

Bills Committee on Domestic Violence (Amendment) Bill 2007
Supplementary information

Who can be a “next friend”

Under Order 80 of the Rules of the High Court (Cap 4A) and Order 80 of the Rules of the District Court Ordinance (Cap 336H), a person under disability (i.e. a minor or a mentally incapacitated person) may not bring or make a claim in any proceedings except by his “next friend”. There is no statutory definition of the term “next friend” and no particular category of person is excluded from acting as “next friend” of a minor under the aforementioned Rules.

According to legal advice, any person who is not connected with the defendant or has no interest adverse to that of the minor may act as a “next friend”. A “next friend” will normally be a family member, guardian or close acquaintance, who has no conflict of interest in the subject matter of the proceeding. If the action is prima facie for the benefit of the minor, the “next friend” will not necessarily be removed even if he is impecunious and a stranger (*Jones v. Evans (1886) 31 S.J.11*). It is noted from previous reported court cases in Hong Kong that parent, sibling, grandparent, spouse, aunt, social worker, trust corporation has acted as “next friend”.

The concept of “next friend” is a well-settled common law concept, and has not been defined. Generally, any adult who is willing to be responsible for the conduct and cost of legal proceedings instituted on behalf of the minor may act as “next friend” of a minor. Based on the above principle, the Director of Social Welfare (DSW) is not precluded from being a “next friend” of minor, who has no suitable family member to act as his “next friend”. That said, it should be noted that under such circumstances the more appropriate and expeditious way for DSW to remove a child from immediate risk is to apply for a care or protection order under the Protection of Children and Juvenile Ordinance (Cap. 213), which empowers the Juvenile Court to commit the child to the care of any person, grant a supervision order or appoint the DSW to be the legal guardian in respect of a child 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, or who requires care or protection.

Details of the proposed anti-violence programme

Under the proposed new section 3(1A) of the Domestic Violence Ordinance (DVO), the court may, in granting a non-molestation order, require the abuser to attend the anti-violence programme (AVP), seeking to change his / her attitude and behaviour that lead to the granting of the injunction order.

The proposed AVP will be educational in nature and applicable to different types of abusers and their participation will be decided by the court. Whilst the detailed requirements of the proposed programme are being thrashed out by the Social Welfare Department (SWD), it is expected to comprise five core components, viz. rapport building and ownership, control and monitoring of violence, self-understanding (learn, confront and challenge), skills training and building, and relapse prevention, with details as follows –

- (i) On ***rapport building and ownership***, the participant will be familiarised with the programme and motivated for enhancement. The caseworker will arouse the person's awareness of the impact of abusive and violent behaviour as well as the legal consequences, and the importance of accepting one's responsibility and seeking help to change.
- (ii) On **controlling and monitoring of violence**, the participant will be guided to share his / her recent conflicts and their management. The caseworker will monitor the participant's situation and work out safety plans to enhance behavioural control and end one's abusive behaviour.
- (iii) On **self-understanding**, the participant will learn and face his / her antecedents of violence, vulnerability, and the violence development and culture, the effect of one's violence on his spouse / partners / the child and other family members, the impact of alcohol, gambling and substance abuse. The participant will also be taught on the key elements of a positive and healthy relationship, including the importance of communication, gender equality and mutual respect, the trust, support and empathy to the other person.
- (iv) On **skills training and building**, the participant will learn basic emotional control skills, including the awareness and expression of

his / her emotion, anger management and anxiety management. The training will help the participant improve his/her self esteem, communication skills and assertiveness. The participant will also receive training on non-violent tactics in handling and resolving relationship conflicts.

- (v) On **relapse prevention**, the participant will learn the relapse prevention skills and get prepared for further intervention.

The proposed anti-violence programme will consist of 12 two to three-hour-long sessions conducted by mental health professionals (social workers, counsellors or psychologists) in the form of either one-on-one or group session. Non-governmental organisations (NGO) will be engaged in delivering the programme and they will be invited to submit programme proposals for approval by the DSW in due course. The approved programmes should include the key elements as set out above and may be modified to suit different types of abuses concerned. The approved programmes should also include a mechanism measuring impact of the programmes on the participants. The Government will fund the operation of such approved programmes based on the number of court referral cases. For NGOs that intend to run AVP on a self-financing basis without seeking funding from SWD, as long as their proposed programmes comprise the required core components, approval will also be given. SWD will in due course make public the details of the AVP to ensure transparency.

The respective NGO service providers will be required to record attendance of participants and report to SWD accordingly. Absence from a scheduled session without prior notification to the service provider will be regarded as non-compliance of the requirement set by the court and hence a breach of the injunction concerned. SWD will provide such attendance record to the applicant of the injunction order and the court as appropriate. Breach of an injunction is a contempt of court and can be punished by imprisonment or a fine.