

Procedural Guide for Social Workers  
On the Handling of Mentally  
Incapacitated Adults Arising from the  
New Provisions in the Criminal  
Procedure (Amendment) Ordinance  
1995

(Updated in 2023)

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## **CHAPTER 1: INTRODUCTION**

### **BACKGROUND**

1.1 In September 1993 when a lady with hearing impairment, low intelligence and inability to speak, was the complainant of a criminal trial of the offences of Rape, Attempted Rape and Indecent Assault, the trial was stopped by the Judge at the stage of cross-examination when the victim was disturbed and upset. The defendant was subsequently acquitted and discharged. The case aroused concern and attracted criticism from the public and the media.

1.2 In October 1993, the Working Party on Mentally Handicapped People Giving Evidence in Court (later known as the “Wong Working Party”) was appointed by the Chief Justice to examine the ways and means by which mentally incapacitated persons (MIPs) giving evidence in Court might be assisted in order to minimise any trauma they might suffer thereby. Subsequently, in March 1994, the Wong Working Party submitted a report recommending practice and legislative changes for the purpose. The major recommendations made by the Wong Working Party are at Appendix 1.1. Basing on the recommendations, the Criminal Procedure Ordinance (CPO), Cap. 221 was subsequently amended in 1995 and implemented in February 1996, intended to protect and assist vulnerable witnesses in criminal proceedings.

1.3 To facilitate social workers in handling MIPs in the criminal proceedings, the “Procedural Guide for Social Workers on the Handling of Mentally Incapacitated Adults Arising from the New Provisions in the Criminal Procedure (Amendment) Ordinance 1995” (the Procedural Guide) was promulgated by the Social Welfare Department (SWD) in 2000.

1.4 Over the past years, the development of social services, such as implementation of Integrated Family Service Centre service mode, re-organisation of Family and Child Protective Services, launching of Victim Support service for Victims of Family Violence, and expansion of clinical psychological services, etc., have taken place. Moreover, the provision of appropriate support services for MIPs in criminal proceedings receives increasing attention from helping professionals as well as the community as a whole. To tie in with the aforesaid service development and the existing arrangement in handling MIPs in criminal proceedings, the Procedural Guide is updated by SWD in 2023.

## **SCOPE OF THE PROCEDURAL GUIDE**

1.5 This Procedural Guide concerns primarily with MIPs aged 18 or above involved in criminal proceedings under the CPO, Cap 221.

## **OBJECTIVES OF THE PROCEDURAL GUIDE**

1.6 The objectives of this Procedural Guide include:-

- (a) To provide reference to social workers of SWD and Non-governmental Organisations in handling MIPs aged 18 or above involved in criminal proceedings.
- (b) To align practices among social workers in providing support services to the MIPs concerned.

**CHAPTER 2: LEGAL PROVISION UNDER PART IIIA OF  
CRIMINAL PROCEDURE ORDINANCE, CAP 221**

**LEGAL PROVISIONS**

2.1 The Criminal Procedure Ordinance (CPO), Cap. 221 stipulates special procedures for vulnerable witnesses<sup>1</sup> in criminal proceedings under Part IIIA. These special procedures aim to avoid trauma and allay anxiety that may be experienced by vulnerable witnesses.

2.2 Mentally incapacitated person (MIP), who is defined within the meaning in section 2 of the Mental Health Ordinance (MHO), Cap 136, is classified as a category of vulnerable witnesses in Part IIIA of CPO.

2.2.1 According to section 2 of MHO, MIP “means a person who is mentally disordered or mentally handicapped”.

2.2.2 In MHO, “mentally disordered” is construed according to the definition of **mental disorder**, which means:

- (a) mental illness;
- (b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;
- (c) psychopathic disorder; or
- (d) any other disorder or disability of mind which does not amount to mental handicap.

2.2.3 In MHO, “Mentally handicapped” is construed according to the definition of **mental handicap**, which means:

“sub-average general intelligence functioning with deficiencies in adaptive behaviour” while “sub-average general intelligence functioning” means an IQ of 70 or below according to the Wechsler Intelligence Scales for Children or equivalent scale in a standardized intelligence test.

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<sup>1</sup> Under Part IIIA of the Criminal Procedure Ordinance (CPO), Cap. 221, “vulnerable witnesses” refer to victims, witnesses or suspects / defendants under the three categories of vulnerable, i.e. child, mentally incapacitated person, and witness in fear. The applicability of CPO under Part IIIA on MIPs being involved as victim, witness or suspect / defendant is summarised at Para. 2.13.

## **SPECIAL PROCEDURES FOR MIPs UNDER PART IIIA OF THE CPO**

### **VIDEO RECORDED EVIDENCE**

2.3 Video recorded evidence which is a video recording of the testimony that is taken under specified conditions, be tendered in evidence with the leave of the trial Judge or Magistracy.

2.4 When a MIP is involved in a triable offence on indictment; or either summarily or on indictment, section 79C of the CPO allows a video recording to be made of an interview between an adult<sup>2</sup> with a MIP<sup>3</sup> to be used as admissible video recorded evidence in Court with the permission of the Court.

2.5 Such a video recording is admissible only where the rules of Court requiring disclosure of the circumstances in which the recording was made have been properly complied with to the satisfaction of the Court.

2.6 In operation, Police will apply to court for tendering video recorded evidence under section 79C unless there is objection from the MIP/ legal guardian.

### **LIVE TELEVISION LINK**

2.7 Where a MIP gives evidence or be examined on video recorded evidence given under section 79C, in proceedings of an offence that is triable on indictment; or either summarily or on indictment, the Court may permit the MIP, in accordance with section 79B of the CPO to give evidence or be cross-examined in Court through a live television link system in a separate room in the premises as courtroom. MIP can only see the Judge and the person who is talking to him / her through the monitor so as to allay stress that may inhibit the MIP to answer freely.

2.8 A court usher will be present to operate the closed circuit television (CCTV) in the separate room, to explain to the MIP what to do and where to sit, and ensure there is no improper communication between the MIP and the support person, if any.

2.9 In cases when the MIP is a victim or witness and where a defendant is not represented but wishes to ask questions of the MIP, the Judge or Magistrate in his / her discretion may permit: -

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<sup>2</sup> In section 79C(1) of CPO, adult means a police officer, a social worker or clinical psychologist who is employed by the Government.

<sup>3</sup> Including MIP who is a victim and witness, and defendant where he / she or his / her counsel so request for a video recording interview under section 79C(3).

- (a) the picture on the monitor of the CCTV in the witness room to be switched off, allowing only the defendant's voice to be heard by the witness; or
- (b) the question to be channeled through another person.

### **SUPPORT PERSON**

2.10 Under the Live Television Link and Video Recorded Evidence Rules, Cap. 221J, a subsidiary legislation of the CPO, there is also provision for MIP witness who is a vulnerable witness to be accompanied by a person, acceptable to Court, namely the "support person", in giving evidence through the CCTV system, after obtaining the permission of Court.

2.11 The support person should not be a witness in the case or have been involved in the investigation of the case as stated in the Practice Direction 9.5 - Evidence by Way of Live Television Link or Video Recorded Testimony issued by the Judiciary in 1996 and last updated in 2015. In the case of a MIP witness, the support person should be someone with some understanding and expertise related to the nature of the handicap or disability.

2.12 The role of support person is to accompany the MIP in giving evidence in Court through the CCTV system so as to help reduce the fear and anxiety of the MIP witness. Also, the support person will assist in the pre-trial preparation by accompanying the MIP for a pre-trial familiarisation visit to Court.

**APPLICABILITY OF PART IIIA / CPO ON MIP BEING INVOLVED AS VICTIM, WITNESS OR SUSPECT / DEFENDANT**

2.13 To facilitate social workers in handling MIPs undergoing criminal proceedings, the applicability of CPO under Part IIIA on MIPs being involved as victim, witness or suspect / defendant is summarised as below for reference:

		MIP Victim	MIP Witness	MIP Suspect / Defendant
	Live television link	✓	✓	✓
s.79B(3), Cap. 221	where a defendant is not represented but wishes to pose questions to MIP victim / witness, Judge or Magistrate may permit to (i) switch off the picture on the CCTV monitor in the witness room, or (ii) MIP being questioned through person other than the defendant	✓	✓	N.A.
s.79C(3)Cap. 221	Video recorded interview tendered in evidence	✓	✓	✓ (where he / she or his / her counsel so request)
Rule 3(9), Cap. 221J	To be accompanied by a support person in giving evidence in Court through the CCTV system	✓	✓	N.A.



## **CHAPTER 3: PROCEDURES OF HANDLING MENTALLY INCAPACITATED ADULTS<sup>1</sup> IN CRIMINAL PROCEEDINGS**

### **GENERAL INFORMATION AND GUIDELINES**

3.1 The handling procedures of mentally incapacitated adults (MIAs) involved in criminal proceedings vary with the circumstances of individual cases and there is no simple hard-and-fast rule applicable to all MIAs involved in criminal cases. To facilitate social workers to have an overview of the procedural flow during the handling of MIAs in criminal proceeding, a summary chart is prepared at [Appendix 3.1](#).

3.2 In handling person with mental disability involving in suspected abuse, domestic violence or adult sexual violence cases, social workers should also make reference to the following guidelines where appropriate:

- Guidelines for Handling Mentally Handicapped / Mental Recovery Adult Abuse Cases<sup>2</sup>
- Procedural Guide for Handling Intimate Partner Violence Cases
- Procedural Guidelines for Handling Adult Sexual Violence Cases
- Procedural Guidelines for Handling Elder Abuse Cases

3.3 The MIAs involved in criminal proceedings may come into contact with professionals of various disciplines. To ensure that the MIA-in-question will receive timely and appropriate services, social workers should maintain close communication and collaboration with other disciplines for the welfare and interest of the MIA. In the course of providing services and support to MIAs, social workers should observe the following general principles:-

- (a) prompt action should be taken; all referrals must be taken seriously and considered with an open mind without prejudicing the situation;
- (b) clarification with parties concerned on the division of work to avoid confusion and duplication of effort is required;
- (c) the principle of confidentiality should be observed unless it is necessary for the protection of the MIA or required by the Court. Part VIII of the Personal Data (Privacy) Ordinance (PD(P)O), Cap 486 also provides specific exemption for collection and transfer of information;

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<sup>1</sup> It refers to the mentally incapacitated person aged 18 or above.

<sup>2</sup> Only Chinese version, namely <處理虐待智障／精神復元成人個案工作指引> (2023年3月更新版), is available.

- (d) avoid requiring the MIA to repeatedly describe the incident concerned unnecessarily;
- (e) leading or coaching questions related to the incident concerned should be avoided;
- (f) questions as regards contents related to the details of the incident concerned and / or revealed in the police investigation should not be asked;
- (g) avoid giving advice on the incident concerned or prejudging the trial process; and
- (h) maintain close collaboration with other disciplines for case coordination.

### **ROLES AND RESPONSIBILITIES OF A SOCIAL WORKER IN THE CRIMINAL PROCEEDINGS WHERE A MIA IS INVOLVED**

#### **SOURCE OF REFERRALS**

3.4 A MIA involved in criminal proceedings either as a witness, victim or suspect/ defendant may come to the attention of a social worker either of the Social Welfare Department (SWD) or Non-governmental Organisations (NGOs) under the following circumstances:-

3.4.1 The MIA being a service recipient of SWD/ NGOs and

- (a) the social worker of the respective service unit becomes aware of an incident through information provided by the MIA or his / her family members or other sources; or
- (b) the social worker of the respective service unit is informed of the incident by the Police.

3.4.2 Where necessary, the police may refer the MIA who is not known to any welfare agencies, for welfare and support services of appropriate service units of SWD / NGOs.

#### **DIVISION OF WORK**

3.5 A MIA involved in criminal proceedings may have contacts with more than one social workers. The social workers concerned should decide among themselves who should be the key worker to follow through the incident and the division of work among them. The functions of the key worker also

include taking initiation to coordinate among workers concerned, if any, to keep parties concerned aware of the case development, to call case conference if necessary, etc. While the decision is subject to the consideration of various factors such as individual agency's policies, operational guidelines of respective services and the MIA's familiarity with the social worker, under normal circumstances, social worker who is familiar with the MIA-in-question would act as the key worker. In deciding the division of work, the interest of the MIA-in-question and his / her family should be the paramount concern.

### **3.6 For known case of social service unit**

3.6.1 The definition of known cases of social service units is at Appendix 3.2

3.6.2 The known case social worker will render appropriate services, such as assistance in reporting to the police, formulation of immediate care plan and provision of social work services, etc.

### **3.7 For new case which is not known to social service unit**

3.7.1 Social service units, including but not limited to integrated family service centre / integrated services centre and medical social services unit, will take up the case in accordance with the existing general principles of division of work among these service units and render follow-up social service as required.

## **SERVICES AND SUPPORT TO MIAS**

### **(I) AT PRE-TRIAL STAGE**

3.8 Social workers may provide the following services and support to MIAs, in consultation with supervisor / senior, as appropriate according to the needs of individual cases:

- (a) to understand the situation of the MIA and the reporting incident (general guide at Appendix 3.3);
- (b) to contact the MIA's significant others such as parents, relatives, guardian, or other social worker concerned. With consideration of the requirements under PD(P)O, information revealed should only be shared among parties concerned on a need-to-know basis without repeatedly and unnecessarily asking the informant, especially the MIA. Part VIII of the PD(P)O also provides specific exemption for collection and transfer of information. In

cases where the family members are involved as a suspected abuser / victim / witness, information related to the case should not be shared without a thorough strategy planning among multi-disciplines;

- (c) to report to the Police or assist the MIA, parent, relative or guardian in the reporting if the alleged crime is not known to the Police yet (notes on reporting to the police are at [Appendix 3.4](#));
- (d) to provide information to the Police that the person have mental incapacity so that the Police may consider whether special arrangements are required for the MIA undergoing criminal investigation;
- (e) to accompany/ arrange the MIA to attend hospital/ clinic for medical examination or treatment if so required;
- (f) to accompany the MIA who was assessed to be mentally fit when giving statement to the Police or attending other criminal investigations if it is considered appropriate. It should be noted that a family member, friend, other adults (including teachers and staff members of residential home) who are familiar and well acquainted with the MIA are more suitable to act as an appropriate adult to accompany the MIA in taking statements or attending other criminal investigations to provide better support for the MIA. Police information on appropriate adult is at [Appendix 3.5](#) for reference;
- (g) if a video-recorded interview<sup>3</sup> (VRI) and / or Mentally Incapacitated Person (MIP) assessment<sup>4</sup> is considered necessary and arranged by the Police, to assist if so required (notes on video-recorded interviews are at [Appendix 3.6](#));
- (h) to coordinate other disciplines / social workers concerned for the provision

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<sup>3</sup> When a person involved in a criminal case, either as a victim, a witness or a suspect / defendant, shows signs of mental problem and his / her level of understanding is in doubt, the Police will first confirm the person's ability to give statement by contacting relevant persons such as relative, social worker, or teacher to gather background information or to trace medical history of the person. The Police may then arrange a VRI for the MIA.

<sup>4</sup> Subsequent to the VRI, the Police after consultation with the legal counsel may require an updated assessment report with regard to the MIP status of the person involved in the criminal proceedings. The Police will then refer the MIA with a history of mental disorder to the psychiatrist of Hospital Authority (HA) and those with a history of intellectual disability to a clinical psychologist for the updated MIP assessment.

of appropriate welfare and support services, including emotional support, immediate care planning, and provision of information on the possible criminal proceedings, special legal provisions or arrangements and participation in welfare case conference, if any, to the MIA and / or his / her family; and

- (i) if the MIA, especially as a victim of an alleged offence such as Rape, shows that her emotions and mental health are adversely affected by the harmful effects of the incident and may be in need of appropriate counselling and therapy, the MIA may be referred to a clinical psychologist or a psychiatrist. Referral to a clinical psychologist of SWD, NGO, or HA should be made in accordance with the principles governing the division of work among clinical psychologists in the “Summary of Agreements on Clinical Psychologist (CP) Support for Integrated Family Service Centres (IFSCs)” and the “Guideline on Provision of Clinical Psychological Service between HA and SWD”. If therapeutic counselling service is deemed necessary prior to the trial, the issues noted at Appendix 3.7 should be attended to.

## **(II) DURING THE TRIAL**

3.9 Social workers should keep in contact with the MIA and his / her family members, if any, and be aware of the progress of the criminal proceedings.

3.10 Throughout the trial, the emotional reaction of the MIA and his / her family will be observed. Counselling and support services for them will be rendered as appropriate.

## **(III) AT POST-TRIAL STAGE**

3.11 Social workers will keep in view the result of the criminal proceeding so as to facilitate the formulation of welfare services.

3.12 Continuous psychosocial services for MIA and his/ her family, including counselling, emotional support and provision of welfare services, will be rendered if so required.

**CHAPTER 4: WITNESS SUPPORT SERVICE**  
**FOR VULNERABLE WITNESS WITH MENTAL INCAPACITY**

**INTRODUCTION**

4.1 Under the Rule 3(9) of the Live Television Link and Video Recorded Evidence Rules, Cap. 221J, there is provision for the witness with mental incapacity to be accompanied by a person, namely the “support person”, in giving evidence through the closed circuit television (CCTV) system, after obtaining the Court’s permission. The support person should not be a witness in the case or has been involved in the investigation of the case as stated in the Practice Direction 9.5 – Evidence by Way of Live Television Link or Video Recorded Testimony issued by the Judiciary in 1996 and last updated in 2015.

4.2 Persons who are familiar with the vulnerable witness, e.g. a relative, teacher, social worker or friend, can serve as support person. In strengthening support to vulnerable witnesses in criminal proceedings, the Social Welfare Department (SWD) has, in cooperation with the Police, been providing witness support service for cases where the natural social network of the vulnerable witness is not available and / or inappropriate to act as the support person.

**OBJECTIVES AND PROVISION OF SERVICE**

4.3 The witness support service aims at reducing the feeling of fear, anxiety and helplessness of vulnerable witnesses when giving evidence in Court by providing them with a package of services ranging from information giving, emotional support, accompanying and escort services during the process of court proceedings.

4.4 Currently, the witness support service for adult mentally incapacitated witnesses is provided by the SWD and Non-governmental Organisation (NGO) for different case natures as follows:

**MULTI-PURPOSE CRISIS INTERVENTION AND SUPPORT CENTRE (CEASE CRISIS CENTRE) OF TUNG WAH GROUP OF HOSPITALS**

4.6 The CEASE Crisis Centre, operated by the Tung Wah Group of Hospitals, is a crisis intervention and support service. It targets to provide comprehensive support to victims, including Mentally Incapacitated Adult (MIA) victims, of sexual violence. Services provided include hotline and counselling and immediate outreaching services on 24-hour basis. Individuals in need can directly approach the 24-hour hotline of the CEASE Crisis Centre

for general support services of sexual violence cases. In respect of support person for the MIA witnesses of sexual violence in Court, the Police will directly contact the Centre for arrangement.

#### **FAMILY AIDE SERVICE OF SWD**

4.7 Family aides of SWD, who had attended the related training, will act as support persons for MIA witnesses who are not currently served by CEASE Crisis Centre mentioned above. The Police will directly liaise with SWD on the arrangement of family aide to serve as a support person in the court proceeding when needed.

#### **ROLES AND CODE OF PRACTICE OF SUPPORT PERSONS UNDER WITNESS SUPPORT SERVICE**

4.8 In supporting the MIA witness, the support person under the witness support service should have some understanding and expertise related to the nature of handicap or disability. The support person will accompany the MIA for the pre-trial familiarisation visit to the Court with the assistance of the Police and Court staff. Emotional and tangible support to the MIA throughout the trial processes will be rendered by the support person. The detailed operational procedural guide is at Appendix 4.1.

4.9 To ensure that the support person can perform their duties properly without prejudice the trial process, they are required to abide by a Code of Practice at Appendix 4.2.

#### **ROLES OF SOCIAL WORKERS UNDER WITNESS SUPPORT SERVICE**

4.10 Case social workers, if any, should render appropriate professional backup to the support person from either the natural social network of the MIA witness or witness support service, and facilitate their support to the MIA witnesses in the Court proceedings, for examples, to provide explanations on the roles and duties of a support person by making reference to Appendix 4.1 and 4.2.

4.11 The information contained in the Child Witness Pack (Appendix 4.3) which is also applicable to MIAs can be made use of in preparing the MIA for attendance at Court.

# APPENDICES

**Chapter 1 : Introduction**

- 1.1 Recommendations of the Working Party on Mentally Handicapped People Giving Evidence in Court

**Chapter 2 : Legal Provision under Part IIIA of Criminal Procedure Ordinance, Cap 221**

**Chapter 3 : Procedures of Handling Mentally Incapacitated Adults in Criminal Proceedings**

- 3.1 Procedural Flow Chart for Handling Mentally Incapacitated Adult (MIA) in Criminal Proceedings
- 3.2 Definition of Known Cases for Social Service Unit for the Purpose of Handling Mentally Incapacitated Adults in Criminal Proceedings
- 3.3 General Guide on Handling Disclosure Involving Mentally Incapacitated Adult in Criminal Proceedings
- 3.4 Notes on Reporting to the Police for Incident Involving a Mentally Incapacitated Adult
- 3.5 Notice to “Appropriate Adult” for Person Assisting/Under Police Enquiry/In Police Custody Who is Mentally Incapacitated or Aged Under 16 (both Chinese and English versions)
- 3.6 Notes on Video Recorded Interviews for Handling Mentally Incapacitated Person in Criminal Proceedings
- 3.7 Areas for Special Attention to Therapeutic Counselling Service

**Chapter 4 : Witness Support Service for Vulnerable Witness with Mental Incapacity**

- 4.1 Witness Support Service for Vulnerable Witness (Mentally Incapacitated Adults) – Procedural Guide
- 4.2 Witness Support Service – Code of Practice for Support Persons
- 4.3 Child Witness Pack (also applicable to MIAs)



**RECOMMENDATIONS OF THE  
WORKING PARTY ON MENTALLY HANDICAPPED PEOPLE\*  
GIVING EVIDENCE IN COURT**

1. When a charge involving a mentally handicapped person either as the defendant or a witness is before the court, the prosecution or the defence, as the case may be, will submit to the court as soon as possible a clinical psychological report identifying that the defendant or the witness is a mentally handicapped person.
2. The court will fix an early date for the trial of the case.
3. As far as practicable, a Cantonese speaking judge or magistrate should be assigned to try the case.
4. The part of the case involving the mentally handicapped witness giving evidence be conducted in Cantonese if the parties request and the court is satisfied that the circumstances of the case so warrant.
5. The court will hear the evidence of a mentally handicapped person in a room similar to a juvenile court other than the courtroom in which the court sits.
6. All persons other than those permitted to be present by the court will be excluded.
7. The judge and counsel will remove their wigs and gowns and wear ordinary attire.
8. A social worker, or a school teacher of the mentally handicapped witness or any suitable person approved by the court may accompany the mentally handicapped witness and sit near him or her while the witness gives evidence provided that there is no prompting or coaching of evidence.
9. The mentally handicapped witness will be allowed counselling by a clinical psychologist or a psychiatrist before, during and after the evidence of the witness.
10. The court will consider sympathetically applications or on its own motion grant adjournments to allow a mentally handicapped witness time to rest and to compose himself or herself before continuing to give evidence whenever circumstances so warrant.
11. The court and counsel or solicitor will endeavor to ensure that simple questions are asked in cross-examination and long and complicated questions or questions which tend to confuse,

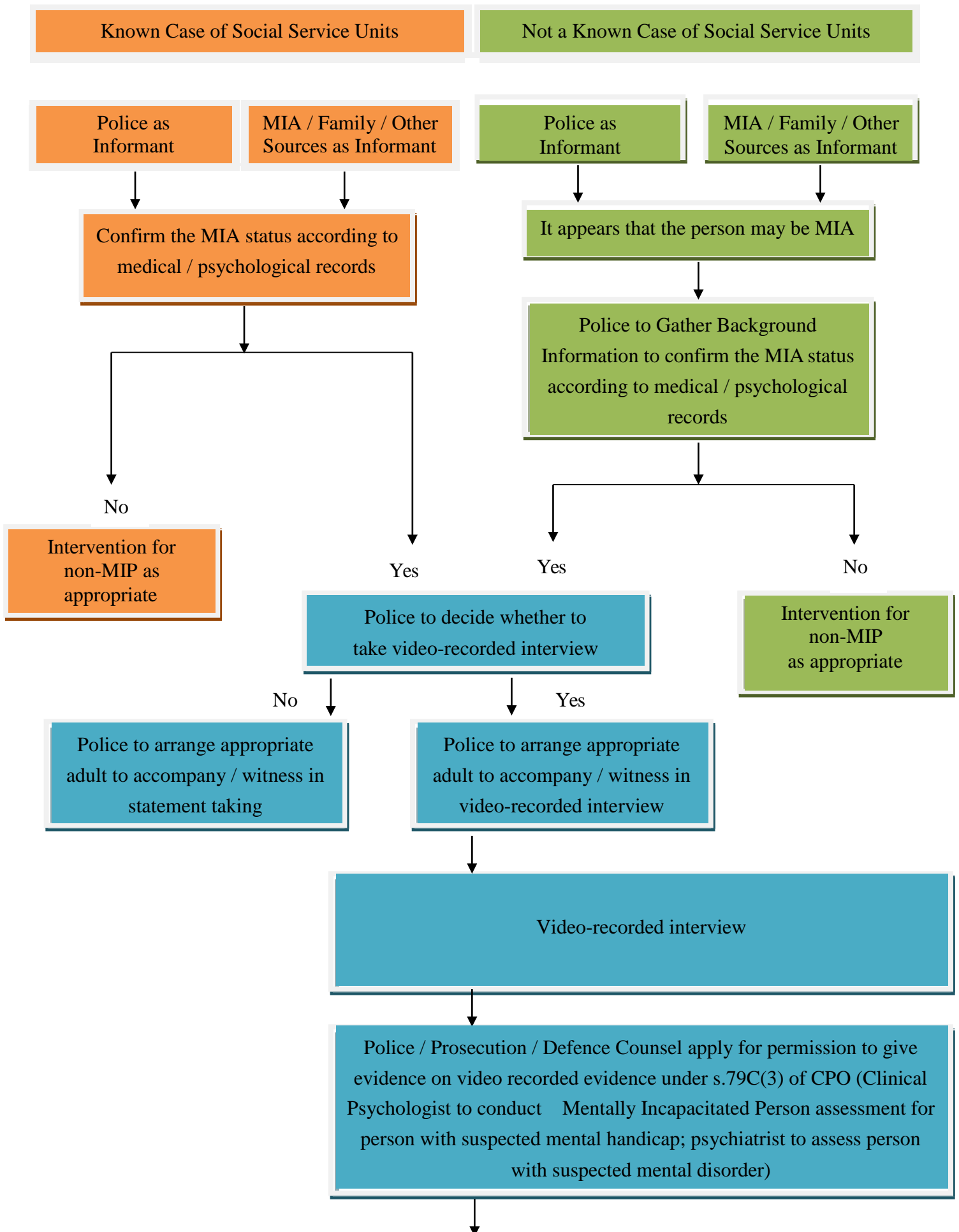
embarrass or mislead the witness must be avoided.

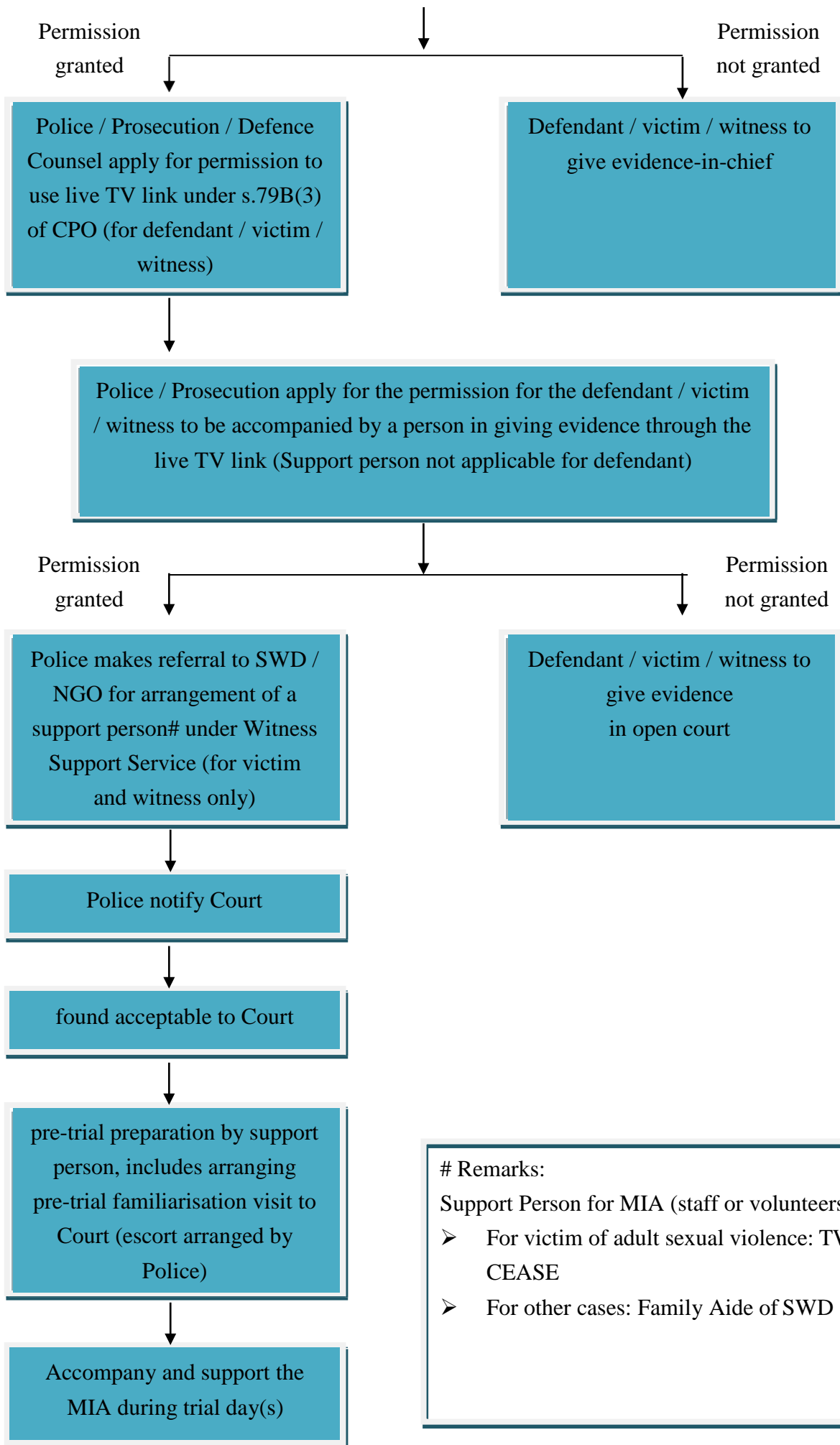
12. A room each in the High Court and the District Court equipped and modified with setting and layout similar to a juvenile court should be available for use whenever necessary.
13. The Judicial Studies Board should from time to time organise lectures and seminars for judges and magistrates on mental health and mentally handicapped people.
14. The use of video link. For this purpose, one court each in the High Court, the District Court and Magistrates Courts to be installed with the necessary equipment.
15. The use of video recording as evidence in chief.
16. Deposition to be taken before a magistrate.
17. The publication of booklets and pamphlets.

25 March 1994

\* Owing to the consequential legislative amendments of the Criminal Procedure Ordinance and the Mental Health Ordinance, the applicability of these recommendations has expanded to cover both mentally handicapped persons and mentally disordered persons [collectively known as mentally incapacitated persons], the child and the witness in fear.

**PROCEDURAL FLOW CHART  
FOR HANDLING MENTALLY INCAPACITATED ADULT (MIA) IN CRIMINAL PROCEEDINGS**





**DEFINITION OF KNOWN CASES FOR SOCIAL SERVICE UNIT  
FOR THE PURPOSE OF HANDLING MENTALLY INCAPACITATED ADULTS  
IN CRIMINAL PROCEEDINGS**

**Social Welfare Department (SWD)**

Known cases refer to the following categories of cases of the various service units:

1. Active cases of casework units, such as Integrated Family Service Centre (IFSC), Family and Child Protective Services Unit (FCPSU), Probation and Community Service Orders Office, and Medical Social Services Unit (MSSU).
2. Any intake case or outreaching case of IFSC / FCPSU<sup>1</sup> / MSSU for which interview or visit has been conducted with the case or the informant and recommendation to open file for follow up action has been endorsed; or the recommendation other than putting away case has not yet been endorsed after one month since intake, irrespective of whether the presenting problem(s) is / are related to suspected crime involving the mentally incapacitated adults (MIA) or whether case file has been opened or not.
3. Cases that come to the attention of a probation officer during the course of social enquiry and still pending sentence.
4. Welfare referral cases which are currently under the concerned probation officer's investigation with required welfare reports not yet submitted to Court.
5. For MSSU, known cases mean:
  - a) Medically intensive cases of MSSU where the MIA is an in-patient or out-patient who is required to attend medical follow-up at least once within 6 weeks, irrespective of the MIA's address;
  - b) Medically active cases of MSSU where the MIA is their patient attending medical follow-up at least once from 6 weeks to 26 weeks and the residential address of the MIA is within the same administrative district of SWD where the MSSU of hospital/clinic is located; or
  - c) Medically intensive case of MSSU where the MIA is a family member of the patient attending medical follow-up at least once within 6 weeks and the MIA's

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<sup>1</sup> Case known to FCPSU for child custody or child abuse social enquiry should be excluded.

residential address is within the same administration district of the SWD where the MSSU of the hospital or clinic is located.

6. Closed cases of IFSC / FCPSU which have been closed for 3 months or less.

**Non-governmental Organisations (NGOs)**

Known cases of NGOs are those active cases being handled by a casework unit which includes IFSC / Integrated Services Centre, MSSU and school social work service.

**GENERAL GUIDE ON HANDLING  
DISCLOSURE INVOLVING MENTALLY INCAPACITATED ADULT IN CRIMINAL  
PROCEEDINGS**

**If the informant is a member of the public/ relative/ friend of the Mentally Incapacitated Adult (MIA)**

1. If there is an informant, who is either a member of the public, friend or relative of the MIA, he/ she should be informed that what is told will be recorded and you may have to refer to later on.
2. To collect relevant information such as:
  - (a) contact details of the informant, if available;
  - (b) the alleged incident-in-question;
  - (c) personal particulars of the MIA who is involved in the incident including the MIA's disability and special needs, if any;
  - (d) the whereabouts of the MIA; ·
  - (e) any other persons involved in the incident, in particular those at risk or in danger.

**If the informant is a MIA**

3. If there is no other informant but the MIA is disclosing information that may result in criminal proceedings either involving the MIA himself/ herself as a witness, victim or suspect/ defendant, the social worker should listen to what the MIA says and do not make comments. (It may be helpful to have another adult present).
4. Inform the MIA he/ she may have to be formally interviewed later and it is important to minimise the number of times the information is repeated.
5. It is important not to make any suggestions to the MIA regarding how the incident-in-question may have happened. Do not question the MIA except to clarify what he/ she is saying. Do not stop a MIA who is freely recalling significant events.
6. Write down notes on what the MIA has said and what questions raised by the social worker.

## **General guide applicable for both kinds of informant**

1. To decide whether the source of information is reasonably credible, it may be necessary to ask a little more about the alleged incident by clarify in what happened, when did it happen, who did it, who is the victim and whether there are any other witnesses. However, it should be clear that the Police is responsible for investigating allegations in relation to crimes and social workers are not trained for this role.
2. While it may be necessary to clarify what happened, it is not necessary to probe into details of the incident. The principle is as soon as you have gathered enough information to decide that there is an incident which may lead to Police intervention, the social worker should stop probing. Examples such as a MIA told that he had beaten a stranger and the man fell unconscious, the mother of a female MIA revealed that the brother of the MIA had sex with the MIP, or a MIA disclosed that he saw a man at the street stabbing another one with a knife etc.
3. Leading questions should never be asked to probe into the area of the incident, for example, “It is Mr X who has beaten you, isn’t it?” On the other hand, questions can be asked in the following manner: “You looked so upset, is there anything bothering you?”, or “You said your brother touched you, what do you mean?”
4. Bear in mind that the social worker is not required to determine whether the incident is criminal or not at this stage. The Police will be responsible for the investigation and to determine whether prosecution should be proceeded.
5. While confidentiality should be respected, the social worker should not promise to keep the information secret as disclosure may be necessary to protect some persons or in Court.



**NOTES ON REPORTING TO THE POLICE  
FOR INCIDENT INVOLVING A MENTALLY INCAPACITATED ADULT**

1. The reporting should preferably be made at the police station of the division where the alleged crime/ offence has taken place. For example, it will be preferable for a MIA residing at a hostel in Chai Wan who was beaten up and robbed in Central to report the incident to the Central Police Station. If the MIA or his/ her relative preferred to report to the nearest police station, they can still make such a report and the case will then be referred to the respective police station for follow-up.
2. If the incident has just occurred, the available physical evidence would be brought along to the police station after consulting the Police. If the incident has recently taken place in a service unit or the MIA's home, the scene should not be disturbed in case the police may search for physical evidence. For cases involving sexual act with a MIA, do not bathe the MIA or wash/ throw away his/ her clothes before the reporting.
3. While the MIA or his/ her relative may not be ready to disclose the incident to the police, the nature of the incident and the urgency of the matter should be taken into consideration. For instance, if a MIA witnessed a man stabbing another man with a knife in a public toilet, the incident may better be reported to the police as another person's life may be at risk. For a female MIA allegedly to have been raped, the matter should be reported to police as soon as possible so that forensic examination and medical treatment, if required can be arranged timely.
4. The Personal Data (Privacy) Ordinance, Cap. 486 provides that personal data can only be transferred or accessed with consent from the data subject (the individual whose personal data is concerned) or the consent from a relevant person (i.e. (a) where the individual is a minor, his/ her parents and/ or legal guardians are relevant persons; (b) where the individual is incapable of managing his own affairs, or (c) the individual is mentally incapacitated under section 2 of the Mental Health Ordinance (MHO), Cap. 136, and a person / Director of Social Welfare has been appointed to be the guardian of that individual under section 44A, 59O or 59Q of the MHO, Cap. 136, is a relevant person.
5. For MIAs, their parents are no longer “a relevant person” who can give consent to or refuse the data transfer unless they have been appointed by the Court to manage the affairs of the mentally incapacitated adult, or have been appointed to be the guardian of the mentally incapacitated adult under section 44A, 59O or 59Q of the MHO, Cap. 136. However, their views should be consulted and respected as far as practical. It is preferable to have discussion with the parents of MIA in relation to the reporting to police.
6. A MIA may give consent to release his/ her personal information if his/ her mental capacity permits his/ her understanding of the request. Part VIII of the Personal Data (Privacy) Ordinance also provides specific exemptions for collection and transfer of information including for the purposes of crime related matters. Extract of the section is at [Annex](#).

(6) A document purporting to be a certificate referred to in subsection (3) or (4) shall be received in evidence and, in the absence of evidence to the contrary, shall be deemed to be such a certificate.

(7) In this section—  
“international relations” (國際關係) includes relations with any international organization;  
“security” (保安) includes the prevention or preclusion of persons (including persons detained in accordance with the provisions of the Immigration Ordinance (Cap. 115)) entering and remaining in Hong Kong who do not have the right to enter and remain in Hong Kong.

#### 58. Crime, etc.

- (1) Personal data held for the purposes of—
- the prevention or detection of crime;
  - the apprehension, prosecution or detention of offenders;
  - the assessment or collection of any tax or duty;
  - the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
  - the prevention or preclusion of significant financial loss arising from—
    - any imprudent business practices or activities of persons; or
    - unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing—
- to which the discharge of statutory functions by the data user relates; or
  - which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or
- (g) discharging functions to which this paragraph applies by virtue of subsection (3),
- are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to—
- prejudice any of the matters referred to in this subsection; or
  - directly or indirectly identify the person who is the source of the data.
- (2) Personal data are exempt from the provisions of data protection principle 3 in any case in which—
- the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and

(6) 看來是第(3)或(4)款所提述的證明書的文件，須獲收取為證據，而在沒有相反證據的情況下，該文件須當作該等證明書。

(7) 在本條中——  
“保安”包括防止或排拒無權進入香港及留在香港的人(包括按照《人民入境條例》(第115章)的條文被扣留的人)進入香港及留在香港；  
“國際關係”(international relations)包括與任何國際組織的關係。

#### 58. 罪行等

- (1) 為——
- 罪行的防止或偵測；
  - 犯罪者的拘捕、檢控或拘留；
  - 任何稅項的評定或收取；
  - 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為的防止、排除或糾正(包括懲處)；
  - 防止或非除因——
    - 任何人輕率的業務經營手法或活動；或
    - 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為，
- (f) 而引致的重大經濟損失；
- (f) 確定有關的資料當事人的品格或活動是否相當可能對以下事情有重大不利影響——
- 由該資料使用者執行法定職能所關乎的事情；或
  - 與本段憑藉第(3)款而適用的職能的執行有關的事情；或
- (g) 本段憑藉第(3)款而適用的職能的執行，
- 而持有的個人資料，在以下情況下獲豁免而不受第6保障資料原則及第18(1)(b)條的條文所管限——
- 該等條文適用於該等資料便相當可能會損害本款所提述的任何事宜；或
  - 該等條文適用於該等資料便相當可能會直接或間接識辨屬該等資料來源的人的身分。
- (2) 凡——
- 個人資料是為第(1)款所提述的目的而使用(不論該等資料是否為該等目的而持有)；及



## 發給協助警方調查或被警方調查/羈留而精神上無行為能力或年齡在16歲以下的人的「合適成人」通知書

請細閱下文，並保留這份通知書以作參考。

1. 你作為合適成人，目的是提供支援予下列正在協助或接受警方調查的人士：
  - 年齡在16歲以下的人士；或
  - 精神上無行為能力人士。
2. 作為合適成人，你須細閱警方「發給被羈留人士或接受警方調查人士的通知書」(Pol. 153) 以知悉有關人士的權利，警方會要求你在該通知書上簽署，以確認被調查人士已獲取該通知書的副本(如適用)。
3. 當警方向該名人士進行以下調查工作時，警方會要求你在場：
  - 會面調查，包括錄取口供；
  - 進行認人程序；
  - 收取體內樣本作法證科學化驗；
  - 在該名人士被羈留在警察羈留設施之前進行的人身搜查 (合適成人必須與該名人士的性別相同)；以及
  - 落案起訴該名人士。
4. 作為合適成人，你的角色是：
  - 向該名協助或接受警方調查的人士提供協助及情緒支援。你可就該人士的福利事宜向警方提出建議；
  - 幫助該名人士明白其享有的權利；
  - 以證人身分觀察警方會面/調查的程序是否公平；
  - 告知警方該名人士的藥物和醫療需要(如有)；以及
  - 協助警方與該名人士溝通，包括告知警方該名人士的溝通需要(如有)。
5. 在調查期間，警方會要求你在警方與該名協助或被調查人士的會面記錄上簽署。在簽署前，請仔細閱讀該份口供，並確認該口供為會面時所提出的問題及答覆的準確記錄。你並不須要對口供內容的真確性作出保證。錄取口供後，警方會將一份口供副本給予該名協助或被調查人士。
6. 你不應：
  - 代該名協助或接受警方調查的人士回答問題；或
  - 除履行你作為合適成人角色外，在警方會面或調查期間作出干擾的行為。

### 注意事項:

- 本通知書正本由案件主管保管，作為案件財物。

單位/檔案編號 : ..... 發通知人員 : ..... 傳譯員(如有) : ..... 語言/方言 : ..... 發出日期及時間 : ..... 協助警方調查或被警方調查/ 羈留人士姓名 : ..... 合適成人姓名 : ..... 合適成人身分證明文件號碼 /社福機構職員號碼 : ..... 備註(如有) : .....	我*已閱讀/警務人員已向我覆讀上文各段，我在 年 月 日 時簽收本通知一份。  (合適成人) (傳譯員 (如有)) (發通知人員)  * 刪去不適用者
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**NOTICE TO 'APPROPRIATE ADULT' FOR PERSON ASSISTING/UNDER  
POLICE ENQUIRY/IN POLICE CUSTODY WHO IS  
MENTALLY INCAPACITATED OR AGED UNDER 16**

Please read the following information and keep it for reference.

1. **You are present as an appropriate adult to provide support to a person involved in police enquiries who is:**
  - aged under 16; or
  - mentally incapacitated.
  
2. **As an appropriate adult, if applicable, you should read the 'Notice to Persons in Police Custody or Involved in Police Enquiries' (Pol. 153) to know and understand their rights. You will be asked to countersign to acknowledge the service of a copy of the Notice to the person under police enquiry.**
  
3. **You will be asked to accompany the person assisting/under police enquiry during these occasions:**
  - police interview, including statement taking;
  - an identification parade;
  - the provision of an intimate body sample for forensic analysis;
  - the body search by police prior to detention in a police detention facility (only if the appropriate adult is of the same gender); and
  - the formal charging by police.
  
4. **Your role as an appropriate adult is to:**
  - provide emotional support and assistance to the person assisting/under police enquiry. You may inform the police the welfare matters related to the person;
  - help the person understand his / her rights;
  - act as a witness to observe whether any police interview / investigative procedure is being conducted fairly;
  - inform police of his / her medication and medical needs, if any; and
  - facilitate communication between police and the person assisting/under police enquiry, including inform police of his / her communication needs, if any.
  
5. **During police investigation, you will be asked to sign the written interview record. Before signing the written interview record, you should read the statement and satisfy yourself that the statement accurately records the questions asked and answers given. You are not required to confirm the authenticity of the content of the statement. After the interview, the Police will provide a copy of the statement to the interviewee.**
  
6. **You should not:**
  - provide answers on behalf of the person assisting/under police enquiry; or
  - interfere with police interview or enquiry other than in the performance of your role as an appropriate adult.

*Note:*

- Original of this Notice is to be retained by the OC Case as case property.

Formation/Ref. No.	:	.....
Issuing Officer	:	.....
Interpreter (if any)	:	.....
Language / Dialect	:	.....
Date & Time of Issue	:	.....
Name of Person Assisting/under Police Enquiry/ in Police Custody	:	.....
Name of Appropriate Adult	:	.....
Identification Document No. of Appropriate Adult / Staff No. of Social Worker	:	.....
Remark (if any)	:	.....

\*I have read / Police has read over to me the above paragraphs and acknowledge receipt of a copy of this Notice at ..... (hours) on ..... (Date).

(Appropriate Adult)

(Interpreter, if any)

(Issuing Officer)

\* Delete as appropriate

**NOTES ON VIDEO RECORDED INTERVIEWS  
FOR HANDLING MENTALLY INCAPACITATED PERSON  
IN CRIMINAL PROCEEDINGS**

1. Section 79C of the Criminal Procedure Ordinance allows a video recording of an interview with a mentally incapacitated person (MIP) to be used as admissible evidence in Court. When a MIP is involved in an offence, either as a victim, witness or defendant / suspect irrespective of the MIP's age, a video-recorded evidence can be used as an admissible evidence, as permitted by Court.
2. Such a video recording is admissible only where the rules of Court requiring disclosure of the circumstances in which the recording was made have been properly complied with and the MIP is available for cross examination (assuming the proceedings get that far).
3. In deciding if video is the appropriate medium on which to record the evidence, other factors should also be considered. They may include the nature of the allegation, competence of the MIP, and the likelihood of the matter going to Court. If a MIP is proved to be unable to give an understandable account of the event under investigation, the MIP's evidence might not form part of the case for the prosecution or the defence.
4. Interviews with MIP witness/ victims shall be conducted in specially designed video suites which are equipped with video/ audio equipment. There are five such suites, one each in Hong Kong Island, Kowloon West, Kowloon East, New Territories South and New Territories North. The addresses of these suites are confidential so as to protect the users.
5. Interviews shall only be conducted by police officers, SWD social workers and government clinical psychologists trained in joint investigation and video-recorded interviews.

**AREAS FOR SPECIAL ATTENTION  
TO THERAPEUTIC COUNSELLING SERVICE**

1. The police officer responsible for the case (OC Case) should be informed by the social worker or clinical psychologist or psychiatrist of the need for therapeutic counselling service for the mentally incapacitated adult (MIA) and the trial preparation counsel of the Department of Justice should be consulted, preferably prior to the therapy/ counselling taking place. The consultation should be done in written form and should include the areas to be covered, methods to be used and reasons for wishing to offer therapeutic help at that time. The Department of Justice will then offer comments on the proposal.
2. Where the police are undertaking a parallel investigation which may lead to prosecution of an alleged suspect, there are important issues to be considered about the need for the MIA to receive appropriate counselling and support and the need for the MIA to appear as a credible witness in Court.
3. Care should be taken to avoid therapeutic counselling from adversely affecting the criminal proceedings. Where the MIA is to give evidence in the prosecution, it is essential to avoid discussion of any matters which might discredit the MIA as a witness or permit allegations of coaching by the social worker/ clinical psychologist/ psychiatrist.
4. The social worker/ clinical psychologist, psychiatrist who has already been involved in the case investigation or as a witness should not provide the therapeutic counselling service.
5. Anybody who does counselling or therapeutic treatment must realise that they might have to give evidence themselves.
6. Records of the therapeutic counselling provided to the MIA must be kept in order as the Court or defence may justifiably wish to know about both the nature and content of the therapy that has taken place before the MIA gives evidence in cross-examination.

**WITNESS SUPPORT SERVICE FOR VULNERABLE WITNESS  
(MENTALLY INCAPACITATED ADULTS)  
PROCEDURAL GUIDE**

**Roles of a Support Person**

1. The major duties of the support person are:
  - (a) to accompany the mentally incapacitated adult (MIA) on a familiarisation visit to the court before the trial; and
  - (b) to provide support to the MIA when testifying in court through the CCTV system.
2. The support person should familiarise themselves with the Code of Practice (see Appendix 4.2) and abide by it.

**Operational Procedures**

3. Referrals for support persons for MIAs should be made by the Family Conflict and Sexual Violence Policy Unit (FCSV) of Police to
  - (i) Tung Wah Group of Hospitals (TWGHs) CEASE Crisis Centre for sexual violence victims, or
  - (ii) the cluster contact person of the Social Welfare Department (SWD) according to the cluster of SWD for cases not falling into (i).

The referrals should include general information about the case, the scheduled hearing dates, and the name and contact telephone number of the police officer responsible for the case (OC Case).

4. Upon receipt of the referral from FCSV, TWGHs CEASE Crisis Centre or SWD will identify the appropriate support person and pass to him/her the general information of the case as provided by the Police. The supervising officer of the support person will then brief the support person concerned of the assignment. Regarding SWD, in case the support person in the cluster is not available, the cluster contact person can liaise with other clusters for assistance. Considering the proximity of clusters, assistance can be sought as follows:-
  - (a) Hong Kong cluster : from clusters in Kowloon
  - (b) the 2 clusters in Kowloon : from each other
  - (c) the 2 clusters in the New Territories : from each other
5. TWGHs CEASE Crisis Centre or SWD will inform FCSV the name of the support person

assigned. FCSV should be informed of any changes in the nomination of the support person three weeks before the scheduled hearing date, as the name of the support person will be passed to the court through the Police.

6. The Police will arrange escort for the MIA for the pre-trial familiarisation visit to the court and the schedule court hearings. The support person would be informed about the dates and meeting points, and the name of OC Case through his/her supervising officer.

### **Pre-trial Preparation**

7. With the assistance of the case social worker responsible for the case, if any, or supervising officer of the support person, MIA will be arranged to have a pre-trial familiarisation visit to the court to get familiar with the Court environment and meet the support person.
8. The support person should consult the case social worker responsible for the case, if any, or his/her supervising officer if any problem is encountered with the MIA. Where necessary, the supervising officer may seek clarification with the OC Case.
9. If the MIA discloses anything about the criminal case during their meeting, the support person should not discuss the evidence with the MIA but alert his/her supervising officer and the responsible case social worker, if any, of such situation immediately, should then pass on the information to the police OC Case.

### **Trial Day**

10. After meeting the MIA in the court, the support person should stay with the MIA when the MIA is in the court and keep in view the physical needs of the MIA. If it is a full day hearing, the support person should have lunch together with the MIA. The case social worker responsible for the case, if any, or supervising officer of the support person, can help clarify the lunch arrangements with the OC Case beforehand.
11. The support person should not speak to the MIA while the MIA is giving evidence, but should be observant of the emotional response of the MIA and alert the Judge through the usher when the MIA has difficulties in continuing to give evidence. The support person should not attempt to comfort the MIA without the permission of the court.
12. While waiting for the trial, or in-between breaks, the support person can help the MIA feel more relaxed by chatting with the MIA about anything not related to the case.



13. If the MIA wants to discuss with the support person the evidence he/she has given, or seeks advice on whether he/she should mention any details of the case, the support person should remind the MIA that he/ he should talk about the evidence and tell the truth in court only.
14. If any problem about the court arrangements is encountered, the support person should inform the case social worker responsible for the case, if any, or his/her supervising officer who can help resolve the problem with the OC Case.

### **After the Trial**

15. The support person should provide immediate emotional and tangible support to the MIA after the trial. When necessary, the case social worker, if any, can be alerted to follow-up on the post-trial emotions. MIA will also be encouraged to approach the helping professionals for assistance if needed.

**WITNESS SUPPORT SERVICE  
CODE OF PRACTICE FOR SUPPORT PERSONS**

1. Support persons involved in providing support service to the vulnerable witnesses should have attended the specially designed training programme for support persons.

2. Support persons assigned to provide support services for a vulnerable witness would not attend the related trial unless they are accompanying the witness in giving evidence.

*A support person who attends the trial to listen to the evidence of another witness may be seen by the defence as prejudicing the course of trial. It is essential that such a situation should be avoided. The support person should approach the court usher if there is a need to find out on behalf of the vulnerable witness how far the hearing has proceeded.*

3. Where a case involves a number of vulnerable witnesses requiring support, different support persons should be assigned to each witness.

*During the course of supporting the witness, the support person may inevitably overhear the details of the case. Though the support person must not discuss the evidence with the witness, the danger of passing on the evidence to the other witness before the trial will be avoided by assigning different support persons to each witness.*

4. Support persons should not offer advice or opinion on the case but they may offer support to the witness by giving factual information concerning court procedure, the trial and the role of the witness.

*Provision of advice on the case is outside the scope of the service by a support person. If the witness or the family member(s) make such a request, the support person should pass on the request to the social worker or the police officer responsible for the case for follow-up.*

5. Support persons should keep confidentiality of the personal particulars and case information of the vulnerable witnesses.

*Confidentiality is an important principle in the provision of witness support service and the support persons should observe this principle. However, there may be situations where they are required by the court to disclose the details of their meetings with the witness or family members, and they should act as the court instructs.*

6. Support persons should observe proper court manner to avoid prejudicing the process of the trial.

*Support person should keep silent and should not communicate with the witness while the court hearing is in process. They should approach the court usher if they observe that the witness is in need of assistance. They should not attempt to comfort the witness without the permission of the court.*
7. Support persons should inform the prosecution their presence in the trial as soon as possible.

*Support persons should inform the prosecution their arrival in the court as soon as possible and keep company with the vulnerable witness.*
8. Support person assigned to the case should follow through the whole case and report to the prosecution through his/her supervisor as early as possible in case of any changes.

*It is important that the support person should be committed to the job and be able to handle the case throughout the whole trial process. Any change of the support person in the course of the proceedings may have impact on the witness.*
9. Support person should not comment on any particular case and should not make comments to the media.

*The support person must not receive requests for interviews by the media during the proceedings or reveal the case information afterwards. They should not make any comments on the cases they have served or make any specific reference to the case while talking to their family members/relatives/friends about their work as a support person.*
10. Equal opportunity should be given to all vulnerable witnesses in need of the service without prejudice to the witness' background such as gender, age, ethnicity, religion, sexual orientation, family background, etc.
11. Support person should be fully conversant with this Code of Practice of the Witness Support Service and abide by it at all times.
12. What a support person should/should not do :
  - (a) To provide support to the vulnerable witness throughout the whole process, and help the witness feel comfortable during the trial;
  - (b) never coach a vulnerable witness in giving evidence;
  - (c) never prompt or seek to influence the vulnerable witness in any way in the course of giving evidence; and
  - (d) refrain from making any comments, or expressing any personal feelings, including anger or hostility, towards the defendant or other family members of the witness, or any personnel connected with the trial.

# 何太應該怎樣做？

## 教導孩子如何上法庭做證人

給兒童證人的家長及照顧者  
(亦適用於精神上無行為能力人士證人的  
家長及照顧者)

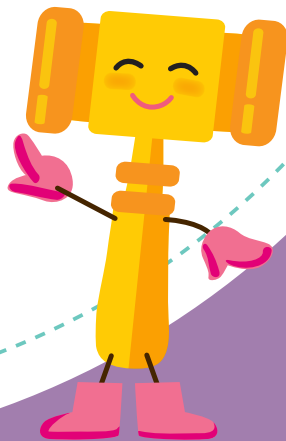


# 前言

經修訂的刑事訴訟程序條例於一九九六年二月生效後，就特定案件，兒童及精神上無行為能力人士可以透過直播電視聯繫設施在法庭作證。透過這種作證方式，證人可以在一個較為輕鬆的環境下，毋須直接面對被告及法庭上其他的人來作證，減低心理壓力和在法庭作證可能帶來的創傷。但在某些案件中，他們仍可能需要在庭上作證。

為了加強他們對擔任證人和審訊程序的認識，從而減低對作證的憂慮和增強他們對作證的信心，政府印製了一套小冊子，為他們及家長提供參考資料。

這套小冊子在得到英國National Society for the Prevention of Cruelty to Children and Childline的允許下，參考其“Child Witness Pack”而編成的。謹此致謝。



# 這套小冊子共有兩冊

## 第一冊：準備好，上法庭，做證人

第一冊的對象是十八歲以下，將會到法庭做證人的兒童及青少年（以下簡稱兒童）。內容主要介紹法庭的環境、審訊程序和證人的工作。由於用字簡易，加上生動插圖，小冊子也適合精神上無行為能力人士證人使用。為了加深兒童或精神上無行為能力人士證人對內容的理解，在派發本小冊子時，請由社工或其他支援者陪同他們一同閱讀及作出解說，同時並可鼓勵他們說出憂慮，消除上庭作證的恐懼或疑惑。

## 第二冊：何太應該怎樣做——教導孩子如何上法庭做證人

第二冊是為兒童（或精神上無行為能力人士）證人的家長及照顧者而編寫的，協助他們了解兒童或精神上無行為能力人士因為做證人而可能產生的困擾，以及指導他們可怎樣支持兒童或精神上無行為能力人士作證。小冊子並介紹法庭的環境和審訊程序，以增加家長及照顧者對上庭作證的認識，從而進一步為兒童或精神上無行為能力人士出庭作證做好準備。

兩本小冊子皆留有空位給負責的個案工作人員填寫聯絡電話。讀者如有需要，可向有關工作人員尋求援助。

放學後，何太焦急地在校門等候女兒阿敏，一看見阿敏，便立即帶她回家。原來，何太接到警方通知，阿敏將要上法庭做證人。何太看阿敏年幼，很不放心。



回到家中，何太對阿敏說：「你下個月要上法庭做證人。現在我們先行預習一下，你把我當做法官和律師，我發問，你回答。」

「不，我、我答不出。」阿敏顫聲說。她從來沒有做過證人，嚇得哭了起來。



「鈴……」門鐘響了。

原來她們的社工方姑娘約好了來探訪。

方姑娘看見阿敏很緊張，問明因由，便告訴何太，與兒童證人預習法庭上回答問題是不適當的。

「那我們應該怎樣辦呢？阿敏年紀這麼小，又從未做過證人，我擔心她上法庭時，會不知所措呀！」何太焦急地說。

「不要急，我們一步一步來。」方姑娘安慰道。方姑娘讓阿敏到房間裏去做功課，然後和何太走進廚房，一邊喝茶，一邊傾談。

# 了解孩子的心理狀況

方姑娘告訴何太，其實有不少孩子都會上法庭做證人，身為他們的父母（或照顧者），首先要了解孩子的心理狀況，並注意以下事情：



- (一) 孩子上法庭作證前，千萬不要與他（或她）預習，否則，會使法官和陪審團感到孩子是在別人指導下而說出口供的。
- (二) 當孩子知道自己要上法庭，會感到很大壓力，甚至以為自己做錯了事情，因此需要你去安撫他的情緒。

其實，許多父母也會有同樣的壓力，所以自己也要先做好心理準備。

要知道，孩子需要你的支持。他可能是一件罪案的見證人，也可能是受害人，因此，你要幫助他，令他感到安全。

有些父母會為孩子的遭遇感到難過，不想他在法庭覆述遭遇，但父母要明白證人的工作對於公平審訊很重要，因此要鼓勵孩子把所見、所聽和所知道的說出來，並告訴他這樣做是正確的。

不要答應孩子，如果他在法庭上表現好，就給他實質「獎勵」，例如買東西給他，只要鼓勵他講出真話。



(三) 孩子要上法庭，自然會產生憂慮，甚至會影響他的情緒以及日常行為。如果孩子有下面的情況出現，請你立刻告訴社工或警察：

- 常常發怒或驚慌
- 有罪咎感
- 對被告的感覺反覆不定，例如有時憎恨被告，有時又擔心被告受罰
- 在學校和家中，情緒不安，精神不集中
- 遺尿、失眠、沒有胃口
- 感到困擾

(四) 留意孩子有甚麼憂慮，例如：

- 害怕在法庭上面對被告
- 害怕被告坐監或者受罰
- 害怕同學或朋友的談論
- 害怕在法庭上應付不來

鼓勵他把憂慮說出來，再給予開解安慰。

(五) 如果孩子是弱智或弱能的話，更需要你的關心和幫助。

(六) 如果你自己也需要幫助，可以向社工求助。

(七) 盡量在孩子面前控制自己的情緒，以免影響他的情緒。

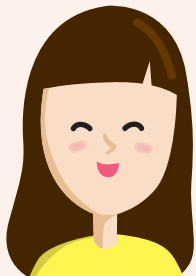
(八) 可以鼓勵孩子找社工傾訴。因為有些事情，孩子可能難於向父母啟齒，而情願告訴社工的。



# 法庭及審訊程序

聽了方姑娘的一番說話，何太的情緒緩和了，她又說：

我現在明白了。不過，一件案件是如何去到法庭和如何審訊，我還是知道得不多。請你給我講解一下，好嗎？



好的。讓我向你講解一下。但如果你想知道更多有關審訊的程序，也可以向警方查詢。

還有，審訊的日期有時亦會因某種原因而更改的，你不用刻意時常提醒孩子審訊的日期。如你對審訊日期的更改有疑問，可以向警方查詢。

跟著，方姑娘繼續向何太解釋審訊的程序。

一宗案件的處理，通常有下面幾個步驟：

## 調查及檢控

警察接到案件時，如果發現受害者或目擊證人是兒童或精神上無行為能力人士，警察有時會聯同社工或臨床心理學家一起替他錄取口供，或將會面過程錄影下來，然後進行調查。若懷疑有人犯了罪，便會將有關案件交給律政司審閱，再由律政司決定是否提出檢控。如決定檢控，便將那人（即被告）帶上法庭。

## 法庭的種類和工作人員

### 法庭的種類

法庭有很多種類，包括裁判法院、地方法院和高等法院。

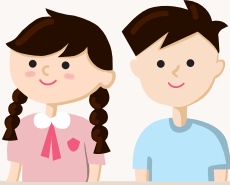
### 法庭上的人

法庭上有很多工作人員，各有各的工作和角色。



#### 法官

法庭的主管，聆聽審訊過程中每個人的發言，按照法律，使審訊在公平的情況下進行。



#### 證人

將知道的事實在法庭上說出來。



#### 被告

被懷疑犯法而受控告的人，未經法官批准，不可直接和證人講話或走近證人。



#### 主控官

負責向法庭提出證據證明被告所犯的罪行。



#### 辯方律師

為被告辯護，向證人提問。



### 法庭書記

協助法官處理文件和證物。



### 陪審團

只設於高等法院。由陪審員組成，他們事前均未接觸過案情，負責聽取控辯雙方提出的證據，並進行討論以作出裁決。



### 傳譯人員

負責翻譯法官、主控官、辯方律師、證人和被告說的話。



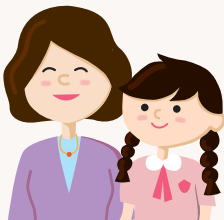
### 司法書記助理

負責陪同證人出入法庭，並指出證人的座位。



### 庭警

負責維持法庭秩序，看管被告，確保被告不會接觸證人及與他們講話。



### 證人支援者

如果法官准許，可以安排支援者幫助兒童證人。他/她會陪伴兒童證人參觀法庭，也會陪伴兒童證人在作證室內作證，但他/她們不會提示兒童要怎樣回答問題。

## 審訊過程

- 審訊當天，法庭的工作人員會安排一個小房間讓兒童證人、家長或監護人在裡面等候。
- 法庭上，有時法官可能不會稱呼孩子的全名，因為他不想法庭裏的人知道孩子的名字，也可能會禁止記者對外報導孩子的名字。
- 首先，法官會問被告是否認罪。如果被告認罪，證人便不用上法庭作證。
- 相反，如果被告不認罪，審訊便會進行。工作人員會帶證人進入法庭作證
- 當兒童作證時，法官有權決定公眾席的人士是否要離場。
- 十四歲或以上的兒童作證時，一定要宣誓，向法庭保證會說真話。
- 兒童作證時，可以是在法庭上，或在一個小房間中，在家長或其他支援者陪同下，透過電視聯接直播系統作證。但如果家長自己也要作證，則一定不可以陪同孩子作證。
- 如果法官決定將兒童證人與警方 / 社工 / 臨床心理學家之前會面的錄影片段，作為呈堂證供的一部份時，證人可以不用重覆該影片的內容，但仍然要回答法官及律師向他提出的問題。兒童證人可以在上庭前看一遍該影片。
- 在裁判法院及地方法院，是法官聽取所有證據後，決定被告是否有罪；而在高等法院，則由陪審團負責決定被告是否有罪。
- 如被告罪名成立的話，就由法官判決處罰。相反，若被告罪名不成立，他會立即被釋放。

## 家長陪同兒童證人作證的考慮

有時家長都可以成為證人支援者，陪同兒童證人作證。但如果家長亦被傳召為同一案件的證人，便不可以擔任支援者，而會由社會福利機構受過訓練的義工或工作人員擔任。

- 家長在決定是否陪同孩子作證前，要先了解一下孩子對你這個決定的感受，他是否很需要家長的陪伴，或者會因此而感到不安呢？家長亦要考慮到自己知道案情後的反應，會否影響孩子作證。
- 家長可以選擇在法庭內聽審而不是陪著孩子在小房間內作證。家長若不知道怎樣決定時，可與社工商量。

## 等候上庭期間

### 法庭



你應該如常地安排孩子的生活。如果有親友問到有關上法庭的事情，你可以坦白告訴他們，但不可討論案情內容。

在開庭之前，警方會安排兒童證人到法庭參觀。你可以讓你的孩子前往法庭，熟悉一下環境，為出庭作證做好心理準備。

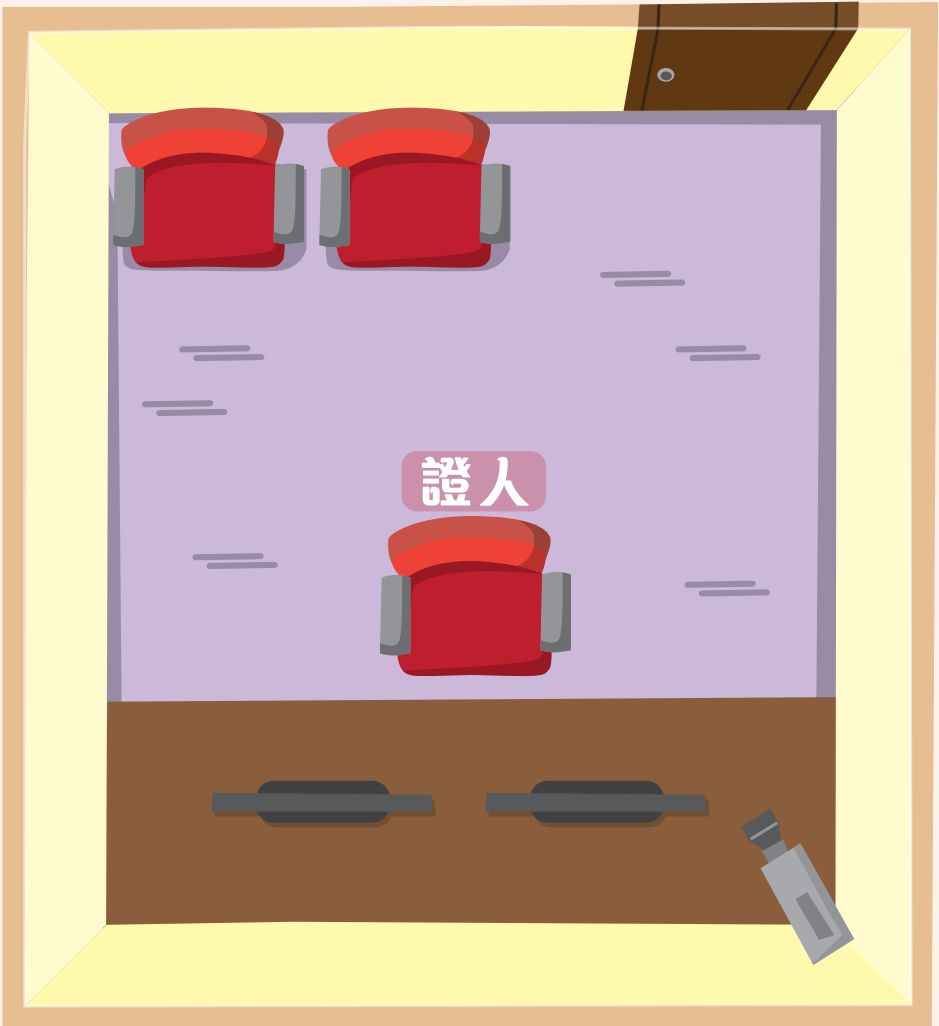
## 上庭當日

要準時到達法庭。

進入法庭之前，孩子會在證人等候室內等候傳召，你可以陪伴孩子。年幼的孩子，可以帶同玩具消磨時間，放鬆心情。此外，法庭的職員會盡量避免讓孩子在法庭外見到被告。

當孩子被傳召入法庭時，將有工作人員引領，而家長則可以在外面等候，或者進入法庭內聽審。

如果孩子被安排在小房間，用電視聯接直播系統作證，而法官沒有批准你陪同，你就要在外面等候，或到法庭內聽審。但如果家長也要作證，他便不可以於作證前進入法庭內聽審。



通常在電視聯接直播系統作證的小房間，證人將由法庭人員陪同，面向電視機就坐。若法官准許，亦可安排支援者陪伴證人。從電視上，證人可看見法官或律師，當他們提出問題時，證人面對電視作答便可，毋須看到被告和法庭內的全部情況。

兒童證人作證完畢，家長可以陪伴離去。

家長要使孩子明白，在作證的時候，只要說出知道的事實就是了。並且，如果需要上洗手間、想喝水，或者想休息的時候，都可以向法官提出要求。

孩子作證完畢後，你應該對她的表現表示欣賞和給予鼓勵，同時，亦要留意孩子作證以後的情緒反應。





# 審訊告一段落以後

方姑娘和何太談過了，便由廚房走出客廳。

何太向方姑娘道謝說：

我現在懂得應該怎樣教導阿敏做好準備上法庭了。

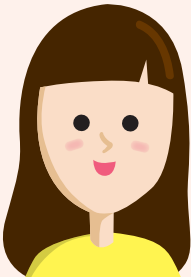


何太再問：

當孩子問及審訊結果，應該怎樣回答呢？



方姑娘說：



首先應該照實回答，而且告訴他，他已經盡了自己的責任，把真相講了出來，無論結果如何，也不要介懷。其次，要開解孩子，幫助他回復健康愉快的心情，過正常生活。

如果孩子的情緒還是未能平復，你可以聯絡社工尋求幫助。請將社工的電話號碼寫在下邊，隨時和他們聯絡。

社工姓名：

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電話：

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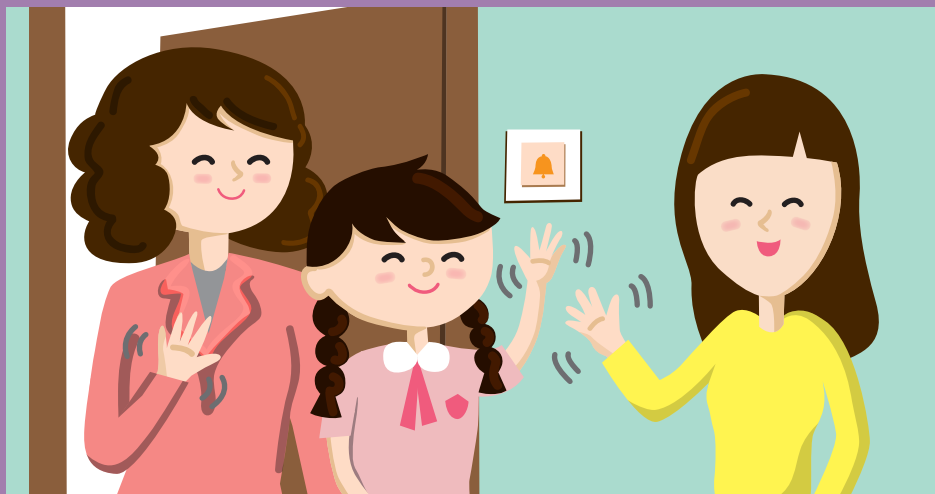
社工姓名：

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電話：

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方姑娘說完，便告辭了。阿敏這時正好做完功課，走出客廳。何太讓女兒和方姑娘說再見，她感覺心情輕鬆許多，也清楚地知道應該怎樣幫助阿敏，做好準備上法庭作證了。





# 準備好， 上法庭，做證人

給兒童證人  
(亦適用於精神上無行為能力  
人士證人)

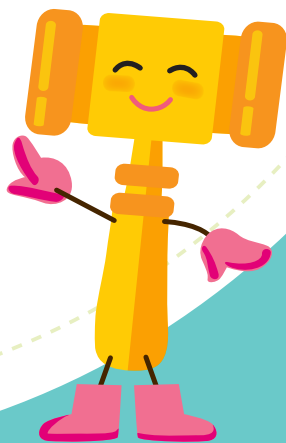


# 前言

經修訂的刑事訴訟程序條例於一九九六年二月生效後，就特定案件，兒童及精神上無行為能力人士可以透過直播電視聯繫設施在法庭作證。透過這種作證方式，證人可以在一個較為輕鬆的環境下，毋須直接面對被告及法庭上其他的人來作證，減低心理壓力和在法庭作證可能帶來的創傷。但在某些案件中，他們仍可能需要在庭上作證。

為了加強他們對擔任證人和審訊程序的認識，從而減低對作證的憂慮和增強他們對作證的信心，政府印製了一套小冊子，為他們及家長提供參考資料。

這套小冊子在得到英國National Society for the Prevention of Cruelty to Children and Childline的允許下，參考其“Child Witness Pack”而編成的。謹此致謝。



# 這套小冊子共有兩冊

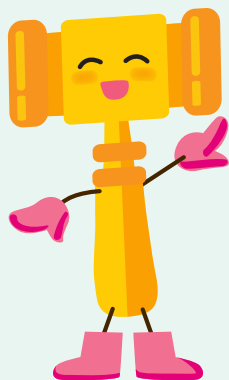
## 第一冊：準備好，上法庭，做證人

第一冊的對象是十八歲以下，將會到法庭做證人的兒童及青少年（以下簡稱兒童）。內容主要介紹法庭的環境、審訊程序和證人的工作。由於用字簡易，加上生動插圖，小冊子也適合精神上無行為能力人士證人使用。為了加深兒童或精神上無行為能力人士證人對內容的理解，在派發本小冊子時，請由社工或其他支援者陪同他們一同閱讀及作出解說，同時並可鼓勵他們說出憂慮，消除上庭作證的恐懼或疑惑。

## 第二冊：何太應該怎樣做——教導孩子如何上法庭做證人

第二冊是為兒童（或精神上無行為能力人士）證人的家長及照顧者而編寫的，協助他們了解兒童或精神上無行為能力人士因為做證人而可能產生的困擾，以及指導他們可怎樣支持兒童或精神上無行為能力人士作證。小冊子並介紹法庭的環境和審訊程序，以增加家長及照顧者對上庭作證的認識，從而進一步為兒童或精神上無行為能力人士出庭作證做好準備。

兩本小冊子皆留有空位給負責的個案工作人員填寫聯絡電話。讀者如有需要，可向有關工作人員尋求援助。

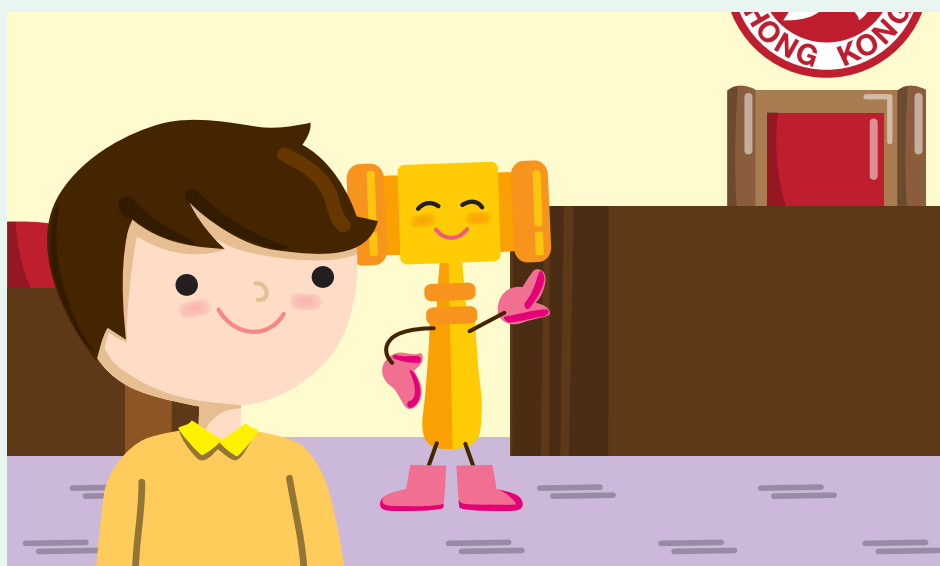


你好，我知道你將會去法庭做證人，又明白你對做證人一事可能有一些不明白的地方，甚至感到不安。因此，我將會透過這本小冊子，向你介紹有關上法庭做證人的事情，讓你了解更多，好好準備。

## 1. 甚麼是證人

當懷疑有人犯了法，要在法庭上接受審訊，一些知道事件或者有資料給法庭參考的人便需要在法庭上把自己聽到的、看到的、知道的事說出來。這些就是證人。

證人的工作對於公平審訊很重要，因此證人到法庭，有責任講出這些東西。



## 2. 誰人會做證人

任何人聽到、看到或知道與案件有關的東西能夠對法院審理案件有幫助，都有可能成為證人，包括你、我以及其他的人。

## 3. 甚麼是法律

法律是社會重要的規則，人人都應該遵守。它告訴我們甚麼事情不可以做，例如偷東西、破壞物件，甚至傷害別人。如果有人不守法，就是犯法；犯法的人，應受到懲罰。



## 4. 甚麼是法院

這個地方叫「法院」。香港的法院，分為三大類：裁判法院、地方法院和高等法院。法庭就設在裏面，判決某人是否做了觸犯法律的事。





## 5. 法庭上有甚麼人

法庭上有不同的人物，他們有不同的工作及角色。



### 法官

法庭的主管，聆聽審訊過程中每個人的發言，按照法律，使審訊在公平的情況下進行。



### 證人

將知道的事實在法庭上說出來。



### 被告

被懷疑犯法而受控告的人，未經法官批准，不可直接和證人講話或走近證人。



### 主控官

負責向法庭提出證據證明被告所犯的罪行。



### 辯方律師

為被告辯護，向證人提問。



### 法庭書記

協助法官處理文件和證物。



### 陪審團

只設於高等法院。由陪審員組成，他們事前均未接觸過案情，負責聽取控辯雙方提出的證據，並進行討論以作出裁決。



### 傳譯人員

負責翻譯法官、主控官、辯方律師、證人和被告說的話。



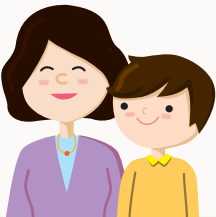
### 司法書記助理

負責陪同證人出入法庭，並指出證人的座位。



### 庭警

負責維持法庭秩序，看管被告，確保被告不會接觸證人及與他們講話。



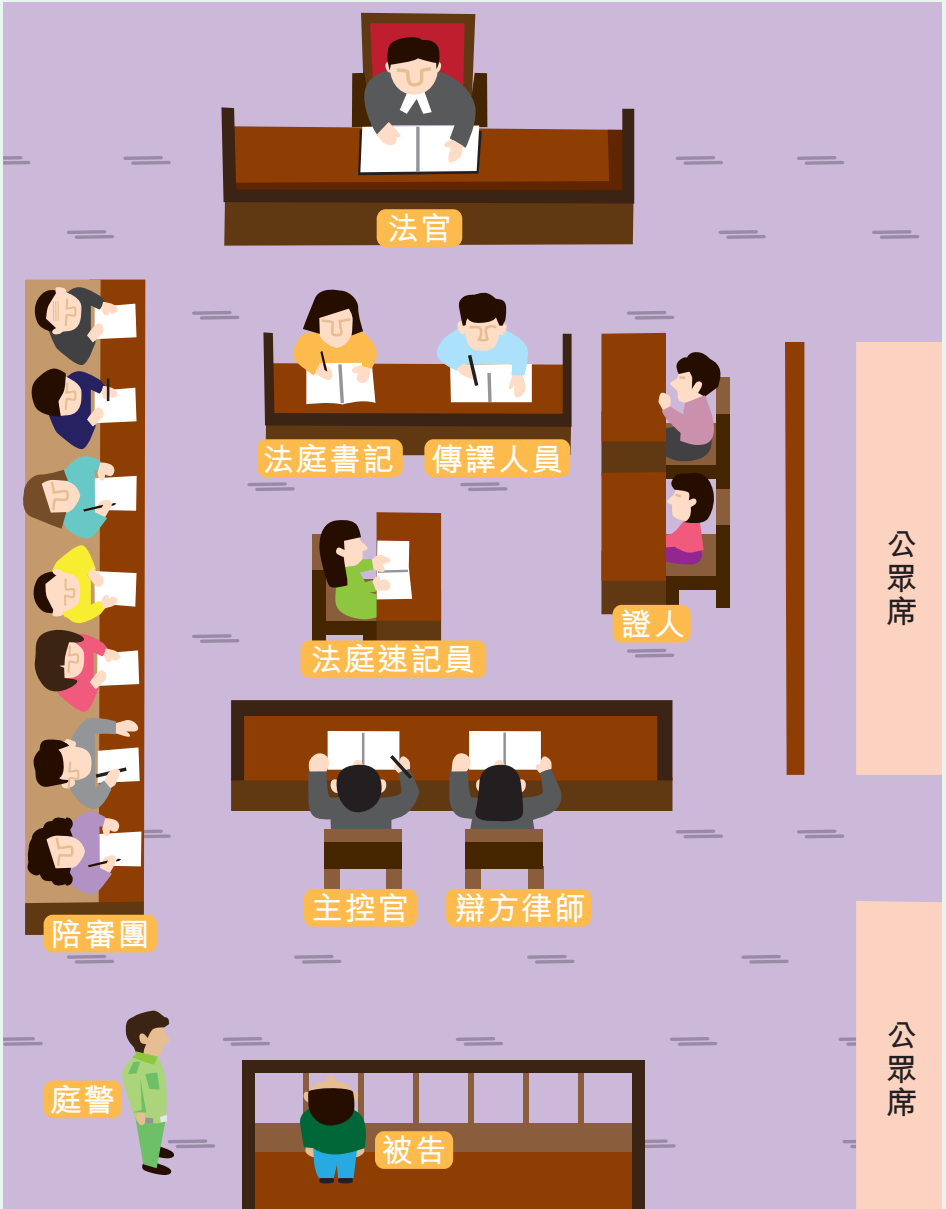
### 證人支援者

如果法官准許，可以安排支援者幫助兒童證人。他/她會陪伴兒童證人參觀法庭，也會陪伴兒童證人在作證室內作證，但他/她們不會提示兒童要怎樣回答問題。

法庭內，法官一般會穿長袍，有些法官、主控官和律師會戴假髮。不過，在兒童證人作證時，他們可能會脫去長袍和假髮。

## 法庭的環境

這是法庭的內部環境。法庭上不同的人，坐在不同的地方，負責不同的工作。



# 6. 審訊過程

- 首先法官會問被告是否認罪。如果被告認罪，證人便不用上法庭作證。
- 相反，如果被告不認罪，審訊便會進行。工作人員會帶證人進入法庭作證。
- 如果證人是十四歲或以上，工作人員會指引證人宣誓，向法庭保證會說真話。



- 如果警方之前曾經錄影與證人會面的過程，法官可能會在法庭上播放這些影片，並可能會向證人提問有關影片的內容。
- 主控官和辯方律師，也可能會向證人提出問題。證人只要講出事情的真相。
- 在裁判法院及地方法院，是由法官聽取所有證據後，決定被告是否有罪；而在高等法院，則由陪審團決定被告是否有罪。
- 如被告罪名成立的話，就由法官判決處罰。相反，若被告罪名不成立，他會立即被釋放。

## 7. 上法庭前的準備

上法庭前你可能會擔心和緊張，你可以向家人、社工或其他陪伴你的人講出你的心情，亦可以盡量鼓勵自己放鬆心情。



如果別人來問你，為甚麼要上法庭，你可以說去法庭做證人。

為了讓你了解多一些法庭的環境，證人支援者在可能的情况下會陪伴你在上法庭前的日子參觀法庭。



## 8. 上法庭 做證人

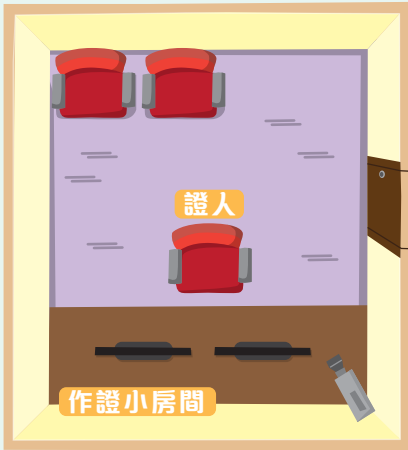
出席法庭要準時。

抵達後，工作人員首先會帶你進入等候室，休息一會，準備作證。你可以帶一些小玩具輕鬆一下。



輪到你作證時，工作人員會再來通知你。你作證的地方可能是法庭，又或者是一間小房間。如果是在小房間內作證，支援者是會陪伴你的。





如果你到小房間作證，面前會有兩部電視機，讓你見到法官、主控官、辯方律師和傳譯人員和聽到他們的說話。同時，當你坐著面對鏡頭，法庭裏的人也會見到你，和聽到你的說話。如果播放先前警察或其他調查人員與你會面過程的影片，你和法庭裏的人也會在電視看到。

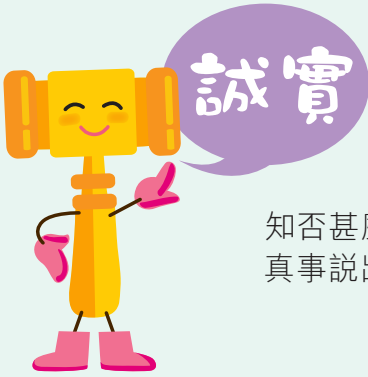
有時法官可能不會稱呼你的全名，因為他不想法庭裏的人知道你的名字，也可能會禁止記者對外報導你的名字。



無論是在哪裡作證，請你聽從工作人員的指示坐下來，然後細心聽法官說話。

如果法官、主控官或辯方律師問你問題，你只需坐在椅上回答，不必站起再坐下。





細心聽他們的問題，然後回答。最要緊的是講出事實，千萬不要講假話。

知否甚麼是假話？就是將一些沒有發生過的事當真事說出來，或是將一些真事說成沒有發生過。



如果你記不清楚事情，就說記不清楚，千萬不要亂猜想。

如果你不明白別人的問題，可以回答不明白，請他再說清楚。



只要講出你所知，毋須驚慌和緊張。如果不知道怎樣說出來，或者要些時間想一想，也可以這樣說。



秘密也可說出來，只要它們是事實，法官和陪審團不會怪責你。

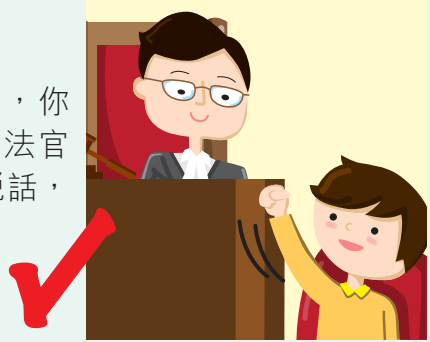
萬一哭了也不怕，抹乾眼淚再說話。



回答問題要開口，不要用手勢、點頭或搖頭代替說話。



在你作證時，如果你有問題或要求，你可即時舉起手，透過電視或現場向法官提出。法官可以看到你，也聽到你說話，他會回答你的問題或要求。



以下是一些例子，都是你可以向法官舉手的事情。



有些話你忘記，有些話你說錯了。



你覺得口渴，想喝水。



要去洗手間。



答完所有問題，工作人員會帶你離開法庭或作證小房間。其實，你只要勇敢去做好證人的工作，就不用害怕。

## 9. 作證之後

作證之後，你的任務便完成了。當所有證人都作證了，法官或者陪審團會決定被告是否犯了法，如果被告罪名不成立，不是他們不信你，只是不能確定被告犯了罪。如果被告被判有罪，法官會判罰他。無論判決是如何，你把事實說出來，你已盡了責任。

看完這小冊子，你應該對上法庭做證人加深了了解，如你還有其他問題，可以問你的社工。請你將社工的電話號碼寫在下邊，有需要時與他們聯絡。



社工姓名：

電話：

社工姓名：

電話：

