

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

PA DOMESTIC VIOLENCE DEFENSE

With

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And featuring

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Program description

When a victim of domestic violence comes into your office for help you want to be the best advocate possible for your client. Pennsylvania has its own steps and procedures for handling domestic violence cases. This CLE will teach you all about them.

I. Introduction

- **Debra D. Rainey, Esq.**
 - **Personal Injury and Criminal Practice – Philadelphia County**

II. Comparing NJ and PA Domestic Violence Statutes, Procedures, and Common Practices

- **NJ - Days of police coming to a DV scene and just telling everyone to take a break is over**
- **NJ - Police are required to protect the victim and enforce the law**
- **PA – statutorily – Protection from Abuse Law – police were found to not taking DV cases seriously, police had training to take action**
 - **Philadelphia police department does not have manpower to address each DV case as required or necessary**
 - **DV victim coordinator position is new to Philly police department to go out with PD in order to facilitate situation with victims and police**
- **PA – majority of police department officers do the right thing and will arrest offender if victim is injured, but if victim does not want to proceed PD will abide by wishes of victim**
- **PA – operates by preliminary hearing (not indictment like NJ) – the victim may not want to proceed by DA’s office uses “excited utterance” exception to hearsay**
- **PA – excited utterance cannot be the result of questioning – DA office is having a problem with this issue so cases being dismissed**
- **PA - Police should inquire when there are injuries and make arrest**
- **PA - Police should make arrest and let the courts sort it out**
- **PA – attitudes in other counties, outside Philly, police will arrest – mostly an issue of resources and caseload**
- **PA – ideally police are getting refresher courses on DV law, not necessarily happening**
- **NJ legislature requires that police determine who is the aggressor and who is the victim – need to sort out information**
- **PA – mutual combat situation – most serious injuries determines who gets arrested**
- **PA – 50% of the time DV cases a result of alcohol or drugs**

- **PA – counsel gets involved once an arraignment takes place and a preliminary hearing date is set**
- **PA – “JP” court – once arrested, you can bail out then and get a date to come back for bail hearing**
- **PA – no magistrate court in Philly – start at municipal court in Philly**
- **PA - Municipal court judges have jurisdiction for cases with sentencing liability up to 5 years in prison down to a misdemeanor of the 1st degree**
- **PA – no right to jury trial in municipal court but right to appeal de novo to court of common pleas**
- **PA – Philly – family court – common pleas judges**
- **PA – felony arrest and charged right there; misdemeanor a warrant is prepared and bail set**
- **PA – condition of bail – “none” – most of the time bail set in Philly based on what DA asked for and prior record – rarely is bail dependent on circumstances of abuse**
 - **No contact is usually condition of bail**
 - **Most of instances when there is a domestic relationship “stay away order” is part of bail**
- **PA – DV requires that have or have had a domestic relationship with someone then you fall within the laws of the Protection from Abuse Order – ex girlfriend/boyfriend, cousin, brother, lived together, child in common**
 - **No age restrictions for victim**
 - **If victim under 18 then parents file in juvenile court**
 - **If abuser is under 18 then starts in juvenile court**
 - **Inter-family issue – i.e. abuse by father; case would start in juvenile court because victim is a minor**
 - **Family Violence and Sexual Assault Unit: ADA coordinates the prosecution of crimes relating to family relationships and extreme violence against women and children.**
 - **Relationship between victim and attacker is the issue, not the type of crime as in NJ**
 - **Predicate crime is not at issue in PA DV cases**
 - **Must demonstrate fear, threat, danger in court**
- **PA – police obligated to tell victim there is a right to protective order**

- **Victim must satisfy preliminary test that she qualifies for temporary protection order – fear of victim**
- **Commissioner is appointed to sign orders; court staff is assigned to hear “evidence”**
- **Temporary order is only 10 days then must have a hearing**
- **When courts are closed – emergent matters are still heard – victim must go to the actual court office in order to file temporary order**
- **Telephonic orders are possible through statute but whether they are conducted in Philly is not likely – due to resources – other counties are different**
- **PA – outside Philly – 24 hour office for intake of temporary protection orders does not exist – but other means may be possible, i.e. certain police department will have the services available**
- **PA – outlying counties do not “advertise” where to go for emergent protection applications – some counties are trying to implement domestic violence advocates to help victims**
- **PA – Philly – protective orders may be a minimal as you cannot harass the victim to you cannot live in the same place, etc.- some times orders allow victim and offender to remain in the same house (maybe because victim could not articulate clear and present danger)**
- **PA – there is jurisdiction for a magistrate to issue search warrants for weapons for victim protection; no always need warrant because if victim and offender are living together victim can give consent to search for weapons**
- **PA – temporary order – victim witness will point victims in direction of resources but no set location for people to go to**
- **PA – service of complaint/order – Philly PD will serve but victim is responsible to provide bona fide address; family member can also serve and affidavit is completed; temporary order remains in place until service is made – to protect victim**
- **PA – final restraining order – Domestic Relations – 23 Pa. Cons.Stat. – once temporary order has been served within 10 days defendant is given opportunity to defend and petitioner must prove that relationship does exist and that there is a threat or fear – burden on victim**
 - **Civil action**

- **Burden by preponderance of evidence (on victim)**
- **No predicate offenses**
- **Is a judge convinced that this person is a threat – does not have to be physical – can be verbal abuse, financial abuse, etc.**
- **Not often a trial in Philly – most parties agree to final order – agreement without admission**
- **Most parties going per se – no counsel provided**
- **Community legal services in Philly may provide attorney services – for either party**
- **Women against abuse – another pro bono counsel**
- **PA – permanent order – child support, etc. can be addressed as long as victim has raised the issue previously; if after a criminal trial – a number of points are addressed**
- **PA – how to defend a case – most of the time the victim’s cannot make out their case – victim is not considered credible – rules of evidence are relaxed**
- **PA – Philly county – DV cases not taken seriously – some judges expect parties to shake hands and dismiss – no protective order is going to be granted – no matter what**
- **PA – no mediation program in place for DV cases regarding protection orders**
- **PA – criminal courts – victim does not want to proceed – ADAs not sensitive to victim’s position – office policy wants to protect victims and therefore there is not much leeway if victim wants to withdraw**
 - **ADAs will question victim in order to confirm that victim is acting voluntarily**
 - **Program in place for situations where parties need each other in order for financial support, etc. – parties may be required to go to counseling, etc. – eye toward dismissing case if requirements are satisfied – only in municipal court**
- **PA – court of common pleas – plead or go to trial**
 - **50% chance of dismissal because victim does not show up or lesser plea**
- **PA – Philly – municipal court – 20% would go to trial**
- **PA – not enough public defenders for all offenders; PDs used to cover preliminary hearings but withdrawn from a number of courts because of limited resources**

- **PA – sentencing exposure**
 - **Municipal court – usually no jail, but if jail 6-12 months; for every conviction of misdemeanor you get a point – so sentence is based on prior record “score” – if no jail then 2 years probation is standard**
 - **Count of common pleas – 11 ½-23 months in county, 3 years probation – credit for time served**
- **PA – different counties have different takes on how to sentence – different types of communities, different jury pool, different caseload**
- **PA – Philly – they don’t waive preliminary hearings; but in other counties they waive because better plea offers**
- **PA – after victim has completed family court process, are they disinclined to go through court process at criminal court?**
 - **All the time – resistance by victims**
 - **ADAs are overworked, no time to prepare for cases – in municipal court**
- **Distinctions between counties are not as wide variety in NJ as in PA**

III. Bringing the case to court – PA and NJ

- **Bring in client and find out what is the defendant “looking for”**
- **Sometimes reach out to other party or other party’s counsel to try to resolve case by a consent to protective order**
- **When final protection order is entered – all civil**
- **Violation of order – up to 6 months in jail – substantive criminal acts are prosecuted at same time of violations of order**
- **Violations are most often seen after final order is entered, as opposed to during temporary order violations**
- **Philly has courtroom that addresses criminal matters relating to domestic relationships**
 - **Complainants and defendants are there together**
 - **Sometimes complainants are present but don’t answer when case is called**
 - **4th time if victim is not present, case will be dismissed**
- **NJ violation of restraining order – up to 6 months in jail, separate prosecutions for violations and substantive offenses, high bail**
- **NJ – not often cross complaint situations – police are urged to determine who is the aggressor and who is the victim**

- **PA – cross complaints – defense counsel can get together and since defendants have 5th amendment rights and case gets thrown out**
- **PA – FVSA – any case involving domestic relationship this unit prosecutes the case**
 - **DA’s office will determine which party is the one the office wants to prosecute – but 5th amendment issue still exists**
- **Crawford v. Washington, 541 US 36 (2006) – confrontation clause issues that makes process more difficult**

IV. Advice to young attorneys

- **If you are going to do criminal defense work, call public defender’s office or local defense bar to learn from them**
- **Court appointed and PDs have the daily trial experience and can give the ins and outs of each court**
- **Don’t be afraid to try your case**
- **Don’t let DAs office influence**
- **NJ – trial is viewed as “failure of the system” because reasonable minds cannot agree on a disposition – system has failed when there is a trial**
 - **Trial is a huge drain of resources**
- **PA – “Smartrooms” – courtrooms – get discovery, get offer, try to get judge’s assistance for a more reasonable offer – system is set up for disposition of cases**
- **PA – SONA (Sex Offenders Near Arena) being implemented – less leeway for resolving sex crimes cases**