

# ***DOMESTIC VIOLENCE COURT PROTOCOLS***

## **Honorable Katrina Ross**

805 Criminal Justice Center  
801 Richard Arrington Jr. Blvd North  
Birmingham, Alabama 35203

### **Arrest**

Once placed in jail on a DV 3 writ the defendant's bond is set. If the defendant makes bond, after 12 hours he/she will be released and should be given "Conditions of Release For DV Cases" sheet by jail personnel informing them of the conditions of release. These conditions include "**no contact**" with the victim. Also the defendant is told how to find out when their first court date is set.

Those who are unable to make bond will be brought to the courtroom the next day at the 48 Hour Hearings. There are no guilty pleas accepted at this time for two reasons: 1) The defendant hasn't consulted with an attorney to discuss ramifications of a guilty plea and 2) The prosecution hasn't had time to assess the case.

If the defendant is in jail the defendant's attorney should file a motion for a bond hearing as soon as possible.

### **Court Proceedings**

An "**Initial Appearance**" docket will be the defendant's first appearance in court. At this time the conditions of bond will be repeated and confirmed. The defendant will be asked if they have hired an attorney, or if they need for the court to appoint an attorney to represent them.

A **pretrial** setting will be made for the defendant to return to court. At this time the DDA and the defense counsel will discuss the case and settlement offers will be made. *Ideally*, by this time the DDA and/or the Victim's Advocate will have discussed the case with the victim. The victim is not required to attend the pretrial setting. If a plea agreement is reached, a plea will be taken that day. If not, the case will then be set for trial.

**Trial** dates will be set on the next trial docket. Cases should be tried as soon as possible so that the parties can go on with their lives. On trial dates, there is also the possibility of settlement. Upon conviction the appropriate sentence will be handed down; upon acquittal the defendant shall be released from all court orders. It should be emphasized that all other court orders (Family or Domestic Relations) are not affected by the acquittal in criminal court.

Once a case has an initial trial setting, one continuance should be allowed for each side this will give them an opportunity to get the victim/witnesses to court OR to insure that the victim's refusal to appear in court is of his/her own volition and not the result of intimidation or threats by the defendant. After two trial settings, if the victim refuses to attend and all are confident this is of his/her own wishes the case may be dismissed.

In some cases, the DA's Office will attempt to proceed without the victim. In light of recent U.S. Supreme Court decisions on hearsay evidence, this can be done only in cases with other witnesses who are willing to testify, photographic evidence, a limited number of 911 calls and, or defendant statements.

## **Sentence**

It is hoped that the appropriate sentence is pronounced using the same common sense, prior history, "make the punishment fit the crime" criteria used in all cases. Sentences have ranged from straight probation to split sentences (some jail time then the balance of the sentence on probation) and some straight jail sentences.

In probation sentences the Court must clearly spell out, preferably in writing, what is expected of the defendant. Defendants convicted for Domestic Violence will be sent to a certified D.V.I.P. program—Alabama Abuse and Freedom from Abuse are our two locally certified programs. An exception might be given where the offense involves siblings or parent-child relationships. I am told by the experts that anger management classes offered by both programs are sufficient in those circumstances. There are always exceptions to this rule—mental health concerns which do occur in some cases—where a defendant may be excused for obvious reasons from attending DVIP. These situations should be rare. Sometimes the situation may call for delaying the DVIP classes and addressing the more immediate need for drug or mental health treatment. Financial costs also need to be considered because none of these programs are free—although most will work with the defendants.

We have found that regular court reviews, post conviction, are critical to ensure compliance with the conditions of probation. Reviews are set up according to severity of the offense and the defendant's compliance pre-conviction, but ordinarily a first review is set up 4 weeks post conviction to review the defendant's progress with DVIP, and other court orders. If all is well, the next review date is usually set off for two to three months. If the victims wish to have "no contact" orders lifted they are encouraged to come to court and ask in person. Usually, this is done at the victim's request.

## **Appeals**

If a case is going to be appealed to the circuit court for a jury trial, conditions of bond need to be set and "no contact" orders repeated. The appealed cases are going to a Circuit Court Judge for a trial setting.

## **Interpreters**

We are very fortunate to have interpreters for different languages for both offenders and victims including sign language.

## **Observations from the Bench**

Too many dual arrests-Defendants take the fifth amendment-cases dismissed. The law requires deputies to make a determination of who is the prior aggressor.

Very poor victim contact—most dismissed cases are due to inability to locate victim or victim's failure to cooperate—LET'S FACE IT THERE WILL BE A CERTAIN NUMBER OF THESE REGARDLESS.

Warrantless Arrests—most cases are initiated by warrantless arrest; this means few victims come to the courthouse to swear out warrants and thus be referred to the District Attorney's Office victim's advocate.