

For Information

Legislative Council
Panel on Administration of Justice and Legal Services
Protection of Victims or Witnesses of Sexual Offence Cases
During Court Proceedings

PURPOSE

The purpose of this paper is to provide Members with the information on the measures that are available for adoption by the court during judicial proceedings where protection of the victims or witnesses of sexual offence cases is required.

BACKGROUND

2. Dr Hon Elizabeth QUAT wrote to the Chairman of the Legislative Council Panel on Administration of Justice and Legal Services (“AJLS Panel”) on 22 January 2013, seeking information regarding the procedures and measures on the handling of sexual offence cases. The Clerk to the AJLS Panel wrote to the Judiciary Administration on 25 January 2013, asking the Judiciary Administration to provide the relevant information as far as the Judiciary is concerned. The Judiciary Administration has provided an information paper on the matter on 21 February 2013.

3. On 29 April 2013, the Judiciary Administration was informed that the matter would be discussed at the AJLS Panel meeting on 28 May. The Judiciary Administration has taken the opportunity to update the information provided to show the latest position in respect of the provision of screens in the Magistrates’ Courts.

4. The Judiciary is the independent institution responsible for the administration of justice through adjudicating cases in judicial proceedings. This paper focuses on the measures available for adoption in protecting the victims or witnesses of sexual offence cases during the judicial proceedings.

MEASURES TO PROTECT VICTIMS OR WITNESSES OF SEXUAL OFFENCE CASES

5 There are various measures that are available to ensure that the victims or witnesses of sexual offence cases have the necessary privacy and protection during the court proceedings. These measures will be described in paragraphs 7 to 23 below.

6. The court will consider the circumstances of each case to determine whether it is appropriate for any one or more of such measure(s) to be used. Generally speaking, the measure(s) will be used where it is satisfied that they are required for the administration of justice and fair adjudication.

(A) Statutory Measures

(a) Anonymity of Complainants

7. Section 156 of the Crimes Ordinance, Cap. 200 provides that after an allegation is made that a specified sexual offence has been committed, no matter, which will likely lead members of the public to identify any person as the complainant in relation to that allegation, shall be published in Hong Kong in a written publication available to the public or be broadcast in Hong Kong, unless the court directs otherwise. This is to prevent the identification of the complainant who may be the victim or witness.

(b) Power of Exclusion & Closed Court

8. Normally, the prosecution would apply on behalf of a victim or witness to a criminal court for excluding the public from the proceedings and/or for the proceedings to be held in camera under the following legislative provisions:

- (i) Section 122 of the Criminal Procedure Ordinance, Cap. 221, provides a judge or a magistrate with the power to order the exclusion from the court in which he sits of members of the public where the proper administration of justice so requires; and

- (ii) Under section 123(1) of Cap. 221, subject to the provisions of the Hong Kong Bill of Rights Ordinance, Cap. 383, if it appears to a court that it is necessary so to do in the interests of justice or public order or security, the court may order that the whole of proceedings before it in respect of any offence or, having regard to the reason for making such an order, any appropriate part of such proceedings shall take place in a closed court.

(c) Non-disclosure of Identity of Victims or Witnesses

9. Pursuant to section 123(2) of Cap. 221, the court may order that no question shall be put to any specified witness in the proceedings before it if the answer thereto would lead, or tend to lead, to disclosure of the name and address of any witness in the proceedings. The witness includes the victim of a sexual offence case.

(d) Prohibition on Taking Photographs, etc in Court

10. Under section 7 of the Summary Offences Ordinance, Cap. 228, no one shall be allowed to take or attempt to take any photograph, portrait or sketch of any person in court. This serves the same purpose of protecting the identity of a victim or witness.

(e) Special Measures for Child Victims or Witnesses

11. If the victim of a sexual offence case is a child under 17 or 18 years of age (as the case may be)¹, the court may make special arrangements for them as a vulnerable witness under Cap. 221 as follows:

(i) Video Recorded Evidence

12. In accordance with section 79C of Cap. 221, the court may allow the video recording that has been made of an interview between the child and a police officer or a social worker/a clinical psychologist who is employed by the Government be admitted and used as evidence in the

¹ According to section 79A of Cap. 221, “child” means a person who in the case of an offence of sexual abuse -

(i) is under 17 years of age; or

(ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 18 years of age.

proceedings. In the circumstances, the court may decide that the child need not be examined in chief.

(ii) Evidence by Live Television Link

13. In accordance with section 79B of Cap. 221, where a child is required to give evidence, or be examined on video recorded evidence given under paragraph 12 above, the court may, on application or on its own motion, permit the child to give evidence or be examined by way of a live television link.

14. Practice Direction – 9.5 entitled “Evidence by Way of Live Television Link or Video Recorded Testimony” sets out clearly the related arrangements for live television link and video recorded testimony. During the proceedings where live television link is made use of, the judge will ensure that no intimidating practices are adopted in the course of questioning; and no inappropriate language is used having regard to the age and mental capacity of the child. Where a defendant is not represented and wishes to ask questions of the child, the judge in his/her discretion may permit:

- (1) the picture to be switched off on the monitor in the CCTV witness room allowing only the defendant’s voice to be heard by the child; or
- (2) the question to be channelled through another person (including the judge),

if he/she feels that the impact of cross-examination will be too inhibiting or threatening to allow the child to answer freely.

(iii) Depositions

15. In accordance with section 79E of Cap.221, where a child is to give evidence in proceedings and in respect of such proceedings:

- (1) for good reason it is unavoidable that a trial cannot be heard without delay; or
- (2) exposure to a full trial would endanger the physical or mental health of the child,

a party to the proceedings may apply for leave for a deposition in writing to be taken from the child by a magistrate. Where leave has been granted, a magistrate may take the deposition at any time before the trial of the offence commences. A deposition taken as such would be admissible as evidence without further proof at the trial of the offence to which the deposition relates. Moreover, except with leave of court, the child in respect of whom a deposition has been taken shall not be examined or cross-examined in any subsequent hearing on any matter which in the court's opinion has been dealt with in the deposition.

(B) Administrative Measures

16. In addition to the above statutory measures, there are other administrative measures which can be resorted to by the court in protecting the victims or witnesses of sexual offence cases. These are set out at paragraphs 17 to 23 below.

(a) Banning of Shooting and Recording in Court

17. No shooting or recording is allowed in court. This prevents the disclosure of the identity of the victims or witnesses.

(b) Provision of Screen

18. When a victim or witness gives evidence in courtroom, the court, upon the application of the prosecution, may arrange for a screen to be placed around the victim or witness so that the public or the press will not be able to view or identify the victim or witness during the related proceedings.

19. In the past, such screen was generally provided by the prosecution. Nonetheless, in view of the recurrence of such requests and the need for consistency, arrangements have been made for their procurement to be centrally co-ordinated and provided by the Judiciary. At present, screens are available in the High Court, the District Court and the seven Magistrates' Courts.

(c) Provision of Special Passage

20. Where circumstances warrant, the court may order that special arrangement would be made for the victim or witness to enter/leave the court building through special passageways. Such order is generally made upon the application of the prosecution.

(d) Special Arrangement in respect of Daily Cause List

21. Daily cause list placed at the reception counter or the Judiciary website for dissemination to the public will only display the initials of a defendant's name if full disclosure may lead to identification of the victim or witness.

(e) Special Arrangements for Child Victims or Witnesses

22. Cases involving child victims or witnesses will be given priority for listing purposes.

23. On the day of trial, in order to avoid child victims or witnesses being burdened with additional stress, postponement, except in very exceptional circumstances, would be avoided as far as possible. All preliminary issues that may otherwise delay the start of the trial would be dealt with in advance or, alternatively, notified to the parties concerned and to the court, at least seven days before the commencement of trial so that arrangements can be made to obviate the child victims or witnesses from coming to court on days or at times when it is unlikely that they will be needed.

CONCLUSION

24. The Judiciary attaches great importance to the need to provide adequate safeguards where protection of victims or witnesses of sexual offence cases is required. It will monitor the situation closely to ensure that this objective will continue to be met.

Judiciary Administration
(Revised in May 2013)