

**INASC**

*Improving Needs Assessment and Victims Support  
in Domestic Violence Related Criminal Proceedings*

**Make it  
happen!**

**Resource for Criminal  
Justice Professionals**  
to improve needs assessment  
and victims support in domestic  
violence related criminal justice  
proceedings in Ireland

## About SAFE Ireland

SAFE Ireland is the National Social Change Agency working on Domestic Violence in Ireland. We are working innovatively and strategically to transform culture and the response to gender based violence (GBV) in Ireland. Our particular GBV focus is on male violence against women and children in intimate/close relationships.

We have evolved from a network of service providers and we are working in close collaboration with 40 frontline domestic violence services across communities in Ireland. SAFE Ireland is leading on research and dissemination of good practice to its members, other professionals and statutory bodies. The organisation collates the experience of member services and gives them and the survivors a public voice, sharing the experiences and the enormity of domestic violence in our country. Members of SAFE Ireland have heard of women's struggles with the legal system from all over the country and the difficulties they face in securing protection from domestic violence for themselves and their children.

SAFE Ireland services have continuously reported on the barriers and issues that women face while navigating the system seeking justice. Now is the time that these issues, that have let so many down, be examined and addressed. We must give voice to the women who have been silenced by the failures of our legal system. The enormity of the problem of domestic violence in Ireland reinforces the need for us all to examine how we deal with it. Each year thousands of women flee their home with their children to escape violence, and the Irish government and people must be responsible for providing those women with an effective remedy.



# **Resource for Criminal Justice Professionals** **to improve needs assessment and victims support in domestic violence related criminal justice proceedings in Ireland**

SAFE Ireland

Lisbon, March 2016



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# Introduction to Part 1: Resource for Criminal Justice Professionals in Ireland

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*The study reveals that there is a world to win in this respect. Victims feel misunderstood, and when they come to report a crime, they are being told to think again. There is very little understanding of the consequences of repeated violence on women's mental resilience.*

(Lünnemann et al. 2015:)

Women going through the legal system to seek protection, safety and support in order to put an end to the intimate violence they were experiencing and to seek justice for their own life, experience similar expectations, achievements, disappointments and frustrations across the five EU countries involved in this project.

The role of the criminal justice system is of the utmost importance and relevance regarding the protection needs and rights of victims of Domestic Violence (DV) and more specifically of victims of intimate partner violence (IPV).

This toolkit was developed within the frame of the project INASC – Improving needs assessment and victim's support in domestic violence related criminal proceedings, co-financed by the Criminal Justice Programme of the European Commission. The Project aimed to improve existing understanding about intimate partner violence victim's trajectories and experiences in the course of criminal proceedings and to explore how these experiences relate to individual assessment mechanisms and outcomes. SAFE Ireland worked with four other countries on this project– Austria, Germany, Portugal and the Netherlands – the project has been jointly developed by six organisations.<sup>1</sup>

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## About the toolkit

INASC's specific goal was to develop practice-oriented research aimed at identifying crucial aspects of supporting mechanisms available to IPV victims within the criminal justice system and of elements that influence the way victims are being supported and protected at three different levels: i) at the entrance door (law enforcement agencies receiving the complaints and follow up procedures towards public prosecution offices); ii) at the enquiry stage (public prosecutors initiatives and decisions taken); iii) in court (court procedures and final decisions by judges).

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1 CESIS (coordination, PT), Dhpol (DE), IKF (AT), Safe Ireland (IE), Verwey-Jonker Institute (NL) and ZOOM (DE).

Combating violence against women “requires coordinated policies at national and at all other relevant levels and a comprehensive approach targeting the key issues of prevention, protection, victim support, and prosecution of perpetrators”.<sup>2</sup>

The *Make it happen! European toolkit to improve needs assessment and victims support in domestic violence related criminal proceedings* is based on the results of the research work undertaken within the INASC Project, and was completed with suggestions and comments put forward by the 5 national advisory committees which were in operation during the whole project. Overall, this toolkit aims to contribute to the national implementation of the Directive 2012/29/EU on victims’ rights, namely as regards IPV victims’ needs of support and protection.

## What is this toolkit?

*Make it happen!* contains a set of tools that are intended to facilitate the integration of women’s expectations, needs and rights into the responses given by the Justice Professionals to criminal reports and cases of IPV.

The toolkit comprises a first part which reflects a European perspective clustered around three main axes: presentation of the main outcomes driven by our research, setting our minds and views over victims of IPV in criminal proceedings and an explanatory list of the most relevant articles of the EU Directive 29/2012 in relation to intimate partners’ violence context.

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Part 2 of this document is the Irish National Toolkit. This includes a set of tools for Irish Justice Professionals as contributions to the implementation of the EU Directive 29/2012, based on its main rights.

## For whom is this toolkit?

*Make it happen!* is a toolkit for the different practitioners of the criminal justice system: judges, public prosecutors, court assistants, law enforcement agencies, and police, among others.

## Why is this toolkit needed?

Domestic violence perseveres across Europe, affecting in particular women and children, as “an extreme expression of inequality on the ground of sex” (FRA, 2014: 7). Intimate partner violence is one of the most frequent forms of violence directed against women. Although the EU has recognised the problem and made efforts to tackle it, violence against women remains a challenge for criminal justice systems.

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2 Source: draft conclusions of the Council of the European Union on ‘combating violence against women, and the provision of support services for victims of DV’ (16382/12).



## What lessons can be learnt from the comparative research?

The outcomes of the INASC research component will hopefully contribute to a deeper understanding of common features characterising the criminal justice systems of the participating countries (AT, DE, IE, NL, and PT) and thus, provide evidence-based recommendations for possible improvements, in particular taking into consideration the implementation of the EU Directive 29/2012.

First and foremost, it is possible to observe a common trend towards the increased criminalisation of different forms of violent acts pertaining to IPV/DV across the five participating countries. In all these countries' legislative frameworks, IPV is no longer perceived "as a private conflict" and IPV cases can be investigated and brought to court without the obligation of the victim to file a complaint. However, and in spite of the political and legal acknowledgement of the public nature of the crime, only one country (PT) officially recognises DV crimes as public crimes to which correspond a specific criminal offence in the Criminal Code.

Nevertheless, a common feature of the legal framework of the five countries under analysis is the adoption of dedicated DV/IPV laws which are particularly relevant from the perspective of victims' protection rights. In all countries, these legal acts were important milestones in defining remedies to protect victims of intimate partner violence.<sup>3</sup>

The following paragraphs will critically highlight some of the main findings of the comparative research which are relevant for the building up of the common part of the toolkit, structured around the Victims' Directive's main Articles.

Whereas Article 3 of the Directive emphasises the right to understand and be understood, the research showed obstacles in realising this right which include: lack of consideration regarding the actual context of violence (e.g. duration of the violent relationship, former protection orders); excessive focus on the single incident triggering the criminal process; lack of knowledge about the dynamics of violence and consequences of traumatisation among justice professionals. Although judges and public prosecutors may be aware of existing challenges, evidence from all countries shows that such awareness is often not translated into the necessary empathy and understanding of the heavy personal cost to victims of giving evidence in court. Being heard is important for victims (e.g. to name the wrong; to terminate the violent relationship) and it is also an essential criterion for the "good conduct" of a trial.

Information rights of IPV victims are widely acknowledged by criminal justice professionals, namely by police professionals across the different countries. In all countries it is the police obligation to deliver information about support, victim rights and most important about aspects of criminal proceedings during the first and following contacts. However, the research showed that there is room for

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3 For further details, please refer to Baptista, Isabel (coord.) (2015) *IPV victims' needs and rights: a brief overview across five EU countries' justice systems*. INASC report available at: [www.inasc.org](http://www.inasc.org)

improvement in ensuring that information rights are closely linked to the specific needs, personal circumstances and stages of the proceedings, as referred to by article 4 of the Directive. The outcomes of both the quantitative and the qualitative research showed that challenges still persist, namely as regards: selectivity and inaccuracy of the information given; inadequacy of the moment and type of information provided; excessive focus on initial stages of the proceedings and on law enforcement agents in channelling such information to victims; existing written information lacking simple and accessible language; and the persistence of a “stereotyped image” of IPV victims among professionals which influences the amount and the kind of information provided.

Article 6 of the Directive addresses the right of victims to receive information about their case. The research showed that in all countries victims have the right to be informed about the release of the perpetrator from arrest, custody or prison or about protection orders. In some countries (e.g. DE, AT) there are procedures through which victims may be informed proactively. However, communication problems persist, clear responsibility on who should inform the victim is often lacking and in some cases victims are expected to be proactive in seeking information. Overall, it is fair to say that across all countries victims expressed the feeling that they were not well informed about their cases, the various stages, proceedings and decisions affecting their lives.

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Communication between justice systems and victims who do not understand or speak the national language presents specific challenges. The research showed that in almost all countries (AT, IE, NL and PT) concerns were raised as regards the provision and quality of interpretation services available to victims. The lack of interpreters for certain languages, the non-availability of interpreters outside “regular” working times or in more rural areas and the lack of translation of crucial documents (summons and verdicts) are some of the difficulties reported.

Victims’ right to access support services is an important aspect covered by Article 8 of the EU Directive. In all countries, it became clear that it is crucial to provide such support to IPV victims. In some countries (e.g. Austria), the adoption of the psycho-social lawsuit assistance has proved an important tool. The wide scope of needs often involved in IPV cases frequently require pooling different specialized skills and a wide range of agencies. Inter-agency cooperation is therefore needed in order to integrate different skills into an effective inter-agency approach. In the five participating countries different intensities and grades of formalisation of such interagency cooperation were described as well as different issues on which cooperation takes place. In nearly all countries (DE, IE, NL and PT) there is an outstanding problem: involving justice agencies in networking and cooperation mechanisms are often missing or not well established. A “neutrality culture” among the criminal justice professionals is often presented as the main ground for such reluctance. Nevertheless, cooperation networks and/or initiatives are deemed to be improving and good practices<sup>4</sup> have been identified in some countries (e.g. DE).

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4 For further details please refer to Amesberger, Helga et al (2015) *Comparative report WS2/WS3*. INASC report available at: [www.inasc.org](http://www.inasc.org)

One final aspect regarding supporting IPV victims' needs should be highlighted from the research: the financial costs related to the long-term effects of violence as well as separation. The research revealed that in none of the countries is such a perspective on the importance of support apparent.

The right of victims to participate actively in criminal proceedings varies across the five countries. However, the research showed some common patterns regarding procedural aspects related to the hearing of victims and the collection of evidence during criminal proceedings. A majority of victims in all the countries were interviewed at different stages of the proceedings, i.e. criminal proceedings are to a large extent in line with the 'right to be heard'. Nevertheless, from the perspective of victims this does not necessarily mean that they were heard indeed and understood, too. The interviews and focus groups revealed that showing understanding for the victim's situation is essential: it influences the way the police and the criminal justice professionals are perceived and has a clear impact on victims' stance towards criminal proceedings.

Another relevant aspect regards the supposed "unwillingness" of victims to testify which was raised by the police and the criminal justice professionals in all the countries involved in the study. In fact, both the case file analysis and the interviews conducted with the victims showed that most victims were indeed interviewed and provided evidence both during the inquiry phase and at court. In all countries, evidence gathering on IPV cases – and the burden of obtaining a successful or unsuccessful investigation – rests primarily on the "victim's shoulders", and to a lesser extent on the perpetrator side (e.g. unbalanced efforts regarding the questioning of victims and perpetrators, limited gathering and preserving of evidence other than the victim's testimony). The argument of the "unwillingness of the victim" to cooperate is often used to explain why, in all countries, the majority of IPV cases is dismissed before it reaches the court. The file analyses in all countries does not support this justification. Justifying the outcomes of the investigation by the lack of victim's involvement is only part of the story and the research showed that practitioners within the criminal justice system in all countries, tend to downplay the importance of outcomes for the victims, whereas victims themselves deem the conviction, the kind of conviction and the sentence as a crucial stage in their emotional and mental processing of the violence they experienced as well as with coping with the consequences of that experience.

All the countries included in the research provide procedures through which IPV victims may receive compensation for damages which is in accordance with article 16 of the Directive. However, the research showed that in many countries being awarded compensation does not necessarily mean that the victim actually receives such compensation. Non-compliance by the perpetrator and his financial situation are the two main reasons for such failure. Some countries (PT and NL) have introduced pre-payments by the State which allows victims to receive such compensation in advance.

Chapter 4 of the Directive deals, among others, with the right to avoid contact between victim and offender. One way to avoid contact with the perpetrator is to

provide separate waiting rooms for victim and suspect during court proceedings and to enable avoidance of contact between victims and the offender within the premises where criminal proceedings are conducted. The research showed that questioning at court when the suspect is present is often a huge challenge for victims. In all five countries courts provide separate waiting rooms and victims may request to be heard without the presence of the offender. However, as the interviews with victims and professionals suggested, there is room for improvement regarding the nationwide implementation, the organisational application and the information to victims about these protection measures.

In all the five countries it is the task of the police to perform an individual assessment of risk and to manage such risk in order to avoid further and repeated violence. Procedures involved in such risk assessment mechanisms are widely variable among countries ranging from the use of highly developed standardized risk assessment tools (in some countries directly linked to the enforcement of protection measures) to non-standardised procedures and tools. The strongest message coming out of the research relates to the existence of implementation problems (e.g. lack of preparation for implementing risk assessment procedures, uneven procedures across the country, non-utilisation of risk assessment outcomes for protection purposes) in all countries irrespective of the degree of sophistication in the procedures and tools used. Thus, it is fair to say that particular attention should be given to existing successful practices regarding individual risk assessment in IPV cases and respective dissemination, rather than investing huge efforts and resources in developing sophisticated mechanisms and tools without the corresponding investment in ensuring their adequate and continued implementation. Finally, it is important to point out that there is evidence across all countries, that risk assessment practices are common among victims' support organisations. Yet, there is much variety in the types and forms of procedures used, and the ways in which the outcomes are (or not) being used by different professionals within the criminal justice system.

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The Victims' Directive explicitly recognises the seriousness of violence in close relationships which may cause systematic psychological and physical trauma with severe consequences and considers that IPV victims may be in need of special protection measures. The EU-wide trend to strengthen victims' rights and ensure adequate protection during criminal proceedings seems to be reflected by the existence of different protection measures and other protection procedures across the five member states.<sup>5</sup> These measures which aim to avoid secondary and repeat victimisation may play a crucial role in reducing the victim's feelings of fear and uncertainty and as a consequence ensure better cooperation during criminal procedures. The research showed that in almost all countries barring/restraining orders have in general or in many cases positive effects for the protection of victims, both as an effective sign for the perpetrator to change his behaviour and as

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5 An overview of existing protection measures across the five countries is available in Baptista et al (2015) *IPV victims' needs and rights: a brief overview across five EU countries' justice systems*. INASC research report.

“something victims have in their hand” in case of further harassment. However, in all countries there is evidence that protection orders partly lack effective enforcement to ensure protection and prevent repeated victimisation since there are no serious or immediate consequences following breach of an order. Stalking and harassment are also reported as triggering minor reactions as regards protection needs of victims. Further improvements in these areas are deemed necessary across the five countries. The research also showed that the specialisation of the police and a proactive role in controlling and monitoring protection orders enforcement is particularly valuable for the effective protection of IPV victims. In some countries (AT and DE), procedures like officially and formalised forms of cautioning the offender prove to be helpful for strengthening the victim’s position. Finally, in some of the participating countries (AT, DE and PT) the research showed the existence of major conflicts between the DV protection system and the system regulating parental rights. Again, the lack of understanding by criminal justice professionals regarding the effects and dynamics of IPV on both victims and their children (either directly or indirectly affected by violence) and communication problems between different justice systems seem to be the cornerstone for the rise of protection flaws in such situations.

## Mind-sets: framing our views over victims of IPV in criminal proceedings

This toolkit focuses mainly on IPV and on women as victims (not as perpetrators). World wide data on reported and under-reported IPV reveals that most victims are women and that violence against women is predominantly perpetrated by men.

Intimate partner violence (IPV) is the self-reported experience of one or more acts of violence - physical, sexual, emotional/verbal/psychological violence, economic abuse, false imprisonment/ confinement, harassment/stalking or forms of coercive control - by a current or former partner. It includes formal partnership, such as marriage, as well as informal partnerships, such as dating and unmarried sexual relationships. Below, we will present the framework underlying the contents of the toolkit.

### Why shouldn't IPV victims be framed as a homogeneous group of women?

Even as a social category, women are not a homogenous group. Other categories intersect with those based on life-experience and violence against women in intimate partner relationships. Such categories are connected with age, ethnic-cultural backgrounds, sexual orientation, gender identity, social class, migratory status, country/place of origin, disabilities, etc.. It is in the intersection of these various categories that women form their personalities and behaviours, whether actively or not, and that come to light in the inquiry stage and during the criminal proceedings. It is not only the individual characteristics of each woman herself that leads her to take a more, or less, active role in the proceedings. It is important to bear in mind the stereotyped profile of the victim that justice system practitioners

make and the way in which this profile impacts on professional discourses and practices: it is often perceived that women victims of intimate partner violence are frightened, powerless, poor, weak and helpless.

As an example, research showed that “*an angry woman is simply not a ‘good victim’*” (Goodmark, 2014: 77). Professional practitioners tend to expect women victims to have certain stereotyped behaviours; when their behaviour does not live up to (social and institutional) expectations, professional interaction is affected: “*women subjected to abuse who fail to conform to victim stereotypes face a cruel choice: tell your authentic story and face the consequences of falling to conform, or tailor your story to the prevailing narrative and deny the reality of your experience*” (Goodmark, 2014: 77).

## Why some victims do not always want to proceed with the criminal investigation?

One of the strategies that survivors use is self-silencing. Self-silencing is described, in psychology, as “*set of distorted cognitive schemas*” (Neves and Nogueira, 2011: 246) based on women’s attempt to build and sustain relationships of intimacy. Women may “*form their concept of the self-based on their participation in close, intimate, and genuine relationships with significant people and that whenever the maintenance of those relationships is in some way at risk, women’s self-esteem and their sense of personal identity are seriously compromised.*” (Ibid). The self-silencing is frequently a “*compulsory choice that women have to make as a means to preserve their own safety and identity*” (Neves and Nogueira, 2011: 253) and therefore a reflection of the absence of women’s power. Several studies have repeatedly shown that “*love and the desire to maintain relationships with their partners lead women subjected to abuse to remain with their partners and to opt out of legal remedies – to refuse to cooperate with prosecutors, to dismiss petitions for protective orders or ignore their terms.*” (Goodmark, 2014: 96-97). Therefore, some victims choose not to proceed with the criminal investigation in order to preserve their own survival.

Equally, many women feel that the justice system does not believe them. They feel they are questioned over and over again on the same facts as if the system doubts them, trying to confirm, at every step, that what IPV victims are saying are the true stories. This feeling of distrust is voiced by many women in their contacts with different professionals and organisations.

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*All the cases... going from the social workers, child protection services, the courts ... everywhere is a door. These doors are closed to us right from the start. And so we have a mental block because there’s not one door open (...) at the entrance of the door is a wolf. A very powerful wolf. This wolf protects the doors which, even so, don’t open.*

Survivor of intimate partner violence, Portugal

Furthermore, there are several reasons that are not directly related to women but to the whole criminal and legal system. It is a fact that legal and procedural barriers to equal access to justice for women victims of intimate partner violence lead to victims' reduced or complete lack of trust in the justice system. Lengthy criminal proceedings, high attrition, and low conviction rates and discriminatory practices constitute serious barriers to efforts to get justice for women victims of intimate partner violence.

Since 2010-2012, the Council of Europe and the United Nations have been highlighting key challenges and obstacles on women's access to justice. In 2013, the Council of Europe published a feasibility study on equal access of women to justice; the study identified several barriers (GEC, 2013: 4) such as:

- ▶ Lack of awareness of procedures;
- ▶ Lack of financial resources - "Costs are not only linked to legal fees and judicial taxes, but may be incurred as a result of ensuring transportation to courts, finding accommodation or for instance seeking childcare." (GEC, 2013: 11) and restrictions on the availability of legal aid;
- ▶ Emphasis placed on using out of court settlement procedures to ensure a swift end to the legal dispute, often leaving women at a disadvantage;
- ▶ Gender neutral legislation which may lead to systemic inequalities, often unintended;
- ▶ Gender bias in courts and among law enforcement officials, in particular regarding specific groups of women (such as, for example, minority, disabled or rural women);
- ▶ And fear, shame and cultural and/or religious barriers.

Moreover, in 2015, the Committee on the Elimination of Discrimination Against Women approved the 33<sup>rd</sup> General Recommendation to CEDAW focussing on women's access to justice. This recommendation draws attention to the fact that access to justice is multidimensional. It encompasses effective access to court, accessibility, good quality and accountability of justice systems, and provision of remedies for victims. This recommendation also acknowledges that effective access to justice optimises the emancipatory and transformative potential of law.

Still according to the above mentioned recommendation it is possible to identify several obstacles and challenges women have to face as regards access to justice. These include: the centralisation of courts in the main cities and their non-availability in rural regions; the resources (time and money) needed to access them; the complexity of criminal proceedings and investigation; the physical barriers for women with disabilities; the lack of access to quality, gender-competent legal aid, as well as the deficiencies often observed in the quality of justice systems (e.g. gender-insensitive decisions due to lack of training, delays and excessive length of proceedings).

## Main goals for the criminal justice system intervention within IPV cases

The basic common standard references for taking action in proceedings involving intimate partner violence are founded on the following set of guiding principles steering the criminal justice system's intervention: safety and protection, autonomy, decision, participation, support, quality follow-up and spotlighting the women. The development of the *Make it happen! Toolkit* took into account these goals.

## Make it happen: Tools for the Criminal Justice Professionals

The logic beyond the set of tools for the criminal justice professionals is to pursue a path: starting from informative tips structured around the EU Directive 29/2012 and integrating both workers and women's perceptions and experiences collected throughout our research; continuing along, we will present some major topics to be covered in the criminal justice practitioners' training gathered as relevant IPV features and respective explanation and implications for the criminal justice systems; and, lastly, picking up some of the tips mentioned in the previous section, we will present some practical examples collected across the 5 countries.

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### Figure of Make it happen! European toolkit to improve needs assessment and victims supporting domestic violence related criminal proceedings



Make it happen!  
Tools aimed at the victims of intimate partner violence

The contents of the above figure will be further developed in each national toolkit.



## The EU Directive 29/2012: list of the most relevant articles related to the protection of IPV victims

### # About the provision of information and support

*None of the police officers said: "Can we get someone for you? Or can we do anything for you?" I would also have appreciated having someone at my side that supported me etc., because I was not even able to do anything for the children. I cried bitterly. I was completely strung out. I sat there for hours and cried. In a heap in the corner. The children constantly came and went and took me into their arms, but I was completely in shock. Well, here I would have wished that the police had said: "We have an emergency facility for you; let us call there and have someone come to you who can hold you up, or so." I mean, they just left.*

Survivor of intimate partner violence, Germany

The EU Directive establishes that victims must receive information about their rights and their case in a way they understand. Particular emphasis is given to victims' right to be accompanied by a person of their choice in their first contact with the authorities due to the impact of the crime or if the victim has difficulties understanding proceedings or to be understood (reinforced later on by article 20); the exclusion of the person of choice is possible in cases of conflict of interests (i.e., if the person of choice is the suspect of domestic violence).

It also mentions a personalised needs-based evaluation assessing the extent or detail of information linked to a specific stage of proceedings. And the need to keep the victim informed continuously.

Information also means victims having access to all applicable protection measures via information provided by the criminal justice practitioners. For instance, States should provide the opportunity to all victims to be notified of the offender's release or escape from detention and of any protection measures available.

## The right to understand and to be understood (article 3)

*I have to admit, I was so excited that I could not capture the information given. I had to read a lot, because before the interrogation one has to sign a declaration, but I could not remember most of it. (...) But one cannot recall everything. One is overburdened with the situation or at least I was. (...) First of all, the information was printed in very small letters, mind-boggling information on a very small space. One cannot capture it. Secondly, as far as I can remember, many paragraphs have been listed, which one does not know their content. In exceptional circumstances this is really, really hard to capture. According to my opinion, this information should be short and precise, summarised in a few key words one can recall.*

Survivor of intimate partner violence, Austria

All communication between criminal justice professionals and victims of IPV must be given in simple and accessible language. The form of communication must be adapted to the specific needs of every victim (namely age, language and disability).

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## The right to receive information from the first contact with a competent authority (Article 4) and the right to receive information about their cases (Article 6)

*I was still at the hospital and I said: 'I would like to go home now and I would like to know whether he still is at home.' It was impossible for them to find out. The police argued that they are not allowed to give this information. It was scary for me that I did not know. (...)*

*I thought, they have to release him after twelve hours and I panicked. Total panic, because they did not find out immediately, and it was weekend. This day was horror.*

*Whenever a victim does not speak the national language or has a poor understanding of the national language, member states must provide interpretation and translation.*

Survivor of intimate partner violence, Austria

Victims must receive information regarding their rights and their cases, as soon as their first contact with criminal justice professionals. Information should include the type of support available to them, the procedure on how to make a complaint and the following steps, and about the results of their complaint.

## The right to interpretation and translation (Article 7)

*Then I have to reschedule, and when I criticize police, they say “things often need to happen very quickly” or “that’s so expensive”.*

Judge, Austria

## The right to access victim support services (Article 8)

*If a victim has been assisted it could make a difference to her life’s project. Not only in being a witness but in the whole process leading to her independence. First freeing herself from the offender and afterwards becoming independent and remaking her life (...) they hate the enlightened victims who have a clear notion of their rights, what they are able to do.*

Lawyer, Portugal

Victims must receive information regarding the support services available, including contacts and operating hours. Getting support from specialised victim support agencies improves victim’s resilience to endure all criminal proceedings, giving them information and competencies on legal matters.

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## # About participation in criminal proceedings

*Particularly hard was the fact that the courtroom was full of friends and family. In my case, I was lucky that the woman from the counselling office was there. She always said: “You can do it”, and she always held my hand and was also there before the hearing commenced.*

Survivor of intimate partner violence, Germany

Victims can participate in the criminal proceedings if they want and they should be helped to attend the court trial. The participation of victims in criminal proceedings comprehends the right to be heard, the right to legal aid, the right to reimbursement of expenses and the right to compensation from the offender during the proceedings.

## The right to be heard (Article 10)

*I was there to tell my story. I wanted to tell everything, but I couldn't. I was afraid. So I told them a weak story because I wasn't sure I wanted to leave him and a report would only worsen the situation. I was partly to blame, but the police did not persist in asking questions about the violence, so I didn't tell.*

Survivor of intimate partner violence, The Netherlands

This right means that criminal justice professionals must listen to victims. The right to be heard enables victims to give their statements about incidents and aspects that may be pertinent to the investigation and where presenting evidence is concerned.

## The right to legal aid (Article 13)

*Victims are hardly ever assisted by a lawyer. The legal support by Slachtofferhulp Nederland is not always adequate. Counselling by a lawyer would be a huge improvement.*

Judge, The Netherlands

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The right to legal aid is by now making a difference on victims' stance regarding criminal proceedings. It impacts on the victims' better knowledge of their rights, on the procedures and stages of the criminal proceedings; it improves the victim's responses and/or enables more comprehensive testimonies, thus reducing the victims' stress levels.

## The right to decision on compensation from the offender in the course of criminal proceedings (Article 16)

*The introduction of a compulsory compensation to the victim - is already provided for by law but the judges still believe that it should be upon a request made by the victim. (...) But I think it should be made compulsory regardless of the need to be claimed or not. It should be sufficient to prove the facts, and then the court would decide on the compensation.*

Public Prosecutor, Portugal

The right to a decision on compensation is a way to reimburse victims of the losses they may have incurred during their intimate partnership.

## # About the protection of victims and recognition of victims with specific protection needs

The EU Directive affirms that victims must be protected from secondary and repeat victimization, intimidation and retaliation (including physical, emotional and psychological violence) during all stages of police investigation and criminal justice proceedings. This must include the determination of necessary conditions to avoid contacts between victims and offenders where the proceedings are taking place (for instance, separate waiting rooms for victims within court premises), and comprehends interim injunctions or protection / restraining orders.

*Well I couldn't understand ... why he was never charged for breaking the Safety Order because I thought that that piece of paper, to be honest with you, is shite because I feel it's doing me no justice. ... I don't even know what that piece of paper actually means because he broke a Safety Order and he was never arrested.*

Survivor of intimate partner violence, Ireland

It is important to refer that the protection of victims from secondary and repeat victimization is reinforced by ensuring that disclosure procedures are limited to disclosing only information relevant to the case, limiting intrusive questions and limiting the number of times a victim can be questioned; it also calls for particular attention to the manner questions are made to victims.

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## The right to protection (Article 18)

*I still don't feel safe and also not taken seriously. Does something really have to happen before anyone takes action? I am still afraid and always on the lookout when I am walking my dog. Because I am sure that my ex would grab me if he knew I was alone at a certain time.*

Survivor of intimate partner violence, The Netherlands

The right to protection is a central right when we speak about intimate partner violence. This right has wide scope and should be understood holistically as it concerns the range of protection measures needed to protect IPV victims and their family members. It also entails the eventual risk of further violence incurred by the justice system practitioners in contact with victims in order to protect the latter from secondary and repeat victimisation.

## The right to avoid contact between victim and offender (Article 19)

*In any case I wanted him not to be there. That was my appeal to my lawyer from the start. The judge said like, "When did you last see him?" We had seen each other a week before, and before that one more time. But very shortly, like. Then she said: "Well, if you have already seen him anyway, then you aren't afraid of him anymore. Then he can stay here, that is my decision, so this will be dismissed." Still, at that moment, I didn't want him to be there, when I made my statement. She simply didn't listen to me. That's the way it was.*

Survivor of intimate partner violence, Austria

Victims must be protected from their offenders particularly during criminal proceedings. This includes avoidance of contact between the victim and her offender within premises where criminal proceedings are conducted, whether that is the police station or at the court hearing. Those premises should also include separate waiting rooms.

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## The right to protection of victims during criminal investigations (Article 20)

*[T]he way I feel is that if [the abuser] was arrested even once at my place, he wouldn't have returned again. Because when I look at what happened in the family court when he was so disrespectful to the judge and the judge put him into jail for some time for contempt of court; since then when we go to the family court and he stands up and the judge tells him to sit down, he sits down! Because he remembers. It's just very simple when people know what's coming next they behave.*

Survivor of intimate partner violence, Ireland

The European Directive recommends Member States to make sure that interviews with the victims are conducted without delay after the complaint has been made or a report filed. Furthermore the number of interviews should be kept to a minimum and only carried out when necessary; the victims may also accompanied by persons of their choice and medical examinations also kept to a minimum and only performed where strictly necessary.

## Individual assessment of victims to identify specific protection needs (Article 22)

*Well, that they have the impression: 'What I say, what is important to me, receives its due space and is also accepted at an authority and that I do not fall between the cracks; I am not one of many numbers. But rather in the manner: I have fears, I have needs, and they are worth something.*

Survivor of intimate partner violence, Germany

The needs of every victim are assessed and victims identified as particularly vulnerable (namely victims of intimate partner violence) are offered specific protection measures.

It considers the development and implementation of a case-by-case approach regarding the assessment of victims' needs within the frame of their protection. It considers the victim's assessment of her vulnerability to secondary and repeat victimisation, to intimidation and retaliation during criminal proceedings; that assessment is based on i) the personal characteristics of the victim; ii) on the type and nature of the crime, and iii) the circumstances of the crime.

The individual assessment should also contribute to identify the victim's communication needs, support needs, protection needs and any other type of assistance need. In annex one there is a possible categorisation of IPV victims' needs related to the criminal proceedings.

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### # About other provisions

## Training of practitioners (Article 25)

*Constant dripping wears away the stone, and here it is possible that some women need five to seven attempts and then even make it, but many don't. However, one only realises this after having worked in the sector for a few years. Initially, one takes it quite personally when the woman returns home again. One thinks: I have talked to her for the past five hours and finally got her into a safe house; why is she now going back? One should not do that. The more one knows about the subject, the better one can handle it.*

Policewoman, Germany

The EU Directive 29/2012 clearly recognises the need for the training of practitioners. Police, prosecutors, judges and other criminal justice professionals should receive training on how to deal with victims in a sensitive and appropriate manner, including specifically their awareness raising on victim's needs.

Furthermore, our research clearly showed that both victims and practitioners consider that specialisation and enhanced skills in DV leads to better interactions with victims, to improved inquiries and evidence collection and to significant improvements in recognizing victims' protection needs and in promoting their protection. The non-specialisation at the criminal justice professionals level cross-cuts the five countries of the INASC project and even though in some countries there are specialized PP departments for Domestic or Intimate Partner Violence, this does not ensure that public prosecutors working in such units are given any specific training or that such skills represent any kind of pre-condition or criterion for entering such teams. Overall, training and increased competences in the specific field of Domestic Violence (comprising areas going well beyond legal aspects) are seen as a key aspect for improving the assessment of victims' needs for support and protection but also for improving the course and outcomes of criminal proceedings as regards IPV cases.

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Legally, violence against an intimate partner is a crime just as theft, robbery, or physical assault on the street. However, intimate partner violence (IPV) also has features differentiating it from "ordinary crime". This specificity has implications for the situation of victims after violent incidents and for their needs and behaviour in the process of law enforcement in IPV cases. Raising awareness of such specificities should be a crucial component of training programmes addressing criminal justice practitioners.

The table below provides an overview of some specific features and dynamics of intimate partner violence and the situation of victims in these cases and points at their consequences for criminal justice institutions and professionals dealing with IPV.

Of course, cases of IPV are diverse. Therefore, this table represents a clarification of general trends and does not speak for individual cases. This table can be adapted and developed in order to respond to national contexts and training needs of criminal justice practitioners.



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**Features of IPV/of IPV victims' situation**      **Explanation / Implication for Criminal Justice System (CJS)**

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Risk of repeat victimization, intimidation, retaliatory responses

Unlike many cases of “ordinary crime” / street crime, intimate partner violence refers to incidents where the possible influence of the offender upon the victim is not limited to a single point in time. Unless effectively banned from approaching the victim, the offender may use violence again, intimidate the victim, or retaliate against her (or against persons close to the victim). This risk of ongoing or repeated victimization can severely affect victims’ sense of security.

**Implication for CJS:** Victims of IPV need an assessment of their risk of repeat victimization and protective measures to reduce this risk in the time after the incident (e.g. through protection orders and a close scrutiny as to compliance to these orders).

History of violence in IPV cases

In many cases, incidents of intimate partner violence that become known to police / law enforcement do not come “out of the blue”. They are often indicators of continued or repeated violence, sometimes over very long periods of time. Violence may have escalated in severity or frequency over time.

The possibility of an extended history of violence implies that victims may have been traumatized again and again, may have had thoughts or unsuccessful attempts of leaving the relationship or may have got used to being victimized.

**Implication for CJS:** Criminal justice practitioners need to be aware of the possibility of a prolonged history of violence beyond the incident that finally spurred legal action.

Embeddedness of physical violence in an overall pattern of power and control

In most cases, prosecution of IPV cases is set in motion by a severe incident of physical violence. However, often physical violence is but one facet in a complex pattern of tactics used to exert power and to control the victim. These behaviours include coercion, threats, intimidation, verbal abuse, emotional abuse, economic pressure, but also sexual coercion /sexual violence. Apart from the traumatizing effects of experiencing physical violence, such patterns of control and humiliation may leave victims in an ongoing state of insecurity and powerlessness.

**Implication for CJS:** In IPV cases, criminal justice practitioners need to be aware of the possibility of legally processing an apparently clearly delineated phenomenon of physical assault which in reality is embedded in a broader pattern of power, control, and humiliation.

Secluded character of the violent incident

As implied in the term “domestic violence”, intimate partner violence usually happens in the privacy of the home. This implies that the chance of detection is lower than with regard to “crime in the streets”. The perpetrator does not need much precaution in order to hide his deeds. Persons witnessing possible indicators of IPV (such as neighbours overhearing an assault or a physician treating an injury possibly stemming from an IPV incident) will sometimes be hesitant to intervene.

**Implication for CJS:** Criminal justice practitioners should be aware of the fact that IPV’s chances of going officially unnoticed are better than in most other fields of crime and violence.

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Lack of witnesses in IPV cases

The private character of the crime scene does not only affect chances of detection but also has an impact on investigation of IPV cases. Usually, there will either be no eyewitnesses at all (except the victim) or victims will be persons who are in a close relationship often with both perpetrator and victim. Mostly these eyewitnesses are children who may themselves be directly affected by violence/ threat of violence and will probably be traumatized by witnessing violence against a parent.

**Implication for CJS:** When witnesses are non-existent or in a difficult situation (as are children witnessing against mother's partner), securing physical/medical evidence as soon as possible after an incident becomes paramount.

Persons beyond the victim-perpetrator dyad affected by IPV

In many cases, persons living with victim/perpetrator in an abusive household are affected as well. This applies especially to children. IPV and child abuse may go hand in hand. Even if children are not assaulted themselves they may be mistreated by being forced to witness violence and by experiencing the chronic stress from living in a violent home. This stress may affect children's physical and mental health and development and may raise the risk of behavioural and school problems.

**Implication for CJS:** Criminal justice practitioners need to be aware of the fact that the consequences of IPV are often not limited to the immediate victim. This refers especially to children who may be traumatized by their exposure to parental IPV.

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Possible ambivalence of victim's attitudes toward the perpetrator

Since victim and perpetrator have been or are still in an intimate relationship, a victim's attitude toward the violent partner is sometimes less clear-cut than it is supposed to be in typical cases of stranger violence / "street crime" etc. Women in abusive relationships may be ambivalent towards the perpetrator for a number of reasons including emotional attachment, hope for change, being manipulated and scared.

**Implication for CJS:** Criminal justice practitioners should be aware of the complexity of victims' attitudes towards perpetrators. This complexity is not to be equated with irrationality; rather, it reflects the specific nature of the victim-offender-relationship and of its pre-offence history.

Possible ambivalence of victims' attitudes to criminal prosecution

The ambivalence toward the perpetrator may also have an impact on victims' attitudes to criminal prosecution and their behaviour in the judicial handling of IPV cases. This refers to filing and maintaining complaints, providing evidence in court, reporting violations of protection orders etc.

**Implication for CJS:** Criminal justice practitioners should be aware of the possible driving factors behind victims' lack of continuous support for measures of criminal prosecution. While this may be an indicator of threat or intimidation, such behaviour may also emerge from conflicts or ambivalences regarding victims' primary aims (putting an end to violence, maintaining the relationship, sanctioning the offender, etc.).

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Complexity of legal regulations connected to cases of IPV

Legal responses to cases of IPV are not limited to criminal law. Protective measures may be based on regulations in police law and civil law. Family law is relevant for questions of custody, alimony, etc. For legal laypersons, this mesh of relevant legal regulations is almost impenetrable – especially given the situation of trauma and emotional turmoil after a severe incident of intimate partner violence.

**Implication for CJS:** Victims of IPV require professional support in understanding legal regulations and legal procedures relevant to their case. Since usually many victims will not be supported by lawyers, the police and the justice system as well as specialized counselling institutions are indispensable sources of information and orientation for persons affected by IPV.

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Need for support during proceedings

Intimate partner violence often leaves victims traumatized and vulnerable. Multiple types of need for support emerge from this. Victims may have the need to be protected from the perpetrator during court proceedings, to avoid contact with the perpetrator as far as possible, to be questioned separately. They may experience the need to be accompanied by a trusted person. Victims want to understand the proceedings they are involved in and they want to make themselves adequately understood.

**Implication for CJS:** IPV victims' needs during proceedings present multiple challenges for the criminal justice system. Conditions which enhance chances of victims feeling safe, informed, and fully understood include thorough information on procedural questions, provision of translation services (for documents and interviews), separate waiting rooms and other measures to avoid unwanted contact with the perpetrator, possibility of support and accompaniment from a trusted person. To the extent that the respective legal system allows for this, opportunities for separate victim and perpetrator hearings should be implemented.

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## Part 2: INASC National Toolkit for Criminal Justice Professionals

### Overview of Ireland's National Toolkit

It was decided, after detailed consideration of INASC research findings both from Ireland and other partner countries, and after consultation with our National Advisory Committee, to construct our National Domestic Violence Toolkit for use in Criminal Proceedings, by producing a separate reference checklist of Domestic Violence victims' support and protection needs, to include recommendations to meet these needs, for use by each of the following:

- ▶ An Garda Síochána;
- ▶ Prosecuting authorities (whether Garda personnel or DPP staff or agents);
- ▶ Courts Service staff;
- ▶ Judges in domestic violence related criminal proceedings.

### How to Use this Toolkit

Our aim is not to replace any needs and/or risk assessment processes already proposed or in use by the Gardaí or others, or to repeat statutory and administrative obligations under the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, but to provide each agency with additional evidence-based and practical tools in the form of checklists and recommendations tailored for each group of criminal justice professionals, to help them identify and address effectively the protection and support needs of domestic violence victims in their respective professional roles. These tools are victim-focussed, and incorporate recommendations to address needs identified by victims of intimate partner violence. They also take account of the needs of other criminal justice participants, as far as possible. They complement the common European part of this Toolkit, produced with our European partners, which explores the key findings of the research and relates them to relevant Articles in the Directive.

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### Guiding Principles Common to Each Checklist:

These are taken from those agreed with the multi-agency National Advisory Committee, and are based also on recommendations made in the Irish INASC National Report on Victims' Needs in the Irish Criminal Justice Process:

- The best possible physical protection for IPV victims should be provided throughout criminal justice process and beyond;
- There should be maximum protection of victims' privacy throughout criminal justice process and beyond;
- Needs and risk assessments should be done as soon as possible and updated regularly;
- Thorough legal history taking, including Domestic Violence Act orders, should be prioritised;

- There should be simple and effective referral protocols and mechanisms;
- Simple to understand, accurate information on criminal justice system, written in plain English/other languages, must be made readily available to victims;
- Future contact for victims with investigating officers should be facilitated;
- Trauma sensitivity should be understood and practiced at all times;
- All criminal justice professionals should treat DV victims positively, supportively and respectfully at all times;
- Access to specialist DV support services should always be facilitated;
- As far as possible in the interests of justice, victims' choices should be facilitated;
- Domestic Violence investigations should be conducted as thoroughly and expeditiously as possible;
- Best International Practice should be followed in all risk assessment instruments/needs assessment tools used;
- Only adequately skilled, independent and DV trained interpreters and translators should be used in DV cases, as far as possible;
- Garda and Court Accompaniment for DV victims should be promoted and facilitated, as far as possible;
- Special measures in court should be considered and put into effect whether or not recommended by Gardaí, in appropriate cases, provided this is in the interests of justice and that victim agrees;
- Adequate criminal justice system training should be provided to all DV specialist support services personnel supporting DV victims considering, or who have made, a complaint to An Garda Síochána, and this should be facilitated as far as possible;
- General and specialised training for all criminal justice professionals should include the perspective of DV specialist support services, and should be prioritised;
- There should be equality of access with regard to all information sheets, booklets, leaflets, website pages, policies, legislation, etc. concerned with victim needs assessment/support, for all sections of the community (e.g. Braille/foreign language versions, etc.);
- There should be a thorough common understanding of the EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime, including Preamble and Guidance Handbook, among criminal justice professionals and Domestic Violence service providers, and of their national implementation (statute law, policy, standards, etc.);
- There should be effective oversight and evaluation of how victim needs assessment and specialist supports are working in practice for DV victims, through structures which are as simple as possible;

- Best practice standards for information giving, contact with official agencies, appropriate referral, individual assessment of specific protection needs, privacy, protection measures, special measures during investigation and during court proceeding should be established, which are ideally, agreed across the various criminal justice agencies and specialist support services.
- *Note: the last two of these could be addressed together through the same mechanism. The model for this in Ireland is the inter-agency SATU (Sexual Assault Treatment Unit) Guidelines Committee, which has met regularly since 2006 to research, draft, discuss, edit, consult, and finally agree, three successive drafts of the guidelines which cover every aspect of SATU procedure from the perspective of each agency involved.*

## (i) Checklist of Domestic Violence Victims' Needs for Protection and Support – for An Garda Síochána:

### Protection and Support Needs on first response:

Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. Not the least of their worries is the fear of becoming homeless and/or dependent on the State or others. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barriers to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that the official response should be as straightforward as possible, by using simple language and giving complex information in outline first.

### Recommendations to Address Victims' Support and Protection Needs on first response

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**Risk Assessment - It is recommended that initial Risk Assessment by AGS should cover the following areas at a minimum:**

- ▶ History of violence in the relationship and in other, domestic and non domestic, relationships – to include, threats of violence to victim(s) and any children;
- ▶ Perpetrator's history of serious non-violent offending and also, any history of suicide attempts and/or threats of suicide;
- ▶ History of DV against victims, to include any DVA orders, previous, existing, or pending;
- ▶ Recent or imminent separation (well known flashpoint for incidents of domestic violence);
- ▶ History of perpetrator's drug or alcohol abuse;
- ▶ History of perpetrator's mental health;
- ▶ History of perpetrator's access to weapons;
- ▶ History of perpetrator's convictions for offences committed against the victim.

### Referral, Information, Communication

Once arrest & detention possibilities have been considered and acted upon, and any evidence which is immediately available, has been secured/gathered, **referral**

**should be made if victim consents, to specialised DV services in local area;** if victim does not consent to be referred, information supplied about these services should be clear and comprehensive – see next point:

**Information procedures re support services:** Should include helpline details (local and national) for DV services, website details for victim support information (An Garda Síochána and DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant);

Victim should be given advice about what to do if perpetrator starts **to harass, threaten or injure her**, (e.g. should be informed that witness intimidation, persistent harassment, and breaches of barring etc. orders, are each criminal offences;)

Advice should include advice in general terms, about **interim barring order possibilities as well as other DVA orders;**

Victim should be **reassured** as well as informed about **criminal justice procedures**, and about their own case, by reference to all possible supports available, such as their right to Garda accompaniment;

Questions should be asked to find out if victim has **additional specific protection needs**, such as being an illegal migrant who is or may be a trafficking victim, or having poor language, literacy or comprehension skills, being a member of the Travelling community or other minority community, having physical disability/illness including mental illness, being dependent on the perpetrator for any reason, and

**Additional information** should be should be provided with information on any local and national groups who can offer real support, e.g. specialist agencies such as immigrant or Traveller support groups, where available,

**Language and other barriers to effective communication** should be addressed by using professional interpreters, ideally with DV training, and where necessary, phone interpreting services. Independent interpreters should always be used in DV situation, and face-to-face contact should be supplemented by information leaflets in victim's language;

If there is no immediate support available from a local DV service or other specialist agency, questions should be asked to find out where the victim could access **informal support through their own social network** and/or community links, and where consent is given, that person should be contacted on the victim's behalf;

Allowance should be made for the fact that the **experience of trauma** makes it hard to take in what will happen/could happen next, and that much information about procedures, etc., will have to be repeated on a future occasion when the impact of the instant trauma has diminished; and for this reason, information should be given in as simple a form as possible;

On no account should attempts be made to **dissuade victims from reporting the crime**, on the contrary they should be encouraged to continue with their complaint, and the attitude of the investigating Garda should be **positive and supportive** throughout. Gardaí should expect that the victim may feel not only fearful of, but



**ambivalent about**, the criminal justice process and its probable consequences for her and any children. A positive and supportive attitude from the investigators, full and accurate information and a simple contact process can go a long way to counteract this;

**Contact** details and ways in which the investigating Garda can be contacted, e.g. via Garda Victim Service Offices, should be given and fully explained; and

**Follow up** by investigating Garda should take place as soon as possible, if not immediately then within 24 hours of reported incident.

## Protection and Support Needs at investigation and where applicable, prosecutorial stages(s):

This stage can take quite a long time. While the victim will now have time to give a full statement to the investigator, and an investigation will normally follow, the rest of the investigation and the prosecution decision making process, may each be quite complex. During this time, victims need the support of family, friends and DV specialist agencies, and also of the Gardaí. Regular, informed, and sympathetic contact with An Garda Síochána can do much to reassure victims that their case is important, that everything possible is being done to get the case into court, and that even if it does not, every effort has been made to do so. This is important to minimise the impact of the crime on its victim. Also during this time, many victims face numbers of practical problems, and many more are confronted by harassment and/or intimidation behaviours by the perpetrator. This last can mean that victims have mixed feelings about the case continuing, and can raise anxiety levels, making it difficult for victims to stick with it. Finally, victims' anxieties about privacy come to the fore very often at this stage.

## Recommendations to Address Victims' Support and Protection Needs at investigation and where applicable, prosecutorial stage(s)

**Follow up** for both investigatory and victim liaison purposes, should be as soon as possible, and should include reminders of all supports local and national (websites and/or helplines);

Investigators should expect that the formal statement of complaint taken soon after the incident will need to be updated as the trauma associated with the immediate aftermath recedes, and certainly before the file is completed. It is likely that when they are calmer, victims will be able to recall more significant details about the incident itself and the surrounding circumstances. It is recommended therefore, that victims are given an opportunity to **add to and/or correct**, their statement before the investigation is finalised. This process will help to reassure victims that their evidence is taken seriously by the Gardaí and therefore, will help to reduce attrition.

**Garda accompaniment** should be facilitated at victim statement taking stage, as far as possible, and where a reasoned decision is taken to exclude an individual accompanying person, this should be explained and where possible, a reasonable opportunity to find a replacement person should be given to the victim;

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**The individual needs assessment** should be done very much in collaboration with the victim, who should be informed fully about any recommendations for special measures made as a result;

Victim should be provided with a **copy of her statement** as soon as possible, unless there is a reasoned decision not to supply it, and if so, that reason should be fully explained to her;

**Effective means of contact** with the investigating Garda, particularly if the investigation will take some time, is key here to preventing attrition and reducing trauma for the victim – this should be an area for a proactive approach, ideally one discussed with and agreed to by the victim; note that this contact may be vital to help prevent a further crime OR to enforce, any DVA order breached, and that following some contacts, it may be necessary to **revisit and update the Risk Assessment elements at least**, of the original individual needs assessment;

**Repetition of important information** about legal supports such as special measures, DVA orders, bail conditions, etc., as well as about the criminal justice system generally, is also key at this stage, bearing in mind that it is difficult for victims to take everything in at the first, most traumatic stage but that as time goes by, the same victims are likely to have more and more questions;

**Privacy** concerns are very significant for most victims of domestic violence. They should be addressed by Gardaí as far as possible, and where it is possible for proceedings to be held in camera and/or for reporting restrictions to be imposed, victims should be told about these possibilities. Gardaí should also ensure that the prosecutor is well aware of both these possibilities where they exist, and what the victim's attitude is in relation to them;

Victims should be reminded regularly what steps they should take in the event of **intimidation and/or harassment behaviours** by the perpetrator and/or others acting on his behalf;

Gardaí must be prepared to explain as far as possible, **the reasons why** any person suggested by victim as a possible witness, might not be asked for a statement, or if one is given, that statement might not be used; this is important, as few victims will have access to legal advice about the rules of criminal evidence, and so might well assume that relevant evidence is being ignored when this is not the case;

When providing **regular, unprompted updates** on the case and explaining **Court procedures**, Gardaí should take care to project a **positive and supportive attitude** throughout;

Victims should be fully briefed about **dangers to the case** which might be caused e.g. by speaking to the media in advance of a conviction, discussing the facts of the case with another witness or potential witness, and so on;

If their case does not go to court, the victim's rights in relation to **reasons and/or a review of the decision not to prosecute**, should be explained in detail and website details/booklets provided;

Garda should ensure that prosecutors are in possession of **Individual Assessments** carried out by Gardaí and should ensure that **Garda recommendations re any special measures** in relation to same, are advocated for with prosecutors in advance of hearing.

## Protection and Support Needs at court stage (if there is one)

Most people, including many lawyers, are nervous at the prospect of giving live evidence in open court and being cross-examined on it. For victims of domestic violence, telling an intimate, personal and harrowing story is extremely daunting. Much support is needed from criminal justice professionals and others at this stage. A DV volunteer can provide straightforward emotional support, but there is still much information about procedural matters which the victim must absorb from the investigating Garda. Victims should be briefed fully before the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is so stressful that it is difficult to take in new information. Because in court so much may change very fast (e.g. plea), more new information may have to be absorbed. In these circumstances, communication should be as clear and brief as possible. Finally, the victim is likely to be very anxious about accidental meetings with the accused.

## Recommendations to Address Victims' Support and Protection Needs at court stage (if there is one)

Garda should **liaise effectively with DPP** re pre-trial meetings, any preliminary hearings, and so on, not least to convey victims' wishes re any special measures available;

.....

Garda should check that victims know about all **court accompaniment services available**, including through Victim Support at Court, by providing details directly or by referring victims to DV/other court accompaniment service;

Garda with prosecutor and Courts Service, should make enquiries and arrangements (where possible) in advance of the hearing to **minimise the chances of an accidental encounter** with the accused, who is usually on bail;

Garda should ensure victims are fully briefed about **possible special measures** available in Court, and that they know what victims' attitude to each of these is, so that they can relay it accurately to the prosecutor;

Garda should check that victims understand **the order of proceedings in court** and in particular, what has happened at any **decision point** in court (jury verdict, sentence, bail hearing, etc.);

Victims should be briefed in particular about what to expect in both **direct and cross-examination**, but without being coached on their evidence in any way;

Garda should check that victims are fully aware of all **practical arrangements for the court date(s)**, such as how early to come to court, where witness room is, where to get refreshments, how long case is likely to last, how to claim for expenses, and if person is convicted, how to request compensation, and/or get help to prepare victim impact statement [etc.].

## (ii) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Prosecuting authorities (whether Garda personnel or DPP staff or agents):

### Protection and Support Needs on first response

*Note: Prosecutors in Ireland do not have direct contact with victims in the absence of the Gardaí, normally. Communication with victims as prosecution witnesses usually takes place via the investigating Garda. Victim requests to consider, review and/or give reasons for decisions by the Director of Public Prosecutions are handled through a single central office in Dublin. When cases come to court, any contacts between prosecutor and victim/witness will be mediated by the relevant Garda. This does not mean that there is nothing a prosecutor can or should do to ascertain and address victims' specific protection and support needs; there are several points in the criminal justice process when a prosecutor's input can be very beneficial for the welfare of DV (and other) victim/witnesses. For a prosecutor, ensuring that measures are in place to safeguard victims' welfare helps to reduce attrition and to increase the chances of the case reaching a satisfactory conclusion. While prosecutors are not often involved at the beginning of a criminal case, the following material is included to help them to understand and later on, address the protection and support needs of DV victims as effectively as possible.*

Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. The fear of becoming homeless and/or dependent on the State or others worries many DV victims. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barrier to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that official responses should be as simple and straightforward as possible, by using simple language and giving complex information in outline only at first. Victims can and should be given references to access more information if they so wish.

## Recommendations to Address Victims' Support and Protection Needs on first response:

**Referral & information procedures re support services:** Sometimes DV victims do approach prosecutors directly. When this happens, prosecutors should either refer them to An Garda Síochána and to the nearest DV specialist support service, where the victim consents, and if s/he does not, prosecutors should provide them with **comprehensive and easy to understand support information**, which should include helpline details (local and national) for **DV services**, contact details if necessary for the relevant **Garda Station** and **Garda Victim Service Office**, website details for victim support information (An Garda Síochána and DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant), and also, details of **any additional specialist** service which may be relevant in their case, such as a local immigrant support group e.g.;

**Language and other barriers to effective communication** should be addressed by using professional and appropriately trained interpreters, written materials in the relevant language, where necessary in urgent situations using interpreting services available by phone.

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## Protection and Support Needs at prosecutorial stages(s):

During this often lengthy stage, victims need support from their own family and friends and from DV specialist agencies, and also from the State agencies. Regular, informed and sympathetic contact with An Garda Síochána, can do much to reassure victims that their case is important, that everything possible is being done to advance the case, and that even if does not get to court, every effort has been made on get it there. This is important to minimise the impact of the crime on its victim. Also during this time, many victims face numbers of practical problems, and many more are confronted by harassment and/or intimidation behaviours by the perpetrator. These behaviours can raise anxiety levels, and naturally will make it difficult for victims to stick with the criminal justice process. Finally, victims' anxieties about privacy come to the fore very often at this stage.

## Recommendations to Address Victims' Support and Protection Needs at prosecutorial stage(s):

**Follow up:** Prosecutors, as well as investigators, should expect that the formal statement of complaint taken soon after the incident will need to be updated as the trauma associated with the immediate aftermath recedes, and certainly before a final decision is taken on prosecution. It is likely that when they are calmer, victims will be able to recall more details about the incident itself and the surrounding circumstances. Some of these details may be important for the prosecutorial decision. It is recommended therefore, that victims are given an opportunity to **add to and/or correct**, their statement before the prosecutorial decision is finalised. This process will help to reassure victims that their evidence is taken seriously by

the prosecutor as well as by the Gardaí, and therefore, will help to reduce attrition.

**The individual needs assessment** should be done very much in collaboration with the victim, who should be informed fully about any recommendations for special measures made as a result;

Prosecutors should ensure that the victim is provided with a **copy of her statement** as soon as possible, unless there is a reasoned decision not to supply it;

**Privacy** concerns are very significant for most victims of domestic violence. They should be addressed by prosecutors as well as Gardaí as far as possible, and where it is possible for proceedings to be held **in camera and/or for reporting restrictions** to be imposed, prosecutors should consider these possibilities; where necessary, they should find out the wishes of the victim in this regard via the investigating Garda, and advocate for any privacy measures as appropriate;

Where prosecutors become aware of any **intimidation and/or harassment behaviours** by the perpetrator and/or others acting on his behalf, if as often happens, it is impossible for the victim to avoid some incidental contact with the accused, they should take all possible steps to ensure that future intimidation and/or harassment behaviours are prevented, e.g. by advocating for a remand in custody OR stricter bail conditions;

Prosecutors should offer a **pre-trial meeting** with victim and Garda in every DV related case, in good time before the hearing. At this meeting, **Court procedures** should be explained in detail, and ad hoc questions about procedures should be answered as fully as possible as they arise;

Prosecutors should ensure that they have **Individual Assessments** carried out by Gardaí, well in advance of trial, and should also ensure that these assessments have been updated, before trial;

Prosecutors should ensure that they advocate at preliminary hearings, and make any necessary arrangements with the Gardaí and/or the Courts Service, for **Garda recommendations re any special measures** in individual assessments, to be carried out, as far as they can in the interests of justice;

## Protection and Support Needs at court stage (if there is one)

Most people are nervous at the prospect of giving live evidence in open court. For domestic violence victims, to tell an intimate, personal and harrowing story about their intimate personal lives to strangers, possibly in public, is extremely daunting. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must absorb. It is important that victims have been briefed as fully as possible in advance of the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury also) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information.

Because the direction of any case in court may change very fast (e.g. on change of plea), new information is likely to present itself. In these circumstances, it is more important than ever that communication is clear, brief, and simple to understand, as far as possible. Finally, the victim is likely to be very anxious about accidental meetings with accused.

## Recommendations to Address Victims' Support and Protection Needs at court stage (if there is one)

Prosecutors should **liaise effectively with Garda in the case** re pre-trial meetings, any preliminary hearings, etc., so that when prosecuting the case in court, they can give effect as far as possible in the interests of justice, to the wishes of the victim. In particular, prosecutors should ensure that they know what the attitude of the victim is to any special measures available, whether or not these are recommended by AGS in the Individual Assessment;

Prosecutors should check via Gardaí that victims know about **court accompaniment services available**, including through Victim Support at Court, well in advance of the hearing;

Prosecutors in tandem with Gardaí and the Courts Service should make enquiries and arrangements (as far as possible) in advance of the hearing to **minimise the chances of an accidental encounter** between the victim and the accused, who is usually on bail;

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Prosecutors should ensure that local Courts Service staff are made aware of all court dates in domestic violence related criminal proceedings, so that they can make any necessary arrangements to maximise support and protection of DV victims on those dates;

Prosecutors should check via Gardaí that victims understand **the order of proceedings in court** and that they are briefed in particular about what to expect in both **direct and cross-examination**, if any;

Prosecutors should check via Gardaí that victims are fully aware of all **practical arrangements for the court date(s)**, such as time of hearing, location of witness room, likely duration of the case, how to claim for expenses, how to request compensation, where to find assistance for preparation of any victim impact statement, etc.;

Prosecutors should advocate at the full hearing for any **special measures** recommended by Gardaí in the Individual Assessment, unless there is good reason not to do so (accused pleading guilty e.g.). Where for any reason these are not advocated, prosecutors should do all they can to ensure that the victim is briefed fully on these reasons in advance;

If the prosecutor considers that there is **another special measure(s)** available which is not recommended, s/he should raise this issue with the Garda in the case and try to find out whether either Garda or victim have any objections thereto. If the prosecutor having consulted with Garda and victim, feels that a particular special



measure although not recommended by Gardaí should be sought, s/he should apply for it unless in his/her view, it is not in the interests of justice to do so;

Prosecutors should do all they can to find out the views of victims on any proposed **acceptance of a plea to lesser charges**, and to take these into account as far as possible in the interests of justice; and

Prosecutors should check with the Garda in the case that the victim fully understands the implications of any order made at a **decision point**, such as: grant of bail/remand in custody, acquittal/conviction, sentence passed/deferred for any reason.

## (iii) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Courts Service staff:

### Protection and Support Needs on first response

*Note: This section is intended to be used when Courts Service staff receive disclosures of domestic violence from court users whose words reveal a crime of domestic violence committed against them and/or any children and who may be or already are considering making a complaint to An Garda Síochána.*

Victims' fears for the safety of their children and themselves are at the forefront of their minds, not only immediately but over time. They are frightened not only of the perpetrator's potential to cause even more harm, but also of the legal process, both civil and criminal, and the practical implications of any such process, for their children and for themselves. Not the least of their worries is the fear of becoming homeless and/or dependent on the State or others. This means that they are often ambivalent about making a criminal complaint. The impact of the recent trauma makes it very difficult for them to process new information and to make decisions which may have far-reaching consequences. It also makes it hard for them to provide coherent and full information. There may also be additional difficulties, such as a language or cultural barrier to understanding their position, fears about immigration consequences of any legal action taken, and/or a disability. This means that any action to address any of these complex needs for protection and support, should be experienced by the victim as reassuring and sympathetic, as far as possible. It also means that official responses should be as simple and straightforward as possible, by using simple language and giving complex information in outline only at first, with references so that the victim can find out more, if s/he so wishes in the future.

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### Recommendations to Address Victims' Support and Protection Needs on first response

**Disclosures of DV and Risk Assessment, as far as appropriate to the role of any first responder agency and/or professional to whom a DV incident is reported by a victim:**

Courts Service staff do not have a formal RA role with regard to reports of domestic violence, apart from Children First responsibilities. However, there are some indicators that a court user's situation is one where they and/or their children are at risk of domestic violence. It is important to be aware of them, to record them, and within one's role, to act upon them, to help ensure that as far as possible, the protection and support needs of victims of domestic violence are addressed. These indicators include:

- ▶ Previous perpetrator violence in the relationship and in other, including non domestic, relationships – and violence here should be understood to include, threats of same to both victim and any children;
- ▶ perpetrator's non-violent (especially serious) criminal behaviour;
- ▶ perpetrator suicide attempts and/or threats of suicide;

- ▶ legal history of previous violence by perpetrator, including any DVA orders ever extant, now in force, or being sought; and
- ▶ Recent or imminent separation (well known flashpoint for incidents of domestic violence).

Where possible and appropriate, disclosures revealing any one or more of these indicators should be followed up with a few brief questions to elicit more information, if the court user consents to answer them. It should be explained that these questions are being asked only in order to help the professional to work out whether further referral and/or information should be made available. The responses should be noted briefly.

**Referral & Information re support services:** Where the victim consents, a referral should be made to local DV services and information provided on any other additional service which may be appropriate, such as a Traveller women’s support group, insofar as this is practicable. Where consent is not given to refer, information should be offered, to include helpline details (local and national) for DV services, website details for victim support information (especially DV services local and national), Victim Support at Court, local Legal Aid Board contact details, information about GP services and local hospital (if relevant), and information about any additional local support services which may be appropriate, such as for example, a local immigrant support group, insofar as this is practicable;

**Information re An Garda Síochána:** Victim should be given contact details for the local Garda Station and for the nearest Garda Victim Service Office, and told how to access additional and accurate information about the criminal justice process online, through the Garda Síochána and other relevant websites, where this is appropriate. The information provided should also reassure the victim that the Gardaí have a duty to provide information about the criminal justice process, protection options including DVA orders, and supportive measures such as Garda and Court accompaniment.

**Language and other barriers to effective communication** should be addressed by using professional and appropriately trained interpreters, as far as practicable, and written materials in the relevant language. Where professional interpreters are not available, other avenues to find an independent and competent interpreter should be explored as far as possible;

Where Courts Service staff discover that a victim has **additional specific protection needs**, such as being an illegal migrant who is or may be a trafficking victim, or having poor language, literacy or comprehension skills, being a member of the Travelling community or other minority community, having physical disability/illness including mental illness, they should provide information and offers of advice, referral, etc. as far as possible in ways that will be understood by, and acceptable to, that victim;

Courts Service staff should offer **general advice and information** about Domestic Violence Act orders (n.b. of course this is not a substitute for detailed legal advice in a specific case) to victims of domestic violence;

**Information** should be available to DV victims from Courts Service staff about **Court Accompaniment services**, and should be offered whenever staff become aware that a court user must appear as a witness in a domestic violence related criminal case;

If there is no immediate support available from a local DV service or other specialist agency, questions should be asked to find out where the victim could access **informal support through their own social network** and/or community links, and where consent is given, that person should be contacted on the victim's behalf, insofar as these measures are practicable at the time;

Allowance should be made for the fact that the **experience of trauma** makes it hard to take in what will happen/could happen next, and that much information about referrals to other organisations, An Garda Síochána, etc., may have to be repeated on a future occasion when the impact of the instant trauma has diminished; and for this reason, any information should be given in as simple a form as possible;

On no account should attempts be made to **dissuade victims from reporting the crime**, on the contrary they should be made fully aware that they have the right to report the crime to An Garda Síochána and assisted in so doing as far as possible.

## Protection and Support Needs at court stage

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Most people are nervous at the prospect of giving live evidence in open court. Domestic violence victims may find it extremely daunting to tell such an intimate, personal and harrowing story to strangers, possibly in public, and be cross-examined on it. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must take in which may have to be provided by professionals. It is important that victims have been briefed as fully as possible in advance of the hearing, as on the day, the experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information. Because the direction of any case in court may change very fast (e.g. on change of plea), new information is likely to present itself. In these circumstances, it is more important than ever that communication is clear, brief, and simple to understand. Last but not least where the Courts Services are concerned, the victim is likely to be very anxious about accidental meetings with the accused person.

## Recommendations to Address Victims' Support and Protection Needs at court stage

Where Courts Service staff become aware that a domestic violence related criminal hearing is due to take place, they should ensure that any **court accompaniment** service based at court is put on notice of that hearing. If there is no court accompaniment service based at court, Courts Service staff should be able to

provide information about any other court accompaniment services which may be able to help the DV victim on the relevant date.

Courts Service staff where they have advance notice from e.g. the prosecutor and/or the Garda in the case, should make arrangements in advance of the hearing to **minimise the chances of an accidental encounter** between the victim and the accused, who is usually on bail – in any domestic violence related criminal case, to the extent that this is practicable;

Where Courts Service staff become aware that **special measures** have been ordered to be provided in any domestic violence criminal case, all arrangements to provide them should be checked meticulously in advance to ensure as far as possible, that there is no delay on the day of the hearing and the trial goes ahead as planned.

## (iv) Checklist of Domestic Violence Victims' Needs for Protection and Support – for Judges in Criminal Courts:

### Protection and Support Needs at both preliminary and full hearing court stages

- (1) Preliminary Hearings – Bail Applications, Sending Forward for Trial, Pre-Trial Hearings, Mentions, etc.
- (2) Full Hearings: Plea, Trial, Sentence

Most people are nervous at the prospect of giving live evidence in open court. Domestic violence victims may find it extremely daunting to tell an intimate, personal and harrowing story to strangers, possibly in public, and be cross examined on it. They may continue to have very mixed feelings about giving evidence against even a very abusive partner. This is the stage when perhaps the most support is needed from criminal justice professionals and others, and much of the support needed is in the form of straightforward emotional support from e.g. a DV service court accompaniment volunteer. That said, there is much information about procedural matters which the victim must take in, sometimes very quickly. The experience of being in court and facing a judge (and possibly, jury) as well as having to share space with the perpetrator, is stressful to the point where it is difficult to take in new information. It is as important as ever that communication is clear, brief, and simple to understand, as far as possible. Finally, the victim is likely to be very anxious about accidental meetings with accused.

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### Recommendations to Address Victims' Support and Protection Needs at all court stages, for judges

Judges should consider at each stage the possibility that victim and/or any children, have been and are still at risk of ongoing intimidation and harassment. Even during trial, this may continue. S/he should be ready to ask questions of both lawyers and of the victim to find out if it is appropriate to impose or revisit **bail conditions, or even a remand in custody**, for the protection of the victim during criminal proceedings;

Judges should help support DV victims by encouraging **court accompaniment for them**, as far as it is within their powers to do so – whether this is by a friend/relative, or DV volunteer;

As far as possible within the courtroom itself, judges should ensure that arrangements are made by Courts Services staff with Garda to **keep the accused and his supporters at a distance from the victim**. This is important, because most defendants are on bail;

Judges when considering Individual Assessments of specific protection needs of DV victims, should bear in mind all **possible special measures** available to the Court, and should ensure they know what victims' attitude to each of these is, before they make a decision. Measures safeguarding **privacy** are likely to be at the forefront of most victims' minds;

Judges should be alert to prevent **oppressive**, irrelevant, unnecessarily prolonged and/or invasive **cross examination of the victim**, both to safeguard privacy rights and to prevent or reduce secondary victimisation.

Judges, as well as prosecutors and Gardaí, should ensure victims understand **the order of proceedings in court** and in particular, what has happened at any **decision point** in court (jury verdict, sentence, bail hearing, etc.) and if there is a conviction, what is expected of them in relation to any Victim Impact Statement and for any possible application for compensation. Here the language used must be as simple as possible, so that it is easy to understand and retain.









While every effort has been made to ensure that all material in this Resource is accurate and up to date at the time of going to press in March 2016, no responsibility or liability of any kind is accepted by its authors or publishers for any errors of any nature whatsoever in this publication.

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Authors:  
SAFE IRELAND  
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The **Make it happen! Toolkit** is based on the results of the research work undertaken within the INASC Project. Overall, this toolkit aims to contribute to the national implementation of the Directive 2012/29/EU on victims' rights, namely as regards intimate partner violence victims' needs of support and protection.

Information regarding the project and all research reports is available at: [www.inasc.org](http://www.inasc.org)

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