



# **The Hong Kong Council of Social Service**

**Adoption of Community  
Treatment Order in Hong Kong  
27 March 2013, Wednesday**

*Presented by*

**Mr Charles CHIU, Chairperson**



# Confluence of Community (post-hospitalization) rehabilitation

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➤ **Conditional discharge (III s.42B)**

- Violence
- No review

➤ **Criminal guardianship order (IIIA) (by Court)**

➤ **Supervision & treatment Order (IIIB)**

- Minor offences / DSW/treatment (by Court)

➤ **Guardianship (IVB)**

➤ **Leave of absence (III s.39)**



# Guardianship Board Experience

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## A.

- **Grandiose delusion**
- **Hoarding**
- **AN cases**

**B. Public guardian and regular reviews**

**C. Fixed duration / close supervision / Conveyance power / non-violent**



# **Community Treatment Order (Kwai Sing East Incident May 2010)**

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- 1. A doctor requires a patient (with criteria met) to follow a course of treatment while living in community**
- 2. With conditions**
- 3. Breach: Liable to be recalled to hospital (for assessment and treatment)**



# Models of Criteria

**(Common criteria: treatment warranted and available outside hospital necessary for health / safety / others): for high relapses**

## **1. High threshold model:**

**must met same criteria of compulsory treatment (i.e. history of being hospitalized / sectioned – how long ago? How many times? How long? How to compute?)**

**Sydney / Saskatchewan / UK / Ontario (for involuntary in-patient only)**



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## **2. Preventive model:**

**deterioration not yet to level of compulsory treatment.**

**Aim: prevent deterioration**

**Melbourne / New Zealand /  
Scotland**



# Legal Safeguard Principle

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## 1. EHRC

**Article 3 (torture / inhuman / degrading treatment)**

**Article 5 (Civil Liberty and Security) (Liable to be recalled)**

**- Coercion on physical liberty**

**- Re Bournemouth (1999)**

**HL vs UK (2004)**



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### **Article 3**

***'No one shall be subjected to torture or to inhumane or degrading treatment or punishment'***





## **Article 5**

***'Everyone has the right to liberty and security of person.***

***1. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:***

***(a) the lawful detention of a person after conviction by a competent court;***

***(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;***

***(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;***



***(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;***

***(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;***

***(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.***

***2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.***



***3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.***

***4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.***

***5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to Compensation.'***



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## **2. Hong Kong**

- BOR**
- ICCPR / ICESCR**
- UNCRDP (2009 rectified)**
- Articles 1 & 12: full legal capacity**

## **3. Regular reviews by Independent judicial body emphasized**



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## ***"Article 1 - Purpose***

***The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.***

***Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."***



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***"Article 12 - Equal recognition before the law***

***1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.***

***2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.***

***3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.***



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***4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.***

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***5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”***





# Legal Safeguard Experiences

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## **A. Who make the order:**

### **1. clinician ordered**

- UK (RC (consultant) & AMHP (CPN/ASW) & SOAD within month)**
- Melbourne**

### **2. Court ordered**

- Sydney**



## **B. What conditions and powers to recall to confer on health professional (UK: broad & flexible)**

### **1. Express power**

**a packet, at discretion  
(facilitating treatment) e.g. enter  
private premises, recall to  
hospital use reasonable force /  
police assistance**

### **2. Formulation of individual treatment plan (enforcing powers are specified indirectly)**



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## **C. Duration & reviews**

**UK: 6 months + 6 months  
+ 1 year**

**(difficulties: patient must be  
present for examination at  
reviews and second opinion  
visits)**



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## D. Appeals

**UK: to MHRT / First-tier Tribunal**

**Melbourne: to MHRB (same as compulsory patients)**

**Sydney: appeal to MHRT (order by magistrate) / Supreme Court (Order by MHRT)**



# **UK: Code of Practice Mental Health Act (D.H. 2008)**

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## **3 Principles:**

- A. Least restrictive principle  
(non-consensual action be  
kept at minimum)**
- B. Respect principle (w/w must  
be considered by practitioner)**
- C. Participation principle  
(patient involved)**



# Trend: Human rights emphasized

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- 1. Community Treatment Order  
less restrictive than  
compulsory treatment and  
correct**
- 2. Yet, coercion remains in  
principle same as compulsory  
treatment, therefore: -**



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- i. Community treatment plan be formulated**
  - ii. w/w of patients into account**
  - iii. Right to appeal (as in compulsory treatment)**
  - iv. \*services for treatment in community must be available**

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**\*Victorian recent trend (draft bill September-December 2010)**



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- v. \*an authorized psychiatrist to access regularly and patient must be able to comply the order**
  - vi. \*reducing norm of 12 months to 3 months)**
  - vii. \*independent authority (Mental Health Tribunal) than clinician to make CTOs**

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**\*Victorian recent trend (draft bill September-December 2010)**





# ***THANK YOU***

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