

Know Your Rights

If You Are Stopped, Questioned, Arrested or Detained



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In Hong Kong, for identification card holder (without restriction on conditions of stay), it is not illegal to work as a sex worker on an individual basis. That being said, there may still be chance for sex workers to violate certain law and legal regulations, and sex workers may face questioning from the police from time to time.

If you are stopped or arrested by the Police, you can:

- request the police officer to show his/her Police warrant card
- request the police officer to tell you the reason he/she stops or arrest you
- remain silent (but there is no need to take a rivalry attitude towards the Police, you should keep calm and be cooperative)

A police officer has the power to search a person he/she reasonably suspects of having committed or intending to commit any offence, but you can request such to be done under a more reasonable or less embarrassing environment (e.g. inside the police station), subject to the officer's final decision. Remember, only a female officer can search the body of female sex workers.

Stopping and Questioning

- A police officer has the power to question anyone regarding a crime or offence.
- A police officer has the general right to stop and question anyone with suspicious behaviors. Whilst doing so, he/she may demand proof of identity, conduct computerised enquiries and search for weapons or drugs.



Caution

- If the police officer has evidence which provides reasonable grounds for suspecting that an individual has committed or is about to commit an offence, he/ she shall caution that person before questioning, and remind his/ her that what he/she says will be written down and might be used as evidence.

Searching

- If a police officer finds any person whom he/she reasonably suspects of having committed or being about to commit any offence, he/she can search him/her for anything that is likely to be of value to the investigation.
- Without prejudicing operational efficiency, a police officer will inform a person of the reason for a search and the intended scope of search, prior to conducting a search.



Arrest

- A police officer must have reasonable suspicion before arresting a person, while telling the reasons why he/she is arrested, the related crime, law stipulated and the rights that person is entitled to.
- Other than answering the basic personal information, the arrested person has the right to remain silent or refuse to sign any documents
- The arrested person should obtain a copy of “Notice to Persons in Police Custody or Involved in Police Enquiries” for better knowledge of his/her rights during detention
- If Hong Kong residents can provide the identification document and correspondence address, the maximum period of detention is 48 hours.

Inspection of Proof of Identity

- In accordance with Section 17C "Carrying and production of proof of identity" of "Immigration Ordinance" (Cap 115) of Hong Kong Law, a police officer has power to inspect the proof of identity of any person. Any person who fails to produce proof of his identity for inspection as required by the law will commit an offence.
- In accordance with Section 17B of "Immigration Ordinance" (Cap 115) of Hong Kong Law, "proof of identity" includes:

a valid identity card;

a document issued by the Commissioner of Registration;

a valid travel document;

a Vietnamese refugee card issued; or

any identity document held by person who is exempted by law.

If any person fails to produce his/ her proof of identity for inspection on demand, he/she should give a reasonable explanation and evidence to prove his/her identity to any police officer in a reasonable time and circumstance. Depending on the circumstances and attitude of the person being checked, a police officer may issue a verbal warning, bring the person back to the police station for further enquiry, take summons action or even arrest the person concerned.



How to Verify the Truthfulness of Police Identity / Police Warrant Card?



1. Police Officers are required to produce Police Warrant Cards under the following circumstances:

Police Officers in Plain-clothes: They shall identify themselves and produce their warrant cards when they are exercising their police powers.

Police Officers in Uniform: Normally, police officers in uniform are not required to produce their police warrant cards. However, they should do so upon the request of a member of the public unless the circumstances do not allow or the request is unreasonable:

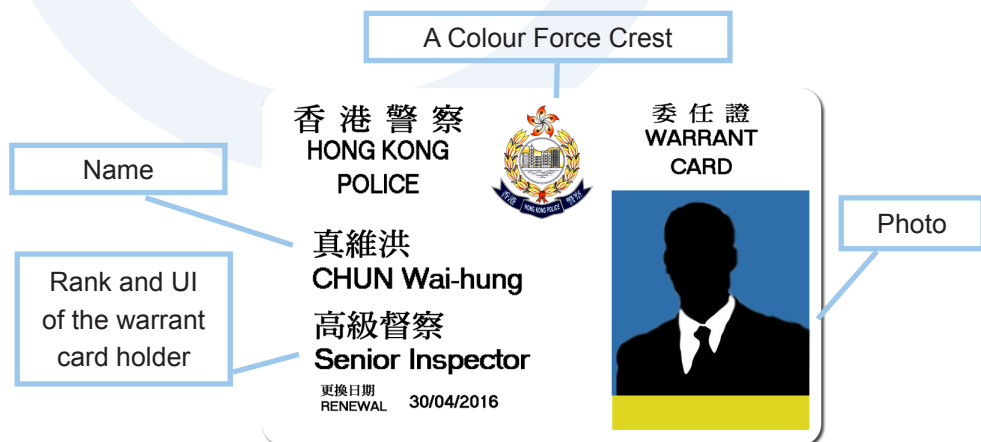
2. When Police Officers produce their warrant cards, there is no requirement for them to give their warrant cards to any member of public for checking. If a member of the public has any queries on doubt about the identity of a Police Officer, he/ she should contact the nearest police station immediately for clarification.



3. The Police Warrant Card has the following features:

In the front, the card is printed with:

- ☒ Hong Kong Police (in Chinese and English);
- ☒ A Colour Force Crest;
- ☒ The Name, rank and UI of the warrant card holder;
- ☒ A photo. The card is covered with laser wording of 'Hong Kong Police' in English and Chinese;
- ☒ In the back, the card is printed with: A statement "The person whose photograph and particulars appear on the reverse is a duly appointed member of the Hong Kong Police"



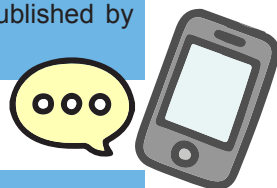
Notice to Persons in Police Custody or Involved in Police Enquiries

1. Seeking legal assistance

- ★ To make private telephone calls to, or communicate in writing or in person with a lawyer.
- ★ To have a lawyer present during any interview with the Police.
- ★ To communicate privately or refuse to communicate with a lawyer claiming to have been instructed by a third person on your behalf.
- ★ To be provided with a list of solicitors published by the Law Society of Hong Kong

2. Telling someone that you are at a police station

- ★ To require the Police to try to inform a relative or friend that you are at a police station, and to be informed of the result.



3. Communicating with a relative or friend

- ★ To be given reasonable opportunities to communicate with a relative or friend by telephone.
- ★ To receive visits from a relative or friend. If for an arrested person and detained person, the permission of the Duty Officer for such visits is required.
- ★ To be supplied with writing materials and to have your letter posted as soon as practicable at your own expense.

4. Receiving copies of written record under caution

- ★ To be supplied with a copy of your written record under caution as soon as practicable after the interview.
- ★ To refuse to answer subsequent questions until a copy of the written record under caution has been provided to you.



5. Communication with consulate if you are a foreign national

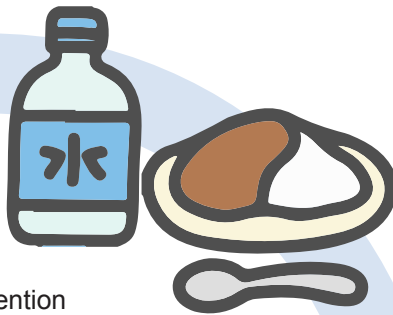
- ★ To receive visits from or to communicate in private with (i) representatives from the consulate or the relevant authority of your home country or (ii) a lawyer whom such representatives arrange for you.

6. Notification to consulate if you are a foreign national

- ★ To require the Police to notify the consulate of your home country in Hong Kong of your arrest or detention.
- ★ To require the Police to notify the relevant authority of your home country of your arrest or detention, if there is no consular representation in Hong Kong.

7. Provision of food and drink

- ★ To be provided with drinking water upon request while in police custody.
- ★ To be offered three meals a day with drinks.
- ★ Due to a special reason, e.g. religious need or outside the canteen operating hours, etc. food from an outlet or delivered by your relative or friend may be arranged on your behalf subject to the permission of the Duty Officer or an inspector and the inspection of such food.



8. Seeking medical attention

- ★ To be given medical attention if you feel unwell.



9. Requesting for release or admittance to bail (applies to persons detained in police custody only)

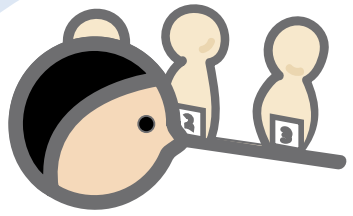
- ★ To request to be released or to be admitted to bail. (If you are remanded by order of a magistrate, the decision of release or granting bail will be made by the magistrate.)



Cautioned Statement Taking

- Unless you wish to talk, you can choose not to answer any questions. Based on what you said, the Police will take notes, which may serve as evidence in court. If you find anything missing or inaccurate, even inauthentic information on the statement, you should immediately request to amend the statement, otherwise refuse to sign on the document.
- You can be accompanied by a lawyer during the questioning and taking of any statement.
- The police should never use any threatening means or induce you to take a statement from you.
- If you feel unwell, you have the right to stop or refuse further “statement taking”.
- You can ask for toilet break or meal break.
- Translation service is available if you do not speak or understand Cantonese.
- If you do not know how to read Chinese characters, you can request the police officer to read the statement aloud for you once after taking.
- If you do not know how to read Chinese characters, but suspecting that the statement is not in accordance with facts, you can find your lawyer for assistance.
- You have the right to request the interview to be videotaped for your own reference. If the arrested person is under the age of 16, the video taking should be done in the presence of parents / guardian.
- You can complain to Duty Officer if reasonable request is denied.
- You have the right to obtain a copy of the cautioned statement free-of-charge.





At the Identification Parade (as a Suspect)

If being requested to participate in the one-way identification as a suspect at the police station:

- you have the right to request 6-7 people with similar height, body size and outfits as you to be present at the identification parade. If your hair color is different from others, you have the right to request wearing a hat (usually shower cap).
- You have the right to request being accompanied by a lawyer, so as to raise opposition or request changes to be made regarding unfair and unjustifiable arrangement that may increase possibility of you being identified at the identification parade.

Bail

- You will be kept in custody whilst the case against you is being investigated. If the investigation into your case cannot be completed immediately, you may be released unconditionally or on bail to appear at a specified police station at the date/time stated in the recognizance.
- If after the investigation there is sufficient evidence against you, you will be charged and either be released on bail to appear before a Magistrate or detained and brought before a Magistrate as soon as practicable.
- Unless the offence is of serious nature or that you are a holder of foreign travelling document, or there is sufficient reason to believe that you would abscond or interfere with prosecution witnesses, you must be allowed to be released on bail.
- Conditions of bail include cash, sureties or recognisance. The police may impose other conditions, for examples restriction on leaving Hong Kong and reporting at designated police station regularly. If such conditions are violated, you can be arrested by the police.

Appear in Court



Having come to court either upon arrest or in compliance with a summons, the offender must wait in court for his/her name to be called.



The magistrate or judge will read to him/her the charge and ask him/her to plead.



If he/she pleads guilty, the prosecutor will read out the facts of the case to see whether he/she agrees to them or not. The offender is then entitled to make any statement which he/she feels the court should be aware of when determining sentence.



If the court imposes a fine, the offender can ask for time to pay.



If the sentence is imprisonment, he/she will be taken away immediately to serve his/her term.



If the offender pleads not guilty, a hearing date will be fixed. In the magistracies this will probably be 4 to 10 weeks later, and longer in the District Court and High Court.



At the hearing, the prosecution must prove the charge beyond reasonable doubt. Prosecution witnesses can be called to tell their side of the story. The Defendant is entitled to cross examine each of them. After the prosecution's case is finished, the defendant can choose to remain silent, or to give his/her version of what took place. But in both cases he/she can call witnesses to support him/her. However, he/she or his/her witnesses are also subject to cross examination by the prosecution.



At the end of the case, he/she can make a statement pointing out the strength of his/her defence and the weakness of the prosecution case. The Court will then decide whether to acquit him/her or to find him/her guilty and impose a sentence. If the defendant is found not guilty, he/she will be free to go immediately, and to get back any bail money he/she has paid.

References:

Checking of Identification Documents:

https://www.police.gov.hk/ppp_en/11_useful_info/power_id.html



Notice to Persons in Police Custody or Involved in police Enquiries

https://www.police.gov.hk/mip/doc/pol_153e.pdf



Criminal Law Procedure

<http://www.dutylawyer.org.hk/en/tellaw/law2.asp?id=20&ver=en&category=criminal>



Action for REACH OUT (AFRO) is a non-governmental organisation established in 1993. We offer services and support to women working in the sex industry. In case of enquiries, we can be reached via the following:

AFRO 24-hour emergency hotline : 2770 1002



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Monday to Friday 9a.m. — 10p.m.



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