Fighting Domestic Violence - Ireland

5. Prosecutorial considerations

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This section explores prosecutions of domestic violence crimes. It focuses on public prosecutions rather than individual actions by a victim of abuse.

The 'Guidelines for Prosecutors' (2019 edition) can be viewed [here.](https://www.dppireland.ie/app/uploads/2019/12/Guidelines-for-Prosecutors-5th-Edition-eng.pdf) This document sets out the relevant law and considerations that are taken into account when decisions on prosecutions are made. The following preliminary points should be noted:

The director of public prosecutions (DPP) prosecutes cases on behalf of the people of Ireland and not just in the interests of any one individual.

AGS is the national police service of the Republic of Ireland and also have prosecution decision-making powers. They may institute and conduct prosecutions in the name of the director of public prosecutions. They can only do so for offenses specified in a general direction from the director of public prosecutions under section 8(4) of the Garda Síochána Act 2005. AGS has permission under the [DPP's guidance](https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Garda-DPP-General-Direction-No-1.pdf) to conduct a public prosecution for any offenses that cause an unlawful killing, serious harm or that are sexual in nature and thus can prosecute on behalf of the DPP for domestic violence offenses.

When an AGS superintendent decides not to prosecute a suspect following the investigation of an offense, victims may request a summary of reasons and a review of that decision from AGS.

Treatment of victims: Under the 2019 DPP Guidance for Prosecutors, the office of the DPP will have regard to any views expressed by a victim when deciding whether or not to prosecute or in relation to the acceptance of a plea of guilty to any lesser charge. Although the views and interests of the victim are important, they are not the only consideration when deciding whether or not to prosecute or when deciding to accept a plea of guilty.

# 5.1 Police procedures

# 5.1.1 When do the police get involved in domestic disputes or legal actions?

AGS's Policy on domestic violence can be viewed [here.[119]](https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Domestic-Violence-Policy-.pdf)  The Policy explains how any member of any division within AGS should approach a domestic violence report. AGS have the power to investigate (interview the victim and alleged abuser and any other member of the household). AGS also have the ability to arrest the alleged abuser if necessary, and this includes where it becomes apparent that a protective order has been breached (see paragraph 3 of the Policy).

According to the Policy, AGS can arrest an abuser who is believed to be in contravention of any of the following laws: (i) Domestic Violence Act 1996 (as amended, now the 2018 Act); (ii) Criminal Damage Act 1991; (iii) Non-Fatal Offences Against the Person Act 1997; (iv) Criminal Law (Rape) Amendments Act 1990; (v) Criminal Justice Public Order Act 1994; (vi) Children Act 2001 and (vii) Breach of the Peace at Common Law.

The Policy explores different types of domestic abuse (e.g., elderly abuse/spouse or couple abuse/child abuse) and explains the steps for AGS to follow in each instance.

According to a [2019 Women's Aid consultation](https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf):

The response from the Garda to domestic violence calls is inconsistent. Rating of AGS by participants in the survey (domestic abuse survivors) ranged from excellent to very poor.

In the view of the survey participants, the court process is both prolonged and stressful and there is a lack of support for victims before, during and after criminal trials.

**Police procedure and arrests following a domestic violence call**

AGS have specific powers under the Domestic Violence Act 2018 to make arrests — and this includes arrests for breach of any restrictive orders. Section 35 of the Domestic Violence Act (2018) empowers members of AGS to make an arrest without warrant where a member of AGS has "reasonable cause for believing that an offence has been committed under section 33" (contravention of a restrictive order). Where no restrictive order is in place, AGS may rely on other (wider) legislation to make an arrest.

Where any offense relating to domestic abuse (including breach of orders, assault, sexual assault, criminal damage, threats to kill, etc.) has been committed, an appropriate PULSE incident[120] will be created and "domestic violence" will be recorded as the motive in the MO details for that incident.

Even where a victim withdraws a complaint, AGS are able to continue with their investigation. The investigating member of AGS does not have the authority to strike out cases before the court. AGS's guidance on domestic violence confirms that:

In domestic violence cases, the Garda should be mindful to gather all possible evidence, which may allow the case to proceed through the Courts, in the absence of the injured party's complaint.

**The courts and domestic violence**

Some recent and [relevant statistics for domestic abuse court cases in Ireland are as follows:](https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf)

In 2018, there were 18,572 applications for an order under the Domestic Violence Act in the district courts.

In 2018, approximately 9,917 orders under the Domestic Violence Act were granted in the district courts (53%).

No information on breaches of orders under the Domestic Violence Act is currently available.

The lack of accurate data may lead to an underestimate of domestic violence crimes. For example, the Central Statistics Office (CSO) found in January 2019 that Gardaí recorded sexual offenses and assaults in official crime figures but not the fact that they were domestic violence offenses.

When a sample of 100 sexual crime cases were reviewed, the CSO found 19 cases should have been **recorded** as domestic violence but only one was recorded as such. In a sample of 100 assault cases studied, 41 should have been **described** as domestic violence but only 19 were. According to the CSO, this meant that domestic violence was being under-recorded, or underestimated, by a "considerable amount."[121]

# 5.1.2 What circumstances effect law firm involvement?

Please refer to section 5.1.1.

# 5.2 Standard of proof

# 5.2.1 Is proof required by any legal means?

The standard of proof for criminal offenses (i.e., grievous bodily harm; sexual penetration offenses; assault) will have the usual standard of proof applied. The prosecution must show beyond reasonable doubt that each element of the offense has been committed by the alleged perpetrator.

When prosecuting a breach of a domestic violence restrictive order, the following are three essential proofs:

a. Proving the existence of the order: When the offender is brought before the court, the original station copy of the order should be produced to prove the order is in existence.

b. Proving the respondent was aware of the existence of the order. This can be done in any of the following ways:

Following arrest, the arresting member should caution the respondent and then ask them whether he/she was aware of the order in question and how he/she was aware. The AGS member should note all responses and can give this direct evidence of what the respondent disclosed.

If the respondent was in court or represented in court on the day the order was granted, evidence of this is sufficient. This information can be obtained from the court file held at the family law court office in which the order was granted.

If the order was served by AGS, the serving member can give evidence of this.

If the respondent was informed of the existence of the order by: (a) the applicant; (b) a member of the applicant's family; (c) a friend or associate of the applicant; or (d) a member of AGS, then direct evidence by the relevant person will suffice.

c. Proving the breach: The applicant and/or any witnesses, which may include a member of AGS, may give evidence of the breach.

# 5.2.2 Are there any requirements regarding evidence and documents?

Please refer to section 5.2.1.

# 5.2.3 Is proof "beyond a reasonable doubt" required?

Please refer to section 5.2.1.

# 5.2.4 Is the standard of proof different for ex parte orders?

Please refer to section 5.2.1.

# 5.3 Affirmative defenses

# 5.3.1 Are affirmative defenses available to the accused?

There are no affirmative defenses to domestic abuse under Irish legislation. The Domestic Violence Act introduced certain provisions to widen the scope of circumstances under which orders can be used against perpetrators.

The eligibility for safety and protection orders has been broadened such that the relationship between the perpetrator and the applicant need only be "intimate," rather than "intimate and committed," as it was under the repealed Domestic Violence Act 1996. A relationship does not cease to be "intimate" under the act by reason only that it is no longer sexual in nature. In practice, these provisions work to remove a defense that the nature of the relationship was not sufficiently developed between the victim and the accused to warrant a domestic violence offense.

There is now no minimum period of cohabitation required for cohabitant applicants seeking barring orders and emergency barring orders. The previous requirement that the applicant for a barring order, "lived with the respondent in an intimate and committed relationship for a period of at least six months in aggregate during the period of nine months immediately prior to the application" has been repealed.[122]

The Criminal Law (Rape) (Amendment) Act 1990 also abolished any rule of law by virtue of which a husband cannot be guilty of the rape of his wife.

**Willful intent**

Orders under the Domestic Violence Act: Willful intent of the accused is not required for the court to make a specified order under the Domestic Violence Act. The court "shall have regard to all the factors or circumstances that it considers may have a bearing on the application."[123] The act includes a number of factors to be taken into account where relevant, including the applicant's perception of their own safety or welfare due to the behavior of the respondent, but does not include any consideration of the intent of the respondent.

Coercive control: Intent is not a requirement for the offense of coercive control. Coercive control is committed when the perpetrator "knowingly and persistently engages in behaviour" that "a reasonable person would consider likely to have a serious effect on a relevant person."[124]

False accusations: There is no specific legislation on how the court deals with false accusations of domestic violence. Accordingly, false accusations will be dealt with depending of the facts of the case. It is possible that an individual who makes false accusations about domestic violence offenses could face prosecution for averting the course of justice and wasting police time.

Consent: Consent is not a defense to domestic abuse under legislation in Ireland.

Self-defense or insanity: Self-defense and insanity are not specific defenses to offenses under the Domestic Violence Act.

# 5.3.2 Is willful intent required?

Please refer to section 5.3.1.

# 5.3.3 Are false accusations punishable for the victim?

Please refer to section 5.3.1.

# 5.3.4 How is consent discussed in the law?

Please refer to section 5.3.1.

# 5.3.5 Is self-defense or insanity a defense?

Please refer to section 5.3.1.

# 5.4 Witness status

# 5.4.1 What is a witness's duty to testify honestly and completely?

Women who suffer from domestic abuse are often involved in a number of different legal proceedings, some of which include:

being a witness in criminal court in relation to one or more trials

appeals on previous verdict or sentence

victim impact statements

bail hearings

applications for orders under the Domestic Violence Act

defending against cross orders under the Domestic Violence Act

separation and divorce

child access and maintenance

[AGS's guidance confirms:](https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb-/domestic-abuse/faqs-in-respect-of-the-domestic-violence-act-2018-.pdf)

Where possible, it is advised that members avoid issuing summonses in respect of applicants to appear at court sittings. Victims of domestic abuse should be offered every support service available and court accompaniment where possible. Extensive engagement and explanation of the process is preferable to a witness summons as it may add to the trauma already experienced.

Since 2017, there has been a renewed focus on victim support in the court process. A [Women's Aid consultation in 2019](https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf) notes the following:

The revised **Garda Domestic Abuse Intervention Policy 2017** has been a positive development, bringing in an enhanced focus on victims' support and safety.

An important area where progress has been made is a cluster of positive actions completed or in progress by AGS of which the establishment of **divisional protective services units and implementation of risk assessment** are key measures. However, adequate resourcing of the protective services units remains an issue.

The **Domestic Abuse Coordination Team**, a local initiative of the Ballymun Garda station, works very well providing women with a consistent contact person and repeated check in, which aims to improve victim engagement and confidence.

The **Dolphin House Family Law Court Support and Referral Service** is a free and confidential drop-in service for women who are experiencing abuse in a relationship. This can include emotional, physical, sexual or financial abuse. This service has been recently replicated in Limerick District Court. It should be available in all court houses.

**Victim Support at Court (V-SAC)** provides valuable court accompaniment to victims of crime, their families and witnesses in the criminal courts. The organization does not currently cover all of the country but it plans to extend and become a national organization by 2021.

Witnesses' duty to testify truthfully and honestly: Before giving evidence in court, a witness will be asked to swear an oath that what they say to the court is the truth. A person who knowingly makes a false statement under oath in court commits perjury and can be prosecuted. Perjury is a common law offense in the Republic of Ireland, but the Perjury and Related Offences Bill 2018 is currently going through parliamentary approval. If enacted, anyone guilty of perjury could face 12 months' imprisonment on summary conviction, or 10 years if convicted on indictment.

Options to abstain from testifying: The general rule is that anyone who is competent can be compelled by the court to give evidence in criminal or civil proceedings. A witness is considered to be competent if they are capable of giving admissible or allowable evidence in court, meaning evidence that is relevant to the facts at issue in the case.

For certain domestic abuse offenses involving violence or sexual offenses against the applicant or a child, if the applicant is the spouse or former spouse of the accused, they may be forced to testify.[125] Under the Domestic Violence Act 2018, there are a number of special measures in place to assist the applicants through the testifying process:

 Applicants may apply for their evidence to be given via video link.[126]

The court can refuse the cross-examination of a victim witness by the accused.[127]

Court staff will provide applicants with information on domestic violence support services as well as contact details.[128]

An applicant has the right to be accompanied in court by an individual of their choice, as well as their legal representative.[129]

 Breach of domestic violence order hearings are heard in private.[130]

A judge can hear evidence from a third-party witness, such as a member of AGS, a child, or a relative or friend of the applicant or the respondent if the judge considers it appropriate.

If a party wants to invite a witness to testify, they can ask them if they would be willing to go to court and give evidence on their behalf. Sometimes it is necessary to issue a witness summons to secure the attendance of a witness, where the applicant applies to the court office to issue a witness summons before serving the summons on the intended witness. The applicant may have to cover the reasonable expenses of the witness. If a witness who has been summoned fails to comply with the summons, the court may impose a fine on the witness for his or her default.[131]

Giving evidence via video link: Provisions setting out the possibilities for evidence to be given in court by way of live television link, through an intermediary and with the use of screens or similar devices are set out in Part III of the Criminal Evidence Act 1992 as amended by the Criminal Justice (Victims of Crime) Act 2017 and the Domestic Violence Act 2018. These possibilities apply in relation to proceedings for "relevant offences" listed in the Criminal Evidence Act 1992 as amended. Sexual offenses (including sexual assault) and offenses involving violence are included.

Can children be called upon to testify? Children can be called upon to testify in criminal and civil proceedings. There are legislative protections in place to support child witnesses giving evidence. In proceedings for domestic violence offenses, the Criminal Evidence Act 1992 makes it easier for people under 17 years of age to give evidence for the following reasons:

A child under 14 years of age does not need to give evidence on oath, and there is no requirement for the corroboration of unsworn evidence of a child.

A child under 17 years of age may give evidence through a live television link unless the court sees good reason to the contrary.[132]

A party may apply to the court to allow an intermediary to convey any questions being asked to the child under 17 years of age in a way appropriate to their age and mental condition.[133]

If an intermediary is not used, the wearing of wigs and gowns is not permitted by barristers and judges for the examination of a child witness under the age of 17 when giving evidence via television link.

What is the effect of a child victim on the charges against the offender?The Domestic Violence Act specifically mentions that the court should, where relevant, consider the accused's history of violence inflicted on a child, their previous convictions for offenses against children, their exposing of a child to domestic violence inflicted on others, and the destruction or damage to the property of children when determining whether to make a specified order.[134]

Further, when a safety order or barring order is being decided on behalf of a child, the views of the child in question must be considered before deciding whether to make the order in question.[135]

# 5.4.2 Who may abstain from testifying in certain situations?

Please see section 5.4.1.

# 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Please see section 5.4.1.

# 5.4.4 What is the impact of domestic violence on witnesses who are children?

Please see section 5.4.1.

# 5.4.5 Can children be called upon to testify?

Please see section 5.4.1.

# 5.4.6 What is the effect of a child victim on the charges against the offender?

Please see section 5.4.1.

# 5.5 Penalties and sentencing; penalty enhancements

# 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

There are no official guidelines on sentencing provisions for domestic violence. However, the penalties for domestic abuse offenses range from a class A fine or imprisonment for a term not exceeding 12 months, or both, to five years imprisonment if convicted on indictment.[136]

There are specific penalties listed for certain offenses under the Domestic Violence Act:

A person who **contravenes an order** (whether a safety order, barring order, interim barring order, emergency barring order or protection order) will be liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months, or both.[137]

A person who **commits the offense of coercive control** under Section 39 of the Domestic Violence Act is liable:

on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both

on conviction on indictment, to a fine or imprisonment for a term not exceeding five years, or both[138]

Under section 40 of the act, the fact that the victim is or was a spouse, civil partner or person in an intimate relationship with the perpetrator is an aggravating circumstance in sentencing those guilty of assault, sexual assault, rape and other offenses against the person (including threats, harassment and false imprisonment).[139] The act does not offer more guidance on the extent of the impact on sentencing, but does limit it to the maximum sentence permissible for the relevant offense concerned.

Domestic violence that results in an unlawful killing is obviously subject to more severe penalties.

# 5.5.2 Are there criminal penalties?

Refer to section 5.5.1.

# 5.5.3 What is the result of a violation of an existing order for protection?

Refer to section 5.5.1.

# 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

Refer to section 5.5.1.

# 5.6 Post-release restrictions

# 5.6.1 Does the law notify the victim of the offender's release from custody?

At present, there is no legislative framework in place to monitor the perpetrator following release from custody or the expiry of an order. Orders can be renewed by applying for a further order before the previous one expires. The court will then decide based on the list of factors under the Domestic Violence Act.[140]

The [Women's Aid consultation in 2019](https://www.womensaid.ie/assets/files/pdf/unheard_and_uncounted_-_women_domestic_abuse_and_the_irish_criminal_justice_system_full_report.pdf) draws upon the difficulty faced by domestic violence victims when attempting to have their orders renewed where there are no recent offenses, even when the perpetrator has been in jail, and their imprisonment is the reason why he could not reoffend.

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