香港防止虐待長者協會
提交立法會福利事務委員會
於二零零八年十二月八日舉行的會議
就討論《家庭暴力條例》的修訂建議意見書

首先，本會對於福利事務委員會，今天討論那麼重要的《家庭暴力條例》的修訂議題，並沒有像過去多年的福利事務委員會或處理家庭暴力的策略和措施小組委員會那樣，邀請各處理家庭暴力或性暴力的團體出席會議發表意見，表示十分錯失望。本會亦憂慮在未有團體參與的情況下，在討論上明顯未能達到問題核心之處，無法改善有關的問題。

再者，現時「家庭暴力」及「性暴力」，由於部份服務運作上的情況，內裡其實是千瘡百孔，部份業界人員的處事手法亦古靈精怪；同時亦經常出現一些外人難以估計的問題。除非今天的福利事事務委員會的存在，只是爲政府未完善政策護航的「政治花瓶」。否則，本會認爲日後的會議，應主動邀請「家庭暴力」及「性暴力」團體或及相關的團體出席，在聽取各團體及使用者方面的意見，了解現有「家庭暴力」及「性暴力」服務實際情況後，以對症下藥的方式，在會議上跟進有關的問題，才是真正有效解決問題的方法。

對於勞工及福利局向立法會提供的文件，表面上來看，一切安排好像已經處理得盡善盡美；但事實上，該局並未有考慮到各「家庭暴力」及「性暴力」團體的意見。由於今天的會議，福利事務委員會沒有邀請各相關「家庭暴力」及「性暴力」團體出席發表意見。而今屆立法會福利事務委員會的議員，並非過去一屆的福利事務委員會；或處理家庭暴力的策略和措施小組委員會的成員。爲了令各福利事務委員會的議員，能在沒有團體出席下，可以準確地了解以往各團體的立場。本會現附上有關改革家庭暴力聯盟發出的＜公義、平等、和諧家庭暴力條例修訂的建議書＞，以供各出席的議員參考。這亦是本會對今天討論的意見。由於福利事務委員會，沒有邀請團體出席，本會亦無法就出席官員的發言或條例細節執行，作進一步補充。

香港防止虐待長者協會
政策及法律支援部
18-12-2008

For Justice, Equality and Harmony: Proposal on Reform of the Domestic Violence Ordinance

公義 平等 和諧：家庭暴力條例修訂建議書

2007

The Alliance for the Reform of Domestic Violence Ordinance
改革家庭暴力條例聯盟

The Alliance for the Reform of Domestic Violence Ordinance

The Alliance was formed by organizations, academics, Legislative Council councilors and individuals who have been working on the issue of domestic violence in various aspects. These organizations and individuals include victims and survivors of domestic violence, front-line service providers, legislators, lawyers and academics who have been researching on this issue.

The Alliance is concerned that victims of domestic violence have not received adequate support under the existing legislation. As a joint platform of concerned civil entities, the Alliance requests the Government to respond to the need of the victims and to consider the Alliance's proposed amendments to the Domestic Violence Ordinance for better protection for the victims. We believe that taking stringent steps towards the issue of domestic violence is indispensable to the harmony of families and society.

Members of the Alliance:

Action for REACH OUT
Association Concerning Sexual Violence Against Women
The Association for the Advancement of Feminism
The Civic Party
Harmony House
Hong Kong Association For The Survivors Of Women Abuse (Kwan Fook)
Hong Kong Federation of Women's Centres
Hong Kong Ten Per Cent Club
Hong Kong Women Christian Council
Hong Kong Women's Coalition for Equal Opportunities
Hong Kong Women Workers' Association
Oxfam Hong Kong
Office of the Hon Fernando Cheung, Legislative Councillor
Office of the Hon Margaret Ng, Legislative Councillor
Office of the Hon Ronny Tong Ka-Wah SC, Legislative Councillor
Society For Community Organization
Hong Kong Women's Coalition on Equal Opportunities
Dr. Anne S.Y. Cheung, Associate Professor, Faculty of Law, University of Hong Kong
Robin Egerton, Barrister-at-law

改革家庭暴力條例聯盟　簡介

本聯盟是由一群長期關注本港家庭暴力問題的團體、學者、議員及個人所組成，其中包括家庭暴力受害人、提供服務的前線工作人員、立法會議員、法律界人士及對家庭暴力問題有深入研究之學者。

念及現時家庭暴力受害人在面對暴力時，往往得不到適切的法律支援，聯盟希望凝聚民間的力量，對改革家暴條例提出共同意見，要求政府認真回應受害人、關注團體及人士的意見，使家庭暴力受害人能在法律層面上獲得更大保障。我們相信，正視家庭暴力的問題，才能長遠促進家庭及社會和諧。

聯盟成員：

青鳥
公民黨
樂施會
和諧之家
香港十分一會
香港女同盟會
新婦女協進會
群福婦女權益會
香港婦女中心協會
香港婦女勞工協會
香港社區組織協會
平等機會婦女聯席
香港婦女基督徒協會
關注婦女性暴力協會
立法會議員張超雄辦事處
立法會議員吳靄儀辦事處
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PREFACE

Domestic Violence Ordinance was first introduced in Hong Kong in 1986, with the Ordinance largely modeled on the UK Domestic Violence and Matrimonial Proceedings Act in 1976, targeting at domestic violence as a social issue.

As time passes, different scholars, academics and other social services organizations have conducted researches and thrown light on our understanding of domestic violence. They have made various suggestions to amend the Domestic Violence Ordinance in Hong Kong. Yet, the cultural background of Hong Kong, particularly the traditional Chinese family values, often projected that domestic violence is more a domestic problem instead of a social issue, thus people who are outside of the family should not be too active in intervening. It was against such background that the government refused to reform Domestic Violence Ordinance over the last twenty years.

While development of the law remained stagnant in Hong Kong, development of the law in this field has been extremely quick and vibrant in other parts of the world. Legislators, advocates, academics alike begin to understand the issue of domestic violence from the perspective of victims, and the impact of domestic violence upon them. Based on this knowledge, they had made various suggestions for new measures to be implemented to enhance the services available to the victims. Researches also raised the need to provide mandated counseling service for the perpetrators in the hope to prevent domestic violence as well as reduce the impact of domestic violence upon the families and the society as a whole. It was against such background that nations around the world, including USA, Canada, Australia, UK modeled their new domestic violence laws to provide better protection to the victims and appropriate punishment to perpetrators, while follow-up services would be provided and stated in the law so as to minimize the recurrence of domestic violence. UK in particular, had revamped laws governing domestic violence thrice over the last twenty years to provide more comprehensive protection for the victims, and to ensure that perpetrators could be held responsible for their deeds.

In spite of the changing attitude towards domestic violence around the world, attitude of the Hong Kong government towards domestic violence has remained the same. Over the years, the only change to the Domestic Violence Ordinance was changing the name of the court from High Court to the Court of First Instance. While the problem of domestic violence has worsened, victims could not be better protected as the law is out of date and has not been in full use for its sake. Domestic violence has hit the family in poverty the most. Victims of domestic violence suffer both physical and psychological harm, and are made more vulnerable to poverty.

It was not until April 11, 2004, when the Tin Shui Wai tragedy took place at Tin Heng Estate and a family of 4 were killed, that domestic violence began to capture the attention of the media and the society as a whole. Death inquest followed in August 2005, and the jury made 11 recommendations to social service organizations and relevant government departments involved. It was back at that time when the government first announced that it was willing to amend Domestic Violence Ordinance. A group of survivors of domestic

violence, frontline workers, concerned organizations, academics, lawyers and Legislative Councillors joined together to form this Alliance, and pull knowledge and experiences of various background to discuss proposal on amendments of the Domestic Violence Ordinance.

Despite rising concern in society, the Hong Kong SAR Government has been slow in the process of amending the law. In a document tabled in Welfare Services Panel of Legislative Council on 8 January 2007, the Government only covered 5 aspects of the law, leaving many essential areas untouched in this hugely belated amendment process.

The Alliance decides to present our proposed amendment in this information kit, in the hope to arouse discussion and garner social support. Our aims are not just to provide better protection for the victims of domestic violence, but to forward a proper combination of punishment and counseling can help the perpetrators and provide a comprehensive solution to the issue of domestic violence. We sincerely hope that you all can join us to support the amendments that we propose.

Alliance for the Reform of Domestic Violence Ordinance
May 2007

CHAPTER 1

Rationale of the Reform of the Domestic Violence Ordinance, Cap.189[1]

In recent years, there have been voices from various organizations to amend the Domestic Violence Ordinance (Cap 189). The Hong Kong Law Reform Commission also recommended reviewing the DVO in the report on stalking in 2000.[2]

Domestic violence can be directed by any family members against any other members of the same family. It may include spousal violence, child abuse, elderly abuse, sibling abuse, parental abuse, intimate partner abuse, etc. The violence may start before marriage and may last after divorce. It can be inflicted in multiple forms including physical assault, sexual violence, psychological aggression, threat with or without physical violence, torture, stalking etc.

The existing DVO (Cap 189), which was enacted in 1986, can no longer meet the challenges of the many facets of domestic violence. The Ordinance was largely based on the Domestic Violence and Matrimonial Proceedings Act 1976 of the United Kingdom.[3] The difference between the Hong Kong ordinance and the English Act was that under the Hong Kong ordinance, there was a maximum duration for injunction order (section 6) and the criteria of issuing an order are limited (section 3(2)).

The recommendations of including elderly abuse and mandatory counselling were raised and rejected by the Government in 1986. As a consequence, court-mandated counselling programmes and the study of elderly abuse are under-developed in Hong Kong while these two areas have been proliferated in Western societies since 1980s. In addition, the English Act had been reformed while the Hong Kong ordinance has remained the same since 1986.[4]

The main principle of reforming the DVO (Cap 189) is that violence amongst people in intimate relationships is different from that amongst strangers. Violence in intimate relationships has its own dynamics, risk factors and impact. It would mislead the public by overemphasizing love and affection in violent intimate relationships that makes the

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[1] This chapter is largely based on the report Chan., K. L.; Chiu, M.C. & Chiu, L.S. (2005). *Peace at home: Report on the Review of the Social and Legal Measures in the Prevention and Intervention of Domestic Violence in Hong Kong.* [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong. See **Appendix A** for existing Ordinance.

[2] Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

[3] Scully-Hill, Anne (2004). *The Annotated Ordinances of Hong Kong: Domestic Violence (Cap 189)*. Hong Kong: LexisNexis.

[4] Hong Kong ordinance changed to the terminology relating to the courts after 1 July 1997. The English Domestic Violence and Matrimonial Proceedings Act 1976 was incorporated into the Family Law Act, 1996 (Chapter 27 of 1996) [Part IV, in particular].

public unreasonably tolerating violence and makes the victims suffer much more than those victimized in other relationships.

I. Definition of Violence

Different definitions of domestic violence across the world illustrate the extensive scope of the problem worldwide.

The World Health Organization[5] defines violence as:

"The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation". (P.5)

Child abuse is defined by the WHO to be:

"Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power". (P.59)

Thus, it is recommended to define domestic violence as physical assault, sexual violence, psychological abuse, neglect (for children and elderly), stalking and exposing a child to domestic violence.

Psychological abuse

Opponents to the inclusion of psychological abuse are worried about the subjectivity of the concept of psychological abuse. Some also argue that the so-called psychological abuse may be wide enough to include simple cases of mere annoyance without psychological harm. Opponents are worried that without a clear definition of psychological abuse, prosecution under this heading could be abused.

Nonetheless, psychological abuse is already included in many domestic violence legislations across the world. Their practical experience may show the way for our amendments.

Taking reference of the overseas examples, the Department of Justice of Canada defines psychological or emotional abuse as[6]:

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[5] Krug, E. G., & et al (Eds.). (2002). *World report on violence and health*. Geneva: World Health Organization.
[6] Aug 13, 2004, the Department of Justice Canada's web site
http://canada.justice.gc.ca/en/ps/fm/familyvfs.html

(a) Harming a person's sense of self and putting them at risk of serious behavioural, cognitive, emotional or mental disorders
(b) Attacking a person verbally - for example, by yelling, screaming, name calling, criticizing, threatening or intimidating
(c) Using criticism, verbal threats, social isolation, intimidation or exploitation to dominate someone
(d) Routinely making unreasonable demands
(e) Criminally harassing or "stalking" - which may include threatening a person or their loved ones, damaging their possessions or harming their pets
(f) Terrorizing a person
(g) Exposing a child to family violence.

The Centers for Disease Control and Prevention of USA[7] gives a very detailed definition of psychological abuse:

Psychological or emotional abuse involves trauma to the victim caused by acts, threats of acts, or coercive tactics, such as those listed below. This list is not exhaustive. Other behaviours may be considered emotionally abusive if they are perceived as such by the victim. Some of the behaviours on the list may not be perceived as psychologically or emotionally abusive by all victims. Operationalization of data elements related to psychological/emotional abuse will need to incorporate victim perception or a proxy for it. Although any psychological/ emotional abuse can be measured by the IPV surveillance system, the expert panel recommended that it only be considered a type of violence when there has also been prior physical or sexual violence, or the prior threat of physical or sexual violence. Thus by this criterion, the number of women experiencing acts, threats of acts, or coercive tactics that constitute psychological/emotional abuse may be greater than the number of women experiencing psychological/emotional abuse that can also be considered psychological/emotional violence.

In summary, psychological/emotional abuse can include, but is not limited to:

(a) Humiliating the victim
(b) Controlling what the victim can and cannot do
(c) Withholding information from the victim
(d) Getting annoyed if the victim disagrees
(e) Deliberately doing something to make the victim feel diminished (e.g., less smart, less attractive)
(f) Deliberately doing something that makes the victim feel embarrassed
(g) Using money that is the victim's
(h) Taking advantage of the victim
(i) Disregarding what the victim wants
(j) Isolating the victim from friends or family

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[7] Centers for Disease Control and Prevention, Injury Center. *Intimate Partner Violence Surveillance*. Retrieve Aug 13, 2004, from the CDC web site: http://www.cdc.gov/ncipc/pub-res/ipv_surveillance/11_Section34.htm

(k) Prohibiting access to transportation or telephone
(l) Getting the victim to engage in illegal activities
(m) Using the victim's children to control victim's behaviour
(n) Threatening loss of custody of children
(o) Smashing objects or destroying property
(p) Denying the victim access to money or other basic resources
(q) Disclosing information that would tarnish the victim's reputation

In summary, psychological abuse may consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial, personal resources and social activities, humiliation, intimidation, threat, and social isolation. These definitions of psychological abuse applied in Canada and USA are very useful reference for defining psychological abuse in Hong Kong legislation. An addition to these definitions can be to include threatening to cause harm to the victim's family members as a form of psychological abuse.

Some commonly recognized forms of psychological abuse have already been recognized in the existing laws, this may help us to define psychological abuse in domestic violence. For example, intimidation (section 24 of the Crimes Ordinance, Cap. 200), harassment (refer to sexual harassment (Sex Discrimination Ordinance, Cap. 480)), threat (section 119 of the Crimes Ordinance, Cap. 200) which are common to the measures of psychological aggression. Daniel O' Leary, a well-known scholar, argued that psychological abuse can be measured reliably and thus developed into the definitions in both mental health and legal settings .[8] He further argued that physical aggression is often preceded by psychological aggression, which has effects that are as deleterious as those of physical aggression. In short, psychological abuse causes traumatic effect and itself is a marker that requires further investigation of physical abuse.

Thus, it is recommended to include psychological harm or trauma, caused by physical or sexual violence, or the threat of physical or sexual violence, or coercive tactics in defining psychological abuse.

Neglect

In the procedural guideline of the SWD, child neglect refers to a "severe or persistent lack of attention to a child's basic needs (such as adequate food, clothing, shelter, education or medical care) that endangers or impairs the child's health or development (including non-organic failure to thrive) or the avoidable exposure of a child to serious danger (including cold, starvation, a child habitually left unattended or forcing a child to undertake duties inappropriate to his/her physical strength or age).[9]

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[8] O'Leary, K. Daniel (2001). "Psychological abuse: A variable deserving critical attention in domestic violence". In O'Leary, K. Daniel & Maiuro, Roland D. *Psychological abuse in violent domestic relations*. NY: Springer Publishing Company.
[9] Working Group on Child Abuse (1998). *Procedures for handling child abuse cases.* Hong Kong: Social Welfare Department.

The existing laws provide protection for children and mentally incapacitated persons against neglect or abandonment. Offences related to neglect include the Offences Against the Person Ordinance (section 27, Cap. 212,)[10], the Protection of Children and Juveniles Ordinance (Cap. 213) and the Mental Health (Guardianship) Regulations (Cap. 136D).[11] Exposing a child whereby life is endangered and ill-treatment or neglect by those in charge of child or young person, under section 26 and 27 of the Offences Against Persons Ordinance (Cap. 212), shall be guilty of an offence. Under the Mental Health Ordinance (Cap. 136D), the guardian shares the responsibility to "ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person". It is believed that society and thus the government shall have the responsibility to ensure these dependant persons are properly cared for. Otherwise, the SWD shall assign a guardian or the Director of Social Welfare to be the guardian, to take up the responsibility of care taking.

This protection should also be extended to include neglect of dependent elderly. Elderly abuse is defined in Hong Kong as "intentional or unintentional failure or refusal to provide for the basic needs (e.g. food, water, shelter, heat, clothing, hygiene, safety) and abandonment of an elderly person. Unintentional neglect refers to situations resulting from lack of experience, information or capability."[12]

At the moment, we still do not have a set of standards to assess if an elderly person is dependent, nor do we have clear system to define the guardian or carer of the elderly. However, these should not be taken as reasons for not including the dependent elderly in the protection of the law.

We propose to include neglect of children, elderly and mentally incapacitated persons as a form of domestic violence under the DVO (Cap. 189).

Stalking

The Law Reform Commission (LRC) had recommended criminalizing stalking.[13] However, legislation governing this area has not been enacted for fear of the negative impact on newsgathering activities.

In 2004, some organizations[14], [15] suggested to criminalize stalking in intimate

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[10] S27: Ill-treatment or neglect by those in charge of child or young person.

[11] Cap 136D The guardian has the responsibility to "take all reasonable steps to ensure the safety and welfare of the mentally incapacitated person and to arrange for the provision of adequate care for the mentally incapacitated person."

[12] Legislative Council Question No. 10: Abuse of elderly people, Replied by: Secretary for Health and Welfare on 1 March 2000. Retrieved Aug 13, 2004 from the Health, Welfare and Food Bureau web site: http://www.hwfb.gov.hk/en/legco/replies/hw/1998_20020630/QTN/LQ68.HTM

[13] Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

[14] Harmony House (2004). Paper submitted to joint meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004.

[15] The Association Concerning Family Violence (關注家庭暴力問題聯席). Paper submitted to joint

relationships, which is supported by the LRC.

We propose that stalking in intimate relations be included in the definition of domestic violence.

Exposing a child to domestic violence

Research on children witnessing family violence has been an important agenda item for the past twenty years. It has been shown that children who witness violence often suffer psychological and behavioural problems as abused children. They may suffer from a wide range of problems such as low self-esteem, lower school performance, difficulty in concentrating, developmental delays, poor social skills, secret keeping and isolation from peers, few interests to social activities, mixed feelings of anger, shame, love, fear, guilt, disrespect for parents, feeling responsible for violence, or even in extreme cases post-traumatic stress disorder.[16]

Making a child witnessing domestic violence by a perpetrator of domestic violence is regarded as a form of criminal child abuse.[17] In most cases, it would also create pressure or psychological stress on the battered spouse. The battered spouses, especially battered women, are worried about the safety of their children and their emotional reactions during spousal violence. They would also be humiliated by being beaten by their partner before their children.

Thus, we recommend that the making of a child witnessing domestic violence by a perpetrator of domestic violence should be regarded as a form of criminal child abuse.

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meeting of the Panel on Welfare Services and the Panel on Security, Legislative Council, on 26 April 2004, CB(2)2131/03-04(08).

[16] International and local studies already showed the negative impact on children witnessing family violence. For example: Brandon, M., & Lewis, A. (1996). Significant harm and children's experiences of domestic violence. *Child and family social work*(1), 33-42.

Chan, K. L. (2002). *Study of children who witnessed family violence*. Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 47).(In Chinese)

Chan, K. L. (2000). *Study of the impact of family violence on battered women and their children* . Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 38).

Jaffe, P. G., & Sudermann, M. (1995). Child witnesses of woman abuse: Research and community responses. In S. M. Stith & M. A. Straus (Eds.), *Understanding partner violence: Prevalence, causes, consequence and solutions* . Minneapolis: National Council on Family Relations.

Peled, E., Jaffe, P. G., & Edleson, J. L. (1995). *Ending the cycle of violence : community responses to children of battered women*. (1 st ed.). USA: Sage Publications, Inc.

[17] Refer to Kantor, G. K. & Little, L. (2003). Defining the boundaries of child neglect: When does domestic violence equate with parental failure to protect? *Journal of Interpersonal Violence, Apr, V. 18(4),* 338-355.

II. Definition of 'family/ domestic'

Under the present law, only married couples or cohabitating heterosexual couples, and their children are under the protection of the DVO (Cap 189), as the law only covers relations within a "Matrimonial Home". It therefore means that domestic violence other than spousal abuse and child abuse, like elderly abuse, sibling abuse, parental abuse, intimate partner abuse etc. are not covered by the Ordinance.

Violence in intimate relationships carries specific dynamics that requires special attention. The main principle of providing protection for victims should cover those who are involved in intimate relationships rather than limiting it to those who are living together, engage in a heterosexual relationship or have a marriage certificate.

The Law Reform Commission had given a very meaningful discussion on the scope of provision. It stated that:

"Victims of stalking who have never cohabited or have ceased to cohabit with the stalker when harassment occurs cannot invoke the jurisdiction of the Court. Thus, the remedies are not available once the spouses are divorced. A former spouse cannot apply under the Ordinance unless she and her former husband are cohabiting after the decree. Similarly, in the case of cohabitants, there is no power to provide protection once the relationship has ended. More importantly, harassment can occur in other types of domestic relationships. For instance, an elderly member of a family may be abused by those with whom he is living; parents may be abused by their violent child; and a gay or lesbian partner may become irrational or obsessive. The requirement of marriage or cohabitation has deprived these parties of the right to apply under the DVO (Cap 189). Victims who are harassed outside the family and domestic context have to proceed in tort, but this is a more cumbersome procedure and is less effective because of difficulties over the precise scope of the remedies available against harassment or molestation. Further, a child who has been molested has no standing to apply for an order under the Ordinance. An application must be made on the child's behalf by a parent. The child receives no protection under the Ordinance if his or her parent is unwilling to bring an action against the other party. There is also a requirement that the child be living with the applicant. Children not living with their parents could not benefit from the Ordinance." (para. 4.36-38)[18]

Comments from the LRC clearly illustrate the complexity of family and intimate relations in a modern society, and the limitations posed by the definition of domestic violence in the existing laws.

We recognize that "cohabiting" in the same household could be used as one of the criteria to identify intimate relationships. However, it should not be the pre-requisite of defining

[18] Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.

relationships. In the UK, section 62 of the Family Law Act 1996, defines the relationships as "cohabitants", "relevant child" and "associated persons". The definitions of the three terms are listed in Appendix 10. The meaning of “associated persons” gives a broader possibility of including the major possible types of violence in intimate relationships. The consultants recommend adopting this definition to the DVO (Cap. 189). Furthermore, the UK Government had passed a Domestic Violence, Crime and Victims Bill [HL] in December 2003 states that cohabiting same-sex couples and couples who have never cohabited or been married are given the same access to non-molestation and occupation orders under the Family Law Act 1996 as opposite-sex couples.

To meet various challenges of domestic violence, the category of persons protected under DVO (Cap.189) is recommended to expand. The definition of family should be extended to cover all possible intimate relationships.

III. Replace injunction order with protection order and property order

Victims of domestic violence can apply for injunction order under the existing DVO (Cap. 189). The existing DVO provide protection for the victims through the non-molestation order, however, it does not provide protection from other harassing bahaviours of the perpetrator, not does it provide protection on the victim’s property and his/her right to remain in dwelling house.

In fact, when making the decision to leave the perpetrator or seek help from institutions, the victims often have to face different forms of threats and harassment from the perpetrator. These harassing behaviours may include harassment to the victims or their relatives, threatening to harass the victims or their relatives, damaging victims’ property, instruct a third-party to harass or threaten the victims. Moreover, if the victims decide to terminate the intimate relation with the perpetrator or temporarily separate from the perpetrator, the existing DVO cannot ensure the victims can personally occupy the dwelling house. As a result, the victims often have to face the additional hardship of moving out of the dwelling house and seek for new residence.

The existing DVO cannot provide full protection to the victims of domestic violence with regard to the above problems. Its impact is discouraging the victims to seek help and encouraging domestic violence.

We recommend that injunction Order should be renamed to and replaced by ‘Protection Order’ and ‘Property Order’ to provide a wider coverage of protection which are more specific and necessary for immediate needs of the victims.

Effective period of protection order and property order

The longest period of effectiveness of ouster and entry orders under section 3(1)(c)(d) of DVO (Cap.189) is 6 months, which clearly cannot provide enough time and flexibility for the victims to handle all the aftermath brought about by domestic violence.

If a victim of domestic violence decides to divorce the perpetrator, he/she would need more time to undergo legal procedures, find new residents and arrange new school for the children. Moreover, domestic violence usually has a long history and the perpetrator would not be able to stop the abusive behaviours in a short period of time. If the perpetrator is arranged to join counselling programmes, 6 months would hardly be enough for the programme to be effective. Moreover, many victims of domestic violence have to face long-term harassment from the perpetrator and live under the shadow of domestic violence.

The Law Reform Commission suggested to take reference from Family Law Act 1996 of the U.K. and adopt an open-ended order to provide for flexibility. This would allow the Courts more flexibility in deciding the duration of the orders and avoid victims having to return to the Courts to have the order renewed. Referring to section 42(7) of the Family Law Act, a non-molestation order may be made for a specified period or until further order. It leaves the judge discretion to grant a specified period that could fit each case.

We recommend to adopt an open-ended order to provide for flexibility and allow the Courts to decide the duration based on situation of each case, so as to provide the most protection for the victims.

Eligible applicant of the protection order and property order

Forms and impacts of domestic violence are very complex and diverse, just as family relations can be very complex. When determining the eligible applicant of protection order, it should be ensured that relevant laws can respond to this complexity and that the directly or indirectly affected persons are entitled to the protection of law.

In some cases, when the abused spouse leaves home and moves to shelter, the abusing spouse try to contact the parents or other family members who are not living together with the abused spouse, and may even invoke threat or harass them. The family members face equal or similar harm as the victims of domestic violence. In such case, the victims, including both the abused spouse and their harassed family members, should have the right to apply for protection order and property order.

Our society expect parents or adults to take care of and protect children, but in families with domestic violence, the abusers are often the adults. Other adults who are not the perpetrator may also, due to unequal power relations or other reasons, decide not to intervene with the abuse and protect the children.

For children under the age of 16, the Family Law Act of the U.K. allows the provision for separate representation for children in proceedings.[19] Local organizations concerned with children's rights also suggested that every single child should have the right to have an

[19] Family Law Act 1996 - Sect 64.

independent counsel for separate representation for children in proceedings.[20]

The Family Law Act also allows the provision for third parties to act on behalf of victims of domestic violence. A representative to act on behalf of another should be a prescribed person, or any person in a prescribed category. The representation should be authorized by the victims. In practice, most of the "third parties" are lawyers because third parties should be familiar with the legal system.

We propose that eligible applicants for protection order and property order should include:

1. **If the victim of domestic violence is a child, there should be no requirement that the application be made by one of the parent or the child be living with the parent;**
2. **A child should have the right to apply for an order on his or her own with the Court's permission, or authorize a lawyer or other designated representative;**
3. **A third party is allowed to proceed with application on behalf of the victim, this third party can be represented by the SWD, or a guardian of an elderly person or mentally incapacitated person.**
4. **Family members under disturbance could be the applicant of protection order or property order.**

Attach a power of arrest to protection order and property order

Under the existing DVO, the court will only attach a power of arrest to the injunction order in the case where abuser had inflicted serious physical injuries on the victims. In other circumstances, police would not arrest the abuser immediately if he/she violates the injunction order, but would have to go through the process of applying for a warrant. Alternatively, the victims may file a civil case against the abuser who had violated the injunction order. But in this case, the responsibility to ensure that the abuser receives punishment for violating the injunction order falls on the victims.

We propose that after the injunction order is replaced with protection order and property order, a power of arrest is automatically attached to the order(s), and violation of the order(s) should be considered as a criminal act. In the case a person violate the order(s), the police is allowed to arrest that person immediately. This would not only enhance the power of the order(s), but also provide a mechanism for more efficient and effective law enforcement.

Simplify the procedure of application of protection order

In 2004, there were only 23 applications for injunction order under DVO (Cap. 189). Compared with the 3993 domestic violence cases reported to the SWD, the small number of application reflects the fact that the protection of law is not fully utilized by the victims. One of the reasons of the low usage rate is the complicated application procedures. Victims often have to obtain assistance from lawyer to handle the application, but they

[20] Against Child Abuse, paper submitted to Welfare Panel of LegCo, March 11, 2002.

usually face financial difficulties and it takes a long time to apply for legal aid. These obstacles often discourage the victims to choose to use this protection under the law.

We propose to consider models from overseas (e.g. Boston, USA)[21], simplify the application form for protection order and property order so that applicants can complete the forms by themselves, and arrange for the police to deliver to the order to the perpetrator. Procedures to apply for emergency protection order should also be simplified so that the victims can file for application by themselves.

IV. Court-mandated Batterer Intervention Programme (BIPs)

Presently, there is no mandatory counselling programmes for the abusers. There are voluntary counseling programmes, but abusers are not mandated to join the programmes and complete them.

In his report, K. L. Chan pointed out that mandatory counselling programmes are implemented in many countries, such as USA, Canada, UK, Australia, New Zealand and Singapore. The counselling programmes are mandated by the courts, if an abuser refuses to complete the progamme, he/she may face the result of re-entry into such programmes, fine or other sentencing. Purposes of court-mandated BIPs are to, through counseling and education, help batterers to understand the cause, responsibility and consequences of violence, and to adopt new values, in the hope to prevent future domestic violence.

Court-mandated BIPs carry two important functions: firstly, better inform the public that domestic violence is a crime; secondly, encourage victims to report domestic violence with less serious sentencing.

V. Establishing a specialized domestic violence court

Domestic violence involves complex inter-personal and power relations, and it often involves both civil and criminal elements in terms of legal proceedings. It is important that our legal system can cater for these factors and provide the greatest legal protection to the victims. Most victims of domestic violence are not familiar with legal procedures and may be intimidated by the long legal process, they often have to face immense psychological pressure. The legal procedure can be a tremendous difficulty to many victims.

To speed up the process of handling domestic violence cases and to provide better support to the victims, Canada, UK, Australia, New Zealand, Taiwan and Singapore have all adopted different forms of domestic violence courts and special legal procedures. These domestic violence courts or special legal procedures emphasize the importance of support to victims, the court environment and facilities were designed to instill a sense of

[21] A sample of the simplified application form used in Boston is attached in Appendix D.

security, various departments and NGOs coordinate through the process to provide comprehensive support to the victims (e.g. legal and welfare consultation, escort service, case counseling service). Trainings are also provided to the law enforcement and legal personnel to build up their expertise. There are prosecutors and police specialized in handling domestic violence cases, and trainings are especially arranged for prosecutors

We should consider these experiences and set up a specialized domestic violence court in Hong Kong to handle civil or criminal cases related to domestic violence, handle applications for protection orders and property orders, and build up comprehensive support to the victims through coordination of various service units and departments.

VI. Status of the DVO (Cap 189): criminal and civil law

The existing DVO (Cap 189) only provides civil law remedies. There is no special category of criminal offence called "domestic violence." The above categorization may have easily reinforced the misconception that domestic violence is not a crime in the eyes of the public.

The existing laws in fighting against domestic violence are scattered over different pieces of ordinances, from criminal to civil, and the cases are handled in different Courts. Nevertheless, none of the ordinance defines domestic violence as a crime. Unless an act of domestic violence constitutes the crime of assault or battery or other offences, the alleged offender would not be charged. That means, "domestic" violence is not considered to be a criminal offence in itself. Thus, clear policy and legal definition of domestic violence as a criminal offence is thus urgently necessary.

Under the Criminal Code of the PRC, domestic violence is a criminal offence. In the UK, domestic violence is not treated as a specific criminal offence. Instead, it is charged under a range of offences. A report on the justice system in the UK discussed the need to create a separate domestic violence offence. It is believed that a Specialized Domestic Violence Court and a clear set of law that pull together all related domestic violence criminal laws would be useful.

We may consider pulling together all relevant ordinances related to domestic violence, e.g. the DVO (Cap 189), Protection of Children and Juveniles Ordinance (Cap 213), Crimes Ordinance (Cap 200), Offence Against Persons Ordinance (Cap212) including rape, marital rape, assault, harassment, stalking etc. and putting them under the Crimes Ordinance. It should clearly define the penalty of each offence, be it imprisonment (for summary or indictment conviction) or fines. Examples of such jurisdiction are: PRC (Marriage Law), Taiwan (Domestic Violence Prevention Act) and Singapore (Women's Charter).

CHAPTER 2

Proposed Amendments to the Domestic Violence Ordinance, Cap.189 by the Alliance

Part 1: <u>Add definitions of 'domestic violence' and 'domestic relationship'</u>

1. Define 'domestic violence' to include: physical abuse, sexual abuse, psychological abuse (like intimidation, harassment, stalking, property damage, threats of abuse, making a child witnessing the abuse) and neglect of child, elderly and mentally incapacitated person. See **Appendix B** for full version.
2. Define 'domestic relationship' to include not only married and cohabitated couples but also their former spouse and cohabitant, same-sex or not; children; parents and parents-in-law and siblings and siblings-in-law. See **Appendix C** for full version.

Part 2: <u>Protection Order</u>[22]

<u>~ Simplify application procedure of ex parte temporary protection order:</u>

3. By way of filling in a standard form. See **Appendix D** for a similar form adopted in Boston, USA.
4. See **Appendix E** for existing procedure for urgent applications for injunctions. Continue to adopt such procedure in the application for 'ex parte temporary protection order'.
5. Relevant test to allow such an urgent application: the Court has to be satisfied that the delay that would be caused by having an inter partes proceedings would or might entail a risk of harm or undue hardship to the applicant or/and a child of the applicant's family.

<u>~ Scope of protection orders</u>

6. Test to grant a protection order: the Court has to be satisfied that the respondent is using, or has used, domestic violence against the applicant, or/and a child of the applicant's family and the making of an order is necessary for the protection of the applicant, or/and a child of the applicant's family.
7. Coverage of a protection order:
    (a) Respondent must not physically or sexually abuse or threaten to abuse the protected person.[23]
    (b) Respondent must not damage or threaten to damage protected person's property.
    (c) Respondent must not engage in or threaten to engage in behaviour which

[22] Propose that existing Injunction Order be replaced with Protection Order and Property Order

[23] 'protected person' means the applicant, any child of the applicant's family and any person for whose benefit the order applies eg the Court may direct that the order also apply for the benefit of a particular person with whom the applicant has a domestic relationship.

amounts to psychological abuse of the protected person including intimidation, harassment or annoyance.

(d) Respondent must not encourage others to engage in behaviour which would be prohibited by the order.

(e) Respondent must not watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution or any other place that the protected person visits often.

(f) Respondent must not follow the protected person about or stop or accost the protected person in any place.

(g) Respondent must not enter or remain on any land or building occupied by the protected person except with the consent of the protected person.

(h) Respondent be restrained from contacting or communicating with the protected person.[24]

(i) Respondent be restrained from taking, converting, damaging or otherwise dealing with property in which the protected person has an interest.

(j) Respondent be required to vacate the applicant's residence.

(k) Require a police / SWD representative to accompany the protected person or the respondent to the applicant's residence and supervise the removal of that persons' or another named persons' belongings.

(l) Require the respondent to pay the applicant compensation for monetary losses suffered by the protected person as a direct result of the domestic violence, the amount of which may be summarily determined by the Court, including loss of earnings or support, medical or dental expenses, out-of-pocket expenses for injuries sustained, moving and accommodation expenses and the costs, including legal fees, of an application under the DV Ordinance.

~ Allow a 'person under disability' to apply for protection order

8. 'person under disability' means persons under 18 or mentally incapacitated persons
9. Follow existing practice provided for under Order 80 of the Rules of High Court. See **Appendix F**.

~ Variation of existing custody / access order

10. On making a protection order, the Court may vary any existing custody / access order in respect of the child/children concerned.

Part 3: Property Orders like Occupation Order, Furniture Order

~ Occupation Order

11. To grant the applicant the right to live in a dwelling house.[25]

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[24] Unless such contact / communication is reasonably necessary in any emergency; is permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of any minor; or is otherwise permitted under the protection order.

[25] Which either party to the proceedings owns or in which either party has a legal interest (including but not

12. Effect: the applicant will be entitled, to the exclusion of the person against whom the order is made, to personally occupy the dwelling house to which the order relates.[26]

~ Furniture Order

13. To grant to the applicant the possession and use of all or any of the furniture, household appliances, and household effects in the subject dwelling house of the Occupation Order or in which the applicant and the respondent live.

Effect: the applicant will be entitled, to the exclusion of the person against whom the order is made, to the possession of the furniture, household appliances, and household effects to which the order relates for so long as the order is in force.

Part 4: Power to grant, vary or discharge a protection order / property order

14. An ex parte temporary protection order continues in force until the return date of an inter partes hearing of the application. See **Appendix G** for existing procedure of making application for interlocutory injunctions.
15. At the inter partes hearing in respect of an ex parte temporary protection order, the Court may grant a final protection order in substitute of the temporary protection order; discharge the temporary order or adjourn for substantive argument.
16. In any other cases, the Court may grant, vary or discharge a final protection order or property order at the inter partes hearing or adjourn for substantive hearing.

Part 5: Court-mandated Batterer Intervention Programmes (BIP)

~ In respect of civil proceedings

17. On making a protection order, the Court may direct the respondent to attend a specified programme. However, if the respondent has a previous record of breaching a protection order / property order or failing to comply with any condition of a protection order or with the direction to attend programme, the Court must then direct the said respondent to attend the programme, unless the Court considers there is a good reason for not making such a direction. Such direction is a condition of the relevant protection order.
18. Registrar must ensure that the programme provider is notified of the direction made.
19. A programme provider may excuse the respondent from attendance at any session(s) but he must make up the missed session with an additional session.[27] Otherwise, the programme provider must notify the Registrar within 7 days of the respondent's failure to attend an session. The Registrar must then bring the matter to the attention

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limited to a tenancy). 'dwelling' means any building or any part of a building which is designed and constructed for use exclusively or partly for residential purposes. See s.26E of Inland Revenue Ordinance, Cap.112 and s.50C of Landlord and Tenant (Consolidated) Ordinance, Cap.7.

[26] Together with any land, buildings, or improvements appurtenant to that dwelling house which are used, or ordinarily would be used, for the purposes of a household.

[27] Unless the programme provider considers that such absence has not significantly affected the person's ability to benefit fully from the programme.

of a Judge so that the Judge may consider whether or not to call the respondent before the Court. The Court may then confirm, vary or discharge the direction and must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.

20. The programme provider must notify the Registrar when the programme concludes who must then notify the applicant.[28]
21. The programme provider may write to the Registrar to suggest the direction be varied by substituting a different programme.

~ In respect of criminal proceedings

22. Allow the criminal court to have additional power in dealing with domestic violence cases to sentence convicted abusers/offenders to BIP.

Part 6: Power to arrest

23. It is an offence if a person, without reasonable excuse, does any act in contravention of a protection order / property order or fails to comply with any condition of a protection order or fails to comply with the direction to attend programme.
24. The person will then be liable on summary conviction to imprisonment for a term not exceeding 6 months and a fine not exceeding $30,000.[29]
25. Where a protection order is in force, any member of the Police may arrest, without warrant, any person whom the Police has a reasonable cause to suspect that person has committed a breach of the order.[30]

Part7: Establishment of a Specialized Domestic Violence Court ("DV Court")

26. Establish a DV Court specializing in handling cases of domestic violence under the Ordinance.
27. All cases, criminal or civil, involving elements of "domestic violence" shall be dealt with in this DV Court.
28. The DV Court shall be staffed by specially trained personnel, such as specially trained judges, prosecutors, lawyers, police officers and social workers, etc.
29. A group of advocates shall be formed and specially trained for the purpose of assisting domestic violence victims in utilizing the DV Court.
30. The DV court shall provide after office-hour service to cater for emergency cases.

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[28] The programme provider must notify the Registrar whether the respondent was excused from attending any session and the reasons and participated fully in the programme.

[29] If the person has previously been convicted on at least 2 different occasions of an offence under the DV Ordinance within 3 years of the commission of the current offence, he is liable on conviction to an imprisonment for a term not exceeding 2 years.

[30] The police shall consider: the risk to the safety of any protected person if the arrest is not made; the seriousness of the alleged breach of the protection order; the length of time since the alleged breach occurred; and the restraining effect on the person liable to be arrested of other persons or circumstances.

CHAPTER 3

Comparison Table of the Major Amendments to the Domestic Violence Ordinance, Cap.189 ("DVO") Proposed by the Government and the Alliance

	Areas of Change	Deficits of existing DVO	Government's proposed amendments[1]	Alliance's Recommendations
1.	Add definitions of 'domestic violence'	❖ **No definition of "domestic violence".** ~ Only reference to "violence" refers to "molest" which is not defined in the DVO ~ Stalking; neglect of child, elderly and mentally incapacitated person, etc are not included.	~ Do not consider adding such definition necessary as the existing DVO already includes psychological abuse because:- 1. According to the Department of Justice, decided court cases have defined 'molest' to include physical and psychological abuse. 2. The court has granted injunction on the ground of psychological abuse. ~ Do not propose to criminalize domestic stalking pending the Administration's review of the proposed anti-stalking legislation.	~ **Should have a clear definition on 'domestic violence' in DVO like many other jurisdictions including UK, New Zealand, Singapore, PRC, Taiwan, etc.** ~ **It should include: physical abuse, sexual abuse, <u>psychological abuse including stalking and neglect of child, elderly and mentally incapacitated person.</u>**

[1] Source from "Legco Panel on Welfare Services: Review of the Domestic Violence Ordinance" LC Paper No. CB(2)723/06-07(03) prepared by the Health, Welfare and Food Bureau, December 2006, and "Legislative Council Brief on Domestic Violence (Amendment) Bill 2007" LC Paper No. HWF/CR 1/3281/01

2.	Add definitions of 'domestic relationship'	∗ **Scope of "protected persons" only cover existing spouses or co-habitants.** ~ Can't protect the victims who are harassed by former spouses or co-habitants or their relatives. ~ Can't protect the victims involved in other familial relationships but not in a 'couple-relationship'.	~ Expand the scope to include persons formerly in spousal/cohabitation relationships and their children; to parent-son/daughter, parent-son/daughter-in-law, and grandparent-grandson/granddaughter relationships; and to other extended familial relationship including between a person and his/her brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew, niece and cousin.	~ **Just like all other jurisdictions, DVO should focus on 'domestic relationships' and not just 'couple-relationship'. Domestic violence involves families, not just couples.** ~ **It should also include: former spouses and co-habitants (same- sex or not); children; parents and parents-in-law; siblings and siblings-in-law; and other extended familial relationships.**
3.	Protection order (now known as injunction order)	∗ **Do not have a sufficient coverage to protect victims** ~ Injunction orders are not "*user-friendly*" and not protective enough for most victims	~ Do not have any suggestion at all in this regard ~ Only focus on some **minor changes** of the existing injunction orders such as enabling a next of friend of a child to apply on his behalf; empowering the court to vary existing custody/access order and to attach a power of arrest; extending the duration of the injunction order to a maximum of 24 months	~ **Injunction Order should be renamed to and replaced by 'Protection Order' to clearly identify the nature of the order and to provide a wide variety of consequential orders with unlimited duration to protect the victims** ~ **Provide a wider coverage of protection which are more specific and necessary for immediate needs of the victims**

				~ **Simplify urgent application procedure of ex parte temporary protection order** ~ **Provide that any breach of the order is an arrestable offence.**
4.	Property Orders	~No such order is provided.	~ No relevance response from the Government	~ **Add Occupation Order and Furniture Order so as to make sure the victims may continue to use premise, which she/ he has been living, with furniture for his/her living.**
5.	Court-mandated Batterer Intervention Programmes (BIP)	∗ **No programme for the abusers to address their treatment and counseling needs.**	~ The court may, in granting a non-molestation order under the DVO, require the abuser to attend an anti-violence programme	~ **For civil proceedings, abuser must attend a specified programme as a condition of the relevant protection order.** ~ **For criminal proceedings, court has additional power to sentence convicted abusers to BIP.**
6.	Establish Specialized Domestic Violence Court	~No such provision.	~Will consider establishment.	~ **Establish specialized domestic violence court for speedy handling of domestic violence cases and provide comprehensive support to victims.**

6.	Establish Specialized Domestic Violence Court	~No such provision.	~Will consider establishment.	**~ Establish specialized domestic violence court for speedy handling of domestic violence cases and provide comprehensive support to victims.**

CHAPTER 4

Recommendations and Comments of other NGOs

Harmony House Response Document
Additional Concern about the Review of Cap. 189 proposed by the Domestic Violence Ordinance Alliance

Harmony House strongly believes that all human being have the right to live with dignity and respect and to be free from violence, abuse and coercion. Therefore, we are dedicated in helping victims of domestic violence protect themselves from violence.

Toward the changes of the society, we are highly appreciated for government's preparation to amend the some 20-years Domestic Violence Ordinance Cap. 189 (the Ordinance), paving the way for more advanced protection to victims of domestic violence. Also encouraging is the active discussion among many concern groups and parties on the amendment of the Ordinance striving for its excellence. As the pioneer fiercely combating domestic violence, we are obligated to participate in the discussion on the amendment of the Ordinance.

Harmony House is in favor of most of the suggestions proposed by the Domestic Violence Ordinance Reform Alliance (the Alliance). However, we are urging for the re-consideration for its definition of family relationship, and we hereby offer some suggestions and supplement for further discussion.

Necessity for widening the protection target of the Ordinance

The Alliance suggests including "ex-spouse and ex-cohabitee (whatever sex), children, parents, parents-in-law, siblings and siblings-in-law" to the Ordinance as targets for protection. Harmony House assents to this extension of protection scope to other family members. This amendment also responds to the phenomenon of same-sex domestic violence which demonstrates understanding and respect to the issue. Research shows that lesbians are afraid of disclosing their sexual orientation when facing same-sex violence (Ip, 2003). In February 2007, internet research conducted by five local homosexuality concern groups revealed that, among 236 respondents, 33% experienced battery, revilement, psychological abuse, stalking and sexual assault by same-sex partners, while 16% encountered physical abuse (Sing Pao, 2007). Harmony House thus supposes the use of "intimate relationship" as a replacement of the phrase "ex-spouse and ex-cohabitee (whatever sex)" applied by Alliance. It is believed that the term "intimate relationship" can be more responsive to the diversity of society and the need of people in different sexual orientations, reinforcing the inclusiveness and coverage of the Ordinance.

Summary

To keep abreast of the changing society, legislation should be regularly reviewed to

meet the need of people from different sections. Legislation demonstrates the position and viewpoint of the government, reflecting the value of our society. Therefore, Harmony House believes that the ideal legislation should necessarily be proactive, in addition to the function of determent and punishment. Currently, the topic of homosexuality still draws much diversified public opinions from the society and yet domestic violence is a complicated social problem. The government should respond to this issue through legislation, striving to ensure the justice and equality before the law. Therefore we sincerely hope that, by joining force with different parties, Domestic Violence Ordinance can be proactive to a more comprehensive and inclusive manner, taking a big leap to in fighting against domestic violence.

Reference

Ip Cheung Sau, Heidi (2003). Same-sex Violence in Hong Kong Paper Presentation, Columbia University 7-8 Feb 2003, Published on Twelfth Annual Graduate Student Conference on East Asia, Abstract Booklet, p.26-27 New York: Columbia University

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Family Services, Caritas, Hong Kong
Statement on the reform of "Domestic Violence Ordinance"

Introduction

Hong Kong Caritas Family Services are of the opinion that the current "Domestic Violence Ordinance" (Cap. 189, Laws of Hong Kong) are unable to cope with the changes of the family structure of the society of Hong Kong, with many family members facing the threats of domestic violence without the coverage of protection from the law. Thus our organization would like to see the law being reformed as soon as possible. Our organization suggests that the focus of the reform include the amendments to the definition of domestic violence, expand the scope of coverage of protection, amend the injunction orders into protection orders, implement court-annexed batterers' intervention programmes (BIPs) and to establish a specialist court dedicated to domestic violence.

Definition of Domestic Violence

- Our organization requests the government to amend Domestic Violence Ordinance by introducing the definition of domestic violence, which includes physical abuse and psychological abuse, since we understand that the impact of psychological abuse is comparable to that of physical abuse.
- We suggest that Domestic Violence Ordinance should include a clear definition as to "molestation", and we are also of the opinion that molestation should include prolonged abuse of various forms, which would have already constituted psychological abuse.

Expand the scope of coverage of protection

In the current government's proposal of amendments to Domestic Violence Ordinance, which the scope of coverage of protection does not cover parents and adult children, relatives from marriage ties and siblings. We suggest that the scope of coverage should be expanded to cover the aforesaid groups based on the principle of fairness, without leaving any member of family being excluded from the law for protection. Thus, the amended law should include former spouses and cohabitants, children, parents and parents-in-law, siblings and siblings-in-law.

The Government had argued against the inclusion of elderly or abuse of elderly by saying that it would cause disruption of pre-existing social values, yet we consider that it is necessary for the government to consider the matter as a whole, and should provide different services for different categories of members of a family instead of excluding them for convenience.

Amend injunction orders into protection orders

- We are of the same opinion as the alliance in suggesting that the government should consider to amend "injunction orders" into "protection orders". Victims of domestic violence and members of the public often have misunderstanding on "injunction orders", which leads to small number of cases seeking an order being granted by the court. Therefore we suggest the government should introduce more

protective elements under the current framework of "injunction order", so as to enhance the protection offered by the law. Furthermore, we also suggest that the government should consider the simplification of the procedures of applying for "protection order", and to provide more resources to different departments, such as the police and social services organizations in assisting victims to apply "protection order".

- Under the current law, "injunction order" is only valid for a maximum of three months, with the possibility of extendable for a further three months. However, as legal procedures are often time-consuming, and the process for victims of domestic violence to search for a new home and other measures would often need more time. Furthermore, given the behavioural pattern of perpetrators, it is impossible for domestic violence to be terminated within such a short time. Thus we concur with the alliance in suggesting that there should not be an upper limit for the validity of protection orders, and the relevant parties could apply to the court requesting the variation of the orders.

Court-mandated Batterers' Intervention Programmes (BIPs)

Our organization suggests that the government should impose court-annexed batterers' intervention programmes, allowing the courts to refer perpetrators to join relevant programmes for the purpose of changing the behaviour pattern of the perpetrators, as the long-term solution to domestic violence.

Establish Special Court on Domestic Violence

We suggest that the government should consider establishing a specialist domestic violence court to handle cases on domestic violence, regardless of their nature and category. Besides, the government can investigate on the experiences of other jurisdictions in the operating specialist domestic violence courts, and to amend the system accordingly, in the hope that domestic violence cases could be handled in a more comprehensive manner.

Appendix A

Domestic Violence Ordinance, Cap.189

DOMESTIC VIOLENCE ORDINANCE – LONG TITLE
VerDate: 30/06/1997

To provide protection of persons from domestic violence and for matters ancillary thereto.

[19 December 1986] L.N. 305 of 1986

(Originally 48 of 1986)

DOMESTIC VIOLENCE ORDINANCE - SECT 1
Short title VerDate:30/06/1997

This Ordinance may be cited as the Domestic Violence Ordinance.

DOMESTIC VIOLENCE ORDINANCE - SECT 2
Interpretation and application VerDate:30/06/1997

(1) In this Ordinance, unless the context otherwise requires-
"child" (兒童) means a person under the age of 18 years; (Amended 80 of 1997 s. 25)
"matrimonial home" (婚姻居所) includes a home in which the parties to a marriage ordinarily reside together whether or not it is occupied at the same time by other persons.

(2) Subject to section 6(3) this Ordinance shall apply to the cohabitation of a man and a woman as it applies to marriage and references in this Ordinance to "marriage" (婚姻) and "matrimonial home" (婚姻居所) shall be construed accordingly.

DOMESTIC VIOLENCE ORDINANCE - SECT 3
Power of District Court to grant injunction VerDate:30/06/1997

(1) On an application by a party to a marriage the District Court, if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage and subject to section 6, may grant an injunction containing any or all of the following provisions-

(a) a provision restraining that other party from molesting the applicant;

(b) a provision restraining that other party from molesting any child living with the applicant;

(c) a provision excluding that other party from the matrimonial home, or from a specified part of the matrimonial home, or from a specified area whether or not the matrimonial home is included in that area;

(d) a provision requiring that other party to permit the applicant to enter and remain in the matrimonial home or in a specified part of the matrimonial home, whether or not any other relief is being sought in the proceedings.

(2) In the exercise of its jurisdiction to grant an injunction containing a provision mentioned in subsection (1)(c) or (d) the District Court shall have regard to the conduct of the parties, both in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any child living with the applicant and to all the circumstances of the case.[cf. 1976 c. 50 s. 1 U.K.]

DOMESTIC VIOLENCE ORDINANCE - SECT 4
Court of First Instance may exercise powers of District Court in certain cases
VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2
The Court of First Instance may exercise the powers conferred on the District Court under section 3-

(a) in a case of urgency; or

(b) where the Court of First Instance is satisfied that special circumstances are present which make it appropriate for the Court of First Instance rather than the District Court to exercise those powers.
(Amended 25 of 1998 s. 2)

DOMESTIC VIOLENCE ORDINANCE - SECT 5
Arrest for breach of order VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2

(1) Where, on an application by a party to a marriage, the Court of First Instance or the District Court grants an injunction (whether pursuant to jurisdiction conferred by this Ordinance or pursuant to any other jurisdiction) containing a provision, in whatever terms, which-

(a) restrains the other party from using violence against the applicant or a child living with the applicant; or

(b) excludes that other party from the matrimonial home or from a specified part of the matrimonial home or from a specified area, the Court of First Instance or the District Court, as the case may be, if it is satisfied that the other party has caused actual bodily harm to the applicant or,

as the case may be, to the child concerned, may, subject to section 6, at the same time as it grants the injunction or at any time during the period for which the injunction is granted, attach to the injunction a power of arrest in the prescribed form.

(2) Where under subsection (1) a power of arrest is attached to an injunction a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction by reason of that person's use of violence or, as the case may be, his entry into any premises or area specified in the injunction, and the police officer shall have all necessary powers including the power of entry by the use of reasonable force to effect that arrest.

(3) Where a person is arrested under subsection (2) he shall-

(a) be brought-

(i) in the case of a power of arrest attached under subsection (1) to an injunction by the Court of First Instance, before the Court of First Instance; and

(ii) in the case of a power of arrest attached under that subsection to an injunction by the District Court, before the District Court, before the expiry of the day after the day of his arrest; and

(b) not be released within the period referred to in paragraph (a) except on the direction of the Court of First Instance or of the District Court, as the case may be, but nothing in this section shall authorize his detention at any time after the expiry of the period mentioned in paragraph (a).

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap 1) shall not apply to this section except in so far as that section applies to a gale warning day.
(Amended 25 of 1998 s. 2)[cf. 1976 c. 50 s. 2 U.K.]

DOMESTIC VIOLENCE ORDINANCE - SECT 6
Limitations with respect to certain injunctions and powers of arrest VerDate:30/06/1997

(1) A provision mentioned in section 3(1)(c) or (d) contained in an injunction granted under this Ordinance shall have effect for such period, not exceeding 3 months, as the court considers necessary.

(2) A power of arrest attached under section 5(1) to an injunction shall-

(a) be granted for such period, not exceeding 3 months, as the court considers necessary; and

(b) lapse on the expiry of the period for which the injunction was granted.

(3) Nothing in this Ordinance shall authorize a court on an application by one of the parties to a relationship to which this Ordinance applies by virtue of section 2(2) to grant an injunction containing a provision mentioned in section 3(1)(c) or (d), or, under section 5(1), attach to an injunction a power of arrest, unless that court is satisfied that having regard to the permanence of that relationship it is appropriate in all the circumstances to grant that injunction or attach that power of arrest.

DOMESTIC VIOLENCE ORDINANCE - SECT 7
Power of court to grant extension VerDate:30/06/1997

A court may extend-

(a) an injunction granted under this Ordinance containing a provision mentioned in section 3(1)(c) or (d); or

(b) a power of arrest attached to an injunction under section 5(1),prior to the expiry of the period thereof for a further period so that the total period thereof does not exceed 6 months from the date when that injunction was granted or that power of arrest attached.

DOMESTIC VIOLENCE ORDINANCE - SECT 8
Rules of practice and procedure VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2
The Chief Justice may make rules for the purposes of this Ordinance in respect of the following matters-

(a) the hearing and determination of applications under this Ordinance;

(b) forms to be used in connection with any application or order under this Ordinance;

(c) the service of documents;

(d) the attendance of parties;

(e) the release on bail of persons arrested under a power of arrest attached, under section 5(1), to an injunction; and

(f) the transfer of proceedings commenced in the Court of First Instance from the Court of First Instance to the District Court and of proceedings commenced in the District Court from the District Court to the Court of First Instance. (Amended 25 of 1998 s. 2)

DOMESTIC VIOLENCE ORDINANCE - SECT 9
Saving as to existing jurisdiction VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2
The powers conferred under this Ordinance shall be in addition to and not in derogation from the powers of the Court of First Instance and the District Court.
(Amended 25 of 1998 s. 2)

DOMESTIC VIOLENCE ORDINANCE - SECT 10
Injunctions not to be registered VerDate:30/06/1997

An injunction containing a provision mentioned in section 3(1)(c) or (d) shall not be registered under the Land Registration Ordinance (Cap 128).

DOMESTIC VIOLENCE ORDINANCE - SECT 11
Powers of the court to be exercised by a judge VerDate:01/07/1997

Amendments retroactively made - see 25 of 1998 s. 2

(1) The powers conferred by this Ordinance on the Court of First Instance shall be exercised by a judge. (Amended 25 of 1998 s. 2)

(2) The powers conferred by this Ordinance on the District Court shall be exercised by a District Judge.

Appendix B

Definition of "domestic violence"

(1) "domestic violence", in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.

(2) "violence" means
- (a) Physical abuse;
- (b) Sexual abuse;
- (c) Psychological abuse, including, but not limited to,
  - (i) Intimidation;
  - (ii) Harassment;
  - (iii) Stalking;
  - (iv) Damage to property;
  - (v) Threats of physical abuse, sexual abuse, or psychological abuse;
  - (vi) In relation to a child, abuse of the kind set out in subsection (3) of this section.
- (d) Neglect, where a child, an elderly person or a mentally incapacitated person who is a dependant of that person and who has been or is being neglected or ill-treated by that person.

(3) Without limiting subsection (2)(c) of this section, a person psychologically abuses a child if that person
- (a) Causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
- (b) Puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;

but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Without limiting subsection (2) of this section,
- (a) A single act may amount to abuse for the purposes of that subsection;
- (b) A number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

Behaviour may be psychological abuse for the purposes of subsection (2)(c) of this section which does not involve actual or threatened physical or sexual abuse.

Appendix C

Definition of "domestic relationship"

A person is in a "domestic relationship" with another person if the person is:-

(a) a spouse, cohabitant or former spouse or cohabitant of the other person, whether they are of same sex or not;
(b) a child of the other person including an adopted child and a step-child, adult son or daughter, no matter having been co-habited with the other person or not;
(c) a father, a mother or a father or mother in law of the other person;
(d) a brother, sister, a step brother or sister or a brother or sister in law of the other person;
(e) any other relatives of the other person;
(f) a same-sex partner or a former same-sex partner of the other person; or an incapacitated person, who in the opinion of the court, can be regarded as a member of the family of the other person.

Appendix D

Summary Application Form for Protection Order used in Boston, USA

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c.209A) Page 1 of 2 | COURT USE ONLY – DOCKET NO. | **TRIAL COURT OF MASSACHUSETTS**

A ☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT _____ DIVISI

B Name of Plaintiff (person seeking protection)

C Plaintiff's Address. DO NOT complete if the Plaintiff is asking the Court to keep it confidential. *See K. 4. below.*

Daytime Phone No. ( )

If the Plaintiff left a former residence to avoid abuse, write that address here:

D I ☐ am over the age of eighteen.
I ☐ am under the age of eighteen, and _____, my _____ (relationship to Plaintiff) has filed this complaint for me.
The Defendant ☐ is ☐ is not under the age of eighteen.

E To my knowledge, the Defendant possesses the following guns, munition, firearms identification card, and/or license to carry:

F Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for divorce, annulment, separate support, legal separation or abuse prevention? ☐ No ☐ Yes
If Yes, give Court, type of case, date, and (if available) docket no.

G Name of Defendant (person accused of abuse)

Def. Date of Birth | Defendant's Alias, if any

Defendant's Address | Day Phone (

Sex: ☐ M ☐

Social Security # | Place of Birth

Defendant's Mother's Maiden Name (first & last)

Defendant's Father's Name (first & last)

H The Defendant and Plaintiff:
☐ are currently married to each other
☐ were formerly married to each other
☐ are not married but we are related to each other by blood or marriage; specifically, the Defendant is my _____
☐ are the parents of one or more children
☐ are not related but live in the same household
☐ were formerly members of the same household
☐ are or were in a dating or engagement relationship.

I Does the Plaintiff have any children? ☐ No ☐ Yes If yes, the Plaintiff shall complete the appropriate parts of Page 2.

J On or about (dates) _____ I suffered abuse when the Defendant:
☐ attempted to cause me physical harm
☐ caused me physical harm
☐ placed me in fear of imminent serious physical harm
☐ caused me to engage in sexual relations by force, threat of force or duress

K THEREFORE, I ASK THE COURT TO ORDER:
☐ 1. the Defendant to stop abusing me by harming, threatening or attempting to harm me physically, or placing me in fear of imminent serious physical harm, or by using force, threat or duress to make me engage in sexual relations unwillingly.
☐ 2. the Defendant not to contact me, unless authorized to do so by the Court.
☐ 3. the Defendant to leave and remain away from my residence which is located at: _____
If this is an apartment building or other multiple family dwelling, check here ☐
4. that my address be impounded to prevent its disclosure to the Defendant, the Defendant's attorney, or the public. *Attach Request for Address Impoundment form to this Complaint.*
☐ 5. the Defendant to leave and remain away from my workplace which is located at: _____
☐ 6. the Defendant to pay me $_____ in compensation for the following losses suffered as a direct result of the abuse: _____
You may not obtain an Order from the Boston Municipal Court or a District or Superior Court covering the following item 7 if there is a prior or pending Order for support from the Probate and Family Court.
☐ 7. the Defendant, who has a legal obligation to do so, to pay temporary support for me.
☐ 8. the relief requested on page two of this Complaint pertaining to my minor child or children.
☐ 9. the following: _____
☐ 10. the relief I have requested, except for temporary support for me and/or my child(ren) and for compensation for losses suffered, without advance notice to the Defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and I must appear in Court on that day if I wish the Order to be continued.

DATE | PLAINTIFF'S SIGNATURE X | **Please complete affidavit on reverse of this page**

This is a request for a civil order to protect the Plaintiff from future abuse. The actions of the Defendant may also constitute a crime subject to criminal penalties. For information about filing a criminal complaint, you can talk with the District Attorney's Office for the location where the alleged abuse occurred.

FA 1 (9/95) COURT COPY

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c.209A) Page 2 of 2 | COURT USE ONLY – DOCKET NO. | **TRIAL COURT OF MASSACHUSETTS**

ISSUES PERTAINING TO CHILDREN

A. **RELATED PROCEEDINGS.** Is there any proceeding that the Plaintiff knows of or has participated in which is pending or has been concluded in any Court in the Commonwealth or any other state or country involving the care or custody of the child or children of the parties? ☐ YES ☐ NO
If Yes, the Plaintiff shall complete and file with this Complaint an Affidavit Disclosing Care or Custody Proceedings as required by Trial Court Uniform Rule IV, and provide copies of documents required by the Rule. This Affidavit and related information are available from the office of the Clerk-Magistrate or Register of Probate of the Court.

B. **RELATED PROCEEDINGS.** Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for paternity: ☐ YES ☐ NO

C. **CUSTODY.**
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for custody if there is a prior or pending Order for custody from the Probate and Family Court or Juvenile Court.
☐ I request custody of the following minor child or children of the parties:

NAME	DATE OF BIRTH	NAME	DATE OF BIRTH

D. **CONTACT WITH CHILDREN.** I ask the Court to order the Defendant not to contact the following child or children unless authorized to do so by the Court:

NAME	NAME

The specific reasons for this request are: _____

If the Plaintiff alleges that the Defendant has abused the above-named child or children, a separate Complaint may be filed on behalf of each child.

E. **VISITATION.** If the Plaintiff is filing this Complaint in the Probate and Family Court, the Plaintiff may request a Visitation Order. Such Orders are not available in other Courts. Regarding visitation, I ask the Court to
☐ permit visitation.
☐ order no visitation between the Defendant and our minor child or children.
☐ permit visitation only at the following visitation center: _____ to be paid for by _____ (name).
☐ permit only visitation supervised by _____ (name) at the following times: _____ to be paid for by _____ (name).
☐ order visitation only if a third party, _____ (name), picks up and drops off our minor child or children.

F. **TEMPORARY SUPPORT.**
The Plaintiff may not obtain an Order from the Boston Municipal Court or a District or Superior Court for temporary support if there is a prior or pending Order for support from the Probate and Family Court or Juvenile Court.
☐ I ask the Court to order the Defendant, who has a legal obligation to do so, to pay temporary support for any children in my custody.

DATE | PLAINTIFF'S SIGNATURE X

FA 1A (9/95) COURT COPY

Appendix E

Ex Parte, Interim and Interlocutory Applications for Injunctions

1. For period from Monday to Friday, applicants should contact the Clerk of Court who will direct them to any judge or deputy judge who is free.[32]

2. If no judge is free during court hours, the Duty Judge will be available at 430pm.[33]

3. For period from 9am-12noon on Saturday, the Duty Judge will be available in chambers and applicants may approach his clerk direct.[34]

4. At any other time, the Duty Judge should be approached at home in the usual way.[35]

5. An applicant will usually be required: [36]
   (a) to give an undertaking in damages;
   (b) to notify the defendant of the terms of the order forthwith by appropriate means;
   (c) if proceedings have not been issued, to issue them forthwith;
   (d) if a draft affidavit has not been sworn, or where the facts have been placed before the court orally, to procure the swearing of the affidavit or the verification on affidavit of the facts outlined orally to the Court.

6. The ex parte order should, as a general rule, contain provision:[37]
   (a) for the defendant to apply on notice for discharge or variation of the order;
   (b) for a return date, of an inter partes hearing;
   (c) for the costs to be reserved.

[32] See Practice Directions 11.1/2, Hong Kong Civil Procedure 2007
[33] See Practice Directions 11.1/2, Hong Kong Civil Procedure 2007
[34] See Practice Directions 11.1/2, Hong Kong Civil Procedure 2007
[35] See Practice Directions 11.1/2, Hong Kong Civil Procedure 2007
[36] See Practice Directions 11.1/7, Hong Kong Civil Procedure 2007
[37] See Practice Directions 11.1/7, Hong Kong Civil Procedure 2007

Appendix F

Order 80, Rules of the High Court, Cap.4A

a. 'person under disability' means a person who is a minor or a mentally incapacitated person.[38]

b. 'mentally incapacitated person' means a mentally disordered person or a mentally handicapped person. [39]

c. 'minor' is a person who has not attained the age of 18. [40]

d. A person under disability must only make a claim by his 'next friend' and defend a claim by his 'guardian *ad litem*'.

e. A person within the jurisdiction not being under a personal incapacity to sue, and not being an accounting party, and not having an interest adverse to the minor, and not connected with the defendants, may be a next friend.[41]

f. Next friend or guardian *ad litem* must act by a solicitor.[42]

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[38] See Order 80 rule 1, Rules of High Court

[39] Under the Mental Health Ordinance, Cap.136, a mentally disordered person means a person suffering from mental disorder; a mentally handicapped person means a person who is or appears to be mentally handicapped. [para.80/1/1, Hong Kong Civil Procedure 2007]

[40] See s.3, Cap.1; para.80/1/2, Hong Kong Civil Procedure 2007

[41] The Court generally expects a next friend to be a substantial person; and, as in the case of a guardian *ad litem*, it is desirable that he should be a relation, connection, or friend of the family and not a mere volunteer. [para.80/3/8, Hong Kong Civil Procedure 2007]

[42] See para.80/2/2, Hong Kong Civil Procedure 2007

Appendix G

Listing and Hearing of Summonses for Interlocutory Orders and Injunctions

a. The return dates for all summonses for interlocutory injunctions are Friday mornings at 10 am.[43]
b. There will be two clear days' notice given to the Respondent.[44]
c. The judge granting an ex parte injunction will determine on which summons day the injunction shall be returnable. In usual circumstances the return date for ex parte injunctions granted less than two clear days before a summons day will be the second summons day following the grant.[45]
d. Applications for ex parte injunctions which are ready for hearing on summons day may be brought before the Summons Judge prior to 4 pm that day.[46]
e. A summons can be adjourned for not more than 14 days and not more than two successive adjournments may be made.[47]

[43] See Practice Directions 5.3/1, Hong Kong Civil Procedure 2007
[44] See Practice Directions 5.3/2, Hong Kong Civil Procedure 2007
[45] See Practice Directions 5.3/2, Hong Kong Civil Procedure 2007
[46] See Practice Directions 5.3/2, Hong Kong Civil Procedure 2007
[47] See Practice Directions 5.3/6, Hong Kong Civil Procedure 2007

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引言

爲針對家庭暴力問題，香港於1986年根據英國在1976年制訂的“Domestic Violence and Matrimonial Proceedings Act”，制訂了《家庭暴力條例》(第189章)。

其後，不同的社會服務機構和學者對家庭暴力的問題進行了更深入和全面的了解和研究，他們分別對《家庭暴力條例》提出不同的條訂建議。但由於香港社會長期以來普遍認爲家庭暴力乃是家事，外人不應干涉太多，因此政府亦不願意修訂《家庭暴力條例》。

在此期間，國際間對家庭暴力的看法卻漸漸起了變化；這些變化包括從受害者的角度理解家庭暴力造成的傷害，試行不同的措施，以增強對受害者的支援，並爲施虐者提供服務，預防及減輕家庭暴力問題。不同的國家，如美國、加拿大、澳洲、英國等等，亦朝此方向修訂家庭暴力法例，保障受害人及適度地懲罰施虐者，並爲雙方提供適切的服務，以家庭暴力不再重複發生爲旨。其中英國在過去二十年間已經先後三次大幅修訂有關的法例，爲受害者提供更全面的保障，並確保施虐者須面對施虐行爲的後果。

然而，在過去二十年，香港政府並沒有正視家庭暴力的問題。二十年來，政府對《家庭暴力條例》所作的唯一修訂，就只是把法庭的名字由最高法院(High Court)改爲現時的高等法院(Court of First Instance)，條例內容毫無進步，未能與時並進。香港的家庭暴力問題日益嚴重，但因爲法例未能提供足夠的保障，法律沒有發揮其應有的效力，受害者亦得不到充足的保障。而當中資源較匱乏者，其情況就更加嚴重。家庭暴力受害者身心受損，亦更易令她／他們陷於貧困之中。

2004年，天水圍天恆邨發生家暴慘案，震驚社會；死因庭在2005年8月就此慘劇展開死因聆訊，並向各政府部門提出十一項改善建議。此時，政府才表示願意檢討《家庭暴力條例》。其後，一群長期關心家暴問題的人士和團體走到一起，結合家暴受害人的經歷、前線服務經驗，學者、法律界及立法會議員的意見，討論如何完善《家庭暴力條例》，並組成「改革家庭暴力條例聯盟」。

政府即使面對社會各界的強烈訴求，修改法例的步伐仍十分緩慢。在2007年1月8日的立法會福利事務委員會中，政府才提出修訂的五大範疇；然而，這個遲來的行動並未能回應香港社會的訴求，法例保障範圍以至執行方面都有很多不足之處。

我們將本聯盟的建議方案及理念整理成此資料套，供各界人士參考討論，並希望集結社會各界的聲音和力量，務求此次修改《家庭暴力條例》，能擴大條例的保障範圍，爲家庭暴力中的受害者提供更好的保障，兼具合理懲處及輔導來處理施虐者，使法律能達到更好的預防、保障和懲處果效。我們希望以此與各位交流彼此意見，並希望各位能支持我們提出的建議修訂。

改革家庭暴力條例聯盟
2007 年 5 月

第一章
改革《家庭暴力條例》(第 189 章) [48]的理念[49]

近年，香港社會有不少要求修改《家庭暴力條例》(香港法例第 189 章)的聲音。在 2000 年，香港法例改革委會員亦在《纏繞行爲研究報告書》中提倡改革《家庭暴力條例》[50]。

家庭暴力是指任何一位家庭成員向其他家庭成員施予暴力對待，當中包括虐待配偶、兒童、長者、兄弟姐妹、父母、親密伴侶等。家庭暴力不但發生於家庭之中，亦可能在婚姻關係開始前，甚至在離婚後仍然發生。「暴力」亦不限於肢體暴力，還包括性暴力、心理虐待、威脅使用武力、折磨、纏繞行爲等。

香港現行的《家庭暴力條例》(第 189 章)於 1986 年制訂；此法例根據英國在 1976 年通過的"Domestic Violence and Matrimonial Proceedings Act"制訂[51]，香港法例與英國法例的主要分別在於，香港的《家庭暴力法例》：
一、在第 6 條下的禁制令有最長期限；及
二、在第 3 條下，只有符合相當嚴謹的條件下才會發出禁制令。

早於 1986 年，已經有人提出把虐待長者及強制輔導納入《家庭暴力條例》，但遭政府拒絕；結果，香港在過去二十年間，虐待長者及強制輔導兩方面的發展遠遠追不上西方社會。在此期間，英國的家庭暴力法已經有翻天覆地的變革。[52]

《家庭暴力條例》的立法精神，在於肯定親密關係中的暴力與一般暴力並不一樣；親密關係中的暴力有其特殊的權力關係及風險因素，亦會對受害者造成與一般暴力事件不同的傷害。同時，社會過份注重親密關係暴力中愛恨交纏的關係，以致縱容暴力，使受害者加倍受到傷害。

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[48]現行《家庭暴力條例》，**見附件A**。
[49] 本章大部分內容參考Chan., K. L.; Chiu, M.C. & Chiu, L.S. (2005). *Peace at home: Report on the Review of the Social and Legal Measures in the Prevention and Intervention of Domestic Violence in Hong Kong.* [A Consultancy Study Commissioned by the SWD of the HKSAR]. Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong.
[50] Law Reform Commission (2000). Report on Stalking. Hong Kong: Hong Kong Government.
[51] Scully-Hill, Anne (2004). *The Annotated Ordinances of Hong Kong: Domestic Violence (Cap 189).* Hong Kong: LexisNexis.
[52] 香港於 1997 年 7 月 1 日更改法例中法庭之名稱。英國則將Domestic Violence and Matrimonial Proceedings Act 1976 併入Family Law Act 1996 中。

I.「暴力」的定義

國際間不同組織對「暴力」各有不同的定義，「暴力」定義之難，可見一斑。

世界衛生組織[53]對「暴力」的定義如下：

「對自己、別人、某群體或某個社區故意施用或恐嚇施用暴力，造成或有可能造成受害者受傷、死亡、精神受創、發展不健全或出現缺陷。」

世界衛生組織界定「虐待兒童」爲：

「虐待兒童是指對兒童負有責任、有權力及被信任的人，對兒童施以各種身體及／或精神虐待、性虐待、疏忽照顧，或以兒童爲商業工具，對兒童的健康、生命、發展及尊嚴帶來潛在或實際的傷害。」

綜合這些定義，我們認爲家庭暴力的定義應該包括肢體暴力、性暴力、精神虐待、疏忽照顧兒童及長者、纏繞行爲及讓兒童活在家庭暴力環境下。

精神虐待

反對把精神虐待列入法例內的人士，認爲精神虐待的標準過於主觀，難以客觀界定，或者因爲定義太闊，以致一般瑣碎、對精神沒有影響的騷擾亦被列爲精神虐待。反對者擔心由於沒有明確的定義，精神虐待可能會被濫用，用作檢控的理由。

不過，不少國家的家庭暴力法皆已包括精神虐待，並且有實際運用的經驗，可供我們在修訂條例時作爲參考。

加拿大的司法部在參考過國外經驗後，把精神虐待界定爲[54]：

- *傷害一個人的自我感覺，對他們的行爲、認知、情緒或精神造成傷害；*
- *以言語攻擊一個人，例如吼叫、尖叫、咒罵、苛刻批評、威脅或脅迫等；*
- *以苛刻批評、言語恐嚇、社交孤立、脅迫或剝削等手段控制對方；*
- *恆常地作出不合理的要求；*
- *刑事恐嚇或作出纏繞行爲，包括以受害者或其親友的性命、財產、寵物等作威脅；*
- *使一個人感到受威脅；或*
- *使兒童處於家庭暴力的環境。*

美國的疾病控制及預防中心[55]對精神虐待的定義更爲詳細：

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[53] Krug. E.G, & et al (Eds.). (2002). *World report on violence and health.* Geneva: World Health Organizations.
[54] Aug 13, 2004, the Department of Justice Canada's web site http://canada.justice.gc.ca/en/ps/fm/familyvfs.html
[55] Centers for Disease Control and Prevention, Injury Center. Intimate Partner Violence Surveillance. Aug 13, 2004, http://cdc.gov/ncipc/pub-res/ipv_surveillance/11_Section34.htm

精神或心理虐待指以行動、威脅採取行動及以下的威迫手段，對受害人造成創傷。此清單並非詳盡無遺；其他使受害人感到受虐待的行爲亦可被界定爲心理虐待。此外，未必所有受害人都會認爲以下列出的行爲全屬於精神或心理虐待，所以在處理實際的精神虐待個案時，需要考慮到受害人的看法（或者參考近似者）。雖然有調查方法可以檢查受害人面對的精神虐待，但專家小組認爲最佳的方法是受害人曾遭受肢體暴力或性暴力、或曾遭恐嚇受到肢體暴力或性暴力，才確定受害人面對的精神或心理虐待是一種暴力行爲。故此，遭受精神虐待、恐嚇或強制行爲的婦女，數目會比同時被確定遭受精神暴力的婦女爲多。

簡而言之，精神虐待包括但不限於以下行爲：
1. 羞辱受害人；
2. 限制受害人的活動自由；
3. 限制受害人接受訊息；
4. 試圖強迫受害人同意其看法及意見；
5. 刻意透過某些行爲讓受害者自覺無用；
6. 刻意讓受害者感到難堪；
7. 挪用受害人的財產；
8. 佔受害人的便宜；
9. 不理會受害人的意願；
10. 不讓受害人與其家人及朋友接觸
11. 限制受害人使用電話及外出；
12.強 迫受害人從事犯法活動；
13. 以受害人的兒女作要脅，控制受害人的行爲；
14. 恐嚇受害人會失去其兒女的撫養權；
15. 破壞受害人的財物；
16. 限制受害人使用財物及其他基本生活所需；或
17. 發放破壞受害人聲譽的消息。

總結而言，精神虐待可以包括持續的言語虐待、騷擾、限制行動，剝奪其行動、財政、個人資源及社交活動，羞辱、威脅、恐嚇及社交孤立。我們認爲，香港法例可參考加拿大及美國法例對精神虐待的定義。此外，在定義中亦應加入恐嚇受害人傷害其家人。

要定義精神虐待，亦可參考現存的香港法例。現行的法例中，如《刑事罪行條例》(第 200 章)第 24 條中的「恐嚇」(intimidation)及第 119 條中的「威脅」(threat)，《性別歧視條例》(第 480 章)第 24 條中的「性騷擾」(sexual harassment)等等，都是相當普遍的心理威脅的例子。知名學者丹尼爾．奧拉利(Daniel O'Leary)[56]便認爲有可靠的辦法量度精神虐待，並以此爲基礎，界定精神虐待，在精神健康及法律界應

[56] O'Leary, K. Daniel (2001). "Psychological abuse: A variable deserving critical attention in domestic violence". O'Leary. K. Daniel & Maiuro, Roland D. *Psychological abuse in violent domestic relations.* NY: Springer Publishing Company.

用。他同時亦指出在發生肢體暴力前，往往會先出現精神虐待，造成與肢體暴力相似的傷害。簡單而言，精神虐待往往會帶來創傷，同時顯示著受害人可能正面對肢體暴力，需要更多的介入。

故此，我們建議將精神虐待的定義爲因肢體暴力或性暴力、威脅使用肢體暴力或性暴力、或強迫行爲造成的心理傷害或創傷。

疏忽照顧

在社會福利署的程序指引中，疏忽照顧兒童的定義是「對兒童的基本需要(如衣、食、居住、教育、醫療等)長期或嚴重忽略，並爲兒童的身心發展帶來嚴重損害，又或是讓兒童面對嚴重的危險。」[57]

現行法例已經有保護兒童及精神上無行爲能力者免受疏忽照顧的法例。有關疏忽照顧的法例可見於《侵害人身罪條例》(第 212 章)第 27 條(對所看管兒童或少年人虐待或忽略)[58]、《保護兒童及少年條例》(第 213 章)及《精神健康(監護)規例》(第 136D章)。根據《侵害人身罪條例》(第 212 章)第 26 及 27 條，使兒童的生命受威脅、虐待、疏忽照顧等都是違反法例的罪行。根據《精神健康(監護)規例》(第 136D章)，監護人有責任確保「採取一切合理步驟以確保該精神上無行爲能力的人的安全及福利，並作出安排，使該精神上無行爲能力的人獲得足夠的照顧。」社會認爲政府有責任確保受照顧的人得到適當的照顧，若有關的監護人無能力照顧精神上無行爲能力的人，社會福利署會委託監護人或由社會福利署署長擔任其監護人，負起照顧的責任。

這些法例的精神應該延續到保護精神上無行爲能力的長者。疏忽照顧長者是虐待長者的其中一種方法，其定義是「刻意拒絕或無意疏忽爲長者提供其基本生活需要（例如食物、食水、居住、保暖、衣服、衛生及安全等），或遺棄長者。無意的疏忽照顧包括因經驗不足、缺乏訊息或能力而引起的問題。」[59]

目前，香港仍未建立一套標準來評定某位長者是否有照顧自己的能力，亦未有清晰的制度確定這些長者的監護人或照顧者。但這些問題都不應成爲立法的障礙，我們應該採取措施，讓依靠別人照顧的長者得到法律保障，免受監護人或照顧者的虐待。

我們認爲應將疏忽照顧兒童、長者或精神上無行爲能力人士列爲家庭暴力行爲。

纏繞行爲

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[57] Working Group on Child Abuse (1998). *Procedures for handling child abuse cases.* Hong Kong: Social Welfare Department.
[58] S27: Ill-treatment or neglect by those in charge of child or young person.
[59] 政府回答立法會議員提問
http://www.hwfb.gov.hk/en/legco/replies/hw/1998_20020630?QTN/LQ68.HTM

法律改革委員會在 2000 年公佈《纏繞行爲研究報告書》，建議把纏繞行爲列爲刑事罪行。但由於新聞從業員認爲相關法律會妨礙新聞自由，因此有關纏繞行爲的立法建議尚未得到落實。

有團體早在 2004 年時[60]，已經建議就親密關係中的纏繞行爲另行立法，而有關建議亦爲法律改革委員會所接納。

我們建議在修訂《家庭暴力條例》時，將親密關係中的纏繞行爲加進暴力的定義中。

<u>使兒童處身家庭暴力情景</u>

過去二十年間，家庭暴力對於兒童成長的影響一直是重要的研究課題。很多研究顯示，在暴力家庭中成長的兒童，與被虐兒童一樣，往往會出現心理及行爲問題。他們面對的問題繁多，包括自尊感低、學業表現差劣、難以專注、發展遲緩、社交技巧較差、不願與其他人溝通、難與朋輩融合、對社交生活缺乏興趣，對父母的感覺夾雜愛、恨、羞恥、憤怒、恐懼、罪咎及不尊重父母，認爲自己要對家庭暴力負上責任，甚至出現創傷後綜合症候群[61]。

在子女面前向伴侶施暴是一種對兒童的心理虐待[62]。有外國學者指讓兒童目擊家庭暴力等同虐待兒童，應列作刑事案件處理。大部份情況下，在兒童前施暴亦會爲伴侶帶來心理壓力，甚至心理創傷。受虐者（尤其是婦女）會擔心兒童的安危及他們對家庭暴力的反應，並會因爲在兒童面前被虐而感到被羞辱。

我們認爲施虐者的行爲對兒童造成傷害，應當負上責任。我們認爲使兒童處身目擊家庭暴力情景應當被定爲一種虐待兒童的刑事罪行。

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[60] 和諧之家及關注家庭暴力問題聯席於 2004 年 4 月 26 日提交立法會福利事務委員會及保安事務委員會之文件。

[61] 有關的國際及本地研究包括 Brandon, M., & Lewis, A. (1996). Significant harm and children's experiences of domestic violence. *Child and family social work*(1), 33-42.

Chan, K. L. (2002). *Study of children who witnessed family violence*. Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 47).(In Chinese)

Chan, K. L. (2000). *Study of the impact of family violence on battered women and their children* . Hong Kong: Christian Family Service Centre and Department of Social Work & Social Administration, the University of Hong Kong (Resource Paper Series No. 38).

Jaffe, P. G., & Sudermann, M. (1995). Child witnesses of woman abuse: Research and community responses. In S. M. Stith & M. A. Straus (Eds.), *Understanding partner violence: Prevalence, causes, consequence and solutions* . Minneapolis: National Council on Family Relations.

Peled, E., Jaffe, P. G., & Edleson, J. L. (1995). *Ending the cycle of violence : community responses to children of battered women*. (1 st ed.). USA: Sage Publications, Inc.

[62] Kantor, G.K. & Little, L. (2003). Defining the boundaries of child neglect: When does domestic violence equate with parental failure to protect? *Journal of Interpersonal Violence, Apr. V. 18,* 338-355.

II. 家庭關係的定義

在現行的《家庭暴力條例》下，只有同居異性伴侶、已婚人士及其子女受到條例的保障，這是由於家庭暴力條例只包括在「婚姻居所」中發生的暴力行爲，亦即是說，除虐待配偶及虐待兒童以外的家庭暴力行爲，包括虐待長者、兄弟姐妹間的虐待、虐待父母、親密關係中的虐待等，都得不到《家庭暴力條例》的保障。

親密關係暴力與一般暴力不同，親密關係暴力的受害人往往會因爲特殊的因素而得不到應有的保障。因此，保障親密關係暴力受害者的法例，不應只狹義地包括異性同居者或已婚者。

法律改革委員會曾經在文件中，相當詳細地分析目前的《家庭暴力條例》在處理纏繞行爲時的限制，對於探討如何修訂法例很有參考價值：

「已經分居或從未同居的纏繞行爲受害人，往往因爲現有法例的限制，無法根據《家庭暴力條例》取得禁制令。因此，當一對夫婦離婚後，有關保障已不再適用。根據《家庭暴力條例》，除非已離婚者在離婚後仍居於同一單位之內，否則根本無法申請禁制令。同樣地，前同居者亦在雙方分開居住後，失去得到保護的機會。更重要的是，其他形式的家庭關係也有可能發生家庭暴力，例如家中的長者可能被同住的人虐待、父母可能被他們的子女以暴力對待、同性伴侶亦可能突然間有非理性的舉動或出現強迫行爲。但由於《家庭暴力條例》要求申請人必須爲婚姻下的其中一方，或最少爲同居者，因此上述人士不可能透過《家庭暴力條例》保障自己的權益。他們若要保障自己在法律上的權益，亦只有透過民事法中的侵權法採取法律行動，但這過程相當複雜，而且有關騷擾條例的賠償亦未能配合家庭暴力的情況，保障不足。而且，根據現行法例，兒童不能自行申請禁制令，只能依靠父母其中一方代表申請，若父母不願意代爲申請，他們得不到法律保障；而且法例規定只有與兒童同住的父或母方可提出申請，若兒童並非與父母同住，便無法得到條例的保障。」[63]

法律改革委員會的分析，清楚說明當今社會的家庭及親密關係的複雜性，以及現行條例中對家庭關係的定義在實際應用時的局限。

我們認爲「同居」只是一個識別親密關係的準則，而非親密關係的前設。英國的《家庭法案》(Family Law Act 1996)第 62 條便將家庭關係定義爲「同居者」(cohabitants)、「有關孩童」(relevant child)及「關連人士」(associated persons)，並在法例的附件十中詳細說明這三個定義。「關連人士」的定義，使所有發生於親密關係中的暴力都能納入法例的範圍之中。英國更於 2003 年通過“Domestic Violence, Crime and Victims Bill”，列明不論是否同性伴侶或是否曾同居，都可以循《家庭法案》申請禁制令及居住令。

[63] Law Reform Commission (2000). Report on Stalking. Hong Kong : Hong Kong Government.

我們認爲要回應社會轉變和日益嚴重的家庭暴力問題，必須修訂家庭關係的定義，擴闊至包括所有家庭成員及各種親密的關係。

III. 以保護令及物業令取代強制令

目前，家庭暴力的受害人可依《家庭暴力條例》申請強制令，禁止施虐者接近受害人及其住所。不過，強制令並未能禁止施虐者的其他騷擾行爲，保障受害人的財物以及能繼續留住在現有居所。

事實上，許多家暴受害人在決定離開施虐者或尋求協助的過程中，都會面對施虐者的各種形式的威嚇和騷擾，例如：騷擾受害人或其親屬、威嚇會騷擾受害人或其親屬、破壞受害人的財物、指使其他人騷擾或威嚇受害人等。此外，如果受害人決定終止與施虐者的親密關係或者暫時與同住的施虐者分開，現行法例無法保障受害人可獨自佔用當時的居所，結果，受害人往往要自行搬離居所，使他們面對加倍的困難。

由於現行法例未能處理上述問題，受害人未能得到全面的保障，直接打擊受害人的求助動力，間接來說則助長了家暴行爲。

我們認爲應以保護令及物業令取代目前的禁制令，擴大法例的保障範圍，除了以往條例所包括的保障範圍外，亦保護受害人免受施虐者各種形式的滋擾，保障受害人的財物以及能安全地留在現有居所中。

保護令及物業令的有效期

根據現行的《家庭暴力條例》，強制令的期限爲三個月，申請人可申請續期三個月。這個期限顯然未能提供足夠的時間及彈性，讓受害人處理家庭暴力帶來的種種問題。

事實上，受害人如決定與配偶離婚，便需較長時間處理有關的法律程序，受害人亦需時尋覓新居所、爲子女安排轉校等。再者，家庭暴力往往有相當長的歷史，施虐者基本上不可能在短期停止其暴力行爲。如果安排施虐者參加輔導計劃，六個月時間亦顯然不足。此外，部份受害人在與施虐者終止親密關係後，還面對施虐者長期的滋擾，使他們終身生活在家庭暴力的陰影下。

法律改革委員會曾經建議香港的《家庭暴力條例》參照英國《家庭法案》的做法，引入無上限的強制令，讓法庭有更大的彈性去作出決定，同時亦讓受害者無須爲延長有關命令的期限而多次到法庭。根據英國《家庭法案》第 42(7)條，法庭判處的禁制令可以有指定期限，或根據往後的法庭頒令而定，法庭有足夠的彈性根據每個個案的情況決定適合的有效期。

我們建議參考英國法例的模式，保護令及物業令的期限採取開放模式，由法庭決定根據個案情況決定合適的期限，讓受害者得到更佳的保障。

申請保護令及物業令的資格

家庭關係錯綜複雜，家庭暴力所呈現的方式及受影響的人亦複雜多樣；在界定誰人可申請保護令及物業令時，必須顧及這種複雜的情況，使無論直接或間接受到家庭暴力影響的人士，都能得到法例的保障。

例如，部份家庭暴力受害人選擇離開家園並搬到其他地方暫住時，施虐者往往會聯絡受害者的親人，甚至對他們施壓、要脅。因此，除受害人面對直接的傷害，其親人亦可能受到威脅或騷擾。我們認爲在此情況下，除了直接受害人，其他受威脅或騷擾的親人都應可以申請保護令及物業令。

社會往往會期望父母或成年人負起照顧及保護兒童的責任，但在出現暴力的家庭中，施虐者往往便是成年人，其他並非施虐者的成年人，亦可能因爲家庭權力的不等或其他因素，沒有採取行動保護被虐兒童。

根據英國《家庭法案》，16 歲或以下的兒童可以要求法庭在處理涉及他們的個案時，爲他們提供個別法律代表[64]。本港關注兒童權益的機構亦曾建議兒童在司法過程中，應有權自行尋求專門代表他們的法律服務[65]。

此外，英國《家庭法案》亦容許第三者代家庭暴力受害者申請禁制令或居住令，而有關人士必須是法例列明的其中一類人士，或符合法例列明的條件，而且必須得到有關受害人的授權。在實際運作時，大部份代表受害人提出申請者皆爲律師。

我們建議擴闊申請保護令及物業令的資格：

1. 如果家庭暴力的受害人是兒童，不必限制由父母代爲提出申請，亦不必限制訴訟任何一方須與兒童同住；
2. 法庭可決定是否受理由兒童自行提出的申請；該兒童亦可授權律師或其他法例指定的人士代表提出申請；
3. 容許第三者代家庭暴力受害人提出申請，如社會福利署、長者和精神上無行爲能力人士的監護人；
4. 間接受家庭暴力影響的人士（如受害人的親屬），亦可提出申請。

保護令及物業令加入逮捕權書

在現行法例下，只有在施虐者曾造成受害人身體受傷的情況下，法庭才可在強制令中加入拘捕令。在其他情況下，施虐者即使違反強制令，警方接報到場亦不會拘捕

[64] Family Law Act 1996 – Sect 64.
[65] 防止虐待兒童會於 2002 年 3 月 11 日向立法會福利事務委員會提交之文件。

違令的施虐者，警方須先另行申請搜查令才可拘捕違令人士。此外，倘施虐者違反強制令，受害人需自行提出民事起訴，即是說，確保違反強制令人士受法律制裁的責任，變相落在受害人身上。

我們建議將強制令改爲保護令及物業令後，在保護令及物業令中自動加入逮捕權書，並將違反保護令或物業令視作刑事罪行，有關人士一旦違反保護令或物業令，警方即可拘捕違令人士。這樣不但可加強保護令及物業令的效力，更可使執法更迅速有效。

簡化申請保護令及物業令之程序

在 2004 年，引用《家庭暴力條例》申請強制令的個案只有 23 宗；但同年，社會福利署接報的家庭暴力個案高達 3993 宗。這兩個數字的驚人差距，正正顯示現時的強制令未被家暴受害人充份運用。強制令使用率偏低的其中一個原因，便是因爲申請手續繁複，受害人往往需要律師協助才能處理有關法律程序；而家暴受害人通常亦面對經濟困難，需要申請法援才能得到律師援助，唯申請法援的時間又往往過長；重重的障礙使受害人未必會選擇採用這個方法來保護自己。

我們建議參考外國（如美國波士頓）的模式[66]，將保護令及物業令的申請表格簡化至受害人可自行填寫，並簡化申請緊急保護令的手續，使受害人不一定需要律師協助申請；申請獲批後，由警方將保護令或物業令交予施虐者。

IV. 強制性施虐者輔導

現時香港並未有強制性的施虐者輔導，現存服務全爲自願參與性質，不能強制施虐者參加及完成輔導。

香港大學陳高凌博士進行的調查指出，現時設有強制性施虐者輔導的國家包括美國、加拿大、英國、澳洲、紐西蘭及新加坡。強制性輔導由法庭判令，拒絕完成輔導的法律後果，包括重新參加輔導、罰款以致判刑。強制性施虐者輔導的目的，是通過心理輔導及教育，讓施虐者了解暴力的成因、責任和後果，改變其價值觀，從而減低施虐者再次施虐的機會，保障受害人及社會。

爲施虐者提供強制性輔導有兩個重要作用，其一是向公眾傳達家庭暴力是罪行的訊息，其二是藉較軟性的判刑鼓勵受害人舉報施虐者。

我們建議將接受強制性輔導列入爲判刑條款之中，賦予法庭權力在處理家庭暴力案件時，判處被定罪的施虐者接受強制性輔導，亦可附加於保護令，或作爲簽保令的其中一項條款，加強對受害人的保障。

[66] 於波士頓使用之簡化申請表格樣式，請參考附件D。

V. 家庭暴力法庭

家庭暴力涉及複雜的人際及權力關係，家庭暴力的案件又涉及民事及刑事成分，司法程序是否能顧及這些因素，幫助受害人得到法律賦予的最大保障，是一個重要的問題。此外，家庭暴力受害人通常對司法程序十分陌生並感到恐懼，在漫長的程序中，承受巨大的心理壓力。對許多受害人來說，司法程序往往是一個重大的難關。

爲了加快處理家庭暴力案件，爲受害人提供更佳支援，加拿大、英國、澳洲、紐西蘭、台灣及新加坡都有不同形式的專責法庭或特別設計的審訊程序處理家庭暴力案件。這些專責法庭或特別程序著重爲受害人／證人提供支援，例如設計有安全感的環境、保護證人的裝置，不同部門及社會服務機構亦會在法庭或程序中互相協調，爲受害人提供全面的支援，如法律諮詢、福利諮詢、陪同服務、個案輔導等。此外，不同國家都注重執法及司法人員對家暴問題的認識及經驗，例如有專責家暴案件的檢控官，處理家暴問題的家暴警察，並爲檢控官及法官提供特別訓練。

我們認爲香港可參考這些經驗，設立家庭暴力法庭，同時審理刑事及民事案件、處理保護令及物業令的申請，並配合其他服務單位和機構，爲受害人提供全面的支援。

VI.《家庭暴力條例》的地位：刑事及民事法

香港現行的《家庭暴力條例》屬民事法，沒有法例將家庭暴力界定爲刑事罪行。我們認爲將家庭暴力清楚界定爲刑事罪行，有助向公眾闡明家庭暴力乃是罪行的訊息。

現行處理家庭暴力的法例條文散落於不同的刑事及民事法例之中，並由不同的法庭處理。但各條相關的法例之中，卻沒有任何一條條文列明家庭暴力爲刑事罪行。只有當家庭暴力行爲嚴重至普通襲擊、毆打等刑事罪行，施虐者才可能被起訴。正因家庭暴力出現在「家庭」中，所以即使涉及暴力，執法者亦很少會以罪案的角度處理。爲家庭暴力作清晰的法律定義，並制訂明確的政策遏止家庭暴力，實在刻不容緩。

根據《中華人民共和國刑法》，家庭暴力早已被列爲刑事罪行。在英國，即使沒有明言家庭暴力爲刑事罪行，但涉及家庭暴力的個案卻可以因爲各種不同的刑事罪行條文而得到處理。英國司法部的研究顯示設有專責家庭暴力法庭及一套清晰的法律，並把所有與家庭暴力有關的法律串連一起，對解決涉及刑事成份的家庭暴力有相當大的幫助。

香港的家庭暴力問題可循這個方向，去解決現行法例的不足。問題的癥結並非在於有沒有需要爲家庭暴力刑事化，而是如何設立一個合適處理家庭暴力的刑事平台，銜接現有的法律。而同樣地亦與檢控官及法官對家庭暴力案件的敏感度有關。

我們建議香港參考國內的《婚姻法》、台灣的《家庭暴力防治法》、新加坡《婦女約章》等，將**《家庭暴力條例》與其他相關的法例，如《保護兒童及少年條例》、《刑事罪行條例》及《侵害人身罪條例》中相關的罪行集中於同一條例之內，爲家庭暴力的受害者提供更大的保障。**同時，法例亦應該清楚列明每項罪行的刑罰，包括循簡易治罪或公訴下的監禁及罰款等。

第二章
改革家庭暴力條例聯盟的建議修訂

第一部份：加入「家庭暴力」及「家庭關係」的定義

1. 界定「家庭暴力」當中包括：身體虐待；性虐待；精神虐待如恐嚇、 騷擾、纏擾行爲、損壞財物、要脅作出虐待、使兒童見證家庭暴力等；以及疏忽照顧兒童、長者及精神上無行爲能力的人。建議修訂的範本，**見附件 B**。

2. 界定「家庭關係」當中包括：已婚人士；未婚但同居者；不論曾否結婚，不論性別的前同居者；子女；父母；任何有姻親關係者；及任何有血緣關係者。建議修訂的範本，**見附件 C**。

第二部份：保護令[67]

~ 簡化申請單方面臨時保護令手續:

3. 只須填寫一份特定的標準表格。可參考美國波士頓所採納的樣本，**見附件 D**。
4. 現時在香港申請迫切強制令(或禁制令)的手續，**見附件 E**。建議繼續採納有關手續作申請 “單方面臨時保護令” 。
5. 申請迫切強制令(或禁制令)的批准準則：若法庭信納因要進行各方之間的法律程序而有機會引致延誤，並因此有可能爲申請人及/或其兒女帶來受損害的風險或過度的困苦，那麼有關申請便應獲得批准。

~ 保護令的涵蓋範圍:

6. 保護令的批准準則：若法庭信納答辯人正使用或曾使用「家庭暴力」對待申請人及/或其兒女以及若要爲申請人及/或其兒女提供保護，是需要發出有關命令，那麼該項申請便應獲得批准。
7. 保護令的內容：

[67] 建議以保護令及物業令取代現行的強制令。

(a) 答辯人不得對「受保護人士」[68]施行或威脅施行身體虐待或性虐待

(b) 答辯人不得損毀或威脅損毀「受保護人士」的財產。

(c) 答辯人不得作出或威脅作出任何可構成心理虐待的行爲，如恐嚇、騷擾或滋擾。

(d) 答辯人不得鼓勵其他人作出任何可被保護令所禁止的行爲。

(e) 答辯人不得在「受保護人士」的居所、業務或工作地方、教育機構或「受保護人士」經常到訪的任何其他地方觀察、在附近流連或阻礙進出有關地方。

(f) 答辯人不得在任何地方跟縱、截停或向「受保護人士」搭訕。

(g) 除得到「受保護人士」的同意，答辯人不得進入或停留於「受保護人士」所身處的土地或大廈。

(h) 答辯人不得與「受保護人士」接觸或聯絡[69]。

(i) 答辯人不得拿取、變換、破壞或在任何情況下處理「受保護人士」有所權益的財產。

(j) 答辯人須搬離「受保護人士」的居所。

(k) 要求警方或社會福利署的代表陪同「受保護人士」或答辯人返回申請人的居所，並監督把有關人等或其他被點名的人的所屬物品搬離。

(l) 要求答辯人對「受保護人士」因爲家庭暴力所受的直接金錢損失作出賠償，金額由法庭決定，可包括收入或支援上的損失、醫療或牙科費用、因傷造成的日常生活開支、搬遷及住宿開支以及根據家暴條例作出申請的費用，包括各項訟費。

~ 容許「無行爲能力人士」申請保護令:

8. 「無行爲能力人士」指任何18歲以下人士及精神上無行爲能力的人。

9. 可參照現行根據高等法院規則第4A章第80號命令所定的程序，**見附件 F**。

~ 更改原有的管養令/探視令:

[68] 「受保護人士」指申請人及其兒女及受益於有關命令的任何人，例如法庭可頒令有關命令也適用於與申請人有「家庭關係」的某人，使其受益。

[69] 除非該接觸/聯絡在任何緊急情況下是合理地需要的；是根據任何命令或書面協議所准許而該命令或協議是與誰負責每日照顧、接觸或管養任何未成年人有關；又或是，在其他情況下，根據保護令所准許的。

10. 在發出保護令時，法庭可以同時更改任何原有涉及相關兒童的管養令/探視令。

第三部份：物業令如「佔用令」、「傢具令」

~ 佔用令:

11. 授予申請人可居於某一「住宅房屋」[70]的權利。
12. 作用：申請人有權獨自佔用有關命令中的「住宅房屋」[71]以摒除命令中所針對的人。

~傢具令:

13. 授予申請人可管有及使用佔用令中或申請人和答辯人所居住的「住宅房屋」內的所有或任何傢具、家居電器及用品。
14. 作用：申請人有權獨自管有有關命令中的傢具、家居電器及用品以摒除命令中所針對的人直至該命令無效爲止。

第四部份：法庭頒布、更改或撤銷保護令/物業令的權力

15. 單方面臨時保護令持續有效至有關申請的各方之間聆訊的提訊日止。現行申請非正審強制令(或禁制令)的手續，**見附件 G**。
16. 於處理單方面臨時保護令申請的各方之間的聆訊時，法庭可以發出最終保護令以替代之前發出的臨時保護令、撤銷臨時保護令或延期聆訊再作實質辯論。
17. 在其他情況，法庭可於各方之間的聆訊頒布、更改或撤銷最終保護令或物業令或延期聆訊再作實質辯論。

第五部份：法庭強制的施虐者輔導計劃

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[70] 即訴訟相方各自擁有或有法定權益的「住宅房屋」(包括但不限於租賃的「住宅房屋」)。「住宅」指任何建築物或其任何部分，其設計及構造是供全部或部分用作居住用途的，見稅務條例(第 112 章)第 26E條及業主與租客(綜合)條例(第 7 章)第 50C條。

[71] 也包括任何用作或一般地會被用作住戶的土地、建築物或附屬於該「住宅房屋」的改建物。

~ 於民事法律程序方面:

18. 在發出保護令時，法庭可以指令答辯人參與一項特定的輔導計劃。然而，若答辯人曾經有過違反保護令/物業令或未能遵守保護令內的條款或遵照指令參與輔導計劃的紀錄，除非法庭認爲有充分的理由不須作出有關命令，法庭必須指令答辯人參與有關的輔導計劃。
19. 司法常務官須確保提供輔導計劃者有被知會已作出的相關命令。
20. 提供輔導計劃者可自行決定容許答辯人缺席任何課堂，但答辯人必須參加補課[72]，否則提供輔導計劃者須於答辯人缺席的7天內知會司法常務官。然後，司法常務官須知會法官，讓法官決定是否須要傳召答辯人。法庭其後可以維持、更改或撤銷有關命令，但必須警告答辯人不遵守法庭命令是刑事罪行，可判處監禁刑期。
21. 提供輔導計劃者在計劃完成後，須知會司法常務官，並由司法常務官知會申請人[73]。
22. 提供輔導計劃者可以向司法常務官作書面建議更改有關命令，以其他計劃取代之。

~ 於刑事法律程序方面:

23. 賦予刑事法庭有額外的權力在處理家庭暴力案件時，判處被定罪的施虐者/被告參與是項輔導計劃。

第六部份：逮捕權書

24. 在沒有合理辯解下，任何人若違反保護令/物業令或未能遵守保護令內的任何條款或遵照指令參與輔導計劃，即屬違法。
25. 違法者，一經簡易程序定罪，可被判處最高6個月監禁及罰款30,000元。[74]
26. 於保護令生效其間，任何一名警務人員皆可以在沒有手令的情況下，拘捕任何該名警員有充分理由懷疑其已經違反法庭命令的人。[75]

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[72] 除非提供輔導計劃者認爲該次缺席並沒有嚴重地影響那人全面得益於有關計劃。
[73] 提供輔導計劃者須知會司法常務官答辯人曾否被接納缺席任何課堂和原因，及有否完成整個計劃。
[74] 若被定罪者曾於過去 3 年內根據家暴條例被定罪最少 2 次以上，他可被判處不多於 2 年的監禁刑期。
[75] 警務人員須考慮：若不作出拘捕，任何「受保護人士」的安全可能會受到的威脅；所指控的違反法庭命令的嚴重性；所指控的違反已發生了多久；以及對可被拘捕人士的周邊人士或狀況的抑制效果。

第七部份：設立家庭暴力專責法庭(“家暴法庭”)

27. 在本條例下，設立一個專責處理家庭暴力案件的法庭。
28. 所有與 “家庭暴力” 有關的案件，不論是民事或刑事，將會交予此法庭處理。
29. 家暴法庭中處理有關案件的法官、檢察官、律師、警員及社工等，均須接受相關的專業訓練。
30. 組成一群受過專業訓練的法律專業人士，以協助家暴受害人使用家暴法庭。
31. 家暴法庭須提供辦公時間以外的服務來應付緊急案件。

第三章 政府及本聯盟就《家庭暴力條例》(第189章) 的主要修訂建議比對表

	修訂範圍	現有《家暴條例》不足之處	政府的建議修訂[1]	聯盟建議
1.	加入「家庭暴力」定義	・沒有定義何謂「家庭暴力」 ・唯一有關「暴力」的參照，只是「騷擾」一詞，並且未有在條例中定義何謂「騷擾」 ・纏擾、疏忽照顧兒童、長者及精神上無行爲能力的人等並不包括在內	・不考慮引入有關定義，認爲現有的條例已包含心理虐待，因爲： 1. 根據律政司意見，已有案例使「騷擾」包括身體及心理虐待 2. 法庭已有基於心理虐待而發出強制令的先例 ・不建議將家庭纏擾行爲刑事化，等待行政機關檢視建議中的纏擾條例。	・應參照其他司法管轄區，包括英國、新西蘭、新加坡、中國內地、台灣等，清楚界定「家庭暴力」 ・這應包括：身體虐待、性虐待、心理虐待（包括纏擾、疏忽照顧兒童、長者及精神上無行爲能力的人）
2.	加入「家庭關係」定義	「受保護人士」範圍只包括現時配偶或同居者 ・未能保護受到前配偶或前同居者或其親屬騷擾的受害人 ・未能保護牽涉其他家庭關係而非「配偶關係」的受害	・擴大範圍至前配偶／同居者及其子女；父母與子女、配偶父母和媳婿、及祖父母／外祖父母和孫／外孫關係；以及其他延伸的家庭關係，包括兄弟姊妹的配偶、配偶的兄弟姊妹、叔伯舅姑姨、甥侄、堂兄弟姊妹或表兄弟姊妹。	・應參照其他司法管轄區，《家暴條例》應針對「家庭關係」，而不應限於「配偶關係」 ・這應包括：前配偶及前同居者（無論同性與否）、兒童、父母、配偶之父母、兄弟姊妹、配偶之兄弟姊妹，任何有姻親關係者；及任何有血緣關係者

[1]見衛生福利及食物局於二零零六年十二月呈上立法會的討論文件 "立法會福利事務委員會檢討《家庭暴力條例》", 立法會CB(2)723/06-07(03)號文件，及衛生福利及食物局於二零零七年六月十三日呈上立法會的參考資料摘要 "2007 年家庭暴力(修訂)條例草案", 立法會HWF/CR 1/73281/01 號文件

		人		
3.	保護令（即現時法例所指的“強制令”）	・對受害人沒有足夠保障 ・強制令並未做到「以受害人爲本」及未能爲受害人提供足夠保障	・未有任何建議 ・只針對條例作一些細微改動，例如：容許兒童的起訴監護人爲其作出申請、授權法庭變更現有的管養令/探視令及附上逮捕授權書、延長強制令有效期至最高 24 個月	・應以「保護令」取代「強制令」以清楚表明這命令的性質，亦應提供多種無時限或可被多次延續的相應命令以保護受害人 ・爲受害人提供更多切合其即時需要及更具針對性的保護 ・簡化緊急申請單方面臨時保護令手續 ・使任何違反有關法令的行爲即屬可被拘控的罪行
4.	物業令	・沒有這項命令	・未有任何建議	・加入 “佔用令” 及 “傢具令” 以確保受害人可繼續於現居所居住及使用傢具
5.	法庭強制施虐者參與輔導計劃	・沒有任何計劃爲施虐者提供治療及輔導	・法院根據《條例》發出「禁制騷擾令」時，可規定施虐者參與反暴力計劃	・如循民事途徑，施虐者必須參與一個指定計劃作爲相關保護令的一個條件 ・如循刑事途徑，法庭有權判處被定罪的施虐者參與輔導計劃
6.	設立家庭暴力專責法庭	・沒有專責法庭	・將研究設立專責法庭	・設立家庭暴力專責法庭，加快處理家庭暴力案件，並爲受害人提供全面支援

			劃前，需要更仔細及深入的研究	
6.	設立家庭暴力專責法庭	・沒有專責法庭	・將研究設立專責法庭	・設立家庭暴力專責法庭，加快處理家庭暴力案件，並爲受害人提供全面支援

第四章
其他團體的建議和評論

和諧之家

有關改革《家庭暴力條例》聯盟建議之回應文件

「和諧之家」深信每個人的權利和尊嚴均應受到尊重，並享有不受暴力、虐待及壓迫的權利，故此，我們一直致力幫助家庭暴力的受害者跳出暴力的枷鎖。

面對社會的不斷轉變，我們非常欣喜政府現正籌備修改已運用了二十多年的《家庭暴力條例》 (以下稱《條例》)，爲家庭暴力受害人提供更合時宜的保障。同時，更令人值得鼓舞的，是社會上有不少熱心人士和團體爲修訂《條例》作出討論，務求使《條例》更爲完善。作爲致力打擊家庭暴力的先驅，參與是次修訂《條例》的討論是責無旁貸的。

我們贊同改革《家庭暴力條例》聯盟所提出的大部份建議。唯獨有關「加入家庭關係定義」中，有值得斟酌的空間，故希望藉此作出補充。

和諧之家認同擴大《家暴條例》的需要

聯盟建議應把《條例》的保障對象擴大至「前配偶及前同居者（無論同性與否）、兒童、父母、配偶之父母、兄弟姊妹及配偶之兄弟姊妹」，本會贊同應把<<條例>>的保障範圍擴大至其他家庭成員，亦明白及尊重有突顯同性家暴問題的需要，因爲香港同性家暴的現象早就存在。有研究指出，女同性戀者遇到同性暴力時，害怕公開表達自己的性傾向（Ip，2003）。2007 年 2 月，本港 5 個關注同性戀團體公佈網上調查，發現受訪者中（236 人）有 33%曾受同性伴侶虐打、辱罵、精神虐待、跟蹤和性侵犯，而受到身體虐待的比率高達 16%（成報，2007 年 2 月）。本會認爲應以「親密關係」(intimate relationship) 一詞，來取代聯盟所用的「前配偶及前同居者（無論同性與否）」此字眼。因爲「親密關係」一詞，更能切合現今多元社會及不同性別取向人士的需要，使《條例》的包容及涵蓋性更強、更廣。

總結

社會日新月異，法律條文需要切合社會及不同人士的需要。本會認爲理想的立法，除了有阻嚇及懲罰外，實在需要有前瞻性，同時，法律條文正好代表著政府的立場，反映社會的價值觀。儘管目前對於同志的議題，社會上有不同的輿論，然而，家暴是現今一個複雜的問題，需要政府立法回應，以保障不同人士的需要，以達到在法律面前人人平等的原則。在此，希望透過結集大眾的力量，制訂更爲完善的<<家庭暴力條例>>，爲打擊家庭暴力的工作進入另一新里程。

參考書目：

Ip Cheung Sau, Heidi (2003) Same-sex Violence in Hong Kong Paper Presentation, Columbia University 7-8 Feb 2003, Published on Twelfth Annual Graduate Student Conference on East Asia, Abstract Booklet, p.26-27 New York: Columbia University

成報 (2007-02-15)。逾三成女同性戀者曾受家暴。港聞版 A09。

香港明愛家庭服務
修訂《家庭暴力條例》立場書

引言

香港明愛家庭服務中心認爲現有之《家庭暴力條例》(香港法例第 189 章)，已經未能配合本地家庭結構所出現的轉變，有不少家庭成員正面對不同種類的暴力行爲，卻因現存條例的灰色地帶，不能享有《家庭暴力條例》的法律保障。有見及此，明愛家庭服務期望政府能夠儘快修訂並落實執行《家庭暴條例》。本服務所倡議之立場重點包括修訂家庭暴力的定義、擴大家庭保護的範圍、將強制令改爲保護令、法庭強制施虐者參與輔導計劃，及設立家庭暴力專責法庭。

修訂家庭暴力的定義

a. 本服務要求政府正式在《家庭暴力條例》內加入家庭暴力的定義，包括身體虐待、精神虐待及心理虐待，因爲心理虐待所造成的傷害並不少於身體虐待。
b. 建議在《家庭暴力條例》對「騷擾」一詞加上清晰的定義，本服務認爲任何家庭成員對另一成員作出持續騷擾行爲，已構成精神/心理虐待。

擴大家庭保護的範圍

現時政府對《家庭暴力條例》的修訂範圍仍未涵蓋父母與成年子女、姻親關係和兄弟姐妹，基於公平原則，本服務認爲政府應該擴大受保護人的範圍至家庭每一位成員，而不應有任何家庭成員，包括父母、兄弟姐妹、姻親被排拒於門外。**所以法例應包括前配偶及前同居者、兒童、父母、配偶之父母、兄弟姐妹、配偶之兄弟姐妹**。政府曾表示修訂涵蓋範圍如長者/虐老會那發家庭價值等問題，但本服務認爲政府需要確切研究在實際推行法例時，需同時配合相關的配套服務及措施，而不應把某一類別的家庭成員拒於保障範圍外。

將強制令改爲保護令

- 本服務同意聯盟的建議，政府該考慮將「強制令」修訂成「保護令」，家庭暴力受害者或社會大眾往往難以理解「強制令」的意義，致令求助人數偏低，建議政府在「強制令」的基礎上加入保護受害者的條文，以加強法律對受害者的保護。此外，本服務建議政府重新考慮簡化現時申請「強制令」的程序，並且考慮增加配套服務，包括透過不同部門，如警方及社會服務機構等，協助受助者即時以簡便的程序取得「禁制令」。
- 現時強制每只有三個月，倘法院認爲有足夠理據，可在三個月後再續期三個月。但各項法律程序需時，婦女要覓得新居所，子女轉校等都要較長時間。

再者，家暴往往有較長歷史，要施暴者在半年內令停止暴力行爲簡直是沒可能。本服務亦贊成聯盟的建議採用開放期限模式，而牽涉的有關人等皆可在中途申請更改期限。

法庭強制施虐者參與輔導計劃

本服務建議政府實施強制性施虐者輔導計劃，由法庭轉介施虐者參與有關的輔導，對施虐者加以輔導以改變施虐的習性，才是根治暴力行爲之長遠之法。

設立家庭暴力專責法庭

本服務建議當局應考慮設立家庭暴力專責法庭，審理有關家庭暴力的民事及刑事案件，並參考外國推行的家庭暴力法庭運作模式，取長補短地發展香港的家庭暴力專責法庭，期望使家庭暴力案件能夠有更效率及更整全地獲得處理。

附件 A
《家庭暴力條例》(第 189 章)

家庭暴力條例 - 第 189 章

家庭暴力條例 - LONG TITLE 詳題
VerDate:30/06/1997

本條例旨在對人提供使其免受家庭暴力侵害的保護，以及就附帶事宜訂定條文。

(1986 年制定)

〔1986 年 12 月 19 日〕1986 年第 305 號法律公告

(本爲 1986 年第 48 號)

家庭暴力條例 - SECT 1
簡稱 VerDate:30/06/1997

本條例可引稱爲《家庭暴力條例》。

(1986 年制定)

家庭暴力條例 - SECT 2
釋義及適用範圍 VerDate:30/06/1997

(1) 在本條例中，除文意另有所指外—
"兒童"(child) 指未滿 18 歲的人； (由 1997 年第 80 號第 25 條修訂)
"婚姻居所"(matrimonial home) 包括婚姻雙方通常共同居住的居所，不論該居所是否同時被其他人佔用。

(2) 在符合第 6(3)條的規定下，本條例適用於男女同居關係，猶如適用於婚姻一樣，而本條例中凡提述"婚姻"(marriage) 及"婚姻居所"(matrimonial home) 之處，須據此解釋。

(1986 年制定)

家庭暴力條例 - SECT 3
區域法院發出強制令的權力 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條

(1) 區域法院如應婚姻其中一方提出的申請，而信納婚姻的另一方曾經騷擾申請人或與申請人同住的兒童，則不論在有關法律程序中是否有人正尋求其他濟助，法院亦可在符合第 6 條的規定下發出強制令，強制令可包括以下全部或其中任何條文—

(a) 禁制該另一方騷擾申請人的條文；

(b) 禁制該另一方騷擾與申請人同住的兒童的條文；

(c) 禁止該另一方進入其婚姻居所，或婚姻居所的指明部分，或一處指明的地方(不論婚姻居所是否位於該地方內)的條文；

(d) 規定該另一方必須准許申請人進入及留在其婚姻居所或婚姻居所的指明部分內的條文。

(2) 在行使司法管轄權以發出載有第(1)(c)或(d)款所述條文的強制令時，區域法院須考慮雙方對另一方的行爲或其他行爲、雙方的各自需要及經濟能力、與申請人同住的兒童的需要以及該個案的所有情況。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)
〔比照 1976 c.50 s.1 U.K.〕

家庭暴力條例 - SECT 4
在若干情況下原訟法庭可行使區域法院的權力 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條
在以下情況，原訟法庭可行使第 3 條賦予區域法院的權力—

(a) 案件情況緊急；或

(b) 原訟法庭信納案件情況特殊，以致由原訟法庭行使該等權力較由區域法院行使爲恰當。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)

家庭暴力條例 - SECT 5
逮捕違反命令的人 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條

(1) 凡原訟法庭或區域法院應婚姻其中一方申請，發出載有以下條文的強制令(不論是依據本條例賦予的司法管轄權或任何其他司法管轄權發出，亦不論措辭如何)—

(a) 禁制另一方對申請人或與申請人同住的兒童施用暴力；或

(b) 禁止該另一方進入其婚姻居所、婚姻居所的指明部分或一處指明地方，則發出強制令的法院如信納該另一方曾導致申請人(或導致強制令所指的兒童，視乎強制令所指的是誰而定)身體受傷害，法院可在符合第 6 條的規定下，在發出強制令的同時或在強制令生效期內的任何時間，在強制令附上一份符合訂明格式的逮捕權書。

(2) 凡強制令根據第(1)款附有逮捕權書，警務人員無須手令，即可逮捕任何他合理地懷疑在違反該強制令的情況下，施用暴力或(視乎強制令的內容而定)進入該強制令指明的處所或地方的人；該警務人員並具有進行逮捕時所需的一切權力，包括使用適度武力強行進入某處所或地方進行該次逮捕的權力。

(3) 根據第(2)款被逮捕的人—

(a) 須在被逮捕翌日午夜前—

(i) 帶到原訟法庭席前(如有關的逮捕權書是根據第(1)款附於由原訟法庭發出的強制令上的)；或

(ii) 帶到區域法院席前(如有關的逮捕權書是根據第(1)款附於由區域法院發出的強制令上的)；及

(b) 如無原訟法庭或區域法院(視乎強制令由前者或後者發出而定)的指示，不得在(a)段所述期間內獲釋，但本條並不授權任何人在(a)段所述期間屆滿後拘留被逮捕的人。

(4) 除適用於烈風警告日的部分外，《釋義及通則條例》(第 1 章)第 71 條不適用於本條。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)
[比照 1976 c. 50 s. 2 U.K.]

家庭暴力條例 - SECT 6
對若干強制令及逮捕權書的限制 VerDate:30/06/1997

(1) 載於根據本條例發出的強制令內的第 3(1)(c)或(d)條所述條文，在法院認爲有需要的期間內有效，但有效期不得超過 3 個月。

(2) 根據第 5(1)條附於強制令的逮捕權書—

(a) 在法院認爲有需要的期間內有效，但有效期不得超過 3 個月；及

(b) 在該強制令有效期屆滿時即告失效。

(3) 如本條例憑藉第 2(2)條適用於某兩個人之間的關係，而其中一方向法院提出申請，本條例並不授權該法院應該項申請發出載有第 3(1)(c)或(d)條所述條文的強制令，或根據第 5(1)條在強制令附上逮捕權書，除非該法院考慮該關係的永久性後，信納發出該強制令或附上該逮捕權書在所有情況下均屬恰當。

(1986 年制定)

家庭暴力條例 - SECT 7
法院延長有效期的權力 VerDate:30/06/1997

法院在—

(a) 根據本條例發出並載有第 3(1)(c)或(d)條所述條文的強制令有效期屆滿之前；或

(b) 根據第 5(1)條附於強制令之上的逮捕權書的有效期屆滿之前，可將其有效期延長，但不得延長至發出強制令之日(或將逮捕權書附於強制令之日)起計超過 6 個月。

(1986 年制定)

家庭暴力條例 - SECT 8

實務及程序的規則 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條
終審法院首席法官可爲施行本條例就以下事項訂立規則—

(a) 根據本條例提出申請的聆訊及裁定；

(b) 根據本條例提出申請或發出命令而使用的有關表格；

(c) 文件的送達；

(d) 有關各方出庭應訊；

(e) 按根據第 5(1)條附於強制令上的逮捕權書而被逮捕的人的保釋事宜；及

(f) 將在原訟法庭展開的法律程序由原訟法庭移交區域法院處理，以及將在區域法院展開的法律程序由區域法院移交原訟法庭處理。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)

家庭暴力條例 - SECT 9
關於現行司法管轄權的保留性條文 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條
本條例所賦予的，是原訟法庭及區域法院的額外權力，而不減損法院現行權力。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)

家庭暴力條例 - SECT 10
強制令無須註冊 VerDate:30/06/1997

載有第 3(1)(c)或(d)條所述條文的強制令無須根據《土地註冊條例》(第 128 章)註冊。

(1986 年制定)

家庭暴力條例 - SECT 11
法院的權力由一位法官行使 VerDate:01/07/1997

具追溯力的修訂—見 1998 年第 25 號第 2 條

(1) 本條例賦予原訟法庭的權力由一位原訟法庭法官行使。

(2) 本條例賦予區域法院的權力由一位區域法院法官行使。

(1986 年制定。由 1998 年第 25 號第 2 條修訂)

附件 B
“家庭暴力”的定義

(1) 就任何人而言，“家庭暴力”指現時或曾經與該人有家庭關係的任何其他人向該人施加暴力。
(2) “暴力”指：
(a) 身體虐待；
(b) 性虐待
(c) 心理虐待包括但不限於：
    (i) 恐嚇；
    (ii) 騷擾；
    (iii) 纏擾行爲；
    (iv) 損壞財物；
    (v) 要脅作出身體虐待、性虐待或心理虐待；
    (vi) 就兒童而言，本條第(3)款所列的虐待。
(d) 疏忽，即任何兒童、長者及精神上無行爲能力的人而他們是該人的受養人並曾經或於現時被該人疏忽照顧或惡待。
(3) 在不局限本條第(2)(c)款的情況下，如某人：
(a) 致使或容許兒童看見或聽到與該兒童有家庭關係的人遭受身體、性或心理虐待；或
(b) 將兒童置於或容許該兒童被置於有實在風險看見或聽到該等虐待的發生；
即屬心理虐待兒童；但爲施行本條第(3)款，那個遭受虐待的人則不會被視爲致使或容許該兒童看見或聽到該等虐待，又或視屬何情況而定，被視爲將兒童置於或容許該兒童被置於有實在風險看見或聽到該等虐待的發生。
(4) 在不局限本條第(2)款的情況下，
(a) 爲施行本條第(2)款，單一作爲可構成虐待；
(b) 爲施行本條第(2)款，成爲行爲模式一部分的連串作爲可構成虐待，即使部分或所有該等行爲被獨立看待時似是微不足道或瑣碎。
(5) 爲施行本條第(2)(c)款，即使某行爲並不涉及實際或被要脅作出的身體或性虐待，均屬心理虐待。

附件C
“家庭關係”的定義

如任何人：

(a) 是他人的配偶、同居伴侶或前配偶或同居伴侶，不論他們是同性與否；

(b) 是他人的子女包括領養和繼子女及成年子女，不論有否與該人共同生活；

(c) 是他人的父親、母親、岳父或岳母；

(d) 是他人的兄弟、姊妹、異父或異母的兄弟或姊妹或配偶的兄弟或姊妹；

(e) 與他人有任何其他的姻親或血緣關係；

(f) 是他人的同性伴侶或前同性伴侶；

(g) 是精神上無行爲能力的人，而以法庭之見，可被視爲他人家庭的成員；

則他與該人即有“家庭關係”。

附件 D
美國波士頓的保護令簡易申請表（中文撮譯本）

美國麻薩諸塞州法院

保護令申請表(頁一)

法院專用----判決號碼_____

一. 法院

☐ 市政法院　☐ 地方法院　☐ 家庭及遺產法院　☐ 高等法院

二. 原告人姓名： _____

三. 原告人資料

原告人地址(如果原告人希望法院將其資料保密，則**無需**填寫)

_____

日間聯絡電話 ： _____

原告人若因爲逃避被虐待而離開原有居所，請將該地址寫下：

_____

四. 原告及被告人年齡

☐ 我已年滿 18 歲。

☐ 我未年滿 18 歲，我的_____(與原告人的關係) _____（姓名）代爲提出此項申請。

被告人 ☐ 已年滿 18 歲　☐ 未年滿 18 歲。

五. 有沒有任何州或國家的法院已經或正在處理涉及被告人，包括離婚、要求頒布婚姻不存在、要求承認分居、要求分居或防止被虐 的申請？

☐ 有　☐ 沒有

如有，請填寫：

案件類型 _____

日期 _____

判決號碼 (如有) _____

六. 被告人姓名 _____ 別名 (如有) _____

被告人性別 ☐ 男 ☐ 女

日常聯絡電話 _____

被告人地址 _____

被告人出生日期 _____ 被告出生地方 _____

社會保障編號 _____

被告人母親姓名 _____ 被告人父親姓名 _____

七. 原告與被告的關係

☐ 婚姻關係
☐ 曾經結婚
☐ 沒有結婚，但有血緣關係或因婚姻建立的關係，具體地說，被告人與我的關係是_____
☐ 孩子的父母
☐ 沒有任何關係但住在一起
☐ 以前曾爲家人
☐ 曾經拍拖或有婚約

八. 原告有沒有子女

☐ 有 ☐ 沒有

如有，原告需要填寫第二頁的部分內容

九. 我曾於_____（日期）遭被告虐待：

☐ 企圖傷害我的身體
☐ 恐嚇傷害我的身體
☐ 傷害我的身體
☐ 以暴力、威脅使用暴力或威脅禁閉，強迫我進行性交

故此，我要求法院頒令：

☐ 1. 被告停止傷害、恐嚇或企圖傷害我，或使我置身遭受嚴重身體傷害的恐懼，或使或用武力、恐嚇或強迫我違反意願，與他發生性行爲。
☐ 2. 除非被告得到法院同意，不得與我聯絡。
☐ 3. 被告離開我的住宅及與之保持距離
地址 _____
☐ 4. 不得將我的地址透露給被告人、被告人的律師或公眾。
(附加請求將地址保密的表格)

☐ 5. 要求被告離開我工作的地方及與之保持距離
地址 _____

☐ 6. 要求被告支付我 $ _____ 補償我受虐後遭受的直接損失：

_____

如果你曾經或正在向遺產及家庭法院提出申請，你可能不能得到麻薩諸塞州市政法院、地區法院或高等法院的法庭頒令。

☐ 7. 要求被告（如有法律責任），給予我臨時援助。

☐ 8. 申請書第二頁關於我年幼子女的申請。

☐ 9. 其他申請 : _____

☐ 10. 我申請的援助，除了給我和子女的臨時援助及補償我所受的損失之外，都不會預先通知被告，因爲這樣很可能使我即時面對被虐的危險。本人明白若法院頒佈臨時頒令，法院將於十個工作天內進行聆訊，決定是否延續此臨時頒令；另外，若本人希望延續頒令，本人有需要在申請延續頒令當日出席法庭聆訊。

原告人簽署 _____

日期 _____

**請在背面填寫書面口供*

該申請書用作申請民事頒令，防止原告人遭受進一步虐待。被告行爲可能涉及刑事罪行，如你決定舉報刑事罪行，請聯絡有關當局。

附件 E
單方面、中期及非正審強制令(或禁制令)申請

1. 於星期一至五期間，申請人應聯絡法庭書記，並由法庭書記把有關申請轉介至任何有空處理該申請的法官或暫委法官。[77]

2. 若在法庭一般處理聆訊時間內沒有法官能騰空處理有關申請，則當值法官會在下午四時三十分處理該申請。[78]

3. 逢星期六早上九時至中午十二時，法庭都有當值法官於內庭，申請人可以直接與該法官的書記聯絡。[79]

4. 上文未有提及的其餘時間，申請人應按一般做法致電當值法官的居所與他聯絡。[80]

5. 一般來說，申請人須要：[81]
   (a) 對損害賠償作出承諾；
   (b) 承諾立刻以適當方式通知被告人該項命令的內容；
   (c) 若未曾開展訴訟的話，承諾立刻展開訴訟程序；
   (d) 若誓章擬稿未經宣誓，或某項事實是在法庭內口述提供的，承諾就誓章進行宣誓或以誓章確認訴訟人在法庭口述的事實。

6. 按一般規定，根據單方面申請所發出的法庭命令應包含一些條文說明下列事項：[82]
   (a) 被告人可在接獲通知後，申請撤銷或更改命令；
   (b) 進行各方之間的聆訊的日期；及
   (c) 法庭暫時不就訟費作出命令。

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[77] 見《香港民事訴訟程序 2007》實務指示 11.1/2 段
[78]見《香港民事訴訟程序 2007》實務指示 11.1/2 段
[79]見《香港民事訴訟程序 2007》實務指示 11.1/2 段
[80]見《香港民事訴訟程序 2007》實務指示 11.1/2 段
[81]見《香港民事訴訟程序 2007》實務指示 11.1/7 段
[82]見《香港民事訴訟程序 2007》實務指示 11.1/7 段

附件 F
高等法院規則第 4A 章第 80 號命令

a. “無行爲能力的人”指未成年人或精神上無行爲能力的人。[83]

b. “精神上無行爲能力的人”指精神紊亂的人或弱智人士。[84]

c. “未成年人”指未滿 18 歲的人。[85]

d. 無行爲能力的人須由起訴監護人代爲起訴及由辯護監護人代爲抗辯。

e. 任何人在司法管轄權內並非處於個人無行爲能力去提出起訴，亦非報帳的一方，也沒有對該未成年人不利的利益，及與被告人沒有任何關係，均可成爲起訴監護人。[86]

f. 起訴監護人或辯護監護人必須由律師代表行事。[87]

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[83] 見高等法院規則第 80 號命令第 1 條規則

[84] 根據《精神健康條例》 (第 136 章) 精神紊亂的人指該人精神紊亂；弱智人士指該人是或似乎是弱智。[見《香港民事訴訟程序 2007》80/1/1 段]

[85]見香港法律第一章第三條；《香港民事訴訟程序 2007》80/1/2 段

[86]法院一般期望起訴監護人是位實質的人；如委任辯護監護人，他需要與該家庭有關係，連繫或是其朋友而並不只是一名純粹義工。[見《香港民事訴訟程序 2007》80/3/8 段]

[87]見《香港民事訴訟程序 2007》80/2/2 段

附件 G
"非正審命令及強制令的傳票"的排期及聆訊

f. 所有以傳票方式要求法庭發出非正審強制令的申請，都會在星期五早上進行，時間由早上 10 時開始。[88]

g. 被告人會在聆訊日兩整天前接獲通知。[89]

h. 至於單方面申請的強制令，下次聆訊日期是由負責批予該項強制令的法官決定。在一般情況下，若強制令的批予日期與下一個傳票日相隔不足兩整天，下次聆訊日期便會是批出強制令後的第二個傳票日。[90]

i. 若單方面要求法庭發出強制令的申請在傳票日當天已經準備就緒，申請可交由負責傳票聆訊的法官在當天下午 4 時前聆訊。[91]可將傳票押後任何傳票聆訊。

j. 有關傳票聆訊可被押後不超逾 14 天但及不得以這方式連續押後超過兩次。[92]

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[88]見《香港民事訴訟程序 2007》實務指示 5.3/1 段
[89]見《香港民事訴訟程序 2007》實務指示 5.3/2 段
[90]見《香港民事訴訟程序 2007》實務指示 5.3/2 段
[91]見《香港民事訴訟程序 2007》實務指示 5.3/2 段
[92]見《香港民事訴訟程序 2007》實務指示 5.3/6 段