

**Bills Committee on Domestic Violence (Amendment) Bill 2007 –
Supplementary Information Note**

**Protection under the Domestic Violence Ordinance to
“A Child Living with the Applicant”**

At the Bills Committee meeting held on 7 December 2007, Members requested the Administration to consider restoring the protection afforded under the Domestic Violence Ordinance (DVO) to “a child living with the applicant” by proposing suitable Committee Stage Amendments (CSAs) to the Bill. This note sets out the Administration’s position on Members’ request.

Protection to a Child under the DVO and the Bill : the Underlying Policy Considerations

2. The DVO enables a party to a marriage, or a man and a woman in cohabitation, to seek injunctive relief from the Court if the other party has molested the applicant, or a child living with the applicant. Under the DVO, the relationship between the applicant and the child is unimportant - as long as the child is living with the applicant and molested by the spouse/cohabitant of the applicant, the applicant may apply for an injunction to protect the child from further molestation.

3. During review of the DVO, we have received representations from various parties, to the effect that protection afforded to a child under the DVO is rather restrictive. For instance, the current law does not permit an application for an injunction to prevent the violent party from molesting a child living with the violent party (as opposed to living with the applicant), or one who is living with other relatives of the family, like grandparents. Moreover, the child cannot apply for an injunction other than through an adult applicant who is living with him/her.

4. Taking into account views of the consultees and the LegCo Panel on Welfare Services, the Administration has proposed in the Bill to dispense with the “living-with” requirement, and define coverage of protection by virtue of “family relationships”. Accordingly, under the Bill, any child (including natural, adoptive or step child) of the applicant, or the respondent, would be covered by the injunction order, and whether that child is living with the

applicant or not is not relevant to the Court's consideration. Also, under the Bill, a minor who has been molested by any of his/her specified relatives¹ may in his/her own right, through his/her "next friend", apply for an injunction order, whether or not the minor lives with the said relative.

5. While welcoming the enhanced protection extended to a minor under the Bill, Members were concerned that the Bill, in removing the "living-with" requirement, would exclude from the coverage of the future DVO any minor who is living with but unrelated to the applicant.

The Administration's Response

6. As we have explained at the Bills Committee meeting, neither the DVO nor the Bill is intended to address **all** inter-personal violence in a domestic context. Our policy intention is to focus protection under the Bill to people in familial relationships as defined under the Bill. It is against such a background that we have proposed to remove the qualification of the "living-with" requirement, in order that a minor who is molested by his/her parent or specified relative could seek protection under the DVO, irrespective of whether or not he/she is living with the applicant or the violent party.

7. We have also explained to Members that any minor who is molested by someone outside the scope of the Bill may seek protection under the Protection of Children and Juveniles Ordinance (PCJO) (Cap. 213). Under the PCJO, the Court is empowered to grant a supervision order or appoint legal guardian in respect of a minor who has been or is being assaulted, ill treated, neglected, sexually abused, or whose health, development or welfare had been or was being neglected or avoidably impaired. We remain of the view that in considering protection to the minor in question, a more appropriate and effective way is to seek a protection order from the Court under the PCJO and remove the minor from contact with the violent party.

8. That said, we also see weight in the Bills Committee's position, in that given the overall objective of the Bill to enhance protection to domestic violence victims, it would be incongruent to our policy intention if a class of domestic violence victims would end up being deprived of continued protection

¹ Including the minor's parents, grandparents, brothers, sisters, uncles, aunts, nephews, nieces and cousins, or the spouses of such relatives.

under the DVO upon enactment of the Bill. It is on account of this consideration that the Administration agrees to propose CSAs to the Bill to preserve the protection afforded to a minor living with the applicant from being molested by the applicant's spouse or cohabitant, and to extend the protection to those molested by the applicant's former spouse or cohabitant.

9. These CSAs will not detract from the policy intent of the Bill, to focus on extending protection to domestic violence victims as defined by specified family relationships, and dispensing with the "living-with" requirement.

Labour and Welfare Bureau
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