

DMA#72676v13 (Selina Lau)
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EVIDENCE (MISCELLANEOUS AMENDMENTS) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the [_____]

Clause

Amendment Proposed

4

(a) In the proposed section 57 -

(i) in subsection (3), by deleting everything after "compellable" where it first appears and substituting -

" -

(a) to give evidence for the prosecution but only in respect of any specified offence with which the accused or a co-accused is charged; or

(b) to give evidence on behalf of a co-accused but only in respect of any specified offence with which the co-accused is charged.";

(ii) by adding -

"(3A) An offence is a specified offence for the purposes of subsection (3) if -

(a) it involves an assault on, or an injury or threat of injury to, the husband or wife of the accused;

(b) it involves causing the death of, an assault on, or an injury or threat of injury to, a child of the family who -

(i) at the material time was under the age of 16 years or was a mentally incapacitated person; or

(ii) at the time when the evidence is given is a mentally incapacitated person;

(c) it is a sexual offence alleged to have been committed in respect of a

child of the family who -

(i) at the material time was under the age of 16 years or was a mentally incapacitated person; or

(ii) at the time when the evidence is given is a mentally incapacitated person; or

(d) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a), (b) or (c).";

(iii) in subsection (4), by deleting everything before "neither" and substituting -

"(4) Subject to subsection (4A), where an accused and the husband or wife of the accused are standing trial together,";

(iv) by adding -

"(4A) Subsection (4) shall not apply to either spouse who is no longer liable to be convicted of any offence in the trial (whether as a result of pleading guilty or for any other reason).";

(v) in subsection (10) -

(A) in the definition of "被控人", by deleting the full stop at the end and substituting a semicolon;

(B) by adding -

"mentally incapacitated person" (精神上無行為能力的人) means a mentally disordered person within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136) or a mentally handicapped person within the meaning of that section;".

(b) In the proposed section 57A(1), by adding "at any time" after "may".

16 In the proposed section 79I -

(a) in subsection (1), by deleting "A" and substituting "Subject to subsection (2), a";

(b) by deleting subsection (2) and substituting -

"(2) The court shall not give permission under subsection (1) if -

- (a) the person concerned is in Hong Kong;
- (b) the evidence can more conveniently be given in Hong Kong;
- (c) a live television link is not available and cannot reasonably be made available;
- (d) measures to ensure that the person will be giving evidence without coercion cannot reasonably be taken; or
- (e) it is not in the interests of justice to do so."

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- (a) In subclause (2) (b), by adding -

"(ia) by adding "or otherwise than on oath" after "oath";".

- (b) By adding -

"(2A) Section 10 is amended by adding -

"(2A) A magistrate may only take the evidence of a witness under subsection (2) (a) otherwise than on oath where this is asked for by the appropriate authority of the place outside Hong Kong."."

New By adding before the heading "**Consequential Amendments**" -

"19A. Regulations

Section 33(i) is amended by adding "or otherwise than on oath" after "oath".

20 By deleting the clause and substituting -

"20. False unsworn statement under certain Ordinances

Section 32A of the Crimes Ordinance (Cap. 200) is amended by repealing everything after "giving" and before "makes" and substituting "evidence otherwise than on oath pursuant to section 10 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), or where required to do so by an order under section 76 of the Evidence Ordinance (Cap. 8) or that section 76 as extended by section 77B of the Evidence Ordinance (Cap. 8),".

New By adding -

"22. Procedure on hearing appeal

Section 118(1)(b) is amended by repealing "paragraphs (a), (b) and (c)" and substituting "subsections (1) and (6) to (17)".

**Mutual Legal Assistance in Criminal
Matters Regulation**

23. Failure of witness to answer questions, etc.

Section 5 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap. 525 sub. leg. A) is amended -

(a) in paragraph (a), by repealing everything after "witness" and substituting "or refuses to take any other step to similar effect in accordance with the law of the place outside Hong Kong the appropriate authority of which has made the request concerned;"

(b) by adding -

"(aa) without lawful or reasonable excuse, refuses to answer a question when required to do so by the magistrate; or"

(c) in paragraph (i), by adding ", to take the step" after "sworn".

24. Schedule amended

The Schedule is amended, in Form 3 -

(a) by repealing everything after "by me to" where it first appears and before "refuses to" and substituting -

"be sworn (or affirmed) as a
witness (or to take any other
step to similar effect in
accordance with the law of the
place outside Hong Kong
concerned) now refuses so to
do*/(or being a witness)";

- (b) by adding "or take the step in
accordance with the law of the place
outside Hong Kong concerned" before
"*/answer".