

**REINFORCEMENT METHOD TO SOLVE
DOMESTIC VIOLENCE PROBLEMS ACCORDING TO
DOMESTIC VIOLENCE ACT 2007**

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ABSTRACT

The study on encouragement to apply problem solution approaches for family violence according to the Domestic Violence Victim Protection Act B.E. 2550 has 3 objectives, which are 1. to study the application of the Domestic Violence Victim Protection Act B.E. 2550; 2. to compare the problem solution approaches for family violence with other countries, which are England, USA, and Australia; and 3. to study on the encouragement to apply the problem solution approaches for family violence under the Domestic Violence Victim Protection Act B.E. 2550, by research studied on documents, especially the Domestic Violence Victim Protection Act B.E. 2550 together with experts' opinions from focus group meetings.

The studied result indicates problems in the application of the Domestic Violence Victim Protection Act B.E. 2550, which are first, inform of the violence to officers; second, entering into a protection process of family violence victims according to Section 10 and 11 of the Domestic Violence Victim Protection Act B.E. 2550; third, requests for secure protection under the law for Establishment of and Procedure for Juvenile and Family Court; forth, the offices' understanding in preparing a case file for prosecution within 48 hours; fifth, appointments of the officers; sixth, announcement of order to provide temporary protection measures or suffer released approaches; seventh, qualifications and roles of the conciliator who has a duty to give advices or assist in conciliation to compromise between the parties; last, operation of Operation Center for Domestic Violence Protection.

Based on the study from the experts' opinions in the meeting of encouragement to apply problem solution approaches appropriate in Thailand, the researcher found the following: first, complaints to police should not be a condition of entering into the protection process of family violence victims according to Section 10 and 11; second, it should have safety plans before and after occurrences of family violence; third, in a case where the victims did not complain to the police, the victims should still have the right to request for secure protection from the Juvenile and Family Court; forth, the officers appointed by the Domestic Violence Victim Protection Act B.E. 2550 must have the skills and expertise to resolve the family violation and should be under a specific unit of the Operation Center for Domestic Violence Protection; fifth, the conciliator should have expertise, and pass particular training; sixth, community has the role to protect and remedy the victims in 3 dimensions which are a reporter, a consolidator, and a monitor of violence person's behavior under particular terms and conditions; finally, the Operation Center for Domestic Violence Protection has to follow up the officer or the Juvenile and Family Court on compliance with orders, measures or approaches to release the victims' suffer under Section 10 and 11 together with network creation of multi-disciplinary team for efficient work.

Based on fact findings from the study, the researcher suggested the following: 1. to grant the officers authority to order the measure or approaches to temporary release suffer without complaint process; 2. to allow Once Stop Crisis Center (OSCC), Non-governmental Organization (NGO), and local administration can act as the Operation Center for Domestic Violence Protection; 3. to provide safe and appropriate shelters; 4. to appoint sub-committees of family violence protection in province level; 5. to have a particular unit to efficiently manage information of family violence.

KEY WORDS: DOMESTIC VIOLENCE / VICTIM PROTECTION

194 pages

การเสริมใช้แนวทางในการแก้ไขปัญหาความรุนแรงในครอบครัวภายใต้พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550

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บทคัดย่อ

การศึกษา เรื่อง การเสริมใช้แนวทางในการแก้ไขปัญหาความรุนแรงในครอบครัวตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 มีวัตถุประสงค์ในการศึกษา 3 ข้อ ได้แก่ 1. ศึกษาถึงการดำเนินงานตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 2. เปรียบเทียบแนวทางในการแก้ไขปัญหาความรุนแรงในครอบครัวกับต่างประเทศ ได้แก่ ประเทศอังกฤษ ประเทศสหรัฐอเมริกา และประเทศออสเตรเลีย และ 3. ศึกษาการเสริมใช้แนวทางในการแก้ไขปัญหาความรุนแรงในครอบครัวภายใต้พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 โดยการศึกษาวิจัยเอกสารโดยเฉพาะพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 ประกอบกับความคิดเห็นของผู้เชี่ยวชาญโดยการประชุมกลุ่มอภิปราย (Focus Group)

ผลการศึกษาพบปัญหาการดำเนินงานตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 ประการแรก การแจ้งเหตุต่อพนักงานเจ้าหน้าที่ ประการที่สองการเข้าสู่กระบวนการคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 มาตรา 10 และมาตรา 11 ประการที่สามการร้องขอคุ้มครองสวัสดิภาพตามกฎหมายว่าด้วยการจัดตั้งศาลเยาวชนและครอบครัวและวิธีพิจารณาคดีเยาวชนและครอบครัว ประการที่สี่ความเข้าใจของพนักงานสอบสวนในการสุ่มสำนวนส่งฟ้องผู้ต้องหาภายใน 48 ชั่วโมง ประการที่ห้าการแต่งตั้งพนักงานเจ้าหน้าที่ ประการที่หกการออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์ ประการที่เจ็ดคุณสมบัติและบทบาทของผู้ประนีประนอมซึ่งทำหน้าที่ในการให้คำปรึกษาหรือช่วยเหลือในการไกล่เกลี่ยให้คู่ความได้ยอมความกัน ประการสุดท้ายการปฏิบัติงานของศูนย์ปฏิบัติการเพื่อป้องกันการกระทำความรุนแรงในครอบครัว

จากการศึกษาความคิดเห็นของผู้เชี่ยวชาญจากการประชุมกลุ่มต่อการเสริมใช้แนวทางในการแก้ไขปัญหาความรุนแรงในครอบครัวที่เหมาะสมกับประเทศไทย ผู้วิจัยมีข้อค้นพบดังนี้ ประการแรกไม่ควรนำการร้องทุกข์มาเป็นเงื่อนไขในการเข้าสู่กระบวนการในการคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวตามมาตรา 10 และมาตรา 11 ประการที่สองต้องมีการวางแผนเพื่อความปลอดภัยก่อนเกิดการกระทำความรุนแรงในครอบครัว และการวางแผนเพื่อความปลอดภัยภายหลังการเกิดการกระทำความรุนแรงในครอบครัว ประการที่สามในกรณีที่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวมิได้ร้องทุกข์ เช่นนี้ผู้ถูกกระทำด้วยความรุนแรงก็ยังคงมีสิทธิร้องขอให้ศาลเยาวชนและครอบครัวคุ้มครองสวัสดิภาพได้ ประการที่สี่พนักงานเจ้าหน้าที่ตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 จะต้องเป็นพนักงานเจ้าหน้าที่ที่มีทักษะและความชำนาญในการแก้ไขสถานการณ์ความรุนแรงในครอบครัวและควรสังกัดอยู่ในหน่วยงานเฉพาะด้านภายในศูนย์ปฏิบัติการเพื่อป้องกันการกระทำความรุนแรงในครอบครัว ประการที่ห้าผู้ประนีประนอมควรมีทักษะความชำนาญและได้รับการฝึกอบรมในเรื่องดังกล่าวมาโดยเฉพาะเป็นอย่างดี ประการที่หกชุมชนมีบทบาทในการคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวและแก้ไขฟื้นฟูผู้กระทำความรุนแรงในครอบครัวซึ่งเป็นผู้ก่อเหตุใน 3 มิติ ได้แก่ เป็นผู้แจ้งเหตุ เป็นผู้ประนีประนอม และเป็นผู้ติดตามเฝ้าดูพฤติกรรมของผู้กระทำความรุนแรงในครอบครัวภายใต้กรอบเงื่อนไขที่กำหนด ประการสุดท้ายศูนย์ปฏิบัติการมีหน้าที่ติดตามการปฏิบัติตามคำสั่งมาตรการหรือวิธีการ เพื่อบรรเทาทุกข์ของพนักงานเจ้าหน้าที่และศาลเยาวชนและครอบครัวตามมาตรา 10 และมาตรา 11 ประกอบกับต้องสร้างเครือข่ายในการทำงานของทิสสหวิชาชีพให้ทำงานได้อย่างมีประสิทธิภาพ

จากข้อค้นพบจากการศึกษาผู้วิจัยจึงมีข้อเสนอแนะดังนี้คือ 1. ควรให้อำนาจพนักงานเจ้าหน้าที่ในการออกคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์เป็นการชั่วคราวได้โดยไม่ต้องผ่านกระบวนการร้องทุกข์ 2. ควรมีการกำหนดให้ศูนย์พึ่งได้ (OSCC) องค์การเอกชน (NGO) และองค์กรปกครองส่วนท้องถิ่นสามารถทำหน้าที่เป็นศูนย์ปฏิบัติการเพื่อป้องกันการกระทำความรุนแรงในครอบครัวได้ 3. ควรจัดให้มีที่พักที่เหมาะสมและปลอดภัย (Shelter) 4. ควรมีการตั้งคณะกรรมการคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวในระดับจังหวัด 5. ควรมีหน่วยงานเฉพาะเพื่อดำเนินการจัดระบบข้อมูลเกี่ยวกับการกระทำความรุนแรงในครอบครัวอย่างมีประสิทธิภาพ

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CHAPTER I

INTRODUCTION

1.1 Research Background

Force exercising in family is a domestic violent crime, which family members pose any physical or mental damage to family member. Most of the cases of intimate partner involvement are domestic violence. Women are commonly victims of bodily harm acts by their husbands. There are several acts of infliction e.g. harm with or without instrumental objects, torture to death, sexual harassment and offense. Some forms of sexual offense are rape, assault of women for undesirably sexual acts without her consent including other wrongful impacts on mental issue. Some examples are threats to harm, swearing, detention, economic and social coerce, refusal to financial supports, and insulting etc.

The statistics of One Stop Crisis Center (OSCC) shows that in 2007 total numbers of women and children received bodily harm were 12,225 or equal to approximately 34 persons per day received bodily harm. The most common form of domestic violence is physically harassment, and secondly the sexual harm. Husband is found most common use of force. Further, the Ministry of Public Health reveals annual cost evaluation of medical treatment of victims of domestic violence is over 36,000 million baht¹.

¹ Kao-Sod Newspapers, 20th November 2007, p.31.

Statistics of violence against child, woman, and domestic violence From 2005 to February 2008 ²								
	Being battered	Being raped	Being naked	Being deserted /detained /sustained	Taking away child from guardians	Attempt to murder	Murdering	others (N/A)
Husband	1,425	14	2	9	0	4	6	5
Father	43	54	15	5	1	0	1	7
Father raising	19	96	46	0	0	1	2	3
Mother	15	0	1	4	0	1	0	4
Mother raising	9	0	0	0	0	0	0	0
Relatives	243	180	107	3	5	2	4	7
Friend/acquaintance	1,355	2,947	1,309	77	528	13	14	150
Stranger	608	370	263	9	28	11	6	32
Employer	7	11	9	0	0	0	0	5
Others	198	119	65	8	25	9	2	24
N/A	125	69	38	3	9	2	2	23
								271

² www.violence.in.th

Most intimate partner cases especially women become victims of domestic violence crime committed by previous husbands or partners. There are several forms of violence. Firstly, **physical violence** is for example kicking, object use, and other forms of hurting body, and cause to death. Secondly, **sexual violence** are e.g. rape, compel victims to do undesirably sexual activities. Thirdly, **mental violence** are through threats to harm, swearing, detention, economic and social coerce, refusal to financial supports, insulting including deserting women to be alone or discarding all responsibilities³.

In previous Thai society man is regarded as having superior role and by norm man was respected with higher power over woman as being shown in old saying as “Woman is a water buffalo, while man is a man”. It was stated in law at that time or Pra Ai-ya-karn-thard, Section 1. In addition, the law also gives the husband the right to beat his wife to have the power to cane cultivation as the spouses of Law of Section 60 states that “husband and wife live together with his wife and found her guilty. Husband can combat women. But vise versa wife to punish the husband is not possible. To strike his wife took flowers to apologize for her husband.”⁴ The law reflects culture and tradition of ancient Thai society that man has powerful relation to woman. Woman therefore had high expectation that good man could be a bread winner. The role of woman was clearly a follower of husband and supporter of husband with patience. Moreover the other roles of household wife were treat provision to husband and child raising. It was a belief at that times that widower could not handle a whole family by herself. Therefore women who have husbands or married must be willing to endure anything to maintain the family good society, which leads to power relationships that men have power over women and make men think that they can do anything to women.

³ Krittaya Archavanilkul et al., Research Report titled “Violence in spouse and women’s health”, Bangkok, 2003, p.5.

⁴ Watcharin Patjekvinyoosakul et al., Research Report titled “Reform of criminal justice of juvenile and family: Response to protect children, youth and family”, 2002, p. 78-79.

Domestic violence can be classified into two prospective. The first one is seeing as a family issue, in this sense it can be explained that it is not involving with other person but husband and wife. Therefore it is natural for any family to have quarrel or arguments, and such events other people should not come to interfere with them. By this concept, there are several family that become too danger for others to provide assistance and later commonly found that woman turns to be victim without any support. Besides, laws give rights to husband to be able to bodily harm with no penalty or further legal execution. It shall be the cause of the domestic violence recidivism. The second one is seeing as public issue, in which is public responsibility to guard and be aware of such acts. From this perspective, woman is perceived as a member of society. Public shall take care of member of society to stay away from danger of domestic violence. Domestic violence is a complication of problems involving intimate persons in family, in which differs from other types of crime against body.

Domestic violence is the complicated problem and involves with intimates. The characteristics of such crime differ from other nature of bodily harm crime. Employing the criminal measure or the Criminal Law enforcement is not appropriate, because the criminal law has intention to offender punishment rather than rehabilitation and protection of the victims of domestic violence. With this regard, Act of Protection of Victims abused by Domestic Violence 2007 was legislated and enforced since 12th November 2007. It is rather appropriate to deal with domestic violence case with problem-solving solution rather than enforcing the criminal law because the solution can be designed, modeled, and different procedures from any regular criminal proceeding. The result of the solution is to protect victim of domestic violence and rehabilitate offenders to prevent them from recidivism, additionally to maintain the relationship of family members. Therefore when the domestic violence such as husband assaults wife, or parents assaults children. Law sets duty to make the official notification by the person who was abused, domestic violence or who was witness of domestic violence. Also the law authorized the competent authority to enter into home or place of the incident to inquire into the offender and victim of domestic violence and other people in the place.

If the victim of domestic violence wishes to inform the complaints against officers then the victim of domestic violence has to provide report of their complaints. When a complaint made to the officers, the official has the authority to order some measures or to provide the temporary relief to the victim of domestic violence, whether the request is made from the domestic violence or not. Moreover it is rational that the person who commits domestic violence to receive medical treatment from doctors, to preliminary relief grant as appropriate.

The restraining order, domestic violence offender into the residence of the family, or close family members as well as how to care for children. Upon the method of such measures to the court within 48 hours, if the court agreed to the order of the relief measures because the facts changed. Courts have the authority to amend or revoke the order or how to measure relief or issue any command including any additional conditions.

The researcher thinks that the procedure under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) is the solutions to the domestic violence by means of civil service support, which must be notified to the official through complaint or notice to begin the process to be able to protect victim of violence by law. The process pays attention to the officials and officers. As a result the problem of enforcement of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) and is appeared in the research study of Mr. Pornsom Paopramoth⁵ Which is found that the official who conducts according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) does not understand or be certain about the content and practical operation, which are often seen as less familiar duty because there are a lot of the new laws. The Office of Women's Affairs and Family Development has a mission to be the driving force to accelerate the preparation of sub-regulations, preparation of operation manual, preparation of training courses and organized multidisciplinary agencies workshops etc.

⁵ Pornsom Paopramoth, The Study of Model of women protection under the Domestic Violence Victim Protection Act, B.E. 2550 (2007), Office of Women's Affairs and Family Development, 2008, <http://www.women-family.go.th/pdf.doc>

The research study of Narumon Phojam and Thitiya Petchmune⁶ of problems and obstacles of the proceeding according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) found that 1) Problem of staff attitude with a view to the problem of domestic violence as a private matter 2) Problem of budget management, personnel, coordinated collaboration of multidisciplinary teams and 3) Problems in practice under the Act, such as the to summarize the case of the accused immediately within 48 hours as required by law. Further, the order of measures or temporary relief will require investigation and sufficient evidence to issue an order for consideration. But the law requires that officers must immediately conduct an investigation to summarize the case and ordered the accused within 48 hours.

The officials could not investigate and collect the sufficient evidence to support the consideration to instruct the measures or methods of relief to not excess the time limit. 4) The problem of the attitudes of people with different views as some perceive the problem of domestic violence as a private matter, not know the legal right to protect the welfare of those abused by domestic violence and not know the process of conduct under the Domestic Violence Victim Protection Act, B.E. 2550 (2007).

With this reason, the researcher thinks that the process of enforcement of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) is the right protection process of the victim of domestic violence and domestic violence offender rehabilitation. The problem is at the law enforcement is not effective to a complete legal provision. To expand opportunities for victims of violence to receive more assistance and protection, we also need to study ways to promote education for women to have freedom to manage their lives by security planning and solving immediate problems when the problem of domestic violence occurs. In the case of notification to the authority of the domestic violence incidence, there must stop the violence and support the victim of violence as soon as possible. Further the officers must be cooperation between the agencies under the Acts, Section 13 in providing the

⁶ Narumon Phojam and Thitiya Petchmune, The Follow up of domestic violence solutions Project in Pathumthani under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) : Legal and Societal Aspects, Fund of Health Promotion, 2008 p. 42-44.

assistance to victim of domestic violence by coordination with the OSCC Center or hospitals for primary medical treatment. Also there must be the plans to provide the secure accommodation for the victim of domestic violence if not wishing to return home. In case that the victim of domestic violence wishes to prosecute those who did violence to, then the role of individuals should be added e.g. individuals within families, communities, including community leaders, local authority so that to take part in under the protection order of Section 10, Section 11 and Section 12 and including the process for monitoring compliance with the order.

In the event of a settlement under Section 12 Paragraph 2 and Section 16 would add the role of individuals within the family, the community to participate in mediation and the conditions of agreement before the settlement, and monitoring of compliance with that condition. In the case where a court sentence the person who commit domestic violence is an offense of domestic violence. The court requires the use of rehabilitation, therapies, probation offenders, public service work, refrain from acts which cause domestic violence or on parole under the Section 12. To determine the method is not a punishment but rehabilitation in the community with aims to change offender's violent behavior, and prevent recidivism by the support of the community to play their role in the rehabilitation of offenders and monitoring of compliance with the order including changes associated with rehabilitation to help remedy such as the program for those who committed domestic violence to help care for victims of domestic violence.

The researcher therefore studies the use of alternatives to solve the problem of domestic violence for considering the scope, model, system, feasibility, readiness, preparation of the law, and opinions of experts for implementation of ways to solve the problem of domestic violence that fit the context of Thai society as a choice for the Protection of Victims of violence and resolve the problem of domestic violence to be effective in future.

As a result when domestic violence occurs in any forms such as husband pose harm to wife, or in the case that parents pose any harm to children, law entitles to

victims of crime or any witness to report crime to officer. Officer therefore shall go to investigate in the place where the domestic violence crime happened.

However, during conduct of the research, Establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case Act 2553 B.E. was issued in the Royal Gazette on the 22nd of November 2010 which shall be in force after one hundred and eighty days from the issuance in the Royal Gazette, thus some problems that were found in this research were moderated. Nevertheless, there are still many major problems which cannot be solved by this newly enacted law, hence the author analyzes these persistent problems with nature of enforcement of this new law for purposes of further enhancing efficiency of Family Violence Victim Protection Act 2550 B.E.

As a consequence, researcher is to study other possible solutions to domestic violence by consideration of research scope, system, model, strategy, feasibility and readiness, legal preparation, opinions of experts towards solution of domestic violence in Thai societal context for alternatives to protection of domestic violence victims and solutions to domestic violence efficiently.

1.2 Objectives of research

1.2.1 Study the enforcement of the Domestic Violence Victim Protection Act, B.E. 2550 (2007).

1.2.2 Study the solutions of domestic violence comparing to international experience e.g. England, the United States, and Australia.

1.2.3 Study reinforcement of solutions to domestic violence under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) e.g. plan for security How to collaborate between agencies to assist victim of violence, participation of individuals within the family and community mediation, the order and monitoring compliance with the order, rehabilitation of offenders by the community, including methods to prevent domestic violence in order to lead to the implementation guidelines for the operation in solving the problem of domestic violence under of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) to suit the context of Thai society.

1.3 Research scope

1.3.1 Study the enforcement of the Study reinforcement of solutions of domestic violence under the Domestic Violence Victim Protection Act, B.E. 2550 (2007).

1.3.2 Study the solutions of domestic violence comparing to international experience e.g. England, the United States, and Australia.

1.3.3 Opinions expressed by the Focus Group imply limits to performance of the Operation Center for Family Violence Prevention arising from the reason that the Center is established under Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12.

1.4 Benefits of the research

1.4.1 Knowledge gained from the research shall be suggestion to reinforce the domestic violence solutions in Thai societal context

1.4.2 Knowledge gained from the research shall be preventive strategy and supportive solutions for domestic violence including compensation for victims of domestic violence.

1.4.3 Knowledge gained from the research shall be suggestion to law revision

1.5 Definitions

1.5.1 Domestic violence means any acts done with intention to harm physical, mental and health issues or potential to harm physical, mental and health issues towards any family members. Further, the use of force or dominated power to family member to do or omit to do something, or to admit of doing something unlawfully but not including negligent act.

1.5.2 Victim of domestic violence means spouse, ex-spouse, and cohabitant without marriage certificate.

1.5.3 Domestic violence wrongdoer means the person who poses harm to spouse, ex-spouse, or cohabitant without marriage certificate.

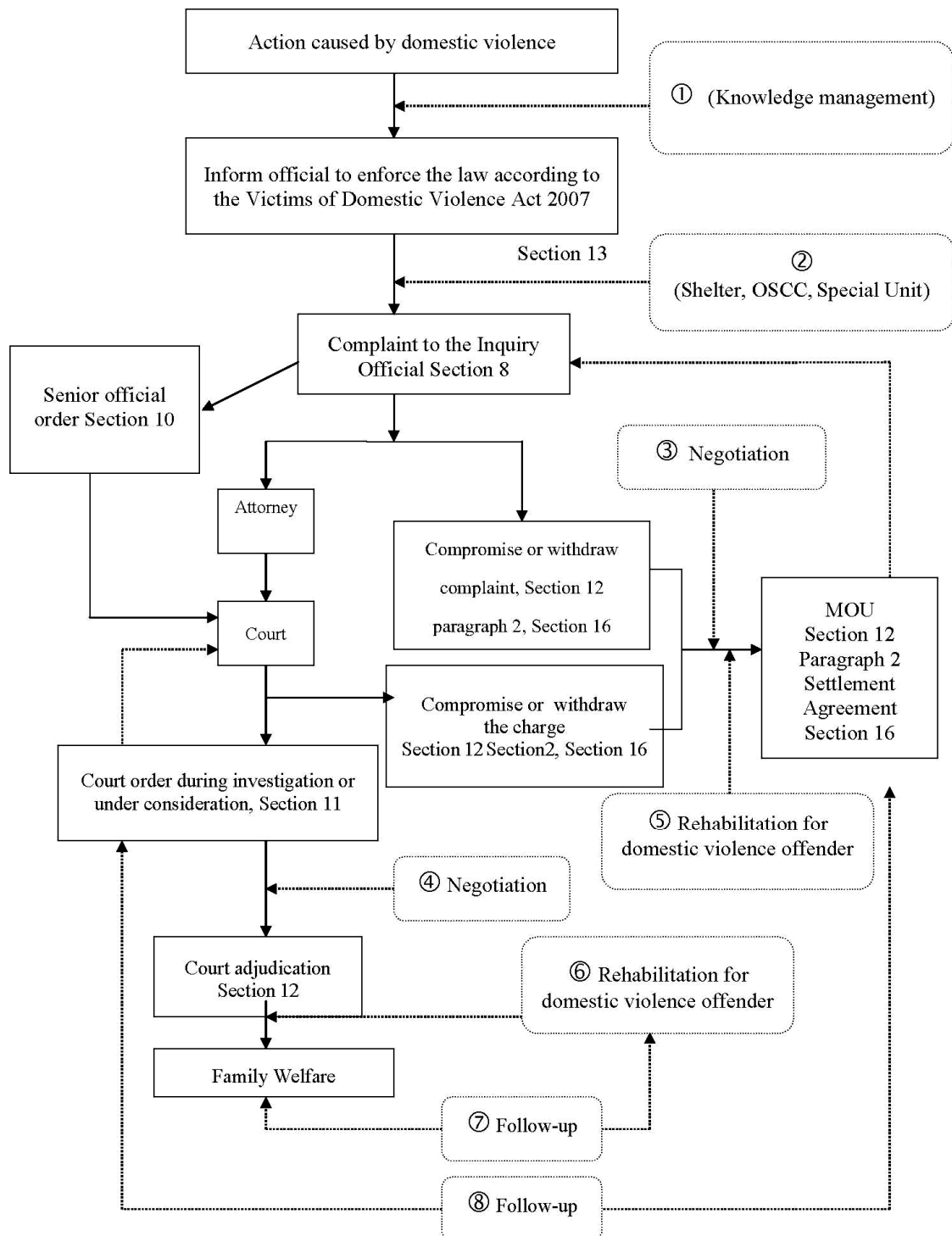
1.5.4 Officers involved in operation under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) which contains the authority, police officer, prosecutor, judge, psychologist, social worker, and doctor.

1.5.5 Community means a person or group of persons who are parents, relatives, parents of the parties, competent person or the Court deems appropriate, people by request from the victim of domestic violence as well as community leaders and local authority

1.5.6 Participation of the community means public hearing, consulting or assisting in the mediation to the parties to settlement.

1.5.7 Rehabilitation in community refers to the community activities and community projects aimed at rehabilitation of offenders under community or locality and environment. The activities in the project focus on rehabilitation rather than punishment, and may include various service activities e.g. education, life skills training, relationships with others, medical services and job placement etc. These activities may be regulated by the community or government agencies

Framework for promotion approach in solving the problem of domestic violence under the Domestic Violence Victim Protection Act, B.E. 2550 (2007)



CHAPTER II

LITERATURE REVIEW

The literature review will present information which is separated into eleven parts. The first part will explore the concepts and themes pertinent to the study of domestic violence. The second part will bring relating theories to analyze the intimate partner violence. The third part will demonstrate the law enforcement ideology. The fourth part will provide the enforcement of the Victims of Domestic Violence Act 2007 (B.E. 2550). The fifth part will be the restorative justice to apply and solve problems occurred in family unit. The sixth part will explain about the process of restorative justice implementation with the coordination of the moderator to facilitate the session and ease the situation between victims of crime and offenders under the humanity conception. The seventh part will show the community service and its practice for offenders. The eighth will look closer at the English experience of protection of victims of domestic violence crime and solution of the domestic violence. The ninth part will be the experience of the United States concerning protection of victims of domestic violence crime and solution of the domestic violence. The tenth part will be the experience of the Australian protection of victims of domestic violence crime and solution of the domestic violence. Lastly the eleventh part will review the associated research studies regarding domestic violence as follows.

2.1 Domestic violence

The Report of the World Conference on Human Rights in Vienna 1993 revealed that the children and women's rights are inalienable, integral and indivisible parts of universal human rights. The country members presenting in the Conference on Human Rights in Vienna 1993 agreed to be acting antiviolenence against woman. The essence of the Treaty lies on the understanding of the factual gender-based violence. The hypothesis is that woman is the victim of all forms of violence. The definition of **“Violence against woman”** is including any acts that harm woman physically,

sexually, and mentally. This involves using threats to harm woman, using force to restraint her liberty whether in public or private areas.

It is noticeable that the definition of violence against woman according to the Declaration on the Elimination of Violence Against Women has the broad meaning. It covers the violence of intimate partner and family members. Also, the meaning covers the crucial social mechanism in which govern woman to be inferior to man. Therefore the definition of violence against woman according to the Declaration on the Elimination of Violence Against Women encompasses violence against woman occurring in the family, violence against woman in some communities and minor ethnic groups e.g. mores or custom involving violence or abuse in woman's life for example female genital mutilation the tradition of some ethnic group that woman and her property belong to her husband, whenever there is a case that the husband dies, woman will be transferred to be a wife of husband brother and her property will accordingly become husband's brother property. Further, there are some other forms of violence against woman e.g. violence or abuse from officials or state mechanism ¹ for example rejection or delay caused in case of receiving medical treatments or employment etc.

The United Nations announced 25th November to be a Stop Violence to Woman Day as a memorial day for three Domichigan female activists who were severely assassinated by dictator in 1960. In Thailand the first movement was arranged in 1995 named "One Voice...Stop violence to woman" campaign under the Say NO to Violence against Women² project, which is for campaigning the idea of stopping all violence against woman sponsored by the Fund for Health Promotion Foundation, Ministry of Justice, Ministry of Social Development and Human Security, Friends of Woman Foundation, and Women Network Against Violence with cooperation of United Nations Development Fund for Women or UNIFEM which is an organization in the United Nations providing financial funds and supports for woman's right establishment. UNIFEM was founded in 1976 for raising the importance of woman's

¹ Watcharintr Patjakevinyoosakul et al, Research on "Assessment of Criminal Justice in Safety Protection of victims of domestic violence", Bangkok, 2003, P 27.

² http://www.novaw.or.th/?page_id=2

right in many regions around the world. In 2008 Her Royal Highness Princess Bajrakitiyabha was invited by the UNIFEM to be the UN ambassador working against the violence against woman and emphasis on the seriousness of the violence against woman issue in society in order to give the strong message to the public that the problem must be put to an end.

2.1.1 Definition of domestic violence

Violence is any behavior or action that violates some other person's rights in all modes of force use e.g. through physical, verbal, sexual which makes any impacts on physic and/or mental elements³ The violence is conducted by use of force to coerce, command with no consent, and hurt woman physically and/or mentally. These violent acts can be sorted into four categories as follows⁴

2.1.1.1 Physical violence e.g. battering, slapping, kicking, punching, using arms, using acid liquid, using boiling water, unexpected pregnancy, sexual transmitted diseases and murdering.

2.1.1.2 Mental violence e.g. verbal and bodily use for the means of carrying out coercion, threats; using jealousy to justify actions; no opinion expression allowing; property destroying, and other actions cause depression, tension and lead to suicidal.

2.1.1.3 Sexual violence e.g. talking about raunchy story, sneaking, touching private part of body, forcing to undress, forcing to have sexual intercourse, raping, not care about wife's sexual needs, forcing to prostitute.

2.1.1.4 Negligence e.g. discarding family members, being unfaithful, not care of offspring and aged parents.

2.1.2 Causes of domestic violence

Assoc. Dr. Kritiya Archavanijkul said that one of causes of domestic violence is the socialization through various institutions which gives woman certain role of gender. Woman perceives an inferior role of gender to man through the

³ Jirawan Deelue, Violence, Faculty of Nursing, Chiang Mai University, p. 1.

⁴ Information Publication of Domestic Violence, Advise to women and Children Provision Unit, Chiang Mai University, p.2.

socialization process. The factors of ongoing violent elements are cultural, economic, legal and political factors⁵

Culture	Economy	Law	Politics
<ul style="list-style-type: none"> -Belief of the appropriate gender role - Expectation towards male and female relationship in family. -Inherited belief in higher male role. - Social values in male dominance to woman power. -Belief that family is private premise for male command. -Acceptance of traditions and practices of marriage. -Acceptance of violence use is solution of problem. 	<ul style="list-style-type: none"> -Limitation of opportunity in income and lack of financial credibility of woman. -Discrimination in inheritance and; land and legacy ownership of woman; and post-marriage guardianship. -Limitation of opportunity access internally and externally of woman. – Limitation of opportunity access in education and training of woman. 	<ul style="list-style-type: none"> -Law regarding divorce, child care, alimony and inheritance. -Limitation of opportunity in legal education of woman. -Values of violence act and rape stated by law make woman situation disadvantageous. -Government officials particularly in criminal justice lack delicacy toward violent issue and have discrimination against women. 	<ul style="list-style-type: none"> -Perception of domestic violence is normal, rather than serious issue. -Acceptation that the family is personal unit, and not in control of state authority, law and religion. -Risk of persistent belief challenge. -Limit the knowledge of woman to be political drive force. -Limit opportunity of woman to participate in settling public organisations and political organization.

The sexual harassment from the economic inequality makes the woman status becomes inferior status, dependant to man to be family leader and bread winner. Overall, the conceptual framework of patriarchy create an idea that woman is an object or asset to be under the control of men. It is the explanation of the Thai society scenario that people respect father and give the position to man as ruler or governing position. Therefore men are in the higher position comparing to woman in many aspects e.g. in education and in profession. As a result, the violence against woman

⁵ Narongchai Kongsakol et al, Research report “The Study of Domestic Violence in 7 Neighboring Communities of Ramathibodi Hospital, Bangkok, 2005, p. 17-18.

and the inferior position of women is prolonged by the stability of the concept of patriarchy and inequality.

2.1.3 Forms of violence against wife

Forms of violence against wife can be illuminated by the Power and Control Wheel of E. Pence and M. Paymar showing the connection between violence and power and control in variety of possibilities. This following form of action is explaining the violence of intimate partner violence or, that is to say, particular husband and wife violence.⁶

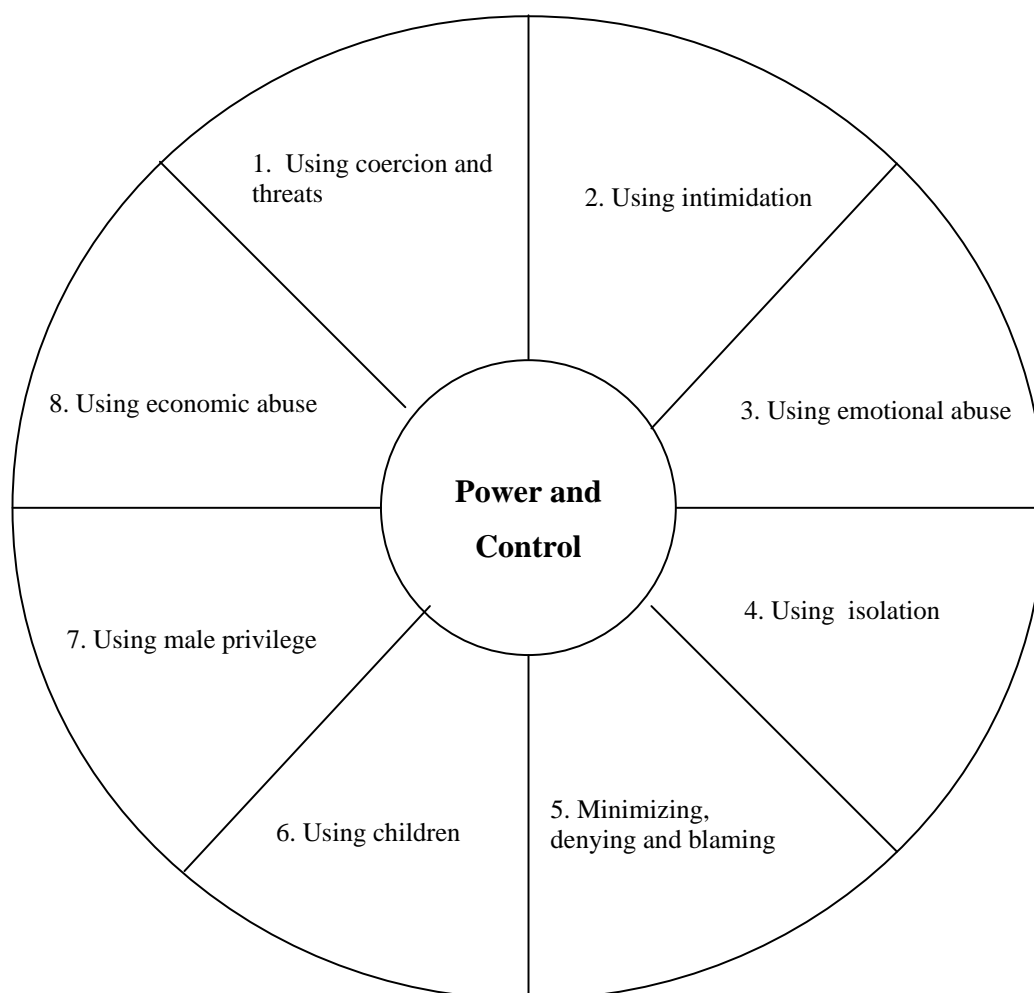


Figure 2.1 Power and Control Wheel.

Source: Duluth Domestic Abuse Intervention Projective (Pence Paymar, 1993)

⁶ Boosarin Klongpayabarn, Domestic Violence: Associated Factors of Assault of Wife in Muang District, Srakaew, Masters of Science Degree (Public Health) Major in Family Health, Mahidol University, 1999, p. 20-21.

Power and Control Wheel Chart can be explained as follows;

2.1.3.1 Using coercion and threats can be done through several forms of action e.g. using threats to harm body or leave in isolating condition, and to tell others about woman's personal issues and story in order to generate woman embarrassment.

2.1.3.2 Using intimidation can be done through many acts e.g. making a certain eye contact, gestures conveying the particular meaning to intimidating woman and intent to display weapons to make woman scared of, using force with surrounding objects, abusing pets and destroying woman's personal belongings and property.

2.1.3.3 Using emotional abuse can be done through several forms e.g. degrading woman by verbal acts, calling or naming woman with rude wordings which conveys insulting message to make woman feel inferior, bad, or unwise, offended and worried in what occurred or any mistakes made.

2.1.3.4 Using isolation can be done through many kinds of action e.g. controlling woman to do or not to do any act for instance not giving permission to woman to be able to meet up or talk to a person who husband is not impressed. Moreover it can be use of area restraint or make restriction to be able to read some published materials or watch some media channels, together with not accepting any reasons and needs of woman.

2.1.3.5 Minimizing, denying and blaming can be done by not taking any responsibilities in all causes created by man. Blaming on woman that is the cause of conflicts and showing no regretful sign when problematic situation is rooted by man.

2.1.3.6 Using children as a form of discomfort woman and distress with children issues for example using children as key to make any pressure on woman, using children to be a negotiator in order to force woman to communicate with. Beyond, man can also make threats to leave woman and children in isolation and no responsibility. Some cases deal with harm body and kidnap children or take children away if woman does not comply with men demands.

2.1.3.7 Using male privilege can be explained in many forms such as giving a fixed role play in family for all family members, being dictator in all

decisions making in family, treating wife as same as slave or maid or even animals of family.

2.1.3.8 Using economic abuse for example wife can never be employed and work outside of the family, never allow woman to have a part-time job or side-line job that earns some money, manage all financial issues to make woman dependant to husband at all time. In some cases, husband gives wife an allowance for spending or never pay wife until she beg for some money, some of the case husband does not let his wife know how much exactly he earns salary.

2.1.4 Impacts of domestic violence

In most cases of intimate partner violence, husband makes violence to woman. As a consequence the battered woman is embarrassed to public and society to seek assistances. In some case woman thinks that she has to be tolerant to the domestic violent situation for keep her family and children. Therefore the common results shown in general society these days are more women suffering from domestic violence problems. These following impacts occurred to family members show potentials of domestic violence behaviors;

2.1.4.1 Physical impacts from domestic violence use e.g. being injured, impaired or to life.

2.1.4.2 Mental impacts form domestic violence use e.g. being miserable, irritated, embarrassed, guilty, traumatic, isolated, relying upon drugs or alcohol addiction, or suicidal association.

2.1.4.3 Economic and social impacts from the result of body injury e.g. the high cost of medical treatments and in some cases may be out of work.

2.1.4.4 Children impacts e.g. it shows that 4 of 5 wives being harmed when having a baby. 53 percent of battered woman, children will also be battered. Accordingly children are direct victims of domestic violence. Children who witness the domestic violence incidences will later on be impacted on their physical and mental development and the perception towards society, where there can be displayed into 2 characteristics.⁷

⁷ Benchaporn Panyayong, Domestic Violence, Department of Mental Health, 2002, p. 2.

(a) Being suppressive. This group of children memorizes violence and accepts the violence use in their mind. They can not understand the situation nor seek way-out to save themselves. As a result the children will be miserable, and are likely to blame themselves, easily to be sad, have a low self-esteem and low adaptation to school and society. In future it is likely that they will become victims of violence crime or in association with suicidal commission.

(b) Being exposed. This group of children has personality shaped by experiencing abusive situations. They tend to be tempered, careless and stimulated to express violence easily rather than using rational process in problem solving. They are likely to have anti-social behavior and be abusive juveniles.

2.2 Law enforcement conception

Paul B. Weston & Kenneth M. Wells state in their work of the Administrative of Justice that the law enforcement is defined as “The function of the administration of justice or the law enforcement is a sequential crime control process performed by agents and agencies of government with assigned functions and territorial Jurisdiction”⁸. In other words, the duty of the criminal justice system or law enforcement agent is the crime control process responsibly conducted by officials and organizational bodies of the government with authority stated by law.

2.2.1 Definitions of law enforcement

Professor Dr. Yut Saeng-Uthai gave two definitions of law enforcement as follows:⁹

2.2.1.1 Law enforcement is the law passing in accordance with the state constitution. House of Representatives pass the laws, or administration of the state passes the laws as authorized the House of Representatives. Law enactment considers authorization of law ratification and the degree of the laws in order to prevent conflict of law in future.

⁸ Aree Roongpornthaweevatana, Enforcement of Criminal Law by Thai Criminal Justice System, Masters of Law, Chulalongkorn University, 1984, p, 45.

⁹ Yhut Saeng U-Thai, Introduction to Law, Bangkok: Thammasat University Press, 1980, p. 92-93.

2.2.1.2 Law enforcement is the use of law in certain factual case. It is the application of law with regards to the social facts or incidence. The criteria of law enforcement shall be applied to authority of the state including authorized officials, police officers, attorneys, court officials, and correctional officers. The aforementioned authority enforce law as follows;

(a) on the occasion that the investigation is required, the investigator(s) has to perform the fact search and seek the association of other probable factor(s).

(b) when the probable factors are investigated, consider the laws on what does it explain about such situation. It is to be noted that in some cases the interpretation of law need to be done in prior.

(c) having had the certain criteria of the law regarding the case, apply the incidence to the law in order to check whether it can be applied by the law or can not.

(d) after being applied the law to the incidence of the case, verify the justified solutions stated by the law.

2.2.2 Law enforcement theory

The law enforcement is to be endorsed when the state established the law enforcing institutes for example administrative institution governed by the minister, ministry, department and governing officials. The criminal law enforcement shall be administered by the criminal justice agencies e.g. police, attorney, court and corrections. The law enforcement and the criminal justice practices shall follow the concepts of Herbert Packer, in the article titled “The Model of the Criminal Procedure” which depicts the two main criminal justice proceeding systems; the first one is the Crime Control Model and the second one is the Due Process Model.¹⁰

2.2.2.1 Crime Control Model

The prime responsibility of the criminal justice system is crime controlling for the benefit of safety and security of the society. Therefore legal measures and efficient national policy are primary acquired. Together with the law

¹⁰ Sermisiri Sivanichyakul, Enforcement of Law regarding to the Search: A Case Study of the Special Investigation Act 2004, Masters of Law, Chulalongkorn University, 2006, p, 11.

enforcement that emphasize on punishing offenders effectively since the wrongdoing committed by the criminal and offender harm society and state of security; and human rights of law abiding citizens. The criminal justice system therefore ensures the safety and security of society by increasing the effectiveness of the criminal justice system and emphasizing the criminal justice system revision through all the proceedings e.g. investigation level, law enforcement level, evidence searching level, and prisoner treatment level. The criminal justice system aims to deliver justice with no delay. The protection of the rights and liberty of its citizens is another consideration of the criminal justice system. With the conception that if society is safe and secured from criminals, community and society shall be in the state of peace and the human rights shall be protected as a matter of consequence.

2.2.2.2 Due Process Model

Due Process Model pays attention to rights protection on certain person. That is to say the legal proceeding in the case shall be done by the Due Process. The Due Process model centered at the law and the principles of law, especially when one is offender, one shall be sentenced by court through the just, unbiased, and rightful process. The non-sentenced person shall be treated as an innocent person whose rights shall be protected. On the other hand, for those who is sentenced and found guilty, one shall receive some form of punishment. The essential concept of this model is to protect rights of the non-sentenced person until the criminal justice proceeding found that person being blameworthy and guilty by law.¹¹

2.3 The Procedure of the Victims of Domestic Violence Act 2007 (B.E. 2550)

The domestic violence is subtle and delicate family problem in which deals with intimate persons. It has a wide difference from other forms of other common crimes. Criminal measures according to the criminal code therefore shall be considered as not ideally relevant to this particular case of domestic violence crime because most of the criminal law aims to punish the criminal or offenders rather than

¹¹ Pongsitra Arunrattanakul, the Special Investigation Act 2004: A Case Study of enforcement to influential persons, Masters of Law, Chulalongkorn University, 2006, p. 13-15.

to provide rehabilitation or protect the victims of domestic violence crime. Thus in legal aspect, the law regarding victims of domestic violence protection shall be relatively appropriate to the domestic violence case and treatment. The intention of this sort of law is to correct and rehabilitate the violence user in domestic violence and to restore the family relationship among the violence users and the victims of the domestic violence crime who are commonly known as family members. The act has these subsequent details;

2.3.1 Definitions

In the Section 3, the important 9 words are defined, that is; domestic violence, family members, court, remedies, psychiatrist, social worker, official, inquiry official and minister.

2.3.1.1 Domestic violence can be divided into 3 natures as follows;

(a) Any action done by the purpose to cause injury to mental or physical health.

(b) A deliberate act in a manner that is likely to cause physical harm or mental health of family members.

(c) Force or overwhelming power by wrong person in the family must commit, not to act or accept the actions of one person or improperly, but it does not include acts of negligence.

2.3.1.2 Family members

This law protects the relationship between husband and wife, both legally married and those living or used to living without as being husband and his wife married status even if the former spouse is divorced from each other despite the adoption of children, including family members and any persons who have to rely on and in the same household.

2.3.1.3 Court

Court represents the Juvenile and Family Court under the law on the establishment of Juvenile and Family Court and Juvenile Court under the law on the establishment of Juvenile and Family Court and Juvenile Court.

2.3.1.4 Psychiatrist

Psychiatrist under the criminal procedure means that the person who meets the ministerial regulations and registration at the Ministry of Justice. The role in the criminal justice system is to trace data, analysis of the data or the mental state or the victim or the accused in criminal cases affected or cause offense

2.3.1.5 Official

The official is the person who is appointed to comply with this Act and include an administrative official or police officer under the Code of Criminal Procedure.

Administrative official or police officer under the Code of Criminal Procedure Act which means to the officers who have the authority and duty to maintain public order including the prison warden, the Excise Officer, the Customs Marine Department inspector, immigration and other officials in the situation of when making an arrest in connection with the suppression of unlawful acts.

Under the Code of Criminal Procedure Act, Section 2(17) the senior administrative official includes the Permanent Secretary, Ministry of Interior Deputy Permanent Secretary, Ministry of Interior Inspector-General of the Ministry of Interior. Assistant Permanent Secretary, Ministry of Interior Director General of Department of the Interior Deputy Director General, Department of the Interior Director of Investigation and Legal Affairs, Head of the Department of Administration and Head of the Legal Affairs Division of Investigation and the Department of Administration, Inspector General, Department of the Interior Provincial governor Deputy Provincial Governor, Provincial Permanent Secretary, Assistant District Sheriff, who was Head of District. It shall also include those acting for it.

Senior police staff includes Police Department, Deputy Director General of Police, Assistant Director-General of Police, Police Commander, Deputy Police Commissioner, Assistant Police Commissioner, Commander of Police, Deputy Commander of Police, Provincial Police Chief, Deputy Head of Provincial Police, Superintendent Director of the Provincial Police Deputy superintendent Deputy Provincial Director of Police, Chief Police Inspector of the police force constabulary, the titular head of the police station from the Police Cadet Class Bachelor's degree or

equivalent police lieutenant or above, or equivalent police lieutenant over the degree and acting officers.

2.3.1.6 Inquiry official

Inquiry official means the authority who has been delegated by the Minister to be officers under the Code of Criminal Procedure. In the location where is no local authority has been delegated by the Minister, the inquiry officer will be acting under the Code of Criminal Procedure.

Inquiry official is the competent authority which is entrusted to be a competent authority by the Minister. However if there is no local authority has been delegated by the Minister, the inquiry officer will be acting under the Code of Criminal Procedure.

(a) In Bangkok, a police officer ranks from lieutenant's degree or equivalent.

(b) In provinces other than Bangkok, the administrative official or police officer, and senior Assistant District police officers with ranks ranging from lieutenant in the police's degree or equivalent.

(c) The offense occurred outside the Kingdom are:
1. the Attorney General or Acting 2. Officers assigned by the Attorney General or Acting 3. Officials of the locality where the accused was arrested in the area.

(d) The government official other countries or the person who has been litigation to inflict damage to the accused.

2.3.2 Determining the base offense and compromising

The Section 4 determines "domestic violence" as the offense and assault offense under Penal Code Section 295. The offense can be compromised. This is, therefore to divert offenders from the justice system. However if the situation cannot compromise each other, acts of domestic violence is an offense under criminal law or other laws, the offender shall be punished under the law is another.

The Section 12 authorizes the competent authority to specify conditions of the settlement, withdrawal of complaint by means of rehabilitation treatment probation, pay grant relief, public service work refrain from acts which cause domestic

violence, and parole, there shall be power to officers to divert cases from the criminal justice system.

2.3.3 Notify the responsible authority

The Section 5 authorizes the person responsible for abuse, domestic violence or who witness or learn to do violence to the official notification and to notify the authority in good faith. The notification shall be protected and does not cause to the person who submits to any of civil, criminal and governing liabilities.

2.3.4 Authority of official

The Section 6 in the case of receiving the result of domestic violence, the official who have the authority or power to enter the dwelling place of the incident in order to ask the offender and victim of domestic violence and people in place there. In such case, the competent authority who enter into the dwelling place can perform any work without a search warrant for the court to issue an arrest warrant.

2.3.5 Duty of inquiry official

2.3.5.1 The inquiring In the Section 8, on the complaint within three months of the period since the victim of domestic violence is able to have the opportunity to inform or complain to. The expressions of investigation together with an opinion to the prosecutor for prosecution before the court shall be within forty-eight hours after the incidence of domestic violence. The extension of the period shall be at the maximum of six days. To inquire domestic violence victim, officers must provide a psychiatrist, psychologist, social worker or the person who abused domestic violence are present during interrogation to consult.

2.3.5.2 Settlement of the withdrawal request

The Section 12, paragraph 2 states that in the event of a compromising, withdrawal of complaint, official shall provide the Agreement prior to the initial settlement, to withdraw the complaint, to adopt the procedures and rehabilitation therapies probation offenders, offenders pay for relief grants, public service work, refrain from acts which cause violence in the family or parole are used as criteria in compliance with the Agreement, *mutatis mutandis*. It can include the

opinions of the victim or their family. If this Agreement and the compliance with such conditions are complete. Afterwards, it has to compromise. The complaint will be withdrawn. If the accused violates or fails to comply with the conditions that officers have the power to lift up the case to proceed.

2.3.5.3 Reconciliation

In the Section 16 in order to settle the case for action violence, the authority may set the reconciliation combined of individuals or group of persons who are parents, relatives, parents of the parties or party officials deem appropriate for consulting or assisting in the resolution of the parties to settle the same or may be assigning a social worker, social work agencies or any person or party to help mediate a settlement that the parties may agree.

2.3.6 Command measures or measures of relief

2.3.6.1 Competent authority to issue the order the Section 10 authorizes the competent authority who is equivalent to an administrative official or senior police under the Code of Criminal Procedure and assigned by the Minister is empowered to order measures, or measures of relief to the victim of domestic violence temporarily including the domestic violence offender to receive treatment from doctors to those who pay for remedy or domestic violence grant preliminary relief as appropriate to the position, the restraining order, domestic violence offender into the residence of the family or someone close to the family as well as how to care for the child.

2.3.6.2 Court approval or disagreement with the statement upon orders measures to alleviate the suffering or more, the proposed measures or measures of relief to the court within forty-eight hours from the date of the order or how to measure the relief. If the court order approving the measures or procedures for the relief, order to determine how to measure or affect the relief. If the court does not agree with the statement measures or methods to alleviate the suffering in whole or in part or facts or circumstances change the court shall make an order inquiry, and promptly if facts or circumstances discerning enough to command court may amend or revoke the order to change the measures or procedures to relieve suffering or to order any including any additional conditions specified.

2.3.7 Violation or failure to comply with orders

The Section 10 Paragraph 5 in the event of a breach or failure to comply or order of the competent court, violators shall be punished with imprisonment for a term not exceeding three months or a fine not exceeding three thousand baht or both.

2.3.8 Jurisdiction

2.3.8.1 The court has the power to issue orders during the Section 11 investigation or trial, the court has the power to order measures, or measures of relief or issue any command as appropriate.

2.3.8.2 The Court Adjudication Section 12, in a court case where a court that the act of violence is wrong, the courts have the power to make use of rehabilitation, therapies, probation, offenders pay for relief grants, public service work, refrain from acts which cause violence in the family, on parole in accordance with the procedure and the time that the court requires.

2.3.8.3 Settlement and withdrawal of request Section 12 paragraph 2 in the event of a compromise or withdrawal of action, the court shall provide for the Agreement prior to the initial settlement to withdraw the lawsuit, to adopt the procedures and rehabilitation therapies probation for the offenders, therefore the offenders pay for relief grants, public service work, refrain from acts which cause domestic violence or parole as condition of complying with this Agreement, mutatis mutandis. It can consider the opinions of the victim or their family. If this Agreement and the compliance with such conditions is complete therefore it has to compromise withdrawal. If the defendant violates or fails to comply with the conditions, in this case the court has the power to lift up the case to proceed.

2.3.8.4 Reconciliation the Section 16 in order to settle the case for domestic violence case, the court may appoint a person or group of persons to conciliate of which includes parents, relatives of the parties who is appropriate to consult or assist in the resolution of the parties to settle the same or may be assigned a social worker, social work agencies or any person or party to help mediate a settlement that the parties may agree.

2.3.9 Rationale of adjudication the domestic violence cases

In the Section 15, regarding the hearing of domestic violence acts, the court has to compare the parties to settle the case. The aim is to achieve peace and warmth in a family which is important to consider the following principles as follows;

2.3.9.1 Protection of the rights of victim of domestic violence.

2.3.9.2 Preservation and protection of marital status as a center for men and women who are willing to be husband and wife. If it is unable to maintain the status of the marriage, subsequently the divorce shall be conducted in a fairness and minimize loss as possible by taking into the account of the welfare and future of children.

2.3.9.3 Protection and family support especially when that family is responsible for providing education to members who are minors of the family.

2.3.9.4 Measures to help maintain husband, wife and their family harmony and improve the relationship between themselves and their child.¹²

Table 2.1 Shows the comparative study of differences in working to Resolve the problem of domestic violence

Prior to the Victims of Domestic Violence Act 2007 (B.E. 2550)	After the Victims of Domestic Violence Act 2007 (B.E. 2550)
1. View of the problem of domestic violence as a personal matter.	1. View of the problem of domestic violence as a public matter.
2. Individuals who witness or know of domestic violence do not involve matters within the family of another person.	2. Appointment the person responsible for abuse, domestic violence or who witness or learn to do violence to the official notification.
3. The purpose of the prosecution to bring the offender to criminal penalties	3. The purpose of the prosecution to protect victims of the abuse of violence and offender rehabilitation to the offender by giving the opportunity to stop or repeat offender does not repent also maintain and relationships of family members.

¹² Narongchai Kongsonthi and Narumon Phocham, Domestic Violence, Bangkok: Sahaprachapanich, 2008, p.309-314

Table 2.1 Shows the comparative study of differences in working to Resolve the problem of domestic violence (cont.)

Prior to the Victims of Domestic Violence Act 2007 (B.E. 2550)	After the Victims of Domestic Violence Act 2007 (B.E. 2550)
4. Prevent crime by the law as a tool to control the behavior of offenders by the Classical School.	4. It is social prevention from the Positive School by rehabilitation of offenders and to be returned to the family with no recidivism of domestic violence.
5. Assault offense under the Penal Code, Section 295 cannot be compromised.	5. To set that the “domestic violence” is an offense with the criminal offense according to the Criminal Act, Section 295 and the offense of domestic violence.
6. The three-level administrative official or police officer rank in equivalent degree or above may request the court to issue an arrest warrant and search warrant only when there are reasonable evidences that the court has reason to believe.	6. In case of receiving the notification of the acts of domestic violence, the authority shall have power to enter into the residence or the place of the accident to ask the offender and victim of domestic violence and other people in the location. In such a case, the competent authority can enter into the dwelling without a search warrant for the court to issue an arrest warrant.
7. In the case that there is physical assault between husband and wife, inquiry official or police officer to terminate the conflict, otherwise there shall bring into court. ¹³	7. The competent authority have power to determine the terms of the settlement, withdrawal of complaint by means of rehabilitation treatment probation, pay grant relief, public service work, refrain from acts which cause violence in the family or parole.
8. The officers began an investigation without delay depending on where any time it deems appropriate.	8. To inquire the domestic violence victim, the officers must provide a psychiatrist, psychologist, social worker or the person who is abused domestic violence to be present during interrogation to consult.

¹³ Regulation of the National Police. With the case that some of the special procedures (No. 2) Act 2543, dated 14 January 2543, Chapter 13, the same husband and wife quarrel Article 583, p. 698-699.

Table 2.1 Shows the comparative study of differences in working to Resolve the problem of domestic violence (cont.)

Prior to the Victims of Domestic Violence Act 2007 (B.E. 2550)	After the Victims of Domestic Violence Act 2007 (B.E. 2550)
9. If officers receive a complaint then the proceeding with legal action will be employed until the case is finalized. There can be no compromise or withdrawal of complaint in the criminal offense.	9. In the event of a compromise, withdrawal of complaint, and the official shall provide the Agreement prior to the initial settlement to withdraw the complaint. To adopt the methods of rehabilitation treatment probation offenders, pay for relief grants, public service work, refrain from acts which cause violence in the family or parole used as criteria in compliance with the Agreement and the opinion of family of domestic violence victims and the victims.
10. Victims of violence to settle or withdraw their complaints on the offense against the private matter.	10. In the settlement in the case of acts of domestic violence, authority may set the reconciliation of individuals or group of persons who are parents, relatives, parents of the parties or party officials discretion for consultation or assisting in the resolution of the parties to settle the same or may be assigned a social worker, social work agencies or any person or party to help mediate a settlement that the parties may agree.
11. Officials have no power to order measures, or measures of relief to the victim of domestic violence.	11. The authority who is an administrative official or senior police under the Code of Criminal Procedure and assigned by the Minister is empowered to order measures, or measures of temporary relief of victims of domestic violence whether there is a request from such person or not to have the power to issue any command as deserved including the domestic violence offender to receive treatment from doctors to those who do pay, domestic violence grant preliminary relief as appropriate to the position, the restraining order, domestic violence offender into the residence of the family or someone close to the family as well as care for the child.

Table 2.1 Shows the comparative study of differences in working to Resolve the problem of domestic violence (cont.)

Prior to the Victims of Domestic Violence Act 2007 (B.E. 2550)	After the Victims of Domestic Violence Act 2007 (B.E. 2550)
12. In civil cases related to domestic violence, the victims of violence may request a provisional court order before the judge in the infringement case and in the family case.	12. During the trial, the court has the power to order measures, or measures of relief or issue any command as appropriate.
13. If the victim of violence has been damaged by acts of infringement, the claims can be filed due to violations of the Code of Civil and commercial Acts.	13. In the case where a court that the act of violence is wrong, courts have the power to require the offender to pay financial support relief efforts.
14. In the case where a court considers that the act of violence is an offense under the Penal Code. Court can use judicial means of pending the case, with the condition for probation or other means for safety protection.	14. In the case where a court that the act of violence is wrong, courts have the power to make use of rehabilitation therapies, probation offenders, public service work, refrain from acts which cause violence in the family or on parole accordance with the procedure and the time that the court requires the offender rather than the time of punishment.
15. The problem of domestic violence is subject to the people that have to resolve by themselves.	15. The problem of domestic violence is a problem with complexity, which must focus on protecting victims of domestic violence, offender rehabilitation and therefore required a form of the team and professional team work.

Table 2.1 Shows the comparative study of differences in working to Resolve the problem of domestic violence (cont.)

Prior to the Victims of Domestic Violence Act 2007 (B.E. 2550)	After the Victims of Domestic Violence Act 2007 (B.E. 2550)
16.To prosecute those who create violence may lead to other family problems such as the prosecution that husband injured his wife, and the Supreme Court sentences the husband to prison. Husband may be fired and does not have money to help families. His wife and children would have suffered from the crime and may cause more problems to society. When her husband came out after being punished to return to the family as husband and wife together again, in such situation it would be more difficult due to lack of relationships.	16.In the main proceedings, domestic violence focused on the protection of the rights of domestic violence victim and families with various measures in order to help husband, wife and their family harmony and improve the relationship between themselves and their child.

2.4 Implementation process of restorative justice in solving the problem of domestic violence

In the case that husband injured wife, and his wife informed complaints to police officers or to make legal proceedings to her husband. The purpose is to punish her husband which law enforcement to control the behavior of the husband. It is supported by the Classical School. It is the crime prevention by implementation the law as an instrument of intimidation against the offense behavior, rather than revenge. But it is noticeable that the action against her husband might affect relationships within the family, which made destructive relationship between two parties to live together as a family for another reason this is not to maintain relationships within the family. The Positive School views that punishment is not a solution but it should be guidelines for rehabilitation of husband who caused violence to be able to change the

behavior to be a good person and can return to live with his wife and family again and to protect society from crime.

The lawsuit also brought husband who is violence offender to punishment which involves severe punishment alone is not a problem of domestic violence which is consistent with the Peacemaking Criminology as formal punishment cannot prevent and control crime. It should be that the community getting involved in improving the behavior of the offender. The Peace group offers non-violent methods as “Restorative Justice” agreed that the formal sanctions cannot prevent and control crime. The community should get involved in improving the behavior of the offender instead. Government should stay away from the process as much as possible. The government involved the offender causing stigma and as a result the offender cannot be good for the society. But if the community to take care of the offender instead and society to forgive and accept the changes themselves and accept him back into society, the offenders can return to the good of society as well.¹⁴ Furthermore, the legal proceeding against the abusive husband can be explained by the Labeling Theory and criminalization of the husband that stirred the humiliation to husband in the form of stigmatization.

The problem of domestic violence is a complex more than it can be used only to punish offenders according to law, to end the problem has therefore required a form of professional team work in solving problem through specialization of professions in varied disciplines. Together with the use of community participation as Social Bond, which may be a mechanism of social control mechanisms within or external control that will act to pull forward or not to trust a person of repeated acts of violence and society will forgive and accept the changes themselves and finally accept that person back into society and can return to the good of society as well.

2.4.1 Restorative Justice

The Restorative Justice is the hybrid of Criminology and Victimology. The concept is the assumption that if the crime occurs at any place it can cause damage to the victim and members of the society at the same time, so how best to remedy the

¹⁴ Sudsawhuan Suthisorn, *Criminology and Social Work*, Bangkok: Thammasat University Press, 2003, p. 57-58.

damage caused by crime is to allow the parties to all relevant parties to participate in solving the damages caused including offenders, victim, and members of society. These three individuals will be the center of the reconciliation process, while the organization of the state as well as law professionals will act as facilitators of the criminal justice system. It will help coordinate the parties to the proceedings to achieve the main objective of the analysis process of reconciliation that is the responsibility of the offender to compensate the damage to the victim and full participation of the victim, offenders and members of society, so that all parties can return to live together with happiness.

In conclusion, the restorative justice means the processes that create a relationship between the offender and the victim to return to a good relationship to each other using a multi-party participation, including party offenders, injured parties, communities and officials in the judicial process conducted by the objective to create strong relationships rather than prison or other punishment under the law.¹⁵

Basic principles of bringing reconciliation process analysis used in criminal cases.¹⁶

2.4.1.1 Willingness of the party.

2.4.1.2 Participation of victim of domestic violence and offender of domestic violence

2.4.1.3 The parties are ready in information, understanding of the processes and outcomes that will occur for the effective meeting.

2.4.1.4 Responsibility of the offender

2.4.1.5 The restorative justice process must consider the respect for human dignity, loyalty, credibility, the rights of offenders and the rights of victims, justice willingness of the parties and empowerment to the participants.

2.4.1.6 Physical and psychological safety of participants is to pay attention to.

2.4.1.7 The facilitators must be the persons who understand the restorative justice process.

¹⁵ Research and Consulting Institute of Thammasat University, Research Report “Restorative Justice Process in Court of Justice”, Bangkok: Duantula Printing House, 2010, p. 132 and 37.

¹⁶ <http://www.justice.govt.nz/policy-and-consultation/restorative-justice/documents/MODULE-1-for-internet-1pdf>.

2.4.1.8 The restorative justice process shall be used in the appropriate case.

2.4.2 Victim-offender mediation: VOM

A key goal of the restorative justice process is to create harmony in society by the injured party has been satisfied and the offender is conscious of the adverse effects caused by their actions and display responsibility by alleviating the adverse effects of the action. Therefore, the form of appropriate reconciliation process oriented and it is possible to solve the domestic violence problem in the context of society, that is, Victim-offender mediation: VOM' because of the dispute between the victim and the perpetrator is the victim and the offender directly.

Form of dispute conciliation between victim and offender in Elmira Ontario, Canada in 1974. The compromise of a dispute which serves to convince the victim and the offender to talk and compromise the same dispute, which compose the dispute will be trained to have expertise in making the victim and the offender have mutual understanding on the offense occurred damage and ways to find a summary of compensation or remedy, damages resulting from the offense, principles used to compose the dispute between the victim and the offender. It shall need to get cooperation from involved persons and its three main principles of justice do well to apologize and measures to prevent recidivism in future.¹⁷

Compromising by restorative justice gives victims of domestic violence an active role in the criminal justice system by receiving information about crime can directly ask any questions from offender through the expressed concern / concerns on the adverse effects of crime that affect his life, negotiation make to the offender. The offender has the opportunity to apologize to those who suffer from the actions of his own. The victim and the offender has to know and understand his real identity not by stereotype.

Dispute Settlement in the process of restorative justice is not done to find out the conclusion that the offender actually guilty or not, and to mitigate how severity of the punishment. However, beginning with all parties accepted what the perpetrators

¹⁷ Institute and conselling of Thammasat University, Research report "Restorative Justice in Court of Justice", Bangkok: Duantula Printing House, 2010, p. 42.

done as offense and understand the injured victim and damage caused by the offender through dialogue-driven healing. The availability of liability or accountability of the offender leads to an agreement between both parties to perform any agreement in order to compensate for the damage caused by the crime.¹⁸

2.4.3 Humanistic mediation¹⁹

If the word “mediation” means reconciliation then the mediation in restorative justice differs from conflict resolving in modernity framework completely because conflict resolving in the previous time conveyed the meaning of compromising of the parties by the public agent operation.

In a restorative justice process, victims and offenders shall meet in a safe place. The objective is to provide the offender has the responsibility or accountability by the aid and pay damages to victims of crime. The mediator has been specifically trained, who helps make the process as well. Allow victims to speak or show the offender recognize that the outcome of his actions cause harm anything / anyone and ask the offender as needed. It has been involved in the development or planning of actions to compensate for the damage error occurred and a chance of the offender to show responsibility for his actions directly including awareness of the adverse effects caused by his actions involved in planning, repairing the damage occurred.

In the meeting, victim of domestic violence has the active role in the criminal justice system. It is conduct by asking any questions that I know of the offender can also express their concern / concerns on the adverse effects of crime that affect his life. The offender has the opportunity to apologize to those who suffer from the actions of his own. The victim and the offender is known and understood in his real identity not that constructed from images or stereotype.

Mediation in the restorative justice does not to find out the conclusion on the offense or to what extent the punishment should be applied to offender. However, beginning with all parties accepted that the perpetrators happened and understand the victims of the domestic violence and the harm and damage caused by the offender.

¹⁸ Operation manual reconciliation processes to resolve domestic violence in integration manner, Probation Department, Ministry of Justice, 2004. P 5-7.

¹⁹ Thongtong Chantarangsu et al, Research project Model of implementation of Restorative Justice in Thailand, Bangkok, 2005 p 94-99.

Reconciliation has to do with discourse in the Dialogue-driven manner focus on the healing responsibility of the offender. Relationships and recovery of restoration including liability for damages incurred mediation leading to resolution of disputes are to be in consideration to the high-level restorative justice as follows;

Table 2.2 Victim Offender Mediation Continuum: From Least to Restorative Impact

Mediation in criminal justice system	Restorative Justice in criminal justice system
agreement-driven, offender-focused	dialogue-driven, victim-sensitive
1 The damage assessment is focused. No opportunity to talk directly between the parties and the community about the criminal damage that occurred.	1 The first priority is to provide opportunities for victims and offenders to talk directly to the victims, or the impact of crime on his life and direct responsibility to the victim.
2 Victims have no right to choose where they feel safe and proper to meet with the offender. No right to choose whether they want to see or want to talk to anybody.	2 Victims have the option through the process of the individual counseling has selected the place to meet and choose people who want to talk, and furthermore.
3 Victims have an opportunity to state their intention to negotiate an agreement in advance. But no chance to prepare for the negotiations.	3 Mutual agreement that led to the sanctions to restitution is important. And what is more important is conversation about the impact of the crime.
4 There are no meetings to prepare well in advance of each meeting of the parties, between the intermediary acts with the victim, and mediator with the offender.	4 Meeting to prepare for the victim to the intermediary between the offender and the mediator before the two sides meet each other with an emphasis on opinion of the victim that the crime affects his life by the needs of the victim and provide both sides for meetings.
5 Mediator is who have a role to explain the offense and the offender. Victims have a duty to answer your question, no chance to show their feelings.	5 No fixed format. Flexible time for the victim and the offender has spoken fully. Mediator must have the patience to listen to with humanitarian principle accordingly.
6 Mediator is who monopolize the conversation mostly. Victims and offenders have a chance to answer a question. There are no discussions between the parties.	6 Mediator uses high patience to listen to the expression of impact of crime. The mediator is the least speaker.

Table 2.2 Victim Offender Mediation Continuum: From Least to Restorative Impact
(cont.)

Mediation in criminal justice system	Restorative Justice in criminal justice system
agreement-driven, offender-focused	dialogue-driven, victim-sensitive
7 Correctional staff acts as mediator.	7 Mediator is a volunteer in the community who has been trained, which act independently or may get support from government official.
8 Reconciliation based on a voluntary matter of the victim, but not of the offender. The point is the liability would not be a matter of Responsibility.	8 Restorative justice between victim of domestic violence and offender.
9 Settlement-driven session for 10-15 minutes.	9 Discussion takes over 1 hour.

Mark S. Unbreit, (2001), *The Handbook of Victim Offender Mediation*, U.S.A. Bass Inc.,

2.5 Community Rehabilitation

The punishment under the Classical School aims at the legislation and the conception of “Punishment fits crime”. Later, the Neo-Classical School begins the new concept of “Punishment fits criminal”. The Positive School shifts the theme of legal aspect to social sciences and behavioral science to understand the cause of crime and nature of criminal under the reasonable rationale. This will bring rehabilitation to offenders and the non-custodial measure.²⁰

The model of conflict management in criminal case can be divided into 4 models 1) Punishment/Retribution 2) Therapy/Rehabilitation 3) Restitution and 4) Restoration. Considering the form of reconciliation, it must change the view that the criminal violation to person, not to the government and in order to maintain justice it is important to pay attention to the needs of victims mainly. The offender must provide a sense of guilt of the actions and must comply with their obligation provided for

²⁰ Aree Roongpornthaweeewathana, *Criminal Law Implementation by the Thai Justice Process*, Masters of Law, Chulalongkorn University, 1985, p. 42.

victims and communities. The table summarizes the model of conflict management in the criminal case as follows;²¹

	Punishment/ Retribution	Therapy/ Rehabilitation	Restitution	Restoration
Object	Guilt	Need	Damage	Conflict
Focus	Offender	Offender	Victim	Relationship
Process	Imposed	Imposed/accepted	Imposed/accepted	Negotiated
Solution	Punishment	Help	Reparation	Agreement/ resolution

Regarding rehabilitation, in theory, the offender can be divided into two main aspects; 1) rehabilitation the offender in prison and 2) rehabilitation the offenders in the community. Although there is necessity to punish offenders who are dangerous to society or the offender in the case of a serious matter there are some alternatives of rehabilitation available e.g. treatment of many offenders to use solutions in the community both before and after the adjudication of court cases. This can be seen from the pending the adjudication, probation, reduction of day of punishment and parole etc.

A community-based correction in academic context means bringing the community resources to change behavior of offender to be accepted by society. The examples of the community resources are the Community service center for post-released prisoner to provide housing and vocation on the release stage. However this includes some projects for the post-release prisoners e.g. the Half-Way House, probation work, parole, alcohol addiction and drugs dependence rehabilitation programs.²²

Some models of community-based correction are such as diversion programs off the criminal justice system in the pre and post prosecution by court e.g. probation, parole, alcohol addiction and drugs dependence rehabilitation programs, and other middle-level measures²³ as follows;

²¹ <http://champpenal.revues.org/document356.html>

²² Sakchai Lerdpanichpant et al, The Feasibility Study of the Implementation of the middle-level measures in the alternative of punishment of offender in the Thai criminal justice, Bangkok: 2008, p 21.

²³ Prathan Wattavanich, Community Justice: the study of the role of community justice in crime prevention and offender rehabilitation, Bangkok: Thai Law Development Project, 2007, p 135-136.

2.5.1 Probation

The court sets the conditions for probation offenders to suspend the punishment provided rehabilitation for the offender to be a good citizen and prevent offenders return to the perpetrators and again. The court opts to deal with the offenders individually. A selection of offense expects to improve offenders themselves in a free society in a period of time during which the offender will be subject to control and monitor individual plans. If the offender violates the conditions or a new one, probation may be revoked and the offender may be punished for an offense that was originally imposed. However, if the offender can make changes themselves then the case may be considered to receive the early probation or after the time specified by the probation may be terminated. In such cases, offenders will be free from obligations or limitations as a result of probation.²⁴

Conditions for probation that the court requires an offender under the Criminal Code, including Section 56 as follows.

2.5.1.1 to report to the official under the court condition within the period specified, thus official can give advice to assist the conduct of the offender.

2.5.1.2 The social or public service activities.

2.5.1.3 To refrain from any conduct which may lead to the offender in the same offense again.

2.5.1.4 To receive treatment for drug addiction, physical disabilities or mental illness or something else at the place and period as the court requires.

2.5.1.5 To act under other conditions as the court deems appropriate to correct or prevent the rehabilitation of offenders act or offense.

In the probation, conditions that the court will assign a probation officer who conduct the responsibility according to a court order, which is the act of Probation under the Penal Code 1979 (B.E. 2522) stated that the authority or the probation officer will be under the general rules of probation to offenders that can be divided into three main tasks²⁵ as follows:

²⁴ Manual of Judicial official regarding probation, in Suwanna Jarutassanee, Legal measure for protection and prevention of battered wives: comparative study of international cases. Dissertation of Masters of Law, Faculty of Law, Thammasat University 2001, p 80.

²⁵ Suwanna Jarutassanee, Legal measure for protection and prevention of battered wives: comparative study of international cases. Dissertation of Masters of Law, Faculty of Law, Thammasat University 2001, p 81.

(a) Persistence Investigation is to seek collection of evidence and analysis of facts about the history and social background of the defendant before the court case by the probation officer who is operated under a court order and then submit a report with comments and suggestions to the discretion of the court to consider or waiting for Justice of the sentence or awaiting punishment and use appropriate practices to individual defendants.

(b) Supervision, when the offender is on probation in the law it requires probation agencies to control the person who shall not violate conditions of probation or commit a new court. By the probation, it will be required to report to the probation period and under conditions that the court requires. If people are violating probation conditions or a new offense, the probationers will act the legal action. The court may impose the penalty or wait for the social psychology of control and supervise the rehabilitation, treatment of non-criminal offense by the changes in habits, attitudes and behavior to the norms of society. The probation officer will supervise the help taking care of different ways using psychology and social work as a guide in practice.

(c) Community Affairs, the procedures and technical processes that probation officer used to do with the probation period of time, definition of the conditions for probation conducted by using the methods of psychological study of ethics, social legislation and other means such as behavioral and psychological rehabilitation, as well as providing relief for individual assistance as appropriate, the use of human resources, which includes institutions and charitable organization as well as volunteer probation. The Ministry of Justice gets involved in promoting awareness and understanding support care for Probationers in both direct and indirect links to the probation was to return to the community as a home.

2.5.2 Community Service-CS

The court or probation officer assigned the offender in a criminal case to work that would benefit the society or the victim without compensation under the consent or request of social services work. The community participates in the

rehabilitation of offenders, work, social work is a non-profit organizations. There are three main aims as follows; 1) retribution 2) reparation and 3) rehabilitation.²⁶

The Court ordered to conduct the community service work in the case where the offender has been working for social, or pay some compensation to the victim. The offender is required to work with the community which is similar to the pay damages in the concept of rationale. With emphasis on labor rather than money, such as cleaning the community, work for elderly home etc. The courts have the power to order the social services to work alone or in conjunction with probation as appropriate.

In foreign countries, the probation officer's discretion is to set the type of work and hours of work appropriate which includes the review of social work because the probation officer will provide the information and the identification of Probationers in a systematic way. Therefore it can put the right job for the probationer well. Along with, there are some budget for staffing and the monitoring of social work services.²⁷

Guidelines for social work services take into account the efficiency and skills for the identification of the probation to be appropriate for social work. The probation officer is responsible for setting the type of work and the hours of work that is not too short (20-500 hours), coupled with the need to monitor the actions of social services to be more stringent.²⁸

2.6 Protection and problem solving in domestic violence in the United Kingdom

In the United Kingdom, the relationship of husband and wife follows the Common Law, which by law is understood in the name of the theory of The Unity of Spouse. However the unity is meant specifically to the man only in the sense of physical body. Since the legal status of women who have come before the marriage was ended when the married and will be included with the husband (feme Covert)

²⁶ www.203.154.185.11/u1/probation/index.php?option=com

²⁷ Sakchai Lerdpanichpant et al, The Feasibility Study of the Implementation of the middle-level measures in the alternative of punishment of offender in the Thai criminal justice, Bangkok: 2008, p 34.

²⁸ www.probation.go.th/cs/pdf/files/cs_article_2.pdf.

therefore a status of married female is different from single female (feme Sole), also called primary Doctrine of Covertures, which is the legal status of women in the marriage, which is under control, care and protection for her husband.²⁹

As the consequence, husband has authority over wife and punishment power to batter wife as a control means of discipline in family, as known as “Rule of thumb” which implies that husband can punish wife by battering with the wood that its thickness is no more than a size of husband’s thumb.³⁰

Today, protecting the rights of the victim of domestic violence, the court shall have power to issue protection orders to domestic violence victim in order to end the violence that children are born with a spouse, child or family member before the start of the criminal act with violence. However, victims with severe offense have the right to take legal action against the criminal and civil actions by the violence subject to the Family Law Act 1996, with significant power to the court for 2 cases 1) occupation order and 2) non-molestation, as follows.³¹

2.6.1 Occupation order

The FLA 1996 Act, Section 30-41 extend the rights of the spouse in possession of and residing in the home under the MHA 1983 to more generally. Any person who has the right to apply for the court to issue an Injunction on the possession of the residence must be a person who is an associated person, such as a spouse or former spouse as husband and wife, or cohabitants or former cohabitants, or who live or used to live in the same house together as a relative who agrees to marry, parents of a child and those who are responsible for the child and lastly those associated with the party of the family.

²⁹ H.J.Stephen, Stephen’s Commentaries on the Laws of England, Vol.2 (London : Butterworth, 1950), p.490.

³⁰ Thapanee Jutharom, Legal measure to protection and solution to domestic violence, Dissertation of Master’s degree, Turakitbundit University, 2006, p.40-41.

³¹ Watcharin Patjekkvinyoochol et al, The research study “The Assessment of the Justice Process in Protection of domestic violence victim” Bangkok. 2003, p. 136-141.

The court has the power to issue the following commands.

2.6.1.1 To order the applicant to remain entitled to possession of the property.

2.6.1.2 To order the defendant to allow the requested access, or in the entire house or part of the house.

2.6.1.3 Orders for either or both parties owned the property.

2.6.1.4 A ban/scroll/ Ltd. Possessory right to use in the home.

2.6.1.5 Issued an order prohibiting the parties who have the right as a spouse residing in the house, or prohibiting of living together temporarily for the right to live by the other spouse.

2.6.1.6 Order to cause the violence to leave Dwelling house or part of the dwelling house.

2.6.1.7 Order to limitation of access by violence offender to the area, which may include dwelling house.

In addition, the court has the power to issue such orders. Petitioner has the right to request that the court order the petitioner who is entitled to possession or entitled to possession of residential houses before the court to issue an order protecting residential or housing, which the court examines the circumstances surrounding in particular as the following concerns.

(a) The need for housing and the ability to search the residence of each party, including son.

(b) Earnings of both parties.

(c) The impact of the protection order will affect the health safety, living conditions of each party, including son.

(d) Actions or behaviors of each party affecting one another.

However, the court may not issue a protection order if it appears that the person who has the right to apply for coverage and entitled to possession of residential or housing dies, except that if the court has issued an order governed by the requestor has the right to housing which marriage property even later, the other party is dead, there is no end of the command.

Effect of residential protection, when a court order and shall have effect throughout the period specified in the command or until the event specified in the order that your spouse is covered until the new marriage or minor child or a court order any changes from the original order.

When court orders regarding the protection of residents and then later to do so at any time, courts have the power to enforce compliance with the order or to order either or both the residential repair, maintenance equipment, including household appliances that it demands, and forced to pay the costs caused by its use and including rental cost if there is any.

2.6.2 Non-molestation order

The FLA 1996 Act, Section 42-62 give the right to person who receives violence or child abuse abused parent requested protection from potentially harmful assault or non-molestation to be protected by the order of the Non-molestation order under Section 42 (1) which refers to the command to any one or both of the following cases.

2.6.2.1 Orders placed requirements do not allow interference with harm to associated person.

2.6.2.2 Orders placed requirements do not allow any interference with relevant child abuse.

The associated person who acts of violence or who have relation to a child, has the right to apply to the court to issue an order protecting the non-molestation and associated person pursuant to Section 62 (3) which mean as follows;

- (a) The person who agreed to marry
- (b) The person who was living with wife or husband.
- (c) The person who live together or have lived together in the same family, but not including employer, employee, residents or tenants.
- (d) The person who is relative including of the father and mother sides.

(e) The person who agreed to be married (although the agreement is terminated).

(f) Those that involve children, under the Section 62 (4) a person who is the father or mother of the child and is always responsible for their parenting of a child.

(g) Parties in family cases.

The case is stated that the FLA Act 1996 gives the right to apply for protection from potentially harmful assault of associated person and relevant child. These rights apply to the court by asking the court to issue an order protection from potentially harmful abuse, which is considered to exercise larger than the DVMPA Act 1976 and DPMCA Act 1978.

The Non-molestation Order, under Section 42 (5) the court shall consider all circumstances including health care, safety and well-being of people applying for coverage which will benefit from the protection of children.

Non-molestation

(a) Order prohibiting interference in general or the specific actions, which prohibit interference abuse or both under Section 42 (6).

(b) Order prohibiting interference with the specified period or until further order.

(c) Order prohibiting interference between the parties in family cases under consideration until the Supreme Court, withdrawal or disposal of filed cases.

Regarding the person who apply for coverage as a child, if children under the age of 16 years, it may apply to court protection orders protect residence or occupation order; or a ban on interference or non-molestation, unless it is authorized by the court or leave of the court under section 43 (1) the court may allow the application under section 43 (1) only when we are satisfied that the child is able to understand the purpose of applying for protection of residential (Occupation order) and ask for protection from potentially harmful assault (non-molestation order), then under section 43 (2) The protection may request to appoint someone to apply for

protection of their representatives and he or she must comply with regulations set by the court of the Section 60.

For the occupation order and non-molestation order, the court will hear the case to investigate both sides, unless in the urgent emergency situation court may hear one party and ordered one party (ex parte order), that is, the court may issue an order protecting the housing or protection from potentially harmful, even if the defendant has been sued or have not received a summons in the following circumstances such a case of danger that may be caused to the petitioner or children involved, if not order protection once the petitioner or the child may be injured by the cause or the defendant. Or it appears that the cause or the defendant to act to stop or hinder not to let the petitioner have the right to submit a request protection, or in the case that has the reason to believe that the defendant exercise intervention and the damage coverage is not protected.

2.6.3 Arrest for breach of order

If it appears that the cause of violence in the family to believe that circumstances will cause interference or threatened harm to the petitioner or more children. The court may issue an order to arrest or attach a power of arrest, along with any protection order. Unless the court has considered all the circumstances and is satisfied that the petitioner or the child has received adequate protection, the court may not issue commands to handle any protection. The Constable has authority to arrest without warrant but this must follow occupation/non-molestation order, and then send the arrestees to the relevant judicial authority within 24 hours from the time of arresting. On Christmas Day, Saturday and Sunday when the officer has already been authorized detention, unless he or she has been bailed.

In the event that the court does not issue an order to arrest, if those who have to comply with an order protecting non-compliance in order all or some of the coverage, petitioner has the right to request the court to issue arrest warrants or issue a warrant for arrest of the respondent, but the court issued an arrest warrant was the petitioner must be sworn and declare to the court to know that there is reason to

believe that those who must comply with an injunction. Court has the power to imprison unless the court to allow bail.

2.6.4 Domestic Violence SAFETY PLAN

If the possibility of violence in the future, victims of violence need to have the plan of the treatment of those who makes violence to their own safety and children by the steps as follows.

2.6.4.1 Step 1: Planning for security prior to the act of domestic violence

(a) Preparing plans for security in the event of acts of domestic violence

(b) Assign a trusted person to go for advice or for assistance in the event of acts of domestic violence.

(c) Set the place to escape to hide when the domestic violence act.

(d) Prepare your luggage for the trip e.g. bags and hidden in a safe place so that can be picked quickly. It can keep with yourself or keep with friends.

(e) Preparation important items to take e.g. documents, money, keys, phone, drug identification and so on

(f) In a separate case with the temporary act of violence, neighbors may be acting as alarm monitoring and security forward if the violence done to the area near the house

2.6.4.2 Step 2: Planning for security during the act of domestic violence

(a) In event of acts of domestic violence, it should leave the situation immediately.

(b) Try to avoid the place where not safe, such as to avoid disputes in the bathroom the place where armed or a room with no exit.

(c) Try to find ways to get help from a third party as soon as possible by the use of symbols such as neighbors or password to contact for assistance or teach a child call for help from the police.

(d) Teach children to understand the plan for safety and teach the child to understand that in the event of acts of domestic violence, children need not to interfere because it cannot make themselves secured.³²

2.6.4.3 Stage 3: Planning for security in the future from the actions of domestic violence

(a) If the case of injury, to try to get treatment from hospital as evidence that the acts of violence occur.

(b) Trying to get advice from professional an advisor which is to assist and respond to various needs. The advice received will be used for further decision making.

(c) If unable to obtain advice from professional advice, then it shall be trying to find any reliable person able to help without thinking about the act of violence that occurred this happened to you alone or is a shame and is not your fault, so you need to get help.³³

2.7 The protection and domestic violence problems of the state of Maryland, USA.

In the United States, the relationship between husband and wife according to the country use the Common Law, which considers husband and wife are the same person. This can be seen from the property management law, and the husband is to seeking property and maintaining the property and responsible for his wife and dependent care as well as the family leader.³⁴ As in England, in addition, the United States has influenced ideas about the power of England with her husband's body over his wife. This can be seen from the decision of the Superior Court; many states allow

³² [http://www.saferlancashire.co.uk/domestic violence/ safety-plan/](http://www.saferlancashire.co.uk/domestic%20violence/safety-plan/)

³³ www.restorativejustice.org.uk/...%20Domestic%20Violence/SORI%20DV%20Report%20SUMMARY%20shart%209.08.doc

³⁴ Visanu Kruangam, *Anglo-American Law*, Bangkok: Chulalongkorn University, 1987, p. 42.

battering his wife punish her husband as appropriate with no offense, unless the assault is assault resulting in permanent injury only as these following examples.

In the Case of *Bradley v State* 2 Miss. 156 (1824) Supreme Court of Mississippi State is the first state to protect husband not to be punished in case of wife assault. Although the court may terminate the rights of husbands to beat his wife with a whip lash, rattan or wood that is not thicker than a thumb for her husband. But the remains of the old law, Rule of Thumb prevalent for nearly half a century, court is allowed to misuse the husband taught his wife, as appropriate in case of emergency, especially forbidding the efficient inhibition, and battering are not taught by a permanent injury to the court for the reason of the litigation. It will just cause the dishonor and disrepute to both parties.

In the Case of *State v Black* 60 NC262 (1844) North Carolina State Supreme Court puts the principle that husbands are responsible for the actions of his wife and parents are responsible for family care. Law is allowed to punish his wife by the husband forced his wife, as necessary to control the wife.

In the Case of *State v Rhodes* 61 NC453 (1868) North Carolina State Supreme Court put the principle that the husband has no right to punish his wife, not in any event. However, if those actions do not cause permanent injury or not caused by malice, not cruel, cruel or cause harm who does not assault offense, the Court reasons that controversy and conflict that is causing the injury is temporary, may not be comparable to the threat of disclosure on family leave to the public. The court should allow the parties to fix the problems on their own and to live together rather than government intervention in family.³⁵

In the State of Maryland, currently has the protection of the rights of the victim of domestic violence. The court shall have power to issue protection orders, domestic violence victim before the criminal act with violence subject to the Act, the Domestic Violence Act 1994 in cases where there is violence in the family of victims

³⁵ Elizabeth Pleck, "Criminal Approaches to Family Violence, 1640-1980" in *Family Violence*, Ohlin, L. and Tonry, M. (Chicago : University of Chicago Press, 1989), p.20.

of domestic violence, they can request a Protection order without going through lawyers and advice or consultation from the Local domestic violence agency with a request to issue, it can be divided into three stages.

2.7.1 Obtaining Immediate Protection

2.7.1.1 Step 1 Go to the District Court during the time of the court.

2.7.1.2 Step 2 The official form and fill out the form completely. The action represents a domestic violence incident.

2.7.1.3 Step 3 Meet with the judge for details about the actions of violence. As well as other evidence of such statement and report to the Medical Image witnesses etc.

2.7.1.4 Step 4 In case there is adequate reason, the court can order the following;

(a) Command to stop the action violent acts of violence.

(b) Order the offender to stay away from violence, abuse and no contact with the offender or away from home, school, work place learning of children and away from the house of a family member.

(c) In the case of married couples under the law, the court may order the offender from violence homes together.

(d) If the spouse is not legally live in the same house, but not less than 90 days, the court may order the act of violence from the homes together

(e) Ordered the victim of violence has the power to take care of children temporarily

2.7.1.5 Step 5 Court will consider the appointment again within a week the police will be sent a copy of Injunction to those who do know the severity. It requires that the acts of violence to court to appeal against such protection.

2.7.1.6 Step 6 In the case that it requires to the provisional Temporary Order, then it should contact the Local domestic violence agency together with bringing these following evidences.

- (a) Picture of wounds caused by the acts of violence
- (b) A copy of the police report.
- (c) If a witness violent acts, invite to the court to testify.
- (d) Requested an arrest warrant from the police
- (e) If you need financial assistance, use a copy of the payment.

2.7.2 Obtaining Immediate Protection

2.7.2.1 Step 1: To the Office of District Court Commissioner for the form and fill out the form completely. The action represents a domestic violence incident.

2.7.2.2 Step 2: Meet the Commissioner in order to clarify details about the actions of violence as well as other evidence of such as statement, report to the Medical, images, witnesses etc

2.7.2.3 Step 3: Injunction can be ordered as follows

- (a) Command to stop the action violent acts of violence
- (b) Order the offender to stay away from violence, abuse and no contact with victim or away from home, school, work place learning of children and away from the house of a family member.
- (c) Ordered the violent offender from the home of the victim of violence
- (d) In the case of married couples under the law, the court may order the offender from violence homes together.
- (e) If not a spouse is not legally married living in the house, but it is a victim of violence as a tenant, in this case the court may order the offender from violence homes together.

(f) If the spouse does not legally live in the same house, but not less than 90 days, the court may order the act of violence from the homes together.

(g) Ordered the victim of violence has the power to take care of children temporarily

2.7.2.4 Step 4: In order to command the provisional Interim Order, Commissioner can issue commands as follows.

(a) Orders must be dated, time and place for the next hearing date for the issuance of the Temporary Protection Order.

(b) Orders must be dated, time and place of the hearing date for the Final Protection Order.

(c) Orders must be dated at the end of the Temporary Protection Order.

2.7.2.5 Step 5: After the Commissioner issued commands; the police must bring a copy to order the offender and victim of violence by violence. It will consider the appointment again within 2-3 days by a violent act can be applied to appeal Temporary Protection Order, if the victim of violence does not come in on the hearing date. Therefore the command shall be rejected. In the event that the parties agree with the protection order, the court can issue the Final Protection Order.

2.7.2.6 Step 6 In the case that require to have provisional Temporary Order, then it should contact the Local domestic violence agency must bring evidence to show the following.

(a) Picture of wounds caused by the acts of violence

(b) A copy of the police report.

(c) If a witness violent acts, invite to the court to testify.

(d) Requested an arrest warrant from the police

(e) If you need financial assistance, use a copy of the payment.

2.7.3 Obtaining Long Term Protection: The Final Order Hearing

In the case that the victim of violence receive a copy of the Temporary Order and consider not to appeal, victims of violence upon the court can issue a protection order is called the Default Order of the order of the court. Violent offender must describe the violence and answered questions to the court. The court may request the child to live with other persons. If the victim feels fear of violence who do violence to notify the court by asking the court to order Final Protection Order will be prepared as follows.

2.7.3.1 Step 1: Court appointments in the last judging day.

- (a) Are there any buses travel to court or not
- (b) Do you know the location of the court or not

2.7.3.2 Step 2: Require to have representative to court or not

- (a) Contact representative prior to the judging day.
- (b) Contact the Domestic Violence Community

Resources in the case that require of the residence.

2.7.3.3 Step 3: You have to prove that the protection order is necessary. This may be evidence of such claims.

- (a) Reports from the police.
- (b) Witness of the event
- (c) Other documentary evidence to those who commit the violence act in order to compensate for medical expenses such as receipts, fees, etc.

2.7.3.4 Step 4: Subjects that the victim of violence need to appear in the order Final Protection Order.

- (a) Order not to contact the person who commits violence or limit contact with the child
- (b) Order not to those who commit the violence to the house or car.
- (c) Order for those who commit the violence to the Counseling.
- (d) Order the offender to pay to the family
- (e) Order the child to the guardianship of others

2.7.3.5 Step 5: If the court considers that reasonable enough, the court can issue a protection order for a period not exceeding one year as follows.

(a) Command to stop the action violent acts of violence.

(b) Order the offender to stay away from violence, abuse and no contact with the offender.

(c) Order to stay away from home, school, work place learning of children and away from the house of a family member

(d) In the case of married couples under the law, the court may order the offender from violence homes share for a period not exceeding one year.

(e) If the spouse is not legally live in the same house, but not less than 90 days, the court may order the act of violence from the homes share for a period not exceeding one year.

(f) Ordered the victim of violence has the power to the temporary child care for a period not exceeding one year.

(g) Order the child to the guardianship of others.

(h) In the case of married couples under the law, the court may order the offender to pay support, violence was raised.

(i) In the case of children, the court may order the offender to pay support violence to child

(j) In the case of joint ownership of the car, court may order that the offender is a violent possession of the car to work or child transmission.

(k) Order the offender and victim of violence, violence counseling program.

(l) Terminated and possession of firearms, violent acts.

2.7.4 Violation of court order

Violent offender and victim of violence will receive a copy of Protective order and will have to keep a copy for records. If the offender uses violence or contact the victim of violence, victims of violence need to call the police immediately. By the

violation of a court, protection order is subject to a fine not exceeding \$ 500 or imprisonment not exceeding 90 days.

2.7.5 Domestic Violence SAFETY PLAN

If the possibility of violence in the future, victims of violence needs to plan in the treatment of those who do violence to their own safety and children with the steps are shown as follows.

2.7.5.1 Step 1: Planning for security during the act of domestic violence

(a) If the decision to flee. I have to use any means to escape. (Try to escape by train to climb the window or fire escape, etc.)

(b) I keep the wallet and keys in the car, which can pick up is easy.

(c) I can tell anyone can do about the violence and ask someone for help when the noise from my house.

(d) I teach children to use the phone and be able to contact the police.

(e) I have a secret code to communicate with customers and friends to ask for help.

(f) If I have to leave home, where will I go.

(g) I teach children to understand how to plan for safety.

(h) In the case that there will be dispute, I will try to avoid and stay out of place to avoid making any such argument in the bathroom, in other places where armed, or a room with no exit.

(i) If the situation was tense, I will make him calm down and I will try to protect myself from danger.

2.7.5.2 Step 2: Planning for security after the occurrence of acts of domestic violence

(a) Plans for preparing to leave the house

(b) Plans for the safety inside housing.

(c) Plans for the safety of a request to issue a Protective Order.

(d) Plan for safety at work and in the public places

(e) Plan for safety from the use of drugs and alcohol.

(f) Plan for safety in dealing with emotions

(g) Things to do when they leave home.

2.8 The protection and resolve domestic violence of the Western Australia state, Australia

Regarding the status of Women in Australia, it is recognized by the law rarely, that is, there is no legislation to protect the rights of women at all. Until the late 19th century, it has canceled husband's right to punish his wife. But, to protect the rights of women is still be less as seen from the case of *Meacher v Meacher* (1946) from the High Court hearing shows that husband has beaten wife, punishment in the base refused to obey the husband and there is a ban that does not allow his wife to visit relatives at previous family's home. The wife to sue her husband asked the court to punish the alleged assault. But the husband claims that he has the power to do to discipline training. Court eventually ruled that the husband has the right like a normal legal to do so.³⁶ When there is violence in the family act by the offender may be a spouse, lover or family members, victims of violence can get help and services from the Crisis Care Unit under the Ministry of Community Development anytime of 24 hours and the victim of violence can seek advice or counsel to request the Restraining order from Domestic Violence Legal Unit By the means that the victim of violence may request the court in person or request that the police requested the court to issue a protection order. It may be into three stages as follows:³⁷

³⁶ Family Violence Professional Education Taskforce, *supra* note 21, p.172.

³⁷ <http://www.legaid.wa.gov.au/InfoAboutLaw.aspx/default.aspx?Page=Domestic/Domestic.xml/>

2.8.1 Violence Restraining Orders

The person who performed with domestic violence whether it is physical abuse or psychological abuse or abuse of the property or even do harm to animals, under the process it can make the self-petition to the court or tell the police to the court requesting the court for protection. In the circumstance of asking the court for a protection order must include: 1. there has been the domestic violence action or are likely to be caused by domestic violence and 2. The court decides that it should order. The court must consider three elements.

2.8.1.1 Prevent the requester from abuse of domestic violence

2.8.1.2 Suspend or stop the abuse in a manner that may cause fear and damage to the safety of life and property.

2.8.1.3 Taking into account of the welfare of children.

In addition, this third element, then the court must consider a criminal record, the offender previously Family and living conditions, court order related to other families consideration by In the event that the person abused by domestic violence under the age of 18 years who has the right to request the court for court protection of their parents were police officers or organization to protect children. The protection order is a court order in order to stop the act or acts of violence to prevent any approach to victim of violence.

The court may have the power to issue protection orders in different ways. The objective is to prohibit a spouse party to cause violence or threatening the other spouse. If there is a violation should be punished but not to the grave. In case of emergency, it urgently requires the court to empower to issue a temporary protection order. The main objective of the protection order to keep in mind that is to change the behavior of the cause of domestic violence. It is necessary to preserve the child from abuse or witnessed abuse, violence witnessing the violence between the parents or family members that form of protection orders should be following.³⁸

(a) Order or stay away from the family.

(b) Restraining order to stay near or at the workplace of a family member.

³⁸ Watcharin Patjekkvinyoochol et al, The research study "The Assessment of the Justice Process in Protection of domestic violence victim" Bangkok. 2003, p. 174-175.

(c) Restraining order to be close to or in any specified place.

(d) Restraining order to be close to family members.

2.8.2 Interim Hearing

In case of making application in writing to the court for court protection, then the court has to make appointment for inquiry as soon as possible. In the petition, it should represent the incident and the reasons for asking a court protection order. Or it is possible to tell a story that happened during any investigation. In the preliminary investigation, violent offender will not participate in any investigation. If the court thinks that there is sufficient information, court may order the temporary protection and sends the order to the violent actions by the period of 21 days to contest such order. If there is no dispute Temporary Injunction, the court may issue a Final Restraining Orders.

2.8.3 The Final Order Hearing

In the case where the offender receives a copy of violence temporary protection orders and a dispute Temporary Protection, the court will make an appointment to come to the party, then the first appointment will be made to ask the victim to the violence that still need protection order or not. In a second appointment, the person who commits violence against the case and evidence and the court can issue a protection order is as follows.

2.8.3.1 Command to stop acts of violence.

2.8.3.2 Order the offender to stay away from violence, abuse and no contact with the offender or away from home, school, work place learning of children and away from the house of a family member.

2.8.3.3 Order the violent offender to stay from the home of the victim of violence.

2.8.3.4 Order not to use the property, although the property may be owned by any person who commits violence.

2.8.3.5 Order to prohibit the offender to use gun.

2.8.3.6 Order to prohibit another person to act as mentioned in the above.

2.8.4 In case of violation of protection orders

Court orders protection of either spouse under the law. The protection can be enforced within two years or maybe more than that in the event the court determined in that order. By the breach the court order to have a fine \$ 6,000 or imprisonment not exceeding 2 years. In addition, the court may determine the power to arrest order protecting the person if the defendant committed or threatened to assault or when the circumstances to believe that the defendant will do so. However, the court may issue an order to arrest the offender who violates the order only if the petitioner has asked specifically to do so. When the police officer has reasonable grounds to suspect that the statement that the power to arrest has been violated, it can be arrested immediately without a warrant and to bring the male offender to the court within 24 hour. If the arrest was made on Saturday or Sunday or holiday, it can be extended to 48 hours, however, the court may punish only when the request is to proceed with court action for violation of order. Otherwise, the court must release the offender immediately.

2.8.5 Domestic Violence SAFETY PLAN

If there is possibility of violence in the future, victims of violence need to receive the treatment of those who do violence to their own safety and children with these steps as follows.

2.8.5.1 Step 1: Planning for security prior to the act of domestic violence

(a) Assess the level of anger of those who do violence whether it is a serious danger to harm you and your child or not.

(b) Stay at home in the area without weapons and find a way to escape before because when the dispute happen then there must flee immediately.

2.8.5.2 Step 2: Planning for security during the act of domestic violence.

(a) In the event of a dispute, do not rush into a place where the child lives, because the child may be in danger.

(b) Have emergency phone number and do not be afraid to call for help from the police.

(c) Tell your friends and neighbors know about the problem of violence in your family and ask for help from that person including the signal to get help, such as turning on a light day, and so on.

(d) Have a secret code to communicate with customers and friends to ask for help.

(e) Tell child to know how to get help and be able to contact the police or how to escape from home.

(f) Keep wallets and car keys in a safe place that is easy to pick up.

(g) Teach children to understand that the violence is wrong and not to do with the person who we love socially. Also tell children that the violence that occurs is not the fault of the children and did not do any of the actions which caused the violence as well as teach children to understand how to plan for safety.

2.8.5.3 Stage 3: Planning for security in a request to issue a Restraining Order.

(a) Write down details about the actions of violence or if it is an accident or events and to compensate as necessary.

(b) Contact for emergency assistance or the police, law, and other necessary information.

(c) If there is any injured person, then it shall go to the doctor and tell your doctor consider the incident. Later get a report from the doctor and keep them as evidence.

2.9 Related research

Ronnachai Kongsakul et al, Research report “**The Study of Domestic Violence in Community around the Ramathibodi 7 Hospital**” Bangkok, 2005.

A study of opinions and behavior that lead to domestic violence and it found that the 207 respondents of 580 revealed that in a year ago there was conflict in the family, 197 respondents (34.0%), be attacked in the family (or domestic violence) were 158 cases (27.2%), and causes related to the controversy revealed that the characteristics of one spouse is impatient, tempered (89.7%), being querulous (83.3%), financial problem (74.5%). The sexual problem is associated with the domestic violence (11%) for a domestic violence must have the offender and victim as well as the reasons the respondents said the economy or finance is the conflict. Corresponding to the two conflicting parties was 67.8 percent and 63.2 percent collectively. Most respondents are impatient, 65.7 percent, being querulous 52.8 and 50 per cent are for alcohol.

Pornsom Paopramoth, Office of Women's Affairs and Family Development, Report of the research. **“The study of ways to promote the protection of women in the enforcement of the Victims of domestic violence Act 2007 (B.E. 2550)”**, Bangkok, 2008.

A study on problems of enforcement the Victims of domestic violence Act 2007 (B.E. 2550) was that workers under the protection of the Victims of domestic violence Act 2007 (B.E. 2550) also did not understand or are unsure of the content and practices, which are often seen as the unfamiliar subjects, and there are many new laws and measures. Office of Women's Affairs and Family Development has a mission to be the engine to accelerate the preparation of sub-states, preparation of operation manual, preparation of training courses and organizing the workshops for multidisciplinary agencies etc.

Social Welfare Department. Pathum Thani Hospital, Research report **“Development of mechanical problem of domestic violence as a pilot province under the Victims of domestic violence Act 2007 (B.E. 2550)”**, Pathum Thani, 2008.

A study is on the development of mechanical solution for the problems of domestic violence in the provinces of Pathum Thani where it is a pilot province under the Victims of domestic violence Act 2007 (B.E. 2550). It abstracts the lessons to be

operational model used in the development of mechanisms to action of both public and private sectors. The working group established at the provincial level, training knowledge base to creating knowledge in working with all agencies involved all departments in the province of Pathum Thani. The study is to summarize the development of mechanisms that need to occur under the Victims of domestic violence Act 2007 (B.E. 2550) to strengthen the network of collaboration partners.

Narumol Phocham and Thitiya Petchmuni, the research report **“The project of monitoring the performance problems of domestic violence in Pathum Thani province under the Victims of domestic violence Act 2007 (B.E. 2550): legal issues and social issues”**, Pathum Thani, 2008.

The study aims to study the principles of the Victims of domestic violence Act 2007 (B.E. 2550) and to compare the differences in working to resolve the problem of domestic violence between the before - after the Victims of domestic violence Act 2007 (B.E. 2550) as well as the social impact of law enforcement and analyze the problem of domestic violence to discover the strengths and problems in the implementation of the the Victims of domestic violence Act 2007 (B.E. 2550). Furthermore to understand the knowledge gained from the study recommendations as a guide in performing the duties of protection officers under the Victims of domestic violence Act 2007 (B.E. 2550) in future.

Rapeepan Kumhom et al, the research report. **“How to make a campaign in both at heart and work: flag to stop violence against children, women and domestic violence”** (evaluation project of operations for women and families about the project / campaign to stop violence against children. Women and their families), Bangkok: Thammasat University, 2008.

This study evaluates the target area with domestic violence in 12 provinces using questionnaires and focus groups to discover how effective the campaign can stop violence against children, women and their families. The issues to consider include the context (C-Context), input (I-Input) the implementation process (P-Process) of output, outcome and impact (P-Product).

CHAPTER III

RESEARCH METHODOLOGY

This chapter provides the research methodology. The chapter comprises five sections. The first section is the research methodology. The second section covers procedures of the data collection. The third section is the research instruments. The fourth section is the timeframe of research conduct. The final section is the operational plan presentation.

3.1 Research Methodology

3.1.1 Documentary Study

3.1.1.1 Review the laws regarding the problem solving of the domestic violence particularly the Domestic Violence Victim Protection Act, B.E. 2550 (2007) and the law enforcement in the criminal justice system.

3.1.1.2 Research the conceptions, models, and theories regarding domestic violence, also including the measures and solutions of the domestic violence. The sources of data and information are ranging from textbooks, books, articles in multi-disciplinary subjects, that is, legal documents, criminological papers, penological documents, victimological documents. Further, the research studies some of the research reports, evaluation reports which are mainly regarded as secondary source of data.

3.1.2 The second part of research methodology applied in the research is the Field Study. Researcher collects qualitative data by employment of the Focus group Discussion. The discussion session consists of executives and officials from Ministry of Social Development and Human Security, the Royal Thai Police, Office of the Attorney General, Court, Rights of Liberties Protection Department, Department of Probation, Local Administration Organization, physician, psychiatrist, social worker, academia, private sector, victims of domestic violence and domestic violence offender.

3.2 Data Collection

In the data collection stage, researcher analyses and combines the knowledge achieved from the documentary research. The information analysis is to become a research questionnaire. The researcher employed the questionnaire set during the Focus Group Session which was set in August in 2010. The results of questionnaire during the Focus Group Discussion were analyzed in its context and written up to the research report.

3.2.1 Research the laws, legal textbook, books, documents, academic papers and related research in the context of law enforcement and the legal measures in solving domestic violence and presentation of domestic violence from Thai and international resources.

3.2.2 Apply the qualitative research method in answering the research questions. The researcher investigates in the opinions and discussion from the Focus Group Discussion, which includes the executives and officers of from Ministry of Social Development and Human Security, the Royal Thai Police, Office of the Attorney General, Court, Rights of Liberties Protection Department, Department of Probation, Local Administration Organization, physician, psychiatrist, social worker, academia, private sector, victims of domestic violence and domestic violence offender for investigating the operation according to the laws regarding the problem solving of the domestic violence particularly the Victims of Domestic Violence Act 2007.

3.2.3 Data collection from the conduct of Focus Group Discussion is completed in August 2010. The process of the data collection is as follows;

3.2.3.1 Official letters are sent to participants' offices for the data collecting to the Ministry of Social Development and Human Security, the Royal Thai Police, Office of the Attorney General, Court, Rights of Liberties Protection Department, Department of Probation, Local Administration Organization, physician, psychiatrist, social worker, academia, private sector, victims of domestic violence and domestic violence offender for the coordination of the attending in the Focus Group Session.

3.2.3.2 In the Focus Group Discussion, the researcher informs all participants the objectives of research. The researcher also asks for cooperation from the participants to check the validity and completeness of the research questions.

If there is the case that any answer has left unanswered then the researcher will ask the question again until all the questions answered.

3.3 Research instruments

The researcher applies the Focus Group Session for the study of the opinion and discussion of the laws regarding the problem solving of the domestic violence particularly the Victims of Domestic Violence Act from Ministry of Social Development and Human Security, the Royal Thai Police, Office of the Attorney General, Court, Rights of Liberties Protection Department , Department of Probation, Local Administration Organization, physician, psychiatrist, social worker, academia, private sector, victims of domestic violence and domestic violence offender. The research employs the questionnaire as research tool for listing research questions. The questionnaire has been proved its significance from the research supervisor, and it has been proved by the experts on validity of research instruments and the meaningfulness of the content. The research revises the research instrument according to the received suggestions from research supervisor and the experts. The following section is the questions in the research questionnaire;

3.3.1 In your opinion, shall the state or community take the role of interfering in domestic violence or not?

3.3.2 In your opinion, how does the state or community take the role of security planning for women?

3.3.3 Under the Victims of Domestic Violence Act 2007, who shall support and protect the victims of domestic violence?

3.3.4 Under the Victims of Domestic Violence Act 2007, the domestic violence offender shall provide / be responsible to the victim of the domestic violence crime in which way?

3.3.5 In your opinion, who shall be the person who lay down the model of protection and solution for domestic violence?

3.3.6 In your opinion, who shall be the person who lay down the model of follow-up the actions made after having the authorized order or of follow-up the

actions made according to the Memorandum of agreement prior to settlement of domestic violence offender?

3.3.7 In your opinion, how does community take the role of supporting the victims of domestic violence?

3.3.8 In your opinion, how does community take the role of negotiation in domestic violence?

3.3.9 In your opinion, how does community take the role of rehabilitation provision to domestic violence offenders?

3.3.10 In your opinion, who shall be the person who lay down the model of follow-up the actions made after having the authorized order or of follow-up the actions made according to the Memorandum of agreement prior to settlement of domestic violence offender?





3.3.11 In your opinion, what additional mechanism shall perform to solving domestic violence problem?

3.3.12 Other suggestions regarding reinforcing the problem solving of domestic violence under the Victims of Domestic Violence Act 2007.

3.4 Research Timeframe

The research timeframe takes approximately six months. The research activity starts from May and finishes in October 2010.

3.5 Operational Plan

Research activity/ Timeframe	May - June	July	August	September - October
Designing Questionnaire				
Data Collection				
Data Analysis				
Research Conclusion and Presentation				

CHAPTER IV

RESEARCH FINDINGS

The study of the reinforcing use to domestic violence solution according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has three objectives which comprises these following components; 1). Study the enforcement of the Victims of Domestic Violence Act 2007; 2). Study the solutions of domestic violence comparing to international experience e.g. England, the United States, and Australia. 3). Study reinforcement of solutions to domestic violence under the Victims of Domestic Violence Act 2007. The examples are security planning, coordination between organizations regarding domestic violence victim, participation of family members and community in conciliation process, the command and monitoring compliance with the order, community rehabilitation and preventative model for domestic violence suitable to the current Thai society. The research findings are divided into three sections according to the objectives as following.

4.1 Study and analyze the problem conditions of the enforcement of the Victims of Domestic Violence Act 2007

On the basis of the research of the Thai law in historical aspect, it is found that the social role of male and female is different greatly. To be more precise, woman has generally lower status than man. As it is shown in the Sukhothai era that the process of formation and gathering up to the Thai State to become independent was directly influenced by Indian culture, and indirectly by Khmer and Mon. Therefore the culture of male priority over woman came from the aforementioned races and cultures. The idea that man was perceived as the breadwinner of the family was shown in the King Rankhamhaeng inscription in between 1285 to 1292. That was the evidential statement that woman in ancient Thai society had no particular role in family or in society.¹

¹ Prasopsook Boondej, Description of Civil and Commercial Code Book 5 Family, Print 5th (Bangkok: Nithibunnakarn Publishing House, 1996) P1.

In the King Rama 1st Reign, there was law compilation of several laws in the Ayutthaya era in the first Thai enacted law, as called Kot-Maii-Tra-Sarm-Duang. The section that most mentioned about family and female status is the Law of Husband and Wife; and in other laws such as the Law of Kidnapping; the Law of Succession; the Law of Slavery etc. The domestic violence towards spouses was evidential in the first Thai enacted law, as called Kot-Maii-Tra-Sarm-Duang in Rattanakosin era as these following statements.²

Being appeared in the ancient style of language expression as conveying the meaning as “In husband and wife brawling, man condemn in swear words to parents and relatives of woman as being behaved as bandit committing a serious crime who deserve to be abused the body, and any payment. Parents of the man agree that woman take responsibility in taking care of man, or vice versa, then woman as to file a lawsuit under the Act called Pra-Ai-ya-Karn”.

“Section 60 for husband and wife who live together, in case that wife has been guilty husband can cane woman with authority. In case that wife scolds at husband, then she must pay respect with flower and popped rice to husband”.

“Section 79 any daughter who has not yet had a husband, daughter is independent to parents. However, once there is a man appreciated in daughter that man has to pay respect to woman’s parents to take care of woman and he is independent in doing so”.

The relationship between husband and wife, in legal context, is regarded as one person. That is to explain that wife status is combined in man’s status. Man has a protective role over woman and has superior to woman, meaning that he can instruct and force his wife.³ Woman therefore has to obey her husband. In case that woman commits any wrongful act, then husband can cane woman as a legal punishment.

Furthermore, parents or husband have rights to take child or woman to pledge without any legal consent of woman. The evidential document is shown in the Act of Slavery Selling. This law legalizes slavery through parents or husband authority to sell on consignment. According to the law, parents and husband is independent to act anything supported by law, on the other hand woman is not independent to free

² Code of King Rama I Law Volume 2, p. 30.

³ Prasobsook Boondej, Description of Civil and Commercial Code Book 5, printed 7th (Bangkok: Roongruengthumma Printing House, 1991) p. 114.

herself. In addition, the Law called Kot-Maii-Lak-Sa-Na-Bet-Sej, Chapter 109 gave rights to husband to be able to give wife to others as property. Therefore wife and child were regarded as property to transfer ownership as same as slaves or animals.⁴

The previously stated law exhibits woman status as same as property. Furthermore, the Law of Husband and Wife authorize husband to be legal polygamy but woman cannot do the same manner. Oppositely woman who has conducted polygamy shall be perceived as committed a severe offence. If woman is caught by husband that she has other man, in this case husband has legal right to murder woman, on the other hands, woman who found her husband having had other woman, then she can only “scold the other woman only” and this can only happen when there is a case of “other woman come to have affair in the house where wife belongs”. In the possession concern, the law gives rights to man over woman to receive a higher proportion when divorce is a case.⁵

In the King Rama 4th reign, western countries came to trade with Thai State; as a result the influence of thought had an effect to the increasing woman’s right and protection. Together with the Act on Family announcement, the woman status in society has been lifted up to the state where woman can have right to select a husband voluntarily. The Act on Husband Sells Wife; Parents Sells Child 1867 mentioned that it is guilty if husband sell or pledge wife without consent from wife. In the King Rama 5th Reign, the Criminal Act 1907 penalizes any person who sells or enslaves any person as criminal offence. In 1902 the abolition of slavery was announced, as a consequence, women were no longer subjected to slaves of any person⁶. Besides, the Criminal Act 1907 stated that offences relating to physical assault were criminal offences. Woman could call for divorce and husband were to be penalized. The examples of the judgment of Supreme Court are as follows;

The judgment of Supreme Court 216/2458 husband batters wife and causes any traumatic bruises up to 13 marks. The official can file defendant a criminal case. Once the court sentence is done, then plaintiff can file a lawsuit for divorce and

⁴ R. Lingat, History of Thai law Book 1, (Bangkok: Institute of Thai Study, Thammasat University and Foundation of Social Science and Humanities, 1984) p. 192-196.

⁵ Malee Prukongsawalee, Woman and Law (Bangkok: Institute of Thai Studies, Thammasat University and Foundation of Social Science and Humanity Textbook Project, 1984) p. 192-196.

⁶ Lumpan Nuamboonlue, Rights and Duties of Woman According to Thai Law (Bangkok: Foundation of Social Science and Humanity Textbook Project, 1990) p. 1516.

the court will afterwards sentence to divorce. Husband then has to pay for the compensation to wife.

The judgment of Supreme Court 580/2468 husband assaults wife several times on no reasonable ground. This time husband hits wife's head and causes the head break, therefore the court sentence to divorce.

The judgment of Supreme Court 541/2524 husband batters wife and causes wife's humerus broken, then husband is to be penalized.

Since the previous time, criminal law has been the crucial law penalizing criminal of domestic violence crime. In the section 295, that is, offences relating to assault others stating that "Any person assaults and causes the physical and mental impact, that is, the offence relating to physical assault, in which the sentencing to imprisonment within 2 years and less than 4,000 Baht fine, or both". This offence is not negotiable as being determined by the criminal law; moreover the Section 295 states noticeably that the litigation is compulsory, therefore it cannot be exempt from litigation even the fact that the victim of domestic violence does not require to take any legal action. For example, in the case of husband assaults wife, police officer or inquiry officer has authority to investigate the case and file a lawsuit the husband without any request made by the battered wife. As a consequence, if court reaches the final decision that the husband is guilty, then he shall be imprisoned or fined. Most of the cases, wife who encountered domestic violence either choose to be tolerant with the situation in silence or take legal action against her husband. For the latter case, the Classical School explains that it is the crime prevention measure using law as deterrent method rather than retributive method. The interpretation of taking litigation against husband is destroying family bond and interpersonal relationship causing the separation and labeling the husband through criminalization process. The result of the process is done to husband where he will be humiliated and cannot return to live a common life as usual because he will perceive that he is a criminal by nature. The Labeling theory clarifies that he will be reconvict of the same crime he did over again, hence harsh punishment is not true solution for domestic violence crime. As the Positive School sees that the punishment is not the means to way-out for domestic violence case, but rehabilitation is a rather likely option. Husband can be rehabilitated to be a law abiding citizen and away from recidivism of domestic violence crime. The

ideology of the Positive School share commonality with the Peacemaking Criminology in the way that punishment is not crime control measure, but the community punishment or community participation is rather beneficial to rehabilitation of alleged offenders. The family problem is regarded as sensitive and complicated subject in which involves in intimate person of the family. Therefore the distinction of domestic violence crime and other types of crime is obvious. The criminal law procedure is not appropriate to apply to domestic violence crime as the intention of the criminal law is to penalize alleged offenders rather than rehabilitate alleged offenders or provide victim of domestic violence protection. As a consequence, the Domestic Violence Victim Protection Act, B.E. 2550 (2007) and other laws which is act to protect the victims of domestic violence are considered to be more suitable to rehabilitation purpose more than implementation of the criminal act. The model, procedure and process are set to protect victims of domestic violence together with rehabilitating and reconciliation of family relationship. Furthermore, children have right to be protected by the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in the incidence of using violence towards children incorrectly.

At present, the implementation of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has been authorized by the minister of the Ministry of Social Development and Human Security. The ministry of the Ministry of Social Development and Human Security has authority to appoint officials and set the Ministry Rule and regulations. From the study of the law enforcement, the implementation of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has some limitations to improve in these following aspects;

4.1.1 The Problem of Notification to the official

The law assigns duties to person who is victim of domestic violence and the witness of the incidence of domestic violence to make a notification to the official. By laws, the trustworthy notification of the incidence is protected by all means.

However, most of the attitudes of public towards domestic violence is personal issue, as a result when the incidence of domestic violence occurred victim of domestic violence crime does not report to the officials. The reason of that fact is the

fear of the alleged offender or humiliation to society or community. Some of the cases do not report to the officials because they do not know about the Domestic Violence Victim Protection Act, B.E. 2550 (2007) which has its objective to rehabilitate domestic violence offender. In other cases, victim of domestic violence does not report to the officials because they are afraid that the alleged offender will be directly punished by the criminal act and only.⁷

Furthermore, the regulation of the Ministry of Social Development and Human Security states noticeably that any person who perceives that the domestic violence occurs, that person must report orally, in writing, phone call, electronic mail and any other means to the official in order to response to the incidence immediately and to cooperation of community in talking domestic violence problem.

Agenda: The law does not secure any method for protecting witness of domestic violence and this may be the crucial reason of not reporting to the official as witness does not feel secured of the procedure of reporting domestic violence.⁸ Additionally the law which appoints physician, nurse, psychologist, social worker, or public health official to inform to officials with no delay at the same time may be seen as the right violation to inform to the official with no consent from the domestic violence patient.

4.1.2 Problem of entrance to Protection Process of Victims of domestic violence

In the incidence that the domestic violence occurs in family e.g. husband batters wife; parents assault child etc. The law states noticeably that any person who perceives that the domestic violence occurs, that person must report orally, in writing, phone call, electronic mail and any other means to the official in order to response to the incidence immediately. Afterwards, the informed officials will have authority to enter to the residence or domestic violence scene with no warrant of search, or warrant

⁷ Narumon Phocham and Thitiya Petchmune, The Follow-up Project of the enforcement of the Victims of Domestic Violence Act 2007 as a solution of domestic violence in Phatumthani Province: Legal and Social Aspects, Thai Health Promotion Foundation, 2008, p. 43-44.

⁸ The Faculty of Law, Eastern Asia University with the Office of Social Development and Human Security Pathumthani, Training of law to the network of the Office of Social Development and Human Security Pathumthani, 18 May 2010, Pathumthai.

of arrest to directly provide urgent medical assistance to victim of domestic violence and further aid from psychiatrist, psychologist and social worker etc.

In the case of victim of domestic violence requires making a compliant to inquiry officer, after that the inquiry officer has to arrange the compliant making process. The complaint under the Code of Criminal Procedure, Section 2(7) means the injured person inform to official that the alleged offender harm to injured person, this statement with intention can pursue to penalize alleged offender by law. The complaint can be made in many means e.g. in writing, orally, or officially inform to official⁹. Only the case that the victim of domestic violence cannot go to inform because the victim of domestic violence has to be admitted in hospital, the authorized official then can make a compliant for the victim of domestic violence. With the regard that if there is no complaint made within 3 months after the domestic violence incidence, it is mechanically the complaint to pursue to any further legal action will be terminated and as a result the lawsuit cannot be performed.

On the occasion that the complaint is made to the official, in the next stage the official will apply the temporary relieve measure to victim of domestic violence with or without any request from the victim of domestic violence. The official set the method to inform court within 48 hours and if court approve the temporary relieve measure to victim of domestic violence, the temporary relieve measure to victim of domestic violence will be applied. On the other hand, if court does not approve the entire temporary relieve measure to victim of domestic violence or approve temporary relieve measure to victim of domestic violence partly, then court has authority to correct or cancel the temporary relieve measure to victim of domestic violence, or set a new temporary relieve measure to victim of domestic violence. However, if stakeholder involves in order of official or court e.g. victim of domestic violence or offender of domestic violence can appeal to court within 30 days after the day of receiving the order. The judgment of court is the final sentence of the case.

Agenda: The victim of domestic violence will be protected by law and aided by emergency medical care, physician, nurse, psychologist, social worker

⁹ Narong JaiKla, Criminal Procedure Code Series 1, eighth printed, Bangkok: Vinyoochon, 2004 , p 42.

according to the Section 6 or taken care by temporary relieve measure to victim of domestic violence under the Section 10 and 11. The victim of domestic violence has to inform or notify to the official or inquiry officer and later the victim of domestic violence will go through the protection of the victim of domestic violence process. The focal point of the entrance of the stage is at informing to the official or inquiry officer. Therefore, the victim of domestic violence who does not inform the official or inquiry officer will not be beneficial from implementation of the temporary relieve measure to victim of domestic violence under the Section 10 and Section 11.

4.1.3 Problem of request to receive security protection under the law on the establishment of Juvenile and Family Court and Juvenile Court.

If the victim of domestic violence does not inform or notify to the official under the Section 5, nor complaint making under the Section 6 within 3 months after the period of possible to inform. However the victim of domestic violence has another channel of requisition of protection from the law on the establishment of Juvenile and Family Court and Juvenile Court.

Agenda: the Juvenile and Family Court Act and the Juvenile and Family Court Procedure Act 2010 announced in the Royal Thai Government Gazette on 22nd November 2010 and the Acts has been enforced after 180 days of the announcement of the Royal Thai Government Gazette, which making the victim of domestic violence who does not inform the official under the Section 5 nor make any compliant in the Section 6 will therefore not be able to receive any legal protection.

4.1.4 Problem of understanding of inquiry officer in summarizing the case and ordering the accused to file a lawsuit within 48 hours.

When the victim of domestic violence informs the official or inquiry officer, the inquiry officer will proceed the investigation of victim of domestic violence and offender of domestic violence, together with evidence collection for further litigation of domestic violence.

4.1.4.1 Investigation according to the Code of Criminal Procedure, Section 2 (11) means evidence gathering and conducting any other actions

according to the law by inquiry officer. The Code of Criminal Procedure set the jurisdictional investigation for inquiry officer as follows;

(a) Investigation in regular manner, the Code of Criminal Procedure, Section 18

(1) Inquiry officer in the area where the incidence occurred or believes to occur in their jurisdictional investigation area.

(2) Inquiry officer in the area where the accused resides or arrested in the field investigation area.

(b) Several areas related to the incidence, the Code of Criminal Procedure, Section 19

(1) When there is not certain whether the criminal act occurred in what locations

(2) When part of the criminal act occurred in one location and other part of the criminal act occurred in other location.

(3) When the offense is serial incidence and occurred in several locations.

(4) When the offence can be under other laws in several locations.

(5) When the offence occurred, the accused was on journey to other place.

(6) When the offence occurred, the victim was on journey to other place.

(c) In the case that the offence occurred outside of the Kingdom of Thailand, under the Criminal Code, Section 7, Section 8 and Section 9 which is under the Code of Criminal Procedure, Section 20.

4.1.4.2 Inquiry officer means the officer who gathers the final investigation record for providing opinion to attorney officer to decide whether that case shall be prosecuted or not, or to cease investigation or to conduct a further investigation or to arrest the escaping accused. If the attorney officer pleads as mentioned above in the case, then the inquiry officer can investigate in several locations but there is one responsible inquiry officer in one location according to the Code of Criminal Procedure, Section 18 Paragraph 3, Section 19 Last Paragraph and Section 20 First paragraph as follows.¹⁰

(a) In usual case, the Code of the Criminal Procedure, Section 18 Paragraph 3 states that

¹⁰ Narong JaiKla, Criminal Procedure Code Series 1, eighth printed, Bangkok: Vinyochoon, 2004, p 109.

(1) Inquiry officer of the locality works where the offense occurred in the jurisdiction.

(2) Inquiry officer of the locality works where the accused resides or was arrested for necessity or convenience.

(b) In the case where there are many locations involved.

(1) Inquiry officer of the locality works according to the Section 19 (1)-(6) and in the arrested area of the accused according to the Section 19 (a).

(2) In the case that the accused cannot be caught but the officer found the offense made by the accused, the officer is the inquiry officer according to the Section 19 (1) - (6) and the location is previously found the offense according to the Section 19 (b).

In the case where there are several inquiry officials, the inquiry officer is referred to the senior inquiry officer (Ministry of Interior Regulations, on criminal rules 1980, 2)

(c) In the case that the offense occurred outside of the Kingdom of Thailand according to the Section 20

(1) Attorney general or the person who act for the Attorney General

(2) Inquiry official who act for the Attorney General

Due to the fact that the domestic violence is a high delicate and sensitive issue, therefore the investigation process shall be conducted in the circumspect manner. The Domestic Violence Victim Protection Act, B.E. 2550 (2007) states that the psychiatrist, psychologist, social worker or any other person that the victim of domestic violence request to appear shall give counseling or advice to the victim of domestic violence for the mental remedy provision to the victim of domestic violence.

In the case that the victim of domestic violence was harassed sexually, the law states that the inquiry official must be woman if the victim of the domestic violence is woman, with an exception due to the special request made by the victim of domestic violence. The report of consent or request must be recorded. According to the Code of Criminal Procedure Section 133, revised 28th in 2008 if the case is urgent

to inquire the victim of domestic violence, then the inquiry may not have to wait for the psychiatrist, psychologist, and social worker because of the inadequate number of the professionals. In such case, the inquiry official must record the reason of the absence of the psychiatrist, psychologist, and social worker because without the record from the inquiry official, the inquiry is not accepted by law.

4.1.4.3 Summary record When the inquiry official has the domestic violence offender, with no delay the inquiry official must inquire the offender and deliver domestic violence offender with inquiry report and opinion to attorney official within 48 hours of the receiving of the domestic violence offender at the office. The time does not include the traveling time of domestic violence offender transfer to the office of inquiry officer or from the office of inquiry officer to court within 48 hours.

In the case that the inquiry officer or attorney official cannot file a lawsuit the domestic violence offender within 48 hours, the attorney official or inquiry official can make a request to court to extend the date up to 6 days for maximum 3 times of request. In the case that there is a request that the domestic violence offender (or the accused) has to be presented to court, court has to inquire the domestic violence offender (or the accused) first if he or she oppose or not. If the domestic violence offender (or the accused) oppose, court then has authority to call the inquiry official or attorney official to make an explanation on the necessary basis and call witness to give evidence.

Inquiry official can ask court to produce arrest warrant of the accused at the time of postponing request being made. In the case that court approves that the accused shall be sent to be in control of administrative official or police within the period that stated in law according to the Code of Criminal Procedure, Section 87 which is;

(a) The length of control of the arrested must not beyond the circumstance of the case, Section 87 Paragraph 1.

(b) The length of control of the arrested must not beyond the length that the law stated, which is on the basis of the seriousness of the case.

(1) For the petty offense or other offense that the sentence term is not beyond the petty offense, the length of control of the arrested is to be of necessity of inquiry made, that is to have information such what is the name of the arrested or where is the residence.

(2) For the high penalty offense, the length of control of the arrested is not beyond 48 hours since the arrest to arrive at the administrative official office or police station. If it is necessary to conduct a further inquiry beyond 48 hours, but the exceeding period must not be over 3 days altogether.

When inquiry officer or attorney officer make a request of postponing to file a lawsuit with no effect to jurisdiction to set the temporary release and when the end of the postponing date arrives but the attorney official cannot manage to make a legal file a lawsuit in time, then the attorney general has authority to make a further decision.

Agenda In the domestic violence offense case, inquiry official has to deliver the domestic violence offender with inquiry report and opinion to the attorney official within 48 hours for the court to make decision of the case. There are some agendas to be discussed as follows.

1. In the case of domestic violence offender has received the court sentence not over 6 months or not over 6,000 Baht fine. Or in the case that the domestic violence offender has offense against several laws with the criminal offense but not as severe to any mental or physical harm according to the Code of Criminal Procedure, Section 391 the offender has to be imprisoned not beyond 1 month or not over 1,000 Baht fine or both. In this case the attorney official has to file a lawsuit to The Juvenile and Family Court because the offense is not over the seriousness of domestic violence offense, so the attorney official has to refer the offender to court within 48 hours since the offender receiving at the office.

2. In the case that the domestic violence offender made other offenses, that is, offense relating assaults others according to the Criminal Code, Section 295. The offense relating assaults others has imprisonment term of not beyond 2 years or not over 4,000 Baht fine or both. The attorney official files a lawsuit to the court. If it is necessary to conduct a further inquiry beyond 48 hours, but the exceeding period must

not be over 3 days altogether according to the Law on the Establishment of the District Court and apply the Criminal Procedure in the District Court to the case.

In summary, in the case that the domestic violence has also made other offenses, that is, offense relating assaults others according to the Criminal Code, Section 295. The offense relating assaults others has imprisonment term of not beyond 2 years or not over 4,000 Baht fine or both. The attorney official files a lawsuit to the court. If it is necessary to conduct a further inquiry beyond 48 hours, attorney official can make a request to adjourn the lawsuit making period.

4.1.5 Problem of appointing the officials

The official according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) means the person who is appointed by the Minister to work under the Act and include administrative official or police officer under the Code of Criminal Procedure.

Administrative official or police officer according to the Code of Criminal Procedure means the officer who has authority by law to maintain public order. The officials include prison officers, Excise officer, Customs officers, Marine Department officers, immigration officer and other officers who are in charge of suppression of the unlawful acts of which the officer is required to arrest or suppress.

The Code of Criminal Procedure, Section 2(17) the senior administrative official e.g. Permanent Secretary, Ministry of Interior Deputy Permanent Secretary, Ministry of Interior Inspector-General of the Ministry of Interior, Assistant Permanent Secretary, Ministry of Interior Director General of Department of the Interior Deputy Director General, Department of the Interior Director of Investigation and the Department of Administration, Head of Legal and Head of the Investigation Division of Administration and Legal Affairs Department Inspector General, Department of the Interior Provincial governor Deputy Provincial Governor, Provincial Permanent Secretary, Assistant District Sheriff, who is Head of District and other officials who act for the aforementioned officials.

Senior police staff including Director General of Police Department, Deputy Director General of Police, Assistant Director-General of Police Department, Police Commander, Deputy Police Commissioner, Assistant Police Commissioner, Commander of Police, Deputy Commander of Police, Chief of Provincial Police, Deputy Head of Provincial Police, Superintendent, Director of the Provincial Police, Deputy superintendent, Deputy Provincial Director of Police, Chief Police Inspector of the police force constabulary, the titular head of the police station from the Police Cadet Class Bachelor's degree or equivalent police lieutenant or above and other officials who act for the aforementioned officials.

The Ministry of Social Development and Human Security by the Office of Women's Affairs and Family Institute arranged the training course for officials who has authority according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007). The qualification of the officials is shown in the Regulation of the Ministry of Social Development and Human Security on Rule of official appointment which includes the inquiry official, the official who is equivalent to the administrative official or senior police officer in domestic violence victim protection in 2008 as follows;

1. Thai nationality
2. Age not under 25 years old
3. Good behavior in Women's right and family promotion and protection
4. Bachelor's degree education and 2 year experience in Women's right and family promotion and protection
5. Certified mental health examination by psychiatrists.
6. The person must have no prohibitions hereinafter;
 - 6.1 Be the accused or the defendant under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) or the law of child protection.
 - 6.2 Be incompetent or quasi- incompetent person
 - 6.3 A person in debt or bankrupt situations.
 - 6.4 Be expelled or dismissed from government agencies or private organizations because they have committed domestic violence.

6.5 Having been imprisoned by a final sentence to imprisonment for a petty offense or negligence.

The person appointed by the Minister as an official under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) will be trained in training course for personnel preparation in protecting victim of domestic violence which set the standard by the Ministry through the assessment done by the Board of Directors to evaluate the course quality and for those who have proven experience, it is exempt of training but they must be evaluated according to the mean that the Director assigned.

Agenda: Officials have authority to enter into private place or the place of the incident to inquire into and support the initial victim of domestic violence. It also has the authority to make domestic violence victim to receive medical treatment from doctors, and psychological counseling from psychiatrist and psychologist and/or social worker. In conjunction with proving complaint channel for victim of domestic violence to inquiry official, inquiry official has authority to set a measure of temporary relieving to support victim of domestic violence, also inquiry official can set the conciliator or a group of people such as father, parents, and relatives of the parties or person who officials deem appropriate to give negotiating assistance. The qualification of the official should be at high level because the authority of the official requires being competent with knowledge, specialism of domestic violence victim treatment and conciliation.

At present the official that the Ministry appointed to be the official under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) come from several professions who work in many Ministries e.g. Ministry of Social Development and Human Security, Ministry of Public Health, Ministry of Justice, Ministry of Education, Local government, and private organizations. In fact these officials have their own duty and responsibility at the Ministry. But since the Domestic Violence Victim Protection Act, B.E. 2550 (2007) assign them to have another responsibility, it seems like they have worn two hats. This may be problematic to time allocation in the performance of duties, the development of a competent professional in work,

support and understanding of organizational management, collaboration between agencies and responsibilities of the authority.

4.1.6 Problem of ordering the measure of temporary protection or relieving measure.

When there is the complaint within 3 months after the victim of domestic violence is possible to make a complaint. The law states that official who is competent as when compared with an administrative official or senior police according to the Code of Criminal Procedure and assigned by the Minister is empowered to authorize order measures or method to provide relief to the victim of domestic violence temporarily whether there is a request from such person or not to have the power to issue any command as necessary and appropriate. Also the domestic violence offender shall receive treatment from doctors and shall pay some money to remedy the victim of domestic violence, therefore the domestic violence shall be granted some preliminary relief as appropriate to the position. The restraining order must be made to domestic violence offender to prevent them from entering into the residence of the family or someone close to the family as well as how to care for the child.

The regulations of the Ministry of Social Development and Human Security on rules and procedures for investigation under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) which made an order to protect and temporary relief measure under Section 10, First Paragraph of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) and has the significant matter in the protection order and temporary relief as follows;

1. That Mr. / Mrs. / Ms. / Master / Miss Lastname the accused of domestic violence to receive psychological/mental/physical treatment.

2. Not allow Mr. / Mrs. / Ms. / Master / Miss Lastname..... the accused of domestic violence to stay in the residence.

3. Not allow Mr. / Mrs. / Ms. / Master / Miss Lastname..... the accused of domestic violence to stay close to family members.

4. That Mr. / Mrs. / Ms. / Master / Miss Lastname the accused of domestic violence and/or That Mr. / Mrs. / Ms. / Master / Miss Lastname take care of the child.

5. That Mr. / Mrs. / Ms. / Master / Miss Lastname the accused of domestic violence to pay for primary medical treatment or any sickness caused by the domestic violence.

Agenda: The regulations of the Ministry of Social Development and Human Security on rules and procedures for investigation under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) which made an order to protect and temporary relief measure under Section 10 Paragraph 1 of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has follow the Form ตร.8 to protect and temporary relief measure for 5 categories according to the law without the authority to order other law as when necessary and appropriate. Along with there is no guideline providing for victim of domestic violence to plan for security for themselves and child from future abuse of domestic violence again.

4.1.7 Problem of qualification and role of negotiator who gives counseling and assistance in reconciliation process.

Providing the consultation or assistance in compromising or resolving the parties in cases of domestic violence act in accordance with Section 16, conciliator who is appointed by the authority or court may come from the three groups as follows; 1). Father, or mother, or parents or relatives of the parties 2). The person who is approved by authority or court 3). Social worker and social work agencies, any person or party to help mediate a settlement.

When these people have been appointed by the authority or court cases and they are responsible as being mediators of domestic violence. The result of mediator can be divided into 2 types;¹¹

¹¹ Bureau of Women's Affair and Family Institute, Operational manual of official, inquiry official, and conciliator under the Domestic Violence Victim Protection Act, B.E. 2550 (2007), Bangkok, 2009.

First type In case that the mediation is not successful, the compromiser must be reported to authority or the court that set of the mediation. Authority or court proceedings will be followed.

Second type In case that the mediation is successful, the compromiser must be reported to authority or the court that set of the mediation. Authority or court will arrange both parties to make a contract of conditional mediation according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) Section 12, Paragraph 2 with the condition of complying with the memorandum of agreement, including how to rehabilitation treatment, probation of offenders, offenders pay for relief grants, public service work and refrain from acts which cause violence in the family or parole.

The regulations of the Ministry of Social Development and Human Security on rules and procedures agreement prior to the initial settlement, withdrawal of complaint in investigation stage, B.E. 2551 (2008) rule 8, rule 9, and rule 10 assigned to the competent authorities or who has been delegated by the Operations Center with jurisdiction to monitor and supervise the accused that the act of domestic violence to follow primary assumptions before the settlement or withdrawal of complaints by the official who has authority to do. At this stage the authorized official has to provide decision of domestic violence offender whether they follow the primary assumptions or not. If the case shows that the offender of domestic violence with intention not to conform the conditions, then the official has to report to the authorized inquiry official or to the Operations Center with jurisdiction to monitor and supervise the accused that the act of domestic violence. The authorized inquiry official will further make a report to attorney official with no delay to follow the criminal procedure.

The regulation of Thonburi Criminal Court on conciliation of the victim of domestic violence protection B.E. 2552 (2009) defines “Conciliator” as judge or other conciliator in conciliation and protection of domestic violence of the Thonburi Criminal Court, which the Director General has authority to appoint competent official under the regulation of Thonburi Criminal Court on administrative committee of dispute resolution B.E. 2551 (2008) or conciliator official of Thonburi Criminal Court on administrative committee of dispute resolution B.E. 2544 (2001) or by regulation of

qualification of competent conciliator of victim of domestic violence protection which must have **psychological and social work knowledge and negotiation skill** and have these following qualification as follows;

1. Must not behave misconduct and negligence in good morality
2. Not being in a debt situation
3. Never been ordered to temporary official leave or to leave government service before, or discharged or punished or expelled from the government
4. Must have never sentenced to imprisonment unless the act is guilty of negligence or petty offense
5. Not incompetent or possibly incompetent person, or of unsound mind or mental infirmity perfect, or not a contagious disease or physical condition or mental abuse.
6. A person of integrity and personality, behavior and attitudes appropriate to the performance of duties.
7. Must have knowledge and understand the law on the Protection of Victims of domestic violence.

Agenda: The Domestic Violence Victim Protection Act, B.E. 2550 (2007) does not give definition of “conciliator” and the regulation of the Ministry of Social Development and Human Security on the rules and procedures agreement prior to the initial settlement, withdrawal of complaint in investigation stage, B.E. 2551 (2008) also does not give a certain qualification of competent conciliator in conducting the conciliation and protection of domestic violence. Also the Ministerial Rules set the system to support the operation under the Section 10, Section 11, and Section 12 B.E. 2553 (2010) Rule 8 states that the Bureau of Women’s Affair and Family Institute arrange the training courses for conciliator in order to protect and conciliate the victim of domestic violence. The course is under the supervision of standard of the Ministry of Social Development and Human Security. Therefore the providing of consultation or assistance in compromising or resolving the parties in cases of domestic violence act in accordance with Section 16, conciliator who is appointed by the authority or court may come from the three groups as follows; 1) Father, or mother, or parents or relatives of the parties 2) The person who is approved by authority or court 3) Social worker and social work agencies, any person or party to help mediate a settlement.

These persons must attend the training course for conciliator or not and the role of conciliation shall be conducted in what strategic direction.

4.1.8 Problem of operation of the Center of Protection of Domestic Violence.

Ministerial Rules which set the system to support the operation under the Section 10, Section 11, and Section 12 B.E. 2553 (2010) states that the Bureau of Women's Affair and Family Institute set the policy, operational plan and coordinate with Operational Center to protect and conciliate the victim of domestic violence. It includes the follow-up and evaluation of policy and operation of the policy.

Law requires the Department of Social Welfare to serve as the operations center in the offense of domestic violence that occurred in Bangkok under the Penal Code or an offense shall be deemed to have done in the Kingdom, and not in any province. Or the offense occurred outside the Kingdom and will be punished in the Kingdom. The Social Development and Human Security Office serves as the operation center of the province of an offense that occurred in that province. The operation center for domestic violence protection has responsibilities as follows;

4.1.8.1 The operation center to inform the facts regarding this information; age, personal history, behavior, physical and psychological health of domestic violence offender, of victim of domestic violence and family members involved in the domestic violence. This information will be analyzed and offer the measures for relief to support the order made by the authority or court according to the Section 10 and Section 11.

4.1.8.2 When the authority or court has set measures for temporary relief to victim of domestic violence according to the Section 10 and Section 11 for the Operational Center to perform as follows;

(a) Coordinate with physicians, psychiatrist, psychologist, social worker or the public organizations and private agencies for rehabilitation for physical and mental issues for giving counseling to domestic violence offender.

(b) Follow up the payment made by domestic violence offender to victim of domestic violence as a primary relief support and make report to authority or court

(c) Follow and invigilate domestic violence offender not to enter into family residence or close to family member.

(d) Follow up organization or and relating person to operate under the child care and report to authority or court

(e) Operate as to follow other orders beyond the above order and if it is not possible to operate successfully then they shall make report to authority or court

(f) Receive the report of order breaking of authority and court and to report to the official or court

(g) Coordinate with the local government, community network, government agencies or private sector in follow up the operation following the order of authority or court.

4.1.8.3 In the case that court follows the Section 12 First Paragraph instead of punishment the offender, then the Operational Center shall follow and coordinate with others, public and private organizations to operate follow the law and report to court

4.1.8.4 In the case that settlement, withdrawal of request, or withdrawal action according to the Section 12 Second Paragraph, the Operational Center shall follow as follows;

(a) To inform the facts regarding this information; age, personal history, behavior, physical and psychological health of domestic violence offender, of victim of domestic violence and family members involved in the domestic violence. This information will be analyzed and offer the measures for relief to support the order made by the authority or court to future settlement, withdrawal of request, or withdrawal action

(b) To coordinate with other persons in giving opinion on making a primary agreement before settlement, withdrawal of request, or withdrawal action

(c) In the case that the inquiry official or court according to the Section 12 First Paragraph is the condition of following the primary agreement in settlement, withdrawal of request, or withdrawal action, the operational center coordinate with the Department of Probation, Department of Juvenile Observation and Protection and public organization and private agencies to make a report to the court

(d) **Follow up of the operation result from the primary agreement** in settlement, withdrawal of request, withdrawal action and the conditions that the inquiry official or court set. If the accused does not follow the conditions, the operational center shall report to authority or court

Agenda: The operational center of domestic violence prevention has 4 main duties; 1) To coordinate and follow up the operation after the order and report, which covers entire victim of domestic violence protection process. However the Department of Social Development and Welfare or the Office of Social Development and Human Security of the Province make the operational center to have appointed the officials two roles under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) increase the workload of the officials. With this reason, the operation center has problems in man force, specialism of officials, and inadequate budget, which in fact in the protection of victim of domestic violence is essential to rely on agencies and personnel with expertise in a particular duty to protect victim of domestic violence systematically.

Table 4.1 Analysis of problem conditions according to the Victims of Domestic Violence Act 2007

Summary of problem condition of operation	Agendas
1. Problem of notifying to officials	The law does not give method in security protection provision to witness of domestic violence situation that to notify the official.
2. Problem of entrance to Protection Process of Victims of domestic violence	The victim of domestic violence will notify the official directly or to make a complaint to the inquiry officer, after the process of document being operated the file will be in the process of protection of victim of domestic violence according to law.
3. Problem of request to receive security protection under the law on the establishment of Juvenile and Family Court and Juvenile Court	Nowadays victim of domestic violence does not notify to the official as mentioned in the Section 5 or does not make any complaint as stated in the Section 6, therefore the process of applying for the security protection cannot be done according to law.
4. Problem of understanding of inquiry officer in summarizing the case and ordering the accused to file a lawsuit within 48 hours.	In the case that the alleged offender of domestic violence has create any domestic violence, and physical assault under the criminal law, in Section 295 is considered as one offence but many law involvement. In such case the official or attorney official can file a lawsuit the alleged offender within 48 hours after the incidence occurred or can make a request to the court to adjourn suing the alleged offender s to the other set time.
5. Problem of appointing the officials.	The official appointment of civil servants and officials from different ministries to perform as officials according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) may have some limitations such as the time management of the operation in both duties; the improvement of professionalism of the official; the support of the executives and the understanding of the executive of the organizations; the cooperation of inter-organizations; accountability and the responsibility of the officials in all levels.

Table 4.1 Analysis of problem conditions according to the Victims of Domestic Violence Act 2007 (cont.)

Summary of problem condition of operation	Agendas
6. Problem of ordering the measure of temporary protection or relieving measure.	The ordering to set the measure of temporary protection or relieving measure according to the Section 10, paragraph 1 as appeared in the Form ๓๘.8, mentions 5 measures of temporary protection or relieving with no other orders which may be necessarily in future. Moreover there is no other orders measure the treatment to victim of domestic violence and to make any protection for family from reconviction of domestic violence offender.
7. Problem of qualification and role of negotiator who gives counseling and assistance in reconciliation process.	The Domestic Violence Victim Protection Act, B.E. 2550 (2007) does not provide definition of “conciliator” and the regulation of the Ministry of Social Development and Human Security regarding the proceeding of MOU of legal settlement and withdrawal of complaints in inquiry stage in 2008 do not clarify the qualification of the conciliator.
8. Problem of operation of the Center of Protection of Domestic Violence.	The law is written that the Department of Social Development and Welfare or the Office of Social Development and Human Security of Provincial level have to work as operation center for preventing the domestic violence incidence therefore the civil servants of the aforementioned offices have the extra duty according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) and as a consequence the operation center of preventing domestic violence has the problem of limiting of manpower, specialism of officials and limiting of budget.

4.2 Comparative study on operation of victim of domestic violence protection between Thailand and internationals.

The operation of victim of domestic violence protection under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) between Thailand and the United Kingdom, the United States, and Australia can be divided into 8 subject matters as follows;

4.2.1 Concept in victim of domestic violence protection and solution to domestic violence

Similarity

The Domestic Violence Victim Protection Act, B.E. 2550 (2007) has its objective in giving domestic violence protection and rehabilitation in reconviction of domestic violence as to maintain status and relationship of family members, which is a crime prevention strategy under the Positive School by rehabilitation of offender and not to recommit such crime.

The protection of domestic violence in the United Kingdom, the United States, and Australia is a very important topic. Some of the protection of domestic violence victim is making the request to court to give protective order e.g. an order to stop the behavior, order to ban offender to go close to family member etc. In the United States, court order domestic violence offender and victim of domestic violence to join counseling program for behavioral change and reconciliation with family members.

Dissimilarity

In Thai society in the previous time, the belief that man had a higher role over woman and social value that said woman is buffalo, when man is a human. Another saying is man is the fore-legs of elephant but woman is rear-leg of elephant. The statement shows the relationship with gender and authority in society that society expects that man is the leader of family while woman is the follower and person who take care of husband and family. Therefore in family when the domestic violence happens, woman has to be tolerant to the situation. Moreover woman has to make the family looks happy and fine as it was before the domestic violence event. Other persons in society shall think as a consequence that domestic violence issue is a family issue, and they shall not be in associated in the situation.

However in the western countries e.g. the United Kingdom, the United State and Australia, the equality and right is the fundamental value of society. Therefore the role of man and woman is in the same level. The role of both gender, right in body, assets and opinion towards domestic violence is seen as public issue. In the case that the domestic violence situation happens, victim of domestic violence will understand that the situation is not appropriate. For that reason, victim of domestic violence will not be tolerant with the situation and look for the legal aid in order to protect victim of domestic violence from the unfair incident.

4.2.2 Safety plan

Similarity

Thailand has the safety plan for remedy after the domestic violence occurred according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 10, Section 11, and Section 12 in the incidence of domestic violence, the victim of domestic violence e.g. spouses, or former spouse, people living with husband or wife, or used to cohabitate as husband, or wife, including children who live in the same house can request to official or court to order temporary relief measure.

In the United Kingdom, the United State and Australia, the preventative security planning for domestic violence can be violence in the future. The victim of domestic violence has to plan for treatment of victim of domestic violence including for child of victim of domestic violence as court order to protection.

Dissimilarity

In Thailand, there is no preventative security planning for domestic violence as appear in the United Kingdom, the United State and Australia, but there is the post security planning for domestic violence which comes after the domestic violence occurrence according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 10, Section 11, and Section 12 by which the authority or court order such temporary relief measure.

4.2.3 Entering victim of domestic violence protection

Similarity

In Australia, victim of domestic violence can inform police to ask court to provide some kind of protection to the victim. The objective is to prevent one party to harm another party. In this part it is similar to the Thai model as when the request to inquiry official to set the temporary relief measure to victim of domestic violence whether there is any request made by victim of domestic violence e.g. the victim of domestic violence receive the medical treatment, domestic violence offender to pay for primary relief to the victim of domestic violence, the order for restriction of the access to the area of domestic violence offender by not allowing to enter into the residence of the victim of domestic violence, the childcare. Within 48 hours of the reception of the case, attorney official shall report to the court to make a decision on the temporary relief measure or not.

Dissimilarity

In Thailand, victim of domestic violence shall be protected at the primary state and receive medical treatment, psychological counseling from psychiatrist and psychologist also social worker according to the Section 6 and for temporary relief measure to victim of domestic violence according to the Section 10 and Section 11. The victim of domestic violence shall report or file the complaint to the inquiry official or authority as an entrance to receive the legal protection from the domestic violence protection procedure. In the United Kingdom and the United States, victim of domestic violence can file the request to court for legal protection without having filed any previous complaint.

4.2.4 Appeal for the safety protection

Similarity

In the United Kingdom, the United States and Australia, when there is a case of domestic violence, victim of domestic violence can appeal to court for the safety protection by the court order without any complaint making in the prior time. This statement is similar to the objective stated in the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 7 that victim of domestic violence who does not inform the official under the Section 5 nor make a compliant under the

Section 6 within three months of the possible period of making such actions. This is to be understood that the legal request is terminated. However the right to be protected by the Law on the establishment of Juvenile and Family Court and Juvenile Court is applied to victim of domestic violence or to stakeholder.

Dissimilarity

Nowadays in Thailand, victim of domestic violence and stakeholder cannot request for legal protection from the Law on the establishment of Juvenile and Family Court and Juvenile Court because the law is in the process of consideration of the House of Representatives.

4.2.5 The order provisional measures or methods of relief

Similarity

The order provisional measures or methods of relief of Thailand, the United Kingdom, the United States and Australia pay attention to the protection of victim of domestic violence and the child. Therefore the measures are set to prevent the domestic violence offender to harm or enter into the residence of the victim of domestic violence and to set the child care for protection of safety.

Dissimilarity

In Thailand, the person who has authority to set the order provisional measures or methods of relief are authority or court, whereas the United Kingdom, the United States and Australia have the court to set the order provisional measures or methods of relief. The order provisional measures or methods of relief of each country are different. In Australia, there is no order of domestic violence offender to receive any medical treatment. In the United Kingdom and Australia, there is also no order of domestic violence offender to compensate for victim of domestic violence but the right of victim of domestic violence to sue a civil claim for damages. In Thailand, there is no order to have ownership such as joint ownership or possessory right of housing and so on.

4.2.6 The role of the compromiser which acts on the advice or assistance in resolving the parties to settlement.

Similarity

Compromising in family law in the United Kingdom, the United State, and Australia is the voluntary process of both parties to participate in the mediation process does not affect the rights under the law. These are in accordance to Thailand where there is primary agreement prior to the settlement, withdrawal of complaint or withdraw the lawsuit. It must be voluntary of the main parties.

Dissimilarity

Compromising in the Domestic Violence Victim Protection Act, B.E. 2550 (2007), the compromisers can be categorized into 3 groups; 1) Parents, relatives of the party 2) The person who is certified by the authority or court 3) Social worker, social work organization where there are some persons from community involvement e.g. respectful person of community. In the United Kingdom, the United State, and Australia, the persons of compromising is commonly are specialists in several fields e.g. lawyer, psychologist, social worker, and public health official. Moreover these authorities have to be trained in counseling and compromising and requested in the vocational organization in family, child and youth.

4.2.7 Monitoring of compliance with the order or how to define measures to alleviate the suffering.

Similarity

In Thailand, the United Kingdom, the United State, and Australia, the monitoring of compliance with the order or how to define measures to alleviate the suffering is very important. The court penalties in case of domestic violence who do not comply with an order or protection order violations in order to protect those with and does not comply with an order or protection order violations of the court to imprisonment or fine or both.

Dissimilarity

In Thailand, the operation center for prevention of domestic violence works as receiving report of violations or failure to comply or order of the competent court and report to the authority or the court and the operation center to coordinate

with local government, community network government agencies or private sectors. This process is for follow up the results of operation according to court or authority order. In the United Kingdom, the United State, and Australia, the law states that the victims of domestic violence have to report to police officer in the case that there is failure to comply with the order or protection order violations. Police officers have the authority to arrest those who do violence, do not follow the order or protection order violations immediately without asking the court to issue an arrest warrant.

To sum up, the comparative study of international measures for solutions of domestic violence shows that in the **United Kingdom**, court has authority to arrange victim of domestic violence protection order prior to the criminal proceedings the domestic violence offender. The protective order can cover 2 cases as follows; 1) occupation order e.g. dwelling house or part of the dwelling house 2) non-molestation which prevents any disturbance to the associated person and in the case that the court ordered the arrest if those who must comply with the order protection requirements in violation. Police officer or constable has authority to arrest without warrant.

In the **United States** Law authorizing the spouse who was harmed by the other party to set the authorized representative or authorized the police officer or any other person the court deems appropriate. Family Court to file the request to issue an order protecting the spouse can harm the other party. In an urgent case, the preliminary order of protection or temporary order of protection e.g. order to stay away from the house, order to refrain from actions cause domestic violence, to order the defendant to receive treatment etc. In case of violation of order, victims of violence require to call the police immediately. By transgression of court must be fined not exceeding 500 USD or imprisoned not exceeding 90 days.

In **Australia** Laws empower police officials to arrest the cause of violence in families without a warrant and empower the District Court issued an injunction restraining order, such as near or in the family restraining order to close family members etc. The order to expel from the residence in the event of a violation of a court order to adjust the power penalty or to find insurance to place or remove a security court and penalties for infringement or jurisdiction. If the court orders the

arrest of the offender who violates the order only when especially requested by the petitioner.

When the police officer has reasonable grounds to suspect that the power to order the arrest had been violated, it can be immediately arrested without a warrant.

Table 4.2 Comparative Table of the Operation of Protection of Victim of Domestic Violence

Protection of Victim of Domestic Violence	Country			
	UK	USA	Australia	Thailand
Attitude towards domestic violence as public issue.	✓	✓	✓	-
Security planning preventing domestic violence situation.	✓	✓	✓	-
The entrance of protection of victim of domestic violence process by court plea.	✓	✓	✓	✓
The entrance of protection of victim of domestic violence process by sending complaint to inquiry officer.	-	-	-	✓
Request for safety and protection	✓	✓	✓	✓
An order to domestic violence offender to cease domestic violence behaviors.	✓	✓	✓	✓
An order to domestic violence offender to receive treatment from doctor.	✓	✓	-	✓
An order to domestic violence offender to pay compensation money to victim of domestic violence.	Civil lawsuit	✓	Civil lawsuit	✓
An order to possess assets.	✓	✓	✓	-

Table 4.2 Comparative Table of the Operation of Protection of Victim of Domestic Violence (cont.)

Protection of Victim of Domestic Violence	Country			
	UK	USA	Australia	Thailand
An order to ban domestic violence offender entering into family residence.	✓	✓	✓	✓
An order to ban domestic violence offender to stay close to family member.	✓	✓	✓	✓
Determining how to nurture children.	✓	✓	✓	✓
Roles of mediator/ negotiator participating in reconciliation process.	✓	✓	✓	✓
Roles of mediator/ negotiator as mediation between the two parties and let the two parties make their own decision.	✓	✓	✓	✓
Police office authorizes to seize alleged offender without court issue of arrest warrant if there is a case of breaking the order by alleged offender .	✓	✓	✓	-

4.3 Study on Experts' Opinions from Focus Group toward Supplementary Approaches of Family Violence Moderation That Are Suitable for Thailand.

Study of experts' opinions by holding a Focus Group to answer the research questions to examine about opinions and discussion of the group of executives or operatives in Ministry of Social Development and Human Security, Royal Thai Police Bureau, Office of the Attorney General, Court of Justice, Rights and Liberties Protection Department, Department of Probation, Local, Local Administration Organizations, medical doctors, psychologists, social workers, academics and interested private organizations along with family violence offenders and victims for implementation of Family Violence Victim Protection Act 2550 B.E. and supplementary approaches for solving family violence problems. From results of the Focus Group, opinions and suggestions can be summarized and categorized in to 12 parts as follows:

Part 1 Ideas of Family Violence Solutions;

Part 2 Roles of the Community in Bewaring of Family Violence Problems;

Part 3 Engagement of Family Violence Victim Protection Program;

Part 4 Formulation of Safety Plans;

Part 5 Request for Security Protection under the Law;

Part 6 Roles of the Official in Protecting Family Violence Victims;

Part 7 Roles of the Inquiry Officer in Prosecuting Family Violence Offenders;

Part 8 Roles of the Mediator Who is Responsible for Providing Consultancy and Assistance to Reconcile the Disputing Parties;

Part 9 Roles of the Community in Protecting Family Violence Victims and Rehabilitating Family Violence Offenders;

Part 10 Roles of the Operation Center for Family Violence Prevention;

Part 11 Monitoring for Compliance with Order Specifying Relief Measures or Methods; and

Part 12 Other Suggestions Concerning Supplementary Approaches for Solving Family Violence Problems under Family Violence Victim Protection Act 2550 B.E.

4.3.1 Ideas of Family Violence Solutions

Family violence is any action on purpose of harming the victim's body, mind or health, which is an offense against life and body while the Constitution of the Kingdom of Thailand 2550 B.E., section 32 provides guarantee of rights to life and body and the Penal Code, Book II prescribes for offenses against life and offenses against physical safety. However, results from a Focus Group of experts from private organizations and individuals, who have suffered from family violence, concur that general public do not somewhat value respect for rights to life and body of others, especially, if the others are their family members, their rights to life and body are dramatically disregarded.

Results from a Focus Group of medical doctors, psychologists and social workers concur that solutions to family violence problems must consider causes of the problems, which can be sorted into 2 cases, namely: 1. Internal Factors – within the Family Violence Offenders; and 2. External Factors – Social Pressures and Environments. Thus, to solve the problems of family violence, it must be considered whether the offender commits any criminal offense and commits the crime in a manner of habitual offender or recidivist or not which must be prosecuted according to the Penal Code and the Criminal Procedure Code in order to convict the offender. However, if the offender commits an offense of family violence and offense of bodily harm under the Penal Code, section 295 in conjuncture of external factor causes, such as problems of poverty or abuse of alcohol, and the victim consents to engage into the procedures of Family Violence Victim Protection Act 2550 B.E., the procedures of the Act will still be implemented.

Result of the Focus Group agree that Family Violence Victim Protection Act 2550 B.E. is a law providing 2 types of measures, namely: 1. Measures for Criminal Prosecution of the Family Violence Offender; and 2. Measures for Protection of the Family Violence Victim and Enrollment of the Offender into Rehabilitation for Remedy of the Victim, which are measures for protecting the victim by using clinical means of psychology, social administration and legal principles along with services of the multidisciplinary team to solve the family violence problems.

4.3.2 Roles of the Community in Bewaring of Family Violence Problems

Family Violence Victim Protection Act 2550 B.E., section 5 prescribes for obligations of an individual, who is a family violence victim or witness or aware of family violence, to report the incident to the official and reporting to the official in good faith, the individual shall be entitled to protection and not exposed to any liability whether civil, criminal and administrative. Result of the Focus Group agree that roles of the community are to carry out duties of reporting to the official once observe or be aware of act of family violence according to section 5, whereby the community may include, village elders and chiefs, local leaders, community leaders and neighbors, who reside in the same community as the family violence victim or offender.

Since, when an act of family violence occurs, individuals, who reside in the same community, must be aware of the occurrence at first and know about relationship of the family violence offender and victim, circumstances and frequency of the violence. Therefore, the law obliges them to report the occurrence to the official to enter the premises or residence of the victim and offender to inquire the family violence offender and victim and other individuals in such premises in order to provide assistance for the family violence victim as well as empowers the official to arrange the family violence victim to receive medical attention and consultancy from psychiatrist, psychologist or social worker. Moreover, another essential role of the community is to collaborate with the official and other agencies, such as the police, hospital and private organizations in the field of children and women support , in order to immediately save the family violence victim.

4.3.3 Engagement of Family Violence Victim Protection Program under Family Violence Victim Protection Act 2550 B.E., Section 10 and Section 11

Results from a Focus Group from the police and private organizations concur that in a case of family violence occurrence, such as a case of the wife being hurt by the husband, the wife can complain to the inquiry officer or police to prosecute the husband for an offense of bodily harm under the law but in practice, when the case turns out that the offender and the victim are husband and wife, the inquiry officer or

police usually try to reason or admonish the parties to settle the dispute¹ by reconciliation rather than admit the complaint and proceed with the case, thus, because the inquiry officer or police perceives the case as matter between husband and wife or internal affair or the family that is likely to be reconciled and sometime the inquiry officer or police may see that when the husband is duly prosecuted, the husband shall be in custody or on remand and the wife will often bail the husband out as if sometime the wife's complaint is not utterly resolute in prosecuting the husband so the inquiry officer or police is not willing to admit the complaint and often attempt to mediate the disputing parties instead. Consequently, the husband, who is the family violence offender, usually agrees with the inquiry officer or police because he does not want to be indicted and persuades his wife to give up the prosecution, whereby the husband persuading the wife to concur with mediation by the inquiry officer or police may be a perfunctory settlement or a settlement that is not intended to truly solve the family problem resulting in the husband eluding the prosecution and being able to hurt the wife again.

Family Violence Victim Protection Act 2550 B.E., section 6 prescribes for engagement of family violence victim protection program whereby in a case that the family violence victim wishes to prosecute, the victim shall be arranged to lodge the complaint under the Criminal Procedure Code but if such victim is not possible or able to lodge the complaint by herself or himself, the official shall lodge the complaint instead. When the complaint is lodged, the inquiry official shall conduct the inquiry expeditiously and refer the family violence victim, the inquiry file and opinions to the

¹ Regulations of Royal Thai Police Bureau on some cases that require special procedures (the 2nd Issue) 2543 B.E. dated the 14th of January 2000, Chapter 13 – Quarrel between Husband and Wife, Article 583, Page 698-699:

Article 583 “In a case that the husband or wife accuse the other of bodily harm if does not use a weapon nor inflicts a serious injury nor occurs on a highway along with the harm is not committed out of *mens rea*, for example to expostulate, the inquiry officer shall attempt to reason or admonish for settling the dispute. When the attempt fails, then the officer shall proceed with the dispute according to the case circumstances but also refer the case up the chain of command and be allowed to refer the disputing parties as well as the case.

Even though the bodily harm between the husband and wife is committed with a weapon or inflicts a serious injury or occurs on a highway, if it is seen appropriate, the officer shall refer the case to the supervisor to consider for appropriate measures, thus because the governmental agency must essentially maintain order and security of the family.

By the way, the inquiry officer shall use discretion to mediate the dispute. If the offense is frequently committed, the offender is not chastened and circumstances appear that the harm will be more serious, the case must be duly prosecuted.

public attorney to prosecute to the court within forty eight hours after the family violence victim is present but if there is necessity preventing the prosecution within such time, the prosecution to the court shall be postponed for a period of not exceeding 6 days. In conduct the inquiry of the family violence victim, the inquiry officer must arrange a psychiatrist, psychologist, social worker or a person requested by the family violence victim to be present in the inquiry for consultancy. In issuance of the order of family violence victim protection, section 10 empowers the inquiry officer, who is ranking not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the minister, to issue an order specifying measures or methods of temporary relief for the family violence victim, whether the victim requests the relief or not, whereby empowering to issue any order as necessary and appropriate, including to refer the family violence victim to receive medical check, require the family violence offender to pay preliminary compensation as suitable for the condition, prohibit the offender from entering the family residence or proximity of the family members as well as to specify measure for taking care of a child.

Results from the Focus Group agree that in engagement of family violence victim protection program under Family Violence Victim Protection Act 2550 B.E., section 10 and section 11, the issuance of an order specifying measures or methods of temporary relief for the family violence victim must be initiated as a criminal case whereby lodging a complaint against the family violence offender at first, which recognizes the lodging of complaint as the start of the engagement of family violence victim protection program. Thus the lodging of complaint for criminal prosecution is a condition for the family violence victim protection.

4.3.4 Formulation of Safety Plans

Results of the Focus Group concur that formulation of safety plans for the family violence victim can be analyzed by separating into 2 phases: 1. Formulation of Safety Plans prior to Occurrence of Family Violence, viz, publication about knowledge necessary for self-protection and avoidance of family violence problems and promotion of roles of the community in bewaring of family violence problems; and 2. Formulation of Safety Plans after Occurrence of Family Violence, viz, assessment of risk to repetitively suffering from violence. Results from a Focus Group

of medical doctors, psychologists and social workers agree that assessment of risk to repetitively suffering from violence shall value safety, prevention of repetitive victimization and risk of using violence in the future and analyze the family violence offender's profile and frequency of violence uses in conjunction to identify causes of the family violence problems and another matter to consider is capability of self-protection of the family members, which, in a case of a child, there may be risk of repetitive victimization. Thus, if the child, who is the family violence victim, receives medical treatment in a hospital, the medical doctor may admit the child in order to preliminarily exclude the child from the family for medical reasons.

Family Violence Victim Protection Act 2550 B.E., section 10 empowers the inquiry officer, who is ranking not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the minister, to issue an order specifying measures or methods of temporary relief for the family violence victim, whether the victim requests the relief or not, whereby empowering to issue any order as necessary and appropriate, including to refer the family violence victim to receive medical check, require the family violence offender to pay preliminary compensation as suitable for the condition, prohibit the offender from entering the family residence or proximity of the family members as well as to specify measure for taking care of a child. Results of the Focus Group concur that issuance of an order specifying measures or methods of temporary relief for the family violence victim is also a method of formulation of safety plans after occurrence of family violence.

4.3.5 Request for Security Protection under the Law

Result of the Focus Group agree that, in a case of the family violence victim not lodging the complaint under section 6, the family violence victim is still be entitled to request for security protection under section 7. Whereas the family violence victim or the stakeholder requesting for security protection under law on establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case, which Establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case Act 2553 B.E. was issued in the Royal Gazette on the 22nd of November 2010 and this Act shall be in force after one hundred and eighty days from

the issuance in the Royal Gazette, as a result, the family violence victim, who does report the incident under section 5 nor lodge the complaint with the inquiry officer under section 6, is not able to request for security protection under the law.

Results of a Focus Group from the Police and Public Attorney concur that the second paragraph of section 6 empowers the official, who is aware of family violence or reported of incident under section 5, to enter into the residence or scene to inquire the family violence offender and victim and other person therein in order to provide assistance for the family violence victim along with to arrange the family violence victim to receive medical attention and consultancy from psychiatrist, psychologist or social worker, whereby the official may collaborate with the multidisciplinary team and specify preliminary security protection for protecting the family violence victim, for example, ordering the family violence offender to omit the use of violence or restraining the offender from approaching the victim.

4.3.6 Roles of the Official in Protecting Family Violence Victims

The “official” under Family Violence Victim Protection Act 2550 B.E. means a person, who is appointed by the Minister to execute operation under this Act, and also includes the administrative official and the police officer under the Criminal Procedure Code. The participants of training provided by Minister of Social Development and Human Security are appointed as officials coming from many professions, namely operatives of Minister of Social Development and Human Security, Ministry of Public Health, Minister of Justice, Ministry of Education, Local Administration Organizations and Private Organizations, whereby, in fact, the persons, who are appointed as officials, already have duties and responsibilities in the scope of missions of the agencies where they are affiliated. Results of a Focus Group from the Police, Public Attorney, Ministry of Social Development and Human Security, Social Workers and Private Organizations agree that appointing officials who are operatives in number of agencies to carry out official duties under Family Violence Victim Protection Act 2550 B.E. burdens such operatives with extra duties, which may affect in limits to work in many aspects, namely allocation of time for duties, professionalism of the officials, support and understanding of the executives in

the agencies, coordination and collaboration between agencies and responsibilities of the officials.

Results of the Focus Group concur that a person, who is appointed by the Minister as the official under Family Violence Victim Protection Act 2550 B.E., must be a professional official from specialized agencies in **the Operation Center for Family Violence Prevention**, namely, Department of Social Development and Welfare, functioning as an operation center for family violence offenses occurred in Bangkok or offenses committed within the Kingdom under the Penal Code and not occurred in another province or offenses occurred out side the Kingdom but punishable within the Kingdom and a Provincial Office of Social Development and Human Security functioning as an operation center for family violence offenses occurred within area of the respective province, whereby providing such centers for performing to prevent family violence.

4.3.7 Roles of the Inquiry Officer in Prosecuting Family Violence Offenders

Results of a Focus Group from the Police, Public Attorney, Ministry of Social Development and Human Security, Medical Doctors, Social Workers and Private Organizations concur that when a complaint is lodged to the inquiry officer against the family violence offender in criminal prosecution for bodily harm, the inquiry officer shall prosecute the offender under the Criminal Procedure Code to convict the offender, whereby most of the inquiry officer fails to apply Family Violence Victim Protection Act 2550 B.E. to such case because problems of lack of knowledge or understanding about the Act. Therefore, the inquiry officer need to learn and understand principles of Family Violence Victim Protection Act 2550 B.E. in order to protect the victim and enroll the offender in a rehabilitation program.

Results of a Focus Group from social workers, private organizations and individuals, who have suffered from family violence, agree that in the investigation process for collecting evidences and witnesses to prosecute the case, the inquiry officer may question the family violence victim whether there is any witness to family violence, medical examination report or other evidence, in order to conclude the case for prosecuting the offender, whereby different from the intent of Family Violence

Victim Protection Act 2550 B.E. Thus, the investigation of family violence case should be conducted by an inquiry officer specialized in family matters or appointing an inquiry officer exclusively for social affairs.

4.3.8 Roles of the Mediator Who is Responsible for Providing Consultancy and Assistance to Reconcile the Disputing Parties

Results of a Focus Group from Public Attorney, the Court of Justice, Department of Probation, Social Workers and Private Organizations agree that consultancy or assistance for mediating to reconciliation between the disputing parties in the family violence case under section 16 is application of the restorative justice to mediation, whereby considering needs of the family violence victim and means to holding the family violence offender responsible for his or her wrong doing by compensating or supporting the victim to a decent condition with the mediator functioning in assisting for reconciliation between the disputing parties.

Family Violence Victim Protection Act 2550 B.E., section 16 prescribes that the mediator, whom the official or the Court appoints, may be selected from three groups of persons, namely: 1. parents, guardians and relatives of the disputing parties; 2. persons, whom the official or the Court deems appropriate; and 3. social workers, social administration organizations or any person who can assist in reconciliation between the disputing parties. Thus, results of a Focus Group from Public Attorney, Minister of Social Development and Human Security, Social Workers Private Organizations and individuals, who have suffered from family violence, concur that the mediator takes essential roles in providing consultancy and assistance for mediating to reconciliation, hence the mediator should be a specially trained professional and have expertise in psychology, social administration, family matters, children and women affairs. However, providing the community to participate in the mediation process should solely regard willingness of the disputing parties. Whereby, result of the Focus Group agree that the community, who should participate in mediation, are parents, guardians and relatives of the disputing parties as well as the community leader and the Operation Center for Family Violence Prevention should be furnished with psychologists and social workers permanently posting at the Center in order to particularly provide consultancy and assistance in mediation.

Results of a Focus Group from Public Attorney, Department of Rights and Liberties Protection, Social Workers, Family Violence Offenders and Victims agree that availability of the mediator for assisting in reconciliation between the disputing parties and applying the restorative justice to solve problems of family violence may vary between the urban society and the countryside, in other words, if it is the urban society, it may need the mediation, who is a professional, neutral or public official, whereas in the countryside that has different custom from the urban society, the community, which are parents, guardians, relatives of the disputing parties and the community leader, may be fit to take substantial roles in the mediation along with Buddhist monk, who stays at a temple in the community and is highly worshiped by the disputing parties, may take a key role in the mediation as well.

4.3.9 Roles of the Community in Protecting Family Violence Victims and Rehabilitating Family Violence Offenders

Results of a Focus Group from the Police, Public Attorney, Minister of Social Development and Human Security, Department of Rights and Liberties Protection, Social Workers and Private Organizations agree that the community take roles in protecting family violence victims and rehabilitating family violence offenders, whereby being analyzed in 3 roles, namely: **the First Role as Informant** reporting to the official upon witnessing to or bewaring of family violence under section 5; **the Second Role as Mediator** functioning to assist in mediating the disputing parties under section 16; and **the Third Role as Monitor** carrying out duties of volunteers of the Operation Center for Family Violence Prevention, monitoring observance of the preliminary memorandum of mediation, withdrawal of complaint or prosecution and conditions that the inquiry officer or the Court specifies. If the offender or the accused violates or fails to observe the conditions, the volunteer must report to the Operation Center for Family Violence Prevention for the Center shall further refer the incident to the inquiry officer or the Court.

Results of a Focus Group from Public Attorney, the Court of Justice, Ministry of Social Development and Human Security and Family Violence Offenders concur that Family Violence Victim Protection Act 2550 B.E. is a law prescribing 2 types of measures, namely: 1. Measures for Criminal Prosecution of the Family

Violence Offender; and 2. Measures for Protection of the Family Violence Victim and Enrollment of the Offender into Rehabilitation for Remedy of the Victim. Whereby the community shall participate in **social measures** for bewaring of and solution to problems of family violence in number of roles, viz, being an informant, mediator and monitor, and the community applying social measures to pressure the family violence offender is another way to punish the offender. For example, if a husband commits bodily harm against the wife and the child, the community may apply some pressure by shunning the offender. However, if the family violence offender manages to improve his behavior, the community should give him a second chance and forgive the family violence offender in order to allow his reintegration with the society and family.

4.3.10 Roles of the Operation Center for Family Violence Prevention

Results of a Focus Group from the Police, Public Attorney, the Court of Justice, Ministry of Social Development and Human Security, Department of Rights and Liberties Protection, Local Administration Organizations, Social Workers and Private Organizations concur that the Operation Center for Family Violence Prevention has authorities under Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12, of three respects. Firstly, to report on fact about age, profile, behavior, physical and mental health of the family violence offender, the family violence victim and their family member, cause of the family violence or any other fact that may be beneficial to the consideration along with suggest measures or methods of relief to the official or the Court for being used in consideration for issuance of order under section 10 or section 11, whereby it can be seen that the Operation Center for Family Violence Prevention is an introductory agency that must get involved to inquire about the family violence and provide consultancy and assistance for the family violence victim and family member, thus, the staff of the Operation Center for Family Violence Prevention should be professional psychologists and social workers or the official under Family Violence Victim Protection Act 2550 B.E., concurrently with carrying out their duties, they should implement principles of Family Violence Victim Protection Act 2550 B.E., section 6 in entering to inquire the family violence offender and providing assistance and consultancy for the family violence victim and family member as well.

Secondly, the Operation Center for Family Violence Prevention has authority to collaborate with the medical doctors, psychiatrists, psychologists, social workers, concerned governmental or private agencies in order to clinically diagnose, remedy or rehabilitate physical and mental health along with providing consultancy for the family violence offender and collaborate with the local administration organizations, community networks, concerned governmental or private agencies to monitor for compliance with order of the official or the Court as well as coordinate with involved individuals to participate in sharing their opinions for complementing the production of the preliminary memorandum of mediation, withdrawal of complaint or prosecution. Lastly, in a case that the inquiry officer or the Court specifies methods under the first paragraph of section 12 as conditions for compliance of the preliminary memorandum of mediation, withdrawal of complaint or prosecution, the Operation Center shall collaborate with Department of Probation, Department of Juvenile Observation and Protection and concerned governmental or private agencies to enforce the conditions and report the inquiry officer or the Court. Results of a Focus Group from the Police, Public Attorney and Social Workers agree that collaboration authorities of the Operation Center for Family Violence Prevention to collaborate needs establishment of a network for cooperation of the multidisciplinary team, which may be established in a form of commission similar to the provincial commission on juvenile protection under Juvenile Protection Act 2546 B.E.

4.3.11 Monitoring for Compliance with Order Specifying Relief Measures or Methods

The Operation Center for Family Violence Prevention has authorities under Ministerial Regulations 2553 B.E. Specifying Procedures for Execution and Enforcement of Section 10, Section 11 and Section 12 to monitor for compliance with order of the official or the Court in a case that the order specifies temporary relief measures or methods for the family violence victim under section 10 or section 11 as well as receive report on violation or non-compliance of such order from the official or the Court and then report to the official or the Court as well as in a case that the Court specify methods under the first paragraph of section 12 to substitute for punishment against the offender along with monitoring for compliance of the preliminary

memorandum of mediation, withdrawal of complaint or prosecution and conditions that the inquiry officer or the Court specifies if the offender or the accused violates or fails to comply with the conditions under the second paragraph of section 12 . As to results of a Focus Group from the Police, Public Attorney, the Court, Department of Social Development and Human Security, Local Administration Organizations, Social Workers and Private Organizations, it is concurred that the Operation Center for Family Violence Prevention must be manned with the staff in a number sufficient for its workload, besides, the Center must establish a network of the multidisciplinary team by harnessing mechanism of village elders and chiefs and volunteers to participate in monitoring the order specifying temporary relief measures or methods for the family violence victim under section 10 or section 11 and a case that the Court sentences to apply measures under the first paragraph of section 12 to substitute for punishment against the offender as well as monitoring for compliance of the preliminary memorandum of mediation, withdrawal of complaint or prosecution under the second paragraph of section 12 along with cooperate with the OSCC to following up for inquiring the family violence offender about problems of family violence whether there is any recidivism.

4.3.12 Other Suggestions Concerning Supplementary Approaches for Solving Family Violence Problems under Family Violence Victim Protection Act 2550 B.E.

Results of a Focus Group from Public Attorney and Social Workers concur that Harmonious Family Center should be established to provide consultancy for the family violence offender and Provincial Commission on Family Violence Victim Protection should be established in a form similar to the provincial commission on juvenile protection under section 17 of Juvenile Protection Act 2546 B.E., which is, for example, comprised of the Governor as the chairman, Vice Governor, who is appointed by the Governor, as the vice-chairman, Provincial Attorney, Provincial Development Director, Provincial Labor Director, Educational Service Area Director, Provincial Public Health Director, Commander of Provincial Police and Representative of the Provincial Juvenile and Family Court, or Representative of the Provincial Court in a case of a province having no Juvenile and Family Court,

Representative of Juvenile Observation and Protection Institution, or Representative of Ministry of Justice appointed from public official in the province for a province having no Juvenile Observation and Protection Institution, and Expert Commissioners, whom the Governor appoints from specialists that have experiences in professions of social administration, education, psychology, law and medicine, by two persons for each profession, whereby each profession must have one representative of the private sector, and the two other experts in children welfare, whereby Provincial Social Development and Welfare Director as a commissioner and the secretary.

Results of a Focus Group from the Police, Public Attorney, the Court, Ministry of Social Development and Human Security, Social Workers, Local Administration Organizations and Private Organizations concur that Ministry of Social Development and Human Security should introduce more aggressive policies on publicizing Family Violence Victim Protection Act 2550 B.E. to inform the general public about legal measures for criminally prosecuting the family violence offender and social measures for protecting the family violence victim whereby substantially regarding safety of the victim and family member and enrollment of the family violence offender in rehabilitation program to remedy damages for the family violence victim, furthermore, must develop attitude, knowledge and expertise for the official and other officials pertaining to enforcement of Family Violence Victim Protection Act 2550 B.E. along with develop capability of the Operation Center for Family Violence Prevention by specifying personnel to be comprised of the staff of the Center, who have knowledge and specialty, and are manned equally to their workload.

Table 4.3 Summarizing Issues of the Focus Group Results

Summary of the Focus Group Issues	Results of the Focus Group
1. Ideas of Family Violence Solutions	1. Solutions to family violence problems must consider causes of the problems 2. Family Violence Victim Protection Act 2550 B.E. is a law providing 2 types of measures, namely: 1. Measures for Criminal Prosecution of the Family Violence Offender; and 2. Measures for Protection of the Family Violence Victim and Enrollment of the Offender into Rehabilitation for Remedy of the Victim
2. Roles of the Community in Bewaring of Family Violence Problems	1. To carry out duties of reporting to the official once observe or be aware of act of family violence according to section 5 2. To collaborate with the official and other agencies in order to immediately save the family violence victim
3. Engagement of Family Violence Victim Protection Program	A criminal case must be initiated by lodging the complaint in order to prosecute the family violence offender at first, whereby lodging of the complaint is a condition for application of family violence victim protection.
4. Formulation of Safety Plans	1. Can be analyzed by separating into 2 phases: 1. Formulation of Safety Plans prior to Occurrence of Family Violence; and 2. Formulation of Safety Plans after Occurrence of Family Violence 2. Issuance of an order specifying measures or methods of temporary relief for the family violence victim is a method of formulation of safety plans after occurrence of family violence.
5. Request for Security Protection under the Law	1. In a case of the family violence victim not lodging the complaint under section 6, the family violence victim is still be entitled to request for security protection under section 7. 2. The official, who is aware of family violence or reported of incident, may collaborate with the multidisciplinary team and specify preliminary security protection for protecting the family violence victim.

Table 4.3 Summarizing Issues of the Focus Group Results (cont.)

Summary of the Focus Group Issues	Results of the Focus Group
6. Roles of the Official in Protecting Family Violence Victims	<ol style="list-style-type: none"> 1. Limits to work are caused by appointing officials or operatives of different agencies to carry out the official duties under Family Violence Victim Protection Act 2550 B.E. 2. The official under Family Violence Victim Protection Act 2550 B.E., must be a professional official from specialized agencies in the Operation Center for Family Violence Prevention.
7. Roles of the Inquiry Officer in Prosecuting Family Violence Offenders	<ol style="list-style-type: none"> 1. The inquiry officer need to learn and understand principles of Family Violence Victim Protection Act 2550 B.E. in order to protect the victim and enroll the offender in a rehabilitation program. 2. The inquiry officer should be specialized in family matters or an inquiry officer should be appointed exclusively for social affairs.
8. Roles of the Mediator Who is Responsible for Providing Consultancy and Assistance to Reconcile the Disputing Parties	<ol style="list-style-type: none"> 1. Mediation for reconciliation between the disputing parties in the family violence case under section 16 is implementation of restorative justice. 2. The mediator should be professional or specially trained. 3. Availability of the mediator assisting in reconciliation of the disputing parties may vary between the urban society and the countryside.
9. Roles of the Community in Protecting Family Violence Victims and Rehabilitating Family Violence Offenders	The community take roles as informant, mediator and monitor of an order specified by the Court or inquiry officer.
10. Roles of the Operation Center for Family Violence Prevention	<ol style="list-style-type: none"> 1. The staff of the Operation Center for Family Violence Prevention should be professional psychologists and social workers or the official under Family Violence Victim Protection Act 2550 B.E.

Table 4.3 Summarizing Issues of the Focus Group Results (cont.)

Summary of the Focus Group Issues	Results of the Focus Group
10. Roles of the Operation Center for Family Violence Prevention (cont.)	<ol style="list-style-type: none"> 2. Section 6 should be enforced in entering to inquire the family violence offender and provide consultancy and assistance for the family violence victim and family members. 3. A network for cooperation of the multidisciplinary team should be established perhaps in a form of commission.
11. Monitoring for Compliance with Order Specifying Relief Measures or Methods	<ol style="list-style-type: none"> 1. The Operation Center for Family Violence Prevention must be manned with the staff in a number sufficient for its workload. 2. The Operation Center for Family Violence Prevention must establish a network of the multidisciplinary team to monitor the order specifying temporary relief measures or methods.
12. Other Suggestions Concerning Supplementary Approaches for Solving Family Violence Problems under Family Violence Victim Protection Act 2550 B.E.	<ol style="list-style-type: none"> 1. Harmonious Family Center should be established to provide consultancy for the family violence offender and Provincial Commission on Family Violence Victim Protection should be established. 2. Ministry of Social Development and Human Security must introduce more aggressive policies on publicizing Family Violence Victim Protection Act 2550 B.E. along with develop attitude, knowledge and expertise for the official and other officials pertaining to the implementation.

4.4 Discussion on the Research Results of the Focus Group

Results of the research on supplementary approaches for solving family violence problems that are suitable for Thailand can be discussed by analyzing 12 parts as follows.

4.4.1 Ideas of Solving Family Violence Problems

Results from analyzing opinions of the Focus Group find that family violence problems can be considered by 2 perspectives: 1 If family violence problems are considered as **personal affairs** or matters between the spouses, others or third parties should not get involved; and 2 Whereas the other perspective views family violence problems as **public affairs**, they are considered as social problems that every sector needs to cooperate to solve the problems. Thus, the ideas are consistent with remarks of Dr. Kitipong Kitayarak¹ on issues about enforcement of law on the family violence, which concluded that the family violence is usually viewed as an internal affair within the family. This spectacle arises problems concerning women and men equality, which are characterized by significant inequality. Even in the year 1932 that Thailand opted for democracy and declared her civil rights, although Thai law still allowed a husband to bash his wife as to teach or punish the woman. Such practice was a part of a culture that recognized the wife as an asset of the husband. Thus, a legal concept is also based on the men-dominated culture as it is mentality of lawyers or feelings of general public. For example, when a passer-by encounters a quarrel between a man and a woman, the passer-by usually try to help, but when the passer-by hears that it is a husband-and-wife matter, he or she often pauses and rethinks his or her intention to intervene. Therefore, when a problem of family violence occurs, the family violence victim is not likely to lodge a complaint for prosecuting the family violence offender. This kind of situation is caused by the victim's fear the offender or shame for being noticed by the community or neighbors along with the person is not aware of his or her lawful rights to protection as well as to prosecution under Family Violence Victim Protection Act 2550 B.E., which is enacted for purposes of

¹ Kitipong Kitayarak, Restorative Justice and Solution to Family Violence Problem, The 2nd National Conference on Suppression of Violence against Children and Women, Thai Health Promotion Foundation (HPF), 2008., Page 25.

rehabilitating the family violence offender. For these reasons, the family violence victim are usually keen on lodging a complaint to the police officer as being afraid that the family violence offender will only be arrested and imprisoned under the Penal Code.

Most of people attitudes that the family violence problem is a personal matter as they perceive an act of family violence such as a bodily harm is acceptable within a family, still such concepts are overlooking human dignity, integrity and rights to life and body of a family member. Whereby, Professor Kanit Na Nakorn gave his opinions that “human dignity” is the source “fundamental value” of a human in a personal matter, thus any act against “virtues of law” concerning “value” of a human in a personal matter is considered a breach of “human dignity”² Therefore, an act of family violence is an offense against a person, specifically against life and body, so it is considered a breach of “human dignity” and “rights to life and body” which are fundamental human rights. Moreover, the family violence also means any act which is committed on purpose of bodily or mental harm. Whereby, a mental harm, which affect functions of the brain, may also result in bodily injury. For example, lifting a gun in threatening to shoot may cause the victim to panic and lose consciousness for a length of time, Whereas, emotional distress, which is caused by humiliation, resent or rancor is not a mental harm³ because emotion and feelings that are called “mind” are not material so they cannot really be harmed but analogously be so. Actually, a body part that perceives such harm is the “brain.” Thus, a mental harm, according to law, means a harm without physical contact that damages the brain functions, whereas a harm directly to destroy brain tissue, which is a part of body, is also considered a bodily harm.⁴

Violence, which occurs within a family in a case of the wife being bodily harmed, is deemed an offense under a criminal law. Hence, the wife is entitled to lodge a complain to prosecute the husband who commits such violence, whereby the punishment against the husband who behaves violently is considered as means to threat and deter the husband from continuing the violence. (Deterrence Theory)

² Kanit Na Nakorn, Criminal Law on Specific Offenses, the 8th Publishing, Bangkok, Winyuchon 2002, page 29

³ Taweekiat Meenakanit, Principles of Criminal Law on Specific Offenses, the 6th Publishing, Bangkok: Winyuchon, 2007, page 155

⁴ Taweekiat Meenakanit, Principles of Criminal Law on Specific Offenses and Petty Offenses, the 3rd Publishing, Bangkok: Winyuchon, 2006, page 50

However, punishment is not a real solution to the family violence problem because mostly the wife does not wish to prosecute the husband but still wants to maintain their marital status as family. Moreover, prosecution against the husband who behaves violently also stigmatizes the husband who behaves violently (Labeling Theory) as a criminal for an offense of bodily harm whereas the husband might think that his violence is a conventional use of force against the wife, which is acceptable, and if intimate neighbors and colleagues oppose such violence and banish the husband who behaves violently from the society, it may induce the husband to behave more violently against the wife. Furthermore, prosecution against the husband who behaves violently is also considered as labeling and initiation of criminal self-determination along with causing the husband who behaves violently to be ashamed or disgraced as unable to live with the wife in the family anymore.

For these reasons, Family Violence Victim Protection Act 2550 B.E. is a key solution to the family violence problems as the Act introduces both measures for criminal prosecution against the offender and measures for the family violence victim protection and enrollment of the offender to the rehabilitation program to improve his or her behavior for reintegration into coexistence with the spouse as family without returning into further use violent behavior, which can be considered as other means of crime prevention.

Prosecution against a husband who behaves violently for conviction, punishment as crime control may be stimulation and induction of more violent behavior. The school of Peacemaking Criminology thus proposes non-violent methods, which are also known as “Restorative Justice”, deny punishment methods and suggest that behaviors of a violent person should be repaired and improved, whereby encourage participation of the community in repairing and improving such behaviors⁵ for enabling the person to renounce his behavior and become a good person of the society, returning to live with his wife and their child as family once again. Additionally, participation of the community in monitoring behaviors of the husband who behaves violently is virtually creation of a Social Bond, which is a mechanism of control within the society or the offender's external control mechanism that will

⁵ Sudsanguan Suthesorn, *Criminology and Social Administrative Services*, Bangkok: Thammasat University Press, 2003, page 57-58.

eventually functions repulsive force preventing the husband from going back to use anymore violence against his husband.

4.4.2 Roles of the Community in Monitoring the Family Violence Problems

Results from analysis of the Focus Group opinions finds that roles of the community are to report to the official upon encounter with or awareness of the family violence under section 5, which are consistent with a report of the Committee on Children, Women, Elderly and Handicapped Affairs and Human Security, the National Legislative Assembly in consideration of the bill of Family Violence Victim Protection Act B.E., which made a remark on the provisions of section 5 that “has duties to report to the official ...” but do not prescribe any sanction against non-compliance. Thus to encourage compliance with this legislation, concerned agencies must execute the following operations:⁶

1. Compulsory publication and campaign on encouragement of lodging of complaint for intervention and assistance or informing the general public on methods of assisting the family violence victim according to the legislation of this Act; and
2. Invention of a merit system for rewarding the person who reports or lodge the complaint for the sake of another person, for example, accumulation of merit point that can be converted into some privileges according to amount of the points.

The Community also takes other roles in helping the family violence victim such as in formulating plans to provide security protection prior to or during occurrence of the family violence. In United Kingdom, United States and Australia, neighbors play important roles as consultant and helper for the family violence victim, whereby the family violence victim may consult with and ask for help from the neighbors along with arrange a distress signal such as turning the light on during the day.

⁶ Secretariat of the Senate Acting as Secretariat of National Legislative Assembly, Family Violence Victim Protection Act 2550 B.E., Bangkok: Secretariat of the Senate, 2007, page 32.

4.4.3 Engagement of Family Violence Victim Program under Family Violence Victim Protection Act 2550 B.E., Section 10 and Section 11

Results from analysis of the Focus Group opinions find that engagement of family violence victim protection program starts from the family violence victim or a person, who encounters or is aware of the family violence, reports on the occurrence to the official or lodges a complaint to the inquiry officer for prosecuting the family violence at first. Once the complaint has been lodged to the inquiry officer, the official shall be empowered to issue an order specifying measures or methods of temporary relief for the family violence victim. Thus, the lodging of complaint is considered as a condition for applying for the victim protection program, which is different from engagement of family violence victim protection program in United Kingdom, United States and Australia, where the family violence victim protection program can be engaged by submitting a request directly to the Court for issuance of a security protection order.

In a case that the family violence victim wishes to request the Court for issuance of a protection order, the victim can seek for advice or consultancy on submission of the request to the Court for issuance of a protection order from an agency that provides assistance for the family violence victim. For example, in United States, when an act of violence occurs within a family, the family violence victim can request for a protection order without any legal representative and seek for advice or consultancy from a Local Domestic Violence Agency on the request for a protection order and, in Australia, when an act of violence occurs within a family, the victim can request assistance and service from a Crisis Care Unit, an affiliation of Ministry of Community Development, any time and the victim can seek for advice or consultancy from a Local Domestic Violence Legal Unit on the request for a protection, whereby the victim may submit the request to the Court on her or his own or demand the police officer to submit a request to the Court for issuance of a protection unit. Whereas, Thailand prescribes for the family violence victim being granted with measure or methods of temporary relief under section 10 and section 11 that the family violence victim must **have reported the occurrence to the official or lodged the complaint to the inquiry officer** in order to be able to engage in the family violence protection program under the law but does not prescribes for rights of the family violence victim

to receive advice or consultancy on a request issuance of a protection order. As a result, the victim cannot request for issuance of an order specifying measures or methods of relief suitable for her or his necessity because the law prescribes that power to issue an order specifying measures or methods of relief is assigned to the official, whose class is not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the Minister.

4.4.4 Formulation of Safety Plans

Analytical results of the Focus Group opinions find that empowerment of the official to issue an order specifying measures or methods of temporary relief for the family violence victim is considered as a method of formulation of safety plans after occurrence of family violence. Whereby, the power to issue an order specifying measures or methods of temporary relief for the family violence, whether there is a request from such person or not, authorizes the official to issue any order as necessary and appropriate, which includes reference of the family violence victim to receive medical check, requirement of the family violence offender to pay preliminary compensation as suitable for the condition, prohibition of the offender from entering the family residence or proximity of the family members along with to specification of measures for taking care of a child.

In United Kingdom, United States and Australia, there are publication of formulation of safety plans prior to or during occurrence of family violence to inform the general public. Whereas in Thailand, Office of Women's Affairs and Family Development, Ministry of Social Development and Human Security, is in charge of publicizing and informing about formulation of safety plans prior to or during occurrence of family violence to the general public in order to prepare for and protect themselves and their children from danger of suffering from the family violence problem. Consistently, results of study of Mr. Ronnachai Kongsakon and Associates⁷ on approaches to solution of family violence problems found that 94.8% of the sample group agreed the most on informing on knowledge of and skills at prevent and solve family violence problem is the most important, the second was 93.1% on preparation

⁷ Ronnachai Kongsakon and Associates, Research Report on "Study on Family Violence in 7 Communities around Ramathibodi Hospital", Bangkok, 2005, page 116.

for reforming a family and enhancement of family skills and the third was 92.0% on establishment of a crisis hotline.

4.4.5 Request for Security Protection under the Law

Analytical results of the Focus Group opinions find that in a case of the family violence victim failing to lodge the complaint under section 6, the victim still has rights to request for security protection under section 7. For a case that the family violence victim or stakeholder requests for security protection under law on establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case, which Establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case Act 2553 B.E. was issued in the Royal Gazette on the 22nd of November 2010 and this Act shall be in force after one hundred and eighty days from the issuance in the Royal Gazette, section 4 provides a definition that a “security protection case” means any case sued or request submitted to the Court or any motion in judicial procedures for security protection of a child or family member, which is governed by the law on the family violence victim protection or other law that concerns security protection of a child or family member.

Establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case Act 2553 B.E. substantially prescribes for legal procedures of a security protection case, thus the family violence victim is entitled to request a Juvenile and Family Court, whose jurisdiction is over the domicile or residence of the victim or the scene of occurrence, for issuance of an order specifying measures or methods of relief under the law on the family violence victim protection. Whereas the family violence victim is unable or impossible to submit the request, the relative, inquiry officer, public attorney, official, organization that provides legal aid for people, organization that provides protection for well-being of children, women, elderly, handicapped or family or another person may, for sake of the victim, may submit the request instead.

In a case that the accused appears to have behavior likely to harm family member's body, mind or health, the Court shall be empowered to issue a security protection order restraining the accused from using alcohol or intoxicant, approaching the family member's residence or workplace, using or possessing property or

committing any action, which might lead to family violence, for a period of time that the Court sees appropriate but not exceeding six months and the Court may require the accused to receive consultancy from a consultancy center or medical facility or agency that the Court specifies. In a case that the Court issues a security protection order, the Court may require the social worker, psychologist, official or other officer to monitor the accused for compliance with the order and report to the Court for a duration that the Court sees appropriate.

4.4.6 Roles of the Official in Protecting Family Violence Victims

Results from analysis of the Focus Group opinions find that the official under Family Violence Victim Protection Act 2550 B.E. must have specialized knowledge and expertise in the family violence victim protection and posted at the Operation Center for Family Violence Prevention because, under Family Violence Victim Protection Act 2550 B.E., to protect the family violence victim, the official takes the following key roles:

1. Admitting a report on occurrence of family violence;
2. Entering into a residence or scene to inquire the family violence offender and victim and other person therein, whereby empowering the official to enter the premises without requiring the Court to issue a search or arrest warrant;
3. Arranging the family violence victim to receive medical attention and consultancy from psychiatrist, psychologist or social worker;
4. Lodging a complaint on behalf of the family violence victim, who is unable or impossible to lodge the complaint on her or his own;
5. Empowering the official, whose class is not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the Minister, to issue an order specifying measures or methods of temporary relief for the family violence victim, whether the victim requests the relief or not, whereby empowering to issue any order as necessary and appropriate, including to refer the family violence victim to receive medical check, require the family violence offender to pay preliminary compensation as suitable for the condition, prohibit the offender from entering the family residence or proximity of the family members as well as to specify measure for taking care of a child;

6. Empowering, at discretion of the official, to appoint a mediator, who are a person or a council of parents, guardians or relatives of the disputing parties or other persons that the official sees appropriate to provide consultancy and assistance in reconciliation between the disputing parties or appoint the social worker or social administration agency to assist in reconciliation between the disputing parties;

7. As the official, who is in charge or assigned by an operating center that has jurisdiction, monitoring and proctoring the accused for compliance with the preliminary memorandum of mediation, withdrawal of complaint or prosecution and conditions that the competent inquiry officer produces, whereby the official in charge having duties to provide consultancy for the accused to comply with such preliminary memorandum as appropriate to the case and whereas the accused intentionally contravening or disobeying such conditions, the official in charge being to report to the competent inquiry officer or the operation center, as the case may be, for the inquiry officer to refer the case along with opinions to the public attorney for decision without delay.

The official under Family Violence Victim Protection Act 2550 B.E. must be an official, who is professional and affiliated to a specialized agency in the Operation Center for Family Violence Prevention, but appointment of governmental officials or staff, who are being posted in different agencies, to carry out duties under Family Violence Victim Protection Act 2550 B.E. may result in some limits to the performance, for example, allocation of time for several duties, development of professionalism of the official and support and understanding of the executive of the agency. However, in operation to protect the family violence victim, it is exclusively necessary to harness a system of the multidisciplinary team in establishing a network and cooperating among agencies for evolving the mechanism to efficiently execute Family Violence Victim Protection Act 2550 B.E. In consistency with results found by study of Worapat Saengkaew and associates,⁸ it was suggested that personnel, who are directly responsible for the execution, should be allocated whereby not assigning such duties to personnel, who has been in charge of too many responsibilities, as the latter may cause the execution to be inefficient, along with integrate execution of the

⁸ Worapat Saengkaew, Project of Family Violence Solution Mechanism Development as Pilot Province under Family Violence Victim Protection Act 2550 B.E., Thai Health Promotion Foundation (HPF), 2008, page 4.

multidisciplinary team with competent Ministries and agencies into a center for coordinating solution to the family violence problem, such as Ministry of Social Development and Human Security having the Operation Center for Family Violence Prevention and Ministry of Public Health having a center for helping children and women affected by violence(One Stop Crisis Center, OSCC), and establish a community network for monitoring and preventing the problem in a local level.

4.4.7 Roles of the Inquiry Officer in Prosecuting Family Violence Offenders

Analytical results of the Focus Group opinions find that the inquiry officer lacks knowledge and understanding of principles of Family Violence Victim Protection Act 2550 B.E. in protecting the victim and enrolling the offender on the rehabilitation program along with prosecuting the offender for an offense of family violence, whereby in consistency with results from a study conducted by Narumol Phojam and Thitiya Petchmunee,⁹ which results concluded that the sample group, who were the police officers, opined that the inquiry process conducted by the multidisciplinary team would delay the process and hinder the inquiry officer in conclusion of the case to prosecute the offender within 48 hours as prescribed by law and issuance of an order specifying measures and methods of temporary relief required the inquiry process to have evidence and witness sufficient to base the order issuance, whereas the law prescribing for the inquiry officer to finish the inquiry process and conclude the case to prosecute the offender within 48 hours, the inquiry officer is unable to issue an order specifying measures or methods of relief in time.

The two problems mentioned above are problems that the police officer perceives as factors, which prevent the inquiry officer from concluding the case and prosecuting the offender within 48 hours as prescribed by law. Whereby analyzing Family Violence Victim Protection Act 2550 B.E., it is found that a case, which the offender must be prosecuted within 48 hours, is a case that the offender commits a family violence offense punishable by imprisonment of not exceeding six years or fine of not exceeding six thousand Baht or a case that the offender commits one act

⁹ Narumol Phojam and Thitiya Petchmunee, Monitoring Project on Result of Solution to Family Violence in Patumthani Province under Family Violence Victim Protection Act 2550 B.E. : Legal Issues and Social Issues, Thai Health Promotion Foudantion (HPF), 2008, page 43-44.

violating several provisions in combination with an offense of bodily harm that is not dangerous to body or mind of the other under section 391 where the offender is punishable by imprisonment of not exceeding one month and fine of not exceeding one thousand Baht or both imprisonment and fine which are a petty offense and an offense under other law that is prescribed for not more severe punishment than the family violence offense, the inquiry officer shall refer the case to the public attorney for prosecution to a Juvenile and Family Court. Thus, the inquiry officer must refer the family violence offender along with the inquiry file and opinions to the public attorney for prosecuting to the Court within 48 hours after the family violence offender is apprehended. But in a case of the family violence offense in combination with the offense of bodily harm under section 295 of the Penal Code, which is a single commission violating several provisions, if there is necessity preventing the inquiry officer or public attorney, as the case may be, from prosecuting the family violence offender within the prescribed period 48 hours, the public attorney or inquiry officer, as the case may be, shall be allowed to submit a request to the Court for postponement of the prosecution.

Family Violence Victim Protection Act 2550 B.E. prescribes a definition of “the inquiry officer” as an official, who is appointed by the Minister to be the inquiry officer under the Criminal Procedure Code in any area that has no official that is appointed by the Minister to be the inquiry officer under the Criminal Procedure Code, is the inquiry officer under this Act. Thus, results from the study the Criminal Procedure Code conducted by the Committee on Children, Women, Elderly and Handicapped Affairs and Human Security, the National Legislative Assembly in consideration of the bill of Family Violence Victim Protection Act B.E. made the remark on the provisions of the eighth section 3 that for an official who is appointed by the Minister to be the inquiry officer under the Criminal Procedure Code, Ministry of Social Development and Human Security must delicately consider the process of appointment of the inquiry officer, whereby organizing educational training on additional knowledge of principles of law on inquiry procedures, prosecution, evidence and witness and other matters which have not been regularly enforced by such official and practicing and drilling in operation of the official along with cooperation with concerned persons and competent agencies in the inquiry process.

Appointment of the inquiry officer in haste is not productive if the official, who is appointed, cannot execute the concerning operation up to the standard as done by the police officer and will only result to damage.¹⁰

The inquiry officer has duties to conclude the case for deciding the feasibility of prosecution, whereby the inquiry officer collecting witnesses and evidences for purposes of proving the accused guilt or innocence. Witnesses and evidences mean anything, which presents the fact that lead to consideration of how circumstances, which are subjects matter of the case, possibly happens the most.¹¹ Duties to collect witnesses and evidences constitute 2 main tasks, namely: 1. Examining physique of the offender or the victim – According to the Criminal Procedure Code, section 132 (1), the first paragraph provides that the inquiry officer shall be empowered to order physical examination of the accused or physically examine the victim upon the consents of the victim and section 132 (1), the second paragraph provides that in physical examination of the victim, if the victim is female, a female official or other person who is female shall conduct the examination, whereby reasonable for the case, the victim may request any other person to be present in the examination; and 2. Being empowered to examine a person, object or document by means of forensic science, whereby in a case of examining a person under section 132 (1), the inquiry officer is empowered to order physical examination of a person to externally find a trace of offense commission appearing on the physique, but not to bring any part of body to be examined by means of forensic science. Whereas bringing a body part to be examined by means of forensic science, which is a picking of blood or other uses of force for obtaining some parts of body , shall affect rights and liberties of the person in respects of not to be tortured or subject to cruelty, for this reason, bringing of a body part, whether it is of the victim, the accused or involved person, can be done only upon consents of such persons, which allow the inquiry officer in charge to refer the person to a medical doctor to administer the examination.¹²

¹⁰ Secretariat of the Senate Acting as Secretariat of National Legislative Assembly, Family Violence Victim Protection Act 2550 B.E., Bangkok: Secretariat of the Senate, 2007, Page 32.

¹¹ Narong Jaihan, Principles of Criminal Procedures, Book 2, the 3rd Publishing, Bangkok: Winyuchon, 2004., page 213.

¹² Narong Jaihan, Legal Principles that Protecting Women in Criminal Procedures, Rapee 52 Academic Journal, Faculty of Law, Huachiew Chalermprakiet University, 2009, page 127-129

4.4.8 Roles of the Mediator Who is Responsible for Providing Consultancy and Assistance to Reconcile the Disputing Parties

Results from analysis of the Focus Group opinions find that mediation for reconciliation of the disputing parties in a case of family violence under section 16 is an introduction of restorative justice, thus the mediation should be a specially trained professional. Whereby a research conducted by Professor Narong Jaihan and associates¹³ found that provision of a conference on mediation under section 16 and the second paragraph of section 12 implied that, on one hand, the law emphasized participation of the mediator in specifying measures suitable for solving the problems, on the other, delegated roles in specifying measures for the family violence offender to the mediator and professionals in social administration or psychology. Hence, these measures are different from a family meeting or Victim-Offender Mediation (VOM), which emphasized on letting the victim and the offender propose suitable solutions to treatment for the offender. For these reasons, this procedure is not consistent with a goal for emphasizing importance of the victim, offender and the community in settlement of the dispute. Moreover, the form of meeting under section 16 whereby cooperating the disputing parties, officials and the family members and social workers or psychologists but not prescribing for compulsory quorum of the meeting, may result in an arrangement preventing concerned persons other than the victim and offender from participating in the meeting. Furthermore, the provisions do not require the victim and the offender to disclose feelings that are causes of the violence or effects of the offense, whereby may not lead to deep understanding between each other. Contrary, the procedure emphasizes on holding a meeting to attain compromise on offense against the person and specifying terms and conditions of the compromise agreement to achieve a goal for conditioning behavior of the offender along with compensating the damages. Thereby, this kind of meeting is in the same form of a family meeting held in a case of juvenile offense but techniques and methods for reconciling the parties are not currently prescribed by any regulations. Hence, if the procedure under section 16 is implemented, it may bring about practical problems of how roles of the mediator and procedure of mediation for constituting an agreement,

¹³ Thammasat University Research and Consultancy Institute, Research Report on “Creation of Restorative Justice in the Court of Justice”, Bangkok : Deun Tula Press, 2010, page 159-160

which is rehabilitation measures for the offender and remedy for damages and relationship of the disputing parties, should be operated because there is no definite standard and guideline as it is in the Juvenile and Family Court. Additionally, there is a problem of which agency shall monitor for compliance with the agreement and which agency shall report on the result to the Court or the official.

A research of Vice Professor Thongtong Jantarangsu and Associates¹⁴ proposed a form of measures introducing restorative justice whereby a mediator facilitating the reconciliation between the victim and the offender on the humanitarian principles as follows:

Step 1 – The mediator separately meets with the victim and the offender on different occasions employing measures and techniques of personal consultancy to develop understanding, acceptance and decision making by the parties on whether they will adopt the restorative justice approach, in order that the “adoption” of the restorative justice approach is voluntary;

Step 2 – Starting the meeting, the Mediator takes roles of an audience and facilitator to the victim and the offender for realizing unfairness by letting each other describe feelings and experiences occurred and their consequences of both physical and mental and in respects of economy, society and occupation;

Step 3 – In this stage, the mediator is aware of unfairness that occurred in the past, regards considers for restoration of fairness and relationship, offering a second chance for each other, jointly defining activities, actions and responsibilities to remedy the occurred drawbacks and leads the parties to conclude the agreement. In other words, the mediator acts as a facilitator.

Step 4 – In drafting the agreement and monitoring for the compliance, the mediator still acts as a facilitator.

Moreover, presence of the mediator taking roles in facilitating the reconciliation between the disputing parties may vary from urban society to countryside. Whereas mediation for reconciliation between the disputing parties in a case of family violence under section 16 is introduction of restorative justice to solve the family violence problems, it is necessary to address different contexts of urban

¹⁴ Thongtong Jantarangsu and Associates, Research Project on Approaches of Restorative Justice Application in Thai Criminal Justice, Bangkok: PACC., 2005, page 326-327

society and countryside where the procedure would be introduced because differences of urban society and countryside may affect in following needs of the mediation procedure:

Urban Society	Countryside
1. A family consists of a father and mother and their children. (A nuclear family)	1. A family also includes relatives. (An extended family)
2. A family may not live under the same roof thus bond between relatives or family members is not quite strong.	2. A family lives under the same roof or within the same fence, thus relatives and family members are well united.
3. A community member lives separately, has little interaction and activities, thus members may not have strong relation.	3. Community members live interdependently, are well related and often interact in community activities such as neighbors, school or temple.
4. A community leader, who is respected and recognized by community members, is not apparent.	4. A community leader, such as village elder and chief or monk, is apparently respected and recognized by community members, whereby enabling reconciliation of the dispute.

In this way, it can be seen that countryside has a social context that is more propitious for family restoration, whereby the community participating in the solution to the family violence more than of an urban society, because restorative justice allows the community to participate in repairing and improving behavior of a husband, who behaves violently. Therefore, the community, which would participate in the reconciliation, must be a community that is strong and capable, whereby constituted with an active citizens – community members who are enthusiastic, and aware of solving social problems and contributing community service¹⁵, quality that is more consistent with the context of countryside. However, introduction of restorative justice to solution of the family violence problem in a context of urban society may experience limits of the community strength. Thus, key roles may fall on participation

¹⁵ Kitipong Kitayarak, Restorative Justice: “Principles and Ideas” of Restorative Justice: New Alternatives for Thai Justice System, edited by Kitipong Kitayarak, Bangkok: Thailand Research Fund, 2002

of the multidisciplinary team and the official in repairing and improving behavior of a husband, who behaves violently, whereby more suitable for the context of urban society.

4.4.9 Roles of the Community in Protecting Family Violence Victims and Rehabilitating Family Violence Offenders

Results from analyzing the Focus Group opinions find that the community has duties to report to the official upon encounter or awareness of the family violence under section 5, which is a role to protect the family violence victim and the community also takes roles as a monitor for observance of an order issued by the Court or the official and in rehabilitating the family violence offender. Whereby, rehabilitation of the offender should not be a punishment but rather be called a “treatment.” The treatment does not impose any difficulty upon the offender as a punishment for retribution or deterrence because the theory perceives that imposing difficulties or harms on the offender by punishing him or her may not induce the person to behave better¹⁶ but rehabilitation of a violent person focuses on changing the offender's behavior in a better manner that the offender would not commit recidivism. Focus on the behavioral changes is consistent with a concept of the Positive School, which considers an offender as a patient that needs a chance of rehabilitation to improve his or her behavior. Once the behavior is changed into a better manner, the offender should be reintegrated into the society.

Participation of the community in monitoring and rehabilitating the offender is also in accordance with a concept of treatment for the offender by Community-Based Corrections, which induces the community to consider for taking responsibilities and participating in administration of the offender. Consistently, a study of Mr. Yongyuth Sanprasith¹⁷ suggested approaches to develop methods of family violence problem prevention and solution as follows:

1. Development of knowledge and understanding among the community leaders, as a chance for the leaders to realize the family violence problems and be inspired to advise the community members on paying more attention to the problems;

¹⁶ Kiatkajorn Wajanasawas, Lecture on Criminal Law 1, the 6th Publishing, Thammasat University Press, 1999, page 526.

¹⁷ Yongyuth Sanprasith, Development of Family Violence Prevention and Solution - Participation Process for Empowering Family and Community: Case Study of a Community in Pathumthani Province, Thai Health Promotion Foundation (HPF), 2008, page 9.

2. Solution to problems of risk groups, whereby selecting a risk group for developing their immunity, for example, developing understanding of the family violence problems or developing specialized skills such as communication or relationship building; and

3. Managing the environment in the community, whereby campaigning with the community media and establishing a network.

Introduction of forms of Community-Based Corrections consists of diversion of the offender from prejudicial process and, after the conviction, widely introduced measures, namely: behavioral probation; compensation for the victim; and intermediate punishment measures¹⁸ such as Community Service (CS), whereby in consistency with a research conducted by Professor Sakchai Lerdpnichpan and associates,¹⁹ which perceived that compulsory community service should be prescribed as the first punishment for a lesser offense and empower the Court to directly order the measure instead of imprisonment without requirement of deferred punishment, then assign a probation officer to monitor the community service, specification of the community service should not be exceeding 500 hours and number of hours should be proportional to gravity of the offense.

4.4.10 Roles of the Operation Center for Family Violence Prevention

Results from analysis of the Focus Group opinions find that the Operation Center for Family Violence Prevention should be provided with the staff of the Operation Center and such staff should consist of psychologists, social workers and professionals or the official under Family Violence Victim Protection Act 2550 B.E., who know and understand principles of Family Violence Victim Protection Act 2550 B.E. in family violence victim protection and family violence offender rehabilitation. Whereby consistently, results of research conducted by Pornsom Paopramote²⁰ found

¹⁸ Prathan Watanawanit, Community Justice: Study on Roles of Community Justice in Crime Prevention and Rehabilitation of Offenders, Bangkok: Thai Legal System Development Project, 2007, page 135-136.

¹⁹ Sakchai Lerdpnichpan and Associates, Study on Approaches and Feasibility to Application of Intermediate Punishment Measures as Alternative Sentencing in Thai Criminal Justice, Bangkok: PTU. 2008, page 187

²⁰ Pornsom Paopramote, Study on Approaches to Enhance Women Protection in Enforcement of Family Violence Victim Protection Act 2550 B.E., Office of Women's Affairs and Family Development, 2008, page 5., referred by <http://www.women-family.go.th/pdf.doc>

that Family Violence Victim Protection Act 2550 B.E. was a law, which needs knowledge and understanding of family matters, whereas the police officer lacks expertise along with overburdened by other tasks. Therefore, they recommended establishment of a specialized agency to carry out the duties instead of the police officer or a mechanism to exclusively implement Family Violence Victim Protection Act 2550 B.E.

Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12 prescribe for Department of Social Development and Welfare functioning as functioning as an operation center for family violence offenses occurred in Bangkok or offenses committed within the Kingdom under the Penal Code and not occurred in another province or offenses occurred out side the Kingdom but punishable within the Kingdom and a Provincial Office of Social Development and Human Security functioning as an operation center for offenses occurred within area of the respective province, which have 4 major duties, namely: to report the fact; to coordinate operation, to monitor for compliance with orders; and to report the results. Hence, it can be seen that performance of such duties by the operation center covers the whole process of family violence victim protection. However, the law prescribing for Department of Social Development and Welfare a Provincial Office of Social Development and Human Security functioning as the Operation Center for Family Violence Prevention is provisions that officials or the staff, who posted in such agencies, shall have duties under Family Violence Victim Protection Act 2550 B.E. in addition to their regular duties. With this reason, the operation center may experience problems of insufficient manpower, knowledge and expertise of personnel and budget. Whereas, in administration of the Operation Center for Family Violence Prevention that has such limits of human resource, it is necessary to harness a mechanism of the multidisciplinary team, which consists of the police officers, public attorneys, judges, psychologists, social workers, medical doctors, local administration organizations, community network, One Stop Crisis Center (OSCC), concerned governmental and non-governmental organizations, in order to establish a network of cooperation for driving the mechanism to efficiently implement Family Violence Victim Protection Act 2550 B.E.

4.4.11 Monitoring for Compliance with Order Specifying Relief Measures or Methods

Analytical results of the Focus Group opinions find that Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12 prescribe that when the official or the Court issues an order specifying measures or methods of temporary relief for the family violence victim under section 10 or section 11, the Operation Center for Family Violence Prevention shall execute the following measures:

1. Monitoring for compliance with an order requiring payment of preliminary support and relief issued by the official or the Court, if the family violence offender contravening or disobeying, reporting to the official or the Court;
2. Monitoring the family violence offender for not entering into the family residence or approaching the family members;
3. Assigning the concerned person or agency to enforce an order specifying methods of child support and reporting to the official or the Court;
4. Executing an order other than the above and reporting to the official or the Court upon non-compliance;
5. Admitting a report on non-compliance with an order issued by the official or the Court and referring the report to the official or the Court; and
6. Collaborating with local administrative organizations, community networks, concerned governmental or non-governmental agencies to **monitor for compliance with an order** issued by the official or the Court.

The Ministerial Regulations prescribe for the Operation Center for Family Violence Prevention having duties to enforce an order issued by the official or the Court, while the operatives of the Operation Center for Family Violence Prevention are officials, staff and employees posted in Department of Social Development and Welfare or Provincial Office of Social Development and Human Security, as the case may be, Further, the fifth paragraph of section 10 prescribes that if the person, to whom the order is issued, does not comply or contravene with the order or conditions, such person is punishable by imprisonment of not exceeding three months or fine or not exceeding three thousand Baht or both imprisonment and fine. The Ministerial Regulations, article 5 (6) prescribes that the Operation Center for Family Violence

Prevention has duties concerning contravention or disobedience against an order issued by the official or the Court and reporting to the official or the Court. Whereas, they are different from United Kingdom, United States and Australia that prescribe for the police being empowered to arrest the family violence offender for non-compliance with a restraining order immediately without requiring the Court to issue an arrest warrant.

The Ministerial Regulations, article 7 (4) prescribes that in a case of compromise, withdrawal of the complaint or prosecution under the second paragraph of section 12, the Operation Center for Family Violence Prevention shall monitor for compliance with preliminary memorandum prior to the compromise, withdrawal of the complaint or prosecution and conditions specified by the inquiry officer or the Court. If the offender or the accused contravenes or disobeys the conditions, **the Operation Center shall report** to the inquiry officer or the Court for proceeding with the case. But, rules of Ministry of Social Development and Human Security on criteria and procedures for concluding preliminary memorandum prior to compromise or withdrawal of complaint in the inquiry process 2551 B.E., article 10 prescribes that in a case of the family violence offender intentionally contravening or disobeying conditions of the preliminarily memorandum prior to compromise or withdrawal of complaint, the **official shall report** the competent inquiry officer or the Operation Center, whose jurisdiction is over the offense, as the case may be.

However, the Ministerial Regulations do not prescribe for the Operation Center for Family Violence Prevention having duties to admit a report on contravention or disobedience with preliminary memorandum prior to compromise, withdrawal of the complaint or prosecution and conditions specified by the inquiry officer or the Court as in a case of prescribing the Operation Center for Family Violence Prevention for having duties to admit a report on non-compliance with an order issued by the official or the Court. Thus, when the Ministerial Regulations and the rules of the Ministry are considered, it can be inferred that in a case of the family violence offender intentionally contravening or disobeying conditions of the preliminarily memorandum prior to compromise or withdrawal of complaint, the family violence victim being entitled to report on the contravention or disobedience with the conditions to the official or the Operation Center for Family Violence

Prevention and then the Operation Center having duties to refer the report to the inquiry officer for proceeding with the case.

4.4.12 Other Suggestions Concerning Supplementary Approaches for Solving Family Violence Problems under Family Violence Victim Protection Act 2550 B.E.

Results from analyzing opinions of the Focus Group find that the family violence problems are problems, which impact on bodies and minds of the victim, the children and the family members, and problems, which affect the society and economy as well. Hence, the family violence problems are not personal problems anymore but social problems, which every sector must cooperate for solution. Whereby, Family Violence Victim Protection Act 2550 B.E. prescribes that the official shall be empowered to protect the family violence victim Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12 prescribe for establishment of the Operation Center for Family Violence Prevention to execute family violence victim protection. But, the study results find that most of the official are officials or staff that are affiliated to different agencies and the Operation Center is not provided with the official, who is exclusively in charge of family violence victim protection, in conjunction of lacking mechanism to systematically coordinate the multidisciplinary team, as a result, implementation of Family Violence Victim Protection Act 2550 B.E. is not as successful as it should be.

For these reasons, it is appropriate to establish a Provincial Commission on Family Violence Victim Protection similar to the provincial commission on juvenile protection under Juvenile Protection Act 2546 B.E., whereby the Governor as the chairman, and Provincial Social Development and Welfare Director as a commissioner and the secretary, in order to avail a mechanism for systematically coordinating the multidisciplinary team. Thus, establishment of a Provincial Commission on Family Violence Victim Protection is also consistent with approaches of Human Trafficking Prevention and Elimination under the Cabinet resolution on the 14th of June 2005, which approved the establishment of the Anti Human Tracking Center in 3 levels, viz:

1. Operation Center on International Human Trafficking;
2. Operation Center on

National Human Trafficking, whereby Ministry of Social Development and Human Security being the central agency coordinating the prevention and elimination of human trafficking with competent agencies; and 3. Provincial Operation Center on Human Trafficking, whereby providing appointment of the commission from competent governmental agencies, with the Governor as the Chairman, Provincial Director of Social Development and Human Security as the Secretary along with encouraging participation of other governmental and non-governmental agencies in prevention and elimination of human trafficking.

4.5 Security Protection under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

For as much as studies on opinions of experts in the Focus Group toward answer of the research questions for examining implementation of Family Violence Victim Protection Act 2550 B.E. and supplementary approaches for solving family violence problems, the Author had finished collecting data and analyzing the data before Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. was announced in the Royal Gazette on the 22nd November 2010 and this Act should be in force after one hundred and eighty days from the announcement in the Royal Gazette thenceforth. In connection with Topic 4.1.3 as previously mentioned thereby, some sections of Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. already provide solutions for some problems of Family Violence Victim Protection Act 2550 B.E. implementation, which are about to be displayed as follows.

4.5.1 Request for Security Protection under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

If the family violence victim fails to report the incident to the official under section 5 nor to lodge the complaint under section 6 within three months after the family violence victim is able and possible to report the incident or lodge the complaint, it shall be deemed that the case is precluded from the prosecution but not forfeit the family violence victim of stakeholders to request for security protection under law on establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case. As a result, the family violence victim, who does not report the incident to the official under section 5 nor to lodge the under section 6, is still able to request for security protection under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

The first paragraph of section 172 of Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. provides that the family violence victim shall be entitled to request to a Juvenile and Family Court, which has jurisdiction over his or her domicile or residence, or the Court that the case

occurred for issuance of an order specifying measures or methods of relief according to law on family violence victim protection.

In a case that the family violence victim is unable or impossible to submit the request under the first paragraph, the relatives, Inquiry Officer, Public Attorney, Official, legal aid agencies, organizations providing security protection for children, women, elderly or handicapped or other entities, in the best interests of the victim, may conduct the submission instead.

4.5.2 Issuance of Security Protection Order under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

Family Violence Victim Protection Act 2550 B.E., section 10 provides that the official, whose class is equivalent to senior administrative official or police officer under the Criminal Procedure Code and appointed by the Minister, shall have power to issue an order specifying measures or methods of temporary relief for the family violence victim, whether the victim requests the relief or not, whereby empowering to issue any order as necessary and appropriate, including to refer the family violence victim to receive medical check, require the family violence offender to pay preliminary compensation as suitable for the condition, prohibit the offender from entering the family residence or proximity of the family members as well as to specify measure for taking care of a child. In this way, when the provisions are compared with English, American and Australian laws, it is found that orders specifying measures or method of temporary relief may be different. For example, in Thailand, there is no issuance of an order to take possession of property such as co-ownership, possession of residence.

However, Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 174 provides that in a case where the accused appears to have behavior likely to harm family member's body, mind or health, the Court shall be empowered to issue an order restraining the accused from using alcohol or intoxicant, approach the family member's residence or workplace, using or possessing property or committing any action, which might lead to family violence, for a period of time that the Court sees appropriate but not exceeding six

months and the Court may require the accused to receive consultancy from a consultancy center or medical facility or agency that the Court specifies. Thus, the law already has prescription that govern an order of use or possession of property.

4.5.3 Rights of the Consultancy Center, Medical Facility or Agency to Receive Remuneration

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 175 provides that when the Court sees that the applicant, who is the family violence victim, is involved with cause of the family violence and needs to receive assistance or treatment, the Court may order the applicant to seek consultancy or receive training, treatment or rehabilitation from a consultancy center, medical facility or agency, which is responsible for security protection of children, women, elderly or handicapped or family matters for a duration specified by the Court.

In a case that the Court issues an order requiring the family violence victim to receive consultancy, treatment or rehabilitation from the consultancy center, medical facility or agency which the Court specifies under the first paragraph of section 175 or requiring the accused to receive consultancy, treatment or rehabilitation from the consultancy center, medical facility or agency which the Court specifies under the first paragraph of section 174, the consultancy center, medical facility, agency or organization, which is responsible for security protection of children, women, elderly or handicapped or family matters, shall receive remuneration according to regulations specified by the Court of Justice Administration Committee upon approval of Ministry of Finance.

4.5.4 Mediation for Reconciliation between the Parties in Family Dispute

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 148 prescribes that in a disputed family case, prior to the hearing process, the Court shall appoint a family dispute mediator to mediate for reconciliation between the parties in family dispute. Thus, criteria and procedures for mediation and reporting the result shall be in accordance with

regulations prescribed by the Chief Justice. For purpose of mediation for reconciliation between the parties in family dispute, the Court may assign the parent, guardian, relative or attorney of the disputing parties, a social worker, psychology or person or agency that the Court sees appropriate to provide consultancy or assistance for the family dispute mediator appointed by the Court under the first paragraph. Whereas, in a family case concerning a juvenile that needs succor or security protection, the Court may summon the official under the law on juvenile protection to be present in the hearing.

Once the family dispute mediator has executed the Court's order, the mediator shall report the result of the mediation to the Court, whereby the result of mediation can be considered for two issues, namely:

The First Issue – If the disputing parties cannot be reconciled or nature of the dispute cannot be reconciled, the Court shall dismiss the mediation and continue the case proceeding, whereby the record or statement in the mediation shall not be admissible in the hearing process; and

The Second Issue – If the medication succeeds, the family dispute mediator shall arrange for conclusion of the compromise agreement and report to the Court or request the Court for summoning the disputing parties to conclude the compromise agreement before the Court.

Once the Court has seen that the compromise agreement is legal and not contrary to public order nor good morals, the Court shall deliver the judgment according to the compromise agreement or the Court may not deliver the judgment immediately but specify probationary terms and conditions for the disputing parties to follow the compromise agreement, especially on guardianship, support of the child or incompetent. In any case, if a juvenile has interests of or stakes in the family dispute, the Court act in regards to the best interests of the juvenile.

In a case that the Court sees that the compromise agreement is illegal and or contrary to public order or good morals or a juvenile has interests of or stakes in the family dispute but the agreement does not give regards to the best interests of the juvenile, the Court must deny delivering judgment according to the compromise agreement.

In mediation of a family dispute, provisions of section 146 shall be applied *mutandis mutatis* whereby giving regards to tranquility and coexistence in the family. For this purpose, in deliberation of the case the Court shall give regards to the following principles:

(1) Conservation and protection of the marital status as the unification of man and woman that consent to live together as husband and wife – If the marital status cannot be maintained, the divorce shall be administered fairly and in the least injurious manner, whereby giving the highest regards to the well-being and future of the child;

(2) Protection and Support of the family, especially when the family needs to be responsible for support and education of the child who is a juvenile;

(3) Protection of the child's rights and promotion of the child's well-being; and

(4) Seeking any measure for assisting the husband and wife to reconcile and improve relationship between each other and the child.

Issues to be considered: The mediation under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 148 is provided that in the disputed family case, prior to the hearing process, the Court shall appoint a family dispute mediator to mediate for reconciliation between the parties in family dispute. Thus, the law compels the mediation in a Juvenile and Family Court, whereby meaning the Central Juvenile and Family Court, Provincial Juvenile or Family Court which is established under this Act.

However, analyzing the Court's jurisdiction concerning prosecution of a family violence offense, which is punishable by imprisonment of not exceeding six month or fine of not exceeding six thousand Baht or both, to a Juvenile and Family Court in a case of one commission violating several provisions, it might be stated that the case only applies to situation of the offender committing the offense against section 391 of the Penal Code, which is the same offense against the first paragraph of section 4 of Family Violence Victim Protection Act 2550 B.E. Whereas the Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. offense against section 295 of the Penal Code, which is punishable by imprisonment of not exceeding two years or fine of not exceeding four

thousand Baht or both, or other offenses or against other law, which is prescribed for punishment more severe than of the provisions of section 4 of Family Violence Victim Protection Act 2550 B.E., it shall not fall under jurisdiction of a Juvenile and Family Court. Hence, the provisions of the mediation under section 148 of Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. cannot be applied. Furthermore, the mediation under section 16 of Family Violence Victim Protection Act 2550 B.E. Only means a mediation in a Juvenile and Family Court.

4.5.5 Qualifications and Roles of the Mediator, Who Is Responsible for Providing Consultancy or Assistance in Mediation for Reconciliation between the Disputing Parties

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 149 prescribes that a Juvenile and Family Court shall be responsible for registering family dispute mediators, whereby a family dispute mediator must have the following qualifications:

- (1) Being at least twenty years of age;
- (2) Having qualifications to be considered for an official position at the Court of Justice according to regulation on the judicial official of the Court of Justice except for the matter of knowledge recover which shall be according to regulations prescribed by the Chief Justice:
- (3) Having a good disposition, personality and behavior suitable for family dispute mediation; and
- (4) Receiving training and practice as much as being able to pass a test on the intent of the Juvenile and Family Court, Legal Procedure in Juvenile and Family Case and family dispute mediation.

The registration or removal of the registry shall be in accordance with regulations prescribed by the Chief Justice.

A family dispute mediator must strictly perform the duties honestly and fairly and maintain confidential the information obtained from the course of duty performance according to instructions that are specified by the Chief Justice, whereby the family dispute mediator shall receive remuneration according to regulations

specified by the Court of Justice Administration Committee upon approval of Ministry of Finance.

4.5.6 Monitoring for Compliance with Security Protection Order

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 174 prescribes that in a case where the Court issue a security protection order restraining the accused from using alcohol or intoxicant, approach the family member's residence or workplace, using or possessing property or committing any action, which might lead to family violence, for a period of time that the Court sees appropriate but not exceeding six months and the Court may require the accused to receive consultancy from a consultancy center or medical facility or agency that the Court specifies, the Court shall order the social worker, the psychologist, the official or other official to monitor for compliance of the accused and report on the result to the Court in a period of time that the Court sees appropriate.

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 176 prescribes that the Court shall communicate the security protection order to the administrative official or police officer, whose jurisdiction is over the domicile or residence of the accused, for acknowledgment. Whereas, in a case that the accused intentionally contravenes or disobeys the security protection order without due reason, the Court is empowered to issue an arrest warrant for detaining the accused until he or she complies with the order but for a period not exceeding one months. If the accused is remanded on temporary release, the Court may specify conditions for being followed by the accused during the temporary release.

CHAPTER V

CONCLUSION

The study of the reinforcing use to domestic violence solution according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has three objectives which comprises these following components; 1). Study the enforcement of the Victims of Domestic Violence Act 2007; 2). Study the solutions of domestic violence comparing to international experience e.g. England, the United States, and Australia. 3). Study reinforcement of solutions to domestic violence under the Victims of Domestic Violence Act 2007. Therefore, the author proposes the following research findings and suggestions:

5.1 Research findings

The research findings are divided into three sections according to the objectives as following.

5.1.1 Study and analyze the problem conditions of the enforcement of the Victims of Domestic Violence Act 2007

From the study of the law enforcement, the implementation of the Domestic Violence Victim Protection Act, B.E. 2550 (2007) has some limitations to improve in these following aspects;

5.1.1.1 The Problem of Notification to the official

The law does not secure any method for protecting witness of domestic violence and this may be the crucial reason of not reporting to the official as witness does not feel secured of the procedure of reporting domestic violence.¹ Additionally the law which appoints physician, nurse, psychologist, social worker, or

¹ The Faculty of Law, Eastern Asia University with the Office of Social Development and Human Security Pathumthani, Training of law to the network of the Office of Social Development and Human Security Pathumthani, 18 May 2010, Pathumthai.

public health official to inform to officials with no delay at the same time may be seen as the right violation to inform to the official with no consent from the domestic violence patient.

5.1.1.2 Problem of entrance to Protection Process of Victims of domestic violence

The victim of domestic violence will be protected by law and aided by emergency medical care, physician, nurse, psychologist, social worker according to the Section 6 or taken care by temporary relieve measure to victim of domestic violence under the Section 10 and 11. The victim of domestic violence has to inform or notify to the official or inquiry officer and later the victim of domestic violence will go through the protection of the victim of domestic violence process. The focal point of the entrance of the stage is at informing to the official or inquiry officer. Therefore, the victim of domestic violence who does not inform the official or inquiry officer will not be beneficial from implementation of the temporary relieves measure to victim of domestic violence under the Section 10 and Section 11.

5.1.1.3 Problem of request to receive security protection under the law on the establishment of Juvenile and Family Court and Juvenile Court.

The Juvenile and Family Court Act and the Juvenile and Family Court Procedure Act 2010 announced in the Royal Thai Government Gazette on 22nd November 2010 and the Acts has been enforced after 180 days of the announcement of the Royal Thai Government Gazette, which making the victim of domestic violence who does not inform the official under the Section 5 nor make any compliant in the Section 6 will therefore not be able to receive any legal protection.

5.1.1.4 Problem of understanding of inquiry officer in summarizing the case and ordering the accused to file a lawsuit within 48 hours.

In the domestic violence offense case, inquiry official has to deliver the domestic violence offender with inquiry report and opinion to the attorney official within 48 hours for the court to make decision of the case. There are some agendas to be discussed as follows.

1. In the case of domestic violence offender has received the court sentence not over 6 months or not over 6,000 Baht fine. Or in the case that the

domestic violence offender has offense against several laws with the criminal offense but not as severe to any mental or physical harm according to the Code of Criminal Procedure, Section 391 the offender has to be imprisoned not beyond 1 month or not over 1,000 Baht fine or both. In this case the attorney official has to file a lawsuit to The Juvenile and Family Court because the offense is not over the seriousness of domestic violence offense, so the attorney official has to refer the offender to court within 48 hours since the offender receiving at the office.

2. In the case that the domestic violence offender made other offenses, that is, offense relating assaults others according to the Criminal Code, Section 295. The offense relating assaults others has imprisonment term of not beyond 2 years or not over 4,000 Baht fine or both. The attorney official files a lawsuit to the court. If it is necessary to conduct a further inquiry beyond 48 hours, but the exceeding period must not be over 3 days altogether according to the Law on the Establishment of the District Court and apply the Criminal Procedure in the District Court to the case.

5.1.1.5 Problem of appointing the officials

The official that the Ministry appointed to be the official under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) come from several professions who work in many Ministries e.g. Ministry of Social Development and Human Security, Ministry of Public Health, Ministry of Justice, Ministry of Education, Local government, and private organizations. In fact these officials have their own duty and responsibility at the Ministry. But since the Domestic Violence Victim Protection Act, B.E. 2550 (2007) assign them to have another responsibility, it seems like they have worn two hats. This may be problematic to time allocation in the performance of duties, the development of a competent professional in work, support and understanding of organizational management, collaboration between agencies and responsibilities of the authority.

5.1.1.6 Problem of ordering the measure of temporary protection or relieving measure.

The regulations of the Ministry of Social Development and Human Security on rules and procedures for investigation under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) which made an order to protect and temporary relief measure under Section 10 Paragraph 1 of the Domestic Violence

Victim Protection Act, B.E. 2550 (2007) has follow the Form ๗.8 to protect and temporary relief measure for 5 categories according to the law without the authority to order other law as when necessary and appropriate. Along with there is no guideline providing for victim of domestic violence to plan for security for themselves and child from future abuse of domestic violence again.

5.1.1.7 Problem of qualification and role of negotiator who gives counseling and assistance in reconciliation process.

The Domestic Violence Victim Protection Act, B.E. 2550 (2007) does not give definition of “conciliator” and the regulation of the Ministry of Social Development and Human Security on the rules and procedures agreement prior to the initial settlement, withdrawal of complaint in investigation stage, B.E. 2551 (2008) also does not give a certain qualification of competent conciliator in conducting the conciliation and protection of domestic violence. Also the Ministerial Rules set the system to support the operation under the Section 10, Section 11, and Section 12 B.E. 2553 (2010) Rule 8 states that the Bureau of Women’s Affair and Family Institute arrange the training courses for conciliator in order to protect and conciliate the victim of domestic violence. The course is under the supervision of standard of the Ministry of Social Development and Human Security. Therefore the providing of consultation or assistance in compromising or resolving the parties in cases of domestic violence act in accordance with Section 16, conciliator who is appointed by the authority or court may come from the three groups as follows; 1) Father, or mother, or parents or relatives of the parties 2) The person who is approved by authority or court 3). Social worker and social work agencies, any person or party to help mediate a settlement. These persons must attend the training course for conciliator or not and the role of conciliation shall be conducted in what strategic direction.

5.1.1.8 Problem of operation of the Center of Protection of Domestic Violence.

The operational center of domestic violence prevention has 4 main duties; 1) To coordinate and follow up the operation after the order and report, which covers entire victim of domestic violence protection process. However the Department of Social Development and Welfare or the Office of Social Development and Human Security of the Province make the operational center to have appointed the

officials two roles under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) increase the workload of the officials. With this reason, the operation center has problems in man force, specialism of officials, and inadequate budget, which in fact in the protection of victim of domestic violence is essential to rely on agencies and personnel with expertise in a particular duty to protect victim of domestic violence systematically.

5.1.2 Comparative study on operation of victim of domestic violence protection between Thailand and internationals.

The operation of victim of domestic violence protection under the Domestic Violence Victim Protection Act, B.E. 2550 (2007) between Thailand and the United Kingdom, the United States, and Australia can be divided into 8 subject matters as follows;

5.1.2.1 Concept in victim of domestic violence protection and solution to domestic violence

Similarity

The Domestic Violence Victim Protection Act, B.E. 2550 (2007) has its objective in giving domestic violence protection and rehabilitation in reconviction of domestic violence. As appear in the United Kingdom, the United States, and Australia is a very important topic. Some of the protection of domestic violence victim is making the request to court to give protective order e.g. an order to stop the behavior, order to ban offender to go close to family member etc. In the United States, court order domestic violence offender and victim of domestic violence to join counseling program for behavioral change and reconciliation with family members.

Dissimilarity

In Thai society in the previous time, the belief that man had a higher role over woman and social value that said woman is buffalo, when man is a human. Another saying is man is the fore-legs of elephant but woman is rear-leg of elephant. The statement shows the relationship with gender and authority in society that society expects that man is the leader of family while woman is the follower and person who take care of husband and family. Therefore in family when the domestic violence happens, woman has to be tolerant to the situation. Moreover woman has to

make the family looks happy and fine as it was before the domestic violence event. Other persons in society shall think as a consequence that domestic violence issue is a family issue, and they shall not be in associated in the situation.

5.1.2.2 Safety plan

Similarity

Thailand has the safety plan for remedy after the domestic violence occurred according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 10, Section 11, and Section 12 as appear in the United Kingdom, the United State and Australia, the preventative security planning for domestic violence can be violence in the future. The victim of domestic violence has to plan for treatment of victim of domestic violence including for child of victim of domestic violence as court order to protection.

Dissimilarity

In Thailand, there is no preventative security planning for domestic violence as appear in the United Kingdom, the United State and Australia, but there is the post security planning for domestic violence which comes after the domestic violence occurrence according to the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 10, Section 11, and Section 12 by which the authority or court order such temporary relief measure.

5.1.2.3 Entering victim of domestic violence protection

Similarity

In Australia, victim of domestic violence can inform police to ask court to provide some kind of protection to the victim. The objective is to prevent one party to harm another party. In this part it is similar to the Thai model as when the request to inquiry official to set the temporary relief measure to victim of domestic violence whether there is any request made by victim of domestic violence.

Dissimilarity

In Thailand, victim of domestic violence shall be protected at the primary state and receive medical treatment, psychological counseling from psychiatrist and psychologist also social worker according to the Section 6 and for temporary relief measure to victim of domestic violence according to the Section 10 and Section 11. The victim of domestic violence shall report or file the complaint to

the inquiry official or authority as an entrance to receive the legal protection from the domestic violence protection procedure. In the United Kingdom and the United States, victim of domestic violence can file the request to court for legal protection without having filed any previous complaint.

5.1.2.4 Appeal for the safety protection

Similarity

In the United Kingdom, the United States and Australia, when there is a case of domestic violence, victim of domestic violence can appeal to court for the safety protection by the court order without any complaint making in the prior time. This statement is similar to the objective stated in the Domestic Violence Victim Protection Act, B.E. 2550 (2007) in Section 7 that victim of domestic violence who does not inform the official under the Section 5 nor make a compliant under the Section 6 within three months of the possible period of making such actions. This is to be understood that the legal request is terminated. However the right to be protected by the Law on the establishment of Juvenile and Family Court and Juvenile Court is applied to victim of domestic violence or to stakeholder.

Dissimilarity

Nowadays in Thailand, The Juvenile and Family Court Act and the Juvenile and Family Court Procedure Act 2010 announced in the Royal Thai Government Gazette on 22nd November 2010 and the Acts has been enforced after 180 days of the announcement of the Royal Thai Government Gazette, which making the victim of domestic violence who does not inform the official under the Section 5 nor make any compliant in the Section 6 will therefore not be able to receive any legal protection.

5.1.2.5 The order provisional measures or methods of relief

Similarity

The order provisional measures or methods of relief of Thailand, the United Kingdom, the United States and Australia pay attention to the protection of victim of domestic violence and the child. Therefore the measures are set to prevent the domestic violence offender to harm or enter into the residence of the victim of domestic violence and to set the child care for protection of safety.

Dissimilarity

In Thailand, the person who has authority to set the order provisional measures or methods of relief are authority or court, whereas the United Kingdom, the United States and Australia have the court to set the order provisional measures or methods of relief. The order provisional measures or methods of relief of each country are different. In Australia, there is no order of domestic violence offender to receive any medical treatment. In the United Kingdom and Australia, there is also no order of domestic violence offender to compensate for victim of domestic violence but the right of victim of domestic violence to sue a civil claim for damages. In Thailand, there is no order to have ownership such as joint ownership or possessory right of housing and so on.

5.1.2.6 The role of the compromiser which acts on the advice or assistance in resolving the parties to settlement.

Similarity

Compromising in family law in the United Kingdom, the United State, and Australia is the voluntary process of both parties to participate in the mediation process does not affect the rights under the law. These are in accordance to Thailand where there is primary agreement prior to the settlement, withdrawal of complaint or withdraw the lawsuit. It must be voluntary of the main parties.

Dissimilarity

Compromising in the Domestic Violence Victim Protection Act, B.E. 2550 (2007), the compromisers can be categorized into 3 groups; 1) Parents, relatives of the party 2) The person who is certified by the authority or court 3) Social worker, social work organization where there are some persons from community involvement e.g. respectful person of community. In the United Kingdom, the United State, and Australia, the persons of compromising is commonly are specialists in several fields e.g. lawyer, psychologist, social worker, and public health official. Moreover these authorities have to be trained in counseling and compromising and requested in the vocational organization in family, child and youth.

5.1.2.7 Monitoring of compliance with the order or how to define measures to alleviate the suffering.

Similarity

In Thailand, the United Kingdom, the United State, and Australia, the monitoring of compliance with the order or how to define measures to alleviate the suffering is very important. The court penalties in case of domestic violence who do not comply with an order or protection order violations in order to protect those with and does not comply with an order or protection order violations of the court to imprisonment or fine or both.

Dissimilarity

In Thailand, the operation center for prevention of domestic violence works as receiving report of violations or failure to comply or order of the competent court and report to the authority or the court and the operation center to coordinate with local government, community network government agencies or private sectors. This process is for follow up the results of operation according to court or authority order. In the United Kingdom, the United State, and Australia, the law states that the victims of domestic violence have to report to police officer in the case that there is failure to comply with the order or protection order violations. Police officers have the authority to arrest those who do violence, do not follow the order or protection order violations immediately without asking the court to issue an arrest warrant.

5.1.3 Study on Experts' Opinions from Focus Group toward Supplementary Approaches of Family Violence Moderation That Are Suitable for Thailand.

Study of experts' opinions by holding a Focus Group to answer the research questions. From results of the Focus Group, opinions and suggestions can be summarized and categorized as follows:

5.1.3.1 Ideas of Family Violence Solutions

Solutions to family violence problems must consider causes of the problems, which can be sorted into 2 cases, namely: 1. Internal Factors – within the Family Violence Offenders; and 2. External Factors – Social Pressures and Environments. Thus, to

solve the problems of family violence, it must be considered whether the offender commits any criminal offense and commits the crime in a manner of habitual offender or recidivist or not which must be prosecuted according to the Penal Code and the Criminal Procedure Code in order to convict the offender. However the victim consents to engage into the procedures of Family Violence Victim Protection Act 2550 B.E., the procedures of the Act will still be implemented.

Family Violence Victim Protection Act 2550 B.E. is a law providing 2 types of measures, namely: 1. Measures for Criminal Prosecution of the Family Violence Offender; and 2. Measures for Protection of the Family Violence Victim and Enrollment of the Offender into Rehabilitation for Remedy of the Victim, which are measures for protecting the victim by using clinical means of psychology, social administration and legal principles along with services of the multidisciplinary team to solve the family violence problems.

5.1.3.2 Roles of the Community in Bewaring of Family Violence Problems

Roles of the community are to carry out duties of reporting to the official once observe or be aware of act of family violence according to section 5, whereby the community may include, village elders and chiefs, local leaders, community leaders and neighbors, who reside in the same community as the family violence victim or offender. Moreover, another essential role of the community is to collaborate with the official and other agencies, such as the police, hospital and private organizations in the field of children and women support, in order to immediately save the family violence victim.

5.1.3.3 Engagement of Family Violence Victim Protection Program under Family Violence Victim Protection Act 2550 B.E., Section 10 and Section 11

Engagement of family violence victim protection program under Family Violence Victim Protection Act 2550 B.E., section 10 and section 11, the issuance of an order specifying measures or methods of temporary relief for the family violence victim must be initiated as a criminal case whereby lodging a complaint against the family violence offender at first, which recognizes the lodging of complaint as the start of the engagement of family violence victim protection

program. Thus the lodging of complaint for criminal prosecution is a condition for the family violence victim protection.

5.1.3.4 Formulation of Safety Plans

Formulation of safety plans for the family violence victim can be analyzed by separating into 2 phases: 1. Formulation of Safety Plans prior to Occurrence of Family Violence, viz , publication about knowledge necessary for self-protection and avoidance of family violence problems and promotion of roles of the community in bewareing of family violence problems; and 2. Formulation of Safety Plans after Occurrence of Family Violence, viz, assessment of risk to repetitively suffering from violence. Issuance of an order specifying measures or methods of temporary relief for the family violence victim is also a method of formulation of safety plans after occurrence of family violence.

5.1.3.5 Request for Security Protection under the Law

In a case of the family violence victim not lodging the complaint under section 6, the family violence victim is still be entitled to request for security protection under section 7. The second paragraph of section 6 empowers the official, who is aware of family violence or reported of incident under section 5, to enter into the residence or scene to inquire the family violence offender and victim and other person therein in order to provide assistance for the family violence victim along with to arrange the family violence victim to receive medical attention and consultancy from psychiatrist, psychologist or social worker, whereby the official may collaborate with the multidisciplinary team and specify preliminary security protection for protecting the family violence victim, for example, ordering the family violence offender to omit the use of violence or restraining the offender from approaching the victim.

5.1.3.6 Roles of the Official in Protecting Family Violence Victims

A person, who is appointed by the Minister as the official under Family Violence Victim Protection Act 2550 B.E., must be a professional official from specialized agencies in **the Operation Center for Family Violence Prevention**, namely, Department of Social Development and Welfare, functioning as an operation center for family violence offenses occurred in Bangkok or offenses committed within the Kingdom under the Penal Code and not occurred in another

province or offenses occurred outside the Kingdom but punishable within the Kingdom and a Provincial Office of Social Development and Human Security functioning as an operation center for family violence offenses occurred within area of the respective province, whereby providing such centers for performing to prevent family violence.

5.1.3.7 Roles of the Inquiry Officer in Prosecuting Family Violence Offenders

When a complaint is lodged to the inquiry officer against the family violence offender in criminal prosecution for bodily harm, the inquiry officer shall prosecute the offender under the Criminal Procedure Code to convict the offender, whereby most of the inquiry officer fails to apply Family Violence Victim Protection Act 2550 B.E. to such case because problems of lack of knowledge or understanding about the Act. Therefore, the inquiry officer need to learn and understand principles of Family Violence Victim Protection Act 2550 B.E. in order to protect the victim and enroll the offender in a rehabilitation program. In the investigation process for collecting evidences and witnesses to prosecute the case, the inquiry officer may question the family violence victim whether there is any witness to family violence, medical examination report or other evidence, in order to conclude the case for prosecuting the offender, whereby different from the intent of Family Violence Victim Protection Act 2550 B.E. Thus, the investigation of family violence case should be conducted by an inquiry officer specialized in family matters or appointing an inquiry officer exclusively for social affairs.

5.1.3.8 Roles of the Mediator who is Responsible for Providing Consultancy and Assistance to Reconcile the Disputing Parties

Consultancy or assistance for mediating to reconciliation between the disputing parties in the family violence case under section 16 is application of the restorative justice to mediation. Hence the mediator should be a specially trained professional and have expertise in psychology, social administration, family matters, children and women affairs. However, providing the community to participate in the mediation process should solely regard willingness of the disputing parties. Whereby, result of the Focus Group agree that the community, who should participate in mediation, are parents, guardians and relatives of the disputing parties as

well as the community leader and the Operation Center for Family Violence Prevention should be furnished with psychologists and social workers permanently posting at the Center in order to particularly provide consultancy and assistance in mediation.

5.1.3.9 Roles of the Community in Protecting Family Violence Victims and Rehabilitating Family Violence Offenders

The community take roles in protecting family violence victims and rehabilitating family violence offenders, whereby being analyzed in 3 roles, namely: **the First Role as Informant** reporting to the official upon witnessing to or bewaring of family violence under section 5; **the Second Role as Mediator** functioning to assist in mediating the disputing parties under section 16; and **the Third Role as Monitor** carrying out duties of volunteers of the Operation Center for Family Violence Prevention, monitoring observance of the preliminary memorandum of mediation, withdrawal of complaint or prosecution and conditions that the inquiry officer or the Court specifies. Whereby the community shall participate in **social measures** for bewaring of and solution to problems of family violence in number of roles, viz, being an informant, mediator and monitor, and the community applying social measures to pressure the family violence offender is another way to punish the offender.

5.1.3.10 Roles of the Operation Center for Family Violence Prevention

The staff of the Operation Center for Family Violence Prevention should be professional psychologists and social workers or the official under Family Violence Victim Protection Act 2550 B.E., concurrently with carrying out their duties, they should implement principles of Family Violence Victim Protection Act 2550 B.E., section 6 in entering to inquire the family violence offender and providing assistance and consultancy for the family violence victim and family member as well. Collaboration authorities of the Operation Center for Family Violence Prevention to collaborate needs establishment of a network for cooperation of the multidisciplinary team, which may be established in a form of commission similar to the provincial commission on juvenile protection under Juvenile Protection Act 2546 B.E.

5.1.3.11 Monitoring for Compliance with Order Specifying Relief Measures or Methods

The Operation Center for Family Violence Prevention must be manned with the staff in a number sufficient for its workload, besides, the Center must establish a network of the multidisciplinary team by harnessing mechanism of village elders and chiefs and volunteers to participate in monitoring the order specifying temporary relief measures or methods for the family violence victim under section 10 or section 11 and a case that the Court sentences to apply measures under the first paragraph of section 12 to substitute for punishment against the offender as well as monitoring for compliance of the preliminary memorandum of mediation, withdrawal of complaint or prosecution under the second paragraph of section 12 along with cooperate with the OSCC to following up for inquiring the family violence offender about problems of family violence whether there is any recidivism.

5.1.3.12 Other Suggestions Concerning Supplementary Approaches for Solving Family Violence Problems under Family Violence Victim Protection Act 2550 B.E.

Harmonious Family Center should be established to provide consultancy for the family violence offender and Provincial Commission on Family Violence Victim Protection should be established in a form similar to the provincial commission on juvenile protection under section 17 of Juvenile Protection Act 2546 B.E. Ministry of Social Development and Human Security should introduce more aggressive policies on publicizing Family Violence Victim Protection Act 2550 B.E. to inform the general public about legal measures for criminally prosecuting the family violence offender and social measures for protecting the family violence victim whereby substantially regarding safety of the victim and family member and enrollment of the family violence offender in rehabilitation program to remedy damages for the family violence victim, furthermore, must develop attitude, knowledge and expertise for the official and other officials pertaining to enforcement of Family Violence Victim Protection Act 2550 B.E. along with develop capability of the Operation Center for Family Violence Prevention by specifying personnel to be comprised of the staff of the Center, who have knowledge and specialty, and are manned equally to their workload.

5.1.4 Security Protection under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

The Author had finished collecting data and analyzing the data before Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. was announced in the Royal Gazette on the 22nd November 2010 and this Act should be in force after one hundred and eighty days from the announcement in the Royal Gazette thenceforth. In connection with Topic 4.1.3 as previously mentioned thereby, some sections of Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. already provide solutions for some problems of Family Violence Victim Protection Act 2550 B.E. implementation, which are about to be displayed as follows.

5.1.4.1 Request for Security Protection under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

The first paragraph of section 172 of Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E. provides that the family violence victim shall be entitled to request to a Juvenile and Family Court, which has jurisdiction over his or her domicile or residence, or the Court that the case occurred for issuance of an order specifying measures or methods of relief according to law on family violence victim protection.

5.1.4.2 Issuance of Security Protection Order under Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E.

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 174 provides that in a case where the accused appears to have behavior likely to harm family member's body, mind or health, the Court shall be empowered to issue an order restraining the accused from using alcohol or intoxicant, approach the family member's residence or workplace, using or possessing property or committing any action, which might lead to family violence, for a period of time that the Court sees appropriate but not exceeding six months and the Court may require the accused to receive consultancy from a

consultancy center or medical facility or agency that the Court specifies. Thus, the law already has prescription that govern an order of use or possession of property.

5.1.4.3 Rights of the Consultancy Center, Medical Facility or Agency to Receive Remuneration

In a case that the Court issues an order requiring the family violence victim to receive consultancy, treatment or rehabilitation from the consultancy center, medical facility or agency which the Court specifies under the first paragraph of section 175 or requiring the accused to receive consultancy, treatment or rehabilitation from the consultancy center, medical facility or agency which the Court specifies under the first paragraph of section 174, the consultancy center, medical facility, agency or organization, which is responsible for security protection of children, women, elderly or handicapped or family matters, shall receive remuneration according to regulations specified by the Court of Justice Administration Committee upon approval of Ministry of Finance.

5.1.4.4 Mediation for Reconciliation between the Parties in Family Dispute

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 148 prescribes that in a disputed family case, prior to the hearing process, the Court shall appoint a family dispute mediator to mediate for reconciliation between the parties in family dispute. Thus, criteria and procedures for mediation and reporting the result shall be in accordance with regulations prescribed by the Chief Justice. For purpose of mediation for reconciliation between the parties in family dispute, the Court may assign the parent, guardian, relative or attorney of the disputing parties, a social worker, psychology or person or agency that the Court sees appropriate to provide consultancy or assistance for the family dispute mediator appointed by the Court under the first paragraph. Whereas, in a family case concerning a juvenile that needs succor or security protection, the Court may summon the official under the law on juvenile protection to be present in the hearing.

5.1.4.5 Qualifications and Roles of the Mediator, Who Is Responsible for Providing Consultancy or Assistance in Mediation for Reconciliation between the Disputing Parties

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 149 prescribes that a Juvenile and Family Court shall be responsible for registering family dispute mediators. A family dispute mediator must strictly perform the duties honestly and fairly and maintain confidential the information obtained from the course of duty performance according to instructions that are specified by the Chief Justice, whereby the family dispute mediator shall receive remuneration according to regulations specified by the Court of Justice Administration Committee upon approval of Ministry of Finance.

5.1.4.6 Monitoring for Compliance with Security Protection Order

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 174 the Court may require the accused to receive consultancy from a consultancy center or medical facility or agency that the Court specifies, the Court shall order the social worker, the psychologist, the official or other official to monitor for compliance of the accused and report on the result to the Court in a period of time that the Court sees appropriate.

Establishment of the Juvenile and Family Court and Juvenile and Family Legal Procedure Act 2553 B.E., section 176 prescribes that the Court shall communicate the security protection order to the administrative official or police officer, whose jurisdiction is over the domicile or residence of the accused, for acknowledgment. Whereas, in a case that the accused intentionally contravenes or disobeys the security protection order without due reason, the Court is empowered to issue an arrest warrant for detaining the accused until he or she complies with the order but for a period not exceeding one months. If the accused is remanded on temporary release, the Court may specify conditions for being followed by the accused during the temporary release.

5.2 Suggestion

From the research, it is found that the family violence problems are not personal problems but social problems that every sector must cooperate in solving them. Thus, Family Violence Victim Protection Act 2550 B.E. prescribes that the official is empowered to protect the family violence victim and Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12 provide for establishment of the Operation Center for Family Violence Prevention in order to execute protection for the family violence victim. However, from the study results, it is found that most of the official is public officials or authorities that are affiliated to different agencies and the Operation Center for Family Violence Prevention does not have officials that carry out duties to exclusively protect the family violence victim in combination with lack of mechanism for systematically collaborating with the multidisciplinary team. Therefore, the author proposes the following suggestions:

5.2.1 The Official Should Be Empowered to Issue an Order Specifying Measures or Methods of Temporary Relief without Prerequisite of Lodging the Complaint.

Family Violence Victim Protection Act 2550 B.E. has intent to protect the family violence victim and offer the offender a chance to turn a new leaf and suppress recidivism by empowering the official or the Court to issue an order specifying measures or methods of temporary relief for the family violence victim under section 10 and section 11 along with prescribing that in a case of the family violence victim wishing to prosecute, the complaint shall be lodged under section 6. However, even the family violence victim fails to lodge the complaint under the Criminal Procedure Code, though the family violence victim is still entitled to the protection and assistance from the official under section 6 and able to request for security protection under section 7 in conjuncture with Establishment of the Juvenile and Family Court and Legal Procedure Juvenile and Family Case Act 2553 B.E., which is a law that empowers the Court to issue an order specifying measures or methods of relief under law on family violence victim protection, and once the Court has issued a security protection order, the Court shall notify the administrative official or police officer,

whose jurisdiction is over the domicile or residence of the accused, for acknowledgment. In a case that the accused intentionally contravenes or disobeys the security protection order without due reason, the Court is empowered to issue an arrest warrant for detaining the accused until he or she complies with the order but for a period not exceeding one months.

Anyhow, if the family violence victim does not request for security protection from a Juvenile and Family Court but wishes to receive protection from an order specifying measures or methods of temporary relief under section 10 and section 11, the family violence victim must lodge the complaint to **the inquiry officer** in order to opt in the family violence victim protection program, as section 1 prescribes that when the complaint is lodged within three months after the family violence victim is able and possible to lodge the complaint, the inquiry officer, who is ranking not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the Minister, is empowered to issue an order specifying measures or methods of temporary relief for the family violence victim, whether the victim requests the relief or not. This section empowers the State official to open the case thereby introducing a legal approach of the Civil Law System. Thus, the process focuses on lodging the complaint to the inquiry officer, whereby the lodging of complaint is the initiation of the criminal justice, which is different from the family violence victim protection program under Family Violence Victim Protection Act 2550 B.E.

Hence, if the family violence victim does not wish to lodge the complaint to the inquiry officer, it will result in the inquiry officer being unable to apply measures or method of temporary relief for the family violence victim under section 10 and section 11. Thus, results from the study find that most of the inquiry officer is lacking knowledge and understanding about principles of Family Violence Victim Protection Act 2550 B.E. in respects to protect the victim and enroll the offender on the rehabilitation program along with decision to prosecute the offender for a family violence offense. For these reasons, **the author proposes legislation of an amendment, whereby prescribing that the official should be empowered to issue an order specifying measures or methods of temporary relief without prerequisite of the complaint lodging process**, in order to more efficiently protect the victim and

enroll the offender on the rehabilitation program, in similarity to the principles that allow a Juvenile and Family Court to issue an order specifying measures or methods of relief under the law on the family violence victim's protection in a case of the family violence victim's request without requiring the complaint to have been lodged to the inquiry officer. However, Family Violence Victim Protection Act 2550 B.E. already prescribes for empowering the Court to examine legality of the official's issuance of order as appearing in the second paragraph of section 10, whereby in a case that the official issues an order specifying measures or methods of relief, the measures or methods of relief shall be referred to the Court within forty eight hours after the issuance of the order specifying measures or methods of relief. Thus, ultimately, the Court shall be the entity to issue such order specifying measures or methods of relief.

5.2.2 The One Stop Crisis Center (OSCC), Non-Governmental Organizations (NGO) and Local Administration Organizations Should Be Prescribed for Collaborating as the Operation Center for Family Violence Prevention.

Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12, article 3 prescribing that Department of Social Development and Welfare shall function as an operation center for family violence offenses occurred in Bangkok or offenses committed within the Kingdom under the Penal Code and not occurred in another province or offenses occurred out side the Kingdom but punishable within the Kingdom and a Provincial Office of Social Development and Human Security shall function as an operation center for family violence offenses occurred within area of the respective province and the “official” under Family Violence Victim Protection Act 2550 B.E. means a person, who is appointed by the Minister to execute operation under this Act, and also includes the administrative official and the police officer under the Criminal Procedure Code is provisions specifying governmental agencies and officials or officers as mechanism for driving implementation of the Act, which is experiencing problems that most of the official is public officials or authorities that are affiliated to different agencies and the Operation Center for Family Violence Prevention does not have officials that carry out duties to exclusively protect the

family violence victim resulting in inefficiency in implementation of the protection program for the family violence victim and enrollment of the family violence offender on the rehabilitation program.

The implementation of solutions to the family violence problems in Pathumthani Province, which is a pilot province, features strength in coordination within the multidisciplinary team who systematically cooperate, whereby the One Stop Crisis Center of Pathumthani Provincial Hospital is the coordinator of the multidisciplinary team for protecting the family violence victim. Moreover, Pathumthani Province is a province that is located in Bangkok perimeter region and Rangsit municipality, which is quite advanced and densely populated, thus Pathumthani Province mostly exemplifies urban society and represents liberalism. In this way, some regards are rather given to rights and liberties of people. Therefore, when a family violence problem occurs, the family violence victim or an observer often report the occurrence to the police or other competent agencies for requesting assistance. For these reasons, the State agencies are enabled to intervene the course of problem and protect the family violence victim in time. It can be seen that the implementation of solutions for the family violence problems in Pathumthani Province cannot be used as a model of the entire State but a model of many urban societies. However, if the case concerns other provinces that features countryside characteristics, the population usually strict with the strongly conservative belief, which sees the family violence as a personal matter of the family member and should not be exposed to an outsider. Thus, execution of the State's intervention to protect the family violence victim in the countryside society is more hardly practiced than in the urban society.

For these reasons, **the author then proposes that the Operation Center for Family Violence Prevention should be established by cooperating the One Stop Crisis Center, Non-Governmental Organizations with Local Administration Organizations to function as the Operation Center for Family Violence Prevention in order to provide support for the official and the Court according to the principles prescribed by the Ministerial Regulations**, thus by the provisions of Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12, article 2 (1) prescribing for Office of Women's Affairs and Family Development as a key agency in supporting

execution and enforcement of Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12 and having authority to formulate policies and action plans and collaborate with the Operation Center and other competent agencies for supporting execution and enforcement of the law by the official, the inquiry officer and the Court as well as collect, monitor and evaluate results of implementation of such policies and action plans.

Additionally, Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12, article 5 (7) prescribes for the Operation Center executing collaboration with local administration organizations, community networks and concerned governmental or non-governmental agencies in monitoring for compliance with order of the official or the Court and reporting the fact or circumstance of change in relationship between the family violence offender and the family violence victim along with the family members to the Court to consider for examining and issuing addition, modification or revocation of the order specifying measures or methods of temporary relief or any order as well as specify additional conditions. Thus, it appears that the Ministerial Regulations enables the local administration organizations, community networks and concerned governmental or non-governmental agencies to more actively participate in protecting the family violence victim and enrolling the family violence offender for rehabilitation program.

5.2.3 A Shelter That Is Suitable and Safe Should Be Provided.

A family violence problem is problem that arises from an act committed by a member of the family, which is a violent act within his or her home, where is a regular residence that should be the safest place. Thus, when members of the family are not possible to live peacefully in their home and their home turns into an unsafe place, in such case, when the official notices or is notified about a violent act within the family, the official shall be empowered to arrange the family violence victim to seek treatment from a medical doctor and receive consultancy from a psychiatrist, psychologist or social worker in order to provide with suitable and safe shelter for the family violence victim after the official is aware of the occurrence of family violence.

For this reason, **the author proposes that a decent safe house should be preliminarily provided for the family violence victim and then refer the victim to an emergency shelter afterward** or coordinate for accommodating the victim in the preliminary safe house or emergency shelter until it is safe from revictimization of the family violence by the power of section 6 of Family Violence Victim Protection Act 2550 B.E. along with the Operation Center for Family Violence Prevention shall collaborate with other agencies as well as provide equipment and facility necessary for living or arrange work to be performed during the family violence victim's stay in the Operation Center, preliminary safe house or emergency shelter if the victim request in combination with clinical treatment for body and mind in a case that the victim is harmed by the family violence.

In a case that the family violence victim wishes to stay at her or his home and the official, whose class is not lower than senior administrative official or police officer under the Criminal Procedure Code and appointed by the Minister to issue an order specifying measures or methods of temporary relief for the family violence victim under section 10 of Family Violence Victim Protection Act 2550 B.E. or the Court issues an order under section 11 restraining the family violence offender from entering the family residence or approaching the family members, the Operation Center for Family Violence Prevention shall assign the official to monitor the family violence offender to ensure compliance of such order and if the family violence offender complains that he or she does not have any other place to live, the Operation Center shall collaborate with local administration organizations or concerned governmental or non-governmental agencies to accommodate the family violence offender in a preliminary safe house, emergency shelter, institution or other residence suitable for preventing the offender from committing further violence by the provisions of Ministerial Regulations 2553 B.E. Specifying Procedures for Supporting Execution and Enforcement of Section 10, Section 11 and Section 12, article 5 (3). Hence, providing the family violence offender with such suitable and safe shelter is for purposes of protecting the family violence victim against proximity to the family violence offender and rehabilitating the family violence offender without intention to impose any difficulty upon the family violence offender.

5.2.4 A Provincial Commission on Family Violence Victim Protection Should Be Established.

The procedure for protecting the family violence victim and enrolling the family violence offender in the rehabilitation program under Family Violence Victim Protection Act 2550 B.E. is a systematic collaboration of the multidisciplinary team to work in a form of a commission. This, **the author proposes that an amendment of law should be enacted to prescribe for establishment of a Provincial Commission on Family Violence Victim Protection**, which may be similar to the provincial commission on juvenile protection under section 17 of Juvenile Protection Act 2546 B.E., whereby being comprised of the Governor as the chairman, Vice Governor, who is appointed by the Governor, as the vice-chairman, Provincial Attorney, Provincial Development Director, Provincial Labor Director, Educational Service Area Director, Provincial Public Health Director, Commander of Provincial Police and Representative of the Provincial Juvenile and Family Court, or Representative of the Provincial Court in a case of a province having no Juvenile and Family Court, Representative of Juvenile Observation and Protection Institution, or Representative of Ministry of Justice appointed from public official in the province for a province having no Juvenile Observation and Protection Institution, and Expert Commissioners, whom the Governor appoints from specialists that have experiences in professions of social administration, education, psychology, law and medicine, by two persons for each profession, whereby each profession must have one representative of the private sector, and the two other experts in children welfare, whereby Provincial Social Development and Welfare Director as a commissioner and the secretary. Hence, the amendment should be enacted on Family Violence Victim Protection Act 2550 B.E. by inserting prescriptions concerning about the establishment of a provincial commission on family violence victim protection.

However, basically, a provincial commission on family violence victim protection may be established under the power of the provincial commission on juvenile protection under Juvenile Protection Act 2546 B.E. and provided with persons for being appointed as a provincial committee on family violence victim protection to be comprised of officials who are actual operatives in the multidisciplinary team to ensure protection for family violence victims in the respective province, namely: staff

of the One Stop Crisis Center; non-governmental organizations; local administration organizations; the police officers; public attorneys; medical doctors; nurses; psychologists social workers; and etc., which can be considered as truly systematic collaboration of the multidisciplinary team, Moreover, the committee staff should be empowered to support the Operation Center for Family Violence Prevention, such as to assess the family violence or summon a person to furnish the fact for investigation into the cause of the family violence, which are legal mechanism for conservation of the family status. In a beginning phase, the committee should focus on tranquility and coexistence in the family and afterward, if the circumstances appear that the marital status is not possible to be conserved, the committee should ensure fair and least injurious divorce by giving the highest regards to the well-being and future of the child.

5.2.5 An Agency for Collecting Information and Maintaining Database of Family Violence Should Be Established.

At the present, there are several agencies carrying out duties to support and protect the family violence victim, for example: Department of Social Development and Welfare; Provincial Offices of Social Development and Human Security; the One Stop Crisis Center; Non-Governmental Organizations; Local Administration Organizations and the police. Since each agency independently collecting statistical data the family violence victim support and protection of its own, as a result, it is unable to know a definite number of family violence victims, whereby affecting the allocation of budget by the Government, collaboration of the multidisciplinary team and provision of welfare in assisting and protecting the family violence victim along with monitor and rehabilitation of the family violence offender as well. For this reason, **the author would like to propose that Ministry of Social Development and Human Security should assign Office of Women's Affairs and Family Development to establish a special agency to aggressively set up a system of information technology to provide data and information of the family violence,** whereby under the power of section 17 of Family Violence Victim Protection Act 2550 B.E. to produce an annual report displaying number of cases of family violence, number of orders specifying measures or methods of relief, number of contraventions of orders specifying measures or methods of relief issued by the official or the Court

and number of the compromises and present the report to the Cabinet and the Parliament once a year.

In such course, the special agency for setting up the system to provide data and information of the family violence must aggressively operate by coordinating with other concerned agencies to inquire and collect the data and information of number of cases of family violence for systematic maintenance and availability of such data and information to be efficiently referred. For example, such special agency must cooperate with Royal Thai Police Bureau, the One Stop Crisis Center or Non-Governmental Organizations, which are providing assistance and protection for the family violence victim, in order to acquire statistical data of family violence cases and compromises or collaborate with Department of Social Development, Welfare and Provincial Offices of Social Development and Human Security, which are functioning as Operation Centers for Family Violence Prevention, and Local Administration Organizations in order to acquire statistical data of orders specifying measures or methods of relief and contraventions of orders specifying measures or methods of relief, thus for purposes of Ministry of Social Development and Human Security in producing the annual report and presenting it to the Cabinet and the Parliament and being aware of situation of offenses, implementation of legal measures and further developing policies and formulating plans for family violence prevention and control.

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APPENDICES

APPENDIX A

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา สำนักงานพระราชบัญญัติ สำนักงานคณะกรรมการกฤษฎีกา
คุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว
สำนักงานคณะกรรมการกฤษฎีกา พ.ศ. ๒๕๕๐ สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา
ภูมิพลอดุลยเดช ป.ร.
ให้ไว้ ณ วันที่ ๒๕ กรกฎาคม พ.ศ. ๒๕๕๐
เป็นปีที่ ๖๒ ในรัชกาลปัจจุบัน
สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

พระบาทสมเด็จพระปรมินทรมหาภูมิพลอดุลยเดช มีพระบรมราชโองการโปรด
เกล้าฯ ให้ประกาศว่า

สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา
โดยที่เป็นการสมควรมีกฎหมายว่าด้วยการคุ้มครองผู้ถูกระทำด้วยความรุนแรง
ในครอบครัว สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา จึงทรงพระกรุณาโปรดเกล้าฯ ให้ตราพระราชบัญญัติขึ้นไว้โดยคำแนะนำและ
ยินยอมของสภานิติบัญญัติแห่งชาติ ดังต่อไปนี้

สำนักงานคณะกรรมการกฤษฎีกา มาตรา ๑ พระราชบัญญัตินี้เรียกว่า “พระราชบัญญัติคุ้มครองผู้ถูกระทำด้วย
ความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐” สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา มาตรา ๒^๑ พระราชบัญญัตินี้ให้ใช้บังคับเมื่อพ้นกำหนดเก้าสิบวันนับแต่วัน
ประกาศในราชกิจจานุเบกษาเป็นต้นไป สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา มาตรา ๓ ในพระราชบัญญัตินี้
“ความรุนแรงในครอบครัว” หมายความว่า การกระทำใด ๆ โดยมีประสงค์ให้
เกิดอันตรายแก่ร่างกาย จิตใจ หรือสุขภาพ หรือกระทำโดยเจตนาในลักษณะที่น่าจะก่อให้เกิด
อันตรายแก่ร่างกาย จิตใจ หรือสุขภาพของบุคคลในครอบครัว หรือบังคับหรือใช้อำนาจครอบงำ
ผิดคลองธรรมให้บุคคลในครอบครัวต้องกระทำการ ไม่กระทำการ หรือยอมรับการกระทำอย่าง
หนึ่งอย่างใดโดยมิชอบแต่ไม่รวมถึงการกระทำโดยประมาท

สำนักงานคณะกรรมการกฤษฎีกา “บุคคลในครอบครัว” หมายความว่า คู่สมรส คู่สมรสเดิม ผู้ที่อยู่กินหรือเคยอยู่
กินฉันสามีภริยาโดยมิได้จดทะเบียนสมรส บุตร บุตรบุญธรรม สมาชิกในครอบครัว รวมทั้งบุคคล
ใด ๆ ที่ต้องพึ่งพาอาศัยและอยู่ในครัวเรือนเดียวกัน

สำนักงานคณะกรรมการกฤษฎีกา “ศาล” หมายความว่า ศาลเยาวชนและครอบครัวตามกฎหมายว่าด้วยการจัดตั้ง
ศาลเยาวชนและครอบครัวและวิธีพิจารณาคดีเยาวชนและครอบครัว

สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา
สำนักงาน _____ สำนักงานคณะกรรมการกฤษฎีกา สำนักงานคณะกรรมการกฤษฎีกา

^๑ ราชกิจจานุเบกษา เล่ม ๑๒๔/ตอนที่ ๔๑ ก/หน้า ๑/๑๔ สิงหาคม ๒๕๕๐

- ๒ -

สำนักงานคณะกรรมการกฤษฎีกา

“เงินช่วยเหลือบรรเทาทุกข์” หมายความว่า ค่าทดแทนความเสียหายเบื้องต้น สำหรับเงินหรือทรัพย์สินใด ๆ ที่ผู้ถูกระทำด้วยความรุนแรงในครอบครัวสูญเสียไป โดยผลของการกระทำด้วยความรุนแรงในครอบครัว และให้หมายความรวมถึงรายได้ที่สูญเสียไป ค่าใช้จ่ายในการรักษาพยาบาล ค่าใช้จ่ายในการหาที่อยู่ใหม่ และค่าใช้จ่ายอื่นที่จำเป็น

“นักจิตวิทยา” หมายความว่า นักจิตวิทยาตามประมวลกฎหมายวิธีพิจารณาความอาญา

“นักสังคมสงเคราะห์” หมายความว่า นักสังคมสงเคราะห์ตามประมวลกฎหมายวิธีพิจารณาความอาญา

“พนักงานเจ้าหน้าที่” หมายความว่า ผู้ซึ่งรัฐมนตรีแต่งตั้งให้ปฏิบัติการตามพระราชบัญญัตินี้และให้หมายความรวมถึงพนักงานฝ่ายปกครองหรือตำรวจตามประมวลกฎหมายวิธีพิจารณาความอาญา

“พนักงานสอบสวน” หมายความว่า พนักงานเจ้าหน้าที่ซึ่งได้รับมอบหมายจากรัฐมนตรีให้เป็นพนักงานสอบสวนตามประมวลกฎหมายวิธีพิจารณาความอาญา ในท้องที่ใดไม่มีพนักงานเจ้าหน้าที่ซึ่งได้รับมอบหมายจากรัฐมนตรี ให้พนักงานสอบสวนตามประมวลกฎหมายวิธีพิจารณาความอาญาเป็นพนักงานสอบสวนตามพระราชบัญญัตินี้

“รัฐมนตรี” หมายความว่า รัฐมนตรีผู้รักษาการตามพระราชบัญญัตินี้

มาตรา ๔ ผู้ใดกระทำการอันเป็นความรุนแรงในครอบครัว ผู้นั้นกระทำความผิดฐานกระทำความรุนแรงในครอบครัว ต้องระวางโทษจำคุกไม่เกินหกเดือน หรือปรับไม่เกินหกพันบาท หรือทั้งจำทั้งปรับ

ให้ความผิดตามวรรคหนึ่ง เป็นความผิดอันยอมความได้ แต่ไม่ลบล้างความผิดตามประมวลกฎหมายอาญาหรือกฎหมายอื่น หากการกระทำความผิดตามวรรคหนึ่งเป็นความผิดฐานทำร้ายร่างกายตามประมวลกฎหมายอาญา มาตรา ๒๙๕ ด้วย ให้ความผิดดังกล่าวเป็นความผิดอันยอมความได้

มาตรา ๕ ผู้ถูกระทำด้วยความรุนแรงในครอบครัว หรือผู้ที่พบเห็นหรือทราบการกระทำด้วยความรุนแรงในครอบครัว มีหน้าที่แจ้งต่อพนักงานเจ้าหน้าที่ เพื่อดำเนินการตามพระราชบัญญัตินี้

การแจ้งต่อพนักงานเจ้าหน้าที่ตามวรรคหนึ่ง เมื่อได้กระทำโดยสุจริต ย่อมได้รับความคุ้มครองและไม่ต้องรับผิดชอบทั้งทางแพ่ง ทางอาญา และทางปกครอง

มาตรา ๖ การแจ้งต่อพนักงานเจ้าหน้าที่ตามมาตรา ๕ อาจกระทำโดยวาจา เป็นหนังสือ ทางโทรศัพท์ วิธีการทางอิเล็กทรอนิกส์ หรือวิธีการอื่นใด

เมื่อพนักงานเจ้าหน้าที่ได้พบเห็นการกระทำด้วยความรุนแรงในครอบครัวหรือได้รับแจ้งตามมาตรา ๕ แล้ว ให้พนักงานเจ้าหน้าที่มีอำนาจเข้าไปในเคหสถานหรือสถานที่ที่เกิดเหตุเพื่อสอบถามผู้กระทำความรุนแรงในครอบครัว ผู้ถูกระทำด้วยความรุนแรงในครอบครัว

หรือบุคคลอื่นที่อยู่ในสถานทีนั้นเกี่ยวกับการกระทำที่ได้รับแจ้ง รวมทั้งให้มีอำนาจจัดให้ ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเข้ารับการตรวจรักษาจากแพทย์ และขอรับคำปรึกษา แนะนำจากจิตแพทย์ นักจิตวิทยา หรือนักสังคมสงเคราะห์ ในกรณีที่ผู้ถูกกระทำด้วยความรุนแรง ในครอบครัวประสงค์จะดำเนินคดี ให้จัดให้ผู้นั้นร้องทุกข์ตามประมวลกฎหมายวิธีพิจารณาความ อาญา แต่ถ้าผู้นั้นไม่อยู่ในวิสัยหรือมีโอกาสที่จะร้องทุกข์ได้ด้วยตนเองให้พนักงานเจ้าหน้าที่เป็นผู้ ร้องทุกข์แทนได้

หลักเกณฑ์และวิธีการดำเนินการตามวรรคสอง ให้เป็นไปตามระเบียบที่รัฐมนตรี

ประกาศกำหนด

มาตรา ๗ ถ้ามิได้มีการแจ้งต่อพนักงานเจ้าหน้าที่ตามมาตรา ๕ หรือมิได้มีการ ร้องทุกข์ตามมาตรา ๖ ภายในสามเดือนนับแต่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวอยู่ในวิสัย และมีโอกาสที่จะแจ้งหรือร้องทุกข์ได้ ให้ถือว่าคดีเป็นอันขาดอายุความ แต่ไม่ตัดสิทธิผู้ถูกกระทำ ด้วยความรุนแรงในครอบครัวหรือผู้มีส่วนได้เสียจะร้องขอคุ้มครองสวัสดิภาพตามกฎหมายว่าด้วย การจัดตั้งศาลเยาวชนและครอบครัวและวิธีพิจารณาคดีเยาวชนและครอบครัว

มาตรา ๘ เมื่อมีการร้องทุกข์ภายในอายุความตามมาตรา ๗ แล้ว ให้พนักงาน สอบสวนทำการสอบสวนโดยเร็วและส่งตัวผู้กระทำความรุนแรงในครอบครัว ส่วนการสอบสวน พร้อมทั้งความเห็นไปยังพนักงานอัยการเพื่อฟ้องคดีต่อศาลภายในสี่สิบแปดชั่วโมงนับแต่ได้ตัว ผู้กระทำความรุนแรงในครอบครัว แต่หากมีเหตุจำเป็นทำให้ไม่อาจยื่นฟ้องได้ทันภายใน กำหนดเวลาดังกล่าว ให้ขอผิดฟ้องต่อศาลได้คราวละไม่เกินหกวัน แต่ทั้งนี้ ต้องไม่เกินสามคราว โดยให้นำกฎหมายว่าด้วยการจัดตั้งศาลแขวงและวิธีพิจารณาความอาญาในศาลแขวงมาใช้บังคับ โดยอนุโลม

ในกรณีที่การกระทำความผิดตามมาตรา ๔ วรรคหนึ่ง เป็นความผิดกรรม เดียวกับความผิดตามกฎหมายอื่น ให้ดำเนินคดีความผิดตามมาตรา ๔ วรรคหนึ่ง ต่อศาลรวมไป กับความผิดตามกฎหมายอื่นนั้น เว้นแต่ความผิดตามกฎหมายอื่นนั้นมีอัตราโทษสูงกว่าให้ ดำเนินคดีต่อศาลที่มีอำนาจพิจารณาความผิดตามกฎหมายอื่นนั้น โดยให้นำบทบัญญัติทั้งหลาย แห่งพระราชบัญญัตินี้ไปใช้บังคับโดยอนุโลม

ในการสอบปากคำผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พนักงานสอบสวน ต้องจัดให้มีจิตแพทย์ นักจิตวิทยา นักสังคมสงเคราะห์ หรือบุคคลที่ผู้ถูกกระทำด้วยความรุนแรง ในครอบครัวร้องขอร่วมอยู่ด้วยในขณะสอบปากคำเพื่อให้คำปรึกษา

ในกรณีจำเป็นเร่งด่วน ซึ่งมีเหตุอันควรไม่อาจรอจิตแพทย์ นักจิตวิทยา นักสังคม สงเคราะห์ หรือบุคคลที่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวร้องขอ ให้พนักงานสอบสวนทำ การสอบปากคำไปก่อนโดยไม่ต้องมีบุคคลดังกล่าวร่วมอยู่ด้วย แต่ต้องบันทึกเหตุที่ไม่อาจรอ บุคคลดังกล่าวไว้ในส่วนการสอบสวน

หลักเกณฑ์และวิธีการดำเนินการของพนักงานสอบสวน ให้เป็นไปตามระเบียบที่ รัฐมนตรีประกาศกำหนด

มาตรา ๙ เมื่อมีการแจ้งตามมาตรา ๕ หรือมีการร้องทุกข์ตามมาตรา ๖ แล้ว ห้ามมิให้ผู้ใดลงพิมพ์โฆษณา หรือเผยแพร่ต่อสาธารณชนด้วยวิธีใด ๆ ซึ่งภาพ เรื่องราว หรือ ข้อมูลใด ๆ อันน่าจะทำให้เกิดความเสียหายแก่ผู้กระทำความรุนแรงในครอบครัวหรือผู้ถูกระทำ ด้วยความรุนแรงในครอบครัวในคดีตามพระราชบัญญัตินี้

ผู้ใดฝ่าฝืนบทบัญญัติในวรรคหนึ่ง ต้องระวางโทษจำคุกไม่เกินหกเดือน หรือปรับ ไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา ๑๐ ในการดำเนินการตามมาตรา ๘ ให้พนักงานเจ้าหน้าที่ซึ่งมีฐานะ เทียบได้ไม่ต่ำกว่าพนักงานฝ่ายปกครองหรือตำรวจชั้นผู้ใหญ่ตามประมวลกฎหมายวิธีพิจารณา ความอาญาและได้รับมอบหมายจากรัฐมนตรีมีอำนาจออกคำสั่งกำหนดมาตรการหรือวิธีการเพื่อ บรรเทาทุกข์ให้แก่บุคคลผู้ถูกระทำด้วยความรุนแรงในครอบครัวเป็นการชั่วคราว ไม่ว่าจะมีคำ ร้องขอจากบุคคลดังกล่าวหรือไม่ โดยให้มีอำนาจออกคำสั่งใด ๆ ได้เท่าที่จำเป็นและสมควร ซึ่ง รวมถึงการให้ผู้กระทำความรุนแรงในครอบครัวเข้ารับการตรวจรักษาจากแพทย์ การให้ผู้กระทำ ความรุนแรงในครอบครัวชดใช้เงินช่วยเหลือบรรเทาทุกข์เบื้องต้นตามสมควรแก่ฐานะ การออก คำสั่งห้ามผู้กระทำความรุนแรงในครอบครัวเข้าไปในที่พำนักของครอบครัวหรือเข้าใกล้ตัวบุคคล ใดในครอบครัว ตลอดจนการกำหนดวิธีการดูแลบุตร

เมื่อพนักงานเจ้าหน้าที่ออกคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ อย่างใดอย่างหนึ่งหรือหลายอย่างตามวรรคหนึ่งแล้ว ให้เสนอมาตรการหรือวิธีการเพื่อบรรเทา ทุกข์ต่อศาลภายในสี่สิบแปดชั่วโมงนับแต่วันออกคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทา ทุกข์ หากศาลเห็นชอบกับคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ดังกล่าว ให้คำสั่ง กำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์มีผลต่อไป

ในกรณีที่ศาลไม่เห็นชอบด้วยกับคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทา ทุกข์ทั้งหมดหรือแต่บางส่วน หรือมีข้อเท็จจริงหรือพฤติการณ์เปลี่ยนแปลงไป ให้ศาลทำการได้ ส่วนและมีคำสั่งโดยพลัน หากข้อเท็จจริงหรือพฤติการณ์เพียงพอแก่การวินิจฉัยออกคำสั่ง ศาล อาจแก้ไขเพิ่มเติม เปลี่ยนแปลง หรือเพิกถอนคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ หรือออกคำสั่งใด ๆ รวมทั้งกำหนดเงื่อนไขเพิ่มเติมก็ได้

ผู้มีส่วนได้เสียเกี่ยวกับคำสั่งของพนักงานเจ้าหน้าที่หรือศาลตามมาตรา นี้ สามารถยื่นอุทธรณ์คำสั่งเป็นหนังสือขอให้ศาลทบทวนคำสั่งได้ภายในสามสิบวันนับแต่ทราบคำสั่ง ให้คำพิพากษาหรือคำสั่งของศาลเป็นที่สุด

ผู้ใดฝ่าฝืนหรือไม่ปฏิบัติตามคำสั่งของพนักงานเจ้าหน้าที่หรือศาล ต้องระวาง โทษจำคุกไม่เกินสามเดือน หรือปรับไม่เกินสามพันบาท หรือทั้งจำทั้งปรับ

มาตรา ๑๑ ในระหว่างการสอบสวนหรือการพิจารณาคดี ให้ศาลมีอำนาจออก คำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ตามมาตรา ๑๐ หรือออกคำสั่งใด ๆ ได้ตามที่ เห็นสมควร

ในกรณีที่เหตุการณ์หรือพฤติกรรมเกี่ยวกับผู้กระทำความรุนแรงในครอบครัว หรือผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเปลี่ยนแปลงไป ศาลมีอำนาจแก้ไขเพิ่มเติม เปลี่ยนแปลง หรือเพิกถอนคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ หรือคำสั่งใด ๆ รวมทั้งกำหนดเงื่อนไขเพิ่มเติมก็ได้

ผู้ใดฝ่าฝืนหรือไม่ปฏิบัติตามคำสั่งศาล ต้องระวางโทษจำคุกไม่เกินหกเดือน หรือปรับไม่เกินหกพันบาท หรือทั้งจำทั้งปรับ

มาตรา ๑๒ ในกรณีที่ศาลพิพากษาว่า ผู้กระทำความรุนแรงในครอบครัวมีความผิดตามมาตรา ๔ ศาลมีอำนาจกำหนดให้ใช้วิธีการฟื้นฟู บำบัดรักษา คุ้มครองประพฤติดูแลผู้กระทำความผิด ให้ผู้กระทำความผิดชดใช้เงินช่วยเหลือบรรเทาทุกข์ ทำงานบริการสาธารณะ ละเว้นการกระทำอันเป็นเหตุให้เกิดการใช้ความรุนแรงในครอบครัว หรือทำทัณฑ์บนไว้ ตามวิธีการและระยะเวลาที่ศาลกำหนดแทนการลงโทษผู้กระทำความผิดก็ได้

ในกรณีที่มีการยอมความ การถอนคำร้องทุกข์ หรือการถอนฟ้องในความผิดตามมาตรา ๔ ให้พนักงานสอบสวนหรือศาล แล้วแต่กรณี จัดให้มีการทำบันทึกข้อตกลงเบื้องต้นก่อนการยอมความ การถอนคำร้องทุกข์ หรือการถอนฟ้องนั้น และกำหนดให้นำวิธีการตามวรรคหนึ่งเป็นเงื่อนไขในการปฏิบัติตามบันทึกข้อตกลงดังกล่าวโดยอนุโลม โดยอาจรับฟังความคิดเห็นของผู้เสียหายหรือบุคคลในครอบครัวประกอบด้วยก็ได้ หากได้ปฏิบัติตามบันทึกข้อตกลงและเงื่อนไขดังกล่าวครบถ้วนแล้วจึงให้มีการยอมความ การถอนคำร้องทุกข์ หรือการถอนฟ้องในความผิดตามมาตรา ๔ ได้ หากผู้ต้องหาหรือจำเลยฝ่าฝืนหรือไม่ปฏิบัติตามเงื่อนไขดังกล่าวให้พนักงานสอบสวนหรือศาลมีอำนาจยกคดีขึ้นดำเนินการต่อไป

หลักเกณฑ์และวิธีดำเนินการตามวรรคหนึ่งและวรรคสอง ให้เป็นไปตามระเบียบที่อธิบดีผู้พิพากษาศาลเยาวชนและครอบครัวกลางประกาศกำหนดในราชกิจจานุเบกษา หรือรัฐมนตรีประกาศกำหนด แล้วแต่กรณี

มาตรา ๑๓ ให้กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์จัดให้มีระบบงานเพื่อสนับสนุนการดำเนินงานและการบังคับให้เป็นไปตามมาตรา ๑๐ มาตรา ๑๑ และมาตรา ๑๒ โดยกำหนดในกฎกระทรวง

มาตรา ๑๔ วิธีพิจารณา การยื่น และการรับฟังพยานหลักฐาน หากพระราชบัญญัตินี้มีได้บัญญัติไว้โดยเฉพาะ ให้นำกฎหมายว่าด้วยการจัดตั้งศาลเยาวชนและครอบครัวและวิธีพิจารณาคดีเยาวชนและครอบครัวมาใช้บังคับโดยอนุโลม

มาตรา ๑๕ ไม่ว่าการพิจารณาคดีการกระทำความรุนแรงในครอบครัวจะได้ดำเนินไปแล้วเพียงใด ให้ศาลพยายามเปรียบเทียบให้คู่ความได้ยอมความกัน โดยมุ่งถึงความสงบสุขและการอยู่ร่วมกันในครอบครัวเป็นสำคัญ ทั้งนี้ ให้คำนึงถึงหลักการดังต่อไปนี้ ประกอบด้วย

(๑) การคุ้มครองสิทธิของผู้ถูกกระทำด้วยความรุนแรงในครอบครัว

(๒) การสงวนและคุ้มครองสถานภาพของการสมรสในฐานะที่เป็นศูนย์รวมของชายและหญิงที่สมัครใจเข้ามาอยู่กินฉันสามีภริยา หากไม่อาจรักษาสถานภาพของการสมรสได้ ก็ให้การหย่าเป็นไปด้วยความเป็นธรรมและเสียหายน้อยที่สุด โดยคำนึงถึงสวัสดิภาพและอนาคตของบุตรเป็นสำคัญ

(๓) การคุ้มครองและช่วยเหลือครอบครัว โดยเฉพาะอย่างยิ่งในกรณีที่ครอบครัวนั้นต้องรับผิดชอบในการดูแลให้การศึกษาแก่สมาชิกที่เป็นผู้เยาว์

(๔) มาตรการต่าง ๆ เพื่อช่วยเหลือสามีภริยาและบุคคลในครอบครัวให้ปรองดองกันและปรับปรุงความสัมพันธ์ระหว่างกันเองและกับบุตร

มาตรา ๑๖ เพื่อประโยชน์ในการยอมความในคดีการกระทำความรุนแรงในครอบครัว พนักงานเจ้าหน้าที่หรือศาล แล้วแต่กรณี อาจตั้งผู้ประนีประนอมประกอบด้วยบุคคลหรือคณะบุคคลซึ่งเป็นบิดามารดา ผู้ปกครอง ญาติของคู่ความหรือบุคคลที่พนักงานเจ้าหน้าที่หรือศาลเห็นสมควรเพื่อให้คำปรึกษา หรือช่วยเหลือในการไกล่เกลี่ยให้คู่ความได้ยอมความกัน หรืออาจมอบหมายให้กงสุลสงเคราะห์ หน่วยงานสังคมสงเคราะห์ หรือบุคคลใดช่วยเหลือไกล่เกลี่ยให้คู่ความได้ยอมความกันก็ได้

เมื่อผู้ประนีประนอมหรือผู้ที่ได้รับมอบหมายตามวรรคหนึ่งได้ดำเนินการไกล่เกลี่ยตามคำสั่งพนักงานเจ้าหน้าที่หรือศาลแล้ว ให้รายงานผลการไกล่เกลี่ยต่อพนักงานเจ้าหน้าที่หรือศาลแล้วแต่กรณีด้วย ในกรณีที่การไกล่เกลี่ยเป็นผลสำเร็จ บุคคลดังกล่าวจะจัดให้มีการทำสัญญายอมความขึ้นหรือจะขอให้เรียกคู่ความมาทำสัญญายอมความกันต่อหน้าพนักงานเจ้าหน้าที่หรือศาลก็ได้

เมื่อพนักงานเจ้าหน้าที่หรือศาลเห็นว่าสัญญายอมความไม่ฝ่าฝืนต่อกฎหมายและความสงบเรียบร้อยหรือศีลธรรมอันดีของประชาชน ให้พนักงานเจ้าหน้าที่หรือศาลดำเนินการให้เป็นไปตามสัญญายอมความนั้น

มาตรา ๑๗ ให้กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์จัดทำรายงานประจำปีแสดงจำนวนคดีการกระทำความรุนแรงในครอบครัว จำนวนคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ และจำนวนการละเมิดคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ของพนักงานเจ้าหน้าที่และศาล และจำนวนการยอมความ และรายงานต่อคณะรัฐมนตรีและรัฐสภาเพื่อทราบปีละครั้ง

มาตรา ๑๘ ให้รัฐมนตรีว่าการกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์รักษาการตามพระราชบัญญัตินี้ และให้มีอำนาจแต่งตั้งพนักงานเจ้าหน้าที่ที่กบฏอกฎกระทรวงและระเบียบเพื่อปฏิบัติการตามพระราชบัญญัตินี้

กฎกระทรวงและระเบียบนั้น เมื่อได้ประกาศในราชกิจจานุเบกษาแล้ว ให้ใช้บังคับได้

- ๘ -

สำนักงานคณะกรรมการกฤษฎีกา

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชบัญญัติฉบับนี้ คือ เนื่องจากปัญหาการแก้ไขการใช้ความรุนแรงในครอบครัวมีความละเอียดอ่อนซับซ้อนเกี่ยวข้องกับบุคคลใกล้ชิด มีลักษณะพิเศษแตกต่างจากการทำร้ายร่างกายระหว่างบุคคลโดยทั่วไป การใช้มาตรการทางอาญาตามประมวลกฎหมายอาญามาบังคับกับการกระทำด้วยความรุนแรงในครอบครัวจึงไม่เหมาะสม เนื่องจากกฎหมายอาญามีเจตนารมณ์ที่จะลงโทษผู้กระทำความผิดมากกว่าที่จะแก้ไขฟื้นฟูผู้กระทำผิดหรือปกป้องคุ้มครองผู้ที่ถูกกระทำด้วยความรุนแรงในครอบครัว ดังนั้น การมีกฎหมายคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว จึงมีความเหมาะสมกว่าการใช้กระบวนการทางอาญา เพราะสามารถกำหนดรูปแบบ วิธีการ และขั้นตอนที่มีลักษณะแตกต่างจากการดำเนินคดีอาญาโดยทั่วไป โดยให้ผู้กระทำความผิดมีโอกาสกลับตัวและยับยั้งการกระทำผิดซ้ำ รวมทั้งสามารถรักษาความสัมพันธ์อันดีในครอบครัวไว้ได้ประกอบกับเด็ก เยาวชน และบุคคลในครอบครัว มีสิทธิได้รับความคุ้มครองโดยรัฐจากการใช้ความรุนแรงและการปฏิบัติอันไม่เป็นธรรม จึงจำเป็นต้องตราพระราชบัญญัตินี้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

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สำนักงานคณะกรรมการกฤษฎีกา

อมรรัตน์/แก้ไข
วติน/ตรวจ

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา ๒๙ มีนาคม ๒๕๕๓

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

APPENDIX B

สำนักงานคณะกรรมการกฤษฎีกา

กฎกระทรวง กำหนดระบบงานเพื่อสนับสนุนการดำเนินงานและการบังคับ

ให้เป็นไปตามมาตรา ๑๐ มาตรา ๑๑ และมาตรา ๑๒

พ.ศ. ๒๕๕๓^๑

อาศัยอำนาจตามความในมาตรา ๑๓ และมาตรา ๑๔ แห่งพระราชบัญญัติ
คุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ อันเป็นกฎหมายที่มีบทบัญญัติ
บางประการเกี่ยวกับการจำกัดสิทธิและเสรีภาพของบุคคล ซึ่งมาตรา ๒๙ ประกอบกับมาตรา ๓๒
มาตรา ๓๓ มาตรา ๓๔ มาตรา ๓๕ มาตรา ๔๑ มาตรา ๔๕ และมาตรา ๕๒ ของรัฐธรรมนูญแห่ง
ราชอาณาจักรไทย บัญญัติให้กระทำได้โดยอาศัยอำนาจตามบทบัญญัติแห่งกฎหมาย
รัฐมนตรีว่าการกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ออกกฎกระทรวงไว้
ดังต่อไปนี้

ข้อ ๑ ในกฎกระทรวงนี้

“สำนักงาน” หมายความว่า สำนักงานกิจการสตรีและสถาบันครอบครัว

“ศูนย์ปฏิบัติการ” หมายความว่า ศูนย์ปฏิบัติการเพื่อป้องกันการกระทำความ
รุนแรงในครอบครัว

ข้อ ๒ ให้สำนักงานเป็นหน่วยงานหลักในการสนับสนุนการดำเนินงานและการ
บังคับให้เป็นไปตามมาตรา ๑๐ มาตรา ๑๑ และมาตรา ๑๒ และให้มีอำนาจหน้าที่ ดังต่อไปนี้

(๑) กำหนดนโยบาย แผนปฏิบัติการ และประสานงานกับศูนย์ปฏิบัติการและ
หน่วยงานอื่นที่เกี่ยวข้อง เพื่อให้การสนับสนุนการดำเนินงานและการบังคับให้เป็นไปตาม
กฎหมายของพนักงานเจ้าหน้าที่ พนักงานสอบสวน และศาล รวมทั้งรวบรวม ติดตาม และ
ประเมินผลการปฏิบัติตามนโยบายและแผนปฏิบัติการดังกล่าว

(๒) ประเมินผลการปฏิบัติงานของพนักงานเจ้าหน้าที่และพนักงานสอบสวน

(๓) จัดทำแผนงานงบประมาณเพื่อสนับสนุนการดำเนินการในการคุ้มครอง
ผู้ถูกระทำด้วยความรุนแรงในครอบครัว

(๔) ดำเนินการอื่นที่เกี่ยวกับการสนับสนุนการดำเนินงานและการบังคับให้
เป็นไปตามมาตรา ๑๐ มาตรา ๑๑ และมาตรา ๑๒

ข้อ ๓ ให้กรมพัฒนาสังคมและสวัสดิการทำหน้าที่เป็นศูนย์ปฏิบัติการใน
ความผิดฐานกระทำความรุนแรงในครอบครัวที่เกิดขึ้นในเขตกรุงเทพมหานคร หรือความผิดที่
ประมวลกฎหมายอาญาให้ถือว่าได้กระทำในราชอาณาจักรและไม่อยู่ในเขตจังหวัดใด หรือ
ความผิดที่เกิดขึ้นนอกราชอาณาจักรและจะต้องรับโทษภายในราชอาณาจักร และให้สำนักงานพัฒนา

สังคมและความมั่นคงของมนุษย์จังหวัดทำหน้าที่เป็นศูนย์ปฏิบัติการในความผิดที่เกิดในเขตจังหวัดนั้น

ในกรณีที่ความผิดเกิดขึ้นในหลายท้องที่หรือเป็นความผิดต่อเนื่อง หรือไม่ว่าความผิดได้กระทำในท้องที่ใด ให้กรมพัฒนาสังคมและสวัสดิการหรือสำนักงานพัฒนาสังคมและความมั่นคงของมนุษย์จังหวัดในท้องที่ที่ทำการสอบสวน ทำหน้าที่เป็นศูนย์ปฏิบัติการ

ข้อ ๔ ให้ศูนย์ปฏิบัติการแจ้งข้อเท็จจริงอันเกี่ยวกับอายุ ประวัติ ความประพฤติ สุขภาพกายและจิตใจของผู้กระทำความรุนแรงในครอบครัว ผู้ถูกกระทำด้วยความรุนแรงในครอบครัว สมาชิกในครอบครัว มูลเหตุที่ก่อให้เกิดการกระทำความรุนแรงในครอบครัว หรือข้อเท็จจริงอื่นใดที่อาจเป็นประโยชน์ต่อการพิจารณา รวมทั้งเสนอมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ต่อพนักงานเจ้าหน้าที่หรือศาล เพื่อใช้ประกอบการพิจารณาออกคำสั่งตามมาตรา ๑๐ หรือมาตรา ๑๑

ข้อ ๕ เมื่อพนักงานเจ้าหน้าที่หรือศาลมีคำสั่งกำหนดมาตรการหรือวิธีการเพื่อ
บรรเทาทุกข์ให้แก่บุคคลผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเป็นการชั่วคราวตามมาตรา ๑๐
หรือมาตรา ๑๑ ให้ศูนย์ปฏิบัติการดำเนินการ ดังต่อไปนี้

(๑) ในกรณีที่มีคำสั่งให้ผู้กระทำความรุนแรงในครอบครัวเข้ารับการตรวจรักษาจากแพทย์ให้ศูนย์ปฏิบัติการประสานความร่วมมือกับแพทย์ จิตแพทย์ นักจิตวิทยา นักสังคมสงเคราะห์ หน่วยงานของรัฐ หรือเอกชนที่เกี่ยวข้อง เพื่อตรวจรักษา ฟันฟู หรือบำบัดร่างกายและจิตใจ รวมทั้งให้คำปรึกษาแก่ผู้กระทำความรุนแรงในครอบครัว

(๒) ในกรณีที่มิได้สั่งให้ผู้กระทำความรุนแรงในครอบครัวชดใช้เงินช่วยเหลือบรรเทาทุกข์เบื้องต้น ให้ศูนย์ปฏิบัติการติดตามการปฏิบัติตามคำสั่งของพนักงานเจ้าหน้าที่หรือศาล หากผู้กระทำความรุนแรงในครอบครัวฝ่าฝืนหรือไม่ปฏิบัติตาม ให้ศูนย์ปฏิบัติการรายงานให้พนักงานเจ้าหน้าที่หรือศาลทราบ

(๓) ในกรณีที่มีคำสั่งห้ามผู้กระทำความรุนแรงในครอบครัวเข้าไปในที่พำนักของครอบครัวหรือเข้าใกล้ตัวบุคคลใดในครอบครัว ให้ศูนย์ปฏิบัติการกำหนดเจ้าหน้าที่ทำการติดตามและสอดส่องผู้กระทำความรุนแรงในครอบครัวเพื่อบังคับให้เป็นไปตามคำสั่งดังกล่าว และหากผู้กระทำความรุนแรงในครอบครัวร้องขอว่าตนไม่มีที่พำนักอื่นใด ให้ศูนย์ปฏิบัติการประสานงานกับองค์กรปกครองส่วนท้องถิ่น หน่วยงานของรัฐ หรือเอกชนที่เกี่ยวข้อง เพื่อให้ผู้กระทำความรุนแรงในครอบครัวเข้าพักในบ้านพักฉุกเฉิน สถานแรกรับ สถานสงเคราะห์ หรือที่พักอื่นใดที่เหมาะสม

(๔) ในกรณีที่มีคำสั่งกำหนดวิธีการดูแลบุตร ให้ศูนย์ปฏิบัติการติดตามให้
หน่วยงานหรือบุคคลที่เกี่ยวข้องดำเนินการให้เป็นไปตามคำสั่งดังกล่าว และรายงานให้พนักงาน
เจ้าหน้าที่หรือศาลทราบ

(๕) ในกรณีที่มีคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์อย่างอื่น นอกจาก (๑) (๒) (๓) และ (๔) ให้ศูนย์ปฏิบัติการดำเนินการให้เป็นไปตามคำสั่งนั้น หากไม่สามารถดำเนินการได้ให้รายงานให้พนักงานเจ้าหน้าที่หรือศาลทราบ

(๖) รับเรื่องเกี่ยวกับการฝ่าฝืนหรือไม่ปฏิบัติตามคำสั่งของพนักงานเจ้าหน้าที่หรือศาลและรายงานให้พนักงานเจ้าหน้าที่หรือศาลทราบ

(๗) ประสานงานกับองค์กรปกครองส่วนท้องถิ่น เครือข่ายชุมชน หน่วยงานของรัฐหรือเอกชนที่เกี่ยวข้อง ในการติดตามเพื่อให้มีการปฏิบัติให้เป็นไปตามคำสั่งของพนักงานเจ้าหน้าที่หรือศาล และรายงานข้อเท็จจริงหรือพฤติการณ์ที่เปลี่ยนแปลงไปเกี่ยวกับความสัมพันธ์ระหว่างผู้กระทำความรุนแรงในครอบครัวและผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ตลอดจนสมาชิกในครอบครัว เพื่อให้ศาลพิจารณาไต่สวนและมีคำสั่งแก้ไขเพิ่มเติม เปลี่ยนแปลง หรือเพิกถอนคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์ หรือคำสั่งใด ๆ รวมทั้งกำหนดเงื่อนไขเพิ่มเติม

ข้อ ๖ ในกรณีที่ศาลกำหนดให้ใช้วิธีการตามมาตรา ๑๒ วรรคหนึ่ง แทนการลงโทษผู้กระทำความผิด ให้ศูนย์ปฏิบัติการติดตามและประสานงานกับบุคคล หน่วยงานของรัฐหรือเอกชนที่เกี่ยวข้อง เพื่อดำเนินการให้เป็นไปตามวิธีการดังกล่าว และรายงานให้ศาลทราบ

ข้อ ๗ ในกรณีที่มีการขอความ การถอนคำร้องทุกข์ หรือการถอนฟ้องตามมาตรา ๑๒ วรรคสอง ให้ศูนย์ปฏิบัติการดำเนินการ ดังต่อไปนี้

(๑) แจ้งข้อเท็จจริงเกี่ยวกับอายุ ประวัติ ความประพฤติ สุขภาพกายและจิตใจของผู้กระทำความรุนแรงในครอบครัว ผู้ถูกกระทำด้วยความรุนแรงในครอบครัว สมาชิกในครอบครัว มูลเหตุที่ก่อให้เกิดการกระทำความรุนแรงในครอบครัว หรือข้อเท็จจริงอื่นใดที่อาจเป็นประโยชน์ต่อการพิจารณาต่อพนักงานสอบสวนหรือศาล เพื่อใช้ประกอบการพิจารณากำหนดเงื่อนไขในการปฏิบัติตามบันทึกข้อตกลงเบื้องต้นก่อนการขอความ การถอนคำร้องทุกข์ หรือการถอนฟ้อง

(๒) ในกรณีที่พนักงานสอบสวนหรือศาลเห็นสมควรรับฟังความคิดเห็นของผู้เสียหายหรือบุคคลอื่นในครอบครัวประกอบการทำบันทึกข้อตกลงเบื้องต้นก่อนการขอความ การถอนคำร้องทุกข์หรือการถอนฟ้อง ให้ศูนย์ปฏิบัติการประสานงานกับบุคคลที่เกี่ยวข้องเพื่อให้เข้าร่วมแสดงความคิดเห็น

(๓) ในกรณีที่พนักงานสอบสวนหรือศาลกำหนดวิธีการตามมาตรา ๑๒ วรรคหนึ่งเป็นเงื่อนไขในการปฏิบัติตามบันทึกข้อตกลงเบื้องต้นก่อนการขอความ การถอนคำร้องทุกข์ หรือการถอนฟ้อง ให้ศูนย์ปฏิบัติการประสานงานกับกรมคุมประพฤติ กรมพินิจและคุ้มครองเด็กและเยาวชน หน่วยงานของรัฐ หรือเอกชนที่เกี่ยวข้อง เพื่อดำเนินการให้เป็นไปตามเงื่อนไขและรายงานให้พนักงานสอบสวนหรือศาลทราบ

(๔) ติดตามผลการปฏิบัติตามบันทึกข้อตกลงเบื้องต้นก่อนการขอความ การถอนคำร้องทุกข์หรือการถอนฟ้อง และเงื่อนไขตามที่พนักงานสอบสวนหรือศาลกำหนด หาก

- ୫ -

สำนักงานคณะกรรมการกฤษฎีกา

ผู้ต้องหาหรือจำเลยฝ่าฝืนหรือไม่ปฏิบัติตามเงื่อนไข ให้ศูนย์ปฏิบัติการรายงานให้พนักงานสอบสวนหรือศาลทราบ

ข้อ ๘ ให้สำนักงานจัดให้มีการอบรมพนักงานเจ้าหน้าที่ พนักงานสอบสวนและผู้
ประณีประนอมซึ่งทำหน้าที่ให้คำปรึกษาหรือไกล่เกลี่ยเพื่อการคุ้มครองผู้ถูกระทำด้วยความ
รุนแรงในครอบครัว ตามหลักสูตรที่กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์กำหนด
ทั้งนี้ หน่วยงานที่เกี่ยวข้องจะจัดการอบรมเองตามหลักสูตรที่กระทรวงการพัฒนาสังคมและความ
มั่นคงของมนุษย์กำหนด โดยให้สำนักงานมีหน้าที่สนับสนุนด้วยการให้ข้อมูล เอกสารหรือสิ่งอื่น
ใดในการจัดอบรม หรือจะส่งบุคลากรของตนเข้ารับการอบรมซึ่งจัดโดยสำนักงานก็ได้

ให้ไว้ ณ วันที่ ๒ เมษายน พ.ศ. ๒๕๕๓
อิสสระ สมชัย

อิสระ สมชัย

สำนักงานคณะกรรมการการเลือกตั้ง
รัฐมนตรีว่าการกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์

- ๕ -

สำนักงานคณะกรรมการกฤษฎีกา

หมายเหตุ :- เหตุผลในการประกาศใช้กฎกระทรวงฉบับนี้ คือ โดยที่มาตรา ๑๓ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ บัญญัติให้กระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์จัดให้มีระบบงานเพื่อสนับสนุนการดำเนินงานและการบังคับให้เป็นไปตามมาตรา ๑๐ มาตรา ๑๑ และมาตรา ๑๒ แห่งพระราชบัญญัติดังกล่าวโดยกำหนดในกฎกระทรวง จึงจำเป็นต้องออกกฎกระทรวงนี้

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

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สำนักงานคณะกรรมการกฤษฎีกา

ปริยานุช/พิมพ์

๒๗ เมษายน ๒๕๕๓

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

นันทน์ภัสร์/ตรวจ

๒๗ เมษายน ๒๕๕๓

สำนักงานคณะกรรมการกฤษฎีกา

สำนักงานคณะกรรมการกฤษฎีกา

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สำนักงานคณะกรรมการกฤษฎีกา

APPENDIX C

สำนักงานคณะกรรมการกฤษฎีกา

ระเบียบอธิบดีผู้พิพากษาศาลเยาวชนและครอบครัวกลาง
ว่าด้วยหลักเกณฑ์ วิธีการและระยะเวลาการดำเนินการแก่ผู้กระทำความรุนแรง
ในครอบครัว แทนการลงโทษและเงื่อนไขการยอมความ
การถอนคำร้องทุกข์ หรือการถอนฟ้อง
พ.ศ. ๒๕๕๐

อาศัยอำนาจตามความในมาตรา ๑๒ วรรคท้าย แห่งพระราชบัญญัติคุ้มครอง
ผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ อธิบดีผู้พิพากษาศาลเยาวชนและ
ครอบครัวกลาง เห็นควรออกระเบียบกำหนดหลักเกณฑ์ วิธีการและระยะเวลาการดำเนินการแก่
ผู้กระทำความรุนแรงในครอบครัว แทนการลงโทษและเงื่อนไขการยอมความ การถอนคำร้องทุกข์
หรือการถอนฟ้องเพื่อให้การดำเนินการ เป็นไปด้วยความเรียบร้อยตามบทบัญญัติดังกล่าวไว้
ดังต่อไปนี้

ข้อ ๑ ระเบียบนี้เรียกว่า “ระเบียบอธิบดีผู้พิพากษาศาลเยาวชนและครอบครัว
กลางว่าด้วยหลักเกณฑ์ วิธีการ และระยะเวลาการดำเนินการแก่ผู้กระทำความรุนแรงในครอบครัว
แทนการลงโทษและเงื่อนไขการยอมความ การถอนคำร้องทุกข์หรือการถอนฟ้อง พ.ศ. ๒๕๕๐”

ข้อ ๒ ระเบียบนี้ให้ใช้บังคับตั้งแต่วันที่ ๑๒ พฤศจิกายน ๒๕๕๐ เป็นต้นไป

ข้อ ๓ ให้ศาลใช้ดุลพินิจพิจารณากำหนดว่าจะใช้วิธีการฟื้นฟู บำบัดรักษา คุณ
ความประพฤติดูแลผู้กระทำความผิด ให้ผู้กระทำความผิดชดใช้เงินช่วยเหลือบรรเทาทุกข์ ทำงาน
บริการสาธารณะ ละเว้นการกระทำความผิดเป็นเหตุให้เกิดการใช้ความรุนแรงในครอบครัวหรือทำทัณฑ์
บนไว้อย่างใดอย่างหนึ่งหรือหลายอย่างรวมกัน แทนการลงโทษแก่ผู้กระทำความผิดนั้นก็ได้โดยให้
พิจารณาถึงสาเหตุแห่งการกระทำความผิด พฤติการณ์แห่งคดี อายุ ประวัติ ความประพฤติด
สติปัญญาการศึกษาอบรม สุขภาพ ภาวะแห่งจิต นิสัย อาชีพ และฐานะของผู้กระทำความผิด
ตลอดจนสิ่งแวดล้อมทั้งปวงเกี่ยวกับผู้กระทำความผิด ประกอบดุลพินิจที่จะใช้วิธีการดังกล่าวให้
เหมาะสมกับผู้กระทำความผิดแต่ละราย และเหมาะสมกับพฤติการณ์เฉพาะเรื่อง โดยมุ่งถึงความ
สงบสุข และการอยู่ร่วมกันในครอบครัวเป็นสำคัญ และศาลอาจสอบถามหรือรับฟังความคิดเห็น
ของผู้เสียหายหรือบุคคลในครอบครัวประกอบดุลพินิจด้วยก็ได้

ข้อ ๔ วิธีการฟื้นฟูและบำบัดรักษาผู้กระทำความผิดแทนการลงโทษนั้น ศาลอาจ
กำหนดข้อเดียวหรือหลายข้อ ดังต่อไปนี้

(๑) ให้ฟื้นฟูโดยการอบรมผู้กระทำความผิด ด้วยการว่ากล่าวตักเตือนหรือให้เข้าร่วมโครงการฝึกอบรมทางศีลธรรมหรือฝึกวินัยหรือโครงการอื่น เป็นระยะเวลาและในสถานที่ที่เหมาะสมตามที่ศาลเห็นสมควร แต่ทั้งนี้เป็นเวลาไม่เกิน ๗ วัน

(๒) ให้เข้ารับการรักษาฟื้นฟูบำบัดรักษาเกี่ยวกับอาการติดยาเสพติดให้โทษ ในสถานพยาบาลสถานที่ของราชการ หรือสถานที่อื่นที่เห็นสมควร จนกว่าจะครบขั้นตอนการบำบัด แต่ทั้งนี้เป็นเวลาไม่เกิน ๖ เดือนนับแต่วันถูกส่งตัวเข้ารับการรักษา ฟื้นฟูบำบัดมีเหตุจำเป็นอย่างอื่นโดยคำนึงถึงอายุ เพศ ประวัติ พฤติกรรมในการกระทำความผิดที่เกิดจากการติดยาเสพติดให้โทษตลอดจนสภาพแวดล้อมทั้งปวงของผู้กระทำความผิดประกอบด้วย และอาจจะให้ผู้กระทำความผิดอยู่ภายใต้การดูแลของพนักงานคุมประพฤติด้วยก็ได้

(๓) ให้ส่งตัวผู้กระทำความผิด ซึ่งมีความบกพร่องทางร่างกายและจิตใจ หรือความเจ็บป่วยอย่างอื่น ไปบำบัดรักษายังโรงพยาบาล สถานที่ของราชการหรือสถานที่อื่นที่เห็นสมควรหรือมอบให้แก่ผู้อื่นที่เต็มใจรับไปดูแลรักษาได้ตามแต่ศาลจะเห็นสมควรจนกว่าผู้นั้นจะหาย หรือตามระยะเวลาที่ศาลเห็นสมควรกำหนดเป็นเวลาไม่เกิน ๑ ปี เว้นแต่มีเหตุจำเป็นอย่างอื่น

(๔) ให้ส่งตัวผู้กระทำความผิดเข้ารับการรักษาบำบัดรักษาอาการติดยาหรือของมึนเมาอย่างอื่นในสถานพยาบาล สถานที่ของราชการหรือสถานที่อื่นที่เห็นสมควร จนกว่าจะหายจากการติดยาหรือของมึนเมาอย่างอื่น แต่ทั้งนี้เป็นเวลาไม่เกิน ๖ เดือนนับแต่วันที่ถูกส่งตัวเข้ารับการรักษา ฟื้นฟูบำบัดมีเหตุจำเป็นอย่างอื่น

ข้อ ๕ วิธีการคุมความประพฤติผู้กระทำความผิดแทนการลงโทษนั้น ให้ศาลกำหนดให้ผู้กระทำความผิดไปรายงานตัวต่อพนักงานคุมประพฤติหรือพนักงานสังคมสงเคราะห์ หรือบุคคลอื่นที่ศาลเห็นสมควรทุก ๓ เดือนต่อครั้งเป็นเวลาไม่เกิน ๑ ปี หรือระยะเวลาที่เห็นสมควรแต่ไม่เกิน ๑ ปี เพื่อให้คำแนะนำช่วยเหลือ ตักเตือนในเรื่องความประพฤติและการประกอบอาชีพ โดยอาจจะกำหนดเงื่อนไขเพื่อคุมความประพฤติข้อเดียวหรือหลายข้อ ดังต่อไปนี้ด้วยก็ได้

(๑) ห้ามมิให้ผู้กระทำความผิดเข้าไปในสถานที่อันมุ่งใจให้ประพฤติชั่วหรือกระทำการใดอันเป็นเหตุให้ประพฤติชั่ว

(๒) ให้ฝึกหัดหรือประกอบอาชีพอันเป็นกิจจะลักษณะ

(๓) ให้ละเว้นการคบหาสมาคมหรือการประพฤติใดอันอาจนำไปสู่การกระทำความผิดอีก

(๔) ห้ามเล่นการพนันหรือห้ามดื่มสุราหรือเสพสิ่งเสพติดทุกชนิดและอาจให้ไปรับการบำบัดรักษาการติดยาหรือสิ่งเสพติดหรือความบกพร่องทางร่างกายและจิตใจ หรือความเจ็บป่วยอย่างอื่น ณ สถานพยาบาลหรือสถานที่อื่นที่เห็นสมควร ตามระยะเวลาที่ศาลกำหนด เป็นเวลาไม่เกิน ๖ เดือนนับแต่วันที่ถูกส่งตัวเข้ารับการรักษา ฟื้นฟูบำบัดมีเหตุจำเป็นอย่างอื่น

สำนักงานคณะกรรมการการกฤษฎีกา สำนักงานคณะกรรมการการกฤษฎีกา สำนักงานคณะกรรมการการกฤษฎีกา

- ๓ -

สำนักงานคณะกรรมการกฤษฎีกา

(๕) เจื่อนไซอื่น ๆ ตามที่ศาลเห็นสมควรกำหนด เพื่อแก้ไขฟื้นฟู หรือป้องกันมิให้ผู้กระทำความผิดกระทำหรือมีโอกาสกระทำความผิดซ้ำขึ้นอีก

เจื่อนไซตามที่ศาลได้กำหนดดังกล่าวนี้ ถ้าภายหลังความปรากฏแก่ศาลว่า พฤติการณ์เกี่ยวแก่การคุมความประพฤติได้เปลี่ยนแปลงไป ศาลอาจแก้ไขเพิ่มเติมหรือเพิกถอน ข้อหนึ่งข้อใดหรือกำหนดเจื่อนไซเพิ่มเติมที่ยังไม่ได้กำหนดอีกก็ได้

ข้อ ๖ วิธีการให้ผู้กระทำความผิดชดใช้เงินช่วยเหลือบรรเทาทุกข์แทนการลงโทษ นั้นให้ศาลกำหนดให้ผู้กระทำความผิดชดใช้ค่าเสียหายเบื้องต้น สำหรับเงินหรือทรัพย์สินใด ๆ ที่ ผู้เสียหายได้สูญเสียไป เพราะผลของการกระทำความผิดนั้น ตามจำนวนเงินและระยะเวลาที่ กำหนดให้ชำระตามที่ศาลเห็นสมควรกำหนด โดยเฉพาะค่าเสียหายดังต่อไปนี้ ให้กำหนดดังนี้

(๑) สำหรับรายได้ที่สูญเสียไป ให้ชดใช้ค่าเสียหายเบื้องต้นในวงเงินที่สูญเสียไป แต่ทั้งนี้ไม่เกินวงเงิน ๕๐,๐๐๐ บาท เว้นแต่มีเหตุสมควรอย่างอื่น

(๒) ค่าใช้จ่ายในการรักษาพยาบาล ให้ชดใช้เบื้องต้นเท่าที่ผู้เสียหายได้ใช้จ่ายไป จริง แต่ทั้งนี้ไม่เกินวงเงิน ๕๐,๐๐๐ บาท เว้นแต่มีเหตุสมควรอย่างอื่น

(๓) ค่าใช้จ่ายในการหาที่อยู่ใหม่ ให้ชดใช้เบื้องต้นเท่าที่ผู้เสียหายได้ใช้จ่ายไป จริง แต่ทั้งนี้ไม่เกินเดือนละ ๔,๐๐๐ บาท เป็นเวลาไม่เกิน ๑ ปี เว้นแต่มีเหตุสมควรอย่างอื่น

(๔) ค่าใช้จ่ายอื่น ๆ ที่จำเป็น ให้ชดใช้เบื้องต้นตามที่จำเป็น ตามจำนวนเงินและ ระยะเวลาที่กำหนดให้ชำระตามที่ศาลเห็นสมควรกำหนด แต่ทั้งนี้ไม่เกินวงเงิน ๕๐,๐๐๐ บาท เว้น แต่มีเหตุสมควรอย่างอื่น

ข้อ ๗ การให้ทำงานบริการสาธารณะแทนการลงโทษนั้น ให้ศาลกำหนดประเภท ของการทำงานบริการสาธารณะประโยชน์ สถานที่ และระยะเวลาตามที่ศาลและผู้กระทำความผิด เห็นสมควร แต่ทั้งนี้ ไม่ควรกำหนดให้เกินวันละสามชั่วโมง และไม่เกินเจ็ดวัน โดยให้พิจารณา ด้วยว่าการทำงานนั้น ต้องไม่ก่อความเสียหายแก่สังคมหรือบุคคลอื่นและไม่ก่อให้เกิดภาระเกิน สมควรทั้งให้พิจารณาจากวิถีชีวิต การดำรงชีพ ความรับผิดชอบต่อครอบครัวและพิจารณาจาก ลักษณะหรือประเภทและความเหมาะสมของงาน รวมทั้งระยะทางและความสะดวกในการเดินทาง ไปทำงานด้วย

ข้อ ๘ การให้ละเว้นการกระทำอันเป็นเหตุให้เกิดการใช้ความรุนแรงใน ครอบครัวแทนการลงโทษ เมื่อศาลเห็นว่าตามพฤติการณ์แห่งคดี ยังไม่สมควรลงโทษผู้กระทำความผิด แต่การกระทำของผู้กระทำความผิดอย่างใดอย่างหนึ่งเป็นเหตุให้เกิดการใช้ความรุนแรง ในครอบครัว ศาลมีอำนาจที่จะสั่งห้ามมิให้ผู้กระทำความผิดกระทำหรือให้ละเว้นการกระทำ ดังกล่าว หรือมีคำสั่งอื่นใดในอันที่จะบรรเทาความเดือดร้อนเสียหายที่ผู้เสียหาย อาจได้รับต่อไป เนื่องจากการกระทำของผู้กระทำความผิด ตามที่ศาลเห็นสมควรได้ โดยศาลอาจกำหนดเจื่อนไซ เพิ่มเติมให้ผู้กระทำความผิดปฏิบัติเพื่อป้องกันมิให้ผู้นั้นกระทำความผิดซ้ำขึ้นอีกก็ได้ตามแต่ศาลจะ เห็นสมควร ภายในระยะเวลาไม่เกิน ๑ ปี เว้นแต่มีเหตุสมควรอย่างอื่น

ข้อ ๙ การทำทัณฑ์บนแทนการลงโทษ เมื่อศาลเห็นว่าตามพฤติการณ์แห่งคดียังไม่สมควรลงโทษผู้กระทำความผิด แต่มีเหตุอันควรเชื่อว่าผู้กระทำความผิดอาจจะก่อเหตุร้าย ให้เกิดอันตรายแก่บุคคลในครอบครัวขึ้นอีก ให้ศาลมีอำนาจที่จะสั่งให้ผู้นั้นทำทัณฑ์บนไว้โดยกำหนดจำนวนเงินไม่เกินห้าพันบาท ว่าผู้นั้นจะไม่ก่อเหตุร้ายดังกล่าวอีกตลอดระยะเวลาที่ศาลกำหนดแต่ไม่เกินสองปี และจะสั่งให้ประกันด้วยหรือไม่ก็ได้

ถ้าผู้ทำทัณฑ์บนกระทำความผิดทัณฑ์บน ให้ศาลมีอำนาจสั่งให้ผู้นั้นชำระเงินไม่เกินจำนวนที่ได้กำหนดไว้ในทัณฑ์บน ถ้าผู้นั้นไม่ชำระให้นำบทบัญญัติในประมวลกฎหมายอาญา มาตรา ๒๙ และมาตรา ๓๐ มาใช้บังคับ เว้นแต่ผู้ทำผิดทัณฑ์บนเป็นเด็กหรือเยาวชนให้นำบทบัญญัติตามพระราชบัญญัติจัดตั้งศาลเยาวชนและครอบครัวและวิธีพิจารณาคดีเยาวชนและครอบครัว พ.ศ. ๒๕๓๔ มาตรา ๑๐๗ มาใช้บังคับ

ข้อ ๑๐ ในกรณีที่มีการยอมความ การถอนคำร้องทุกข์หรือการถอนฟ้องในความผิดตามมาตรา ๔ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ ให้ศาลจัดให้มีการทำบันทึกข้อตกลงเบื้องต้นก่อนการยอมความ การถอนคำร้องทุกข์หรือการถอนฟ้องนั้น และกำหนดให้นำวิธีการตามข้อ ๔ ถึงข้อ ๙ ข้อเดียวหรือหลายข้อ มาเป็นเงื่อนไขในการปฏิบัติตามบันทึกข้อตกลงดังกล่าวโดยอนุโลม โดยอาจรับฟังความคิดเห็นของผู้เสียหายหรือบุคคลในครอบครัวประกอบด้วยก็ได้ หากได้ปฏิบัติตามบันทึกข้อตกลงและเงื่อนไขดังกล่าวครบถ้วนแล้วจึงให้มีการยอมความ การถอนคำร้องทุกข์ หรือการถอนฟ้องในความผิดดังกล่าวได้ หากจำเลยฝ่าฝืนหรือไม่ปฏิบัติตามเงื่อนไขดังกล่าว ในข้อนี้หรือข้ออื่น ๆ ข้อใดข้อหนึ่ง ให้ศาลมีอำนาจยกคดีขึ้นดำเนินการต่อไป

ประกาศ ณ วันที่ ๒๔ กันยายน พ.ศ. ๒๕๕๐

สนธิ ตระกูลพรายงาม

อธิบดีผู้พิพากษาศาลเยาวชนและครอบครัวกลาง

๖ พฤศจิกายน ๒๕๕๐

BIOGRAPHY

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WORK EXPERIENCE

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2000-2003	Investigator at Office of the Ombudsman
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