

(Translation)

香港特別行政區政府
保安局



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The Government of the
Hong Kong Special Administrative Region
Security Bureau

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7 August 2015

Miss Kay Chu
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Chu,

At the special meeting of the Panel on Welfare Services held on 13 June 2015, Members requested the Government to provide supplementary information in relation to the training provided to Police frontline officers on the handling of mentally-incapacitated persons (MIPs). The Government's response is at [Annex 1](#).

Members also requested the Government to provide the Police General Orders which are related to the handling of MIPs. An extract of relevant sections is at [Annex 2](#).

Yours sincerely,

(Signed)

(Dennis Ching)
for Secretary for Security

c.c.:

Commissioner of Police
(Attn: Ms Irene Ho
Mr Henry Tam)

Overview of Training Provided to Police Officers in Dealing with Mentally Incapacitated Persons

Training Course and Target	Training Aim and Syllabus	Training Mode and Instructor	Number of Sessions
<p>Foundation Training (For Recruit Police Constables and Probationary Inspectors)</p>	<p>Aim includes: To enable new recruits</p> <ul style="list-style-type: none"> ● To apply “Rules and Directions for the Questioning of Suspects and the Taking of Statements” to question suspects and take statements (including from mentally incapacitated persons); ● To take appropriate actions to deal with the injured, sick, persons suffering from memory loss, the disabled, wandering child and elderly, disorganised persons and the poor; ● To appropriately handle 	<ul style="list-style-type: none"> ● Lectures by Police Force (“Force”) instructors or guest lecturers, exercises, evaluations, tutorials and workshops. 	<ul style="list-style-type: none"> ● Recruit Police Constables: 28 sessions, comprising sections of “Rules and Directions for the Questioning of Suspects and the Taking of Statements”, “The sick, injured, persons suffering from memory loss, disorganised persons and the poor”, “taking over a report room, custody search, custody and detention management” and “Force Values”. ● Probationary Inspectors: 23 sessions, comprising sections of “Rules and Directions for the Questioning of Suspects and the Taking of Statements”, “The sick, injured, persons

	<p>detained persons (including mentally incapacitated persons);</p> <ul style="list-style-type: none"> ● To strengthen their recognition of Force Vision, Statement of Common Purpose and Values, and to serve the community in a professional manner; and ● To discharge the police duty effectively and up to a high moral standard and meet the expectations from the Force and the general public. <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● “Rules and Directions for the Questioning of Suspects and the Taking of Statements” and how to apply it to question suspects and take statements (including from mentally incapacitated persons); ● Procedures for and skills of 		<p>suffering from memory loss, disorganised persons and the poor”, “taking over a report room, custody search, custody and detention management” and “Force Values”.</p>
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	<p>dealing with the injured, sick, persons suffering from memory loss, the disabled, wandering child and elderly, disorganised persons and the poor;</p> <ul style="list-style-type: none"> ● Safe custody and protection of detained persons (including mentally incapacitated persons); ● Force Vision, Statement of Common Purpose and Values; and ● Living-the-Values Workshops. 		
<p>Constable Continuation Training (For those with 3 months' experience)</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> ● To enable trainees to take correct actions during stop and search, and to deepen their understanding of “Rules and Directions for the Questioning of Suspects and the Taking of 	<ul style="list-style-type: none"> ● Lectures by Force instructors, case studies, role-plays and practices, and completion of worksheets. 	<ul style="list-style-type: none"> ● 6 sessions, comprising sections of “Rules and Directions for the Questioning of Suspects and the Taking of Statements” and “Force Values”.

	<p>Statements”, and</p> <ul style="list-style-type: none"> ● To enable fresh graduates to acknowledge Force Values. <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● Skills of stop, question and search; ● How to apply “Rules and Directions for the Questioning of Suspects and the Taking of Statements” to give cautions and make statements (including mentally incapacitated persons); and ● Force Values. 		
<p>Inspector Continuation Training (For those with 6-9 months’ experience)</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> ● To deepen trainees’ understanding of “Rules and Directions for the Questioning of Suspects and the Taking of Statements”, and to exercise appropriate 	<ul style="list-style-type: none"> ● Lectures by Force instructors, discussions, role-plays and experience sharing. 	<ul style="list-style-type: none"> ● 9 sessions, comprising sections of “Rules and Directions for the Questioning of Suspects and the Taking of Statements” and “Force Values”.

	<p>supervision; and</p> <ul style="list-style-type: none"> • To apply a higher moral standards when discharging duties to meet the expectations from the Force and the general public. <p>Syllabus includes:</p> <ul style="list-style-type: none"> • How to apply “Rules and Directions for the Questioning of Suspects and the Taking of Statements” to give cautions and make statements (including mentally incapacitated persons); and • The importance of practising Force Values. 		
Police Constable Development Course	<p>Aim includes:</p> <ul style="list-style-type: none"> • To enable trainees to 	<ul style="list-style-type: none"> • Experience sharing, group discussions, lectures by 	<ul style="list-style-type: none"> • 3 sessions, comprising sections of “Rules and Directions for

	<p>understand the importance and skills of the correct taking of cautioned and witness statements (including those taken from mentally incapacitated persons);</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● To understand the “Rules and Directions for the Questioning of Suspects and the Taking of Statements”; ● To be aware of the points to note in taking cautioned statements; ● To understand the court’s acceptance criteria for cautioned statements; ● To understand the purpose of taking witness statements; and ● To note the guidelines for taking witness statements. 	<p>Force instructors and statement taking exercises.</p>	<p>the Questioning of Suspects and the Taking of Statements”.</p>
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<p>Sergeant Promotion and Development Courses</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> • To enable trainees to understand the general duties of a duty officer and to discharge such duties in a professional manner; • To strengthen their professional sensitivity; and • To enhance their professional conduct. <p>Syllabus includes:</p> <ul style="list-style-type: none"> • To take over a report room, custody search and detention management (including mentally incapacitated persons); • Duties of a duty officer at a report room - supervisory functions; • Custody search and detention management - human rights and duty of care; • Handling of report room 	<ul style="list-style-type: none"> • Lectures by Force instructors. 	<ul style="list-style-type: none"> • 9 sessions, comprising sections of “taking over a report room, custody search, custody and detention management”, “professional sensitivity” and “Force Values”.
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	<p>cases - test of trainees' supervisory abilities and police knowledge;</p> <ul style="list-style-type: none"> • Tips on professional sensitivity; • Force Values and its importance; • Professional police; • Ethical/conduct issues of police; and • Professional responsibility, sense of commitment and pride. 		
<p>Station Sergeant Promotion Course</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> • To deepen their knowledge of the human rights of detained persons and the duty of care of the Force towards them; • To familiarise themselves with the initial actions on the handling and search of detained persons, and the 	<ul style="list-style-type: none"> • Lectures and case analysis by Force instructors. 	<ul style="list-style-type: none"> • 13 sessions, comprising sections of “taking over a report room, custody search, custody and detention management”, “equal opportunities” and “Force Values”.

	<p>handling and search of detained persons with special needs;</p> <ul style="list-style-type: none"> • To introduce legislation, conventions, agreements and procedures related to equal opportunities, to reflect on equal opportunities through relevant cases; and • To enhance their own professional conduct and to promote the professional conduct of the Police to their subordinates. <p>Syllabus includes:</p> <ul style="list-style-type: none"> • To take over a report room, custody search and detention management; • Introduction of anti-discrimination legislations in Hong Kong (including disability discrimination); 		
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	<ul style="list-style-type: none"> • Introduction to international law and laws of Hong Kong related to anti-discrimination legislations; • How the Force deals with complaints; • How the Equal Opportunities Commission deals with complaints; • Force Values; • Professional police; • Ethical/conduct issues of police; • The work of Force Ethics Officer; and • Professional responsibility, sense of commitment and pride. 		
Command Courses	<p>Aim includes:</p> <ul style="list-style-type: none"> • To raise Inspectors’/ Senior Inspectors’ understanding of anti-discrimination legislations in Hong Kong 	<ul style="list-style-type: none"> • Lectures by Training Officer of the Equal Opportunities Commission. 	<ul style="list-style-type: none"> • 1 session, comprising a section of “equal opportunities”.

	<p>(including disability discrimination), to explore the possible legal consequences of discrimination, and to deepen their understanding of the role and work of the Equal Opportunities Commission;</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> • Introduction of anti-discrimination legislations. 		
<p>Standard Criminal Investigation Course</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> • To enable trainees to understand how to take cautioned statements from persons suspected or known to be mentally incapacitated persons; • To familiarise themselves with the procedures for and 	<ul style="list-style-type: none"> • Lectures by Force instructors, role-plays, case-sharing, mock video interviews with vulnerable witnesses and e-learning. 	<ul style="list-style-type: none"> • 8 sessions, comprising sections of “Rules and Directions for the Questioning of Suspects and the Taking of Statements”, “The sick, injured, persons suffering from memory loss, disorganised persons and the poor”, “taking over a report room, custody search, custody

	<p>skills of dealing with mentally incapacitated persons (including witnesses and suspects); and</p> <ul style="list-style-type: none"> • To increase detective police officers' knowledge of the procedures for and skills of handling persons detained by the Police. <p>Syllabus includes:</p> <ul style="list-style-type: none"> • Skills of taking statements; • “Rules and Directions for the Questioning of Suspects and the Taking of Statements”, including points to note when dealing with mentally incapacitated persons; • Procedures for and skills of dealing with the sick, injured, persons suffering from memory loss, disorganised persons and the poor (including mentally 		<p>and detention management” and “psychology of crime and investigation”.</p>
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	<p>incapacitated persons);</p> <ul style="list-style-type: none"> • Procedures for handling persons detained by the Police. • Skills of interviewing mentally incapacitated persons (including witnesses and suspects); and • Skills of questioning mentally incapacitated persons. 		
<p>Advanced Criminal Investigation Modules</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> • Police Clinical Psychologists to explain the characteristics of some mental and psychological illnesses (such as schizophrenia, manic-depressive disorder and autism) to trainees to increase their knowledge on such illnesses and to raise their relevant awareness. 	<ul style="list-style-type: none"> • Lectures and discussions led by Police Clinical Psychologists. 	<ul style="list-style-type: none"> • 8 sessions, comprising sections of “psychology of crime and investigation”.

	<p>They also teach trainees how to apply psychology to criminal investigation and how to deal with vulnerable witnesses.</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> • How to apply relevant knowledge to criminal investigation; and • Understanding common mental and psychological illnesses including schizophrenia, manic-depressive disorder and autism. 		
<p>Training Days (For all frontline police officers)</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> • Training Days Package “Handling Mentally Disordered Persons” 	<ul style="list-style-type: none"> • Lectures by Force instructors. 	<ul style="list-style-type: none"> • Sections of half-day training days.

	<p>(released in February 2014) to increase officer's knowledge on mentally disordered persons, so that they can handle cases more professionally.</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● Understanding “psychosis”; ● Force guidelines on dealing with “mentally disordered persons”; ● Identifying whether mentally disordered persons require mental health and/or social welfare follow-ups; ● Mechanisms for transferring data of mentally disordered persons; and ● Inter-department cooperation strategies. 		
E-learning packages (For all frontline police officers)	<p>Aim includes:</p> <ul style="list-style-type: none"> ● An e-learning package called “Criminal 	<ul style="list-style-type: none"> ● Self-learning computer software. 	<ul style="list-style-type: none"> ● Not applicable.

	<p>Psychology” was released in April 2015 in cooperation with Police Clinical Psychologists. It includes understanding of autism to increase officers’ knowledge on relevant topics and to strengthen their professionalism when discharging their duties.</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● Common signs of persons with autism; ● Psychology of sex offenders; and ● Psychology of theft. 		
<p>“Training course on conducting video-recorded interview with children and mentally incapacitated persons” (Trainees come from the Hong Kong Police Force</p>	<p>Aim includes:</p> <ul style="list-style-type: none"> ● To enhance trainees’ understanding of children and mentally incapacitated persons, and to enhance their practical knowledge 	<ul style="list-style-type: none"> ● Instructors consisting of clinical psychologists from the HKPF and the SWD, police officers and social workers from the SWD who have solid 	<ul style="list-style-type: none"> ● The course is divided into 4 stages and lasts about 3 weeks in total.

<p>(HKPF), the Social Welfare Department (SWD), other government departments and non-governmental organisations)</p>	<p>and skills on video-recorded interviews, and the professional skills required for “joint investigation” by the HKPF and the SWD.</p> <p>Syllabus includes:</p> <ul style="list-style-type: none"> ● Understanding mentally incapacitated persons; ● Understanding abused mentally incapacitated persons; ● Procedures for multi-disciplinary collaboration dealing with suspected abuse of mentally incapacitated persons; ● Legislation protecting mentally incapacitated persons suspected to be subject to abuse; ● Procedures for the investigation and trial of cases involving abuse of mentally incapacitated 	<p>experience and track record in the handling of children and mentally incapacitated persons. Forensic pathologists, government medical officers, clinical psychologists from the Correctional Services Department as well as social workers from SWD who have a wealth of practical experience in dealing with “mentally incapacitated persons” are also invited as guest lecturers.</p> <ul style="list-style-type: none"> ● Training modes include classroom lessons, talks, discussions, role-plays and practices. 	
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	<p>persons;</p> <ul style="list-style-type: none"> ● Ordinances on relevant crimes, related criminal procedures and ordinances about witness support; ● Support to mentally incapacitated victims and witnesses; ● Proof in offences involving mentally incapacitated victims; and ● Interviews with mentally incapacitated persons with special needs. 		
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**Security Bureau
Hong Kong Police Force
August 2015**

POLICE GENERAL ORDERS

CHAPTER 49

PERSONS IN POLICE CUSTODY

04/03
03/07
12/11

Definitions

A Person Under the Age of 18 Years

A person apparently under the age of 18 years shall be defined as follows:

- (a) 'Child' is any person apparently under the age of 14 years;
- (b) 'Young person' is any person apparently 14 years of age upwards and under the age of 16 years; and
- (c) 'Juvenile' is any person apparently 14 years of age upwards and under the age of 18 years.

Appropriate Adult

An appropriate adult in respect of a detained person shall follow the same definition as described at **FPM 21-36(3)**:

- (a) a relative, guardian or other person responsible for care or custody of that person;
- (b) someone who has experience of dealing with a person with a particular special need, but who is not a police officer nor employed by police, such as a social worker; or
- (c) failing either of the above, some other responsible adult who is not a police officer nor employed by the police.

Authorized Persons

For the purpose of visits to and communication with persons detained in police detention facilities (cell or THA) 'Authorized Persons' are:

- (a) a police officer who has a lawful duty to visit police detention facilities or custodial ward and to check the person(s) detained therein in the course of duties;
- (b) a civilian who is required to visit police detention facilities or custodial ward in the course of duty, e.g. a WKM II for cleaning purposes, etc.;

PERSONS IN POLICE CUSTODY

- 14/11
- (c) a relative or friend who will be permitted to visit a detained person at reasonable times and at reasonable intervals, subject to the discretion of the Duty Officer, other than in circumstances where the OC Case has provided cogent justifications for restricting outside contact, for a specific time frame. If there is any doubt, the Duty Officer shall seek instruction from the OC Case and, where necessary, from the ADVC OPS or DVC or equivalent;
 - (d) a Magistrate, Justice of the Peace, Correctional Services officer, Doctor, or member of hospital staff who is required to visit a detained person or prisoner in the course of duty;
 - (e) a Consul or other official representative of any country provided there is reasonable proof that the detained person is a national of that country and the detained person consents to see them;
 - (f) the welfare officer and/or a senior officer of a Department of the Government Disciplined Services who is to be permitted to visit a detained person who is a member of this Department with the prior arrangement of the OC Case/ADVC CRM/CIP CRM/ADVC OPS or equivalent;
 - (g) a Solicitor or Barrister (with Solicitor or Solicitors Clerk) in accordance with the PGO and FPM 49-20, other than in circumstances where the OC Case provides cogent justification, separate from sub-para (c) above, for specifically restricting access to the detained person; and
 - (h) any other person who has lawful business to visit police detention facilities or custodial ward and is authorized in writing in that behalf by the ADVC ADM, ADVC OPS or the DVC concerned, e.g. a maintenance workman or religious representative.

Custody Officer

'Custody Officer' is the Duty Officer who is responsible for the acceptance, safety, security and welfare of any person arrested and detained in police detention facilities, the search of such persons prior to their being detained in a police detention facility, and authorizing any continued detention in custody or subsequent release, whether unconditionally or subject to recognizance.

Custody Search

14/11 A custody search is a search conducted on a detained person prior to the detention in a police detention facility.

PERSONS IN POLICE CUSTODY

Detained Person

‘Detained Person’ refers specifically to a person being detained or to be detained in a police detention facility.

Detained Person’s Property

‘Detained Person’s Property’ means all property of any nature taken from a detained person, or articles belonging to the person so detained and subsequently taken over by Police, and not in any way connected with the alleged offence.

Detained Person with Special Needs

‘Detained Person with Special Needs’ includes the following:

- (a) Detained persons under the age of 16;
- (b) Detained persons who are or suspected to be mentally incapacitated;
- (c) Detained persons with physical disabilities;
- (d) Detained persons with physical communication difficulties e.g. deaf or blind;
- (e) Detained transsexuals and transvestites; and
- (f) Other detained persons who the Duty officer considers may require special attention¹.

Officer-in-charge of a Police Station

‘Officer-in-charge of a Police Station’, for the purposes of Section 51 of the Police Force Ordinance, Cap. 232, shall be the Duty Officer and the DVC, (or an equivalent officer in other Formations). If necessary, the Commissioner will from time to time authorize other officers in this behalf.

Police Detention Facility

Police Detention Facilities are cells and Temporary Holding Areas (THAs).

Period of Custody

The period of detention in police custody for an arrest is to be calculated from the original time a person was arrested for an offence, even if the same person is subsequently determined to be a suspect in connection with other offences during the period of detention.

¹ FPM 49-12 ‘Sick or Injured Persons in Police Custody’ covers a person in police custody (including a detained person) who appears to the Duty Officer to require medical attention. FPM 49-05 and 23 and PGO/FPM 49-36 deal with a person who is in lawful possession of prescribed drugs or medication.

PERSONS IN POLICE CUSTODY

Person in Police Custody

'Person in Police Custody' is any person in the custody of the Commissioner commencing from the time a person is arrested until the time of release or delivery into jail custody by a court.

Prisoner

'Prisoner' is any person remanded into jail custody by a court of law and detained in the custody of the Commissioner of Correctional Services.

Private Parts

"Private Parts" in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman.

Reviewing Officer

'Reviewing Officer', is the ADVC OPS (or equivalent Inspectorate officer designated in the absence of the ADVC OPS) who is responsible to review the detention or continued detention of all persons in police custody in the station. The Reviewing Officer will resolve any conflict between the OC Case and the Custody Officer over the detention or continued detention of any such detained person.

Temporary Holding Area

A 'Temporary Holding Area' (THA) is defined as:

Any purpose-built facility or multi-purpose area inside a police station, including the station compound, that has been designated by an officer of the rank of Superintendent or above as a location for the temporary holding of detained persons.

49-01 Process and Detention of Persons in Police Custody

Section 51 of the Police Force Ordinance, Cap. 232 states that:

"Every person taken into custody by a police officer with or without a warrant, except a person detained for the mere purpose of taking his name and residence or detained under Section 54, shall be forthwith delivered into the custody of the officer-in-charge of a police station or a police officer authorized in that behalf by the Commissioner."

2. Where an arrest is made, the person arrested shall be brought before the officer-in-charge of the police station (i.e. the Duty Officer) of the Division where the arrest was made, or other officer authorised by the Commissioner, and the person's particulars shall be entered into CIS. **If the arrest and detention is justified, confirmation will be made in CIS by the Duty Officer.**

PERSONS IN POLICE CUSTODY

3. The Duty Officer who is not satisfied that the arrest of any person was lawful in the context of this order shall release such person forthwith.

4. It is the responsibility of the Duty Officer to decide, under the provisions of Section 52 of the Police Force Ordinance, whether an arrested person shall remain in police custody or be released, whether unconditionally or subject to recognizance. The Duty Officer shall take into account the views of the OC Case if the latter is of the rank of Inspector or above. In any case in which the decision of the Duty Officer does not accord with the views of an OC Case, then the matter shall be referred to the ADVOC OPS for a decision. Any decision by the ADVOC OPS shall be documented on the case file and full details included in the 'DO's Notes' section of the appropriate CIS Detention Record.

5. The following arrested persons shall be detained in police custody :

- (a) any person, other than a child or young person, delivered into police custody by a member of the Immigration Department, Customs and Excise Department or Independent Commission Against Corruption unless the memorandum accompanying the prisoner states that bail may be granted. In such a case, bail shall only be granted in the amount stated in the memorandum for the person to report at a police station or a court on the date and time specified and shall be subject to any special conditions which may be enumerated therein;
- (b) any child or young person, due to any one of the reasons stated in PGO 49-17(2)(a) to (c) considered not appropriate to be sent to a remand room, is one of the categories set out in section 4 of the Juvenile Offenders Ordinance, Cap. 226, namely:
 - (i) who is charged with homicide or some other grave crime;
 - (ii) whose interest requires that he/she be removed from association with any undesirable person; and
 - (iii) whose release would defeat the ends of justice.

6. If it appears to the Duty Officer that the inquiry into the case of an arrested person cannot be completed forthwith, he/she shall, pursuant to Section 52(3) of the Police Force Ordinance, release the arrested person:

- (a) unconditionally;
- (b) on own-recognizance to appear at a Police Station; or
- (c) on bail to appear at a Police Station.

PERSONS IN POLICE CUSTODY

7. An arrested person who is not detained in police custody under PGO 49-01(5), or released under PGO 49-01(6), shall be released by the Duty Officer on bail to appear before a magistrate.

8. When a person who has been lawfully arrested or detained under:

- (a) Section 50 of the Police Force Ordinance, as a person suspected of being liable to deportation; or
- (b) the Immigration Ordinance, Cap. 115;

is brought to a Duty Officer, the Duty Officer shall, if satisfied that such person is under lawful custody, detain such person in police detention facilities.

9. Whenever an officer requests a Duty Officer to accept a person into custody, or whenever the Duty Officer is asked to detain a person brought from another station, the Duty Officer shall be informed by the escorting officer of the date and time of the arrest of that person. The Duty Officer shall further be informed by the OC Case of the date and time of application for, issue or service of, any warrant of detention applicable to such person in police custody. The Duty Officer shall make an appropriate entry in CIS.

10. Escorting officer(s) shall remain with the person in police custody until released from their responsibilities by the Duty Officer.

11. All persons in custody, including foreign nationals, are entitled to the right to communicate with a relative, friend, legal counsel or representatives from the consulate or the relevant authority of the person's home country provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or administration of justice.

12. The Duty Officer is to ensure the food and water be supplied to a person in police custody on request.

Charge to Court

13. When a person in police custody is charged with an offence, the person shall normally be taken before a Magistrate as soon as practicable, which means not later than the next sitting of the Magistrate's court. An OC Case must be prepared to justify to a Magistrate's satisfaction, the period a person spent in police custody.

Period in Custody

14. In any case where a person is in police custody under an ordinance or a warrant for a specified period, it shall be the responsibility of the Duty Officer to ensure that such person is not detained for a period longer than that permitted by law. If, in such a case, no instructions to release, or no warrant authorizing further custody are received within twelve hours before the expiry of such period, the Duty Officer of the station at which the person has been in custody shall notify the OC Case. If for any reason the Duty Officer is unable to contact the OC Case, the Duty Officer shall notify the DVC who shall in turn inform the Formation Commander concerned of the situation. At the expiry of such period if no legal authority for further detention has been received, such person shall be released forthwith by the Duty Officer.

15. All such action shall be documented in CIS.

49-4 Custody Search

07/08

The Commissioner of Police has determined that in order for Police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in police detention facilities and to ensure the safety of others who may come into contact with them, **a custody search will be conducted on all persons to be detained in police detention facilities.**

Handheld Metal Detector

2. The Duty Officer shall ensure that a handheld metal detector is used prior to a custody search being conducted and a record is made in CIS to this effect as well as the result after the use of handheld metal detector. If the handheld metal detector was not used prior to a custody search, such fact will be recorded in CIS (Supplementary Information in the Custody Search Record Module) detailing the reason for not using the handheld metal detector.

Reasons

3. The Duty Officer, or an officer authorized by the Duty Officer, will search a detained person prior to the person being detained in a police detention facility. The Duty Officer will determine the scope of the custody search on a case-by-case basis, based upon the prevailing circumstances, in order to be satisfied that a detained person does not have:

- (a) any weapon or article with which the detained person might do self-harm or others an injury or any implement with which an escape may be effected; and/or
- (b) evidence which is material to the offence for which the detained person is arrested or charged and any other offences; and/or
- (c) any article with which a further crime could be committed e.g. malicious damage to property or consumption or distribution of dangerous drugs.

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Factors

4. The scope of a custody search on each occasion is to be determined having regard to the prevailing circumstances and shall be proportionate to such circumstances and justifiable. When deciding the scope of a custody search to be conducted, the Duty Officer shall take into consideration the following factors, which are not exhaustive, including:

- (a) offence(s) committed;
- (b) criminal record(s);
- (c) level of violence exhibited during offence and upon arrest;
- (d) suicidal tendency exhibited;
- (e) previous record(s) of self-harm, if known;
- (f) demeanour following arrest and case processing;
- (g) any other behavioural characteristics displayed; and
- (h) any other relevant factors.

Scope

5. The Duty Officer will make a record in CIS Custody Search Record of all custody searches conducted on detained persons, distinguishing between a custody search that involves:

Level I - Non-removal of clothing

'non-removal of clothing' e.g., a detained person is given a pat-down search and no items of clothing, except footwear, are removed. This may include the search of a handbag and/or a detained person is asked to empty pockets;

Level II - Removal of clothing

'removal of clothing' e.g., this would include a detained person being asked to remove coat, trousers, shirt / blouse and the search of such items; and

Level III - Removal of underwear

'removal of underwear' e.g., the request for removal of items of clothing usually worn to cover a person's private parts.

All "removal of underwear" custody searches shall be further sub-categorised as follows:

- (a) Looking into underwear; or
- (b) Partial removal of underwear; or
- (c) Full removal of underwear.

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6. Prior to conducting a custody search, the Duty Officer, or in the Duty Officer's absence, a designated deputy, will explain to the detained person the reason(s) for the custody search and the scope of the custody search to be carried out.

Custody Search Form (Pol. 1123)

7. Prior to a custody search, the Duty Officer will ensure that a copy of the 'Custody Search Form' (Pol. 1123), in the language of the detained person if a translated copy is available, which clearly sets out the rights and entitlements of persons to be searched before being detained in a police detention facility is served on the detained person. The contents of the Pol. 1123 shall be explained, as far as practicable in the language that the detained person speaks, and the detained person shall be invited to sign the Pol. 1123 in acknowledgement. A new Pol. 1123 will be used for subsequent custody searches, if any. A copy of signed Pol. 1123 will be provided to the detained person for retention whilst in police custody, provided that the detained person does not have suicidal tendency. A copy of the Pol 1123 is at Annex A.

Record of Custody Search

8. Officers conducting or witnessing the search of a detained person will cross-reference the search in their police notebook with the relevant record made in CIS.

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Manner in which a Custody Search is conducted

9. Custody searches shall be conducted by police officers as follows:

- (a) only officers of the same gender as the detained person will be present when a custody search is conducted;
- (b) only officers of the same gender as the detained person will conduct the custody search;
- (c) at least two officers of the same gender as the detained person will be present;
- (d) the custody search will be conducted only in an area offering privacy; and
- (e) the custody search will be conducted in a search room within the report room designated by the DVC or equivalent, which is not in view of persons other than those officers required to carry out, witness or supervise the custody search. The door of the search room where the custody search is conducted shall be locked or the access restricted during the search. Such room(s) shall be equipped with a proper lock to ensure unauthorized persons cannot enter during a custody search. If the door is fitted with a glass panel, a blind shall be installed to ensure persons outside the room cannot see inside.

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10. Where clothing (including underwear) is to be removed, officers will:
- (a) not require a detained person to remove all clothes at the same time, e.g. a person whose clothing above the waist has been removed should be allowed to put the clothing back on before removing clothing below the waist;
 - (b) conduct a custody search as quickly as practicable; and
 - (c) allow the detained person to put the clothing on as soon as the custody search is complete.

11. Custody searches are never to be used as a punitive measure. In particular, a custody search involving the removal of underwear shall not be conducted routinely but only in circumstances with strong justification.

12. A custody search involving the removal of underwear may take place only if it is considered necessary to remove an article which a detained person would not be allowed to keep, and the Duty Officer reasonably considers the detained person might have concealed such an article.

13. Police officers will conduct every custody search with proper regard to the privacy and dignity of the detained person. If it is determined that a custody search involving the removal of clothing or underwear is to be carried out, physical contact between the detained person and the searching officer is to be kept to the minimum. Duty Officers will make every practicable effort to minimize embarrassment and to secure the detained person's co-operation in the search process.

Standard Custody Search Procedures

14. All custody searches shall be conducted in accordance with FPM 49-04 (7) to (19).

15. In the unlikely event that the detained person is requested to perform any actions or postures which depart from the standard search procedures contained in this instruction, such actions or postures must be justified and the reasons fully recorded in CIS.

Record of Custody Search in CIS

16. The Duty Officer, or a designated deputy in the Duty Officer's absence, will record in the templates specifically designed for recording custody searches in the Detention Module in CIS as soon as reasonably practicable after every custody search:

- (a) the use of handheld metal detector;
- (b) details of any weapon / exhibit found by using the handheld metal detector;
- (c) reason(s) for not using the handheld metal detector prior to the custody search;

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- (d) the reason(s) why a custody search was conducted;
- (e) the factors considered;
- (f) details of factor(s) considered if one or more of the factors as per PGO 49-04(4) (f), (g) or (h) are selected; 14/11
- (g) the level of the custody search; 14/11
- (h) sub-categories of custody search involving "removal of underwear";
- (i) the specific justification for a custody search involving "full removal of underwear";
- (j) the service and signing of the Pol. 1123;
- (k) who conducted the custody search;
- (l) who witnessed the custody search;
- (m) where the custody search was carried out;
- (n) any concern(s)/objection(s) raised by the detained person regarding the custody search and action taken to address the concern(s)/objection(s); 14/11
- (o) any change of level of custody search as a result of concern(s)/objection(s) raised; and 14/11
- (p) details of special act / posture requested to be performed by a detained person during a custody search.

Subsequent Custody Search

17. **If a detained person is removed from a police detention facility for any reason, the detained person may be searched on return and prior to being detained in the police detention facility.** The Duty Officer will decide whether a further custody search is required to be conducted for the reason(s) as set out in PGO 49-04(3). Such search, if needed, shall be conducted and recorded as per PGO 49-04(2) to (16). 04/09

Body Cavity Search

18. Officers having reason to suspect that a person being searched has concealed any article within their body, this matter shall report the matter to the DVC or equivalent.

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19. The DVC or equivalent shall decide whether or not a medical examination is necessary and if considered necessary, shall contact the Forensic Pathologist.
20. If a medical examination is undertaken, it shall be made by the Forensic Pathologist or in accordance with arrangements made by the Forensic Pathologist.
21. A "body cavity" or "Intimate" search may only be performed under Section 52(1A) of the Dangerous Drugs Ordinance, Cap. 134.

Searching of Detained Person with Special Needs

22. In accordance with the Force Values of 'respect for the rights of the public and of the Force' and 'fairness, impartiality and compassion in all our dealings', the Force acknowledges that detained persons may have special needs. To safeguard the rights of detained persons with special needs and provide a duty of care, an empathetic, practical and sensible approach must be adopted when searching persons with special needs.
23. Persons who are arrested, detained and subject to search react differently and police officers must exercise patience and tact when dealing with such persons. Such processes are potentially traumatic experiences for any person. This is compounded when dealing with persons with special needs. In particular, groups of persons who are considered to have or request additional attention are to be treated as persons with special needs.
24. To ensure that the rights and welfare of persons with special needs are fully addressed, whilst the presence of an appropriate adult is mandatory for detained persons under the age of 16 and detained persons who are or suspected to be mentally incapacitated, the presence of an appropriate adult for other categories of detained persons with special needs is optional. Where the presence of an appropriate adult is mandatory or a detained person has requested the presence of an appropriate adult, a custody search shall be, where practicable, conducted in the presence of such an appropriate adult. However, should the Duty Officer be unable to contact an appropriate adult as required within a reasonable time or a custody search is considered urgent, for example, where there is risk of harm to the detained person or to others, a custody search shall be conducted without the presence of an appropriate adult. This fact and the steps taken to contact an appropriate adult shall be fully recorded in CIS.
25. For the purposes of custody searches and related procedures, an appropriate adult must be of 18 years of age or above and of the same gender as the person to be searched.
26. The role of an appropriate adult is to provide:
 - (a) assistance and support to such a person;
 - (b) a safeguard for such person's welfare;

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- (c) assistance to the police in dealing with and looking after the rights, welfare and special needs of such a person;
- (d) assistance in communicating with such a person;
- (e) assistance in explaining to such a person the reason(s) for detention and procedural matters e.g. custody search to be conducted; and
- (f) assistance to the police in explaining to such a person the contents of police documents.

49-5 Property Belonging to Detained Persons

The Duty Officer shall seize and be responsible for property belonging to a detained person until it is handed over to another officer or returned to the detained person upon release.

2. When taking over duty the Duty Officer shall:
 - (a) check the detained person's property and ensure that the correct number of packets and other articles are taken over;
 - (b) examine each packet and other articles to be satisfied that it is intact and the seals have not been tampered with; and
 - (c) provided that the Duty Officer is satisfied that the property is correct, make a suitable entry in CIS.
3. The officer being relieved shall be present throughout such check. If any discrepancy is discovered, it shall be reported to the DVC or equivalent.

Video Interviews – Suspect's Copy

4. The suspect's copy video tape, if not given to the suspect or his legal representative, will be stored in the Formation Property Office as an exhibit and a record made in CIS. If the suspect is to take possession of the tape, but is to be returned to a cell, the videotape will be treated as detained persons' property and handled accordingly. Detained persons will not be allowed to take the tape into cells with them as the video tape cassette contains numerous sharp metal components, which could be used to injure.

49-6 Safe Custody of Persons in Police Custody

Whenever a detained person is removed from a police detention facility or custodial ward, the Duty Officer shall ensure that the following are recorded in CIS:

- (a) the time of the removal;
- (b) the reason for the removal;
- (c) the rank, name, and number of the escorting officer; and
- (d) their destination.

Cell Occupancy Principles

2. The Duty Officer shall ensure that there are never only two detained persons in one cell, but one or three or more.
3. **As a general practice, where possible and depending on the cell capacity of individual police station, a DVC shall ensure that the principle of single cell occupancy is followed.**

Inspection of Cells

- 08/08
4. The Duty Officer shall personally supervise the searching of all cells not less than once per shift. The Duty Officer shall make an OB entry after this has been completed. The Duty Officer shall also ensure that the cells are checked in accordance with the provisions of paragraphs 9 to 11 below.

Keys to THA

5. To ensure the security of detained persons, keys to the THA are to be kept by the Assistant Duty Officer, in accordance with FPM 49-08(2).

Keys to Cells

6. The Duty Officer shall be responsible for the security of all keys to the main access gate of cells as well as all the individual cells (not the THA). The Duty Officer shall ensure that the keys to the main access gate of male and female cells are maintained separately. Similarly, keys to the individual male cells are kept separately from the keys to the individual female cells in accordance with the procedures set out in FPM 49-06(7).

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7. Duplicate copies of the keys(s) to the main access gate of male and female cells and of each and every individual male and female cells, shall be kept in the Duty Officer's safe, be itemized in the safe register and checked during the shift handover process. The DVC will issue instructions and ensure that monthly checks are made of the Duty Officer's safe and its contents.

8. The Duty Officer will hold the key to the main access gate of both the male and female cells as well as individual male and female cells, however this key shall not be taken into the cell corridor and individual cells. Before entering the cell corridor, the Duty Officer shall hand the key to the main access gate of cells to the Assistant Duty Officer or other officer who shall remain outside and ensure that the main access gate is unlocked only to permit entry and exit by the Duty Officer. It is the responsibility of the Duty Officer to ensure that the main access gate remains locked at all times and is only opened when all the occupied cell doors are locked. The Duty Officer shall not open or allow the main access gate of cell to be opened while any detained person is outside the cell, except when such person is being admitted to, or being taken out of, the cell corridor under escort.

Visits to Cells

9. When there is one or more detained persons the Duty Officer or, if the Duty Officer is unavailable, the Assistant Duty Officer, is to visit the cells at a frequency of not less than once per hour. Each hour is to be counted from the time the Duty Officer commences duty, (e.g. one check between 08:45 hours to 09:45 hours, one between 09:45 hours to 10:45 hours, etc.) the actual time of the check within each one-hour period being left to the discretion of the Duty Officer. A record will be made of each visit in the OB stating the number of detained persons in the cells and whether or not everything is correct.

10. If a Duty Officer or, if unavailable, an Assistant Duty Officer, is to check the cells in which a person of the opposite gender is detained, an officer of the same gender of the detained person should be deployed to check the cells to ensure that it is appropriate for the Duty Officer or Assistant Duty Officer to check the cells before their entrance to the cell corridor.

11. During the check to cells in which a person of the opposite gender is detained, the Duty Officer or Assistant Duty Officer must be accompanied by an officer of the same gender of the persons detained in the cells being visited. In a station where the individual cells do not open directly into the report room, the Duty Officer will order a police constable to check the detained persons at regular intervals not exceeding 25 minutes (e.g. one check every 25 minutes throughout the shift), inspect the cells, report the findings to the Duty Officer and will record details of the visit in the OB. The Duty Officer will, thereafter, endorse these findings as appropriate.

Toilets and Showers

12. In a station where toilet, shower and washing facilities are not provided within each cell, a detained person shall normally be permitted to use such other facilities as may be available upon request, subject to the discretion of the Duty Officer. The detained person is to be properly guarded whilst absent from the cell for this purpose.

13. A person in police custody shall not be allowed or escorted to use any public toilets situated in the report room.

Self-harm in Police Custody

14. Whenever a person in police custody attempts to inflict self-harm or is known to have suicidal tendencies, the Duty Officer shall cause an entry to be made in CIS. Where applicable, the Duty Officer shall also:

- (a) inform the OC Case;
- (b) inform the OC Court before any court appearance; and
- (c) brief the I/C Detained Person Escort Team or officer taking over custody of the detained person.

15. The Duty Officer shall arrange a continuous watch over a detained person:

- (a) who is known or is reported to be dangerous, violent or have suicidal tendencies; or
- (b) when so directed by the authorized officer who originally accepted such person into custody or, in any other case, when so requested by the ADVC CRM/ CIP CRM.

16. When a person in police custody is committed to prison, the DVC concerned shall forward a report through the Formation Commander to the Commissioner of Correctional Services if such person:

- (a) is reputed to be violent or to have suicidal tendencies; or
- (b) has attempted to escape or is likely to attempt to do so.

17. Such a report shall be as informative as possible to enable the Commissioner of Correctional Services to decide what special precautions, if any, need to be taken.

49-7 Safe Custody of Special Watch Detained Persons

The following detained persons shall always be treated as 'Special Watch' :

- (a) having a previous record of serious and violent offences or of offences involving firearms or explosives;
- (b) being suspected of, or charged with, serious and violent offences or of offences involving firearms or explosives;
- (c) being detained on behalf of other Government Departments or ICAC where a specific request that such person be treated as a 'Special Watch' detained person is received;
- (d) having previously escaped from custody or who are thought to be of a high escape risk; and
- (e) having an expressed or known suicidal tendency.

2. The OC Case is responsible for informing the DVC and the Duty Officer of any person in police custody brought to a station that requires a special watch. The DVC, in turn, is to inform the DC of all detained persons under special watch, including those detained for other Departments of Government or the ICAC.

3. The Duty Officer is responsible for informing all Report Room personnel of the presence of 'Special Watch' status detained persons in the cells, and of the special orders in force for each of them. In such cases, the CIS Detention Record is flagged by the system when the OC Case issues 'Special Watch' instructions.

4. 'Special Watch' detained persons shall be allocated separate cells from other detained persons and their safe custody shall be subject to the provisions of specific orders promulgated by the DC.

5. 'Special Watch' detained persons shall not be removed from cells at the same time that other persons are being brought into or removed from cells.

6. 'Special Watch' detained persons shall be conveyed in a different vehicle from that used for ordinary detained persons.

7. When being moved, a 'Special Watch' detained person shall be restrained in a handcuff transport belt with the hands secured in a crossed position behind the back. The only exception to this may be if such a 'Special Watch' detained person is brought to a rural area for the purpose of an investigation, where upon the discretion of the officer-in-charge, the detained person may be unfettered for a period of time no longer than is absolutely necessary for the detained person to negotiate the difficult terrain. In such circumstances, the detained person shall be guarded at all times in order to prevent any escape or tampering with evidence.

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8. When 'Special Watch' detained persons are to be sent to court, the Duty Officer is to telephone the OC Court before the detained persons and their escort leave the station, informing the OC Court of the number of such persons being sent and the time of their departure.

9. Whenever 'Special Watch' detained persons appear in court, the OC Case is to consider the need for special precautions to prevent their escape or any attempt by outside elements to release them. Should the OC Case consider that there is a requirement for special security measures to be imposed at the court hearing, an application in writing to the RC (Attn: SSP CRM), shall be made through the chain of command, as set out in CP's Confidential Order – Security Operations at Court Hearings [(57) in CP/CON 42/13]. The same procedure is to be followed in respect of any other case where such action is considered necessary.

10. On arrival at court, the 'Special Watch' detained persons will be handed over to court staff inside the cell corridor or cell with the handcuff transport belts removed thereat.

11. If a 'Special Watch' detained person is remanded in police custody, the OC Court is to ensure that an escort is made available and if necessary, shall telephone the Duty Officer to inform an escort to be sent.

12. On arrival of the escort, the 'Special Watch' detained persons will be restrained by handcuff transport belts and handed over to the escort inside the cell corridor or cell.

49-8 Use and Management of Temporary Holding Area (THAs)

Upon confirmation by the Duty Officer that the arrest and detention of a person in custody is lawful, the Duty Officer thereafter or at other times authorise such person be detained in a THA, for example pending the OC Case's instruction to either detain such person in a cell, bail or otherwise release the person. Therefore, Duty Officers shall assume responsibilities for the safe custody of all persons for the time being detained in a THA including the following:-

- (a) ensure a custody search will be conducted on such person in accordance with PGO/FPM 49-04 prior to putting the person in any THA;
- (b) handle the types of property on the detained person as specified in and in accordance with PGO/FPM 30-02 and 30-03;
- (c) remove any items on the detained person which may pose an immediate danger to the detained person, or others in accordance with FPM 49-08(6) to (8);

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- (d) make immediate arrangements to maintain a continuous watch on the detained persons until they are removed from the THA, for instance, for processing, further enquiries and are either detained in a cell, bailed or otherwise released;
- (e) ensure males and females shall not be detained in the same THA and adults separate from juveniles, young persons and children;
- (f) ensure keys to the THA(s) are to be kept by the Assistant Duty Officer; and
- (h) record in CIS the detention of a person in a THA and all subsequent movements.

49-9 The Handing Over of Persons in Police Custody

On handing over a person in police custody, the handing over officer shall inform the receiving officer of the following:

- (a) the reason as to why such person is handcuffed;
 - (b) whether such person has been taken before the Duty Officer;
 - (c) if such person is under medication or has a medical problem;
 - (d) number and scope of custody search(es) previously conducted on such person whilst being detained in police detention facilities; and
 - (e) any other matters, which are necessary to know in order to ensure the well being of such person, including anything said or done by such person that indicates a suicidal tendency or escape.
2. The receiving officer shall sign the handing over officer's police notebook to the effect that officer has received custody of the person and was informed as above.
3. Where the receiving officer is the Duty Officer, an entry shall be made by the Duty Officer to this effect in the 'DO's Notes' Section of the appropriate CIS Detention Record, that shall also include the information provided by the handing over officer at paragraphs (c), (d) and (e) above.

49-11 Hooding of Persons in Police Custody

Detained persons may be hooded in accordance with PGO/FPM 43-20 "Hooding of Persons".

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49-12 Sick or Injured Persons in Police Custody

In any case when a person in police custody so requests or when it appears to a Duty Officer that such person is in need of medical attention, due to sickness or an injury, the Duty Officer shall complete a Pol. 42 (Rev.), or a Pol. 42A in the case of any alleged assault by police, and send it together with the person to the nearest Government hospital or clinic. The Duty Officer shall ensure that any antecedent history of illness, use of alcohol or drugs is included in the Pol. 42 (Rev.) or Pol. 42A, and that escorting officers are briefed to keep watch on the detained person and report any symptoms to the medical officer (MO).

2. If in the opinion of the Duty Officer it is likely that the person in police custody will be admitted to hospital the Duty Officer shall also complete an entry in CIS. A person detained in court who is in need of medical attention, shall be handled in the same manner by the Duty Officer of the Division in which the court is situated.

3. If a person in police custody admitted to hospital has been charged with, or it is intended to charge the person with, an offence listed in PGO/FPM Chapter 21, the Duty Officer shall take action to have such person admitted to the custodial ward.

4. If it is intended to charge the person in police custody with an offence, which is not listed in PGO/FPM Chapter 21, the Duty Officer shall notify the DVC who will direct the appropriate action to be taken. Such person shall not be detained in the custodial ward.

5. If it is decided not to charge a person in police custody held in a custodial ward or not to proceed with a charge already preferred against such person, the Duty Officer shall immediately notify the Hospital Chief Executive concerned in writing and shall despatch a suitably amended release form to the officer-in-charge at the custodial ward authorizing the Medical Superintendent formally to release the said person named therein from police custody. The officer shall not remove such person from the custodial ward except in accordance with arrangements made by the hospital authorities.

6. In any case where a person in police custody is found in possession of a methadone card which is in the name of the said person, the Duty Officer shall specifically ask whether methadone treatment is required and if so, make the necessary arrangements. An entry to this effect will be made in the 'DO's Notes' section of the CIS Detention Record and the requirement for methadone medication will be entered in the 'Activities – Medication' section of the Detention Record. Should the person be under "special watch", the Duty Officer will consult the OC Case prior to the person being removed from the cell.

7. In the case of an I.I. being admitted into hospital, the I.I. is to be detained in a custodial ward, or placed under police guard pending the results of a finger print check. Subsequent to the fingerprint results, the decision regarding the continued detention or guarding of the I.I. shall rest with the Formation Commander of the arresting officer.

49-13 Security of Persons in Police Custody in Hospitals and Clinics

It is the escorting officer's responsibility to ensure that a person in police custody is properly secured whilst receiving medical treatment and where possible should maintain direct and close supervision of such person.

2. In any case when a person in police custody held in a secure medical facility is transferred to an open ward the attendant medical staff will inform the OC Case of this movement. It is the duty of the OC Case then to arrange, through the Duty Officer of either the originating station and or the station closest to the secure medical facility, for the prompt despatch of police duties to relieve the escort staff of the medical facility.

49-14 Interviews with Persons in Police Custody or Prisoners in Hospital or Prison Custody

Police officers shall not interview prisoners who are remanded in the custody of Correctional Services Department concerning matters directly relevant to any charges or counts upon which a trial is awaited, including the obtaining of antecedent information, without first consulting the Department of Justice.

2. Where it is known that the prisoner is legally represented, this shall be drawn to the attention of the Department of Justice.

3. Where permission is granted, the case file shall be so noted in minute form recording the name of the Government Counsel consulted and any limiting instructions or advice given.

4. Interviews of prisoners in relation to crimes punishable in Hong Kong are permitted. In the event of a request for an interview with a prisoner in the custody of the Correctional Services Department, a memorandum to the Commissioner of Correctional Services requesting such interview shall be signed by an Inspector or above, who:

- (a) shall be at least one rank senior to the officer requesting the interview;
- (b) shall be satisfied that advice from the Department of Justice has been obtained in respect of any such interview concerning matters directly relevant to any charge or count upon which a trial is awaited, including the obtaining of antecedent information; and
- (c) in circumstances whereby any prisoner is legally represented, shall ensure that this fact is brought to the attention of the Department of Justice.

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5. Whenever a request is received from an overseas agency for a prisoner to be interviewed other than in connection with an investigation within the jurisdiction of the HKSAR authorities, the Department of Justice must be consulted and an appropriate written record of any advice received shall be made.

6. In the event of any doubt whatsoever concerning a request for an interview with a prisoner in Correctional Services Department custody, advice from the Department of Justice must be obtained prior to any interview taking place.

49-16 Females in Police Custody

Whenever a detained person is a female, a woman officer shall be present. In stations where female cells are provided, sufficient women police will be scheduled for duty to meet the requirements of reception, processing, custody search, monitoring and, where appropriate, escort and guard duties. Should no woman officer(s) be available for such duties, arrangements will be made for the detained female to be transferred to the nearest police station which is both equipped with female detention facilities and where women officer(s) are available for duty.

49-17 Children and Juveniles in Police Custody

Police are to escort, in police transport, child / juvenile or juvenile prisoners on remand to and from a Magistracy and the Tuen Mun Children and Juvenile Home (TMCJH) as follows:

- (a) When the detention of a child / juvenile is necessary, the Duty Officer of the police station where the child / juvenile is located / arrested will be responsible for the escort of the child / juvenile to the TMCJH;
- (b) If the child / juvenile is detained in TMCJH and required to appear in a Magistracy, including those cases initiated or brought up by other government departments, the Duty Officer as mentioned in the subparagraph (a) will send the "Acknowledgement of Receipt of Child / Juvenile" (SWD 458) to the police station where the Magistracy is situated and the Duty Officer of the latter police station will arrange the escort of the child / juvenile from the TMCJH to the Magistracy and vice versa; and
- (c) For cases of which a "Warrant of Commitment to Place of Detention" (HKM 107(s)) has been issued by a Magistracy, the Duty Officer of a police station where the Magistracy is situated will arrange the escort of the child / juvenile from TMCJH to the Magistracy and vice versa.

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2. A child or juvenile on remand is normally detained in the TMCJH. If for one of the following reasons, a child or juvenile is in police custody, including in hospital under guard or in a custodial ward, the Duty Officer shall prepare a memorandum, which certifies why the child or juvenile could not be sent to TMCJH. This certificate is sent to court with the case papers relating to the child or juvenile. The reasons for not sending a child or juvenile to a remand home are:

- (a) that it is impracticable to do so; or
- (b) that the child or juvenile is of so unruly or depraved a character that he/she cannot be safely so detained; or
- (c) that by reason of the state of health or mental or bodily condition of the child or juvenile, it is inadvisable so to detain the child or juvenile.

3. When a child or young person (apparently under 16 years of age) is arrested, all reasonable efforts are to be made to inform the parent(s) or guardian to come to the station whilst the child or young person is held there. If the parent or guardian is not located before the child or young person is sent to the TMCJH, then efforts shall continue to warn the parent or guardian to attend the court before which the child or young person will be brought.

49-18 Care of Children of Persons in Police Custody and Persons assisting Police but not under Arrest

A child shall not under any circumstances be left unattended even at the request of a parent.

2. If the parent is in police custody and no relative or friend is forthcoming to accept responsibility for the child, the Duty Officer is to take action in accordance with PGO/FPM 34. The Duty Officer shall ensure that the person in police custody is informed of the name of the institution to which the child has been sent.

49-20 Visits to and Communication with Persons in Police Custody and Prisoners

A police officer shall not visit any police detention facility or custodial ward or communicate with any person detained therein unless required to do so in the course of his/her duty.

2. Duty Officers, or in the case of a person detained other than in a police station cell, officers for the time being holding such person in custody, shall only permit authorized persons to visit the police detention facilities or custodial ward under their control or communicate with any person so detained in their custody.

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3. If a person in police custody provides information concerning an investigation undertaken by another OC Case, or which may be of use as intelligence, the information shall be forwarded to the relevant officer or unit in the most appropriate manner, considering the nature of the information and whether communication of it is "time critical". In every instance in which such information is obtained, and bearing in mind the appropriateness of making a written record of the details, a suitable notebook entry will be made as soon as practicable thereafter. The officer must bear in mind the possibility of having to give evidence in court concerning the information that has been given.

49-23 Detained Person's Property to Court

If it appears to the court's detained persons' property clerk that a TEPE containing the detained person's property has been tampered with prior to receiving it, a report shall immediately be made to the OC Court who shall have the detained person brought at once to the court property office and, in the presence of such person, the officer who brought the property in question and the court's prisoners' property clerk, the OC Court shall open the TEPE by cutting along an edge remote from the point of suspected tampering. However, in order to safeguard against such an occurrence, the OC Court shall carry out inspections of detained persons' TEPEs once every day to check that they have not been tampered with. The result of inspection should be recorded in an Occurrence Book.

2. If the OC Court finds that something is missing from the TEPE the OC Court shall:

- (a) seal the property and the original TEPE in another TEPE taking care not to damage the seals on the original TEPE;
- (b) endorse the new TEPE with a list of the contents, his/her name, rank, time and date of opening the original and obtain in addition thereon the signature or thumbprint of the detained person and the signatures of the court's prisoners' property clerk and the property escort officer as witnesses to the list of property found in the original TEPE;
- (c) search the property escort officer and the remaining officers of the detained persons' escort team if still in the vicinity of the court, and take such other immediate action as any special circumstances of the case may suggest;
- (d) inform the DVC of the station concerned who shall initiate an investigation into the loss; and
- (e) report the facts in writing at once to the DC.

3. If the contents of the original TEPE are correct, the OC Court shall reseal them in a larger TEPE as directed in the previous paragraph and certify thereon that the contents were found correct. Action shall be reported to the DVC concerned for the latter's information.

49-26 General Orders regarding Detained Persons' Property

When money or property belonging to a detained person is discovered missing:

- (a) the officer discovering such loss shall make an immediate report to the DVC/ADVC;
 - (b) the DVC/ADVC shall:
 - (i) cause a report to be made in the CIS;
 - (ii) as soon as possible during office hours make a telephone report to the STA FC; and
 - (iii) make a written report to the STA FC within 24 hours;
 - (c) the Formation Commander in whose Division the loss was discovered shall, within seven working days, submit to the Major Formation Commander an MIR recommending what action should be taken; and
 - (d) if theft or other crime is suspected, a report shall be made in the CIS and this fact noted in the MIR.
2. Other than where property is being returned to a detained person, such person's TEPE shall only be opened in accordance with the following instructions:
- (a) at court in the presence of the detained person on the order of a magistrate;
 - (b) in all other circumstances by the OC Case in the presence of the detained person. A second police officer shall also be present to witness the procedure. The OC Case shall:
 - (i) explain to the person so detained the reason for opening the property;
 - (ii) if any items are removed, delete such from the property description panel on the front of the TEPE or the detained person's property label (Pol. 39E);
 - (iii) replace the contents in a new TEPE;
 - (iv) amend the CIS endorsing thereon the reason for opening the TEPE and listing any items removed; and
 - (v) invite the person so detained to sign the amended form. The two police officers shall countersign it.

PERSONS IN POLICE CUSTODY

3. When a TEPE is to be opened, this shall be done by cutting the bottom of the TEPE, as indicated on the TEPE by the words 'to remove contents cut along the dotted line to here'. Under no circumstances shall the sealed top of the TEPE be tampered with.

4. Where a TEPE is opened and the contents are to be retained by Police, the opened TEPE shall be folded and placed inside the new TEPE, with the contents and the new TEPE unique number recorded in the CIS.

49-28 Detention of Persons in connection with Offences against the Prevention of Bribery Ordinance, Cap. 201, on behalf of ICAC

When a person in the custody of the ICAC has been delivered for detention in police detention facilities, subject to such person not being detained longer than legally permitted, the detained person shall not be released without receiving a written request in memorandum form signed by an ICAC officer of, or above, the grade of Investigator.

49-29 Detention of Persons in connection with Offences against the Immigration Ordinance, Cap. 115, on behalf of Immigration Department

When a person in the custody of the Immigration Department has been delivered for detention in police detention facilities, subject to such person not being detained longer than legally permitted, the detained person shall not be released without the receipt of a written request in memorandum form signed by an officer of or above the rank of Senior Immigration Officer.

49-30 Detention of Persons on behalf of the Customs and Excise Department

Once a person in the custody of the Customs and Excise Department has been delivered for detention in police detention facilities, subject to such person not being detained longer than legally permitted, such detained person shall not be released without a written request in memorandum form signed by an officer of the Customs and Excise Department holding the rank of Inspector or above.

49-31 Detained Persons on Remand in Possession of Dangerous Drugs

Whenever a detained person is found in possession of dangerous drugs, the matter shall be promptly reported to the DVC concerned who shall bring it to the attention of the DC.

2. The DVC shall then instruct the ADVCM or equivalent to:

- (a) take charge of the new case (possession of dangerous drugs);

PERSONS IN POLICE CUSTODY

- (b) arrest the person for possession of dangerous drugs;
 - (c) conduct a thorough investigation to establish the source of the dangerous drugs; and
 - (d) arrange for charging as appropriate. Such charge(s) shall be laid separately from the original charge(s).
3. On completion of enquiries and court case, a report shall be submitted to the RC.

49-33 Death of Persons in Police Custody

When a person who is in police custody, dies, the officer in whose custody the person was, shall immediately inform the Duty Officer of the police station of the Division in which the death occurred; except in the event of a death which occurs in a Hospital custodial ward, in which case the police officer-in-charge of the ward shall inform the Duty Officer of the referring station/Unit for further action.

2. The Duty Officer on receipt of such a report shall immediately inform the DVC or other responsible officer who shall direct what further action should be taken at the scene. The DVC or other responsible officer is to inform the Forensic Pathologist of the circumstances who will decide whether to attend or not.

3. Notwithstanding the above, if there is any doubt as to whether or not life is extinct, the police officer shall immediately call a doctor if one is available, or otherwise have the detained person removed to the nearest hospital or clinic where medical aid can be obtained. If life is certified extinct, arrangements shall be made to remove the body to the nearest mortuary.

4. When a person in police custody is found to have committed suicide and the death has been certified or the injuries sustained by the person are considered to be life threatening then the Duty Officer, in whose custody the person is detained, shall immediately inform the OC Case. The OC Case shall, based on the overall circumstances of the case, and any record of contact persons made in CIS in accordance with FPM 49-01 (6), instruct the Duty Officer whether or not the next of kin, other relative or friend can be notified of the incident and the current whereabouts of the person.

5. The Duty Officer shall then make an appropriate record in the 'DO's Notes' section of the appropriate CIS Detention Record of actions taken.

PERSONS IN POLICE CUSTODY

6. The investigation into a death in police custody is to be conducted independently and impartially and seen to be conducted in such a manner. The investigation will be conducted by the following units:

Location of Death	Investigating Unit
<ul style="list-style-type: none"> ■ within a Division or District 	<ul style="list-style-type: none"> ■ a Regional or other District unit not directly connected with the arrest, detention or investigation of the deceased as directed by the Regional Commander concerned
<ul style="list-style-type: none"> ■ within a Regional unit or Headquarters Formation 	<ul style="list-style-type: none"> ■ an independent Regional or HQs Formation as directed by CP (D OPS)

49-36 Issue of Prescribed Drugs or other Medication to Persons in Police Custody

Other than persons in police custody who are due to be transferred directly to CSD custody, persons who on arrest have prescribed drugs or other medication in their possession shall be referred to the nearest Government clinic or hospital through the Duty Officer. The drugs or medication shall accompany the escort and be given to the MO. A person in police custody shall be permitted to receive only drugs or other medication approved by a Government MO, and only in accordance with instructions as to dosage and frequency as given or approved by the Government MO.

2. When persons in police custody are due to be transferred directly to CSD custody, and in such cases where that person is arrested solely because they are the subject of a recall order or, because his/her release under supervision or conditional release has been revoked, any prescribed drugs or medication in his/her possession are to be delivered into the custody of CSD along with all other items of property.

49-38 Interviewing of Persons in Police Custody

If it is considered that it is necessary to handcuff a person in police custody when being interviewed, substantial justification may be required to persuade the court that it was necessary under the circumstances. Such circumstances shall be recorded in the notebook of the police officer conducting the interview.

49-40 Transporting of Persons in Police Custody by Police Launch

08/05

When the use of 'wrist restraints' are justified as stipulated in PGO 29-11, the wrist restraints need not be removed from a person in police custody except for the purpose of negotiating obstacles whilst embarking/disembarking from a launch e.g. climbing ladders; jumping from height.

2. To cater for the unlikely eventuality of the person being thrown overboard, such person shall be provided with a life jacket that is to be fitted prior to embarkation and taken off after disembarkation.

3. Whilst on board a launch, wrist restraints should not be taken off a person in police custody until the launch has docked and the crew is ready to disembark passengers.

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CUSTODY SEARCH FORM**YOUR RIGHTS IN RESPECT OF CUSTODY SEARCH**

1. Article 28 of the Basic Law prohibits arbitrary or unlawful body searches of any resident and Article 6(1) of the Hong Kong Bill of Rights (Chapter 383, Law of Hong Kong), requires that all persons deprived of their liberty shall be treated with humanity and dignity.

SPECIAL NEEDS

2. 'Detained Person with Special Needs' includes the following:

- (a) Detained persons under the age of 16;
- (b) Detained persons who are or suspected to be mentally incapacitated;
- (c) Detained persons with physical disabilities;
- (d) Detained persons with physical communication difficulties e.g. deaf or blind;
- (e) Detained persons transsexuals; and
- (f) Other detained persons who the Duty officer considers may require special attention.

3. If you have any "Special Needs", please bring these to the attention of the Duty Officer before a custody search is conducted.

4. To ensure that the rights and welfare of persons with special needs are fully addressed, whilst the presence of an appropriate adult is mandatory for detained persons under the age of 16 and detained persons who are or suspected to be mentally incapacitated, the presence of an appropriate adult for other categories of detained persons with special needs is optional.

PERSON(S) FOR SEARCH

5. The Commissioner of Police has determined that in order for police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in police detention facilities (Temporary Holding Area (THA) or cell) and to ensure the safety of others who may come into contact with them, a custody search will be conducted on all persons to be detained in police detention facilities.

6. A Duty Officer, or an officer authorized by him, will search you prior to being detained in a police detention facility. The Duty Officer has determined the scope of the custody search and the reasons will be explained to you. The custody search is conducted to ensure that you do not have:

- any weapon or article with which you might do yourself or others an injury or
- any implement with which you might effect an escape; and/or evidence which is material to the offence for which you have been arrested or charged and any other offences; and/or
- any article with which you could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

FACTOR(S) CONSIDERED

7. In deciding the scope of the custody search to be conducted on you, the Duty Officer has taken into consideration the following factor(s)

- offence(s) committed;
- criminal record(s);
- level of violence exhibited during offence and upon arrest;
- suicidal tendency exhibited;
- previous record(s) of self-harm, if known;
- demeanour following arrest and case processing;
- any other behavioural characteristics displayed; and
- any other relevant factor

*Please specify: _____

SCOPE OF SEARCH

8. The scope of the custody search has been determined as follows:

- Non-Removal of Clothing – means emptying pockets, searching of belongings and a pat-down search with no clothing, except footwear, to be removed; or

[Please turn overleaf for more information and to acknowledge receipt of this Form]

CUSTODY SEARCH FORM

- Removal of Clothing – means removal of coat, shirt / blouse, trousers and skirt; or
- Removal of Underwear – means looking into / partial removal / full removal / search and request for removal of clothing worn to cover your private parts.

“Private Parts” in relation to your body means the genital and anal areas and includes the breasts in the case of a woman.

The Duty Officer has determined the scope of search with Removal of Underwear. Specifically.

- Looking into your underwear, or
- Partial removal of your underwear; or
- Full removal of your underwear.

CONDUCT OF SEARCH

9. A custody on you will be conducted by police officers as follows:
- (a) only officers of the same genders as you will be present when the custody search is conducted;
 - (b) only officers of the same genders as you will conduct the custody search;
 - (c) at least two officers of the same genders as you will be present,
 - (d) the custody search will take place only in a room offering privacy, and
 - (e) the custody search will be conducted in a search room within the report room designated by the DVC which is not in view of persons other than those officers required to carry out, witness or supervise the search.
10. Where your clothing is to be removed, officers will:
- (a) not require you to remove all of your clothes at the same time;
 - (b) conduct a search as quickly as possible; and
 - (c) allow you to put your clothing on as soon as the search is complete.
11. Your legal representative, if available, may be allowed to be present during the

custody search provides no undue hindrance is caused to the investigation of the administration of justice.

WHAT YOU MAY RETAIN

12. You may be allowed to retain the following while in police custody, except to the extent that the Duty Officer considers that it is necessary to remove any of them to prevent harm being done to yourself or others:

- (a) essential clothing;
- (b) spectacles, hearing aid, contact lenses, etc. If removed these items will be temporarily returned to you when required for interviews, enquiries or statement taking;
- (c) head-dress, if you are required by faith or custom to wear it;
- (d) underwear, unless you are mentally unbalanced, or there is reason to believe that you may inflict self-harm, or the item of clothing is a case exhibit; and
- (e) copies of any paper statements you may have made whilst in custody (including a copy of this form)

SUBSEQUENT SEARCHES

13. Whilst being detained in police custody, you may be searched again for reasons as set out in paragraph 5 and 6 above and in accordance with procedures set out in paragraph 7-12 above.

CONCERNS/OBJECTIONS

14. If you have any concerns / objections*regarding the search, you may bring these to the attention of the Duty Officer will record your concerns / objections. Based on your concerns / objections, the Duty Officer will re-consider his decision. His decision is final

*Please specify _____

[Please turn overleaf for more information and to acknowledge receipt of this Form]

CUSTODY SEARCH FORM

REFUSAL TO BE SEARCHED

15. If you refuse to be searched, minimum force may be used to carry out the search. You may also be liable to prosecution under section 63 of the Police Force Ordinance, Cap. 232 or section 36 of the Offences Against the Person Ordinance, Cap 212

RECEIPT OF FORM

16. The Duty Officer has explained the above to you. The Duty Officer will invite you to sign this Form and will provide you with a copy of this Form to the search.

FORMATION R. N. -----

DATE & TIME -----

NAME OF RECIPIENT -----

IDENTITY DOCUMENT & NO. -----

ISSUING OFFICER
(DUTY OFFICER / ASSISTANT
DUTY OFFICER) -----

SERCHING OFFICER -----

WITNESSING OFFICER -----

I (have red / have had read over to me #) the above paragraphs and acknowledge receipt of a copy of this FORM at.....hours on(Date).

(Recipient) (Issuing Officer)

(Duty officer / Assistant Duty Officer)

(Searching Officer) (Witnessing Officer)

(Interpreter, if any) (Parent / Guardian / Appropriate Adult)

The search was conducted between and hours on(Date) at(location of search)

[A NEW PORM WILL BE USED FOR A SUBSEQUENT SEARCH]



GUIDANCE TO AN ARRESTED PERSON ON ARREST AND DETENTION

You have been arrested. This document contains useful information to help you understand the legal authority for your arrest and detention.

ARREST

It is lawful for any police officer to arrest any person who he reasonably believes will be charged with, or whom he reasonably suspects of being guilty of any offence for which the sentence is fixed by law, or for which a person may (on a first conviction for that offence) be sentenced to imprisonment, or any offence if it appears to the police officer that service of a summons is impracticable, or any person whom he reasonably suspects of being liable to deportation from Hong Kong. (Section 50, Police Force Ordinance, Cap. 232)

2. Police officers will only make arrests in accordance with the law which are necessary for the purpose of the maintenance of law and order. Arrests may be made lawfully by a police officer with or without a warrant issued by the court.

3. If you are arrested by a police officer, you will be informed that you are under arrest and the reasons for your arrest.

4. Following arrest, you will be brought before the Duty Officer of the police station covering the area in which you were arrested for inquiry. The Duty Officer will examine the reasons for your arrest and shall be satisfied that your arrest is lawful. If the Duty Officer is not satisfied that you should be further detained, you will be released forthwith.

DETENTION

5. The relevant law governing police detention following arrest is set out in sections 51 and 52 of the Police Force Ordinance, Cap. 232.

6. You will be kept in custody whilst the case against you is being investigated. If the investigation into your case cannot be completed immediately, you may be released unconditionally or on bail to appear at a specified police station at the date/time stated in the recognizance. You will not be kept in custody longer than necessary for such investigation. If after the investigation there is sufficient evidence against you, you will be charged and either be released on bail to appear before a Magistrate or detained and brought before a Magistrate as soon as practicable.

7. Where a warrant for your arrest and detention under any law relating to deportation is applied for while inquiries are being conducted, you may be detained for a period not ordinarily exceeding 72 hours after your arrest.

8. The general principle on detention is that you will be released on bail by entering into a recognizance with or without sureties for a reasonable sum, or on cash bail for a specified amount, as soon as possible following your arrest unless the offence is of a serious nature or it is reasonably considered that you should be detained pending your appearance before a Magistrate. Any such detention must be justified on reasonable grounds having regard to the circumstances of your case. In this regard, you will normally be released on bail except:

- (a) where the offence is of a serious nature;
- (b) where you have been arrested on a warrant which does not allow bail;
- (c) where you may abscond or where you may repeat the offence;
- (d) where you may interfere with witnesses, impede the investigation or attempt to obstruct the course of justice;
- (e) where you should be detained in your own interests to protect you from acts committed by yourself or others; or
- (f) where you cannot produce a reasonable amount of bail money in circumstances where entering into recognizance with or without sureties is not appropriate.