

**INTIMATE PARTNER VIOLENCE
DISTRICT COURT FOR MONTGOMERY COUNTY
CRIMINAL HEARING MONITORING FORM**

ROCKVILLE/SS

DATE: _____

VOLUNTEER: _____

CASE #: _____

JUDGE: _____

The domestic violence criminal docket is pretty straightforward. The case no. will appear to the left, followed by the defendant's full name. The case number is always a digit, followed by a D and eight more digits. See Defendant information below.

Was case transferred to Circuit Court? Yes ___ No ___

If yes, Case Number: _____

Some more serious cases are transferred to Circuit Court based on evidence the police and State's Attorneys office have gathered. The prosecutor will advise the judge when this happens and is expected to provide the judge with the Circuit Court case number. It is important for us to have this information as we will try to follow the Circuit Court criminal cases as often as possible.

DID BAILIFF or Judge announce that: (NOTE: You only need to complete one form with this information as it applies to the entire docket)

Defendants and victims should have **no contact**? ___ YES ___ NO ___ UNK ___

Exits would be **staggered**? ___ YES ___ NO ___ UNK ___

The stakes are even higher in a criminal hearing than in a protective order hearing. Defendants could be jailed for their crimes or face years of supervised probation where their activities will be closely monitored and a violation could send them back to court and a possible jail sentence. Emotions may run high and safety concerns for victims should be paramount or they will be fearful of coming to court. The courtroom should be made as safe as possible for victims to avoid unwanted contact with their abusers or their families. One way to maintain safety in the courtroom is to announce defendants should have no contact. Another way is to announce that exits will be staggered and briefly explain how that works. To simply stagger exits with no explanation might confuse individual defendants and it is preferable to announce it as policy.

IF THE JUDGE MOVED CASES to another courtroom did he/she **STAGGER** the exit or send a bailiff escort?

There have been incidents of unwanted contact between defendants and victims when they walk through the halls to reach another courtroom. These exits should either be monitored by a bailiff or the judge or bailiff should stagger, direct the victims to leave first and provide them sufficient time to reach the other courtroom before defendants so they will not be at risk of unwanted contact.

1. DEFENDANT: _____ Gender: _____ Interpreter: _____

PRESENT _____ ABSENT _____ IN CUSTODY _____ FTA _____

SUPPORT: Public Defender _____ Private Attorney _____ Alone _____

Defendants will usually be in the courtroom in the audience or arrive in custody when their case is called. If defendants are absent and it is for a valid reason you will find this out from the defense attorney, who will request a continuance. If the defendant is an FTA, failure to appear, the judge will not be pleased and may issue a bench warrant requiring police to pick him up. Please note in margin if a bench warrant is issued. If Defendant had interpreter, please note language.

Defendants may have a public defender as defense counsel or a private attorney. The public defenders are usually in the courtroom early conferring with the prosecutors and checking the audience to see if their defendants are present. They usually handle a number of different cases. Still, it is sometimes difficult to tell who is a public defender and who is a private attorney. Don't be concerned if you are not sure. Just put a question mark by public defender. You will get to know the players better after you monitor for a little while.

2.. CHARGES: (List as shown on docket) check all that apply)

The first charges listed on the docket to to the right of the defendant's name are the most serious and are commonly a second degree assault or a violation of a protection order. The charges all arise from the same incident and describe other laws the defendant is charged with violating. These "Lesser included charges" will appear below the main charge numbered in order as 002, 003, 004, etc.. These may vary from theft to malicious destruction of property to disorderly conduct. Stalking and harassment are also charges, but are considered "a course of conduct" as they do not arise from one incident but a series of incidents Under DISP (for disposition) in the last column, the clerk may have written in cont. (continued) or (moved to 412, another criminal courtroom). You will not have to worry about these cases as they will not be called. If there are numerous charges, such as eight or more violations of protective order (not uncommon), list and add x 8 or whatever the number is.

3. VICTIM: _____ Gender: _____ Interpreter: _____

PRESENT _____ ABSENT _____ UNKNOWN _____

RELATIONSHIP: Married _____ Separ/Div _____ Dating/Lived together _____ Unk _____

CHILDREN: Yes _____ No _____ How many? _____ Ages? _____

(both children in common and other children – include any under 18 years of age)

Victim present? It may be difficult to determine if the victim is actually present. If the case is postponed, or a nolle prosequi (see below), the victim, as state's witness, will not need to be in court for those dispositions. If you don't know whether the victim is present, just check

UNKNOWN. But please try to identify the victim's gender as we need this information. You may hear the prosecutor refer to the victim as "him" or "her" and that will be sufficient. Note there is only one victim advocate from the Abused Person's Program who accompanies victims and offers them support and you will recognize her after a few visits to court. Unlike in civil protective order hearings, the victim advocate NEVER goes to the table with the victim but remains in the audience although she may play a supportive role before and after the court hearing. If Victim had an interpreter, please note language.

***Sorting out relationships.** This is a domestic violence docket so you already know that these are intimate partner cases involving domestic violence and rarely will you need to try and sort out a child abuse case or a dispute between relatives from the domestic violence cases we monitor. Check with more experienced monitors if you have a question about this. It will be useful to know as much about the relationship of victim and defendant as possible. Children the couple have in common and other children who live in the household but are from other intimate partner relationships should be included in your answer, These children, too, are victims of family violence as they may witness it or become involved in it just as easily as the children shared by the couple. Recent Maryland law has made it a separate crime to expose children to family violence.*

DISPOSITION - WHAT HAPPENED TO CASE?

If a District Court criminal case gets as far as the court room but does not go to trial, there are three common dispositions, listed below (but three types of nolle prosequi – read carefully).

4. POSTPONEMENTS

a. **Requested by:** Prosecutor ___ Defense ___ Both _____

Reason: _____

b. **IF Defendant is unrepresented, did the judge tell the Def.**

there is a PD Office in the **building**? ___ YES ___NO

c. Was postponement **granted**? ___ YES ___NO

Criminal cases can be postponed for a variety of reasons (Defendant has not secured an attorney, a witness has been held up, evidence is unavailable). Quite often the postponement (or continuance) is agreed upon by prosecutor and defense. However, the prosecutor is expected to be prepared to go forward without a valid reason and judges frown on too frequent requests for postponement from either side. Being able to document who requested the postponement and why should provide a better idea of the reasons cases are not in a position to be tried or disposed of and whether or not there are systemic roadblocks to cases going forward when scheduled.

One of the frequent reasons for postponing a case is because the defendant has no attorney. Judges will go out of their way to ensure that a defendant knows he has a right to an attorney and explain why going forward without the aid of an attorney's expertise could jeopardize a defendant's chances. Thorough judges also make a point of telling the defendant that there is a Public Defender's office in the District Court and that they should go there ASAP and request an attorney.

Please note whether the postponement was granted or denied.

5. Victim INVOKED MARITAL PRIVILEGE? ___ YES ___ NO

In Maryland a spouse is allowed to claim the “privilege” not to testify against her husband in a domestic violence case. The clerk or prosecutor will call the case up as if it were a trial, but there any resemblance ends. The victim will be sworn in and the state’s attorney will read her a list of questions she must respond to positively to assure the court that she has freely chosen not to testify against her husband and that by claiming marital privilege she is giving up the right to do so for the particular incident/s giving rise to the charges. She must also answer that this is the first and only time she has claimed the privilege. The defendant will then be “acquitted” of the charges, the prosecutor will “rest” and defendant will be released.

A spouse may have a number of reasons for claiming this privilege. It may mean that she feels the incident was out of character for her spouse and will not occur again or that she has re-thought what a conviction might mean to her husband’s career or to the family unit. It could also mean she has been coerced or sweet-talked into claiming the privilege. Recognizing this possibility, Maryland law only allows her to claim marital privilege only once. If charges are brought for a subsequent act of domestic violence, she may not want to cooperate for the reasons stated above, but she will not be able to claim marital privilege again.

NOTE: *In some cases, the prosecutor may not “rest.” If the prosecutor feels he has enough evidence to go forward without the spouse’s testimony, the prosecutor may do so on a lesser included charge or on another count. For example, the prosecutor may acknowledge “acquittal” on a charge of second degree assault, but go forward with a trial “proving” that the defendant was guilty of reckless endangerment or malicious destruction of property. In cases such as this, which are rare, the prosecutor can use physical evidence of injury, a 911 tape, doctor’s reports or police testimony as well as testimony of other witnesses, and out of court statements made by the victim (provided they can overcome some hearsay objections) for this purpose. Additionally, a prosecutor may have sufficient evidence to induce the Defendant (and his attorney) to plea bargain to a lesser charge (see PLEA BARGAIN below). These cases should be treated as trials or plea bargains, but the marital privilege should be noted.*

6. NOLLE PROSEQUI? Yes (unconditional) _____ NO _____

Did Prosecutor explain? YES _____ NO _____

IF YES, check all reasons given by prosecutor:

Victim unavailable _____ Insufficient evidence _____
Primary aggressor unknown _____ Defendant completed diversion program _____

If NOLLE with CONDITIONS or STET, Mark ALL Conditions

	No Contact	Complete APP	Anger Management	Alcohol Eval and Treat	Other
Cond Nolle					
Stet					

A **nolle prosequi** (commonly known as a “nolle”) means the state has chosen not to prosecute the charges against the defendant and to “dismiss” the case. The most common reason a prosecutor will elect not to pursue a criminal case is because the case is “weak, “ lacking sufficient evidence for the charge to be proven beyond a reasonable doubt. In domestic violence cases this is often because the victim, who is the State’s primary witness, has failed to cooperate with the prosecution out of fear of retaliation or because she has reconciled with the defendant/abuser or has left town. In some cases she may have a protective order or a safety plan that she feels is sufficient to keep her safe and want to avoid another confrontation with the abuser in the court room.

**** NOTE:**

A nolle is not the same as when a judge dismisses a case, a final judgement. It simply means the prosecutor has chosen not to go forward and, theoretically, can bring the case into the court again if the prosecutor chooses, although this is rare..

A nolle prosequi after a postponement. Another variation of nolle prosequi occurs when the defendant and prosecutor have agreed that the case will be nolle once defendant has completed the conditions of his agreement with the prosecutor (i.e. completed a diversion program such as APP counseling for abusers or community service). Pursuant to their agreement, the prosecution then drops the case. You may encounter this nolle at the forward end, when the prosecutor asks for a continuance so that the defendant can complete the terms, or at the back, when the prosecutor announces that the case is nolle because defendant has complied with the agreement.

A **conditional nolle**, is being used more frequently by prosecutors, In these cases, the prosecutor will announce to the judge that the defendant is receiving a conditional nolle, meaning that if the defendant completes the terms of their agreement, the prosecutor will not reactivate the case. There is no time frame given for the completion and no return court date requested.. Presumably, the prosecutor will withdraw the nolle or rebring the case if the defendant does not abide by their agreement. Unfortunately, as monitors we have no way of knowing the final outcome short of researching the case file. Conditional nolles are listed in Judiciary Case search as “nolles.”

Stetted cases. If this was not complicated enough, we should note that prosecutors are also beginning to use the **Stet Docket** to accomplish pretty much the same thing as a conditional nolle. The prosecutor will announce to the judge that the case has been stetted, meaning it has been put on an “inactive” list. (See **Five Facts about the Stet Docket in Maryland** in Training Manual). This means the prosecutor and defendant have reached an agreement that the defendant will meet certain conditions during a (sometimes unspecified) time period. As with the conditional nolle, the prosecutor reserves the right to reactivate the case if the defendant fails to comply with the terms of the agreement. Stets differ from conditional nolles in 3 respects: 1) Defendants must waive their right to a speedy trial if the time period will exceed the period in which a speedy trial is required; 2) a defendant can bring the case back for any reason within one year; 3) if a case is on the stet docket for 3 years or longer, the defendant can have the case expunged.

STOP HERE IF NOT A PLEA OR TRIAL

You do not need to complete the remainder of the form if this is not a plea or a trial.

7. PLEA AGREEMENT? YES ___NO___ IF YES:

charge(s) agreed to? 1) _____

2) _____

By far the most common method of resolving criminal cases in the District court is the plea agreement. The Defendant (and his attorney) will agree to plea to lesser charges, usually only one or two, in order to avoid a conviction for a crime of violence that may carry a severe jail sentence and produce a criminal record of such a conviction. For example, Defendant is charged with 2nd degree assault, but agrees to plea to reckless endangerment or theft or any of a number of lesser charges arising from the same incident. The benefit for the defendant is clear; a lesser penalty and milder criminal record and avoidance of the risk of being found guilty by the judge and sentenced for the more serious crime. There is also benefit to the prosecutor, not just in terms of the time this saves not having to prepare for trial. The prosecutor will have a conviction and the Defendant will likely be in a probationary situation where his activities can be monitored by a probation officer and the defendant will be required to enter “diversion programs” that will in theory teach give him the opportunity to learn about why he has committed an act of domestic violence and how to avoid it (APP counseling) as well as requiring that he have no contact with the victim for the course of his probation. If the defendant does violate probation he can be brought back to court for violating probation.

The Court should ensure that the defendant has freely entered into this plea agreement and defendant will normally be read a document describing rights he is waiving (both to a trial and to an appeal) or the judge may ask the written waiver be provided. This is always done before the plea is officially entered.

NOTE: *A plea agreement cannot be appealed by the defendant. However, a judge need not accept the plea agreement or more importantly either the prosecutor’s or defense attorney’s recommendations for sentencing. For example, if the judge chooses to give the defendant jail time and the prosecutor promised defendant he wouldn’t do time, the plea agreement has failed. The defendant is free to appeal the judge’s sentence to the Circuit Court.*

8. Summarize Prosecutor’s description of facts

Check all that apply:
Any injuries? Yes___ No___
Children present ? Yes___ No___
Did Def use a **weapon**? Yes___ No___
(if yes, what) _____
Strangulation (attempt or actual)? Yes___ No___
Was defendant drinking? Yes___ No___
Visitation or custody related? Yes___ No___
During **exchange** of children? Yes___ No___

*The prosecutor will read out the facts of the incident(s) that gave rise to the charges against the defendant, including the date and location as well as injuries incurred by the victim. Take down as much as you can. Pay particular attention to the **Check all that Apply questions**: attempted strangulation, use of a weapon (it could be anything a gun, knife or stick) and defendant's inebriation are signs of increased danger. If children are at or near the crime scene it also means the defendant is putting the children at risk. The last two questions, **Was this Visitation or custody related? During exchange of children?** Are also important. Visitation and custody are hot button issues even in a normal relationship. In a relationship where there is domestic abuse, they have proven lethal for victims and their children. The defendant may be angry that he is not allowed to see his children as often as he would like and that the victim now has "charge" of decisions about their upbringing. He may also be furious that he is not only separated from the victim he wants to control but having to pay some form of child support to her. Exchanges of children are also opportunities for the defendant to have contact with the victim and to reassert his control over her, even do her physical harm.. Affordable child exchange centers where victims in abusive relationships can safely exchange children without coming into contact with the abuser, can help to avoid some of these outcomes.*

SENTENCING:

Sentencing is a separate part of the plea agreement or trial process. In a plea agreement the prosecutor and defense must present the agreement to the judge for the judge's approval- Generally the judge will accept the plea agreement but the exact sentence remains at the judge's discretion. In all likelihood, the prosecutor may have offered the defendant no jail time in exchange for the plea, but will still argue for stricter terms of probation, supervised vs. unsupervised, will recommend to the judge that defendant complete APP counseling and have no contact with the victim (except for visitation arrangements regarding children) for the length of probation. The prosecutor may also cite the presence of children at the crime scene, the use of a weapon, or a defendant's previous criminal record as aggravating factors that argue for a stiffer penalty. The defense attorney, in contrast, will argue for the mildest sentence, citing mitigating circumstances, i.e., this is a first offense, the defendant is young, the defendant has already made efforts to rehabilitate himself by doing community service or taking APP counseling.

Before the sentence is delivered, the victim will be given the opportunity to make a Victim Impact Statement and the prosecutor is free to bring up the defendant's past criminal record.

9.. Did victim make a **Victim Impact Statement? YES ___ NO ___**

If **YES**, what did he/she say? _____

Over the last several decades the Victim impact statement has become a critical element in criminal proceedings and an important aspect of the package of rights that Maryland affords victims of violent crime. It is the victim's opportunity to tell the judge about the impact of the crime of domestic violence on her and her children, both physical, psychological and economic. It also might affect the judge's sentence, persuading him to deliver a more severe one based on what she relates or to add other conditions to probation. One judge has ordered the defendant to write a letter to his family apologizing for the effect domestic violence has had on them.

Victims are sometimes quite reluctant to make a victim impact statement in open court even if they are present because they may fear retaliation, dislike airing their family's problems in public or simply not want to relive the trauma. Some victims take this opportunity to plead on behalf of a lesser sentence for their partners, citing that they are good fathers or that they feel the incident of abuse was out of character or a result of excessive drinking or mental illness. Victims are not required to make a victim impact statement but should always be given the opportunity by the prosecution.

10. Did Defendant have **prior criminal charges or convictions? YES ___ NO ___**

	Convictions	Charges only
DV	_____	_____
Drugs/alcohol	_____	_____
Assault	_____	_____
Other	_____	_____

Although during a trial on the facts, a defendant's prior criminal record can usually not be introduced as probative, it can be at sentencing. DV related charges and charges involving violence to others may persuade the judge to give a harsher sentence. Alternatively, if the defendant has no prior criminal record and the victim in her impact statement makes a good case for milder treatment, it may persuade the judge to order a more moderate sentence. Don't worry if you feel you haven't completed this section. The prosecutor will be speaking quickly and this will be researched again on Case Judiciary.

This chart includes prosecutor’s sentencing recommendations (1st column) and the judge’s sentence (second column).

	Did Prosecutor Recommend?	Judge’s sentence?
Jail time		
Complete AIP Program (22 weeks)		
No contact with victim (except visitation)		
No hostile contact		
Supervised Probation		
Unsupervised Probation		
Probation Before Judgment	OK / No / Did not address	Did judge order a PBJ? Y____N_____
Substance abuse Evaluation/treatment		
Abstain from alcohol during		
Mental health eval/treat		
IF protective order, did Prosecutor remind judge?		Did judge tell Defendant to abide by PO terms? YES ___ NO _____
MARK DOMESTICALLY		

There are fixed maximum sentences for certain crimes but no sentencing guidelines in District court adjudications so Judges have a fair amount of latitude in the sentences they hand down. In District Court cases they usually suspend both jail time and fines (especially if they have viewed the defendant’s records and determine that payment of fines might prove to be meaningless burden if the defendant cannot afford them). Probation and time served, even if overnight, are often the terms of the sentence. NOTE: Check mark Judge’s jail time column with the number of days/years in the sentence. In most cases, the sentence will be suspended, so you must note that as well (i.e. 30 days – susp).

*At sentencing, the prosecutor will often request some of the terms of probation you see listed in the chart. This often includes a requirement that the defendant **COMPLETE APP** counseling and, unless otherwise indicated, have **no contact** with the victim during a period of **supervised probation**. Such conditions will give the victim a degree of safety and allow her time to get her life back together during the defendant’s probation period. Supervised probation means the defendant will have to report to a probation officer on a regular basis and provide evidence that he is completing counseling, not contacting the victim, and observing any other conditions the judge may have set, such as **alcohol or drug counseling** or a **mental health***

evaluation if that is indicated. In any period of unsupervised probation, the defendant's failure to obey probation conditions will only be an issue if he is caught in non-compliance.

What's This?

NO Probation before Judgement (PBJ)? Like the conditional nolle the probation before judgement is a legal hybrid. Judges usually order one in cases where the defendant has no criminal record and does not seem likely to re-offend. This does not mean there is no "sentence." As with a normal sentence, the defendant will have a probation period and must comply with all its terms, but with a PBJ if he does comply, at the end of the probationary period he can have the record of this case expunged, or erased. If he fails to comply and violates the terms of probation, then the sentence may be converted back to a regular sentence and expungement will not be an option. Prosecutors sometimes will state that they "defer to the court" on this issue, meaning they have no objection to this outcome. If they clearly state **No probation before judgement**, this means they believe that the defendant's crime was bad enough or the likelihood of his being a repeat offender sufficient, that he does not deserve a PBJ.

DV Related finding? Did the Prosecutor ask for a **DV Related finding** and did the Judge say he/she would make that finding? This question from the prosecutor usually comes both in the sentencing recommendations and at the end of the case, when the prosecutor might ask for it again. It may sound like an afterthought. It is not. Since Maryland law does not define crimes of domestic violence, i.e., domestic assault vs. assault, the only way that a record can be made of the domestic violence is for the prosecutor to make this request, for the judge to assent and check the DV Related Box in his/her Trial Summary. It will then be recorded in appropriate databases as a domestic crime so that law enforcement can track a defendant's previous record of domestic abuse. Monitors may need to listen carefully for this exchange, which often comes after exhaustive requests from both the prosecutor and defense attorney.

11. GUNS: DID JUDGE:

- a. **TELL** Def he/she is disqualified from having **guns**? YES___ NO__
- b. **ASK IF** Def HAS **guns**? YES___ NO___
- c. **WARN** Def regarding **penalties**? YES___ NO___
- d. **URGE** Def to **turn into police**? YES___ NO___

GUNS: Guns in the hands of domestic violence offenders are the single greatest predictor of fatality for their partners. It is important that each judge address this issue at the end of a sentencing. Many, but not all, of the crimes tried in District Court prohibit the convicted defendant from ever owning or possessing a gun. Rather than asking you to sort out which crimes apply, please complete these questions for every sentence.

12. Did the judge:

- a. Clearly **EXPLAIN** to defendant conditions of sentence? ___ **YES**___ **NO**
- b. Clearly describe **penalties** for violating terms of sentence? ___ **YES**___ **NO**
- c. Use **language** defendant appeared to understand? ___ **YES**___ **NO**

d. Talk with Defendant about need to deal with his/her problem, break the cycle of abuse, impact on children? **YES** **NO**

If the Defendant does not understand the conditions of his sentence and the penalties for violation he may be more likely to violate it. More importantly, in a domestic violence adjudication, the best practice is for the judge to emphasize in sentencing the special nature of this crime, targeted against an intimate partner in a relationship of trust. The documented and long lasting effects on both the victim and their children and the entire family unit are recognized by experts in the field and the special nature of the crime is one rationale for having a separate domestic violence criminal docket.

13. Briefly describe the judge's demeanor in this case (please be specific-Direct quotes help):

14. WAS PROSECUTOR Familiar with facts of case? Organized? **YES** **NO**

15. Were bailiffs, interpreters and clerks:

Courteous to all parties, efficient and professional? **YES** **NO**

Interpreters in the criminal courtroom have the same responsibilities as they do in protective order hearings. They should be simultaneously and impartially translating whatever exchanges there are between parties and the judge. They should not be prodding for quicker responses or adding any advice or any extra content to their translation. Bailiffs should be professional and alert and, when necessary, might stop a Defendant from any threatening action against a victim or show humane concern for a victim such as bringing her Kleenex if she breaks down in tears during testimony.

STAGGERED EXITS:

16. Was Defendant taken into custody? **YES** **NO**

IF **NO**, actual time VICTIM LEFT courtroom _____

Actual TIME DEFENDANT LEFT courtroom _____

17. Did you witness any PROMISING PRACTICES? **Yes** **No**

If yes, please describe and/or add any General Comments _____

Judges and other court personnel, including the state's attorneys, inevitably come up with their own promising practices. After all, they usually have years of experience with court rooms. In fact, many of the best practices that Court Watch first researched were identified by panels of judges and attorneys working in the field.

Some examples of promising practices that monitors have noted before:

- 1. During one docket a judge made it a practice of asking after each hearing if the victim was present. If she was, the judge made a point of asking the bailiff to hold the defendant until the victim had time to leave the court room and get to her transportation. Since victims are often not in the court room, this served as a good reminder to bailiffs to stagger the exit and relieved court personnel of searching for the victim.*
- 2. One state's attorney has frequently asked for staggered exits for certain cases, pointing out to the judge that the victim is present and requesting that the defendant be held the requisite time for victim to make a safe exit. The judges have always complied and directed bailiffs to "stagger" the exit. This should by no means relieve the judge of the responsibility for a policy of staggering exits and making other provisions for safety in and outside the his/her courtroom, but it has been successful in assuring that victims in certain cases about which the state's attorney may have more information are able to leave the courtroom safely.*
- 3. Bailiffs sometimes go the extra mile with both defendants and victims. One bailiff took extra time to explain to an agitated defendant what to do with his paperwork and insured that the defendant understood before leaving the courtroom. The defendant calmed down and broke into a smile.*

Please use this section of the form to note any other comments about the case or your observations. .