

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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3 February 2015

Miss Betty Ma
Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Fax No: 2185 7845)

Dear Miss Ma,

Thank you for your letter dated 7 January 2015. Our reply is set out below.

According to section 34 of the Protection of Children and Juveniles Ordinance (Cap 213) ("Ordinance"), a police officer may apply to a juvenile court for a care or protection order for a child or juvenile who needs care or protection. The sole purpose of the Police in making such application is to help the child or juvenile obtain appropriate care or protection against any harm rather than penalize the child or juvenile or his parent or guardian.

Under section 34(2) of the Ordinance, a child (aged under 14) or juvenile (aged between 14 and 18) in need of care or protection means a child or juvenile:

- (a) who has been or is being assaulted, 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.

When applying for a care or protection order, the Police have to comply with the objective requirements stated in the statutory provision above.

In making the application, the Police have a role to present the actual circumstances and related facts about the child or juvenile to the court for its consideration. According to the Ordinance, social workers of the Social Welfare Department or persons authorized by the Director of Social Welfare ("DSW") may also apply to the court for a care or protection order.

Regardless of the circumstances, the Police will never propose arrangements or alternatives to the court when applying for a care or protection order. In respect of the Police's application, the court will hear the views of the parent or guardian of the child or juvenile, his legal representative and the social worker concerned before handing down its decision. The role of the Police is to submit the completed application form and case summary to the court. The Police do not participate in the hearing.

Under section 34(1) of the Ordinance, a juvenile court, on its own motion or on the application of the DSW or of any police officer upon being satisfied that the child or juvenile brought before the court is in need of care or protection, may appoint the DSW to be the legal guardian of such child or juvenile; 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; order his parent or guardian to enter into recognizance to exercise proper care and guardianship; or even make an order placing him for a specified period, not exceeding 3 years, under the supervision of a person appointed by the court. Decisions are to be made independently by the court based entirely on the circumstances of individual cases. The Police do not make proposals and have no power to influence such decisions of the Judiciary.

Legislative Councillors have expressed concern about the application of a care or protection order by the Police for a 14-year-old girl who was arrested for defacing the external wall of the Central Government Offices. In handling the case, the Police adhered strictly to the requirements under the

abovementioned statutory provision and determined to apply for such order from the court for the teenager, taking into account her background and her family's ability of exercising care. We wish to point out that it is possible for the Police or DSW to apply for a care or protection order for a child or juvenile not in proper care or protection even if he/she has never committed an offence. Considerations adopted by the Police in handling this case are no different from those in other similar cases. For the sake of protecting the privacy of the minor, it is not appropriate for the Administration to comment further on the case.

Yours sincerely,

(Mrs Millie Ng)
for Secretary for Security

c.c. Assistant Commissioner of Police (Crime)