. In addition, young offenders can be sentenced to attend the rehabilitation services provided by the Social Welfare Department and the Correctional Services Department (see Table 1.1). The former adopts a social work approach to help young offenders become law-abiding citizens, achieved through both community-based and residential services. Through statutory supervision, counselling, and academic, vocational and social skills training, the offenders are equipped with the necessary skills to deal with life demands and reintegrate into the community. The Correctional Services Department is responsible for the safe and humane custody as well as rehabilitation of offenders. To correct the delinquent behaviour of young offenders, its programmes emphasize self-control and discipline, education, vocational training and statutory aftercare, which are run and monitored by the Division of Rehabilitation and Development.

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2 In some overseas jurisdictions, this is handled in the Family Court. But in Hong Kong, the Family Court deals with other family issues, such as divorce.

3 A more detailed discussion of Care or Protection Order can be found in Chapter 10.
<table>
<thead>
<tr>
<th>Options</th>
<th>Age</th>
<th>Period</th>
<th>Responsible Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth Prison</td>
<td>14-20</td>
<td>Determined by court</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td>Training Centre</td>
<td>14-20</td>
<td>6-36 months</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td>Detention Centre</td>
<td>14-20</td>
<td>1-6 months</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td></td>
<td>21-24</td>
<td>3-12 months</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td>Rehabilitation Centre</td>
<td>14-20</td>
<td>3-9 months</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td>Drug Addiction Treatment Centre</td>
<td>14-20</td>
<td>2-12 months</td>
<td>Correctional Services Department</td>
</tr>
<tr>
<td>Reformatory School</td>
<td>7-15</td>
<td>12-36 months</td>
<td>Social Welfare Department</td>
</tr>
<tr>
<td>Probation Home</td>
<td>7-15</td>
<td>Maximum 12 months</td>
<td>Social Welfare Department</td>
</tr>
<tr>
<td>Probation Hostel</td>
<td>15-20</td>
<td>Maximum 12 months</td>
<td>Social Welfare Department</td>
</tr>
<tr>
<td>Probation Order</td>
<td>7 or above</td>
<td>12-36 months</td>
<td>Social Welfare Department</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>14 or above</td>
<td>Maximum 12 months</td>
<td>Social Welfare Department</td>
</tr>
</tbody>
</table>
1.3 Conclusion

To construct and design culturally specific measures alternative to prosecution for Hong Kong, the strategy of the research team was first, to examine the existing network of youth services available in the community as the focal points to run diversionary measures. Second, the research team considered the alternatives to prosecution available in six overseas jurisdictions and evaluations of the effectiveness of these. Third, options for new measures were selected that could provide new options for responses to juveniles who offend in Hong Kong. It must be stressed that without good cause and strong justification, the research team will not advocate transplanting the overseas measures directly into Hong Kong. It is important to adapt any new measures to build on the strengths of the local system and to respond to the particular needs of Hong Kong at the present time. In addition, areas for collaboration that are likely to enhance the functional linkages between existing youth services and the juvenile justice system will be identified.

On 12 March 2003, the Juvenile Offenders (Amendment) Bill 2001 was passed by the Legislative Council. With effect from 1 July 2003, the minimum age of criminal responsibility was raised from seven to ten years of age. In this regard, the proposals about new measures alternative to prosecution recommended in this report are not only relevant but also timely.
Chapter 2
Alternatives to the Prosecution of Children and Young Persons in Singapore

2.1 Objectives of Youth Justice

Juvenile justice in Singapore aims at an equilibrium between the justice and restorative models of rehabilitation of young offenders, where they are not competing paradigms, but complementary elements of the juvenile justice system. The Juvenile Courts of Singapore embraces the following principles:

1. Holding the offenders accountable for their behaviour and having them take responsibility for the consequences of their offending act—this may be by way of reparation to society in the form of community work, restitution, compensation or an apology to the victims, as well as by placing the offenders on probation or in a corrective institution;

2. Allowing the victims, where appropriate, to confront the offenders to make them aware of the harm caused by their offending act/behaviour; and

3. Requiring parents to take responsibility for their child's behaviour and empowering them to play a greater role in the rehabilitation of the offender (Mesenas and Lim, 2003:5).

In handling juvenile offenders, the following factors will be considered:

* rehabilitation and reformation of the juvenile;

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1 This chapter is based on the data collected by the research team and information submitted by the collaborating expert, Dr Alfred Choi, Associate Professor, School of Communication and Information, Nanyang Technology University, Singapore. A fuller account of the measures alternative to prosecution in Singapore can be found in Lo and Wong, 2003.
Alternatives to the Prosecution of Children and Young Persons in Singapore

- removal of the juvenile from undesirable surroundings;
- what is required for the welfare, education and training of the juvenile;
- adequate family support;
- compensation of the victim;
- protection of the public;
- the extent of the risk of further offending by the juvenile; and
- punishment of the offender (Menas and Lim, 2003).

2.2 Target Groups where Measures Apply

The minimum age of criminal responsibility is seven years old in Singapore. The rehabilitation of juvenile offenders between the age of seven and fifteen is governed primarily by the Children & Young Persons Act (CYPA) and the Probation of Offenders Act.

2.3 Main Features of the System

2.3.1 Ministry of Community Development and Sports

The Ministry of Community Development and Sports (MCDS) is the lead agency in rehabilitation work. MCDS administers the statutory requirements of these legislations and provides statutory services. It oversees the sentencing options for juvenile offenders as well as the operations of the juvenile institutions. MCDS formulates policies and designs services for the rehabilitation and reintegration of juvenile offenders together with its stakeholders—the Courts, the Ministry of Home Affairs, the National Youth Council and other voluntary welfare agencies. Overall, MCDS is guided by the following principles in developing and implementing strategies for the rehabilitation of juvenile offenders:

- The family as a basic building block and change agent of society.
- The "Many Helping Hands Approach", where all aspects of the community are utilized.
Maintaining the juvenile in his home environment as far as possible, with institutionalization as the last resort.

Maximizing the fullest potential of every juvenile through treatment and rehabilitation (Ang, 2002).

Under the CYPAMendment Act 2001, the proficiency of the rehabilitation system has further increased. Three major aspects: parental involvement, rehabilitation within the community and differentiated case management, are strongly emphasized (Ang, 2002). It also ensures that the multi-pronged approach used is culturally specific and practically relevant for juvenile offenders.

2.3.2 Pre-Court Diversion Measures
For most first-time juvenile offenders who have committed less serious crimes, pre-court diversion initiatives offer them a chance to rehabilitate themselves without the burden of a criminal record. Police Caution, Guidance Programme and Streetwise Programme are the pre-court rehabilitative options available, which will be discussed in detail below.

2.3.3 Juvenile Court Measures
The Juvenile Court in Singapore is named as the Subordinate Court, which deals with three categories of cases, namely: criminal offences committed by those between 7 and 15 years old, those who are considered as beyond parental control, and those who are in need of care and protection. The court has to fulfill triple roles: adjudication, preventive justice and transformative justice. By preventive justice, the court seeks to get to the roots of crime, not simply waiting for the stages where desperate families come to the court. Under the principle of transformative justice, the court serves not only to impose deterrent sentences and punish youth offenders, but also serves as adjudicators, mediators and counsellors, in order to bring about rehabilitation and restoration. The scope of transformative justice extends beyond the courtroom to the families and even to the community, moving beyond litigants in partnership and collaboration with community organizations. Through this
Alternatives to the Prosecution of Children and Young Persons in Singapore

strategic community partnership, the court advocates for reintegration not disintegration, reconciliation not severing, and restitution and forgiveness not revenge (Mesenas, 2002).

The court is presided by a juvenile court magistrate, assisted by two advisors who are chosen from a Panel of Advisors composed of volunteers from various walks of life, e.g. school principals, doctors, businessmen, psychologists. Depending on the severity and gravity of the offence and the needs and circumstances of the juvenile, the court may impose the following sentencing options (Choi and Lo, 2002):

- Payment of a Fine, Damages and Costs
- Community Service Order
- Parent's bond to exercise proper care and guardianship
- Mandatory Counselling
- Family Conferencing
- Probation (at home)
- Probation (with community service)
- Probation (with weekend detention)
- Probation (with detention)
- Weekend Detention up to 52 weekends
- Place of Detention up to 6 months
- Approved School (2-3 years)
- Send to District (Adult) Court for Reformatory Training Centre up to 4 years

2.4 Alternatives to Prosecution

2.4.1 Streetwise Programme

The immediate aim of the Streetwise Programme is to encourage youths who have unwittingly drifted into gangs/secret societies to leave the gangs and offer them protection against gang harassment. The ultimate goal is to positively change their behaviours for the better.
Youths who are found to have joined gangs or engaged in gang-related activities can be referred to the Streetwise Programme in lieu of prosecution and their names will not be recorded in the registry kept by the CID of secret societies.

The Streetwise Programme was jointly formulated by the National Youth Council, Singapore Police Force, Ministry of Education, and Ministry of Community Development and Sports. Currently, four voluntary welfare service agencies have been appointed to provide treatments to the youths who signed up for the Streetwise Programme. They are: Beyond Social Services, Lakeside Family Service Centre, Youth Guidance Outreach Services and Teen Challenge. The National Youth Council is the lead-agency that coordinates with the key government bodies and service providers.

Youths eligible for the programme are referred mainly via two channels, the Criminal Investigation Department (CID) and the Ministry of Community Development and Sports (MCDS). The CID refers non-offenders to the programme while the MCDS refers offenders. Youths referred by the MCDS attended the Streetwise Programme as part of community treatment. Youths could also participate in the programme through self-referrals. In May 1999, Streetwise Hotline was launched to provide an avenue for help and self-referral to the programme (see Figure 2.1).

Streetwise Programme is a 6-month developmental programme that offers an integrated intervention framework comprising of casework, groupwork, and activity-based learning components for youths between 13 and 19 years old. To develop a holistic and comprehensive developmental programme, each social service agency is required to incorporate the four key components – (i) Counselling of parents and significant family members, (ii) Supervision and counselling of Streetwise Programme participants, (iii) Recreational activities, and (iv) Academic support/Career guidance programmes.

To allow flexibility but at the same time ensure adequate services are provided, some minimum standards are set as follows:
Alternatives to the Prosecution of Children and Young Persons in Singapore

- Counselling - 8 sessions
- Group work sessions - 6 sessions
- Service learning - 30 hours
- Physical education - 24 sessions

Service agencies will inform the referral agencies of participants who have breached conditions and those who have successfully completed the programme.

Figure 2.1 Strategic partners of the Streetwise Programme
Efficiency

Social service agencies reported that the participants had displayed more respect for authority. Their level of self-esteem had increased and they had a more positive self-image. These youth had also displayed a greater awareness of personal responsibility and ability to resolve conflicts, manage anger and problem-solve through their participation in the programme activities.

In terms of relationships with family members, caseworkers found the youths to be more obedient and respectful towards their parents and other family members. They became more concerned towards their families and showed a greater appreciation for their efforts and feelings. Communication between family members has also improved. Through the positive experiences encountered during the programme, parents had the opportunity to provide affirmation for their children. This, in turn, allowed the parents to understand the emotional needs of their children and to provide consistent support and supervision to complement the programme.

As for behaviour in school, the service agencies reviewed the School Progress Reports and commented that youths were experiencing less disciplinary problems at school and their relationships with their peers had also improved. A significant number of youths mentioned that the outings and group discussions were interesting, they learned new things from them, and would recommend the Streetwise Programme to a friend in a similar situation.

As suggested by Fruchtel and Huang (2002:23), the most impressive aspect of the Streetwise Programme was the multidimensional concept. Casework, group work, community work, physical education, school support, vocational programmes and curfew monitoring were carried out through the cooperation with different stakeholders. In 1999, the Streetwise Programme won the Regional Award under the Commonwealth Youth Service Award as a project that had sustained meaningful impact on society and community, especially in the youth sector.
The completion rates for both CID and MCDS referred cases were high at 74% and 72% respectively. For those who had successfully completed the Streetwise Programme, only about 3% committed gang-related offences within a year and 5% did so after one year. The recidivism rates, in terms of any offence committed, were still low at 7% within a year and 14% after one year. For those who had not successfully completed the Streetwise Programme, 9% were found to have gang-related offences within a year and 11% after one year. In terms of any offence committed, the figures were 19% within a year and 32% after one year. The figures showed the beneficial effects of the Streetwise Programme, especially the long-term effects of reducing the re-commission of any offence.

2.4.2 Guidance Programme

The Guidance Programme steers the juvenile offenders away from the court system and provides them the opportunity to acquire the life skills and resolve against committing crimes again in the future.

The Guidance Programme is a pre-court diversionary measure for juveniles, under 16 years old, who have committed minor crimes (such as shoplifting) for the first time. This stringent programme ensures that the delinquents could really understand their mistakes and be prepared to mend their ways. To avoid punitive measures while making sure that the delinquents would take advantage of the rehabilitative programme, the juvenile offenders are allowed to voluntarily enrol in the rehabilitative programme with the incentive that they will not be charged by the police.

When juvenile offenders are arrested, the police will interview them and their family members, and obtain school and other reports. The police will evaluate mitigating and extenuating factors and decide whether to (i) charge the offenders, (ii) give a warning in the presence of parents, and (iii) place them on Guidance Programme (see Figure 2.2).

The Guidance Programme is a 6-month voluntary programme comprising individual and family counselling, group work, visit to the juvenile homes,
family camps and community service. By participating in the various activities, youth offenders placed under this programme are given ample opportunities to reflect on their values and decision-making skills, recognise the seriousness and consequences of their act, take responsibility of their own actions, and to acquire life-skills in self-control.

The Guidance Programme also prepares to equip the juvenile offenders' parents with necessary skills and knowledge in effective parenting. The 6-month programme can be extended based on the social worker's report. If the juveniles complete the programme successfully, a police caution will be given to them and the police will not press charge against them.

**Figure 2.2 Flow chart of juveniles placed on Guidance Programme**

1. **Juvenile Offender**
2. Police evaluate mitigating and extenuating factors
   (Juvenile and family members are interviewed, school and other relevant reports are obtained.)
3. Police's Decision on whether to charge offender
   (After consultation with AGC)
4. Juvenile is charged in court
5.Juvenile is placed on Guidance Programme
6. Police warn juvenile in the presence of parents
Effectiveness

According to the social workers, the majority (85%) of the juveniles were responsive and cooperative, with less than 10% of the cases seen to be high risk and required an extended treatment period. Parents' attendance was rather high, with 85% attended family sessions and 75% attended parents' group session. Both social workers and Police Officers agreed that the Guidance Programme helped capture the group of youths who were at risk or "on the fringe" at an early stage. Without the Guidance Programme, it would be difficult to identify this group of youths or to get them to undergo a structured programme of rehabilitative activities (MODS, 2000).

At the beginning, many offenders were resistant to and some showed negative attitude towards the Guidance Programme. Most of the offenders interviewed admitted that they saw no choice but to enroll in the Guidance Programme. In other words, they joined the programme because they were afraid of being charged in court or did not want to hire a lawyer and go through the whole legal process. Offenders who were younger than fourteen years old usually left the decision to their parents.

After counseling sessions by the social workers and participating in group-work, they became less resistant. After much rapport building, especially through group activities, the juveniles became more enthusiastic towards the sessions. The initial skepticism turned into positive response toward group activities and was most apparent in outdoor excursions, camps or sports activities where they found the activities to be fun, exciting and that they could meet other youths to make new friends. They also found family activities interesting because they seldom or never played games with their families.

All of the 42 youths interviewed, except two, said that they enjoyed a good relationship with their social workers. Some of them were relating to the social workers as friends rather than as counselors and were still in contact with them despite having completed the Guidance Programme (MCDS, 2000).
The majority of youths interviewed said that they had made some positive changes in themselves after joining the Guidance Programme. The positive improvements reported by the youths included: (i) stayed home more often, (ii) studied harder, (iii) less temperamental/childish, (iv) able to manage their time better, (v) more helpful and understanding, and (vi) not doing any more stupid things. Only two youths said that they did not learn anything at all from the Guidance Programme and they had not changed at all. In addition, most parents reported that they saw significant positive changes (such as more obedient and more hardworking) in their children after the Guidance Programme.

The Guidance Programme enjoyed a very high rate of successful completion—89% in 1999 and 86% in 2000. The percentage of youths who could not complete the Guidance Programme successfully because of breach of Guidance Programme conditions was low and stood at only 7% on average. The percentage for those who committed fresh offences was even lower—at 2%. Less than 2% opted for voluntary early termination. Youths who completed the Guidance Programme successfully had attended at least the core components of the programme (i.e. counseling and group-work). Many attended other optional components such as tuition, community services, outdoor excursions and camps.

Out of the 199 successful completion cases discharged from 1998 to June 1999, only 29 re-offended (MCDS, 2003). The overall recidivism rate worked out to be 14.6%. The majority of these re-offenders re-offended in the first two years.

2.4.3 Measures for Children and Young Persons Beyond Parental Control

The Beyond Parental Control measures aim to help pre-delinquents or those presenting delinquent behaviours as well as their parents who cannot provide proper supervision and disciplining of their children.

Children and Young Persons beyond Parental Control refer to those below 16 years of age and who display behavioural problems in schools or at home.
They are not arrested for seizable offences or charged in court by police, but their delinquent behaviours are beyond their parents' control and are serious enough for the state to take statutory measures. The *Children and Young Persons Act* makes provision for the power of parent or guardian to bring child or young person before the Juvenile Court.

In dysfunctional families, parental supervision was commonly lax or inconsistent. Some parents tended to rely too much on the Court and MCDS to rehabilitate their children for them and were not proactive enough to improve their own parenting skills and put in efforts to participate throughout the rehabilitation process. Rehabilitation programmes would have limited effects unless the parents take their roles seriously and sharpen their parenting skills, and the families function in proper order. Previously, many parents refused or failed to take part in the rehabilitation of their children. The *Children and Young Persons (Amendment) Act* was passed on 20 April 2001 to widen the scope of child protection and to strengthen rehabilitative measures. It makes provision to bond parents to comply with the orders made by the Court.

Under the *Children and Young Persons Act*, when children and young persons are beyond parental control, their parents can seek assistance from MCDS, which will refer them to receive counselling from social service agencies or for voluntary admission to residential care (see Figure 2.3). If the intervention is unsuccessful, they may file complaints at the Juvenile Court. After court hearing, the magistrate may (i) discharge the complaint, (ii) place the young person under statutory supervision of an approved Welfare Officer or of some other persons appointed for the purpose by the Court for a period not exceeding 3 years, or (iii) place the young person in an approved home for a period of not less than 2 years and not more than 3 years.
Figure 2.3 Flow chart of beyond parental control cases

Juvenile non-offender but presenting pre-delinquent or delinquent behaviours

Parents seek assistance from MCDS

Advice on option of counselling by social service agencies or referral to Child Specialist if problem do not require statutory intervention

Referral for voluntary admission if problem is not so serious but juvenile requires residential care

If intervention is unsuccessful

File complaint at Juvenile Court that juvenile is beyond parental control

Court calls for social report from Child Welfare Service (with recommendation)

Outcome of Court Hearing

Complaint discharged or withdrawn

Statutory Supervision

Approved Home Order
For non-offenders, recourse through the Juvenile Court serves as a possible option only when diversionary measures cannot be adopted or are not suitable for the juveniles. Institutionalisation as a means of treatment for both offenders and non-offenders is used only as a last resort and only if deemed necessary and in the interest of the juvenile. Where possible and practical, the juvenile is treated within the community to minimise disruption to the juvenile's education, and to provide for greater family involvement and responsibility in the rehabilitation of the juvenile.

All youths sent to the MCDS approved homes undergo educational and vocational programmes according to their academic level and aptitude so as to equip them with marketable job skills. Residents who show good progress and performance are allowed to attend school or work outside the Home by virtue of the Day Release Scheme. Upon their release from the Homes, all residents are placed under the supervision of the Ministry's Aftercare Unit. The Aftercare programme requires the youths discharged to keep in contact with the Aftercare Officers, attend group-work sessions and talks on topics such as secret societies, sexuality, and participate in community service projects and healthy recreational activities such as canoeing, camping. The Aftercare Officers also help to link the youths to volunteers who serve as mentors and friends.

Under the Children and Young Persons (Amendment) Act 2001, the Court is further empowered to compel parents and guardians to exercise proper care and supervision of their children. The Court can now make orders that instruct:

1. The parent/guardian, and/or the juvenile placed under supervision to participate in programmes (e.g. counselling) that help in the rehabilitation of juvenile or improving parent-child relationship.

2. The parent/guardian, and/or the juvenile to approach a medical practitioner, psychologist or an approved social worker for assessment (e.g. psychotherapy).
Alternatives to the Prosecution of Children and Young Persons in Singapore

3. The parent/guardian to attend all stages of court proceedings that their child is involved in unless it is not in the interest of the child to do so.

4. The parent/guardian to borne the cost of any assessment or treatment made in respect of the juvenile, pursuant to the Court's order as the Court thinks fit.

5. The parent/guardian to enter into a bond to comply with the order given. Penalty for non-compliance is a fine up to $2,000.

Effectiveness
With the amendments to the Children and Young Persons Act in April 2001, measures for children and youths beyond parental control have been improved by compelling parents to exercise proper care of children. Since the amendment, there has been no completed systematic study on the effectiveness of these measures. MCDS has recently designed a systematic research method of measuring the effectiveness of the programmes brought about by the amendments of the Act and is in the process of collecting data from the youths, parents, case workers and schools. Unfortunately, the pilot study can only be completed by mid 2003 at the earliest and is not in time for use in this project.

2.5 Conclusion

Like many developing nations, Singapore has been exploring ways of tackling juvenile delinquency to find the right formula that maximises deterrence, rehabilitation and prevention. Fully aware that prosecution and institutionalisation might result in undesirable outcomes in some cases, Singapore has introduced diversionary programmes. Three such measures have been discussed in this paper. They have the common objective of giving problem youths a second chance to mend their ways without resorting to punitive measures and the harsh experiences of criminal process. Despite some areas where improvement is needed, their strengths have withstood the test of time.
Chapter 3

Alternatives to the Prosecution of Children and Young Persons in England and Wales

3.1 Objectives of Youth Justice

With the introduction of the Crime and Disorder Act 1998, the entire youth justice system in England and Wales has been reconstructed around the principle of increasingly intensive and demanding interventions in the lives of young people, with a view to preventing the escalation of anti-social or offending behaviour. The government’s youth justice reform policy is chiefly based on a “neo-correctionalist” approach (Pitts, 1999; Cavadino and Dignan, 2003), though it also incorporates certain elements of a restorative justice approach. These philosophical underpinnings are reflected in five key principles that have chiefly informed its strategy: (a) the primacy of offending prevention, (b) effective and progressive interventionism, (c) responsibilisation (for both young people and their parents), (d) reparation, and (c) efficiency.

3.2 Target Groups where Measures Apply

The age of criminal responsibility in England and Wales is ten years old. With regard to offenders under this age, two new non-criminal measures have been introduced – the Child Curfew Order and the Child Safety Order, which are intended to deal with pre-delinquents. With regard to young offenders who are between the minimum age of criminal responsibility and the age of majority (18 years), the previous non-statutory system of cautioning has been radically overhauled and placed on a much more statutory footing. Under the

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This chapter is based on the data collected by the research team and information submitted by the collaborating expert, Professor James Dignan, Professor of Criminology and Restorative Justice, Centre for Criminological and Legal Research, University of Sheffield, England. A fuller account of the measures alternative to prosecution in England can be found in Lo and Wong, 2003.
new youth justice system, the new measures, Reprimands, Final Warnings, and the Anti-social Behaviour Orders are much more restrictive, although the system does also incorporate elements of a restorative justice approach, such as the Referral Orders (refer for restorative conferences). Another feature is the Parental Orders that target parents with children who have committed a crime.

3.3 Main Features of the System

An overview of the full range of principal interventions for unruly and offending children and young persons is provided in Table 3.1. As can be seen, the entire youth justice system has been reconstructed around the principle of increasingly intensive and demanding intervention in the lives of young people, with a view to preventing the escalation of anti-social or offending behaviour.

Table 3.1 The New Youth Justice: principal institutional features

<table>
<thead>
<tr>
<th>Function</th>
<th>&quot;Criminal jurisdiction&quot;</th>
<th>&quot;Care jurisdiction&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy-making</td>
<td>Juvenile Offenders’ Unit in Home Office</td>
<td>Department of Health</td>
</tr>
<tr>
<td>Strategic implementation</td>
<td>Youth Justice Board</td>
<td>Children and Young Person’s Unit, Department for Education and Skills (DfES)</td>
</tr>
<tr>
<td>Operational delivery</td>
<td>Multi-agency Youth Offending Teams (YOTs), comprising social workers, police, probation, education and health</td>
<td>Local Authority Social Services Department: Child Protection Teams, comprising local authority social workers</td>
</tr>
<tr>
<td>Judicial</td>
<td>Youth Court</td>
<td>Family Proceedings Court</td>
</tr>
</tbody>
</table>
Alternatives to the Prosecution of Children and Young Persons in England and Wales

Figure 3.1 The English youth justice system in outline

KEY — Ongoing processing = Processed out of the system

* At the time of writing referrals orders could only be made after a plea of guilty. However, legislation has recently been introduced that will allow such orders to be made after a finding of guilt also.

N.B. Options in italics are new or have been radically reformed since 1997.
Under the new reform, a national Youth Justice Board was formed and charged with the strategic responsibility for the youth justice system as a whole. Its responsibilities include advising the Home Secretary on how the principal preventive aim of the youth justice system might most effectively be pursued; setting national standards and promoting and funding good practice; and monitoring the operation of the youth justice system and the provision of youth justice services. On local government authorities, the primary operational responsibility for delivering youth justice services has been assigned to new multi-agency "Youth Offending Teams" (YOTs), comprising representatives from local authority social services, the police, probation service and local education and health services. The full set of measures for responding to unruly children and young people under the new youth justice system has already been presented in Table 3.1.

The principal points of decision making in the system are set out in Figure 3.1. The various decision making processes are initially in the hands of the Police and then pass to the Crown Prosecution Service and to either the Youth Court or the Crown Court with various alternative options at each stage. The detail of the system is discussed more fully in a fuller version of this paper (Dignan, 2003). Additional detail is presented here on the alternatives to prosecution.

### 3.4 Alternatives to Prosecution

#### 3.4.1 Reprimand and Final Warning

Under the pre-1998 youth justice system, the main pre-court alternative to prosecution consisted of the non-statutory cautioning system that applied to both young and adult offenders. This was a fairly permissive\(^2\) and explicitly diversionary system, though formal cautions were citable in court in the event of any later proceedings. With regard to young offenders under the age of 18,

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\(^2\) The cautioning system was regulated by non-statutory guidelines issued by the Home Office. Although the guidelines were amended in 1994 in an attempt to discourage the practice of "repeat" cautioning and cautioning inappropriately (e.g. for very serious offences), the system still afforded considerable discretion to the police.
however, this old-style cautioning system has been replaced by a much more restrictive statutory regime comprising the distinct categories of a single “reprimand” and then a “final warning”, followed by prosecution (Crime and Disorder Act 1998, ss. 65-6).

The interventions are directed at young offenders who are apprehended after committing at least one criminal offence. The aim here has been to establish a regime that will deliver predictable and graduated interventions to young offenders depending on the number and also the seriousness of the offences for which they are responsible and the extent to which they are considered to be at risk of reoffending.

Reprimand. Where a case is reported to the police (Box 1, Figure 3.1), the matter may be dealt with informally if the police decide to take no further action (NFA), which effectively means that the case is dropped (Box 2, Figure 3.1). Alternatively, the police may decide to informally warn the young suspect, in which case no formal record is kept, and the incident cannot be mentioned in court in the event of any future prosecution (Box 3, Figure 3.1).

Furthermore, the police may consider Reprimand (Box 4, Figure 3.1) which is a formal oral warning that is intended to be issued by a Police Officer to a first time juvenile offender provided the offence is minor and the juvenile is judged to have only a low risk of further offending. Only a single Reprimand may be delivered in respect of a particular offender, which means that any further offence should be followed by either a Final Warning or a prosecution, depending on the seriousness of the offence and the perceived risk of further

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3 This response may be used where the offender is below the age of criminal responsibility or there is insufficient evidence to warrant a prosecution or it is felt that formal action would not be warranted on public interest grounds.

4 The informal warning runs counter to the philosophy underlying the new youth justice reforms which requires all offenders to be “made responsible” for what they have done. Official guidance stresses that informal action is only appropriate “in exceptional circumstances” where the police consider that it will be sufficient to prevent reoffending, and suggests that this should be restricted to cases involving anti-social behaviour or very minor non-recordable offences (Home Office/Youth Justice Board, 2002). However, it has not been prohibited and informal warnings are presumably still issued though, for obvious reasons, it is impossible to know how often this occurs, or whether the reforms have made any difference to the number of informal warnings that are issued.
offending. The juvenile is to be told that this is the case, advised that a
Reprimand is a serious matter and informed that a record will be kept by the
police until the offender is 18 years old, or for five years, whichever is longer.

**Final Warning.** The Final Warning is intended to provide a fast and more
effective response to early offending behaviour, and to ensure that
appropriate action is taken at this early stage to confront the young person
with their offending behaviour. Where an offender is to be issued with a Final
Warning (Box 5, Figure 3.1), the police are required to refer the case to the
local youth offending team (Box 6, Figure 3.1), which in turn is expected to
assess the offender’s suitability for a compulsory “rehabilitation” or “change”
programme (Boxes 5a and 5b, Figure 3.1). The aim of this programme is to
confront and address the offender’s behaviour. Virtually all offenders who
were given a Final Warning would be expected to participate in a “change”
programme of this sort.

The following procedural requirements have to be satisfied by the police
before a Reprimand or Final Warning may be issued. There must be sufficient
evidence that the young person has committed an offence; the police must be
satisfied that it would be in the public interest for the offender to be
prosecuted; the offender has to admit guilt; and the police need to be satisfied
that the offender has no previous convictions. Moreover, if the young offender
has already been warned within the past two years a further warning cannot
be issued and the offender must then be charged. A second warning is only
possible if a young person was finally warned more than two years ago. In
addition, the police are also required to consider the seriousness of the
offence, and a four-point offence-based Gravity Factor System has been
devised by the Association of Chief Police Officers.

Where a young person is referred to the YOT, the latter is expected to
undertake a risk assessment using a specially devised tool known as ASSET.
The purpose of this exercise is to identify and assess re-offending risk factors;

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5 For details see Home Office/Youth Justice Board, 2002: 10.
determine the nature and content of any intervention programme that might be appropriate to deal with these factors; explore the young person's attitude towards the intervention, including the likelihood of their engagement with a programme; and explore the possibility of the young person's participation in a restorative conference for the delivery of the warning.

With regard to the delivery of Reprimands and Final Warnings, the official guidance endorses and indeed strongly encourages the use of restorative processes, where appropriate, based on experience gained in the Thames Valley police area, which has pioneered this approach. One option that is endorsed, termed the "restorative warning", includes the involvement of a young offender's parents and, where appropriate, any other influential adult and ensures that the victim's views are also conveyed. The second main option, termed restorative meeting or conference, includes the presence and direct participation of the victim and, possibly also, the victim's supporter(s).

Where a Final Warning is not appropriate for any reason, the young person must be charged, and the case is then passed on to the Crown Prosecution Service (CPS) for consideration (Box 7, Figure 3.1). The CPS has the final say over whether a prosecution proceeds to court or is discontinued (Box 8, Figure 3.1). Discontinuations are normally considered appropriate either because the available evidence is not considered sufficiently strong to warrant a prosecution, or because the CPS considers that it would not be in the public interest to pursue such a course. If it is decided not to prosecute, the CPS may refer the case back to the police with a recommendation that they reprimand or warn the offender, though in practice few such references back appear to be made. If, on the other hand, the CPS decides to prosecute (Box 9, Figure 3.1), the case then normally proceeds to the Youth Court (Box 10, Figure 3.1).

Effectiveness
The results of three separate reconviction studies remain inconclusive for a variety of reasons. One reconviction study found that the Final Warning
sample had outcomes that were 6% better than expected—a 30% actual rate of further proceedings compared with an expected rate of 36%—a difference that was statistically significant (Hine and Ceinick, 2001). However, the differences remained the same once the controls in the regression are applied, suggesting that other factors could have been responsible for this change (Bottoms and Dignan, forthcoming).

The results of a second reconviction study conducted by the Home Office (Jennings, 2002), the Youth Justice Board (2002: 1) also showed a significant impact but there are a number of problems with the methodology omitted to control for demographic variables—for example relating to age and gender—despite the fact that these are known to have a significant impact on reconviction rates. This omission is crucial since, as the Home Office study itself points out, the youth justice reforms have had a significant impact on the demographic characteristics of those who are now being formally processed compared with the situation in 1997. When taken in conjunction with presentational manipulation of the percentage differences in the reconviction rates, it is clear that the findings do not provide compelling evidence on which to mount the extravagant claims for success that have been made by both the government and the Youth Justice Board.

In the third reconviction study, Hoyle et al. (2002) found that only 14% of a sample of young offenders, who had been given restorative cautions or conferences, were re-sanctioned within one year, compared with 29% of a normal sample, and the difference between the two was found to be statistically significantly. However, it is important to treat these findings with caution, as the authors themselves acknowledge. The sample size was extremely small and, there were other factors that might have had an impact on cautioning rates quite apart from the adoption of the scripted conferencing model.

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6 The main difference was that the latter were conducted in the presence of victims and allowed them to participate whereas the former did not, though both procedures involved the use of a script that was designed to promote the ideal of reintegrative shaming (see Braithwaite, 1989).
3.4.2 Referral Order and Youth Offender Panel

The aims of the new procedure are strongly influenced by restorative justice thinking in four important respects. First, the decision-making process itself is intended to be both inclusionary and party-centred, in order to encourage and facilitate participation by those most directly involved in the offence and its consequences. This is also reflected in the adoption of a "conferencing" model in place of the traditional adversarial judicial decision-making model. Second, the decision-making forum is community-based and has involved the recruitment and training of a new cohort of volunteer "community representatives" (see Crawford and Newburn, 2002). Third, both the process itself and also its outcomes are intended to be "restorative". This is reflected firstly in the provision of a forum in which the views and wishes of victims can be articulated (whether directly or indirectly) and addressed; and secondly in the expectation that offenders will undertake some form of reparation to either the victim or the community. Fourth, there is also a strong emphasis on the importance of "reintegrating" offenders back into the community by the time the process is concluded.

The new Referral Order procedure currently applies (Box 12, Figure 3.1) to young offenders who are prosecuted for the first time, who plead guilty as charged when they appear 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 (both of which are in any event rare disposals for first-time defendants). In such circumstances the youth court is normally obliged to deal with the case by passing a sentence known as a "referral order" available nation-wide since April 2002.

Young persons in receipt of such an order are obliged to attend one or more meetings of another newly created body: the Youth Offender Panel or "YOP" (Box 13, Figure 3.1). The YOP is convened by the local youth offending team, which also provides one member of the three-person YOP panel. The other two are community representatives, drawn from an approved list of specifically recruited and trained volunteers. The Referral Order initiates a
structured process of meetings that take place during the order, the length of which is specified by the court at the time it is made and can be from three to twelve months. An important aim of the initial panel meeting is to devise a contractual agreement (Box 14, Figure 3.1), the effect of which is to bind the offender to an agreed "programme of behaviour" for the duration of the Referral Order.

The aim of the programme must be the prevention of reoffending, but it is also intended that all contracts should have restorative outcomes. Consequently, in addition to the participation of the young offender and his/her parents, any victim(s) of the offence are also invited (but not obliged) to either attend the initial panel meeting or to agree to their views being conveyed by one of the other participants. 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. However, assuming an agreement is reached, the panel then meets on a regular basis to review progress, offer support and, where appropriate, congratulate the young person on maintaining compliance, which illustrates the reintegrative aspects of the new procedure. Where the offender successfully completes the programme, the Referral Order is discharged when the offender is "signed off".

Effectiveness
Since the national implementation of Referral Orders only occurred on 1 April 2002, it is too soon to offer any detailed assessment of their effectiveness. However, the final report of the pilot evaluation (Newburn et al., 2002) found a completion rate of 74% for contracts that were agreed in the course of the panel meetings. Predictably, there were variations in completion rates, the likelihood of successful completion being greater with orders of shorter duration and those with fewer elements, and variations were also associated with type of offence. Most of those failing to complete the Referral Order were reconvicted of a further offence and re-sentenced.
The study also found very low rate of victim participation. Victims attended panel hearings in only 13% of cases in total, and in only 28% of cases was there any form of victim involvement—for example in the form of a statement to be relayed to the offender, or consent to personal reparation (Newburn et al., 2002: 41). Moreover, in contrast to the early experience of family group conferencing in New Zealand (Morris et al., 1993: 309), this does not appear to be because of inconvenience in the timing of the panels, since almost two-thirds were held after 5 p.m., and over one third were scheduled to begin after 6 p.m. Rather, the relative absence of victim participation would appear to have more to do with difficulties encountered in identifying, contacting, consulting with victims and persuading them to participate. It is not clear from the evaluation report whether there was any correlation between victim participation and completion rates.

3.4.3 Local Child Curfew Schemes

The original aim of the Child Curfew Scheme was to enable local authorities to maintain order more effectively by imposing a ban on young children under the age of ten from streets or other public places at night unless supervised by a responsible adult.

The procedural requirements are fairly cumbersome, and require the local authority firstly to consult with the police and local community, and then apply to the Home Secretary seeking confirmation of the scheme. The precise ages of the children who will be affected by the scheme, the designated curfew hours (between 9 p.m. and 6 a.m.) and the intended duration of the scheme (up to a maximum of 90 days) are all matters to be determined by the local authority in its application. The scope of the Child Curfew Order was subsequently extended by the Criminal Justice and Police Act 2001 to children under the age of 16. Moreover, an application for the order may now be made by a Chief Police Officer alone, though the approval of the Home Secretary is required.
Where such a scheme is imposed, the police are required to take home a child who is believed to be in breach of the ban, or to use their existing powers under the Children Act to take the child into police protection if there is no one at home. They are also required to notify the local authority of any breach of the curfew notice. Local social service departments are also under a duty to make enquiries following such a breach to decide whether further action is required. In addition to their statutory powers under the Children Act, social services could also apply for a Child Safety Order to be made.

**Effectiveness**

Continuing reluctance to use this measure has so far precluded any direct attempts to assess its effectiveness. The only empirical evidence to date relates to a six-month evaluation of a small-scale pilot initiative with somewhat similar aims that was introduced in Hamilton, Scotland, in October 1997 (McGallagly et al., 1998). The primary aim of the scheme was to ensure the safety of young children, especially those under 12, who were out alone on the streets after dark, but a secondary aim was to reduce opportunities for juvenile and disorder. During the six month evaluation, the police in Strathclyde undertook 229 interventions with vulnerable young people, most of whom (87%) were returned home, and only 2% of whom were charged with a crime. Compared with the six month period immediately prior to the scheme, recorded crime in the intervention area fell by 23%, as opposed to a 14% reduction in the control area, with even greater decreases for crimes associated with juveniles, such as vandalism and theft. However, compared with the corresponding period in the previous year, the number of reported offences showed an increase in both the intervention area and control area (of 17% and 18% respectively), suggesting that the short-term reduction may have been partly the result of seasonal factors. Moreover, other housing management initiatives were also known to be operating within the intervention area contemporaneously with the child safety initiative, which could have contributed to the greater reduction in recorded crime within this area as opposed to the control area.
3.4.4 **Child Safety Orders**

Their principal aim is to prevent children from becoming involved in criminal or anti-social behaviour by taking steps to address low level criminal or unruly behaviour from the outset.

A Child Safety Order may also be imposed where a child below the age of ten commits an act which would (apart from the child’s age) constitute an offence; where a child has acted in an anti-social manner that is likely to cause harassment, alarm or distress to others, or has contravened a ban imposed under a local Child Curfew notice.

The order may be imposed by a magistrates’ family proceedings court, but only on the application of a local authority social services department. The effect of such an order is to place the child under the supervision of a local authority social worker or YOT worker, and to require the child to comply with any specific requirements that may be imposed by the court. For example, the court may seek to ensure that the child receives appropriate care, protection and support and is subject to proper control; or to prevent any repetition of the behaviour that gave rise to the order. The normal duration of the order is three months, but in exceptional circumstances it can be made for up to twelve months. The effect of the order—placing a child under supervision—is much the same as might be achieved under the auspices of the *Children Act* by imposing a supervision order designed to safeguard the child’s welfare. However the ground for making the order is different insofar as it is specifically offence-related and, in addition, the “paramouncty” of the child’s welfare” principle that is set out in the *Children Act* does not apply to Child Safety Orders.

**Effectiveness**

Another new youth justice initiative that has met with a remarkably lukewarm response is the Child Safety Order, only two of which were made during the
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18-month piloting of the youth justice reforms contained in the Crime and Disorder Act 1998. Holdaway et al. (2001: 44-5; 108ff) suggested a number of reasons for this. First, there were felt to be very few children in each YOT area for whom such an order (as opposed to child protection measures) might be appropriate. Second, there are practical evidential difficulties in applying for orders in respect of children who, because of their age, are unlikely to feature in police records. Third, there could be some professional resistance on the part of local authority social workers, YOT staff and courts, linked perhaps with a strong belief that children of this age are most appropriately dealt with in other ways. Fourth, the order operates at the interface between the new (criminal-based) youth justice system and the existing child protection system. Moreover, the fact that an order has to be applied for by the local authority social services department renders it more susceptible to the kind of screening and “gatekeeping” measures that have largely been dismantled in respect of young offenders (Holdaway et al., 2001: 109).

3.4.5 Anti-social Behaviour Order

Anti-social Behaviour Orders (ASBO) are civil orders, which are partly preventive in nature. They were designed to deal with serious and persistent anti-social behaviour and, if possible, prevent its escalation without having to resort to criminal sanctions, though a breach does give rise to criminal proceedings and penalties.

The orders may be used against any person aged 10 or over who has acted in an anti-social manner, which is defined as behaviour “that caused or was likely to cause harassment, alarm or distress to one of more persons not of the same household” (s. 1(1) Crime and Disorder Act, 1998). It includes behaviour that puts people in fear of crime. The measure has most commonly been used in connection with the management of public housing. Although it was originally expected that ASBOs would chiefly be used against adults (Home Office, 1998), a review of the order has shown that more orders have been made against juveniles (under 18) than against adults (58% and 42% respectively; Campbell, 2002:8). Moreover, almost three quarters (74%) of
those given ASBOs are aged 21 or under, suggesting that, to the extent that
the measure has been used at all, it has largely been used in respect of anti-
social youth.

Only the police or a local authority are able to apply for an ASBO, which must
be made within six months of the behaviour taking place, and each agency is
required to consult with the other. Because it is a civil order, the standard of
proof and rules of evidence are less rigorous, i.e. it requires that the facts be
established "on the balance of probabilities" rather than the more exacting
criminal standard of "beyond reasonable doubt". This is one of the reasons
why the order has proved to be so controversial in practice (see Gardner et
al., 1998). All ASBO applications are heard in the magistrates' court,
regardless of the age of the person against whom it is sought. This has
proved to be a contentious issue because the reporting restrictions that would
normally apply in a youth court do not routinely operate in a magistrates'
court. Consequently, there is nothing to stop the press or crime and disorder
partnerships from applying for reporting restrictions to be lifted at the end of
the final hearing, even in respect of juveniles. Such applications are generally
considered on a case-by-case basis. The order itself may consist of a variety
of prohibitions that are felt to be necessary in order to protect people living in
an area from further anti-social acts committed by the defendant. Since
breach of an order is a criminal matter, however, any such allegation must be
proved to the criminal standard of evidence beyond reasonable doubt.
Conviction for breach carries the normal maximum sentence which, in the
case of juveniles aged between 12-17, consists of a 24 month detention and
training order, half of which is spent in custody and half under supervision in
the community.

Acceptable Behaviour Contracts
ASBOs are both cumbersome and expensive measures (costing on average
£5,500; Campbell, 2002: 90). Acceptable behaviour contracts were
introduced in February 2000 as a cheaper, quicker and more flexible informal
alternative. They are intended as a "first step" response to persistent anti-
social behaviour. Young people who engage in such behaviour are invited, together with their parent(s), guardian or other appropriate adult to a meeting with the local authority housing department and the police. Such meetings are normally held in housing department offices, to emphasise the fact that the young person is not involved in a criminal investigation. The purpose of the meeting is to confront the young person with information about their behaviour and invite them to agree not to engage in anti-social activities by signing an acceptable behaviour contract. Copies are kept by the local housing manager and are also sent to the parent or guardian and to the local YOT. The contract is not legally binding, but a refusal to sign or failure to comply can be cited in a civil action application for an eviction order, or in support of an Anti-social Behaviour Order.

Effectiveness
Police and local authorities have applied for ASBOs in roughly equal numbers to date and, of those applications, the great majority (96%) have been successful. Relatively few applications (16%) were made in respect of anti-social behaviour by a person acting alone. This contrasts with the much bigger proportion of applications brought in respect of either gang behaviour (50% of the total) or behaviour by members of a family (31%). However, even in cases such as these, the application itself is in practice often made in respect of a single individual, for example the ringleader. Applications were made in respect of a wide variety of behaviours, most of which involved verbal abuse (59%), harassment (55%), threats (46%) or intimidation (37%). However, applications have also been brought in respect of other types of behaviour including being drunk and disorderly, persistent shoplifting, trespass and even prostitution.

A sample of cases in which ASBOs were imposed in the 3rd quarter of 2000 (July-September) was followed up in July 2001 to see if any had reappeared in court during the relatively short timeframe since the imposition of the order.

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8 Applications were made against single individuals as opposed to groups of people in 33% of the case files examined by the review (Campbell, 2002: 11 & Table 2.5).
Just over one-third (36%) of the sample was known to have breached the order during this period, most of whom (30% of the total sample) had committed a further offence. As for the action taken on breach, despite a widespread perception that courts do not view such matters sufficiently seriously, just under half resulted in a custodial sentence, roughly half of which were imposed on juveniles. The average length of sentence imposed on these juveniles ranged from 120 to 180 days. Juveniles who breached their ASBOs were also liable to be fined and, more often than not, their parents were also fined or made to pay compensation or costs in such cases.

As Campbell (2002) points out, however, the success or otherwise of the order cannot be assessed simply in terms of the number of breaches or the way they are dealt with. Some respondents who were interviewed felt that orders had succeeded in significantly reducing the problem behaviour even if they did not stop it altogether. Other authorities that made very little use of the orders themselves indicated nevertheless that they provided a useful "ultimate threat" to back up less draconian responses such as acceptable behaviour contracts. In terms of cost, the average cost was £5,350 in total and, even when action taken in respect of appeals and breach is excluded, still comes to £4,800. Overall, attitudes towards the measure were generally positive and, where this was the case, the orders themselves were considered to be cost-effective since continuing anti-social behaviour can also result in heavy costs to a local authority. Reservations mainly focused on poor relationships between members of partner agencies and also on delay, particularly in dealing with breaches.

3.4.6 Parenting Order
Parenting Orders represent an extension of the "responsibilisation" doctrine, and are designed to assist and support parents or guardians in addressing their child's anti-social or offending behaviour. The aim is to work preventively with parents, to provide support and equip them with the skills to cope with challenging behaviour that could deteriorate if not addressed.
Parenting Orders are available in criminal, civil and family proceedings courts in any one of four possible situations: (a) in connection with a Child Safety Order, (b) an Anti-social Behaviour Order, (c) where a young person has been convicted of an offence, or (d) where a person has been convicted of an offence under the Education Act 1996, relating to school attendance. These four situations will soon be increased to five; proposals have been announced to make the order available in respect of courts imposing a Referral Order on young offenders who appear in court for the first time (Benn, 2002). Not all parents who attend parenting programmes do so compulsorily, however, since many more are referred on a voluntary basis, whether by YOTs or other agencies.

A Parenting Order may consist of two elements. The first requires parents to attend counselling or guidance sessions, which can last for up to three months. The second may require parents (or guardians) to exercise a measure of control over their child (for example by ensuring that the child attends school or avoids certain people or places) for a period of up to twelve months. Failure to comply with the order (which is supervised by YOT workers) constitutes a criminal offence that is punishable with a fine of up to £1000. In addition to the Parenting Order, and for the sake of completeness, brief mention should also be made at this point of a number of other ancillary measures that can be imposed on the parents of offending youngsters. They include fines, parental bind-overs and also compensation payments.

Effectiveness
A national evaluation of the youth justice pilot reforms (Holdaway et al., 2001: 43ff, 99ff) found that Parenting Orders were slow to develop and experienced variable rates of take-up. The study also found that implementation was adversely affected by a shortage of suitable established parenting programmes and a marked degree of professional resistance on

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Only 284 parenting orders were reported to the Home Office during the pilot period, which fell well short of the 400 that had been predicted at the outset.
the part of YOT staff, particularly with regard to the compulsory aspects of the order itself.

In a three-year national evaluation of the effectiveness of 42 projects (Ghate and Ramella, 2002), it was found that two thirds of the initial referrals were made via the voluntary route, and only one in six (16%) reached the projects via a Referral Order, though the latter were over-represented among the impact sub-sample, one-third of which consisted of compulsory referrals via a Parenting Order. The impact on parents was said to have been very positive, in spite of the initial hostility expressed by many of those who came via the compulsory route. Attendance rates were reported to be high and, by the time they left the projects, most parents (regardless of referral route) were said to have reported significantly positive changes in parenting skills and competencies. Only 6% of “exit ratings” were negative or indifferent when asked how helpful the programme had been, and nine in ten would recommend the programme to other parents in their position. These positive attitudinal changes were not matched to anything like the same extent by their children, however, in respect of whom there were only mild indications of any improvement in the way they perceived their relationships with their parents.

The evaluation also sought to measure changes in young people’s offending behaviour, using both self report and also official reconviction data. It is important to note at the outset, however, that a majority of young people in the reconviction study (75%) had severe behavioural and emotional difficulties. They were also very prolific offenders since 89% had been convicted during the year before their parents were referred to the programme, and the average number of offences committed during this period was 4.4 per offender. During the follow-up period, 61.5% were reconvicted,\(^\text{10}\) which is a statistically significant difference; and the average number of offences committed was only 2.1 per offender. Nonetheless, the self-report study presents a very different picture to the one based on official reconviction data.

\(^{10}\) If “pseudo reconvictions”—i.e. those relating to offences which were committed before the intervention began—are omitted, the reconviction rate is 56%.
When asked how many offences they had committed in the four weeks immediately prior to their parent’s first contact with the parenting programme and also in the four weeks just prior to their parents leaving the programme, the average number reported was virtually identical in each case (4.04 and 4.12 respectively). Intuitively, this is a more plausible finding in some respects, since the parenting programme is a relatively minor intervention that is not directed at the young people themselves but at their parents. Moreover, it is of short-term duration, and takes place in a context of deep-seated problems that have often subsisted over a considerable period of time.

As Ghate and Ramella (2002) acknowledge (see also Ramella et al., 2002), in the absence of a comparison group, it is impossible to be sure that any reduction in reoffending may not have occurred in any event (for example because the offenders had passed the peak age of offending). And even if there was a reduction it is impossible to know whether this was as a result of the Parenting Order or one of the other interventions that most of the youngsters were experiencing at the same time. Indeed, reconviction rates for those whose parents who engaged most fully with the programme were somewhat higher than for those whose parents engaged only erratically with the programme. Much firmer evidence is needed, therefore, before we can be confident that Parenting Orders really can have the beneficial impact on offending behaviour that an uncritical reading of the preliminary evaluation findings might suggest.

3.5 Conclusion

To appreciate the above evaluations of the research, a number of preliminary cautionary remarks are required. First, it is important to emphasise that most of the provisions have been introduced too recently to have been extensively and conclusively evaluated. Consequently, the conclusions that may be drawn from such preliminary research findings as are available are necessarily provisional and tentative at best. Second, the depth of the government’s commitment to an evidence-led approach has (perhaps
inevitably) been tempered in practice by other expediencies such as the demands of the political timetable. Third, much of the research has been commissioned and funded by the Youth Justice Board which is also responsible for the strategic development and implementation of key aspects of the youth justice reform programme. At times the Board has discharged these functions with almost evangelical zeal, accompanied by a sustained attempt to “accentuate the positive” aspects of the reform programme at every opportunity. For all these reasons it is important to scrutinise the early empirical evidence that is available, and particularly the often hyperbolic claims that accompany it with more than usual care and circumspection. The provisional verdict on the success of the new system must, therefore, remain—“unproven”.
Chapter 4
Alternatives to the Prosecution of Children and Young Persons in Belgium

4.1 Objectives of Youth Justice

The judicial reaction against juvenile delinquency is governed by the Law of 2 February 1994 on the adaptation of the Youth Protection Act of 8 April 1965 (YPA). The Belgian Youth courts deal with juvenile crime in a purely "protective" way, meaning that no punishments can be imposed, but only measures designed for the rehabilitation of the young offender.

4.2 Target Groups where Measures Apply

The age of criminal responsibility in Belgium is 18. Juveniles under the age of 18 do not appear before a criminal court, but before the Youth Court. There is no lower age limit, because all cases are treated in fact as welfare cases. The basic judicial organs are the Public Prosecutor (with a specialised youth division), the Youth Court (with a single specialised judge) and the Youth Chamber in the Court of Appeal. The Youth Court judge can make use of a section of the social service, provided by the Communities.

4.3 Main Features of the System

4.3.1 Police and the Public Prosecutor (PP)

As in most countries with a legalistic judicial system, Belgian's legal procedure obliges the police to report every complaint concerning offences, misconduct

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1 This chapter is based on the data collected by the research team and information submitted by the collaborating expert, Professor Lode Walgrave, Director, Research Group of Youth Criminology, Katholieke Universiteit Leuven, Belgium. A fuller account of the measures alternative to prosecution in Belgium can be found in Lo and Wong, 2003.
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or so called “situations of danger” to the PP. In practice, however, this is not workable. A great part of the reporting and even established facts are never referred to the PP because they are informally handled by the police. Quite often the police deliver warnings or mediate informally. With a few specific exceptions, no information about these practices exists as, in principle, they are illegal. Currently, a few local experiments allow the police some margin of discretion, but still under supervision of the PP Office. Every PP Office has a specialised Youth Division. The police report to the PP all minors registered because of “acts defined as offences” (art 36, 4 and 91 s.11, YPA.). All traffic offences committed by juveniles of 16 years and older are dealt with by the adults’ jurisdiction.

In all other cases, the criminal investigation with regard to the facts is started. The enquiry on the “personality and the social circumstances” of the offender, however, is referred to the Youth Court judge. During the investigative phase, the Youth Court can, on the request of the PP, take a "provisional disposition".

- Placement under supervision, probably with conditions.
- Placement in a private family, in a foster home or in an authorised private institution with an open regime.
- Placement in a public facility for supervised observation and education, with a more closed and disciplined regime.
- Up to 1 January 2002, a juvenile older than 14 years could also exceptionally be placed in custody under certain strict conditions, and for a maximum of 15 days. This disposition has been abolished, which has led to the erection of a Federal detention house for “serious” young offenders. The maximum stay is two months.

Juveniles of 12 and older must be heard by the Youth Court judge personally prior to any of these provisional dispositions. Moreover, legal assistance is assured as from the investigative phase. A lawyer is appointed officially. Appeal is possible.
In principle, the investigation phase must be finished after six months. It includes also the social and personality enquiry, the results of which must be communicated by the Youth Court judge to the PP. The PP then has two months to decide whether to refer the case to the Youth Court in view of a trial and conviction of definitive measures, or to classify without prosecution.

The law grants the PP a large discretionary power, which includes a variety of options in the approaches taken to cases. So, for example, the PP may consider the case primarily as a welfare problem, and refer on a voluntary basis to the agencies of the Communities or to a private welfare agency. In an increasing number of arrondissements private agencies, funded by the Communities, offer services in an effort to set up a voluntary process of victim offender mediation or restitution. A positive outcome of these processes may be a reason for closing the dossier, or will at least have an impact on the furtherance of the procedure. The degree to which PP’s make use of these possibilities differs, depending on the availability of services in the arrondissement and on the PP’s personal sensitivities vis-à-vis these modalities.

4.3.2 The Youth Court

According to the YPA, all measures taken by the Youth Court with regard to the minor are “measures of care, guardianship and education”, and their size and content have no relation to the behaviour that brought the minor before the court. In principle, only the needs of the minor determine the nature of the measure. This is theory of course. In practice a connection exists between the seriousness of the case and the measure. Most judges do not deny that repressive intentions can play a role in their sentencing.

Except for the unofficial warnings that are usually accompanied by a classification without prosecution, the Youth Court can take the following definitive measures by judgement.

- A reprimand, which is officially registered in the criminal record.
• A supervision order, putting the minor under the supervision of the court, probably with conditions, e.g. community service.

• Residential placement in a foster home or in a private institution, not exceeding the duration of one year, but repeated placements may be decided yearly until the age of majority.

• Placement in the public facility for supervised observation and education. First, only juveniles older than 12 years can be admitted by judgement, except for “very exceptional cases”. Second, the judgement must specify whether the placement is in an open or in a closed section of the facility. Third, the judgement must also specify the maximum duration of this placement, which cannot exceed the duration of one year. A new judgement may however repeat the decision until the age of majority.

In principle, all measures imposed by the Youth Court come to an end at the age of majority, i.e. at 18 years old. This means that educative measures would make little sense for juveniles who commit an offence shortly before their 18th birthday. Therefore, the duration of the measure can be extended until the age of 20, on condition that the Youth Court decides before majority by a judgement, wherein the exact duration of the extension is defined.

As a special measure, the Youth Court can give up its authority over an offending minor, and refer him back to the PP with a view to prosecution by a penal court of common law. The court can decide such referral when it considers the existing measures of youth protection to be inadequate, on condition that (1) the minor is at least 16 years old, and (2) a medico-psychological examination has been carried out, or the minor obviously refuses to undergo such examination, or when the juvenile reoffends in some types of very serious offences. Once a juvenile has been referred to the common law procedures, he remains under the adults’ jurisdiction for possible subsequent offences.
After the judgement, the Youth Court judge will supervise directly and/or via his social service teams the implementation of the measure. The PP and the parties involved can appeal against the judgement at the Youth Chamber of the Court of Appeal. Moreover, revision of the judgement is always possible on the initiative of one of the parties involved.

4.3.3 Special Assistance to Youth and Prevention

The three Belgian Communities (Flanders, French and German) were granted jurisdiction over the so-called "Social Youth Protection" by the reform of the Belgian state in 1980 and 1988. For example, the legal framework of the Special Youth Support (SYS) in Flanders consists of three Decrees, brought together in the Order of the Flemish Executive of 4 April 1990. The SYS is composed of several agencies.

Committee for Special Youth Care

In Belgium, an administrative arrondissement does not coincide completely with the judicial arrondissement. In every administrative arrondissement, a "Committee for Special Youth Care" has been founded, composed of volunteers. Each Committee is divided into a "Bureau for Special Youth Care" and a "Prevention Cell". The Bureau has three tasks:

1. To organise care and assistance in what is called "problematic educative situations". The Bureau co-operates closely with the differentiated net of general welfare services. The intervention is voluntary. It depends not only on the parents' approval, but also on the consent of the minors themselves, if they are 14 years old and more.

2. To guarantee that assistance will be offered (though, not imposed) to children and families who have been referred by the judicial system. This is to motivate the PP and Youth Court judge to refer their cases to the system of SYS, and to divert to it as many cases as possible from the judicial circuit.
3. To try to set up voluntary assistance in problematic educative situations, when the Youth Court has already taken urgent measures of placement. Indeed, as already mentioned briefly in the former section, the Youth Court may, at the request of the PP, take an urgent provisional disposition of residential placement when the "physical or psychological integrity of the minor is severely threatened" and urgent measures are considered to be necessary. Such provisional dispositions may however not exceed a period of 45 days, during which the Committee for Special Youth Care can try to set up a process of voluntary assistance and care. If it does not succeed, it will start a procedure for the Commission for Mediation (see below).

The Prevention Cell is responsible for general prevention, by cooperating in or itself organising initiatives of prevention with regard to the well-being or positive development of children and youth on a local or regional level. In practice, such prevention programmes consist of information or warning projects, participation in consultative structures and working out of own projects. The latter are often carried on in co-operation with other local facilities of education, police, youth work and/or welfare work.

**Social Service**

The fieldwork of both the Bureau and the Cell is carried out by the Social Service for the SYS. This service is established in every arrondissement by the Flemish Decree, and it is divided into two sections, of which one is put at the disposal of the Youth Court, and the other works for the Committee for Special Youth Care. It consists of a team of professional consultants (with a degree in social work, criminology or the like).

The clients of the Committee (parents, minors themselves, others) only have contact with the professional consultants. The consultants try to help by means of advice, referrals, or by means of a concrete offer of assistance, taking into account the diversity of the available facilities. The official members of the Bureau in fact only act as relatively distant supervisors and make decisions with financial consequences.
Commission for Mediation

The Commission for Mediation exists in every judicial arrondissement and consists of six voluntary members, chosen from among experienced welfare workers and lawyers with experience in youth cases. The Commission for Mediation acts as an arbitration body of last instance in connection with voluntary assistance, when the parties cannot agree about the proposals for settlement concerning a problematic educative situation.

A request for mediation can be introduced by the Bureau for Special Youth Care, by the parents, the minor or his confidant, by welfare workers of authorised services, or by the PP. The Commission for Mediation tries to reach a consensus between the conflicting parties. If a voluntary agreement cannot be reached, the Commission can decide to simply stop the case or to refer the case to the PP with a view to a referral to the Youth Court for a judicially enforceable educational measure.

The Flemish Decree then lists thirteen possible measures that may be imposed by the Youth Court. Several of them coincide with the possible measures imposed on young offenders, including even placement in the closed facility, as described in the previous section.

Private and Public Facilities and Ambulatory Agencies

The Communities also acknowledge and subsidise the private facilities, and organise the public institutions for SYS. These facilities and institutions receive both the children and juveniles referred by the Youth Court and by the Committee for Special Youth Care. The minors can be placed there under the regime for “offending juveniles”, as described in the former section, or as minors in “problematic educative situations” within the meaning of the Flemish Decree. Minors known as juvenile offenders are thus placed in the same institutions with children and juveniles in need of welfare assistance. It illustrates again the welfare character of the judicial response to juvenile offending.
Alternatives to the Prosecution of Children and Young Persons in Belgium

The private facilities consist of residential, semi-residential and ambulatory services. A growing amount of ambulatory services are recognized as "restorative services", intended as monitoring community services ordered by the Youth Court or as an attempt to set up a kind of victim offender mediation, mostly at the request of the PP (see Figure 4.1).

**Figure 4.1** The most important trajectories according to the Special Youth Support Decree, in combination with the *Youth Protection Act*

![Diagram of trajectories](image)

- **Special Youth Support, as organized by Flemish Decree**
  - Problematic educative situation (reported by parents, minor, others)
  - Committee (Bureau) for Special Youth Care
  - Voluntary Assistance accepted
    - Case dropped
  - Voluntary Assistance not accepted
  - Commission for Mediation
    - Agreement
      - Case dropped
    - No agreement
      - Case dropped
  - Public Prosecutor
    - Case dropped

- **Judicial Protection, as organized by Belgian Act**
  - Minor's misconduct (reported by parents)
  - Urgent problematic educative situations or Offences (reported by police or others)
  - Youth Court
    - Case dismissed
  - Public Prosecutor
    - Case dismissed

Executed by Committee and/or by authorized agencies or facilities, e.g. residential/semi-residential placement, community service, mediation, family group conference
4.4 Alternatives to Prosecution

It is difficult to delimit strictly what is to be understood by “alternatives to prosecution”. In fact, the whole Belgian juvenile justice system can be considered as an alternative to prosecution, because no legal punishments are pronounced, only measures “in the best interest of the child”. This is theory, of course. In practice, juveniles are punished by the youth courts, i.e. they are sent to closed or half open facilities because they have committed an offence (or “an act defined as an offence”—another dubious use of language), and with a view to “teaching them a lesson”, or to protect public safety. However, these disciplinary facilities do also try rehabilitation programmes, and most juveniles are sent to half open institutions with a view to (re)education, or are referred to ambulatory pedagogical programmes. There is lively experimentation going on in the field of renovating pedagogical and treatment programmes, from which, however, systematic evaluation is almost completely absent.

Moreover, the Belgian Communities offer all kinds of voluntary programmes with a view to helping children and their families, and facilitating their rehabilitation, re-education and treatment, in order to avoid “juridicisation” of the problems, or to motivate PP to refer their cases to them instead of to courts.

Special attention must be given to the swelling stream of practices which can be brought together under the label “restorative justice”. In the past decade, restorative justice has emerged as a very important issue in the debates on criminal justice and juvenile justice reform. There is a growing body of practice, empirical research, theoretical and ethical reflection all over the world, which is placing increasing confidence in the restorative response to crime. According to the restorative justice paradigm, the primary function of the social reaction to an offence should not be to punish, nor even to (re)educate, but to set the conditions for repair or compensation for the harm caused by that offence. This option has especially been tried out for juvenile offending. Restorative models have found their way into the juvenile justice systems in
most Western countries, with New Zealand having gone farthest along this road (Van Ness and Høstderk Strong, 1997; Braithwaite, 2002a; Bazemore and Walgrave, 1999; Morris and Maxwell, 2001c).

In Belgium, but especially in the Flemish Community, there is an increasing interest in a different approach to youth crime. Instead of pure treatment or (re)education, instead of simple punishment, these alternatives are inspired by taking the offence and its consequences seriously, imposing more constructive responsibility on the young offenders, and paying more attention to the harm and suffering inflicted on the victim. The practice of (1) community service, (2) Victim Offender Mediation and—very recently—(3) family group conferencing witness to this tendency.

4.4.1 Community Service
Community service was originally often imposed as a provisional disposition. However, the Brussels' Court of Appeal rejected this and obliged the Youth Courts to impose it after a fully fledged trial only. Most courts do follow this recommendation, but not all. Despite the decision, the Federal Government has funded police services to organise short terms of community service for benign offences, under the control of the PP. In 2002, the Flemish Government funded 9 private agencies for monitoring all kinds of "restorative practices". They organised in that year the carrying out of 375 community service orders (which can be estimated at 15% to 20% of all Flemish youth court judgments) (Nuytens et al., 2003).

Effectiveness
A systematic research on 474 community service cases imposed by the Youth Court and 45 such cases at the PP's level all over Belgium revealed that all kinds of offenders and of offences were responsive to such measures. Courts impose community service on juveniles who have committed on average 6.5 registered offences. For three quarters of the cases, the community service order is the first judicial measure. In a considerable number, it was used as an alternative to placement in a closed facility. The average duration imposed was 63 hours. There was almost no proportionality between the duration and
the seriousness of the offences (Geudens and Walgrave, 1996). Juveniles who accomplished a community service (N=214) committed very significantly fewer recidivistic offences than a control group (N=200) with traditional treatment oriented measures (till 18 months after trial) (Walgrave and Geudens, 1997). A statistical stepwise procedure revealed the community service itself was the most decisive factor in non-reoffending.

4.4.2 Victim Offender Mediation

Victim offender mediation is more recent in Belgium. It first started in the arrondissement of Leuven at the end of the 1980's, as form of community service: in order to make community service pedagogically more meaningful, victims were contacted to ask their view, which gradually led to a settlement practice (Claes, 1998).

Currently, mediation is gradually more and more accepted, especially in Flanders. In 2001, sixteen Flemish services organised altogether 914 mediations (Nuytens et al., 2003). More than 90% are carried out after referral by the PP. The referral is done on a voluntary basis. Most cases are relatively benign. Many mediations are carried out indirectly, with the mediator functioning as a go between.

There is disagreement on whether or not the PP should stop further prosecution if the mediation results in an agreement. Whereas stopping prosecution seems at first sight only logical, it might lead to selecting out more serious cases in which the PP wants in any case to prosecute. Another problem is net-widening: because the PP mostly refers non-serious cases, the suspicion is that only non-serious offences are referred, for which no judicial response would have taken place at all if mediation did not exist. However, even if that were true, it is said, net-widening here would lead to more victims being given compensation in a way which is also meaningful for offenders. Some think that such net-widening is desirable.
Effectiveness

Systematic empirical evaluation is not carried out. There have, however, been a few partial studies. In 1999, for example, the functioning of a compensation programme in Leuven was evaluated (Stassart, 1999). The compensation programme in fact offered a kind of indirect mediation, leading to financial agreements in which authorities contributed to the compensation. In a number of cases, a direct meeting is organised after the payment. The sample of 71 interviewed victims (29), offenders (21) and “significant others” (21) participated usually for emotional and pedagogical reasons, or to avoid further juridical prosecution, though the material compensation as such was also important. Only four out of the 71 expressed dissatisfaction after the process, and 64 were explicitly satisfied (in different degrees). Only two victims found the juridical procedure a better way to deal with the crime. These results are in line with what is observed all over the world (Braithwaite, 1999).

4.4.3 Family Group Conferences

Since the end of 2001, an experiment has been operating which has opted to implement the original New Zealand version of conferencing. Because of the fundamentally different legal regimes (New Zealand being a common law country, and Belgium a continental legalistic country), some juridical “creativity” was needed to insert it into the Belgian juvenile justice system. In order to ensure that serious offending is conferenced, only juveniles who have already been referred to the Youth Court are dealt with.

Legally, the Youth Court judge orders conferencing to be considered, and makes a provisional disposition for referral to a private mediation service. In cases where the conference appears not to be possible (because the juvenile denies the facts, because he refuses to cooperate, or because the mediator estimates the meeting too risky for the victims), the court is advised. In the other cases, a conference is set up. The outcome is noticed as a “declaration of intention”, which is brought before the Youth Court. The conference

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2 The compensation programme in fact offered a kind of indirect mediation, leading to financial agreements in which authorities contributed to the compensation. In a number of cases, a direct meeting is organised after the payment.
agreement is then confirmed and "translated" in a judgement (Vanfraechem, 2002a).

Effectiveness
So far, one out of four referrals did not lead to a conference. Currently, more than 40 conferences have been carried out, for, among others, serious physical violence, burglary, arson, carjacking and armed robbery. Victims participate personally in half of the meetings, and are represented by a family member or their lawyer in another quarter. All conferences have led to a "declaration of intention", and all have been confirmed as such by the judgement. With three exceptions, no problems are signalled with the carrying out of the agreement.

Empirical evaluation is based on observations, interviews with all victims, offenders, the offenders' parents and with a sample of other participants. So far, the overall result reveals very high levels of satisfaction on the part of all participants. Even a majority of the victims who did not participate agree with the principle (Vanfraechem, 2002b). A very large majority of all participants said that they did not feel pressed to participate and found that the process as a whole was fair, respectful and paid sufficient attention to what they had to say. They also considered the outcome to be adequate and reasonable. It is too early to measure and compare the reoffending rate adequately.

4.5 Conclusion
Since the 1980's, the Belgian juvenile justice field has never settled down. The system has always been working in a "transitional period", pending a fundamental reform. The reason is that there is only consensus on the fact that the existing system needs reform, and that a simple return to a traditional punitive system is not desirable, but not on what the reform should look like. Different arguments are advanced to support the unanimous view in favour of departing from the pure welfare approach. (1) Focussing completely on the needs of the offender, and not at all on the characteristics of the offence, strips the system from its foundations in order to construct legal safeguards
such as legality, due process, proportionality, and the like. (2) Evaluative research does not a priori lead to encouraging results with regard to the general effectiveness of the treatment. (3) A pure welfare approach is not credible as a response to some forms of serious and patterned juvenile crime, especially in the cities. (4) Such an approach neglects the needs and rights of the victims.

An exploration of recent reforms in most European juvenile justice systems reveals a general tendency to hold juvenile offenders more responsible than they are in the protective approach, to focus more attention on the harm and suffering inflicted on the victims, and to avoid the purely repressive response which is dominant in the traditional criminal justice approach. Most European countries have then adopted a variety of restorative responses, like restitution or mediation and/or community service, to concretise these tendencies (Schalkens, 1998). Within the framework of restorative actions or sanctions, the reintegration of the offender would be the most important additional goal. Only in the case of very serious threats to public safety would the restorative foundations be subordinated to incapacitation. Currently the Government is considering whether or not to implement such an approach in new law for Belgium.
Chapter 5
Alternatives to the Prosecution of Children and Young Persons in Canada

5.1 Objectives of Youth Justice

The new Youth Criminal Justice Act in Canada (Y.C.J.A., in force 1 April 2003) is intended to significantly increase the use of diversion, including more use of police and prosecutorial screening, conferencing and community-based programs. The underlying objectives are to resolve a case in a way that is more expeditious and less expensive for society than a court-based response.

A properly designed diversion program can offer youths, parents, and victims an opportunity to engage actively in achieving a resolution for the situation caused by the offending which may prove more satisfactory to all involved. This move towards the increased use of community-based responses is consistent with a growing interest in "restorative justice" in Canada.

The objectives of the Youth Criminal Justice Act 2003 emphasise the importance of preventing crime by taking constructive measures to rehabilitate and reintegrate offenders, treating all those involved with fairness and respect, repairing harm to victims and acknowledging the rights of young people, victims and families. The following principles from section 3 of the Youth Criminal Justice Act 2003 describe what is intended:

3(a) the youth criminal justice system is intended to

(i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,

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1 This chapter is based on the data collected by the research team and information submitted by the collaborating expert, Professor Nicholas Bala, Faculty of Law, Queen's University, Canada. A fuller account of the measures alternative to prosecution in Canada can be found in Le and Wong, 2003.
(ii) rehabilitate young persons who commit offences and reintegrate them into society, and
(iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;

(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
(i) rehabilitation and reintegration,
(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
(i) reinforce respect for societal values,
(ii) encourage the repair of harm done to victims and the community,
(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

5.2 Target Groups where Measures Apply

The minimum age of juvenile court jurisdiction in Canada is 12 years of age. Apart from court jurisdiction, there are a number of different types of programs in Canada operated by police, Probation Officers and community groups to deal with young offenders (12 through 17 years of age) outside of the youth courts.

5.3 Main Features of the System

Canada is a federal state, with the federal Parliament having responsibility for the enactment of the laws dealing with criminal matters, including youth criminal
justice laws, while the provincial governments have responsibility for implementing these laws and providing services needed by the youth justice system. The provinces also have jurisdiction over a range of issues related to juvenile justice, including child-welfare, education and health. This overlap in constitutional responsibility for issues relating to juvenile justice often makes it difficult to achieve a comprehensive response to youth offending, and is reflected in significant variation across Canada in how youth crime is dealt with.

5.4 Alternatives to Prosecution

5.4.1 Extrajudicial Measures under the Y.C.J.A.

In 1984 the Young Offenders Act [Y.O.A.] came into force, enacted by the federal government. The Y.O.A. placed an emphasis on accountability, the protection of the public and respect for the legal rights of youths. That Act established a uniform national age jurisdiction of 12 through to the 18th birthday, and a custody sentencing regime based on determinate sentencing.

During the past decade in Canada there was intense criticism from the media, academic and youth justice professionals about the inadequacies of the Y.O.A., in particular the over-use of courts and custody, and arguing that many cases should be diverted from the formal youth justice system. Thus, the most significant parts of the new Y.C.J.A. are actually intended to reduce the use of courts and increase community-based responses to youth crime, while reducing Canada’s over-reliance on incarceration for young offenders. This move towards the increased use of community-based responses is consistent with a growing interest in restorative justice in Canada.

The Y.C.J.A. introduces two new terms: “extrajudicial measures” and “extrajudicial sanctions.” The broader concept of “extrajudicial measures” is defined as “measures other than judicial proceedings... used to deal with a young person alleged to have committed an offence.” Extrajudicial measures are all types of diversion and include the exercise of police discretion not to charge, as well as more formal diversion programs. “Extrajudicial sanctions” refers to a more formal type of pre-adjudication diversion schemes (see Figure 5.1).
Section 4 of the Y.C.J.A. sets out principles that are to govern the establishment of policies and programs about extrajudicial measures, as well as to be taken into account in making decisions about individual youth.

4(a) ... extrajudicial measures are often the most appropriate and effective way to address youth crime;

(b) extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour;

(c) extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence; and

(d) extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who

(i) has previously been dealt with by the use of extrajudicial measures, or

(ii) has previously been found guilty of an offence.

Section 5 sets out criteria that should be considered by those establishing programs and policies about the use of extrajudicial measures. This section makes clear that restorative justice principles are an important aspect of extrajudicial measures. While responses to youth offending outside the court system are intended to be informal, they should encourage youths to take responsibility for their acts, engage with their parents and communities, and repair harm done to victims.

Extrajudicial measures should be designed to:

(a) provide an effective and timely response to offending behaviour outside the bounds of judicial measures;

(b) encourage young persons to acknowledge and repair the harm caused to the victim and the community;
(c) encourage families of young persons—including extended families—and the community to become involved in the design and implementation of those measures;

(d) provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation; and

(e) respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence.

While ss. 4 and 5 encourage the use of extrajudicial measures, they do not give youth a legal right to be dealt with outside the court system. It is the police and prosecutors (perhaps acting with the advice of Probation Officers or community agencies) who decide who is charged and taken to court. In practice, however, some judges are, in appropriate cases, likely to suggest that the Crown prosecutor consider referring the youth to some form of extrajudicial measures. This judicial power of "suggestion" for use of extrajudicial measures is not legally binding, but may be quite influential with some prosecutors. If there has been a failure to deal with an appropriate case by means of extrajudicial measures, the judge might also take account of this at the time of sentencing, imposing only a judicial reprimand rather than a more onerous sentence.

5.4.2 Police and Prosecutorial Discretion to Divert

For adolescents who are apprehended for relatively minor offences, a Police Officer may decide that a youth should be dealt with informally, sometimes simply by cautioning the youth about not committing further offences. This practice, commonly known as "police screening" is especially common with delinquents under the age of 12, but it can be used with juveniles of all ages.

To encourage more use of police cautioning, as well as to provide some consistency and regulation of the practice, some provisions of the Y.C.J.A. make explicit reference to police cautioning. The exercise of discretion by the police not to charge is an important type of extrajudicial measure and, as such, is encouraged by the general statements in ss. 4 and 5. These statements stress the importance of responding outside the court system to adolescent
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offenders, especially if they have no prior record of offending and the offence does not involve violence.

The police caution may be administered informally by the officer handling the case. The officer may also contact the parents, telling them that their child is believed to have committed an offence. The Police Officer may informally discuss with the parents whether the offending behaviour is related to other problems that might be assisted by a social agency or doctor, or whether the child's school or church might be able to provide help, leaving it for the parents to decide what help to seek. The officer might arrange for a simple apology to a victim or a return of stolen property. If there is to be much involvement between the offender and victim, a referral to an extrajudicial sanctions program is likely appropriate. Most police forces have policies that require a police warning to be recorded and placed on their centralized computer files, so that if there is a repetition of offending behaviour, there may be a more intrusive response.

A caution may also involve the sending of a “caution letter” by the police or prosecutor to the youth and parents warning of the consequences of further offending. This cautioning process may also involve a voluntary referral for further help from a social agency or community resource. If the youth's behaviour or situation seems more serious, or there is a victim who expects or would benefit from some type of restitution or meeting with the offender, the youth may be referred by the police to a formal extrajudicial sanctions program.

Decisions by the police or a prosecutor to caution a youth or to refer a youth to a program of extrajudicial sanctions do not require any finding or formal admission of guilt by the youth. Before a Police Officer decides whether to caution a youth, make a referral to a program of extrajudicial sanctions or send a case to court, the officer will usually discuss the offending behaviour with the youth. The fact that the youth acknowledges the offending behaviour and expresses remorse could be a significant factor in deciding that a formal court response is not required.
5.4.3 Youth Justice Committees

To encourage the use of extrajudicial measures and community involvement in responding to youth crime, the Y.C.J.A. has provisions authorizing “conferences” and “youth justice committees.” While both were used under the former Y.O.A., it is expected that their use will increase with the enactment of the Y.C.J.A. Although the extent of their use depends on provincial policies and local initiatives, the federal government is encouraging this type of response to youth crime by providing educational materials, as well as funding support for operation and evaluation of model programs.

The previous Y.O.A required that the members of these committees were to serve “without remuneration.” While the members of these committees will continue to be drawn from the community, the requirement that all members serve without remuneration is not in the Y.C.J.A. This clarifies that in addition to volunteers, professionals who work for community agencies or schools, or Police Officers may be members. It also allows for possible payment of a person serving in the role of co-ordinator. A committee may also be involved in providing support for victims and assisting in their reconciliation with offenders.

A youth justice committee may have a role in arranging for support or supervision of young offenders in the community, whether referred by a court or as a result of extrajudicial measures. A youth justice committee may also be asked to play a role in co-ordinating the efforts of local child-welfare agencies, social agencies, and schools in working with young offenders. Some youth justice committees are also involved in responding to offending by children under 12, in conjunction with parents, police and child-welfare agencies. The way in which a youth justice committee operates depends on the role that it is expected to play. If it is dealing with individual youth, it is important that a committee has appropriate policies and a training program to ensure that volunteers understand their mandate.

5.4.4 Youth Justice Conferences

The concept of the conference in the Y.C.J.A. was at least in part inspired by the Family Group Conference, as developed in New Zealand. The conference
concept is also based on the traditional practices of many Canadian Aboriginal communities for dealing with offending. Indeed, in Canadian schools and families, there is a long tradition of responding to certain types of less serious offending behaviour by having a meeting with the offender, the victim, and others to discuss the behaviour and develop a consensus about a just response. The Y.C.J.A. recognizes a flexible concept of the conference as having a role in responding to youth crime.

Police forces in Canada are increasingly involved in establishing their own programs of extrajudicial sanctions, with conferences playing an important role in some localities. A growing number of Police Officers have training in conducting conferences involving offenders, family members, victims, and community members. Youth justice committees, schools and community agencies are also making increasing use of the conference as an aspect of extrajudicial sanctions programs.

A conference may be used in more serious cases to provide advice to a judge about whether to release a youth from detention pending trial, as well as advising at the time of sentencing or sentence review. Section 19 of the Y.C.J.A. expressly allows a youth justice court judge to refer a case to a community conference to provide advice for any judicial decision that will be made, such as a decision about pre-trial release or about sentencing. Since conferences involve members of the community and local agencies, and tend to operate on restorative justice principles, there is a greater likelihood of a conference resulting in a recommendation for a community-based sentence, and hence conferencing is likely to result in less use of custodial sentences.

Youth justice committees and conferences are similar but distinct. Youth justice committees are established in specific communities and have a continuing existence and fixed membership. Committees may deal with individual cases or systemic issues, while conferences deal only with individual cases and have a membership determined to deal with specific cases. The mandate of a youth justice committee may include the convening
of conferences about youths from a particular community, perhaps with some or all of the committee members participating in the conferences.

5.4.5 Extra-judicial Sanctions under the Y.C.J.A.

The process for referring a youth to an extra-judicial sanctions program varies in different localities. In some provinces a youth will be referred to an extra-judicial sanctions program without charges being laid (called a "pre-charge program"), but in others charges will have to be laid before a case can be sent to extra-judicial sanctions (i.e., a "post-charge program"). Some provinces will use both pre- and post-charge programs.

In most pre-charge programs, the police refer youths directly to the program, perhaps after some form of consultation with the Crown prosecutor's office, without even commencing a Youth Court proceeding. It is also possible to have a pre-charge program for which referrals are made by the Crown prosecutor as a result of referral after Crown screening of charges. With post-charge programs, the youth will generally have a first appearance in court before the Crown prosecutor decides whether the youth should be referred to the program. If the case is referred to an extra-judicial sanctions program, the court case will be adjourned pending a decision about which sanction should be imposed and the charges will be dismissed by the court if the youth satisfactorily completes the program. A common procedure is to have the Crown prosecutor, generally acting with the advice of the police, make the decision about whether to divert a youth to an extra-judicial sanctions program instead of dealing with the case in the courts.

Section 11 of the Y.C.J.A. requires that parents must be notified of any extra-judicial sanction that is imposed, but it is also a common practice to involve parents in the process before a decision is made about how to proceed. It is a common practice to notify the victim before sanctions are imposed and, often, to invite the victim to a meeting with the youth, at which the offence is discussed and an appropriate response developed. While these meetings can provide an important opportunity for victims to feel vindicated and for offenders to gain an appreciation of the effects of their conduct, the
meetings must be conducted with sensitivity to ensure that neither the victim nor youth feels intimidated by the experience. If appropriate, extrajudicial sanctions may include some form of restitution, apology, or personal service by the youth to the victim.

5.4.6 Offenders under 12: Child-Welfare Responses

The most common police response in Canada to offending behaviour by a child under 12 is to take the child home and discuss the situation with the child and parents. If the behaviour is more serious or there has been prior police involvement, the Police Officer may make a referral to an appropriate agency for voluntary assistance. If the police are aware of a program that deals specifically with offending behaviour by children under 12, a referral may be made to such a program; there are a few of these programs in major urban centres in Canada (see Figure 5.2).

When a child-welfare agency receives reports of offending behaviour by a child under 12 years of age, which may come from police or other sources, the agency will investigate whether there are parental abuse or neglect concerns that would in themselves merit intervention, with the offending behaviour being considered primarily as a symptom of the child's response to an unsatisfactory home situation. If parental abuse or neglect concerns are present, the agency will intervene. If abuse or neglect is not evident but offending behaviour is a serious concern, the response of child-welfare agencies will vary.

In every province the primary legal basis for a response to offending by children under 12 is child-welfare law. When parents are considered unwilling or unable to care properly for their children, child-welfare legislation authorizes involuntary intervention by a state-sponsored child-welfare agency. Under this legislation, child-welfare workers, and in most jurisdictions Police Officers, have the authority to apprehend a child believed to be “in need of protection.” A Police Officer or child-welfare worker who is dealing with a child under 12 who is believed to have committed an offence may have grounds for immediately apprehending the child, although this is only to be done if there are serious and pressing child-welfare concerns. A child who is apprehended
Figure 5.2 Welfare responses to child offenders under 12 in Canada

Offence by child under 12 → School, parents or victim responds

Report to Police

Police investigate - ascertain under 12 child offender → Police warn child/parents

Mental Health Involvement - Commital to Facility (Rate)

Referral to Child Welfare Agency for investigation


Child Welfare Court (civil process) → Court Dismisses

Supervision by Agency in Child's Home → Temporary Agency Care (foster or group home) → Permanent Agency Care (foster or group home or adoption)
is removed from parental custody and usually placed in a foster home or a
temporary care facility. There is always an onus upon the agency to justify an
apprehension as necessary to protect a child from abuse or neglect, since
apprehension represents a great intrusion into the life of the child and family.

Although each Canadian province has its own unique child-welfare legislation,
there are significant similarities. The legal basis for child-welfare agency
involvement arises in such circumstances as: physical, emotional, or sexual
abuse by the parents; physical or emotional neglect; and other situations
where parents are unwilling or unable to care for their children. Each province
also allows for intervention in cases of offending behaviour by children under
12, which can be classified as those under which (Baia and Mahoney, 1995):

- offending behaviour by a child under 12 is itself a ground for intervention;
- offending behaviour combined with parental inability to respond
  adequately to that behaviour is a ground for intervention;
- offending behaviour is not specifically referred to, but child-welfare
  legislation may in more serious situations be invoked under more
general criteria, such as on the basis of being a child "beyond the
  control of the person caring for" the child.

5.4.7 Offenders under 12: Voluntary Programs—Earlscourt in Toronto
In a few of Canadian communities there are special programs for offending by
children under 12 to which police or schools can refer parents; attendance at
such programs is, however, voluntary. The Earlscourt Child and Family Centre,
in Toronto, Canada's largest city, is the only facility to specialize in
behavioural problems and offending by children under 12, and has a
sophisticated range of programs. Earlscourt has a number of programs for
persistent or serious child offenders under the age of 12, including special
programs for girls, for sexual offenders and for children who are committing
arson, as well as a small residential program for the most seriously disturbed
child offenders. The Centre receives referrals from many sources, but over
half of the cases are referred by the police. There is now a special protocol for
referrals from police and other agencies to the Centre.
Earls court has conducted research to help identify children under 12 with the highest risk for reoffending, and to assess the effectiveness of its interventions. It has developed very useful early risk assessment instruments for children up to 12 years of age—one for boys and another for girls—to identify children with the greatest risk of future offending behaviour and to help select effective intervention strategies.

The largest program at the Earls court Centre is the Outreach Project, a multifaceted, intervention program for boys under 12 years of age with significant behavioural or offending problems. Treatment components are matched to the individual needs of each boy and his family; a main component is a 12 week after school program for boys and their parents. It includes individual and group sessions for the boys, and separate sessions for parents; in appropriate cases the boy's school will also be involved, and there may be family counselling. This program is based on a cognitive-behavioural problem solving strategy designed to help children and parents to increase their ability to think before they act in problematic situations.

Earls court has conducted research studies that indicate that at least in the short term, children involved in the program in comparison to a control group have significant reduction in misconduct (based on parents’ reports and self-report measures). Other research indicates that approximately 60% of the high risk children who have been through the Project have not had Youth Court records of offending. While the Earls court programs seem very promising, there has not yet been the type of long term, control group based studies that are needed to definitely establish the value of this type of intervention in reducing recidivism.

Although there are a few good programs in Canada for children under the age of 12 who have behavioural problems, such as the Earls court programs, these operate on a voluntary basis and there is a concern that the parents of the children most in need of help will not cooperate with these programs and the children will not receive the intervention that they need.

For further references and a summary of research, see www.earls court.on.ca/orp.html
5.5 Effectiveness of the Measures

There has been substantial variation in the use of police screening and alternative measures in different provinces, but on the whole Canada has made far more use of the formal youth court processes to respond to adolescent offending than other countries and less use of various diversionary practices. Canada’s extensive reliance on a court-based response to youth offending was both expensive and associated with a high rate of use of youth custody. There is substantial scope for the extension of various diversionary schemes in Canada, and the new Youth Criminal Justice Act 2003 should result in a significant increase in the use of these responses.

While diversionary responses to youth crime have not been conclusively proven to reduce recidivism, there is the prospect that some types of diversion programs can reduce reoffending among some youths. Experience in Canada and elsewhere clearly indicates that we can extend the use of various diversionary programs without increasing the risk of reoffending.

5.6 Conclusion

Many different models of diversion are being tried in Canada and some may have the potential to reduce recidivism. Some diversion programs provide responses that are quite similar to those used by the courts, albeit without being imposed after a judicial process, and these are likely to have similar recidivism rates to court-based responses. There are, however, now some programs that offer restorative justice based responses to adolescent offending which are not available through the conventional youth court system. One would expect that the effectiveness of diversionary programs in terms of reducing recidivism would depend on the nature of the program and the types of cases dealt with, as well as on whether the program has good links to counselling and community supports that can assist youths at serious risk of reoffending in dealing with their problems. Some of those involved in operating diversionary programs claim that those programs that have higher levels of victim involvement are more likely to be effective, both in engaging
offenders and in reducing recidivism. Conversely, it seems that non-involvement of victims may reduce the impact of the diversionary process on the young offender and hence reduce the effectiveness of this type of program. Diversion of adolescent offenders, which has been underused in Canada, should be encouraged.

For children under 12, Canada makes no use of youth court. The selection of the age of 12 as a minimum age of criminal responsibility is a defensible policy choice, recognizing that children have great difficulty in meaningfully participating in the formal Youth Court process. While Canada has a few very good programs for child offenders, most notably those at the Earls Court Centre in Toronto, there must be appropriate legislation and programs in place to allow for appropriate treatment oriented responses to child offenders.

While various types of youth diversion programs can make some use of volunteers and provide a less expensive alternative to adolescent offending than sending a youth to court, effective programs require appropriate funding. These programs are most likely to be effective if they have trained competent staff with enough time to work with victims and offenders, and to monitor and follow up with a youth after a diversionary decision is made.
Chapter 6
Alternatives to the Prosecution of Children and Young Persons in Queensland, Australia

In Australia, each State has a separate system of administration of criminal justice for children. This paper discusses the main institutional responses to children and young people who are convicted of offences with reference to the case of Queensland, Australia.

6.1 Objectives of Juvenile Justice

The Juvenile Justice Act 1992 provides a framework for the administration of juvenile justice and dealing with children who have or are alleged to have committed offences in Queensland. The main objectives of the measures are (summarized from Section 4 of the Act):

1. Detention. A child (a) should be detained in custody for an offence (whether on arrest or sentence) only as a last resort and (b) if detained in custody—should only be held in a facility suitable for children.

2. Diversion. If a child commits an offence—the child should be treated in a way that diverts the child from the court's criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.

3. Fairness. Participation and understanding: if a proceeding is started

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1 This chapter is based on the data collected by the research team and information submitted by the collaborating experts, Dr Wing-hong Chui, Assistant Professor, School of Law, City University of Hong Kong, HKSAR, Mr Jason Kidd, Community Conferencing Service Brisbane City, Department of Families, Queensland, Australia and Mr Cameron Preston, Queensland Police Service, Australia. A fuller account of the measures alternative to prosecution in Queensland, Australia can be found in Lo and Wong, 2003.
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against a child for an offence—(a) the proceeding should be conducted in a fair and just way; and (b) the child should be given the opportunity to participate in and understand the proceeding.

4. Accountability. A child who commits an offence should be—(a) held accountable and encouraged to accept responsibility for the offending behaviour; (b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and (c) dealt with in a way that strengthens the child’s family.

5. Victims. A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.

6. Parents. A parent of a child should be encouraged to fulfil the parent’s responsibility for the care and supervision of the child, and supported in the parent’s efforts to fulfil this responsibility.

6.2 Targets Groups where Measures Apply

The age of criminal responsibility in Queensland is ten, and the Juvenile Justice Act 1992 applies to young people aged from ten to sixteen. While section 6 of the Act gives the Governor in Council power to extend the definition of a child to include those of seventeen years, the power has not been exercised. It also provides an exclusive code for dealing with juvenile offenders who are charged, thereby guiding the Queensland Police Service, all Courts and the Department of Families to respond to their offending behaviour during the pre-trial and sentencing processes.

6.3 Main Features of the System

Formal sentencing options for juvenile offenders available in the Children’s Court are set out in Table 6.1. The sentencing options can be classified into three main types, namely unsupervised orders, supervised orders, and
detention orders. In addition to the sentence options set out in Table 6.1, the court can impose an order that the child pays restitution and compensation to an amount no greater than twenty penalty units for property loss or for any injury suffered by any other person (section 192(2) of Juvenile Justice Act 1992).

Table 6.1 Sentencing options for juvenile offenders in Queensland

(I). Unsupervised Orders

Reprimand—This option must always be considered when: (a) the young person is a first offender, and (b) the offence(s) is a minor or simple one.

Good behaviour order—Any breach of a good behaviour order may be taken into account in sentencing if the young person appears in court for another offence.

Fines

(II). Supervised Orders*

Probation order

Community service order**

(III). Detention Orders*

Immediate release order—The court may consider imposing a detention order but immediately suspend the detention order and release the young person on an immediate release order

Detention order

* Combinations of orders for a single offence—A court may make more than one type of order for a single offence, these being (a) a probation order with a community service order or (b) a probation order with a detention order.

** A child who is under 13 years at the time of sentencing cannot be ordered to perform community services (see section 120(1)(e)).

Source: Department of Families, Youth and Community Care, 1997: Chapter 5
6.4 Alternatives to Prosecution

One of the general principles of juvenile justice emphasises that where appropriate, it is desirable to deal with children who offend by diverting them from the criminal justice system in relation to the nature of the offence and the child's criminal history (section 4(d) of Juvenile Justice Act 1992). A number of options for this are available to the Police and they are described below.

6.4.1 Warnings

Police have the option to take no formal action against a child and adopt the least intrusive method of dealing with the offence by talking with the child. Given the age and antecedents of the child or the circumstances of the offence it may be more appropriate to warn the child about the particular conduct. This may be sufficient to divert the child from the Court system.

6.4.2 Cautioning

The Police Service's cautioning programme aims at diverting a majority of juvenile offenders who committed minor offences from the court. Cautions are normally administered for the first offence which comes to police attention. If the offences are separated by time and the circumstances warrant it, the child may receive more than one caution.

The following are the legislative criteria or conditions for a young offender to be eligible for a caution: (a) if the child admits committing the offence to the Police Officer; and (b) if he or she consents to being cautioned. When administering a caution, in addition to the child, a person chosen by the child, a parent or an adult chosen by a parent should be present.

Effectiveness

Figures available from the Department of Families (2001) show that police dealt with 33,659 matters involving young people, and young people were responsible for 17% of the matters cleared in 1999/2000. Forty-two per cent of all matters involving young people were dealt with through the formal
cautioning process in 1999/2000, the same percentage as in the previous two years.

O'Connor (1992: 128-129) comments that: "The process can be a highly stressful and unpleasant experience for a child." A child being cautioned "is required to admit their wrongdoing in front of a Police Officer and parent or caregiver" and is also "made aware of what consequences would follow reoffending". Lewis and O'Regan (1992: 246) believe that cautioning is "more than a simple exhortation to commit no further offence" and it helps the child and parent address pro-actively the underlying reasons for offending behaviours such as physical or sexual abuse. A Police Officer thus may be able to refer the child or parent according to their needs or problems to relevant agencies for assistance.

However to date evaluation research on the use of cautioning for juvenile offenders is almost non-existent in Queensland, thus limiting our understanding of its effectiveness. Lewis and O'Regan (1992: 247) comment:

Data on recidivist rates for juveniles coming to the notice of police is difficult to obtain, however indications are that between 70% and 85% of juvenile offenders never come to notice again....

6.4.3 Community Conferencing

Both the police and the court can refer matters they consider appropriate to community conference, for young people aged from 10 to 16 inclusive when they commit the offence. To be more specific, the Juvenile Justice Act 1992 requires that the following conditions are met:

- The young person must admit the offence to the police.
- The victim (if there was a victim) must give consent.
- A caution is inappropriate, and the matter would have otherwise been sent to court if a referral to conference was not made.
The Police Officer considers that a referral is more appropriate than starting a proceeding.

In deciding whether it is appropriate to refer an offence to a community conference a Police Officer or court must have regard to (a) the offence's nature; (b) the harm suffered by anyone because of the offence; and (c) whether the interests of the community and the child would be served by having the offence considered or dealt with in an informal way.

Diversion to Conferencing may occur at a number of different stages along the youth justice service continuum. Figure 6.1 illustrates the ways in which referrals can be made to community conferences.

Figure 6.1 Ways of referrals made to community conferences

Source: Department of Families, Youth Justice Operations Unit, Community Conferencing (2003)
A Community Conference is a facilitated meeting between a young person who committed a crime, the young person's family or other support people and the victim (if they wish to attend). The victim may also bring support people with them (Pollard and Kidd, 2000: 1). This group is the community of people who were directly affected by the crime. The Queensland model is administered through the Department of Families. The model provides for Conferencing Co-ordinators to be based in the various Regions of the Department around the State who are responsible for contracting and training of conference convenors.

Conference convenors are present to facilitate a safe and supportive environment to discuss the effects of the offending behaviour and to negotiate an agreement about how to repair the harm that has been done. Conferences usually run for approximately between 1½ and 2 hours. Unlike some other Australian and overseas programmes however, the Queensland programme relies on an intensive face-to-face preparation phase leading up to the conference.

The underpinnings, rationales and framework of practice in Queensland Conferencing are elaborated in the Convenors Manual (Department of Families, 2002), and they include accountability, reparation, reintegration, reducing recidivism, family responsibility, victim participation, community involvement, diversion and cultural appropriateness (Department of Families, 2002: 5).

A significant change pending for Conferencing in Queensland is the substantial amendments to be made to the Juvenile Justice Act 1992 which governs the programme. Some of the major amendments include:

- Removing the need to obtain victim consent prior to referral to Conferencing. This change will substantially free up the referral pathway from court as this requirement had necessitated adjournments to obtain victim consent. This will also enable the Conferencing Service to canvass the option with victims to ensure they are given the full
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information and can make an informed decision on whether to participate.

- Removing the potential which exists currently in limited circumstances for the Conferencing referral to appear on the young person's court history. This is seen as a positive step in that the Conferencing process as a more informal justice system response is not subject to the same legal checks and balances as court.

- Enabling the court to leave the pre-sentence conference agreement as the court outcome when sentencing is not then required.

- Tightening up the referral guidelines for both police and court to encourage referrals whilst still maintaining a discretionary referrals system.

Effectiveness

Section 18A of Juvenile Justice Act 1992 outlines the intended benefits of Conferencing to juvenile offenders, victims and the community. For instance, the juvenile offender may benefit by meeting the victim and taking responsibility for their wrongdoings, giving an opportunity to make restitution or pay compensation, and having less involvement in the criminal justice system to avoid stigmatisation and lengthy delay in trials. While the victim may benefit by meeting the offender and understanding why he or she committed such an offence, and expressing the victim's interests and concerns, the community may benefit by increasing use of dispute resolution without formal legal proceedings.

Likewise, Pollard and Kidd (2000: 2) believe that Community Conferencing offers many potential benefits. First, it is a process which brings together those people in the community who have been most affected by a criminal offence. Second, it offers an opportunity for a young person to admit their offence and accept responsibility for his or her offending in a real and tangible way and therefore also reduce reoffending rates. Third, it is an inclusive process for community and victim involvement in the justice system and can
empower the young person's family through their involvement in decision-making about the offending behaviour.

Research on Queensland Conferencing like other jurisdictions has emphasised the measuring of satisfaction levels of participants in conferences. Satisfaction is indeed a contested concept to define precisely. However research on Conferencing commonly defines this as the participant's sense of fairness and procedural justice (Hayes and Daly, under review). The original external evaluation of Queensland Conferencing (Hayes et al., 1998) found that participant satisfaction levels were above common international standards of best practice. One reason for this may be the extensive preparation phase employed in Queensland (Palk et al., 1998: 8). Some key findings are summarised as below:

- Between 96.7% and 100% of young people, parents or caregivers and victims were satisfied with the Conference agreements and felt the Conference was fair.
- Over 98% of young people, parents or caregivers and victims reported that they would recommend Conferencing to a friend in the same position (reported 2 months after the Conference).
- Results from the study of 76 Conferences examined within the trial period show a compliance rate of 93% with Conference agreements.
- Two months after the Conference 82.4% of victims believed the Conference helped the offender understand the impact of their offence. 90% of parents and 76% of victims thought the Conference process helped the young person "make up" for the offence.
- 88.2% of victims expressed satisfaction with agreements.

Hayes et al. (1998) also found that victims were more satisfied with the process than they would have expected to be through the courts. In his recent work Hayes also hypothesises that variations in victim satisfaction rates across programmes are affected by the emphasis given to victim's rights and roles in the relevant legislative framework (Hayes, 2002: 7-8).
Furthermore some higher volume jurisdictions such as South Australia have directed resources away from the conference preparation phase and this might also explain variations in satisfaction rate, as participants may in some instances enter conferences with potentially unrealistic expectations (Hayes, 2002: 8).

The Re-Integrative Shaming Experiments (RISE) in Canberra are important in that unlike the Queensland evaluations the research compared conferences with courts in a randomised study (Strang et al., 1999). This research together with the recent South Australian research (Daly and Hayes, 2001) also considered both procedural justice (fairness) and restorative justice (repair of damage) outcomes separately. Amongst other things the RISE research found higher reported levels of procedural fairness and restorative justice than court (Daly and Hayes, 2001: 5). There was also the finding that victims report that the process helped them to understand why the offence occurred, they are less fearful of the offender and are better able to move on and put the offence behind them (Strang, 2001 cited in Hayes, 2002).

The results from the ongoing internal evaluation of Conferencing in Queensland are consistent with these positive outcomes (Information obtained from the Department of Families, Youth Justice Operations Unit, Community Conferencing database). For example recent results across the programme (2001/2002 financial year) indicate that:

- 99% of the 389 Conferences held during the year reached an agreement.
- 96% of all participants in Conferences held during the year felt the Conference was fair.
- 94% of participants were satisfied with the agreement made.
- Overall victims indicated a 93% satisfaction rate with Conferences.
- Most Conference agreements have been completed successfully; only 13 agreements (3%) were breached as at the end of the financial year.
Although only 3% of conference agreements were breached last financial year there is an increasing number of young people being referred from the courts who are already well entrenched in the system and this makes agreement enforcement and conference processes more difficult. The increasing numbers of pre-sentence referrals in particular are more likely to have more serious offences, more challenging and longer offending histories and a myriad of other factors which influence their lives such as homelessness, exclusion from school and job markets, drug and alcohol abuse and an absence of family and support networks.

Recidivism

The majority of the research on Conferencing has been concerned with the quality and effectiveness of the conference process in dealing with the immediate offence. Less emphasis has been given in the research to the longer-term outcomes such as recidivism (Hayes, 2002: 17). Jurisdictional variations in the nature of conferencing programmes and processes also makes cross-programme comparisons difficult (Hayes, 2002: 18). However in terms of reoffending data the New South Wales programme (the current model of Conferencing in Queensland was heavily influenced by a review of the New South Wales system) recently published a study which indicated a 15-20% reduction in reoffending when conference participants were compared to court cases (Luke and Lind, 2002).

Hayes (2002) believes that these results are consistent with a growing body of evidence in this area which suggests that restorative justice has the potential to effect reductions in reoffending. Furthermore certain studies conducted by Hayes and Daly (2001) in South Australia and by Maxwell and Morris (2001) in New Zealand have found a relationship between reoffending and whether the conference process generated feelings of remorse in the offender.

A more recent and longer-term evaluation is currently under way in Queensland Conferencing (Hayes, 2002). In the preliminary report Hayes concludes that the Queensland model of Conferencing may effect change in recidivism behaviours for some offenders but that further research is required to examine the relative
impact of pre-conference offending, of the conference process itself and the young person's social environment post conference. Hayes found that 44% of the young offenders conferenced did not re-offend even from three to five years post conference. Where young people did re-offend the median annual post-conference offending rates were nominal (one offence per year).

6.4.4 Drug Diversion

With reference to section 211 of Police Powers and Responsibilities Act 2000, juvenile offenders aged between ten and sixteen are eligible for alternative processes to Court for minor drug offences. However it does not specify what "minor drug offences" in the current legislation are. In a brochure entitled Drugs and the Law in the Sunshine State, the Drug and Alcohol Coordination of the Queensland Police Service (2000: 9) states that:

Another option for police and magistrates to deal with drug offenders is diversionary programs. The Police Diversion Program, to commence in 2001, will be offered to eligible juveniles and adults charged with possession of 50 grams or less of cannabis. Offenders will be required to admit guilt and agree to undertake a drug assessment/brief intervention which includes an education program.

Effectiveness

No reliable statistics are available to measure the effectiveness of the drug diversion programme, perhaps due to the recency of its implementation in Queensland. However, it is anticipated that such a programme will not only reduce the rate of prosecution of minor young drug offenders especially for cannabis-related offences but also improve their access to other services such as mental health services and drug rehabilitation services. This is a joint effort between Queensland Police Service and Queensland Health to deal with young drug offenders in the community. The call for multi-agency planning and implementation of the diversion programme should not be ignored. In addition, in a recent study conducted in 1999, Morrison and Burdon (2000: 74) report that:
Many respondents emphasised the need for pragmatic training methods to educate police on the ethical and expedient justifications for adopting formal diversion with minor alcohol, and in particular, drug-related offenders. In addition, it was broadly recognised that the strategies and the diversion system required close monitoring and evaluation. The purpose of this was two-fold; (i) it would provide a means for identifying unintended consequences of diversion and, (ii) it would be conducive to providing police with the necessary feedback for assessment of whether they were achieving their objectives.

6.4.5 Police Counsels for Child Offenders under Ten Years of Age

When a child under the age of criminal responsibility commits an action which but for the child's immature age (refer section 29 of the Queensland Criminal Code 1899) would be an offence, that child may be officially counselled. The Police Counsel follows the same procedures as a Police Caution with a slightly different reporting and administrative requirements. The process involves an "authorised" Police Officer (usually a senior or designated member of the Juvenile Aid Bureau) sitting down with an erring juvenile, and explaining why it is wrong to have committed such an action. This process is carried out in the presence of the child's parent or guardian or a responsible adult. Any relevant police incident reports are then updated to reflect that counselling has been administered as an outcome to the investigation.

As with Police Cautioning, police operational procedures also outline the conditions for Police Counsel. First, the child must admit to having committed the actual action. Second, the child must consent to being counselled. Third, a prima facie case must be established against the child in relation to each incident, which should not constitute a serious one, unless it is a matter for which an adult could be dealt with summarily; or permission is obtained from a commissioned officer or delegate to counsel a child for that action.
However, information is not available on how frequently Police Counsels have been used or on their impact on children. The lack of knowledge in this area may be a result of the small number of 'very young' criminals.

6.4.6 Youth and Family Support Service for At Risk Children and Young People

In 2001, Department of Families recently introduced a new and innovative early intervention and diversion service with the establishment of the Youth and Family Support Service (YFSS) in Brisbane, Queensland. This is an extended hours support and counselling service for "at risk" young people and their families.2

The YFSS aims to provide best practice early intervention and diversion services to youth at risk and their families by assisting families and young people to respond to conflict or crisis; ensuring young people at risk of harm have an appropriate service response; and diverting young people at risk of offending from further involvement in the statutory youth justice system.

The assessment, case planning and ongoing case management processes employed by the service are underpinned by a developmental prevention framework which involves intervention early in developmental pathways by responding to multiple risk and protective factors at crucial transition points (National Crime Prevention 1999: 10). Early intervention is therefore defined as intervention early in the development of a problem. This may or may not mean early in life (National Crime Prevention 1999: 11). Interventions are aimed at early identification of potential and actual problems as they emerge and develop in the transitions from pre-adolescence to adolescence and from adolescence to adulthood.

The service operates upon a philosophy which recognises that it is important for young people and their families to stay connected. It recognises that "between the ages of 10 and 17 years young people experience many

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2 At the outset, the authors would like to acknowledge that much of the following information is extracted directly from YFSS's promotional material, namely YFSS Service Description and the YFSS Information for Agencies Brochure.
changes: physical, emotional, social and educational. This can be a time when both young people and their parents are anxious about a range of issues such as school achievement, peer groups and risk-taking behaviour. It is an important time for establishing a strong pathway for the transition to adulthood. It is also a critical period when families need to support each other and remain connected" (Queensland Government, 2001: 12).

The service also recognises that young people at risk and their families require access to appropriate information and support and in particular need help to manage conflicts and crises. Furthermore this help should be provided at the earliest possible point in the conflict or crisis and before young people and their families become involved in the statutory child protection or youth justice systems.

The YFSS works mainly with young people aged between 10 and 17 years, and their families who live within the Brisbane City Region. Client engagement with the YFSS is on a completely voluntary basis and the service is provided free of charge. Referrals to the service come from a range of government and non-government agencies such as the Police, child protection services, youth justice services, telephone crisis and help lines, health authorities, schools, family support services, youth outreach and youth accommodation services.

Cultural and lifestyle diversity is valued by the YFSS. Clients include Aboriginal or Torres Strait Islander young people, youth from culturally and linguistically diverse communities, as well as lesbian, gay, bisexual or transgender young people.

YFSS operates as an extended hours (10 am to 12 midnight, seven days a week) service enabling a timely response to young people at risk. Teams of caseworkers operate in rostered shifts, allowing increased availability and timely responses to referred young people and their families. Crises are generally responded to within 24 hours and both urgent and non-urgent referrals are followed up with visits scheduled at times convenient to the young person and their family. The capacity of the YFSS to make home visits
differentiates the service from those that provide only telephone counselling. The YFSS also provides supported referrals to other services for specialist and longer-term support (for example child and youth mental health services or job placement and training agencies). The YFSS works closely with other Government and community agencies to ensure coordinated and integrated support for young people and families. The YFSS does not provide statutory child protection or youth justice interventions as these are provided by other Government workgroups. This ensures that the YFSS resources are targeted at early intervention, prevention and diversion services.

Effectiveness

The June 2002 Management Report for YFSS found that the service was receiving more than one new referral per day and this was increasing (60% of referrals were accepted). Most referrals (about 80%) were for young people aged between 13 and 17. Multiple issues were identified at the point of referral:

- family conflict/crisis (>70%)
- homelessness (>35% and increasing)
- youth crime (>30%)
- drug use (> 22%)
- school non-attendance (>21% and increasing)
- immediate survival needs (>17%)

The YFSS is subject to a cumulative two-phase process that includes process and impact evaluations. The first nine months (30 July 2001 to 30 April 2002) of service development processes have been evaluated. A forthcoming Process Evaluation Report will provide a profile of the YFSS as it has evolved and a measure of the extent to which the YFSS is compliant with best practice/evidence based standards for early intervention services. This report should be available early in 2003. The second phase impact evaluation will measure the impact of the service with reference to the YFSS service objectives.
6.5 Conclusion

This paper has examined four alternative measures for diverting child and young offenders from the formal criminal justice process, and one initiative which aims at addressing the needs of at-risk children and families thereby preventing them from offending in Queensland. One observation is that while a number of initiatives have been implemented in the past few years, research to monitor the progress and measure outcomes is still developing. Apart from Community Conferencing, diversion programmes in Queensland are geared towards the treatment of first-time, minor offenders especially in the pre-adjudication. However, in the light of the seriousness of the offence not all first offenders will be diverted from prosecution or the court. Based on previous research in England and Wales, there are concerns including differential policies and procedures on police cautioning in different regions over England and Wales and prejudicial police decision-making against the ethnic communities (Gelsthorpe et al., 1995). While there are criteria to be met before police cautioning or community conferencing can be used, a wide range of factors such as gender, ethnicity, class, and parental attitudes are found to affect how an offender is treated. There is evidence that Aboriginal youth are less likely to benefit from police decisions to divert children from the court system in Australia (Gale et al., 1990). Based on the available data, females (59%) are more likely than males (37%) to be cautioned in 1999/2000 (Department of Families, 2001). This experience requires us to look at the discretion exercised by the police and the Family Service Officers in the diversionary process (Brants and Field, 1995). This is clearly an area in which further research is needed.
Chapter 7
Alternatives to the Prosecution of Children and Young Persons in New Zealand

7.1 Objectives of Youth Justice

In 1989, New Zealand adopted new legislation (the Children, Young Persons and Their Families Act 1989) that set out new objects and principles for Youth Justice including the use of Family Group Conference. The new system emphasises diversion from the courts and responses that aim to provide for the rehabilitation and reintegration of young people, support for their families, and that take into account the needs of victims.

The main objects stress:

- promoting the wellbeing of children and families;
- assisting families in caring for their children;
- ensuring that young offenders are held accountable for their actions;
- dealing with children who commit offences in ways that enhance their development.

General principles emphasise the need to:

- involve families in decisions and seek their agreement to decisions;
- consider the wishes of children and young people and their welfare;
- work in a time frame appropriate to the age of the child or young person.

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1 This chapter is based on the data collected by the research team and information submitted by the collaborating expert, Dr Gabrielle Maxwell, Director, Crime and Justice Research Centre, Victoria University of Wellington, New Zealand. A fuller account of the measures alternative to prosecution can be found in Lo and Wong, 2003.
Specific principles governing the youth justice sections of the 1989 Act emphasise that:

- criminal proceedings should not be used if there is an alternative means of dealing with the matter;
- criminal proceedings must not be used for welfare purposes;
- measures to deal with offending should strengthen the family, family group, "Whanau, hapu and Iwi",\(^2\) and foster their ability to deal with offending by their children and young people;
- young people should be kept in the community;
- age is a mitigating factor;
- sanctions should be the least restrictive possible and should promote the development of the child in the family;
- due regard should be given to the interests of the victim; and
- the child or young person is entitled to special protection during any investigations or proceedings.

7.2 Target Groups where Measures Apply

The age of criminal responsibility in New Zealand is 10. However, children under the age of 14 cannot be prosecuted except for the offences of murder and manslaughter. In other cases where such children's offending causes concern, they may be dealt with by warning, Police diversion or a Family Group Conference (FGC). Alternatively they may be referred to the Department of Child, Youth and Family Services (CYFS) as in need of care and protection and, if necessary, issues of the care and guardianship of these children can be dealt with in the Family Court. A young person who commits offences beyond the age of 16 is dealt with in the same manner as an adult, that is, in the District Court or, if the offence is serious, in the High Court. The very serious offences of murder and manslaughter committed by any juvenile aged 10 years or over are automatically transferred by the Youth Court to be dealt with in the High Court. The Youth Court can also transfer other serious matters to the adult courts (see Table 7.1 and Figure 7.1).

\(^2\) Whanau, hapu and Iwi refer to the extended family, clan and tribe which are the key groups within the social structure of Maori (the indigenous people of New Zealand).
Table 7.1 Potential responses to children and young people who offend in New Zealand

<table>
<thead>
<tr>
<th>Type of intervention</th>
<th>Child welfare system (Care and Protection)</th>
<th>Youth Justice system</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Measures</td>
<td>Ages</td>
</tr>
<tr>
<td></td>
<td>C&amp;P agreement with CYF</td>
<td>0-16</td>
</tr>
<tr>
<td></td>
<td>C&amp;P FGC</td>
<td>0-16</td>
</tr>
<tr>
<td></td>
<td>Application for Guardianship</td>
<td>0-16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10-16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10-16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14-16**</td>
</tr>
</tbody>
</table>

Abbreviations:
- CYF is the Department of Child Youth and Family Services which manages both the care and protection system (C&P) and the Youth Justice system (YJ).
- FGC stands for a family group conference. These can occur in both the child welfare and youth justice systems but the purposes, procedures and governing legislation is different in each system.

Notes
- C&P agreements are signed agreements made between CYF social workers and the family and have no explicit standing under the legislation.
- Police Youth Diversion is an informal arrangement made by the Police Youth Aid officers with the family and has no explicit standing in legislation.
- Apart from the C&P agreements and the Police Youth Diversion, all other procedures are explicitly dealt with in the Children, Young Persons and Their Families Act 1989.
- It is important to note that these ages of jurisdiction and measures for youth justice matters exclude murder and manslaughter which is always dealt with in the adult courts for those over the age of 10 years.
Figure 7.1 Pathways through the system

Young person detected in alleged offending

- No action, informal warning
- Refer to Youth Aid
- Charges laid in Youth Court

- Warning
- Police youth diversion
- Refer for FGC

- Family Group Conference
  - Denied or non-agreed - refer back to Police

- Family Group Conference

- Youth Court
  - FGC plan implemented
  - Court orders
7.3 Main Features of the System

The New Zealand system incorporates a number of innovative strategies: the rights and needs of indigenous people were to be taken into account; families are central to all the decision-making processes involving their children; young people themselves have a say in how their offending should be responded to; victims are given a role in negotiations over possible penalties for juvenile offenders; and decision-making advocated is to be by group consensus.

These strategies have been achieved partly through changes in Police and court processes and practice but mainly through a new decision-making forum, the Family Group Conference which enabled victims and offenders to meet together with members of the enforcement agency and the family in order to decide on an appropriate penalty. The Family Group Conference enables the involvement of the family, the young person and the victim in decision making at a venue and using a procedure of their own choice and in accordance with their culture.

7.3.1 Police

Juvenile offenders cannot be arrested unless certain tightly drawn conditions are met. The most important are that the arrest is necessary to ensure the juvenile's appearance in court, to prevent the commission of further offences, or to prevent the loss or destruction of evidence or interference with witnesses.

It is expected that minor and first offenders will be diverted from prosecution by means of an immediate (street) warning. Where further action is thought necessary, the Police can refer juveniles to the Police Youth Aid section (a specialist unit dealing only with juveniles) for follow-up—for example, a warning in the presence of the parents. Youth Aid may also require an apology to the victim and give the child or young person an additional sanction (for example, some work in the community). This system of Police Youth Aid Diversion and the role of Police more generally in responding to children and young people is more fully described elsewhere (Maxwell et al., 2002). Evidence from this study indicated that 44% of children and young people were
Alternatives to the Prosecution of Children and Young Persons in New Zealand
dealt with by warnings, 32% by Police Youth Aid diversion, 8% by direct referral to a Family Group Conference and 17% by charges in the Youth Court followed by a Family Group Conference.

7.3.2 Youth Justice Co-ordinator
The Youth Justice co-ordinator (YJC) is employed by the Department of Child, Youth and Family Services (CYFS). It is his or her responsibility to:

- negotiate with the Police to divert juveniles themselves rather than arrange a Family Group Conference (FGC) unless the offence is moderately serious or because of previous offending;
- meet with the young people and their family and the victim to inform them about the conference and to consult with them about the arrangements for it including who will be invited and when and where it will be held;
- convene the conference within statutory time frames and to facilitate the conference; and
- record the outcomes and ensure that all involved are informed about them.

7.3.3 The Family Group Conference
The FGC lies at the heart of the New Zealand procedures, both as a means of avoiding prosecution and also as a means of determining how young people who commit offences will be dealt with. The FGC has responsibility for formulating a plan for the juvenile or making such recommendations to the Youth Court as it sees fit (including prosecution). The range of possibilities here covers ways of repaying the victim and the community, penalties for misbehaviour and plans designed to reduce the chances of reoffending. The exact details are limited only by the imagination of the parties involved. Common options include an apology, reparation, work for the victim or the community, donations to charity, restrictions on liberty such as a curfew or grounding and programmes of counselling or training.
Similarly, where a young person is arrested and brought before the court for alleged offending (other than murder, manslaughter or a traffic offence not punishable by imprisonment), the court must adjourn the matter to enable an FGC to be held if there has not been a denial or if there has been a finding of guilt. The court, in dealing with the case, must have regard to the recommendations of the FGC.

The FGC is made up of the young person, his or her advocate if one has been arranged, members of the family, whanau or family group and whoever they invite, the victim(s) or their representative, the Police, the YJC and a CYFS social worker in cases where the CYFS has had a statutory role in relationship to the custody, guardianship or supervision of the young person. The jurisdiction of the FGC is limited to the disposition of cases where the young person has not denied the alleged offences or has already been found guilty. The intended focus of the FGC is the young person’s offending and matters related directly to the circumstances of that offending. The 1989 Act clearly states that, criminal proceedings should not be used to intervene in the life of the young person on welfare grounds and this objective has been interpreted to imply that FGCs themselves should primarily focus on issues of accountability rather than welfare.

The plans and decisions are binding when they have been agreed to by all those present at an FGC and, where it is relevant, accepted by the court. An FGC can be reconvened to review original decisions at a later date. This provision can be used when a young person fails to complete the tasks on which the FGC has agreed. At this stage, a new plan is formulated. At any stage, plans can include a recommendation for prosecution in court.

7.3.4 Youth Court

A court process is reserved for a minority of young offenders. The Youth Court was created as a branch of the District Court to deal with youth justice cases only. Its establishment underlines the importance of the principle that the offending of young people should be premised on criminal justice not welfare principles; that is, on notions of accountability and responsibility for actions.
due process, legal representation, requiring judges to give reasons for certain
decisions, and imposing sanctions which are proportionate to the gravity of the
offence. In all cases that come before the Youth Court, a lawyer is appointed to
represent the young person.

Where cases are referred to the Youth Court, the possible outcomes are as
follows in order of severity: transfer to the District Court; supervision with
residence; supervision with activity; community work; supervision; fine,
reparation, restitution, or forfeiture; to come up if called upon within 12 months
(a type of conditional discharge); admonition; discharge from proceedings; and
Police withdrawal of the information. The last two options are those used when
the Youth Court adopts the FGC recommendations. In addition, it is possible to
order the disqualification of a driver involved in a traffic offence. In 2001,
national data indicated that only 39% of charges laid in the Youth Court were
dealt with by Youth Court orders; the remainder were withdrawn or discharged
after the completion of FGC plans. National data are not available on specific
orders in the Youth Court but data from 1998 (Maxwell et al., 2003) indicated
that fewer than a quarter of Youth Court cases received an order involving
supervision or custody of some kind.

Supervision with residence orders may last for up to nine months and are
made up of three months in the custody of the Department of Social Welfare
(reduced to two months if the young person does not abscond or commit
further offences during the custodial placement) and up to six months'
supervision following the period of residence. Supervision with activity
involves up to three months' structured supervised activity and may be
followed by up to three months' supervision. Community work is for a
minimum of 20 and a maximum of 200 hours and has to be completed within
12 months. Supervision is limited to a maximum of six months. In addition,
approximately 5% of cases appearing before the Youth Court receive a
criminal conviction. These cases are transferred to the District Court where
most receive a custodial sentence.
7.4 Alternatives to Prosecution

The above description of how the system operates has described several ways in which alternatives to prosecution occur. In summary:

- Police can decide to take no further actions;
- Police can warn the young person verbally and in writing;
- Police can arrange informal diversion;
- Police can refer for a Family Group Conference;
- The Youth Court must refer for a Family Group Conference and can accept its recommendations without making orders.

7.5 Effectiveness of the Measures

7.5.1 Diverting Young People from Courts and Custody

Police practice is definitely more diversionary than it was prior to the 1989 Act. Official statistics (Department of Statistics, 1991) recorded a Youth Court appearance rate for 1990 of 160 per 10,000 young people aged 14-16. This can be compared with an average rate of 630 in the three calendar years prior to the introduction of the Act.

Figure 7.2 describes the changing rates of Youth Court appearances from before the Children, Young Persons, and Their Families Act up to the present. By 1998, this rate of Youth Court appearances by distinct cases had gradually risen again to 230 per 10,000 and the latest figure for 2000/01 is 240 per 10,000.3 However, despite the increased rate of charging in the Youth Court in more recent years, it is clear that the use of diversionary options is still considerably greater than it was in the past.

Diversion from criminal proceedings has certainly been an important feature of the new system but so too has diversion from custodial options. National data

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3 These figures have been derived from data supplied by the Ministry of Justice and Statistics New Zealand.
show that in 1990, cases receiving a custodial sentence in the adult courts were reduced both in proportion and numerically compared with previous years. In 1987 the number was 295 and this dropped to 104 in 1990. Since then it rose to a high of 143 in 1997 but from then on it decreased again so that by 2001 there were only 73 cases. These data are shown graphically in Figure 7.3.

Figure 7.2 Rates per 10,000 aged 10 – 16 years of distinct cases in the Youth Court for the June/July years 1987 to 2001

Figure 7.3 Custodial sentences for Youth Court cases from 1987 to 2001
Alternatives to the Prosecution of Children and Young Persons in New Zealand

The data in Figure 7.3 show graphically that there has been an overall downward trend in the use of prison. Conviction and transfers decreased from nearly 1,500 per annum prior to the 1989 Act and have number less than 200 per annum since.

7.5.2 Participation and Involvement

Data from a study on Achieving Effective Outcomes (AEO) (Maxwell et al., 2002) showed that 85% of the Family Group Conferences studied involved at least one parent and nearly half were also attended by at least one other family member. Victims or their representative were also present for about half the Family Group Conferences. Participation means more than simply attending. In the AEO study, almost all the young people interviewed said that others who were present cared about them and supported them and four out of five said they were consulted about who should come and that they understood what was going on. Family too were able to feel that they were treated with respect and understanding and had had a real role in what happened. Similarly more than eight out of ten of the victims interviewed reported being able to express their views and given a chance to explain the impact of the offending on them.

7.5.3 Accountability

Prior to the 1989 Act, only about three out of five (Ministry of Justice statistics) of those who appeared in court received any formal penalty. In Maxwell and Morris' (1993) 1990/91 sample, about 95% of those who attended Family Group Conferences or who appeared in court were made accountable for their offence either by receiving a penalty or making an apology. In addition, 11% of the total sample had some form of informal sanction arranged through the Youth Aid section. Thus, the total number who received some form of sanction is almost certainly greater than in the past. When the same comparison is made for the young people dealt with by Family Group Conferences in 1998, 95% are being made accountable in some way. However, data in Table 7.2 on the type of sanctions being used show that restorative outcomes are now more common than restrictive sanctions.
Table 7.2 Recommendations of the Family Group Conference comparing the combinations of primarily restorative, restrictive, rehabilitative and reintegrative measures for the retrospective sample; number and percentages (n=904)

<table>
<thead>
<tr>
<th>Type of element</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restoration - any</td>
<td>762</td>
<td>84</td>
</tr>
<tr>
<td>Restriction - any</td>
<td>529</td>
<td>59</td>
</tr>
<tr>
<td>Some accountability</td>
<td>878</td>
<td>97</td>
</tr>
<tr>
<td>Reintegration - any</td>
<td>349</td>
<td>39</td>
</tr>
<tr>
<td>Rehabilitation - any</td>
<td>279</td>
<td>31</td>
</tr>
<tr>
<td>Some provisions to enhance wellbeing</td>
<td>421</td>
<td>47</td>
</tr>
<tr>
<td>Nothing</td>
<td>26</td>
<td>3</td>
</tr>
</tbody>
</table>

7.5.4 Enhancing Wellbeing and Reintegration

The successes of the procedures in ensuring that young people take responsibility for offending by repairing harm and diverting them from courts and custody are undeniable. The success of the system in enhancing wellbeing is more arguable. The use of measures that are specifically intended to prevent future reoffending was less common. In total, Table 7.2 shows that nearly half (47%) of the young people had rehabilitative and/or reintegrative elements in their plan. However, over half had no reintegrative or rehabilitative elements and this could be seen as falling short of the intention of the Act, to promote the wellbeing of young people who have offended (Morris, 1999). This could be because those present at the conference believed that the accountability measures were sufficient; for example: when a young person offends thoughtlessly, shows remorse at the conference and undertakes to repair the harm or when the young person is sentenced to a custodial penalty in an institution which will provide rehabilitative programmes. Alternatively, the failure to include measures to enhance wellbeing may reflect the lack of

4 Work in the community (as opposed to work for the victim) was not included as either restorative or restrictive. It is, however, included in the total for some accountability.
suitable programmes for young people; a concern reported by many of the co-ordinators and managers who were interviewed. For whatever reason, it seems clear that there were likely to be many whose needs remained unmet in relation to mental health, drugs and alcohol, managing anger, improved interpersonal relationships, pro-social opportunities and building competencies in relation to motor vehicles, and, perhaps most importantly of all, in relation to educational and training options. The extent of the failure to meet educational and training needs, for example, was demonstrated by findings that, two to three years after their Family Group Conference, 89% reported they had had periods of unemployment and only a third of those reporting a lack of educational or vocational qualifications had had any arrangements made for further educational or training opportunities. It is also likely to be true that others in need of rehabilitative services did not receive referrals for these.

While the above data show that the decisions of the FGC emphasised accountability, particularly through restoration, in most cases and provided measures designed to enhance wellbeing through rehabilitation or reintegration in about 60% of cases, it is important to consider whether or not these plans were actually carried out. Data from CYF files were only available for two thirds of the cases that were examined and for many of these the file noted that data on completion were not applicable. However, for the 170 cases on which there was information, the plan was recorded as fully completed for 80%, mainly completed for another 9%, and accountability plans were completed for 90%. These data are consistent with information from the young people themselves; at least 67% of those interviewed said they had fully completed the plan and at least 81% had completed it for the most part. This is also consistent with data

5 The absence of sufficient suitable programmes for young people, particularly in relationship to anger, alcohol and drug problems and other mental health issues has been widely reported by health and welfare professionals. The launch of the CYF youth services strategy in 2000, the Ministry of Justice strategy in response to the report of the Task Force on Youth Justice and recent announcements in the areas of child health services by the Ministry of Health have been designed in response to the recognised need (Department of Child, Youth and Family Services, 2000; Ministry of Justice, 2002).

6 This would be the case when there was no agreed plan or when the matter was dealt with by apologies and/or payments given in the family group conference. It may also have been seen to be true when the case was dealt with by Youth Court orders.
Alternatives to the Prosecution of Children and Young Persons in New Zealand

from 1990/91 where Family Group Conference plans were either completed fully or for the most part by 87% of the young people (Maxwell and Morris, 1993).

7.6 Conclusion

The system in New Zealand was the first example of a restorative process that was an integral part of the justice system of the country and remains the world's most well developed example of a restorative system within a country that operates under the Westminster system. It has undoubtedly effectively delivered a new model of justice focusing on the accountability of young offenders to those they have harmed, and reducing the need for formal processes through courts and outcomes that focus principally on restrictive and punitive sanctions. At the heart of this effectiveness lies the Family Group Conference which can allow for a process that involves the meeting and participation of all affected by the offending, in an atmosphere where the participants feel that they are treated with fairness and respect, where decisions are taken by consensus, where outcomes emphasis repairing the harm to the victims and changing the lives of the young offenders.

However, evaluation demonstrates that the New Zealand system although restorative in many respects, sometimes also focuses on delivering restrictive sanctions to some young offenders. Too, the system has been less successful in achieving goals of enhancing the wellbeing of the young people who enter the system and ensuring that they have the skills to be effectively reintegrated into society as people with a potential to contribute to society as well as to benefit from the rewards of participation.
Chapter 8

The Changing Face of Youth Justice\(^1\)

This chapter traces the changes that have occurred in juvenile justice systems around the world. The first section describes the gradual development of patterns that have affected both Hong Kong and other countries up until 1989: the recognition of the differences in offending by juveniles and adults; the development of the “welfare” approach to juvenile offending; the move to diversion and decarceration and, more recently, concerns about the rights of children; systems that fail to deliver quality services; the shift in service provision from the government to the private sector; and a recognition of the importance of empowering people, offenders, families and victims, to play a major role in decisions about their lives. The second part of this chapter describes the emergence, since 1989, of a restorative justice approach to juvenile offending.

8.1 Influences on Youth Justice up until 1989

8.1.1 The Recognition of Age and Maturity as Factors in Responses to Offending

The twentieth century was characterised by a growing awareness of the inappropriateness of treating children who offended in the same way as adult offenders. There were two compelling reasons for treating children and adults differently: children who offended often did not understand the inappropriateness of their actions and there was a growing recognition of the link between offending and adverse background circumstances.

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\(^1\) This chapter and the one that follows have been adapted from a number of other sources including Lo, Wong and Maxwell (2003), Maxwell (2003) and Maxwell, Lo and Wong (2003), and previous publications by Maxwell and others.
8.1.2 The Development of an Emphasis on Welfare

The emphasis changed from punishing young people for offences to responding instead to their adverse background circumstances with the provision of services to support them and their families. Increasingly, new courts were developed for dealing with cases of offending by young people that were designed to be less intimidating and formal than adult courts and aimed to explore reasons for offending for which appropriate remedies were arranged. When families were judged to be unable to provide adequately for the needs of their children, the children were placed elsewhere: either in other families or, more frequently, in the case of young offenders, in residential settings. Often the residences became long-term homes or were seen as providing relatively lengthy training over a number of years that would enable the children to be rehabilitated and given the skills to become effective and useful citizens. The emphasis on the welfare approach to offending became particularly strong in Europe where it persists in most jurisdictions to this day.

In England and in the countries that took their lead from England, the emphasis was more on a mixture of a welfare approach together with the use of punishments that were seen, at that time, as potentially having a deterrent effect and appropriate for those children who were deemed to understand the nature and meaning of their offending. A pattern developed of using Borstals for up to 3 years for the older group of young offenders and boys and girls homes offering training for the younger offenders until they reached school leaving.

These ideas were also a dominant influence in Hong Kong. The original 1932 juvenile justice ordinance created a Juvenile Court system and provided for the establishment of Probation Officers for the supervision of juvenile offenders (O'Brien, 1994). The replacement Juvenile Ordinance (Cap 226 in 1950) strengthened the Juvenile Court and extended the provisions designed to provide for the welfare of juveniles who offended emphasizing steps which would be in their "best interest". In practice, the upshot of this has been that:
Young offenders are frequently incarcerated. In fact, juveniles who have not committed crimes, and who would therefore not be detained if they were adults, are often incarcerated for long periods. In such cases the juvenile court's intention may be to provide treatment or care but the fact remains that these youth are held against their will.... In Hong Kong... many first offenders receive a custodial sentence in a probation home. (O'Brian, 1994: 167)

Similarly Gray (1991) has suggested that over the last 25 years there has been a trend to apprehend increasing numbers of juveniles for relatively trivial offences and to place them in custodial situations for their own good because their families found the young person difficult to discipline or control or because schools reported unruly behaviour and breaches of school rules. Irregular work habits and staying out late overnight or spending time at billiard room and video parlors were seen as evidence of life styles requiring correction (Gray, 1991: 35). She also comments:

...there has been a massive expansion in the scope of juvenile justice agencies; a decreasing tolerance for juvenile misbehavior; policing strategies targeted at youth; and a probably "net widening", resulting in the official processing of juveniles who previously would have been dealt with informally by the community or by the police. (Gray, 1991: 37)

She goes on to an analysis of the use of training and detention centres. She comments that:

...even in 1988, Correctional Services statistics indicate that 68% and 76% of males under 20 committed to training centres and detention centres respectively had no more than one previous conviction. There is no doubt that the use of residential care and custody in Hong Kong features far earlier in a juvenile's criminal career than is usual in other countries. (Gray, 1991: 37)
8.1.3 The Move to Diversion and Decarceration

Throughout the 1970s, it became increasingly apparent throughout the world that these strategies which aimed at rehabilitation had often failed (Gelsthorpe and Morris, 1994). By placing children in institutions they had effectively been removed from society with the result that they had been denied many of the normal experiences that foster positive development. On the other hand, the aggregation of young offenders had enabled them to learn from one another—in other words, these supposedly benign institutions were "schools for crime". Those who had grown up in them were more likely than children growing up at home to offend as young adults and experience other difficulties in social adjustment and with human relationships. In other words, the same adverse consequences that were reported for the imprisonment of young people were also reported for institutions intended to offer them a more positive life style.

In the wake of these research findings, internationally there was a call to reduce the involvement of children and young people in the criminal justice system to a minimum consistent with the need for public safety while building supports in the community for them and their families. Thus there was an increasing emphasis on diversion and deinstitutionalisation, the use of community placements, the use of least restrictive alternatives and increased delivery of services and programmes to strengthen families and to respond to the needs of the children themselves. Consistent with this approach has been the increased use of police cautioning systems (for example in most of the jurisdictions considered in the earlier chapters in this report) and the use of community sentences. Chui (1995) concludes, on the basis of a study of the operation of these alternatives for juveniles in England and Wales, that:

There is overwhelming evidence that community treatment can minimize the harm of detention and is not worse than custody in reducing reoffending behaviour. (p.67)... It has been shown as a result of recent initiatives that community-based provision is clearly the best response to young offenders. It is not only more desirable
than locking up young people, but it is also considerable more effective in discouraging further criminal behaviour. (p.79)

Hong Kong too has been responsive to some aspects of this philosophy. The use of cautions by the police is one way in which this occurred although, as already indicated in the quotation above, this may have largely resulted in net widening. Another important development is the growth of community services for children and an increasing emphasis on services to strengthen and support families in Hong Kong. For example, in the mid-1990s, the Community Support Service Scheme was launched to help young people cautioned by the police on a voluntary basis (Working Party on Review of Children and Youth Centre Services, 1994). "Services for Young Night Drifters" were launched to help children and teenagers found loitering on the streets or in entertainment centres after midnight. Positive outcomes have been reported for both schemes and this has led to their expansion in the new millennium (Lo et al., 1997a, 1997b; Lee and Tang, 1999).

The use of the Community Services Orders (Cap 378) is another example of a community based response in Hong Kong. They were first introduced in 1987 on an experimental basis in three magistracies, extended to all magistracies since November 1992 and to all courts in May 1998 (Lo and Harris, 2000) and have been widely used for young offenders (O’Brian, 1994). However, those taking part in research by Lo and Harris (2000) in 1999 did not include any juveniles under the age of 16 indicating that few juveniles were receiving these orders at that time.

The Lo and Harris (2000) study provides a description and evaluation of Community Service Orders. The aims of the Orders are to provide a constructive disposal of the case with an emphasis on rehabilitation (in the sense of moral training rather than therapy) of the offender, and reparation to the community. About 90% successfully complete their orders and on this criterion the success rate is higher than for probation orders. Those on the scheme see it as:
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A meaningful and constructive way to punish them and let them contribute to society... they are able to learn some work skills, interact with people who are in need of help and widen their own perspectives... Participation in community service also facilitates their personal growth... enables them to make full use of their abilities, display to other people their capability and potentiality and learn to take responsibility. This increases their sense of achievement and self confidence, rebuilds their social responsibility and might eventually change their lifestyles and reintegrate them into society. (Lo and Harris, 2000: 111-112)

Although the review makes a number of recommendations for strengthening the scheme, it endorses it as offering an alternative to custody that is flexible. However, it also warns that care must be taken to avoid net widening and become an "unjustifiable costly disposal for minor offenders who should attract a fine or probation." (Lo and Harris, 2000: 122)

8.1.4 The Influence of Concerns for the Rights of Children and Young People

The emphasis on constructive responses has also been affected by thinking about the need of children for protection. In the wake of a growing human rights movement, there has been a recognition that children's rights are more extensive than those of adults because of their increased vulnerability to harm, because of their more limited understanding of the world and because of their greater susceptibility to pressure to comply with those in authority. Thus a number of United Nations human rights instruments have been developed which focus on the special issues around the rights of children in general (such as the United Nations Convention on the Rights of the Child) and, in particular, on the rights of children who offend (Beijing rules, Riyadh Guidelines, Cairo declaration). Hong Kong, as a signatory to these international documents needs to be responsive to them. It is in response to these obligations that Hong Kong has recently reviewed the minimum age of criminal responsibility for children. Opposing views on this question are summarised below:
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, and by the United Nations Committee on the International Covenant on Civil and Political Rights (ICCPR), both of which bodies have called for a review of the law in Hong Kong with a view to raising the minimum age of criminal responsibility in the light of the principles and provisions of the United Nations Convention on the Rights of the Child and the ICCPR. (Law Reform Commission, 2000:1)

Those who favour maintaining the present minimum age of criminal responsibility argue that bringing young delinquents into the criminal justice system in their formative years provides an opportunity for systematic rehabilitation. Sanctions imposed on a child reduce the likelihood that he will develop a life-long pattern of criminal behaviour. (Law Reform Commission, 2000:2)

The debate has, for the time being, been resolved by the Government by raising the minimum age to 10 years but not to the age of 12 years, as recommended by many, at the present time.

8.1.5 The Need to Separate Welfare and Justice Concerns and to Increase Accountability for Offending

It has also been recognised that problems can arise from the very systems designed to deliver support and services to children and families. The first need that was recognised was for increased training and professionalization of social workers. With increased specialization, came the need for better integration of services, holistic approaches and empowerment models of delivery. These trends can also be seen in Hong Kong over recent years with
Along with the notions of the need for protection, the recognition of the dangers of increasing the penetration of young people into the criminal justice system and the adoption of UN principles and guidelines setting out children's rights came the development of the "just welfare" model or the "justice" model or the "just desserts" model as it has been variously called (Gray, 1991; O'Brian, 1994; Maxwell and Morris, 1993). This school of thinking has emphasized the need to separate the different roles of the justice system and welfare systems. It has argued that it was unjust to use placements in institutions or orders in the criminal justice system to require children and young people to receive treatment. Such practices were seen as both contrary to principles of human rights and, in practice, counterproductive as it became apparent that court orders did not result in children benefitting from attendance in programmes or training in institutions. Furthermore, it was argued that the emphasis on welfare had often led to a neglect of any actions designed to make children and young people accountable for their offending or to take any responsibility for their actions.

Thus it was suggested that a model of justice should ensure that the punishment was, as in the adult jurisdiction, related to the nature of the offence, that equality and proportionality should be used as criteria for sentencing and that welfare purposes should not be the justification for the selection of penalties. Furthermore, it was reasonable to expect that children and young people, provided they were deemed to understand the nature of their actions, should be accountable for their offending. Orders for reparation, fines, community service, and restrictions of liberty were, therefore, seen as appropriate.

At the same time, this approach has also recognized that it is appropriate to emphasize minimal intrusion into the criminal justice system and to recognize that age and maturity are mitigating factors in determining a sentence. Much of the legislation in English speaking countries has been heavily influenced by
those ideas in the period from the mid 1970's up to the present. They were
certainly the most influential ideas influencing criminologists concerned with
juvenile justice in the 1980s and 1990s.

8.1.6 Shift in Resources from Government to Private Sector
Over this period too, there was a shift in way services have been delivered. In
part, this has been a response to increasing restrictions on government
spending in countries like England, New Zealand and Australia and in part, this
has resulted from a change to business models of service provision in the
private sector with the State being seen as a purchaser of services rather than
a provider. The result of this “market philosophy” has been a movement of
resources from State agencies to the voluntary and private sector and this too
has had an impact on the nature of the options available for children and
young people who offend and how services are delivered to them. Some of
these changes have already begun in Hong Kong and, as pressure builds on
Government spending, so too will pressures to reduce costs of welfare
services, to move to community based self help models and to outsource
service provision.

8.1.7 Empowerment
Finally, increasingly the importance of using strategies that empower rather
than create dependency has been recognised. The trend towards an
empowerment model is already visible in the concept of social capital
articulated in the aim to create social capital underlying the creation of the
Community Investment and Inclusions Fund (Health, Welfare and Food
Bureau, 2002). There have been both philosophical reasons for this shift and
pragmatic ones. However, the concept is still a novel one, especially in relation
to youth justice so deserves further description in relation to families, offenders
and victims.

Empowerment of the Family
A recurrent theme in conventional criminological literature is that deficiencies
in the family lie at the root of juvenile crime (see Rutter and Giller, 1983 for a
review) and so traditionally the State has acted to remove children from
families in situations of alleged abuse and neglect and when children offend. The exception is when the State has recognised family responsibility in a negative sense by holding the family accountable for their children's misdemeanors (as, for example, in the provision in England described in Chapter 3 to fine parents whose children commit offences). Indeed, despite rhetoric about the importance of families, families have been undermined by the ways in which juvenile justice systems have tended to operate: by exclusion.

The idea of a partnership between the State and families in resolving issues which affect their children is a novel one. In contrast with most systems of juvenile justice, the legislation introduced in New Zealand in 1989 gave the responsibility to families to respond to their child's offending and restricted the power of professionals, in particular the power of social service professionals. Thus, except for minor and inconsequential offending which is usually dealt with by the police by means of a warning, families have been given the opportunity to formulate a plan and, in many cases, to play a major role in its implementation.

Empowerment of Offenders

To speak of the empowerment of offenders in conventional criminal justice systems is a contradiction in terms. Offenders do not participate much in court procedures, a situation well depicted in Carlen's (1976) description of them as "dummy players". The "game" takes place all around them for the benefit of "repeat players", such as judges, prosecutors, defence counsel and the like, while they watch passively and uninvolved. They take on the status of objects or "dependants" and participate little (Ericson and Baranek, 1982). O'Connor and Sweetapple (1988), for example, describe as follows the position of young people in the Australian Courts:

For children the structure and mechanisms of the court routinely strip them of their ability to participate in the court process.... In many cases... legal representation simply reinforces the child's disadvantaged and dependent position and at the same time allows
the court to proceed under the fiction that the child's wishes and interests are represented... they are powerless to impinge on their fate. (p.98)

One method of meeting these concerns, they suggest, is through the introduction of processes whereby young offenders can meet with their victims:

The necessity of reconciliation is especially important for juveniles because their crimes are primarily committed in their local community. Crime is prevented, not by threat and intimidation, but by the fabric of social connectedness to the people. (pp.128-130)

Such meetings also address a further concern which arises from practice in traditional criminal justice systems: the absence of any direct contact between the victim and the offender. Many consequences come from this. To quote O'Connor and Sweetapple (1988) again:

The young people charged with these crimes rarely see the personal distress and inconvenience caused... their attention is not effectively directed at the consequences of their behaviour for others... so the victim rarely sees the offender and the offender rarely sees the victim. Both remain ignorant of the other, of the other's potential suffering. The child does not encounter the hurt of the victim, nor have to grapple with making recompense in a meaningful way. The victim never sees the offender... never has the comfort of knowing the offender...—far from being a violent thug—is most likely a somewhat pathetic young person from their own neighbourhood. (pp.117-118)

To understand the consequences of their actions from the perspective of the victim, to accept responsibility for them and to actively make a commitment to some reparation requires that young people feel a part of (rather than apart from) the proceedings.
Empowerment of Victims

Traditionally, the criminal justice system has given only a minimal role to victims. Indeed, in part, one of its functions has been to protect offenders from the vengeance of victims. However, increasingly, criminal justice systems are giving more weight to the needs and wishes of victims. There are a number of reasons for this shift in emphasis: in particular, acceptance of the failure of criminal justice systems to reform and/or deter offenders and, consequently, the need to substitute alternative justifications for intervention; and the emergence of pressure groups from a range of political backgrounds (from the women’s movement to “law and order” proponents) which have begun to highlight victims’ concerns.

Thus, in most jurisdictions in recent years, there have been a number of significant changes in the provision of services for victims. In many countries legislation has recognized the legitimacy of concerns for victims and provided for taking “victim impact statements” which can be used in evidence in court proceedings. There has also been an increase in the number of agencies providing support services, improvements in court procedures and the introduction of reparation as a sentence. In a review of these developments, Hutton and Young (1989) comment that, at that time, there had been little concerted effort to set up, and no indication of official support for, reconciliation meetings between victims and offenders or to provide a forum in which victims could participate in the sentencing process or, at least, have their views taken into account. New Zealand, Queensland, Singapore, Belgium, Canada and England and Wales have introduced new youth justice systems that include both of these provisions (see previous chapters).

The main argument used in favour of increasing victims’ representations about how offenders should be dealt with (through the presence of victims or their representatives at hearings, consultation with victims about appropriate outcomes, the introduction of victim impact statements and the like) is that they possess the information required to reach a “just” outcome. To do otherwise, it is argued, retains an imbalance in favour of offenders; for those making decisions about offenders can be influenced by information about the
offender's situation, for example, the impact of a particular outcome on them or their families.

There are other arguments in favour of victim involvement. Koehler (1988), for example, argues that, by providing victims with information and facilitating their participation in the process, the system will increase victim satisfaction, enhance the prospects of reconciliation and "peace-making" and provide a more effective means of restitution and reparation. It is this participation which empowers.

Counter-arguments are that the involvement of victims introduces subjectivity and emotion into what should be an objective and rational task that outcomes will inevitably, therefore, become more punitive, and that disparities in outcomes will increase depending on the whims or idiosyncrasies of victims. Rock (1985) also draws our attention to some potential pitfalls for victims—in particular, the time consumed by meeting with minor offenders for minimal return and the pain caused by meeting with serious offenders.

From 1989, there was a major shift in focus with the development of the restorative justice model that emerged in New Zealand. But first it is important to summarize the position as it appeared in 1989 (see Box 8.1).

8.2 The Emergence of Restorative Justice Approaches to Juvenile Offending

Before 1989, the phrase restorative justice would have had little or no meaning for criminologist. Theories about the criminal justice system debated the "soft" welfare approaches based on the recognition of the disadvantage of offenders and the desire for their rehabilitation and "hard" punitive approaches based on notions of justice as essentially retributive and theories of deterrence. The middle ground was occupied the theory of "just welfare". What then gave rise to the rather different perspective offered by the restorative justice model and what led to the emergence of restorative justice as an international movement?
Box 8.1 Issues Influencing youth justice systems up till 1989

1. The recognition of age and maturity as mitigating factors
2. The importance of welfare rather than simply punishment
3. Research on the consequences of criminal justice processes and the institutionalization of children and young people led to an emphasis on diversion, deinstitutionalisation, community based sanctions and the use of the least restrictive alternative
4. Protection of children's and young people's rights
5. The need for integrated approaches for the successful delivery of welfare services
6. The influence of the "just welfare" model led to an emphasis on separation of justice and welfare issues, on the abolition of status offences, on equality and proportionality in sentencing, and on accountability and responsibility of young people for offending
7. A shift in resources from state agencies to the voluntary and private sector
8. Pressures to reduce government expenditure
9. The recognition of the importance of empowerment in enabling change

In 1989, in three different parts of the world and from three very different sources came the publication of three documents that collectively formed the basis of a new option for theory and practice:

- Howard Zehr, a religious and spiritual leader and an academic, published "Changing Lenses" (Zehr, 1990). This book encapsulated an alternative view of how disputes could be resolved. It challenged traditional notions of trial and punishment of offenders. It placed instead in the foreground of debate, a concern for victims that resonated with the growing world wide movement for victims' rights. It proposed new responses to victims that emphasized healing hurts and restoring the balance within communities. It spoke eloquently of the different outcomes that could result from the process of Victim Offender Mediation that was already gaining ground throughout the Western world. It emphasized harmony and peace and transformation. The emphasis for Zehr can be said to be on repair of harm.
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At first Zehr's notion of restorative justice seemed an unlikely competitor in the mainstream criminological world. Its ideas lay outside those of the mainstream. They had their origins in minority Christian communities and, in particular, among the Amish in the United States. It harked back to notions of a more communitarian approach to justice which seemed at first sight possible only within small and tightly knit groups who shared a culture very different to that characterized by the large scale urban societies of today.

John Braithwaite, Australia's leading theoretical criminologist, published "Crime, Shame and Reintegration". Braithwaite too presented an alternative view of relations among people within society. The book starts from the radical notion that the goals of justice should be to reintegrate the offender into the community, to repair the damage to those affected by the offending through a process that can heal and reform. He saw the process of shame and acknowledgement of the responsibility for the offending as being essential to achieving these goals. He spoke of the importance of reintegrative shaming as the central step making forgiveness and restoration of community possible. He made a clear distinction between reintegrative shaming which emphasizes feelings of remorse and acts of apology and repair, from stigmatic shaming of the sort that leads to naming, blaming and labeling and leaves the offender feeling rejected and without the possibility of continued membership of the community. The primary emphasis for Braithwaite can be said to be on reintegration.

Braithwaite's book had an immediate and strong impact on the mainstream criminological community. It is to be found in libraries and bookshops around the world. He speaks with an authoritative voice to a generation seeking a new understanding of the world of conflict resolution and builds a theory incorporating ideas from anthropology, sociology and psychology. But how was such a theory to be translated into action? What place could such a theory have in the Western justice tradition built around systems that protect offenders' rights through the use of the formal and impersonal processes involving Courts, Judges, Juries and lawyers? The answer was provided in that same year with the first of the "new" youth justice systems.

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New Zealand passed legislation setting out a new approach to children and young people who offended—the Children, Young Persons and their Families Act 1989. This law was based on an explicit set of principles around youth justice which emphasized: strengthening families, including victims, acknowledging cultures, making young people accountable for offending and making provisions for their development while emphasizing the importance of diversion and decarceration. It gave effect to this new focus by creating a new process—the Family Group Conference. The Family Group Conference brought back into the justice system families, victims and culture, players who had been previously been marginalized, and made consensus decision making rather than judicial arbitration the way of reaching an outcome.

At first the similarity in what was being described in these three documents was not obvious. The novelty of the Braithwaite's book seemed to lie in offering a new theory about how conflict is resolved while new emphasis in the New Zealand legislation seemed at first sight to be the emphasis on empowerment and neither used the language of restorative justice proposed by Zehr. However, it soon became apparent to all those involved, that these three documents all represented the same fundamental shift in thinking. Restorative justice involves taking responsibility for offending, repairing harm, reintegrating offenders, victims and communities, and the empowerment of all those affected by the what has happened, offenders, families, victims and communities.

Throughout the 1990s, research, innovation in practice, conferences and publications around the world explored the new ideas and experimented with new programmes. Key processes that are now seen to be central to the restorative justice approach are Conferencing (as in the Family Group Conferences, family conferences or community conferences in New Zealand, Australia, England, Canada, Singapore, Belgium, Netherlands and elsewhere), Circles (as in the sentencing circles in Canada) and Victim Offender Mediation (as in the United States, Germany, Austria, England, and elsewhere) (Morris and Maxwell, 2001c).
By the year 2000, the theory and practice of restorative justice had become clearly articulated. The restoration of community and the repair of harm envisaged by Zehr (1990) had been given a modern place in criminological theory by Braithwaite (1989) and transformed into practical processes through the development of a fully fledged mainstream restorative system for youth justice in New Zealand and through the emergence and developments in conferencing, mediation and circles throughout the world. At the 10th UN Crime Congress in Vienna in 2000, a bare ten years after the emergence of the three seminal publications, the nations of the world endorsed restorative justice as the way forward and set up a process that led last year (United Nations Economic and Social Council, 2002) to the development of standards for the restorative processes that are rapidly growing within both juvenile and adult jurisdictions.
Chapter 9
Objectives, Principles and Standards:
Changing Philosophies and New Research

9.1 Introduction

There are a number of international agreements that are relevant to juvenile justice. These include the UN Guidelines for the Prevention of Juvenile Delinquency, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Convention on the Rights of the Child. All of these set out minimum standards which all countries are expected to meet in relation to responses to offending by juveniles. They cover procedures when juveniles are apprehended, questioned about offending, retained in custody, appear before the courts, are sentenced and appeal. They set limits for the types of punishment that are appropriate and the rights of children and young people to have access to education, to leisure, to services, and to contact with their families and others while setting out also their rights to protection from abuse and not to be imprisoned with adult offenders.

In order to assist member countries in ensuring that their law meets the above standards and rules, in 1997 the United Nations produced a Model Law on Juvenile Justice (United Nations Centre for International Crime Prevention, 1997). The model sets out a number of guiding principles for law which include:

1. Children and young people are entitled to care and special assistance in order to play their role in the community to the full.

2. The juvenile justice system must seek the wellbeing of the young person and ensure that reactions are in proportion to the circumstances of both the young person and their offence.
3. The juvenile justice system must promote the development of the young person's personality and moral responsibility as a citizen.

4. Young people in conflict with the law must enjoy equitable and humane treatment. Diversion should be encouraged, detention must be the disposition of the last resort and its duration must be as short as possible and the young person must be separated from adults.

5. Proceedings must protect the interests of the young person and enable him or her to participate and express himself or herself freely. Institutionalization should be ordered only in the absence of other appropriate dispositions and if such is the case, the young person must receive educational, psychological and medical treatment to facilitate their rehabilitation.

6. Deprivation of liberty should only be pronounced after careful consideration, limited to the possible minimum and be pronounced only for serious offences. Capital and corporal punishment shall never be applicable.

7. All persons in charge of cases concerned with young people (including judges, prosecutors, police, prison staff and social workers) must receive continuous and specialized training.

In most respects the Hong Kong Juvenile Offenders Ordinance is not inconsistent with these principles. However, questions can be raised about:

- The need to include principles, such as the above, in law;
- The extent to which all the protections indicated as required by the above principles are covered in the detail of the Juvenile Offenders Ordinance;
- Whether or not the diversionary provisions provided for under current law are sufficient to be consistent with the above principles;
- Whether or not the provisions for the use of residential training, and
their nature, length of periods and frequency, are consistent with the principles set out above, even when these are intended for the education or training of the young person.

It may also be useful for legislators to consider, when reviewing the current legislation in Hong Kong, explicit principles, such as some of those above, in its enactment.

9.2 Recent Developments in the Use of Restorative Justice for Juveniles

Most recently the Economic and Social Council of the United Nations (2002) has recommended the adoption of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters\(^1\) which are also relevant to the responses to juveniles who offend. These principles are intended to assist countries adopting restorative procedures to respond to crime in line with the commitments made to consider the adoption of such procedures in paragraph 28 of the Vienna Declaration.\(^2\)

In the wake of positive research results from New Zealand first (Maxwell and Morris, 1993; Morris and Maxwell, 1993), and later Australia (Hayes et al., 1998; Daly, 2000; Sherman et al., 2000) a growing interest was displayed by other jurisdictions. Conferences all over the world have focused attention on restorative options, such as conferences in New Zealand (McElrea, 1995; Morris and Maxwell, 1997, 1999), in Australia in 1994 and 2000 (Alder and Wundersitz, 1994; Strang and Braithwaite, 2000), Canada (Hudson and Galaway, 1995; CRILF, 1998), in Ireland in 1999, in USA in 1997 (Bazemore and Schiff, 2001), in Belgium in 1998 and 2001 (Walgrave, 2002), in Germany in 2000 (Weitekamp and Kemer, 2002), in England in 2002 (Von Hirsch et al., 2003), in South Africa in 1995, in Singapore in 2002 and in Canada in 2003. Groups of politicians and policy analysts have converged on New Zealand and

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1. United Nations Economic and Social Council; E/CN.15/2002/L.2/Rev.1
latterly on Australia from all around the world over the last ten years seeking information on the use of conferencing. The International Network for Research on Restorative Justice based in Leuven, Belgium has served as a focus for information and debate.

Research has continued, theory has developed and books on restorative justice have proliferated. Many practice issues have been clarified and new legislative models have developed. Now, countries around the world have introduced or are considering legislative change and are increasingly following the examples provided by New Zealand and various Australian jurisdictions in clarifying objectives and principles and providing standards for practice. In the next section we review and compare the objectives, principles and standards that are currently in operation in our six exemplar jurisdictions.

9.3 Objectives and Principles in Hong Kong Compared to Six Other Countries

A paper by Maxwell, Lo and Wong (2003) provides a detailed comparisons and analysis of the objectives and principles that are explicitly stated in or underpin the operation of legislation in Hong Kong and six other countries. Parts of the material dealt with in this chapter are, with the permission of the authors, summarized here in as far as they are directly relevant to proposals for future options for Hong Kong.

First, it should be noted that all but one of the comparison jurisdictions explicitly state certain objectives and principles in their legislation on juvenile justice. Belgium is the exception and this is explained by the fact that its legislation (enacted in 1965) is the least recent of those being considered.

Second, the legislation of the six countries can be contrasted in the extent to which it includes restorative justice principles. All those countries/1ates which have passed legislation since 1988 reflect, at least to some extent, a move towards a restorative approach: (New Zealand, Queensland, Singapore, Singapore passed its current legislation in 1993 and amended it in 2001.
England and Canada). In contrast, Belgium, like Hong Kong, differs from the other countries in that its legislation is principally influenced by a “welfare” approach but in recent years there have been moves in Belgium to focus more on accountability; responsibility for offending through the use of restorative approaches and, to this end, the trial use of Family Group Conferences is currently under way.

The third dimension on which the countries differ is with respect to the emphasis placed on punishment versus welfare.

1. New Zealand, Queensland and Canada occupy the middle ground here. They have chosen to de-emphasize punishment for less serious offences and instead to increase the extent to which their practice emphasizes diversion, restoration and reintegration.

2. Singapore and England are currently more concerned to emphasize punishment. However, both Singapore and England attempt to balance a concern for punishment with a concern for rehabilitation and the prevention of future offending. Thus some concern for restorative elements emphasizing repair, reintegration and consideration of victims and the possibility of family group conferencing are available in both England and Singapore. But in both countries concerns for strong intervention and punishment still remain at the forefront of the law and practice and Family Group Conferences are seen as processes related to sentencing options rather than as diversionary measures that can be alternatives to prosecution.

3. Belgium offers an example at the opposite end of this spectrum with a total emphasis on a welfare approach. As in Hong Kong, the strong Belgian emphasis on welfare has led to children and young people being detained in children’s homes and training centres despite a lack of evidence that this approach is effective in enhancing their wellbeing.
9.4 Objectives and Principles Reflecting the Move to a Restorative Approach

The paper by Maxwell, Lo and Wong (2003) also provides an analysis of the objectives and principles adopted in legislation by Canada, Queensland and New Zealand to clarify their move toward a restorative justice approach. With permission an extract from this paper has been presented here, with minor amendments, because of its relevance to purposes of this report.

All three countries have retained an emphasis on the "protection" of children and young people, on the need to "divert" young people from court proceeding and to "keep them in the community" wherever possible, on ensuring that they are given opportunities for "holistic personal development". They also all explicitly emphasize the need for proceedings to be "fair and just" and for "parents to be supported" in their caring role.

The new features that are critical are those that emphasize "participation and understanding", "accountability and responsibility", "proceedings not being used for welfare purposes", and "time frames". We shall deal with each in turn:

**Participation and understanding.** This principle is about empowerment. In the legislation in both Queensland and New Zealand, the child is to be given the opportunity to participate in the proceedings. In Canada, Queensland and New Zealand specific sections deal with the importance of the child understanding proceedings. And in all three jurisdictions, parents and victims are also given the right to participate in a Family Group Conference and be party to its decisions. It is clear that in all three jurisdictions, the intent is to empower children, parents and victims as effective participants in the decision making process.

**Accountability and responsibility.** Canada, Queensland and New Zealand all place an emphasis on the accountability of young people for their actions and this is clearly also part of the reason for introducing the use of Family Group
In New Zealand and Queensland it is clear that accountability is intended to be achieved through largely by the young person attempting to repair the harm that was caused through the process of the Family Group Conference where plans are expected to include elements such as apology, arrangements for return of goods, payment of some type of compensation or reparation, work for the victim or some other form of making up for what was done. Young people, parents and family take responsibility for what has happened by participating in the plans for repair and also by making plans for the prevention of problems in the future and playing a part in monitoring them.

In Canada, it is yet rather early to determine how the new legislation will be used.

Proceedings not being used for welfare purposes. It is clear that in Canada, Queensland and New Zealand the intent is to focus on providing additional options which achieve a more direct approach to responding to offending than the welfare measures that were so often evident in the second part of the twentieth century. Consequently there has been an increased separation of justice and welfare in New Zealand, and, potentially, in Canada.

Time frames. The focus on time frames is another characteristic shared by the legislation in these three jurisdictions. This is intended to ensure that appropriate responses occur within time frames meaningful to the child or young person.

9.5 Basic Principles and Standards for Restorative Youth Justice Systems

In 1995 a group of non-governmental organizations with consultative status to the United Nations attending the Crime Congress in Cairo sponsored a series of ancillary meetings on restorative justice. As a result, it was decided to form a Working Party which, among other activities drafted a set of basic principles for

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Maxwell, Lo and Wong (2003) note that the emphasis on accountability is also a feature of the legislation in Singapore and England and Wales and is also partly achieved through the use of Family Group Conferences although conferencing is not necessarily the principle method in these jurisdictions of achieving accountability.
restorative justice. After lengthy consultation with many interested groups (Van Ness, 2003), a declaration setting out 23 basic principles on the use of restorative justice programmes in criminal matters was developed and circulated at the 10th UN Crime Congress in Vienna in 2000.

These principles summarized the consensus among both theoreticians and practitioners about the conditions under which restorative justice approaches achieve their goals. The declaration set out definitions relating to restorative programmes, principles around the use and operation of such programmes, principles around the role of facilitators and proposals about their continuing development throughout the world. These principles formed the basis of deliberations in a meeting of experts called under the auspices of the United Nations Economic and Social Council in Canada in 2002. The result has been the adoption, as mentioned previously, by the Council of a set of basic principles that are intended to assist the development of new procedures throughout the world.

In 2002, Braithwaite published an article in criminology which debates a broader focus on "standards" for restorative justice which effectively offer a set of objects, goals and principles which can guide the practice and underpin legislation (Braithwaite, 2002b). While at a more pragmatic level, Maxwell et al. (2003) have offered an analysis of the conditions for effective practice based on a study in New Zealand which identified factors in the youth justice system that were related to a reduced probability of reoffending and increased chances of positive life outcomes for young people who had offended at least eighteen months previously. These two rather different approaches to defining core standards come to very similar conclusions on many important issues relating to the current debate about what works in youth justice. The standards for practice proposed for New Zealand can be seen in Maxwell et al. (2003). They cover effective practices relating to:

- Achieving the empowerment of key participants: young people, families and victims;
- Treating participants with respect and responding with equality to their
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corns;
- Meeting standards relating to human rights and fairness;
- Achieving effective outcomes in terms of preventing reoffending and enabling positive life outcomes for young offenders;
- The collection of data for monitoring effectiveness.

9.6 Restorative Justice Procedures and the Role of Law

The use of the Basic Principles promulgated by the United Nations and the adoption of practice standards developed in New Zealand is likely to assist in ensuring fair and effective systems. They provide a framework for the development of non-adversarial processes in which the culture of different peoples can be affirmed and moral values validated. But it is also important that such principles and standards be backed by law which sets out principles and procedures to provide protection against the misuse of new procedures and ensure accountability on the part of those responsible for them. Recognition of the continuing importance of law in the development of restorative justice is discussed in the preamble to the Basic Principles. The detail of the various Acts of Parliament adopted by the countries discussed here also provide models of options for ensuring basic protection of human rights and honoring essential elements in the rule of law.
Chapter 10
Options for Handling Unruly Children

10.1 Introduction

Now that the new amendment to the Juvenile Offenders Ordinance has been passed into law, unruly children (defined as those who offend under the age of 10 years) will no longer be eligible for prosecution for offending. Inevitably there will be questions asked by the public about:

- How many of these children are there?
- What type of offences are they responsible for?
- What is the Government doing to keep the public safe?
- What is being done to repair the harm they have caused?
- What measures are being taken to ensure that they do not offend again?

These are questions for which it is important to have answers. It is the role of this research report to develop a plan that will ensure that suitable measures are put in place and that these measures will be able to be assessed to determine their effectiveness. Of course it will not be possible to devise measures that will eradicate all offending by children, or to repair all the harm that is done or to prevent some of them from continuing to offend. But at the very least it will be important to provide reassurance to the public that child offending is not increasing in numbers or seriousness, that steps have been taken to repair the damage done by this offending and that the chances of reoffending have been minimised. In particular, it would be desirable for the Government to demonstrate that while it cannot be responsible for the amount and type of offending that occurs, it can at least ensure that better measures have been put in place to respond to victims and to reintegrate offenders. In making proposals, it is useful to examine the principles and practice underlying responses to child offenders in other jurisdictions that have been successful in...
achieving the above objectives.

This chapter therefore aims to examine:

- The data that is available about children who have offended over recent years;
- A review of the principles underlying responses to child offenders;
- New options that can serve as alternative measures to support child offenders;
- The likely advantages and disadvantages of these options.

10.2 Data on Child Offenders

The Report on The Age of Criminal Responsibility (The Law Reform Commission of Hong Kong, 2000) shows that, of a total of 4,197 juvenile offenders in 1998, only 4% were under the age of 10 years. This made up a total of 142 children in 1998. Not only is this a very small group, it is also a group who commit relatively minor offences—82% of them were involved in shop theft or snatching.

The relatively minor nature of their offending is confirmed by the fact that current systems appear to be able to deal with most of them without resort to prosecution: in 1998, 65% of all the children who were arrested were dealt with through the Police Superintendent's Discretion Scheme (PSDS). Many of those not dealt with by PSDS had been arrested for the relatively minor offences of shop theft or snatching: 31 out of the 50. In 1998, only five children under 10 years old who had not been given PSDS were involved in the relatively serious offences against the person of indecent assault, wounding, serious assault or unlawful sexual intercourse. In 1997 there were only two children in these categories and in 1996, one child (The Law Reform Commission of Hong Kong, 2000: 95-97).

1 The figure for 1999 is also 4% although both number under age 10 (114) and the total number of offenders (2,898) were down compared to 1998. In 1999, as in 1998, only five of those in the under 10 age group committed one of the four most serious offences against the person.
Data was not available on how the children not dealt with by PSDS were responded to but it is very likely that most of them were prosecuted in the Juvenile Court. Nevertheless, it would seem useful to strengthen the alternative measures for this age group in order to ensure that there are a suitable range of measures to deal with their offending and to provide reassurance to the public that appropriate actions will be taken.

10.3 Ways Ahead

Despite the above data illustrating how few serious child offenders there are, it is timely for Hong Kong to reconsider the principles underlying its choice of options available to support unruly children. There are a number of reasons for this. As already mentioned, the amendment to the age of criminal responsibility specified in the Juvenile Offenders Ordinance is the most obvious of these but there are others that are equally compelling:

1. Research has cast doubt on the value of residential institutions for young offenders as effective in equipping them with the skills they need to become successful citizens. Punitive detention carries the risk of increasing recidivism because of its potential to act as a "school for crime" and to develop close ties between young offenders.

2. Internationally, countries in Europe, Asia and Australasia who have recently updated their legislation or are currently considering doing so are developing new objectives and new processes in the areas of child care and protection.

3. Welfare policy in Hong Kong is moving in new directions—particularly towards building social capital through building community support networks, the links and respect between people, and the sense of cohesion and belonging among members of the community (Health, Welfare and Food Bureau, 2002). The ultimate aims set out for building social capital are very close to the objectives that have become part of the justice systems built on restorative justice principles. Both include goals
of: increasing social solidarity; social inclusion; social participation; self-help and mutual-help; and positive values of mutual assistance, self-empowerment and resilience in the face of adversity (Health, Welfare and Food Bureau, 2002: 9). Both emphasize that approaches to achieving these goals must involve building communities of support and empowering individuals to take charge of their own decisions and their future.

4. The information on various jurisdictions included in the earlier chapters in this report indicates that, while Hong Kong compares favourably with other countries in the strength and organization of its services and programmes for young people and families (Choi and Lo, 2002), 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.

5. Further, experience in Hong Kong has indicated that while changes to the provision of services for children, youth and families have increased their effectiveness over recent years (Lo et al., 1997a; Lee and Tang, 1999; Wong, 2000), there are still improvement that can be made if there is to be an all round approach to children at risk.

10.4 Principles to Guide Responses to Children who Offend

Internationally there have been several notable trends in responses to children and families with needs for care, protection and support (see chapters 2 to 9). Some of these have already had their impact on the provisions of services in Hong Kong:

Inter-agency co-operation. Research has demonstrated that the failure of services to reach children and families in need is often due to the complexities surrounding service delivery. It has often been noted that many agencies become involved in the life of families experiencing problems in ways that are unhelpful: roles overlap; practice conflicts and families become confused at best or fall between the cracks because a particular agency will assume
another will be providing the necessary support. Hong Kong has already assessed the reality of this problem for the territory and has taken steps to reduce it by the formation of integrated children and youth services centres and integrated family services centres.

**Strengthening families.** The difficulties faced by many families who are poor, fractured and lacking the ability to respond to their children’s needs have also been well documented. Hong Kong has taken a lead in the Asian region in providing for services that aim at strengthening families. Such services are key to providing for appropriate responses to children who offend.

Improved integration of services and an emphasis on strengthening families are linked to three other important principles which have already received some recognition in Hong Kong:

**Empowerment.** Internationally, there has been an increased recognition that family empowerment is a key to supporting and strengthening families. Both children and family members need to be able to understand what is proposed, participate fully in decisions and remain in contact with one another if they are to receive the full benefit of services designed to help them.

**Deinstitutionalisation.** There has been a strong trend over recent years to de-emphasize the use of training institutions and children’s homes for children who are abused, neglected or are in need of assistance by reason of offending. This reflects the results of research over recent decades that indicate that children placed in such institutions are disadvantaged in a number of ways compared to children who remain in a family setting, even though the family may be experiencing difficulties in caring for that child. De-institutionalization is a logical step in the process which emphasizes providing services to strengthen families and to assist them in supporting their members.

**Maintaining links with family.** The importance of the child’s ties to the family and to their community has also been recognised and emphasized as a response to a basic right of the child (for example Article 12 of the United
10.5 Existing Options for Responding to Unruly Children: the Care or Protection Order

With the raising of the age of criminal responsibility, an unruly child under 10 years of age cannot be prosecuted. However, the Police (or the Director of Social Welfare) can consider applying a Care or Protection (C/P) Order from the Juvenile Court under section 34 of the Protection of Children and Juveniles Ordinance (Cap 213), if they consider the child’s situation and family background unsuitable to the extent that harm may be caused to the child or to others, especially where the child is beyond parental control.

Usually the situation will be one where the parents are incapable of looking after the child or discharging their obligation as parents. Under this Order, the Court is able to specify someone to care for the child and to provide appropriate oversight of the child's behaviour. The Court will require the Director of Social Welfare to appoint an officer to be in charge of the case and supervise the child. The supervision period is for up to 3 years. In addition, the Court may impose other conditions on the child, such as a schooling condition and/or a curfew condition, as part of a supervision order which forms part of the C/P Order.

Under the C/P Order, the Court may also consider the option of residential care, if the supervision of the child in the community is not viable or effective. Due to behavioural, emotional or relationship problems, or family crises arising from illness, death or desertion, some children are unable to be cared for by their own families. Residential care aims to provide family substitute or supplementary services for them to grow up in a stable and safe environment, promote their health, welfare and self-care abilities, and meet their physical, social, emotional and intellectual needs.

There are different options of residential service, including foster care service, small group homes and residential homes, to provide care to children whose
parents cannot take care of them. Before deciding the choice of placement, social workers will assess the children’s needs and consider various factors, such as:

- age of child
- physical, mental and emotional conditions of the child
- developmental needs and behaviour of the child
- need to remove the child from his/her community
- environment which best meets the child’s need
- parental and family resources

It has all along been government policy to place children in home-like environment as far as possible if a child must be removed from the biological family temporarily. Whilst non-institutional care is the preferred option for children in need of out-of-home care, the Government has increased the provision of foster care service over the past several years. Social Welfare Department also took the opportunities to convert large residential care institutions into small group homes and foster care places when the operating agencies re-engineered their services. Over the past three decades, the number of foster care places under subvention has increased from 40 in 1972 to 745 in 2003, including 700 ordinary foster care places and 45 emergency foster care places.

In a case where a C/P Order is not sought, the Police may still want to offer some kind of assistance to the child. In such circumstance, the Police may refer the case to the Social Welfare Department or Education and Manpower Bureau. For instance, the Social Welfare Department, through its own service units or NGOs, runs a number of counselling services and supportive programmes which are appropriate for these children and their families. Figure 10.1 describes the process as it currently operates. Please note that PSDS cannot be applied to unruly children after the raise of the age of criminal responsibility. For details regarding the C/P Order, please refer to the Protection of Children and Juvenile Ordinance (PCJO).
Figure 10.1 Pathway of handling unruly children after the raise of the age of criminal responsibility

10.6 New Options for Future Response to Unruly Children

In addition to the current options available under the C/P Order or through direct referral to the Social Welfare Department or Education and Manpower Bureau, the research team proposes a number of new options for responding to unruly children under the age of criminal responsibility. They have been
given provisional names which could be modified further as part of an implementation exercise:

- Introducing the option of Police Child Support Service;
- Family Support Conferences that focus on providing better protection for the child and support for the family;
- Empowerment Programmes that make use of Integrated Children and Youth Services Centres to provide appropriate supportive programmes for children at risk;
- Community Alternatives to Institutional Placements that increase the use of foster home and kin care placements for children receiving C/P Order.

Figure 10.2 describes how these new options would fit in with the current system in Hong Kong for responding to children who offend. It is proposed that those children who offend could be dealt with by a scheme of Child Support Service operated by the Police, which has features different from the current PSDS system for those over the age of criminal responsibility who offend. However, when matters are somewhat more serious, the Police would also have the option of referring the case to the Social Welfare Department for a Family Support Conference or an Empowerment Programme. It is proposed that the option of arranging for a Family Support Conference be made available to the Juvenile Court when considering the case of children in need of support and services under a C/P Order. Section 34 (1) of the PCJO allows the Court to make a range of orders including ordering the child's parents or guardian to enter into recognizance to exercise proper care and guardianships. In this circumstance, referring the child and the child's parents or guardian to attend a Family Support Conference could be an alternative option for the Juvenile Court. For children needing care in another environment, it is proposed that the options for foster and kin placements or small family group homes be increased.
Figure 10.2 The proposed system for responding to unruly children

Unruly Children

Child Support Service

No Further Action

Police

Empowerment Programme

No Further Action

Juvenile Court

SWD

Family Support Conference

Case Dismissed

C/P Order + other conditions
  e.g. curfew, schooling, residential care

Community alternatives to institutional placements
10.7 Details of Proposed New Options

10.7.1 Police Child Support Service

Schemes for diversion by the Police, often called "alternative" or "extra judicial sanctions", are in place in Canada and New Zealand. They involve specially trained officers in the Police in visiting homes, and sometimes schools and victims, to talk with the child and with others. The police officers will try to determine factors that may be related to the offending and to discuss what may need to be done to prevent further occurrences.

It is recommended that a Child Support Service run by the Police be launched to assist unruly children, if the children and their parents consent to such assistance. The objective of this measure is to respond to the child's offending immediately and speedily, so as to divert them away from any further involvement with the juvenile justice or support system. Sometimes, suitable supportive responses of a fairly minimal kind can be easily arranged. This could be done by:

- making sure that the school responds to any problems such as bullying;
- making sure the parents know where to get help with child care or after school supervision or for a child with specific difficulties;
- arranging the family to undertake actions to repair harm;
- arranging the child to make an apology.

If more serious difficulties are encountered, the police officer is likely to wish to refer the child, through the Social Welfare Department, to attend an Empowerment Programme organized by an Integrated Children and Youth Services Centre or for a Family Support Conference organized by an Integrated Family Services Centre. The Police may also wish to initiate a C/P Order if a particular child or family is uncooperative in the above helping process.

Research evidence from New Zealand suggests that police management of youth diversonary processes can be effective. Data in Chapter 7 of this report
options for handling unruly children shows that about three quarters of children and young people in that country are responded to with a variety of diversionary options managed by the police including police warnings and police youth diversion. Maxwell et al. (2002) evaluate the system as it operates in New Zealand and conclude that the police have an important role to play in ensuring that the restorative principles and objectives of the New Zealand legislation are achieved.

Thus research supports the importance of the police role in working with young people who offend. But the research also indicates that the most effective contribution they can make is in implementing diversionary and restorative principles in making decisions about prosecution, diversionary referrals, warnings or taking no further action. It also shows that they can be successful in developing diversionary schemes and taking alternative actions that provide a mid-level alternative to prosecution.

The data from the New Zealand research has implications too for putting in place safeguards to ensure best practice is maintained. The research showed that there was considerable inconsistency across areas in the amount of information collected by the police to assist them in making decisions, in the way that information was used and in the types of diversionary outcomes arranged. These findings indicate that it is important that the role of the police is clearly defined and limited; that those dealing with young people receive special training; that they operate within clear guidelines, and that their actions are systematically recorded and monitored to ensure that best practice is maintained.

In Hong Kong, there is a Juvenile Protection Section in each police region consisting of police officers who have developed special skills in working with children and young people. These staff can provide a core group who would be capable of developing new protocols, training and practice standards for the new roles. Thus the research team proposes that the functions of the Juvenile Protection Section be enhanced to take charge of Police Child Support Service.
Advantages of Police Child Support Service are likely to be:

- Allowing for relatively minor problems to be quickly resolved at a low level in ways that respond to victim, family and child needs;
- Reducing the chances of reoffending;
- Low cost of intervention;
- Increasing the effectiveness of police actions;
- Replacing the PSDS option for children under the age of 10 who offend;
- Building on police experience with the PSDS.

Disadvantages or possible areas of concern could be:

- The need to provide additional training to specific officers within each police region to enable expertise to be built up in this rather specialized branch of policing;
- Using police responses for this preventive strategy;
- Developing policies and guidelines for the Service and ensuring that they are adhered to. These guidelines would need to make it clear that this option will in no way allow the Police to respond to children under the age of criminal responsibility in ways that are intended to punish or put in place sanctions for their offending as if they were over the age of criminal responsibility;
- Allaying concerns in the community that this may allow departure from the "rule of law" by providing sufficient and appropriate guidelines and ensuring that these are debated with involved parties before adoption and widely publicized;
- Providing some system of monitoring the scheme and reporting on the frequency and nature of actions taken under it;
- Eliciting criticism to the effect that the use of Police Child Support Service is a way of effectively lowering the age of criminal responsibility below the current threshold of ten years old;
- Extra resources may be required to handle a small group of child offenders. (As mentioned in Para. 10.2, the numbers of offenders for
1998 and 1999 were 142 and 114 respectively, representing 4% of the total number of juvenile offenders. Some of these offenders may be referred out to services provided by other government departments or NGOs.

Overall, although this would be a relatively low cost response to children who offend, for it to be effective, it would be essential to invest in the necessary support for it. The costs are likely to be effectively recouped from the costs that would otherwise be incurred in referrals for C/P Orders or to community support services. It would therefore be important to ensure that this transfer in costs from one part of the system to another was recognised.

10.7.2 Family Support Conference

The Family Support Conference is intended to enable the families (including wider family and others able to support the child) and unruly children to come together to find a way in which greater support can be given to the family and the child in order to ensure that the child does not reoffend. The main function of the Family Support Conference is to ensure that the child is protected from adverse experiences in the family or in the community, that needs are responded to, that the family is strengthened and there is support for the development of the child.

In the conference, the focus is not on the offending but on the child's and family's needs. The victim would not normally attend such a conference (unless the victim also had a relationship with the child). Representatives of potential service providers could be invited to ensure that options for support services were fully explored. In other words, this conference is intended to be the start of what can be a therapeutic and reintegrative process for the child and family.

The model proposed is somewhat similar to the Care and Protection Family Group Conference that is provided for children in New Zealand (Fraser and Norton, 1996), the Family Group Conferences in Child Welfare operating in England (Marsh and Crow, 1998), and the Family Decision Making Conference.
that has operated in Canada (Pennell and Burford, 1996). In New Zealand, conferences with welfare aims have been located wholly inside the welfare system, with conferences being managed by the Department of Child and Family Services and the coordinators and supporting social work staff employed by the Department. Other jurisdictions conducting conferences for welfare purposes have adopted the strategy of setting up separate agencies as for example in the Family Decision Making Project in Newfoundland, Canada and conferencing in England and Wales. Similarly, a pilot project in Victoria, Australia referred families for conferences to an external agency (Ban, 1996).

There has been relatively little research, to our knowledge, on the relative merits of these options. The advantages of being managed and operated by a social welfare department may be an increased sense of ownership of the system as both Newfoundland (Canada) and Victoria (Australia) have failed to make more than occasional use of the option of family support conference referral. But this may reflect the fact that there is no legislative requirement for conferences to be held when serious issues relating to care and protection of children need to be resolved. On the other hand, the monitoring for quality of the conferences run by the external agencies seems to have been better than in the welfare system in New Zealand, but this again may reflect the differences in case loads: the New Zealand system with its large and growing case load has not been well financed compared to the relatively small scale pilot projects elsewhere. Thus size of operation and resourcing may be the key issues rather than location per se. Key considerations for Hong Kong in the location of Family Support Conferences may, therefore, revolve around issues of support and resources and the likelihood that the conferences will be used when they are appropriate.

It is envisaged that the model should be tailor-made to meet the needs of those in Hong Kong and to fit with other existing services rather than simply be copied from an overseas jurisdiction. Thus it should have its own name, its own objectives and its own rules for operation. Currently there are relatively limited services for at risk children and their families that specifically target crime
prevention goals. New services need to be developed and existing services strengthened and these needs are addressed by the proposals discussed in the next section.

It is proposed that the Family Support Conference be run by selected integrated Family Services Centres as a pioneer service, monitored by the Social Welfare Department. Members of the Conference may include a senior social worker from the Integrated Family Services Centre who facilitates the conference, the child, his or her parents or other family members, and a family social worker who would normally follow up the case. If necessary, a school social worker/guidance teacher, an inspector from Education and Manpower Bureau, a youth worker from an Integrated Children and Youth Services Centre, and/or an officer from the Police Juvenile Protection Section could be invited to attend.

Two routes of referral to the conference are proposed. First, the Police could make a referral to the conference upon parental consent. If the parents or key caregivers disagreed or failed to attend the conference, the Police might wish to consider initiating a C/P Order as an alternative. Second, the Juvenile Court could also make such a referral. If the conference had been at the request of the Court, the designated social worker had to submit a report to the Magistrate after the conference to report the development of the case and agreements made in the conference. The Court would then have the options of accepting the recommendations of the report or of making appropriate orders. In cases where the family failed to attend the conference, the Court would consider other appropriate options, including the use of C/P Order.

The advantages of adding this option are:

- As the child is relatively young, the new service could bring together those involved with the child to participate in the process of decision-making and thus widen the circle of family support;
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- It could empower those who will continue to be responsible for the care of the child to take responsibility for his or her future and to make decisions, if necessary, about an alternative home for that child;
- It will enable the child to express his or her views about what has happened and what should happen in future;
- It could provide additional information about the child's family background in a relatively cost-efficient manner;
- It could inform the Juvenile Court about appropriate decisions when cases are referred from it;
- Although this should not be its primary purpose, it can provide a specific focus on offending and ways in which the child and family may want to take responsibility for repairing any harm that has been done to others;
- It is likely to be able to increase the use of community care and reduce the extent to which children are placed in homes or special residential and training institutions, and thus save the overall cost;\(^2\)
- It is likely to enlist the co-operation of the child and the family in making the plans for their future work.

Disadvantages of the new options are that:

- It will involve costs in setting up a new system, appointing and training new staff and providing for suitable arrangements for venues when conferences are needed;
- It will involve sharing the responsibility for decisions with the child and family and this will involve changes in the roles of all the professionals involved: particularly social worker but also the roles of Police and Judiciary;
- It may involve in greater collaboration with schools to ensure that appropriate provisions can be made for the child's educational needs within the community;

\(^2\) With respect to costs, it should be noted that the impact of arranging care and protection conferences in New Zealand was to enable many institutions for children to be closed so that there were considerable overall savings in costs without jeopardizing the quality of services.
• It will mean a shift in thinking for not only practitioners but also families and the community in considering new ways of responding to children who offend;
• It will be important to ensure that this process is administered in ways that maintain the equality of all before the law and that guarantees their human rights;
• It may be difficult sometimes to find family members who can provide the care that the child needs—for some children alternative placements will need to be arranged but it may still be possible to ensure through the conference process that there are ways of keeping the child in contact with his or her family and possibly reuniting the family in future.

It may be criticized as a way of effectively lowering the age of criminal responsibility below the current threshold of ten years old unless it is made clear that the primary goal of the conference is to address the child's need for care and protection and not as an alternative method of arranging for the child to be made accountable.

In summary, given the experience and research from the overseas countries examined, the research team believes that on balance the advantages of using these conferences will outweigh the disadvantages and improve the extent to which families will be supported and empowered and that quality solutions are arrived at for children.

Overall, our proposal aims to strengthen integrated child and family services to provide improved support to unruly children and their families. As already noted, currently there are relatively limited services to at risk children and their families specifically targeting crime prevention goals. New services need to be developed and existing services strengthened. But it is also essential that services be fully integrated so that the same family is not in the position of receiving services from multiple sources. Service delivery needs to be holistic, integrated and seamless and delivered by professionals who are working in partnership out of the same service delivery philosophy. At the same time, the
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package of services delivered needs to be targeted at the specific needs of the children and the families. This implies that the relevant needs of the whole family need to be determined and that a key worker arranges for the provision of the essential services, monitors this for the whole family and reassesses their status at regular intervals.

10.7.3 Empowerment Programme

Some children may offend due to curiosity or peer pressure. Some of the offences may be attributed to the children's damaged personalities, weak ego strength, impaired family relationships, low self-esteem, or involvement in delinquent subculture. We are not sure of the causes of the offence, but one thing that we can be sure is that the children will proceed to a storming period of adolescence soon. Thus some measures have to be developed to address the needs of the children and empower them to face the hurdles ahead. This includes training that would increase the children's resilience and competencies and develop positive values through the use of a structured programme. The aim of the proposed "Empowerment Programme" is to reduce offending and anti-social behaviour by providing 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. Services should also be extended to the children's families if necessary.

In England and Wales, a similar project known as Youth Inclusion and Support Panels were established in October 2002 to target at younger children at risk of offending with the aim of keeping them out of the criminal justice system (Warner, 2002). The panels identified 8-13 year-olds displaying "problematic behaviour"—such as drugs misuse, anti-social behaviour, mental health or family problems—and who are deemed on this basis to be "at risk" of offending. The children and their families are identified and recruited by referrals from relevant organizations although their participation is voluntary. The panels will direct them towards mainstream services and provide them with key workers offering dedicated help to those who most need it. The initiative, however, is criticized as a way of effectively lowering the age of criminal responsibility.
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below the current threshold of ten (Dignan, 2003). Moreover, the panels are very new initiatives that a comprehensive evaluation has yet to be seen.

Hong Kong has an extensive network of Integrated Children and Youth Services Centres which cover all urban areas of Hong Kong. One of the centre objectives is to respond to the increasing problems encountered by children and young people living in deprived social conditions. Programmes would enhance the children's ability

"In achieving their life tasks and in overcoming developmental crises at the different stages of their development, from childhood, through adolescence to adulthood, especially those in disadvantaged circumstances who would have a greater need for professional help." (Working Party on Review of Children and Youth Services, 1994:30)

Programmes organised for children and young people for this purpose are categorized as Core 2 services, or Supportive Services. They are provided to complement the caring function of the family, facilitate young people in making optimum use of educational and social opportunities, and enhance their abilities in the areas of self-care, mutual aid and social re-integration.

Since it is stipulated by the Government that Supportive Services be organised for disadvantaged children and youth, the Integrated Children and Youth Services Centres are placed in the right position to provide Empowerment Programmes for unruly children. The Police might wish to refer an unruly child through the Social Welfare Department 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.

As our previous discussion disclosed, only a very small number (about 4%) of child offenders are under ten years old, and thus the demand for services will not be tremendous. The Government can select a few centres with the most

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relevant experiences and expertise to start up this service in the neighbourhoods. In this respect, those centres, which have netted up with a District or Night Outreach Social Work Team, or a Community Support Service Scheme, should be given the pioneer role in this new area of supportive service.

The advantages of Empowerment Programmes are:

- After the training, the children can be incorporated into the Integrated Centres as members so that follow-up services can be provided.
- Positive role models can be provided by senior members of the centres.
- The expertise of the selected centres can be fully utilized.
- The existing venues and network of services can be fully utilized.
- Through receiving services in a neighbourhood centre, the potential labelling effect on the offending child can be minimized.
- Reducing the chances of reoffending.
- Low cost of intervention.

Disadvantages are that:

- Costs will be involved in developing a set of Empowerment Programmes targeted specific crime of young people.
- It will be necessary to educate frontline youth workers in their new role in the prevention of youth offending.
- By placing the programme in the Integrated Children and Youth Services Centres, it is likely that some NGOs may request extra resources in supporting the services.

Again, the research team notes the potential advantages of this proposal as outweighing the disadvantages. Improved outcomes for children always come at a price and there always be critics. Nevertheless, if the scheme is introduced in stages and assessed at an appropriate time, there will be clear evidence available before the Government is required to make a long-term commitment to it and public concerns will be able to be addressed.
10.7.4 Community Alternatives to Institutional Placements

It is recommended that when residential care is required under a C/P Order, the use of family-like placements be strongly encouraged. A Family Support Conference could be called forth when there are concerns on the quality of care currently being provided, to consider options and to develop a plan which would assist the Juvenile Court to make a decision regarding the provision of support to current caregivers or agree on suitable alternative placements with kin, foster families or in small group homes as an alternative to the larger residential homes.

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.

The use of family-like placements to residential care placements is now widespread throughout most of the countries considered in this report. In Hong Kong, the use of foster care service and small group homes is being developed and further development to replace residential care institutions should continue. Converting large residential care institutions into small group homes and foster care places by the Social Welfare Department is in the right direction. However, the situation in Hong Kong where living spaces are limited and many families lack the resources to take in additional children makes family placements in foster homes or with kin difficult to achieve. Some extra support from the Government and from the community is necessary to sustain the growth of small family-like group care for children in need of care.

Advantages of more family-like placements would be that:

- Outcomes for children are likely to be improved if they can remain in the community, maintain contact with those they are already attached to and
live in a family like environment where they have an opportunity to acquire the life skills that are difficult to learn in an institutional environment;

- Placement in family-like or small group setting is likely to be less criminogenic in that the children will be less likely to associate with others who have difficulties and a history of offending;
- Research demonstrates more positive outcomes for children kept in communities in terms of education, personal growth and acquiring life skills;
- Overseas experience shows that the cost of community care is considerably less than the cost of residential care even when the costs of social work support and additional financial support to families is taken into account.

Disadvantages of using more family-like placements would be that:

- Locating suitable families with space to accommodate additional children may be problematic;
- Systems of oversight and support for those accepting such children will have to be developed, revised or updated;
- The closure of existing institutions always involves hardships for those who rely on them for their livelihood;
- Public education will be necessary to avoid public perception that their community will be more dangerous if the unruly children are kept in the community.

Overall, the research team considers that the advantages of this proposal outweigh the disadvantages provided that the Social Welfare Department is able to find suitable family placement options. In other respects, the likely improvement in the chances of preventing further offending and enhancing the chances of these children becoming competent citizens are likely to be even more important than the reduction in costs.
10.8 Conclusion

Four proposals are made in this chapter for new measures aimed at targeting unruly children who offend under the age of 10 years: Police Child Support Service, Family Support Conference, Empowerment Programme, and community alternatives to institutional placements for children in need of care. It is likely that both Government and NGOs will need to be involved in developing and delivering these services. Under these proposals, the Police will have an active role to play not only in designing operational policies and procedures, and making referral decisions, but also in providing the diversionary measures. The Social Welfare Department is likely to have a particular role in developing policies, setting standards, managing service delivery either from within its own service units or through subvention to NGOs, monitoring progress and assessing outcomes.
Chapter 11
Options for Handling Young Offenders

11.1 Introduction

At the time of the raising of the age of criminal responsibility, questions were asked about whether the new age should be 10 or 12 years. The arguments for 12 years include a recognition that most countries around the world have set the age of criminal responsibility at 12 or higher. The Government has indicated at the then meeting of the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001 that the Government will consider proposing to further raise the minimum age of criminal responsibility when the Administration put forward proposals to provide additional supportive measures for unruly children below the minimum age. It is envisaged that proposals could be made only after careful consideration of the recommendations made in the final report of this research.

Taking into account that the only diversion programme currently available in Hong Kong, PSDS, targets young persons between the age of 10 and 17, it is considered that it would be more appropriate to maintain consistency among different alternatives to prosecution. This chapter therefore considers a range of options for this age group. In particular it examines the following questions:

- Are current measures as effective as possible in repairing the harm they have caused?
- Are the measures currently being taken to ensure that they do not offend again, suitable and sufficient in the light of current research and thinking?
- What options could be considered for the future and what are the advantages and disadvantages of them?
This chapter therefore aims to examine:

- The principles underlying responses to young persons who offend;
- New options that can serve as alternatives to prosecution;
- The likely advantages and disadvantages of these options.

However, first it seems appropriate to review and summarize the arguments that lead to the need to reconsider alternatives to prosecution for young persons who offend:

11.2 Reasons for Hong Kong to Examine Alternatives to Prosecution for Young Persons

It seems timely for Hong Kong to consider re-examining the legislative options available as alternatives to prosecution for young persons. There are number of reasons for this:

1. As mentioned in previous chapters, many overseas jurisdictions have recently updated or are considering updating their legislation to provide alternatives to prosecution of young offenders.

2. The welfare directions in Hong Kong are moving towards building social capital through building community support networks, mutual respect between people, and the sense of cohesion and belonging among members of the community (Health, Welfare and Food Bureau, 2002). These aims are very close to the restorative principles adopted in juvenile justice, which include increasing social solidarity, social inclusion, social participation, self-help and mutual-help, and positive values of mutual assistance, self-empowerment and resilience in the face of adversity (Health, Welfare and Food Bureau, 2002:9). Both emphasize and involve building social support and empowering individuals to take charge of their own decisions.
3. While Hong Kong has a comprehensive network of 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. A resolution at the United Nations 10th Crime Congress in Vienna in April 2000 called on all countries to move towards restorative justice approaches to offending and this has been followed up with the development of new basic principles to guide member states in the implementation of these processes.

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 from prosecution.

6. Increasing the use of diversionary options does not result in increased offending rates and, if the processes are well managed and targeted at offenders who are at risk of continued offending, reoffending can be reduced.

11.3 Principles for the Future Juvenile Justice System

Options for principles to guide policy and practice in response to young persons who offend come from a consideration of the objects and principles in the six comparison jurisdictions examined in the earlier chapters of this report. These can be summarized under headings as follows:

11.3.1 Protection

As mentioned in Chapter 9, member States of the United Nations have a duty to ensure that the rights of young people are protected. Specific features include ensuring that, when young people are apprehended by the Police:
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- They are informed of their rights not to answer questions other than to give their name, age and address;
- The power of arrest of young people is to be limited to those occasions where it is necessary to prevent further offending, destruction or interference with evidence, interference with witnesses or in order to secure their appearance at further proceedings;
- The use of custody should be limited to those instances where this is necessary for the safety of the young person or of others;
- When questioned, young people have the right to have a parent or nominated adult present;
- They have the right to consult with a lawyer on apprehension and in any subsequent proceedings;
- The right to a defended hearing should they deny the charges;
- Young people have the right to be fully informed about what is and is likely to happen in a manner that ensures that they fully understand;
- Young people have the right to have their view heard in any proceedings;
- Young people have the right to privacy and confidentiality of proceedings;
- Cruel and unusual punishment is prohibited including the use of corporal or capital punishment.

11.3.2 Welfare

Provisions should be made for the wellbeing of young people in all respects as set out under the United Nations Convention on the Rights of the Child. Services should be made available for their rehabilitation, their education, their opportunity to training and to obtain employment and to associate with others. Support should be provided to their family in order that the family can provide appropriate care for the children. At the same time, they have the right to protection from persons and situations where they may be abused, neglected, ill treated or harmed. This includes the right to being held separately from adults when in custody and the right to have matters resolved within time frames that are appropriate to their age and development.
11.3.3 Justice
Most of the comparison countries have adopted the main features of the "just welfare" perspective which ensures that:

- Wherever possible, young people are diverted from courts and custody;
- Sanctions are the least restrictive possible given the nature and circumstances of the offending;
- Young people should be made accountable for their offending;
- Sanctions should not be used for welfare purposes, in other words: young people should not be required to attend treatment or placed in custody for welfare reasons.

11.3.4 De-Institutionalization
Most of the countries considered in this report, now, severely limit the use of institutions for the management of young people who offend and endeavour to keep them with their families, to place them with kin, or to place them with other families, preferably in the same community. When institutional placements are used, this needs to be justified by reason of the potential threat to public safety, for the safety of the young persons and such placements are made for the shortest time possible consistent with the above goals.

11.3.5 Empowerment
Novel features of practice by those countries considered here where restorative justice principles have been adopted include the empowerment of all those affected by the offending through their being given the option of being included in decision making about the outcome. This includes family members and supporters of the young persons (including wider family such as grandparents, uncles and aunts, siblings and others important in the life of the children), and any victims and their supporters. It is important for empowerment to occur, that the procedures adopted limited the power of professionals to dominate and coerce decisions and ensure "that agreements are arrived at voluntarily and contain only reasonable and proportionate obligations".

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11.3.6 Repair of Harm
The second restorative justice feature is an emphasis on the repair of harm. Processes are intended to encourage offenders and their families to make amends to victims and repair harm wherever possible. This may be through the use of apology, restitution of goods, reparation up to the value of damage (within the limits of the young persons' and their families' financial resources), and undertaking appropriate work to make good the harm or any other appropriate response.

11.3.7 Reintegration
The third restorative justice feature is to achieve reintegration. Critical features that assist in reintegration have been identified in research as including the support of family members and others, forgiveness and being given the opportunity to make a new start and the implementation of rehabilitative and reintegrative plans that allow the young persons to resolve problems and build skills.

11.4 Current Options of Diversion

11.4.1 Police Superintendents' Discretion Scheme
This Police Superintendents' Discretion Scheme aims to divert offending young persons from being prosecuted in the Court. Police officers who hold the rank of superintendent or above may caution the young persons under the following conditions:

- The offender must be below the age of 18 when committed the subject offence which should be a relatively minor offence;
- The evidence available is sufficient to support a prosecution, and that a prosecution would be the only alternative course of action;
- The offender voluntarily and unequivocally admits the offence; and
- The offender and his/her parents or guardian agree to the cautioning.

Under normal circumstances, an offender will be cautioned once. Only in extremely justifiable situations will the Police allow a second caution after
consideration of the following factors: the nature, seriousness and prevalence of the offence; the offender's previous record; the attitude of the complainants; and attitude of the offender's parents or guardian.

Although the attitude of the complainants will be considered before the cautioning, there are no such measures as Family Group Conference and Victim Offender Mediation. But there is an option that the Police can refer the offenders to receive counselling and support services from the Community Support Service Scheme (see below), if the young persons concerned do not agree that they be handled in such a manner, perhaps because they do not consider that they have committed the offence, they can challenge the case in the Court, and the Police cannot force them to accept PSDS.

If the offending young persons are subject to PSDS, they are required to go through certain aftercare supervision run by the Police Juvenile Protection Section. However, if eventually the young persons refuse to follow the supervision, the Police cannot prosecute them again for the same offence. The reason being that the young persons have already been subject to a police discretion not to prosecute them (Mui, 2003). On the other hand, if the offending young persons are considered not suitable for cautioning under PSDS, the Police still have the option of prosecuting them.

11.4.2 Community Support Service Scheme
The Community Support Service Scheme, run by NGOs but fully subvented by the Government, is set up to help youth cautioned by the Police under PSDS. The Police refer the young persons, on a voluntary basis, to receive the services. Altogether five teams have been set up to serve the whole territory of Hong Kong. It aims to divert the offending young persons from the juvenile justice system, re-integrate them into the community, develop acceptable behaviour, and redirect their energies into constructive and legitimate channels. Community service projects are organised to help the offending young people develop a sense of self-worth and responsibility. Structured activities with therapeutic objectives are provided for them and their parents or carers who have experienced difficulty in supervising their children. Examples of activities
are counselling or supportive groups, skill learning classes, adventure and outdoor activities and volunteer or leadership training. Research suggests that the services provided were effective in helping the youth at risk, who were also highly satisfied with the quality of services received (Lo et al., 1997b).

11.5 New Options for Young Persons Who Offend

Two main options for alternatives to the prosecution of young persons aged 10-17 are considered. In addition, one of these could also be available for use as an order of the Court. These are described below. They have been given provisional names which could be debated further as part of an implementation exercise:

- Family Group Conferences for young persons aged 10-17 that focus on accountability for offending and responses to reintegrate and rehabilitate the young persons after referral from the Police (in consultation with the Prosecution) or the Court of offences where there is sufficient evidence to proceed with a prosecution;
- Empowerment Programmes for young persons aged 10-17, on a voluntary basis, in lieu of prosecution.

The research team also considers the possibilities offered by Victim Offender Mediation as a restorative justice strategy that, while it can respond to the needs of victims and promote the reintegration of the young offenders, is not seen as a potential alternative to prosecution.

In the following, the research team firstly describes how these options could operate in relation to the current youth justice system and how they would also intersect with the welfare system. Figure 11.1 provides a diagrammatic outline of the new options.
Figure 11.1 The proposed system for young offenders aged 10-17
11.5.1 Family Group Conferences

It is recommended that Family Group Conferences be used as an alternative to prosecution of young offenders between the age of 10 and 17. The term "Family Group Conference" is not new in Hong Kong. It has been mentioned and discussed in local literature (Hong Kong Federation of Youth Groups, 1998; Wong, 1998; Wong, 1997, 1999 and 2002). Its objectives are:

- Providing an option to the handling of young offenders which can be restorative, constructive, educative and more effective in preventing reoffending and achieving other positive outcomes.
- Providing an option that can repair the harm to the victim and be responsive to their needs and concerns.
- Providing an option that enables families and young people to participate fully in the process of making a decision about the outcome.

There are two routes of referral to Family Group Conferences, as follows:

Pre-Charge Diversion. When there is sufficient evidence and the offence is of sufficient seriousness for referral to the Prosecution to be considered, a Police Youth Officer should review the case and, whenever possible, make a referral for a Family Group Conference in consultation with the Prosecution. Criteria for referral may need to be considered further with reference to overseas experiences, but the research team recommends that referral to the Prosecution should only be considered if the offence is relatively serious (imprisonable if committed by an adult) or if there is a considerable history of previous offending. 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.

Pre-Sentence Diversion. The Court, whenever necessary, may refer suitable cases for a recommendation from a Family Group Conference before making a decision. This approach is not regarded as an alternative to prosecution, but a pre-sentence diversion that uses restorative measures,
rather than punitive sanctions, to help the offenders to be accountable for their behaviour and repair the harm they have caused.

In both cases above, new legislation will be required to empower the relevant parties to use Family Group Conference as a restorative and diversionary measure in the juvenile justice system.

The manner in which the Family Group Conference is arranged, the records kept and the standards to be met should be determined after further consideration of the way in which the process operates in various Australian jurisdictions, New Zealand, Canada, England and Wales, and Belgium and a consideration of the issues discussed in Chapter 9. Members of the Conferences may include the people listed in Figure 11.2.

The experience in other countries is that many victims will wish to attend as it provides them with an opportunity to meet with the person who was responsible for harming them and to describe the impact that the offending had on them. It also provides them with the opportunity to contribute to the decision about what the best response to the offending should be. Under this circumstance, the victims will normally be accompanied by their supporters, who may be their family members, teacher or social worker.

On the other hand, other victims will not wish to be present at the conference, most commonly because they are too busy or do not wish to meet the offenders and their families. In order to ensure that the offenders are informed about the impact of their offending when the victims do not attend, other countries\(^2\) invite these victims to nominate a representative to speak on their behalf and/or to provide a statement in written form describing the harm done to them. In some cases, the representative may be a family member, colleague or friend of the victims, but in some cases the representative can be one of the professionals involved in the conference such as the Police Youth Officer, the

\(^2\) For example, Australia and New Zealand. For a detailed discussion of this issue, please refer to Strang, 2001.
**Figure 11.2 Members of a Family Group Conference**

Family Group Conference

- **With victim's presence**
  - Offender
  - Offender's parent/guardian
  - Victim
  - Victim's supporter
  - Conference facilitator
  - Police Youth Officer
  - Other significant others, e.g. teacher, social worker, if appropriate.

- **Without victim's presence**
  - Offender
  - Offender's parent/guardian
  - Victim's letter/feedback
  - Victim's representative
  - Conference facilitator
  - Police Youth Officer
  - Other significant others, e.g. teacher, social worker, if appropriate.

Victim's social worker or the conference coordinator. To ensure that the victim's voices are heard, the representative should collect feedback (e.g. letters or recordings) from the victim and show them to the offender or the offender's supporters. It is proposed that such a solution be adopted in Hong Kong when the victim is not able or does not wish to attend the conference.

The advantages of introducing Family Group Conferences can be summarized as follows:

- Saving costs involved in obtaining a solution through the prosecution in the Court.
- Alternatively, if the Family Group Conference has resulted from a Court referral, there can be savings from reducing the need for social work reports and specialist assessments in order to determine the most appropriate response by the Court.
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- Engaging the support of wider family in determining solutions likely to be more effective than restrictive and punitive sanctions and residential or custodial options.
- Potentially being more effective in reducing reoffending, especially for relatively serious offending, than the options currently available to the Court.
- Responding to the call from the United Nations to encourage member states to introduce restorative justice options for handling young offenders.

The disadvantages can be seen as:

- Requiring the setting up of new systems for the management of Family Group Conferences, the training of facilitators, Police Youth Officers and other professionals involved in the process.
- Setting up systems of monitoring and evaluating the effectiveness of outcomes and whether or not standards are met.
- Educating the public about the rationale behind the new system and responding to fears of victims and the community generally about its potential to respond adequately to offending.
- Educating victims and families about the role in the new system.
- Re-educating professionals (Police, social workers, lawyers and Judges in their new roles), encouraging them to give up the expectation that they will be the principal decision makers and assisting them to recognize and develop the skills that are necessary to undertake their new roles as supporters and facilitators of outcomes that are owned by those most affected by the offending.
- Developing systems that ensure that, in the failure of Family Group Conferences to agree or for tasks to be undertaken, other options for accountability are still available.\(^3\)

\(^3\) The way these matters are managed in New Zealand and the various Australian jurisdictions can provide possible models that could be adapted to meet the requirements of Hong Kong law.
• Putting in place adequate systems to guarantee, in practice as well as in theory, rights under law, suitable safeguards against disproportionate outcome and inequalities of treatment.
• Ensuring that the involvement of members of the general public did not allow for the interests of particular groups to be served in ways that violate basic rights and concerns for equality under the law.

Many of the issues raised here will, in practice, be bound up with where the new services will be placed. In particular will they be managed partly or wholly by the Government and if so which branches of Government; or alternatively will NGOs be involved in provision of services and, if so, how will this operate and how will systems of monitoring and accountability be managed. On this issue, the following overseas experiences are relevant:

Police conferencing. In Australia, at various times and in various locations, notably in the RISE programme in Canberra and in Wagga Wagga, the Police have arranged conferencing and it was this latter example that was an important influence in leading the Thames Valley Police in England to also adopt a conferencing model and for experiments with Police-led conferencing in Canada. In general, Police have arranged conferences for relatively minor offences and use a scripted model where the questions asked by the facilitator follow a preset pattern. Evaluations of Police-led conferencing have, however, not supported the usefulness of conferencing for minor offences (Strang, 2001). They have also drawn attention to a number of disadvantages in police officers acting as facilitators (Young, 2002):

Police-led conferencing is prone to some distinctive pitfalls. Traditional police cultures, and the authoritarians and questionable practices it can generate, present significant obstacles to the successful implementation of restorative justice... Thus there is nothing surprising about the finding that some police-officer facilitation has been heavily shaped by a traditional policing outlook. (p 221)
For these various reasons, it is not recommended that Police-led conferencing be adopted in Hong Kong.

Youth Justice Family Group conferences. In New Zealand the conferences are managed totally within the welfare department which takes responsibility for the management of the process and the employment of youth justice coordinators and youth justice social workers to support the system. Morris and Maxwell (2001a, 2001b) comment that, in their view, locating youth justice conferences inside a welfare department has not worked well for a number of reasons:

- Many families have previous negative experiences with the same department that also manages cases of child abuse and neglect.
- The urgency of work with abused and neglected children has meant priority for staff and resources for these cases with a result the youth justice work suffers.
- Although facilitators are meant to be independent of the statutory role of the department and operating under youth justice principles, they are in the main supervised by senior social workers or social work managers whose working attitudes are shaped by their statutory role in relation to childcare and protection.
- Social welfare and restorative justice values are not necessarily reconcilable. Social welfare practitioners are concerned primarily for the best interest of the child whereas, in youth justice, considerations of victims' needs must be given due weight and the facilitator's role needs to be an independent one.

They consider the Department for Courts as an alternative location but the coercive and punitive role of courts is seen as a disadvantage. Similarly, Lilles (2001) points to the dangers in involving judges and courts closely in the

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4 In this section, discussions are limited to New Zealand and Australia. Discussion of management practice with respect to family group conferences in Canada and England under their new laws is premature as there is insufficient evidence. It has already been noted that Police-led conferencing, as in some areas of England and Canada, is not recommended.
process because the pressures in courts on the time taken by processes is at odds with the need to give time for participants to reach effective conclusions for themselves. In Singapore, the process of providing conferences through courts may have been a factor in the tendency for the professionals to make decisions in a similar way to hearings.

The Australian jurisdictions have adopted a variety of mixed strategies. In Queensland, a youth justice coordinator employed by the welfare department is charged with responsibility for managing the process which operates by training and employing a number of facilitators contracted from outside the department who actually prepare both parties, convene and facilitate the conference and report the outcomes. In New South Wales, a similar process of training and employing full or part time facilitators from outside of government service has also been chosen but, in this case, a special bureau has been created for the purpose of managing youth justice conferences. In Adelaide, the process is under the oversight of the Attorney General’s Department where a special unit manages the process and employs local field staff who facilitate conferences. These mixed methods have generally been seen as working well by commentators. However, it needs to be noted that in all three Australian states, the process of referral for Family Group Conference is a requirement under law in certain cases.

By way of comment on the appropriateness of locating youth justice conferences in the voluntary sector, Morris and Maxwell (2001a) comment:

The voluntary sector is likely to be seen by victims and offenders as more independent than statutory organisations and it is not likely to be contaminated by some of the value conflicts mentioned above. A further acknowledged strength is that the voluntary sector can also receive referrals from those victims who do not wish to have their victimization dealt with within the criminal justice system, but who nevertheless want some resolution. We need to acknowledge here that research (for example, crime surveys) shows that the vast majority of victims in all communities do not report their victimization
to the Police.... But the role of the voluntary sector in the provision of restorative justice within a criminal justice context will remain marginal (and marginalized) unless it works in partnership with the state in order to receive referrals from it. Victim Offender Mediation demonstrates both these strengths and weaknesses. Mediation has remained outside the mainstream of the criminal justice system and advocates of mediation has seen this as advantageous in gaining the trust of victims, offenders and other members of the community. However, as we noted above, independent organisations can find it difficult to encourage and develop the trust of the state gatekeepers who determine referrals, especially when the process has no legislative base.... This was the experience of the pilot [conferencing] projects described by Ann Skelton and Cheryl Frank in... South Africa and by Jim Dignan and Peter Marsh in... England and Wales. (Morris and Maxwell, 2001a: 273)

In conclusion, Hong Kong will need to determine where it wishes to place youth justice family group conferencing if it adopts the recommendations of this report. The Government may wish to retain both the management of the process and the employment of staff within a government agency or it may wish to enter a partnership with voluntary sector agencies as has been successfully done in Australia. It may wish to manage the process within the Social Welfare Department, in another government department or in a separate bureau as in New South Wales.

It is our recommendation that the option of a separate unit attached to the Social Welfare Department that employs its own field staff with adequate training in conference facilitation may be the most suitable one for Hong Kong. It provides some measure of independence from other major agencies while guaranteeing government control of the process consistent with the maintenance of the rule of law.

11.5.2 Empowerment Programme

If there is to be a move away from institutional care for training and
rehabilitation or for providing necessary supervision to young persons who would otherwise be candidates for a custodial sentence, there need to be new options within the community. A number of the comparison countries whose systems are reviewed here provide for systems of supervised placement for a variety of purposes within the community.

For example, in New Zealand, Family Group Conference plans may include arrangements for supervised placements within the community which are managed through the Department of Child, Youth and Family Services or under the auspices of an NGO. In addition, there is provision for "Supervision" and "Supervision with Activity" orders that are in some respects similar to the Probation Order used in Hong Kong but different in that an individualized plan for the particular person is arranged for such orders after a Family Group Conference has been held to develop such a plan with the assistance of the social workers who will be involved in its management.

Empowerment Programme, which has been proposed as an option for unruly children in Chapter 10, is proposed here as an alternative to prosecution for handling young offenders aged 10-17, albeit with different features. It focuses on training and community service, with individualized plans, that would increase their resilience and competencies and develop positive values. Its aim is to reduce offending and anti-social behaviour by providing them with a range of purposeful and structured activities that combine voluntary services and life skills training, such as anti-crime awareness and refusal skills. In order to maximise its restorative and reintegrative functions, Empowerment Programme should place an emphasis on voluntary services. This would help the young offenders to take responsibility for their offending in ways that would assist them to understand more about the impact of their offending on the community and, at the same time, to reintegrate them into society through being given an opportunity to help the under-privileged. Services should also be provided to strengthen their families if necessary.

There are two routes of referral to Empowerment Programme, as follows:
Pre-Prosecution Diversion. Whenever appropriate, the Prosecution could refer the young offenders, in lieu of prosecution, to the Empowerment Programme through the Social Welfare Department. Those being placed in the Programme would be required to consent to participate in 60 hours of life skills training and voluntary services to be completed within a period of 3 months. If the young persons failed to complete the stipulated requirements, the Prosecution might decide to take the case to the Court.

Referral from Family Group Conference. Another route of referral to the Empowerment Programme would be the Family Group Conference. The young offenders might like to accept attending an 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.

It is recommended that the scheme be run by NGOs but coordinated and monitored by the Social Welfare Department. As mentioned in Para.10.7.3, selected Integrated Children and Youth Services Centres, which have netted up with a District or Night Outreach Social Work Teams, or a Community Support Service Scheme, should be given the pioneer role in this new area of supportive service because of their expertise in dealing with youth at risk.

Some specific advantages of Empowerment Programmes are:

- The Social Welfare Department and NGOs have demonstrated their ability to manage voluntary services and processes in the past;
- A systematic operating system is already in place;
- Reduced costs to the system because of decreased use of court processes and, potentially, the use of residential and custodial outcomes;
- An encounter between young offenders and the under-privileged serves as a potential for reduced reoffending;
- Providing support for community needs.
Disadvantages that may give rise to public concerns are:

- Public fears about safety of offenders providing voluntary services in the community—however, this has not been reported as a serious problem both in Hong Kong (Lo and Harris, 2000) and in other jurisdictions where young offenders have received such placements;
- Costs of managing the supervision of those on Empowerment Programme—but again this could be offset by the savings mentioned above;
- The need to develop and expand services and guidelines to manage new approaches;
- The need to develop new systems of monitoring and ensure that placements in Empowerment Programme are not abused—again this is an area where previous expertise has been developed in the Social Welfare Department;
- The need to find sufficient voluntary service opportunities to meet the demand.

### 11.5.3 Victim Offender Mediation

Victim Offender Mediation has been used around the world as a way of responding, in specific cases of relatively serious offending, to the needs of victims and offenders (Umbreit et al., 2001; McCold and Wachtel, 2002). They have occasionally been used as an alternative to prosecution and as a way of informing sentencing decision but have probably been used most widely after a sentence has been pronounced (Wong, 2002). In some notable cases, they have occurred years after the offence. They often involve only a victim, an offender and a mediator, although over recent years, many of Victim Offender Mediation schemes have begun to see more like Family Group Conferences in that they involve supporters of both victims and offenders. In addition, there has been a growing trend to use them in situations where a sentence has yet to be determined. However, as their main use has been in more serious cases appearing before a Court and where imprisonment is a possible outcome, they have not been proposed here as an alternative to prosecution. This should not however, preclude their consideration as an alternative for Courts and correctional authorities to use before or after sentencing.
In terms of advantages, it has been demonstrated that they can lead to:

- Victim's being able to understand what has happened and feeling healed;
- Offenders expressing remorse and being forgiven;
- Reported satisfaction occurs in a high percentage of cases for both parties;
- Positive life outcomes can be reported by both parties.

Generally the costs of Victim Offender Mediation are relatively low to the Government as schemes providing these services are often operated by trusts and rely heavily on volunteers. Such services are currently available in Hong Kong and report positive outcomes. The further exploration of such schemes and the use of them in the criminal justice system for young persons who offend can be considered.

11.6 Next Steps in Determining the Appropriateness of these Options

It is proposed that the new options be adopted for a trial period to determine how they might operate in practice, whether or not they can be useful within the Hong Kong juvenile justice system and, if they are, how best such systems can be introduced into the framework of law and practice in Hong Kong. As such, programme evaluation should be conducted to identify the effectiveness of these pioneer measures. The next chapter deals further with some of these issues.
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?
Summary of Research Findings and Recommendations

- 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
Summary of Research Findings and Recommendations

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

<table>
<thead>
<tr>
<th>Law Enacted</th>
<th>Jurisdictions/Measures</th>
<th>Targets</th>
<th>Effectiveness</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>Singapore</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Streetwise Programme</td>
<td>13-19</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Guidance Programme</td>
<td>Under 16</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Measures for Children Beyond Parental Control</td>
<td>Under 16</td>
<td>Service too new for evaluation</td>
</tr>
<tr>
<td>1998</td>
<td>England and Wales</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reprimand &amp; Final Warning</td>
<td>10-17</td>
<td>Unproven</td>
</tr>
<tr>
<td></td>
<td>Referral Order (since April 2002)</td>
<td>10-17</td>
<td>Service too new for evaluation</td>
</tr>
<tr>
<td></td>
<td>Child Curfew Order</td>
<td>Under 16</td>
<td>Unproven</td>
</tr>
<tr>
<td></td>
<td>Child Safety Order</td>
<td>Under 10</td>
<td>Unproven</td>
</tr>
<tr>
<td></td>
<td>Anti-social Behaviour Order</td>
<td>Over 10</td>
<td>Unproven</td>
</tr>
<tr>
<td></td>
<td>Parental order</td>
<td>Parents</td>
<td>Unproven</td>
</tr>
<tr>
<td>1985</td>
<td>Belgium</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Service</td>
<td>Under 18</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Victim Offender Mediation</td>
<td>Under 18</td>
<td>No systematic evaluation</td>
</tr>
<tr>
<td></td>
<td>Family Group Conferences</td>
<td>Under 18</td>
<td>Too early to conclude</td>
</tr>
<tr>
<td>1992</td>
<td>Queensland, Australia</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Conferences</td>
<td>10-16</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Police Cautioning</td>
<td>10-16</td>
<td>Absence of research</td>
</tr>
<tr>
<td></td>
<td>Drug Diversion</td>
<td>10-16</td>
<td>Service too new for evaluation</td>
</tr>
<tr>
<td></td>
<td>Police Counsel</td>
<td>Under 10</td>
<td>Too few cases for evaluation</td>
</tr>
<tr>
<td>1983</td>
<td>New Zealand</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Police Youth Aid Diversion</td>
<td>10-16</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Family Group Conferences</td>
<td>10-16</td>
<td>Yes</td>
</tr>
<tr>
<td>2003</td>
<td>Canada</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Extra-judicial Measures</td>
<td>12-17</td>
<td>Services too new for evaluation</td>
</tr>
<tr>
<td></td>
<td>- police cautioning</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>- voluntary referral for counselling</td>
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<tr>
<td></td>
<td>- pre-charge extra-judicial sanctions, e.g. restitution, apology</td>
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<td>- post-charge extra-judicial sanctions, e.g. restitution, apology</td>
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<tr>
<td></td>
<td>- Family Group Conferences</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Earls court Outreach Project</td>
<td>Under 12</td>
<td>Further research needed</td>
</tr>
</tbody>
</table>
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.
Summary of Research Findings and Recommendations

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 reoffending 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
Summary of Research Findings and Recommendations

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
recidivism 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 particularly 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
Summary of Research Findings and Recommendations

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.
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