
Mandatory Reporting of Child Abuse Bill

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A BILL

To

Require certain professionals to report suspected serious child abuse cases; to provide for protection for the professionals for making the reports; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mandatory Reporting of Child Abuse Ordinance.
- (2) This Ordinance comes into operation on the expiry of 18 months after the day on which it is published in the Gazette.

2. Interpretation

In this Ordinance—

Authority (主管當局) means—

- (a) the Director; or
- (b) the Commissioner of Police;

child (兒童) means a person below the age of 18 years;

court (法庭) includes a magistrate;

Director (署長) means the Director of Social Welfare;

report (舉報) means a report made under section 4(1);

specified professional (指明專業人員) means a person specified in Part 1 of Schedule 1.

3. Application to public officers

This Ordinance applies to public officers in the same way as it applies to persons who are not public officers.

Part 2

Mandatory Reporting

4. When must reports be made

- (1) If a reasonable ground to suspect the following comes to the notice of a specified professional during the course of his or her work as a specified professional—
 - (a) a person is a child at the material time; and
 - (b) at the material time, the child—
 - (i) has been suffering serious harm; or
 - (ii) is at real risk of suffering serious harm,the professional must, as soon as practicable after the material time, make a report in respect of the child in compliance with section 6.
- (2) However, a specified professional is not required to make a report under subsection (1) if the professional honestly and reasonably believes that the harm mentioned in subsection (1)(b) was, or is to be, caused solely by—
 - (a) an accident not caused by the neglect of a responsible person of the child;
 - (b) the child himself or herself; or
 - (c) any other child who is not a responsible person of the child (otherwise than caused by any act of a sexual nature).
- (3) For subsection (1)(b), in determining whether the harm is serious, regard must be had to the degree and extent of the harm and all other circumstances of the case, and in particular, any of the following circumstances may add to the seriousness of the harm—

- (a) the harm persists for a substantial period or occurs frequently;
- (b) the act or omission that causes the harm—
 - (i) appears to be premeditated; or
 - (ii) appears to involve threat, coercion, sadism or any other unusual element.

Examples—

Examples of an act or omission that may cause serious harm to a child are—

- (a) inflicting physical injury on the child by violent means;
 - (b) forcing or enticing the child to take part in any act of a sexual nature;
 - (c) intimidating, terrifying or denigrating the child in a severe or repeated way such that the child's psychological health is endangered or impaired; and
 - (d) neglecting the child's basic needs in a severe or repeated way such that the child's health or development is endangered or impaired.
- (4) To avoid doubt—
- (a) for subsection (1), it is immaterial whether the specified professional actually formed a suspicion as to the matters mentioned in paragraphs (a) and (b) of that subsection based on the ground mentioned in that subsection; and
 - (b) for subsection (3), harm caused by a single incident may be considered as serious, having regard to the degree and extent of the harm and all other circumstances of the case.
- (5) A specified professional who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(6) In this section—

material time (關鍵時間) means the time at which the ground mentioned in subsection (1) comes to the notice of the specified professional;

responsible person (負責人), in relation to a child, means a person who has the custody, charge or care of the child.

5. Defences for offence under section 4

(1) If a specified professional is prosecuted under section 4(5) for contravening section 4(1) in respect of a child, it is a defence for the professional to establish that—

(a) the professional had made a report before the time of the alleged contravention in respect of—

(i) the same, or substantially the same, serious harm suffered by the child; or

(ii) the same, or substantially the same, real risk of the child suffering serious harm; or

(b) the professional honestly and reasonably believed that another specified professional had made a report before the time of the alleged contravention in respect of—

(i) the same, or substantially the same, serious harm suffered by the child; or

(ii) the same, or substantially the same, real risk of the child suffering serious harm.

(2) If a specified professional is prosecuted under section 4(5) for failing to make a report in respect of a child as soon as practicable after the material time as defined by section 4(6) (*delay*), it is a defence for the professional to establish that the professional—

- (a) honestly and reasonably believed that the delay was in the best interests of the child; and
 - (b) has, during the delay, taken actions that are reasonably necessary in the circumstances to protect the interests of the child.
- (3) A specified professional is taken to have established a matter that needs to be established for a defence under subsection (1) or (2) if—
- (a) there is sufficient evidence to raise an issue with respect to that matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (4) Without limiting the definition of *report* in section 2, a reference to a report in subsection (1) includes a notification in any way to an Authority before this Ordinance comes into operation.

6. Requirements for reports

- (1) A report must be made in the form specified by the Director under section 14.
- (2) A report must contain sufficient information for an Authority to identify the child concerned.
- (3) A report must be submitted to an Authority in the way specified by the Director under section 14.

7. Director may issue guidelines

- (1) The Director may issue guidelines to provide practical guidance for the purposes of this Part.
- (2) The Director must—
 - (a) publish the guidelines in a way appropriate to bring them to the notice of persons affected by them; and

- (b) make copies of the guidelines available to the public free of charge.
- (3) The guidelines are not subsidiary legislation.
- (4) The Director may amend or revoke the guidelines. Subsections (2) and (3) apply to an amendment or revocation of the guidelines in the same way as they apply to the guidelines.

8. Effect of guidelines

- (1) A person does not incur any civil or criminal liability only because the person has contravened the guidelines issued under section 7 (as may be amended under that section) (*guidelines*).
 - (2) If, in any legal proceedings, the court is satisfied that a provision of the guidelines is relevant to the determination of a matter that is in issue in the proceedings—
 - (a) the guidelines are admissible in evidence in the proceedings; and
 - (b) proof that the person contravened, or did not contravene, the provision may be relied on by a party to the proceedings as tending to establish or negate the matter.
 - (3) In any legal proceedings, a document that purports to be a copy of the guidelines is, in the absence of evidence to the contrary, to be presumed to be a true copy of the guidelines.
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Part 3

Protection for Specified Professionals

Division 1—Pre-reporting Protection

9. Prohibition on inhibiting or obstructing making of reports

- (1) A person must not wilfully—
 - (a) inhibit or obstruct a specified professional from making a report; or
 - (b) impose any guideline or requirement that has such an effect.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

Division 2—Post-reporting Protection

10. Application of this Division

This Division applies in relation to a specified professional in respect of a report made by him or her if, at the time of making the report, the professional honestly believed that he or she was required by this Ordinance to make the report.

11. Prohibition on disclosing identity of specified professionals who made reports

- (1) A person commits an offence if the person discloses the identity of a specified professional as the person who made a report, or information from which such identity could be deduced.

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- (2) However, the person does not commit an offence under subsection (1) if—
- (a) the disclosure is necessary for performing a function under an Ordinance, or for carrying into effect or doing anything authorized by an Ordinance;
 - (b) the disclosure is made for the consideration of the institution of, or otherwise for the purpose of, any criminal proceedings or any investigation of a criminal complaint;
 - (c) the disclosure is made with the written consent of the professional;
 - (d) the disclosure is made under an order of a court;
 - (e) the disclosure is made for the purpose of seeking advice from, or the giving of advice by, a counsel or a solicitor or any other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
 - (f) the identity of the professional, or the information, has already been lawfully disclosed or made available to the public; or
 - (g) the disclosure is made to prevent or mitigate a real risk of injury to a person.
- (3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

12. No liability incurred by making reports

- (1) A specified professional does not incur any civil or criminal liability only by making a report.

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Part 3—Division 2

Clause 12

C2031

- (2) A specified professional must not be held to have breached any code of professional conduct or ethics, or to have departed from any accepted standards of professional conduct, only by making a report.
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Part 4

Miscellaneous

13. Prosecution deadline

- (1) A prosecution for an offence under this Ordinance may only be started before the end of the specified period.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (2) In this section—

specified period (指明限期), in relation to an offence, means the period of 12 months after the date on which the offence is discovered by the Authority that first discovers the offence.

14. Director may specify form and related matter

The Director may specify—

- (a) a form to be used for any matter provided for under this Ordinance; and
- (b) the way in which the form is to be submitted.

15. Amendment of Schedule 1

The Secretary for Labour and Welfare may, by notice published in the Gazette, amend Schedule 1.

16. Related amendments

The Criminal Procedure Ordinance (Cap. 221) is amended as set out in Schedule 2.

Schedule 1

[ss. 2 & 15]

Specified Professionals

Part 1

Professionals

1. A registered pharmacist within the meaning of the Pharmacy and Poisons Ordinance (Cap. 138).
2. A registered dentist within the meaning of the Dentists Registration Ordinance (Cap. 156).
3. An enrolled dental hygienist within the meaning of the Ancillary Dental Workers (Dental Hygienists) Regulations (Cap. 156 sub. leg. B).
4. A registered medical practitioner within the meaning of the Medical Registration Ordinance (Cap. 161).
5. A registered midwife within the meaning of the Midwives Registration Ordinance (Cap. 162).
6. A registered nurse or enrolled nurse within the meaning of the Nurses Registration Ordinance (Cap. 164).
7. A child care worker or supervisor within the meaning of the Child Care Services Regulations (Cap. 243 sub. leg. A).

8. A registered teacher or permitted teacher (within the meaning of the Education Ordinance (Cap. 279)) who is working in a specified school.
9. A person approved to be appointed under regulation 56(6) and (7) of the Education Regulations (Cap. 279 sub. leg. A) as a warden of a boarding school within the meaning of those Regulations that is a specified school.
10. A registered medical laboratory technologist within the meaning of the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. A).
11. A registered occupational therapist within the meaning of the Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap. 359 sub. leg. B).
12. A registered optometrist within the meaning of the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. F).
13. A registered radiographer within the meaning of the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. H).
14. A registered physiotherapist within the meaning of the Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. J).
15. A registered chiropractor within the meaning of the Chiropractors Registration Ordinance (Cap. 428).

16. A registered social worker within the meaning of the Social Workers Registration Ordinance (Cap. 505).
17. A listed Chinese medicine practitioner or registered Chinese medicine practitioner within the meaning of the Chinese Medicine Ordinance (Cap. 549).
18. A person employed as a member of the teaching staff or a principal of the Youth College of the Vocational Training Council established under the Vocational Training Council Ordinance (Cap. 1130).
19. A person employed by the Government as a teacher or a principal who is working in a Government school.
20. A person registered by the Director as a superintendent of a residential child care service unit.
21. A person who professes to practise as, or publishes his or her name as, an audiologist.
22. A person who professes to practise as, or publishes his or her name as, a clinical psychologist.
23. A person who professes to practise as, or publishes his or her name as, a dietitian.
24. A person who professes to practise as, or publishes his or her name as, an educational psychologist.
25. A person who professes to practise as, or publishes his or her name as, a speech therapist.

Part 2

Interpretation

1. In this Schedule—

Government school (官立學校) means a school entirely maintained and controlled by the Government;

specified school (指明學校) means a school within the meaning of the Education Ordinance (Cap. 279), but does not include—

- (a) a Government school;
 - (b) a school that only provides post secondary education within the meaning of that Ordinance; or
 - (c) an exempted school within the meaning of the Education (Exemption) (Private Schools Offering Non-Formal Curriculum) Order (Cap. 279 sub. leg. F).
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Schedule 2

[s. 16]

Related Amendments to Criminal Procedure Ordinance (Cap. 221)

1. Section 79B amended (evidence by live television link)

(1) Section 79B(2)(b)—

Repeal

“or”.

(2) After section 79B(2)(b)—

Add

“(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.

2. Section 79C amended (video recorded evidence)

(1) Section 79C(2)(b)—

Repeal

“or”.

(2) After section 79C(2)(b)—

Add

“(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.

3. Section 79E amended (depositions)

(1) Section 79E(1)(b)—

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Section 3

C2045

Repeal

“or”.

(2) After section 79E(1)(b)—

Add

“(ba) an offence under section 4(5) or 9(2) of the Mandatory Reporting of Child Abuse Ordinance (of 2023); or”.

Explanatory Memorandum

The main object of this Bill is to require certain professionals (*specified professional*) to report suspected serious child abuse cases and to provide for protection for specified professionals for making the reports.

2. The Bill contains 4 Parts and 2 Schedules.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 contains the definitions for the interpretation of the Bill.
5. Clause 3 provides that the Bill applies to public officers in the same way as it applies to persons who are not public officers.

Part 2—Mandatory Reporting

6. Clause 4 provides that if a reasonable ground to suspect that a child has been suffering serious harm, or is at real risk of suffering serious harm, comes to the notice of a specified professional during the course of his or her work as a specified professional, the professional is required to make a report in respect of the child as soon as practicable.
7. Clause 5 provides for defences for a specified professional prosecuted for an offence under clause 4.

8. Clause 6 provides for requirements for a report, including the form and content of the report.
9. Clause 7 empowers the Director of Social Welfare (*Director*) to issue guidelines to provide practical guidance for the purposes of Part 2, and clause 8 provides for the legal effect of the guidelines.

Part 3—Protection for Specified Professionals

10. Clause 9 prohibits any person from wilfully inhibiting or obstructing a specified professional from making a report under clause 4.
11. Clause 10 provides that the post-reporting protection under clauses 11 and 12 applies in relation to a specified professional in respect of a report if the professional honestly believed that he or she was required to make the report.
12. Clause 11 provides that a person must not disclose the identity of a specified professional as the person who made a report, except for the purposes, or under the circumstances, specified in that clause.
13. Clause 12 provides that a specified professional does not incur any civil or criminal liability, and must not be held to have breached any code of professional conduct or ethics, only by making a report.

Part 4—Miscellaneous

14. Clause 13 provides for the prosecution deadline for an offence under the Bill.

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Explanatory Memorandum

Paragraph 15

C2051

15. Clause 14 empowers the Director to specify the relevant form and the way in which the form is to be submitted.
16. Clause 15 empowers the Secretary for Labour and Welfare to amend Schedule 1 by notice published in the Gazette.

Schedules

17. Schedule 1 contains a list of specified professionals.
18. Schedule 2 contains related amendments to the Criminal Procedure Ordinance (Cap. 221).