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THE WOMEN'S LEGAL RIGHTS INITIATIVE

ALBANIA BENCH BOOK FOR PROTECTION ORDERS

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INTRODUCTION

In January 2006, 20,000 Albanians made clear that they thought domestic violence was a serious problem in our society. For the first time, a citizen's petition was introduced into Parliament to pass a law – a law to help the victims of domestic violence. Such laws are

common in the world and in Europe and in fact required if Albania is ever to become a member of the EU.

The purpose of the law is to prevent and reduce domestic violence in all its forms and to guarantee legal protection to members of the family who are subjects of domestic violence paying particular attention to the needs of children, the elderly and the disabled. (Article 1) Every part of society has a role in preventing violence. The law outlines the roles for Ministry of Labor, Social Affairs and Equal Opportunities who is the main implementer, the Ministry's of the Interior and Health and line structures such as police departments, emergency rooms and local government, particularly social services. The court has a major role in granting protection orders as a civil remedy. The law specifically empowers the judiciary to take protection measures for victims and to ensure a quick, affordable and simple service to the victims. (Article 2) The prosecutors have a role in intervention in criminal actions. Social services and NGOs participate in a coordinated community response and all areas must coordinate under the law. This manual will first outline the specifics of the law and its interconnection with existing law, then it will present detailed information about implementing the law effectively, and end with specific forms and detailed procedures. This outline of law and procedure is intended to give judges a useful tool for implementing the law. We know that there are many changes to Albanian legislation and it is difficult to keep current with them all. We hope this benchbook will be useful.

WHAT ARE DOMESTIC VIOLENCE CRIMES?

Any of the following crimes from the existing criminal law can be considered domestic violence when done between family members. (Article 3, On Measures against Violence in Family Relations).

- Murder (Articles 76 – 83, 85 of Penal Code)
- Threat (Article 84)
- Torture (Articles 86 and 87)
- Wounding (Article 88/b)
- Termination of pregnancy without consent (Article 93)
- Denial of help (Article 97)
- Causing of suicide (Article 99)
- Abduction (Article 109, 109/a)
- Trafficking (Article 110/1 and Article 114/b, re minors 128/b)
- Trespass (Article 112)
- Forcing into and exploiting for prostitution (Article 114)
- Insult (Article 119)
- Defamation (Article 120)
- Limitation of the freedom of expression/speech, of movement or assembly (Article 261)
- Violation of private life (Article 121)
- Rape (Articles 100-107)
- Other obscene acts (Article 108)
- Abandonment (Article 124)
- Denial of living means (Article 125)

Illegal taking of child (Article 127)
Coercion for cohabitation or termination of marriage (Article 130)
Damage to property or economic well-being (Articles 150-154)
Limitation on freedom to administer their income (robbery/theft – (Articles 139 and 134)
Serious intentional injury (Article 88, 88/a)
Non serious intentional injury (Article 89)
Other intentional injury (Article 90)
Serious injury due to negligence (Article 91)
Non serious due to negligence (Articles 92)
Wrongful use of telephone (Article 275)

While the following actions are not listed in the existing criminal code, they are included as domestic violence under the law “On Measures Against Violence in Family Relations:

Prohibition on holding monetary means, despise, direct physical, psychological, sexual and economic abuse of children and putting children in dangerous situations where they witness violence. The last is addressed to the perpetrator of violence not the victim.

One objective is to support existing family values as expressed in Albanian law. (Article 5) Family Code Article 1 states those values as:

Marriage, as a legal cohabitation, is founded on the moral and legal equality of the spouses, in the mutual sentiment of love, respect and understanding, as the basis of unity in the family. Marriage and family enjoy special protection from the state.

Equality cannot exist in a family when violence is present.

WHAT KIND OF FAMILY RELATIONS QUALIFY UNDER THE LAW?

To qualify under the law, the parties must meet one of the following relationships:

Persons who are related

Persons who used to be in a family relation but are no more

Members of the family are defined as:

- i. Spouses or cohabitating partners
- ii. Brothers, sisters, relatives of direct blood line, including adoptive parents
- iii. And children, and spouses of these people
- iv. Persons related by direct blood line including parents and adoptive children of the spouse or cohabitating partner
- v. Brothers and sisters of the spouse if these have been living together during the last 3 months (*this seems contradictory with the one above i.e. the spouses direct blood line is already covered so their brothers and sisters are covered regardless if living with them or not*).

(Article 3)

IS THERE MORE THAN ONE TYPE OF PROTECTION ORDER?

There are two types of protection orders:

A. Protection Order (Article 12)

The protection order is an order issued by the court providing certain protection measures for the victim(s) of family violence. It shall be granted after a hearing and certain findings.

B. Emergency Protection Order (Article 22)

The emergency order is a temporary court order valid until a regular protection order is issued. It shall be granted under the same conditions except that the court has only 24 hours to reach a decision after the presentation of the petition. (Article 21) Other differences require that a date shall be set for verification of the order within 20 days from its issuance and the perpetrator has only 5 days to appeal.

WHO CAN ASK FOR A PROTECTION ORDER?

Persons who may request a protection order are: (Article 15)

1. The petition for protection orders may be presented by:
 - a. The victim themselves
 - b. The victim's legal representative or attorney
 - c. The police / the prosecutor

2. The petition for protection orders on behalf of the minor may be presented by:
 - a. The minor's parent or guardian
 - b. The minor's legal representative or attorney
 - c. Relatives of the minor
 - d. Representatives of the Social Services Office at the Municipality or Commune, where the minor resides temporarily or permanently, when they have knowledge of the violence perpetrated
 - e. DV victim protection and rehabilitation centres and services recognised/licensed by the Department for Prevention and Reduction of Domestic Violence.

3. The petition for emergency protection orders may be presented by:
 - a. The victim herself or himself
 - b. The victim's legal representative or attorney
 - c. The prosecutor
 - d. The police / the prosecutor
 - e. A family member of the victim, and
 - f. Representatives of the Social Services Department of the municipality or commune, where the victim temporarily or permanently resides who have knowledge of domestic violence incidents that have occurred
 - g. DV victim protection and rehabilitation centres and services recognised/licensed by the Department for Prevention and Reduction of Domestic Violence

Relatives, neighbours and teachers may report domestic violence and ask the appropriate authority to take action. (Article 11)

The functions of the prosecutor are outlined in Criminal Procedure Code (CPC) Article 24 and do not include this type of intervention. However, in CPC Article 59(2) they can participate in private prosecutions and also appear in family law cases so this law should be sufficient authorization. The only time the prosecutor is likely to file a petition is when they are already involved in a case and following it closely e.g. when they are involved in a criminal case with this family.

WHO CAN ISSUE PROTECTION ORDERS?

The courts that can issue a protection order are the district court or the family and juvenile matters court when it is established. (Article 14) The competent court is the district court of the actual residence of the victim or the location of the victim's workplace or the court of the district where the petition for the protection order is presented. In other words, in any court.

The Civil Procedure Code (CiPC) Article 42 says the territorial jurisdiction is the residence of the respondent not the victim. However, drafters of this specific law discussed this issue and the judges and professors did not think it was a conflict. Some lawyers argued that because it was a specific law, newer than the CiPC and on the particular topic of the family which has special protection, it could be argued that it prevails over the CiPC.

Civil Procedure Code Article 349 outlines the competence of judges in "Disputes in the Family" which appears to be broad enough to encompass protection orders since they relate to property and custody. Article 364 allows joinder of other requests and Article 365 taking of temporary measures. Most importantly, even if there is no petition for a protection order, the court has an obligation under Family Law Article 2 requiring action for the best interest of the child to take action to prevent harm to the children.

Family Law Code Article 62 reads - **Measures against violence**

A spouse, who is subjected to violence, has the right to request that the court order as an urgent measure the removal of the spouse, that perpetrated violence, from the marital residence.

Therefore, the court should suggest to the victim that s/he obtain a protection order or to save further time for the court, simply grant one pursuant to the obligations of Articles 2 and 62.

Whenever immediate help is requested, the petition may also be compiled and presented at the nearest police unit. (Article 16(2)) The police unit should contact the prosecutor who is on call and have the prosecutor contact the judge to issue the emergency protection order. In addition to requesting a protection order, the police can act in

accordance with Articles 108 through 110 of the Law on State Police when it passes. Article 108 allows the police to order a person to leave a locality or prohibit him to enter a locality if he presents a threat or disturbance. Article 110 allows the police to take protection measures if a person is a threat to his own safety or that of another person. Under Article 112, weapons can be seized. (See Appendix A)

WHAT IS THE TIMELINE FOR ISSUING A PETITION ORDER?

A petition can be presented to the court at any time. (Article 16) When a petition is presented, the court has 15 days to set a hearing. (Article 19) When an emergency order is requested or needed, the court has 24 hours to make a decision (Article 21). The perpetrator shall be requested to be present at the hearing but if s/he does not come, the hearing proceeds so long as s/he has been properly summoned pursuant to the procedural laws. (Article 19) The existence of any other type of legal proceedings has no impact on the decision to issue a protection order. (Article 13)

WHAT TYPES OF ORDERS CAN BE MADE?

The following are the types of protection measures that can be ordered to protect the victim(s): (Article 12)

1. Protection against domestic violence shall be ensured by/through:
 - a. Immediately ordering the defendant to refrain from committing or threatening to commit an act of domestic violence against the victim or other family members of the victim
 - b. Forcing the perpetrator to refrain from harming, harassing, contacting or communicating directly or indirectly with the victim or any other member of her family
 - c. Removing the perpetrator from the residence for a certain period of time, determined in the court order and restricting their re-entrance without court authorization
 - d. Prohibiting the perpetrator to be within a certain distance to the victim or the members of her family
 - e. Immediately forbidding the perpetrator to approach/get near the house, workplace, the original family residence or the future couple's residence or that of other persons and moreover the children's school or any other place commonly frequented by the victim, unless this happens for work-related reasons
 - f. Placing the victim and the children or the other family members who did not commit violence in temporary shelters always keeping in mind the best interest of the child
 - g. Limiting or prohibiting the perpetrator to see the victim's child based on appropriate conditions
 - h. Prohibiting the perpetrator to enter or stay in the temporary or permanent residence of the victim, or in any part thereof, regardless of any property or possession rights the perpetrator may have over these.

- i. Ordering a court authorized person (member of the police or bailiff) to accompany the victim or the perpetrator to the victim's residence and to supervise removal of their personal belongings or those of other persons
 - j. Ordering the perpetrator to allow the victim to possess the commonly used residence or part thereof
 - k. Ordering the perpetrator to pay the rent for the permanent or temporary residence of the victim as well as paying support obligations to the victim, children or other members of the family under their responsibility
 - l. Prohibiting the perpetrator as well as the victim to sell any of their property until a certain period of time
 - m. Transferring the temporary child custody rights to the victim and temporarily removing parental rights for the perpetrator (This is to be carefully confronted with the Family Law provisions) See further discussion of this later.
 - n. Deciding and ordering - depending on the case (under the competence of the court) - the intervention of public or private social services or of a centre of *family mediation* or of organizations whose objective is to support and shelter subjects of domestic violence. (This should never be done without the knowing consent of the victim because it is often very dangerous.)
 - o. Ordering the perpetrator to effectuate a periodic payment in favour of cohabitating persons, who as a result of the above mentioned measure, remain deprived of living means. To secure the payment the court may order the employer (of the perpetrator) to transfer the payment directly to the beneficiary. This order shall be an executive title.
 - p. Sending the victim of domestic violence to rehabilitation programmes
 - q. Ordering the perpetrator to participate in rehabilitation programmes
2. Protection orders may include several of the protection measures mentioned in paragraph 1
 3. Emergency protection orders may contain several of the protection measures mentioned under point a through i of this article

The court must be careful that it does not order remedies that don't exist e.g. space at a shelter or participation in a rehabilitation program. Judges must keep informed on what is available in the community so they can make appropriate orders. If respondent is ordered to a rehabilitation program, the program must meet certain requirements that are outlined in this document on pages _____. Mediation is a completely inappropriate order since it can only be effective if completely voluntary. Likewise conciliation and confrontation (Civil Procedure Code 171 and 240) are completely inappropriate in domestic violence cases. If the respondent is allowed to go to the residence and collect belongings, a law enforcement officer or bailiff should accompany him. Specific language for such orders is given in the Appendix B.

While Article 13 says that the protection order does not affect property or custody rights under family law, it obviously does on a temporary basis. To be consistent with the Family Law Code, so long as the protection order is in effect, the property regime should be in accordance with Family Code Articles 57-58 and 60. If a divorce is pending or

temporary orders have been issued, the orders should be consistent. But if there is any difference in the two orders, because the protection order is concerned with safety of victims of violence, its orders have higher priority than the family court orders. The parties will have to go court to reconcile the conflicting orders. But until then, the protection order remains top priority.

In addition, the court may take other measures for the protection of the victim. One such measure might be ordering the law enforcement officers to seize or the perpetrator to surrender any weapons belonging to the person, in the persons control or accessible to the person. The court has such authority under Civil Procedure Code Articles 163 and 178.

If weapons have been seized, they shall be returned by the police only after termination of the protection order and receipt of a court order stating that the weapons should be returned. After seizing the weapons, the court should suspend or revoke the Weapons Authorization Card until the termination of the protection order or further hearing. If the person is law enforcement or military, the administrative authority should be notified and they then take further action.

WHAT SHOULD BE IN THE PETITION?

The language of the petition should follow the Civil Procedure Code Article 154 with the additional information of the relationship between the victim and perpetrator, the facts and why the petitioner fears for their well being, what specific protection measures are requested and the petitioner's signature. (Article 16)

WHERE IS THE PETITION FILED?

The petition can be presented at any time to any court. When immediate help is sought the person may also present the petition at the nearest police unit (Article 16) and the police should contact the prosecutor so that s/he can contact judge on call to issue an emergency protection order.

A free lawyer should be available to prepare the petition and file it. (Article 16) But if not, the petitioner may file the petition on pre-printed forms or hand written. (Appendix C) There are no court fees for the petitioner for filing the petition. If the petition is granted, fees can be accessed against the respondent. If the petition is rejected, fees can be accessed against the petitioner. (Article 4 and 16)

HOW SOON IS THE HEARING?

For a regular protection order, the court must set the hearing within 15 days. (Article 19)
For an emergency protection order, the court must make a decision with 24 hours.
(Article 21)

WHAT EVIDENCE CAN BE TAKEN AT THE HEARING?

Necessary evidence may be: witness statements, police reports, medical reports, acts of expertise (expert witness declarations), examinations and statements/explanations by the parties, other documents issued by the social workers of the social services department at

the municipality and commune, documents issued by legal persons (NPOs) legally registered. (Article 18) The burden of proof rests on the respondent. (Article 18)

The Total Investigative Management System (TIMS) should be accessed to find out if the respondent has a warrant out for his arrest or has previous convictions or protection orders.

Confidentiality is very important for a victim of violence. Many victims will not seek help for fear that it will become known. Therefore the laws regarding confidentiality of victim information must be strictly adhered to (Criminal Procedure Code Articles 59, 159, 282-289 and Civil Procedure Code 235).

The court must also be very careful in appointing an expert witness in domestic violence cases. Very few social workers, psychologists or medical personnel of any kind have any knowledge about domestic violence. (See Assessment of Health Care Workers Capacities to Address Gender Based Problems, National Association of Social Workers, UNICEF, Tirana, 2006.) The requirements of Civil Procedure Code 80 require that the expert have specific knowledge in the field s/he is asked to testify about. (Civil Procedure Code Articles 80-84) Domestic violence is a very specialized field of knowledge and the court should make sure the expert has specialized training and experience specifically in the field. Often the best expert is not professionally trained but has much experience.

WHO CAN TESTIFY AT THE HEARING?

While examining the petition the court may hear testimony from the following persons:

- a. The victim, her or his legal representative or attorney
- b. The perpetrator, his or her representative or attorney
- c. The prosecutor, when he or she filed the petition
- d. The representative of the social services department at the municipality or commune of the temporary or permanent residence of the petitioner when the petition is a minor or when the petitioner is legally incapacitated or when the domestic violence affects these categories/persons
- e. Health centres employees who assisted the victim because of domestic violence
- f. Witnesses deemed necessary by the court (Article 19)

Under the Civil Procedure Code Article 235, the spouses if still married, children, parents and other relatives cannot be questioned unless the case is directly related to family problems which this is. These persons decide themselves whether they shall testify and they cannot be punished for refusing to testify. Thus if the victim is too fearful to testify other means of evidence should be produced and she should not be punished by the court.

WHAT IF THE HEARING IS FOR VERIFICATION OF THE EMERGENCY PROTECTION ORDER?

The only difference is that at the conclusion of the hearing, the Court decides if the existing order shall be withdrawn or terminated because there is no evidence to support it.

The court can issue a protection order and may change the protection measures in the order. (Article 23)

WHEN SHOULD THE COURT GRANT THE PETITION?

The court shall issue an order if it finds that there is sufficient basis to believe that the perpetrator may commit an act of family violence or that issuance of the protection order is necessary to protect the security, health or well-being of the victim or related family members. The order can be issued only against the respondent. (Article 20)

Regardless of any other order or decision issued by another court or institution, the court shall issue the protection order if the requirements of this law are met. (Article 13)

It will be the responsibility of the Court to enforce Article 10 (6) that requires that those persons who receive information about domestic violence and should implement the law but fail to do so shall be held administratively and/or criminally responsible under Articles 248 or 251 of the Criminal Code.

WHAT LANGUAGE MUST BE IN THE DECISION?

In addition to Civil Procedure Code 310 - Language that must be in the decision includes: (Article 20)

- a. the protection measures ordered by the court
- b. time limits for the protection order with a maximum of 12 months and the possibility of extension
- c. A statement that violation of the protection order shall be a criminal offense under Criminal Code 320.
- d. That there is a right to appeal within 15 days.

If it is an emergency protection order it must also state: (Article 22)

- a. Time limits for the order which expires at the time a regular protection order is issued
- b. That the appeal time is 5 days.
- c. The date for the verification of the emergency protection order which should be no longer than 20 days from date of issuance.

IS THERE AN APPEAL, AMENDMENT OR TERMINATION PROCEDURE?

The appeal on a protection order is 15 days. (Article 24) The appeal on an emergency protection order is 5 days. (Article 24) Any appeal does not affect the implementation of the order which goes into effect immediately. (Article 24)

The only way to amend or terminate the order is to file an appeal. The behavior of the parties or any alleged agreement between them cannot change a court order. The victim or their representative or the prosecutor, when s/he presented the petition, may present a request for termination or amendment of the order only when there is a fundamental change in circumstances. (Article 25) The request is to be heard the same as the original protection order with a hearing, evidence and testimony. (Article 2 and 25) The request does not suspend the protection order which remains effective. (Article 3 and 25) After the hearing, the court may keep the protection order in place, amend it if circumstances

have fundamentally changed, or terminate it if the protection measures under the law are no longer needed because of the fundamental change of circumstances. The court should be very careful when amendment or termination is requested because the respondent could be threatening the victim to withdraw the order.

The protection order terminates automatically on the termination date unless 15 days prior, the victim requests a continuation of the order. (Article 4 and 25) Upon such a request, the court hears it the same as the original protection order with a hearing, evidence and testimony. After the hearing, the court can certify the termination on the original date or continue the protection order if there is basis to believe the respondent may commit an act of family violence and the order is necessary for protection.

ONCE THE ORDER IS ISSUED, WHO IS NOTIFIED?

After issuing the protection order, the order enters into force immediately and the application begins regardless of the notification or lack of it to the respondent. The respondent who failed to appear shall be notified immediately of the order. (Article 20) Within 24 hours, the court shall send copies of the protection order to:

- a. The victim and other persons mentioned in the protection order
- b. The prosecutor, when they present the request
- c. Social services department of the municipality or commune of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently
- d. The police department of the location where the victim or other persons mentioned in the protection order reside temporarily or permanently

WHEN DOES THE ORDER GO INTO EFFECT?

The judicial decision regarding either an emergency or regular protection order is an executive title from the moment it is declared by the court and shall be carried out immediately pursuant to Articles 510 et seq of the Civil Procedure Code. (Article 26) The court should issue an execution order under Article 511 at the same time that it issues the protection order to facilitate immediate implementation and save time and effort for the victim and the court.

WHO HAS TO IMPLEMENT THE ORDER?

The order is to be carried out immediately by bailiffs, police departments, local governments and the respondent. (Article 26) Social workers and law enforcement shall take all necessary steps to ensure immediate and continuous enforcement of the protection measures ordered.

The information that a protection order has been issued should be entered into the TIMS data base so that police, prosecutors and other judicial officers will know of the existence of the order for the best protection of the victim. If TIMS is not yet in effect in your court, the information should be entered into your existing data base.

WHAT HAPPENS IF THE PROTECTION ORDER IS VIOLATED?

Forced execution of the court order shall be carried out by the Bailiff services. If the respondent refuses to comply voluntarily, authorities shall proceed with forced implementation/execution according to Civil Procedure Code section 606/3 or Criminal Code 320. If the respondent does not comply with the order, the sheriff can order the civil penalty under Civil Procedure Code 606/3 which is 50,000 lek. If the respondent actively interferes with or places obstacles in the compliance with the order, the bailiff is obligated to report that to the prosecutor who then can apply Article 320 of the Criminal Code. In addition, the police and prosecutor should bring criminal charges for any acts or omissions that are classified as criminal offenses. (Article 27)

If a respondent has committed a criminal act, the excuse that he could not control himself is not a defense (Criminal Code Article 17) unless an actual mental illness is diagnosed and in any event can only be used in determining punishment not guilt. Being drunk or under the influence of drugs is also not a defense (Criminal Code Article 18) but if accidental, which surely must be very rare indeed, is mitigating in determining punishment. If the respondent is purposely drunk, that is an aggravating circumstance. Violence in the family is an aggravating offense that should be more severely punished (Criminal Code 50(e)) When the act is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves) or (h) when the act is committed by taking advantage of family relations.

THE SPECIAL ROLE OF THE COURTS IN ENDING DOMESTIC VIOLENCE.

The Court Environment

There are few things that are more important in the course of the legal proceedings that surround a domestic violence case than the manner in which the court conducts and projects itself. The manner in which staff and the court conduct themselves sends an important message about the recognizing the importance of all aspects concerning domestic violence.

A. Setting the Tone

It is essential that the judge and staff set the tone for all proceedings. Forms for a petition for protection order have been developed by local NGO's and are attached as Appendix C-G. The Parliament has made it clear in the law that they want quick, affordable and simple procedures for the victims. Making forms available is one way to comply with the law. Court staff should make these available free of charge for victims. While court staff cannot give legal advice or assistance, they can provide such forms.

Matters should be called and heard promptly. Emergency orders must be decided in 24 hours and regular orders must be decided within 15 days. Lives and safety are at issue and cases should be heard promptly which is why the law gives the petitioner the right to bring a petition at any time in any court. All attention should be focused on the matter at hand. The bearing and attitude of court and staff should reflect the gravity of the matter.

Attention should be given to the physical separation of the parties including family and friends to prevent coercion and intimidation.

B. Spectators and Witnesses

Frequently witnesses, friends and supporters accompany both parties. Often times these people are directly interested or involved in the proceedings. Frequently a new partner accompanies the respondent. Often times a victim advocate will accompany the petitioner. Steps must be taken to establish ground rules for the conduct of all parties. The court may exclude prospective witnesses and order them not to communicate with each other. (Civil Procedure Code Article 237)

Begin the proceeding by announcing that outbursts and facial and body expressions of disbelief or anger such as rolling of eyes, sighing etc. will not be tolerated. If the judge observes such conduct, s/he should stop the proceedings, admonish the person, and advise that a repeat of the conduct will result in removal from the courtroom. (Civil Procedure Code 178) If it happens again, remove the person. The impact will be immediate.

B. Victims

Often petitioners will arrive at the courthouse with the respondent. Great caution should be exercised to prevent the respondent from exerting influence on the petitioner. Frequently court environments are cramped and parties are often close together. The court should take steps to separate the parties as much as possible and put other persons in between them such as attorneys or bailiff.

The court should be particularly mindful of the respondent glaring or looking angrily or threatening at the petitioner. If the judge sees it, s/he should state it for the record and advise the respondent to not repeat it or s/he will be punished with contempt of court. (Civil Procedure Code 178)

Many victims of domestic violence are reluctant to testify against the abusers. Victims may be reluctant to testify for the following reasons:

- a. The victim may be dissatisfied with the court system. This may be because the victim is not prepared for the realities of the court system or court personnel have made the victim feel responsible for the abuse.
- b. The victim may be subject to physical retaliation or intimidation by the abuser.
- c. As with the Stockholm Syndrome, the abuser may be treating the victim well at this point and in hopes that this will continue, the victim declines to participate.
- d. Many victims partially or completely blame themselves for the abuse.
- e. The victim may be using the process as yet another attempt at convincing the abuser to stop the abuse. Research shows that victims try many different methods to stop the abuse.

- f. Even when victims do testify, women are often not believed. Many studies from around the world have shown that judges discount women's testimony about abuse.
- g. Generally the victim and abuser are the only eye witnesses. But courts know that eye witness testimony is very unreliable. That is why modern jurisdictions rely much more heavily on other types of evidence.
- h. Protection orders are court orders against the respondent for behavior that is not allowed. As court orders, they cannot be changed by the agreement of the parties or any one party. Further, the victim is not covered by the order as that is not the person who committed the prohibited act. (Article 20)
- i. Fact finding in domestic violence cases presents challenges no more difficult than in other types of cases. The court simply needs to understand the dynamics and know the law as in all situations. The lethality rate is very high in domestic violence cases and judicial action is very important in preventing more serious crimes.

C. Ethics Issues

Although a judge must always maintain the neutral role of her/his position, that does not prevent the judge from taking care to ensure safety for all persons. Similarly, judges have a duty to know and understand the dynamics and laws relating to domestic violence as they do other crimes.

D. Court Safety

The court should take all steps to minimize contact between the petitioner side and the respondent side. When the hearing is concluded, the respondent side should be kept in the court room 15 minutes while the petitioner is escorted by a bailiff out of the courtroom and to transportation.

At all times, the court has an obligation to maintain safety for court personnel and the public. A bailiff can be present throughout the hearing. The victim has a right to be treated with fairness, respect and dignity and to be treated without intimidation, harassment or abuse throughout the justice proceedings.

E. How Judges Can Help

The judge's demeanor demonstrates concern about the victims' circumstances and the underlying events. The judge should recognize that the victim might be overwhelmed by the process and unable to follow through with all necessary steps.

1. The judge must listen carefully.
2. The initial step toward stopping the abuse is being able to identify it. Denial, rationalization and minimization are coping methods by

the abused person and those closest to them. The court must take whatever steps are possible to help the victim find safety.

3. The victim must trust the judge. One of the effects of battering is that the victim's sense of trust is so eroded s/he can no longer trust anyone. For a victim living in an environment where a mistake in judgment could be lethal, there is no room for a mistake. The court must take a proactive approach so the victim can trust the court and the process. If the victim does not have an attorney, one should be appointed. (Article 16)
4. While a victim may understand the legal issues intellectually, s/he may be experiencing changing emotions that make it difficult to comprehend the options. A judge should take time to explain the options and ensure that the victim understands.
5. A victim may not want to make trouble and may appear very complacent even when s/he disagrees. A judge needs to take time to ask for specific details. A victim may tend to accept responsibility for things that are not her/his fault out of fear of further abuse. Frequently a victim will accept inaccuracies in the record for the same reason. A judge must make sure the record is clear and complete. The victim should be able to express objections without fear and if necessary without the batterer in the room.
6. A courtroom must be free of intimidation. It is easy to forget that the victim may have been exposed to years of intimidation. The court should create a courtroom atmosphere that shows zero tolerance for domestic violence. The judge can instruct the bailiff not to permit any loud and intimidating behavior during court breaks. Comments about the victim or jokes should not be permitted. Allowing this to happen sends a message of defiance and indicates that the respondent is immune to the courts authority. (Civil Procedure Code Article 178)

F. Confidentiality

The issue of the rights and duties of a domestic violence program and medical personnel who may have treated a domestic violence victim have often arisen in other countries. Confidentiality provisions are found in Criminal Procedure Code 59, 159, 282-284 and Civil Procedure Code 235.

G. Best Practices to stop Domestic Violence

Domestic violence is a learned behavior through observation, experience, reinforcement, culture, family, and community. It is rarely caused by genetics, substance abuse, illness or problems in the relationship. Many batterers believe they have the right to make and enforce rules. Many victims routinely evaluate which rules they will follow depending on level of danger, available intervention and likelihood of punishment.

Domestic violence is about power and control. Violence is a choice, not an "out of control" behavior. Stopping the violence requires a new response considering the dynamics unique to domestic abuse. Common effects on the victim are low self-esteem, self blame, stress, blame, self-medication with alcohol or drugs, suicidal ideation, isolation from family and friends, minimizing or rationalizing the abuse, and mostly fear. Common perpetrator attitudes include: consistent attempts to control the victim, minimizing the violence, denying the actions, blaming the victim, low self-esteem, jealousy and possessiveness, intimidation, dependency on the victim, appearing presentable and even likeable in the public and court but with a completely different behavior at home, substance abuse, promising it will never happen again and expressing remorse they do not really feel.

Goals in ordering protection are:

- Stop the abuse and protect the victims
- Hold the perpetrator accountable
- Change the perpetrators behavior
- Create consequences for violation of court orders
- Make it clear that domestic violence is not tolerated in society
- Prevent violence in the next generation

H. Holding the respondent accountable

As mentioned above, the court can use Civil Procedure Code 606/3, Criminal Code 320 and additional crimes as methods to hold the respondent accountable. Because this is a family crime, the penalty should be aggravated as outlined in Criminal Procedure Code Article 50.

In order to determine appropriate methods of holding the perpetrator accountable and changing behavior, the following are some facts the court might like to know to determine the best response:

1. The respondent's criminal history. This should be available through the TIMS system when that is set up in all jurisdictions.
2. Impact of the violence on the victim and the victim's wishes.
3. History of abusive behavior.
4. Drug, alcohol and mental health examinations.
5. History of prior court contact by the family.
6. Information about children, elderly and disabled people living in the home.
7. Lethality assessment on respondent. Lethality factors have been useful in predicting dangerousness. Factors are:
 - i. Is the victim trying to separate or divorce the respondent? If so, that increases the danger.

- ii. Use of drugs or alcohol does not cause violence but it often increases the severity of the violence and thus the injury.
- iii. Depression also does not cause the violence but it can increase severity.
- iv. Access to weapons, especially guns, is especially dangerous.
- v. Stalking is a symptom of obsession.
- vi. Rage is used as an excuse to justify behavior.
- vii. Obsession – if I can't have you, no one else can.
- viii. Homicide or Suicide threats should be taken seriously.
- ix. Easy access to victim or children – often on court ordered visitation
- x. History of domestic violence – including to pets.
- xi. Increasing isolation
- xii. Sexual assault – often a precursor to murder.
- xiii. Escalation of any of the above behaviors.

I. Offender Rehabilitation programs

Different types of programs exist with very different philosophy and practice. Victim safety should be the first concern and offender accountability the second. To make the issue clear, it should be noted that the vast majority of domestic violence is committed by male offenders against female victims. Around the world, approximately 95% of the abusers are male and 85% of the victims are female. Of the small percentage of female offenders, a large number of them are actually victims of domestic violence who have used violence to defend themselves or members of their family especially children.

While there are a wide variety of programs, most have a similar process. They begin with intake and assessment followed by orientation and establishment of rules and expectations. Many have an introduction to the underlying assumption of the program. The batterer attends weekly sessions that focus on education or therapy or both to identify the violent behaviors, encourage him to admit his violence and motivate him to change.

Some programs have contact with the victim to ascertain actual progress, some rely on victim advocates, and some do not contact the victim at all. The later course is dangerous because there is no factual basis to determine if the abuser's behavior has changed. Criteria for completion of the program can be simple attendance to writing a letter of accountability to taking other concrete steps. Simple attendance provides no assurance that behavior has actually changed.

There are three broad categories of treatment philosophy:

1. Pro-feminist: The point of analysis that highlights the difference in the three categories is the belief in the cause of domestic violence. The pro-feminist philosophy suggest that because our society has inherited

centuries of attitudes and beliefs shaped by the assumption of men's superiority over women, the cause is located in the socialization of males and the continuing tolerance and support of male violence. The treatment is focused on confrontation and re-education of the attitudes and beliefs that support this behavior. It is recognized that this must be coupled with a strong legal system response that indicates zero tolerance for domestic violence.

2. Family Systems Approach: The family systems approach locates the problem in the functioning of the family system. It sees all members of the family as contributing to the problem. The problem with this model is that it tends to blame the victim and focuses on couples counseling that is recognized as dangerous to the victim at worst and ineffective at best as the victim cannot freely disclose information for fear of retaliation. This approach is used less frequently and must be monitored closely to prevent the victim from increased danger.
3. Focus on individual pathology: This approach locates the problem of abuse in the individual's constitution. Personality disorder and traumatic childhood experiences are seen as the cause of domestic violence. A psycho dynamic or cognitive behavioral approach is used to intervene. A drawback to this perspective is that no psychological "type" has been identified to describe or explain violence or predict recidivism. Abusers psychological characteristics range across the spectrum as do non-abusers. Perhaps as a result, focus is now on cultural factors as well as psychological.

The effectiveness of offender treatment programs has not been proven. Only a few studies have found small improvements from attendance at such programs. Further, these successes are based on self-reports of the abusers only. If the victims are asked to report about the behavior of the abusers, the success rates are lower still.

Women have reported that abusers have learned to abuse in a more sophisticated way so it cannot be reported to the police. As one prosecutor in Russia said, "Why would you beat a woman when there are so many other ways to control them?" Additionally, while batterers consistently under-report their acts, victims are consistently over optimistic about the abusers potential for change. It is also very difficult to estimate the degree of fear the victims feel that may inhibit reporting of the abuse.

Some criteria of success the court should look for:

- End of violence
- End of threats and intimidation
- Victims are and feel safe
- Manipulative behavior ends
- Egalitarian behavior increases

A quality offender treatment program will:

- Be licensed
- Have regular contact with the court
- Make victim safety first priority
- Make perpetrator accountability second priority
- Have contact with the victim
- Understand the power and control perspective
- Work from a pro-feminist philosophy
- Work in a coordinated community response system
- Be at least 26 weeks long and preferably 52
- Have joint male and female facilitators
- Have a different program for female offenders than male ones.

A quality offender treatment program teaches:

- Awareness of the tactics of power and control
- That only the offenders are responsible for the behavior
- The victim is never the cause of his behavior
- No one deserves to be abused
- No one has the right to control another
- A partner is not property
- Abuse is a choice.
- Abuse is a method of obtaining power and control over another
- Abuse is not an anger problem, an addiction problem or a mental illness.

A quality offender treatment program should do the following:

- Provide regular reports on batterers behavior to the court
- Have regular contact with the victim and/or advocates for the victim
- Meet regularly with the coordinated community response team

Two critical mistakes have been made in offender treatment programs in other countries. Anger management should never be ordered as it ignores the larger dynamics of domestic violence and the use of anger as a manipulative tool and control tactic. Anger management also supports the myth that the abuser “loses control”. Years of experience show that is not so. The abuser clearly chooses when, where and who to abuse and can compose himself quickly when the police knock on the door. Couples counseling is so dangerous that many jurisdictions around the world have passed laws prohibiting it. The victim is at high risk of retaliation and counseling continues the myth that somehow the victim is to blame for the abuse and condones the abusers behavior.

Substance abuse treatment may be necessary but it is not the solution. Abusers continue their behavior drunk or sober. Drugs or alcohol may increase the severity of the abuse, but it does not cause it nor will stopping the use of drugs or alcohol necessarily stop the domestic violence.

A treatment program alone cannot successfully change the offender's behavior. Many experiences over time taught the perpetrator that his behavior was acceptable. The combined impact of the civil justice system, the criminal justice system, and society are all necessary to teach the opposite. Offender monitoring by the court has been shown to have a very positive impact on changing behavior. Judges lectures from the bench have been effective in communicating zero tolerance for domestic violence and a strong social disapproval for acts of violence. The court system is central for solutions to domestic violence.

APPENDIX

- A. Draft law on State Police
- B. Script for protection order hearings
- C. Petition for Protection Order
- D. Petition for Emergency Protection Order
- E. Protection Order
- F. Emergency Protection Order
- G. Notice of Service of Protection Order
- H. Foundational Questions

APPENDIX A: DRAFT LAW ON STATE POLICE

Article 108

Banishment from locality

- (1) In order to avert threat or to prevent the disturbance of public order or security, the police officer may order a person to leave from the locality or may prohibit him to enter the locality, for as long as the threat or disturbance persists.

Article 110

Protective measures

- (1) The police officer takes the possible/necessary measures for the protection of:
 - a) the person, whose state obviously indicates that he can not control his actions or behaviour and for that reason may harm or endanger his own life or that of the others. Execution of the measure in the police premises lasts for as long as it is necessary, but no longer than 10 hours.
 - b) the minor who is no longer under supervision or has escaped from the parent or custodian, by returning him to the custodian or sending him to the minors welfare services, respecting the time limits specified in point (a).
- (2) In order to carry the responsibilities specified in paragraph (1) of this article, the police officer may conduct the physical search and examination of these persons.

Article 112

Impounding of objects

- (1) Objects are seized or impounded only in cases provided by law and in full compliance with respective legal procedures.
- (2) Outside the cases otherwise disciplined by the law of the Republic, objects may be impounded only if this is strictly unavoidable to avert imminent threats to public

order and security and/or to public safety. The officer who takes action will provide a process verbal in the given forms which will be notified to the owner if known.

- (3) Objects are impounded only as long as it is strictly necessary. After that objects are returned to the owner if identified or identifiable with no delay. If within 90 days, or in the shorter term as may be required by the nature of the object, the owner cannot be identified or otherwise voluntarily fails to claim the restitution, impounded objects will be declared public property by means of an Order of the Ministry of Interior and in accordance to the law of Albania be transferred to the Ministry of Finance as part of the public treasury.

APPENDIX B.

Script for Protection Order Hearing

A. Swearing In

The chairman of the court session, after s/he has been assured of the identity of the witnesses, makes them conscientious of the importance of the mission and of the oath taken before the court and makes known to them that they are obligated to tell the truth on what they know in relation to the case, warns them on responsibility they bear for false testimony. In the meantime the court secretary reads the oath formula as follows : Conscientious, I swear that I shall say the truth and only the truth. While standing, the witness answers “I swear” and waits outside the court room under instruction not to communicate with each other. (Civil Procedure Code Article 237)

On the record, the judicial officer shall announce the parties name and cause number.

This is cause number _____, petitioner _____ versus respondent _____.

B. Petition Review

Review the petition to assure that it contains all the information necessary to issue an order. Based on that review, you may want to ask the some of the following questions.

1. How is the respondent related to you?
2. What acts did the respondent commit?
3. When did these acts occur?
4. Where did these acts occur?
5. Who was present or witnessed these acts?
6. Did this behavior cause you to be afraid?
7. Why do you think you need a protection order?

C. Other protected parties

- a. How are you related to the other persons for whom you are requesting protection?
 - b. What did the respondent do to them and when?
 - c. If they are children – are you the parent or legal guardian of the children?
 - d. Is the child/ren related to the respondent?
- D. Issuance of order – Consider the requests by the petitioner when considering the terms. (Article 12)
- a. Based upon the evidence provided, there is sufficient basis to believe that the respondent may commit an act of family violence or;
 - b. Based upon the evidence provided issuance of the protection order is necessary to protect direct or indirectly the security, health and well-being of the victim.
 - c. Based upon the evidence the court is including these other persons (named) who are family or intimately connected to the victim that may become subjects of domestic violence. (Article 20)
 - d. I am granting the protection order and entering the following orders
 - i. Contact
 - 1. I am ordering that the respondent not commit any new crimes against you or the others mentioned in the order
 - 2. I am ordering that the respondent not contact you or the others in the order in any way.
 - e. If petitioner asks for exclusive use of the residence:
 - i. Whose property is this?
 - ii. Is this marital property?
 - iii. Is your name on the lease?
 - iv. If the property is a rental – do you understand that this order is not effective against the owner and I cannot order the landlord to allow you to stay unless the rent is paid?
 - 1. Based on the evidence, I am granting exclusive use of the residence.
 - 2. Based on the evidence, I am ordering that the respondent not approach the house/workplace/school or other place _____ (name) within in _____ meters.
 - 3. The respondent can return once with law enforcement officers to pick up personal belongings. Law Enforcement will not stand around and wait so this should be done quickly and you may want to gather up these things for the respondent to speed up the process.
 - 4. Based on the evidence, I am ordering that the petitioner have temporary custody of the minor children (state names and ages); that respondent have visitation with the joint children (specify); that the respondent pay (specify amount) for rent and support obligations of the family, that the respondent not sell the family property.

f. If the petitioner does not request exclusive use of the residence:

Does the respondent know where you live?

If not, do not put the address on the documents for the safety of the petitioner.

I am ordering the respondent to not go near where you live but I am not going to put your address on the order or tell the respondent where you live.

g. If the petitioner requests protection for other locations:

Does the respondent know where you work?

If not – I am ordering the respondent to not go near where you work but I am not going to put your address on the order or tell the respondent where you work.

If yes – I am ordering the respondent to not go near where you work.

h. Do you and the respondent work at the same place?

If yes – I am ordering that the respondent not approach you in any way while at work and that the respondent remains at least 100 meters away from you at all times.

i. Does the respondent know where you or the children go to school?

If not – I am ordering the respondent to not go near where you or the children go to school but I am not going to put that address on the order or tell the respondent where you or the children go to school.

If yes – I am ordering the respondent to not go near where you or the children go to school.

j. If the petitioner asked for any other locations to be put into the order –

Why do you think these other locations should be included.

Then decide and use the same language as above.

E. Firearms

- a. Does the respondent have or have access to firearms?
- b. Has the respondent ever threatened you with firearms?
- c. Has the respondent ever threatened you with any other type of weapon/
- d. Has the respondent threatened your physical safety or that of the children, relatives, friends or pets?

Depending on the answer to these questions,

1. The court finds that there is a credible threat to the safety of the petitioner or others.

2. I am ordering that the respondent not possess or purchase a firearm for the duration of the order and transfer any firearms owned or possessed to the local law enforcement within 24 hours of this order.

F. Petitioner advisories

- a. The order is in effect for TIME LIMIT – generally 12 months.
- b. The order goes into effect immediately
- c. I am also issuing an order of execution so that if the respondent does not obey the order, you can bring the execution order to court immediately for the bailiff/sheriff to enforce.
- d. If any information or conditions change during this time, you must return to the court to modify the order. You cannot change the order or get rid of it on your own.
- e. You will receive a copy of the order. You should make copies and carry one with you at all times.

G. Hearing

- a. The respondent has a right to request a hearing in 5 days (if an emergency order) or 15 days (if a regular order). If you move or change your telephone number, please be sure to tell the court so we can notify you if the respondent asks for a hearing.
- b. If the respondent asks for a hearing, we will notify you at your telephone number or address. If you have an attorney, we will notify the attorney.
- c. If you or your attorney do not show up at the hearing, we will dismiss the order. (Article 19)

H. Violations

- a. Once the order is served, it is a crime for the respondent to violate the conditions in the order.
- b. If you believe the respondent has violated the order, contact the police immediately.
- c. Also bring your execution order to court.

I. Safety

- a. The protection order does not guarantee your safety. You should take steps to protect yourself and your family.
- b. Give a copy of the order to all the people and places listed in the order such as your landlord, school principal, at work etc.
- c. Have a list of what agencies can help you and the telephone number to the nearest police.
- d. You should make a safety plan with a local domestic violence agency.
- e. Do you have any questions?

Script for Contested Protection Order Hearing

1. This is the time set for the hearing on protection order number _____ with petitioner _____ and respondent _____.

2. Is the petitioner ready?
3. Is the respondent ready?
4. Have the parties been sworn in? If not swear them in.
5. First I would like to narrow the issues if possible. The court can amend the order, terminate the order or continue the order. What is it you are asking?
6. If the respondent is asking to amend the order, find out what specific conditions the respondent is seeking to amend. If the respondent objects to something stated in the petition, explain the difference between the petition and the order and that the respondent is only bound by the order.
7. First I will explain how this hearing will proceed. Since the respondent bears the burden of proof, (Article 18) s/he will go first. Then the petitioner or attorney can ask questions. If the respondent has any witnesses or documents, s/he should present them. Then the petitioner can testify and the respondent's attorney can ask questions. Likewise if the petitioner has documents or witnesses, s/he should present them. I will also be able to ask questions.
8. At this time, I would like to ask all those who are going to be witnesses, except the parties, to wait outside the courtroom and we will call you when we need you. (Civil Procedure Code 238)
9. Then call the respondent to the stand. State your name, spell for the record. What is your relationship to petitioner? What happened and why do you think the order should be amended or terminated?
10. Then ask the petitioner if s/he has any questions.
11. Ask the respondent if s/he has any witnesses.
12. Then repeat the process with the petitioner.
13. If the court finds that there is not sufficient cause to keep the order, the order is terminated.
14. If the court finds there is sufficient cause to keep or amend the order –
 - a. Based upon the evidence provided, there is sufficient basis to believe that the respondent may commit an act of family violence or;
 - b. Based upon the evidence provided issuance of the protection order is necessary to protect direct or indirectly the security, health and well-being of the victim.

- c. Based upon the evidence the court is including these other persons (named) who are family or intimately connected to the victim that may become subjects of domestic violence. (Article 20)
- d. If amending any specific protection measures, state them specifically.
- e. The court also finds the respondent had actual notice of the hearing.
- f. The respondent had an opportunity to appear and did appear and present evidence.

15. Regardless of what order the court makes, you must consider the safety of the petitioner. Keep the respondent in the court room for 15 minutes to give the petitioner time to leave the courthouse and be safely on the way before the respondent is released. If possible, have the bailiff accompany the petitioner out of the courthouse and to whatever transportation s/he is using.

APPENDIX C

Petition for Protection Order

APPENDIX D

Petition for Emergency Protection Order

APPENDIX E

Protection Order

APPENDIX F

Emergency Protection Order

APPENDIX G

Notice of Service of Protection Order

APPENDIX H. Foundational Questions

Because the victims of violence may be hesitant to testify, it is vital that other types of evidence be introduced to prove the violence. The following scripts are related to what those different types of evidence might be.

A. Diagram/Documents (Civil Procedure Code 246-252, 258-263)

1. Let me show you what has been marked for identification purposes as Exhibit ____
2. Do you recognize this exhibit?
3. What is it?
4. Did you prepare it?
5. When and where did you prepare it?
6. Is it drawn to scale?
7. Does it accurately reflect the relationships of objects?
8. Are distances and directions shown?
9. Is the exhibit in essentially the same condition as when you prepared it?

10. Offer the exhibit for introduction.

B. Photographs (Civil Procedure Code 278-280)

1. Let me show you what has been marked for identification purposes as Exhibit _____
2. Do you recognize this exhibit?
3. What is it?
4. Who took it?
5. When and where was it taken?
6. Does it accurately depict the scene at the time and place it was taken?
7. Offer the exhibit for introduction.

C. Tape Recording (Civil Procedure Code 278-280)

1. 129 Tape Recording – Custodian of Records

- a. Please state your name and job title.
- b. where do you work
- c. How long have you been employed as a _____
- d. what are your job responsibilities.
- e. Do these responsibilities include 129 tape recordings?
- f. is your department required to keep these recordings by law or policy?
- g. did you bring the tapes to court today?
- h. Are you the custodian?
- j. How are the calls maintained?
- k. Are they recorded as they are made?
- l. Do you make duplicate copies?
- m. How do you make duplicate copies?
- n. Let me show you what has been marked for identification purposes as

Exhibit _____

- o Do you recognize this exhibit?
- p. How do you recognize it?
- q. What is it?
- r Offer exhibit.
- s. Can you tell me from what address this call was made?
- t. Can you tell me from what phone number the call was made?
- u. Can you tell me what date and time the phone call was made?
- v. What officers were dispatched to that call?
- w. What is the department incident report number?

2. Person who made the call

- a. Play the tape
- b. Ask them if it is their voice
- c. Ask them if this accurately reflects the conversation
- d. Offer for admission

3. Witness familiar with the callers voice
 - a. What is your name
 - b. Do you know _____ (name of caller on tape)
 - c. How long have you known _____
 - d. How do you know _____
 - e. Have you ever spoken to _____
 - f. Would you recognize the voice on the telephone?
 - g. Did you listen to the cassette tape prior to trial?
 - h. Let me show you exhibit _____ and ask you to identify it.
 - i. Did you recognize anyone's voice on the tape?
 - j. Whose voice did you recognize?

4. Other tape recordings
 - a. Let me show you what has been marked for identification purposes as Exhibit _____
 - b. Do you recognize this exhibit?
 - c. What is it?
 - d. Were you present when it was made?
 - e. Who else was present when it was made?
 - f. When and where was it made?
 - g. Is the entire conversation recorded?
 - h. Prior to trial, at my request, did you listen to Exhibit _____
 - i. Was it accurate?
 - j. Were there any changes?
 - k. Do you know whose voices are on the tape?
 - l. Offer the exhibit
 - m. Play for the court.