

**DOMESTIC VIOLENCE
PROSECUTION
HANDBOOK
ANNEXURES**

ANNEXURE A : LIST OF BEHAVIOURS AND POSSIBLE OFFENCES

EXAMPLE OF BEHAVIOUR	POSSIBLE OFFENCE	CHARGE/LEGISLATION
<i>Neglecting, abandoning or ill-treating a child</i>	Duty to provide necessities of life	s104(1) Penal Code
	Abandonment of Incapable persons	s103 Penal Code
<i>Forcing entry into a house</i>	Enter a dwelling House	s143 Penal Code
<i>Pressuring a victim/witness to "drop the case" or not to give evidence</i>	Interfere with witness	s82(1)(f) Penal Code
	Obstructing the course of justice	s82(1)(c) Penal Code
	Conspiracy to defeat justice	s79 Penal Code
<i>Physical violence, with or without weapons (eg: punching, slapping, pushing, kicking, headbutting, and hair pulling)</i>	Intentional Assault (no damage)	s107 (a) Penal Code
	Intentional Assault (temporary damage)	s107(b) Penal Code
	Intentional Assault (permanent damage)	s107(c) Penal Code
<i>Neglecting, abusing or ill-treating an individual whereupon the act has caused serious physical harm or death</i> <i>*In addition to possible offences listed assault should also be considered and charged in addition.</i>	Duty to provide necessities of life	s104 (1) Penal Code
	Abandonment of Incapable persons	s103 Penal Code
	Unintentional harm (negligence)	s108 (c) Penal Code

<i>Violence resulting in death</i>	Premeditated Intentional Homicide	S106(1)(b) Penal Code
	Intentional Homicide	s106(1)(a) Penal Code
	Intentional Assault (causing death)	S107(1)(d) Penal Code
EXAMPLE OF BEHAVIOUR	POSSIBLE OFFENCE	CHARGE/LEGISLATION
<i>Offensive/obscene/ menacing telephone calls, text messages, letters, emails, social media/online messages</i>	Domestic Violence Offence (harrass, intimidate, abuse)	s10 and 4(1)(b) Family Protection Act
	Domestic Violence Offence (indecent or offensive)	s10 and 4(1)(e) Family Protection Act
	Domestic Violence Offence (stalking)	s10 and 4(1)(d) Family Protection Act
<i>Posting of intimate images, messages, or defamatory/insulting material</i>	Domestic Violence Offence (stalking)	s10 and 4(1)(d) Family Protection Act
	Domestic Violence Offence (indecent or offensive)	s10 and 4(1)(e) Family Protection Act
	Criminal Defamation	s120 Penal Code
	Obscene Publication	s147 Penal Code
<i>Excessive contact (eg: numerous phone calls to check someone's whereabouts,</i>	Domestic Violence Offence (stalking)	s10 and 4(1)(d) Family Protection Act

<i>leaving unexpected/unwanted gifts, defamation of character to friends/family employers etc)</i>		
<i>Following an individual physically, or using online methods such as checking online media activity, or tracking an individual through GPS applications</i>	Domestic Violence Offence (stalking)	s10 and 4(1)(d) Family Protection Act
EXAMPLE OF BEHAVIOUR	POSSIBLE OFFENCE	CHARGE/LEGISLATION
<i>Constantly visiting an individual (or their friends'/family') home, workplace or regularly known location</i>	Domestic Violence Offence (stalking)	s10 and 4(1)(d) Family Protection Act
<i>Threatening with an article used as a weapon (eg: a knife, tool, telephone, chair)</i>	Threats to kill	s115 Penal Code
	Domestic Violence Offence (threats)	s10 and 4(1)(g) Family Protection Act
	<i>Possible alternative charge</i> Abusive and threatening behaviour	s121 Penal Code
<i>Throwing articles (eg: crockery, even if they miss their target)</i>	Intentional Assault * DV offences can also be used	s107 Penal Code

	Domestic Violence Offence (threats)	s10 and 4(1)(g) Family Protection Act
	Malicious Damage	133 Penal Code
<i>Tying someone up with ropes or other items</i>	Intentional assault	: s107 Penal Code
	Kidnapping	s105 Penal Code
	Abduction of a person under 18 years of age	S92A Penal Code
<i>Threatening to kill someone</i>	Threats to kill	s115 Penal Code
	Domestic Violence Offence (threats)	s10 and 4(1)(g) Family Protection Act
	Abusive and threatening behaviour	s121 Penal Code
EXAMPLE OF BEHAVIOUR	POSSIBLE OFFENCE	CHARGE/LEGISLATION
<i>Threats to cause injury</i>	Domestic Violence Offence (threats)	s10 and 4(1)(g) Family Protection Act
<i>Threats seriously to damage or undermine social status</i>	Extortion	s137 Penal Code
<i>Damaging or destroying property or threatening to damage or destroy property</i>	Domestic Violence Offence (threats)	s10 and 4(1)(g) Family Protection Act
	Domestic Violence Offence (damage property)	s10 and 4(1)(f) Family Protection Act
	Malicious Damage	s133 Penal Code

<p><i>Harming or threatening to harm a pet</i></p> <p><i>*A pet is property at law, any of the property offences can be used to address this offence, however the maltreatment offences may be more appropriate</i></p>	Maltreatment of Animals, Birds or Fish	s136 Penal Code
	Malicious Damage	133 Penal Code
<p><i>Locking someone in a room or house or preventing him or her from leaving</i></p>	False imprisonment	s118 Penal Code
	Kidnapping	s105 Penal Code
	Abduction of a person under 18 years of age	S92A Penal Code
<p><i>Preventing someone from visiting relatives or friends</i></p> <p><i>*The action of preventing may also include a DV offence</i></p>	False imprisonment	s118 Penal Code
<p><i>Preventing someone from seeking aid (eg - medical attention)</i></p> <p><i>*The action of preventing may also include a DV offence</i></p>	False imprisonment	s118 Penal Code
EXAMPLE OF BEHAVIOUR	POSSIBLE OFFENCE	CHARGE/LEGISLATION
<p><i>Using violence or threatening violence to prevent someone from dressing as they choose or forcing them to wear a particular make-up, jewellery and hairstyles</i></p>	Intentional Assault	s107 Penal Code
	Domestic Violence Offence (Harrass, Abuse, Intimidate)	s10(1)(b) Family Protection Act

<i>Enforced financial dependence or unreasonably depriving someone of money</i>	Domestic Violence Offence (Harrass, Abuse, Intimidate)	s10(1)(b) Family Protection Act
<i>Forced sexual activity</i>	Sexual intercourse without consent	s89 and 90 Penal Code
	Incest	s95 Penal Code
	Act of indecency	98 and 98A Penal Code
	Agg Sexual Assault of a Child u15	s97A Penal Code
	Prostitution	s101 Penal Code
	Procure/Benefit from Child Prostitution	s101A-C Penal Code
	Produce Child Pornography	s101D Penal Code
<i>Breaching the conditions of a protection order</i>	Breach of a protection order	s21 Family Protection Act
<i>Secret or enforced administration of drugs</i>	Intentional Assault	s107 Penal Code

Annexure B: Family Violence Memorandum of Understanding

See Resources section of OPP website

Annexure C: OPP Victim of Crime Charter

VICTIM OF CRIME CHARTER

The Office of the Public Prosecutor Undertaking to Victims of Crime

1 To treat victims with courtesy, compassion, respect and dignity. This will include, in some cases, seeking orders from the court to suppress names, ensuring the victim cannot see the accused in court and close the court to maintain the victims dignity.

2 To take into account and to treat a victim in a way that responds to their needs, for example obtaining support for children or people with disability during the court process.

3 To assist the return, as soon as possible, of a victims property which has been held as evidence. Where a victims property is not held by the OPP the victim will be directed to the police case officer.

4 To seek all necessary protection from violence and intimidation by a person accused of a crime against the victim, this includes:

- seeking protective bail conditions from the court;
- opposing bail because of the risk to the victim;
- seeking suppression of the victims home address or contact details.

5 When a defendant has been convicted of an offence involving domestic violence and there is reason to believe that the victim remains at significant risk, the prosecutor will refer the concerns to police.

6 When a victim has suffered a loss that can be supported by documentation the prosecutor will seek a compensation or reparation order from the court at sentence.

7 To assist in protecting the victims privacy as far as possible and to take into account the victims welfare at all stages of the prosecution.

Annexure D: Domestic Violence Evidence Checklist

Evidence Checklist for Domestic Violence Cases

Date:	Case reference:
Prosecutor:	Police Case Officer:

The following checklist should be completed by prosecutors as soon as a Family Violence Brief is provided to the OPP or SPD.

The completed checklist should be kept on CMS and on your desktop as it will need to be completed over a few days or weeks. It is an electronic file, however, when it is completed it should be printed out and put on the file.

The safety of the complainant and any children or others in the family should be the primary consideration. Consider whether you should refer them immediately to the Vanuatu Womens Centre.

Prosecutors should refer to the Domestic Violence handbook for further information

Have you collected all available evidence , including material other than the complainant's statement and given consideration to the wider pattern of behaviour and its cumulative impact ?			
	YES	NO	COMMENT*
Police first responder statements (to include nature and seriousness of visible injuries, signs of struggle, attempts of choking/drowning, or isolation, disposition of victim/offender, IDs of other persons present)	<input checked="" type="radio"/>	<input type="radio"/>	

Any other first responders such as ambulance	<input type="radio"/>	<input type="radio"/>	
Victim statement	<input type="radio"/>	<input checked="" type="radio"/>	
Photographs; of scene and any injuries (request follow up photos taken 3 days after offence). Recover any possible weapons (sticks, footwear if victim has been stamped on).	<input type="radio"/>	<input checked="" type="radio"/>	
Admissions.	<input type="radio"/>	<input checked="" type="radio"/>	
Medical evidence/DNA (if available at the time);	<input type="radio"/>	<input checked="" type="radio"/>	
Other statements – children, neighbours following house to house enquiries, support services.	<input checked="" type="radio"/>	<input type="radio"/>	
Data: CCTV, Social Media, bank records e.g. social media/other electronic evidence, messages, diaries, spyware technology on phone, apps, bank-records CCTV. Check that phones have been seized by police	<input type="radio"/>	<input checked="" type="radio"/>	
Is there any evidence of coercive and controlling behaviour?	<input type="radio"/>	<input checked="" type="radio"/>	
Relevant information to include from Police Records.			
	YES	NO	COMMENT*
Risk of reoffending. Any previous offending or police involvement	<input checked="" type="radio"/>	<input type="radio"/>	
Any previous breaches of protection orders	<input type="radio"/>	<input checked="" type="radio"/>	
Any previous allegations and how these allegations were concluded (if case did not proceed why not?)	<input type="radio"/>	<input checked="" type="radio"/>	

Police Interview of defendant	<input type="radio"/>	<input checked="" type="radio"/>	
Were any firearms used? Does the suspect have any firearms licences or are there any reports linking suspect and household members to weapons?	<input type="radio"/>	<input checked="" type="radio"/>	
Police view on bail is obtained	<input type="radio"/>	<input checked="" type="radio"/>	
Information regarding the victim and/or incident.			
	YES	NO	COMMENT*
Victim Personal Statement; can be updated throughout case proceedings.	<input type="radio"/>	<input checked="" type="radio"/>	
Safety of victim (victim's views)	<input type="radio"/>	<input checked="" type="radio"/>	
Whether victim has been contacted by suspect/friends/family whether supportive or intimidating contact – detail within comments section.	<input type="radio"/>	<input checked="" type="radio"/>	
Has the suspect raised a defence (details in comments section)	<input type="radio"/>	<input checked="" type="radio"/>	
Protection Order – does the victim want one and if so with what terms?	<input type="radio"/>	<input checked="" type="radio"/>	
What Bail conditions are required. Ensure they that do not restrict the victim and any children. Include locations to avoid.	<input type="radio"/>	<input checked="" type="radio"/>	
Any issues the police have raised in relation to proving the offence/s.	<input type="radio"/>	<input checked="" type="radio"/>	
Ability/willingness of victim to attend court, give evidence and any special considerations.	<input type="radio"/>	<input checked="" type="radio"/>	
Special measures needed? Screening or support person	<input type="radio"/>	<input checked="" type="radio"/>	

Information regarding any children and/or dependants

(When a child is interviewed it should be done in safety and privacy and in no circumstances should a child be used as a translator for their parent).

	YES	NO	COMMENT*
Safety of children (Police and Victim's views).	<input type="radio"/>	<input checked="" type="radio"/>	
Whereabouts of children during incident (include relation to victim/suspect and age).	<input type="radio"/>	<input checked="" type="radio"/>	
Child Desk involvement	<input type="radio"/>	<input checked="" type="radio"/>	

* The comment box must be completed if no evidence available

Prompts for Prosecutors

Prosecutors must refer to the Domestic Violence prosecution Handbook however, the table below provides some helpful prompts for prosecutors to consider.

Consider obtaining **wider information** in addition to this evidence gathering checklist.

If further evidence is required from the police ensure this is set out in an email in a clear and includes an action plan and is also discussed person to person with the police case manager

Find out whether there are any current or proposed family proceedings or civil proceedings involving the complainant or suspect.

Assessing the defendant.

Are you going to have to make pre trial application or voir dices in relation to the admission of evidence said by the defendant or the admission of any bad character evidence or any relationship evidence?

Has the credibility of the defendant been fully considered? E.g. Are there any previous instances of misconduct/convictions?

Are there any aggravating features?

What are the possible defences?

What pleas would you accept other than the offences charged? Should you contact defence about this?

Victim and witness support following a decision to charge.

Victim Statement obtained and updated if required.

Has the victim been referred to the VWC

Identification and consideration of vulnerabilities (physical or mental impairment, financially dependant, age).



All contact details for victim obtained?

Where there is a withdrawal or retraction; refer to the 'Withdrawal Request Form'

**The framework of this checklist is taken from the UK Crown Prosecution Service and Police Operations Manual. It has been amended to suit Vanuatu.*

ANNEXURE E: WITHDRAWAL REQUEST FORM

WITHDRAWAL REQUEST FORM

NAME OF MATTER	COURT FILE NUMBER
POLICE CASE OFFICER	PROSECUTOR
NAME OF COMPLAINANT	IS THE COMPLAINANT A CHILD (if yes D.O.B)
IS COMPLAINANT BEING SUPPORTED? IF YES BY WHO?	NAME OF DEFENDANT
<p>DATE/FORM OF WITHDRAWAL REQUEST (TICK BOX WHEN COMPLETE)</p> <ul style="list-style-type: none"> • IF IN WRITING ATTACH • IF MADE VERBALLY PLEASE ATTACH YOUR NOTES • IF MADE TO POLICE PLEASE ATTACH ANY CORRESPONDENCE 	
<p>PROSECUTOR MADE CONTACT WITH THE COMPLAINANT AFTER RECEIPT OF REQUEST: Yes/No</p> <p>If no, explanation:</p> <p>WRITTEN RECORD OF CONTACT OR ATTEMPTED CONTACT TO BE ATTACHED INCLUDING THE FOLLOWING INFORMATION:</p> <ul style="list-style-type: none"> • the reasons provided by the victim for requesting the charges be withdrawn; • whether it appears that the views of the victim have been freely expressed and are not the result of threats, coercion, inducement or intimidation; 	

<p>THE PROSECUTOR HAS SPOKEN TO THE COMPLAINANT ABOUT THE FOLLOWING (WRITTEN RECORD INCLUDING RESPONSES TO BE ATTACHED)</p> <ul style="list-style-type: none"> • that the victim has been advised of the availability of services to provide victim support and protection; • they have been given a pamphlet from the VWC and an offer has been made to make an appointment with VWC • that the prosecution process, has been adequately explained to the victim; 	
<p>THE PROSCUTOR HAS COMMUNICATED TO POLICE BY EMAIL AND PHONE ANY CONCERNS THE VICTIM HAS ABOUT SAFETY</p>	<p>Date of Communication</p>
<p>REQUEST TO POLICE TO INVESTIGATE WITHDRAWAL REQUEST MADE</p>	<p>Date of Request</p>

OPP prosecutors wishing to enter a “nolle prosequi” must file a memorandum with the ‘withdrawal request report’ attached to it, with the Public Prosecutor to make the determination whether this course of action is appropriate.

THIS DOCUMENT AND ATTACHMENTS MUST BE DISCLOSED TO DEFENCE. IT IS NOTED THAT LEGAL PROFESSIONAL PRIVELEGE IS CLAIMED OVER ANY OPINION OR RECOMMENDATION PROVIDED TO THE PUBLIC PROSECUTOR IN ANY FORM, WHETHER IT IS IN RELATION TO THIS FORM OR NOT.

I have accurately completed this form and carried out inquiries as required.

Signed: PROSECUTOR

ANNEXURE F : UNREPORTED CASES

See Resources on OPP Website

ANNEXURE G: BAIL CONSIDERATION FORM

JURISDICTION

PROSECUTION MATTERS TO CONSIDER

1. *Seriousness of the offence*

- What are the charges?
Max penalty
- Is it on a family member?
- Were there others present and saw offence such as children?
- Are there any injuries?
- Where weapons used and does the accused still have access to weapons?
- Is this an offence so serious that bail should not be granted?

2. *The strength of the prosecution case?*

- Is there enough evidence on the file to prove all elements of the offence?
- Are police investigations ongoing?

3. *Is the accused likely to reoffend?*

- Was the accused on bail/parole?
- How long ago did the offence take place?
- Does the accused have a Criminal History or is there police information of similar behaviour?
- Is the victim vulnerable, that is, a child elderly, in a close relationship with the accused?
- Was the accused affected by drugs or alcohol
 - If yes, will they continue to use them on bail

4. *Is the accused likely to appear in Court if released on bail?*

- Do they have a place to live?
- Do they have any ties to the community? family, church etc
- Have they previously failed to appear at court?
- Is the accused likely to go to gaol if convicted
- Is the case against the accused strong?

5. *Is the accused likely to harass or threaten somebody?*

- Does the accused have power over the victim or witnesses?
- Has the accused tried to intimidate witnesses?

6. *Victims views and concerns*

- What are the victim's views, are they fearful?
- Have they been a victim of this accused before?

7. *Matters relating to the accused*

- Does the accused have any physical or mental health issues?

POSITION IN RELATION TO BAIL

8. After considering all the factors ask yourself the following

Question 1 Is there a real risk that:

- a) The accused will not attend court
- b) The accused will reoffend/ the risk of further serious offending exists
- c) The accused will intimidate or harass the victim or witnesses
- d) The accused is a threat to community safety

If the answer is **yes** to any of the above **go to Q2**

Question 2 Can the risk/s be reduced to an acceptable level by bail conditions?

If the answer is NO to Question 2, then bail should **most likely be OPPOSED**

If the answer is YES, to Question 2 then bail should most likely **NOT BE OPPOSED**

Bail Opposition Court Plan

Provide following information to court

- Facts of the offence and any previous 22 convictions
- Views of the victim
- Reason for opposition based on matrix

Bail is opposed for the following reasons:

The offence is so serious that any risk is not acceptable. It is serious because:

There is a real risk that:

- a) The accused will not attend court

- b) The accused will reoffend/ the risk of further serious offending exists

- c) The accused will intimidate or harass the victim or witnesses

- d) The accused is a threat to community Safety/ or the victims safety

- Provide the information to the court that supports any of the above

ANNEXURE H: BAIL CONDITIONS FORM

See Resources section of OPP Website

ANNEXURE J: VICTIM IMPACT STATEMENT

See Victim Impact Statements under resources on OPP website

ANNEXURE K : PILON GENERAL PRINCIPLES FOR OBTAINING THE BEST EVIDENCE

See Resources Section of OPP Website