

**For information
8 October 2007**

LEGCO PANEL ON WELFARE SERVICES

Subcommittee on Strategy and Measures to Tackle Family Violence

Prosecution of Abusers in cases involving Domestic Violence

Introduction

At the meeting on 25th July, 2007, the Administration was requested to submit an information paper to elaborate on the prosecution policy relating to domestic violence. This paper sets out that prosecution policy in greater detail and is supplementary to the information paper submitted by the Hong Kong Police Force and the Department of Justice jointly in July, 2007. The general prosecution policy is set out in *The Statement of Prosecution Policy and Practice* which applies to all criminal offences. The prosecution policy for domestic violence is more particularly set out in *Domestic Violence : The Policy for Cases involving Domestic Violence*. Both documents are attached to this paper.

General Prosecution Policy and Practice

2. The prosecutor must consider two issues in deciding whether to prosecute. First, is the evidence sufficient to justify the institution or continuation of proceedings? Second, if it is, does the public interest require a prosecution to be pursued?

3. When considering the institution or continuation of criminal proceedings the first question to be determined is the sufficiency of the evidence. A prosecution should not be started or continued unless the prosecutor is satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person. We do not support the proposition that a bare prima facie case is enough to justify a decision to prosecute. The proper test is

whether there is a reasonable prospect of a conviction. This decision requires an evaluation of how strong the case is likely to be when presented at trial. When reaching this decision, the prosecutor will wish as a first step to be satisfied that there is no reasonable expectation of an ordered acquittal or a successful submission of no case to answer.

4. A proper assessment of the evidence will take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court, as well as an evaluation of the admissibility of evidence implicating the accused. The prosecutor should also consider any defences which are plainly open to or have been indicated by the accused, and any other factors which could affect the prospect of a conviction.

5. Once the prosecutor is satisfied that the evidence itself can justify proceedings in the sense that there is a reasonable prospect of obtaining a conviction, he must then consider whether the public interest requires a prosecution. Regard should be had to the availability or efficacy of any alternatives to prosecution.

6. Although the public interest will be the paramount consideration, the interests of the victim are an important factor in determining the balance of the public interest and should be taken into account. The factors which can properly lead to a decision not to prosecute will vary from case to case, but, broadly speaking, the graver the offence, the less likelihood will there be that the public interest will allow of a disposal less than prosecution. In assessing the gravity of the offence, it will be necessary to consider whether the victim has suffered significant harm or loss. Where, however, an offence is not so serious as plainly to require prosecution, the prosecutor should consider whether the public interest requires a prosecution. Factors to be taken into account include likely penalty, staleness, youth, old age and infirmity, mental illness or strain, sexual offences, peripheral defendants, remorse, delay mitigation, availability of a civil remedy, counter-productiveness of prosecution, mistake, attitude of the victim and assistance to the authorities.

Domestic Violence

7. The public interest 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.

8. In deciding whether to prosecute a case involving domestic violence, the prosecutor takes the views of the victim into account, without treating them as determinative. The prosecutor obtains 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 is it that the public interest will require a prosecution, even if the victim does not wish to co-operate.

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.

10. On rare occasions, the public interest might not require a prosecution in cases involving domestic violence. Such situations might arise where the victim wishes to consider an alternative to prosecution, the violence involved was minimal, the accused has no history of spousal or other forms of violence such that the risk to the victim's safety can credibly be assessed as low or the accused is motivated to change.

11. The charges in domestic violence cases should reflect the seriousness and persistence of the accused's behaviour, the probable intent and the severity of the injury caused. They must provide the court with the capacity to impose a sentence which adequately reflects the seriousness of the crime. If an accused offers to plead guilty to a different and possibly less serious charge, this will only be accepted if it enables the court to pass a sentence that reflects the seriousness of the offence. The victim will be advised of the charges brought, and alerted to any change, and consulted and advised when necessary.

12. 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 concern over a future breach of the peace.

13. A bind over order may also be sought if the victim withdraws support for the prosecution, and it is decided to discontinue the case. Even then, the prosecutor only seeks such an order if there is still sufficient evidence to sustain the complaint. A bind over order operates in the interest of preventive justice.

14. An accused may offer to be bound over on condition that the charges are dropped. The prosecutor will approach any such proposal with great caution. It is only accepted after a careful consideration of the possible consequences and whether it would be in the public interest to do so. To dispose of the case in this way is not likely to be in the public interest in cases involving serious violence. If, however, the consequences of prosecution would be out of all proportion to the seriousness of the offence or to the penalty which the court is likely to impose, a bind over order may satisfy the interests of justice.

Expediting the Trials of Vulnerable Witness Cases:

15. In order to avoid delays in bringing cases involving vulnerable witnesses to trial, the Department has implemented measures to facilitate the fast-tracking of such cases. These include :

- (1) Where possible, vulnerable witness cases should be tried in Chinese,
- (2) Legal advice on vulnerable witness files should be provided within seven working days of their receipt from the police,
- (3) Vulnerable witness case files are noted '*High Priority*', and this is highlighted on the police file by the Department of Justice staff, when the file is received, and also on the prosecution file once this is prepared,
- (4) The file is submitted by the police for advice as a matter of urgency, and need not include transcripts and translations, or the results of scientific examinations of exhibits,
- (5) Vulnerable witness cases should be committed for trial on the first return day,
- (6) In order to achieve committal on the first return date, the committal bundle should be served on the defendant no later than the twenty-eighth day after the date on which the return day is fixed by the court,
- (7) Witness statements and documentary exhibits should be served on the defence as they become available, rather than when the complete bundle is ready,
- (8) At the time that advice is given, the police will be requested to expedite the transcribing of the vulnerable witness' video statement

and the defendant's video recorded interview – there is no need to translate these exhibits into English at this time,

- (9) Committal can take place even if the transcripts of the statement and interview are not available on the return day, provided the tapes have been served on the defence,
- (10) Committal can take place even if the Government Chemists' results of scientific examinations are not yet available, except if such evidence is necessary to establish a prima facie case,
- (11) Preparation counsel should prepare the indictment, and the applications under ss. 79B (giving evidence by live television link) and 79C (video recorded evidence) of the Criminal Procedure Ordinance, Chapter 221, so that they can be filed at court the day after committal,
- (12) The indictment, when filed, should be accompanied by the list of witnesses and the list of exhibits from the committal bundle, and also a brief summary of the facts of the case,
- (13) Translations of witness statements and documentary exhibits are only required if the trial is to be in English, and may not be required for committal,
- (14) The police are able to arrange urgent transcripts and urgent translations, on payment of an additional fee to their contractors,
- (15) The Judiciary is able to urgently certify transcripts and translations, when specifically requested to do so.

Conclusion

16. The Department prosecutes cases of domestic violence whenever it can upon the proper application of the prosecution policy guidelines. At the same time, domestic violence cases are accorded every priority at all stages of proceedings. Victims and their interests are at the heart of our approach to prosecuting.