

National Laws

Legislation of Interpol member states on sexual offences against children

China - Chine - China

Hong Kong

The information on this page is up to date as of spring 2006

I. Ages for legal purposes

Age of simple majority

The legal age of majority is eighteen (18) years

Age of consent for sexual activity

The legal age of consent for sexual activity is sixteen (16) years (Crimes Ord., Cap 200).

Age of consent for marriage

The legal age of consent for marriage is twenty-one (21) years (Marriage Ord., Cap 181).

Definition of a 'child'

"Child" means a person under the age of 16 under the Prevention of Child Pornography Ordinance, Chapter 579 Laws of Hong Kong.

II. Rape

'Rape', Article 118 of the Penal Code, 'Sexual Offences', CAP. 200

(1) A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(2) A man who induces a married woman to have sexual intercourse with him by impersonating her husband, commits rape.

(3) A man commits rape if -

a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and

b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it.

(4) It is thereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence or reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

(5) In relation to such a trial as is mentioned in subsection (4) which is a trial in the District Court or a summary trial before a magistrate or in a juvenile court, references to the jury in that subsection shall be construed as references to the District Court, the magistrate or the juvenile court, as the case may be.'

III. Other forms of child sex abuse

'Non-consensual buggery', Article 118A of the Penal Code, 'Crimes', CAP. 200

'A person who commits buggery with another person who at the time of the buggery does not consent to it shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.'

'Assault with intent to commit buggery', Article 118B of the Penal Code, 'Crimes', CAP. 200

'A person who assaults another person with intent to commit buggery shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.'

'Homosexual buggery with or by man under twenty-one (21)', Article 118C of the Penal Code, 'Crimes', CAP. 200

'A man who -

a) commits buggery with a man under the age of twenty-one (21); or

b) being under the age of twenty-one (21) commits buggery with another man, shall

be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.'

'Buggery with girl under twenty-one (21)', Article 118D of the Penal Code, 'Crimes', CAP. 200

'A man who commits buggery with a girl under the age of twenty-one (21) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.'

'Gross indecency with or by man under twenty-one (21)', Article 118H of the Penal Code, 'Crimes', CAP. 200

'A man who -

a) commits an act of gross indecency with a man under the age of twenty-one (21);
or

b) being under the age of twenty-one (21) commits an act of gross indecency with another man,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for two (2) years.'

'Indecent assault', Article 122 of the Penal Code, 'Crimes', CAP. 200

'(1) Subject to subsection (3), a person who indecently assaults another person shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.

(2) A person under the age of sixteen (16) cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

(3) A person is not, by virtue of subsection (2), guilty of indecently assaulting another person, if that person is, or believes on reasonable grounds that he or she is, married to that other person.

(4) A woman who is a defective cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of indecently assaulting a defective by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a defective.'

'Intercourse with a girl under thirteen (13)', Article 123 of the Penal Code, 'Crimes', CAP. 200

'A man who has unlawful sexual intercourse with a girl under the age of thirteen (13) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.'

'Intercourse with a girl under sixteen (16)', Article 124 of the Penal Code, 'Crimes', CAP. 200

'(1) Subject to subsection (2), a man who has unlawful sexual intercourse with a girl under the age of sixteen (16) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for five (5) years.

(2) Where a marriage is invalid under section 27(2) of the Marriage Ordinance (Cap. 181) by reason of the wife being under the age of sixteen (16), the invalidity shall not make the husband guilty of an offence under this section because he has sexual intercourse with her, if he believes her to be his wife and has reasonable cause for the belief.'

'Abduction of an unmarried girl under eighteen (18) for sexual intercourse', Article 127 of the Penal Code, 'Crimes', CAP. 200

'(1) A person who takes an unmarried girl under the age of eighteen (18) out of the possession of her parent or guardian against the will of the parent or guardian with the intention that she shall have unlawful sexual intercourse with men or with a particular man shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for seven (7) years.

(2) In subsection (1), 'guardian' means any person having the lawful care or charge of the girl.'

'Permitting a girl or boy under thirteen (13) to resort to or be on premises or vessel for intercourse', Article 140 of the Penal Code, 'Crimes', CAP. 200

'An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers a girl or boy under the age of thirteen (13) to resort to or be on such premises or vessel for the purpose of doing an unlawful sexual act or for the purpose of prostitution, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.'

'Permitting a young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act', Article 141 of the Penal Code, 'Crimes', CAP. 200

'An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers -

a) a girl under the age of sixteen (16) to resort to or be on such premises or vessel for the purpose of having unlawful sexual intercourse with a man or for the purpose of prostitution;

b) a girl or boy under the age of twenty-one (21) to resort to or be on such premises or vessel for the purpose of committing buggery with a man; or

c) a boy under the age of twenty-one (21) to resort to or be on such premises or vessel for the purpose of committing an act of gross indecency with a man,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for fourteen (14) years.'

'Indecent conduct towards a child under the age of sixteen (16) years', Article 146 of the Penal Code, 'Crimes', CAP. 200

'(1) Subject to subsection (3), a person who commits an act of gross indecency with or towards a child under the age of sixteen (16), or who incites a child under the age of sixteen (16) to commit such an act with or towards him or her or another, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.

(2) It shall not be a defence to a charge under this section to prove that the child consented to the act of gross indecency.

(3) A person who commits an act of gross indecency with or towards a child or who incites a child to commit such an act with or towards him or her is not guilty of an offence under this section if that person is, or believes on reasonable grounds that he or she is married to the child.'

'Incest by men', Article 47 of the Penal Code, 'Crimes', CAP. 200

'(1) Any man who has sexual intercourse with a woman, who is to his knowledge his granddaughter, daughter, sister or mother, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for fourteen (14) years :

Provided that if, on an indictment for any such offence, it is alleged in the indictment and proved.

- a. that the woman is under the age of 16 years but is of or above the age of 13 years, he shall be liable to imprisonment for 20 years.
- b. that the woman is under the age of 13 years, the same punishment may be imposed as may be imposed under section 123.

(2) It is immaterial that the sexual intercourse was being done with the consent of the woman.

(3) Any man who attempts to commit any such offence as aforesaid, or who incites a girl under the age of sixteen (16) years, who is to his knowledge his granddaughter, daughter or sister, to have sexual intercourse with hem, shall be guilty of an offence triable summarily or upon indictment and shall be liable on conviction to imprisonment for ten (10) years.

(4) (...)'

'Incest by women of or over sixteen (16)', Article 48 of the Penal Code, 'Crimes', CAP. 200

'Any woman of or above the age of sixteen (16) years who with consent permits her grandfather, father, brother or son to have sexual intercourse with her (knowing him to be her grandfather, father, brother or son, as the case may be) shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for fourteen (14) years.'

IV. Child prostitution

'Trafficking in persons to or from Hong Kong', Article 129 of the Penal Code, 'Crimes', CAP. 200

'(1) A person who takes part in bringing another person into, or taking another person out of Hong Kong for the purpose of prostitution shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.

(2) It shall not be a defence to a charge under this section to prove that the other person consented to being brought into or taken out of Hong Kong whether or not she or he knew it was for the purpose of prostitution or that she or he received any advantage therefor.'

'Control over persons for purpose of unlawful sexual intercourse or prostitution', Article 130 of the Penal Code, 'Crimes', CAP. 200

'(1) A person who -

a) harbours another person or exercises control or direction over another person with the intention that that person shall do unlawful sexual acts with others; or

b) harbours another person or exercises control, direction or influence over another person for the purpose of or with a view to that person's prostitution,

-shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for fourteen (14) years.

'Causing or encouraging prostitution of , intercourse with, or indecent assault on a girl or boy under sixteen (16)', Article 135 of the Penal Code, 'Crimes', CAP. 200

'(1) A person who causes or encourages the prostitution of or an unlawful sexual act with a girl or boy under the age of sixteen (16) for whom that person is responsible, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.

(2) Where a girl or boy is a prostitute or has done an unlawful sexual act, a person shall be deemed for the purpose of this section to have caused or encouraged the same if that person knowingly allowed the girl or boy to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

(3) Subject to subsection (4), the persons who for the purposes of this section are to be treated as responsible for a girl or boy are -

a) any person who is her or his parent or legal guardian;

b) any person who has actual possession or control of her or him, or to whose charge she or he has been committed by her or his parent or legal guardian or by a person having the custody of her or him;

c) any other person who has the custody, charge or care of her or him.

(4) In subsection (3), 'parent' does not include, in relation to any girl or boy, a person deprived of her or his custody by order of a court of competent jurisdiction but, subject to that, in the case of a girl or boy who has been adopted under the Adoption Ordinance (Cap . 290) means her or his adopters and in the case of a girl or boy who is illegitimate, and has not been so adopted, means her or his mother and any person who has been adjudged to be her or his putative father.'

'Living on the earnings of prostitution of others', Article 137 of the Penal Code, 'Crimes', CAP. 200

'(1) A person who knowingly lives wholly or in part on earnings of prostitution of another shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for ten (10) years.

(2) For the purposes of subsection (1), a person who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over another person's movements in a way which shows he or she is aiding, abetting or compelling that other person's prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he or she proves the contrary.'

V. Child pornography

Prevention of Child Pornography Ordinance", Chapter 579, Laws of Hong Kong

"Child pornography" means:

- (i) *a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a person who is or is depicted as being 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*
- (ii) *anything that incorporates a photograph, film, image or depiction referred to in paragraph (i),*

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

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

- (i) on conviction on indictment to a fine of \$2 000 000 and to imprisonment for 8 years; or
- (ii) on summary conviction to a fine of \$1 000 000 and to imprisonment for 3 years.

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:

- (i) on conviction on indictment to a fine of \$1 000 000 and to imprisonment for 5 years
- (ii) on summary conviction to a fine of \$5 000 000 and to imprisonment for 2 years.

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:

- (i) on conviction on indictment to a fine of \$2 000 000 and to imprisonment for 8 years; or
- (ii) on summary conviction to a fine of \$1 000 000 and to imprisonment for 3 years.

'Prohibition on publishing obscene articles', Article 21 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) Subject to subsection (2) any person who -

- a) publishes;
- b) possesses for the purpose of publication; or
- c) imports for the purpose of publication,

any obscene article, whether or not he knows that it is an obscene article, any obscene article, commits an offence and is liable to a fine of \$ 1.000.000 and to imprisonment for three (3) years.

(2) (...)'

'Prohibiting on publishing an indecent article to a juvenile', Article 22 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) Subject to subsection (2), any person who publishes any indecent article on a person who is a juvenile, whether or not he knows that it is an indecent article or that such person is a juvenile, commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 400.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.

(2) (...)'

'Prohibition on display of indecent matter', Article 23 of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) If any indecent matter is publicly displayed, the person making display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 800.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.

(2) Nothing in this section shall apply in relation to any matter-

a) included in a television programme service provided by a company licensed under Broadcasting Ordinance (CAP. 562); or

b) included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.'

'Prohibition on possession of an indecent article for the purposes of publication', Article 27A of the Penal Code, 'Control of Obscene and Indecent Articles', CAP. 390

'(1) (...) any person who possesses for the purpose of publication any indecent article (...) whether or not he knows that it is an indecent article, (...), commits an offence and is liable to a fine of \$ 400.000 and to imprisonment for twelve (12) months on his first conviction, and to a fine of \$ 800.000 and to imprisonment for twelve (12) months on a second or subsequent conviction.(...)'

VI. Internet

- Hong Kong does not have specific legislation targeted solely at 'Crimes Against Children Using the Internet'. Any publication of child pornography on the Internet would be governed under the 'Control of Obscene and Indecent Articles Ordinance', Cap. 390.
- The Government of Hong Kong has proposed 'The Prevention of Child Pornography Bill' and 'Crimes (Amendment) Bill' to the Legislative Council (similar to a parliament) for consideration. The former targets to prohibit simple possession, making, distribution of child pornography amongst other provisions. The latter Bill targets to provide extra-territorial effect to certain sexual offences committed against children.