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Procedural Guide for Social Workers

On the Handling of Mentally Incapacitated Adults

Arising from the New Provisions in the

Criminal Procedure (Amendment) Ordinance 1995

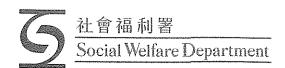


TABLE OF CONTENTS

Chapter 1 : Introduction

Chapter 2 : New Provisions

Chapter 3 : Procedures of Handling Mentally Incapacitated Adults

in Criminal Proceedings

Chapter 4: Witness Support Programme for Vulnerable Witness

with Mental Incapacity

CHAPTER 1: INTRODUCTION

BACKGROUND

- 1.1 In September 1993 when a deaf and dumb and of low intelligence lady 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 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 Working Party are at Appendix 1.1.

KEY CHANGES

- 1.3 The Criminal Procedure Ordinance [CPO], Cap. 221 was subsequently amended in 1995 and implemented in February 1996, intended to protect and assist 3 categories of vulnerable witnesses in criminal proceedings, namely:-
- (a) the witness in fear;
- (b) the child; and
- (c) the mentally incapacitated person [MIP].
- 1.4 Special procedures were introduced by legislative changes to avoid the trauma and allay the anxiety that would be experienced by these vulnerable witnesses. Such procedures include:-
- (a) live television link that allows the witness to sit in a separate room in the court building, while the witness is visible to the judge, counsel, jury and defendant, the witness can see them except the defendant; and
- (b) video recorded evidence which is a video recording of the testimony of a witness that is taken under specified conditions, be tendered in evidence with the leave of the trial judge.

Procedural Guide for Social Workers on the Handling of Mentally Incapacitated Adults Arising from the New Provisions in the CP(A)O 1995

1.5 When a vulnerable witness is to give evidence through a live television link system, the witness can be accompanied by a person acceptable to the Court.

SCOPE OF THIS GUIDE

1.6 This procedural guide covers the new provisions arising from the CP(A)O 1995 which concerns primarily with mentally incapacitated adults aged 18 or above in giving evidence in criminal proceedings.

OBJECTIVES OF THE GUIDE

- 1.7 The objectives of this guide include:-
- (a) To provide reference to social workers of the Department and NGOs in handling MIPs arising from the legislative changes in the Criminal Procedure Ordinance.
- (b) To ensure consistency in practice among social workers in handling the MIPs concerned.

CHAPTER 2: NEW PROVISIONS

LEGAL PROVISIONS

- 2.1 The Criminal Procedure (Amendment) Ordinance 1995 adds a new Part IIIA to the CPO to provide special procedures for vulnerable witnesses in criminal proceedings.
- 2.2 The definition of mentally incapacitated person [MIP] is as below:-
- 2.2.1 According to s.79A of CPO and the consequential amendment of the Mental Health (Amendment) Ordinance [MH(A)O] 1997, Schedule 2, MIP means a person who is mentally disordered or mentally handicapped as the case may be, within the meaning of the Mental Health Ordinance, Cap. 136.
- 2.2.2 In MH(A)O 1997, "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 MH(A)O 1997, "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.

- 2.3 For the purpose of this guide, the <u>special procedures only apply to MIPs in the following situations</u>: -
- 2.3.1 For video recorded evidence under s.79C of CPO:-
- (a) where in proceedings in respect of an offence that is triable
 - on indictment; or
 - either summarily or on indictment.
- (b) a video recording has been made of an interview between-
 - a police officer or a social worker or clinical psychologist who is employed by the Government;

AND

- a MIP, including one who is a defendant where such a defendant and his counsel so request.
- 2.3.2 For evidence by live television link under **s.79B** of CPO:-

Where a MIP, including one who is a defendant, is to give evidence, or be examined in video recorded evidence given under s.79C, in proceedings in respect of an offence that is triable-

- on indictment; or
- either summarily or on indictment.

INTRODUCTION OF VIDEO RECORDED EVIDENCE

- 2.4 Section 79C of the CPO allows a video recording of an interview with a MIP to be used as an admissible evidence in Court. When a MIP is involved in a triable offence, either as a victim, witness, or suspect irrespective of the MIP's age, a video recorded evidence can be used as admissible evidence, as permitted by 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.

INTRODUCTION OF LIVE TELEVISION VIDEO LINK

2.6 Section 79B of the CPO provides vulnerable witnesses including MIP may testify in Court through a live television video link system in a separate

Procedural Guide for Social Workers on the Handling of Mentally Incapacitated Adults Arising from the New Provisions in the CP(A)O 1995

room in the premises as courtroom. The mentally handicapped or mentally disordered witness will be allowed to give evidence or be cross-examined in the separate room in which he/ she can only see the Judge and the person who is talking to him/ her through the monitor. It aims to prevent the MIP from facing the accused person which may induce stress to inhibit the MIP to answer freely.

- 2.7 A court usher will be present to operate the closed circuit television (CCTV) in the witness room, to explain to the witness what to do and where to sit, and ensure there is no improper communication between the witness and the support person, if any.
- 2.8 Where a defendant is not represented and wishes to ask questions of any mentally handicapped or mentally disordered witness, the Judge in his discretion may permit: -
- (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.

INTRODUCTION OF SUPPORT PERSON

- 2.9 Under the Live Television Link and Video Recorded Evidence Rules, Cap. 221J, a subsidiary legislation of the CPO, there is also provision for the 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 Court's permission.
- 2.10 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 issued by the Chief Justice in 1996. In the case of a mentally incapacitated witness, the support person should be someone with some understanding and expertise related to the nature of the handicap or disability.
- 2.11 The role of support person is to accompany the MIP in giving evidence in Court through the CCTV system to help reduce the fear and anxiety of the MIP. Also, the support person will assist in the pre-trial preparation by accompanying the MIP for a pre-trial familiarisation visit to Court.

CHAPTER 3: PROCEDURES OF HANDLING MENTALLY INCAPACITATED ADULTS IN CRIMINAL PROCEEDINGS

GENERAL INFORMATION

- 3.1 The handling procedures of MIPs involved in criminal proceedings vary with the requirements of individual case and there is no simple hard-and-fast rule applicable to all MIPs involved in criminal cases.
- When a person involves in a criminal case, either as a victim, a witness or a suspect, shows signs of mental problem and his/ her level of understanding is in doubt, the Police will firstly 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. If a report on the person's ability in giving statement is considered necessary, the person will be either referred to the Hospital Authority's psychiatrist if he/ she is suspected as suffering from mental disorder, or to clinical psychologist of the Social Welfare Department/ HA / NGO for such assessment if he/ she is suspected as having mental handicap.
- 3.3 The division of work between clinical psychologists of SWD/ HA/ NGO is as follows:
- 3.3.1 Clinical psychologists of HA will be responsible for all hospital inpatients, cases referred by their psychiatrists and cases previously known to them.
- 3.3.2 Clinical psychologists of NGO will be responsible for all cases known to them and cases referred by the social worker of their agency.
- 3.3.3 Clinical psychologists of SWD will take all cases previously known to them and those do not belong to the previous two categories.
- 3.4 When the person is confirmed to be <u>a MIP</u> and <u>have the ability to give statement</u>, he/ she may go through the following proceedings if the MIP is involved as a witness/victim/ suspect: -
- 3.4.1 if considered necessary to take video-recorded evidence and the MIP is available for cross examination, usually when the case nature involves sensitive issues such as rape, the police will approach clinical psychologist of the SWD through the Child Abuse Investigation Unit [CAIU] or through SWD social worker for a video-taped interview, in

Procedural Guide for Social Workers on the Handling of Mentally Incapacitated Adults Arising from the New Provisions in the CP(A)O 1995

which statement may be taken by the police, clinical psychologist or social worker of the Social Welfare Department. In any case, both video or written statements are to be taken in the presence of an appropriate adult, preferably familiar with the MIP;

- 3.4.2 immediate care plan, including arrangements for medical examination and/ or treatment, family or social support and accommodation, will be decided for the MIP;
- 3.4.3 if the criminal case is brought to Court, the MIP may be required to attend the Court for giving evidence or cross-examination. In the case of video-recorded evidence taken and submitted as evidence, the MIP can, with the permission from Court, testify in a separate room in the same premises as the courtroom through a live television video link system. A support person will be allowed to accompany the MIP in the separate room;
- 3.4.4 even if no video tape is tendered as evidence, the MIP can still testify via live television video link, subject to the approval of the Court.
- 3.4.5 A procedural flow chart for handling MIPs in criminal proceedings is at Appendix 3.1.
- 3.5 When the <u>witness/victim</u> is confirmed to be <u>a MIP</u> and assessed to be <u>unable to give statement</u>, the Director of Public Prosecutions will decide, on the evidence available, whether the case should go to Court.
- 3.6 When the <u>suspect</u> is confirmed to be <u>a MIP</u> and assessed to be <u>unable to give statement</u>, the case may still be brought to Court and special provisions under s.74 to s.76 of the CPO may be invoked, including acquittal on grounds of insanity, determination on the mentally incapacitated accused person's fitness to be tried and whether he/ she did the act, or ordering of special disposal options, namely, guardianship order, supervision and treatment order, hospital order and order for absolute discharge.
- 3.7 For a MIP under the age of 18 involved in criminal proceedings except as a defendant in respect of physical or sexual abuse, social workers will handle the case in accordance with the Procedures for Handling Child Abuse Cases Revised 1998.

ROLES AND RESPONSIBILITIES OF A SOCIAL WORKER IN THE CRIMINAL PROCEEDINGS WHERE A MIP IS INVOLVED

Source of referrals

- 3.8 A MIP involved in criminal proceedings either as a witness, victim or suspect/ defendant may come to the attention of a social worker either of the SWD or non-government organisations [NGO] under the following circumstances:-
- 3.8.1 The MIP being a service recipient of SWD/ NGO family casework unit, medical social services unit, or rehabilitation service unit, or in some cases probation service or school social work service, and
 - (a) the social worker of the respective service unit becomes aware of an incident through information provided by the MIP 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.
- 3.8.2 Where necessary, the police may refer the MIP who is never known to SWD/ NGO to SWD family services centre for arrangement of functional assessment by the Departmental Clinical Psychologist.

Division of work

3.9 A MIP involved in criminal proceedings may have contacts with several 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 MIP's familiarity with the worker, under normal circumstances, social workers of casework setting would act as the key worker according to the following principles:

3.9.1 For new case which is not known to SWD or NGO

SWD family services centre of the district where the MIP resides will take up the case and render services as required, including referral to Departmental Clinical Psychologist for functional assessment, and provision of follow-up social services.

3.9.2 For known case of SWD/ NGO service unit

The definition of known cases of welfare organisations is at Appendix 3.2.

- (a) The SWD/ NGO social worker of a <u>casework setting</u> will render services as appropriate, such as intake, assistance in reporting to the police, referral to Departmental Clinical Psychologist for functional assessment, and provision of follow-up social services.
- (b) The SWD/ NGO social worker of a <u>residential/ rehabilitation</u> service unit will assist in reporting the case to the police and refer the MIP to SWD family services centre for social follow-up services. Otherwise, for a MIP who is a known case of a SWD/ NGO casework unit, she will inform the respective social worker of the incident and render assistance as appropriate.

At pre-trial stage

- 3.10 For social workers of both SWD and NGO casework service units:
- (a) to intake the case, if it is not previously known to the unit, and understand the situation (general guide to intake is at Appendix 3.3);
- (b) to consult supervisor/senior and seek advice, if required;
- (c) to contact the MIP's significant others such as parents, relatives, guardian, or other social worker concerned, information revealed should be shared among parties concerned without asking the informant, especially the MIP, to repeat;
- (d) to report to police or assist the relative in the reporting if the alleged crime is not known to police yet (notes on reporting to the police are at Appendix 3.4);

- (e) to help in explaining to the police that the person is a MIP for the police to decide whether special arrangements such as involvement of CAIU or company of a mature adult will be required when the MIP is giving statement;
- (f) to accompany the MIP to attend hospital/clinic for medical examination or treatment if so required;
- (g) to refer the MIP to clinical psychologist for assessment on the ability to give statement if so required. An appointment for such assessment can be made by phone to the Senior Clinical Psychologist on duty and followed by a formal referral in the standardised referral form (a copy is at Appendix 3.5) with a covering memo/ letter as the case may be;
- (h) to accompany the MIP when giving statement to police if there is such a need;
- (i) if a video-recorded interview is considered necessary and arranged by the police, to assist if so required (notes on video-recorded interviews are at Appendix 3.6);
- (j) to provide casework service to the MIP and his/ her family as appropriate, including explanation on the possible criminal proceedings, special legal provisions or arrangements and participation in welfare case conference, if any;
- (k) following a video recorded interview or statement giving, and prior to any court hearing, to keep in view of the progress of the case and the MIP and his/her family's social needs. The information contained in the Child Witness Pack (Appendix 3.7) which is also applicable to mentally handicapped persons can be made use of in preparing the MIP for attendance at Court;
- (l) if the MIP, 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 MIP may be referred to a clinical psychologist or a psychiatrist for assessment. If therapeutic counselling service is deemed necessary prior to the trial, the issues noted at Appendix 3.8 should be attended to;

- (m) if the MIP is allowed to testify through a closed circuit television system in a separate room in the premises as the courtroom and a support person is available from the MIP's natural social network, to render supportive services to the support person as appropriate such as explanation on the roles and duties of support person. Reference should be made to Appendix 4.3;
- (n) if a support person mentioned in 3.10(m) above is not available, the police will refer the MIP to SWD for Witness Support Programme provided by Family Aides through respective regional contact persons of the Department. Detailed information is at Chapter 4 and a list of these contact persons is at Appendix 4.1:
- (o) for SWD caseworkers, if the arrangements stipulated in 3.10(n) has been made, to render professional backup to the Family Aide who acts as the support person of the MIP.
- 3.11 For social workers of both SWD and NGO residential/ rehabilitation service units:
- (a) to understand the situation (general guide to intake is at Appendix 3.3);
- (b) to consult supervisor/senior and seek advice, if required;
- (c) to contact the MIP's significant others such as parents, relatives or guardian, information revealed should be shared among parties concerned without asking the informant, thus avoiding the need for the MIP to repeat the information;
- (d) when the MIP is not a known case of SWD/ NGO casework service unit, to report to police or assist the relative in the reporting if the alleged crime is not known to police yet (notes on reporting to the police are at Appendix 3.4);
- (e) to help in explaining to the police that the person is a MIP for the police to decide whether special arrangements such as involvement of CAIU or company of a mature adult will be required when the MIP is giving statement;
- (f) when the MIP is a known case of SWD/ NGO casework service unit, to inform the caseworker of the incident as soon as possible; otherwise, to refer the MIP to SWD family services centre for social follow-up services, if required;

- (g) to accompany the MIP to attend hospital/clinic for medical examination or treatment if so required;
- (h) to accompany the MIP in giving statement if there is such a need;
- (i) to keep in contact with the caseworker so as to keep in view of the case progress and assist on shared case basis.

During the trial

3.12 The duty of the social worker of both SWD and NGO is basically the same during the trial period except that SWD social worker may have to render support services to the Family Aide who acts as the support person of the MIP witness. Both the SWD and NGO social worker should keep in contact with the MIP and his/ her family members, if any and be aware of the progress of the criminal proceedings. Counselling service and mobilisation of family support services may be rendered as appropriate. Caution has to be taken in that the social workers should not touch on the criminal investigation and the MIP should not be required to repeat their experience in the criminal proceedings unnecessarily.

At post-trial stage

3.13 Both SWD and NGO social workers will render continuous counselling service if so required.

Key principles and general guidelines

- 3.14 A social worker handling a MIP who is involved in criminal proceedings should observe the following:-
- (a) all referrals must be taken seriously and considered with an open mind without prejudicing the situation;
- (b) clarification with social workers concerned on the division of work to avoid confusion and duplication is required;
- (c) prompt action should be taken;

- (d) the principle of confidentiality should be observed unless it is necessary for the protection of the MIP or required by the Court;
- (e) leading questions or coaching should be avoided; and
- (f) questions as regards contents revealed in the police investigation should not be asked.

CHAPTER 4: WITNESS SUPPORT PROGRAMME FOR VULNERABLE WITNESS WITH MENTAL INCAPACITY

BACKGROUND

- 4.1 With the implementation of the amended Criminal Procedure Ordinance (CPO) in February 1996, legal provisions are introduced to protect vulnerable witnesses, including victims of child abuse and MIPs who are involved in criminal proceedings. In the amended legislation, there are provisions for:
- (a) vulnerable witnesses to testify in Court through a closed circuit television video link (CCTV) system in a separate room in the premises as the courtroom; and
- (b) evidence given by a vulnerable witness in a video recorded interview conducted by a police officer, or Government social worker and clinical psychologist, shall be admissible evidence in Court.
- 4.2 Under the Live Television Link and Video Recorded Evidence Rules Cap. 221J, a subsidiary legislation of CPO, there is also provision for the 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 Court's permission. 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. In the case of a MIP, the support person should be someone with some understanding and expertise related to the nature of the disability.
- 4.3 Persons who are familiar with the vulnerable witness, e.g. a relative, teacher, social worker or friend, can serve as support person. In addition, the SWD has worked out, in co-operation with the police, a Witness Support Programme to provide support persons for vulnerable witnesses, in case of need.

OBJECTIVES OF THE PROGRAMME AND ROLE OF THE SUPPORT PERSON

4.4 The objective of the Programme is to help reduce the fear and anxiety of vulnerable witness when giving evidence in Court by providing a support person to accompany the witness during the trial. The support person

Procedural Guide for Social Workers on the Handling of Mentally Incapacitated Adults Arising from the New Provisions in the CP(A)O 1995

provides emotional and practical help to the witness but will not provide any advice on the case or prejudice the trial process.

4.5 The role of the support person is to accompany the witness in giving evidence in Court through the CCTV system and assist in the pre-trial preparation by accompanying the witness for a pre-trial familiarization visit to Court. The pre-trial Court visit will be arranged by the police and Court staff. The support person provides support to the witness throughout the process and help the witness feel comfortable during the trial.

PROVISION OF SERVICE

- 4.6 Family Aides of the SWD are available to be called up as support persons for MIP witnesses. Requests for arrangement of support persons under the Witness Support Programme are made through the Child Protection Policy Unit of Police to the contact persons of SWD. A list of these contact persons is at Appendix 4.1. The name of the support person should be submitted to Court at least two weeks before the trial.
- 4.7 The general duty of a Family Aide in Family Services Centre is to assist family caseworkers in training their clients' basic skills in home making and child care. In serving as a support person, arrangement will be made for the Family Aide assigned to the case to meet the MIP before the trial so that they may get to know each other. The support person will accompany the witness for the pre-trial visit to Court and when giving evidence in Court. A set of procedural guides for Family Aide service for MIP is at Appendix 4.2.

CODE OF PRACTICE

4.8 To ensure that the Family Aides, while performing their duties as support persons, will not behave in any manner which would prejudice the trial process, they are required to abide by a Code of Practice at Appendix 4.3.

APPENDICES

Chapter 1: Introduction

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

Chapter 2 : New Provisions

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

- 3.1 Procedural Flow Chart for Handling MIP in Criminal Proceedings
- 3.2 Definition of Known Cases for Welfare Organizations for the Purpose of Handling Mentally Incapacitated Adults in Criminal Proceedings
- 3.3 General Guide to Intake Procedure for Handling MIP in Criminal Proceedings
- 3.4 Notes on Reporting to the Police for Incident Involving a MIP
- 3.5 SWD Clinical Psychology Unit Referral Form for Psychological Services
- 3.6 Notes on Video-recorded Interviews for Handling MIP Adults in Criminal Proceedings
- 3.7 Child Witness Pack
- 3.8 Areas for Special Attention to Therapeutic Counselling Service

Chapter 4: Witness Support Programme for Vulnerable Witness with Mental Incapacity

- 4.1 List of Contact Persons for Mentally Incapacitated Witnesses Witness Support Programme
- 4.2 Witness Support Programme for Vulnerable Witness Family Aide Service (Mentally Incapacitated Persons) Procedural Guide
- 4.3 Witness Support Programme Code of Practice for Support Persons

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 endeavour 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.

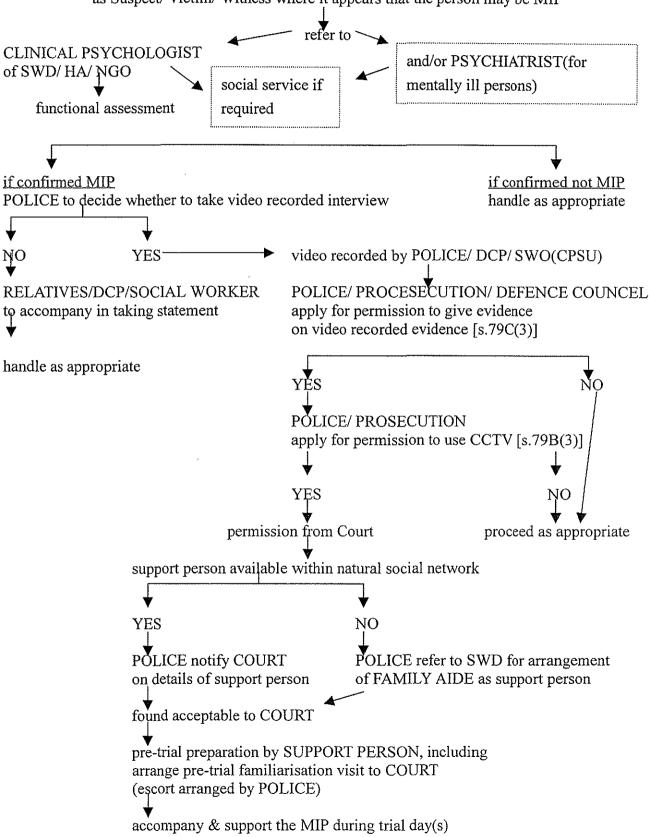
25 March 1994

* 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 MIP IN CRIMINAL PROCEEDINGS

POLICE

in handling a person involved in criminal proceedings as Suspect/ Victim/ Witness where it appears that the person may be MIP



DEFINITION OF KNOWN CASES FOR WELFARE ORGANIZATIONS FOR THE PURPOSE OF HANDLING MENTALLY INCAPACITATED ADULTS IN CRIMINAL PROCEEDINGS

Social Welfare Department

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

- 1. Active cases of casework units, such as family services centre/ probation office/ school social work unit/ medical social services unit.
- 2. Closed cases of family services centre which have been closed for 6 months or less.
- 3. Closed cases of school social work unit which have been closed for 6 months or less and the MIP is still studying in the school served.
- 4. Any intake case or outreaching case of family services centre 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 5 working days since intake, irrespective of whether the presenting problem(s) is/are related to suspected crime involving the MIP or whether case file has been opened or not.
- 5. Cases that come to the attention of a probation officer during the course of social enquiry and still pending sentence.
- 6. Welfare referral cases which are currently under the concerned probation officer's investigation with required welfare reports not yet submitted to Court.
- 7. MIPs who are residing at or attending departmental rehabilitation service units such as hostels, day activity centres and sheltered workshops.
- 8. For medical social services [MSS], known cases mean:
- (a) medically intensive cases of MSS where the MIP is their patient and is required to attend medical treatment at least once within 6 weeks, irrespective of the MIP's address;

(b) medical active cases of MSS where the MIP is their patient attending medical treatment at least once from 6 weeks to 6 months and the residential address of the MIP is within the same district of the MSS unit:

or

(c) medically intensive case of MSS where the MIP is a family member of their patient attending medical treatment at least once within 6 weeks and the MIP's residential address is within the same district of the MSS unit.

Non-governmental Organisations

Known cases of NGOs are those active cases being handled by a casework unit which includes family services centre, medical social services unit and school social work service.

GENERAL GUIDE TO INTAKE PROCEDURE FOR HANDLING MIP IN CRIMINAL PROCEEDINGS

If the informant is a member of the public/relative/friend of the MIP

- 1. If there is an informant, who is either a member of the public, friend or relative of the MIP, he/ she should be informed that what is told will be recorded and you may have to refer to later on.
- 2. While confidentiality should be respected, do not promise to keep the information secret as disclosure may be necessary to protect some persons or in Court.
- 3. 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 MIP who is involved in the incident including the MIP's disability and special needs, if any;
- (d) the whereabouts of the MIP;
- (e) any other persons involved in the incident, in particular those at risk or in danger.

If the informant is a MIP

- 1. If there is no other informant but the MIP is disclosing information that may result in criminal proceedings either involving the MIP himself/ herself as a witness, victim or suspect/ defendant, listen to what the MIP says and do not make comments. (It may be helpful to have another adult present).
- 2. Do not let the MIP tell anyone else because he/ she may have to be formally interviewed later. It is important to minimise the number of times the information is repeated.
- 3. It is important not to make any suggestions to the MIP regarding how the incident-in-question may have happened. Do not question the MIP except to clarify what he/ she is saying. Do not stop a MIP who is freely recalling significant events.
- 4. Write down notes on what the MIP has said and what questions raised by the intake 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 clarifying 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 worker should stop probing. Examples such as a MIP told that he had beaten a stranger and the man fell unconscious, the mother of a female MIP revealed that the brother of the MIP had sex with the MIP, or a MIP 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 the intake stage. The police will be responsible for the investigation and to determine whether prosecution should be proceeded.

NOTES ON REPORTING TO THE POLICE FOR INCIDENT INVOLVING A MIP

- 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 MIP 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 MIP 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, try to bring along the available physical evidence to the police station. If the incident has recently taken place in a service unit or the MIP's home, try not to disturb the scene in case the police may search for physical evidence. For cases involving sexual act with a MIP, do not bathe the MIP or wash/ throw away his/her clothes before the reporting.
- 3. While the MIP 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 MIP 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 MIP 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. where the individual is a minor, his/ her parents and/ or legal guardians; where the individual is incapable of managing his own affairs, a person who has been appointed by a Court).

For adult MIPs, 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. However, their views should be consulted and respected as far as practical. It is preferable to have discussion with the parents of MIP in relation to the reporting to police.

An adult MIP 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 <u>Annex</u>.

- (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-
 - (a) the prevention or detection of crime;
 - (b) the apprehension, prosecution or detention of offenders;
 - (c) the assessment or collection of any tax or duty;
 - (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
 - (e) the prevention or preclusion of significant financial loss arising from—
 - (i) any imprudent business practices or activities of persons; or
 - (ii) 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—
 - (i) to which the discharge of statutory functions by the data user relates; or
 - (ii) 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—

- (i) prejudice any of the matters referred to in this subsection; or
- (ii) 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—
 - (a) 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,該文件須當作為該等證明書。
 - (7) 在本條中——
- "保安"(security)包括防止或排拒無權進入香港及留在香港的人(包括按照《人民人境條例》(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—
 - (a) 罪行的防止或值测;
 - (b) 犯罪者的拘捕、檢控或拘留;
 - (c) 任何税項的評定或收取;
 - (a) 任何人所作的不合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);
 - (e) 防止或排除因——
 - (i) 任何人輕率的業務經營手法或活動;或
 - (ii) 任何人所作的不合法或嚴重不當的行為、或不試實的行為或舞弊行 為,

面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——
 - (i) 由該資料使用者執行法定職能所關乎的事情;或
 - (ii) 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)條的條文所質限——

- (i) 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
- (ii) 該等條文適用於該等資料便相當可能會直接或問接識辨屬該等資料來源的人的身分。
- (2) 凡——
 - ·(a) 個人資料是為第(1)熬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

CAP. 486

(b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,

and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.

- (3) Paragraphs (f) (ii) and (g) of subsection (1) apply to any functions of a financial regulator—
 - (a) for protecting members of the public against financial loss arising from—
 - (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons—
 - (A) concerned in the provision of banking, insurance, investment or other financial services;
 - (B) concerned in the management of companies;
 - (C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426); or
 - (D) who are shareholders in companies; or
 - (ii) the conduct of discharged or undischarged bankrupts;
 - (b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A); or
 - (c) specified for the purposes of this subsection in a notice under subsection (4).
- (4) For the purposes of subsection (3), the Governor may, by notice in the Gazette, specify a function of a financial regulator.
 - (5) It is hereby declared that-
 - (a) subsection (3) shall not operate to prejudice the generality of the operation of paragraphs (a), (b), (c), (d) and (f)(i) of subsection (1) in relation to a financial regulator;
 - (b) a notice under subsection (4) is subsidiary legislation.

59. Health

Issue 11

Personal data relating to the physical or mental health of the data subject are exempt from the provisions of either or both of—

- (a) data protection principle 6 and section 18(1)(b);
- (b) data protection principle 3,

in any case in which the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—

(b) 第3保障資料原則的條文就該等使用面適用便相當可能會損害該款所提述 的任何事宜,

則該等資料獲豁免而不受第3保障資料原則的條文所管限,而在為任何人違反任何該等 條文而針對他進行的法律程序中,如該人證明他當時有合理理由相信不如此使用該資 料便相當可能會損害任何該等事宜,即為免責辯護。

- (3) 第(1)款(f)(ii)及(g)段適用於財經規管者的以下職能——
 - (a) 保障公眾免受因以下事情導致的財政損失的職能——
 - (i) 屬-----
 - (A) 從事銀行、保險、投資或其他財經服務的提供;
 - (B) 從事公司的管理;
 - (C) 從事《職業退休計劃條例》(第426章)所指的職業退休計劃的管理;或
 - (D) 公司股東,
 - 的人们不被實行為、不勝任、不良行為或嚴重不當的行為;或
 - (ii) 已獲或未獲解除破產令的破產人的行為;
 - (b) 維持或促進提供(a)(i)(A) 段所提述的任何服務的任何體系的一般穩定性 或有效運作的職能;或
 - (c) 為本款的施行而在第(4)款下的公告中指明的職能。
- (4) 總督可為第(3)款的施行藉濫報公告指明財經規管者的職能。
- (5) 現聲明----
 - (a) 第(3) 款的施行不得損害第(1) 款(a)、(b)、(c)、(d) 及(f)(i) 段就財經規 管者而施行的概括性;
 - (b) 第(4)款下的公告是附屬法例。

59. 健康

與有關的資料當事人的身體健康或精神健康有關的個人資料,獲豁免而不受以下 任何或所有條文所管限——

- (a) 第6保障資料原則及第18(1)(b)條的條文;
- (b) 第3保障資料原則的條文,

但上述豁免僅在以下情況適用---

SOCIAL WELFARE DEPARTMENT CLINICAL PSYCHOLOGY UNIT

Referral Form for Psychological Services

Fax. No.:		nical Psychologist	enior Clinica	To: Seni			From:	
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Summary of Assessment Results :			
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Name of Magistracy / Court :			
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SECTION (E) CASI: SUMMARY (FOR ALL CASES) (Please state significant events in client's development with regard to health, education, work,						
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SECTION (E) DEACONG FOR REFERRAL						
SECTION (F) REASON(S) FOR REFERRAL						
	(Please tick)					
1. For report(s) to court for sentencing						
2. For report for placement purposes	l J					
3. For recommendations on treatment / mana	gement					
4. For psychological treatment from D.C.P.						
5. Others (please specify)	[]					
SECTION (G) OTHER INFORMATION						
Signature of referrer:	Signature of Supervisor :					
Name :	Name :					
Post / Rank:	Post / Rank:					
Unit:	Unit:					

NOTES ON VIDEO-RECORDED INTERVIEWS FOR HANDLING MIP ADULTS IN CRIMINAL PROCEEDINGS

- 1. Section 79C of the Criminal Procedure Ordinance allows a video recording of an interview with a MIP to be used as admissible evidence in Court. When a MIP is involved in an offence, either as a victim, witness or 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 will not form part of the case for the prosecution or the defence.
- 4. Interviews 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 clinical psychologists trained in joint investigation and video-recorded interviews.

多多告訴你 和心心姐姐講心事 何太應該怎樣做?





新修訂的刑事訴訟程序條例於一九九六年二月生效後,兒童及弱智人士可以透過直播電視聯繫設施在法庭作證。透過這種新的作證方式,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,減低了證人的心理壓力和在法庭作證可能帶來的創傷。但在某些案件中,兒童仍可能需要在庭上作證。

為了加強兒童證人對擔任證人和審訊程序的認識,從而減低他們對作證的憂慮和增強他們對作證的信心,政府印製了一套兒童證人資料小冊子,為兒童證人及其家長提供參考資料。

這套小冊子乃在得到英國 National Society for the Prevention of Cruelty to Children and Childline的允許下,從其"Child Witness Pack"改編而成的。在此謹向參與編訂 Child Witness Pack的機構致謝。

這套小冊子共有三本:

分子區

這本書適合五歲至九歲的讀者。在卡通人物多多的引領下。本書以圖文並茂的方式,介紹法庭的環境、審訊程序和證人的工作。由於用字簡易。本書也適合同集設弱智兒童或中度/嚴重弱智人士使用。為了加深兒童證人及弱智人士對本書的理解 在派發本書時,請由社工或其他支援者陪同兒童證人或弱智人士一同閱讀及解說內容,同時並可鼓勵他們說出憂慮,消除他們上庭作證的恐懼或疑惑。

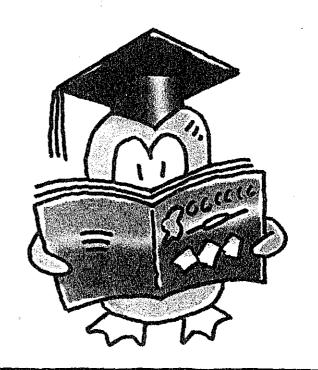
這本書適合十歲至十八歲的讀者。在支援者心心姐姐的引導下,兒童證人來達認 識了法庭的環境和審訊程序,並且明白作證時需要留意的地方。在派發本書時。請 社工或其他支援者和兒童證人一同閱讀及解說內容,以加深兒童證人對內容的理解。 並可鼓勵兒童將他們對上庭的疑慮說出來,加強他們作證的信心。本書同樣適合輕 度弱智青少年或成年人使用。

1.1. 注度的最多。

這本書是為兒童證人或弱智人士的家長及照顧者而編寫的。內容者重指導家長怎樣適當地支持孩子作證和了解孩子因為要做證人而可能產生的問題。本書並介紹正法庭的環境和審訊程序,以增加家長對上庭作證的認識,從而進一步為孩子出庭作證做好準備。

三本小冊子內,皆留有空位給負責該個案的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。





跟著多多,

翻看書中的每一頁,

就可以看得多多,

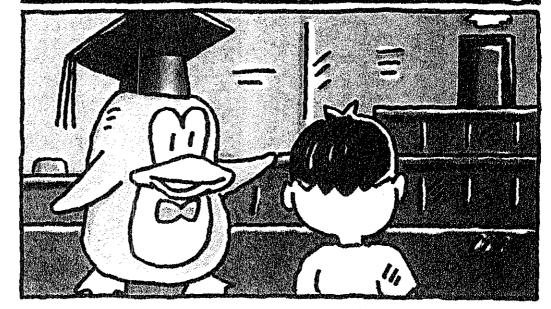
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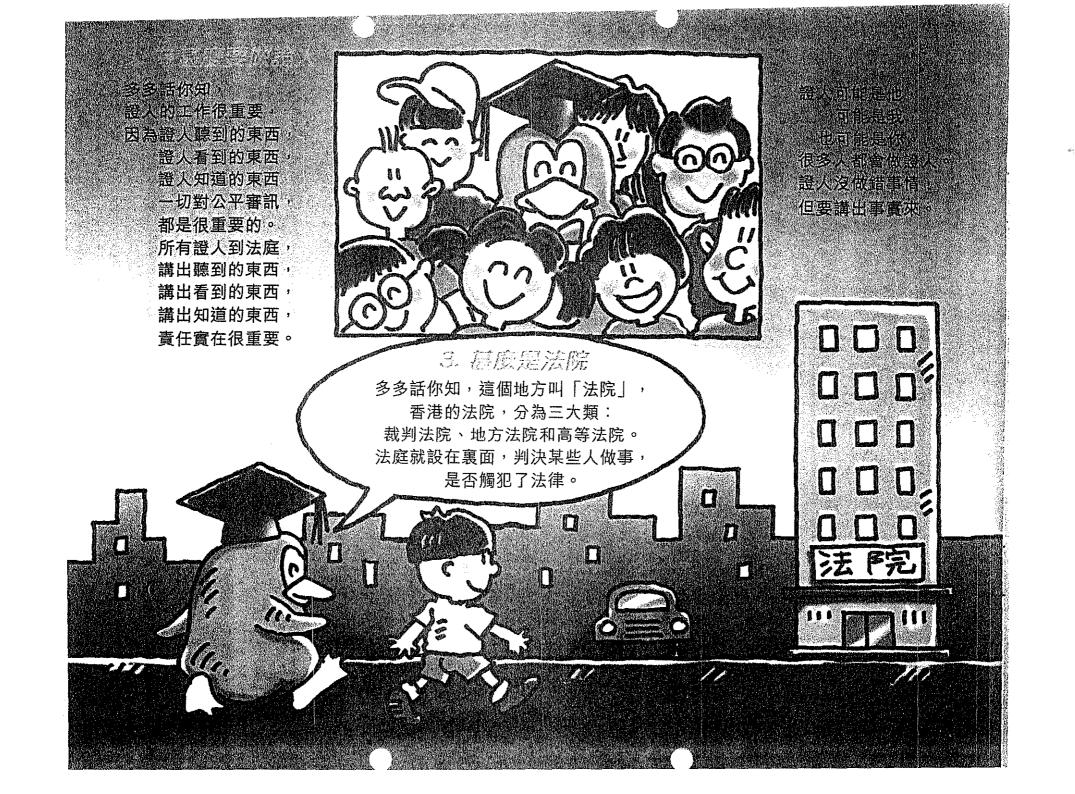
知得多多。

多多的本領實在多又多。

上法庭,為甚麼?準備做個小證人。



今天,多多帶小朋友走到法庭去看一看。

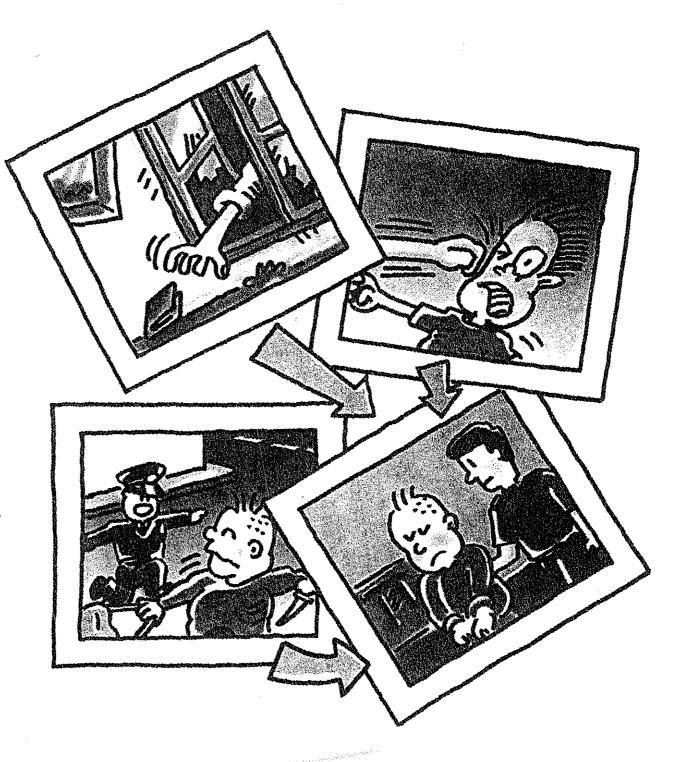




4. 法律短辐照

法律是重要的規則, 人人都應該遵守。 它告訴我們不可以偷東西, 它告訴我們不可以偷東西, 更不可以傷害人。

如果有人不守法, 就是犯法; 犯法的人, 會受到懲罰。



5. 法庭上有甚麽人

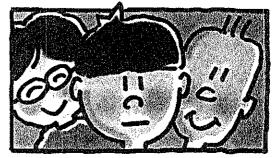
法庭上有甚麼人? 多多話你知。 他們坐在不同的地方, 各有不同的工作。

態慮上倉島圏人の



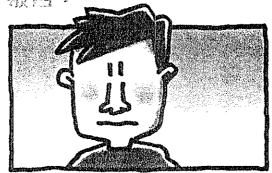
是法庭的主管, 他留心聽庭上各人説話, 來決定是否有人犯了法。

: 人語



向法庭説出他知道的一些事情, 每宗案件可能有一個或者多個證人。





是可能犯了法的人, 也許你不會見到他/她, 未經法官批准, 被告不可以向證人問話或走近證人。



會在法庭上講述被告 如何做出犯法的事情。 也會問證人,知道些什麼?

議方



是為被告辯護。 他代表被告, 向證人問話。

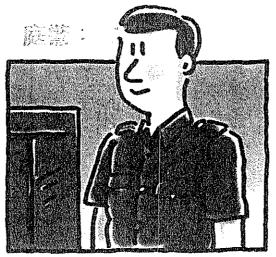
曆審團:(只被於高等法院)



七人組成的陪審團,聽審後決定被告有沒有犯法。



法庭裏的人可能會用不同的言語來 交談,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。



庭警負責維持法庭秩序。



司法書記助理負責陪證人出入法庭,並告訴證人應坐在那個座位。

髓塵

法庭上有各種人, 都有不同的工作。 你也有你的工作, 所以不用怕。



法庭書記

協助法官

處理文件及證物,

法庭速記員負責記

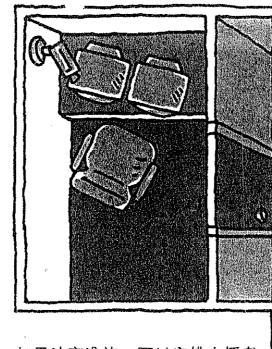
錄審訊時每 個人說的話。

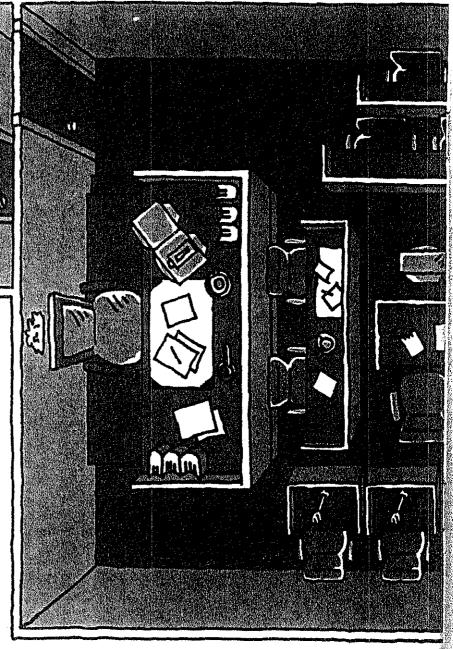


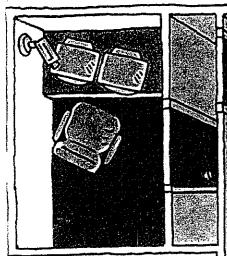
如果法官准許,可以安排支援者 幫助兒童證人,他會陪伴兒童證 人參觀法庭,也會陪伴兒童證人 在作證室內作證。

看完法庭的情形, 多多和你玩遊戲。 想一想,做一做, 動動腦節好處多。

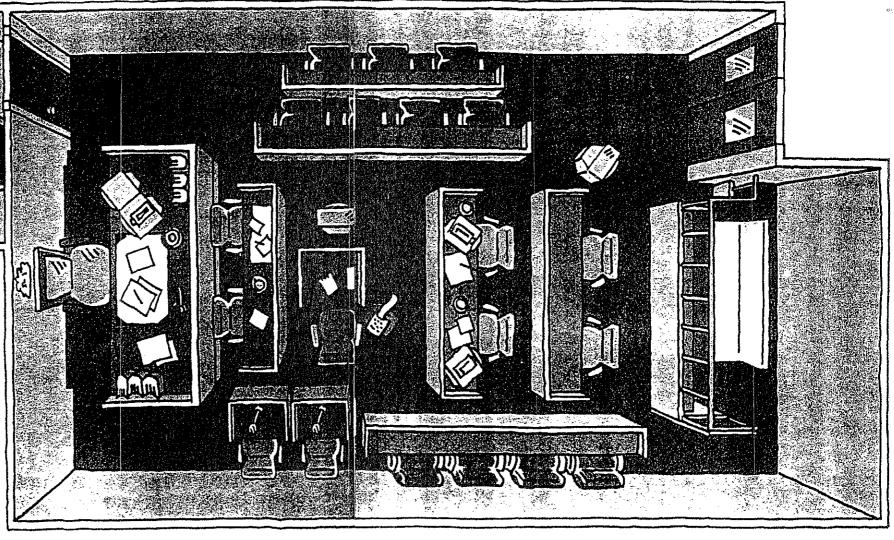


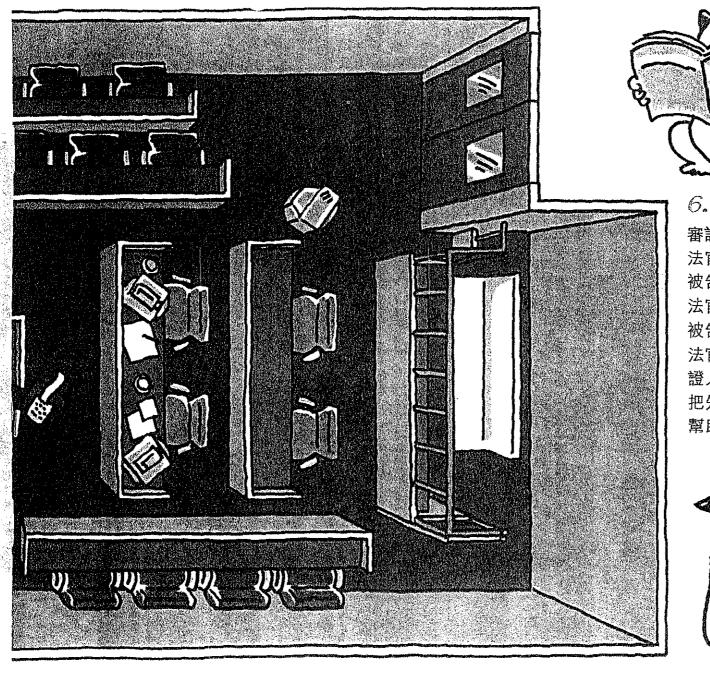






如果法官准許,可以安排支援者 幫助兒童證人,他會陪伴兒童證 人參觀法庭,也會陪伴兒童證人 在作證室內作證。



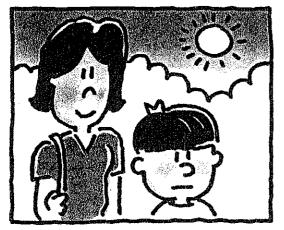


6. 審訊過程

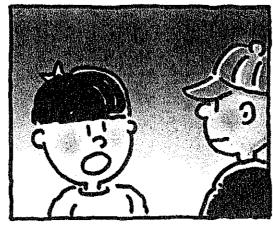
審訊過程是怎樣,
法官先來問被告有否做錯事,
被告回答「有」,
法官便會處罰他。
被告可答「沒有」,
法官便要來審訊。
證人要上法庭去,
把知道的事實說出來,
幫助法庭去判決。



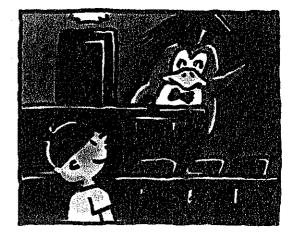
7. 上庭去



不要擔心, 也不用緊張, 只要將知道的事實講出來。



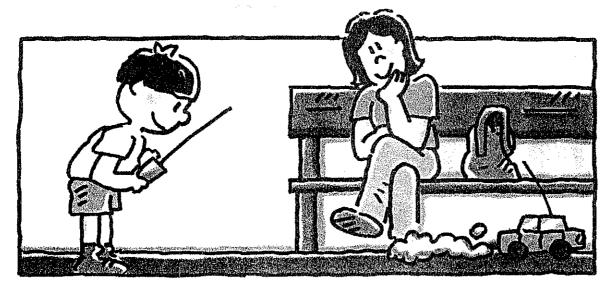
別人如果來問你, 為甚麼要上法庭, 你可以說去法庭做證人。



多多最和氣,時時都能陪伴你, 看完這本書,一同去參觀法庭。

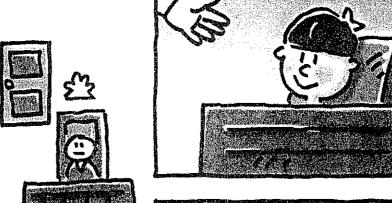




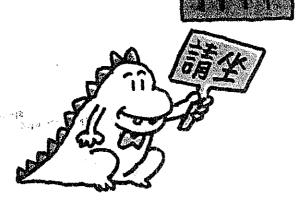


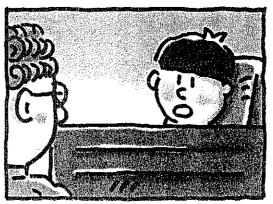
等候室,真安靜,可玩玩,可休息。 一二三,三二一, 輕鬆準備等作證。

工作人員來通知, 現在就要輪到你, 不一定去大法庭, 或是走進小房間, 坐下來作證, 支援者會陪伴你。

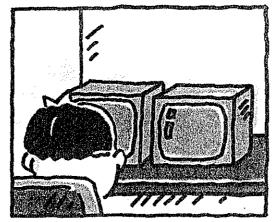


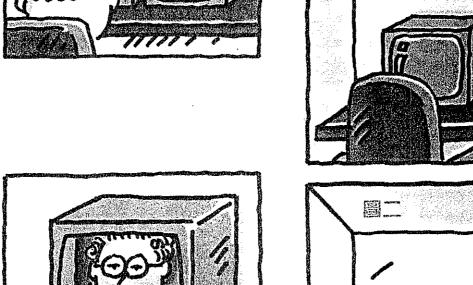
工作人員會指出,你的座位在那裏,安心坐下細心聽, 法官將會提醒你, 講出真話最緊要。



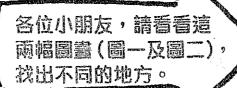


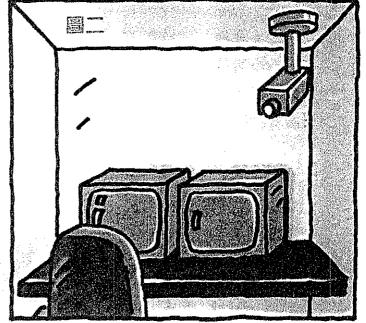
法官、主控官或 辯方律師如問你, 你就一一來回答。 坐在椅上開口講, 不必站起再坐下。

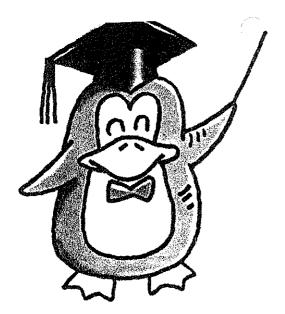




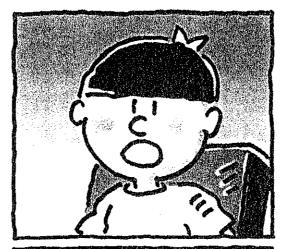
法官、主控官和 辯方律師來提問, 小心聽清楚, 然後才回答, 坐著面對鏡頭, 坐蔣面對鏡頭, 法庭亘的人便會 見到你。







玩完遊戲好歡喜,多多再教你, 證人工作很重要,幾件事情要牢記。



細心聽別人的問題,回答每一個問題,講出事實最緊要。



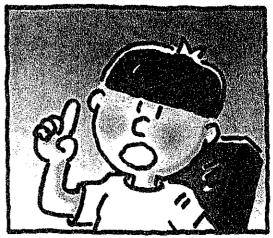
記不清楚的就説記不清楚。 千萬不要亂猜想。



忠誠老實講真話,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。

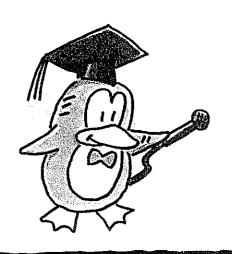


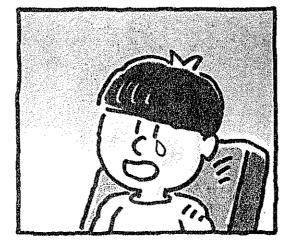
別人問話聽不明,可以回答 不明白,請他再説清楚。



只要講出你所知, 毋須驚慌和緊張。

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, 因你沒有説假話。





萬一哭了也不怕, 抹乾眼淚再説話。



回答問題要開口, 不要點頭或搖頭。 是就回答:「是」, 不是就說:「不是」。

還有其他一些事, 你可即時舉起手, 透過電視向法官, 提出你的問題或要求。 法官可以看到你, 也聽到你説話, 他會回答你的問題或要求。





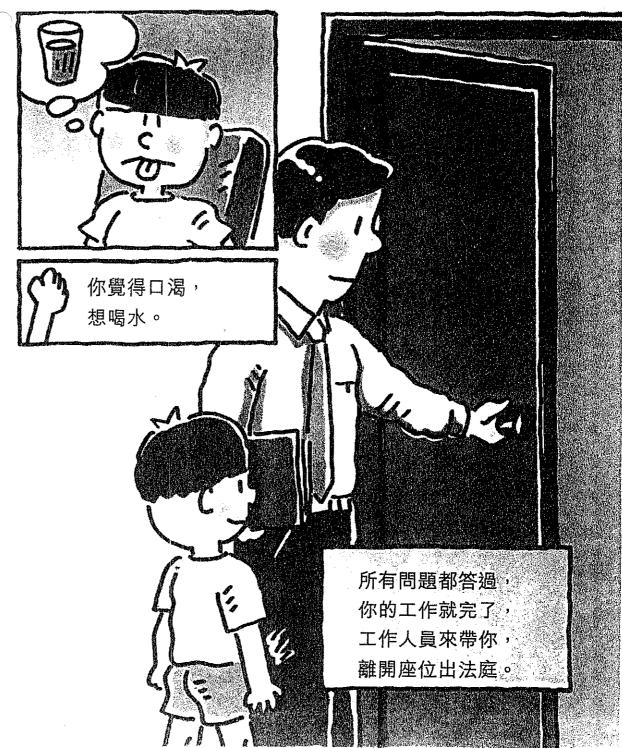


有些話你忘記説, 有些話你説錯了。





或者要去洗手間,當然最好事前去。

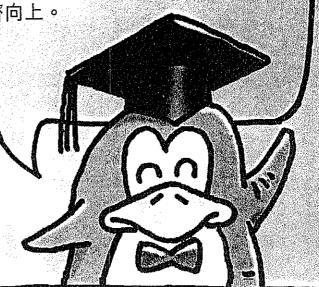


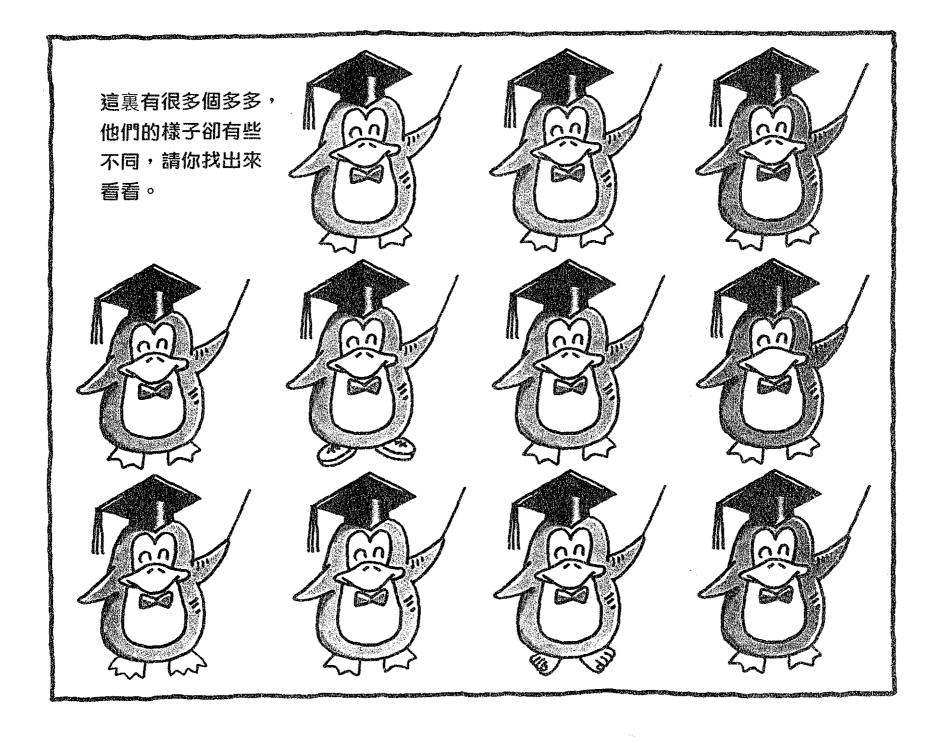
B. FEZE

你的任務完成了,法官或者陪審團,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法。如果被告判有罪,法官會判罰他。無論判決是如何,

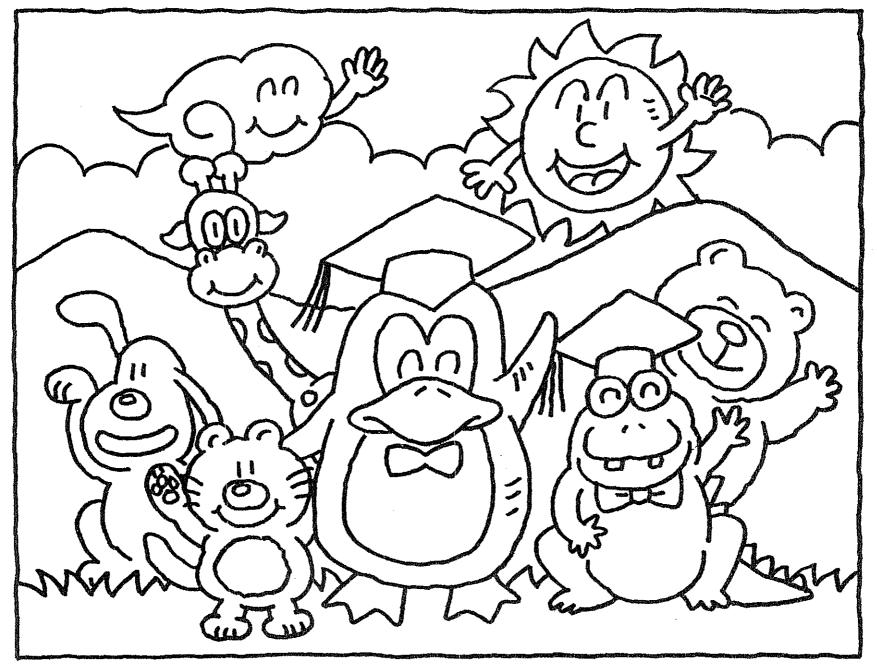
你把事實説出來,你已盡了責。

多多讚賞你,再帶你玩遊戲,健康聰明齊向上。

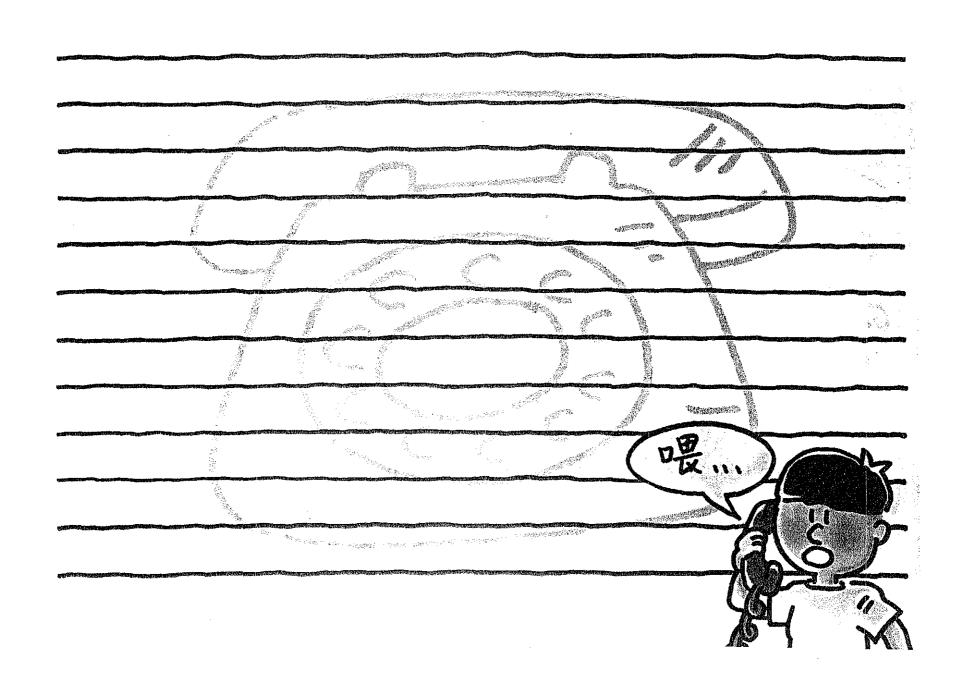




你心目中的多多、太陽和雲是甚麼顏色的呢!現在就開始創造你的彩色世界吧!



多多還介紹他的好朋友給你,如果有需要,可以打電話給他們,他們都會幫忙你:





⑥ 香港政府新聞處設計、香港政府日務屬印

家的心心心道。 意識心質

做好準備上法庭

(給十至十八歲讀者及輕度弱智人士)





新修訂的刑事訴訟程序條例於一九九六年二月生效後,兒童及弱智人士可以透過直播電視聯繫設施在法庭作證。透過這種新的作證方式,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,減低了證人的心理壓力和在法庭作證可能帶來的創傷。但在某些案件中,兒童仍可能需要在庭上作證。

為了加強兒童證人對擔任證人和審訊程序的認識, 從而減低他們對作證的憂慮和增強他們對作證的信心, 政府印製了一套兒童證人資料小冊子,為兒童證人及其 家長提供參考資料。

這套小冊子乃在得到英國 National Society for the Prevention of Cruelty to Children and Childline 的允許下,從其" Child Witness Pack"改編而成的。在此謹向參與編訂 Child Witness Pack 的機構致謝。

這套小冊子共有三本:

多多告訴你--準備好,上法庭

這本書適合五歲至九歲的讀者。在卡通人物多多的 引領下,本書以圖文並茂的方式,介紹法庭的環境、審 訊程序和證人的工作。由於用字簡易,本書也適合同年 齡弱智兒童或中度/嚴重弱智人士使用。為了加深兒童 證人及弱智人士對本書的理解,在派發本書時,請由社 工或其他支援者陪同兒童證人或弱智人士—同閱讀及解 說內容,同時並可鼓勵他們說出憂慮,消除他們上庭作 證的恐懼或疑惑。

和心心姐姐滿心非 做好準備上法庭

這本書適合十歲至十八歲的讀者。在支援者心心姐姐的引導下,兒童證人萍萍認識了法庭環境和審訊程序,並且明白作證時需要留意的地方,在派發本書時,請社工或其他支援者和兒童證人一同閱讀及解說內容,以加深兒童證人對內容的理解,並可鼓勵兒童將他們對上庭的疑慮說出來,加強他們作證的信心。本書同樣適合輕度弱智青少年或成年人使用。

何太應該怎樣做一教導孩子如何上法庭做證人

這本書是為兒童證人或弱智人士的家長及照顧者而編寫的,內容著重指導家長怎樣適當地支持孩子作證和了解孩子因為要做證人而可能產生的問題。本書並介紹了法庭的環境和審訊程序,以增加家長對上庭作證的認識,從而進一步為孩子出庭作證做好準備。

三本小冊子內,皆留有空位給負責該個案的工作人 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。 下午,萍萍放學回家後,接到社會福利署社工 方姑娘的電話,約她到中心見面。萍萍告訴媽媽要 見方姑娘後,便起程前往。

在中心會客室內,方姑娘通知萍萍,有一宗案件要審訊,她需要上庭做證人。萍萍聽到後,呆了一呆,不知道怎樣做證人。

方姑娘連忙安慰她,說:「不用擔心,我介紹心心姐姐給你認識吧。心心姐姐專門幫助一些需要上庭做證人的兒童,解釋有關審訊的程序和陪伴他們上法庭。心心姐姐已來了中心,我請她入來和你談談吧。」

萍下感到擔心和煩惱之際,方姑娘已帶著心心姐姐來到她的面前,介紹她們互相認識後,方姑娘便離開了會客室。心心姐姐坐下來和萍萍談了一會,看出萍萍好像有些心事,便鼓勵她把心中疑難說出來。在心心姐姐親切鼓勵下,萍萍便將她對做證人的疑問,——說出來。

看,這就是萍萍想出的主要問題了:

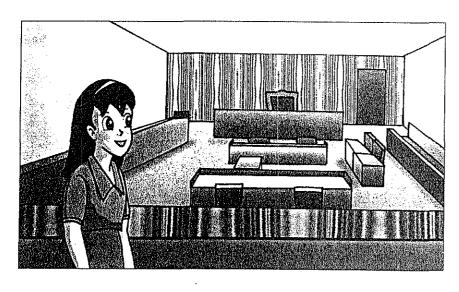
甚麽是證人? 證人要做些甚麼? 為甚麼有些人要上法庭? 法庭裏會發生甚麼事情? 怎樣準備上法庭? 上完法庭之後會怎樣?

甚麼是證人?

心心姐姐聽完萍萍的提問以後,說:「好,你 的問題提得好。我可以逐一為你解答。」

「首先,我來講一講,甚麼是證人。要知道, 證人是說出事件發生的經過,來幫助法官判決是否 有人犯了法。

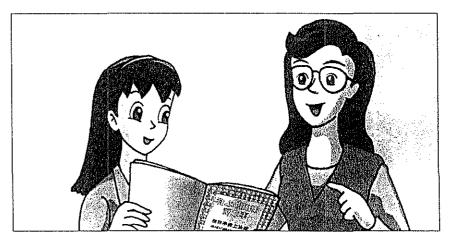
一個證人,可能見到或聽到一些重要的事情, 又或者有一些事情發生在自己身上。證人要說出所 見或所聽或發生在自己身上的事情。」



「有許多青少年,都會到法庭做證人,所以,你不是唯一一個。」

□氣,她沒有先前的緊張、不安。但是,稍一頓,又紅著臉對心心姐姐說:「妳講得很清楚。不過,不知道為甚麼,想到要上法庭做證人,我的心還是跳得很厲害。」

心心姐姐笑著說:「做新的工作是不容易的。不過,有很多青少年,在他們準備上法庭做證人之前,能了解更多關於法庭的情形,以及法庭內各人的身份和職責,做好充分的心理準備,感覺就會好得多了。」



「那麼,心心姐姐,妳能告訴我更多關於法庭的人和事嗎?」萍萍急著問。

「當然可以。我再給妳講講,為甚麼有些人要上法庭吧。」

*為甚麼有些*人要15%產?

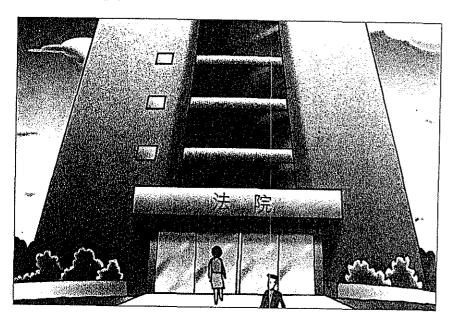
「大家都明白,我們的社會,是由法律治理的社會。」心心姐姐不快不慢地說著。

「因此,法律是非常重要的規則,我們每個人的行為,都要受到法律的約束。

如果有人做了不守法則的事情,就是觸犯法律。

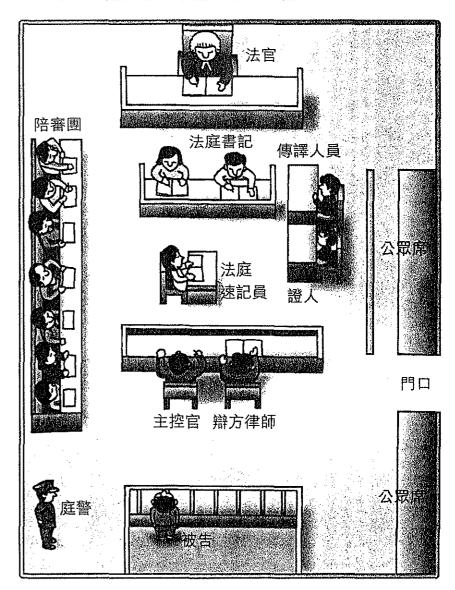
被懷疑犯了法的人,會被警方檢控,並且要到法庭 接受審判。你對警方說的話,無論是文字記錄或是錄 影,都可以提交法庭作為證據。

而法庭是有很多種類的,包括裁判法院、地方法 院、高等法院。



法庭內有各種不同工作的人,妳可以看看下面的圖 畫。]

心心姐姐說著,拿出一張圖,給萍萍看:



法官:法官是法庭的主管,坐在高台上,很小心地聆聽每個人說的話,並且確保他們遵守法庭內的規則,讓審訊能夠在公平的情況下進行。

被告:被告可能是觸犯了法律的人,他或她坐在被告席上。未經法官批准,被告不能直接和妳說話,也不能走近妳。

主控官:主控官向法庭證明被告如何觸犯了法 律。

辯方律師:辯方律師的工作,是替被告辯護。他 亦代表被告。向證人問話。

證人: 證人把知道的事情在法庭上說出來。每宗 案件可能有一個或者多個證人。

陪審團:只設於高等法院。有七個陪審員,他們 在到達法庭之前,都未曾接觸案情。他們負責聽 取控辯雙方提出的證據,並進行討論和作出裁 決。

法庭書記:法庭書記負責協助法官處理文件及證 物。

法庭速記員:法庭速記員是負責記錄審訊時每個 人說的話。

傳譯人員: 傳譯人員的工作是翻譯法官、主控官、辯方律師、證人和被告說的話。

庭警:庭警身穿制服,負責維持法庭秩序。他或她 監視被告,不讓被告接觸證人和對證人講話。

司法書記助理:司法書記助理的工作是陪伴證人出入法庭,告訴證人應坐在那個座位。

法庭裏的工作人員,有些會穿著特別的服飾, 例如法官會穿長袍和戴假髮。不過,在兒童證人作 證時,法官可能會除去長袍和假髮。

看完上面的圖畫,心心姐姐問萍萍:「現在,妳對法庭上各人的工作,尤其是妳自己的工作,都清楚了嗎?」

萍萍點點頭,答道:「清楚了。」

心心姐姐又說:「天快黑了,妳先回家吧,想 起甚麼問題,通知方姑娘,就可以找到我了。」

「好的,再見!」萍萍說著站了起來,擺了擺手。

「再見!」心心姐姐也擺擺手。

就這樣・他們離開了中心。

學作品規定

離上法庭做證人的日子,還有兩個多星期的時間,萍萍如常地回校上課,放學了,就回家做功課。

「咯咯、咯咯。」窗門忽然被人敲響了,

萍抬頭一看,原來是住在隔壁的胡小貝。 便問:「妳有甚麼事找我嗎?」

胡小貝眨眨眼睛,好奇地問:「聽說妳要上 法庭做證人,是真的嗎?」



萍萍沒想到她會這樣問。怔了一下,沒有回答,就把窗門關上了。

萍正在想著的時候,電話響起來了,原來是心心姐。萍萍趕忙把胡小貝問她的事情說出來。



心心姐姐在電話旁說:「萍萍,不要緊的,妳可以把上法庭做證人的事情,照直告訴胡小貝。這也不是甚麼秘密,只是妳要去做的一件工作。」

「那好,我明白了。」萍萍再次放下心來。

「對了,明天是星期六,妳不用上課吧?」心 心姐姐問。

「不用的。」萍萍答道。

「那麼,妳有沒有興趣參觀法庭呢?可以增加你對法庭的認識。」心心姐姐提議。

「我有興趣的。心心姐姐,妳能帶我去嗎?」 萍萍興奮地問。

「當然可以。明天我來接妳。一言為定。」

第二天上午,心心姐姐來萍萍家,帶她去參觀 法庭。 萍萍跟著心心姐姐來到了法庭。

由於沒有審訊進行,每個人的位置都是空的。

萍對法庭已經有了初步的認識,所以,她 很容易識別了不同的位置,上面應該坐著甚麼人。 她又很快地找到了證人的座位。



接著,心心姐姐把 她帶到一個空的房間, 對她說:

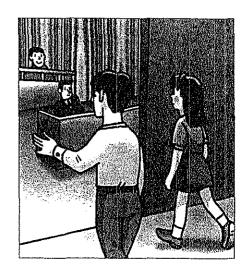
「在進入法庭作證 之前,妳會被安排在這 個等候室裏,安靜地休 息,等候上法庭。妳可 以帶備一些圖書和玩 具,消磨時間。此外, 妳也可以多帶一件外

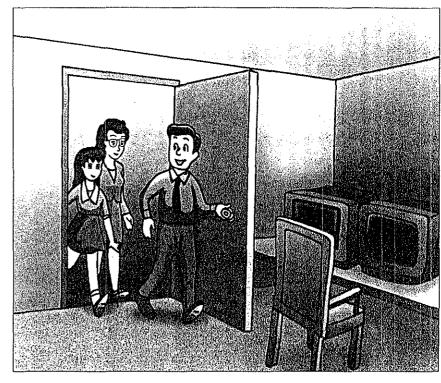
套,作為保暖之用。」

「還會有其他人在這裏的嗎?」萍萍問。

「未上庭前,妳的家人,法庭職員可以陪伴 妳。」心心姐姐回答說。

「甚麼時候進入法庭呢?」萍萍又問。





她們再次來到法庭裏。心心姐姐讓萍萍坐在證 人的位置,然後說:「證人在法庭中的工作很重 要,審訊的程序是這樣的一」

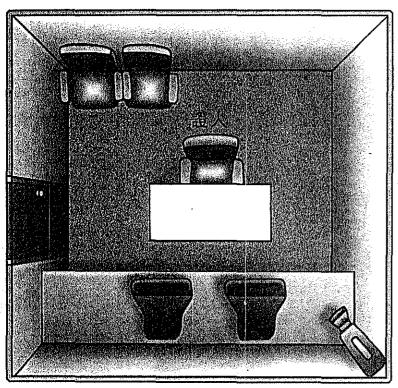
- 法官會首先詢問被告是否認罪。被告如果 認罪,證人便不用上法庭作證。相反,被 告不認罪,審訊便會進行。
- 司法書記助理帶證人入庭後,會引領證人 宣誓。十四歲或以上的證人要在庭上宣 誓,向法庭保證會說真話。
- 證人逐一向法庭說出自己所知道的事情。
- 當審訊進行的時候,法官和陪審團都會很 留心地聽每一個人說的話。
- 主控官會向陪審團證明被告是觸犯了法律。
- 作為證人,妳的工作就是講出事情的真相。主控官和辯方律師,可能向妳和其他證人,提出問題。
- 法官和陪審團會小心聆聽妳的話。

- 如果警方將證人講出的事實錄成映像,法官可能會在法庭上播放這些錄影帶,並會向證人提問有關錄影帶上提及的事情,證人必須作出回答。
- 上庭前,妳可以要求警方讓妳再看妳的口供或錄影帶。
- 一 在審訊中,妳只須坐在證人的座位上回答法官、主控官和辯方律師的問題。
- 聽完所有證人的話,陪審團會離開法 庭,討論被告是否有罪。

在小房間作證

心心姐姐介紹完審訊的程序,再把萍萍帶到小 房間去。這裏有座椅,還有兩部電視機。

「如果妳被安排在小房間作證的話,照樣會有法庭職員帶妳到妳的座位就座。面對著電視機,妳會見到法官、主控官和辯方律師。他們也可以在電視機上看到妳。當他們向妳提問,妳面向電視機回答就可以了。妳如果需要喝水、上洗手間,也可以向法官提出。」心心姐姐耐心地解釋說。



回答問題時應注意的事項

萍望著電視機,想像一下法庭的情況,忍不住又問心心姐姐:「我在回答法官、主控官和辯方律師的問題時,還有甚麼事情要留意呢?」

心心姐姐微微一笑,說:「嗯,妳能提出這樣的問題是很好的。根據一些青少年證人的經驗,我可以告訴妳一些回答問題應注意的事項,包括:

小心聆聽每一個問題, 清楚回答每一個問題, 說真話是最重要。

● 法官或法庭速記員會將妳 在庭上所說的話記錄下 來。這個過程是頗費時 的,可能要在每個問題之 間,稍為停頓。但妳不用



擔心,如果妳有甚麼地方不明白,可以向法官 提問。有時妳在電視機裡看不到法官,但法官 仍然可以見到你和聽到你說的話。

● 要聽清楚和想一想每個問題,才清楚地回答。如果聽不清楚,或者不明白,可以請提問的人覆述一次。

▶ 法庭上的法官、主控官或籍方律師,有時會用很深、很特別或很專門的法律名詞。妳如果不懂,可以說『我不明白』。如果他用不同方式發問同一個問題



用不同方式發問同一個問題,而妳仍然不明白的話,也可以說『我不明白』。

- 如果他一連問幾條問題,妳可以請他每次問 一條。
- 如果妳說話時,有人打斷妳的話,妳可以請 他停止,讓妳先說完。
- 如果妳對那個人問的話,有不同意的地方,妳可以說:『我不同意你講的話。』
- 如果有些問題妳不願在大庭廣眾中回答,妳可以向法官請求,是否可以不回答。
- 要講述妳的遭遇,可能會令妳感到尷尬和害怕,但請記著:法官及陪審團不會因為妳說話的用詞而怪賣妳。最重要的是妳將所知的事實說出來。
- 沒有人可以告訴妳應該說甚麼,只要妳用妳 自己的說話,說出究竟發生了甚麼事,甚至一 些秘密也可以,只要是事實便可。|

聽完心心姐姐的一番話, 萍萍不禁拍一拍手, 說:「哈, 心心姐姐, 妳想得真周到。」

心心姐姐這次沒有笑,很嚴肅地說:「我講了 這麼多,其實,堅持講出事實,才是最重要的。」

萍萍的神情也變得認真了,說:「我明白了。」



「明白就好。妳是個聰明的孩子。我也不妨再 提醒提醒妳—」

- 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,便是說假話。
- 如果妳答錯了,可以要求更正。
- 如果妳已經答過一條問題,有人再重新提出來,這並不表示妳答錯,妳只要再答一次就可以。
- 不要怕傷害別人的感情而隱藏或者故意遺漏一 些事實,這樣會令審訊不能公平地進行。
- 不要因為一時記不起來就推測;說明記不起便是了。
- 有些律師會提出一些難答的問題,妳不必急於回答,妳只要堅持說真話。
- 作證時應保持冷靜和客觀,有些事情的細節可能會令妳難受和不安。遇到這些情形,妳可向法官請求稍為休息一下,待情緒完全平靜下來再繼續。
- 妳不須一定同意向妳提問的人所說的話,同意 便回答『同意』,不同意便回答『不同意』,妳 更不必用說話去取悅任何人。

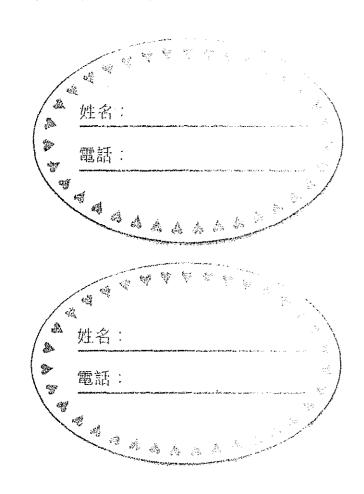
心心姐姐講完了,就和萍萍一起,走出了法 院。

「審訊有了結果,又會怎樣呢?」萍萍最後問。



心心姐姐友善地說:「如果被告被裁定無罪, 這並不表示陪審團不信妳,只是他們未能確定被告 有罪罷了。反過來,如果被告入罪,就有待法官判 決刑罰。請記著,妳已把事實說出來,無論判決如 何,妳已盡了做證人的責任。」 心心姐姐的話,消除了萍萍心中所有的疑慮, 她感激地說:「謝謝妳,心心姐姐,幫我做好準備 上法庭。」

另外,心心姐姐拿出一張卡片給萍萍,上面寫 著電話號碼。並提醒萍萍,如果需要幫助或服務, 都可以和卡片上的人聯絡。



何太應該馬機 EXELVATION DE L'ALTERNATION (給兒童證人或弱智人士 的家長及照顧者)

何太應該急誘機?

新修訂的刑事訴訟程序條例於一九九六年二月生效後,兒童及弱智人士可以透過直播電視聯繫設施在法庭作證。透過這種新的作證方式,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,減低了證人的心理壓力和在法庭作證可能帶來的創傷。但在某些案件中,兒童仍可能需要在庭上作證。

為了加強兒童證人對擔任證人和審訊程序的認識, 從而減低他們對作證的憂慮和增強他們對作證的信心, 政府印製了一套兒童證人資料小冊子,為兒童證人及其 家長提供參考資料。

這套小冊子乃在得到英國 National Society for the Prevention of Cruelty to Children and Childline 的允許下,從其" Child Witness Pack"改編而成的。在此謹向參與編訂 Child Witness Pack 的機構致謝。

這套小冊子共有三本:

多多告訴你一準備好,上法庭

這本書適合五歲至九歲的讀者。在卡通人物多多的 引領下,本書以圖文並茂的方式,介紹法庭的環境、審 訊程序和證人的工作。由於用字簡易,本書也適合同年 齡弱智兒童或中度/嚴重弱智人士使用。為了加深兒童 證人及弱智人士對本書的理解,在派發本書時,請由社 工或其他支援者陪同兒童證人或弱智人士一同閱讀及解說 內容,同時並可鼓勵他們說出憂慮,消除他們上庭作證的 恐懼或疑惑。

和心心姐姐講心事一做好準備上法庭

這本書適合十歲至十八歲的讀者。在支援者心心姐姐的引導下,兒童證人萍萍認識了法庭環境和審訊程序,並且明白作證時需要留意的地方,在派發本書時,請社工或其他支援者和兒童證人一同閱讀及解説內容,以加深兒童證人對內容的理解,並可鼓勵兒童將他們對上庭的疑慮說出來,加強他們作證的信心。本書同樣適合輕度弱智青少年或成年人使用。

何太應該怎樣做一教導孩子如何上法庭做證人

這本書是為兒童證人或弱智人士的家長及照顧者而編寫的,內容著重指導家長怎樣適當地支持孩子作證和了解孩子因為要做證人而可能產生的問題。本書並介紹了法庭的環境和審訊程序,以增加家長對上庭作證的認識,從而進一步為孩子出庭作證做好準備。

三本小冊子內,皆留有空位給負責該個案的工作人 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。





放學的時間到了。

一群又一群穿著白色校服的學生,從課室走向學校門口。

何太早在校門等候 多時了,她的雙眼幾乎 連眨也不敢眨,十分緊 張地以目光搜索著。

終於,何太找到自己的女兒阿敏。一手拉著她,便向家的方向走。

原來,何太接到警 方的通知,她的女兒阿 敏,將要上法庭做證 人。何太看阿敏年幼無 知的樣子,很不放心。



何太帶著阿敏回到家中,坐了下來。何太說:「阿敏,你下個月要上法庭做證人了。現在我們先試一下,你把我當做法官和律師,我發問,你回答。」

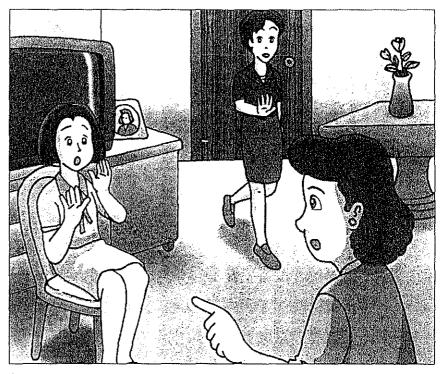
「不,我、我不回答。」阿敏顫聲說。她從來沒試 過,嚇得哭了起來。

「鈴……」門鈴響了。



何太把門打開,原來是和她們相熟的社工方姑娘剛 巧到訪。

方姑娘問明因由,勸何太不要這樣做,因為和兒童 證人預習回答問題是不適當的行為。



「那我們應該怎樣辦呢?阿敏這麼小,又從來未做 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。然後,讓阿敏到房間裏去做功課。方姑娘和何太走進廚房,一邊喝茶,一邊談著。

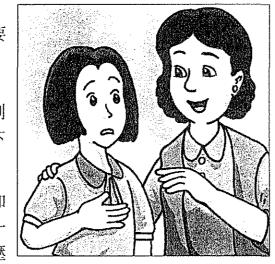


了解孩子的心理狀況

方姑娘告訴何太,有不少孩子要上法庭做證人,身 為兒童證人的父母,首先要了解孩子的心理狀況,有些 事情是要注意的。

第一,在孩子要 上法庭作證的時候, 千萬不要預先演習, 否則,會使法官感到 孩子是在別人指導下 而說出口供的。

第二,當孩子知 道自己要上法庭,一 定會感到有很大的壓



力,可能以為自己做錯了甚麼事情,因此,需要你去安定她的情緒。

其實, 許多父母和監護人, 也會有同樣的擔心, 所以自己也要先做好心理準備。

要知道,你的孩子需要你的支持。她可能是一件罪 案的見證人,也可能是受害人,因此,你要幫助她,及 令她感到安全。

也有些父母,會為孩子的遭遇感到難過,但也要鼓勵孩子把所見、所聽和所知道的說出來,並告訴她這樣做是正確的,及不會因為這樣做而受到指責。

同時,卻不要答應,如果她在法庭上表現好,就買 東西作「獎勵」,只要鼓勵她講出真話就是了。

第三,孩子要上法庭,很自然會產生憂慮。有時, 甚至會影響她(或他)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醫察:

- 常常發怒或驚慌;
- 有犯罪感;
- 對被告的感覺反覆不定,對他/她生氣,又怕他/她受罰;
- 在學校和家中,情緒不安,精神不集中;
- 遺尿、失眠、沒有胃口;或
- 感到困擾。

第四,找出孩子憂慮的是甚麼,鼓勵她說出來,再 作解釋。她可能會:

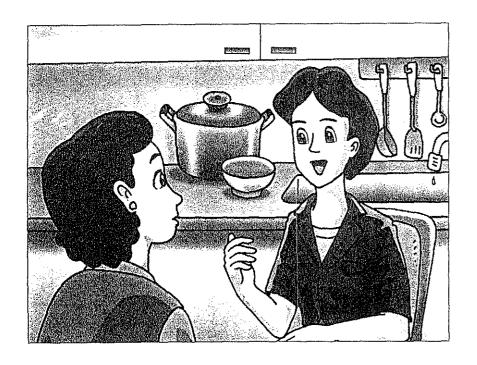
- 害怕在法庭上面對被告;
- 害怕被告坐監或者受罰;
- 害怕同學或朋友的談論;
- 害怕在法庭上應付不來。

第五,如果孩子是弱智,或者是弱能的,更需要你的關懷和幫助。

第六,如果你自己也需要幫助,可以向有關機構的 社工求助。

第七,記得儘量在孩子面前控制自己的情緒。

第八,也可以鼓勵孩子找社工傾訴。因為有些時候,孩子不願告訴父母的話,會告訴社工的。



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,對於一件案件是如何去到 法庭和審訊的程序,還是知道得不多。請你給我講解一 下,好嗎?」

「好的。」方姑娘笑著回答。

「這裏有兩本分別為五至九歲及十至十八歲兒童證 人提供資料的小冊子,可以幫助阿敏明白怎樣做兒童證 人的工作。當阿敏閱讀這份資料時,有一個對審訊程序 有認識的人替她解答疑問及給予支持是十分重要的。」

「如果你需要知多一些有關法律的程序,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改期,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:一





調查:

警察接到投訴時,如果發現受害者或罪案目擊證人是個兒童,警察有時會聯同社工一起替兒童證人錄取口供,或將會面過程錄影下來。然後,根據證人提供的資料,繼續進行調查。若懷疑有人犯了罪,便會將他檢控及帶上法庭。

檢控

警方將有關案件檔案交給律政署審閱,再由律政署 決定是否提出檢控。

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,包括法官、證人、被告、 主控官、辯方律師、法庭書記、陪審團、傳譯人 員、司法書記助理、法庭速記員、庭警等等,各有 各的工作。

法官一法庭的主管,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。

- ☆人─將知道的事實在法庭上講出來。
- 进告一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。
- 直持百一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。
- 法庭告記一協助法官處理文件和證物。
- 陪書剛一只設於高等法院。由七名陪審員組成,事 前均未接觸過案情,負責聽取控辯雙方提 出的證據,並進行討論作出裁決。
- 你置人員—翻譯法官、主控官、辯方律師、證人和 被告説的話。
- 司法書記助理—負責陪同證人出入法庭,並指出證 人的座位。
- 过原独原[1]一負責記錄審訊時每個人說的話。
- 应告一負責維持法庭秩序,看管被告,確保被告不 會接觸證人及與他們對話。





證人



主控官



庭警



陪審員



法庭速記員



被告



辯方律師



司法書記助理



審訊過程

- 法庭的工作人員會安排一個小房間讓兒童、其家 長或監護人等候作證。
- ●當兒童作證時,法官有權決定公眾席的人上是否要離場。
- 十四歲或以上的兒童作證時,她一定要宣誓,向 法庭保證會説真話。
- 兒童作證時,可以是在法庭上,或在一個房間中,在家長或其他支援者陪同下,透過電視聯接直播系統作證。但當家長也要作證時,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(或社工)面談的 錄影帶,作為呈堂證供的一部份時,兒童證人可 以不用重覆該影帶的內容,但仍然要回答法官及 律師向她提出的問題。兒童證人可以在上庭前看 一遍該錄影帶。
- 當陪審團聽取所有證據後,他們要進行討論,作 出裁決。若被告罪名不成立,他立即可以重獲自 由,離開法庭。相反,如被告罪名成立的話,就 由法官判決處罰。

家長陪同兒童證人作證

如果兒童證人的家長亦被傳召為同一案件的證 人,家長便不可以陪伴兒童證人作證。



- ●兒童證人的家長在決定是否陪同孩子一同作證前,要先了解一下孩子對你這個決定的感受, 她是否很需要家長的陪伴,或者會因此而感到 不安呢?家長亦要考慮到他知道案情後的反 應,家長的不安會影響孩子作證。
- ●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

你應該如常地安排孩子的生活。如果有親戚或者朋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。

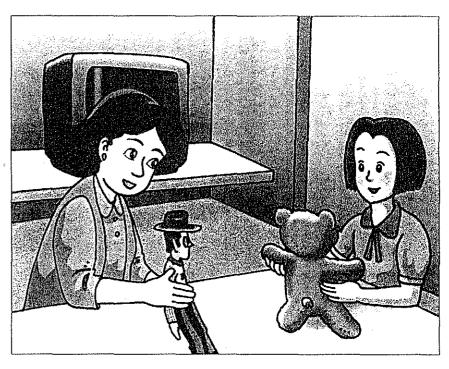
在開庭之前,警方會安排兒童證人到法庭參觀。你可以讓你的孩子前往法庭,熟悉一下環境,為出庭作證 做好心理準備。

上庭當日

要準時到達法庭。

在進入法庭之前,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,可以帶同心愛的玩具消磨時間,減輕緊張的情緒。此外,法庭的職員會儘量避免讓你的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,但當家長 也要作證時,她便一定不可以於作證前進入法庭內聽 審。

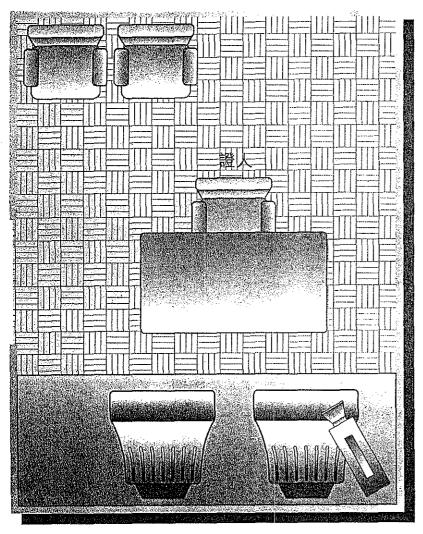


如果你的孩子被安排在小房間,用電視聯接直播系 統作證,若法官沒有批准你陪同,你就應該在外面等 候,或進入法庭內聽審。





通常在電視聯接直播系統作證的小房間,兒童證人 將由法庭人員陪同,面向電視機就坐。若法官准許,亦 可安排支援者陪伴兒童證人。從電視上,可看見法官或 律師,當他們提出問題時,兒童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,家長可以陪伴她離去。

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

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





裁判告一段落以後

方姑娘和何太談得差不多了,便由廚房走出客廳。

何太感激地向方姑娘道謝,又說:「我現在懂得應該怎樣教導阿敏做好準備上法庭了。那麼,是不是上完 法庭作證之後,孩子就能夠重新過正常生活呢?」

「那還要靠家長和社工繼續努力。」方姑娘誠懇地 説。

「具體的,還有哪一方面的工作要做好呢?」何太 再問。

「在審訊完畢後,作為兒童證人的家長,主要有幾個方面的工作要做好。首先,當孩子問及審訊的結果,就應該照實回答,而且要告訴孩子,她已經盡了自己的責任,把事情的真相講了出來,所以,無論結果如何,也不要介懷。

其次,要開解孩子,幫助她回復健康愉快的心情, 重新過正常的生活。

前兩方面的工作都做過了,如果孩子的情緒還是未 能平復,那麼,你可以聯絡社工尋求幫助。下面的電話 號碼,你可以隨時打去,和他們商量,一起去解決孩子 的情緒問題。」

姓名:	
電話:	
₩.C7 .	
姓名:	
電話:	

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 鬆了許多,也清楚地知道應該怎樣幫助阿敏,做好準備 上法庭作證了。



never A Conserve



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 MIP 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 MIP to receive appropriate counselling and support and the need for the MIP 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 MIP is to give evidence in the prosecution, it is essential to avoid discussion of any matters which might discredit the MIP 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 MIP 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 MIP gives evidence in cross-examination.

Appendix 4.1

LIST OF CONTACT PERSONS FOR MENTALLY INCAPACITATED WITNESSES WITNESS SUPPORT PROGRAMME

The following contact persons should be contacted in accordance with the respective region where the mentally incapacitated witness resides:

Region	Regional Contact Person	Office and Telephone No.
Hong Kong	Professional Assistant (Hong Kong Region)	Hong Kong Regional Office, SWD 2851 9299
East Kowloon	Professional Assistant (East Kowloon Region)	East Kowloon Regional Office, SWD 2323 5044
West Kowloon	Professional Assistant (West Kowloon Region)	West Kowloon Regional Office, SWD 2399 2337
New Territories East	Professional Assistant (New Territories East Region)	New Territories East Regional Office, SWD 2699 5501
New Territories West	Professional Assistant (New Territories West Region)	New Territories West Regional Office, SWD 2417 6301

WITNESS SUPPORT PROGRAMME FOR VULNERABLE WITNESS FAMILY AIDE SERVICE (MENTALLY INCAPACITATED PERSONS) PROCEDURAL GUIDE

Family Aide as Support Person

- 1. The major duties of the Family Aide are:
 - (a) to accompany the mentally incapacitated person [MIP] on a familiarisation visit to Court before the trial; and
 - (b) to provide support to the MIP when testifying in Court through the CCTV system.
- 2. As a support person, the Family Aide should familisarize themselves with the Code of Practice (see <u>Appendix 4.3</u>) and abide by it.

Operational Procedures

- 3. Referrals for support persons for MIPs should be sent by the Child Protection Policy Unit [CPPU] of Police to the regional contact person of SWD according to the regional boundaries of SWD with general information about the case, the scheduled hearing dates, and the name and contact telephone of the police officer responsible for the case [OC Case].
- 4. Upon receiving the referral from CPPU, the regional contact person will identify a support person from the Family Aides of the region and liaise with the supervising officer of the Family Aide and pass to him/ her the general information of the case as provided by Police. The supervising officer will then brief the Family Aide concerned of the assignment. In case the Family Aides in the region are not available, the regional contact person can liaise with other regions for assistance. Considering the proximity of regions, assistance can be sought as follows:-

(a) Hong Kong Region: from regions in Kowloon

(b) the 2 regions in Kowloon: from each other

(c) New Territories East Region: from West Kowloon Region (d) New Territories West Region: from East Kowloon Region

5. The regional contact person will inform CPPU the name of the Family Aide assigned. CPPU should be informed of any changes in nomination three weeks before the scheduled hearing date, as the name of the Family Aide will be passed to Court through the Police.

- 6. Police will arrange to escort the MIP for the pre-trial familiarisation visit to Court and the schedule court hearings. The Family Aide would be informed about the dates and meeting points, and name of OC Case through the regional contact person, and the supervising officer of the Family Aide.
- 7. If the case is handled by SWD, the regional contact person will inform the caseworker responsible for the case about the arrangement of support person and the Family Aide assigned to the case. If the case is not known to SWD, the supervising officer of the Family Aide will provide the necessary professional support as the responsible caseworker.

Pre-trial Preparation

- 8. With the assistance of the caseworker responsible for the case, the Family Aide will be arranged to meet the MIP before the pre-trial familiarisation visit to Court.
- 9. The Family Aide will accompany the MIP to the pre-trial familiarisation visit to Court and help the MIP get familiar with the Court environment.
- 10. The Family Aide should consult his supervising officer if any problem is encountered with the MIP. Where necessary, the supervising officer may seek clarification with regional contact person.
- 11. If the MIP discloses anything about the criminal case during their meeting, the Family Aide should not discuss the evidence with the MIP but alert his supervising officer and the responsible caseworker of such situation immediately.

Trial Day

- 12. After meeting the MIP in Court, the Family Aide should stay with the MIP when the MIP is in Court and keep in view the physical needs of the MIP. If it is a full day hearing, the Family Aide should have lunch together with the MIP. Regional contact person can help clarify the lunch arrangements with Police beforehand.
- 13. The Family Aide should not speak to the MIP while the MIP is giving evidence, but should be observant of the emotional response of the MIP and alert the Judge through the usher when the MIP has difficulties in continuing to give evidence. The Family Aide should not attempt to comfort the MIP without the permission of Court.

- 14. While waiting for the trial, or in-between breaks, the Family Aide can help the MIP feel more relaxed by chatting with the MIP about anything not related to the case
- 15. If the MIP wants to discuss with the Family Aide the evidence he/ she has given, or seeks advice on whether he/ she should mention any detail of the case, the Family Aide should remind the MIP that he/ she should talk about the evidence in Court only and tell the truth.
- 16. If any problem about the court arrangements is encountered, the Family Aide should inform the regional contact person who can help resolve the problem with Police.

After the Trial

17. The Family Aide should prepare a brief report on the work done and difficulties encountered (standard report form at Annex A), and send the report to his/ her supervising officer. The supervising officer should add in observations or comments and send the report to Rehabilitation and Medical Social Services Branch of SWD for reference through the respective regional contact person. A statistical form (at Annex B) would be prepared by regional contact persons on quarterly basis.

Reimbursement of Expenses

18. Reimbursement of expenses incurred by the Family Aide in providing the service, such as travelling expenses, can be made to the Oi/c of the family services centre of the Family Aide through the supervising officer.

Witness Support Programme for Mentally Incapacitated Person Family Aide Service – Service Report Form

From:				To: SS(RM)3, Rehabilitation and Medical Social Servi			ial Services Branch		
(Name of Supervisor/ Family Aide Service) Unit/ Tel.:				via Regional Contact Person (Nan			(Name/Po	Name/ Post)	
							(Ivallie) I e		
Re									
Dat	te:								
Pa:	rt I (to be	completed by Suppo	ort Person)			, , , , , , , , , , , , , , , , , , , 			
A.	Name: Sex/ Ago MD/MH	e:	e if inappropriate) (see No			ation on Support Person:			
C.	Record (of Activities: (please 1	use separate sheet if neede	ed)					
	Date	Nature of Activity (see Note 2)*	Details of Activity (see Note 3)*	Time S _I (No. of h		Problems/ Diffict encountered, if any, an action taken	d remedial	Remarks	
, market 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1,									
							, market		

Note 1*:

Mentally incapacitated persons include mentally disordered persons (MD) and mentally handicapped persons (MH)

MD includes:

- (1) mental illness;
- (2) 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;
- (3) psychopathic disorder; or
- (4) any disorder or disability of mind which does not amount to mental handicap

MH includes: sub-average intellectual functioning with deficiencies in adaptive behaviour

Note 2*:

Coding for Nature of Activity

- 01 meeting with the witness
- 02 meeting with the witness and family/ guardian/ caseworker
- 03 pre-trial Court visit with the witness
- 04 accompanying the witness to give evidence at Court
- 05 post-trial activity
- 06 others (please specify)

Note 3*:

Please describe what you have done with the witness and other people involved, for example,

- 1. help the mentally incapacitated person understand the role of a witness by reading the child witness pack (which is also applicable for mentally handicapped persons) together with him/ her
- 2. clarifying questions raised by the mentally incapacitated person about the Court process
- 3. helping the mentally incapacitated person's parents/ relatives/ guardian to understand the Court process

Part II (to be completed by the concerned supervisor, if required)					
Any other feedback or suggestions:					
			-		
	-			~	
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Quarterly Statistical Return on Witness Support Programme for Mentally Incapacitated Person

(to be submitted on the 5th of first month of each quarter)*

To: Fax No.:	SS(RM)3, Rehabilitation and Medical Social Services Branch 2893 6983						
From:		Region					
	(Name/ Post	of Regional Contact Perso	n)				
Tel. No. of	Regional Conta	act Person:					
Period:		to					
No. of cases served		Total time spent by Support Person	Total fees reimbursed (\$)				
		Prepared by	(signature)				
		Date:					

^{*} to be submitted in January, April, July and October

WITNESS SUPPORT PROGRAMME CODE OF PRACTICE FOR SUPPORT PERSONS

- 1. Support persons involved in providing support service to the vulnerable witnesses would be provided a specially designed training programme for support persons.
- 2. Support persons assigned to provide support services to 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 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, difference support persons should be assigned to each witness.

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

4. Support persons should not offer advice or opinion on the case, 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 members 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 Court to disclose their meetings with the witness or the family members, and they should act as the Court instruct.

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 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 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 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 SWD's contact person 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 commit 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 case for information afterwards. They should not make any comments on the cases they have served or make any specific reference to the case while taking 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 sex, age, race, family background etc.
- 11. Support person should be fully conversant with the Code of Practice of the Witness Support Programme and abide by it all times.

12. What a support person should do:

(a) To provide support and comfort 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;
- (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.