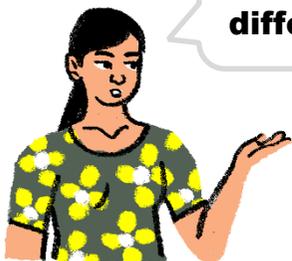


## Immigration Detention in Hong Kong: Know Your Rights

If you do not hold a Hong Kong permanent identity card or have the right of abode, you could be subject to immigration detention in certain circumstances. Immigration detention refers to holding someone in a government-run detention facility for immigration control purposes.

Although immigration detention is difficult to think about, it is important to learn about it, so that you can be prepared if it happens to you. This is because **if you are detained it may be without warning.**



### **How is immigration detention different from prison?**

Immigration detention is the practice of holding people in detention centres. The purpose of immigration detention is supposed to be to enable the government to remove people from Hong Kong. It should be used as a last resort and for the shortest possible time. Under the law, immigration detention **should not be used as a punishment.**

By comparison, someone can be sent to prison if they are found guilty of a criminal offence. A prison sentence is given by a judge in a court of law.

The decision to put someone in immigration detention is made by the Immigration Department. It is not authorised by a judge. Someone who is put in immigration detention might not be given a specific date when they will be released.

## **For what reasons can the Immigration Department detain me?**

The Immigration Department can put someone in immigration detention in the following circumstances:

- to enable a person's removal from Hong Kong
- to establish a person's identity or the basis of their non-refoulement claim, and/or
- where there is reason to believe that the person will not comply with any conditions attached to bail/recognition such as reporting regularly or living at a bail address.

If someone is found guilty of a criminal offence like breach of condition of stay, they could serve a criminal sentence in a prison and then be moved into immigration detention before being removed or deported from Hong Kong.



## **When will I be detained?**

Detention usually takes place:

- a) on arrival to Hong Kong
- b) after making a non-refoulement claim
- c) after a refusal of your non-refoulement claim against which there is no further appeal (i.e. a higher court refuses to accept an appeal or the highest court in Hong Kong, the Court of Final Appeal, refuses your claim), or
- d) at the end of a criminal sentence before you are deported or removed from Hong Kong.



## **Where will I be detained?**

You may be detained in any of the following institutions / facilities:

- a) Castle Peak Bay Immigration Centre (CIC)
- b) Mau Tau Kok Detention Centre (MTK)
- c) Tai Tam Gap Correctional Institution, and / or
- d) prisons, police stations, border facilities and other facilities under the control of the Immigration Department and Correctional Services Department.

## **Are there categories of people who should not be detained?**

Under the Immigration Department's Detention Policy, the following persons should not be detained:



an elderly person requiring close supervision or medical care



a person with a serious medical or mental-health condition



a person who is physically disabled requiring constant nursing care



a person who has been subjected to torture and there is satisfactory evidence for this

However, if you are in one of these categories, the Immigration Department could still detain you. The immigration detention system in Hong Kong lacks strong screening mechanisms to identify whether someone in detention has mental health issues or suffers from trauma.

If you fall within one of these vulnerable categories, you should refer to the Detention Policy and point out that you should not be detained or that you should be released if you are detained. As far as possible, **gather documentation that can prove your condition**, so if you are ever in immigration detention, you can use it to support your argument that you should not be detained.

### **Can I still be detained if I am:**



#### **pregnant?**

Yes. However, the Immigration Department's Detention Policy states that if a woman is pregnant and there is no clear prospect of imminent removal, she should not be detained. Therefore, **it is important that you inform the Immigration Department** that you are pregnant.



#### **under 18 years old?**

Yes. However, the Immigration Department's Detention policy states that a person under 18 should not be detained. If they are detained, then generally this will be at Tuen Mun Child and Juvenile Home rather than Castle Peak Bay Immigration Detention Centre.



### **For how long can I be detained?**

The length of detention **depends on the reason you were detained** under the Immigration Ordinance.

- (1) If you are waiting to be deported or removed, or, if you are waiting for a final decision in your non-refoulement claim, you can be detained indefinitely.
- (2) However, if you are detained in order to establish whether you have entered Hong Kong lawfully, the relevant law in Hong Kong lays down an initial time period of 24 hours for investigation, which can be extended for a further 24-hour period pending a decision on whether you should be granted permission to land. So, if you were detained for this particular reason, you cannot be detained for longer than 2 days.

## **What can I prepare if I know I am vulnerable to detention and may be detained?**



Keep a list of emergency contacts including your lawyer and give this to someone else you trust as well.



Keep copies of your identity and other official documents. Give these copies to your lawyer and / or someone you trust. Scan and email yourself copies of the documents.



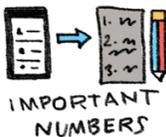
If on medication take this with you, together with a prescription and a letter from your doctor to say why the medicine should not be stopped or changed.



Give a trusted friend a copy of your house/room key so that if you are detained, they can go to get essential items for you. Only give a key to someone you trust and make sure this is allowed under your accommodation rules. Alternatively, give a trusted friend a consent letter to access your room if you are detained. A consent letter can also be used to allow your friend to contact your lawyer on your behalf.



Arrange for a trusted friend to contact International Social Services to let them know you are in detention if you are detained. This should make it easier for your welfare entitlements to be restored once you are released from detention.



Your phone will be taken from you in detention so write down a list of your important numbers and keep them with you.

## What are my rights in detention?

✓ You have a right to be visited by friends and relatives (see below).

✓ You have a right to be treated with respect. Ill-treatment of detainees is forbidden by law.

✓ You have a right to make a complaint (see below).

✓ You have the right to ask for and have access to a doctor.

## How do I protect my rights after being detained?

- × If you are in detention, do not sign any legal documents that you do not understand.

### What will detention be like?

In detention, you will have:

- access to a telephone
- daily access to outdoor exercise area
- your own separate bed, clean sheets and blankets
- access to books and other reading materials.



## **How can I keep in touch with friends and family?**

As soon as you are detained you have a right to request an officer to inform a family member or friend of your whereabouts.

Detention can be a lonely experience. Under the rules, you are allowed to telephone friends and receive visits. Ask the Welfare Officer at the detention centre for information about how to do this.

## **Is there separate detention for men and women?**

Female detainees are kept separate from male detainees. A female detainee must be guarded by a female officer.

## **Can I practice my religion in detention?**

There are religious services conducted at CIC which people can attend.

## **How can I seek legal advice?**

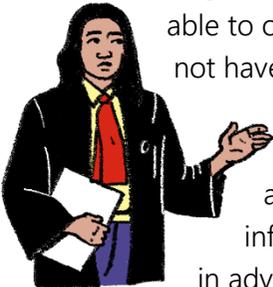
Your case will be allocated to a Welfare Officer while you are in immigration detention, and they will be able to assist you with different services, including accessing legal advice where available. You should contact your Welfare Officer as soon as possible.

If you already have a lawyer, you should inform them that you have been detained.



You will be allowed reasonable opportunity to communicate with a lawyer. To prepare your defense you are given access to writing materials and letters should be posted without delay. You will also be able to telephone your lawyer.

If you are in immigration detention and you would like general legal advice, there is no government-provided legal aid available. You could write or telephone law firms and non-governmental organisations to see if they may be able to offer you free legal advice. However, you will not have access to computers or the internet in detention to be able to search for organisations that may be able to offer advice. So, it is best to keep contact information for relevant law firms and NGOs in advance in your emergency contacts.



## **How can I seek other help?**

If your family needs support while you are in detention, they could contact the CIC Detainees Rights Concern Group who make regular visits to people in detention and are gathering information about the detention system. They can be [contacted via Facebook](#).

There is a list of items that friends and relatives can bring you on the Correctional Services Department [website](#). They can also bring you books and other reading materials. Make sure they only bring the specific brands listed because other brands will not be permitted.



## How can I make a complaint?

There is no confidential system for making a complaint in CIC or MTK. In CIC, you could make a complaint to the Superintendent, or any officer authorized by the Superintendent to receive complaints. In MTK you can make your complaint to any officer, and they should bring the complaint to the attention of an Assistant Principal Immigration Officer.

Government appointed Justices of the Peace provide the only form of external monitoring of immigration detention. They visit CIC every 2 weeks, and it is possible to make a complaint to them, although the complaint mechanism is not kept confidential. In 2019 they visited MTK four times.

It is also possible to make a complaint in writing to the Ombudsman. Complaints can be made by post or email:

 30/F, China Merchants Tower, Shun Tak Centre, 168-200  
Connaught Road Central, Hong Kong

 [complaints@ombudsman.hk](mailto:complaints@ombudsman.hk)

For more information, please check the Ombudsman [website](#).

## Who are we?

The Immigration Detention in Hong Kong Project is a 3-year research project at the Faculty of Law, Chinese University of Hong Kong to evaluate the immigration detention system in Hong Kong in relation to vulnerable migrants. It is the first research project about immigration detention in Hong Kong. We aim to generate policy-oriented analysis that can help to improve the system and protect the rights and welfare of detainees and their families.



*SCAN FOR PROJECT WEBSITE*

The information in this document is adapted from the Right to Remain Toolkit on Immigration Detention, the Immigration Ordinance and more.

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