

Memorandum of Understanding **Between the Office of the Director of Public Prosecutions,** **The Judicial Administration, Department of Community** **Rehabilitation and Royal Cayman Islands Police Service**

Introduction

This Protocol aims to provide operational guidance to all criminal justice agencies and partners involved in proceedings before this Cayman Islands Specialist Domestic Violence Court/Fast track court SDVC.

The principles of this Protocol will be applied regardless of gender, disability, nationality, race or ethnic origin, age, religion and sexual orientation.

Whilst the Protocol makes reference to "victim", it should be noted that until proceedings have been proved against a defendant, the victim's status is one of a complainant. Also reference to "victim" within this Protocol does not prejudice the guilt of a defendant in any manner whatsoever. "Victim" and "Complainant" will be used interchangeably as this context requires herein; as will "defendant" and "offender".

SDVC Project Aims

The SDVC is a Court of Summary Jurisdiction which operates procedurally as a specialist court for suppression of domestic violence and the treatment of defendants and complainants coming before it.

It's the aim to provide at all levels of the court system a coordinated judicial response to criminal proceedings involving domestic violence.

SDVC Project Objectives

1. To improve court efficiency resulting in fewer court appearances and less undue delay.
2. To improve victim safety.
3. To promote informed and consistent judicial decision-making.
4. To protect the rights of all concerned.
5. To increase confidence in the criminal judicial system.

Implementation date

1st October 2018.

Protocol - Definitions

Domestic violence proceedings will include proceedings relating to:

1. Any incident of threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members (see definitions in Section 3 of Protection from Domestic Violence Law 2010).
2. The SDVC will, wherever possible hear all Summary Court proceedings that fall within this definition.

Identifying Domestic Violence Cases

Royal Cayman Islands Police Service (RCIPS) will:

- a. Ensure all domestic violence cases are clearly identified as such before they are submitted to the Office of the Director of Public Prosecutions (ODPP). This will be done by marking on the top right hand corner of the MG 1 'DV' on a sticker, clearly indicating that this is a domestic violence case.
- b. On being notified by the ODPP that a case falls within the domestic violence definition, mark their papers accordingly.

ODPP will:

- c. Endorse the classification DV sticker on the front of the ODPP file jacket by the notation "Approved".
- d. Inform the RCIPS that a case falls within a domestic violence classification, should the RCIPS fail to identify such a case.
- e. Enter details of the case into a Domestic Violence Log and attach a monitoring form to the file.

Cayman Islands Summary Court (CISC) will:

- f. Mark the front of the court file with a sticker to identify that the proceedings fall within the domestic violence definition.
- g. Through the Magistrate ensure that the court is aware that the case falls within the agreed definition.
- h. Deputy Clerk of Court/Supervisor of the Criminal Registry will:
Each week collect a list of DV cases from all agencies and cross-reference.

Investigation of Domestic Violence Cases

RCIPS will:

Initial Investigation

- a. Ensure officers reporting or attending a domestic violence incident gather and preserve the widest range of evidence and not focus solely on the evidence that the complainant has to offer and/or the willingness of the complainant to give that evidence. Evidence of what officers see and hear at the scene could be significant in a subsequent court case.
- b. Provide any DV victim with a RCIPS Family Support Unit (FSU) contact card when attending a DV related call out and FSU will provide Department of Community Rehabilitation (DCR) with a victim referral.
- c. Police responding to DV calls may be confronted with sharply conflicting accounts of what has taken place, with each party claiming to be the victim. Officers should assess whether one party may have used justifiable force against the other in self-defence (one party may make a false counter allegation and /or both parties may exhibit some injury and/or distress). Counter allegations require that police officers conduct immediate further investigation at the scene to attempt to establish the primary aggressor. Officers should be aware that the primary aggressor is not necessarily the person who was first to use force or threatening behavior.
- d. Gather the following evidence and record all details including:
 - i. Any visible injuries to any party at the scene including defence injuries and take photographs in all cases;
 - ii. Any claim by any party of self-defence;
 - iii. The lack of injury to any party;
 - iv. Any allegation of self-inflicted injury and ascertain if there is a history of this;
 - v. Signed medical consent;
 - vi. Full details of the physical conditions at the scene.
 - vii. Take photographs of the scene.
 - viii. Full notes of the emotional and mental state of the parties involved and any evidence of intoxication from drink or drugs;
 - ix. Comments made by all parties or other persons present as witnesses. In particular, anything said by any party in the presence of the other party. All parties should be asked to sign the officer's pocket notebook against the record of the comments that they have made.
 - x. The presence of children during the incident.
- e. In addition the Police will:
 - i. Seize and preserve CCTV footage;

- ii. Speak to neighbours and identify potential witnesses;
 - iii. Identify witnesses within the household. Consider speaking with children who may have witnessed the incident. (Where appropriate they will be formally interviewed at a later stage);
 - iv. Consider forensic opportunities and preserve exhibits;
 - v. Seize any relevant mobile telephones or devices.
 - vi. Photograph exhibits that cannot be seized physically.
 - vii. Make appropriate DV referral (containing all child details if applicable.)
- f. The Initial investigating officer will take a full statement from the complainant which should include details of:
- i. The actual incident;
 - ii. The complainant's injuries (physical and emotional) and their extent;
 - iii. Whether a weapon was used, the type of weapon and where it came from;
 - iv. Whether any children or other witnesses were present;
 - v. Whether there is any damage at the location i.e. broken furniture, windows or ceramics, whether the telephone was ripped out etc; and how the damage was caused;
 - vi. Whether drug/alcohol abuse was a factor;
 - vii. A brief history of the relationship.
 - viii. Previous reports.
 - ix. Any relevant factor.

Secondary Investigation

- a. The investigating officer will conduct any outstanding enquiries from the initial investigation and also gather the following evidence:
- i. 911 recording if applicable;
 - ii. Interview and obtain all other witness statements;
 - iii. Relevant telephone subscriber and call evidence;
 - iv. Additional forensic evidence.
- b. The investigating officer will take a separate victim personal statement of the complainant and any other victim. The victim personal statement will be included on the case papers. This will be taken even if the victim appears to be reluctant to support a prosecution and this statement will include details of:
- i. The family composition;
 - ii. The full history of the relationship, including any prior violent incidents.
 - iii. Whether any threats have been made since the incident;
 - iv. Whether there has been any effect on any children;
 - v. The victim's view of the future of the relationship;
 - vi. How the incident has affected them;

- vii. Whether there is a history of drug/alcohol abuse within the relationship.
 - viii. Family immigration issues.
- c. The investigating officer will also take full statements from the complainant in relation to any relevant incidents, which were either previously reported but not substantiated at that time or not previously reported. These additional matters will then be further investigated.
- i. Where the complainant's first language is not English, ensure a registered interpreter, (preferably an interpreter who has received domestic violence awareness training) is utilised, to assist in taking the statement and signs a statement producing the original and translation. Officers are to consider asking if the victim has a preference as to the gender of the interpreter.
 - ii. Never conduct an interview with the complainant through members of the complainant's family, especially children of the family.
 - iii. Conduct a thorough formal interview of the suspect and where a complainant has made a statement, the officer should endeavor to put all the facts alleged in the statement to the suspect. Reference should also be made to any photographs of injuries sustained by the complainant. Any corroborative evidence should also be put to the suspect. The interview must establish clearly whether the suspect accepts and admits what is alleged.
- d. In investigating counter allegations the investigating officer should make comment on the following:
- i. Comparative severity of any injuries inflicted by either of the parties;
 - ii. Whether either party has made threats of future harm against another party, child, family member or household member;
 - iii. Whether either party has a prior history of violence;
 - iv. Whether either party has made previous counter allegations;
 - v. Whether either party appeared to act defensively to protect him or herself or a third person from the injury.

Timelines for RCIPS investigation

Parameters of cases included:

RCIPS will:

Identify high risk cases, ***where injury has resulted, there has been a threat with a weapon, or any other factor*** and complete the case file and submit to the ODPP within **5 days** of the report being made.

ODPP will:

Provide a ruling within **3 days** of receipt of the file.

RCIPS will:

If charges are authorised, RCIPS will lay charges immediately and notify DCR.

CISC will:

Register new charges within 24 hours of receipt and ensure the case is listed before the next available SDVC.

Case Handling Issues

RCIPS will:

Ensure the investigating officer includes the following information on an MG 6 in all files:

- a. Composition of the family;
- b. History of the relationship;
- c. Previous incidents involving any of the parties and the outcomes;
- d. Ability/willingness of the victim to give evidence;
- e. Contact details of other witnesses;
- f. Effect of proceedings on any children; Whereabouts of children during the incident;
- g. Current domestic arrangements and information, or the officer's view on the future relationship;
- h. Likelihood of recurrence;
- i. Views on safety of victim and any children;
- j. Information from other statutory or voluntary agencies e.g. Social Services, local Health Authority or any available victim support schemes;
- k. Civil orders made or pending and any breaches that are known to the police;
- l. Vulnerable witness forms where appropriate;
- m. Details of any Risk Assessment made. Does the offender admit the offence or admit one offence and deny others;
- n. Where more than one person has been arrested details of who is believed to be the principal aggressor;
- o. Has the victim previously withdrawn a case and if so why; and
- p. Inform the ODPP of any family proceedings, if known, that are currently being litigated by the defendant and victim. Should the position change during the criminal proceedings i.e. either party commences, changes, or breaches an order or is successful in litigation, and the police become aware, the police will notify the ODPP of this.

ODPP will:

- a. Apply the ODPP DV Zero Tolerance Policy and Guidance when reaching a decision to charge and selecting the appropriate charges. The level and number of charges should reflect the seriousness of the case.
- b. Review and prosecute cases of domestic violence expeditiously in accordance with ODPP Policy on Prosecuting cases of Domestic Violence.
- c. Comply with the Code for Crown Prosecutors at all times.
- d. Not make assumptions that calling the victim's as a witness is the only way to prove a case and the ODPP will consider what other evidence that may be available either to support the victim or as an alternative to the victim's evidence.

- e. Seek to prioritise requests for written, oral or telephone advice in domestic violence proceedings.
- f. Make the risk of future harm a prime consideration when considering public interest factors.
- g. Inform RCIPS of any changes to the charge or where the case has been discontinued.
- h. Apply for special measures where appropriate.
- i. Consider applications for orders under the Law.

Victim Referral Procedure

RCIPS will:

- a. Upon investigating the allegation, offer to victims a referral to a domestic violence advocacy service and victim support dependent on the perceived needs of the victim.
- b. Offer the opportunity of a pre-trial visit to court and refer to DCR if the victim wishes to be supported throughout the process.
- c. Carry out a risk and needs assessment, including any special measures requirements and send a copy of this to the ODPP.

FSU will:

- a. Contact the complainant within 24 hours of receiving the referral:
 - i. Explain options based on information disclosed on the phone and at interview stage;
 - ii. Agree safety plans at every stage of the case irrespective of the route the complainant chooses to take;
 - iii. In relation to civil orders, clients will be informed of their option to withdraw from the process, but will be actively encouraged/supported to continue with their involvement;
 - iv. In relation to criminal cases, clients will be informed of the possible outcomes of any request to withdraw statements or to withdraw

- their support as a witness;
- v. Explain the positive outcomes of the SDVC i.e. judicial monitoring, community punishments to include attendance on perpetrator programmes; and restraining orders;
 - vi. Refer to DCR and where appropriate other agencies and discuss with the victim the support available and confirm they have received the contact card.
 - vii. Collect and record information from the victim/witness about previous convictions and/or civil injunctions, which may be relevant to the Police case and also to the ODPP for the bail hearing.

Bail

RCIPS will:

- i. Provide the ODPP with the information required on an MG7, to conduct a contested bail hearing, if the defendant is brought before the court with an application to remand in custody.
- ii. The investigating officer will also consult with the victim about bail conditions in order to ensure the safety of the victim and any children. The officer will also explain the victim's rights and the defendant's obligations. The officer will tell the victim that ultimately the court decides bail conditions.
- iii. Undertake a risk assessment and bring such to the attention of the ODPP so that it may be taken into account in whether or not to oppose bail.
- iv. Include in the initial remand file the view on the victim and child's safety and the victim's view on their own safety.
- v. The RCIPS should immediately notify the victim of the court's decision.
- vi. When informed that a defendant has breached his bail conditions will prioritise contacting and arresting the defendant.

ODPP will:

- a. Where a defendant applies for bail or to vary his bail conditions and introduces new information not previously known to the ODPP, the prosecuting advocate will consider seeking an adjournment so that the Police can make enquiries.

RCIPS will:

- b. Provide the ODPP prosecutor with any information they are able to share that may be relevant to the prosecutor in relation to bail hearings. They will make this information known to the prosecutor before the bail hearing commences.

CISC will:

- c. Always consider whether as a minimum to protect the victim's safety, it should impose a condition upon the defendant not to contact the victim directly or indirectly; not to go within (a reasonable distance) of the victim's home, work, or other place where the victim frequents.
- d. Expect the defendant to attend all hearings, including any case progression hearing, to maintain pre-trial judicial monitoring.
- e. Inform the FSU and the DCR of the result of any bail application within 3 hours of the decision.
- f. If a bail application or application to vary bail has been made on a day when the SDVC is not sitting, the court will email a record of any change to the bail position to the RCIPS and the DCR within 3 hours of the decision.
- g. As a matter of practice not entertain any application to vary bail unless written notice of the application has been served on all parties including the court.

DCR will:

- h. Inform the RCIPS and the CISC if a defendant is non-compliant with bail condition requiring the defendant to attend the DCR for services within a 24 hour timeframe, without a reasonable excuse. Where it is not practical to inform the CISC e.g. at the weekend or in the evening, DCR will notify the CISC by 9.30am of the next working day.

All will:

- i. If made aware of any harassment of the victim/witness from the defendant or any other person contact the RCIPS and the RCIPS can enable the victim/witness to make an additional statement.

First Listing to Start of Trial

RCIPS will:

- a. Ensure all defendants charged with a domestic violence offence and released on bail from the Police Station will be bailed to the next SDVC ***within the following 14 days.***
- b. When a case is going to trial, the investigating officer/FSU will notify the ODPP of:
 - i. Any witness needs or vulnerability for the purpose of any application for special measures;
 - ii. Any domestic circumstances which may affect the witnesses' ability to attend court at short notice;
 - iii. The need for an interpreter or any other assistance to give evidence.

- c. The IO/FSU will be responsible for ensuring that the victim's details are passed to the ODPP.

ODPP will:

- d. Assign prosecutors to the SDVC who are trained and experienced in domestic violence cases.
- e. Give consideration to the best way for the witness to give evidence including the use of interpreters, an application for screens and by video link, if necessary.

CISC will:

- f. Convene SDVC sessions to deal with criminal domestic violence cases.
- g. Ensure that where the defendant appears in custody from the Police on any day other than a SDVC session, the defendant will be remanded either on bail or in custody to the next SDVC session.
- h. Provide specialist training to Magistrates and staff.
- i. Consult on and publish a SDVC Good Practice Guide.
- j. CISC will apply the following timescales:
 - i. Case to be listed before the first available SDVC for first mention hearing.
 - ii. Plea to be taken on first appearance unless there are special circumstances and trial date to be set within **four weeks**.
 - iii. Where a plea is not entered on the first mention date, no more than one adjournment should be granted before a trial date is fixed.

RCIPS/ODPP will:

- k. Adopt the following guidelines for managing the preparation of cases for trial:
 - i. Full file from the Police to the ODPP and witnesses summonsed within **three weeks** of the incident date;
 - ii. ODPP to review the file and serve primary disclosure by the first mention date;
 - iii. Clarify points of contact with the victim up to and including the start of the trial.

CISC will:

- i. Consider requiring the defendant to wait at the back of the courtroom so that the victim/witness can be informed of the bail/variation to bail decision. This will be justified whenever there has been a bail condition not to contact the victim.
- ii. Accommodate pretrial court visits (if complainants wish to attend and arranged by the RCIPS), special entry, separate witness-waiting areas and increased security.

RCIPS will:

- a. If they have been provided with the victim/witness details contact the victim/witness and offer:
 - i. Pretrial familiarisation and court visit;
 - ii. Information on:

The court process;

- a. Issues of vulnerability or disability;
- b. Safe transport to court on trial day;
- c. Safe entry to the court building on trial day;
- d. Escort to court;
- e. Separate waiting areas;
- f. Increased security;
- g. Special Measures which the ODPP may be able to apply for;
- h. Other support agencies if requested by the victim/witness;
- i. Safety planning and any other issues that are of concern to the victim.
- j. Provide appropriate on-going support regarding the trial process to all victims and witnesses, including extra visits to the court as required.
- k. Inform the ODPP as soon as they have any information in relation to the method that the victim wishes to give evidence e.g. screens.
- l. Where requested, will telephone the victim 24 hours before the trial to confirm attendance.

CISC will:

- a. Ensure Interpreters are available when required.
- b. Identify a separate waiting area for victims.

Trial

ODPP/DCR/FSU will:

- a. Meet each victim/witness as they arrive at court and escort them to a safe waiting facility.
- b. DCR/FSU will provide emotional support and relevant information to the witness throughout the day if required.
- c. By prior arrangement with the CISC will offer a separate entrance into the courtroom.
- d. Where required, inform or make alternative arrangements to inform the victim of the case result within one hour of the trial concluding.
- e. Where required, the victim will be offered the services of on-going support from FSU.

Withdrawal of Domestic Violence Cases

RCIPS will:

Where a victim wishes to retract their complaint take a full retraction statement, which will include:

- a. Confirmation of whether the original statement given to the police was true (if the account given in the original statement has to be amended, an explanation for this should be included);
- b. Whether the victim has been put under pressure to withdraw;
- c. Nature of the original allegation (if not fully covered in a previous statement);
- d. Victim's reason for withdrawing the allegation;
- e. With whom they have discussed the cases - particularly anyone who has advised them subject to legal privilege (an attorney, for example);
- f. Whether any civil proceedings have been or are likely to be instigated;
- g. Impact on the victim's life and that of any children if the case is continued.
- h. The investigating officer or the officer taking the statement of withdrawal will provide a written report to the ODPP of their views on:
 - i. The truthfulness of the reasons given;
 - ii. How they consider the case should be dealt with;
 - iii. How a victim might react to being compelled; and
 - iv. Safety issues relating to the victim and any children.
 - v. Ensure the officer taking the withdrawal statement provides information on the MG6 about surrounding circumstances covering the issues of duress, state of fear of victim and other surrounding circumstances and should be prepared to attend court to give such evidence orally.
 - vi. Any withdrawal of support for the prosecution should prompt a revised risk assessment process and safety planning.
 - vii. Where allegations of intimidation are made, the police should investigate and consider whether further offences have been committed.
 - viii. Explain to the victim that making a withdrawal statement does not necessarily mean that the prosecution will be dropped and they still may have to attend court and give evidence. In such cases the victim may be invited to make a Victim Personal Statement or add to a previous statement, to express their views as to why they do not support a prosecution and their views now on the incident/relationship/defendant.
 - ix. Explain the victim's options.
 - x. Explain to the victim that they should still feel comfortable to call the Police again, even if they wish to withdraw their support for a prosecution on this particular occasion. Emphasize to the victims that they should always call the police if there are any further

incidents of violence.

DCR will:

- xi. In appropriate cases provide report as to the circumstances surrounding the retraction.

ODPP will:

- i. After considering all the circumstances of the case, including any further information provided by other agencies, determine whether, notwithstanding the victim's withdrawal, it is in the public interest to proceed with the prosecution.
- j. Consider the following options:
 - i. If there is sufficient evidence to proceed without the victim attending court;
 - ii. Whether to apply for a witness warrant.
- k. In cases where the first indication that the victim wishes to withdraw the complaint arises at court:
 - i. Invite the court to grant an adjournment for the Police to make enquiries into the wishes of the complainant. The length of the adjournment sought will depend on the nature of the enquiries and whether the defendant is in custody. If appropriate, the ODPP will seek the same bail conditions during this process, but in any case the CISC will inform the RCIPS as soon as possible should these conditions vary;
 - ii. If an adjournment is granted, notify the RCIPS immediately for the investigating officer to instigate an enquiry into the victim's genuine wishes.

Verdict to Sentence

CISC will:

- i. Where the SDVC adjourns the matter for sentence and a community penalty is a stated option, the court will require the defendant to attend for assessment as to his/her suitability for attendance at an intervention programme. Where such attendance is required and the defendant is granted bail the court should consider making it a condition of bail where appropriate and additional to attendance at the DCR when individual meetings with a Probation Officer are required.
- ii. Where the Deputy Clerk of Court/Supervisor of the Criminal Registry is informed of the defendant failing to attend a report appointment for the preparation of a report, within 24 hours of being so notified,

will after receiving the approval of a Magistrate the defendant by summons that the case has been rescheduled to the next SDVC.

- iii. Where a report has been ordered by the SDVC DCR will prepare a victim impact report.

DCR will:

- a. Ensure a DCR court duty officer obtains the request for a report, interviews defendant, collates all paperwork. (Information from a GP and any known psychiatrist /psychologist previously obtained would necessitate the offender to sign a medical consent form). This information would need to be provided to the DCR, in order to assist in the preparation of a report.
- b. Prioritise the preparation of an assessment report, within 3 weeks of the request. All offenders will be assessed as to their suitability for an intervention programme.
- c. Ensure that the report is written by a probation officer who has been trained in domestic violence issues.
- d. Where appropriate and if possible offer to provide a one to one probation programme if English is not the first language.

Committal for trial/sentence

CISC will:

Apply a standard adjournment period for committal to the Grand Court of **two weeks** for a defendant in custody and **four weeks** if on bail.

Post-Conviction

CISC will:

- a. Where a community sentence with a programme requirement has been made, consider imposing a condition to attend the SDVC within three or six months on stated dates to review progress (this could include payment of a compensation order where appropriate).

DCR will:

- a. Where a court has made a requirement to attend court to review a community sentence with a programme requirement prepare a brief progress report on the offender's progress.

Breach Proceedings

CISC will:

- a. List breaches of community sentences made in respect of defined DV offences in the SDVC and fast track the hearing.

DCR will:

- b. In the event of an offender failing to meet DCR's criteria for attendance, breach proceedings to be initiated.
- c. In the event of the whereabouts of the offender being unknown, and/or where there are active risk concerns and where the risk is estimated as high or imminent, the relevant information will be shared with the RCIPS and court for the court to decide if a warrant needs to be issued.
- d. Whilst breach proceedings are pending, if appropriate, the offender will continue to attend any offender programme unless discharged from an intervention programme in accordance with DCR programme contracts.

Review

In 2020 this Protocol will be reviewed by its signatories.

Signatories

Clerk of Court for the Judicial Administration

Director of Public Prosecution for the ODPP

for the RCIP/FSU

for the DCR