

立法會
Legislative Council

LC Paper No. LS94/06-07

**Paper for the House Committee Meeting
on 29 June 2007**

**Legal Service Division Report on
Domestic Violence (Amendment) Bill 2007**

I. SUMMARY

1. **Object of the Bill** To enhance protection for victims of domestic violence by amending the Domestic Violence Ordinance (Cap. 189).

2. **Comments** To expand the power of the Court to:
 - (a) grant injunctions against molestation by former spouses, former partners in cohabitation relationships between persons of opposite sex and other specified “relatives”;
 - (b) attach an authorization of arrest to an injunction;
 - (c) extend the maximum validity period of an injunction to 24 months;
 - (d) vary or suspend a custody order or an access order when granting injunctions; and
 - (e) require persons against whom injunctions are granted to participate in programmes approved by the Director of Social Welfare.

3. **Public Consultation** Between May and October 2006, the Administration consulted the Social Welfare Advisory Committee, the Women’s Commission, the Elderly Commission, representatives of the District Fight Crime Committee, the Chairmen and Vice-chairmen of the District Councils and the two Working Groups on Elder Abuse and on Combating Violence, and the Committee on Child Abuse under the Social Welfare Department.

4. **Consultation with LegCo Panel** The LegCo Subcommittee on Strategy and Measures to Tackle Family Violence and the Panel on Welfare Services discussed the preliminary proposals between May and September 2006 and on 8 January 2007 respectively. Members expressed views on the duration of the injunction, expansion of the scope of the Bill to different familial relationships, persons living in the same household and co-habitation relationships of the same sex, definition of “domestic violence” and court order requiring batterers to undergo counselling.

5. **Conclusion** The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by members, members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend the Domestic Violence Ordinance (Cap. 189) (Principal Ordinance) to enhance protection for victims of domestic violence.

LegCo Brief Reference

2. HWF/CR 1/3281/01 issued by the Health, Welfare and Food Bureau on 13 June 2007.

Date of First Reading

3. 27 June 2007.

Comments

4. According to the LegCo Brief, in response to public concern over domestic violence, the Administration has conducted a review of the Principal Ordinance and has identified a number of areas for further improvement. The Bill contains proposals which are intended to enhance the protection of victims of domestic violence as follows:

- (a) extending the scope of an injunction that may be granted under the Principal Ordinance to cover -
 - (i) molestation by former husbands, former wives or former partners in cohabitation relationships between persons of opposite sex; and
 - (ii) molestation of persons by their children, parents, grandchildren, grandparents, brothers, sisters, uncles, aunts, nephews, nieces and cousins or by the spouses of such relatives or by such relatives of their spouses;
- (b) enabling a court to -
 - (i) attach an authorization of arrest to an injunction containing a provision restraining the respondent from using violence against any person or a provision excluding the respondent from any premises or area, if it is satisfied that the respondent has caused actual bodily harm to the protected person or it reasonably

believes that the respondent will likely cause bodily harm to the protected person; and

- (ii) vary or suspend a custody order or an access order in relation to a minor when granting an injunction that concerns the minor after considering the welfare of the minor, the wishes of the minor and any material information, including any report of the Director available to the court at the hearing;
- (c) extending the maximum validity period of an injunction or an authorization of arrest to 24 months;
- (d) allowing minors to apply for injunctions under the Principal Ordinance by “next friends”;
- (e) making consequential amendments and minor technical amendments to the Principal Ordinance and the Domestic Violence Rules (Cap. 189 sub. leg. A); and
- (f) enabling a court to require persons against whom injunctions are granted to participate in programmes approved by the Director which are aimed at changing the attitude and behaviour that lead to the granting of such injunctions.

5. The Bill shall come into operation on a day to be appointed by notice published in the Gazette.

Public Consultation

6. According to the LegCo Brief, between May and October 2006, the Administration consulted the Social Welfare Advisory Committee, the Women’s Commission, the Elderly Commission, representatives of the District Fight Crime Committee, the Chairmen and Vice-chairmen of the District Councils and the two Working Groups on Elder Abuse and on Combating Violence, and the Committee on Child Abuse under the Social Welfare Department.

Consultation with LegCo Panel

7. At its closed meeting on 23 May 2006, the LegCo Subcommittee on Strategy and Measures to Tackle Family Violence (the Subcommittee) was consulted on the Administration's preliminary proposals to amend the Principal Ordinance. While expressing support for the preliminary proposals, major views expressed by members were as follows:

- (a) duration of the injunction order and the power of arrest attached should

be left to the discretion of the court to decide, as some matrimonial or custody proceedings took more than 24 months to conclude;

- (b) all familial relationships and persons living in the same household should be covered;
- (c) a definition of "domestic violence" to include physical abuse, sexual abuse and psychological abuse should be specified; and
- (d) the court should be empowered to make orders requiring batterers to undergo counselling.

8. For details on the deliberations of the Subcommittee, members may wish to refer to the minutes of the Subcommittee meetings on 15 June and 20 September 2006 (LC Paper Nos. CB(2)223/06-07 and CB(2)285/06-07) and the background brief on the Review of the Domestic Violence Ordinance (Cap. 189) for the meeting of the Panel on 8 January 2007 (LC Paper No. CB(2)723/06-07(04)).

9. At its meeting on 8 January 2007, the Panel was consulted on the Administration's proposal to amend the Principal Ordinance. While expressing support for the legislative proposal, some members were concerned about the problem of increasing elderly abuse cases and took the view that the scope of the Bill should be extended to cover non-spousal elderly abuse. These members advised that they would consider proposing amendments to the Bill if the Administration did not take heed of their views. Some members also suggested that the scope of the Bill should be extended to cover co-habitation relationships of the same sex. Some members considered that the meaning of "domestic violence" should be spelt out clearly to render better protection to the victims of domestic violence. They urged the Administration to include physical abuse, sexual abuse and psychological abuse in the term "domestic violence". Members may wish to refer to the minutes of the Panel meeting on 8 January 2007 (LC Paper No. CB(2)1027/06-07) for details.

Conclusion

10. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the concerns raised by members, members may wish to form a Bills Committee to study the Bill in detail.

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26 June 2007