MOH/P/PAK/396.18(GU)

GUIDELINE

ON MEDICAL ASSESSMENT OF CHILD CUSTODY CASES

Medical Development Division
Ministry of Health Malaysia

MEDICAL DEVELOPMENT DIVISION

MINISTRY OF HEALTH MALAYSIA

GUIDELINE ON MEDICAL ASSESSMENT OF CHILD CUSTODY CASES

This policy was developed by the Medical Services Unit, Medical Services Development Section of the Medical Development Division, Ministry of Health Malaysia and the Drafting Committee for the Guideline On Medical Assessment of Child Custody Cases.

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CONTENTS

FOREWORD

DIRECTOR GENERAL OF HEALTH MALAYSIA

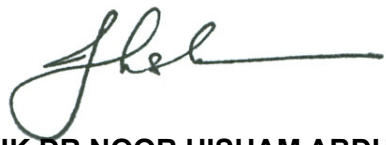
The rate of divorce is increasing in our society and there are many implications that a divorce has on the family. This is particularly true for children of divorced couples.

Mental health professionals are commonly consulted to help in doing an assessment of custody of these children. The guiding principle of 'the best interests' of the child has been the subject of extensive consideration in custody assessment. However, the application of this principle remains a challenge. This guideline is intended to help users to utilize the concept of 'the best interest' principle, where the emotional health of the child is paramount.

This guideline is also intended to provide help for clinicians in making complex decisions and to minimize differences in practice.

I would like to thank and congratulate the development group for this timely guideline. Whilst this guideline merely outlines the process, professional judgement is still needed in each specific case.

It is my hope and expectation that this guideline will provide an effective learning experience and be a useful reference for all health professionals in caring for children especially in custody cases.



DATUK DR NOOR HISHAM ABDULLAH

FOREWORD

NATIONAL ADVISOR FOR PSYCHIATRIC SERVICES

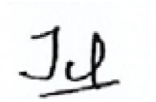
The importance of good mental health for a child is well understood and accepted. However, in custody disputes, the mental health needs of the children involved are often forgotten or ignored and set aside as the disputing parents do battle with each other. As a result, almost everyone involved suffers, and that cannot be good at all.

In Malaysia today, the number of child custody cases has increased over the years. Parental separation, divorce, guardianship or child abuse and neglect cause much hardship and distress. Being the experts in child health and development, often health professionals are called upon by the Courts to offer their opinions as to the best way forward with regard to the custody of the child. The health professional, as the assessor, provides an important service to children and the courts and this has far-reaching consequences in the eventual physical and mental development of the child. It was in order to best perform this task that the idea of a guideline on the medical assessment of child custody cases was first mooted.

It is important to understand the basic details of what goes into a child custody evaluation to prepare for the process because although the purpose of custody evaluations is to ensure that the needs of the child are met as best as they can, yet it can still be a nerve wracking ordeal for all involved. We hope that with a comprehensive guideline like this one, the medical assessment of child custody cases would be standardized and parents and children gain the best arrangements that they rightfully deserve.

I wish to congratulate the guideline development group and all those involved in the development and publication of this much awaited guideline for their tireless effort and well-thought-out affirmations which encompass the various medical aspects of the custody assessment. It is my expectation that this guideline will serve as the reference for health

care professionals to adequately equip them with skills, psychological and physical, in caring for children and their families, who present with these issues.



Dr. Toh Chin Lee

1. INTRODUCTION

This guideline was conceived to assist and help standardize the medical assessment of child custody cases for health practitioners in the Ministry of Health Malaysia. The number of child custody cases has increased over the years as a result of parental separation, divorce, guardianship, neglect or abuse.

The custody assessment is a medico-legal process, in which a court-appointed assessor evaluates the family and makes recommendations to the court with the child's best interests and welfare in mind. These cases require careful consideration of parental rights and responsibilities, especially when parents are unable to jointly reach an agreement (1). Being the experts in child health and development, health professionals are often asked to assist courts in this process. The health professional as the assessor provides an important service to children and the courts by establishing a clear sense of direction and purpose (1). This has consequences in the eventual physical and mental health development of the child.

In the preparation of this custody assessment guideline, the four general principles of The United Nations Convention on the Rights of the Child 1989 (CRC) were taken into account to ensure that the best interests of the child are always upheld. The CRC is a comprehensive set of international legal norms that advocates for the promotion of the well-being and protection of the legal rights of children. The CRC is recognised as the most ratified international human rights treaty in the world. The Convention defines a 'child' as a person below the age of 18 and this is so in Malaysia (2).

The four main integral general principles enshrined in Articles 2, 3, 6 and 12 of the CRC are as detailed below (2):

1. **Non-discrimination (Article 2):** The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter

where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis (14).

2. **Best interests of the child (Article 3):** The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and lawmakers (14).

3. **Right to life, survival and development (Article 6):** Children have the right to live. Governments should ensure that children survive and develop healthily.

4. **Respect for the views of the child (Article 12):** When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This does not mean that children can now tell their parents what to do. This Convention encourages adults to listen to the opinions of children and involve them in decision-making-not give children authority over adults. Article 12 does not interfere with parents' rights and responsibilities to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Children's ability to form and express their opinions develops with age and most adults will naturally give the views of teenagers greater weight than those of a preschooler, whether family, legal or administrative decisions.

Malaysia acceded to the CRC on the 17th February 1995.

2. OBJECTIVE

To facilitate assessors in the Ministry of Health Malaysia at establishing an ethical, standardized and comprehensive clinical process when conducting child custody assessments.

3. GENERAL PRINCIPLES

1. During child custody assessment, the assessor shall focus on identifying the physical, emotional and psychological needs of the child to ensure that the child's best interests are protected (3).

2. The assessment of parenting capacity is a core child protection task. This includes assessing parents' capacity to protect children from risk and enhance their development (4). Parenting capacity also reflects parental competence i.e knowledge, skills and attitudes that facilitate and optimise parental role to ensure maximum potential for child's growth and development

A custody assessment is not intended to determine fault nor blame parents for family dissolution or take one parent's side against the other.

4. THE PROCESS OF MEDICAL ASSESSMENT OF CHILD CUSTODY CASES

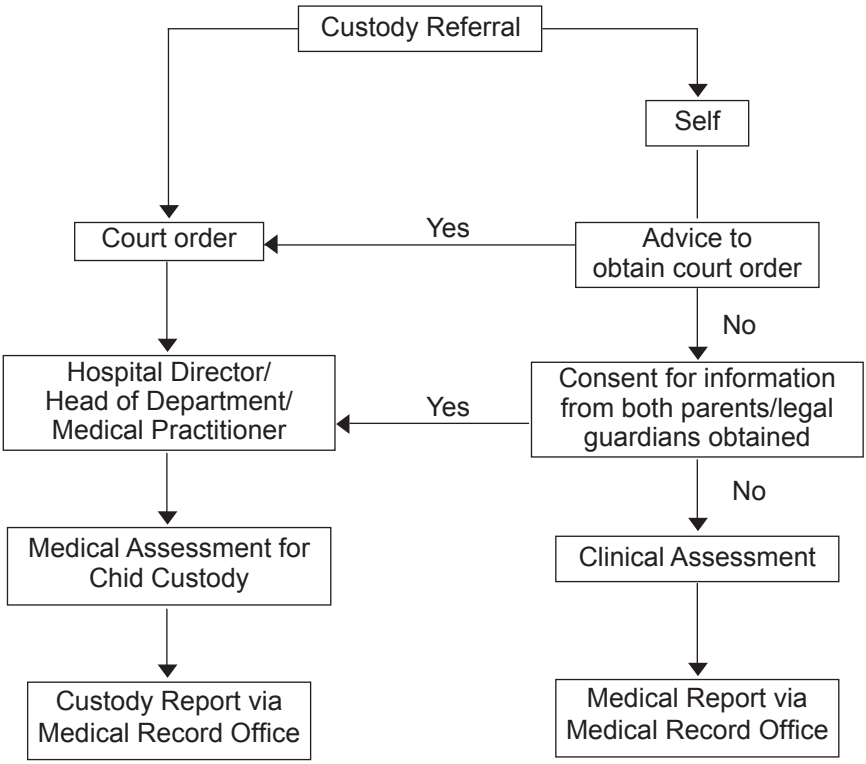
The process of child custody assessment is composed of several phases: planning and performing the clinical assessments, writing the report, making recommendations and sometimes testifying in court.

Amicable family dissolution and the nature of continuing family relationships are more important to a child's mental health than the structure of any particular custody arrangement.

4.1. Referral Procedure

Ideally, the request for the assessment should be via a court order to avoid potential disputes. A court order would enable access to all parties even without their consent to conduct the assessment. If one parent requests for a custody assessment to be done, the parent should be advised to obtain a court order.

If there is no court order, the assessor would need to obtain consent prior to communication with any other party. If no consent is obtained, the assessor would then do a usual medical assessment and document the shortcomings involved.



The referral procedure flow

4.2. The Assessor

The child custody assessor is a qualified health professional who functions as an impartial examiner. He/ she should have the minimum of a master's degree (or its regionally recognised equivalent) in a mental health field that includes formal education and training in child development, child and adult psychopathology, interview techniques and family systems. He/ she should also have relevant knowledge in the legal, social, familial and cultural issues involved in custody and access decisions (3, 5). These include psychiatrists, clinical psychologists, paediatricians and mental health workers familiar with custody assessments.

In the event that the assessor is unable to comment on a particular area of the assessment, which is beyond his/ her area of expertise, the court should be informed. The court would then appoint the relevant expert. The assessor, in custody cases, while guided by the child's best interests, reports only to the court or the legal counsel representing the court.

4.2.1. Dual role: Custody assessment versus therapeutic role (6, 7)

There is a difference between custody assessment and routine clinical assessment. In a clinical assessment the client is the child whereas in a custody assessment the client is the court (5, 8). The clinician assesses and recommends treatment whereas a custody assessor remains neutral and objective as to the custody issues while being supportive to the child.

Ideally, the health professional who is the treating clinician should not be the custody assessor for the same child. It is advisable for the assessment to be done by another health professional to maintain neutrality and objectivity. However in Malaysia, often the treating clinician has to take on the role of the assessor. In these instances, the assessor should be distinctly aware of his/ her boundaries and be clear about the dual role. Assessors must be mindful of this role and convey this to the relevant parties before beginning the assessment (9). The court-appointed child custody assessment carries limited confidentiality and the information

acquired is expected to come to the attention of the court.

4.3. Liaising with other agencies

Psychological data and opinions may provide additional information and perspectives about the child's best interests not otherwise readily available to the court. The assessor may need to liaise with other relevant departments and agencies that are involved in the child custody assessment process in order to contribute significantly to decisions about the child's welfare, although the court makes the ultimate decision.

4.4. Legal and cultural context

The assessor should be familiar with the local culture and laws when addressing child abuse, neglect and family violence and act accordingly. In keeping with Article 12 of the CRC, every child has the right to participate and express his or her views freely in all matters concerning them. However, the child must be able to understand the advantages and disadvantages of their proposed preference (10). The views of every child shall be given due weight in accordance with their age and maturity (2).

4.5. Place of assessment

The assessment can be done at any facility that the court appoints and nearest to the child's current location.

5. AREAS OF ASSESSMENT (5,11)

The process of assessment is dependent on the child's age and language skills. In order to conduct a comprehensive assessment, the child should ideally be interviewed and observed in several settings, i.e., alone, individually with each parent and together with both parents/ families. The assessor should also contact other relevant people, thus ensuring that all relevant parties are interviewed. The number of interviews for a complete assessment is dependent on the complexity of each case

and the assessor's clinical judgment. The assessor needs to inform the parent(s) or the legal counsel that adequate time would be required for a complete assessment and report.

5.1. Continuity & quality of attachments

Evaluating the quality of attachment between the child and the parents or the significant others is very important during the assessment. The assessor should ascertain the parent-child interaction and recognize and protect the opportunities for the child to maintain continuity with the attachment figures.

5.2. Styles of parenting and discipline

The assessor should evaluate each parent's parenting style to determine how good a fit there is between each parent and the child. Inferences should be explored and the assessor has the task to discover potential parental distortions or, alternatively, positive aspects of the parent-child relationship (9). Whenever possible, collateral sources of information (e.g. extended family members, teachers and other child caregivers) should be obtained to corroborate the information gathered.

5.3. Conflict resolution

The assessor should determine how conflicts are resolved in the family. It is useful to observe how each parent manages the disputes between the family members, particularly between the siblings which may happen during play or family sessions.

5.4. Parent's physical and mental health

Some parents may have physical or mental health issues that would interfere with their ability to care for the child. This includes history of drug or alcohol abuse and history of domestic violence, regardless of whether the violence was directed against or witnessed by the child. When evaluating the parents for these factors, the assessor must consider if the parent's mental or physical health poses a potential threat to the child's health and well-being.

5.5. Parental alienation

Parental alienation is a process and the result of the psychological manipulation of a child by one party into showing unwarranted fear, disrespect or hostility towards a parent or other family members. In a custody dispute, a child may appear to be extremely hostile toward one of the parents. The child finds nothing positive in the relationship with that parent and prefers no contact. The assessor should assess this apparent alienation and hypothesise its origin and meaning (9).

5.6. Gender Role Model

Parents may attempt to use gender consideration to bolster their case, for example, making the argument that a daughter should stay with a mother and a son should stay with a father. Each parent's relationship with the child and his/ her sensitivity to gender role model needs of the child is more important (9). The overall relationship and the ability to parent should take precedence over the gender of the parent itself.

5.7. Sibling relationship

Assessment of the sibling relationship and each parent's sensitivity to the relationship should be done. Siblings undergoing parental divorce need support from each other and where possible, should be together.

5.8. Child with special needs

Children with chronic physical illnesses, developmental disorders (e.g. autism spectrum disorder, attention-deficit/ hyperactive disorder or intellectual disability) and mental disorders (e.g. anxiety/ mood disorder) have special needs. The assessor should evaluate parental sensitivity and ability to understand and respond appropriately to the needs of this special population.

5.9. Social support systems

The assessor should gauge the availability of social network or support for the child in relation to each parent, for example presence of other

family members. The assessor should also evaluate the possible effects on the child if the supports are not readily available especially if a parent has a mental health issue or any other disability.

5.10. Cultural issues

The assessor should explore the possible impact of cultural influences on the child's development especially if the parents have different cultural backgrounds. It is important to assess each parent's attitude towards the other parent's culture and their willingness to allow the child to have the chance to experience the diversity.

5.11. Value system and religion

It is important for the assessor to evaluate parents' ethics and value systems and how it may impact the child. It is essential that the assessor refrains from imposing his or her own values on the parents. Should the child's wellbeing be adversely affected by a parent's value systems, the assessor should specify this in the report. Issues involving religion are often strong points of contention between parents of differing faiths. The child's best interest is of paramount importance in these circumstances.

5.12. Other relevant information

Information on parent's work schedules, education, social and financial standing is important to help the court reach a decision. However, this information is best provided by the social worker.

6. ETHICAL CONSIDERATIONS

Ethical issues are frequently encountered in custody assessments. The assessor must consider whether he/ she has biases with any party involved that might jeopardise the professionalism of the assessment. Potential areas of ethical conflict are:

6.1. Dual role (Assessor-therapist)

Defining professional roles and the purpose of the service at the outset of working with a client helps ensure clarity of expectations for the client and maintenance of appropriate boundaries for the assessor. Potential conflicts in legal matters for the assessor arise from fundamental differences between therapeutic and evaluative functions.

In circumstances where the therapist is required to perform a custody assessment, the assessor should ensure that all relevant parties are made aware of the potential conflicting dual role and its implications.

6.2. Consent

Assessment requested by the civil court does not require consent. If a parent refuses to participate, the assessment process should still proceed. The non-participation should be highlighted in the assessment report as a limitation. No opinion should be made about this parent.

7. REPORT WRITING

7.1. Writing a Custody Assessment Report

The child custody report should be clear with minimal medical jargon and no ambiguity in the information provided. The conclusion of the assessment should be based on a clearly articulated formulation.

7.2. Contents of custody assessment report

A custody report shall contain wherever possible:

1. Patient's particulars – e.g. age, gender, mental and physical health of the child
2. Context of the referral
3. Professionals involved, settings, dates, duration and number of sessions and assessments performed on the child.
4. Identification and verification of all parties involved

5. Limitations encountered in the process of custody assessment, if any
6. Parental factors (as elaborated in Areas of Assessment)
7. Attachment & bonding of the child and parents
8. The capacity of the child to state his/her wishes
9. The conclusion of the assessment should address the following issues:
   9.1. Child factors: Psychological functioning, developmental needs and perceptions of the child considering his/ her best interests;
   9.2. Parental factors: Their adaptive and psychosocial functioning and competency in parenting;
   9.3. Functional ability of the parents meeting the child's needs. The parent-child interactions should be evaluated;
   9.4. Other related situational variables that may affect the parents, child or the family.
10. Writing the recommendation: If there is insufficient information, the assessor should refrain from offering a firm recommendation. In addition, the assessor should refrain from recommending the exclusion of one parent from the child, even in cases involving the risk of abuse as this can be mitigated by supervised/ accompanied access.

The assessor should be clearly aware that the final decision is the court's prerogative.
(See Appendix 1 for Sample Report)

8. CASE SCENARIO: Common Issues and Challenges

8.1. Case 1: A child with behavioural issues

A 5-year-old girl was brought by her mother for reasons of school refusal and behavioural issues. Her mother reports that each time after visiting her father over the weekend, the child would show some behavioural changes i.e. crying, has tantrums and refuses to sleep. As a result of this, the child has started to refuse to go to pre-school and her mother wants a report from you as a psychiatrist to support that her child is

suffering from emotional trauma and would like to use this report as a supportive document in gaining full custody of the child in the divorce proceedings.

Issues and challenges:

1. As the mother came on her own, she should be advised to obtain legal advice and get a court order for a custody assessme
2. Behavioural issues or changes in child's behaviour can be at tributed to many factors, and one should not assume that paren tal discord is the sole factor. A good clinical history is needed to ascertain underlying causative factors.
3. A comprehensive history should be obtained from both parents and the child, even though the presenting parent was the mother.
4. A complete assessment requires several sessions. Prepare a report only when the assessment is complete. Do not be pressured into a hasty report.
5. In the ideal situation, two separate clinicians need to be involved. One to manage the psychological aspects of the child and one to conduct the custody assessment. However, due to limited resources, you may have to take on the dual role.

8.2. Case 2: A non-verbal child with alleged sexual abuse

A 3-year-old girl was brought by her father with alleged sexual abuse by the mother's boyfriend and is showing sexualised behaviour. The child's parents have been divorced for the past 2 years and the custody is with the mother. Her father requests for the child to be assessed psychologically and wants a document to be provided to support his application for the full custody of the child. The child was duly referred to the Suspected Child Abuse and Neglect Team (SCAN) and the physical examination did not reveal any evidence of abuse.

Issues and challenges:

1. In this case scenario, the priority should be to manage the alleged abuse as delineated in the protocol for the management of child abuse.
2. In the absence of physical evidence of abuse, the assessment of the child is more complex. We need to ascertain if the sexualised behaviour is part of the normal development of the child or a result of possible sexual abuse.
3. It is not easy to obtain history from a 3-year-old child as she may not be able to relate verbally. It may involve other modes of assessment and would need a child psychiatry consult.
4. Her father should be informed that her mother needs to be interviewed too. If the interview with her mother is not possible, this limitation should be documented in the report.
5. The report should reflect your findings even if it does not support her father s request.

8.3. Case 3: The use of a medical report in a custody case

A 7-year-old boy was brought by his mother presenting with symptoms of delayed speech, repetitive behaviour and being disruptive in class. There is underlying parental discord and a history of domestic violence. The clinician diagnoses this boy with Autism Spectrum Disorder and manages accordingly. His mother subsequently requests for a medical report, which she uses as a supporting document in the divorce proceedings as means to obtain custody of the child.

Issues and challenges:

1. The medical report in this case should only be about the diagnosis of Autism Spectrum Disorder. Do not draw conclusions about parental discord or domestic violence.
2. If the mother intends to have a custody assessment, she should be advised accordingly.
3. Be always aware that a medical report can be used for other purposes.

9. WORKING WITH OTHER AGENCIES

The assessor may need to liaise with other relevant agencies or departments that are involved in the child custody assessment process. This multiagency collaboration consists of representatives from the following agencies:

1. Interdepartmental level (e.g. Paediatrics, Obstetrics & Gynaecology, Medical Social Work)
2. Child Protection Officer and SCAN team - in the event there is suspicion of abuse
3. External agencies (e.g. Polis Diraja Malaysia, Jabatan Kebajikan Masyarakat and other relevant non-governmental agencies)

When working with other agencies, professional differences must not come in the way of timely and clear decision making. Professionals in all the agencies involved have a duty to act assertively and proactively to ensure that the child's best interests is seen as a priority.

10. OTHER ISSUES

If legal conflicts or parental dissatisfaction arises from the custody assessment, the assessor should consult his/ her superior and Penasihat Undang-Undang Kementerian Kesihatan Malaysia for legal advice.

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APPENDIX 1

Laporan Perubatan (Medical Report)
Kementerian Kesihatan Malaysia

Patient Particulars:

Name of patient:	MRN:
I/C or MyKID No:	Gender:
Passport No:	Age:

XYZ was referred to the psychiatry clinic of Hospital B for a custody assessment. The order came from the High Court Judge, in the context of a custody dispute between the parents.

XYZ was assessed by Dr. X, a Consultant Psychiatrist, Dr Y, a medical officer and Ms. L, a clinical psychologist (list all professionals present) for a total of __ sessions (duration, time, place), in the presence of (describe each session, seen with whom), on these dates: _____, _____, _____.

Information in preparing this report was also obtained by history from _____, _____, _____. Other relevant information were obtained from e.g. school report, child protector report, paediatrician report etc. Limitations encountered during assessment.

History:
Refer to the section on Areas of Assessment.

Mental State Examination:
Summation of observations of the child's appearance and behaviour, and interaction with siblings, with each parent and clinician. The ability of the child to express his/ her wishes.

Diagnosis:
If applicable

Conclusion:
Formulation of the assessment.

Recommendation, if any:
Recommendation for child's placement is considered with the best interest of the child in mind.

Report prepared by:
Name :
MMC Reg. No. :
Designation :
Qualification :
Department :
Signature : Date : Time :

Official Hospital Stamp

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