

Sexual and Domestic Violence Protocol for Police Prosecutors

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1.00 OBJECTIVE

- 1.1 The objective of this protocol is to provide guidance for police prosecutors prosecuting cases involving domestic violence. On account of the **peculiar vulnerability of victims** of sexual and domestic violence, this protocol provides general **guidance on approaches to prosecuting cases involving domestic violence** and **information about the assistance available** in Guyana to victims of sexual and domestic violence, and other information that may enhance the assistance provided for victims of sexual and domestic violence.
- 1.2 The objective of the prosecution of offences involving domestic violence is to prevent and reduce domestic violence in all its forms by appropriate legal means, to guarantee legal protection, especially safety, to members of the family who are subjects of domestic violence with special attention to children, the elderly and the disabled, to uphold the law, to hold the perpetrator accountable and to provide an opportunity for rehabilitation of the perpetrator if appropriate.

- 1.3 Sexual and domestic violence raise sensitive issues. All agencies and communities need to work in harmony to break the cycle of domestic violence, help the victims take control of their lives and to help perpetrators understand the consequences of their abusive conduct, discontinue their abusive behaviour and reform their approaches to dealing with conflict in domestic relationships.

2.00 GUIDING PRINCIPLES

- 2.1 Every individual has the basic right to a life free from fear and violence. **All forms of violence and intimidation constitute a violation of the individual's basic human rights.** Women and girls are the predominant victims of sexual and domestic violence. Men, boys, the elderly, persons with disabilities and persons of different sexual orientations are also victims of sexual and domestic violence.
- 2.2 Sexual and domestic violence committed against women and girls in particular is a hindrance to the achievement of the objectives of equality, development and peace, and must be condemned in all its forms.
- 2.3 Combating sexual and domestic violence is not the responsibility of any one sector, but a collective responsibility. **Police prosecutors play a critical role in preventing domestic violence and reducing the prevalence of sexual and domestic violence** by ensuring prompt, vigilant and just prosecution of perpetrators.

3.00 GUIDELINES FOR POLICE OFFICERS¹

- 3.1 The role of the prosecutor is to promote safe communities by the prosecution or resolution of criminal cases so as to obtain outcomes that both deter perpetrators of domestic violence and encourage rehabilitation. Prosecutors attempt to work with victims to ensure results that reflect their concerns and needs.
- 3.2 **Referral to support services** – referral of the victim to an appropriate support service agency, is important to effective prosecution of domestic violence cases. Further guidance on the agencies to which referral can be made, the services offered and the steps to be taken in referring victims is given at below.
- 3.3 **Bail Applications** – victims are not parties to criminal prosecutions and therefore are not entitled to be heard when the court decides whether to grant bail and the conditions of bail. It is the responsibility of the prosecutor to bring to the court's attention any factor which may be relevant to a bail application. The prosecutor should solicit relevant information from the

¹ Extracted from the "Guyana Police Force Domestic Violence Policy – Dealing with Reports of Domestic Violence."

victim with a view to making representations regarding bail. See Below for further guidance.

- 3.4 **No Drop policy** – Although the police make the decision to charge in cases where domestic violence constitutes an offence, the key witness is the victim. If a victim decides not to testify or recants earlier allegations, it may be difficult for the prosecutor to proceed. Below provides guidance for police prosecutors in these circumstances.

4.00 WHAT IS DOMESTIC VIOLENCE?

- 4.1 Domestic violence occurs when a family member intimate partner or former intimate partner attempts to physically or psychologically dominate another. It is **intended to control, overpower or dominate the victim** and includes any kind of abusive behaviour that occurs in the home, for example in the following types of relationships (see section 3 Domestic Violence Act):

- parent and child
- siblings, e.g. brother and sister
- relatives or family members, e.g. cousins, aunt, uncle, niece, nephew, grandparent, grandchild
- sexual relationships, including boyfriend/girlfriend, visiting relationships, former intimate partners and persons in same sex relationships. It includes physical, sexual, psychological and verbal abuse, financial control and/or financial restriction, as well intimidation and harassment.

- 4.2 Types of abuse that give rise to domestic violence include:

- 4.2.1 **Physical abuse** – the **intentional use of bodily or actual force** with the potential for causing injury, harm, disability, or death, e.g. hitting, shoving, biting, restraint, kicking, or use of a weapon. It includes indirect physical abuse, which may include destruction of objects, striking or throwing objects near the victim, or harm to the victim. See section 2(o) and 2(h)(i)(B) and (D) Domestic Violence Act.

- 4.2.2 **Psychological abuse** – also called emotional abuse. See section 2(q) Domestic Violence Act. This is a form of abuse characterized by a person subjecting or exposing another to behaviour that is mentally harmful. Psychological abuse involves the **wilful infliction of mental or emotional anguish by threat, humiliation**, or other verbal (see 5.2.3 below) and non-verbal conduct. It is often associated with situations of **power imbalance** and includes preventing the

victim from seeing friends and relatives, actively sabotaging the victim's social relationships, and isolating the victim from social contacts.

- 4.2.3 **Verbal abuse** – a form of abusive behaviour involving the use of language. It is a form of **profanity** in that it can occur with or without the use of expletives. It includes **name calling**, spoken words as well as abusive words in written form that **cause annoyance**. See section 2(h)(i)(A) and 2(h)(vi) Domestic Violence Act.
- 4.2.4 **Financial control or restriction**, also referred to as **economic abuse** – This occurs when the abuser has **control over the victim's money** and other economic resources. Usually, this involves putting the victim on a strict "allowance," **withholding money** at will and **forcing the victim to beg** for the money until the abuser gives them some money and **demanding money from the victim**. It is common for the victim to receive less money as the abuse continues. This also includes (but is not limited to) preventing the victim from finishing education or obtaining employment, or intentionally squandering or misusing communal resources. See section 2(q) Domestic Violence Act.
- 4.2.5 **Intimidation** – Intimidation entails intentional behaviour "which would cause a person of ordinary sensibilities" **fear of injury or harm**. It is not necessary to prove that the behaviour was so violent as to cause terror or that the victim was actually frightened. It is sufficient to show that the violence, conduct or threat was **calculated to coerce the victim into submission** to the perpetrator. See section 2(k) Domestic Violence Act.
- 4.2.6 **Harassment** – This refers to a wide spectrum of offensive behaviour. The term commonly refers to **behaviour intended to disturb or upset**. Generally, it refers to behaviours which *are* found threatening or disturbing. See section 2(h) Domestic Violence Act.
- 4.2.7 **Passive abuse** – This is a form of **covert, subtle and veiled abuse** that often leads to physical violence. It includes victimisation,² procrastination,³ forgetfulness,⁴ ambiguity, neglect, spiritual and intellectual abuse. See section 2(k) and (q) Domestic Violence Act.

4.3 Under the *Domestic Violence Act*, cap 11:09 domestic violence includes, but is not limited to, the following types of conduct (see section 5(1) Domestic Violence Act):

(a) **Following** the victim;

² Punishing or taking revenge on the victim for doing something that displeases the perpetrator/abuser.

³ Taking an inordinately long time to do something that the victim asks or provide something that the victim needs, with the intention of keeping the victim dependent on the perpetrator.

⁴ This entails the perpetrator pretending that s/he has forgotten to do something that would benefit the victim, again with the intention of keeping the victim dependent on the perpetrator.

- (b) **Stalking** places that the victim visits often (e.g. home, school, work, the gym);
- (c) **Taking away or hiding** the victim's **clothes or personal effects**;
- (d) **Threatening the life or safety** of the victim or a person the victim cares for;
- (e) **Threatening to destroy the victim's property**, belittling and demeaning the victim;
- (f) Name calling; and
- (g) Making **unwelcome phone calls** sending unwelcome email or letters to the victim.

- 4.4 In many cases victims may be subjected daily to non-physical forms of abuse, with physical abuse occurring only occasionally. **Non-physical forms of abuse** are just as, or even **more, painful and destructive than physical abuse** and are often a forerunner to physical abuse.
- 4.5 Women and children are the most common victims of domestic violence. However men, elderly persons and persons in same sex relationships can also be victims of domestic violence (See *Guiding Principles* at 2.00 above).

5.00 IMPORTANCE OF SENSITIVITY

- 5.1 Victims of domestic violence often suffer extreme physical and psychological trauma. They may **feel trapped, powerless and vulnerable** as a result of the abuse that they have suffered. Therefore, when dealing with victims of sexual and domestic abuse police officers must **be sensitive to the abuse** that the victims have endured and the likely effects of that abuse.
- 5.2 Prosecutors should always be mindful of the impact that abuse may have on the self-esteem and confidence of victims of domestic violence. Be careful to act in a manner that does not further damage and **undermine their self-esteem and confidence**.
- 5.3 **Accept and believe what the victim tells you.** Do not underestimate the abuse that the perpetrator is capable of inflicting or that the victim has endured. **Do not be judgmental** as this may alienate the victim and discourage her from proceeding with the prosecution. There may be things that a victim may not freely disclose and which influence the victim's decision to discontinue the matter. For example –
- Fear of reprisals if they leave the abuser;
 - Social isolation and limited support systems – feeling that there is no one who can help;
 - Financial dependence on the perpetrator;
 - Unwillingness to cause upheaval in the lives of children;
 - Wanting the violence to stop but not wanting the relationship to end;

- Low self-esteem – feeling of powerlessness and doubting their ability to manage on their own;
 - Self-blame for the abuse and shame in revealing injuries;
 - Feeling that it may be safer to stay in the relationship because violence may escalate if they attempt to leave.
- 5.4 Always **speak in a non-intimidating manner** and be as helpful and considerate as possible. Your attitude towards the victim can affect her decision whether to proceed with the prosecution.

6.00 *SUPPORT SERVICES*

- 6.1 Referral of the victim to an appropriate support service agency, is important to effective prosecution of domestic violence cases. The following steps should be taken:
- (a) The prosecutor's office, upon first contact with a victim, will **advise the victim to seek counseling support** from the **Help and Shelter** and/or the Ministry of Human Services and Social Security, if this has not already been done. The counselors can assist the victim throughout the prosecution of the case and inform him or her of the availability of support and treatment.
 - (b) The prosecutor will attempt to **contact or interview the victim as soon as possible** prior to the hearing.
 - (c) The prosecutor will inform the victim that the **police are responsible for charging and prosecuting the case**.
 - (d) The prosecutor will stress that the **victim is an important witness** in the case.
 - (e) The victim will be instructed to **report his/her address and phone number** (and any changes) **to the prosecutor** and the counselor, if counseling is sought.
- 6.2 **Help and Shelter** provides counselling for both victims and perpetrators of domestic violence and also operates a 24 hour hotline counselling service. Court support counsellors assist and encourage victims who are involved in court proceedings. The organisation also provides shelter for women and children who are victims of domestic violence.
- 6.3 The **Ministry of Human Services and Social Security** offers counseling for victims of domestic violence through its Probation and Welfare Services Department. Gazetted social workers employed within the Ministry can make applications on behalf of victims under the *Domestic Violence Act*. Through its Difficult Circumstances Unit the Ministry provides tangible support to victims of domestic violence to enable them to develop economic independence from their perpetrators.
- 6.4 Attached to the protocol in Appendix is a list of organizations that assist victims of domestic violence.

- 6.5 Where the crime being prosecuted involves domestic violence the victim should be encouraged to make an application under the *Domestic Violence Act* for a protection order. See **9.00** “*Alternative Proceedings in the Magistrate’s Court*” for orders that the court can make on an application under the *Domestic Violence Act*.

7.00 BAIL APPLICATIONS

- 7.1 There is frequently little or no contact between the prosecutor and the victim prior to trial. Prosecutors should attempt to identify themselves to the victim prior to court and familiarize himself with the circumstances of the victim before the court determines the question of bail.
- 7.2.1 Prosecutors should elicit as much assistance as possible from the victim and witnesses in preparing for trial. It is particularly beneficial for the prosecutor to ask the victim and witnesses to write down all of the information that will help the magistrate danger and threat that the perpetrator poses to the victim before the magistrate decides whether to grant bail.
- 7.2.2 The following information may be particularly helpful in formulating effective oppositions to bail applications
- (a) other occasions when the police have been involved;
 - (b) other acts of violence, harassment, property damage or abuse;
 - (c) times that there were injuries that required medical attention at the hospital, the family physician or clinic;
 - (d) other people in the family, or pets, who have been hurt;
 - (e) concerns about present safety or contact with the offender.
- 7.3.1 Prosecutors must be mindful of previous incidents of violence and threats as it is likely for the violence to escalate because the perpetrator is being prosecuted. Additionally, the perpetrator is likely to use his control over the victim to frustrate his prosecution by encouraging, persuading or coercing the victim not to support the police in the prosecution. Such coercion is even more likely where the victim and perpetrator live together or are related.
- 7.3.2 Prosecutions are conducted by police prosecutors on behalf of the state. Victims do not have a voice in criminal proceedings except through the prosecutor and when required to give evidence. It is therefore important that the prosecutor brings to the courts attention previous acts of violence and threats before the question of bail is determined.
- 7.3.3 If the magistrate seems inclined to grant the perpetrator bail, application should be made to impose conditions on the perpetrator’s bail that address the safety concerns of the victim. For example, that the perpetrators not visit the victim or come within a certain distance of the victim or be in a particular location. If concerns for the victim’s safety arise after bail has been granted, when the matter is next called in court, application can be made for the conditions to be added to the perpetrator’s bail.

- 7.3.4 Where conditions are imposed on the perpetrator's bail it is essential that those conditions are not only orally pronounced in court, but that those conditions are endorsed on the court and bail record. Where the conditions are recorded in writing it is easier for the police to enforce the conditions of the bail should the perpetrator breach those conditions.
- 7.4 Where the perpetrator is granted bail without conditions or the conditions of bail are not sufficient to address the victim's safety concerns, the victim should be encouraged to make an application for a protection order under the *Domestic Violence Act*. A protection order will protect the victim even if the perpetrator is found not guilty or if found guilty is given a non custodial sentence. See **9.00 "Alternative Magistrate's Court Proceedings"** for orders the court can make on a domestic violence application.

8.00 CONDUCT OF THE TRIAL

- 8.1 Court can be an **intimidating process** for most victims. It is always advisable for the victim to arrange to **have a support person attend court with the victim**, preferably someone who is able to assist in interpreting what is occurring.
- 8.2 Victims of domestic violence often find criminal prosecutions **intimidating and overwhelming**. Their relationship with the perpetrator often causes them to feel **guilt** over the **prospect of the perpetrator going to jail**. They may also **feel conflicted** because the **loss of the financial support** that the perpetrator provided. More importantly, notwithstanding the criminal charges many victims live in **fear of their perpetrators**. It is important that **prosecutions** in cases involving domestic violence and **completed as quickly as possible**, and ensuring that justice is served, in order to reduce the likelihood of the victim becoming intimidated and overwhelmed.
- 8.3 The prosecutions should proceed with **as few adjournments as possible** to **increase the likelihood of conviction** and to **protect the victim** and society. If a victim fails to appear for trial and the victim's testimony is essential, an adjournment should be requested. If the perpetrator requests a continuance, it should be opposed.
- 8.4 **If an adjournment is granted**, it should be brought to the attention of the court and **made clear to the perpetrator on the record** that any **conditions of bail** or **order of protection remain in effect**. If there are no conditions of bail and the victim desires conditions to be added to ensure her safety, those conditions should be requested from the court.
- 8.4 If the victim who appears at trial indicates a continuing **reluctance to testify**, indicates that the previous statement regarding the assault was untrue, indicates she was mistaken as to the previous information given, or indicate that she can no longer remember what occurred, the prosecutor should **inquire of the victim as to the reasons for the purported changes** in testimony and to remind the victim of the **victim's obligation to testify truthfully** as to what occurred on the incident in question. The prosecutor should not unethically or illegally coerce a witness to testify contrary to the truth. If the victim continues to insist that the previous statements are untrue or unreliable, the prosecutor should **re-assess the evidence** to determine

whether there **still exists substantial independent evidence** constituting proof beyond a reasonable doubt of the perpetrator's guilt and consequently whether to proceed to trial.

- 8.5 Although the police make the decision to charge in domestic offences, the key witness is the victim. If a victim decides that they will not testify or that they will recant their earlier allegation, it may be difficult for the prosecutor to proceed. Having victims request that the police withdraw charges is not uncommon with domestic violence. Victims are frequently isolated, financially and emotionally dependent on the offender, and fearful of the consequences of criminal proceedings. Victims choosing to recant their statements should be referred to Help and Shelter, the Ministry of Human Services and Social Security or another appropriate counseling agency for further advice and support.

9.00 ALTERNATIVE MAGISTRATES' COURT PROCEEDINGS

- 9.1 In addition to prosecution for any criminal offence that has occurred, victims of domestic can make applications to the Magistrate for protection orders under the *Domestic Violence Act*. The Act empowers the Magistrate to make three types of orders – protection orders, occupation orders, tenancy orders and ancillary orders.
- 9.1.1 **Protection orders** can be made under section 5 of the *Domestic Violence Act*. The Magistrate can make a protection order when satisfied that the perpetrator has engaged in physical, sexual, verbal or psychological abuse. Protection orders **prohibit the perpetrator from engaging in specified conduct** or **compel the perpetrator to do specified things**. Section 6 of the *Domestic Violence Act* stipulates the conditions that can be attached to a protection order, including –
- Ordering the perpetrator to contribute towards the victim's or a child's **maintenance**
 - Granting the victim **custody of children**
 - Ordering the perpetrator to **stay away from the victim's or a child's home**, school, work or other place that the victim or child goes
 - **Preventing** the perpetrator from **following or contacting the victim**
 - Ordering the perpetrator to **return property** to the victim
 - Ordering the perpetrator to **undergo counselling and therapy**
- 9.1.2 **Occupation orders** are authorised by section 8 of the *Domestic Violence Act*. Occupation orders direct the **perpetrator to remove** from the home and gives the **victim the right to live in the home**, regardless of who owns the home (including instances where the home is owned by the perpetrator) (see also section 9 *Domestic Violence Act*). Occupation orders can be made only where a protection order is also made.

- 9.1.3 **Tenancy orders** are made when the home that the victim and perpetrator live in is rented in the name of the perpetrator. See section 11 of the *Domestic Violence Act*. The tenancy order **transfers the tenancy from the perpetrator to the victim**. Even after the tenancy is transferred to the victim, the court can order the **perpetrator to contribute to the payment of the rent**. Tenancy orders can be made only when a protection order is also made.
- 9.1.4 **Ancillary orders** can be made along with occupation or tenancy orders under section 15 of the *Domestic Violence Act*. Ancillary orders empower the magistrate to provision for the **use by the victim of furniture, household appliances and household effects**.
- 9.2 The court can also make **interim orders** (Section 27 *Domestic Violence Act*) that **protect the victim while the Magistrate is hearing the matter** up to the moment when the Magistrate makes a final decision. The court can make interim protection, interim occupation and interim tenancy orders where it is satisfied that the orders are necessary to ensure the safety of the victim while the court is hearing the matter. Interim orders are effective for 14 days and can be renewed by the Magistrate each time the parties appear before the Court.
- 9.3 In addition to interim orders, the Magistrate can make an ***ex parte* interim protection order** under section 5(3) of the *Domestic Violence Act*. This provision allows the Magistrate to make an **interim protection order** as soon as the application is filed, even **before the perpetrator is served** with the notice of the proceedings.

10.00 STAFF TRAINING

- 10.1 All police prosecutors who are likely to prosecute cases involving sexual and domestic violence should receive **training to sensitise them to the needs, vulnerabilities, difficulties and issues affecting victims** of sexual and domestic violence in particular.
- 10.2 Annually, or more frequently if possible, all police officers prosecuting cases involving sexual and domestic violence should undergo **continuous training and sensitisation on dealing with victims** of and prosecuting cases involving sexual and domestic violence.