An Introductory Manual for Social Workers

Understanding the legal aspects of working with children and families

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About the Authors

Mother’s Choice

Mother’s Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

www.motherschoice.org

Human Rights in Practice Course, Social Justice Summer Internship

Centre for Comparative and Public Law at the University of Hong Kong, Faculty of Law

The Centre for Comparative and Public Law was established in 1995 as a non-profit virtual research center in the Faculty of Law at the University of Hong Kong. Its goals are to (1) advance knowledge on public law and human rights issues, primarily from the perspectives of international and comparative law and practice; (2) encourage and facilitate collaborative work within the Faculty of Law, The University of Hong Kong, and the broader community in the fields of comparative and public law; and (3) make the law more accessible to the community and more effective as an agent of social change.

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Dear friends of Mother’s Choice,

At Mother’s Choice, our vision is to see every child in a safe, loving, and permanent family. This is a vision that we passionately fight for – even when it seems impossible.

At times when barriers prevent a child from being in a family, we see the incredible difference that knowledge of the law can make in changing their life story. The publication of this Manual is a significant step, as legal knowledge specific to safeguarding children in Hong Kong is brought together in one place as a resource for the social work community, acting as the intersection of law and social welfare.

My hope for this Manual is that it acts as a catalyst of change. In giving front-line workers this valuable tool, I hope that those who are a voice for children at-risk are empowered to use the law to make decisions in the best interests of the child they represent. The Manual presents legal information in a way that is easy for social workers to understand when facing crisis situations under great pressure. It fills the gaps, answers questions, and gives examples of how the law can be used to protect and safeguard the rights of children in Hong Kong.

I am incredibly proud of the work that our team, volunteers, and community partners do on a daily basis to ensure every child in Hong Kong has the most fundamental protection available to them – a safe, loving, and permanent family. They keep moving forwards, bringing hope into difficult situations, and giving children a voice when they have none. It takes a village to raise a child, and everyone has a role to play. Thank you for everything you do.

Alia Eyres
Chief Executive Officer
Mother’s Choice
February 2017
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### List of Abbreviations

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<th>Description</th>
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<tr>
<td>CAIU</td>
<td>Child Abuse Investigation Unit</td>
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<tr>
<td>CCTV</td>
<td>Closed Circuit Television</td>
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<td>CPR</td>
<td>Child Protection Registry</td>
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<td>CPSIT</td>
<td>Child Protection Special Investigation Team</td>
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<td>DH</td>
<td>Department of Health</td>
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<td>DSW</td>
<td>Director of Social Welfare</td>
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<td>FCPSU</td>
<td>Family and Child Protective Services Unit</td>
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<td>HA</td>
<td>Hospital Authority</td>
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<tr>
<td>ICYSC</td>
<td>Integrated Children and Youth Services Centre</td>
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<tr>
<td>IFSC</td>
<td>Integrated Family Service Centre</td>
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<tr>
<td>ISC</td>
<td>Integrated Services Centre</td>
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<tr>
<td>MCCA</td>
<td>Medical Coordinator on Child Abuse</td>
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<tr>
<td>MDCC</td>
<td>Multi-disciplinary Case Conference on Protection of Child with Suspected Abuse</td>
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<tr>
<td>MO</td>
<td>Medical Officer</td>
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<tr>
<td>MSSU</td>
<td>Medical Social Services Unit</td>
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<tr>
<td>MSW</td>
<td>Medical Social Worker</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>PCJO</td>
<td>Protection of Children and Juveniles Ordinance</td>
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<tr>
<td>PD(P)O</td>
<td>Personal Data (Privacy) Ordinance</td>
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<tr>
<td>SWD</td>
<td>Social Welfare Department</td>
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1. Introduction
1. Introduction

1.1 Origins of the Manual

The starting point for this Manual was a desire to address some of the issues which arise through our case work with vulnerable families. In recent years the cases that frontline social welfare professionals are faced with have become increasingly complex, requiring responses to a range of vulnerability factors and elements of risk. A knowledge-based needs assessment was carried out through focus group meetings with frontline colleagues in 2015. It identified a range of gaps in legal knowledge that were impeding frontline efforts in providing a voice for vulnerable children and securing the range of rights to which they are entitled.

The outcomes of this needs assessment informed the chapters and content of this Manual, covering areas as diverse as child abuse, root tracing and a range of other topics in between.

1.2 We all have a role to play

The government has a legal responsibility to protect and promote the rights and welfare of all children within Hong Kong. This duty extends to all courts, administrative bodies, and other government agencies. Protecting children is not only the responsibility of the government, but of society as a whole. Everyone can help play a role in protecting the rights of children.

It is important that every individual working with children and families is aware of the role they play in protecting children, as well as that of other professionals and caregivers. It is only through efficient and transparent collaboration between agencies and individuals that we can achieve the best outcomes for children.

This Manual aims to help social workers and other professionals better understand some of the core legal requirements when advising and working with children and families and what role they and others can play in promoting the safety and welfare of children. References to "clients" in this Manual mean direct service recipients who receive individual, group services or program activities provided by social workers.

There are basic principles that are at the core of achieving best practices in working with children and families:

- Children should be at the center of all systems and decisions. The needs and best interests of the child should always be the paramount consideration.
- Children should have a voice. Their wishes should be listened to when making decisions about his or her life.
- To ensure proper care and protection, the input of everyone who works with children – including teachers, doctors, nurses, youth workers, police, social workers, NGO workers, and others is required and significant.
- Subject to confidentiality rules or the relevant laws, codes or protocols, it is critical that professionals from a variety of fields and backgrounds share information and work together for effective identification and assessment of issues affecting children, and that proper provision of services to resolve those issues is implemented.

4 How much weight is given to a child's view is dependent on the case and the child's competence. Specific considerations in the context of Termination of Pregnancy and Birth Registration can be found in sections 4.1 and 5.1 respectively.
Professionals should regularly review the actions and processes they are using to protect and promote children’s welfare, making sure they continue to be of the highest quality and responsive to the changing needs of the children they are working with.  

1.3 Life journey of a child

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2. General practices
2. General practices

2.1 Introduction to the United Nations Convention on the Rights of the Child

2.1.1 What is the United Nations Convention on the Rights of the Child?

The Convention on the Rights of the Child is an international treaty that sets out the basic rights of children under international law. Treaties are agreements between nations, in which governments agree to certain rules or standards regulating how they will behave. During the 20th century, a variety of human rights treaties were entered into between nations around the world. By doing this, the governments of those countries agreed to uphold minimum standards protecting the basic human rights of all individuals. Human rights are considered to be basic rights which belong to all human beings, regardless of their race, gender, nationality, religion or class.

2.1.2 What does the United Nations Convention on the Rights of the Child do?

The Convention on the Rights of the Child (the Convention) specifically sets out the rights of children. The Convention recognizes that children and young people play a special role in society and have particular needs and rights that must be protected. The Convention was adopted by the United Nations General Assembly on 20 November 1989. Currently 196 countries are party to the Convention, making it the most widely adopted international agreement. The Convention was extended to Hong Kong in 1994. By signing up to the Convention, governments agreed to respect the rights of children as described in that document. The widespread adoption of the Convention indicates that these rights for children are widely supported by nations around the world.

2.1.3 What rights are protected by the Convention?

There are more than 50 specific rights within the Convention on the Rights of the Child, incorporated within four core principles. These are:

- Non-discrimination
- Consideration of the best interests of the child
- Right to life, survival, and development
- Respect for the views of the child

2.1.4 What does the right to “non-discrimination” mean?

The principle of non-discrimination (Article 2) states that the rights within the Convention apply to all children. Governments must protect the rights of all children equally, irrespective of the child's or his or her parent's or legal guardian's race, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2.1.5 What does the “best interests of the child” mean?

The best interests of the child principle (Article 3) states that in “all actions concerning children… the best interests of the child shall be a primary consideration”. This means that when parents, government officials, professionals, judges and other persons make decisions affecting children, the impact of that decision on the child, from a best interests perspective, must be considered as one of the most important factors.

2.1.6 What does the “inherent right to life” mean?

Under the Convention (Article 6), “every child has the inherent right to life” and countries “shall ensure to the maximum extent possible the survival and development of the child”. This principle means that children must be given the best chance at both a healthy life as well as developing to their full potential. This principle not only encompasses the physical health of a child, but also their social development and education.

2.1.7 What does “respect for the views of the child” mean?

The final principle requires that there be respect for the views of the child (Article 12). This means that children have a right to have their opinions heard and respected in matters concerning them, taking into account their age and maturity. Respecting the views of a child can be seen to include two parts. First, it is important to hear and take into account the child’s views and opinions. Second, the child should be an active participant in the decision-making process of matters concerning him or her. The weight of the child’s views must be balanced with what is deemed to be in their best interests.

2.1.8 How are children’s rights balanced against the rights and interests of the family?

The Convention also recognizes the vital role that the family plays in the lives of children. The Convention supports loving and harmonious environments for children to develop in and specifically requires that governments should provide support to families and allow parents to fulfil their parental duties to children. Although the Convention recognizes the rights of parents, it also addresses the responsibilities parents have to their children. It is important to recognize that parental rights are not absolute and must be balanced against a child’s rights, especially the child’s right to be heard and to have his or her “best interests” considered.

2.1.9 How are children’s rights protected?

The rights of children described in the Convention are considered to be absolute. By agreeing to be bound by the Convention, countries agree that they should take concrete steps to respect and protect the rights described in it. However, the Convention only lays down the general standards: it is understood that each country must find its own way of implementing these standards. One way that countries do this is to incorporate the rights or certain principles described in the Convention into their own domestic laws. This could then facilitate the enforcement of laws that protect children's rights locally and perhaps most importantly, promote changes in the attitudes and behavior of society to best protect these rights. In Hong Kong, some of the Convention's principles have been adopted in the Hong Kong Bill of Rights and the Guardianship of Minors’ Ordinance, and Hong Kong court decisions supporting the Convention’s standards and principles form part of Hong Kong common law. Further, English court decisions confirming the Convention’s principles are either binding on Hong Kong courts or have persuasive effect.

2.2 Introduction to the "best interests of the child" standard

United Nations Convention on the Rights of the Child

Article 3(1)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

2.2.1 What does the “best interests of the child” standard mean?

While the “best interest of the child” standard is required by the Convention to be ‘a’ primary consideration, in most countries it is now a legal requirement to consider what is best for the child as ‘the’ paramount consideration in decisions affecting their care or wellbeing.8 For example, in cases of child abuse, the child’s rights and interests must be considered above other factors, including what is best for the parents, family, or others involved with the case.9 10

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8 See J v C 113 Sol Jo 164, [1969] 1 All ER 788, [1969] 2 WLR 540, [1970] AC 668, 710H. (“Welfare of the infant” should be regarded as “the first and paramount consideration” in custody matters as opposed to only being “a primary consideration” as envisaged by the Convention.)

9 JD v East Berkshire Community Health NHS Trust [2005] UKHL 23.

In Hong Kong, the best interest standard is legally required by both international law obligations, and Hong Kong’s domestic law. The standard in Hong Kong is that the best interests of the child must be the “paramount consideration.”

### What Role Can I Play?

Social workers often play a key role in providing recommendations to others on what is in the best interests of the child and how a child’s interests can be protected, in particular to lawyers, judges, and other decision makers. It is therefore critically important that social workers develop strong skills in both assessing and advocating children’s best interests. Social workers can become especially skilled at understanding how to communicate with children across a range of ages and stages of development and how to work with them together with their families.

#### 2.2.2 How do you know what is in the “best interests of the child?”

Although it is clear that decision makers must consider the best interests of the child, figuring out what that means in practice can be difficult. It often requires many factors to be balanced against each other. Those factors, and the relative weight of each of them, may be different in every case.

Both the UK and Australia have addressed this by creating a statutory checklist of factors that should be considered when evaluating whether a decision is in the best interests of a child.

Under the UK checklist, which was adopted by the Hong Kong Courts in 2006 and has been used by them since, the courts must consider:

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding);
2. his/her physical, emotional and educational needs;
3. the nature of the relationship of the child with each of his/her parents, siblings and with other persons;
4. the likely effect on him/her of any change in his/her circumstances;
5. his/her age, maturity, sex, religious faith, social and cultural background and any other characteristics which the court considers relevant;
6. any harm which he/she has suffered or is at risk of suffering;
7. his/her relationships and emotional ties to a parent, sibling, relative, or other member of his/her extended family or member of his/her community;
8. any family violence involving the child or a member of the child’s family;
9. how capable each of his/her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and

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12 See Hong Kong Bill of Rights, Art. 20 http://www.hklii.hk/eng/hk/legis/ord/383/s8.html; Guardianship of Minors Ordinance (Cap 13), Section 3(1)(a)(i) http://www.hklii.hk/eng/hk/legis/ord/13/s3.html; K v V (Children – Removal from Jurisdiction) [2006] 2 HKFLR 292 http://law.lexisnexis.com/webcenters/hk/Hong-Kong-Lawyer-/The-law-on-relocation-of-children-bringing-about-change. See also Guardianship of Minors Ordinance (Cap. 13) s. 3(1)(a) http://www.hklii.hk/eng/hk/legis/ord/13/s3.html (“best interests of the minor” should be regarded as “the first and paramount consideration” as opposed to only being “a primary consideration” as envisaged by the Convention.)

13 See K v W (Children – Removal from Jurisdiction) [2006] 2 HKFLR 292. (“The welfare of the child is always paramount,” at 296) K v V summary (confirming point) available only at: http://law.lexisnexis.com/webcenters/hk/Hong-Kong-Lawyer-/The-law-on-relocation-of-children-bringing-about-change. See also Guardianship of Minors Ordinance (Cap. 13) s. 3(1)(a) http://www.hklii.hk/eng/hk/legis/ord/13/s3.html (“best interests of the minor” should be regarded as “the first and paramount consideration” as opposed to only being “a primary consideration” as envisaged by the Convention.)


15 See SMM v TW (Relocation of Child) [2010] HKFLR 308. Paragraph 27 “…judges in Hong Kong have also adopted the welfare checklist in s.13 of the Children’s Act: see, for example, Judge Bruno Chan in P v P (Children: Custody) [2006] 2 HKFLR 305 http://legalref.judiciary.gov.hk/ls/common/search/search_result_detail_frame.jsp?DIS=71440&QS=%28%7BSMM%7D%29%26f%26s%26t%3D%29&TP=JU. See also LWY v YCT [2015] HKEC 2198 English Judgment at 16 http://legalref.judiciary.gov.hk/ls/common/search/search_result_detail_frame.jsp?DIS=101030&QS=%28%7BLWY%7D%29%26f%26s%26t%3D%29&TP=JU.
j. the practical difficulty and expense of the child having contact with a parent, and whether that difficulty or expense will substantially affect the child’s right to maintain personal relations and direct contact with his or her parents on a regular basis;

k. the rights of the child;

l. the range of powers available to the court under the Children Act 1989 (UK) in the proceedings in question and any other fact or circumstances that the court considers relevant.\(^{16}\)

These factors should all be weighed and assessed holistically. In practice, this is often a very discretionary practice, and the ultimate decision will typically lie with the court.

2.2.3 What if there is more than one child?

Sometimes, the issues may affect more than one child, for example a teenage mother and baby, conjoined twins, or other siblings. The issue of whose interests should take priority in these circumstances has been considered by the courts. It has been held that the court should give priority to the interests of the child who is the subject of the application.\(^{17}\) However, if that is not possible without detriment to others, then it has been suggested that the courts should balance the children's interests and make a decision which causes the least detriment to all the children involved.\(^{18}\)

**NOTE: The Importance of Reducing Delay**

“Delay”, or in other words the impact of time passing, is an important factor to consider when dealing with children. One year in a child’s life is very different from one year in the life of an adult. Child development is time sensitive and children are deeply affected by even short periods of instability and insecurity.\(^{19}\) In many places, including the UK, the impact that delay may have on a child is a compulsory consideration in all children’s matters.\(^{20}\)

**The Science behind Reducing Delay**

Studies have shown there are critical windows of time during a child’s early years when brain development occurs that will impact the rest of the child’s life.\(^{21}\) Having interactions and experiences at the right time is crucial for how a child’s brain develops.\(^{22}\)

In particular, early consistent interactions between a baby and his/her primary care giver are necessary for the building of healthy neural connections and for future healthy cognitive and social development.\(^{23}\)

When babies and young children experience stress, it can have particularly devastating effects on their developing brains.\(^{24}\) When children experience prolonged exposure to stress, and they do not have adequate buffering relationships, such as a healthy relationship with a caregiver, the result can be toxic stress. This can lead to damaged systems and brain development, with lifelong repercussions.\(^{25}\)

It is therefore critical that instabilities or stressors in a child’s life, particularly for a very young child, are dealt with as quickly as possible.

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16 See Children Act 1989 (UK), s. 1(3). [http://www.legislation.gov.uk/ukpga/1989/41/section/1](http://www.legislation.gov.uk/ukpga/1989/41/section/1) but note the powers referred to in Hong Kong should be those available to the Hong Kong Court, e.g. under the Guardianship of Minors Ordinance.

17 Birmingham City Council v. H (A Minor) [1994] 2AC 212

18 Re T and E (Proceedings: Conflicting Interests) [1995] 1FLR 581; A (Children) (conjoined twins: surgical operation) [2001] 1FLR 1


NOTE: The Importance of Permanency

As explained above, the bonds that a child forms with his/her primary care givers play a vital role in that child's development, both in terms of the physical development of the brain, as well as the psychological development of stable relationships and social skills. Children are also negatively affected by stress and instability. It is critically important for children to have a permanent and stable home as quickly as possible.

"Permanency planning", meaning planning aimed at placing a child into a safe permanent placement as soon as reasonably possible, is at the core of best practice child welfare planning from around the world and is critical to acting in the best interests of the child. Because of this evidence, in many places around the world, it is a legal requirement to consider permanency when planning for the best interests of a child.

NOTE: Considering the wishes and feelings of the child

Under both international law and Hong Kong law, if a child is capable of forming his or her own views, he/she has a legal right to express those views and to have his/her voice heard regarding proceedings affecting his/her interests.

Respecting the views of the child is a two-step process. First, it is important to hear and take into account the child’s views and opinions. Second, the child should be an active participant in any process involving or concerning him/her.

How far the wishes and feelings of the child should be depended on follows the circumstances of the individual case. In particular, the wishes of the child must always be considered in light of their age and understanding.
As a child becomes older, more knowledgeable and more competent to make decisions, his/her right to make decisions regarding his/her own life increases.\(^{31}\) This includes a legal right to make medical decisions.\(^{32}\)

In this sense, the weight of a child’s opinion increases over time. This means that although parents have a legal right to make decisions regarding the child, this right is not absolute. The right slowly diminishes over time as the child grows and develops.\(^{33}\)

<table>
<thead>
<tr>
<th>Child’s legal right to make decisions increases</th>
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<td>Birth</td>
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A child’s wishes are not the only determining factor. A court will consider all the other relevant factors when making a decision.\(^{34}\) A court can override the wishes of a child, even when that child is considered mature enough to make competent decisions, if the court believes that the child’s stated wishes are against his/her best interests.\(^{35}\)

**EXAMPLE CASE**

**Children’s Wishes**

Eve’s parents were divorced. Eve lived with her father, but was supposed to have regular contact with her mother. Eve began to refuse to have contact with her mother. To make things more complicated, her father was transferred to a job overseas in Singapore and wanted to relocate Eve to Singapore. Eve’s mother applied for Eve to be in her and Eve’s father’s joint custody.

The judge interviewed Eve without her parents being present to understand her feelings and wishes.\(^{36}\) He determined that Eve felt a grievance against her mother, was happy living with her father, and wished to go with him to Singapore. The judge determined that “[i]n matters like this, the interest and welfare of the child are paramount to the feelings of the parents… I can only consider what is best for the child… In this instance the welfare of the child is, so far, that she has stayed happily with her father and stepmother and she has expressed the desire to go with her father to Singapore.” The judge explained that if Eve later wanted a different relationship with her mother, this would still be an option, but at this point in her life it was in her best interests to continue living with her father.\(^{37}\)

**2.2.4 Questions to Consider**

**Q:** How can you balance the wishes of a child against the wishes of a parent?

**A:** As set out above, the primary legal question is what is in the best interest of the child, not what either the child or his/her parent wants.\(^{38}\) The court makes its decision having regard to, but is not restricted by, the wishes of the child and his/her parent.\(^{39}\)

**Q:** How can you best understand the wishes of a child?

**A:** In some cases, the court can decide that the child should be separately represented. This means that the child can either (1) have his/her own lawyer appointed; and/or (2) have someone appointed to represent the child’s interests (known as a guardian ad litem). They may assist with the understanding of what the child’s wishes are. However, they are appointed to represent the child’s interests which may differ from his/her wishes.\(^{40}\)

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\(^{32}\) See Gillick v West Norfolk and Wisbech Health Authority [1986] AC 112 (HL).


\(^{35}\) The Judge has discretion as to whether to do this: D v D (1980) 10 Fam Law 53.


\(^{37}\) Guardianship of Minors Ordinance, s3(1)(a)(i).

\(^{38}\) H v N [2012] 5 HKLRD 498.

\(^{39}\) Practice Direction PDSL6.
Q: *When a child is very young, are there still ways to communicate with the child and understand his/her wishes and needs?*

A: Yes. As the Practice Direction for Judges on whether to meet children in family cases (PDSL5) makes clear, “some younger children may have a clear understanding of their circumstances which they wish to express”. 41

If the Judge decides to meet with the child, then in advance of the meeting the Judge will tell the parties to the litigation (such as the child’s parents):

- The purpose of the meeting;
- When and where the meeting will take place
- Who will attend the meeting (a Judge should never see a child alone)
- How the meeting is to be recorded; and
- Who is to prepare the child for the meeting
  - At the beginning of the meeting, the Judge should explain that the meeting will be recorded and the contents of the meeting conveyed to the child’s parents. The Judge should tell the child that the Judge cannot keep secrets. The child should be assured that the outcome is never the child’s responsibility.

41 Practice Direction PDSL5.
3. Abuse
3. Abuse

3.1 Child abuse

3.1.1 Introduction

United Nations Convention on the Rights of the Child

Article 19

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

“Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

What Role Can I Play?

Social Workers can play a key role in identifying cases of child abuse, referring them to the appropriate departments and services, collecting evidence and information to determine best interests and ensuring that there is follow up on the case to guarantee that the child remains safe. By learning about abuse, and how to best intervene, it is possible for social workers to make a huge difference in such cases.

What Role Should Others Play?

All professionals who work with children have a duty to be alert to signs of child abuse, and to take proper measures such documenting concerns and reporting cases of child abuse in the course of their work.

3.1.1.1 Children have the right to be free from all forms of abuse, including physical or mental violence, injury or abuse, sexual abuse, neglect, maltreatment, or exploitation. The government has a legal responsibility under international law to take all appropriate legislative, administrative, social and educational measures to protect children from abuse.

3.1.1.2 While children should, as a general rule, not be separated from their parents, the law requires the best interests of the child to be the primary and paramount consideration. Therefore, in cases of abuse by parents or guardians it may be necessary to remove children into appropriate care arrangements.

3.1.1.3 Governments are also required to establish social programs to provide necessary support for the child and their family, as well as putting in place procedures for prevention, identification, reporting, investigation, treatment and follow-up of instances of child maltreatment.

3.1.1.4 Everyone, particularly professionals who work with children, should be alert to signs of child abuse, and to take measures to protect children who may be in need of special care and intervention.

3.1.2 What is the legal definition of child abuse?

3.1.2.1 In the Social Welfare Department's Procedural Guide for Handling Child Abuse, child abuse is defined as “any act of commission or omission that endangers or impairs the physical /psychological health and development of an individual under the age of 18”. Note that the SWD definition of abuse is not limited to immediate physical harm, but also covers situations that will endanger or harm the child in the long term. The Guide specifically outlines the four main categories of child abuse; Physical abuse, Sexual abuse, Neglect, and Psychological abuse.

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Physical Abuse is a physical injury or physical suffering to a child (including non-accidental use of force, deliberate poisoning, suffocation, burning, Munchausen’s Syndrome by Proxy, etc.), where there is a definite knowledge, or a reasonable suspicion that the injury has been inflicted non-accidentally\(^{46}\);

Sexual Abuse is the involvement of a child in sexual activity (e.g. rape, oral sex) which is unlawful, or to which a child is unable to give informed consent\(^{47}\). This includes direct or indirect sexual exploitation and abuse of a child (e.g. production of pornographic material). It may be committed by individuals whether inside the home or outside. It may be committed by parents, or carers or other adults singly or acting in an organised way, or children. It includes acts which may be rewarded or apparently attractive to the child. It may be committed by individuals either known or strangers to the child; (Child sexual abuse differentiates from casual sexual relationship that does not include any sexual exploitation e.g. between a boy and a girl, though the boy can be liable for offences like indecent assault or unlawful sexual intercourse with an under aged girl).

Neglect is severe or a repeated pattern of lacking of attention to a child’s basic needs that endangers or impairs the child’s health or development\(^{48}\). Neglect may be:

- Physical (e.g. failure to provide necessary food, clothing or shelter, failure to prevent physical injury or suffering, lack of appropriate supervision or left unattended)
- Medical (e.g. failure to provide necessary medical or mental health treatment)
- Educational (e.g. failure to provide education or ignoring educational needs arising from a child’s disability)
- Emotional (e.g. ignoring a child’s emotional needs, failure to provide psychological care);

Psychological Abuse is the repeated pattern of behaviour and attitudes towards a child or extreme incident that endangers or impairs the child’s emotional or intellectual development\(^{49}\). Examples include acts of spurning, terrorising, isolating, exploiting/corrupting, denying emotional responsiveness, conveying to a child that he/she is worthless, flawed, unwanted or unloved. Such act damages immediately or ultimately the behavioural, cognitive, affective, or physical functioning of the child.

Chapter 2 of the SWD Procedural Guide also includes set of helpful indicators, checklists and risk factors.

3.1.2.2 The above definitions do not apply directly to the criminal law. Instead, whether an alleged child abuser has committed a crime will depend upon the offence with which they are charged. There are a number of offences that relate specifically or especially to abuse of children (see appendix 10.2). The most directly relevant to child abuse are sections 26 (exposing child whereby life is endangered) and 27 (ill-treatment or neglect by those in charge of child or young person) of the Offences Against the Person Ordinance (Cap 212) (OAPO)\(^{50}\). In relation to sexual abuse, there are a wide variety of offences set out in the Crimes Ordinance (Cap 200) and the Prevention of Child Pornography Ordinance (Cap 579).

Section 27 of the OAPO makes it an offence where any person “over the age of 16 years who has the custody, charge or care of any child or young person under that age wilfully assaults, ill-treats, neglects, abandons or exposes such child or young person or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental

\(^{46}\) Procedural Guide on Handling Child Abuse Cases (2015), pg. 3, para. 2.4.
\(^{47}\) Procedural Guide on Handling Child Abuse Cases (2015), pg. 3, para. 2.4.
\(^{48}\) Procedural Guide on Handling Child Abuse Cases (2015), pg. 4, para. 2.4
\(^{49}\) Procedural Guide on Handling Child Abuse Cases (2015), pg. 4, para. 2.4
\(^{50}\) Offences against the Person Ordinance (Cap 212), s 26 and s 27.
Ill-treatment includes emotional and psychological abuse such as “bullying or frightening”, or any course of conduct calculated to cause unnecessary suffering or injury to health. The phrase “injury to his health” is understood in light of modern understanding of children’s health and development, and may be proved by expert evidence from child development, medical and psychological experts.

3.1.2.3 If you suspect that a crime has been committed, you should work with your supervisor to agree on information sharing arrangements with the police and SWD (where appropriate) in order to safeguard the child.

NOTE: Differences between corporal punishment and abuse

The line between corporal punishment and child abuse is often difficult to determine. Studies show, however, that excessive corporal punishment can have a variety of negative outcomes and cause long-term harm for children, including increased anxiety, aggressive behavior, decreased academic success, and lower self-esteem.

When determining whether an incident of corporal punishment amounts to child abuse, often it is necessary to weigh a variety of factors such as the severity of the injury, the age and development of the child, the manner of discipline, whether there is a pattern of abuse, the emotional effects of the incident, and the parent’s motivation.

EXAMPLE CASE

F v L [2007] HKEC 1524

Father: “I was at home cooking noodles for the children to eat. After they finished eating, the elder son told me that he wanted to go downstairs to play. I said it was raining outside and asked him not to play downstairs in the street. At the time, I was not wearing any top, only a pair of shorts. I was washing the dishes in the kitchen. My elder son was very angry and scratched my back with his hands. So I walked out to the living room and got a rattan stick to discipline him …… I scolded the elder son loudly, saying that he was disobedient to his father. So I beat the elder son with the rattan stick. I aimed at the elder son’s hand, but the elder son dodged around. That’s why I ended up hitting him on his body and on his face. I did not use a lot of force in beating the son. Perhaps the end of the rattan stick was starting to split open, so it led to marks being left on the wound.”

 Judge: “In his later affidavits, the husband changes his story and says that the N-H used a sharp object to scratch his back. Whatever the reality I am satisfied, having seen the photographs of the injuries suffered by the son, that the husband completely over reacted and that the punishment inflicted was out of all proportion to any act of naughtiness allegedly committed by N-H. In the discharge summary at the UC Hospital, the injuries are described as follows:

‘A 8.5 cm linear reddish mark over the left face, two 3 cm linear marks over the left arm, a 2 cm reddish mark at the right forearm and a 2 cm mild reddish mark at the left upper buttock.’

I do not accept that this level of corporal punishment inflicted on a young child, N-H was then only 6 years of age at the time, is acceptable. So-called discipline of this severity cannot and should not be countenanced in a civilized society.”

51 Offences against the Person Ordinance (Cap 212), s 27(1).
52 Doriane Lambelet Coleman et al., Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse, 73 LAW AND CONTEMPORARY PROBLEMS 107-166 (Spring 2010), 145, available at http://scholarship.law.duke.edu/lcp/vol73/iss2/6/.
53 Id.
3.1.3 Care or Protection Orders (CPOs)

3.1.3.1 While some instances of child abuse may not constitute criminal offences, the legal system can respond to the types of conduct described in the SWD definition of child abuse by issuing a Care or Protection Order under the Protection of Children and Juveniles Ordinance (Cap 213) (PCJO). A court may issue a Care or Protection Order if a child is deemed in need of 'care or protection'.

3.1.3.2 Specifically, the PJCO states that, "[f]or the purposes of this Ordinance, a child or juvenile in need of care or protection means a child or juvenile-

a. who has been or is being assaulted, ill-treated, neglected or sexually abused; or
b. whose health, development or welfare has been or is being neglected or avoidably impaired; or
c. whose health, development or welfare appears likely to be neglected or avoidably impaired; or
d. who is beyond control, to the extent that harm may be caused to him or to others, and who requires care or protection."  

Accordingly, where a court is of the view that a child is suffering from child abuse or is otherwise exposed to a harmful situation, it may intervene pursuant to the PCJO.

3.1.4 When can a “Care Protection Order” be applied for and what input can an NGO have?

3.1.4.1 The Protection of Children and Juveniles Ordinance (PCJO) enables action to be taken to protect a child or juvenile in need of care or protection (in accordance with the definition set out above) by applying to the Juvenile Court for a Care or Protection Order. If the court determines that the child or juvenile is in need of care and protection, it may carry out the following actions as deemed necessary and appropriate to the child’s circumstances;

- appoint the Director of Social Welfare to be the legal guardian of the child or juvenile;
- commit the child or juvenile to the care of any person or institution who is willing to provide such care;
- order his parent or guardian to enter into recognizance to exercise proper care and guardianship; and/or
- make an order placing the child or juvenile for a specified period under the supervision of any person appointed by the court.

3.1.4.3 Not every suspected child abuse or child neglect case warrants an application for a CPO under the PCJO. In deciding whether or not to apply for a CPO, all the circumstances of the case including the child's or juvenile's safety, psychological state, behavior and views and the parents'/carers' views and attitude towards professional intervention, and any possible adverse effects on the child or juvenile, should be considered.

3.1.4.4 Many NGO social workers are not authorized to make an application for a CPO directly. However, NGO social workers play a key role by providing support, evidence and recommendations to the court and to persons authorized to make CPO applications, for example, Social Welfare Department (SWD) social workers. Importantly, NGO social workers can communicate elements of risks and insight from their interaction with families. They should seek all possible channels to provide their opinions and evidence relating to the case, including attendance at court hearings, particularly when the child is in institutional care or when the social worker is acting as the primary service provider.

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55 Protection of Children and Juveniles Ordinance (Cap 213), s 34(2).
56 Protection of Children and Juveniles Ordinance (Cap 213), s 34.
57 Protection of Children and Juveniles Ordinance (Cap 213), s 34(1).
58 Protection of Children and Juveniles Ordinance (Cap 213), s 34(1).
### SIGNS OF CHILD ABUSE

1. Withdrawal from friends or usual activities
2. Changes in behavior – such as aggression, anger, hostility or hyperactivity – or changes in school performance
3. Depression, anxiety or unusual fears or a sudden loss of self-confidence
4. An apparent lack of supervision
5. Frequent absences from school
6. Reluctance to leave school activities, as if he or she doesn't want to go home
7. Attempts at running away
8. Rebellious or defiant behavior
9. Attempts at suicide

**Physical Abuse**

- Frequent injuries or unexplained bruises, welts, or cuts.
- Is always watchful and “on alert,” as if waiting for something bad to happen.
- Injuries appear to have a pattern such as marks from a hand or belt.
- Shies away from touch, flinches at sudden movements, or seems afraid to go home.
- Wears inappropriate clothing to cover up injuries, such as long-sleeved shirts on hot days.

**Sexual Abuse**

- Trouble walking or sitting.
- Displays knowledge or interest in sexual acts inappropriate to his or her age.
- Makes strong efforts to avoid a specific person, without an obvious reason.
- Doesn’t want to change clothes in front of others or participate in physical activities.
- An STD or pregnancy, especially under the age of 14.
- Runs away from home.

**Emotional Abuse**

- Excessively withdrawn, fearful, or anxious.
- Shows extremes in behavior.
- Doesn’t seem to be attached to the parent.
- Acts either inappropriately adult (taking care of other children) or inappropriately infantile (rocking, thumb-sucking, throwing tantrums).
- Loss of self-confidence or self-esteem.
- Depression.
- Desperately seeks affection.
- A decrease in school performance.

**Neglect**

- Poor growth or weight gain.
- Poor hygiene.
- Taking food or money without permission.
- Eating a lot in one sitting or hiding food for later.
- Poor record of school attendance.
- Clothes are ill-fitting, filthy, or inappropriate for the weather.
- Untreated illnesses and physical injuries.
- Is frequently unsupervised or left alone or allowed to play in unsafe situations and environments.

** Keep in mind that warning signs are just possible signs. The presence of warning signs does not necessarily mean that a child is a subject of abuse.**

**Please see the SWD’s Procedural Guide for Handling Child Abuse for a detailed checklist for identifying possible signs of child abuse.**

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3.1.5 Is it mandatory to report suspected child abuse cases?

3.1.5.1 While there is no legal duty to report crimes in Hong Kong, the Social Welfare Department has stated that, where there is risk of harm to the child for any reason social workers coming across such cases should report this62 (also see 5.5).

3.1.5.2 Professionals who perceive a risk of harm to a child are exempt from the relevant privacy and confidentiality laws and codes.63 Reports will be collated into the Child Protection Registry (CPR (as discussed below) (see 3.1.11).

3.1.5.3 Additionally, social workers may have a professional duty to report cases of abuse in order to protect their clients.64 There may be serious consequences if this duty is not complied with: if a child is harmed because a social worker did not report a case, the child or their representative could later bring a lawsuit arguing that the social worker breached their professional duties by allowing harm to come to that child. Once again, the paramount consideration must be the best interests of the child.

3.1.5.4 It is important not to promise a child that abuse will not be reported.65 Instead workers should explain to the child that they may have to tell others in order to keep them safe, but that they will always act in the child’s best interests.66

3.1.5.5 To reduce the number of interviews that a child may need to attend during the investigation period, a more child-friendly mechanism for reporting child abuse cases, especially sexual abuse cases, to police has been put in place. A Report Form and Written Dated Notes can be used by professionals to report such cases directly to the police.

3.1.5.6 Government policy requires that government officials report crimes or suspected crimes to the proper officials, regardless of whether they heard about the crime through their official or personal capacity.69

62 Social Welfare Department, Procedural Guide for Handling Child Abuse Cases (2015 Version), see pg. 2, para. 1.9; see also Section V, in particular Chapter 17 at p. 188 for examples on the responsibilities of social workers and others working in Children and Youth Services to refer child abuse cases.

63 Normally, client confidentially and private information is protected by Article 14 of the Hong Kong Bill of Rights, the Personal Data (Privacy) Ordinance (Cap 486), as well professional codes of ethics such as the Code of Practice for Registered Social Workers (sections 7 – 12). However, disclosure is justified where the information is necessary to prevent foreseeable harm to a child. There are explicit exceptions within the Personal Data (Privacy) Ordinance for cases where maintaining privacy of information would cause serious physical or mental harm to the subject or other individuals (Section 59), or where the information is necessary for detection or prevention of crime or seriously improper conduct (Section 58). Professionals such as medical practitioners or residential child care staff are allowed to share private information in such cases for the purpose of protecting a child from serious physical and/or mental harm or to aid in child abuse investigations. See Procedural Guide on Child Abuse (2015) Chapter 4, at 32 for additional information.

64 See e.g. JD v East Berkshire Community Health NHS Trust [2005] UKHL 23.


67 Procedural Guide for Handling Child Abuse Cases (2015), Appendix IX


Flow chart on referrals of suspected child sexual abuse / serious physical abuse cases

Chart on procedures for handling suspected child sexual abuse / serious physical abuse cases

3.1.6 Multi-Disciplinary Case Conference

3.1.6.1 In addition to reporting to the relevant authorities, there are other intermediate steps that should be taken in response to concerns about child abuse. An MDCC (Multi-disciplinary Case Conference) is a meeting of all professionals involved in the case from a variety of disciplines. An MDCC should always be called when it is suspected that the physical or mental health and development of a child is endangered. The purpose of the conference is to allow professionals to share knowledge and concerns, plan for the protection and welfare of the child, and recommend a follow-up plan for the child and his/her family.

TIP: MDCCs should be used not only after an incident of child abuse has already occurred, but as a way to plan for the future welfare of a child and to prevent child abuse from occurring.

3.1.6.2 When a case of child abuse is referred to the SWD, it is their practice to search the Child Protection Registry to see whether the case is already known to the SWD or whether it is a new case. For known cases, the responsible unit will conduct a social enquiry. If it is a new case, the Family and Child Protective Services Unit (FCPSU) will carry out a social enquiry of the case.

3.1.6.3 Cases will be divided into different types, and handled by different units accordingly (see referral procedure). Where there is suspicion of child abuse, an MDCC will either be called immediately or the social worker will investigate further before deciding whether an MDCC should be called. The SWD social worker leading the case should arrange the MDCC. Where abuse is suspected, this will ordinarily come from the FCPSU (exceptions highlighted in para 11.5 of the Procedural Guide). NGO social workers play a key role in ensuring MDCCs are held, using the Procedural Guide for Handling Child Abuse Cases to influence SWD social workers to make necessary arrangements that involve all relevant parties, including the police. NGO social workers should take full notes at MDCCs.

3.1.6.4 An MDCC should be conducted within 10 working days of when the case was received by the investigating social welfare unit.

3.1.6.5 Prior to an MDCC, a Social Enquiry Report must be produced by social workers providing case-work services. The report should cover all assessments and determine whether there is a risk or likelihood of maltreatment in the future. It should take place upon receipt of referral and alongside investigation and medical/forensic examination where appropriate.

3.1.6.6 In the MDCC, participants should consider the following factors: nature of the incident; level and nature of risk to the child and other children of the family; risk of recurrence; welfare planning; parents'/guardians’ attitudes and behavior; and welfare needs of other family members where necessary. The MDCC will also discuss if the child should be placed on the Child Protection Registry. It is important for all participants to input the information available to them about the case so as to assess risk in the most comprehensive way.

3.1.6.7 More detailed information about these procedures is available in the SWD’s Procedural Guide for Handling Child Abuse Cases.

3.1.7 What role can the child play in a child abuse investigation? Can they speak on their own behalf?

3.1.7.1 Under the Convention on the Rights of the Child, children have the right to be heard and to express their views in all matters affecting their own lives.

3.1.7.2 Family participation in a child abuse investigation aims to enhance parents’ understanding of the issues of concern, tap their contribution to the formulation of the welfare plan, and enlist their involvement in the implementation of the welfare plan. It is also an empowering process.

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70 Procedural Guide for Handling Child Abuse Cases (2015), at pg. 69,70.
71 Procedural Guide for Handling Child Abuse Cases (2015), at pg. 69,70
However, the welfare and rights of the child should always be the paramount concern throughout the process of this investigation.  

The MDCC normally consists of two parts. The first part is for professional sharing a discussion while the family members will be invited to join the second part. The Chairperson, with consultation with members as appropriate, will decide at which time point the family members will join the MDCC according to individual case merit but at least when the initial welfare plan is formulated. All members are expected to attend the MDCC including the part of meeting with the family unless there is a specific reason, it is not appropriate for the social worker of a refuge centre, where the mother and the child concerned are residing, to meet the father who is the suspected abuser.

3.1.7.3 If the child is unable to attend the MDCC, the child should still be told that a meeting is being held and the child’s views and wishes should be conveyed to the MDCC by the social worker or other members of the MDCC. A child can also give his/her views to the MDCC in writing.

3.1.7.4 A pre-conference meeting with the child/ren and their parents/guardians to consult their opinions should be held. A post-conference meeting should also be held to convey the decision and the recommendation of the MDCC to the child.

3.1.7.5 If criminal proceedings eventuate, and the child is required (or wishes) to give evidence of the abuse, special rules apply to evidence provided by children to make it easier and more comfortable for children to give testimony. For example:
- children under the age of 14 can give evidence in the form of an unsworn deposition (a written statement made outside of the court).
- children may also be allowed to testify via CCTV.
- in some cases, previous interviews with the child may be presented as evidence.

3.1.8 What happens to cases that are not established as child abuse?

3.1.8.1 If, after assessing the case, there is not enough evidence to prove that a child has been abused, the case is treated as an “ordinary family case.” All parties involved should be informed that this is the result.

3.1.8.2 Formally, there are limited measures available to protect a child where abuse is not established. If a social worker still has concerns, it is incumbent on that social worker to use their own initiative and continue to follow up and check on the case, providing ongoing support to the family to maximize the ongoing welfare and safety of the child. Sometimes in these cases, an MDCC may still be arranged to plan for the welfare of the child.

3.1.9 If a case of child abuse is established for one child in a family, what happens to other children in the family?

3.1.9.1 When one child in a family is abused, there is a high risk that other children in the family may also be abused. During intake procedures and when preparing a Social Inquiry Report, information about other children in the household and whether the other children are potentially at risk should be carefully recorded. The Child Protection Special Investigation Team (CPSIT) and social worker/FCPSU should also consider actions to protect other children in the household.

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76 Procedural Guide on Handling Child Abuse Cases (2015), p. 120, para. 11.36.
78 Guide to Participants of MDCC, Para I (10).
79 Evidence Ordinance (Cap 8), s 4.
80 Criminal Procedure Ordinance (Cap 221), s 79B. See also Live Television Link and Video Recorded Evidence (Cap 221J).
81 Criminal Procedure Ordinance (Cap 221), s 79C. See also Live Television Link and Video Recorded Evidence (Cap 221J).
3.1.9.2 A major purpose of the MDCC is to assess the level of risk to the other children in the family, make recommendation for the welfare planning of other children, and determine whether the name of the siblings should also be placed into the Child Protection Registry.85

3.1.10 What if a mother uses drugs while she is pregnant? Is this a form of child abuse?

3.1.10.1 An unborn child does not have legal rights until after it is born.86 Therefore no offence of child abuse normally arises.

3.1.10.2 However, if a mother engages in a dangerous activity while pregnant, such as using drugs and/or alcohol, this may constitute a warning sign indicating that the new-born child may be at risk of abuse. It may be appropriate to call for an MDCC or develop a care plan in such cases, citing the risk of future abuse to the child.

3.1.11 What is the Child Protection Registry?

3.1.11.1 The Child Protection Registry (CPR) is a computerized record system designed to keep a record of all instances of child abuse. The main objectives of the CPR are to:

- facilitate better communication among government departments and NGOs and make it easy to check whether a case is known to any other departments or organizations;
- collect statistical information on the problem of child abuse in Hong Kong; and
- plan and develop services and public education using a preventative approach to child abuse.87

3.1.11.2 Different service units are invited to report child abuse cases and children found at risk to the CPR.

3.1.11.3 Only registered users can make enquiries to the CPR.88 The information that can be obtained is restricted to:

- whether or not the child is registered;
- whether the case is active or closed; and
- the name and telephone number of the officer-in-charge / supervisor of the service unit handling / last handled the case.

3.1.12 What happens if a parent has been sentenced in a child abuse case? Would this result in permanent removal of custody?

3.1.12.1 Being convicted of a child abuse offence does not automatically mean that a CPO will be imposed, that a child will be removed from their parents, or that the parents will lose their parental rights.

3.1.12.2 The immediate placement of a child will depend on the determination of the MDCC or a court order. In severe child abuse cases, it is highly likely that the child will be placed into foster care or other temporary care (following a CPO). It is a decision for the court to determine if, and how soon, the child can be returned to the parents if the child was removed from the parents under a court order.

3.1.12.3 The parental rights of a parent will only be terminated if the child is: (a) in the care of the Social Welfare Department; and (b) the Director of Social Welfare applies for a freeing order. This will only happen in extreme cases, for example if the child has been "abandoned, neglected, or persistently ill-treated."

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85 Guide to participants of MDCC, para. A(3)(b), F(3), F(5).
86 Re F (in utero) [1988] Fam 122, [1988] 2 All ER 193 (CA). See also C v S [1988] QB 135, [1987] 1 All ER 1230 (CA), following Paton v British Pregnancy Advisory Service Trustees [1979] QB 276, [1978] 2 All ER 987; Re D (Unborn Baby) [2009] 2 FLR 313, 318, at para 12. Barring certain exceptions, see e.g., Offences Against the Person Ordinance (Cap 212), s 47A (medical termination of pregnancy) and s 47B (child destruction); Inheritance (Provision for Family and Dependants) Ordinance (Cap 481), s 2(1).
87 Procedural Guide on Handling Child Abuse Cases, p. 36, para. 4.23.
88 Staff of service units from SWD/NGOs, police officers of CIAUs and senior medical officers/medical officers in charge of dealing with child abuse cases who wish to be registered as users of the CPR are required to send in the completed Record Form for Access. Process outlined at http://www.swd.gov.hk/doc/en/08Appendix%20VI.pdf
CASE EXAMPLE

"Children's rights advocates say case of malnourished girl, 7, highlights serious flaws in Hong Kong’s child welfare system"

South China Morning Post, Jennifer Ngo and Emily Tsang, Sept 10, 2015

"[A] girl moved to Hong Kong from the mainland in November last year to stay with her birth parents, brother and half-sisters. She has been in hospital since July, is said to weigh less than 15kg, has gangrene on her thighs, buttocks and feet and has skin ulcers all over her body.

Lawmakers and social work scholar[s] said there were obvious gaps between departments, which allowed the girl's plight to go unreported.

"Family social workers usually don't look too deep. If there's a financial problem they help the family apply for welfare; if there is a marriage issue they offer counselling. They may not look into the children if they do not suspect abuse," he said. "What I'd ask is why the school didn’t report the case – it was a red flag when the girl withdrew from school after staff questioned her mother about her wounds."

The girl is in a stable condition, but has been unresponsive to all attempts of stimulation since being admitted. Her parents and older twin sisters have been released on bail."

Questions to Consider:

- Who are the various professionals who interacted with this girl?
- Why do you think these professionals did not notice the abuse or take action in this case?
- If a similar case happened again, what actions would you suggest to take?

Child Abuse Rates in Hong Kong

Research Findings

A 1999 Social Welfare Department survey found that 68% of parents surveyed had engaged in at least one case of psychological abuse, 52% surveyed had engaged in at least one case of minor violence towards their children and 40% surveyed had used severe violence towards their children.

In 2001 the Medical Coordinators on Child Abuse (MCCA) under the Hospital Authority published its first data on child abuse. It reported that between 1997 and 1999: 494 cases of child abuse were reported from the 12 public hospitals in Hong Kong; 452 cases resulted in a multi-disciplinary case conference; and abuse was found in 254 of these cases. In five cases, the child died as a result of serious head trauma.

A 2005 study by Chan, based on a territory wide household survey, found: around 45% of children had been physically assaulted by one or both parents at some point; around 9% of children had encountered severe physical assault by their parents; around 72% of children reported having encountered psychological aggression by their parents; and 27% of children reported having encountered neglect.

A 2010 study by Patrick Ip, analyzing the data from the Hospital Authority’s Clinical Management System, found that from 2000 to 2008 there were 5,400 admissions into public hospitals because of child abuse. The data also showed an increasing trend of admissions to the hospital for child abuse. In 2000 there was an admission rate of 3.3 per 10,000 individuals under the age of 19. In 2008 this went up to 7.3 admissions per 10,000 children.

3.2 Sexual assault and underage sex

United Nations Convention on the Rights of the Child

Article 34

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91 Medical Coordinators on Child Abuse, Suspected child abuse cases in public hospitals: an interim analysis of 494 cases, 6 HONG KONG JOURNAL OF PAEDIATRICS 3-56 (2001)


93 Ip, P., Child abuse and neglect in Hong Kong, 5 HONG KONG JOURNAL OF PAEDIATRICS 61-64 (2010).
Understanding the legal aspects of working with children and families

3.2.1 Introduction

3.2.1.1 The government has a legal duty to take appropriate steps to protect children from sexual exploitation and sexual abuse. One way to do this is to criminalize such acts and prosecute offenders effectively and strictly in accordance with the relevant laws.

3.2.1.2 In order to best protect child victims of sexual abuse, it is important to understand the legal definitions of various sexual offences (including rape, underage sex and other types of sexual assault) under Hong Kong law. It is also necessary to know who has a duty to report these crimes to the police, how to report this and the subsequent procedures involved and the kind of evidence required to establish a case. There are many parties who can play a role in ensuring that children have the best possible support and protection.

What Role Can I Play?

There is generally no legal requirement to report suspected sexual offences or other crimes to the police. Social workers may, however, have a professional duty to report cases of abuse in order to protect their clients and it is best practice to do so. The Social Welfare Department recommends that professionals refer any suspicion of child abuse, including sexual offences against children, to the Family and Child Protective Services Units of the Social Welfare Department and/or submit a report to the police as soon as possible.

Social workers can also play an important role in supporting the recovery of children and their families in cases of sexual abuse as well as supporting them to report where appropriate, acting as an advocate through criminal justice investigations and implementing case plans which uphold safety, dignity and protection.

What Role Should Others Play?

Police Officers – In investigating sexual abuse cases, police officers should keep in mind the governing principles and specific requirements laid out in the Procedural Guide for Handling Child Abuse. In particular, the child must not be further traumatized by the investigation and the best interests of the child must always be protected. Police officers may achieve this by minimizing the number of times a child is interviewed and employing special procedures to reduce the stress on child witnesses.

Parents, medical professionals, schools and government officials have a responsibility to report cases as well as to cooperate with any investigations and/or meetings relating to the child’s safety. All involved professionals have a responsibility to respond sensitively to cases of abuse, upholding confidentiality where it does not pose additional risk and taking care not to impose feelings of shame, blame or guilt upon child and family victims.

3.2.2 What is the legal definition of rape?

3.2.2.1 A man commits rape if:

a. he has unlawful sexual intercourse with a woman or girl who at the time of the intercourse does not consent to it; and

b. at the time he knows that she does not consent to the intercourse or he is reckless as to whether or not she consents to it.\(^{95}\)

3.2.2.2 It is important to know the definition of the relevant terms:

a. “Sexual intercourse” means penetration of the vagina by the penis. Any other types of sexual acts do not qualify as rape. For example, penetration of the mouth, non-vaginal penetration by

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\(^{95}\) Crimes Ordinance (Cap 200), s 118(3).
the penis or non-penile vaginal penetration will not be considered rape, though they may amount to other offences, such as indecent assault.

b. “Consent” means that a girl agrees to sexual intercourse. A girl can change her mind and withdraw her consent during intercourse. A man who continues with sexual intercourse after the girl has told him to stop commits rape.

c. “Reckless” means the defendant could not care less whether the girl was consenting or not but pressed on regardless. On the other hand, where the defendant genuinely, but mistakenly believed that the woman was consenting, this element is not satisfied.

3.2.2.3 A man who commits rape is liable on conviction to imprisonment for life. In practice, depending on the facts and the circumstances of a case, the terms of imprisonment start, at the very least, at 5 years.

3.2.3 Sex with an underage girl and/or mentally incapacitated girl or woman

3.2.3.1 It is illegal for a man to have sexual intercourse with any girl under the age of 16. Consent is irrelevant in underage sex cases. In other words, if the girl is under the age of 16, any man engaging in sexual intercourse with her has committed a crime, irrespective of whether the girl has consented to the intercourse.

3.2.3.2 If the girl is under the age of 16, but above the age of 13, the man could face a sentence of up to five years imprisonment. If the girl is under the age of 13, the man could be sentenced to life imprisonment. In practice, the precise age of the girl and the accused is most relevant to the sentence. Sentences in the range of 6 to 18 months' imprisonment are not uncommon.

3.2.3.3 It is also a crime for a man to have sexual intercourse with a mentally incapacitated girl or woman of any age, where the man committing the act knows that the girl or woman is mentally incapacitated. It is irrelevant whether the mentally incapacitated girl or woman has given consent as she is deemed not to have legal capacity to consent to sexual activities. A mentally incapacitated person is described in legal terms as a mentally disordered person or a mentally handicapped person whose mental disorder, or mental handicap, as the case may be, is of such a nature or degree that the person is incapable of living an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so.

Sexual Offences under the Crimes Ordinance (Cap 200)

Section 47 – Incest by men
Section 48 – Incest by women of or over 16
Section 118 – Rape
Section 118A- Non-Consensual Buggery
Section 118B – Assault with intent to commit buggery
Section 118C – Homosexual Buggery with or by a man under 16
Section 118D – Buggery with a girl under 21
Section 118E – Buggery with a mentally incapacitated person
Section 118G – Procuring others to commit homosexual buggery
Section 118H – Gross indecency with or by a man under 16

98 HKSAR v Ho Yin Ting [2013] HKEC 278.
99 Crimes Ordinance (Cap 200), s118(1).
101 Crimes Ordinance (Cap 200), s 123, 124.
102 Crimes Ordinance (Cap 200), s 123.
103 Crimes Ordinance (Cap 200), s 123.
104 Crimes Ordinance (Cap 200), s 117.
<table>
<thead>
<tr>
<th>Section</th>
<th>Offence Description</th>
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</thead>
<tbody>
<tr>
<td>118I</td>
<td>Gross indecency by a man with a male mentally incapacitated person</td>
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<td>119</td>
<td>Procurement of an unlawful sexual act by threats or intimidation</td>
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<td>120</td>
<td>Procurement of an unlawful sexual act by false pretences</td>
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<td>121</td>
<td>Administering drugs to obtain or facilitate an unlawful sexual act</td>
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<td>122</td>
<td>Indecent Assault</td>
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<td>123</td>
<td>Sexual Intercourse with a girl under 13</td>
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<td>124</td>
<td>Sexual Intercourse with a girl under 16</td>
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<td>125</td>
<td>Sexual Intercourse with a mentally incapacitated person</td>
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<tr>
<td>126</td>
<td>Abduction of an unmarried girl under 16</td>
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<td>127</td>
<td>Abduction of an unmarried girl under 18 for sexual intercourse</td>
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<td>128</td>
<td>Abduction of mentally incapacitated person from parent or guardian for sexual act</td>
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<td>129</td>
<td>Trafficking in persons to or from Hong Kong for the purpose of prostitution</td>
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<td>130</td>
<td>Control over persons for the purpose of unlawful sexual intercourse or prostitution</td>
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<td>Causing prostitution</td>
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<td>132</td>
<td>Procurement of a girl under 21</td>
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<td>133</td>
<td>Procurement of a mentally incapacitated person to have unlawful sexual intercourse</td>
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<td>134</td>
<td>Detention for intercourse or in a vice establishment</td>
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<td>135</td>
<td>Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16.</td>
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<td>136</td>
<td>Causing or encouraging prostitution of a mentally incapacitated person</td>
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<td>138A</td>
<td>Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances.</td>
</tr>
<tr>
<td>140</td>
<td>Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse, prostitution, buggery, or homosexual act.</td>
</tr>
<tr>
<td>142</td>
<td>Permitting a mentally handicapped person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act.</td>
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<tr>
<td>146</td>
<td>Indecent conduct towards a child under 16</td>
</tr>
</tbody>
</table>

**Prevention of Child Pornography Ordinance (Cap 579)**

Section 3 – Offences relating to Child Pornography

**Related Inchoate Offences**

- Inciting another to commit any of the above offences
- Aiding, abetting, counselling or procuring the commission of any of the above offences
- Conspiracy to commit any of the above offences
- Attempted to commit any of the above offences

Note: In Hong Kong law, while rape refers to male perpetrators only, other sexual offences refer to ‘any person’ as potential perpetrators (See individual offences for clarity).

Buggery: The act of Buggery (anal sexual intercourse with a man by a man or with a woman by a man) is in itself not illegal in Hong Kong where both parties are over 16, if both male and consenting (this changed in 2014), or where the woman is over 21 and consenting, if with a woman by a man.

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**Can young boys be guilty of committing rape or underage sex?**

"Man" in both the Hong Kong legal definition of rape and the legal definition of illegal underage sex means any male over the age of 10.
This means that in Hong Kong even young boys, for example those under the age of 14, can be guilty of committing rape or underage sex under Hong Kong law. This is true even if the boy is close in age to the girl. In these cases, it is up to the government prosecutor to decide whether to bring criminal charges against the boy.\(^{107}\)

In the past, there was a legal presumption that boys under 14 were not capable of committing a sexual offence. This was however changed in 2012. Boys under 14 can now be found guilty of such crimes.\(^{108}\) In Hong Kong, children under 10 cannot be guilty of ANY criminal offences, and therefore cannot be found guilty of rape, underage sex, or any other sexual offences.\(^{109}\)

### Can a boy be a victim of rape?

In Hong Kong, rape or underage sex can only be committed by a man upon a woman. This definition means that, under current law, a boy cannot be the victim of rape or underage sex. **However**, sexual assault against a boy amounts to a different type of crime, for example indecent assault or homosexual buggery with a man under 16. (See table of sexual offences above)

### 3.2.4 Is it compulsory to report a case of rape or underage sex?

**3.2.4.1** Generally, there is no legal duty to report crimes in Hong Kong.

**3.2.4.2** However, the Social Welfare Department has recommended that where there is a suspected child abuse case, it is best practice to (a) refer such cases to the Family and Child Protective Services Units of the Social Welfare Department (if it is a new case) or to the responsible service units (if it is a known case) and/or (b) make a report to the Police for investigation or assistance as soon as possible.\(^{110}\) These cases are considered an exception to the traditional laws and rules regarding privacy of information and client confidentiality.\(^{111}\)

**3.2.4.3** In addition, in some cases social workers may have a professional duty to report cases of abuse in order to protect their client. What this means is that if a child is harmed because a social worker did not report a case, the child or their representative could later bring a lawsuit arguing that the social worker breached their professional duties by allowing harm to come to that child.

**3.2.4.4** Government policy requires that civil servants report crimes or suspected crimes to the proper officials, regardless of whether they heard about the crime through their official or personal capacity.\(^{112}\) In addition, the government asks that every other member of the community help law enforcement agencies by reporting crime.\(^{113}\)

### 3.2.5 How to report a rape or sexual offence to the police

**3.2.5.1** Anyone wishing to report a crime to the Police can call “999” for urgent matters or go directly to a Police Station.\(^{114}\) If a victim wishes to report the case directly in a Police Station, it is best to report the case to the Police Station within the District where the crime took place. If requested to do so by the victim and/or his/her parents, professionals working with the family staff may support attendance.

**3.2.5.2** If the offence was recent, the victim should be careful not to clean or throw away any clothes, sheets, or tissues used to clean themselves, or other evidence.

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\(^{107}\) See paragraph 3.2.6.2 below for the test for prosecution.

\(^{108}\) Crimes Ordinance (Cap 200), s 118O.

\(^{109}\) Juvenile Offenders Ordinance (Cap 226), s 3.


\(^{111}\) Normally, client confidentiality and private information is protected by Article 14 of the Hong Kong Bill of Rights Ordinance (Cap 383), the Personal Data (Privacy) Ordinance (Cap 486), as well professional codes of ethics such as the Code of Practice for Registered Social Workers (Part 2, paragraphs 7-12). However, disclosure is justified where the information is necessary to prevent foreseeable harm to a child. There are explicit exceptions within the Personal Data (Privacy) Ordinance for cases where maintaining privacy of information would cause serious physical or mental harm to the subject or other individuals (Cap 486 s 59), or where the information is necessary for detection or prevention of crime or seriously improper conduct (Cap 486 s 58). Professionals such as medical practitioners or residential child care staff are allowed to share private information in such cases for the purpose of protecting a child from serious physical and/or mental harm or to aid in child abuse investigations. See Procedural Guide for Handling Child Abuse Cases, pp. 28-30 for additional information.


3.2.5.3 The victim should be interviewed by an officer of the same sex as the victim (unless the victim requests otherwise) and be accompanied by a parent/guardian/independent support person, or legal representative, if necessary/requested\(^{115}\). He/she will be asked to give a statement outlining all memories of what happened.

If the victim is under 17 years of age, they will be asked to make a statement verbally, and this will be recorded and if the child is under 18 years of age at the time of the court hearing, the video will be shown.\(^{116}\)

3.2.5.4 Once the statement is recorded, the police will begin an investigation. Actions may be taken at the scene and/or follow-up enquiries will be carried out.

- Medical services will be arranged immediately if required.
- Police will visit the scene to collect evidence.
- Forensic evidence may be collected from the victim (if the victim or their parent/guardian consents to this). There are various different forms of evidence, depending on the nature of the offence but may include clothing, bedsheets and bodily swabs to detect DNA.
- A police photographer may take photographs of any injuries.
- With the victim’s consent, a referral may be made to the Social Welfare Department for specialized crisis intervention and after-care.\(^{117}\)
- An identification parade may be conducted.

3.2.5.5 The time needed by the police to investigate will depend on a number of factors, for example whether the suspect can be located. If the girl becomes pregnant as a result of the incident, the police may wait until after the girl gives birth in order to collect DNA evidence.

3.2.6 After a report is made to the police, what happens next?

3.2.6.1 Where a suspect is identified, the suspect will be arrested and brought before a police officer in charge of the relevant police station, provided that the police officer in arresting the suspect has a reasonable suspicion of the person being guilty of an offence.\(^{118}\) The police will decide whether to bring charges, usually in consultation with the Department of Justice (which holds ultimate responsibility for commencing criminal prosecution in Hong Kong).\(^{119}\) After charging, unless the offence appears to be of a serious nature or the police officer reasonably considers that the person ought to be detained, the charged person will be granted bail on the understanding that s/he will return home and appear at the court on a specified date. If the charged person is to be detained in custody, the police are required to bring him/her before a magistrate as soon as practicable and generally within 48 hours after his arrest.\(^{120}\) At this first appearance, the magistrate has full power to make a decision to remand the defendant in custody or release him/her on bail.\(^{121}\)

3.2.6.2 Following charging and investigation the police will present the case to the Department of Justice for them to decide whether to continue the prosecution of the defendant by proceeding with the same charge(s) laid by the police, or may amend, withdraw or add to the charges. Generally, a prosecutor will only prosecute an individual if (a) the evidence available is sufficient to justify instituting or continuing proceedings, and (b) the general public interest requires a prosecution to be pursued. In deciding where the public interest lies in a particular case, the prosecutor must consider the justice of the situation and examine all of the factors, including, among other things, the seriousness and circumstances of the offence, and the age or aptitude of the suspect or victim.\(^{122}\)

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\(^{116}\) Criminal Procedure Ordinance (Cap. 221), s.79A.

\(^{117}\) Ibid.

\(^{118}\) Police Force Ordinance (Cap. 232), ss. 50(1), (1A) and (1B).

\(^{119}\) Criminal Procedure Ordinance (Cap. 221), s.14(1); see also paragraph 3.2.6.2 below.

\(^{120}\) Police Force Ordinance (Cap. 232), s. 52(1).

\(^{121}\) Criminal Procedure Ordinance (Cap. 221), ss. 9D and 9G; Magistrates Ordinance (Cap. 227), ss. 79 and 102.

\(^{122}\) Prosecution Code, Department of Justice, 4 November 2015, paras 5.1 – 5.10.
3.2.6.3 If the Department of Justice decides to proceed with the prosecution, the case will go to court. Depending on the offences involved, the defendant may have to plead either guilty or not guilty on their first or subsequent appearance before the magistrate. If he/she pleads guilty, the victim will not need to appear in court. If the defendant pleads innocent, the victim will be required to go to court to testify.

3.2.6.4 For certain serious offences, including rape, the matter can only be tried by the Court of First Instance. In those circumstances, there will usually be initial proceedings called "committal proceedings" held in the Magistrates Court. Unless the defendant elects otherwise, the magistrate will conduct a preliminary inquiry to determine whether the defendant should be committed to the Court of First Instance (but the magistrate has no power to determine the guilt of the defendant). During this preliminary inquiry, the victim may be called as a prosecution witness to give evidence and be cross-examined by the defendant's lawyers. If the magistrate determines that the defendant has a case to answer, he or she should also ask if the defendant wishes to plead guilty. If the defendant pleads guilty, s/he will be committed for sentence in the Court of First Instance. This means that the victim will not be asked to go to court again. If the defendant does not plead guilty, however, and there is sufficient evidence to put the defendant upon the trial for an indictable offence or if the evidence raises a strong or probable presumption of the defendant's guilt, s/he will be committed to a trial at the Court of First Instance, during which the victim may be called to testify as a prosecution witness again.

3.2.6.5 If the case is an underage sex case, this whole process generally takes two to six months. If the case is a rape case, it can often take over a year. Where the victim is a child or a mentally incapacitated person, a magistrate may order that the accused is committed to the Court of First Instance for trial without the option of a preliminary inquiry first.

**NOTE: Special Protections for Child Victims and Witnesses**

If necessary, the victim may request the use of a one-way viewing facility at an identification parade. On the day the victim goes to the court, police accompaniment through a separate entrance can be put in place. There should also be a support person sitting with the victim in the waiting room. In some cases, particularly when interviewing a child about a sensitive or traumatic topic such as a sexual or violent offence, a video recording may be used as evidence or the child may be allowed to give testimony via a closed circuit television link or a live video link, so that he/she does not have to appear in the courtroom.

3.2.7 What evidence is considered in a case of rape or underage sex?

3.2.7.1 There is direct and indirect evidence.

a. Direct evidence is what a person saw, heard, smelled, tasted, or felt.

b. Indirect evidence is evidence other than direct evidence that can also help to prove a case. Examples of indirect evidence might include: bed sheets with the bodily fluid of the suspect, torn clothing, CCTV of the building in which the crime took place, tissues used by the victim to clean themselves, fingerprints of the suspect, photographs, witnesses, or a record of communication between the victim and the suspect (both before and after the sexual offence).

3.2.7.2 It is important to collect any evidence and submit it to the police as this can be critical in establishing a case.

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123 Indictable offences listed in Part III of the Second Schedule to the Magistrates Ordinance can only be determined by the Court of First Instance, see Magistrates Ordinance (Cap.227), s. 88.
124 Magistrates Ordinance (Cap. 227), s.80A-C.
125 Magistrates Ordinance (Cap. 227), s.81.
126 Magistrates Ordinance (Cap. 227), s.82(1).
127 Magistrates Ordinance (Cap.227), s.81B(2).
128 Magistrates Ordinance (Cap. 227), s.85(2).
129 Criminal Procedure Ordinance (Cap 221), s.79F.
131 Ibid.
132 Criminal Procedure Ordinance (Cap 221), s 79B, 79C, 79D.
3.2.8 What are a victim's rights in regards to reporting a sexual assault case? Do the police have to provide updates about the case?\textsuperscript{133}

3.2.8.1 The relevant police officers should inform victims of their role in, and the procedures of, the prosecution and court process, should they request such information. They should also update victims of the progress and result of the investigation. For serious crimes, including rape, victims should be updated at least every six months in any event.\textsuperscript{134}

3.2.8.2 The victim should be given the contact number of the Investigating Officer of the case and the police reference number for the case. The victim is entitled to call the responsible Investigating Officer at any time for an update. Social workers can obtain information about the investigation on the client’s behalf so long as they have given consent to the police.

3.2.9 Sources of additional support (the following is non-exhaustive, please check the internet for the most up-to-date services in your area)

Rain Lily – Provides hotline and crisis center for female victims of sexual violence.
Tel: 2392 2569 / www.rainlily.org.hk

CEASE – Crisis intervention and support services for victims of sexual violence.
Tel: 2703 4111 / ceasecrisis.tungwahcsd.org

The Victims of Crime

Criminal and Law Enforcement Injuries Compensation (CLEIC) Scheme


Abuse

Understanding the legal aspects of working with children and families
4. Pregnant girls
4. Pregnant girls

United Nations Convention on the Rights of the Child

Article 24

“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures;

a) To diminish infant and child mortality

b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care……..

d) To ensure appropriate pre-natal and post-natal health care for mothers:

e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and the prevention of accident…

4.1 Termination of pregnancy

4.1.1 Termination of Pregnancy Introduction

4.1.1.1 An unplanned pregnancy is often a crisis in a woman or girl's life, meaning it can be a time where tough decisions are required.

4.1.1.2 Social workers play an important role in this situation, including helping the woman/girl to understand her options—becoming a mother, placing her baby for adoption, or terminating the pregnancy – and the legal and practical issues surrounding these options, so that the woman/girl can make an informed decision.

4.1.1.3 Individuals counselling women and girls on this decision should be careful to examine their own values and biases, and to provide non-judgmental counselling, restricting their advice to clear factual information about the law and about each of the three options.

4.1.1.4 This section covers the legal aspects of the option to terminate a pregnancy. Subsequent sections provide information in relation to becoming a mother and placing a baby for adoption.

What Role Can I Play?

Social workers can play a critical role in educating women and girls about the law regarding termination of pregnancy and her options. A social worker's role is to help her make an informed decision and provide support and advocacy with transitional steps following decision making. This may include hospital attendance, residential placements, changes in education and support to meet health, emotional and other needs.

Social workers can also help ensure pregnant women and girls are living in places of safety, mediate between girls and parents and respond appropriately to any pregnancies that have resulted from abusive acts such as rape or control in relationships.

What Role Can Others Play?

Parents – Although not required by law, it is the policy of many Hong Kong hospitals to require consent from the girl's parents before they will perform a termination where she is under 18. Parents therefore play a critical role in the decision-making process. Parents are often also a key source of support for the girl but social workers should be mindful to provide independent support and maximize additional support available by third parties such as friends, schools, partners and relatives where safe and appropriate.

Medical Professionals – Medical professionals play a primary role in determining the medical needs of a woman/girl and what her available options are. As with all professionals involved with the care of unplanned pregnancies, medical professionals must be careful not to let their personal ethics or values affect their professional judgment.
4.1.2 **Under what circumstances can a pregnancy be terminated legally?**

4.1.2.1 Termination of pregnancy can only be legally performed if

a. it takes place within 24 weeks of pregnancy, unless it is necessary for saving the life of the pregnant woman;\(^\text{135}\)

b. it is performed by registered doctors in specific hospitals and clinics.\(^\text{136}\) This requirement does not apply if the termination is immediately necessary to save the life of, or to prevent grave permanent injury to the physical or mental health of, the pregnant woman;\(^\text{137}\) and

c. two registered medical practitioners agree in good faith that the termination of pregnancy should be performed. The doctors would only determine that a termination should be performed if:

1. continuance of the pregnancy would involve risk to the life of the pregnant woman or be of injury to the physical or mental health of the pregnant woman, greater than if the pregnancy were not terminated; or

2. there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormality as to be seriously handicapped.\(^\text{138}\)

4.1.2.2 In cases where the pregnant woman/girl is under 16 or has been the victim of a sexual offence (and has made a report to the police within 3 months of the offence), the doctor will automatically presume that the continuance of her pregnancy would involve risk of harm to the pregnant girl and may therefore perform a termination of pregnancy if requested.\(^\text{139}\)

4.1.3 **When is termination of pregnancy illegal and what are the consequences?**

4.1.3.1 Any termination of pregnancy not performed by medical practitioners, or not in a designated clinic or hospital as described above, is illegal.

4.1.3.2 Any termination of pregnancy after 24 weeks is also illegal, unless it is necessary to save the life of the pregnant woman or girl.\(^\text{140}\)

4.1.3.3 Accessing or performing illegal termination of pregnancy, or helping someone to access an illegal termination of pregnancy, can result in a fine and/or imprisonment with up to a life sentence. For women who attempt to abort their own baby with unlawful administration of poison or other noxious thing or by use of any form of instrument, the maximum sentence is 7 years. Anyone who supplies substances or instruments with knowledge of intended use for illegal abortion is liable to 3 years imprisonment.\(^\text{141}\)

4.1.4 **What about getting an abortion outside of Hong Kong after 24 weeks? Is that illegal?**

4.1.4.1 If a woman or girl obtains an abortion abroad after 24 weeks, it is unlikely that she will face any criminal charges in Hong Kong. This is because the Hong Kong courts only have jurisdiction over criminal acts that take place within Hong Kong territory.\(^\text{142}\) Whether or not she is criminally liable in the country where the abortion is sought would depend on that country’s domestic laws.

4.1.4.2 However although the woman/girl herself will not be liable, anyone in Hong Kong who assists her in seeking a termination of pregnancy outside Hong Kong may still face criminal charges for the actions they took inside Hong Kong in helping the woman/girl to obtain an abortion.

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\(^\text{135}\) Offences Against the Person Ordinance (Cap 212), s 47A(2C).

\(^\text{136}\) Offences Against the Person Ordinance (Cap 212), s 47A(3). Unless immediately necessary to save the life of the woman. See section 47A(4).

\(^\text{137}\) Offences Against the Person Ordinance (Cap 212), s 47A(4).

\(^\text{138}\) Offences Against the Person Ordinance (Cap 212), s 47A(1).

\(^\text{139}\) Offences Against the Person Ordinance (Cap 212), s 47A(2A).

\(^\text{140}\) Offences Against the Person Ordinance (Cap 212), s 47A(2C).

\(^\text{141}\) Offences Against the Person Ordinance (Cap 212), s 46, 47.

\(^\text{142}\) Since Section 46 of the Offences Against the Person Ordinance (Cap 212) does not fall under Sections 2(2) and 2(3) of the Criminal Jurisdiction Ordinance (Cap 461), the common law principle applies that Hong Kong courts only have jurisdiction over criminal offences which are committed within the territorial limits of Hong Kong.
4.1.5  **Is parental consent required for a termination of pregnancy?**

4.1.5.1 Whether parental consent has to be obtained for medical decisions of a child (including termination of pregnancy) depends on the capacity and ability of the child to make an informed decision.

4.1.5.2 Under the Medical Council of Hong Kong’s Code of Professional Conduct Guide, children under 18 may consent to medical treatment if they are capable of understanding the nature and implications of the proposed treatment.\(^{143}\) This is also supported by case law.\(^{144}\) If the child is not capable of sufficient understanding, consent has to be obtained from the child’s parent or legal guardian.

4.1.5.3 **In practice,** although it is *not a legal requirement,* many public and private hospitals in Hong Kong require parental consent for a girl under 18 to undergo termination of pregnancy.\(^{145}\)

4.1.5.4 Where a hospital requires parental consent for a termination of pregnancy, but the parents refuse to give such consent, it may still be possible for a girl to undergo abortion. For example, it may be possible to obtain a court order allowing the girl to have the procedure without parental consent where it is deemed in the girl’s best interests. In these cases, the social worker involved should seek legal advice.

4.1.6  **Does the biological father of the baby have any legal rights regarding the decision to terminate a pregnancy?**

4.1.6.1 No, the biological father of the baby has no legally enforceable right to stop the girl from terminating a pregnancy. This is the case whether or not the couple is married.\(^{146}\)

4.1.7  **Contact information**

*The Family Planning Association of Hong Kong*

Address: 10/F., Southorn Centre, 130 Hennessy Road, Wanchai, HK  
Telephone: 2575-4477  
Fax: 2834-6767  
Email: fpahk@famplan.org.hk  
Services Hotline: 2572-2222

**List of Approved Hospitals and Clinics\(^{147}\)**

<table>
<thead>
<tr>
<th>Hospital</th>
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<tr>
<td>Hong Kong Adventist Hospital – Stubbs Road</td>
<td>Princess Margaret Hospital</td>
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<tr>
<td>Hong Kong Sanatorium &amp; Hospital Limited</td>
<td>Queen Elizabeth Hospital</td>
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<td>Kwong Wah Hospital</td>
<td>Queen Mary Hospital</td>
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<td>Matilda &amp; War Memorial Hospital</td>
<td>Tsan Yuk Hospital</td>
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<td>North District Hospital</td>
<td>Tsuen Kwan O Hospital</td>
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<td>Pamela Youde Nethersole Eastern Hospital</td>
<td>Hong Kong Adventist Hospital – Tsuen Wan</td>
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<td>Pok Oi Hospital</td>
<td>Tuen Mun Hospital</td>
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<td>Prince of Wales Hospital</td>
<td>Union Hospital</td>
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<td>United Christian Hospital</td>
<td>The Family Planning Association of Hong Kong</td>
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<td>(Wanchai Nursing Home)</td>
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\(^{145}\) See Suet Lin Hung, Access to safe and legal abortion for teenage women from deprived backgrounds in Hong Kong, 18(36) *REPRODUCTIVE HEALTH MATTERS* (2010), at 107.


4.2 Pregnant girls’ rights in education and employment

United Nations Convention on the Rights of the Child

**Article 28**
States Parties recognize the right of the child to education…with a view to achieving this right progressively and on the basis of equal opportunity.”

4.2.1 Introduction

4.2.1.1 All children have a right to education. This right is protected both by Hong Kong law and by international law. This right applies to each child, as part of his or her human dignity and inherent rights.

4.2.1.2 The Convention on the Rights of the Child makes it clear that education should be directed to “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential,” This means that each child has a right to education that meets his or her particular needs.

4.2.1.3 Discrimination in education is strictly prohibited. This includes discrimination based on gender. The government is required under international law to take steps to prevent discrimination on the basis of maternity or pregnancy, as well as to reduce the number of girls dropping out of school. Discrimination in education may include acts:

a. depriving any person or group of persons of access to education of any type or at any level;

b. limiting any person or group of persons to education of an inferior standard; and

c. establishing or maintaining separate educational systems or institutions for persons or groups of persons.

4.2.1.4 Education is a human right in itself, but it is also a critical means of realizing other rights, such as the right to access healthcare or the right to work. Education can play a critical role in the future life of a child, and is often the primary way in which children can lift themselves out of poverty or challenging backgrounds.

What Role Can I Play?
Social workers and other professionals can provide significant support to children and pregnant girls, making sure that their right to education is not violated. They can help girls understand that they have the right to stay in school, should they wish to, and help to explore the additional support which may be available in practice. They can also play a role in speaking to school officials, parents and others to make sure that they are upholding their responsibilities to the girl.

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151 International Covenant on Economic, Social and Cultural Rights, Art. 2(2), 3; Convention on the Rights of the Child, Art. 2; Committee on Economic, Social and Cultural Rights, General Comment 13 (1999) (E/C.12/1999/10), para. 31; Committee on the Rights of the Child, General Comment 1 (CRC/GC/2001/1), para. 10; Sex Discrimination Ordinance, s. 25; Disability Discrimination Ordinance, s. 24; Family Status Discrimination Ordinance, s 18; Race Discrimination Ordinance, s. 26.

152 Id.


What Role Can Others Play?

**Hong Kong Government** – The government has a legal duty to provide all children with an education that meets their needs, and not to discriminate against anyone within the education system.

**School Officials** – School administrators and employees have a duty to provide equal education to all students, and are strictly forbidden from discriminating against students based on gender or pregnancy (or race, disability, marital status or family status).

### 4.2.2 Can schools expel a girl because she is pregnant?

4.2.2.1 No. In Hong Kong, the Sex Discrimination Ordinance specifically prohibits discrimination against pregnant women, i.e. when pregnant women or girls are treated less favorably than they would be if they were not pregnant.\(^{158}\) Accordingly, if a school expels a girl based solely on the fact that she is pregnant, that would amount to unlawful discrimination. Under the Sex Discrimination Ordinance, it is unlawful for a service provider to refuse to provide goods, services, or facilities on the basis of gender (or pregnancy or marital status).\(^{159}\) It is also unlawful for an educational establishment to deny admission or access to a student because of gender (or pregnancy or marital status).\(^{160}\)

4.2.2.2 School attendance is compulsory in Hong Kong from 6 years old (Primary 1) until the completion of Secondary Education Form III.\(^ {161}\)

### 4.2.3 Can a school expel a young mother, or treat her differently, because she has child care duties?

4.2.3.1 No, discriminating against someone because she has responsibility for the care of an immediate family member is unlawful under the Family Status Discrimination Ordinance (Cap 527).\(^ {162}\)

**What can a girl do if a school discriminates against her on the basis of her pregnancy or her family status?**

If a school discriminates against a girl on the basis of her pregnancy or her childcare responsibilities, she may either make a complaint to the Equal Opportunities Commission (the "Commission") or file a claim in the District Court. Frontline professionals may want to refer such cases to the Commission for conciliation and/or legal advice/assistance. The Commission is an independent body funded by the government that works towards the elimination of discrimination through three main functions; investigation and conciliation, legislation and codes of practice and guidelines, education and promotion. Through its first function it can investigate complaints lodged and conduct conciliation between parties or (in appropriate cases) provide assistance for legal action where conciliation fails.

### 4.3 Pregnancy rights in employment

#### 4.3.1 Introduction

4.3.1.1 While employment rights may not be a concern for many women and girls facing an unplanned pregnancy, some may actually be working, rather than in school. Women and girls in this situation may be concerned about their job and their rights in employment during pregnancy. In particular, a young mother may encounter workplace discrimination on the basis of her pregnancy. In such cases, it is important to understand the extent of a pregnant woman's employment rights under Hong Kong law.

#### 4.3.2 What employment benefits is a pregnant girl or woman entitled to?

4.3.2.1 A woman or girl who is working under a "continuous contract" is entitled to take maternity leave of up to ten weeks (plus a further period equal to the number of days, if any, beginning on the day after the expected due date up to and including the actual date of birth) and up to four weeks of additional leave in the event of illness or disability arising out of the pregnancy or

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\(^ {158}\) Sex Discrimination Ordinance (Cap 480), s 8.

\(^ {159}\) Sex Discrimination Ordinance (Cap 480), s 28.

\(^ {160}\) Sex Discrimination Ordinance (Cap 480), s 25.

\(^ {161}\) Education Ordinance (Cap 279), s 74.

\(^ {162}\) Family Status Discrimination Ordinance (Cap 527), s 5.
The maternity leave must be taken in a continuous period beginning between two to four weeks before the due date. The maternity leave must be taken in a continuous period beginning between two to four weeks before the due date.

“Continuous contract” means employment of 18 or more hours per week for at least four weeks.

4.3.2.2 A pregnant employee is entitled to paid maternity leave only if she has worked under a continuous contract for at least 40 weeks immediately before taking maternity leave and has given notice of the pregnancy, preferably in writing, to her employer (including a medical certificate confirming her pregnancy). She should give such notice as soon as possible after her pregnancy has been confirmed by a medical certificate, or, if she has not given any notice before her due date, within seven days of her due date.

4.3.2.3 Where an employee is entitled to maternity leave pay for the initial 10 weeks of maternity leave, the rate of pay must be at least 4/5th of the employee’s average daily wages during the 12 months immediately before the date of commencement of her maternity leave, or if she has been employed for a period shorter than 12 months, the shorter period.

If the pregnant woman or girl has worked under a continuous contract for fewer than 40 weeks prior to her scheduled maternity leave, she is still eligible for maternity leave WITHOUT PAY if she has given notice of her confirmed pregnancy and her intention to take maternity leave.

4.3.3 Can a pregnant employee be assigned heavy, hazardous or harmful work?

4.3.3.1 A pregnant employee may request not to be assigned heavy, hazardous or harmful work on producing a medical certificate stating that she is unfit to handle heavy materials, or to work in places where gas injurious to pregnancy is generated, or to do other work injurious to pregnancy, then the employer may not allocate the employee the work covered by the medical certificate. If the employee is already performing such work, the employer should reassign her to other types of work as soon as practicable, but in any case not later than 14 days after the date of the receipt of the request.

4.3.3.2 Within 14 days after the date of the request, however, the employer may arrange for the employee to attend another medical examination, at the employer's expense, to obtain a second opinion as to the employee's fitness to undertake the work at issue. The employer must give the employee at least 48 hours' notice of the examination. If the second opinion provides that the employee is fit to do the specified work or if the employee refuses to attend the medical examination as arranged by the employer, the employer may refer the employee's request to the Commissioner for Labour for a ruling. However, pending the result of the second medical opinion, the employer should still act upon the pregnant employee's request.

4.3.3.3 Despite any changes in the earnings of the employee as a result of her transfer from heavy, hazardous or harmful work in accordance with the above arrangement, payment for maternity leave should be calculated on the basis of the average daily or monthly wages (as appropriate) earned by the employee during the period of 12 months immediately before re-assignment of her work, or if she has worked for the employer for less than 12 months, the shorter period.

163 Employment Ordinance (Cap 57), s 12
164 Employment Ordinance (Cap 57), s 12AA.
165 Employment Ordinance (Cap 57), s 3, citing Schedule I.
166 Employment Ordinance (Cap 57), s 14(2)(a).
167 Employment Ordinance (Cap 57) s 12(4).
168 Employment Ordinance (Cap 57), ss 12(4) and (5).
169 Employment Ordinance (Cap 57), s 14(3A).
170 Employment Ordinance (Cap 57), s 12
171 Employment Ordinance (Cap 57), s15AA(1) and (2)
172 Employment Ordinance (Cap 57), s 15AA(2).
173 Employment Ordinance (Cap 57), ss 15AA(2) and (3).
174 Employment Ordinance (Cap 57), s15AA(4).
175 Employment Ordinance (Cap 57), ss15AA(5) and (6).
176 Employment Ordinance (Cap 57), s15AA(8).
4.3.4 Can an employer discriminate against an employee because she is pregnant?

4.3.4.1 No. Pregnancy is a protected class under the Sex Discrimination Ordinance. It is therefore illegal for an employer to discriminate against an employee on the basis of her pregnancy.

4.3.4.2 Conduct is discriminatory if the employer “treats her less favorably than he treats or would treat a person who is not pregnant” or if the employer applies the same condition or requirement to her as everyone else, but the condition is something she cannot comply with because she is pregnant, and the employer cannot objectively justify that condition or requirement.

4.3.4.3 The employee’s pregnancy or family responsibilities do not have to be the sole reason for the discriminatory treatment in order for it to be prohibited. It is sufficient if the pregnancy or family responsibilities (as applicable) is one of the reasons for discriminatory treatment, even if it is not the main reason.

4.3.5 Can an employer dismiss an employee when she becomes pregnant?

4.3.5.1 Generally no. After an employee who is working under a continuous contract has informed her employer that she is pregnant, it is illegal for an employer to dismiss her, starting from the date on which the pregnancy is medically confirmed to the date that the employee returns from maternity leave. In addition, if the employee informs her employer of her pregnancy immediately after having been given notice of termination, the employer must withdraw such notice. Note however that the above prohibition does not apply in cases where the employee is summarily dismissed (e.g. for serious misconduct) in accordance with section 9 of the Employment Ordinance.

4.3.5.2 If an employer violates this prohibition, it will be liable to pay the pregnant employee:

a. the sum which would have been payable if the contract had been terminated by the employer by giving a payment in lieu of notice (unless such amount has already been paid);

b. a further sum equivalent to the monthly average of the wages earned by the employee during the 12 month period immediately before the dismissal date (or if the period is shorter than 12 months, the shorter period); and

c. maternity leave pay for 10 weeks (if she would have been entitled to such payment).

4.3.5.3 In addition, the employer may be liable on conviction to a fine of up to HK$100,000. If any director, manager, secretary or other officer of the employer was involved in or complicit in the offence by the employer, such person may also be liable on conviction to such penalty.

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The Minimum Employment Age in Hong Kong

Children under 13 are not allowed to be employed. Children between the ages of 13 and 15 may work in non-industrial jobs or in the preparation of food for consumption on the premises, subject to certain conditions. In particular, if they have not completed Form III of secondary education they must still attend full time education. Children between the ages of 15 and 17 (inclusive) are considered “young persons” and may be employed, though they are also subject to certain restrictions. For example, where they are employed in an industrial undertaking, their working hours can be no longer than 8 hours a day and 48 hours a week, as well as no more than 6 days a week.
5. Birth
5. Birth

5.1 Birth registration

**United Nations Convention on the Rights of the Child**

**Article 7**

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality…..”

5.1.1 Introduction

5.1.1.1 It is the **legal right** of every child to have his or her birth registered. A child’s right to be registered is a fundamental right, and is closely linked to many other rights, such as access to healthcare and education. Despite this, anecdotal evidence suggests that there are still cases in Hong Kong where children remain unregistered.

5.1.1.2 The right to be registered applies to all children born in Hong Kong, including children of immigrants and migrant workers.

5.1.1.3 In order to ensure that all children born in Hong Kong are registered, it is important to know who has a duty to register a child, the procedures involved, and whose names can be registered on the birth certificate.

**What Role Can I Play?**

Social workers can play an important role in educating parents about the importance of registering their child and helping them understand how to register and the type of information to be included on the birth certificate. In particular, it is important to help parents understand whether, and how, the biological father can be registered on the birth certificate.

**What Role Can Others Play?**

*Officials at the Birth and Deaths General Register’s Office* have a duty to register all children, including children of immigrants or migrant workers, or those whose parents are not available at the time of registration.

*Parents* have a duty to register a child’s birth. If the parents are not available, this duty will fall on others (see below).

5.1.2 Who has a duty to register birth?

5.1.2.1 The following individuals have a duty to register a child:

- a. His or her father; or
- b. His or her mother (if the father is unavailable); or
- c. The occupier of the house where child was born or any person who was present at the birth (if the parents are unavailable); or
- d. The person having charge of a public institution (when the child is born in, or admitted to, such an institution); or
- e. The person who found the child (where the child is found exposed).

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194 Births and Deaths Registration Ordinance (Cap 174), ss 7 & 8.
It is a legal requirement that any child born in, or admitted to, an institution or residential care facility must be registered. It is the duty of the person in charge of this institution to obtain as much information as possible from the mother or other person admitting the child into their care and to duly register that child within 42 days.195

5.1.3 What is the time frame in which birth registration must occur?

5.1.3.1 Registration should occur within 42 days after a child is born.196 When registered on time, there is no registration fee.197

5.1.3.2 After 42 days, however, the person registering the child will have to pay a registration fee of HK$140.198 If more than 12 months have passed since the child’s birth, the child can be registered only with the consent of the Registrar, and on payment of a HK$680 registration fee.199

5.1.4 What happens if a person does not register a child?

5.1.4.1 By not registering a child, a person is potentially preventing the child from having access to healthcare, education, or other social services later in life.

5.1.4.2 In addition, anyone listed in paragraph 5.1.2.1 above who fails to perform his or her duty to register a child may be liable, on conviction, to a fine of up to HK$2,000 and/or imprisonment for up to 6 months.200

5.1.5 Whose names should be included on the birth certificate? Does the biological father’s name need to be registered?

5.1.5.1 If the mother’s identity is known, her name should be included on the birth certificate.

5.1.5.2 If the mother is married, her husband may be presumed at law to be the father of the child, unless proven otherwise (on the balance of probabilities)201

5.1.5.3 If the child is born outside of wedlock, the biological father of the child may be included on the birth certificate only in the following circumstances:202

a. At the joint request of the mother and the father;

b. At the request of the mother who personally attends the registry and produces:
   1. a declaration stating that the person is the child’s father; AND
   2. a statutory declaration made by that other person stating that he is the child’s father;

c. At the request of the person claiming to be the father who personally attends the registry and produces:
   1. a declaration stating that he is the father; AND
   2. a statutory declaration made by the mother stating that person is the father of the child;

d. At the request of the mother or the alleged father where either personally attends the registry and produces:
   1. a certified copy of a court order; AND
   2. if the child has attained 16 years of age, his or her written consent to the registration of that person as his or her father.190

195 Births and Deaths Registration Ordinance (Cap 174), s 8.
196 Births and Deaths Registration Ordinance (Cap 174), ss 7 & 8.
197 Births and Deaths Registration Ordinance (Cap 174), s 9(1).
198 Births and Deaths Registration Ordinance (Cap 174), s 9(2).
199 Births and Deaths Registration Ordinance (Cap 174), s 9(3).
200 Births and Deaths Registration Ordinance (Cap 174), s 28; Criminal Procedure Ordinance, Schedule 8.
201 Parent and Child Ordinance (Cap 429), s 28; Criminal Procedure Ordinance, Schedule 8.
202 Births and Deaths Registration Ordinance (Cap 174), s 12(1).
What is a Statutory Declaration?
A statutory declaration is a legal document in which a person declares or swears in writing that something is true. It must be made in a particular format in order to be valid. In Hong Kong, a justice, notary, commissioner or other person authorized by law to administer an oath may take and receive the declaration.  

5.1.5.4 If the father was not included on the birth certificate at the time of birth, it is possible to register him at a later time. The Registrar of Births and Deaths can re-register the birth to show that a person is the father if any of the four requirements in paragraph 5.1.5.3 is fulfilled.  

5.1.5.5 The child may also apply to court for a declaration that a person is his or her parent – essentially altering the birth certificate. The court will respond to such requests where, at the time of application, the application is domiciled in Hong Kong or has been resident for 1 year or more, or has a substantial connection with Hong Kong. If the Registrar is satisfied that the birth should be re-registered, he or she will authorize it.  

5.1.6 Does inclusion on the birth certificate have an impact on a mother or father’s parental rights and responsibilities?  

5.1.6.1 A birth certificate is a piece of evidence indicating that certain persons are the parents of the child, but it does not actually prove that they have any parental rights.  

5.1.6.2 For children born within wedlock, there is a presumption that the legal husband of the child’s mother is the father of the child. This means that it is assumed that he is the father and has parental rights. However, this presumption can be challenged if there is enough evidence showing that he is not, in fact, the biological father. If the evidence proves that the legal husband is not the biological father, his name on the birth certificate would not give him any parental rights.  

5.1.6.3 Currently, for children born out of wedlock, “parent” refers only to the biological mother and not the father. The biological father also currently has no automatic legal parental rights with regards to the child, even if his name is on the birth certificate. The only way for a biological father that is not married to the biological mother (unmarried biological father) to gain parental rights is through applying for a court order (note, however, below).  

Rights of the Unmarried Biological Father
Unmarried biological fathers do not automatically have any parental rights under Hong Kong law. They must instead seek these rights through a court order under the Guardianship of Minors Ordinance. In a recent case, however, the court ruled that there should be “some efforts” made to locate the biological father, in order to give him an “opportunity to decide whether to make application under the Guardianship of Minors Ordinance”. This means that even if unmarried biological fathers do not have any automatic parental rights, they may have the right to be contacted, in order to enable them to seek these rights.  

5.1.7 Does an adoption certificate function as a birth certificate?  

5.1.7.1 Please see the chapter on Adoption.  

5.1.8 Procedures and Contact Information
5.1.8.1 Where to Apply:  
The birth of a child should be registered at a birth registry in the district in which the birth occurred. The child is not required to be present. In the case of married parents, only one parent has to be present. If the child was born outside of a hospital or clinic or the birth has not been registered within 1 year, the birth should be registered at the Births and Deaths General Register Office.  

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203 Oaths and Declarations Ordinance (Cap 11), s 12.  
204 Births and Deaths Registration Ordinance (Cap 174), s 12A.  
205 Parent and Child Ordinance (Cap 429), s 6.  
206 Births and Deaths Registration Ordinance (Cap 174), s 12B.  
207 Parent and Child Ordinance (Cap 429), s 5(3).  
208 Guardianship of Minors Ordinance (Cap 13), s 3(1)(c).  
209 Guardianship of Minors Ordinance (Cap 13), ss 3(1)(c)(iii) & 3(1)(d).
5.1.8.2 What to bring:
When applying to register the birth of a child, the parent(s) should bring originals of the following documents:

- Hong Kong identity cards or valid travel documents (e.g. passports, documents of identity etc.) of the mother (and spouse, where applicable);
- Married couples must also provide the husband’s information as well as the mother’s, along with a marriage certificate;
- If the biological father is not the legal husband and wishes to be listed, he will either need to come to the birth registration in person, or submit a Statutory Declaration (see 5.1.5.3 above).

5.1.9 Contact Information

Online Booking for Birth Registration Appointments

The Births and Deaths General Register Office
Address: 3/F, Low Block, Queensway Government Offices, 66 Queensway
Tel: (852) 2867 2785

General Enquiries:
Hotline: (852) 2824 6111
Email: enquiry@immd.gov.hk

5.2 Immigration Status

5.2.1 When will a child be a Hong Kong Permanent Resident?

5.2.1.1 A child born in Hong Kong will be a Hong Kong Permanent Resident (and therefore has the right of abode in Hong Kong) if:

a. The child is a Chinese national. Any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. Both Hong Kong Chinese and the mainland Chinese are Chinese nationals. Or

b. The child is not a Chinese national (i.e., none of his/her parents are Chinese nationals), but at least one of his or her parents is a Hong Kong permanent resident at the time of his or her birth or any time before he or she attains 21 years of age. Please note that on attaining 21 years of age, the child ceases to be a Hong Kong Permanent Resident by virtue of his or her parent's permanent residency status. However, he or she may apply to be a permanent resident if he or she has ordinarily resided in Hong Kong for a continuous period of not less than seven years.

5.2.1.2 A child born outside of Hong Kong will be a Hong Kong Permanent Resident if at least one of his or her parents is a Chinese national who is a Hong Kong Permanent Resident at the time of his or her birth.

It does not matter whether the child’s parents were married in order for the child to receive the right of abode. If either the biological mother or biological father is a Chinese national and had the right of abode at the time that the child was born, the child will have the right of abode.

5.2.1.3 If a child is not entitled to permanent residence at birth, he or she can apply to become a Hong Kong Permanent Resident if he or she:

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210 Basic Law Article 24(1); Immigration Ordinance (Cap 115), Sch 1(2)(a).
211 Basic Law, Article 24(5); Immigration Ordinance (Cap 115), Sch 1(2)(e).
212 Basic Law, Article 24(3); Immigration Ordinance (Cap 115), Sch 1(2)(c); Ng Ka Ling and Another v. The Director of Immigration [1999] HKCFA 72; [1999] 1 HKLRD 315; (1999) 2 HKCFAR 4; [1999] 1 HKC 291; FACV 14/1998 (29 January 1999).
5.2.2 What does it mean to have “permanent residence?”

5.2.2.1 Permanent residence is not nationality; it is a separate legal status that allows that a child to stay in Hong Kong indefinitely and to receive certain benefits. In particular, it gives the child the right of abode, which entitles him or her:

- to land in the HK Special Administrative Region;
- to be free from any condition of stay (including a limit of stay) in the HK Special Administrative Region;
- not to be deported from the HK Special Administrative Region; and
- not to be removed from the HK Special Administrative Region.\(^{216}\)

5.2.2.2 In addition, it gives the child the right to obtain social welfare assistance from the Social Welfare Department and receive other government and welfare benefits.\(^{217}\) These include:

- comprehensive Social Security Assistance (CSSA);
- low payment rate / free care in Hong Kong’s public health system;
- Hong Kong kindergarten voucher or Student Financial Assistance; and
- subsidized child care services.

5.2.3 What if the child does not qualify for permanent residence? What is his or her immigration status?

5.2.3.1 A baby’s immigration status is always tied to its parents’ immigration status on the date that the baby’s birth is registered.

5.2.3.2 If only the biological mother’s name is registered on the birth certificate, the baby’s immigration status will be tied to that of the mother. If the biological father has his name on the birth registration, the baby’s immigration status will be tied to either the father or mother’s status, whichever is more favorable for the child.

5.2.3.3 The baby’s immigration status will be marked on his or her birth certificate:

- “Established” means that the child has Hong Kong Permanent Resident status;
- “Not Established” means that:
  a. the baby has a permit to stay in Hong Kong (with Form ID235B) or
  b. the baby has no permit to stay (without Form ID235B).

5.2.4 If a baby is found abandoned and the parents cannot be located, what will the child’s immigration status be?

5.2.4.1 In the case of an abandoned child, the nationality and immigration status of the parents can often be hard to determine. This decision is therefore to be made by the Director of Immigration. If the Director determines that the child appears to be of Chinese descent, the Director may grant him or her the Right of Abode.

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\(^{214}\) Basic Law, Article 24(2); Immigration Ordinance (Cap 115), Sch 1(2)(b).

\(^{215}\) Basic Law, Article 24(4); Immigration Ordinance (Cap 115), Sch 1(2)(d).

\(^{216}\) Immigration Ordinance (Cap.115), Section 2A(1).

\(^{217}\) Basic Law, Article 36.
The Immigration Ordinance (Cap 115) states that:

a. A new-born infant, who appears to the Director to be of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a Chinese citizen who was a permanent resident of the Hong Kong Special Administrative Region at the time of birth of the child;

b. A new born infant, who appears to the Director to be not of Chinese descent, is taken, in the absence of evidence to the contrary, to be the legitimate child of a parent not of Chinese nationality but who had the right of abode in Hong Kong at the time of birth of the child.\(^{218}\)

\[^{218}\text{Immigration Ordinance (Cap 115), Schedule 1, s 1(3).}\]

This determination by the Director of Immigration can be challenged if there is evidence to the contrary. Legal advice should be sought in this scenario.
6. Children in care
6. Children in care

6.1 Introduction to the problem

The residential care system operated by governments or other institutions is designed to shelter, protect and care for children in need. However, substantial evidence has shown that long-term stay or placement in the residential care system, however well run an institution it is, could be detrimental to and may cause life-long issues for children. At Mother’s Choice, it is our belief that placement in residential homes should be treated as a temporary solution only and long-term placement should be taken as a last resort. Yet it is noted that for various reasons in Hong Kong, it is not uncommon for children in need to have to spend their entire childhood under the residential care system.

6.1.1 The Problem: Statistics on the Number of Children in Care

As of March 2015, there were over 3,000 children in the residential care system in Hong Kong. Of these, approximately 50% lived in institutional residential homes, 26% in foster care homes and 24% in small group homes. There were children on the waiting list for placement and the average waiting period for a successful placement was 3 months.

In Hong Kong, the vast majority of children are placed in the residential care system with the consent of their parents. Under this system, parents still maintain legal rights and guardianship over their children. Typically, the assumption is that a child is only temporarily placed into care so that its parents could have the time and help needed to get back on their feet with the view that the child could reunite with them in due course. Therefore, for around 90% of the cases, the plan for the child is “family reunion” when he or she is first placed into care.

However, for many of these children, reunion with their families never materializes. Statistics show that although 90% of all cases began with family reunion as the plan, fewer than 60% of reunions were actually achieved. Of the remaining 40%, many children continued to remain in care until they “age out” of the system at 18. Further, even those children who were eventually reunited with their family often spent numerous years in the system before they moved back with their parents. The average length of stay for a child in care, as of 2015, was 42 months. As explained in 6.1.2 below, this lengthy stay in residential care can be extremely detrimental to a child’s development.

6.1.2 The Costs: The Societal and Financial Impact of Raising Children in Care

There is a common assumption in Hong Kong that children growing up in the residential care system face little risk of harm to their mental or physical health as their basic needs are taken care of, they have adequate housing, nutrition and access to education. The reality, however, is that raising a child within a residential care system has serious and long-lasting effects on physical and social development. Raising children in residential care also comes at tremendous financial and social cost to the community at large.

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219 This section is taken from “Being a Voice for Children in Residential Care,” a submission by Mother’s Choice to the Faculty of Law, Chinese University of Hong Kong, published in the book “Towards a Better Child Law for Hong Kong 2016”.


222 As of 31 March 2016, there were 1,569 children in residential homes, 839 in foster care and 773 in small group homes. See GovHK Press Releases on LCQ15: Family and Child Protection Service, online at http://gia.info.gov.hk/general/201607/13/P2016071301623_237994_1_1468402943206.pdf.

223 Average time children waited to be placed into residential care was 3 months as of 31 March 2016. See GovHK Press Releases on LCQ15: Family and Child Protection Service, online at http://www.info.gov.hk/gia/general/201607/13/P2016071301623.htm.

224 As at 31 December 2014, there were 3,188 children placed in residential care with the consent of their parents or guardians. SWD does not keep statistics on the number of children in residential care because of a Care or Protection Order or of children in residential care by parental consent before a Care or Protection Order was made.” See Examination of Estimates of Expenditure 2015-16 (Question Serial No. 4002), LWB(WW)0928 http://www.legco.gov.hk/yr14-15/english/fc/fc/w_q/lwb-ww-e.pdf.

225 Statistics taken from an independent study conducted for Mother’s Choice by Bain and Co. (on file with authors).

226 Data taken from the SWD indicates that the average time that a child spends in care in Hong Kong is 42 months. See independent Bain and Co. study for Mother’s Choice (on file with authors).
The Physical and Social Impacts on a Child’s Development

A child’s early experiences have a lasting impact on the development of his/her brain. During this early period, the brain is developing the neural circuitry, or “architecture”, on which it will rely and build for the rest of the child’s life. The nerve connections and neurotransmitter networks that are being created during these early years can be influenced by a variety of conditions and traumas. Having appropriate interactions and experiences at the right time is therefore crucial for how the brain develops. It is particularly important that the child experiences consistent interactions with a primary caregiver during this period. These early experiences shape a child’s healthy cognitive and social development, and have long-lasting effects on their learning, behavior and health.

The effect of stress is particularly devastating on the young developing brain. While learning to deal with stress is a critical part of healthy development, experiencing prolonged exposure to stress, particularly when children do not have adequate buffers such as a healthy relationship with a caregiver, can result in toxic stress. This leads to long-term damage of a child’s brain development. In particular, prolonged exposure to stress during critical early periods of development can have a strong effect on the areas of the brain tied to learning and reasoning. Adverse childhood experiences impact not only a child’s brain development, but have also been documented to affect a person’s physical health more generally, including increasing the risk for chronic health conditions such as heart disease, diabetes, back pain, stroke, mental illness and asthma.

Children growing up in residential care systems are particularly vulnerable to these types of long-term physical and developmental damage. Children in care often do not have access to a primary care giver, and do not have the types of consistent, comforting interactions needed to promote healthy neural development. Indeed, children in care often have their primary social relationships disrupted. Moreover, children in care are also especially vulnerable to exposure to highly stressful or traumatic experiences. Statistics from other jurisdictions show high levels of exposure to trauma among children who grow up in care. One study in the U.S. revealed Post Traumatic Stress Disorder rates among children in foster care were higher than those in returning military combat veterans. Many children entering care may come from families with drug abuse problems, mental illness, poverty and/or family instability.

Children who have inadequate or unstable relationships with caregivers can develop insecure attachments, which harm their healthy social development. This has been demonstrated by the 1960s attachment experiments by Mary Ainsworth and John Bowlby. For a description see Inge Bretherton, The Origins of Attachment Theory: John Bowlby and Mary Ainsworth, DEVELOPMENTAL PSYCHOLOGY 28 (1992), 759-775. See also HARRIET WAR AND REBECCA BROWN, SAFEGUARDING CHILDREN IN THE EARLY YEARS (2014), 2.

Research by Eric I. Knudsen, a Professor of Neurobiology at Stanford University School of Medicine indicates that there are “sensitive periods” during which the brain goes through specific developmental phases, and during which experiences have a particularly powerful effect on neural circuits and neural development. See Sensitive Periods in the Development of the Brain and Behavior, JOURNAL OF COGNITIVE NEUROSCIENCE 16:8 (2004), 1412–1425, http://www.mippressjournals.org/doi/pdf/10.1162/0898929042304786.


Activities and possibly it is he or she will be...

Understanding the legal aspects of working with children and families

http://www.legco.gov.hk/yr14

in Foster Care, AM J ORTHOPSYCH


the risk of mothers physically abusing their children: a path analysis using systems theory, 30 CHILD ABUSE AND NEGLECT:

http://www.euro.who.int/__data/assets/pdf_file/00

VIOLENCE (2007), EUR/07/50631214; Egeland, B. et al.


adolescents transitioning out of foster care, PEDIATRIC NURSING 33(4) (2007), 345–55


See Vinnerljung et al., Suicide attempts and severe psychiatric morbidity among former child welfare clients—adolescents and dependent on the welfare system. Nor does it account for the long-term economic costs on the healthcare system associated with an increased risk of health problems.

The Financial Impacts

At a financial level, the cost of raising children in residential care is significant. In 2013-2014, the expenditure for foster care, small group homes and residential homes for children in Hong Kong was $136.5 million, $172.8 million and $241.2 million respectively. This did not include expenditure outside of government funding spent by private organizations, hospitals, religious groups and NGOs like Mother’s Choice.

These numbers also do not take into account the financial costs that result from generations of children and youths leaving care with higher risks of becoming homeless, unemployed, incarcerated, engaged in risky behavior and dependent on the welfare system. Nor does it account for the long-term economic costs on the healthcare system associated with an increased risk of health problems.

violence and may have already experienced trauma or neglect. In other cases, foster care itself may be an unstable and even traumatic experience for the child.

Research also indicates that children who grow up in residential care are more likely to struggle with anti-social behavior and to engage in harmful activities such as drug use, criminal activities and delinquency, homelessness or teenage crises pregnancy than children who do not grow up in residential care. Children in foster care have also been documented to have higher rates of mental health problems, as well as higher suicide rates, than those children who are not.

Perhaps even more troublingly, the harmful effects of residential care are often multi-generational. Children who grow up with the long-term effects of adverse childhood experiences, are at a higher risk of developing dysfunctional behavioral traits and relationships as adults, leading to harm to their own children and families.

There is also a negative correlation between the length of time that a child spends in care and their likelihood of family reunification. The longer a child spends in care, the less likely it is he or she will be reunited with his family. Studies have shown that after the first year, reunification rates typically decrease for every additional year that a child spends in care.

Additionally, reunification rates for adolescents in care are significantly lower than reunification rates for younger children.

The Financial Impacts

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6.1.3 Case Study: Mak-yin’s Story

The numbers and statistics mentioned above seem staggering and overwhelming. One way to illustrate a child’s position in practice is to examine individual stories. Mak-yin was born to a mother who was mentally unstable and physically abusive. When Mak-yin was a baby, he was placed into a children’s home. Within a year, despite evidence of serious physical abuse, he was returned to his mother. The abuse grew worse. When Mak-yin was at a young age, his mother dangled him from the balcony of their flat, more than 20 stories from the ground, threatening to kill him. Her attempt was thwarted and, as a result of this incident, Mak-yin went back into care. Thus Mak-yin started his journey through five different foster homes and he struggled to fit in wherever he went.

Although it was clear from the beginning that Mak-yin’s mother was both unable and unwilling to care for him, and that family reunion was not an option available to him, Mak-yin was also not released for adoption for many years. At age 11, after 7 years in the residential care system, he was finally released for adoption. However, Mak-yin's paperwork for him to join an adoptive family was not processed until he was almost 16 years old. By then it was too late – Mak-yin was not adopted and “aged out” of the foster care system at age 18 with no family to support him. Whether such delay in processing the required paperwork for Mak-yin was due to insufficient law and policy to govern the timeline or a lack of understanding of what was in his best interests, his case highlights that practice, systems and legal frameworks are worth examining.

Children like Mak-yin are “stuck” in a system that seemingly does not prioritize what is best for their needs or their development. Under international law, governments and individual social workers have a legal responsibility to prioritize a child’s “best interests” when making decisions for and about that child. In addition, best practices dictate that social workers should always look to a child’s need for a permanent placement and must develop a “permanency plan” to ensure that children like Mak-yin are placed into a stable and permanent home as soon as possible.

6.2 Residential care services

<table>
<thead>
<tr>
<th>United Nations Convention on the Rights of the Child</th>
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<tr>
<td><strong>Article 18</strong></td>
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<tr>
<td>(1) “States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”</td>
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<tr>
<td>(2) “For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.”</td>
</tr>
<tr>
<td><strong>Article 20(1) &amp; (2)</strong></td>
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<tr>
<td>1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.</td>
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<tr>
<td>2. States Parties shall in accordance with their national laws ensure alternative care for such a child.</td>
</tr>
<tr>
<td>3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”</td>
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6.2.1 Introduction

6.2.1.1 Article 18(1) of the United Nations Convention on the Rights of Child (“Convention on the Rights of the Child”) sets out that the primary responsibility for “the upbringing and development of the child” lies with their parents or legal guardians. Generally speaking, it is preferable for children to remain with their parents unless this contravenes what is in their best interests. Consistent with this, Article 9 of the Convention on the Rights of the Child provides that, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in

243 Disclaimer: To respect the privacy of those who shared with us their stories, client names may have been changed.
accordance with applicable law and procedures, that such separation is necessary for the best interests of the child..."\(^{244}\).  

6.2.1.2 Caring for children is also the responsibility of the government and of society as a whole. Public and private social welfare institutions, courts of law, administrative authorities and legislative bodies should all regard the best interests of the child as the "primary consideration". The government also has a responsibility to "render appropriate assistance" to parents and legal guardians in their performance of their child-rearing responsibilities.\(^{246}\) 

6.2.1.3 However, as stated in previous sections, it may not be in the best interests of the child in every situation to stay with its parents. This is especially true when there has been mistreatment or abuse of the child, in which case the government is obliged to take "appropriate legislative, administrative, social and educational measures" to protect children from any sort of abuse or maltreatment. \(^{247}\) These appropriate measures includes "effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore and, as appropriate, for judicial involvement". \(^{248}\) 

6.2.1.4 In the situation where it is not in the child's best interest to remain in the family environment or where "a child is temporarily or permanently deprived of his or her family environment", the government also has a duty to provide alternate care for such a child, such as foster care, adoption and placement in suitable institutions for the care of children.\(^{249}\) 

What Role Can I Play? 
Social workers can play some of the most important roles in residential care cases. Social workers can help to make sure that a child is placed into an appropriate placement and schedule regular case review meetings to follow up on the case so as to ensure that the placement and care of the child continue to be in the best interests of the child. 

6.2.2  What are the situations where a child can be placed into residential care? 

6.2.2.1 There are generally three types of situations where a child can be placed into residential care: 

1. Firstly, the parents can voluntarily commit their child to the residential care system on a temporary basis. This is by far the most common situation in Hong Kong. In this type of cases the parents will retain all of their legal parental rights, whilst the social workers and foster parents have very limited scope to make decisions on behalf of the children. Importantly, in these cases social workers are still able to use legal tools to advocate for other authorities to take action in the best interests of the child. 

2. The second type of situation is where the child or juvenile is removed from the parents and committed to residential care by a juvenile court.\(^{250}\) The juvenile court may: 
   a. "appoint the Director of Social Welfare to be the legal guardian of such child or juvenile"; 
   b. "commit him to the care of any person whether a relative or not, who is willing to undertake the care of him, or of any institution which is so willing"; 
   c. "order his parent or guardian to enter into recognizance to exercise proper care and guardianship"; or 
   d. "make an order placing him for a specified period, not exceeding 3 years under the supervision of a person appointed for the purpose by the court".\(^{251}\) 

\(^{244}\) Convention on the Rights of the Child, Art. 9. 
\(^{245}\) Convention on the Rights of the Child, Art. 3(1); Guardianship of Minors Ordinance (cap 13) s 3(1)(a)(i). 
\(^{246}\) Convention on the Rights of the Child, Art. 3(1); Guardianship of Minors Ordinance (cap 13) s 3(1)(a)(i). 
\(^{247}\) Convention on the Rights of the Child, Art. 18(2). 
\(^{248}\) Convention on the Rights of the Child, Art. 18(2). 
\(^{249}\) Convention on the Rights of the Child, Art. 19(1). 
\(^{250}\) Convention on the Rights of the Child, Art. 19(1). 
\(^{251}\) Convention on the Rights of the Child, Art. 19(1).
These orders (CPOs) can be made where the juvenile court is satisfied that a child or juvenile is "in need of care or protection", which include situations where the child or juvenile has been or is being assaulted, ill-treated, neglected or sexually abused, or the health, development or welfare of the child or juvenile has been, is being or appears likely to be neglected or avoidably impaired, or that the child or juvenile is beyond control to the extent that harm may be caused to him or to others. 252 Any person or institution to whose care a child or juvenile is committed by the juvenile court shall, whilst the order is in force, have the like control over the child or juvenile as the parent and shall be responsible for his/her maintenance. 253 The juvenile court also has the power to order the parent or other people liable to maintain the child or juvenile to contribute to his maintenance. 254

3. The third situation, which is rare, is where the child is made a ward of court. 255 Wardship jurisdiction lies in the Court of First Instance, which "has inherent jurisdiction to deal with the custody of any child who is a Hong Kong subject and irrespective of where the child may be at the relevant time or of the fact that one parent may be resident out of the jurisdiction". 256 While there is no stated limit on the court's powers to make orders in relation to wardship, the wardship jurisdiction of the Court of First Instance has been invoked in the following circumstances:

a. to resolve disputes regarding custody of a minor, including where the applicant has no standing to seek custody under statutes (e.g. a relative of a minor);

b. to prevent a minor from being abducted, or to secure the return of a minor already abducted;

c. to allow a minor to be adopted overseas as there was no procedure permitting a child to leave the jurisdiction to be adopted overseas; and

d. to order an operation to be performed for a minor when the parents of the minor refused to give consent. 257

Any person can make an application for an order that a child be made a ward of court and that child will become a ward of court immediately upon the making of such an application. 258 Once warded, the minor will come under the guardianship of the court, which has authority to make any order both in respect of the ward's (the child's) persons and property. 259 The court usually delegates actual care and control of the ward to another person. No major decision affecting the child can be made without the consent of the judge – the court may even make orders relating to the maintenance, education, religion and marriage of the ward. 260

6.2.3  Can a child be placed into residential care by one parent without the consent of the other?

6.2.3.1 Assuming that the father has parental rights, then both parents have the right to apply to the court for an order to determine where the child lives. 261 However, apart from the parents, it is only the Director of Social Welfare who can otherwise make such an application. 262 Grandparents, aunts, uncles, etc. do not have the ability to do so.
6.2.3.2 If the child is placed into residential care by one parent who is in Hong Kong, but the other parent lives elsewhere (such as mainland China) and does not consent to the placement, then the first question for the court would be to decide the child’s place of habitual residence. If the child is not habitually resident in Hong Kong, then it may be that the child should be returned to his/her place of habitual residence for decisions in respect of that child to be made there. Depending on the laws of that other place, grandparents and other family members may then have right to apply for orders in respect of the child.

6.2.4 What are the review procedures for residential care cases?

6.2.4.1 The government has a legal obligation under the Convention on the Rights of the Child to regularly review any residential care placement to make sure that it continues to be best suited to the child’s needs and best interests. Hong Kong law does not specify how often a residential care case must be reviewed, though in some cases, review procedures are specified in the contracts and agreements between the different residential care agencies and the government.

6.2.5 When a child is in residential care, are there any circumstances where birth parents can lose their parental rights? What if the birth parent is not cooperating with the Social Welfare Department (SWD) or is not making any effort to get their child back? In these cases, can the child be adopted?

6.2.5.1 Section 5(5)(a) of the Adoption Ordinance (Cap. 290) requires that parents must give their consent before the court can make an order authorizing the adoption of their child. The parent shall cease to have any parental rights, duties, obligations or liabilities in respect of their child with effect from the execution of the form of consent. The court may dispense with the parent's consent and free the minors for adoption (which is called a 'freeing order') in the following situations:

1. in the case of a parent or guardian of the minor, that he has abandoned, neglected, or persistently ill-treated the minor;
2. in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the minor, that he has persistently neglected or refused so to contribute;
3. the person whose consent is required is incapable of giving consent or cannot be found or that his consent is unreasonably withheld.

6.2.5.2 In some foster care cases, particularly where it seems unlikely that the child will ever be returned to their parents, it is possible for the Director of Social Welfare to apply for a freeing order on behalf of the child if the Director is the legal guardian of the child or the child is in the care of the Director.

6.2.5.3 While it is unlikely that birth parents not attending case review meetings or not cooperating with social workers would, by itself, be grounds for a freeing order, it could be useful evidence to argue that a freeing order should be made on the grounds that the parent has unreasonably withheld consent. However, ultimately this is always a decision for the Judge, based on what is in the child’s best interests.

6.2.5.4 Please see the chapter on adoption for more information on Freeing Orders.

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263 Child Abduction and Custody Ordinance.
265 Adoption Ordinance (Cap 290), s. 5(5)(a).
266 Adoption Ordinance (Cap 290), s.5(5B)
267 Adoption Ordinance (Cap 290), s. 6(1).
268 Adoption Ordinance (Cap 290), s 5A.
Introduction to Hong Kong’s Foster Care System

The foster care system in Hong Kong works under a system of subvention. While the system is centrally managed by the Social Welfare Department (SWD), management of the day-to-day care of the child is placed into the hands of a network of Foster Care Agencies.

The SWD has a dedicated foster care body named the Central Foster Care Unit (CFCU). This body oversees a team of referral workers, who are mobilized across family service centers. Families who cannot adequately care for their children due to various family problems or crises may apply for foster care services through a referring social worker. The application will be accepted if all parties agree that foster care is the most suitable service for the child. Once the application is approved, the CFCU will refer the case to Foster Care Agencies for matching and placement.

Once a child is matched, Foster Care Agencies will then work closely with referral worker in the planning and monitoring of the implementation and development of foster care services for the child and the family. The Foster Care Worker is in charge of the day-to-day supervision of foster homes and foster children during placement. They will visit and stay in regular contact with the child, supervise and support foster parents, record case notes, and facilitate regular case review meetings to develop the child's permanency plan and review case progress along with the referral worker.

Unlike many other countries, in Hong Kong the majority of children are placed in the residential care system at the consent of their parents. Because these placements are voluntary, parents retain legal custody and guardianship over their children while they are in care. Unlike in cases of wardship, in these voluntary placements there is typically no court involvement. Major decisions regarding the child’s care and placement are made not through the courts but through the social welfare system and relevant social workers. Where professionals have concerns about children’s safety and welfare, however, wardship applications can be made to the court with the help of legal representation by social welfare professionals.

NOTE: Right to Education of Children in Residential Care and Foster Care

As stated in previous sections, all children have a legal right to education, including all children living in residential care. This right is protected both by Hong Kong law and by international law. Discrimination in education is strictly prohibited. This includes discrimination based on race, ethnicity, national origin, or gender. Even children who are not legal residents of Hong Kong have a legal right to education.

In addition, education should help children to develop “to their fullest potential.” This means that each individual child has the right to education that meets their particular needs.

Who pays for children’s education when they are in residential care?

In most cases, even when a child is in residential care, their parents still have the legal responsibility to pay their school fees and similar expenses. Even if the children are receiving financial assistance from the Comprehensive Social Security Assistance (CSSA), the parent will typically be in charge of dispensing this money. In some emergency cases, however, government money or emergency funds can be applied for to cover the children’s school fees and/or some schools will offer placements free of charge for children in residential care.

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269 Education Ordinance (Cap 279), s. 74; Convention on the Rights of the Child, Art. 28; International Covenant on Economic Social and Cultural Rights, Art. 13.


273 Protection of Children and Juveniles Ordinance (Cap 213), s 34(4)(b).

274 Based on conversation with Mother’s Choice staff.
7. Adoption and root tracing
7. Adoption and root tracing

United Nations Convention on the Rights of the Child

Article 21

“States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.”

7.1 Adoption

7.1.1 Introduction

7.1.1.1 The People’s Republic of China is party to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the “Convention”). Since Hong Kong is a Special Administration Region of China, the Convention therefore also applies to Hong Kong and all adoptions in Hong Kong have to meet the requirements of the Convention. The Convention seeks to protect the rights of the adopted child and the basic principles under the Convention are detailed below.

7.1.1.2 An adoption recognizes a new legal relationship between a child and their adoptive parents. The birth parents are released on all legal connections with the child, and the adoptive parents take on legal parental responsibility towards the child.\(^\text{275}\)

7.1.1.3 The Convention recognizes that the best place for the full development of a child is to “grow up in a family environment, in an atmosphere of happiness, love and understanding.”\(^\text{276}\) International law requires that governments which are signatories to the Convention should prioritize taking steps to assist families, and enable a child to remain in their family of origin.\(^\text{277}\) In some cases, however, this is not possible. In these cases, the Convention still recognizes the importance that a child grows up in a family environment.\(^\text{278}\)

7.1.1.4 The Convention states that the first consideration in all adoptions, for both in-country and international adoptions must always be the best interests of the child.\(^\text{279}\)

7.1.1.5 While there is a preference for a child to be adopted within their original country, in some cases inter-country adoption may offer the possibility of a permanent family to a child for whom a suitable family cannot be found in locally.\(^\text{280}\)

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\(^{275}\) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art. 26; Adoption Ordinance (Cap 290), s 13.

\(^{276}\) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), preamble.

\(^{277}\) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), preamble.

\(^{278}\) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), preamble.

\(^{279}\) Convention on the Rights of the Child, art. 21.

\(^{280}\) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), preamble; Convention on the Rights of the Child, Art. 21(b).
7.1.1.6 Adoption of a child must be done in accordance with all applicable laws and procedures in the state of origin.\textsuperscript{281} It is important that consent is obtained from all appropriate persons,\textsuperscript{282} and that these individuals have all been properly counselled on the process and meaning of adoption\textsuperscript{283}.  

7.1.1.7 Children have a legal right to have their opinions and wishes considered during the adoption process.\textsuperscript{284} The adoptive child should also be counselled about the process of adoption.\textsuperscript{285}

**What Role Can I Play?**

Social workers screen potential adoptive parents to make sure that they are a good match for the child. They can help counsel birth parents to make sure that they understand what it means to give a child up for adoption and what the process would look like. They can counsel children and help prepare them for the adoption process. They can also counsel adoptive parents and help support them as they transition into their new parenting roles.

Social workers can help advocate for both families and children during matching panels, and make sure that the “best interests of the child” always remains the top priority. Social workers can also be advocates for the children by presenting information about them in a way that draws interest and gives them the best possible chance at adoption.

It is important that social workers consider their own values on adoption, inter-racial families and other related issues to make sure that their judgments are not affected by their own personal biases.

7.1.2 Overview of the adoption process in Hong Kong

7.1.2.1 The adoption process in Hong Kong is administered by SWD and governed by the Adoption Ordinance, Cap 290. The Adoption Unit of SWD takes the application and handles the matters in relation to adoption in Hong Kong.

7.1.2.2 An adoption is only legal and effective under an Adoption Order. The proposed adopter or adopters are required to apply to the District Court for an Adoption Order. As a general rule, an Adoption Order would only be made by the court if consent is obtained from every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child\textsuperscript{286} ("Adoption Order with Consent"). In extreme circumstances, the court may dispense with any consent required where adoption is deemed in the child’s best interests\textsuperscript{287}.

7.1.2.3 If the Director of Social Welfare is the legal guardian of the child or the child is in the care of the Director of SWD, the Director can apply to the court to release or “free” the child for adoption if the court is satisfied that consent required should be dispensed with ("Freeing Order"). Upon the making of the Freeing Order, all rights, duties, obligations and liabilities of the parents or guardians of the child shall vest in the Director as if the order were an Adoption Order and the Director were the adopter. The Director or an accredited body could then place the Child for adoption.

7.1.2.4 If the necessary consent or a Freeing Order is obtained, the Director of Social Welfare could place the child for adoption. The processes and the time frames for local and overseas adoptions are summarized as follows\textsuperscript{288}.

\textsuperscript{281} Convention on the Rights of the Child, Art. 21(a); Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art. 1.

\textsuperscript{282} Convention on the Rights of the Child, Art. 21(a); Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art. 4(c).

\textsuperscript{283} Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art 4(c)(1).

\textsuperscript{284} Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art 4(d)(2).

\textsuperscript{285} Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), art 4(d)(1).

\textsuperscript{286} Adoption Ordinance (Cap 290), s 5(5)(a).

\textsuperscript{287} Adoption Ordinance (Cap 290), s 6

Timeframe for local adoption of DSW Wards

**Process of Application**

- **intake of application**
  - *group briefing session*
  - *(once a month, each for Chinese and English session)*

- **screening of questionnaire**
  - *within 2 weeks upon receiving the questionnaire*

- **screening of application form**
  - *2 to 4 weeks, depends on whether the documents submitted are in order*

- **home study**
  - *2 to 3 months*

- **home approval**
  - *1 week, depends on whether supplementary information has to be further provided*

- **matching proposal**
  - *discussed in matching panel (twice a month)*

- **matching process**
  - *2 to 3 weeks, visits and outings with the ward and prepare for the ward - discharge from residential home*

- **adoption placement (lodge Form 1)**
  - *4 months*

- **filing of First Schedule forms (submit legal application to Court)**
  - *2 months*

- **filing of Second Schedule forms and general report**

- **court hearing**

- **collect the adoption order and adoption certificate**
  - *6 weeks*

- **ward supervision (6 months; legal requirement)**
Timeframe for overseas adoption of DSW Wards

Process of Application

1. Home study conducted by overseas agencies
2. Assessment of home study report referred by ISS/MC
3. Child study by ISS / MC
4. Approval of home
5. Home pool
6. Child pool
7. Matching proposed by overseas agencies, ISS / MC (including completion of documents of acceptance by adopters)
8. Assessment on matching by AU
9. Approval of matching by DSW
10. High Court Wardship Proceedings
11. Departure arrangement (DSW to sign consent for adoption, O/C AU to endorse visa/passport applications, ISS/MC to prepare documents and escort)
12. Adoption placement
13. Adoption order granted
14. Ending of DSW guardianship
15. Case closed in AU

4 weeks for first screening and 2 weeks for supplementary information if required

2 weeks

6 weeks

6 to 12 months; every country has its own duration of placement

Waiting time in the home pool and child pool varies.
7.1.3 Adoption Order with Consent – Whose consent is required to free a child for adoption?

7.1.3.1 Consent is needed from any individual who has legal parental rights over the child. Generally, this means that at a minimum the birth mother must consent to the adoption.

7.1.3.2 In cases where the birth mother is married, it is assumed that her husband is the biological father and also has parental rights over the child. In such cases, consent is typically also needed from the legal husband. If the legal husband is NOT the biological father, however, his consent is not needed (see box below).

7.1.3.3 An unmarried biological father does not have any automatic parental rights over the child. Currently, the consent of an unmarried biological father would only be legally required if he has been given parental rights through a court order, for example an order for custody, guardianship, or access. This is true even if his name is on the child’s birth certificate. Under recent case law, however, he may have a legal right to be contacted, to see if he would like to seek a court order which gives rise to his parental rights (see box below).

7.1.3.4 In the case that the parents of the child are both deceased, consent is required from the child's guardian or someone who is liable by virtue of any order or agreement to contribute to the maintenance of the child.

NOTE: What if the Legal Husband is not the Biological Father?

The legal husband of the mother of the child is presumed to be the biological father of a child. If there is evidence that the legal husband is NOT the biological father of the child, this presumption is rebuttable on the balance of probabilities (i.e. meaning the burden of prove is on the applicant to show that it is more likely than not). Evidence that could prove this might be, for example, DNA test results, interview statements or immigration records proving the legal husband was not physically present in Hong Kong during the conception period.

However, if the legal husband is appointed to be the guardian of the child or if he applies to be and is ordered by the court to be the guardian of the child, the legal husband's consent is still required.

7.1.4 What is the difference between general consent and specific consent adoptions?

7.1.4.1 General consent adoption refers to cases where parents give consent to adoption without specifying the adoptive parents. General consent should be given under a prescribed form and once the general form of consent is executed, the parent who gives the consent ceases to have any parental rights, duties, obligations or liabilities in respect of the child. The Director of Social Welfare immediately becomes the guardian ad litem of the child.

7.1.4.2 Specific consent adoption refers to adoptions where the birth parents give consent to specific, named adoptive parents. Specific consent is given under a prescribed form. A parent does not lose his/her parental rights upon giving specific consent and his/her parental rights will only be permanently lost when the Adoption Order is made.

7.1.5 Can the consent to adoption be revoked?

7.1.5.1 Specific consent does not relinquish parental rights. It could be revoked at any time before an Adoption Order is made.

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289 Adoption Ordinance (Cap 290), s 5(5)(a).
290 Parent and Child Ordinance (Cap 429), s 5(1).
291 Guardianship of Minors Ordinance (Cap 13), s 3(c)(ii).
292 Guardianship of Minors Ordinance (Cap 13), 3(c)(ii).
293 The name on the birth certificate is considered evidence of paternity, but does not on its own provide the putative father with any parental rights or responsibilities. See Chapter on Birth Registration, as well as The Law Reform Commission of Hong Kong, Report on Illegitimacy (1991), p. 61.
294 Adoption Ordinance, s 5(5)(a).
295 Parent and Child Ordinance (Cap 429), s 5(2).
296 Form 4A of Adoption Rules (Cap 290A).
297 Adoption Ordinance (Cap 290), s 5(5B).
298 Adoption Ordinance (Cap 290), s 5(5F).
299 Form 4 or Form 4B of Adoption Rules (Cap 290A).
300 Adoption Ordinance (Cap 290), s 5(1)(a).
301 Adoption Ordinance (Cap 290), s 5(1)(a).
7.1.5.2 General consent relinquishes the parental rights of the parent who gives consent. A general consent adoption can be revoked within three months by written notice to the Director of SWD. After three months, it is necessary to seek the permission of the court to revoke the general consent.

7.1.6 Can birth parents request specific requirements of the adoptive parents, for example race or religion, when they sign a general consent form to free their child for adoption?

7.1.6.1 Birth parents have no general rights to make any special requests when freeing their child for adoption. If there are any special considerations taken, this will be on a case-by-case basis and would be up to the discretion of the SWD worker assigned to the case. Ultimately, the SWD has a legal duty to act in the best interests of the child, even when conflicts arise with respect to any requests made by the birth parents.

7.1.7 Adoption by Freeing Order – can a child be adopted even without the birth parents consent?

7.1.7.1 Under s.5(5)(a) of the Adoption Ordinance, an Adoption Order shall not be made except with the consent of every person who is a parent or guardian of the child. However, in extreme cases, a child could be adopted even without the consent of the parents. The court may dispense with the consent requirement under s.6 of the Adoption Ordinance if it is satisfied that:

a. the parent or guardian of the child has abandoned, neglected, or persistently ill-treated the child;

b. the person liable by virtue of an order or agreement to contribute to the maintenance of the infant, has persistently neglected or refused to contribute;

c. the person whose consent if required cannot be found, or is incapable of giving his consent or has unreasonably withheld consent; or

d. it is of the opinion that such consent ought, in all the circumstances of the case, to be dispensed with.

7.1.7.2 In these cases, the Director of Social Welfare can apply for a Freeing Order to free the child for adoption if the Director is the legal guardian of the child or the child is in the care of the Director.

7.1.7.3 When applying for a Freeing Order, any person whose consent would normally be required (normally the child’s parents) must still be notified that such order is being sought and they must be given the opportunity to be heard. This is because an order which dispenses with the consent of a parent, if granted, would permanently sever the legal relationship between the parent and the child. It is an extremely serious invasion of parental rights, and would only be sanctioned by the court after hearing the parent or after making all reasonably practicable efforts to notify him or her of the proceedings.

7.1.8 What counts as abandonment under s6 of the Adoption Ordinance?

7.1.8.1 Abandonment occurs when a parent has completely deserted their child. In these cases, the parent completely disregards their parental duty and “gives up the child and has left it to its fate.”

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302 Adoption Ordinance (Cap 290), s 5(5C).
303 Adoption Ordinance (Cap 290), s 5(5D)
304 Adoption Ordinance (Cap 290), s 6.
305 Adoption Ordinance (Cap 290), s 5A.
306 Adoption Ordinance (Cap 290), s 5A(3).
7.1.8.2 A child’s abandonment can be quite difficult to prove. The Director of Social Welfare must have taken all reasonably practicable steps to get in contact with the parents regarding the child and the future welfare plan for the child. This may include trying to reach the birth parent by phone, post, home visits, etc.

7.1.8.3 In some cases, the court may also require that there be “substituted service” as a means of trying to reach the birth parents. This means that in addition to trying to reach the parent by traditional means, a notice must be advertised in public newspapers.

**CASE EXAMPLE**

*In the Matter of WKY, HCMP 1566/2015*

WKY’s birth mother and biological father were both residents of mainland China. WKY was born during a visit to Hong Kong. Both parents were suspected of having mental illnesses and could not properly care for the baby. The parents had signed a letter of authorization authorizing an aunt, Madam Wong, to bring WKY to Hong Kong and to care for the baby. Both of the parents disappeared sometime in 2010. Madam Wong and WKY’s other family members were no longer able to care for her and approached the SWD for assistance. Repeated attempts to locate the birth parents were not successful. Newspaper notices were posted in mainland China, as well as broadcasted on the radio. Notices were also posted in Social Welfare Offices, police stations, and other government and NGO offices. The parents could still not be located.

In light of all the evidence, the court therefore found that the parents had abandoned and/or neglected the baby and that the SWD had taken all reasonably practical steps to locate the birth parents and inform them of the proposed welfare plan for WKY. The court ordered that WKY be freed for adoption.

7.1.9 What counts as neglect under s6 of the Adoption Ordinance?

7.1.9.1 A parent is considered to have neglected their child where they do not make the proper arrangements for the care and nurturing of the child. Neglect involves a very serious dereliction of parental responsibility, in that the parent fails to provide for “adequate and proper food, nursing, clothing, medical aid, accommodation, education or any other special needs of the child.”

**CASE EXAMPLE**

*In Re C [2012] 1 HKLRD 308*

The mother in this case had four children, all between the ages of one and thirteen. All four children were in residential care. The mother had a long history of drug abuse, had been in and out of drug treatment, and had a history of disappearing. The birth mother had no regular employment or stable relationships. She ignored the health of her children and did not take good care of them or have a plan for their welfare. About a year and a half prior to the court hearing, the mother gave birth to her youngest daughter. The baby was born showing drug withdrawal symptoms and was put into care. After the mother was discharged from the hospital, she immediately disappeared and became untraceable. She left the children without any plan for their care or welfare. The court found that based on these facts, the mother had both neglected and abandoned her children.

7.1.10 Where the birth parents are missing, what are the procedures and timelines for tracing the parents for the purpose of obtaining consent and/or proving abandonment?

7.1.10.1 There are no legally required timelines or procedures regarding the tracing process. Tracing guidelines are internal guidelines of the SWD and are not made public.

7.1.10.2 This makes it especially important that social workers continue to monitor a case and advocate for agreed upon deadlines to be met. Otherwise it is possible that the child’s case could become “stuck” because of an impasse in the tracing process.

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Adoption and root tracing

Understanding the legal aspects of working with children and families

7.1.10.3 It appears that the current procedure is first to check with the Immigration Department, to see whether the birth parents or other relevant individuals remain in Hong Kong. If these individuals are in Hong Kong, advertisements will be placed on the radio and in local newspapers. If these individuals are no longer in Hong Kong, the case will be referred to ISS to conduct overseas tracking.

7.1.10.4 In practice it appears that recent domestic tracing cases are typically completed within six months. Overseas tracing can take at least four to six months and is heavily dependent on which country the birth parent or other individuals are currently living in and the speed and capabilities of the overseas partnering agency in that country.

7.1.11 What counts as “unreasonable withholding of consent?” under s6 of the Adoption Ordinance?

7.1.11.1 The courts have explained that “unreasonable withholding of consent” means that a parent, in refusing to give consent to free the child for adoption, is “refusing to acknowledge the realities that point so clearly to his or her inability – past, present and future – to be able to care for the child and in that refusal, is prejudicing the child’s manifest best interests and thereby acting unreasonably.”

7.1.11.2 The fundamental question is what a reasonable parent, placed in the position of the parent in question, would do. The unreasonableness of the parent who is withholding consent must, if he or she has ignored or disregarded some appreciable ill or risk, be likely to be avoided or some substantial benefit likely to accrue if the child is adopted.

7.1.11.3 A recent English case has stated that the important question to ask is whether a freeing order is a “necessity” in order to protect the best interests of the child. This means that the bar for proving “unreasonable withholding of consent” is high. There is no Hong Kong case to date which follows this English decision and it is not sure whether such a high threshold will apply in Hong Kong.

7.1.11.4 Examples of circumstances where parents have been “unreasonably withholding consent” include cases where they continue to abuse drugs and/or alcohol, have mental health issues, and/or have no realistic plan to care for their children. In such cases, Hong Kong courts have freed the child for adoption.

CASE EXAMPLE

Director of Social Welfare v DTTH [2012] 5 HKLRD 203

The mother in this case was a long term drug addict and repeat criminal offender. She had three children, one of whom had already been freed for adoption. Her youngest child was born with withdrawal symptoms and was placed into foster care. The mother had no contact with the birth father. After the child’s birth, the mother was imprisoned for nearly a year and a half on theft charges.

The court cited the following facts in justifying the making of its order:

1) The mother had failed to put her life in order. For example, even after she was released from prison, she did not have a stable residence, regular employment or relationships. She failed to keep her promises regarding parental duties or cooperating with case workers. She had been involved in repeated criminal offenses and had a history of drug abuse.

2) She lacked child-care abilities and had failed to show concern for the infant. For example, she did not keep in touch with case workers or inquire about the infant’s conditions.

3) She failed to come up with a concrete child-care plan for the child.

In light of all of this evidence, the court determined that the mother was demonstrably unable to care for the infant, but she simply refused to give consent to the infant’s adoption. In so doing, she was prejudicing the child’s manifest best interests and thereby acting unreasonably. Any reasonable parent in her position would not withhold her consent to the infant’s adoption. The court also stated that the advantages of adoption for the infant are sufficiently strong to justify overriding the views and interests of the mother. The court therefore held that she was “unreasonably withholding consent” and freed the child for adoption.

NOTE: Questions to consider on whether to apply for a Freeing Order

314 In Re B (A child) 2013 UKSC 33.
1. Is there any realistic long-term plan for the care of the child?
2. Do the birth parent(s) and the child continue to have any sort of substantial relationship?
3. What is in the best interests of the child?

Having asked these questions, if the social worker feels that freeing a child for adoption is the best course of action, he or she should consider seeking legal advice before moving forward. Note – only the Director can make the application for the freeing order (see paragraph 7.1.7.2 above).

7.1.12 Does a criminal record affect a parent’s rights to their child? What about a drug addiction?
7.1.12.1 When deciding whether to free a child for adoption, courts would seriously consider factors such as whether the parents have criminal records and whether or not they have a continuing drug addiction. Having one or more of these problems, however, is not in itself a reason to free a child for adoption. These problems can be used as evidence to show that a parent is neglecting his or her child or that the parent is “unreasonably withholding consent” for adoption.

7.1.13 What evidence can be collected by a social worker to prove the need for a freeing order?
7.1.13.1 Courts have considered the following when deciding whether or not to free a child for adoption. Social workers should record case-note evidence on these topics.
   - Does the parent have a stable residence?
   - Does the parent have regular employment?
   - Is drug use occurring?
   - Has the parent kept his or her promises around parental duties?
   - Has the parent kept in touch with child-care workers?
   - Has the parent inquired about the child’s condition?
   - Does the parent have a concrete plan on how to care for the child?

7.1.14 Does death or long-term incarceration dispense with the requirement to seek consent?
If a parent dies, the surviving parent (if any) is the guardian of the minor either alone or jointly with any guardian otherwise appointed.316 As such the death of a parent will dispense with the need to seek that parent’s consent to a freeing order. Consent however will need to be obtained from the child’s surviving parent and/or guardian.

The situation is unclear whether consent can be dispensed with in circumstances whether a parent is incarcerated long-term. Case law has made clear that incarceration is one of the factors the Court will take into account when considering whether a parent has unreasonably withheld their consent to a freeing order.317 However, there is no available guidance as to whether long-term incarceration would enable consent to be dispensed with without first seeking the consent. In the circumstances, it would be recommended to err on the side of caution and assume consent would be required of a parent who is incarcerated long-term, but their refusal to provide consent may mean that consent is unreasonably withheld.

7.1.15 Placing a child for adoption – What are the basic requirements of a potential adoptive parent?
7.1.15.1 The following are the basic requirements for a person to be an adoptive parent:318
   - he or she is at least 25 years old and mature enough to make the life-long commitment to adopt a child and to take up parental responsibilities;

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316 Guardianship and Minors Ordinance, s5
317 See for example Director of Social Welfare v DT [2008] HKLRD 192
318 See further details in the “Considering Adoption” leaflet published by the SWD at http://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_adoptionse/
he or she has good physical and mental health without serious illness/disability and is thus able to raise the child until the child can be independent;

he or she is reasonably educated, preferably with at least six years of post-kindergarten primary-level education;

he or she is in stable employment and has sufficient financial resources, and a stable accommodation in which to bring up a child;

he or she has resided in Hong Kong for 12 months or longer so as to be familiar with the social environment and community resources, and can stay for a continuous period of 12 months or more to complete the adoption process (not applicable to intercountry adoption);

(if married) he or she has been married for at least 3 years and the marriage is stable enough to provide the child with secure home care; and

He or she has no criminal record.

7.1.16 Can a Social Worker refuse a potential adoptive parent who fits the basic requirements, but who they think will not make a good adoptive parent?

7.1.16.1 Under both international and Hong Kong law, prospective adoptive parents must be evaluated to determine whether or not they are suitable to become adoptive parents.\(^{319}\)

7.1.16.2 Under the Adoption Ordinance, the Director of SWD or an accredited body may decide whether an applicant is suitable to become an adoptive parent. The accredited bodies registered by SWD are Mother's Choice, Po Leung Kuk and International Social Services, Hong Kong. For overseas adoptions the Director must take into account any recommendations made by the relevant accredited body.\(^{320}\) Social workers therefore have the duty to provide their professional judgment on whether or not a prospective family is suitable to become adoptive parents.

7.1.16.3 If a potential adoptive family raises red flags, it is important to investigate and deal with this early on in the application process. If a potential adoptive family is found to be highly unsuitable, the SWD should be alerted to prevent the parents from "agency-shopping" by later re-applying through other agencies.

7.1.17 Does a child need to be “psychologically ready” for adoption?

7.1.17.1 There are no legal requirements that a child be assessed as "psychologically ready" before they are placed for adoption. However, when considering whether an adoption order should be granted, the court is required to give due consideration to the wishes of the child. For further information on this see section 18 below.

7.1.17.2 The ultimate factor to consider in whether a child should be placed for adoption is always the best interests of the child. This is a decision for the court.

7.1.17.3 In practice, a child should typically be counselled regarding the adoption process and a social worker or clinical psychologist's assistance should be provided in order to prepare a child for adoption. This is especially true in cases of intercountry adoption.\(^{321}\)

7.1.18 Will a child’s voice/opinion be heard in adoption proceedings? What if a child does not want to be adopted?

7.1.18.1 Under both international and Hong Kong law, a child has the right to have its voice and opinion considered in adoption proceedings. The Adoption Ordinance specifically requires that the court must give “due consideration” to the wishes and opinions of the child.\(^{322}\)

7.1.18.2 How much weight is given to a child’s opinion is dependent on the age of the child and the other factors in the case.\(^{323}\) The overarching factor in any adoption proceeding is always the

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\(^{319}\) Adoption Ordinance (Cap 290), s 29; Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention), arts. 5(a), 15.

\(^{320}\) Adoption Ordinance (Cap 290), s 29(3).


\(^{322}\) Adoption Ordinance (Cap 290), s 8(1)(b).

\(^{323}\) Adoption Ordinance (Cap 290), s 8(1)(b).
Adoption and root tracing

The ultimate decision on this is always up to the court when deciding the case.

If a child expresses that it does not want to be adopted, this is an important consideration. This must be weighed, however, against the long-term interests of that child in going to a permanent family and the knowledge that the child may not fully understand the adoption process. In practice, counselling the child to help him or her understand the process and prepare the child for the adoption is often necessary. The child will have an opportunity to express its views before the court, and it will be up to the court to decide whether adoption is in its best interests.

What is the legal status of an adoption certificate as compared to a birth certificate?

An adopted person will be re-registered in the Adopted Children Register. The original birth entry will be marked with the word ‘Adopted.’

Under Hong Kong law, a certified copy of an entry in the Adopted Children Register, if sealed and stamped by the register’s office and if it has a record of the date and country of birth, can be used as evidence of the date and country of birth, just as if it was an ordinary birth registration.

Any person is entitled to ask for a certified copy of an entry in the Adopted Children Register, under the same terms as they could ask for a certified entry under the Births and Deaths Registration Ordinance.

Root tracing

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Introduction

Under Article 7(1) of the Convention on the Rights of the Child, a child, whether adopted or not, has the right to know his or her parents.

In the case of an adopted child, there should be a balance between the child’s right to know his/her parents and the birth parents’ right to privacy, as well as considerations for what is in the child’s best interests. For this reason, the right of a child to know information about its birth parents in cases of adoption is limited.

Current social science tells us, however, that it is often psychologically beneficial for adopted children to be given some information about their birth parents. For example, it is widely accepted that some knowledge of birth family origins is important for the adopted person’s healthy identity formation. Root tracing, as it is termed in Hong Kong, is the process by which an adopted child or adult seeks information about his or her birth family.

United Nations Convention on the Rights of the Child

Article 7

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

7.2 Root tracing

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324 Adoption Ordinance (Cap 290), s 8(1)(b).
325 Adoption Ordinance (Cap 290), s 19.
326 Adoption Ordinance (Cap 290), s 19.
327 Adoption Ordinance (Cap 290), s 18(2).
328 Adoption Ordinance (Cap 290), s 18(3).
329 Convention on the Rights of the Child, art. 7.
330 The assumption that the traditional ‘closed’ model of adoption is wholly compatible with the welfare interests of the child has faded in recent years. That approach was rooted in theories of child development that maintained the importance of allowing a child to form attachments within a clear and consistent set of relationships free from any ambiguity … increasingly, an adoption that allows for such degree of ‘openness’ as is compatible with the comfort levels of all parties is now viewed as being in the long-term perhaps healthier and more honest than the traditional closed approach; given the prevailing transparency of the current social context.” See K. O’Halloran, THE POLITICS OF ADOPTION: INTERNATIONAL PERSPECTIVES ON LAW, POLICY AND PRACTICE (2015), p. 43.
331 Dominic McSherry, Open adoption: Adoptive parents’ experiences of birth family contact and talking to their child about adoption, 35(3) ADOPTION & FOSTERING (2011), p 4.
What Role Can I Play?

Social workers and NGO staff can play a critical role in helping a child to understand his/her story.

The first thing that they can do is to keep excellent records of the child’s life when he/she is in care. This allows a child who later wants to root trace to be able to have a more accurate and detailed understanding of his/her own history.

Social workers and NGO staff can also be an important source of information regarding root tracing. They can share information with the adoptive parents and children about how to access root tracing services and can also share with both adoptive parents and birth parents the benefits that can come from allowing a child to access information about his/her birth family.

What Role Should Others Play?

SWD Adoption Unit of the SWD and Accredited Bodies – These units can provide birth information relating to the adopted person and provide advice on alternative means of root tracing. The SWD cannot disclose any identification information of the birth parents based on the file records without the birth parents’ permission.

7.2.2 How can one complete root tracing?

7.2.2.1 The Adoption Unit of the SWD has a formal application process by which an adopted child can apply for information about their birth parents.

7.2.2.2 In certain cases, it is also possible to apply to the court for an order requiring a search of the Adopted Children Registry to find an adopted person’s record.

7.2.3 How can an adoptee apply to the SWD for root tracing?

The application stage

7.2.3.1 Individuals who want to start the process of root tracing should send a letter or email to the Adoption Unit of SWD.

7.2.3.2 The letter should explain the reason for contact and why the individual is root tracing.

The adoptee might consider the following questions:

- Are they seeking identifying information such as history of birth or medical information?
- Are they seeking information regarding the names or last known location of their birth parents?
- Do they wish to establish contact with their birth family?

7.2.3.3 The letter should also include copies of the adopted person’s:

- Passport
- Adoption Order
- Adoption certificate

*Please note that all the above must be certified by a Justice of the Peace. (Where applications are from overseas, practice is to provide copies which are sworn as true copies).

7.2.3.4 If the adoptee is under 18 years of age, a letter of consent is also required from the adoptive parents.

The processing stage

7.2.3.5 Once the Adoption Unit receives the documentation, they will start a search for the adopted person’s file. They will then send a short letter to the last known address of the birth parents, should there be one to seek permission for information release.

7.2.3.6 The birth parents’ consent will be sought on whether to provide the information requested. The Adoption Unit cannot force the birth parents to consent to the adopted person’s request.

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332 Adoption Ordinance (Cap 290), s 18(4).
The contact stage

7.2.3.7 If the processing stage progresses adequately and all parties have consented to contact, any contact between the adopted person and the birth parents will be facilitated by a mediator from the root tracing agency. The mediator will be involved in sending letters and photos between the parties before they meet, and arranging the first meeting between the birth parents and the adopted person.

7.2.3.8 The Adoption Unit may offer limited counselling services to all parties involved, including the birth parents, adopted person and adoptive parents, to discuss the expectations of both parties and to help parties prepare for the reunion.

7.2.4 Contact information

Social Welfare Department – Adoption Unit
auenq@swd.gov.hk
8. Pathway to permanency
Practical tips for effective case recording
8. Pathway to permanency – Practical tips for effective case recording

8.1 Effective case recording

8.1.1 Effective case recording is of vital importance to the delivery of any social service and can promote a better outcome for children in the following ways:

- Better evidencing how social workers’ roles and responsibilities in working with children and families have been fulfilled.
- Facilitating an information record of families in order to provide appropriate and planned care, share relevant information with other agencies and make appropriate referrals.
- Allowing social workers to more easily recall important details regarding interactions and plans that are important to providing individual support.\(^{333}\)
- Evidencing incidents, either isolated or repeated ones, that demonstrate risks, changes, progress or stagnation in a family.
- Serving as essential monitoring, evaluation and data collection tools that help improve services and depict a clearer picture of social issues.

8.1.2 In relation to the discussion in this chapter, case records are integral to legal proceedings.

Case records can be subpoenaed to court for a variety of legal cases involving children, families and social service departments. While legal advocacy remains a last resort in order to keep children safe, engaging in diligent case recording means that should there be the need for a case to be presented to the court for consideration, the relevant application can be prepared quicker and more efficiently with evidence to assist proceedings. It is worth noting written records concerning a case will be scrutinized in legal proceedings, therefore accuracy is imperative.\(^{334}\)\(^{335}\)

**NOTE: The assumption of legal proceedings**

Social workers should assume legal proceedings as a potential possibility for all cases, preparing case notes and collecting evidence in a way that seeks to demonstrate the child’s best interests and illustrate diligent, professional social work practice.

8.1.3 What is a court subpoena?

8.1.3.1 A court writ of subpoena ("Subpoena") is a legal document in a prescribed form. It is issued by the court to compel a person, who is or may be otherwise unwilling, uncooperative, or even merely neutral, to attend the specified court at the specified date and time to give oral evidence at trial or to produce material documents for use at trial or both.\(^{336}\) A Subpoena can either compel a witness to testify or require the production of documents, such as social work case notes.

8.1.4 How can case file documentation be used as an evidential tool in legal cases to promote safe permanency?

8.1.4.1 Clear documentation of effective case work management, including; thorough assessment, planning, support interventions and interim care strategies, are initially aimed at obtaining safe

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\(^{334}\) Ibid.


\(^{336}\) Robertson v. Canadian Imperial Bank of Commerce, see http://www.eccourts.org/wp-content/files_ml/22.03.90mauricerobertsonvcbc.pdf
permanency arrangements for children through family and inter-agency liaison. However, as safe permanency is not always obtainable through these means, documentation is used as evidence in promoting alternative plans through legal proceedings.

8.1.4.2 Where there are concerns about the welfare of a child in his/her current circumstances, social work departments can initiate legal proceedings, for example, the application of wardship proceedings which immediately make the child concerned a Ward of the Court. Once a child becomes a “Ward of the Court”, this means that the Court has the custody of that child and every major decision regarding that child’s welfare must be referred to the Court by making application accordingly.\[337\]

What role can I play?
Social workers play a key role in collecting and providing evidence for courts legal proceedings involving children.

- Through professional work with families and children, social workers are well placed to advice on individual children’s best interests in permanency planning.
- The quality of case file evidence can help courts to make decisions about safe permanency plans for children, for example in granting freeing orders for adoption where parents unreasonably withhold consent, (see chapter 7 Adoption and Root Tracing), or where family reunification would pose safety and/or wellbeing risks in adverse to the child’s best interests.\[338\]
- Courts will demand a lot of evidential information about the problems alleged. So, where social welfare services pursue litigation (legal proceedings) to promote the best interests of the child, case work documents will form key evidence on risk factors, therefore impacting outcomes for the child.

8.1.5 How can documentation be used to improve the systems of care for families in Hong Kong?

8.1.5.1 In the case of Yeung Chi Wai,\[339\] it had been decided in the Multi-Disciplinary Case Conference that five year old Yeung would be placed in institutional care temporarily based on the risks posed to his safety by his mother's and step-father's substance misuse problems. However, Yeung was sent back to his mother and step-father, where he later died in their care from methamphetamine ingestion.

8.1.5.2 Effective case recording can facilitate the improvement of policy and practice to prevent tragedies such as that of Yeung Chi Wai occurring in the future. This can be achieved if the case records provide detailed information for analysis.

8.1.6 What are the key principles of effective documentation?\[340\]

8.1.6.1 Effectiveness:

- Include all and only relevant details, making sure that case notes are clear, accessible and accurate.
- Use correct grammar and spelling. Lack of writing skills lowers the credibility of the professional in legal proceedings.
- Print or write legibly.
- Document what you know to be factual (such as direct observations or conversational dialogue).
- Be specific – avoid subjective characterizations such as ‘drunk’, ‘aggressive’. These are judgements. Record facts which can be used as evidence, such as ‘I observed 2 empty bottles of vodka in the apartment (half liter sized)/ x’s eyes looked glazed/ their speech was slurred.’

\[338\] M v Y (2009) 5 HKLRD 579, at 598, per Hartman JA.
Clearly state where information has come from.

If a client response or behavior seems strange, factually document what happened.

Document as soon as practicable following sessions/dialogue/incidents to preserve accurate recollection.

Avoid acronyms and abbreviations unless they appear on an approved list.

Use precise description (such as ‘I observed 2 empty, half liter sized bottles of vodka’, rather than ‘I observed alcohol’) to avoid misperception.

Supervision discussions and notes should be documented with recommendations/instructions and dates.

Avoid vague language or ambiguity including phrases such as ‘It seems’, ‘I suppose’, ‘it appears’, ‘I feel’. This is not factual and would not stand as strong evidence in court. Make sure that facts, judgements and opinions are differentiated and if you do think something is important, cite the facts upon which your opinion is based.

8.1.6.2 Ethics and professionalism:

Do not display bias.

Do not engage in defamation of character, use judgmental or derogatory language.

Where professional assessments are made, processes of analysis and justifications for conclusions should be noted.

Do not tamper with or alter records and do not use dittos, erasure or ‘white out’ in your documents.

Do not document interventions before they occur.

Do not document staffing or interdepartmental issues.

Do not share information with parties outside of professionals working on the case. If a client has requested the sharing of information with any outside parties, ensure service user consent has been documented clearly (with signature where possible).

Actions and decisions should be recorded with clear justification.

Ensure that successes, achievements and positive outcomes are also documented for fair practice to eliminate risk of accusations relating to selective interpretation.

8.1.6.3 Clarity:

Always include appointment slips, copies of letters, receipts, emails, attendance records, contact and visitation plans/attendance information/reports, copies of text messages/WhatsApp conversations, minutes and actions of meetings and any other information that support or confirm what you are saying in your notes.

Document all dialogue with all stakeholders.

Document any views obtained by the child, ensuring and demonstrating that the information was not obtained in a leading or biased manner (include transcript of actual conversations where you are sure you can remember it accurately). It is advisable to write such notes at the time of conversation.

If client’s understanding around certain terms or issues has been clarified, document what was said or discussed.

Ensure that times, dates, communicating persons and content of discussions or engagements are documented for all contacts with case stakeholders – This includes messages left requesting call backs, unanswered calls and calls that reached blocked dial tones.

Ensure relevant information is not omitted.

_N.B. Documentation should evidence how the best interest of the child has been prioritized in decision making._
### NOTE: Case Example.

Case worker X has been documenting evidence for the timely implementation/review of the child’s permanency plan as her department is most concerned that family reunification is not in the best interest of the child. Birth parents are refusing to relinquish care but are also refusing to engage with parenting support or change their risk posing behaviors. Here is how case worker X documented information in case note that is now being used as evidence.

<table>
<thead>
<tr>
<th>Professional assessment</th>
<th>Evidence</th>
<th>Could this evidence be contested at court?</th>
<th>How could this evidence be more robust?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The birth parents are not committed or are unable to commit to building the relationship with their child, to prioritize his needs or to improve their chaotic lifestyle.</td>
<td>“Birth parents failed to attend 6 out of 8 scheduled contact sessions.” (Written case notes following non-attendance.)</td>
<td>Yes – Birth parents are claiming that case worker X did not inform them of scheduled contact sessions.</td>
<td>Documented proof of contact plan sharing and agreement (this is most robust where signatures are obtained).</td>
</tr>
<tr>
<td>The child has been physically harmed in the past and currently feels scared to return.</td>
<td>“The child has disclosed that his birth parents beat him at home. When I asked him if he was scared to return to their care he said yes” (Case note entry)</td>
<td>Yes – the case note was recorded three days after the disclosure so it is claimed that case worker X could not have remembered the details accurately. It is also claimed that case worker X coached the child into making this disclosure.</td>
<td>Recording should have been on the same day with accurate time, date, location etc. Disclosures should happen naturally and not be probed. Determining questions should always be open questions and not leading to avoid evidence being quashed as ‘coaching’. What exactly was said and how were meanings clarified? (to avoid misinterpretation) Was anyone else present? What immediate action was taken?</td>
</tr>
<tr>
<td>Parental non-attendance for contact has caused emotional stress to child resulting in regressive behaviors.</td>
<td>Written in case notes, case summary, letter to SWD and best interest report.</td>
<td>Yes, Birth parent’s legal team are saying this claim is unsubstantiated.</td>
<td>Who observed/was informed of these behaviors? When? (Times, dates, content; a written report of concerns from the observing person should be obtained where possible). What were the behaviors? What observations indicate that they are a result of parental non-attendance at contact? Could a medical/mental health professional have been involved to provide support to the child and file a report based on their professional opinion? (medical reports are highly regarded in court) Records of dialogue with birth parents in relation to impact.</td>
</tr>
</tbody>
</table>

**Also consider – What will the impact be for both the child and case worker X if she is unable to prove her claims?**
8.1.7 Types of documentation

8.1.7.1 Is documentation important at each stage of permanency planning?
Yes. The ‘working towards permanency diagram’ below highlights the stages of permanency planning in accordance with a desirable twelve month time frame. Effective documentation for each stage is of great significance and will take different forms depending on the activities and focus of each timeframe. This section gives further information on different methods of documentation and the stages at which they are required.

![Working towards permanency diagram](image)

- Determine specific goals
- Determine action steps to achieve outcome
- Clarify roles and timeframe
- Identify and respond to risk and safety issues
- Reviewing progress and re-strategizing
- Identifying and responding to change
- Celebrating milestones
- Concurrent planning if needed
- Prepare case summary and send letter to IFSC (Progressive Approach)
- Initiate case conference with the IFSC (Take Minutes & recap action steps)

8.1.7.2 Chronology

What is it?
A chronology should provide a clear account of all significant events in a child’s life to date, drawing upon the knowledge and information held by agencies involved with the child and family.

Timeframe
Ongoing for the duration of case management.

Significance
- Allows social work and/or legal professionals reviewing the case to determine whether the time plan has been adhered to.
- Gives quick access to an overview of the case by documenting a sequential story of significant events.
- Allows current events to be understood in the context of family history.
- Allows risk indicators to be identified and shared in an easily accessible manner with other agencies (There are many examples of case inquiries that have stressed the importance of chronologies in assessing risk and preventing harm).
- Enables workers to identify if there have been certain patterns in a family’s history (e.g. depression/self-harm triggers).

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**Components**

Date; Event; Brief Description; Source of informing body or reference to document containing further information; information should be accurate and consistent with good, up-to-date case recording (i.e. should contain sufficient detail but not as a substitute for the social worker's own records); should be reviewed and analyzed to recognize patterns/elements of risk.

<table>
<thead>
<tr>
<th>Full date is needed. Case notes should include further details (including information source, medical record and/or details on dialogue with medical professionals).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case notes entry will need to include times and method of contact.</td>
</tr>
<tr>
<td>There is surplus information here for a chronology. This could have been recorded more succinctly with full details recorded in case notes.</td>
</tr>
<tr>
<td>E.g.: “Concerns reported by referral worker in relation to BM’s engagement. Referral worker considering involving DoJ in pursuing adoption but will communicate this with BM first to allow for opportunity to demonstrate commitment”</td>
</tr>
<tr>
<td>Always include date of corresponding case note.</td>
</tr>
</tbody>
</table>

**NOTE: Chronology Entry Examples.**

There are 81 events recorded in this chronology document starting from the birth of the child’s father in 1976 to the most recent communication with Referral Worker in 2015. Here are some sample entries.

1. **Birth Mother’s Condition**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Brief Description</th>
<th>Source of informing body or reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.2013</td>
<td>BM’s diagnosis</td>
<td>BM was diagnosed with mixed anxiety disorder and needed to take medicine.</td>
<td>case note 14.8.2014</td>
</tr>
</tbody>
</table>

2. **SWD Intention and time plan**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Brief Description</th>
<th>Source of informing body or reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.10.2015</td>
<td>Update from Referral Worker</td>
<td>RW reported that BM’s situation was getting worse in recent two months. She was not able to reach BM and BM understood that she could not schedule visit for the children with FM personally. RW expressed that she was planning to explore the adoption plan in view of BM’s little involvement and her negative impacts made on the children. RW’s supervisor had been thinking about adoption but did not reach agreement with ADO yet. They would need to pass the case to DoJ if they really decide to pursue adoption. RW planned to deliver the message to BM on 13/10, that if she still did not show commitment in achieving the family reunion plan, RW would pursue adoption. RW added that the next child welfare meeting might be held in coming December but not confirmed yet.</td>
<td>case note (date)</td>
</tr>
</tbody>
</table>

Other examples of **significant events** may include: births; deaths; immigration status; convictions; incidents of harm/significant risk; care transitions; case conference dates; dates of any written agreements with birth families and/or interim carers; dates and type referrals made.

8.1.7.3 **Case notes**

**What are they?**

Case notes are the chronological record of all interactions, observations, interventions and actions involving the child, his/her family and any other professionals or stakeholders involved in their circumstances.

**Timeframe**

Ongoing for the duration of case.

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342 ibid
Significance

- Vital for social work continuity (to keep track of events and interventions and to allow new case workers to understand the family circumstances and case management to date).
- To support legal decision making.
- To allow for accountability and transparency of social work service.
- For historical record which may be requested for case review purposes or by the client.

Components

Dates, times, mode of contact and content of all the things that have happened during a family’s involvement with the service including; phone calls; face-to-face contacts; contacts with service providers; any assessments, meetings or reviews (including minutes and actions); court hearings; and visits.343

Considerations

- Ensure case notes demonstrate how clients have been informed about their rights and responsibilities
- What information can be included as additional evidence to support what is written in case notes? (E.g. appointment slips, emails, written reports from observation witnesses, police reports, copies of letters, minutes of meetings).
- How can client consent to share information be evidenced in case notes? (Signatures are always the best form of evidence).
- Do notes show that practice is in line with codes of conduct, law and best practice?
- Is any information that is relevant to justify decision and recommendations included?

8.1.7.4 Case Review Meeting Minutes

What are they?

A written record of Case Review Management meetings outlining discussion content and agreed actions.

Timeframe

As standard practice, Case Review Meetings should be held once every six months commencing from the date of referral of the case. However, they can be called at any time to review circumstantial changes of increased risk.

Significance

- Opportunity for families to demonstrate progress in achieving the permanency plan and highlight any concerns, wishes and feelings to be considered.
- Opportunity for referral worker to identify further support or steps to be taken to achieve the permanency plan or for all parties to review current plans in light of circumstances.
- Opportunity to ensure the child’s perspective/ voice to be presented.
- Opportunity for all parties to alert red-flagging circumstances and devise appropriate actions. Red flag circumstances may include, for example, parents failing to demonstrate progression of targets or continuous extension of residential placement with no real goals and time frames.
- Opportunity to devise clear action plans to support permanency planning, meaning that where plans are not fulfilled, there is written evidence in relation to the process that was agreed.

Components

Date; Venue; Attendees/absentees; Time; Agenda; Minutes; Matters arising from previous meetings; Agenda and date of next meeting; Adjournment with clear reasoning; Clear targets/milestones/achievements.

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Considerations

- How has it been evidenced that all stakeholders have been informed of the meeting in a timely manner?
- Who is an appropriate independent person to ask to record minutes?
- Have minutes been shared with stakeholders who could not attend? How is this evidenced?
- How has confidentiality in this process been ensured?

8.1.7.5 Contact and visitation documentation

What is it?

Any documents that demonstrate decision making processes in contact and visitation planning and monitoring of plan implementation.

Significance

- Allows all involved social workers to be accountable for contact decision making in the child’s best interests.
- Accurately reflects the quality of interaction between children and families to inform permanency planning recommendations.
- Shows that social workers have assessed and managed risk in order to keep children safe.
- Contact and visitation documents consist of two parts, both of equal importance in legal proceedings.

Timeframe and components:

a. Contact and visitation plans: Whilst there is no legal requirement on the timeframe for such plans, this should be prepared as soon as practicable to avoid delay, to promote existing attachments with family members and to support transitions between care arrangements. To contain: thorough assessment and management of risk and circumstance, justification of best interests decision making, evidence of stakeholder involvement, documenting of any opposing views and how these were resolved, clear timescales, review plans, contact conditions, information of contact plan sharing with birth parents and other relevant stakeholders.

b. Contact and visitation records: These should be completed following each contact/visitation and should include: date, time, venue, attendee, details of lateness and/or nonattendance with clear reasoning, key observations, any information from caregivers in relation to concerning behaviors prior to or following contact, incident record with clear details of appropriate responses.

Case Scenario:

Following a community contact session supervised by interim caregivers, the caregivers telephoned the child’s case worker to notify that they had observed birth mother using abusive and derogatory language in an aggressive manner towards her seven year old daughter. They also notified that when the child failed to comply with her instructions, birth mother would threaten to ‘beat (her) again when she returns home’. Caregivers said that following contact the child was tearful, had expressed that she did not want to return to her mother’s home and had been suffering with nightmares and bed wetting. Attempts to engage the birth mother in one to one work focused on the impact of her behavior and facilitating understandings of healthier behavior management strategies failed to improve her attitude towards her daughter, whose regressive behaviors and emotional wellbeing deteriorated. On one occasions she told her caregivers that if she was sent home she would ‘run away’, another occasion she said she would ‘kill (her)self’. The child’s social worker began working with her supervisor to recommend alternative permanency planning to the Social Welfare Department in the child’s best interests. Both case worker x and y responded with the same actions but their documentation differs. Here is how;

Case worker x’s case file:

- Contact plan.
- Contact attendance record.
- A case note entry referring to the call received from interim caregivers, stating that they ‘expressed concerns about birth mother’s interaction with child’.
- A case note entry of ‘home visit to birth mother’.
- Information above, documented in a letter to the Social Welfare Department.
Case worker y’s case file:

- Contact plan with risk assessment and documented reasons for supervised contact based on reports from the referral worker about birth mum’s concerning verbal interaction with child.
- Case note entry detailing the caregiver’s initial telephone call. A dated and signed written report from caregivers outlining information above in factual detail had also been obtained.
- Written, dated statements from caregivers in relation to each report of concerning behavior/disclosure, including dates and observations. Case note recordings documented the advice the case worker had given in managing these behaviors.
- Details of a conversation with the child’s school teacher factually detailing her observations of behaviors displayed by the child at school, in particular prior to and following contact (including time, date and teacher’s name).
- Copy of referral form referring the child for specialist play therapy sessions.
- Detailed case note recordings of 121 sessions between the case worker and birth mum, noting birth mum’s non-attendance and attitude through factual dialogue and observations.
- Copies of letters sent to all stakeholders inviting them to attend an emergency case review meeting in light of the recent events.
- Minutes of meetings (including attendees, actions, discussions, etc.).

Consider

1. What information would be of use to the Social Welfare Department for each file?
2. How effective would case worker x be in delivering the evidence required to prove that reunification is not in the child’s best interests? What could the potential impact of this be?
3. How would the professional integrity of each case worker be considered by outside parties on the basis of their documentation?

8.1.7.6 Case Summary

What is it?

A short summary document outlining key information to support recommendations about children’s circumstances and welfare.

Timeframe

Analysis and planning phase.

Significance

A case summary document serves as a powerful case presentation for championing safe permanency for the child via the judicial system. It can also be a useful way to present information to other social workers involved in the case and can help a new/covering case worker focus on key issues.

Components

Relevant family background; any history of circumstances that have led to conditions of adversity for the family and child/ren subject/s (e.g. substance abuse, mental health, abuse, domestic violence); number of siblings and their circumstances; details of critical incidents and/or risk factors within the family that highlight family dynamics; extended family involvement where relevant; any family trauma; evidence of improvement/ relapse/ commitment of birth families in fulfilling parental responsibility and details of the impact of the child; current circumstances and permanency plans; any recommendations to secure safety; reference to any other key documents of relevance.

8.1.7.7 Letter of recommendation to the Social Welfare Department (for social workers based in external agencies)

What is it?

A letter, accompanying a case summary, providing information about the case, highlighting concerns and level of urgency for case review in the child’s best interest.

Timeframe

Analysis and planning phase.
Significance

Evidences formal information sharing and calls for action when current circumstances for children are deemed unsafe or not in their best interests. In this sense, a letter can begin the process of litigation where other methods aimed at promoting safety and wellbeing have been exhausted.

Components

Particulars of the child/ren; reference to and details of any previous correspondence; date, proposed plan to promote child welfare, background information, key best interest concerns and calls for action.

Considerations

- Is a return address included?
- How has confidentiality in delivery been considered?
- Is the letter directed to the most relevant person in the case? (second letters should be escalated to senior staff)
- Are additional letter copies held on file?
- How does information evidence best interest recommendations?
- How can relevant legislation and government guidance be referred to where relevant?
- Do previous case note recordings correspond with the information in the letter?

8.1.7.8 Case Conference Documentation

What is it?

A written record of all communications concerning any case conference in relation to specific families.

Timeframe

Standard case conferences are held throughout the case on an as and when necessary basis. Relating to legal proceedings, this would typically occur in the analysis and planning phase.

Significance

- To share successes and concerns in relation to the child’s permanency plans in a multi-agency forum, providing a holistic picture of the family’s circumstances.
- Opportunity to evidence the sharing of case worker’s concerns about the child’s circumstances with decision makers, thus escalating recommendations for additional permanency planning through the appropriate procedure.
- To inform frontline workers about higher level strategy and planning in relation to families.
- Evidencing roles and agreed actions to ensure accountability.

Components

Social workers should document and file their own copy of meeting minutes for case conferences initiated by them and for those initiated by the Social Welfare Department. Minutes are to include: date; venue; attendees/absentees; time; agenda; matters arising from previous meetings; key issues discussed and decision made; who is responsible to follow up each action with timeframe; date of next meeting; adjournment; appendix (Case Summary). Case files should also document how delegates had been informed of the meeting and include any informed reason for non-attendance.

8.1.7.9 Child Protection/Best Interest Reports

What is it?

A written statement report communicating the social worker’s safe permanency recommendations in the child’s best interests based on; the child’s rights under the UNCRC, the social worker’s professional training and all information available to them, current and historic circumstances and elements of actual and estimated risk.
**Timeframe**

Alignment Phase

**Significance**

- Allows the circumstances of the child to be analyzed thoroughly and systematically by the Social Welfare Department through first hand professional opinions.
- Documents clear evaluation of different options for the child to support higher level decision making.
- Opportunity to present the voice of the child with credible supporting evidence from multi-disciplinary perspectives

**Components**

See sample best interest report below

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**Best interest report sample**

**Regarding:**

(Name) ___________________________ DOB: __/__/__

(Name) ___________________________ DOB: __/__/__

(Name) ___________________________ DOB: __/__/__

**I. Introduction**

- Placement Instability in Foster Care
- Attachment
- Permanency

**II Permanency Options**

- Child 1
- Child 2
- Child 3

**III. Evaluation of Options**

- The Emotional Ties and Relationships between Children and SM
- The Capacity of the Parents to Provide a Safe and Loving Home
- Permanency Planning Recommendations

**IV Conclusion**

1. PysD., MEd., MS.W., R.S.W.
   Clinical Psychologist (Agency)

2. MBBS., CCDS, Paediatrician
   (Clinic / hospital)

3. MS.Sc., R.S.W.
   (Agency)

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What effect has the interim care experience had on the child? What effect is it likely to have in the future? *What factual evidence / observations are you basing this on?*

- Consider what risks are likely for the child in the future for each option; *interim care, reunion, alternate family, placement, adoption* – how are these best managed?
- Take care to represent each child as an individual with different needs and responses but remember and articulate their rights as universal (reference UNCRC)

Include the opinion of as many accredited professionals as possible to strengthen the credibility of recommendation as applicable to the case

- Use legal instruments, best practice and academic research to back up your professional training where it is relevant
- Consider how to evidence this document and how you shared it with others – remember confidentiality
- The content of third document should be backed up in case notes and all other documentation is in the case file
8.1.7.10 **Social Worker Witness Statements**

**What is it?**

A witness statement is a document recording the evidence of a person, which is signed by that person to confirm that the contents of the statement are true.³⁴⁴

**Timeframe**

Whenever wardship litigation is required to keep a child safe.

**Significance**

Serves as the basis for drafting a supporting affidavit for the wardship originating summons.

**Components**

To be prepared by the most involved social worker of the case who has witnessed a specific event or incident that is the subject of legal proceedings; should be honest, clear, concise and logical; original work³⁴⁵; should be signed and dated; should be written in the first person; no abbreviations/jargon; should include page numbers (paragraph numbers are also useful).³⁴⁶

8.1.7.11 **Adoption Report** ³⁴⁷

**What is it?**

The guardian ad litem (guardian appointed by the court to represent the interests of the child, generally the Director of Social Welfare), is required to investigate as fully as possible all circumstances relevant to the proposed adoption with a view to safeguard the interest of the infant before the court and to make a report to the court for that purpose. Reports in Hong Kong are completed by the Social Welfare Department Adoption Unit.

**Timeframe**

Rule 15 of the Adoption rules state that the guardian ad litem will receive an appointment for the hearing of an adoption application 14 days after their report has been submitted, or should obtain an appointment as soon as practicable. Current practice is that the relevant department submits an adoption report to court following their six monthly visit to the child in placement with their prospective adoptive parent/s in order to request the court to grant the finalization order.

**Significance**

- Assists the court with decision making in the child’s best interest³⁴⁸ by providing information and assessment of the placement to date.
- Serves as a key source of information about the child’s pre-adoption history that s/he will be able to access upon reaching adulthood.

N.B. **On reaching adulthood, the child may request a copy of this report, potentially relying on this document to process his/her adoption process. Adoptive parents can request file information prior to the child reaching 18. Wording should be factual, relevant and sensitive.**

**Components**

Factual and evidenced demonstration of the prospects, risk, observations and assessment.

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³⁴⁷ See also Adoption Rules (CAP 290A).

9. Glossary of terms
9. **Glossary of terms**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Affidavit</strong></td>
<td>A statement of evidence sworn under oath for use in court</td>
</tr>
<tr>
<td><strong>Adoption Certificate</strong></td>
<td>A legal document which indicates a child’s birth information. It replaces the child’s birth registration. An official copy of an Adoption Certificate should have the same effect as a birth registration</td>
</tr>
<tr>
<td><strong>Barrister</strong></td>
<td>A qualified lawyer who is instructed by a firm of solicitors acting for the client to advocate before the court</td>
</tr>
<tr>
<td><strong>Best Interests Standard</strong></td>
<td>A legal standard which requires that in cases dealing with children, what is best for the child must be the primary or paramount consideration and must be considered above other considerations, for example what is best for the parents or other parties</td>
</tr>
<tr>
<td><strong>Birth Registration</strong></td>
<td>A legal process involving the registration of a child’s details of birth in a register maintained by the government. Without this registration the child has no legal existence and will therefore have difficulties in accessing services and legal benefit in Hong Kong</td>
</tr>
<tr>
<td><strong>Care and Protection Order</strong></td>
<td>An order by a juvenile courts to (a) appoint the Director of Social Welfare to be the legal guardian of such child; or (b) commit him to the care of any person or institution who is willing to care of him; and/or (c) make an order placing him for a specified period under the supervision of any person. See section 34 of the Protection of Children and Juveniles Ordinance (Cap 213).</td>
</tr>
<tr>
<td><strong>Child Protection Registry</strong></td>
<td>A computerized record system, which is intended to record all cases of child abuse and make it easier to cross-check these cases between different departments and organizations</td>
</tr>
<tr>
<td><strong>Continuous Contract</strong></td>
<td>Employment of over 18 hours per week for at least 4 weeks</td>
</tr>
<tr>
<td><strong>Convention on the Rights of the Child</strong></td>
<td>An international treaty that sets out the basic rights of children under international law and the obligations of governments to fulfil those rights</td>
</tr>
<tr>
<td><strong>Child Abuse Investigation Unit</strong></td>
<td>A special unit of the police whose duty is to investigate sexual abuse cases of children below age 17 by family members, extended family members, or persons entrusted with their care, and certain cases of extreme physical abuse of children</td>
</tr>
<tr>
<td><strong>Child Protection Special Investigation Team</strong></td>
<td>A joint team of professionals, comprising of the Police (CAIU), social workers from CPSU, and clinical psychologists, that will be created to deal with cases of child sexual abuse or cases of severe physical abuse</td>
</tr>
<tr>
<td><strong>Department of Justice</strong></td>
<td>The department responsible for representing the Hong Kong Government in legal matters. It is also responsible for providing legal advice for the other departments of the Government, including advice regarding law reform</td>
</tr>
<tr>
<td><strong>District Court</strong></td>
<td>A court of record that includes the Family Court of Hong Kong. It has limited jurisdiction in civil and criminal cases as well</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>Broadly speaking, evidence is anything that might prove something to be true. Evidence that can be used in a courtroom often includes things like “testimony” (meaning an oral or written statement), or documents or physical objects that help to prove whether something is true or not true</td>
</tr>
<tr>
<td><strong>Equal Opportunities Commission</strong></td>
<td>A government body that is responsible for eliminating discrimination, promoting equal opportunities, and helping people understand their rights and obligations under Hong Kong’s anti-discrimination laws</td>
</tr>
<tr>
<td><strong>Family Court</strong></td>
<td>A division of the District Court that deals with matters related to children (including adoption) and families (e.g. divorces) in most cases. However, in more serious or complicated case, matters may be handled by the High Court (e.g. in wardship proceedings)</td>
</tr>
<tr>
<td><strong>Family and Child Protective Services Unit</strong></td>
<td>Specialized units operated by the Social Welfare Department to assist families in cases of child abuse or other domestic violence or abuse</td>
</tr>
<tr>
<td><strong>Freeing Order</strong></td>
<td>A legal order that a judge can make ending the birth parents’ parental rights and freeing a child for adoption. Such orders will only be made under certain grounds indicating that a parent is unable or unwilling to fulfil their parental responsibilities</td>
</tr>
<tr>
<td><strong>Foster Care</strong></td>
<td>A type of residential care in which children whose parents cannot adequately take care of them are temporarily placed into an alternate family environment under the care of “foster parents” until they can re-unite with their families, join an adoptive family, or live independently</td>
</tr>
<tr>
<td><strong>Guardian</strong></td>
<td>A person who is legally entitled to parental rights and duties in relation to a child</td>
</tr>
<tr>
<td><strong>High Court</strong></td>
<td>The superior court of record that has unlimited jurisdiction to deal with most matters (including family, adoption, wardship), both civil and criminal. Wardship cases must begin in the High Court</td>
</tr>
<tr>
<td><strong>Illegitimate Child</strong></td>
<td>A child born to unmarried parents, who has not been subsequently legitimized under the Legitimacy Ordinance (Cap 184), such as by subsequent marriage of parents. The principle distinction between legitimate and illegitimate children is in respect of parental responsibility of natural/birth fathers. However, adoptive children are to be treated in all important respects as though they are the legitimate children of their adoptive parents (see Part 3 of the Adoption Ordinance, Cap 290)</td>
</tr>
<tr>
<td><strong>Legitimate Child</strong></td>
<td>A child born to married parents, or legitimized subsequently under the Legitimacy Ordinance (Cap 184), such as by subsequent marriage of parents</td>
</tr>
<tr>
<td><strong>Mandatory Reporting</strong></td>
<td>A legal requirement that exists in certain countries that requires all individuals, or certain types of professionals or categories of individuals, to report suspected cases of child abuse and neglect to government authorities</td>
</tr>
<tr>
<td><strong>Minor (or Child)</strong></td>
<td>A person who is under the age of 18</td>
</tr>
<tr>
<td><strong>Multi-Disciplinary Case Conference</strong></td>
<td>A joint meeting of various professionals that should be called in response to a suspected or potential child abuse case, at which they can share information and plan for the welfare of the child(ren) and their family</td>
</tr>
<tr>
<td><strong>Ordinance</strong></td>
<td>Another word for the individual laws of Hong Kong. They are organized by “chapters” based on specific topics or areas of law</td>
</tr>
<tr>
<td><strong>Parental Rights- and Responsibilities</strong></td>
<td>A legal term meaning that a person has specific legal rights, duties, and responsibilities in regards to a child, for example the right to have custody over them, to make legal decisions for them, and responsibilities to support, care for them, and act in the child’s best interests</td>
</tr>
<tr>
<td><strong>Presumption</strong></td>
<td>A legal concept, meaning that a particular fact or idea is assumed to be true, unless proven otherwise</td>
</tr>
<tr>
<td><strong>Protected Class</strong></td>
<td>A group of people, or a characteristic of a group of people, which it is illegal to discriminate someone based on (for example, race, national origin, or sex)</td>
</tr>
<tr>
<td><strong>Residential Care Services</strong></td>
<td>Services provided by the government to house and take care of children and young persons under the age of 21 who cannot be adequately cared for by their families</td>
</tr>
<tr>
<td><strong>Risk Factor</strong></td>
<td>Factors that make it statistically more likely that a child may be in an abusive or dangerous situation or home environment</td>
</tr>
<tr>
<td><strong>Right of Abode</strong></td>
<td>A legal status that allows a person to stay in Hong Kong indefinitely, to be free from any condition of stay, and to receive certain legal and social benefits</td>
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<tr>
<td><strong>Root Tracing</strong></td>
<td>The process by which an adopted child later seeks information about their birth parents</td>
</tr>
<tr>
<td><strong>Solicitor</strong></td>
<td>A type of lawyer who may be instructed by clients directly and may also instruct barristers to appear in court on behalf of clients</td>
</tr>
<tr>
<td><strong>Statutory Declaration</strong></td>
<td>A legal document where a person “declares” or swears that something is true in front of a justice, notary, commissioner or other person authorized by law to administer an oath</td>
</tr>
<tr>
<td><strong>Tracing Procedures</strong></td>
<td>Steps that are taken to locate missing birth parents or other individuals in order to plan for the permanency of a child or to seek their consent in freeing the child for adoption</td>
</tr>
<tr>
<td><strong>Unreasonably Withholding Consent</strong></td>
<td>When parents refuse to give consent to have their child(ren) adopted, a court may find that this is unreasonable given the circumstances of the case, and rule that the parents are “refusing to acknowledge the realities” that they are unable to care for their child, either now or in the future. The court may then choose to issue a “freeing order,” freeing the child for adoption even without parental consent</td>
</tr>
<tr>
<td><strong>Ward</strong></td>
<td>A child who is under the care of a guardian or the supervision of the High Court</td>
</tr>
<tr>
<td><strong>Ward of Court</strong></td>
<td>A child for whom the court exercises parental rights. The court supervises big decisions for so long as the child remains a ward of the court. It is required to act in the best interests of the child</td>
</tr>
<tr>
<td><strong>Ward of the DSW</strong></td>
<td>A child placed under the guardianship of the Director of Social Welfare after being made a ward of court or following a Care and Protection Order by a juvenile court magistrate or by the High Court during wardship proceedings. When the parents of a child give consent for adoption, the child is automatically made a ward of the Director. That means that the Director is the acting parent of the child. It must exercise its rights in the best interests of the child</td>
</tr>
<tr>
<td><strong>Wardship Proceedings</strong></td>
<td>The procedure by which the High Court is invited to exercise its extensive and unfettered discretion to protect children. Anyone can apply for wardship who has a sufficient and sincere interest in the child – including the Director of Social Welfare. These proceedings are inquisitorial, and not adversarial. That means that the parties who are involved are not necessarily opposing each other – and are merely there to help the court</td>
</tr>
<tr>
<td><strong>Witness Statement</strong></td>
<td>An informal document prepared by a person with personal knowledge of a case in order to give information on the background of a case to lawyers. This document is not for submission to a court. These documents are helpful in quickly explaining the circumstances of a case so that advice can be sought quickly</td>
</tr>
</tbody>
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10. Appendices
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10.1 Code of Practice for Registered Social Workers

PREAMBLE

In accordance with Section 10 of the Social Workers Registration Ordinance (Cap. 505), the Social Workers Registration Board approves and issues this Code of Practice for Registered Social Workers “for the purpose of providing practical guidance in respect of the professional conduct of registered social workers (including ethical matters relating to such conduct)”.

The primary objective of the Code of Practice is for the protection of clients(1) and the members of society at large. To enhance public trust and confidence in the social work profession, the issue of a code of practice is essential.

This document serves as a guide to the everyday conduct of social workers. Under section 11 of the Social workers Registration Ordinance, this Code of Practice will be used as a basis for adjudication when the conduct of a social worker is alleged to have violated the standards specified in this document. It represents standards of ethical behavior for social workers in professional relationships with clients, with colleagues, with agency, with profession, and with society as a whole. It is applicable to any professional conduct of social workers.

Social workers are required to cooperate in the implementation of this Code of Practice and abide by any disciplinary rulings based on it. They should also keep abreast of the laws of Hong Kong which may be amended from time to time. Social workers should take adequate and appropriate measures and action to prevent, discourage, correct, or expose the unethical conduct of other social workers. They should also take reasonable and appropriate measures to monitor all staff under their supervision and other persons assisting them in delivering service not to violate this Code of Practice or jeopardize the interest of clients(2).

PART 1 – BASIC VALUES AND BELIEFS

1. Social workers’ primary mission is to help people in need and to strive to address social problems.

2. Social workers respect the unique value and dignity of every human being irrespective of one’s ethnicity, color, family/social/national origin, nationality, culture, birth, sex, age, language, beliefs, political and other opinion, family/social/economic status, disability, educational attainment, contribution to society, or sexual orientation.

3. Social workers believe that individuals have the potential to develop and thus accept a responsibility to encourage and facilitate the self-realization of individuals with due regard to the interest of others.

4. Social workers accept responsibility to advance social justice and to safeguard the cause of human rights.

5. Social workers believe that each society, regardless of its form, should provide maximum benefits to its members.

6. Social workers accept responsibility to update, upgrade and devote their professional knowledge and skills to the betterment of individuals and society, with the aim to empowering people to act on their own behalves as far as possible.

7. Social workers recognize the central importance of human relationships and seek to strengthen relationships among people in a purposeful effort to promote, maintain and enhance the well-being of individuals, families, social groups, organizations and communities for the prevention and relief of hardship and suffering.
PART 2 – PRINCIPLES AND PRACTICES

Related to Clients

Responsibility
1. Social workers have a primary responsibility to the clients.

Cultural Awareness
2. Social workers should recognize the ethnic and cultural diversity of the communities being served.
3. Social workers should be acquainted with and sensitive to the cultures of clients and appreciate the differences among them in respect of their ethnicity, national origin, nationality, religion and custom.

Informed Decision and Self-determination
4. Social workers acknowledge a responsibility to inform clients of their rights and help them to obtain appropriate services. Clients should also be informed of, as far as possible, obligations and possible consequences associated with services provided to them.
5. Social workers should clearly inform clients, who are using services under compulsion, of their rights as well as the limits of their rights and assist them in attaining as much autonomy as possible.
6. Taking into account the limit of clients’ rights to self-determination, social workers should encourage clients to participate as far as possible in decision-making about the goals, alternatives and services available to them.

Use of Information and Principles of Confidentiality
7. Social workers should respect clients’ right to privacy and confidentiality of their information, subject to other statutory requirements including, in particular the Personal Data (Privacy) Ordinance (Cap.486). They should also, as far as possible, fully inform clients of the limits of confidentiality in a given situation, the purpose for which information is obtained, and how it may be used.
8. In disclosing case materials, social workers should make necessary and responsible efforts to remove all identifying information and to seek consent, as far as possible, from the client and the relevant agency.
9. Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of electronic media. Disclosure of identifying information should be avoided whenever possible.
10. Social workers should inform clients of the limitation and risks associated with such services provided via electronic media.
11. Social workers should not discuss confidential information in any setting unless privacy can be ensured.
12. Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law.

Conflicts of Interest
13. Social workers should not abuse the worker-client relationship in pursuit of personal interests.

Sexual Relationship
14. Social workers should under no circumstances be engaged in any sexual activities or sexual contacts with clients, whether such activities or contacts are consensual or forced.
15. Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship.

Continuation of Service
16. If and when a fee for service is required, social workers should ensure that clients would not be denied timely services they need because of financial constraints.
**Billing Practice**

17. Social workers should establish and maintain billing practices that accurately reflect the nature and extent of services provided. Those being engaged in private or independent practice should also enable such billing practices to identify who has provided the service in the practice setting.

18. Social workers should clearly inform clients of all fee rates and charges before services are delivered.

**Related to Colleagues**

*Respect*

19. Social workers should pay due respect to different opinions and practices of other social workers, other professionals and volunteers. Any suggestion or criticism should be expressed and conflicts resolved in a responsible manner.

*Interdisciplinary Collaboration*

20. Social workers should discharge duties and treat co-workers, irrespective of which organizations they are from, in a fair and professional manner.

21. Social workers should collaborate as far as possible with other social workers and colleagues from other disciplines to enhance service effectiveness.

22. Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. They should induce and help the interdisciplinary team as far as possible to clearly define the professional and ethical obligations of the team as a whole and of individual team-members.

23. Social workers on whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other appropriate avenues to address their concerns consistent with clients' well-being.

*Supervision and Training*

24. Social workers, who provide supervision or professional consultation, should possess and maintain necessary knowledge, skills and methodology through appropriate education, training, consultation and research to facilitate them to perform the tasks in professional supervision and training competently. Social workers should provide training or instructions only within their areas of knowledge or competence.

25. Social workers who provide supervision should recognize a supervisor's educational, supportive, developmental and work-focused role and should not abuse the professional relationship with supervisees for any interests.

26. Social workers who provide supervision should monitor their supervisees to act in accordance with this Code of Practice.

*Consultation*

27. Social workers should seek the advice and counsel from colleagues whenever such consultation is in the best interests of clients.

28. Social workers should seek consultation only from colleagues who have demonstrated knowledge, expertise, and competence related to the subject of the consultation.

29. Social workers, for the purpose of consulting with colleagues about clients, should provide information on clients on a need-to-know basis.

*Clients' Right of Choice*

30. Social workers respect clients' right of choice. With due respect to other agencies and colleagues, they should not solicit the clients of other social workers.
Communications between Co-workers

31. Without the explicit permission of the author of the communications between co-workers, social workers should not convey to clients any contents of such communications that are beyond the scope of the clients' personal particulars.

Sexual Relationship

32. Social workers who function as supervisors or educators should not be engaged in any sexual activities or sexual contacts with supervisees, students, or trainees over whom social workers exercises professional authority.

Related to Agency

33. Social workers should be responsible to the employing agency for the efficient and effective performance of professional duties.

34. Social workers should act constructively and responsibly to influence and to improve policies, procedures, and practice of their employing agencies in order to continuously improve the quality of service and to prevent social workers from violating this Code of Practice when enforcing agency policies.

35. Social workers should make clear in any public statements or when undertaking public activities whether they are acting in a personal capacity or on behalf of a group or an organization.

36. Social workers should not use institutional affiliation to recruit clients for private practice without the consent of the institution.

Related to Profession

Professional Responsibilities

37. Social workers should maintain honesty, integrity and responsibility in professional practice.

38. Social workers should uphold the values and ethics, and advance the knowledge of the profession.

39. Social workers should bring to the attention of appropriate bodies any violation of this Code of Practice that may put the interests of clients at risk, and should be ready to defend other social workers against unjust accusations.

Competence

40. Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, professional consultation, supervised experience, or other relevant professional experience.

41. Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after being engaged in appropriate studies, training, professional consultation, and supervision by people who are competent in those interventions or techniques.

42. When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps, including appropriate education, research, training, professional consultation, and supervision, to ensure the competence in their work and to protect clients from harm.

Respect

43. In criticizing the profession, social workers should do so in a responsible and constructive manner.

Representation

44. Social workers should make no misrepresentation or false claim as to personal particulars, professional qualifications, credentials, education, competence, nature of service, and method of service or results to be achieved.
Independent Practice

45. Social workers who are engaged in private or independent practice should practice only within their areas of competence and offer suitable referrals when clients’ needs go beyond their areas of competence. Any publicity on their practice should be made based on the actual qualifications, experience and expertise.

Professional Development

46. Social workers should accept responsibility for upgrading their professional skills and knowledge.

47. Social workers should take responsibility to help those who are entering the profession to establish, strengthen and develop their ethics, values, skills and knowledge.

Call to Duty

48. Social workers should respond to calls to duty when an explicit request is made and when a call is made specifically for social workers on the spot to render certain service under specific circumstances.

Related to Society

49. Social workers recognize the need to bring to the attention of policy makers or the general public any policies, procedures or activities of governments, societies or agencies which create, contribute to, or mitigate against the relief of hardship and suffering.

50. Social workers recognize the need to advocate changes in the formulation of policies and legislation to improve social conditions, to promote social justice and general welfare of the society. Social workers also recognize the need to contribute to the implementation of policies for human welfare and should not allow one’s knowledge, skills or experience to be used to further unjust policies or inhuman practices.

51. Social workers recognize the need to prevent and eliminate discrimination, and the need to strive for a more reasonable distribution of resources and to ensure that all persons should have equal opportunity to access to the necessary resources and services.

52. Social workers recognize the need to promote conditions that encourage respect for diversity of cultures in the society.

53. Social workers recognize the need to encourage informed participation by the public in formulating and developing social policies and institutions.

Notes

"Clients" refers to direct service recipients currently receiving individual, group services or program activities provided by social workers.

"Interest of clients" – Social workers should make professional judgement after considering and striking a balance among the interests of clients and those of other related bodies (including family members, agency, community and society, etc.).

"Call to duty" in this context is not applicable to calls made through mass media to social workers at large.

(Remark: Chinese version prevails over English version if there is any discrepancy.)

First gazetted on 16 October 1998
Amended on 15 January 2010
Part 2 Paragraph 7 amended on 15 November 2013
10.2 Social Welfare Department organizational chart

10.3 List of ordinances relating to child abuse offences

Protection of Children and Juveniles Ordinance, Cap 213

Evidence Ordinance, Cap 8
Section 4 Evidence given by children

Employment Ordinance, Cap 57

Criminal Procedure Ordinance, Cap 221
Section 79B Evidence by live television link
Section 79C Video recorded evidence
Section 79D Chief Judge to make rules

Live Television Link and Video Recorded Evidence Rules, Cap 221J
Rule 3 Evidence through live television link where witness is a vulnerable witness or is to be cross-examined after admission of a video recording

Education Ordinance, Cap 279
Section 74 Power of Permanent Secretary to order attendance at primary school or secondary school
Section 78 Enforcement of order

Adoption Ordinance, Cap 290
Section 22 Prohibition of certain payments
Section 23 Restriction upon advertisements
Section 23A Restriction on arranging adoption and placing of infant for adoption

Child Abduction and Custody Ordinance, Cap 512

Offences of Sexual Abuse
An offence of sexual abuse refers to the offences prohibited by one of the following Sections of the Crimes Ordinance, Cap 200 and the Prevention of Child Pornography Ordinance, Cap 579.

Crimes Ordinance, Cap 200

Part VI Incest
Section 47 Incest by men
Section 48 Incest by women of or over 16

Part XII Sexual and Related Offences
Section 118 Rape
Section 118A Non-consensual buggery
Section 118B Assault with intent to commit buggery
Section 118C Homosexual buggery with or by man under 16
Section 118D Buggery with girl under 21
Section 118E Buggery with mentally incapacitated person
Section 118G Procuring others to commit homosexual buggery
Section 118H Gross indecency with or by man under 16
Section 118I Gross indecency by man with male mentally incapacitated person
Section 118J Gross indecency by man with man otherwise than in private
Section 118K Procuring gross indecency by man with man
Section 119 Procurement by threats
<table>
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<th>Section 120</th>
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<td>Intercourse with mentally incapacitated person</td>
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<td>Abduction of unmarried girl under 18 for sexual intercourse</td>
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<td>Section 128</td>
<td>Abduction of mentally incapacitated person from parent or guardian for sexual act</td>
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<td>Section 134</td>
<td>Detention for intercourse or in vice establishment</td>
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<td>Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16</td>
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<td>Section 136</td>
<td>Causing or encouraging prostitution of mentally incapacitated person</td>
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<td>Section 137</td>
<td>Living on earnings of prostitution of others</td>
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<td>Section 138A</td>
<td>Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances</td>
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<td>Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse</td>
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<td>Indecency in public</td>
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</tbody>
</table>

### Prevention of Child Pornography Ordinance, Cap 579

- **Section 3(1)** Printing child pornography; making child pornography; producing child pornography; reproducing child pornography; copying child pornography; importing child pornography; or exporting child pornography
- **Section 3(2)** Publishing child pornography
- **Section 3(3)** Possession of child pornography
- **Section 3(4)** Advertising child pornography

### Offences of Cruelty

An offence of cruelty refers to Section 26 or 27 of the Offences Against the Person Ordinance, Cap 212.

### Offences Against the Person Ordinance, Cap 212

- **Section 26** Exposing child whereby life is endangered
- **Section 27** Ill-treatment or neglect by those in charge of child or young person
**Offences Involving an Assault on, or Injury or a Threat of Injury to, a Child**

An offence involves an assault on, or injury or a threat of injury to, a child and the offence is triable on indictment or either summarily or on indictment refers to one of the following Sections of the Offences Against the Person Ordinance, Cap 212.

**Offences Against the Person Ordinance, Cap 212**

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<th>Section</th>
<th>Description</th>
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<td>Shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm</td>
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<tr>
<td>42</td>
<td>Forcible taking or detention of person, with intent to sell him</td>
</tr>
<tr>
<td>43</td>
<td>Stealing child under 14 years</td>
</tr>
</tbody>
</table>
10.4 Procedural guide for escalating best interest concerns in practice

Mother’s Choice example

Mother’s Choice case worker recognises that a child is at risk, is 'stuck' in institutional care or that permanency planning is unobtainable and/or unsafe.

Case worker to work with supervisor to determine and implement a plan of action focussed on promoting best interest observations and recommendations to involved stakeholders (in line with the principles of this Manual).

For very complex cases, there will be cross departmental efforts that work closely with legal professionals to be the voice for the child.

1 Mother’s Choice case worker to assess and document levels of risk and uncertainty from the best interest perspective.

2 Respond to immediate safety needs (involving supervisors if this requires Child Protection referral to the Police or Social Welfare Department).

3 Flag case to supervisor.

Where there are complications, or the case is not progressing, supervisors may involve their seniors/Head of team in the coordination of the next stage.