



GEORGIA COMMISSION ON FAMILY VIOLENCE

*2 Martin Luther King Jr. Drive
Suite 1570, East Tower
Atlanta, Georgia 30334
(404) 657-3412 (phone) * 404-656-3987 (fax)*

A MODEL PROSECUTORIAL PROTOCOL FOR FAMILY VIOLENCE INCIDENTS

INTRODUCTION

Family violence is abuse that occurs between family members or unmarried partners. One person in the relationship gains power and control over the other by using physical, sexual and/or emotional force. Family violence can occur between husbands and wives, ex-spouses, dating partners, adult children and aging or ailing parents, same-gender couples, parents and children or caregivers and clients. The vast majority of victims are women.

I. POLICY STATEMENT

It is the policy of the department to fully investigate and prosecute to the fullest extent family violence incidents; to operate under objective, consistent and definable policies not governed by the subjective considerations of reluctant victims; to move to provide protection and assistance to victims of family violence; and to inform involved parties of the various services that may be available to them within the Criminal Justice System, from social service agencies and other community services.

(ADMINISTRATIVE DIRECTIVE)

The administration of each prosecutor's office should write a policy statement directing implementation of the policy.

II. DEFINITIONS

- A. Official Code of Georgia Annotated, §19-13-1 defines family violence as the occurrence of one or more of the following acts between past or present spouses, persons who are

parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

1. Any felony; or
2. Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention. (Ga. L. 1981, p. 880, § 1; Ga. L. 1988, p. 1251, § 2; Ga. L. 1992, p. 1266, § 3; Ga. L. 1993, p. 1534, § 3.)

B. A protective order, relating to acts of family violence, is described in Official Code of Georgia Annotated §19-13-4 as follows:

1. The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The orders or agreements may:
 - a. Direct a party to refrain from such acts;
 - b. Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
 - c. Require a party to provide suitable alternate housing for a spouse and his or her children;
 - d. Award temporary custody of minor children and establish temporary visitation rights;
 - e. Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
 - f. Order either party to make payments for the support of a minor child as required by law;

- g. Order either party to make payments for the support of a spouse as required by law;
 - h. Provide for possession of personal property of the parties;
 - i. Order a party to refrain from harassing or interfering with the other;
 - j. Award costs and attorney's fees to either party; and
 - k. Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.
2. A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.
- C. A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section. Ga.L. 1993, p. 788, S 1.
- D. Penalties are provided for violation of protective orders issued by the Court. According to Official Code of Georgia Annotated §19-13-6(b), "[a]ny person who violates the provisions of a domestic violence order which excludes, evicts, or excludes and evicts that person from a residence or household shall be guilty of a misdemeanor."

III. PROCEDURES FOR PROSECUTING FAMILY VIOLENCE CASES

Violent behavior in the home or in intimate relationships is criminal behavior and it will not be tolerated, minimized or mediated solely because of its characterization as a "domestic matter." The following are general statements of the procedures which will be utilized to facilitate this basic philosophy regarding family violence cases:

- A. The victim in a family violence case cannot "drop" charges or "press" charges once the

- case is submitted to the prosecutor from the law enforcement agency. The decision whether or not to proceed with prosecution of the case is made solely by the prosecutor.
- B. Charges will be prosecuted without victim cooperation if there is deemed to be sufficient independent evidence to prove the elements of the crime(s) without the victim's full involvement.
 - C. Once subpoenaed, if a victim fails to appear in court he/she will be treated as any other witness who fails to submit to an authorized subpoena. The case will not be dismissed solely due to the victim's failure to appear.
 - D. The prosecutor will not offer or agree to reduce a family violence charge to a lesser offense unless after a thorough investigation and a discussion with the victim it is determined that the ends of justice are served thereby. This policy recognizes the seriousness of this type of crime, and communicates that to the extent violent behavior in the home is deemed criminal, it will not be tolerated.
 - E. Once an indictment has been returned, or an accusation has been filed, the prosecutor **will not** move to dismiss the charges merely because a victim is reluctant to cooperate. The case will proceed until the defendant either enters a plea or is tried by a judge or jury.

Identification and Assignment of Cases

All paperwork concerning family violence matters should be clearly designated as such **before** it is transferred from the law enforcement agency to the prosecutor's office. If "family violence" paperwork has not been previously so designated, then as soon after receipt as it is realized to be such, it should be prominently marked as a family violence case, e.g., by use of the designation "F.V." or use of a family violence cover sheet.

Once identified, family violence matters should be assigned, whenever possible, to an attorney

who has been designated to deal specifically with these types of cases. From the time of assignment, strong preference should be given to "vertical prosecution"; i.e., if an attorney is initially assigned a particular case, then that attorney should handle the case until its final disposition.¹

Initial Screening and Case Preparation

¹Larger offices are, of course, in a better position to establish a family violence prosecution unit, or otherwise provide a specialized response to these cases. However, even if a single prosecutor only handles family violence cases part-time, the use of a designated and specialized person consolidates the handling of the cases. Specialization will also afford consistency for judges, law enforcement officers and - most importantly victims as they deal with the prosecutor on family violence cases.

Cases, once assigned, should be initially reviewed by the prosecutor, if possible, within **three days** of their receipt. Those cases with photographed visible injuries or documented medical treatment should be given priority². Any medical treatment that was received needs to be documented in the reports of law enforcement which are submitted to the prosecutor. This documentation should include a copy of medical records and the pre-hospital patient intake form. In addition, the investigating officer should identify by name, address and phone number any emergency medical services personnel who dealt with the victim at the scene.

In conducting the initial screening of a case, the prosecutor should consider the facts of the case in light of the following:

- A. The extent or seriousness of the injuries;
- B. Use of a gun or other weapon;
- C. Defendant's prior criminal history;
- D. Past history of violence, whether charged or uncharged;
- E. Existence of court order affecting case (e.g. temporary protective order, peace bonds, etc.);
- F. Status of defendant's arrest;
- G. Victim cooperation; and
- H. Presence of independent evidence of the extent of any violence.

Every effort should be made by the prosecuting attorney to contact the victim within **five days** of receipt of a case. During the initial contact, the following information should be reviewed with the

² "Visible injuries" refers to scratches, bruises, abrasions or contusions which the victim suffers from a family violence incident. "Medical treatment" refers to treatment of the victim by emergency medical services personnel (paramedics, fire fighters, etc.) or medical personnel (doctors, nurses, etc).

victim:

- A. From this point on, he/she does not "press" or "drop" charges;
- B. His/Her sole responsibility is to testify truthfully in court regarding the incident;
- C. He/She is a witness to criminal conduct;
- D. The parties in the action are the State of Georgia and the defendant;
- E. Ask the victim when the defendant first talked to her/him after the incident; and what was said;
- F. Ask about defendant's family and the victim's; who has called victim; what they have said; e.g., have there been threats, promises or requests made to the victim to induce him/her to drop the charges;
- G. Evaluate the impact of threats, intimidation, economic support issues, children, length of the relationship, history of abuse, low self-esteem, drugs or alcohol;
- H. Convey to the victim that he/she is not responsible for defendant's violence - the defendant bears the responsibility for his/her behavior;
- I. Do not try to get the victim out of the relationship;
- J. Make sure the victim understands how kind and loving defendant will be while the case is pending;
- K. Encourage victim and tell him/her they are not alone;
- L. Determine whether victim has received a victim assistance pamphlet and, if not, furnish the same to them³ . If available, offer referral to the nearest shelter or victim witness assistance program. The victim should be advised that cooperation with the prosecution is a prerequisite to the possibility of receipt of any victim compensation.
- M. Explain the consequences which may follow if the victim refuses to abide by a subpoena

issued by the Court.

If the victim relays information to the prosecutor about the incident, this information should be recorded or reduced to writing, signed and dated by the victim. If at all possible, this interview should be videotaped.

In the event that the victim is hostile or otherwise unwilling to cooperate with the attorney in the prosecution of the case, it will then be necessary for the prosecutor to determine if there exists sufficient **independent evidence** to prove the elements of the crime(s) charged. Such independent evidence may include:

- A. Injuries observed by a person other than the victim;
- B. Medical reports which indicate injuries;
- C. Eyewitnesses to the crime(s);
- D. Witnesses who heard noises indicating that a family violence incident was occurring, i.e., screams, furniture being thrown, etc.
- E. A 911 tape with statements of a victim, witness, and/or defendant;
- F. Presence of physical evidence, i.e., weapon, broken furniture, disarray, torn clothes, etc.;
- G. Admissions by the defendant;
- H. Any and all photographic evidence gathered at the scene or subsequently.

If sufficient independent evidence exists, then criminal charges should be pursued by the prosecutor, irrespective of the desires of the victim. If such evidence is not available and the victim is unwilling or unable to cooperate in the prosecution of the case, then the prosecutor should dismiss all charges and **immediately** notify the victim of this action. Even if a lack of evidence requires dismissal, however, the prosecutor should maintain on file information concerning the incident. An

³A sample of a victim assistance pamphlet is included as Attachment 1.

index should be kept, referenced by defendant's name and cross-referenced by the victim's name. Finally, if a victim indicates that he/she will cooperate with the prosecution of a case, then charges may be pursued even without the existence of independent evidence.

Notwithstanding any of the foregoing, the prosecuting attorney should file an Affidavit and Accusation or proceed to the Grand Jury once the following preparations have been made:

- A. Corroborating witnesses have been interviewed;
- B. Names, addresses and phone numbers of **all** witnesses are included in the case file;
- C. A complete criminal history of the defendant is included;
- D. 911 tape has been ordered;
- E. Medical treatment reports have been obtained;
- F. Reports of prior incidents of family violence by the same defendant are attached;
- G. A copy of the temporary protective order and proof of service - when applicable - has been obtained;
- H. Photographs of the victim's injuries have been received and reviewed;
- I. Contact has been made with the victim-witness assistant, shelter personnel, etc. assigned to handle the victim's case.

Pre-trial Proceedings

Bonds and Bond Revocations.

The prosecuting attorney's position as to bond will, of course, be based on the specific fact situation presented in a case. In making this decision, the prosecutor must be thoroughly informed as to:

- A. Whether or not there is a history of abuse;
- B. The seriousness of the current offense;
- C. Use of a weapon;

- D. Substance abuse;
- E. Whether or not there have been death threats; and
- F. Whether or not the victim is afraid of the defendant.

If the Court indicates an intention to grant a bond to the defendant, the prosecutor should, whenever possible, argue for those conditions and prerequisites which will assure the safety and welfare of the victim, e.g., such as "no contact" provisions, requiring the defendant not to have **any** contact with the victim, providing possession of the residence to the victim and excluding the defendant while the criminal case is pending, requiring the defendant to make payments to support his/her minor children as required by law, etc. In addition, the attorney should inform the victim as to the possibility of civil remedies, such as temporary protective orders and restraining orders, and to provide information as to those agencies which would be able to assist in obtaining such relief.

If the conditions of a bond previously set have been violated, the prosecuting attorney should immediately file a Motion To Revoke Bond, and should actively participate in the bond revocation hearing.

Preliminary Hearings

The prosecutor should use preliminary hearings, when feasible, to corroborate and protect the State's case; however, this must be balanced against the welfare of a particular victim. For instance, as a general rule the victim in a family violence case should testify at preliminary hearings to preserve their testimony and to allow them to experience testifying in a setting resembling a trial. However, if the defendant and his/her family intend to threaten and harass the victim into not cooperating with the State, it would be wise to limit the victim's contact with the defendant, especially in cases involving small children. Even when a victim is cooperative and testifies at a preliminary hearing, his/her testimony should be recorded for later use if necessary.

Motions

When a defendant has engaged in similar transactions - whether or not they have involved the current victim, and whether or not they have resulted in convictions - the prosecuting attorney should give notice of his/her intention to introduce the same at trial. A hearing pursuant to Uniform Superior Court Rule 31.3, should be held as soon as possible after an affidavit and accusation or indictment has been filed. Often, a defendant will attempt at trial to put the victim on trial by placing her/his alleged misconduct before the jury. The prosecutor should move in limine to provide the victim with protection against such tactics to the full extent that the law allows. Notices regarding similar transactions of the defendant, motions in limine, and any other motions of the prosecution should be in writing.

Trial

A. General Considerations.

Once a family violence case has been set for trial, the victim should be informed by the prosecutor or a victim-witness assistant regarding the trial date and the nature of the victim's responsibilities regarding the testimony at trial. The victim's address should be verified at this time and he/she should be served with a subpoena. If a victim who has been served with a subpoena subsequently fails to appear on the day of trial, the assigned prosecutor will request a warrant be issued for his/her arrest. The charges will not be dismissed by the State if the victim fails to appear for trial after being subpoenaed. At times, a victim may be cooperative soon after the trial, but later become uncooperative with the prosecution. If this occurs, or there appears a likelihood that it may occur, the prosecutor should inform the victim - and defense counsel - that the change in attitude

⁴ For instance, a defendant's notice to the State regarding intention to place in evidence the character of victim.

⁵ Of course, an alternative response to the victim's failure to appear could be the issuance of a citation for contempt.

will not result in dismissal of the charges; the prosecution will proceed until the defendant pleads guilty or is tried by a jury if there was, in fact, a reasonable likelihood of conviction at the time charges were filed. Any young children who are either to testify as a victim or witness should be introduced to the courtroom and its surroundings prior to trial.

B. Trial Notebook

Each District Attorney and Solicitor's office should develop a Family Violence Trial Notebook to assist their family violence unit or individual attorney in the prosecution of family violence crimes. The notebook should be updated semi-annually by the prosecutor(s) assigned to handle these cases. Pertinent case law, statutes and other information should be indexed for quick access. Although the particular format for the notebook will depend on the preferences of individual prosecutors, the following is a sample index of topics and the considerations which should be included:

1. **PRE-TRIAL**

- a. Bond-Prerequisites
- b. Temporary Protective Orders
- c. Bond Revocations
- d. Similar Transactions
- e. Prior Difficulties
- f. Motions
- g. Voir Dire

2. **TRIAL**

- a. Opening
- b. Victims

- c. Spousal Immunity
- d. Unavailable Witnesses
- e. Hearsay
- f. Experts
- g. Medical Records
- h. Child Witnesses
- i. Other Witnesses
- j. Cross-examination of Defendant
- k. Rebuttal
- l. Jury Charges
- m. Closing

3. **POST-TRIAL**

- a. Sentencing
- b. Probation Revocations

C. Jury Selection

The jury selection process should be used to focus jurors on the fact that the **State** is prosecuting the case, the victim is not a party in the action, victims do not press charges, family violence is a crime and not "merely a family matter", etc.; questions should be framed so as to relay this information and to identify those prospective jurors who may disagree with these principles. Although it is impossible to identify a person opposed to these concepts simply by occupation, sex, etc., there may be some potentially weak jurors which the prosecutor should be aware of in making selections for service. For example, a survivor of family violence may be less sympathetic to the victim if the survivor left the relationship without intervention of the criminal justice system; the

"good ol= boy" may view concerns with family violence as a threat to the family; professional women may view the chronic female victim negatively due to a difference in personal philosophy or motivation. The prosecutor's observations and other information in this regard should be included for reference in the Trial Notebook.

D. Strategy Considerations

The particular strategy to use in prosecuting a family violence crime will depend, of course, on the specific facts and nuances of each case. However, there are certain considerations which the prosecutor should review in every case in developing his/her trial strategy:

1. Consideration should be given to having the victim seated. at the table with the prosecutor during the trial in appropriate cases, if the Court permits.
2. The ordering of witnesses should be done so as to emphasize the State's role in the case. For example, putting officers on the stand first should accomplish this goal.
3. Uncooperative victims should be treated carefully. Questions to him/her should be phrased in a manner which will develop their motive to lie to protect the defendant.
4. Avoid characterizing the batterer as a devil or a complete reprobate; seek to convey that on the stated dates and times he committed crimes against the State of Georgia.
5. Decide whether to develop a broad picture of the relationship between the victim and defendant, or whether to keep it narrow. This may depend on the nature of other violent incidents and/or unsympathetic acts committed by the victim.
6. Consider using expert testimony on victim and offender dynamics.
7. Consider ways to use hearsay exceptions when confronted with an uncooperative victim. For example, statements the victim made to officers, neighbors, children, etc. as coming within the excited utterance or res gestae exceptions; emergency room records, 911 tapes and printouts, paramedics and fire department records, etc. as medical or business record exceptions.
8. If children are the victims of or were present during the crime, determine the feasibility of using them in proving the State's case. In making this decision,

⁶See Attachment 2 for a sample Bibliography of available resources.

consider the following:

- a. Competency and credibility of the child;
- b. Type of rapport the attorney has with the child;
- c. Whether using the child at trial will **increase** the risk of future abuse;
- d. What protections and support are available for the child after he/she testifies; and,
- e. Whether the benefits of the child's testimony outweigh the emotional trauma he/she will suffer, and/or the effect it will have on the parent-child relationship.

Sentencing

Upon a plea or verdict of guilty, the prosecuting attorney should explain to the victim what are the parameters of the defendant's sentence. Every effort should be made to incorporate the victim's concerns into the State's recommendations. Care should be taken not to unintentionally punish a victim as a by-product of punishing the defendant, e.g., seeking a large fine will effect the defendant's ability to pay on an existing support order. If appropriate, work programs should be sought as part of the sentence, to allow for ongoing financial support of the family. Whether or not incarceration is requested by the State, long-term counselling for a batterer should always be included in the State's recommendation to the Court. The length of counselling should be determined by the counselor with the approval of the Court. This counselling should **not** include couples counselling or family counselling, and whenever possible should only be conducted by a therapist who is specially trained in family violence.

⁷O.C.G.A. §24-3-16; §24-9-5; *Shaver v. State*, 199 Ga. App. 428(1991).

Appendix F
Attachment 1

Appendix F
Attachment 2

Bibliography

Browne, A. (1987). When Battered Women Kill. United States: The Free Press, New York, New York.

Crocker, Phyllis, L. (1985). "The meaning of equality for battered women who kill men in self defense." Harvard Women's Law Review, 8, 121-153.

Ewing, C.P. (1987). Battered Women who Kill: Psychological Self-Defense as Legal Justification. Lexington, Massachusetts: D.C. Heath.

Gillespie, C. (1989). Justifiable Homicide. Columbus, Ohio: Ohio State University Press.

Jenkins, Pamela and Barbara Davidson. (1990). "Battered Women in The Criminal Justice System: An Analysis of Gender Stereotypes." Behavioral Sciences and the Law, vol. 8, 161-170.

Jones, A. (1980). Women who Kill. New York: Holt, Rinehart and Winston.

Jones, A. (1994). The Next Time She'll Be Dead: Battering and How to Stop It. Boston: Beacon Press.

Sanders, Robert (1989). "Self-defense. Battered Woman Syndrome." The Advocate, August, 37-45.

Schechter, E.M. (1986). "Describing and Changing: Women's Self-defense work and the Problem of Expert Testimony on Battering." Women's Rights Law Reporter, 9, 195-222.

Walker, L.E. (1984). The Battered Woman Syndrome. New York: Springer Publishers.

