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Date: 5 December 2016

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Dear Mr Lamont

Re: Creation of a Specific Offence of Domestic Abuse - Proposed Associated Reforms to Criminal Justice.

Background

Over 2015/16 the Scottish Government consulted on the creation of a specific offence of domestic abuse. The majority of respondents were content that any specific offence of domestic or partner abuse should be drawn so as to encompass both conduct, such as threats or physical abuse, and psychological abuse and coercive control. A number of respondents highlighted a need to modernise criminal procedure in order to ensure that the victim of domestic abuse is not subject to further abuse within the court process. In particular the proposals seek to prevent the accused from using their present rights within criminal procedure to exercise coercive control and cause further psychological harm.

The Proposed Reforms

- A prohibition on the accused obtaining precognitions or statements from the complainer in a domestic abuse case except through a solicitor. This relates to the principles underpinning the proposed prohibition on accused conducting their own defence (below); that is, reducing the opportunity for coercion/intimidation and control. This provision already exists in relation to certain sexual offences and is a logical consequence of the recognition of coercive control and psychological abuse as an offence.
- That the prohibition on an accused person from conducting their own defence in certain cases be extended to include any accused charged with a domestic abuse offence. This in effect extends the provision already existing for vulnerable witnesses to the victims of domestic abuse.

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- That expert evidence is permitted in order to provide the court/jury with opinion with regard to the reaction and decision making of a person affected by domestic abuse. For instance appearing calm, not being obviously distressed and/or continuing to live with accused does not necessarily indicate the absence of trauma/distress.
- Mandatory Consideration of a Non-Harassment Order, post conviction. At present this can only be considered if applied for by the prosecution. The court would in these circumstances have to consider matters such as the offender's criminal record including any adverse conduct towards the victim. This is a welcome attempt to ensure so far as possible consistency regarding the use of such orders. However, it remains to be seen if the discretion permitted to a Sheriff/Judge is applied appropriately and proportionately across all cases.

Yours sincerely



Sean McKendrick
Convenor
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Criminal Justice Standing Committee