

Submission to the Panel on Welfare Services on Child Protection
Subcommittee on Children's Rights
“Support measures for children from drug abusing families”
Meeting on 22 December 2016

I make this submission to share my experience as a lawyer who advises several child welfare charities and non-profit organizations on legal issues facing children from drug abusing families.

In summary, my experience has led me to the conclusion that there are insufficient suitable residential care services available for children exposed to drug abuse. Such children are often left in dangerous homes, stuck in institutional care, or cycled through short-term care placements. I urge the Hong Kong Government to make immediate improvements in the availability of suitable residential care services and eliminate delays in reviewing and implementing permanency plans for children in care.

Our Legal Duties

The Hong Kong Government has an obligation under international treaties,¹ the Basic Law and the Hong Kong Bill of Rights to protect children.² Indeed, such duties are part of our common law.³ In particular, the Government must take all appropriate measures to protect children from the illicit use of drugs.⁴ These duties include, *inter alia*, the duty to identify and investigate child abuse and neglect, initiate and pursue necessary court proceedings, ensure where necessary in their best interests, and that their status is regularly reviewed.

Child Protection and Residential Care Services

With the above legal background in mind, I would like to share my concerns with the committee about the shortage of residential care services available for children from drug abusing families:

Firstly, children living in circumstances where they are exposed to drug abuse are at high risk of child abuse, such as assault, ill-treatment, neglect and sexual abuse. These risks are greater when parents and family members are drug abusers. In such cases, it is essential that children in such risky environments are removed and placed into safe, secure and appropriate environments pending welfare assessments. Where children have been exposed to such abuse, emergency and short-term carers must be sufficiently equipped and trained to care for such children.

¹ See the provisions of the United Nations Convention on the Rights of the Child, especially Articles 3, 6, 16, 19, 20, 25, 27, 32, 33, 34, and 36.

² See especially Article 20 of the Hong Kong Bill of Rights and Article 4 of the Basic Law.

³ See eg *D v East Berkshire Community Health NHS Trust* [2003] 4 All ER 796 (CA); and *ABB v Milton Keynes Council* [2011] EWHC 2745 (QB).

⁴ See Article 33 of the United Nations Convention on the Rights of the Child.

Secondly, wherever possible, placements should be residential ‘home-based’ rather than institutional. Long-term institutional care is not conducive to healthy child development. It may be necessary in the short-term, but is rarely an ideal solution. Children require the love, security, safety and support provided residential ‘home-based’ care. Furthermore, there should be as much stability in placement as possible, as ‘cycling’ through placements creates insecurity and anxiety for children that undermines their welfare and development.

Finally, time is of the essence for children. They develop quickly, and exposure to risks can have long-term consequences. Delay in taking action to investigate, protect and provide long-term solutions for children and their families is contrary to the best interests of children. This is especially true for children in drug abusing families. On the one hand, substance abuse disorders can be chronic and long-term without treatment; on the other hand, from the point of view of children, brief exposure to small amounts of drugs can have serious immediate and long-term consequences.

Problems in Practice

In my work, I have seen how shortages of residential placements have direct consequences on the welfare of children from drug abusing families:

- Child protection and law enforcement professionals are less likely to remove children from a dangerous environment if there are no placement facilities for those children;
- Professionals are deterred from making official reports or investigating cases when they know that there are no placement facilities for those children;
- Children are more likely to spend time in hospitals and other forms of institutional care, where they lack appropriate care and may become institutionalized;
- Children with special needs are more likely to be placed in unsuitable care facilities or go without require professional support due to the shortage of capacity; and
- Placement shortages sometimes may also lead to “placement cycling”, where children spend repeated short-stays in different ‘emergency’ and short-term placements, pending release of longer-term placements.

I have also seen how placement shortages are exacerbated by failures to review and delays in implementing permanency plans. In my experience, failures to review or take prompt and suitable actions to implement permanency plans mean that children spend more time in institutional or short-term placements. These delays have exponential effects: since the places of children ‘stuck’ in the system are ‘held up’, there are more children waiting in line behind them without access to those services.

I applaud the committee for taking up this issue and my colleagues at child welfare organizations for their courage in raising the problems with the current system. I implore the Hong Kong Government to take heed of the views expressed before this committee.

Submitted by

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