

# **DOMESTIC VIOLENCE**

This policy document on Domestic Violence highlights how Members of the Garda Síochána should respond to Domestic Violence incidents. It incorporates information on Garda standards, procedures and legislation as well as victim support in regard to Domestic Violence incidents. All Members of the Garda Síochána are required to be familiar with its content.

## **What is Domestic Violence?**

Domestic Violence has not been defined in legislation however, the following may be a useful working definition.

“Domestic Violence” includes the physical, sexual, emotional or mental abuse of one partner by the other partner in a relationship which may or may not be one of marriage or cohabitation and includes abuse by any family member against whom a Safety Order or a Barring Order may be obtained by another family member.

## **Who is affected by Domestic Violence?**

Domestic Violence is not confined solely to heterosexual relationships but also occurs within lesbian, gay and bisexual or transgender (LGBT) relationships. Though women in heterosexual relationships account for the majority of reported victims of domestic violence, men in heterosexual relationships, and men and women in same sex relationships, are also victims. In addition, children in homes where domestic violence exists also suffer.

Domestic Violence also presents itself in the form of abuse of older people by abusive spouses / children / relatives / carers (Elder Abuse); and abuse of people with disabilities by either their carers, partners or relatives.

Domestic violence crosses class, gender, race and religious belief and can affect a diverse range of victims.

## **1.0 INTRODUCTION**

- 1.1 The function of the Garda Síochána is to provide policing and security services for the State. The objective of these services includes the vindication of individuals' human rights.
- 1.2 It is the duty of the Garda Síochána to investigate fully all incidents of domestic violence, including reports of domestic violence received from a third party. These cases require special care and attention because of the vulnerable circumstances which usually surround the injured party with she/he often not being able to make the kind of rational decisions which would be in her/his best interests. Domestic violence cases are incidents of extreme bullying, and inappropriate action by the Garda Síochána can often confirm the aggressor's perception of invulnerability which can in turn lead to further violence.
- 1.3 Each District Officer will take a personal interest in the implementation of the policy contained in this document. Each Divisional Officer will nominate an Inspector to oversee the policy and evaluate its effectiveness within that Division.

## **2.0**      **PROCEDURE**

- 2.1      Reports of crimes of domestic violence will be dealt with promptly because life and property may be at risk. Gardaí should also always be aware of the potential danger to themselves which may exist and take appropriate precautions. If a report of domestic violence is received from a third party, the Garda member will investigate the matter fully and take appropriate action. Information on barring orders and support will be given.
- 2.2      If the investigating member is alone, the initial interview will be with the complainant or the alleged victim. It is, however, preferable that each incident of domestic violence be attended by two members. If the victim is a female and prefers talking to a female, every effort should be made to include a female Garda in the investigation. The assistance of Ethnic Liaison Gardaí should be considered when cultural issues are encountered.
- 2.3      There may be a need for the Garda member to render first aid to the victim or abuser. If the victim has minor injuries and wants to be taken to a GP / hospital or refuge, this should be facilitated. If assistance of a more serious nature is needed, the appropriate services (ambulance, fire brigade etc.) should be contacted. If there is a possibility that the victim may die the member will accompany the victim in the ambulance to the hospital. Assistance should be called if the incident cannot be dealt with by one member alone.
- 2.4      Members will introduce themselves by name, will remain calm and be patient, tactful and courteous. At the same time the investigating member will display a positive, helpful and non-judgemental attitude.
- 2.5      Direct verbal confrontation between the assailant and the victim will be prevented by getting enough distance between them to enable each relate what has happened without interruption. In order to achieve this, the parties will be separated and kept out of sight and hearing of each other. This will remove the possibility of non-verbal intimidation being used.
- 2.6      From the outset, the investigating member will keep in mind the emotional and physical pain the victim may be suffering while ensuring that all available evidence regarding any alleged assault is obtained. To this end, the investigating member will take note of the following:-
- (a) Day, date, time and place of incident;
  - (b) Detailed description of the occurrence, including injuries, with indications of corroboration, if any;
  - (c) Name and address of complainant / victim and alleged offender and relationship between both;
  - (d) The existence or otherwise of a Safety / Barring / Interim Barring / Protection order;
  - (e) Name and address of any witness;
  - (f) Physical and emotional condition of alleged victim and alleged offender;
  - (g) Physical and emotional condition of any children present;
  - (h) Condition of premises.

- 2.7 Where evidence of a violent attack on a victim has been established, the incident should be dealt with in an appropriate manner. Advice on obtaining relevant Court Orders can be dispensed to the victim at a later stage after the incident has been appropriately dealt with. Dispensing of advice in obtaining relevant Orders should not replace affirmative action at the scene of a domestic dispute.
- 2.8 As well as taking note of the above, the investigating member will also seize and retain any physical evidence, which could be used to support a prosecution and where appropriate preserve the scene.
- 2.9 The investigating member should also take a statement of complaint from the injured party and a statement from witnesses (where available) as soon as possible.
- 2.10 As regards entry to a private dwelling, if there is evidence of an attack (people shouting, screaming etc.,) or calls for help from individuals inside the premises, entry will be made. In all other cases, where entry to the premises is refused by the alleged abuser, the Garda will ask to see the alleged victim before departing the scene. The Supreme Court case of *D.P.P. v Delaney* [1997] 31.R. 453 (SC) addresses the issue of the inviolability of the dwelling and entry without a warrant. Garda members must be cognisant of the rights of all individuals in cases where alleged domestic abuse is occurring behind closed doors. Justification must be proved subsequently that entry to a dwelling without warrant was in defence of life and limb of a person in peril and not merely to gain entry to the dwelling. Article 40.5 of the Irish Constitution protects the inviolability of a dwelling and only in exceptional circumstances, such that the rights of a victim supersede the rights of the owner/occupier of the dwelling, can this right be infringe.

### **3.0 ARREST**

- 3.1 The Garda Síochána will take a pro-active approach towards arresting and charging where there are reasonable grounds to believe that a suspect has committed an offence and a power of arrest exists. The injured party's attitude will not be the determining factor in respect of the exercise of such powers.

The victim should not be asked if the abuser should be arrested. If a breach of an Order occurs or an offence has been disclosed by the victim, the alleged abuser should be arrested.

- 3.2 To this end, there are a number of pieces of legislation to which a member may have recourse, for example:
- (a) Domestic Violence Act, 1996 (as amended);
  - (b) Criminal Damage Act, 1991;
  - (c) Non-Fatal Offences Against the Person Act, 1997;
  - (d) Criminal Law (Rape) Amendment Act, 1990;
  - (e) Criminal Justice Public Order Act, 1994;
  - (f) Children Act, 2001 – S.254 (Offences against Children).
  - (g) Breach of the Peace at Common Law;

### **4.0 SAFETY / BARRING / INTERIM BARRING / PROTECTION ORDERS.**

- 4.1 Safety Orders, Barring Orders, Interim Barring Orders, and Protection Orders as defined in Sections 2, 3, 4 and 5 of the Domestic Violence Act

1996 may be issued by the Courts. Where an Order is in force, the Garda Síochána will take a pro-active approach to arresting the respondent where the member has reasonable cause for believing that the Order has been contravened and a complaint has been received from or on behalf of the applicant.

- 4.2 It should be noted that a Barring Order is not made void where the respondent has been allowed back, even for an extended period, by the applicant, into the premises from which he / she has been barred. The fact that some Courts may regard this action by the applicant as inconsistent does not affect the validity of the order and consequently the power of arrest.
- 4.3 It is of vital importance that each Garda member responding to a Domestic Violence incident will know exactly what each Order is and when it can be used. Incorrect or conflicting information given to victims may have devastating effects. The following Orders can be obtained under the Domestic Violence Act, 1996.

**Safety Order (Section 2, Domestic Violence Act, 1996)**

**Barring Order (Section 3, Domestic Violence Act, 1996)**

**Interim Barring Order (Section 4, Domestic Violence Act, 1996)**

**Protection Order (Section 5, Domestic Violence Act, 1996)**

**Power to make orders under the Child Care Act, 1991 (Section 7, Domestic Violence Act, 1996)**

## **5.0 BAIL**

- 5.1 Where the injured party has reason to fear harassment or retaliation, the court should be so informed in order that this fact may be taken into account in any bail application. In any case, where such a ground is advanced as an objection to bail, the Court normally requires the injured party to give evidence to this effect.
- 5.2 Where bail is granted and any special conditions are attached, the injured party will be informed of all details and encouraged to inform the investigating member if any of these conditions are being breached. Likewise, where there has been a change in the circumstances of the investigation (eg, offender is granted bail, bail conditions are changed, etc), the investigating member should inform the injured party forthwith.
- 5.3 Where a person is arrested and charged immediately after an assault, station bail should not be granted, if there is a likelihood of intimidation. Where it is necessary that a special sitting of the District Court is convened in relation to such an incident, it will be Garda policy to object to the granting of bail.
- 5.4 Members of the Garda Síochána must be aware of the grounds for objecting to bail which are governed by the case of People (AG) v O'Callaghan (1966) I.R. 501 (O'Callaghan Rules) and Section 2 of the Bail Act, 1997.
- 5.5 Members must always be prepared to offer evidence where the Court requires such, rather than submissions, in relation to objections to bail.

## **6.0 WELFARE OF CHILDREN**

- 6.1 In addition to the various available powers of arrest in relation to offences against children, investigating members will also keep in mind their powers under Section 12 of the Child Care Act, 1991 in relation to an immediate risk in respect of the safety of children.
- 6.2 Where the investigating members suspect that there is a risk to the health, safety or welfare of any children involved, the appropriate HSE office will be notified without delay as per instructions in HQ Directive 54/10.
- 6.3 Further, the Children First National Guidelines for the Protection and Welfare of Children (1999) require that the Garda Síochána formally notifies the appropriate HSE office when a member suspects that a child has been the victim of emotional, physical or sexual abuse or neglect (wilful or unintentional). Sufficient evidence to support a criminal prosecution is not required before notifying the HSE.
- 6.4 Official transport may be used to ensure the safety of injured spouses and children.

## **7.0 CULTURAL ISSUES**

- 7.1 Ireland has become a multi-cultural society with numerous different communities who may have differing needs and present different issues. Some cultures may have a negative view of the police service and this may deter them from reporting incidents of domestic violence or indeed any other crime. It is important that community relations between the Garda Síochána and ethnic groups are developed and maintained to ensure reporting of incidents and to raise awareness among victims of domestic violence that there is help and support available.
- 7.2 The following issues should be highlighted in any diversity training given to members responding to Domestic Violence incidents:
- Distrust of police (this can be based on experiences in home country);
  - Language (possible limited ability to communicate with or understand the investigating Garda, or any written material on the topic if only available in English);
  - Religious Customs (being separated to be interviewed, male / female Garda issue);
  - Cultural practices (forced marriage, dowry related violence and female genital mutilation, among others);
  - Culture (openness to talk about Domestic Violence, hand shaking, eye contact);
  - Immigration issues (immigration status tied to living with spouse).
- 7.3 Investigating members should contact the Garda Racial and Intercultural Office (Community Relations, Harcourt Square) if they require advice about cultural issues when investigating domestic violence incidents.

## **8.0 DOMESTIC VIOLENCE AND DISABILITY**

- 8.1 The victim of domestic violence crime and the offender do not have equal power. The power gained from a sustained pattern of coercion,

intimidation and violence gives the offender power over their victim. This is further exacerbated if the victim has a disability, as they may be more dependent on their abuser resulting in a greater sense of power / control over the victim. As a result, the victim is vulnerable to pressure, intimidation and retaliation by the offender.

Members responding to Domestic Violence incidents which involve people with disabilities should be mindful of this additional sensitivity and should be conscious that the incident may require interagency intervention (HSE / NGO's etc).

8.2 Members of the Garda Síochána should also be aware that disability can take a number of forms:

- Physical (mobility, dexterity);
- Sensory (vision, hearing, speech);
- Intellectual (learning, memory);
- Mental (i.e. depression, schizophrenia).

## **9.0 DOMESTIC VIOLENCE AND ELDER ABUSE**

9.1 In any case of domestic violence, the abuse may be in the form of financial or material abuse, neglect and acts of omissions. This is very common among Elder Abuse victims. Theft, fraud, exploitation, pressure in connection with wills, property, inheritance, financial transactions can be perpetrated. In addition, ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, and withholding necessities of life such as medication, adequate nutrition and heating, all constitute abuse.

9.2 Members responding to incidents which involve older people should be mindful of the complexities of the abuse, when interviewing the victim. Members of the Garda Síochána should be conscious that the incident may require interagency intervention (HSE / NGO's etc).

## **10.0 ADVICE AND SUPPORT**

10.1 It is important to note that victims of domestic violence vary. All victims both male and female, irrespective of relationship type, will have their complaint of domestic violence investigated without bias or discrimination.

10.2 The investigating member will ensure that the victims are fully informed of the legal redress available to them through the civil courts. Such guidance and support should include addresses of the Family Law Courts and / or the District Court Clerk. It is the responsibility of each station to update any listing of services / Court contact details in order for members of the Garda Síochána to provide victims with accurate contact information. The investigating member should inform the victim fully of the procedures to be followed in applying for a Safety / Protection / Interim Barring Orders.

10.3 Where cohabiting couples are involved, the complainant / alleged victim should be informed of the procedure for applying for Orders under the Domestic Violence Act, 1996.

10.4 One of the central features evident in incidents of domestic violence is the need for co-ordination of Garda work with that of other relevant services. The investigating Garda should make the victim aware of the relevant

services in the area, both statutory and voluntary, which may be of assistance to him / her. Liaison with external agencies, both locally and nationally, is important in furthering the Garda Síochána understanding of the issues central to domestic violence.

10.5 Investigating members should be aware that research has shown that victims are less likely to withdraw their allegation or complaint and continue with a prosecution when:

- they have been supported by a victims' group;
- there is a substantial investigative effort (statement of complaint taken immediately).

Therefore it is valuable both for the victim and the Court system that cases are dealt with professionally and victims are advised of the relevant services available.

10.6 In all cases of domestic violence, the investigating member will:

(a) provide the victim with a copy of the relevant Domestic Violence information literature and make the victim aware of the relevant services in the area, such as :

- Health Service Executive (HSE) Senior Helpline (Elder Abuse)
- National Crime Victims Helpline;
- Health Service Executive Social Workers;
- Rape Crisis Centre;
- Women's Aid / Refuge;
- AMEN (Abused Men);
- NNWRSS (National Network of Women's Refuges and Support Services);
- Local women's support groups;
- Local GPs;
- Family Law Courts;
- Legal Aid Board;
- Local Housing Authorities;
- Any other agency which may be of assistance.

Information relating to these services should be updated as required. These updated lists should be placed close to the phone in the public office of every Garda Station for ease of access. Where literacy issues may arise, information should be explained verbally. Where language is an issue, the information should be provided in a language which the victim can understand or be interpreted for the victim.

(b) Give the victim, in writing, his / her name, station and telephone number (call card).

(c) Call back to complainant / victim within one month to provide further information on any developments in the investigation, and reassurance in cases where there is no on-going investigation.

10.7 The reality is that domestic violence crimes are repeated, systematic and dangerous crimes, often against the same victim. In cases of domestic violence crimes, even where an alleged offender has been charged and brought before the Courts by the Garda Síochána, the abuse tends to continue, with victims at elevated risk where the defendant has been

remanded on bail. To this end it is important that the injured party is put in contact with appropriate services bearing in mind that their safety is paramount.

**11.0 Human Rights**

- 11.1 Members carrying out their functions shall at all times respect a person's personal rights and dignity as a human being and shall not subject any person to ill-treatment of any kind.

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