



# 青少年犯罪的非刑事化處理

警司警誡令與跟進服務

## Decriminalizing Juvenile Offences

Police Superintendents' Discretion Scheme and Follow-up Services

青年問題研究系列(二)  
Youth Study Series No. 2

香港青年協會  
The Hong Kong Federation of Youth Groups  
9. 1993

# DECRIMINALIZING JUVENILE OFFENCES

## Police Superintendents' Discretion Scheme and Follow-up Services

### *Summary Report*

#### 1. INTRODUCTION

The Police Superintendents' Discretion Scheme (PSDS), originated in the 1960s, has been working to keep young people who have committed minor offences away from court trials and thus from custodial sentences. The aim is to enable them to rehabilitate themselves. Yet there is a lack of a comprehensive review on the efficacy and impact of the Scheme which has been playing an important part in deterring recidivism on the part of young offenders.

This exploratory study, amidst a scarcity of literature, carries the following objectives:

1. To identify the current practice and administration of the PSDS.
2. To explore the impact and influence of cautioning on juvenile offenders, their families, schools, social systems and employment.
3. To explore juvenile offenders' problems and needs in the aftermath of committing minor offences.
4. To explore the needs of supplementary treatments or welfare programmes for the juvenile offenders under the PSDS.

#### 2. METHODOLOGY

##### *Definitions*

**Juveniles** mentioned in this study refer to young people aged from 7 to 16, in a way to coincide with the age-bracket endorsed by the PSDS.

Juveniles committed an offence will be named **offenders** in this study, instead of criminals against whom a judicial accusation has been brought.

**Crime**, as defined by Hartjen (1974), is *a socially recognized status constructed by societal members or their authorized agents in the course of labeling someone as a criminal* (pp.8).

In this light, **criminalization** is primarily a reflection of the societal desire to litigate against a certain set of evil behaviours, the perception of which, however, will change over time and with cultural transformation.

**Decriminalization** discussed in this study refers to the informal treatment for a certain category of minor offences, the judicial resolution for which rests on the police and neither a legal prosecution will be pursued nor a criminal record be made.

### *Case Interviews*

Apart from the compilation of statistics provided by the Police and visits to a number of respective service authorities, a total of 21 PSDS cases were conveniently sampled and interviewed from 2 August to 1 September 1993, using a semi-structured questionnaire and a lengthy case recording (Appendix I and II). The cases, having been in contravention of the law in three years, were referred by various social service agencies with the consent of the client. The interviewees were primarily clients of the outreaching social work, school social work and youth centres alike.

The face-to-face interviews which generally lasted from an hour to an hour and a half, were conducted by four highly-trained interviewers with a uniform training from social work degree programmes. Whereas the cases illustrated in this study are not necessarily representative of the overall profile of the PSDS clients, a qualitative analysis on the process of the cautioning and its aftermath will definitely shed light on the significance of this Scheme which can never solely be reviewed on a quantitative basis.

### *Limitations*

For reasons of confidentiality and privacy, the Police have turned down our request for a random sampling of the recipients of the PSDS. In view of the limited size and representation of this convenient sample, diverse sources of cases were ensured whereas a bias to the social service clients has to be noticed. The study has been conducted despite a shortage of manpower and time but the limited number of interviewers in turn ensures a better control over the quality of and uniformity in data collection.

Since all respondents were interviewed voluntarily and were not bothered by the consequences of disclosing their thoughts to the interviewers, they were generally frank and open. In view of the principle of confidentiality, however, interviewers have not been able to verify the self-report of the respondents.

## **3. ADMINISTRATION OF THE PSDS**

### *Principles and Prerequisites*

Any juvenile arrested may be unconditionally discharged, cautioned or prosecuted, subject to the discretion of police. According to the Police General Order (PGO) Chapter 34-08, unless there exist exceptional circumstances (such as the seriousness of the offence, the seriousness and persistence of the offender's record, or the prevalence of the offence), as a general principle, whenever possible juveniles below 17 should be dealt with by the discretion not to prosecute and the cautioning should be conducted as soon as practicable.

This distinctive policy for juveniles is constituted by the concern that on one hand young offenders diverted from entering the criminal justice system could preclude the criminal label which may entail further offences; on the other hand time and effort of police and the courts can be saved by not being *snowed under* by unnecessary prosecutions for minor offences (NACRO 1988a).

Nevertheless, there are specific circumstances under which a caution can be exercised: according to the PGO Chapter 34-08, the evidence available should be sufficient to support a prosecution, and that a prosecution would be the only and inevitable alternative course; and the offender voluntarily and unequivocally admits the offence. Only if extremely extenuating circumstances exist could an offender be cautioned for a second time.

### ***Trend of Operation***

As revealed in *Table and Figure 5.1*, from 1985 to 1992, the figure of juveniles arrested shows a slight fluctuation of 24 per cent from the lowest in 1986 to the highest in 1987. Despite the slight reduction of the juvenile population of 3 to 4 per cent in that period, the number cautioned progressively lowers from 4,438 in 1987 to 2,300 in 1992. The caution rate also slides from 58 per cent to a recent 35 per cent (*Figure 5.2*). The reduction in shop theft as attributed by the Police may be a reason for that slide but apparently is not sufficient. *Table 5.1* further shows that in 1985-88 the number cautioned and prosecuted adds up exactly to the number arrested, but since 1989 an outstanding number of arrest is recorded whereas the treatment is undefined.

As for the crime type distribution, *Table 5.2* indicates that prevalent offences leading to arrest are shop theft, miscellaneous thefts and other robberies. Juvenile offenders are also generally prosecuted for these offences. The highest caution rate in major crime type lies with shop theft through the years, superseding other offences (*Figure 5.3*). According to *Table 5.4*, some offences committed by those from 7 to 11 are fully cautioned whilst those above 16 receive fewer cautions. *Table 5.6* further shows a variation of treatments for the same offence in different districts.

Of the total 3,355 juveniles cautioned in 1992, about 20 per cent have been supervised by the Juvenile Protection Section (JPS) of the Police. In the first quarter of 1993, about 27 per cent of the 896 cases have this arrangement (RHKPF, Information Paper on JPS, 1993).

## **4. FINDINGS**

### ***Case Profile***

Of the 21 cases who had been cautioned in the past three years, 17 were males and the others females. Their ages ranged from 13 to 18, the lowest age of being cautioned at 11. Major offences leading to the cautioning were with shop theft, fighting, wounding or other thefts. Seven of them have been under the supervision of the JPS. A number of concerned parties have also been interviewed for supplementary information, including representatives from the Police and the JPS, officers in charge of the Correctional Service Section of the Social Welfare Department and the Project Phoenix for PSDS clients of the Methodist Centre.

## *Police's Role in Cautioning*

### *Arrest*

Most shop theft offenders instantly realized that they were caught while those fighting at schools were generally arrested during lessons or after school. Offences committed in public places generally have the offenders apprehended at home or stopped and searched in public. Most offenders interviewed were ashamed, embarrassed or frightened at the moment of arrest, those with a previous record of offence were particularly frightened. The fear did not last for long when they realized the pettiness of the offence and the limited consequences involved. Those used to these matters especially felt that it was not a big issue.

Females, younger offenders with naive appearance were generally treated with politely and kindly whilst some others, particularly those who behaved arrogantly were treated coarsely with triad or foul language. Some even complained of being assaulted.

### *Investigation*

The course of investigation reported by the offenders showed that they were treated lightly and their parents were constantly persuaded to force them to admit the offence from the beginning of the investigation. In some circumstances, though mandatory prerequisites of sufficient evidence and an unequivocal guilty plea were not satisfied, investigation came to a halt when the offender admitted the offence in exchange for a caution, regardless of the implicit reason for the plea.

In Case A06 a 15-year-old boy involved in a fight reported to the police another offender responsible for wounding, but the police constable in charge of the investigation constantly persuaded him to omit this figure in the testimony for the benefit of a caution. Nevertheless, the boy spoke of the offender in front of the police constable, his mother and finally the superintendent during the cautioning, and complained that his 'truth' was totally ignored. He was extremely disappointed about the extent to which justice and righteousness were upheld in the criminal proceedings.

### *Discretion*

The judicial authority vested in the superintendent implies a gatekeeper's role in resolving circumstances under which cases have to be brought to court. With regard to the fact that most superintendents are foreigners and speak a foreign language, proceedings involved in the cautioning heavily rely on translation and interpretation. In which case the police constable, originally solely responsible for investigation, is likely to undertake an additional authority for judicial resolution.

A foreign superintendent living in Hong Kong for a year and half admitted to us that sometimes he felt somewhat helpless in view of the language barrier. Once in a case he had to caution a boy who spoke Mandarin. His colleague translated his words into Cantonese and the boy's mother translated them into Mandarin by which time the boy understood. In turn the boy's words had to go through the same process in reverse. The superintendent queried about how much residual deterrent was left after this complicated communication.

### *Cautioning*

Duration of the caution varied from five minutes to about twenty minutes. In some cases the superintendent spoke softly to the offender and in some others he gave him/her a stern lesson. In most cases the superintendent first asked for the detail of the offence and then stated the consequences and implications for that offence as the PGO required. In Case A13, the superintendent briefly learned the offence and asked if the offender's mother was willing to give her son a chance, the cautioning came to an end when the mother said yes.

Sometimes offenders realized from the police constables that the caution had nothing to do with their records and life would immediately return to normal. In these situations, they tend to ignore the seriousness of the cautioning. An undue delay of the cautioning up to two to three months after committing the offence was reported by a few offenders.

### *Follow-up Visits by the Police*

There are a total of 23 police constables at the JPS responsible for the supervision of PSDS clients up to six hundreds a year. Each new case will be visited within a fortnight and the monthly visit generally continues for a year or two. It is usually the offenders' parents who particularly welcome the police's supervision upon which they have great expectations. Some offenders claimed that the visits were brief and meaningless for the police constables communicated only with their parents and treated it as a routine duty. Moreover, they usually rushed to leave. Some of those interviewed valued the support and advice from the constables whom they perceived as friends.

### *Offenders' Perceived Impact of the Caution*

#### *Family*

Although some parents, particularly those with family problems, were obviously indifferent to their children's offence and the subsequent cautioning, the prevailing family reaction was to punish the youngsters and speak to them severely. Some of the offenders were unmoved by the stern policy while others resisted with vigour. Some parents seemed to rely on the police constables to discipline their children as a way of avoiding their own responsibility.

The most effective family attitude to chasten young offenders, as revealed by the cases interviewed, was to couple restrictions with an unfailing support. It is the demand for discipline that makes youngsters realize their responsibility and the acceptance and communication that move them to behave themselves.

#### *School*

Unless the schools knew nothing about the students' offences, young offenders were prone to meet strong opposition from the school authority. In cases known to the schools, the offenders were mostly advised or forced to quit. Some offenders agreed to leave in exchange for a better school record while others gave up in view of the tremendous pressure and demand imposed on them. In Case A20, the offender tried to perform well in his study; he did it by advancing from the 31st place in class to the 7th place, but finally yielded to the

prejudice he received in school and dropped out. As for schools used to these cases, they offered neither discrimination nor help.

There were cases, however, which showed that lenient school policies and supportive attitudes resulted in the student's improvements. In Case A19, the offender realized his fault by the discipline master's moving appeal and since then he reform himself. He was delighted to find his leaving record no disgraceful remarks.

### ***Peer Relationship***

Support from peers could be in the form of being well-advised or ill-advised. Good advisors warned offenders off misdeeds whilst bad ones further encouraged misdemeanours which were generally perceived by the street gangs as essential requirements for advancement in their stratum. Most offenders interviewed, however, found that their offences were too trivial to be noticed among their peers who were of similar background.

### ***Employment***

Of the limited number of working interviewees, most of them were engaged in industries that required labour, in which situation their record of conduct were insignificant to their employment. The offenders would not deliberately disclose their previous offence to their colleagues, even if they do so, their colleagues who mostly had similar experiences would never be alarmed. The sole concern that bothered them or their parents was about their future application for civil service.

### ***Assistance from Social Service Agents***

Some interviewees perceived their discussions with social workers as useful and meaningful, whereas some felt that it was of no constructive value and the only benefit derived from these discussions was the relief of grievances. Some of those interviewed, however, showed their appreciation to the social workers who had provided a variety of services to them. The most treasured services included the introduction of recreational activities, provision of employment and legal information as well as assistance in school transference. In Case A19, the interviewee specified with delight the cross-border youth exchange programme which had broadened his horizons.

## **5. DISCUSSION AND RECOMMENDATION**

### ***The Spirit Underlying the PSDS***

The PSDS provides an opportunity for young offenders to rehabilitate themselves by switching from the path leading to legal prosecution to the one for decriminalization. The principle of confidentiality and the respect for privacy further preclude as far as possible prejudice and ill-treatments in the aftermath of the offence, so that juveniles can carry on a life without a criminal label. Though there is currently a lack of coordination among the offender's social systems and some imperfections do exist in the operation, the spirit underlying the PSDS are what the Federation affirms and supports.

According to NACRO (1988a), the peak offending age is between 14 and 16 and the majority of young people stop offending at around 16 or 17. The objective of the cautioning scheme in the United Kingdom, therefore, is to deter recidivism by reducing prosecution of juveniles and by working for their rehabilitation. The PSDS which has operated in Hong Kong for thirty years has not yet stipulated its objective for the convenience of an efficacy assessment.

It is the Federation's opinion that the PSDS in Hong Kong should carry objectives of the reduction of recidivism and the provision of further rehabilitation opportunities. In this direction, effective supervision as well as assistance from various supporting systems and professionals are definitely essential. The recidivist rate should also be closely monitored to indicate the latest trend.

### ***To Review and Improve the PSDS***

The attitudes of police and the way they handle juvenile offenders are crucial to the deterrent of the caution as well as the success of the Scheme. The course of legal proceeding experienced by juvenile offenders is definitely significant to the formulation of their perception of justice and righteousness which in turn greatly influence their enthusiasm to discipline themselves.

The exercise of the discretion not to prosecute should base on prerequisites of sufficient evidence and an unequivocal guilty plea. How seriously the caution is perceived, in what way the testimony is taken, on where the judicial authority rests, whether language barriers exist, and when the caution is delivered are important parts of the legal procedure that deserve notice.

### ***To Improve Services of the Juvenile Protection Section***

With limited resources and manpower, the JPS has been providing good supervision to the PSDS clients who should be reminded of the deterrent elicited by the caution. Since the training provided for the police constables at the JPS do not include in-depth counselling and their duties do not required this, the counselling needs of the clients may not be satisfied. It should be the responsibility of other professionals to fulfill such needs.

The paramount importance of the JPS should therefore lie with extending the deterrent of the caution and supervision. A concerted effort by the family, school, social service sectors and police should be devoted to the welfare of juvenile offenders.



### *Monitoring from Outside the Police*

The operation of the PSDS which significantly influence the treatment received by young offenders is a concern of the society at large. Details of the operation and regular reports on statistics, including the figure of unconditional discharge which does not exist in the current compilation, should be of special value to the community. The Federation suggests that community monitoring can be performed by the Central and District Fight Crime Committees which would be able to reflect opinions of various sectors of the community.

### *Social Services Provided for Juvenile Offenders*

In view of the service gap for the PSDS clients which exists in current social service branches and the insufficient training of general social workers on legal matters, a special social work professional independent of the Police would be of value to the welfare of young offenders.

The social work professional with special training on legal matters and procedures would contribute to deterring recidivism in the following ways:

1. Their instant intervention at the beginning of the case investigation would provide offenders with independent information about the consequences of the offence and any courses of action possible.
2. They would be able to intervene in crises arising from unsatisfactory social relationships and emotional problems. The seriousness and deterrent of the cautioning would also be reinforced to maximize the efficacy of the Scheme.
3. Caution Plus programmes transplanted from foreign experiences could be provided with an objective to rehabilitate juvenile offenders by encouraging them to take part in community service, to take up training courses and to participate in other forms of reform treatments.

Involvement in services mentioned above should be on a voluntary basis as the will of the client and their family should be respected. The Police, however, must inform the client of the available services and make arrangements for such services.