

Changing Life Stories:  
Understanding the Legal Aspects of  
Working with Children and Families

# Children in Alternative Care



An Introductory Manual for Child Welfare Professionals

# About the Authors



母親的抉擇  
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](http://www.motherschoice.org)

*With thanks to:*

*Thank you to the Centre for Comparative and Public Law at The University of Hong Kong, Herbert Smith Freehills, Mayer Brown and many other individuals who were involved in Version 1 and Version 2 of this Manual for your unfailing commitment and support to the ongoing work of Mother's Choice in protecting vulnerable children in Hong Kong. With special thanks to Mayer Brown for their additional assistance in the design and production of Version 2 this Manual.*

# Contents

<b>Children in Care</b> .....	<b>2</b>
<b>The Problem: Statistics on the Number of Children in Care</b> .....	<b>3</b>
<b>The Costs: The Societal and Financial Impact of Raising Children in Care</b> .....	<b>3</b>
<i>The Physical and Social Impacts on a Child's Development</i> .....	3
<i>The Financial Impacts</i> .....	5
<b>Residential Care Services</b> .....	<b>6</b>
<b>Introduction</b> .....	<b>7</b>
<b>What are the Situations Where a Child can be Placed into Residential Care?</b> .....	<b>9</b>
<b>Can a Child be Placed into Residential Care by One Parent Without the Consent of the Other?</b> .....	<b>11</b>
<b>What are the Review Procedures for Residential Care Cases?</b> .....	<b>12</b>
<b>When a Child is Living in Residential Care, are There Any Circumstances Where the Birth Parents of the Child will Lose Their Parental Rights? In These Cases, Can the Child be Adopted?</b> .....	<b>12</b>
<b>Alternative Care Placements</b> .....	<b>13</b>
<b>What Residential Care Services are Available for Children in Hong Kong?</b> .....	<b>14</b>
<b>Endnotes</b> .....	<b>18</b>

This Manual contains brief information on the law relevant to the subject, which is provided by the authors and contributors to this Manual. The legal position and relevant laws on the subject may change from time to time. While the information is derived from sources believed to be reliable and accurate, the authors and contributors of the publication do not make any representation or warranty as to the accuracy of the information. Mother's Choice and its representatives also do not accept any responsibility for errors or omissions in the information provided. The information provided is not and should not be treated as legal advice, and professional legal advice should be sought before any course of action is pursued. While effort has been made to ensure that the information contained in this Manual is correct, the authors, contributors, editorial team, and Mother's Choice disclaim all liability and responsibility for any error or omission in this publication, and in respect of anything, or the consequences of anything, done or omitted to be done by any person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication.



# Children in Care

# Introduction<sup>1</sup>

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 is associated with negative developmental outcomes for children.<sup>2</sup> 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.

## THE PROBLEM: STATISTICS ON THE NUMBER OF CHILDREN IN CARE

For the year 2019-2020, the Social Welfare Department reported 3,570 placements for children in the residential care system in Hong Kong.<sup>3</sup> The vast majority of children are placed in the residential care system with the consent of their parents.<sup>4</sup> Under this system, parents still maintain legal rights and guardianship over their children.<sup>5</sup> Typically, the assumption is that a child is only temporarily placed into care so that his or her 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.<sup>6</sup>

Government data reports that 18% of children are in residential care due to abuse or suspected abuse, with 82% of children in care due to temporary lack of appropriate care - the definition of the latter includes situations where parents are ill, imprisoned, missing, or carers are unable to handle emotional or behavioural problems of children<sup>7</sup>, which implies the temporary nature of care is to support parents to reunify with their children.

While 90% of children in care have a plan for family reunion, in reality, only 57% of children were discharged from care to family reunion in 2017, and 2% were adopted, leaving the remaining 37% in or ageing out of care<sup>8</sup>.

Further, those children who were 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 foster care, as of 2017, was 35.2 months.<sup>9</sup>

## 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.

### The Physical and Social Impacts on a Child's Development

A child's early experiences have a lasting impact on the development of his or her brain. During these early "sensitive periods", the brain is developing the neural circuitry, or "architecture", on which it will rely and build for the rest of the child's life.<sup>10</sup> The nerve connections and neurotransmitter networks that are being created during these early years can be influenced by a variety of conditions and traumas.<sup>11</sup> Having appropriate interactions and experiences at the right time is therefore crucial for how the brain develops.<sup>12</sup> It is particularly important that the child experiences consistent

interactions with a primary care giver during this period.<sup>13</sup> 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 and the development of insecure attachments.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> Many children entering care may come from families with drug abuse problems, mental illness, poverty and/or family 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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup> Additionally, reunification rates for adolescents in care are significantly lower than reunification rates for younger children.<sup>23</sup>

## The Financial Impacts

At a financial level, the cost of raising children in residential care is significant. For 2020-2021, the estimated government expenditure for foster care, small group homes and residential homes for children in Hong Kong is \$267.7 million, \$316.2 million and \$496.9 million respectively.<sup>24</sup> This does 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 health-care system associated with an increased risk of health problems.<sup>25</sup>

### CASE STUDY

#### MAK-YIN'S STORY<sup>26</sup>

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.





# Residential Care Services



## United Nations Convention on the Rights of the Child

### **Article 18**

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.”*
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.”*

### **Article 20(1) & (2)**

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.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
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.”*

## Introduction

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 accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...”*<sup>27</sup>.

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”.<sup>28</sup> The government also has a responsibility to *“render appropriate assistance”* to parents and legal guardians in their performance of their child-rearing responsibilities.<sup>29</sup>

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.<sup>30</sup> 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*".<sup>31</sup>

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.<sup>32</sup>

In 2009, the UN General Assembly adopted a resolution on the **Guidelines for the Alternative Care of Children**<sup>33</sup>. These Guidelines:

*Set out desirable orientations for policy and practice with the intention of enhancing the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children deprived of parental care or who are at risk of being so*

They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care, and seek in particular:

- a. To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala of Islamic law;
- b. To ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development;
- c. To assist and encourage Governments to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social and cultural conditions prevailing in each State; and
- d. To guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and the private sectors, including civil society.

The Guidelines do not have the force of law in Hong Kong but are taken into account by the UN Committee on the Rights of the Child when examining its reports to the Convention and in formulating its observations and recommendations.

## 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.

## WHAT ARE THE SITUATIONS WHERE A CHILD CAN BE PLACED INTO RESIDENTIAL CARE?

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

### 1. Voluntary Placement

Parents can voluntarily commit their child to the residential care system on a temporary basis. In these type of cases the parents will retain all of their legal parental rights, whilst the social workers and foster parents may have limited scope to make decisions on behalf of the children.

## CASE STUDY

Eric's mother has been struggling with mental health, unemployment, and housing challenges and cannot currently provide a safe environment for Eric. She does not have any family support or friends who are able to help her. She is committed to accessing psychiatric services, seek job training, find employment, and safe accommodation so that Eric can return to her care as soon as possible.

### 2. Care or Protection Order

The child or juvenile is removed from the parents and committed to residential care by a juvenile court.<sup>34</sup> 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".<sup>35</sup>*

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.<sup>36</sup> 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 or her maintenance.<sup>37</sup> 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.<sup>38</sup>

## CASE STUDY

A newborn baby, Mia, has tested positive for in-utero exposure to methamphetamine, despite their mother insisting that she did not use substances throughout her pregnancy. Professionals working with the mother are concerned that she does not have safe and stable housing and there are a number of potential risks to Mia if she was to go home. A Multi-Disciplinary Case Conference (MDCC) was held, and the professionals involved in the case established a case of child abuse and neglect. A Care or Protection Order was granted, and the Court ordered that Mia be placed in the care of an institution for a period of 12 months, subject to ongoing review of the mother's progress.

### 3. Wardship

The child is made a ward of court.<sup>39</sup> 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*".<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> 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) person and property.<sup>43</sup> 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.<sup>44</sup>

### CASE STUDY

Tony is two years old and his parents have been missing since he was born. Tony has been living with grandparents, but they can no longer care for him. He has been waiting for a medical procedure, but as the grandparents have no parental rights to the child, they cannot give consent to medical care. Wardship is granted so that decisions about the child's medical care and placement in residential care can be made by a Court-appointed guardian.

### CAN A CHILD BE PLACED INTO RESIDENTIAL CARE BY ONE PARENT WITHOUT THE CONSENT OF THE OTHER?

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.<sup>45</sup> Apart from the parents, the Director of Social Welfare is the only person who can otherwise make the application.<sup>46</sup> Neither grandparents, aunts, nor uncles etc. of the child have the ability to do so.

If the child is placed into residential care by one parent who is living in Hong Kong, but the other parent lives elsewhere (such as mainland China) and does not consent to the placement, then the first issue for the court to determine would be the child's place of habitual residence. If the child is not habitually resident in Hong Kong, then he or she may be returned to his or her place of habitual residence for such decisions to be made.<sup>47</sup> Depending on the laws of the place where the child habitually resides, the grandparents and other family members of the child may then have the right to apply for orders in respect of the child's custody.



## WHAT ARE THE REVIEW PROCEDURES FOR RESIDENTIAL CARE CASES?

The government has a legal obligation under the Convention on the Rights of the Child to regularly review all residential care placements to make sure that the placements continue to be best suited to each child's needs and best interests.<sup>48</sup> 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.

As defined by the Social Welfare Department, “**Permanency planning**” for a child under out-of-home care is a systematic, goal-directed and timely approach of care planning to maintain the child with his or her family of origin or live in a safe and permanent environment, aiming at securing stability and continuity of nurturing relationships for the child. When professionals plan to refer a child for residential child care services, the best interests of the child are paramount. A comprehensive assessment and accurate information of the family's situation, in respect to the child's genuine need for out-of-home care, are very essential for formulation of a follow-up plan<sup>49</sup>.

## WHEN A CHILD IS LIVING IN RESIDENTIAL CARE, ARE THERE ANY CIRCUMSTANCES WHERE THE BIRTH PARENTS OF THE CHILD WILL LOSE THEIR PARENTAL RIGHTS? IN THESE CASES, CAN THE CHILD BE ADOPTED?

Section 5(5)(a) of the Adoption Ordinance (Cap. 290) requires that parents must give their consent before the court makes any order to authorize an adoption of their child.<sup>50</sup> The parents 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.<sup>51</sup> The court may dispense with the parents' consent and free the minors for adoption (which is called a 'freeing order') in the following situations<sup>52</sup>:

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.<sup>53</sup>

In some cases, particularly where it seems unlikely that the child will ever be returned to his or her 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.<sup>54</sup> Social workers working with the child must prepare all of the evidence available in order for the Judge to make a decision in the child's best interests.

Freeing Orders are covered in greater detail in the chapter “Adoption” of this manual.



# Alternative Care Placements

## What Residential Care Services are Available for Children in Hong Kong?

Residential child care services are provided for children and young persons under the age of 21 who cannot be adequately cared for by their families because of various reasons such as behavioural, emotional or relationship problems, or family crises arising from illness, death and desertion<sup>55</sup>.

“**Non-Institutional Care**”, as defined by the Social Welfare Department includes:

- Foster care - for children under 18 years of age
- Foster care (Emergency) - for children under 18 years of age
- Small group homes - for children from 4 to under 18 years of age
- Emergency/Short-term Care in Small group Home - for children from 4 to under 18 years of age

“**Institutional Care**”, as defined by the Social Welfare Department includes:

- Residential child care centres (Residential creches) - for children under 3 years of age
- Residential child care centre (Residential nursery) - for children from 3 to under 6 years of age
- Children’s reception centre - for children under 18 years of age
- Children’s homes - for children and young persons from 6 to under 21 years of age
- Boy’s homes/girl’s homes - for children and young persons from 7 to under 21 years of age with behavioural or emotional problems.
- Boy’s hostels/girl’s hostels - for young persons from 14 to under 21 years of age with behavioural or emotional problems who are studying or working



## 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 SWD, the 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 social workers' referral. 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 both 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 provide support to 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 were placed in the residential care system with the consent of their respective parents. Because these placements were done voluntarily, the parents would generally retain the legal custody and guardianship over their children while their children 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 were not made through the courts but through the social welfare system and relevant social workers. However, in the case where professionals have concerns about the safety and welfare of the children, wardship applications can be made to the courts 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 the legal right to education, including all children living in residential care. This right is protected by both Hong Kong law<sup>56</sup> and international law<sup>57</sup> and applies to **every child**.<sup>58</sup> Discrimination in education is strictly prohibited.<sup>59</sup> 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.”<sup>60</sup> 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 has been placed in residential care, his or her parents would still have the legal responsibility to pay the school fees and similar expenses of the child.<sup>61</sup> Where a child is receiving financial assistance from the Comprehensive Social Security Assistance (CSSA), his or her parents will typically be in charge of dispensing the money. In case of emergency, parents may apply for government money or emergency funds so as to cover the children's school fees and/or some schools may offer placements free of charge for the children who live in residential care.<sup>62</sup>







## Endnote

- 1 Scully-Johnson, A., Sihombing, Sala., & Lynch. (2016). *Reforming Hong Kong's Child & Family Justice System*. The Chinese University of Hong Kong Press.
- 2 Ijzendoorn, M., Bakermans-Kranenburg, M., Duschinsky, R., Fox, A., Goldman, P., Gunnar, M., Johnson, D., Nelson, C., Reijman, S., Skinner, G., Zeanah, C., & Sonuga-Barke, E. (2020). Institutionalisation and deinstitutionalization of children 1: a systematic and integrative review of evidence regarding effects on development, *Lancet Psychiatry*, 7(8). 10.1016/S2215-0366(19)30399-2.
- 3 Social Welfare Department The Government of the Hong Kong Special Administrative Region. (2021). 2019-20 Annual Service Provision and Statistics - Child Welfare Services. [https://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_family/sub\\_familysps/id\\_cws/](https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_familysps/id_cws/)
- 4 "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." Social Welfare Department The Government of the Hong Kong Special Administrative Region. (2015). *Replies to Questions Raised by Finance Committee Members in Examining the Estimates of Expenditure 2015-16*. Social Welfare Department The Government of the Hong Kong Special Administrative Region.
- 5 Guardianship of Minors Ordinance (Cap. 13), s. 10
- 6 Social Welfare Department The Government of the Hong Kong Special Administrative Region. (2021). Foster care service. [https://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_family/sub\\_listofserv/id\\_fostercare/](https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_fostercare/)
- 7 Social Welfare Department The Government of the Hong Kong Special Administrative Region. (2018). *Replies to Questions Raised by Finance Committee Members in Examining the Estimates of Expenditure 2018-19*. Social Welfare Department The Government of the Hong Kong Special Administrative Region.
- 8 Ibid
- 9 As at 31 December 2017, the average length of stay in various foster families of each child was 35.2 months. The Government of the Hong Kong Special Administrative Region (2018, March 28). Press Releases. <https://www.info.gov.hk/gia/general/201803/28/P2018032800696.htm>
- 10 Knudsen, E.I. (2004). Sensitive Periods in the Development of the Brain and Behavior, *Journal of Cognitive Neuroscience*, 16(8), 1412-1425. <http://www.mitpressjournals.org/doi/pdf/10.1162/0898929042304796>.
- 11 Bellis, M.D.D and Zisk, A., (2014). "The Biological Effects of Childhood Trauma", *Child and Adolescent Psychiatric Clinics of North America*, 23(2), (2014) 185-222. <https://www.sciencedirect.com/science/article/abs/pii/S1056499314000030?via%3Dihub>
- 12 National Scientific Council on the Developing Child, (2007). *The Timing and Quality of Early Experiences Combine to Shape Brain Architecture Working Paper 5*, Centre on the Developing Child Harvard University, [http://developingchild.harvard.edu/wp-content/uploads/2007/05/Timing\\_Quality\\_Early\\_Experiences-1.pdf](http://developingchild.harvard.edu/wp-content/uploads/2007/05/Timing_Quality_Early_Experiences-1.pdf); Greenough W.T. et al., (1987). Experience and Brain Development, *Child Development*, 58(3)539-559. [http://www.jstor.org/stable/1130197?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/1130197?seq=1#page_scan_tab_contents).
- 13 Briggs-Gowan, M.J. et al. (2019). Adverse impact of multiple separations or loss of primary caregivers on young children. *European Journal of Psychotraumatology*, 10(1). <https://www.tandfonline.com/doi/pdf/10.1080/20008198.2019.1646965?needAccess=true>  
See also Ward, H., & Brown R. (2014). *Safeguarding Children in the Early Years*. Pugh G., Duffy B.(Ed.), *Contemporary Issues in the Early Years*. Sage Publishing. [https://www.sagepub.com/sites/default/files/upm-binaries/55707\\_Pugh\\_&\\_Duffy\\_Sample\\_\(Chapter\\_14\).pdf](https://www.sagepub.com/sites/default/files/upm-binaries/55707_Pugh_&_Duffy_Sample_(Chapter_14).pdf)
- 14 See National Scientific Council on the Developing Child.(2014). *Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3*, Centre on the Developing Child Harvard University [http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress\\_Disrupts\\_Architecture\\_Developing\\_Brain-1.pdf](http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf).



- 15 Ibid. [http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress\\_Disrupts\\_Architecture\\_Developing\\_Brain-1.pdf](http://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf).
- 16 See Mock, S.E., & Arai S.M. (2011). Childhood trauma and chronic illness in adulthood: mental health and socioeconomic status as explanatory factors and buffers. *Frontiers in Psychology*. <https://doi.org/10.3389/fpsyg.2010.00246>; Felitti V.J., & Anda R.F., (2009). The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders, and Sexual Behavior: Implications for Healthcare. Lanius R., & Vermetten E. (Ed.), *The Hidden Epidemic: The Impact of Early Life Trauma on Health and Disease*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511777042.010>;
- 17 Greeson, J. et al. (2011). Complex Trauma and Mental Health in Children and Adolescents Placed in Foster Care: Findings from the National Child Traumatic Stress Network. *Child Welfare*, 90(6) [https://www.researchgate.net/profile/Johanna-Greeson/publication/224845521\\_Complex\\_Trauma\\_and\\_Mental\\_Health\\_in\\_Children\\_and\\_Adolescents\\_Placed\\_in\\_Foster\\_Care\\_Findings\\_from\\_the\\_National\\_Child\\_Traumatic\\_Stress\\_Network/links/09e4150b64c4710c70000000/Complex-Trauma-and-Mental-Health-in-Children-and-Adolescents-Placed-in-Foster-Care-Findings-from-the-National-Child-Traumatic-Stress-Network.pdf](https://www.researchgate.net/profile/Johanna-Greeson/publication/224845521_Complex_Trauma_and_Mental_Health_in_Children_and_Adolescents_Placed_in_Foster_Care_Findings_from_the_National_Child_Traumatic_Stress_Network/links/09e4150b64c4710c70000000/Complex-Trauma-and-Mental-Health-in-Children-and-Adolescents-Placed-in-Foster-Care-Findings-from-the-National-Child-Traumatic-Stress-Network.pdf)
- 18 Pecora, P.J. et al. (2005). Improving Family Foster Care, Findings from the Northwest Foster Care Alumni Study. Casey Family Programs. [http://www.casey.org/media/AlumniStudies\\_NW\\_Report\\_FR.pdf](http://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf).
- 19 Braga, T., et al. (2017). Unraveling the link between maltreatment and juvenile antisocial behavior: A meta-analysis of prospective longitudinal studies. *Aggression and Violent Behaviour*, 33, 37-50. <https://www.sciencedirect.com/science/article/abs/pii/S1359178917300150>; Norman, R.E., et al. (2012). The Long-Term Health Consequences of Child Physical Abuse, Emotional Abuse, and Neglect: A Systematic Review and Meta-Analysis. *PLOS Medicine*, 9(11). <https://pubmed.ncbi.nlm.nih.gov/23209385/>; White, C.R. et al. (2011). The Relationship Between Homelessness and Mental Health Among Alumni of Foster Care: Results from the Casey Young Adult Survey. *Journal of Public Child Welfare*, 5(4), 369-389. <https://doi.org/10.1080/15548732.2011.599754>; Middlebrooks, J.S., Audage N.C. (2008) *The Effects of Childhood Stress on Health Across the Lifespan*. Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control [https://drum.lib.umd.edu/bitstream/handle/1903/22891/Childhood\\_Stress.pdf?sequence=1&isAllowed=y](https://drum.lib.umd.edu/bitstream/handle/1903/22891/Childhood_Stress.pdf?sequence=1&isAllowed=y) ; Lopez, P. et al. (2007). Addressing the Health Needs of Adolescents Transitioning Out of Foster Care. *Pediatric Nursing*, 33(4), 345-355. [http://www.medscape.com/viewarticle/563202\\_1](http://www.medscape.com/viewarticle/563202_1); Smith, C.A., & Thornberry T.P. (2006). The Relationship Between Childhood Maltreatment And Adolescent Involvement In Delinquency. *Criminology*, 33(4), 451-481. <http://dx.doi.org/10.1111/j.1745-9125.1995.tb01186.x>; Smith, C.A. et al, Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behavior, *Child Abuse & Neglect*, 29(10), 1099-1119. <https://www.sciencedirect.com/science/article/abs/pii/S0145213405002097>; Kelley B.T. et al. (1997) In the Wake of Childhood Maltreatment, U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention. <https://www.ncjrs.gov/pdffiles1/165257.pdf>; Roman, N.P., & Wolfe, P. (1995). Web of Failure: The Relationship Between Foster Care and Homelessness. National Alliance to End Homelessness. <https://abfe.issueelab.org/resources/3897/3897.pdf>
- 20 Brown, L.A. (2020). Suicide in Foster Care: A High-Priority Safety Concern. *Perspectives on Psychological Science*, 15(3), 665-668. <https://journals.sagepub.com/doi/abs/10.1177/1745691619895076#articleCitationDownloadContainer>; Evans, R., et al. (2017) Comparison of suicidal ideation, suicide attempt and suicide in children and young people in care and non-care populations: Systematic review and meta-analysis of prevalence. *Children and Youth Services Review*, 82, 122-129 <https://www.sciencedirect.com/science/article/pii/S0190740917305261>; Vinnerljung, B., et al. (2006). Suicide Attempts and Severe Psychiatric Morbidity Among Former Child Welfare Clients—A National Cohort Study. *Journal of Child Psychology and Psychiatry*, 47(7), 723-33 <https://pubmed.ncbi.nlm.nih.gov/16790007>
- 21 Madigan, S. (2019). Testing the cycle of maltreatment hypothesis: Meta-analytic evidence of the intergenerational transmission of child maltreatment, *Development and Psychopathology*, 31(1), 23-25 <https://doi.org/10.1017/S0954579418001700>; Thompson, R. (2008). Exploring the Link Between Maternal History of Childhood Victimization and Child Risk of Maltreatment, *Journal of Trauma Practice*, 5(2), 57-72. <https://doi.org/10.1017/S0954579418001700>



org/10.1300/J189v05n02\_04; Violence and Injury Prevention Programme WHO European Centre for Environment and Health. (2007). The Cycles of Violence: The Relationship Between Childhood Maltreatment and the Risk of Later Becoming a Victim or Perpetrator of Violence. WHO Regional Office For Europe [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0008/98783/E90619.pdf](http://www.euro.who.int/__data/assets/pdf_file/0008/98783/E90619.pdf); Mapp, S.C. (2006). The effects of sexual abuse as a child on the risk of mothers physically abusing their children: a path analysis using systems theory. *Child Abuse and Neglect*, 30(11),1293-1310. <http://www.sciencedirect.com/science/article/pii/S0145213406002365>; N, Assubj et al., The intergenerational transmission of child maltreatment: A three-level meta-analysis, *CHILD ABUSE AND NEGLECT* 84, 131-145 ;

- 22 Wulczyn, F. (2004). Family Reunification. *Children, Families, and Foster Care*,14(1), 94-113, at 101-102 <http://files.eric.ed.gov/fulltext/EJ795826.pdf>.
- 23 Leathers S.J., et al. (2010). Predicting Family Reunification, Adoption, and Subsidized Guardianship Among Adolescents in Foster Care. *American Journal of Orthopsychiatry*, 80(3), 422-431. <https://doi.org/10.1111/j.1939-0025.2010.01045.x>
- 24 The Government of the Hong Kong Special Administrative Region, The 2021-2022 Budget, Head 170 – Social Welfare Department, <https://www.budget.gov.hk/2021/eng/pdf/head170.pdf>
- 25 Dolezal, T. (2009). Hidden Costs in Health Care: The Economic Impact of Violence and Abuse. *Academy on Violence & Abuse*.
- 26 Disclaimer: To respect the privacy of those who shared with us their stories, client names may have been changed.
- 27 Convention on the Rights of the Child, Art. 9.
- 28 Convention on the Rights of the Child, Art. 3(1); Guardianship of Minors Ordinance (Cap 13) s 3(1)(a)(i).
- 29 Convention on the Rights of the Child, Art. 18(2),
- 30 Convention on the Rights of the Child, Art. 19(1).
- 31 Convention on the Rights of the Child, Art. 19(2).
- 32 Convention on the Rights of the Child, Art. 20.
- 33 UN General Assembly (64th sess: 2009-2010). (2010). Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly. United Nations Digital Library.
- 34 Protection of Children and Juveniles Ordinance (Cap.213), s 34(1).
- 35 Protection of Children and Juveniles Ordinance (Cap.213), s 34(1). The order referred to in paragraph (d) above can either be made alone or in addition to the order under paragraph (b) or (c).
- 36 Protection of Children and Juveniles Ordinance (Cap.213), s 34(2).
- 37 Protection of Children and Juveniles Ordinance (Cap.213), s 34(4)(a).
- 38 Protection of Children and Juveniles Ordinance (Cap.213), s 34(4)(b).
- 39 High Court Ordinance (Cap. 4), s. 26; Rules of the High Court (Cap. 4A), Order 90 (Proceedings concerning Minors).
- 40 LexisNexis. (2018, July 30). Halsbury's Laws of Hong Kong, ¶180.353



- 41 Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China. (2011). Bills Committee on Guardianship of Minors (Amendment) Bill 2011. Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China. [yr10-11/english/bc/bc57/papers/bc571103cb2-2447-2-e.pdf](#), accessed on 24 June 2020.
- 42 High Court Ordinance (Cap. 4), s. 26(2).
- 43 Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China. (2015). Administration's response to issues raised by members of the Bills Committee at previous meetings. Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China.
- 44 LexisNexis. (2018, July 30). Halsbury's Laws of Hong Kong, ¶180.356
- 45 Guardianship of Minors Ordinance, s10(1).
- 46 Ibid.
- 47 Child Abduction and Custody Ordinance.
- 48 Convention on the Rights of the Child, Art. 2
- 49 Social Welfare Department The Government of the Hong Kong Special Administrative Region. (2021). Protecting Children from Maltreatment - Procedural Guide for Multi-disciplinary Co-operation (Revised 2020). [https://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_family/sub\\_fcwprocedure/id\\_1447/](https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_fcwprocedure/id_1447/)
- 50 Adoption Ordinance (Cap.290), s. 5(5)(a).
- 51 Adoption Ordinance (Cap.290), s.5(5B).
- 52 Adoption Ordinance (Cap.290), s.6,
- 53 Adoption Ordinance (Cap.290), s. 6(1).
- 54 Adoption Ordinance (Cap.290), s 5A.
- 55 Social Welfare Department (2020) Residential Child Care Services, [https://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_family/sub\\_listofserv/id\\_residchildcare/](https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_listofserv/id_residchildcare/)
- 56 Education Ordinance (Cap.279), s.74,
- 57 Convention on the Rights of the Child, Art. 28; International Covenant on Economic Social and Cultural Rights, Art. 13
- 58 UN Committee on the Rights of the Child (CRC). (2001). General comment No. 1 (2001), Article 29 (1), The aims of education. UN Committee on the Rights of the Child (CRC).
- 59 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. (1999). CESCR General Comment No. 13: The Right to Education (Art. 13). Office of the High Commissioner for Human Rights.
- 60 Convention on the Rights of the Child, Art. 29(1)(a).
- 61 Protection of Children and Juveniles Ordinance (Cap.213), s 34(4)(b).
- 62 Based on conversation with Mother's Choice staff.

# What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 **All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.**
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 **My family has the responsibility to help me learn to exercise and protect my rights.**
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 **I have the right to live with a family who cares for me.**
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 **I have the right to be listened to, and to be taken seriously.**
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 **I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.**
- 18 I have the right to be raised by both parents if possible.
- 19 **I have the right to be protected from abuse - from being hurt or badly treated in body and mind.**
- 20 & 21 **I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.**
- 22 If I am a refugee (if I have been forced to leave my home country), I have the same rights as children in my new country.
- 23 **If I have a disability, I have the right to special care and education.**
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 **If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.**
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 **I have the right to play and rest.**
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 **I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.**
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 **I have the right to know my rights! And everyone around me should learn about my rights.**
- 43 - 54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the **United National Convention on the Rights of the Child (UNCRC)** in 1994.

**I am a child, and I have all of these rights.**

**As I grow older, I have more responsibility to make choices and exercise my rights.**

**These rights will help me thrive and reach my full potential.**

