

## **LEGISLATIVE COUNCIL BRIEF**

### **PREVENTION OF CHILD PORNOGRAPHY BILL**

#### **INTRODUCTION**

At the meeting of the Executive Council on 8 January 2002, the Council ADVISED and the Chief Executive ORDERED that the Prevention of Child Pornography Bill (the Bill), at Annex A, should be introduced into the Legislative Council, to offer better protection to children against sexual exploitation by creating various offences in relation to child pornography, pornographic performance by children and child sex tourism.

#### **BACKGROUND AND ARGUMENT**

##### **Combination into One Bill**

2. The Prevention of Child Pornography Bill and the Crimes (Amendment) Bill 1999 (the latter for tackling the problem of child sex tourism) were introduced into the Legislative Council on 7 July 1999, but lapsed at the end of the previous legislative term on 30 June 2000 before priority was accorded for the Bills to be scrutinized by the Legislative Council. Re-introduction of the Bills to the Legislative Council is therefore necessary. In view of the common objective of protection of children against sexual exploitation, we have decided that the two Bills should be combined as one to form the revised Prevention of Child Pornography Bill at Annex A. This should facilitate the Legislative Council's consideration of the whole set of proposals during the legislative process.

##### **General Background**

##### ***United Nations Convention on the Rights of the Child (UNCRC)***

3. Under Article 34 of the UNCRC, which applies to Hong Kong, children should be protected from all forms of sexual exploitation and sexual abuse. Enacting legislation which prohibits child pornography and child sex tourism will be a positive step to implement the UNCRC.

### ***Child Pornography***

4. Child pornography is a serious form of sexual exploitation of children. Legislation should be in place to protect children from such harmful exploitation as they are usually unable to make informed decisions, and thus are vulnerable. At present, there are provisions in the Crimes Ordinance, Cap. 200, that protect children from sexual abuse. However, they do not deal directly with child pornography. The Control of Obscene and Indecent Articles Ordinance (COIAO), Cap.390, prohibits the publishing, possessing for publication or importing for publication of obscene articles, including child pornography when it is classified as obscene. Offenders are liable to a maximum fine of \$1 million and imprisonment for three years. Further, COIAO prohibits publication of indecent articles to those under the age of 18. However, the COIAO does not provide for an offence of mere possession of obscene articles or child pornography.

5. Possession of child pornography may pose serious harm to children because :

- (a) child pornography promotes paedophiles' feelings that having sex with children is normal behaviour;
- (b) it fuels fantasies that incite offenders to offend;
- (c) it is used for grooming and seducing children; and
- (d) children are abused in the production of child pornography involving real children\*.

While the problem of child pornography does not appear to be very serious in Hong Kong at present, it may worsen quickly if no measures are taken to tackle the problem. Of particular concern is child pornography found on the Internet because of the relative ease in distribution, access and downloading. Although Hong Kong is not known to be a production or distribution centre of child pornography, paedophiles may still access Web sites of child pornography originating from other countries and be in possession of child pornography. Therefore, the need to prove for "the purpose of publication" in a possession offence may become a loophole and greatly hamper Police's enforcement action

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\***Note** Reference is made to the judgment of the R.v.Sharpe case by the Supreme Court of Canada dated 26 January 2001. The Court judgment can be found on the Web site :  
[http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1\\_0045.html](http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1_0045.html)

in tackling the problem. The table of statistics below illustrates the difficulties in prosecution and conviction in this connection.

**Cases of publishing or possession for the purpose of publishing obscene articles which depict child pornography from 1996 to 2000**

<b>Year</b>	<b>Number of reported cases</b>	<b>Number of prosecution cases</b>	<b>Number of convicted persons</b>
1996	6	3	2
1997	8	2	2
1998	4	0	0
1999	7	0	0
2000	13	2	2
<b>Total</b>	<b>38</b>	<b>7</b>	<b>6</b>

6. Out of the 31 cases that were not actionable, many of them were so because of a lack of evidence to prove that the possession was for the purpose of publication. However, in order to curb the demand at source, it is necessary to make mere possession of child pornography an offence. This should fundamentally deter the use of children for producing pornographic material. Many countries, including the United Kingdom, Australia, the United States and Canada, have enacted legislation against child pornography which also include an offence for possession.

***Child Sex Tourism***

7. Sexual exploitation of children is known to have international dimensions. Child sex tourism, that is, arrangements which enable adults to travel from their home countries to other places, in particular less-developed places, to engage in sexual activities involving children, is known to exist around the world. A number of countries, including Australia, the United States and many European countries, have enacted specific legislation against child sex tourism.

8. Hong Kong, through regular liaison with overseas law enforcement agencies, has been maintaining a close watch on the problem and assisted in the investigation of a number of cases. However, the Crimes Ordinance does not prohibit local residents from exploiting children sexually in other places. Nor does it provide protection to local children who may be abducted outside the territory and become targets of child sex tours. Given the heinous nature of child sex tours and the need for joint international efforts, legal sanctions must be imposed on perpetrators who prey on local or overseas children. We therefore propose to

introduce legislative amendments to provide extra-territorial effect to certain sexual offences under the Crimes Ordinance in respect of acts committed to children where the perpetrator or the victim has a nexus with Hong Kong.

## **The Proposals**

9. The major proposals of the revised Prevention of Child Pornography Bill at Annex A are summarised as below –

- (a) creating offences of making, producing, publishing, importing, exporting, distributing, advertising and possessing pornography that depicts children under 16 years of age;
- (b) criminalising the use, procurement or offer of children under the age of 18 for making pornography or for pornographic performances; and
- (c) extending the application of certain sexual offence provisions to acts committed against children outside Hong Kong and prohibiting the making of any arrangement relating to commission of those acts and advertisements for such arrangements.

### ***Proposals relating to child pornography***

10. To provide clear and comprehensive definitions in relation to child pornography, we propose that –

***“child pornography” means –***

- (a) *a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a person who is or appears to be a child, whether it is made or generated by electronic or any other means, whether or not it is a depiction of a real person and whether or not it has been modified; or*
- (b) *anything that incorporates a photograph, film, image or depiction referred to in paragraph (a),*

*and includes data stored in a form that is capable of conversion into a photograph, film, image or depiction referred to in paragraph (a) and anything containing such data;*

***“child” means a person under the age of 16 years;***

***“pornographic depiction” means –***

- (a) *a visual depiction that depicts a person who is or appears to be engaged in explicit sexual conduct; or*
- (b) *a visual depiction that depicts in a sexual manner or context the genitals or anal region of a person or the breast of a female person.*

*but, for the avoidance of doubt, a depiction for a genuine family purpose does not, merely because it depicts any part of the body referred to in paragraph (b), fall within that paragraph.*

### ***Defence***

11. Despite the tight definition above, we consider it reasonable and necessary to provide for certain defence clauses so that innocent people who come across child pornography will not be inadvertently caught by the Bill.

12. We propose to provide a statutory defence to a charge under the offences mentioned in paragraph 9(a) above for the defendant to establish that the alleged child pornography has artistic merit or his act in relation to the child pornography is for a genuine educational, scientific or medical purpose or that the act otherwise served only the public good. We also propose that a person charged with certain child pornography offences may deploy another defence if he did not know or had any reasonable cause to suspect the relevant material to be child pornography, or he had not asked for any child pornography and after it came into his possession, he endeavoured to destroy it within a reasonable time. Furthermore, a defendant’s belief that the person pornographically depicted is of the age of 16 or above and is depicted as such will be a defence only if he establishes that he took all reasonable steps to ascertain the person’s age and ensure that the person was not depicted as a child.

### ***Interface between the Bill and the Control of Obscene and Indecent Articles Ordinance***

13. In reconsidering how the Bill may operate after enactment, we have come to the view that it is necessary to provide an interface between the Bill and the COIAO. Under the COIAO, obscene articles are prohibited from publication while indecent articles may be sold or distributed to persons aged 18 years or above provided that the publication complies with certain statutory requirements. There is no compulsory pre-censorship under the COIAO. However, if in doubt

about the classification of an article, a publisher may voluntarily submit an article to the Obscene Articles Tribunal (OAT) for classification.

14. The OAT classifies a submitted article as Class I (neither obscene nor indecent), II (indecent) or III (obscene). Since OAT relies on the adjudicators to reflect the standards of morality generally accepted by reasonable members of the community, there may be a question whether an article classified as Class I or II may be subject to prosecution for offences under the Bill after its enactment. To address this problem, we propose that consequential amendments should be included in the Bill to provide a proper interface such that the OAT shall refuse to classify an article if it is of the opinion that the article may be child pornography within the meaning of the Bill. This will help the OAT to steer clear of child pornography matters which will be dealt with by the courts. Defence will also be granted for offences under the Bill in relation to articles that have been classified as Class I or Class II by the OAT. This will ensure a person will not be penalised under the Bill in relation to an article which has been classified and allowed to be published under the COIAO.

***Proposals relating to procurement of children for making pornography or live pornographic performances***

15. While the revised Bill was under preparation, the Administration was asked to consider if the International Labour Convention No. 182 (ILC 182), which was adopted by the International Labour Organisation in 1999, should be applied to the Hong Kong Special Administrative Region.

16. The ILC 182 is an important and widely ratified international labour convention. Member States which ratify the ILC 182 shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. Under the ILC 182, “child” applies to all persons under the age of 18 years and “the worst forms of child labour” comprises, among other things, the use, procurement or offer of a child for the production of pornography or for pornographic performances. The Mainland is considering ratifying the ILC 182 and the Administration also considers it appropriate to apply the ILC 182 to the Hong Kong Special Administrative Region.

17. To comply with the ILC 182, it is proposed to add provisions to the Crimes Ordinance to prohibit the use, procurement or offer of a person under the age of 18 for making pornography or for live pornographic performances. In this connection, children under the age of 16 are considered more vulnerable. They may not be able to make independent decisions and give informed consent. We therefore consider that the level of protection for children under 16 should be

higher than those of the age of 16 or above but under 18 (referred to as “between 16 and 18” hereafter), and propose a two-tier definition for pornographic depiction involving children.

18. On the one hand, the use, procurement or offer of a person under the age of 16 is prohibited if the subject pornography or pornographic performance is a pornographic depiction within the proposed definition in paragraph 10 above. On the other hand, the use, procurement or offer of a person aged between 16 and 18 is prohibited if the subject pornography or pornographic performance –

- (a) visually depicts the person as being engaged, or appearing to be engaged, in explicit sexual conduct; or
- (b) visually depicts the person, for sexual purposes, where the dominant feature of the depiction is the genitals or anal region of the person or, in the case of a female person, her breast.

19. This two-tier definition makes a distinction between the level of prohibition against procurement of children under 16 and those between 16 and 18. Taking into account the need to offer stronger protection to children under 16, we believe that this distinction is proportionate and necessary.

20. It is also proposed that there shall be a defence to a charge for using or procuring a person aged between 16 and 18 for making pornography or for a live pornographic performance if the person depicted consented to being so used and the pornography so made is solely for the personal use of the person depicted and the defendant or, in the case of a live pornographic performance, the audience of the performance consisted of the defendant only. Given that the age of consent for heterosexual intercourse is 16 years old, this proposed defence is to ensure that the private sexual life between the persons concerned will not be caught.

21. However, no defence on grounds of artistic merit, genuine education, scientific or medical purposes, public good or a belief that the person depicted is above the age of 16 will be proposed for the procurement offences because in the offences of use, procurement or offer of a child, a child is directly exploited and actual contacts are made with the child concerned. The offender is in a position to ascertain the age of the child and is the one who directly exploits the child. The exploitation is similar and in many circumstances no less serious than what other sexual offences involving a child may entail.

***Proposals relating to child sex tourism***

22. We propose to extend the application of 24 sexual offence provisions of the Crimes Ordinance to acts committed outside Hong Kong, the provisions are set out in Annex B. In other words, these provisions will be given extra-territorial effect. At present, 14 of these provisions are applicable to victims of any age. Four provisions currently apply to victims under the age of 21. We propose that the extra-territorial effect will only be applicable to cases where victims are under the age of 16 under these 18 provisions. Four of the remaining six provisions have applicable age limit of the victims set under the age of 16 and the other two under the age of 13. For these six provisions, we do not propose any change to the applicable age limit.

23. We further propose that the extra-territorial effect should cover the persons and corporations referred to in sub-paragraphs (a) to (c) below insofar as they are the perpetrators of the relevant criminal act outside Hong Kong and the persons referred to in sub-paragraph (a) below insofar as they are the victims of the relevant criminal act outside Hong Kong -

- (a) a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong;
- (b) a body corporate that is incorporated or registered in Hong Kong; or
- (c) a body of persons, whether corporate or unincorporated, whose principal place of business is Hong Kong.

24. Separately, we propose to create an offence for arranging or advertising child sex tours. The offence covers any message sent through the Internet, any other forms of electronic transmission or other means.

25. We propose that valid marriage between the defendant and the victim will be a defence to a charge for extra-territorial sexual offences under the Bill provided that the victim consented to the act. We also propose that there shall be a defence for a person charged with publishing an advertisement for child sex tours if he did not have any reasonable cause to suspect it to be such an advertisement.

## THE BILL

26. The main provisions of the Bill are –

- (a) **Clause 3** creates various offences relating to child pornography and stipulates their respective maximum penalties as follows :

Proposed Offence	Maximum Penalty	
	Conviction upon Indictment	Summary Conviction
Printing, making, producing, reproducing, copying, importing or exporting child pornography	8 years and \$ 2,000,000	3 years and \$1,000,000
Publishing child pornography	8 years and \$2,000,000	3 years and \$1,000,000
Advertising child pornography	8 years and \$2,000,000	3 years and \$1,000,000
Possessing child pornography	5 years and \$1,000,000	2 years and \$500,000

- (b) **Clause 4** provides for defences to charges under the Bill as explained in paragraph 12 above.
- (c) **Clauses 5 to 13** are enforcement provisions on search, seizure, forfeiture, and removal or effacement of child pornography.

### *Amendments to the Crimes Ordinance*

- (d) **Clause 14** adds a new section 138A to the Crimes Ordinance (Cap. 200) such that the use, procurement or offer of a person under 18 for making pornography or for live pornographic performances will be an offence with maximum penalties as follows :

Age of victim	Fine	Imprisonment
under 16	\$3,000,000	10 years
between 16 and 18	\$1,000,000	5 years

It also provides for defences as explained in paragraph 20 above.

(e) **Clause 16** adds new sections 153P, 153Q and 153R to the Crimes Ordinance (Cap. 200) :

(i) the new section 153P extends the application of 24 sexual offence provisions (listed in the new Schedule 2 to Crimes Ordinance) to acts committed against children outside Hong Kong if the defendant or the child has connections with Hong Kong, and provides for a defence as explained in paragraph 25 above;

(ii) the new section 153Q makes it an offence to make arrangements for the commission of those acts or publish advertisements in relation to such arrangements, which is punishable by a fine of \$3,000,000 and imprisonment for 10 years and provides for a defence as explained in paragraph 25 above; and

(iii) the new section 153R provides for amendment of Schedule 2.

**Clause 18** adds the new Schedule 2 listing the sexual offence provisions.

(f) **Clauses 19 to 26** are consequential amendments to other Ordinances, mainly for the following purposes -

(i) to enable a child to give evidence by live television link and to apply other special procedures in relation to certain offences under the Bill;

(ii) to prohibit persons convicted of certain offences under the Bill from being childminders or registered social workers;

(iii) to require an Obscene Articles Tribunal to refuse to classify an article that, in its opinion, may be child pornography;

(iv) to make it clear that sexual offences to which the Post-Release Supervision scheme applies cover those offences that are, by virtue of the Bill, constituted by acts committed outside Hong Kong.

27. The existing provisions of the Crimes Ordinance which are being amended are at Annex C. The existing provisions of relevant legislation which are being amended as consequential amendments are at Annex D.

## **PUBLIC CONSULTATION**

28. Two rounds of public consultation were conducted in November 1998 and February 1999 involving over 80 organisations which included social welfare agencies, youth organisations, concern groups, and associations in the fields of information technology, mass communication and the legal profession. All of them supported the proposals in principle. After the Bills were published, the Law Society of Hong Kong, the Hong Kong Bar Association and the Legal Adviser of the Legislative Council provided further comments on the Bills. We have duly considered these views and revised our legislative proposals as appropriate.

29. In view of the revised proposals, a fresh round of public consultation was conducted in November 2001. The majority of comments received generally support the proposals. There are, however, some diverse comments on the coverage and clarity of the definition of child pornography, and whether artistic merit and genuine family purpose should be defences. We also consulted the Security Panel on 6 December 2001. Members in general supported the principles and spirit of the proposals which offer better protection to children. They also raised several concerns including enforcement difficulties, the provision of statutory defence, the concept of “looks like under 16 years of age” and the proposed differential treatment of persons aged under 16 and 18. Following the Administration’s explanations on these issues, Members agreed that they could be further explored in detail after the Bill’s introduction into the Legislative Council.

## **BASIC LAW IMPLICATIONS**

30. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

31. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

32. The Bill does not contain express binding provisions and will not affect the current binding effect of the existing provisions of the Crimes Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

33. The Child Protection Policy Unit of the Police will co-ordinate resources available in Police districts to enforce the proposed legislation. The Technology Crime Division of the Police will tackle child pornography on the Internet, where necessary. The Customs and Excise Department will also take part in enforcing the proposed legislation. With regard to offences in relation to child sex tours, we estimate that the number of cases will not be great. Overall, there will be additional workload for the Judiciary arising from the warrant system and the new offences created under the Bill. The departments concerned will absorb the additional workload arising from the Bill from within their existing resources.

## **LEGISLATIVE TIMETABLE**

34. The legislative timetable will be -

Publication in the Gazette	11 January 2002
First Reading and commencement of Second Reading debate	23 January 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **PUBLICITY**

35. A press release will be issued on 8 January 2002. A spokesman will be available to answer media enquiries.

**ENQUIRIES**

36. Enquiries on this brief may be directed to Mr Rick Chan, Assistant Secretary for Security, at 2810 2068.

**Security Bureau  
8 January 2002**

**PREVENTION OF CHILD PORNOGRAPHY BILL**

**CONTENTS**

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Offences relating to child pornography	3
4.	Defences	4
5.	Entry, search and seizure under warrant	6
6.	Ancillary powers of officers under warrants	7
7.	Seizure by police officer or member of Customs and Excise Service	8
8.	Obstruction	8
9.	Liability to forfeiture	9
10.	Order and direction for forfeiture	9
11.	Procedure in relation to forfeiture	10
12.	Removal or effacement of child pornography	11
13.	Procedure in relation to removal or effacement	11

**Amendments to Crimes Ordinance**

14.	Section added	
	138A. Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances	12
15.	Conviction for offence other than that charged	14
16.	Subheading and sections added	

**Certain sexual offences committed against  
children outside Hong Kong; related**

### **arrangements and advertisements**

	153P. Extra-territorial effect of sexual offence provisions listed in Schedule 2	15
	153Q. Arrangement or advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2 provision	17
	153R. Amendment of Schedule 2	17
17.	Other offences of which accused may be convicted	18
18.	Schedule 2 added	
	Schedule 2      Sexual offence provisions that have extra-territorial effect	18

### **Consequential Amendments**

#### **Criminal Procedure Ordinance**

19.	Interpretation	20
-----	----------------	----

#### **Child Care Services Ordinance**

20.	Offences relevant to meaning of “prohibited person”	20
-----	---	----

#### **Customs and Excise Service Ordinance**

21.	Ordinances referred to in sections 17 and 17A	21
-----	---	----

#### **Control of Obscene and Indecent Articles Ordinance**

22.	Jurisdiction	22
23.	Registrar to give notice	22
24.	Tribunal to have exclusive jurisdiction	22

### **Post-Release Supervision of Prisoners Regulation**

25.	Specified offences	23
-----	--------------------	----

### **Social Workers Registration Ordinance**

26.	Description of offences which disentitle persons from being or continuing to be registered social workers	23
-----	---	----

A BILL

To

Prohibit the production, possession and publication of child pornography; to amend the Crimes Ordinance to prohibit the use, procurement or offer of persons under the age of 18 for making pornography or for live pornographic performances, to extend the application of certain sexual offence provisions of that Ordinance to acts committed against children outside Hong Kong, and to prohibit the making of arrangements relating to the commission of those acts and the advertisement of such arrangements; and to make provision for connected purposes.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Prevention of Child Pornography Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

**2. Interpretation**

(1) In this Ordinance, unless the context otherwise requires –  
“assisting officer” (協助人員) means a member of the Customs and Excise Service or a police officer called on to assist an authorized officer under section 5(2);

“authorized officer” (獲授權人員) means any person authorized by a warrant issued under section 5;

“child” (兒童) means a person under the age of 16;

“child pornography” (兒童色情物品) means –

- (a) a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a

person who is or appears to be a child, whether it is made or generated by electronic or any other means, whether or not it is a depiction of a real person and whether or not it has been modified; or

- (b) anything that incorporates a photograph, film, image or depiction referred to in paragraph (a),

and includes data stored in a form that is capable of conversion into a photograph, film, image or depiction referred to in paragraph (a) and anything containing such data;

“distribute” (分發) includes making any message or data available through any means of electronic transmission;

“film” (影片) means –

- (a) a cinematograph film and includes any sound-track associated with such film;
- (b) a videotape or laserdisc and includes any sound-track associated with such videotape or laserdisc;
- (c) a still film and includes any sound-track associated with such film;
- (d) any other record of visual moving images that is capable of being used for the subsequent screening of those images and includes any sound-track associated with such record;
- (e) any combination of the films referred to in paragraphs (a), (b), (c) and (d); or
- (f) an excerpt or part of a film referred to in paragraph (a), (b), (c), (d) or (e);

“photograph” (照片) includes the negative as well as the positive version of a photograph;

“pornographic depiction” (色情描劃) means –

- (a) a visual depiction that depicts a person who is or appears to be engaged in explicit sexual conduct;
- (b) a visual depiction that depicts, in a sexual manner or context, the genitals or anal region of a person or the breast of a female person,

but, for the avoidance of doubt, a depiction for a genuine family purpose does not, merely because it depicts any part of the body referred to in paragraph (b), fall within that paragraph;

“still film” (定畫影片) means a slide, or a series of slides, including single frames of a film, of visual non-moving images that is or are capable of being used for the subsequent screening of those images.

(2) For the purposes of this Ordinance, a person publishes any child pornography if he, whether or not for any form of reward –

- (a) distributes, circulates, sells, hires, gives or lends the child pornography to another person; or
- (b) shows, plays or projects the child pornography to or for another person.

(3) Any child pornography that is displayed in or so as to be visible from –

- (a) any public street or pier, or public garden; or
- (b) any place to which the public have or are permitted to have access (whether on payment or otherwise),

shall for the purposes of this Ordinance be regarded as child pornography publicly displayed.

### **3. Offences relating to child pornography**

(1) Any person who prints, makes, produces, reproduces, copies, imports or exports any child pornography commits an offence and is liable –

- (a) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 8 years; or

(b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

(2) Any person who publishes any child pornography commits an offence and is liable –

(a) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 8 years; or

(b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

(3) Any person who has in his possession any child pornography (unless he is the only person pornographically depicted in the child pornography) commits an offence and is liable –

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years.

(4) Any person who publishes or causes to be published any advertisement that conveys or is likely to be understood as conveying the message that any person has published, publishes or intends to publish any child pornography commits an offence and is liable –

(a) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 8 years; or

(b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.

#### **4. Defences**

(1) It is a defence to a charge under section 3 for the defendant to establish that –

(a) the depiction that is alleged to constitute child pornography has artistic merit;

- (b) the defendant committed the act that is the subject of the charge for a genuine educational, scientific or medical purpose;
- (c) the act that is the subject of the charge otherwise served the public good and did not extend beyond what served the public good; or
- (d) if the defendant is charged with having in his possession child pornography, the possession -
  - (i) is for a genuine educational, scientific or medical purpose; or
  - (ii) otherwise served the public good and did not extend beyond what served the public good.

(2) It is a defence to a charge under section 3 for the defendant to establish that he had not himself seen the child pornography and did not know, nor did he have any reasonable cause to suspect, it to be child pornography.

(3) Without prejudice to subsection (2), it is a defence to a charge under section 3(3) for the defendant to establish that he had not asked for any child pornography and after it came into his possession he endeavoured to destroy it within a reasonable time.

(4) Without prejudice to subsection (2), it is a defence to a charge under section 3 for the defendant to establish that the thing that is alleged to constitute child pornography is, or was at the time the offence is alleged to have been committed, classified as a Class I or a Class II article under the Control of Obscene and Indecent Articles Ordinance (Cap. 390).

(5) It is a defence to a charge under section 3 for the defendant to establish that –

- (a) the defendant believed on reasonable grounds that the person pornographically depicted in the child pornography was not a child at the time of the depiction and the person was not depicted as a child;

- (b) the defendant took all reasonable steps to ascertain the age of the person; and
- (c) in so far as the defendant was able to influence in any way how the person was depicted, the defendant took all reasonable steps to ensure that the person was not depicted as a child.

## **5. Entry, search and seizure under warrant**

(1) If, on an application made by a police officer or member of the Customs and Excise Service by laying an information on oath, a magistrate is satisfied that there are reasonable grounds for suspecting that there is in or on any premises, place, vessel, aircraft or vehicle –

- (a) any thing in respect of which an offence under section 3 has been or is being or is about to be committed; or
- (b) any thing that is, or contains, evidence of the commission of any such offence,

he may issue a warrant authorizing any person being a police officer or member of the Customs and Excise Service to enter or board such premises, place, vessel, aircraft or vehicle, and search for, seize, remove and detain any such thing.

(2) An authorized officer may –

- (a) if he is a police officer, call on any member of the Customs and Excise Service; or
- (b) if he is a member of the Customs and Excise Service, call on any police officer,

to assist him in the exercise of the powers conferred by this section.

(3) An authorized officer or an assisting officer may, at any time of the day or night –

- (a) enter and search any premises or place named in the warrant; or

- (b) stop, board and search any vessel, aircraft or vehicle named in the warrant.
- (4) An authorized officer or an assisting officer may seize, remove and detain –
  - (a) any thing in respect of which he suspects on reasonable grounds that an offence under section 3 has been or is being or is about to be committed; and
  - (b) any thing that he suspects on reasonable grounds to be, or to contain, evidence of the commission of such an offence.
- (5) In this section –
  - “aircraft” (飛機) does not include a military aircraft;
  - “vessel” (船隻) does not include a ship of war or a ship having the status of a ship of war.

## **6. Ancillary powers of officers under warrants**

An authorized officer or an assisting officer may, in relation to his powers under a warrant –

- (a) use such force as is reasonably necessary to enter and search any premises or place that he is empowered to enter and search;
- (b) use such force as is reasonably necessary to stop, board and search any vessel, aircraft or vehicle that he is empowered to stop, board and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of those powers;
- (d) detain any person found in or on any premises, place, vessel, aircraft or vehicle that he is empowered to enter, or board, and search until it has been searched; and

- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle that he is empowered to board and search until it has been searched.

#### **7. Seizure by police officer or member of Customs and Excise Service**

In addition to any power he may have under section 5, any police officer or member of the Customs and Excise Service may seize, remove and detain –

- (a) any thing in a public place, in respect of which he suspects on reasonable grounds that an offence under section 3 has been or is being or is about to be committed; and
- (b) any thing in a public place, that he suspects on reasonable grounds to be, or to contain, evidence of the commission of such an offence.

#### **8. Obstruction**

(1) Any person who –

- (a) obstructs an authorized officer or an assisting officer in the exercise of any power conferred by this Ordinance (other than section 7); and
- (b) fails to comply with any reasonable requirement, direction or demand given or made by an authorized officer or an assisting officer in the execution of a warrant,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(2) Any person who obstructs any police officer or member of the Customs and Excise Service in exercising a power conferred by section 7 commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

## **9. Liability to forfeiture**

(1) The following are liable to forfeiture in accordance with this Ordinance –

- (a) any child pornography that has come into the possession of the police or the Customs and Excise Service;
- (b) any –
  - (i) machinery or apparatus used for showing, playing or projecting any child pornography; or
  - (ii) machinery, plate, implement, utensil, photographic film or material used for the purpose of the commission of an offence under section 3(1);
- (c) any thing seized, removed or detained under section 5 or 7.

(2) Subsection (1)(b) does not apply to any thing that is used by a public officer in the execution of his duties.

## **10. Order and direction for forfeiture**

(1) Subject to subsection (2) and section 11, where an application is made by a public officer to a magistrate for an order for forfeiture, the magistrate may, in the case of any thing that is before him and is liable to forfeiture under section 9, order it to be forfeited.

(2) Where a person charged with an offence under section 3 has established any ground of defence –

- (a) under section 4, an order for forfeiture shall not be made under subsection (1) in respect of any thing that relates to the charge and is not child pornography; or
- (b) under section 4(1) or (4), an order for forfeiture shall not be made under subsection (1) in respect of any thing that relates to the charge and is child pornography.

(3) An order for forfeiture of any thing may be made under subsection (1) notwithstanding that no person is convicted of any offence in connection with the thing.

(4) Any thing that is ordered to be forfeited under subsection (1) shall be disposed of in such manner as the magistrate directs.

#### **11. Procedure in relation to forfeiture**

(1) Subject to subsections (3) and (4), before making an order for forfeiture of any thing under section 10, the magistrate shall issue a summons to –

- (a) the occupier of any premises or any place or, in the case of a stall, the owner or the occupier of the stall, in or from which the thing was seized;
- (b) the owner of the thing seized,

to appear on a day specified in the summons to show cause why the thing should not be forfeited.

(2) In addition to any person mentioned in subsection (1), any other person being the producer or manufacturer of any thing seized or a person into whose hands any such thing may have passed before seizure, or a person who has an interest in any thing seized, may appear before the magistrate on the day specified in the summons to show cause why the thing should not be forfeited.

(3) If the magistrate is satisfied that any person mentioned in subsection (1) cannot for any reason be found or ascertained, he may dispense with the issue of a summons to that person.

(4) If any summons issued under subsection (1) has not for any reason been served and the magistrate is satisfied that all reasonable efforts were made to serve the summons on the person named in the summons, he may make an order for forfeiture under section 10 notwithstanding that the summons was not served and that the person named in the summons has not been given an opportunity to show cause why the thing should not be forfeited.

(5) An order for forfeiture of any thing shall, unless the magistrate considers that there are special reasons for directing otherwise, apply to the whole of the thing.

## **12. Removal or effacement of child pornography**

(1) If, on the application made by any public officer, a magistrate is satisfied that any child pornography is publicly displayed on any building or other structure, the magistrate may order the owner or occupier of the building or structure to remove or efface that child pornography.

(2) If a person against whom an order is made under subsection (1) fails to comply with the order within the time specified in the order, or if no time is specified, within a reasonable time, the magistrate may, on the application of any public officer by warrant, empower any police officer, with such assistance as may be necessary, to enter and if necessary to break into or forcibly enter the premises or place concerned and execute that order.

(3) A police officer in executing an order under subsection (1) shall have all the powers of a police officer acting in the execution of a warrant under section 5, including the powers mentioned in section 6.

(4) The Commissioner of Police may apply to a magistrate for an order that a person who has failed to comply with an order made against him under subsection (1) shall pay any expenses reasonably incurred by a police officer in the execution of the order under this section and the magistrate may make an order for such payment.

## **13. Procedure in relation to removal or effacement**

(1) Before making an order to remove or efface any child pornography under section 12 the magistrate shall, unless he is satisfied that the owner or occupier of the building or other structure mentioned in that section cannot for any reason be found or ascertained, issue a summons to him to appear on a day

specified in the summons to show cause why an order should not be made to remove or efface that child pornography.

(2) In addition to the person mentioned in subsection (1), any other person being the owner, producer or manufacturer of the child pornography mentioned in section 12(1) may appear before the magistrate on the day specified in the summons to show cause why the order to remove or efface that child pornography should not be made.

(3) Section 11(4) and (5) shall apply in relation to an order to remove or efface child pornography under section 12 as they apply in relation to an order for forfeiture under section 10.

### **Amendments to Crimes Ordinance**

#### **14. Section added**

The Crimes Ordinance (Cap. 200) is amended by adding –

**“138A. Use, procurement or offer of persons  
under 18 for making pornography or  
for live pornographic performances**

(1) Any person who uses, procures or offers another person who is under the age of 18 for making pornography, or for a live pornographic performance, in which that other person is or is to be pornographically depicted, commits an offence and is liable on conviction on indictment –

- (a) if the offence is committed in relation to a person under the age of 16, to a fine of \$3,000,000 and to imprisonment for 10 years;
- (b) if the offence is committed in relation to a person of the age of 16 or above but under 18, to a fine of \$1,000,000 and to imprisonment for 5 years.

(2) It is a defence to a charge of using or procuring a person of the age of 16 or above but under 18 for making pornography for the defendant to establish that –

- (a) at the time of the alleged offence, the person pornographically depicted for making pornography consented to being so depicted; and
- (b) the pornography so made is solely for the personal use of the defendant and the person depicted.

(3) It is a defence to a charge of using or procuring a person of the age of 16 or above but under 18 for a live pornographic performance for the defendant to establish that –

- (a) at the time of the alleged offence, the person pornographically depicted for the performance consented to being so depicted; and
- (b) the audience of the performance consisted of the defendant only.

(4) For the purposes of this section, to depict pornographically –

- (a) in relation to a person under the age of 16, means –
  - (i) to visually depict that person as being engaged, or appearing to be engaged, in explicit sexual conduct; or
  - (ii) to visually depict, in a sexual manner or context, the genitals or anal region of that person or, in the case of a female person, her breast,but, for the avoidance of doubt, a depiction for a genuine family purpose does not, merely because it depicts any part of the body referred to in subparagraph (ii), fall within that paragraph;
- (b) in relation to a person of the age of 16 or above but under 18, means –

- (i) to visually depict that person as being engaged, or appearing to be engaged, in explicit sexual conduct; or
- (ii) to visually depict that person, for sexual purposes, where the dominant feature of the depiction is the genitals or anal region of that person or, in the case of a female person, her breast;

(5) In this section –

“live pornographic performance” (真人色情表演) includes any play, show, exhibition, act, entertainment, presentation, display or other performance of any kind in which a person is pornographically depicted;

“pornography” (色情物品) means –

- (a) a photograph, film, computer-generated image or other visual depiction that depicts a person pornographically, whether it is made or generated by electronic or any other means, whether or not it is a depiction of a real person and whether or not it has been modified; or
- (b) anything that incorporates a photograph, film, image or depiction referred to in paragraph (a),

and includes data stored in a form that is capable of conversion into a photograph, film, image or depiction referred to in paragraph (a) and anything containing such data.”.

## **15. Conviction for offence other than that charged**

Section 149(1) is amended by repealing “the Schedule” where it twice appears and substituting “Schedule 1”.

**16. Subheading and sections added**

The following are added immediately after section 153O –

**“Certain sexual offences committed against  
children outside Hong Kong; related  
arrangements and advertisements**

**153P. Extra-territorial effect of sexual  
offence provisions listed in  
Schedule 2**

- (1) Where –
- (a) (i) a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong;
  - (ii) a body corporate that is incorporated or registered in Hong Kong; or
  - (iii) a body of persons, whether corporate or unincorporate, that has a place of business in Hong Kong,
- commits any act outside Hong Kong; and
- (b) the act –
- (i) would have constituted an offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong; and
  - (ii) is committed in relation to a person under the age of 16 or, in the case of an offence under section 123 or 140, under the age of 13,
- then the person or body shall be guilty of that offence.

(2) Where any person or body of persons, whether corporate or unincorporate, commits any act outside Hong Kong that –

- (a) would have constituted an offence under any of the provisions specified in Schedule 2 had it been committed in Hong Kong; and
- (b) is committed in relation to a person who is a Hong Kong permanent resident or who ordinarily resides in Hong Kong and is –
  - (i) under the age of 16 ; or
  - (ii) in the case of an offence under section 123 or 140, under the age of 13,

then the person or body shall be guilty of that offence.

(3) It is a defence to a charge for an offence that is an offence by virtue of subsection (1) or (2) for the defendant to establish that –

- (a) at the time of the act that is the subject of the charge (“the relevant act”), there existed between the defendant and the person in relation to whom the act was committed a marriage that was valid, or recognized as valid, under the law of –
  - (i) the place where the marriage was solemnized;
  - (ii) the place where the relevant act was committed;or
  - (iii) the place of the defendant’s residence or domicile;
- (b) when it was solemnized, the marriage was genuine; and

- (c) at the time of the relevant act, the person in relation to whom the relevant act was committed consented to the act.

**153Q. Arrangement or advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2 provision**

(1) Any person who makes arrangements, whether wholly or partly in Hong Kong, for himself or another person to commit any act in relation to a person under the age of 16 that would constitute an offence under any of the provisions specified in Schedule 2 if it were committed in Hong Kong, commits an offence and is liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment for 10 years.

(2) Any person who publishes, distributes or publicly displays, or causes or permits the publication, distribution or public display of an advertisement for any arrangements referred to in subsection (1) commits an offence and is liable on conviction on indictment to a fine of \$3,000,000 and to imprisonment for 10 years.

(3) For the purposes of subsection (2), “distribute” (分發) includes making any message or data available through any means of electronic transmission.

(4) It is a defence to a charge under subsection (2) for the defendant to establish that he had not himself seen the advertisement and did not know, nor did he have any reasonable cause to suspect, it to be an advertisement mentioned in that subsection.

**153R. Amendment of Schedule 2**

The Chief Executive in Council may, with the approval of the Legislative Council, amend Schedule 2 by order published in the Gazette.”.

**17. Other offences of which accused may be convicted**

The Schedule is renumbered as Schedule 1.

**18. Schedule 2 added**

The following is added –

“SCHEDULE 2 [ss. 153P, 153Q & 153R]

SEXUAL OFFENCE PROVISIONS THAT HAVE EXTRA-TERRITORIAL EFFECT

Section	Description of offence
118	Rape
118A	Non-consensual buggery
118B	Assault with intent to commit buggery
118C	Homosexual buggery with or by man under 21
118D	Buggery with girl under 21
118F	Homosexual buggery committed otherwise than in private
118G	Procuring others to commit homosexual buggery
118H	Gross indecency with or by man under 21
118J	Gross indecency by man with man otherwise than in private

- 118K Procuring gross indecency by man with man
- 119 Procurement by threats
- 120 Procurement by false pretences
- 121 Administering drugs to obtain or facilitate unlawful  
sexual act
- 122 Indecent assault
- 123 Intercourse with girl under 13
- 124 Intercourse with girl under 16
- 126 Abduction of unmarried girl under 16
- 130 Control over persons for purpose of unlawful sexual  
intercourse or prostitution
- 132 Procurement of girl under 21
- 134 Detention for intercourse or in vice establishment
- 135 Causing or encouraging prostitution of, intercourse  
with, or indecent assault on, girl or boy under 16
- 140 Permitting girl or boy under 13 to resort to or be on  
premises or vessel for intercourse
- 141 Permitting young person to resort to or be on premises  
or vessel for intercourse, prostitution, buggery or  
homosexual act
- 146 Indecent conduct towards child under 16”.

**Consequential Amendments  
Criminal Procedure Ordinance**

**19. Interpretation**

Section 79A of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing the definition of “offence of sexual abuse” and substituting –

““offence of sexual abuse” (性虐待罪行) means –

- (a) an offence against Part VI or Part XII, other than sections 126, 147A and 147F, of the Crimes Ordinance (Cap. 200);  
or
- (b) an offence against section 3 of the Prevention of Child Pornography Ordinance ( of 2002);”.

**Child Care Services Ordinance**

**20. Offences relevant to meaning of  
“prohibited person”**

The Schedule to the Child Care Services Ordinance (Cap. 243) is amended –

- (a) in item 5 –
  - (i) by adding –
    - “section 138A Use, procurement or offer  
of persons under 18  
for making  
pornography or for  
live pornographic  
performances”;
  - (ii) by adding–
    - “section 153Q Arrangement or  
advertisement relating

to commission against  
a child of act outside  
Hong Kong that  
offends Schedule 2  
provision

For the avoidance of doubt, where an offence under a section of the Crimes Ordinance (Cap. 200) may, by virtue of section 153P of that Ordinance, be constituted by an act committed outside Hong Kong, a reference in this item to an offence under that section includes a reference to an offence so constituted.”;

(b) by adding immediately after item 7 –

“7A. Prevention of  
Child Pornography  
Ordinance  
(        of 2002)

section 3            Offences relating to child  
                                 pornography”.

### **Customs and Excise Service Ordinance**

#### **21. Ordinances referred to in sections 17 and 17A**

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding “Prevention of Child Pornography Ordinance (        of 2002)”.

## **Control of Obscene and Indecent Articles Ordinance**

### **22. Jurisdiction**

Section 8 of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) is amended –

- (a) in subsection (1), by adding “for the purposes of this Ordinance” after “determine”;
- (b) in subsection (2), by repealing “a Tribunal may” and substituting “, a Tribunal shall refuse an application to make a classification if it is of the opinion that the article may be child pornography within the meaning of section 2(1) of the Prevention of Child Pornography Ordinance ( of 2002), and may in any other case”.

### **23. Registrar to give notice**

Section 19(1) is amended by adding before paragraph (a) –

- “(aa) of any refusal of an application under section 8(2) in relation to an article that, in the opinion of a Tribunal, may be child pornography;”.

### **24. Tribunal to have exclusive jurisdiction**

Section 29 is amended –

- (a) in subsection (1), by adding “for the purposes of this Ordinance” after “determine”;
- (b) in subsection (2), by adding “for the purposes of this Ordinance” after “arises”;
- (c) in subsection (3), by adding “for the purposes of this Ordinance” after “admits”.

## **Post-Release Supervision of Prisoners Regulation**

### **25. Specified offences**

Schedule 1 to the Post-Release Supervision of Prisoners Regulation (Cap. 475 sub. leg.) is amended, in item 4, by adding at the end –

“For the avoidance of doubt, where an offence under a section of the Crimes Ordinance (Cap. 200) may, by virtue of section 153P of that Ordinance, be constituted by an act committed outside Hong Kong, a reference in this item to an offence under that section includes a reference to an offence so constituted.”.

## **Social Workers Registration Ordinance**

### **26. Description of offences which disentitle persons from being or continuing to be registered social workers**

Schedule 2 to the Social Workers Registration Ordinance (Cap. 505) is amended, in item 2 –

(a) by adding –

“138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances”;
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(b) by adding –

“153Q(1)	Arrangement relating to commission against a child of act outside Hong Kong that offends Schedule 2 provision
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For the avoidance of doubt, where an offence under a section of the Crimes Ordinance (Cap. 200) may, by virtue of section 153P of that Ordinance, be

constituted by an act committed outside Hong Kong, a reference in this item to an offence under that section includes a reference to an offence so constituted.”.

### **Explanatory Memorandum**

The objects of this Bill are –

- (a) to prohibit child pornography;
- (b) to prohibit the use, procurement or offer of persons under the age of 18 for making pornography or for live pornographic performances; and
- (c) to extend the application of certain sexual offence provisions to acts committed against children outside Hong Kong.

### **Prohibition of child pornography**

2. Clause 3 creates offences relating to child pornography. It will be an offence to make or publish child pornography. Possession of child pornography and publication of an advertisement suggesting the availability of child pornography will also be prohibited.
3. Clause 4 provides defences for certain offences under clause 3.
4. Clauses 5, 6 and 7 provide for entry into and search of any place, and seizure of child pornography and things relating to the commission of an offence.
5. Clause 8 makes it an offence to obstruct a police officer or customs officer in certain circumstances.
6. Clauses 9, 10 and 11 make provision for the forfeiture of child pornography and other things seized under clauses 5 to 7.

7. Clauses 12 and 13 provide for the removal or effacement of child pornography.

**Prohibition of the use, procurement or offer of persons  
under 18 for making pornography or for live  
pornographic performances**

8. Clause 14 adds a new section 138A to the Crimes Ordinance (Cap. 200) to make the use, procurement or offer of a person under the age of 18 for making pornography or for live pornographic performances an offence. Certain defences are also provided for.

**Extension of the application of certain sexual offences  
provisions to acts committed against children  
outside Hong Kong**

9. Clauses 15 to 18 amend the Crimes Ordinance (Cap. 200) to create offences of sexual violations of children outside Hong Kong and related arrangements and advertisements. In particular, clause 16 adds new sections 153P, 153Q and 153R to the Crimes Ordinance (Cap. 200) –

- (a) the new section 153P extends the application of 24 sexual offence provision (listed in the new Schedule 2 to the Crimes Ordinance) to an act committed against a child outside Hong Kong if the defendant or the child has connections with Hong Kong;
- (b) the new section 153Q make it an offence to make arrangements for the commission of those acts or to publish advertisements in relation to such arrangements and provides a defence for the offence;
- (c) the new section 153R provides for amendment of Schedule 2.

Clause 18 adds the new Schedule 2. Clauses 15 and 17 are minor consequential amendments for renumbering.

### **Miscellaneous consequential amendments**

10. Clauses 19 to 26 are consequential amendments to other Ordinances, mainly for the following purposes –

- (a) to enable a child to give evidence by live television link and to apply other special procedures in relation to certain offences under the Bill;
- (b) to prohibit persons convicted of certain offences under the Bill from being childminders or registered social workers;
- (c) to require an Obscene Articles Tribunal to refuse to classify an article that, in its opinion, may be child pornography;
- (d) to make it clear that sexual offences to which the Post-Release Supervision scheme applies cover those offences that are, by virtue of the Bill, constituted by acts committed outside Hong Kong.

**Provisions of Crimes Ordinance which will be extended to apply to acts outside Hong Kong**

<b>Section</b>	<b>Offence</b>	<b>Maximum Penalty (Imprisonment) (Conviction upon Indictment)</b>
118	Rape*	Life
118A	Non-consensual buggery*	Life
118B	Assault with intent to commit buggery*	10 years
118C	Homosexual buggery with or by man under 21*	Life
118D	Buggery with girl under 21*	Life
118F	Homosexual buggery committed otherwise than in private*	5 years
118G	Procuring others to commit homosexual buggery*	2 years
118H	Gross indecency with or by man under 21*	2 years
118J	Gross indecency by man with man otherwise than in private*	2 years
118K	Procuring gross indecency by man with man*	2 years
119	Procurement by threats*	14 years
120	Procurement by false pretences*	5 years
121	Administering drugs to obtain or facilitate unlawful sexual act*	14 years
122	Indecent assault*	10 years
123	Intercourse with girl under 13	Life
124	Intercourse with girl under 16	5 years
126	Abduction of unmarried girl under 16	10 years
130	Control over persons for purpose of unlawful sexual intercourse or prostitution*	14 years
132	Procurement of girl under 21*	5 years
134	Detention for intercourse or in vice establishment*	14 years
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16	10 years
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse	Life
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act*	14 years
146	Indecent conduct towards child under 16	10 years

**Remarks**

\* Only applies to victims under the age of 16

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	<b>149</b>	Heading:	<b>Conviction for offence other than that charged</b>	Version Date:	30/06/1997

(1) If on the trial of a charge for an offence specified in the second column of the Schedule the accused is acquitted, but it is proved that the accused is guilty of any offence specified opposite thereto in the third column of the Schedule or of being party to any such offence, he shall be convicted of such offence or of being a party to any such offence and shall be liable to be punished accordingly.

(2) Nothing in this section shall exclude the application to any offence of any other law authorizing a court to find a person guilty of an offence other than that with which he is charged.

(Added 1 of 1978 s. 6)

Chapter: 200 Title: CRIMES Gazette L.N. 29 of  
ORDINANCE Number: 1999

Schedule: Heading: SCHEDULE Version 01/02/1999  
Date:

[section 149]

OTHER OFFENCES OF WHICH ACCUSED MAY BE CONVICTED

Item	Offence charged	Other offences of which defendant may be convicted
1.	Rape (section 118)	Procurement of another person by threats (section 119) Procurement of another person by false pretences (section 120) Administering drugs to obtain or facilitate unlawful sexual act (section 121)
2.	Non-consensual buggery (section 118A)	Homosexual buggery committed otherwise than in private (section 118F) Procurement of another person by threats (section 119) Administering drugs to obtain or facilitate unlawful sexual act (section 121)
3.	Assault with intent to commit buggery (section 118B)	Indecent assault (section 122)
4.	Homosexual buggery with or by man under 21 (section 118C)	Indecent assault (section 122) Gross indecency with or by man under 21 (section 118H)
5.	Buggery with mentally incapacitated person (section 118E)	Gross indecency by man with male mentally incapacitated person (section 118I) Indecent assault (section 122) (Amended 81 of 1997 s. 59)
6.	Homosexual buggery committed otherwise than in private (section 118F)	Gross indecency by man with man otherwise than in private (section 118J)

(Schedule added 1 of 1978 s. 7. Amended 90 of 1991 s. 25)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	L.N. 29 of 1999
Section:	79A	Heading:	<b>Interpretation</b>	Version Date:	01/02/1999

### **PART IIIA\***

#### **SPECIAL PROCEDURES FOR VULNERABLE WITNESSES**

In this Part, unless the context otherwise requires-  
"child" (兒童) means a person who-

- (a) in the case of an offence of sexual abuse-
  - (i) is under 17 years of age; or
  - (ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 18 years of age; or
- (b) in the case of an offence to which this Part applies, other than an offence of sexual abuse-
  - (i) is under 14 years of age; or
  - (ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 15 years of age;

"court" (法院、法庭) includes the District Court and a magistrate;

"live television link" (電視直播聯繫) means a system in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, a closed circuit television system-

- (a) that is capable of allowing-
  - (i) persons in the courtroom to see and hear persons in the other room; and
  - (ii) persons in the other room to hear, or see and hear, persons in the courtroom;
- (b) for the purpose of persons in the other room giving evidence in the proceedings taking place in the courtroom,

and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;

"mentally incapacitated person" (精神上無行為能力的人) 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); (Replaced 81 of 1997 s. 59)

"notice of transfer" (移交通知) means a notice served under section 79F;

"offence of cruelty" (殘暴罪行) means an offence against section 26 or 27 of the Offences against the Person Ordinance (Cap 212);

"offence of sexual abuse" (性虐待罪行) means an offence against Part VI or Part XII, other than

sections 126, 147A and 147F, of the Crimes Ordinance (Cap 200); (Amended 37 of 1996 s. 5)

"statement" (陳述) includes any representation of fact, whether made in words or otherwise;

"video recording" (錄影紀錄) means a recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

(Added 69 of 1995 s. 3)

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\* Please note section 1(2) of 69 of 1995. It reads as follows-

"Section 3 does not apply in relation to-

(a) any trial; or

(b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap 227),

that commenced before the commencement of this Ordinance."

As to addition of Part IIIA under section 3 of 69 of 1995, please see annotation to Part IIIA. 69 of 1995 commenced operation of 16 February 1996.

Chapter:	243	Title:	CHILD CARE SERVICES ORDINANCE	Gazette Number:	L.N. 446 of 1997
Schedule:		Heading:	<b>SCHEDULE</b>	Version Date:	30/09/1997

[sections 15A(1)(a), 15C(6) &19]

OFFENCES RELEVANT TO MEANING  
OF "PROHIBITED PERSON"

Common law offences

1. Murder.
2. Manslaughter.

Statutory offences

Offence	Descriptions*
3. Dangerous Drugs Ordinance (Cap134)	
section 4(1)	trafficking in dangerous drug
section 5(1)	supplying or procuring a dangerous drug to or for any person
section 6(1)	manufacturing a dangerous drug
section 8(1)	possessing or consuming a dangerous drug
4. Affiliation Proceedings Ordinance (Cap 183)	
section 16(b)	ill-treating a child
5. Crimes Ordinance (Cap 200)	
section 47	incest by men
section 48	incest by women of or over 16
section 118	rape
section 118A	non-consensual buggery
section 118B	assault with intent to commit buggery
section 118C	homosexual buggery with or by a man under 21
section 118D	buggery with a girl under 21
section 118E	buggery with a defective
section 118F	homosexual buggery committed otherwise than in private

section 118G	procuring others to commit homosexual buggery
section 118H	gross indecency with or by a man under 21
section 118I	gross indecency by a man with a male defective
section 118J	gross indecency by a man with another man otherwise than in private
section 118K	procuring gross indecency by a man with another man
section 118L	bestiality
section 119	procurement of an unlawful sexual act by threats or intimidation
section 120	procurement of an unlawful sexual act by false pretences
section 121	administering drugs so as to enable a third person to do an unlawful sexual act
section 122	indecent assault
section 123	sexual intercourse with a girl under 13
section 124	sexual intercourse with a girl under 16
section 125	sexual intercourse with a woman who is a defective
section 126	abduction of an unmarried girl under 16
section 127	abduction of an unmarried girl under 18 for sexual intercourse
section 128	abduction of a defective for an unlawful sexual act
section 129	trafficking in persons for the purpose of prostitution
section 130	control over persons for the purpose of unlawful sexual acts or prostitution
section 131	causing prostitution
section 132	procurement of a girl under 21 to have unlawful sexual intercourse
section 133	procurement of a woman who is a defective to have sexual intercourse
section 134	detention of a person for an unlawful sexual act or in a vice establishment
section 135	causing or encouraging the prostitution of, an unlawful sexual act with, or indecent assault on a girl or boy under 16
section 136	causing or encouraging the prostitution of a defective
section 137	living on earnings of prostitution of others
section 139	keeping a vice establishment
section 140	permitting a girl or boy under 13 to resort to or be on premises for prostitution or an unlawful sexual act
section 141	permitting a young person to resort to or be on premises for the purpose of prostitution, sexual intercourse or a homosexual act
section 142	permitting defective to resort to or be on premises or vessel for intercourse, prostitution or homosexual act
section 146	indecent conduct towards a child under 16
section 147	soliciting for an immoral purpose

## 6. Offences against the

## Person Ordinance

### (Cap 212)

section 5	conspiring or soliciting to commit murder
section 10	administering poison or wounding with intent to murder
section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
section 19	wounding or inflicting grievous bodily harm
section 20	attempting to choke, etc., in order to commit indictable offence
section 21	using chloroform, etc., in order to commit indictable offence
section 22	administering poison, etc., so as to endanger life or inflict grievous bodily harm
section 23	administering poison, etc., with intent to injure, etc.
section 26	exposing a child whereby his or her life is endangered
section 27	ill-treatment or neglect by those in charge of a child or young person
section 28	causing bodily injury by gunpowder, etc.
section 29	causing gunpowder to explode, etc., with intent to do grievous bodily harm
section 30	placing gunpowder near a building, etc., with intent to do bodily injury
section 31	setting a man trap, etc., with intent to inflict grievous bodily harm
section 33	injuring a person by furious driving of a vehicle
section 39	assault occasioning actual bodily harm
section 42	forcible taking or detention of a person with intent to sell him or her
section 43	stealing a child under 14 years
section 44	unlawful transfers of possession, custody or control of other persons for valuable consideration
section 46	administering a drug or using an instrument to procure abortion
section 47	procuring a drug, etc., with intent to cause abortion
section 47B	child destruction
section 47C	infanticide
section 48	disposing of the dead body of a child with intent to conceal the fact of its birth

## 7. Protection of Children and Juveniles Ordinance

### (Cap 213)

section 26	abduction of child or juvenile
section 42	assisting escape of child or juvenile from custody or control

## Miscellaneous

8. Any offence proof of the commission of which involves proof that actual bodily harm was occasioned to another person.
9. Inciting another to commit any of the offences specified in paragraphs 1 to 8.
10. Aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraphs 1 to 8.
11. Conspiracy to commit any of the offences specified in paragraphs 1 to 8 contrary to section 159A of the Crimes Ordinance (Cap 200).
12. Attempting to commit any of the offences specified in paragraphs 1 to 8 contrary to section 159G of the Crimes Ordinance (Cap 200).

\*Note: The short description of offences in this Schedule is for ease of reference only.

(Added 38 of 1997 s. 18)

Chapter:	342	Title:	CUSTOMS AND EXCISE SERVICE ORDINANCE	Gazette Number:	L.N. 235 of 1998
Schedule:	2	Heading:	<b>ORDINANCES REFERRED TO IN SECTIONS 17 AND 17A</b>	Version Date:	29/05/1998

[sections 17 & 17A]

Copyright Ordinance (Cap 528) (Replaced 92 of 1997 s. 280)  
 Import and Export Ordinance (Cap 60)  
 Post Office Ordinance (Cap 98)  
 Dutiable Commodities Ordinance (Cap 109)  
 Pesticides Ordinance (Cap 133) (Added L.N. 143 of 1977. Amended 79 of 1990 s. 21)  
 Dangerous Drugs Ordinance (Cap 134)  
 Antibiotics Ordinance (Cap 137)  
 Pharmacy and Poisons Ordinance (Cap 138)  
 Acetylating Substances (Control) Ordinance (Cap 145) (Added L.N. 253 of 1975)  
 Animals and Plants (Protection of Endangered Species) Ordinance (Cap 187) (Added L.N. 235 of 1976)  
 Plant (Importation and Pest Control) Ordinance (Cap 207) (Added L.N. 117 of 1976)  
 Weapons Ordinance (Cap 217) (Added L.N. 361 of 1981)  
 Firearms and Ammunition Ordinance (Cap 238) (Replaced L.N. 361 of 1981)  
 Dangerous Goods Ordinance (Cap 295) (Added L.N. 1 of 1974)  
 Reserved Commodities Ordinance (Cap 296) (Added L.N. 73 of 1983)  
 Air Pollution Control Ordinance (Cap 311) (Added 13 of 1993 s. 37)  
 Trade Descriptions Ordinance (Cap 362) (Replaced 39 of 1980 s. 37)  
 Control of Obscene and Indecent Articles Ordinance (Cap 390) (Replaced L.N. 132 of 1987)  
 Ozone Layer Protection Ordinance (Cap 403) (Added 24 of 1989 s. 19)  
 Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (Added 35 of 1989 s. 33)  
 Rabies Ordinance (Cap 421) (Added L.N. 452 of 1995)  
 Toys and Children's Products Safety Ordinance (Cap 424) (Added 80 of 1992 s. 36)  
 Organized and Serious Crimes Ordinance (Cap 455) (Added 82 of 1994 s. 35)  
 Consumer Goods Safety Ordinance (Cap 456) (Added 84 of 1994 s. 36)  
 Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) (Added 87 of 1997 s. 36)  
 Prevention of Copyright Piracy Ordinance (Cap 544) (Added 22 of 1998 s. 42)  
 (Amended 13 of 1995 s. 2)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	
Section:	8	Heading:	<b>Jurisdiction</b>	Version Date:	30/06/1997

- (1) In relation to any article, or any matter publicly displayed, referred to it by a court or magistrate under Part V a Tribunal may determine whether-
- (a) the article is obscene or indecent;
  - (b) the matter is indecent; or
  - (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.
- (2) In relation to any article submitted to it under section 13 a Tribunal may-
- (a) refuse an application to make a classification in respect of any article if it considers that article cannot be adequately described for the purpose of giving notice of classification under section 19; or
  - (b) make a classification that the article is-
    - (i) a Class I article if it is of the opinion that the article is neither obscene nor indecent;
    - (ii) a Class II article if it is of the opinion that the article is indecent; or
    - (iii) a Class III article if it is of the opinion that the article is obscene; and
  - (c) in respect of any classification that an article is a Class II article and at the time of making that classification, impose conditions relating to the publication of that article.
- (3) For the purposes of subsection (1)(c) the opinion of an expert as to the ground of defence in section 28 may be admitted either to establish or negative that ground.

(Enacted 1987)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	
Section:	19	Heading:	<b>Registrar to give notice</b>	Version Date:	30/06/1997

- (1) The Registrar shall give notice in accordance with subsection (2)-
- (a) of any interim classification;
  - (b) of any classification-
    - (i) made at a full hearing;
    - (ii) deemed to be the classification of a Tribunal under section 15(5); or
    - (iii) made following a reconsideration under section 17; and
  - (c) of any conditions imposed under section 8(2)(c).
- (2) Notice under subsection (1) shall be given once each in an English language newspaper and a Chinese language newspaper published daily and circulating generally in Hong Kong.
- (3) If notice in accordance with subsection (2) is published in the newspapers referred to in that subsection on different days, notice shall be deemed to have been given on the last of those days.
- (4) The Registrar shall keep and maintain, in such form as he thinks fit, a register of notices given under this section.

(Enacted 1987)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	29	Heading:	<b>Tribunal to have exclusive jurisdiction</b>	Version Date:	01/07/1997

## PART V

### DETERMINATION BY A TRIBUNAL

- (1) A Tribunal shall have exclusive jurisdiction to determine whether-
- (a) any article is obscene or indecent;
  - (b) any matter that is publicly displayed is indecent; or
  - (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.

(2) Subject to subsection (3), where in any civil or criminal proceedings before a court or magistrate a question arises as to any of the matters mentioned in subsection (1), that court or magistrate shall refer that question to a Tribunal; and the parties to those civil or criminal proceedings and, in the case of proceedings to which a public officer is not a party, the Secretary for Justice or their representatives, may appear and be heard at any hearing of that Tribunal relating to that reference. (Amended L.N. 362 of 1997)

(3) Where in any civil or criminal proceedings before a court or magistrate a person admits that an article is obscene or indecent or that any matter publicly displayed is indecent the court or magistrate may accept that admission and so find against that person, and subsections (1) and (2) shall not apply.

[cf. 1963 No. 22 s. 12 N.Z.]  
(Enacted 1987)

Chapter:	475A	Title:	POST-RELEASE SUPERVISION OF PRISONERS REGULATION	Gazette Number:	
Schedule:	1	Heading:	<b>SPECIFIED OFFENCES</b>	Version Date:	30/06/1997

[section 2]

Common law offences

1. murder
2. manslaughter

Statutory offences

3.	Offence	Description*
	Societies Ordinance (Cap 151)	
	section 19(1), (2)	being or claiming to be an office-bearer of an unlawful society
	section 20(2)	being or professing to be a member of triad society
	section 21(1), (2)	allowing unlawful society in building
	section 22(1), (2)	inciting, etc., a person to become a member of an unlawful society
	section 23(1), (2)	procuring a subscription or aid for an unlawful society
	section 24	contravention of an order made on a previous conviction under section 19 or 20 of the Societies Ordinance (Cap 151)
	section 25	contravention of a prohibition order under section 8 of the Societies Ordinance (Cap 151)
4.	Crimes Ordinance (Cap 200)	
	section 24	threatening injury etc. with intent
	section 25	assault with intent to cause certain acts to be done or omitted
	section 47, 48	incest
	section 53	causing an explosion likely to endanger life or property
	section 54	acting with intent to cause an explosion, or making or keeping explosive with intent to endanger life or property
	section 55	making or possession of explosive
	section 60	criminal damage and arson
	section 61	threats to destroy or damage property (L.N. 495 of 1996)
	section 62	possessing anything with intent to destroy or damage property (L.N. 495 of 1996)
	section 118	rape

section 118A	non-consensual buggery
section 118B	assault with intent to commit buggery
section 118C	homosexual buggery with or by a man under 21
section 118D	buggery with a girl under 21
section 118E	buggery with a defective (L.N. 495 of 1996)
section 118F	homosexual buggery committed otherwise than in private (L.N. 495 of 1996)
section 118J	gross indecency by a man with another man
section 118L	bestiality
section 121	administering drugs to obtain or facilitate an unlawful sexual act
section 122	indecent assault
section 123	unlawful intercourse with a girl under 13
section 124	unlawful intercourse with a girl under 16
section 125	unlawful intercourse with a female defective
section 135	causing or encouraging prostitution of, etc., a girl or boy under 16
section 137	living on the earnings of prostitution
section 146	indecent conduct towards a child under 16
section 148	(Repealed L.N. 495 of 1996)

5. Theft Ordinance  
(Cap 210)

section 10	robbery
section 12	aggravated burglary
section 23(1), (3)	blackmail
section 23(4)	possession of blackmail letter or writing

6. Offences against the  
Person Ordinance  
(Cap 212)

section 5	conspiring or soliciting, etc., to commit murder
section 10	administering poison or wounding with intent to murder
section 11	destroying or damaging a building with intent to murder
section 13	attempting to administer poison, or shooting, or attempting to shoot or drown, etc., with intent to murder
section 14	attempting to commit murder by means not otherwise specified
section 15	sending a letter threatening to murder
section 17	wounding, shooting, etc., with intent
section 19	wounding or inflicting grievous bodily harm
section 22	administering poison, etc., so as to endanger life or inflict grievous bodily harm endangered
section 26	exposing a child whereby its life is endangered (L.N. 495 of 1996)
section 27	ill-treatment or neglect of child or young person by those in

	charge
section 28	causing bodily injury by gunpowder, etc.
section 29	causing gunpowder to explode, etc., or throwing corrosive fluid, with intent to do grievous bodily harm
section 30	placing gunpowder near building, etc., with intent to do bodily harm
section 39	assault occasioning actual bodily harm
section 42	forcible taking or detention of person, with intent to sell him or her
section 43	stealing child under 14 years
section 47B	child destruction
section 47C	infanticide

7.	Public Ordinance (Cap 245)	Order	
	section 17C		possession of offensive weapon at public meeting or procession
	section 28(1), (2)		causing a bomb hoax
	section 33		possession of offensive weapon in a public place

\* Note: The short description of offences in this Schedule is for ease of reference only.

(Enacted 1996)

Chapter:	505	Title:	SOCIAL WORKERS REGISTRATION ORDINANCE	Gazette Number:	
Schedule:	2	Heading:	<b>DESCRIPTION OF OFFENCES WHICH DISENTITLE PERSONS FROM BEING OR CONTINUING TO BE REGISTERED SOCIAL WORKERS</b>	Version Date:	30/06/1997

[sections 17(4)(b) & 39(2)]

1. An offence under the following section of the Affiliation Proceedings Ordinance (Cap 183)-  

Section	Description*
16(b)	ill-treating a child

2. An offence under any of the following sections of the Crimes Ordinance (Cap 200)-

Section	Description*
47	incest by men
48	incest by women of or over 16
118	rape
118A	non-consensual buggery
118B	assault with intent to commit buggery
118C	homosexual buggery with or by a man under 21
118D	buggery with a girl under 21
118E	buggery with a defective
118F	homosexual buggery committed otherwise than in private
118G	procuring others to commit homosexual buggery
118H	gross indecency with or by a man under 21
118I	gross indecency by a man with a male defective
118J	gross indecency by a man with another man otherwise than in private
118K	procuring gross indecency by a man with another man
118L	bestiality
119	procurement of an unlawful sexual act by threats or intimidation
120	procurement of an unlawful sexual act by false pretences
121	administering drugs so as to enable a third person to do an unlawful sexual act
122	indecent assault
123	sexual intercourse with a girl under 13
124	sexual intercourse with a girl under 16 (if, but only if, the offender was

	more than 18 years of age at the time of the offence)
125	sexual intercourse with a woman who is a defective
126	abduction of an unmarried girl under 16
127	abduction of an unmarried girl under 18 for sexual intercourse
128	abduction of a defective for an unlawful sexual act
129	trafficking in persons for the purpose of prostitution
130	control over persons for the purpose of unlawful sexual acts or
131	prostitution
	causing prostitution
132	procurement of a girl under 21 to have sexual intercourse
133	procurement of a woman who is a defective to have sexual intercourse
134	detention of a person for an unlawful sexual act or in a vice
135	establishment
	causing or encouraging the prostitution of, an unlawful sexual act with,
136	or indecent assault on a girl or boy under 16
137	causing or encouraging the prostitution of a defective
	living on earnings of prostitution of others
139	keeping a vice establishment
140	permitting a girl or boy under 13 to resort to or be on premises for
	prostitution or an unlawful sexual act
141	permitting a young person to resort to or be on premises or vessel for
	the purpose of sexual intercourse, prostitution, buggery or a
142	homosexual act
	permitting defective to resort to or be on premises or vessel for
146	intercourse, prostitution or homosexual act
147	indecent conduct towards a child under 16
148	soliciting for an immoral purpose
	indecent in public

3. An offence under any of the following sections of the Offences against the Person Ordinance (Cap 212)-

Section	Description*
2	murder
5	conspiring or soliciting to commit murder
7	manslaughter
10	administering poison or wounding with intent to commit murder
11	destroying or damaging building with intent to commit murder
12	setting fire to or casting away ship with intent to commit murder
13	attempting to administer poison, or shooting, or attempting to shoot or
	drown, etc., with intent to murder
14	attempting to commit murder by means not specified
15	sending letter threatening to murder
17	shooting or attempting to shoot, or wounding or striking with intent to
	do grievous bodily harm

19	wounding or inflicting grievous bodily harm
20	attempting to choke, etc., in order to commit indictable offence
21	using chloroform, etc., in order to commit indictable offence
22	administering poison, etc., so as to endanger life or inflict grievous
23	bodily harm
26	administering poison, etc., with intent to injure, etc.
27	exposing a child whereby his or her life is endangered
29	ill-treatment or neglect by those in charge of a child or young person
	causing gunpowder to explode, etc., or throwing corrosive fluid, with
	intent to do grievous bodily harm
30	placing gunpowder near building, etc., with intent to do bodily injury
31	setting spring gun, etc., with intent to inflict grievous bodily harm
42	forcible taking or detention of a person with intent to sell him or her
43	stealing a child under 14 years
44	unlawful transfers of possession, custody or control of other persons
	for valuable consideration
47B	child destruction
47C	infanticide

4. An offence under any of the following sections of the Protection of Children and Juveniles Ordinance (Cap 213)-

Section	Description*
26	abduction of child or juvenile
42	assisting escape of child or juvenile from custody or control

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**\*Note: The short description of offences in this Schedule is for ease of reference only.**