



Hong Kong College of Paediatricians
香港兒科醫學院



**Submission to Panel on Security on
Law Reform Commission Report on
“Sexual offences records checks for child-related work: interim proposals”
8th April 2010**

Hong Kong needs a comprehensive system to protect children from sexual abuse and exploitation. For checks on past sex offences, the Hong Kong College of Paediatricians would like to see the system laid down in legislation rather than being voluntary. Never-the-less, interim measures should be adopted in order not to further delay the protection of children but there should be a defined time frame for legislation to be in place rather than relying on administrative means according to the wish of employers.

With regard to the above report, our College has the following comments:

Recommendation 1

We are against a US-style “Megan’s Law” being introduced into Hong Kong.

Recommendation 2

We support, as an interim measure, the establishment of an administrative scheme to enable the criminal conviction records of sexual offences of persons who undertake child-related work and work relating to mentally incapacitated persons to be checked.

Measures to protect human rights are indeed important. Declaration of the Rights of the Child stipulates that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection...” As Hong Kong has a commitment to implement the Convention on the Rights of the Child, Hong Kong is to protect the child from all forms of sexual abuse and exploitation. The basic principle of the Convention is that “in all actions concerning children... the best interests of the child shall be a primary consideration.” Therefore, the child, being a holder of human rights, and being in a vulnerable position, needs on balance more consideration and stronger protection while respecting the rights of offenders.

Rehabilitation of the offender is a concern. For the protection of both children and offenders, there should be a holistic scheme including treatment, rehabilitation, risk assessment and management of offenders. An important step is to look into mandatory treatment.

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Recommendation 3

We agree that the definition of a child is a person below the age of 18 years and that for the purposes of the recommendations "child-related work" is to be defined as work where the usual duties involve, or are likely to involve, contact with a child or mentally incapacitated person. Employees, volunteers, trainees and self-employed persons should be covered by the scheme.

Recommendation 4

To avoid further delay in implementation of the system, we accept as an interim measure that checking whether an employee has any previous convictions for sexual offences is voluntary but registered organizations should be urged to make the check mandatory within their organization pending legislative changes.

We are still concerned that a voluntary system, like the certificate declaring the holder is not prohibited to be a child-minder under the Child Care Services Ordinance, is little known and rarely used to make the system being in place only in name. Offenders with an interest in child molestation may seek out employers that do not make it a rule to check potential employees with children harmed as a result. Having a mandatory scheme also protects the employer from accusations of discrimination of individual employees. Therefore the next step should be to study legislative changes to make the system mandatory.

Recommendation 5

We agree with the recommendation that the system should apply to both existing and prospective employees, volunteers, and trainees. It can start with prospective employees including those on probation and be extended progressively to persons in existing posts.

Recommendation 6

The system of checking is acceptable but the employer needs to have proper documentation that such a check has been made. In a screening system where few positives are expected, any false negatives would much reduce the effectiveness of the whole system or create difficulties when the system is being reviewed.

Recommendation 7

We agree to the proposed list of serious sexual offences to be included.

Recommendation 8

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We agree that the check will include only convictions of sexual offences and not be processed till a charge or arrest for such offences is settled.

Recommendation 9

As serious sex offences are unlikely to be under the category of "spent" convictions, our College accepts this recommendation.

Conclusion

The measures are interim proposals intended to be implemented with minimal delay. The Law Reform Commission recognizes that the proposals are "extremely modest" compared with other jurisdictions considered by the Commission. Our College does not wish to see the interim measures giving an unwarranted sense of security that a system is already in place to protect children against repeat sex offenders. The establishment of more permanent and comprehensive measures should be accorded due priority.

As mentioned in our previous submission to the Law Reform Commission, such record checks are only a small piece in the jigsaw of the prevention of child sexual abuse and exploitation, albeit an important piece. The community needs to be aware that most sexual abuse is committed by family members and friends where such checks would not apply. Neither does the check prevent the first offence. As Hong Kong does not have mandatory reporting of child maltreatment, offenders may be dismissed and change employers without going through an official investigative process. With the legal system, conviction not being registered may mean that there were difficulties in the collection of evidence, that the defendant was given the benefit of doubt or that through plea bargaining, the conviction was for a lesser offence. The interim proposals do not cover other forms of child maltreatment other than the specified sex offences. They also do not cover convictions outside Hong Kong. Hence potential employees from overseas may have to be checked separately.

Community education and support to enhance adults' ability to protect children and children's ability to protect themselves are essential. Organizations involved with child-related work should have systems in place to avoid putting children at risk of abuse under the care of adults. In preparation for a more comprehensive approach to sex offenders, we need to have professionals trained in offender assessment and treatment. Investment in these areas will do much to prevent the trauma to our children from sexual abuse.

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