

**Consultation Paper with respect to the Babes programme and the Mandatory Reporting requirement under section 22 of the Criminal Procedure Code**

Submitted by the BABES Committee, Beyond Social Services ©

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## Introduction to the Babes programme

Babes is a secular **crisis intervention** programme that aims to **help pregnant teenagers**. It seeks to provide the necessary resources and information, whether emotional or practical, such that these teenagers know their options and are able to make responsible choices together with their families, and not take the drastic step of abandoning their babies, doing harm to themselves or their child within . Since the launch of Babes in February 2005 till the end of 2008, Babes has helped a total of 193 clients, with 3 falling into the under 14 age-range, and 29 in the 14 to 16 age-range. These 32 young persons under 16 years of age account for about 17 percent of the clients.

## Purpose of Discussion Paper

Beyond Social Services has found and foresees that the legal duty under section 22 of the Criminal Procedure Code of the public to give information to the police of the commission of the seizable Penal Code offences of *statutory rape* (section 375) and now *sexual penetration of minor under 16* (section 376A) has had and will continue to have a sizeable impact on our helping teenagers and their families in pregnancy crisis through the Babes programme, in that these young persons and their families are less likely and less willing to seek and receive support and assistance when they are told that either their child or the child's consensual sexual partner has committed a criminal offence that must be reported to the police. We fear such children, minors, young persons and their families may take risky or ill-informed actions that may endanger their lives or the lives of their babies. There are already examples of this happening.

We seek the assistance and guidance of the Attorney-General:

- (1) to help us better understand how to balance the law and how to continue to provide counselling and guidance with respect to ***non-coercive, non-exploitative, non-commercial consensual underage sexual intercourse especially between teenagers***, and how such cases are investigated and dealt with by the police and the Attorney-General's Chambers;
- (2) to help us better understand the law with respect to ***professionals in the social services*** in relation to the legal duty to give information to the police under the Criminal Procedure Code, and how cases of omission to do so are investigated and dealt with by the police;
- (3) to outline situations where there could be a ***reasonable excuse*** in the situation of a teenage pregnancy crisis not to give information to the police;
- (4) to consider diverting children and young persons from prosecution in cases of non-coercive, non-exploitative, non-commercial consensual underage sex (especially those who were in a mutual boyfriend/girlfriend relationship, or even planning on marriage).

## Executive Summary

1. Non-coercive, non-exploitative, non-commercial consensual underage sex between teenagers is a social phenomenon that is unlikely to be easily legislated away by way of punishing such behaviour. Recent trends indicate an increase among young Singaporeans which results in an increase in Sexually Transmitted Infections and unwanted pregnancies.
2. Beyond Social Services' Babes programme workers routinely have awareness of the commission of either section 375 or 376A Penal Code offences once it is verified that the teenager under 16 has an unplanned pregnancy. With the introduction of section 376A of the Penal Code, a perhaps unintended consequence is that even non-coercive, non-exploitative, non-commercial consensual underage sex between teenagers can be classified as a serious Penal Code sexual offence, and whereas previously there was only a legal duty to report to the police awareness of the commission of *statutory rape* with respect to pregnant girls under 14, there is now a duty to report the commission of *sexual penetration of minor under 16* with respect to pregnant girls under 16, save in certain circumstances where there could be a reasonable excuse.
3. In the highly stressful situation of an unplanned pregnancy crisis, there is a great concern that the legal duty to make a police report on the part of the Babes worker (especially where the teenager or family is unwilling to make the police report) may have serious detrimental impact on the situation, compounding the crisis and possibly endangering the life of the teenager and the child within. The helping relationship is also seriously affected with the loss of trust and cooperation so necessary to support these teenagers and their families. The requirement of mandatory reporting becomes an obstacle and contributes to the stress, disillusionment and possibly burn out of professionals in the field.
4. The law recognises the appropriateness of treating young persons differently from adults in view of their youth and vulnerability. With respect to the offence of *sexual penetration of minor under 16*, similar to the defence under the Women's Charter, section 377D(2) provides for the defence of *mistake as to age* for a person who was under 21 years of age at the time of the alleged offence.
5. Bearing this in mind, and more so in view of the risk to the very life and well being of the pregnant teen and the baby, it is keenly suggested that there is sufficient and "*reasonable excuse*" for Babes programme workers not to give the police information of awareness of the commission of an offence either under section 375 or 376A of the Penal Code in cases of unplanned pregnancies from consensual underage sex between teenagers, as the foremost ethical responsibility is to protect the teenager's life, safety and well being, and that of any unborn child. There could also be a secondary but lesser concern of what social and health impact could arise to the pregnant teenager's partner and his family.
6. It is suggested that if the law remains as it is, a diversionary programme be explored to divert teenagers from prosecution in cases of non-coercive, non-exploitative, non-commercial consensual underage sex. As a longer term strategy, the power to punish offenders in situations of coercive, exploitative and commercial sex with teenagers below 16 is certainly good and necessary and we certainly do not recommend removing this power.

## A. Statistics and Figures

1. Demographics and total live births in 2007 from *Singapore's Second and Third Periodic Report to the United Nations Committee on the Rights of the Child, January 2009* by the Ministry of Community Development, Youth and Sports, Singapore (page 2 & 3):

“As of end June 2007, the resident population was 3,583,100, a growth of 6.4% from 2003. Of the total resident population in 2007, 18.9% (678,400) were aged below 15 years ...”

### RESIDENT POPULATION AGED BELOW 20 YEARS BY AGE GROUP

	2003	2004	2005	2006	2007
0-4 years	210,000	204,800	199,600	194,400	193,600
5-9 years	247,000	240,500	237,200	235,200	229,500
10-14 years	259,100	257,300	258,600	256,400	255,300
15-19 years	214,000	227,400	234,900	246,500	257,300

“The total fertility rate per resident female was 1.29 in 2007, compared to 1.27 in 2003. There were a total of 39,490 live births in 2007 ...”

2. Teenage births figures from the *Report on Registration of Births and Deaths 2007* by the Registry of Births and Deaths, Immigration and Checkpoints Authority, Singapore (copy of relevant pages in Annex A):

### TEENAGE BIRTHS, 1998 – 2007

Year	Total
1998	787
1999	873
2000	953
2001	891
2002	843
2003	731
2004	781
2005	853
2006	838
2007	820

Of the 820 teenage births in 2007, 15 babies were born to teenagers below 15 years of age.

In 2007, there were 561 single parent registration births (registered without the father's name). About 34.9% of these births (about 196) were born to teenagers.

3. Adolescent suicides figures from *Singapore's Second and Third Periodic Report to the United Nations Committee on the Rights of the Child, January 2009* by the Ministry of Community Development, Youth and Sports, Singapore (page 64):

### SUICIDES IN CHILDREN 5 – 18 YEARS

Year	Total
2003	17
2004	9
2005	10
2006	7
2007	14

4. Adolescent sexually transmitted diseases figures from *Singapore's Second and Third Periodic Report to the United Nations Committee on the Rights of the Child, January 2009* by the Ministry of Community Development, Youth and Sports, Singapore (page 76):

PERSONS AGED 10 – 19 YEARS WITH SEXUALLY TRANSMITTED INFECTIONS

Year	Total
2003	368
2004	653
2005	678
2006	775
2007	820

Upward trend with more teenagers contracting sexually transmitted infections every year



5. Figures of reported rape, statutory rape and underage consensual sex in the article “Safety zone for violated victims” in *The Sunday Times, June 14, 2009 page Home 10*:

“Last year, there were 172 cases of reported rape, up from 129 in 2007 and 118 in 2006. Statutory rape, which involves victims below the age of 14, jumped from 57 cases in 2007 to 63 last year.

.....

SSCB [Serious Sexual Crime Branch of the Criminal Investigation Department] officers note how there has been a spike in consensual sex cases.

These cases are usually more straightforward, as the girls do not see themselves as victims.

Last year, 310 girls below the age of 16 were caught engaging in underage consensual sex, nearly 45 per cent more than in 2007.”

6. Figures of births to mothers aged 20 and below, and number of abortions, quoted in the article “Young mums’ baby blues” in *The Straits Times, Monday, June 22 2009 page B5*:

“From 2004 to last year, an average of 1,200 babies – almost 3 per cent of all babies born – were born each year here to mothers aged 20 and below.

About that number of abortions are done on teens each year: The number hovered around 1,400 in 2006 and 2007, but dipped last year to about 1,300.

Counsellors who work with young mums say that they are often not psychologically and financially ready for parenthood.

Mr Edward Ong, who heads the Singapore Planned Parenthood Association, said that firstly, the teenager and her parents have to deal with the shock and the shame of a pregnancy out of wedlock.

After the emotions settle, they have to decide between completing the pregnancy and aborting it.

The girl’s studies may have to be disrupted. If she is forced to start work after delivering the baby, she may become ‘economically disadvantaged’, he said.

.....

So far this year, four babies have been found abandoned and dead. The latest was found last week, dumped at a Bukit Batok staircase landing.”

7. Figures of girls under age 14 having sex, teenage STIs and abortions, quoted in the article "More girls under age 14 having sex" in *The Straits Times*, Thursday, August 6 2009 page A1:

"It is a sign of the times: More girls aged below 14 are having sex.

The police have now tabbed this as a worrying crime issue, and are trying to keep a lid on the problem.

Crime statistics issued yesterday for the first half of the year showed that the number of statutory rape cases involving girls under 14 jumped more than 70 per cent, to 37 cases, compared with 21 in the same period last year.

Consensual sex was often at the heart of the problem. Many of the girls had sex with casual friends and boyfriends, most of whom were about the same age.

.....

But beyond landing those involved in trouble with the law, teen sex also caused other problems.

Many such trysts led to unwanted pregnancies, abortions and a rise in the number of sexually transmitted infections (STIs) and HIV cases.

Last year, 787 teens caught STIs, more than three times the 238 in 2002. For HIV, the figure rose from one in 2002 to nine in 2007. The total number of teenage abortions last year was 1,289.

Yesterday, police said the increase in statutory rape offences was linked to wider societal trends, and they were working with various ministries, including the Ministry of Education and the Ministry of Community Development, Youth and Sports, to come up with programmes to educate youths on the legal and social consequences of underage sex.

.....

In their statement yesterday, police called on parents, schools and others to play a role in combating such crimes."

## **B. Legislation relevant to the Babes programme in this discussion**

### *Penal Code amended section 375 (Rape)*

- (1) Any man who penetrates the vagina of a woman with his penis
  - (a) without her consent; or
  - (b) with or without her consent, when she is under the age of 14 years of ageshall be guilty of an offence.
- (2) Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or caning.
- (3) Whoever –
  - (b) commits an offence under subsection (1) with a woman under 14 years of age without her consent,shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

### *Penal Code new section 376A (Sexual penetration of minor under 16)*

- (1) Any person (A) who –
  - (a) penetrates, with A's penis, the vagina, anus or mouth, as the case may be, of a person under 16 years of age (B);
  - (b) sexually penetrates, with a part of A's body (other than A's penis) or anything else, the vagina or anus, as the case may be, of a person under 16 years of age (B);
  - (c) causes a man under 16 years of age (B) to penetrate, with B's penis, the vagina, anus, or mouth, as the case may be, of another person including A; or
  - (d) causes a person under 16 years of age (B) to sexually penetrate, with a part of B's body (other than B's penis) or anything else, the vagina or anus, as the case may be, of any person including A or B,with or without B's consent, shall be guilty of an offence.
- (2) Subject to subsection (3), a person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.
- (3) Whoever commits an offence under this section against a person (B) who is under 14 years of age shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

### *Penal Code new section 377D (Mistake as to age)*

- (2) In the case of a person who at the time of the alleged offence was under 21 years of age, the presence of a reasonable mistaken belief that the minor, who is of the opposite sex, was of or above –
  - (a) the age of 16 years, shall be a valid defence to a charge of an offence under section 376A(2)

*Women's Charter section 140(1)(i)*

Any person who –

(i) has carnal connection with any girl below the age of 16 except by way of marriage shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.

*Criminal Procedure Code section 22 (Public to give information of certain matters)*

(1) Every person aware –

(a) of the commission of or the intention of any other person to commit any seizable offence punishable under Chapters VI, VII, VIII (except section 276B), XII and XVI of the Penal Code or under any of the following sections of the Penal Code:

161, 162, 163, 164, 170, 171, 211, 212, 216, 216A, 226, 270, 281, 285, 286, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 400, 401, 402, 430A, 435, 436, 437, 438, 440, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 489A, 489B, 489C, 489D and 506; or

(b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without its being known how that person came by death,

shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the officer in charge of the nearest police station or to a police officer of the commission or intention or of the sudden, unnatural or violent death or death under suspicious circumstances or of finding of the dead body, as the case may be.

(2) If any person discovers any dead body and he has reason to believe that the deceased met with his death through an unlawful act or omission he shall not remove or in any manner alter the position of the body except so far as is necessary for its safety.

*Penal Code section 176 (Omission to give notice or information to a public servant by a person legally bound to give such notice or information)*

Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to \$1,500, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence or in order to the apprehension of an offender, with imprisonment for a term which may extend to 6 months, or with fine which may extend to \$3,000 or with both.

*Penal Code section 202 (Intentional omission to give information of an offence, by person bound to inform)*

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment for a term which may extend to 6 months, or with fine, or with both.



### C. Teenage Sexuality

Sexual development in humans begins in adolescence at the onset of puberty – during the teenage years. This is about growing up, with sexuality being central to negotiating the transition from childhood to adulthood, and it is hence to be expected and only natural for teenagers to have physical and emotional sexual urges and desires as they develop as sexual beings. A significant number will explore their developing sexuality by having sex with their peers, as can be seen from the teenage birth figures, the abortion figures, the figures on adolescent sexually transmitted infections, and the figures on statutory rape and underage consensual sex in Section A above (pages 3 to 5).

Scientific studies have verified what the social sciences have observed, that physical sexual maturity precedes the development of the parts of the brain governing impulse control and rational thinking and decision-making (which apparently does not mature till early adulthood). The culture of sex in the modern ubiquitous mass media and popular culture, and the prolongation of adolescence in modern society contribute to the pressure on teenagers to have sex. Even with the best family nurturance, education and positive peer-group support, there will be teenagers who will have sex outside marriage.

Many of these teenagers will not, even if they know that sex under 16 is illegal, understand or appreciate why having sex under 16 is considered a criminal offence, and perhaps not have sufficiently developed their impulse control or rational thinking facilities to prevent their having sex.

Some will have an unplanned pregnancy and the Babes programme seeks to step in quickly in the ensuing pregnancy crisis to support the teenagers and their families through this difficult period.

### D. The Impact of the Law on Teenage Sex and the Babes programme

Prior to the latest amendments to the Penal Code, there were two relatively clearly defined categories of illicit sex affecting children and young persons:

- (a) the previous section 375 of the Penal Code was very clear that even with consent, sexual intercourse with a female under 14 was punishable as rape (commonly termed *statutory rape*);
- (b) then, section 140(1)(i) of the Women's Charter made sexual intercourse with a female under 16 years of age an offence (for the male), even if consensual (*carnal connection with a girl under 16*, commonly referred to as *underage sex*).

From the *Consultation Paper on the Proposed Penal Code Amendments* and the record of the Parliamentary debate on the second reading of the Penal Code (Amendment) Bill in October 2007, it is clear that the new offence of *sexual penetration of minor under 16* in the Penal Code was introduced with the purpose of further protecting minors against sexual exploitation and abuse, and not to further penalise underage sex.

In his address to Parliament to move for the Bill to be read a second time, the Senior Minister of State for Home Affairs, Associate Professor Ho Peng Kee said that “the amendments we are making to our laws to further protect minors from sexual abuse received strong support from many quarters,” and with respect to the new offence of *sexual penetration of minor under 16*, stated that “section 376A will be introduced to make oral and anal sex, whether consensual or non-consensual, with a minor under 16, an offence, attracting an imprisonment term of up to 10 years or fine or both. This new offence will also cover other penetrative acts such as penile-vaginal penetration and penetration of the anus

or vagina by any part of the body or object. Causing a minor to penetrate or be penetrated by any person will also be an offence. Whilst there is some overlap with the Women's Charter and the Children and Young Persons Act, we believe that this new offence will provide the prosecution with greater prosecutorial discretion in deciding on the appropriate charge to prefer based on the circumstances of the case."

Prior to this, the male having consensual sexual intercourse with a female below 16 years committed a lesser offence of "carnal connection with a girl under 16" (*consensual underage sex*) under the Women's Charter, where there is no legal duty to report this offence to the police. With the introduction of the new offence of *sexual penetration of minor under 16*, a perhaps unintended consequence is that the act of consensual underage sex between teenagers is now also a serious sexual offence under the Penal Code for both males and females, and where the girl gets pregnant (clear evidence of the commission of the offence), pursuant to section 22 of the Criminal Procedure Code, the public (including the Babes workers) are legally obliged to "forthwith" report this awareness of the commission of the offence to the police (unless they have "reasonable excuse" not to do so).

Even with the pertinent amendments to the Penal Code taking effect in February 2008, police statistics are still showing an increase in consensual underage sex. Even though consensual underage sex is a serious offence under the new section 376A of the Penal Code, this new law does not seem to have had a significant impact on the behaviour of teenagers so far.

## **E. A Comparative Study of the Legislation in Other Jurisdictions**

(a) The mandatory reporting provision in our Criminal Procedure Code was inherited from British days, adapted from the Indian Code of Criminal Procedure (section 22 of our Criminal Procedure Code very similar in terms with the current section 39 of the Indian Code of Criminal Procedure). One could surmise this provision in the Criminal Procedure Code was a codification of the old common law offence of *misprision of felony*, and was to prevent the commission of and to aid in the investigation of serious crimes especially against life.

(b) In Malaysia, section 13 of the Criminal Procedure Code is also worded very similarly to Singapore's section 22.

(c) The United Kingdom abolished the common law offence of *misprision of felony* by the Criminal Law Act 1967, and there is now no general duty to report offences in English criminal law. Mandatory reporting is limited to specific offences or situations; for example, misprision of treason is still an offence, it is an offence to fail to report terrorism under section 19 of the Terrorism Act 2000 and there are sanctions against the failure to report an arrangement which helps another person to acquire or use criminal property under the Proceeds of Crime Act 2002.

(d) In contrast to this, there has been a duty in French criminal law to report all serious offences (usually those crimes carrying a maximum of at least 10 years' imprisonment) since 1941 (Law 25<sup>th</sup> October 1941), with this duty being reinstated after Liberation (Ordonnance 25<sup>th</sup> June 1945) as Article 62. This is now contained in Articles 434-1 of their Penal Code. In the 1960s, a specific duty to report terrorism and offences against the State was added, followed in 1971 by a duty to report the abuse or neglect of children (now contained in Articles 434-2 and 434-3 respectively in the Penal Code). The duty to report child abuse has been the most prosecuted of the duties and in the mid 1990s reforms of the Penal Code, the duty to report was extended to cover violent offences against vulnerable adults as well.

*(Information on the English and French positions from the Web Journal of Current Legal Issues: Stretch, 'Duties to Report and the Proceeds of Crime Act 2002: A Comparison With Mandatory Reporting In France.' [2005] 4 Web JCLI)*

(e) In the United States of America, the offence of misprision of felony remains only in a very limited form, being applied only against persons placed in a special position of authority or responsibility.

Under the Californian Child Abuse and Neglect Reporting Act (California Penal Code sections 11164 – 11174.3), the general rule is that consensual underage sex is not reportable, unless there is:

- (i) sexual intercourse between a minor under 16 and an adult 21 and over;
- (ii) sexual activity between a minor 14 or 15 years old and an adult at least 10 years older than the minor;
- (iii) consensual sexual contact between minors where one is over 14 and one is under 14.

(f) In Thailand, it seems there is no mandatory reporting requirement for criminal offences, although the Child Protection Act B.E. 2546 (2003) requires the public to notify or report to the relevant officer having the duty to protect a child's safety of an act of abuse against a child (including sexual abuses committed against a child).

(g) In New South Wales, section 316 of the Crimes Act 1900 provides that a person who knows or believes that a serious indictable offence (punishable by imprisonment for life or for a term of 5 years or more) has been committed and has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it commits an offence if that person fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority. There is a proviso that a prosecution for this offence can only be commenced with the approval of the Attorney General if the knowledge or belief was formed or obtained in the course of practising or following a prescribed profession, calling or vocation. Social workers, including victim support workers and counsellors are included in the prescribed list.

## **F. Concerns of the Babes programme workers**

It is very often a confusing and highly stressful time for teenagers in the midst of an unplanned pregnancy crisis. Telling them there is a legal duty to report to the police the commission of the offence of *statutory rape* or *sexual penetration of a minor under 16* significantly compounds this crisis, and experience is already showing that this may amongst other things:

- reduce their willingness to seek needed help, fearing getting themselves, their families or their boyfriends into trouble with the law and fearful of the involvement of the police and other authorities in their lives;
- hamper and maybe even hamstring efforts to effectively build a helping relationship with the girl and her family, impeding efforts to help the girl make informed responsible decisions;
- create more and higher hurdles for the often teenaged father and the teenaged mother of the baby in taking responsibility for and in planning for the care of the child with their possible pending incarceration, and prevent the crucial bonding of the infant with the parents early in the child's life, and such an impact on the care of the baby could well have long-term psychological damage to the child;
- lead to their doing something detrimental to their and their babies' safety and well being, such as threatening suicide or other self-harm (including self-induced or illegal

abortions), running away, refusing to cooperate (including going for pre-natal health check-ups), abandoning babies and other such risky behaviours;

If word gets out that the Babes policy is to report the girls and their boyfriends to the police, very few pregnant girls would seek help from the Babes programme. These concerns affect not only the Babes programme; this situation is also pertinent to agencies and other bodies that such pregnant teenagers and their families may turn to, including the National Pregnancy Helpline, the maternity hospitals, Samaritans of Singapore, religious bodies, Family Service Centres and the whole range of other children and youth agencies.

Since the commencement of Babes about four years ago, we have had to make three police reports for girls under the age of fourteen who were found to be pregnant. Since the revision in the Penal Code, we have had to make three reports for girls under the age of sixteen who were found to be pregnant. The story below illustrates one of the cases of which we were required under the law to make a police report.

## CASE STUDIES

This 15 year old Babes Client was a Chinese, free thinker and was still schooling when she found out that she was pregnant. She was about three months then and had an intention to keep the child as this was already her second pregnancy. The father of the child was unknown at that point in time but the client's current boyfriend was willing to take responsibility for the child.

When news of the requirement to make a police report was broken to the client and her mother, the client and mother were extremely unreceptive to the situation and were initially keen to terminate Babes intervention in their lives. They felt very much threatened as they felt that the presence of Babes indicated also the presence of the legal authorities in their lives. This discomfited them tremendously resulting in them deciding on a premature termination despite the family needing help to deal with the repercussions of having a teenager pregnant.

Furthermore, they also refused to make a police report and said that they would go to Malaysia to have an illegal abortion if necessary so as to escape the legal obligations. They felt that since many others also pursued the same route with no ill effects, it was a viable option for them to pursue. Hearing that this was so, the Babes workers were concerned of the possible health risks involved as well as the legal implications of such act and persuaded them to do otherwise. The family finally agreed not to take illegal measures to terminate the pregnancy, but still refused to make a police report as they were afraid of the repercussions of making a police report.

Given the above situation, combined with the legal obligations required, the Babes workers decided to make a police report on the client's behalf, which was not at all well-received by the family. Having to do this further weakened the already fragile therapeutic relationship, rendering it difficult for the Babes workers to work effectively with the family afterwards as they viewed us with much suspicion as well as hostility. Furthermore, having to make a police report added much strain to the already precarious pregnancy situation and resulted in much distress and discomfort to the family, which was already overburdened with a teenage girl being pregnant.

For other case studies see Appendix I.

## **G. Reasonable Excuse?**

Section 22 of the Criminal Procedure Code was to prevent the commission of and to aid in the investigation of serious crimes especially against life, and where prosecutorial discretion is exercised wisely, one could possibly suppose that in the Babes situation, where there is consensual underage sex between teenagers and no coercion, exploitation or abuse, the worker would not be prosecuted for failing to inform the police. This may, however, be cold comfort to our Babes workers or any person who finds himself in the situation of having awareness of the commission of such a reportable offence.

More importantly, there are crucial life or death concerns and issues (with respect to the life and well being of the pregnant teen – this is not about the morality of abortion) and it is submitted that this consideration in the limited case of consensual underage sex between teenagers is sufficient and “reasonable excuse” not to give the police the information of awareness of the commission of the alleged offence.

The law, after all, recognises the appropriateness of distinguishing between adults and children/juveniles/young persons in view of the special needs and vulnerabilities of this stage of life, with the Penal Code acknowledging this in section 377D(2), providing for the defence of *mistake as to age* for a person who was under 21 years of age at the time of the alleged offence of *sexual penetration of minor under 16*.

In the situation of an unplanned teenage pregnancy crisis, it would be the foremost ethical responsibility of anyone with such information to protect against risks to the safety and well being of the pregnant teen, and not giving information to the police is a reasoned and responsible response to these concerns. This would be of increasing significance the younger the pregnant girl is, bearing in mind the more limited life experience and earlier developmental stage of the girl.

## **H. Diversionary Programme?**

Whilst the amendments made to the Penal Code have been for the purposes of further protecting minors against sexual exploitation and sexual abuse, it has maybe inadvertently also affected those who perhaps through a moment of adolescent indiscretion, have found themselves in an unplanned pregnancy crisis. Theories of adolescent development give sexuality a central place in negotiating the transition from childhood to adulthood. Thus, exploring their sexuality is part and parcel of a process of growing up and may not necessarily be defined as problem behaviour; taking steps to punish them may give the notion that sexuality is unhealthy, and will not only prevent them from seeking help but may further prove to worsen their already precarious pregnancy situation.

The power to punish offenders in situations of sexual coercion or exploitation certainly is good and necessary. In view of the question as to the appropriateness of punishing youthful sexual exploration behaviour, and the current legal system’s way of dealing with this issue, we wonder if it would be possible to design a programme to divert teenagers from prosecution in cases of non-coercive, non-exploitative and non-commercial consensual underage sex.

A. Babes Cases that fall under Section 376A of the Penal Code

We assisted 5 girls aged 14 and 15 years old after Section 376A came into place. Police reports were filed for all cases. 3 of the girls with the support of their parents proceeded to terminate their pregnancy. All these girls were very reluctant to file police reports because they were extremely concerned that their boyfriends aged between 16 to 17 years old would get into trouble with the law. They only did so because their parents supported them in the process. These girls were fortunate as their parents stepped in decisively to support them.

The other 2 girls and their families protested strongly when we informed them that they had to file a police report. They avoided us after receiving the information and were considering acting in manner that could prove detrimental to their well being.

1.

15 year old student whose family was considering an illegal abortion in Malaysia to avoid filing a report as they did not want to their daughter or her boyfriend aged 16 years old in trouble with the authorities. When we filed the police report, our fragile helping relationship was further weakened as mother and daughter were very angry that we did so and avoided us for about 2 months.

2.

15 year old who was 7 months pregnant and avoided medical appointments at KK Hospital as she was afraid that she would have to file a police report and her boyfriend whom she was planning to marry would get into trouble with the law. Her boyfriend was 18 years old and was serving his national service.

was staying with an aunt and they were very cold towards us when we informed them about the reporting obligation. family kept protesting that they have met the boy friend's family and have already starting discussing marriage. They felt that a police record for the boy would not help the couple's future and even disrupt the marriage plans.

B. Cases prior to Section 376A

We attended to 24 girls aged 14 and 15 years old and are highlighting the following cases as they had expressed much concern about the need to file a police report. These girls were unaware that reporting was not mandatory but if it was so, there would have been a strong possibility that they would have acted in an impulsive way that would have threatened their well being.

1.

She was about 7 months pregnant before she finally agreed to go for a medical check-up. She was avoiding having to make a police report and only allowed us to accompany her when we reassured her that a report was not necessary. Her boyfriend was 16 years old and she did not want to get him into trouble as he has already agreed to assume responsibility for the child.

2.

She was about 5 months pregnant. Her boyfriend was 18 years old and was intending to help-out with childcare. mother was quite fearful that she would lose her daughter if a police report was filed. Her eldest son was already in prison and she was very afraid that

would be taken into welfare if a police report was made. Also, mother felt that the boyfriend will stop taking responsibility if got him into trouble with the law. The family had no firm plans apart from the fact that the pregnancy had to be concealed from the authorities.

3.

mother contacted us regarding her daughter's pregnancy. She had suspected her daughter was about 4 months pregnant but her daughter has refused any assistance from her. Later, we learnt that was rejecting assistance as she did not want a police report against her boyfriend aged 16 years old. We were only able to persuade her to come clean with her mother and to accept medical attention after we assured her that we had no reporting obligations.