Fighting Domestic Violence - The Philippines

5. Prosecutorial considerations

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# 5.1 Police procedures

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

The police generally get involved in domestic disputes or legal actions when they receive a complaint relating to a violation of the VAWC Act, when they encounter an ongoing act of domestic violence *in flagrante delicto* (caught in the act) and when they enforce a warrant of arrest issued by a court relating to a legal action arising out of a domestic dispute.

# 5.1.2 What circumstances effect law firm involvement?

Police involvement does not generally affect law firm involvement. The law firm can assist in preparing and filing a complaint before law enforcement agencies and in coordinating with the police when effecting a warrant of arrest.

# 5.2 Standard of proof

# 5.2.1 Is proof required by any legal means?

Yes. Proof is required throughout the criminal prosecution process, which is a two-stage process. A preliminary investigation is held before a public prosecutor requires proof sufficient to establish probable cause that a crime has been committed and that the respondent has committed the same. Once a formal charge is filed in court, the proof required is proof beyond a reasonable doubt that a crime has been committed and the accused has committed the same.

# 5.2.2 Are there any requirements regarding evidence and documents?

Yes. Evidence, whether testimonial or documentary, should be relevant and admissible in accordance with the Revised Rules on Evidence of the Philippines.

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

Yes, but only once a formal charge has been filed in court. During the preliminary investigation, only "probable cause" is required.

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

Yes. The Rules on Violence Against Women and Children only require the court to have "reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur" for it to issue *ex parte* a temporary protection order.

# 5.3 Affirmative defenses

# 5.3.1 Are affirmative defenses available to the accused?

Yes. Under the RPC, there are circumstances that may justify or exempt someone from criminal liability. Under Article 11, self-defense may be invoked by the accused to justify his actions and exempt him from liability.[95] Admission of insanity can also exempt one from criminal liability.[96] However, it is not a valid ground for exemption from civil liability. The following circumstances also exempt the accused from criminal liability:

any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it

any person who acts under the compulsion of an irresistible force

any person who acts under the impulse of an uncontrollable fear of an equal or greater injury

any person who fails to perform an act required by law when prevented by some lawful or insuperable cause[97]

# 5.3.2 Is willful intent required?

It may or may not be required depending on the cause of action used as a basis for filing a criminal case. Filing a criminal case based on a crime under the RPC requires willful intent to commit a crime.

On the other hand, a criminal case based on the VAWC Act or other special laws outside of the RPC may proceed without proof of willful intent to commit a crime. However, at the least, there should be willful intent to perpetrate the act that is the subject of the criminal case.

# 5.3.3 Are false accusations punishable for the victim?

Yes. False accusations are punishable as libel or slander under Philippine law. Under the RPC, libel includes the public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a person.[98] It may be committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition or any other similar means.[99] Slander refers to oral defamation or libel.[100]

# 5.3.4 How is consent discussed in the law?

Consent is mainly discussed in the RPC. It is not discussed in the VAWC Act. Under the RPC, rape is considered generally committed by force, threat or intimidation or upon a person deprived of reason or otherwise unconscious, or by means of fraudulent machination or grave abuse of authority.[101] However, if the victim is under 12 years old or mentally disabled, the accused may be guilty of rape even with the consent of the victim.[102]

Furthermore, a person may be charged with acts of lasciviousness with the consent of the offended party if the victim is a woman who is a virgin, single or a widow of good reputation (above 12 years old but below 18 years old), or a sister or descendant (regardless of reputation or age).[103]

Under the RPC, the marriage of the offender to the offended party will extinguish the criminal action or remit the penalty already imposed upon him in cases of seduction, acts of lasciviousness and rape.[104]

# 5.3.5 Is self-defense or insanity a defense?

Yes, insanity or self-defense is a defense that the accused can invoke to exempt himself from criminal liability.

# 5.4 Witness status

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

Under Rule 132 of the Philippine Rules on Evidence, a witness has the obligation to answer questions, although their answer may tend to establish a claim against them.[105] However, a witness can only testify on facts on which they have personal knowledge.[106]

# 5.4.2 Who may abstain from testifying in certain situations?

The accused may abstain from testifying in criminal proceedings.[107] A person cannot be compelled to testify against their ascendants or descendants, except when the testimony is indispensable in a crime against that person or by one parent against the other.[108]

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

Under Rule 132 of the Philippine Rules on Evidence, a witness has the following rights:

to be protected from irrelevant, improper or insulting questions, and from a harsh or insulting demeanor

not to be examined, except only regarding matters pertinent to the issue

not to give an answer that will subject them to a penalty for an offense, unless otherwise provided by law

not to give an answer that will degrade their reputation, unless it is the very fact at issue or a fact from which the fact at issue would be presumed[109]

However, generally, a witness may not refuse to testify. A witness may only refuse to answer certain questions.

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

The Rule on the Examination of a Child Witness will apply to child witnesses who are victims of a crime, accused of a crime and witnesses to a crime. The rule includes provisions on appointing a guardian *ad litem*,[110] an interpreter,[111] a facilitator[112] or support persons[113] during hearings. The rule also includes provisions on special modes of conducting hearings such as live television link testimony[114] in criminal cases, providing screens or one-way mirrors to shield the child from the accused[115] and excluding the public when a child testifies.[116]

Furthermore, evidence offered to prove that the alleged victim engaged in other sexual behavior and evidence to prove the sexual predisposition of a victim will not be admissible in criminal proceedings involving child sexual abuse.[117]

# 5.4.5 Can children be called upon to testify?

Yes, children can be called upon to testify. Under Section 6 of the Rule on the Examination of a Child Witness, every child is presumed qualified to be a witness. However, the court may conduct a competency examination, on its own or upon the motion of a party, where there is a doubt regarding the ability of the child to perceive, remember and communicate their testimony.

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

Where the victim of the crime is a child, the circumstances can aggravate the imposable penalty or they become subject to a special penal law, which would commonly have higher penalties than those imposed under the RPC.

For example, in the crime of rape under the RPC, when the victim is a minor and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree or the common law spouse of the parent of the victim, the penalty of death will be imposed. Rape without aggravating circumstances is penalized by *reclusion perpetua*, which is a penalty lower in degree than death. Presently, the penalty of death is suspended by law. Thus, the highest penalty imposed is *reclusion perpetua*, which translates to 30 years of imprisonment.

# 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 separate penalties for first-time domestic violence offenses. All acts of violence committed against women and their children are punishable in the same measure, regardless of whether it is a first-time offense or a subsequent offense. [118] The criminal penalty to be imposed varies and it is dependent on the act of violence committed by the abuser.[119]

# 5.5.2 Are there criminal penalties?

There are criminal penalties for the crime of violence against women and their children as provided for in the VAWC Act. The criminal penalty to be imposed varies and it is dependent on the act of violence committed by the abuser.[120]

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

The VAWC Act provides that all temporary protection orders and permanent protection orders are enforceable anywhere in the Philippines, and a violation of these orders is punishable with a fine ranging from PHP 5,000 (approximately USD 100) to PHP 50,000 (approximately USD 1,000) and/or imprisonment for six months.[121]

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

Any victim of violence under the VAWC Act will be entitled to actual, compensatory, moral and exemplary damages.[122] Furthermore, in addition to imprisonment, the perpetrator will be subjected to the following penalties: (i) paying a fine in the amount of no less than PHP 100,000 (approximately USD 2,000) but no more than PHP 300,000 (approximately USD 6,000); and (ii) mandatory psychological counseling or psychiatric treatment.[123]

# 5.6 Post-release restrictions

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

The VAWC Act does not specifically provide any information or any mandatory obligation regarding whether the victim will be notified of the offender's release from custody.

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