

# LCQ14: The rights and welfare of arrested children

Following is a question by the Dr Hon Fernando Cheung and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (November 13):

Question:

Since June 9 this year, a number of large-scale public meetings and processions (public events) relating to the "anti-extradition to China" movement have occurred in Hong Kong. During those public events, a number of demonstrators and bystanders, including children under the age of 16, were arrested. It has been reported that subsequent to the arrests of three children aged between 13 and 15 on August 29 this year, despite confirmation from their parents that they would fulfil their duty to protect and care for their children, the Police still filed applications to the juvenile court for Care or Protection Orders (C or P Orders). Such children were detained in Tuen Mun Children and Juvenile Home (TMCJH) of the Social Welfare Department (SWD), for 27 days in the longest case, while the court was awaiting reports from SWD. In this connection, will the Government inform this Council:

(1) of the number of cases of the Police arresting children under the age of 16 during public events since June 9, this year, and set out the following details of each case in a table by date of arrest: (i) the age of the arrestee, (ii) the location of the arrest, (iii) the offence(s) allegedly committed by the arrestee, (iv) the charge(s) laid (if a prosecution has been instituted), (v) the bail conditions (if applicable), and (vi) whether the Police have applied to the court for a C or P Order;

(2) given that although Chapter 49 of the Police General Orders (PGOs) provides that "[t]o 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", some social workers who were at the scene of the aforesaid public events have pointed out that the Police refused to let these social workers accompany children under the age of 16 who had been arrested to the police station or accompany them throughout their detention, whether it has assessed if such practice of the Police has contravened the relevant requirements of PGOs;

(3) whether it has assessed if the Police's treatment of the aforesaid three children conforms to the requirements of Article 37 of the Convention on the Rights of the Child (i.e. "States Parties shall ensure that ... [t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"); and

(4) of the mechanism in place for dealing with requests from religious personnel and Members of this Council for paying official visits to children under the age of 16 who are being detained in TMCJH, including how the urgency of such visits is to be determined, and whether the views of the detainees will be sought beforehand?

Reply:

President,

Our reply to Dr Hon Fernando Cheung's question is as follows:

(1) There have been conflicts and violence arising from public protests and processions since June 9. As at October 31, the Police arrested 3 001 persons in total, of which 510 arrestees were charged with offences including rioting, unlawful assembly, possession of offensive weapons, criminal damage and using facial covering while at an unlawful assembly etc. Among the 165 arrestees under the age of 16, 19 were charged with alleged offences including those mentioned above. The Police do not maintain the number of applications for care or protection orders.

(2) In general, a person upon arrest by the Police will be brought to the police station as soon as possible to confirm the legality of his custody and arrest before the Duty Officer. The arrestee will then be handed over to the Police's investigation team for further investigation. After completing the preliminary investigation, the Police will decide whether detention of the arrestee is required. The Police will consider releasing an arrestee on his own recognisance, on bail or unconditionally having regard to the circumstances of individual cases.

The Police have put in place clear guidelines on handling child or juvenile arrestees to protect their rights and welfare. According to the Police General Orders, if the arrested person is under the age of 16, the Police shall make all reasonable efforts to inform the parent(s) or guardian of the child or young person concerned to come to the station whilst the child or young person is being held. Under reasonable and practicable circumstances, the Police will request an "appropriate adult" to accompany the child or young person at the police station before carrying out investigation on the child or young person. An "appropriate adult" is defined as the following:

- (a) a relative, guardian or other person 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; or
- (c) failing either of the above, some other responsible adult who is not a police officer nor employed by the police.

The Police will arrange appropriate adults for arrestees according to established procedures and guidelines.

Before carrying out a custody search on a detained person under the age of 16, the Duty Officer will ensure the presence of an appropriate adult of the same gender as the arrestee. Subsequent investigations against a detained person, including the taking of statement, collecting intimate body samples, etc., must also be conducted in the presence of an appropriate adult.

The Police strives to protect the privacy and rights of detained persons at all times. The Police will ensure that males and females shall not be detained in the same temporary holding area, and that adults shall be detained separately from children and juveniles. Detained children and juveniles enjoy the same fundamental rights as ordinary persons, including the rights to request and receive medical treatment, seek legal service and assistance, communicate with a relative or friend, etc. If temporary care has to be arranged, the persons concerned will be transferred to the Tuen Mun Children and Juvenile Home (TMCJH) for detention.

Detained persons are entitled to the rights set out in the Notice to Persons in Police Custody or Involved in Police Enquiries. The Police will issue and explain the notice to every detained child and juvenile in the presence of an appropriate adult, and the appropriate adult shall acknowledge the content by signing the notice. Besides, all appropriate adults will be issued with the Notice to "Appropriate Adult" for Person Assisting/under Police Enquiry/in Police Custody who is Mentally Incapacitated or Aged under 16 which explains the roles and responsibilities of an appropriate adult, so as to help them understand how they can provide appropriate support to arrestees.

(3) Under the Protection of Children and Juveniles Ordinance (Cap 213), a care or protection order may be issued to a person aged below 18 who requires care or protection. If any factor or circumstance below is found in respect of a child or juvenile, a police officer may apply to a juvenile court for issuance of such order to provide the child or juvenile in need with care or protection. According to section 34(2) of the ordinance, a child or juvenile in need of care or protection means a child or juvenile:

(a) who has been or is being assaulted, ill-treated, neglected or sexually abused; or

(b) whose health, development or welfare has been or is being neglected or avoidably impaired; or

(c) whose health, development or welfare appears likely to be neglected or avoidably impaired; or

(d) who is beyond control, to the extent that harm may be caused to him or to others, and who requires care or protection.

In considering whether to apply for a care or protection order, the Police have along follow the said ordinance by taking into account the circumstances of individual cases and determining if the person concerned

meets the criteria to be identified as a child or juvenile in need of care or protection under the law at that time. Whether an order will be issued eventually is a decision by the court.

As an application for leave for judicial review on the relevant issue has been lodged, it is not appropriate for us to comment on any individual case at this stage.

(4) The Social Welfare Department (SWD) respects children's rights, including their freedom of religion and thought. SWD will, in collaboration with various religious organisations, provide after-school groups and support activities for children in juvenile homes under its purview to help them build meaningful community connections.

TMCJH under SWD provides refuge to children or juveniles aged 8 to below 18 who require care or protection. Given that persons detained in TMCJH are minors, if anyone other than their parents or guardians requests a visit, SWD's case social workers concerned will first make an assessment to ensure that the visit is relevant to the welfare plans of respective children or juveniles in order to protect their privacy and rights. They must also obtain the consent of parents or guardians before issuing an instruction of approval for visit to TMCJH.

Based on the above criteria, SWD's case social worker concerned will, in accordance with the actual circumstances of individual cases, make corresponding assessments and decisions which meet the welfare needs of respective children or juveniles with regard to individual visit requests.