

For information
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LEGCO PANEL ON WELFARE SERVICES

Subcommittee on Strategy and Measures to Tackle Family Violence

Prosecution of Abusers in cases involving Domestic Violence

Introduction

This paper sets out the enforcement actions against abusers in cases involving domestic violence taken by the Police, and the policy of the Department of Justice (DoJ) for prosecuting such abusers.

2. Prosecution of perpetrators for acts of violence arising within a domestic context is handled by way of bringing charges for relevant offence(s) under the general criminal law. For example, the Crimes Ordinance (Cap. 200) deals with sexual and related offences, such as rape, incest and indecent assault, and acts resulting in psychological harm such as criminal intimidation. The Offences Against the Person Ordinance (Cap. 212) covers such offences as homicide, wounding, assault, forcible taking or detention of persons, wounding or inflicting grievous bodily harm, unlawful abandonment or exposure of a child aged under two years, and wilful assault, ill-treatment, neglect or abandonment of a child.

Police Enforcement

3. The Police handle and investigate all reports of domestic violence professionally and conduct thorough investigations according to the circumstances of each report. Where there is evidence of an offence, Police will take prompt and decisive actions to effect arrest. Depending on the circumstances of each individual case and subject to availability of

sufficient evidence such as the victims' and witnesses' testimony, medical reports and other circumstantial evidence, the Police will initiate prosecution action.

4. Domestic violence, different from other cases, often remains a one-against-one case, being the victim's version versus the abuser's version. In the absence of any other witnesses, the Police may encounter difficulties in verifying the truth among the two versions. Despite the existence of medical reports and other circumstantial evidence, the victim's testimony remains the crucial part in establishing the prosecution case. Nevertheless, a victim, for various reasons, may decline to provide further information to the Police, not to mention testifying against the abuser in criminal proceedings. Under these circumstances, the Police might encounter certain difficulties in initiating prosecutions against the domestic violence abusers.

Prosecution by Department of Justice

5. DoJ is responsible for the control of criminal prosecutions, free from any interference. Like any other criminal cases, the decision as to whether or not to prosecute an offender in a domestic violence case rests with the prosecutor. In handling these cases, DoJ will act in accordance with "The Policy for Prosecuting Cases involving Domestic Violence" and "The Statement of Prosecution and Practice".

The Charging Policy

6. In deciding whether to take forward a prosecution in a case of domestic violence, the prosecutors will need to consider alignment with the public interests. Public interests will normally require that a prosecution be brought in a case of domestic violence if–

- there is sufficient evidence to provide a reasonable prospect of conviction; and
- the victim is willing to give evidence.

7. In selecting the appropriate charge(s), the prosecutor will choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence.

8. In making his decision, the prosecutor should take the views of the victim into account, without treating it as determinative. The prosecutor should obtain information about the family circumstances and the likely effect of a prosecution on the members of the family. In general, the more serious the offence, the more likely it is that public interests will require a prosecution.

9. Domestic violence often occurs in private. The victim may be the only witness who can testify to the commission of the offence, which the accused may deny. Unless the accused admits the offence and pleads guilty, the victim will in all likelihood be required to testify at court. But the prosecutor will actively consider what other evidence may be available. It is not to be assumed that bringing the victim to court to testify is the only way to prove a case.

Binding Over

10. A bind over order is an order which the court can make when it considers that the suspect may offend again. The suspect must agree to behave properly within a period of time. There must also be sufficient evidence to support the complaint and to justify the making of the order. A bind over order may be appropriate as an alternative to prosecution if the case is minor and –

- the parties are reconciled;
- there is no history of violence; and
- there is a concern over a future breach of the peace.

11. A bind over order may also be sought if the victim withdraws support for the prosecution, and the prosecution decided to discontinue the case. Even then, the prosecutor should only seek such an order if there is still sufficient evidence to substantiate the complaint.

12. An accused may offer to be bound over on condition that the charge(s) is/are dropped. The prosecutor would approach any such proposal with great caution. It would only be accepted after a careful consideration of the possible consequences and whether it would be in the public interests to do so. To dispose of the case in this way is not likely to be in the public interests in cases involving serious violence. Ultimately, it is for the court, not the prosecution or the defence, to decide if a bind over order is appropriate in the case presented before it.

Prosecuting against the wishes of the victim

13. In some cases the violence may be so serious, or the previous history shows such a real and continuing danger to the victim or the children or other persons, that the public interests in pursuing a prosecution have to outweigh the victim's wishes. If the prosecutor concludes that the case should continue and that it is necessary to rely on the victim's evidence to prove the case, then the prosecution has to decide –

- whether an application could be made to use the victim's statement in evidence under section 65B of the Criminal Procedure Ordinance (Cap. 221) (in which case the consent of the defence is required);
- whether the prosecution can proceed by helping the victim to attend court by the use of special measures, such as CCTV; or
- whether the victim should be compelled to give evidence in person in court, under section 57 of the Criminal Procedure Ordinance.

Statistics

14. In 2006, the Police received reports on a total of 1 811 domestic violence-related crime cases, which were then investigated by crime investigation teams. Out of these crime cases, a total of 1 408 cases (or 78%) have so far been dealt with by the court by way of prosecutions or binding over proceedings. In 2004 and 2005, the Police received 903 and 1 274 domestic violence crime cases respectively, out of which, 511 (or 57%) and 904 (or 71%) cases were dealt with by the court.

Hong Kong Police Force
Department of Justice
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