

Kowloon Women's Organisations Federation

Established in May 2000, KWOF is a registered non-profit-making charitable organization. KWOF brings together 29 grassroots women's organizations in five districts, namely Kowloon City, Sham Shui Po, Yau Tsim Mong, Wong Tai Sin and Kwun Tong, and operates three community service centers, with a membership of over 44,200. Our objectives include "women's participation, community-oriented, gender equality and social progress".

KWOF's service objectives are: to take grass-roots women as our core power to show concern for the community; to participate in community building; to advocate lifelong learning; to set up and operate non-profit-making women's schools; to protect women's rights and interests; to ensure equality between men and women; to promote the development of welfare services for women, children and the elderly, and to advocate for the establishment of equal and harmonious families.

1. Introduction

In Hong Kong, the right of person under custody is highly protected. In general, the rights of a person under detention are set out in a document called "Notice to Persons in Custody". This document is prominently displayed inside any interview room of a police station, or other officers of the law enforcers in Hong Kong.

Rights of persons under Custody

Officers of police and other law enforcers should also explain to the detained person the basic contents of this document before the interview, and should give a copy to the detained person. The detained person's rights include:

1. Requesting that the detained person's relatives or a friend be informed of the detention;
2. Asking for a list of solicitors;
3. Asking to be released on bail;
4. Being provided with drinking water upon request, adequate food and refreshment free of charge, as well as medical care if necessary;

Provided that there is no unreasonable delay or hindrance will likely be caused to the processes of investigation or the administration of justice, the following additional rights are available to a detained person:

1. Communicating and consulting with a legal adviser in private;
2. Communicate privately or refuse to communicate with a solicitor or barrister claiming to have been instructed by a third person on your behalf;
3. Make telephone calls or email or faxes to friends or relatives;
4. Have a solicitor or barrister present during any interview with the police;
5. Be provided with a supply of writing materials;
6. Request to have letters posted or delivered as soon as practicable at the detainee's expense;
7. Be supplied with a copy of cautioned statements or questions and answers

under caution as soon as practicable after the interview, if not the detainee can refuse to answer subsequent questions;

8. Request to be provided with food/refreshment at the detainee's own expense.

2. Further Protection

Young Persons

Young persons are also entitled to the same rights as adults when being detained. They will also be accompanied by their parent or legal guardian. If the arrested person is under the age of 16, the Police shall make all reasonable efforts to inform the parent(s) or guardian of the child or young person concerned to come to the station whilst the child or young person is being held. Under reasonable and practicable circumstances, the Police will request an "appropriate adult" to accompany the child or young person at the police station before carrying out investigation on the child or young person. Subsequent investigations against a detained person, including the taking of statement, collecting intimate body samples, etc., must also be conducted in the presence of an appropriate adult.

Foreign Nationals

Foreign Nationals are allowed to receive visits from or to communicate in private with representatives from the consulate or the relevant authority of your home country or a legal representative whom such representatives arrange for him or her.

3. Bail

In general, the detained persons have right to be released on bail. The bail could be with or with sureties for a reasonable sum, or on cash bail for a specified amount, as soon as possible. A detained person will normally be released on bail, except:

1. Where the offence is of a serious nature;
2. Where the detained person has been arrested on a warrant which does not allow bail;
3. Where the detained person may abscond;
4. Where the detained person may repeat the offence;
5. Where the detained person may interfere with witness, impede the investigation or attempt to obstruct the course of justice;
6. Where the detained person should be detained in his or her own interests to protect himself or herself from act committed by himself or herself or others, or
7. Where the detained person cannot produce a reasonable amount of bail money in circumstances, where entering into recognizance with or without sureties is not appropriate.

4. Legal Protection

In general, there are 2 ordinances to protect the rights of the detained persons and control the power of the police, including the Criminal Procedure Ordinance (Cap. 221) and Police Force Ordinance (Cap. 232).

Detained persons have a right to be informed by the law enforcers of the reason for being arrested and detained. It's is generally unlawful if the police officer fails to inform the arrested person the reason for arresting.

Under the Hong Kong legal system, the burden is on the prosecution to provide satisfactory evidence to the Court to prove that the defendant is guilty of the offence beyond reasonable doubt.

Any persons have a right to silence. After the arrest, the police are required to inform the arrested person by saying, "You are not obliged to say anything unless you wish to do so but whatever you say will be put into writing and may be given in evidence."

Therefore, it's the right for a detained person to obtain legal advice before deciding whether or not to answer any questions. He or she may also have a lawyer present during the questioning and taking of any statement.

A person who is detained in custody by the police shall be brought before a court as soon as practicable and generally within 48 hours from the time of the arrest. If the police want to detain a person for a longer period, they must first bring that person before a court and make the relevant application. That person may object to such an application and ask for bail.

5. Police General Order

The Police General Orders is an administrative document made by the Commissioner of Police under section 46 of the Police Force Ordinance ("the Ordinance"), which stipulates that the Commissioner may from time to time make such orders as he thinks expedient to enable him to administer the police force, render the police force efficient in the discharge of its duties and for carrying out the objects and provisions of the Ordinance.

Chapter 49 of Police General Orders set out the rule for Persons Detained in Police Custody. Police officers are required to follow the order when handling a detained person. Major requirements are as follows:

Search

Custody searches shall be conducted as follows:

Only officers of the same gender as the detained person will be present and conduct when a custody search is conducted;

At least 2 police officers will be present;

The custody search will be conducted only in an area offering privacy;

The custody search will be conducted in a search room with appropriate lock, which is not in view of persons other than those officers required to carry out, witness or supervise the custody search.

Officers cannot require a detained person to remove all clothes at the same time (e.g., remove only the clothes under the waist, then to put the clothing back before removing the clothes above the waist);

Officers should conduct a custody search as quickly as possible and allow the detained person to put the clothing on as soon as the custody search is complete;

Removal of underwear shall not be conducted only in circumstances with strong

justification;

If custody search involving the removal of clothing or underwear is to be carried out, physical contact between the detained person and the police officer is to be kept to minimum;

Police officers should conduct every custody search with proper regard to the privacy and dignity of the detained person;

Searching record must be well recorded and kept.

Safe Custody of Persons in Police Custody

The police should ensure the safe of a detained person, major requirements are as follows:

There are never only two detained persons in one cell, but one or three or more;

Police should personally supervise the searching of all cells periodically;

Normally, each cell should provide toilet, shower and washing facilities, if these are not provided, a detained person shall normally be permitted to use such other facilities as may be available upon request;

The police to take special care to a detained person who attempts to inflict self-harm or is known to have suicidal tendencies, and inform the court before any court appearance, and shall arrange a continuous watch over a detained person.

Sick or Injured Persons

In any case when a person in police custody so requests or when it appears to the police that such person is in need of medical attention, due to sickness or an injury, the police shall send the detained person to the nearest Government hospital or clinic, and report any symptoms to the medical officer.

If a detained person has prescribed drugs or other medication in their possession, he or she shall be referred to the nearest Government clinic or hospital. A person in police custody shall be permitted to receive only drugs or other medication approved by a Government Medical Officer, and only in accordance with instructions as to dosage and frequency as given or approved by the Government Medical Officer.

Conclusion

From the above, the Police ensure the security of detention facilities and safeguard the safety of detained persons and those who might be in contact with them, while balancing the protection of the privacy and rights of detained persons. The duty of care owed to detained persons is fulfilled, and the safety, privacy and rights of detained persons are ensured.