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Legal terms

Alleged

This word is used by the legal system to indicate something that has not yet been proven. You may hear “alleged” assailant or “alleged” victim. It does *not* mean that the police or prosecutor do not believe a crime was committed.

Civil Cases

Civil cases are cases that are usually filed for money damages or to right wrongs. You must be able to prove you suffered specific losses in order to win damages.

County Attorney

The county attorney is the prosecutor who works for the county. If the criminal charges are prosecuted as violations of state law, it will be the county attorney who will prepare and present the case against the assailant (defendant).

Complainant

The complainant is the person, city, county or state who files a suit, makes a complaint or reports a crime.

Criminal Cases

Criminal cases are cases that are filed by the State of Iowa and pertain to violations of the laws within the state.

Defendant

This is the person who is charged with the crime or the person against whom the suit is filed. If the assailant is arrested, he becomes the defendant.

Defense Attorney

This is a lawyer who represents the defendant in a criminal case. If the defendant has no money for an attorney, the court may appoint an attorney to represent him.

Initial Appearance

This is when the defendant appears before the judge after being arrested, and the judge informs the defendant of the charges against him, his constitutional rights, the conditions of release and the amount of his bond. At the initial appearance, the defendant enters a plea of guilty or not guilty. In a domestic assault charge, the defendant cannot plead guilty at this time within Polk County. The court may enter a **No-Contact Order** at this time. See page 35.

Mandatory Arrest

Mandatory arrest means that police officers are required by law to make an arrest of a person who has committed a domestic abuse assault where bodily injuries are visible. This arrest will occur if the defendant is present at the time of the investigation. If not present, the police officer will request a warrant for the person's arrest. If both partners have injuries, officers should identify and arrest the "primary physical aggressor." (Keep in mind, women have been arrested if they have inflicted injuries while trying to protect themselves.)

Plaintiff

The person, city, county or state who sues or files the complaint (same as "complainant").

Plea

The person who has been charged will at some point "enter a plea," telling the court he is guilty or not guilty of the offense with which he is charged.

Primary Physical Aggressor

In determining the primary physical aggressor, a peace officer will consider the need to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between the persons involved.

The Healing Path

Probable Cause

This is the standard used to determine whether there is enough evidence to charge a person with a crime. Your statements, visible injuries, statements by witnesses, destroyed property and anything else that causes an officer to believe that a crime took place is considered to determine if there is probable cause to file a charge. This is sometimes called “reasonable cause.”

Pro Se Protection Orders

These are orders that are filed on one’s own behalf without representation by an attorney. Forms are available at the Civil Division of the Clerk of Court Office at the Polk County Courthouse.

Prosecutor

The prosecutor is the attorney employed by the county. If the charges are prosecuted under state law, it is the county attorney who will decide the charges, prepare the case and present the evidence against the assailant.

Subpoena

A subpoena is an official order of the court which tells people they **MUST** come to court. You may get a subpoena as a witness, and if so, you must show up at the designated time and place.

Suspect

The “suspect” is the term used to refer to the person the police suspect committed the crime.

Venue

Venue is the city, county or state where the incident occurred. The location of a crime will determine what venue the hearings and/or trial will be held; for example, Polk County.

When the Police are called

Iowa has a mandatory arrest law regarding incidents of domestic abuse. Officers must arrest an assailant if they have probable cause to believe an assault took place. In most cases, the police will seek prosecution for an assault resulting in bodily injury. Probable cause could include your statements, visible injuries or witness statements. In cases where no bodily injury is observed, an arrest is discretionary.

If an arrest is made

If the officer finds that there is probable cause that a crime has taken place, the assailant is arrested and he is taken to jail. The assailant will then remain in jail until he appears before a judge at his initial appearance. This normally occurs within 24 hours. The case will then go to the county attorney's office for review. If the assailant has left the scene of the crime, a warrant will be requested for his arrest.

If no arrest is made

If you did not call law enforcement at the time of the assault, you may file a complaint/report at a later time by calling the **Polk County Attorney's Office at 286-3880**. It is better to report the incident as soon as possible. You will be given a time to come in and talk with an officer, or an officer may be sent to your residence or place of employment to speak with you. There are various forms that you may be required to complete.

If the officer finds that there is enough evidence (injuries, a witness, medical records, etc.) to seek a warrant for an arrest, the police officer will prepare a preliminary complaint and warrant for an arrest and present them to the county attorney. If there is sufficient evidence available, in the opinion of the county attorney, that a criminal offense has occurred, then the case will be approved for charges, and a warrant for an arrest will be signed by a judge. The warrant will be sent to the law enforcement agency, and they will then go to arrest the assailant.

The Healing Path

After the warrant is signed, the case proceeds and the assailant will be arrested. Once arrested, the defendant will be held until the next court session when he makes an initial appearance before a judge.

This process does not mean that you are pressing charges. The State presses charges and you are a witness for them.

It is possible that while the county attorney believes that an assault actually occurred, the suspect may not be charged because there is not sufficient evidence to file a charge.

See page 40 for information regarding the **Crime Victim Compensation Program** service if you need assistance with medical or counseling expenses, or lost wages due to the reported crime.



Officer Steve Howell of the Des Moines Police Department and founder of the "Pendant" and "Telephone Tape Recorder Programs," discusses programs with an abuse survivor.

When the assailant is charged

Once your assailant is arrested, he or she will appear in front of a magistrate or judge, either in person or by remote video. He will be informed of the charges against him and of his constitutional rights. Conditions of release and amount of bond will be set. In most cases, the defendant will be released on bond; but for your protection, the court may enter a No-Contact Order as a condition of release.

No-Contact Order

This is an order that tells a defendant he must not have contact with you in person, by phone or mail or indirectly. This means that you should not initiate contact with the defendant without the court's permission. The order is a condition of the defendant's bond and stays in place as long as the defendant is on bond or until the judge removes or changes the order. The county attorney may also make additional recommendations regarding the terms of release.

The law allows police officers to arrest without a warrant when a defendant violates a No-Contact Order. Contact the police department or sheriff's office to make a report; ask for an incident number and report the contact to the county attorney or **Victim Liaison** at **286-3880**.

If the defendant is contacting you by phone, list all of the calls. Record calls on an answering machine or have someone else listen in. Save any letters or other mail and keep a record of when you receive them. You should notify the officer in charge of your case, the Victim Liaison or the county attorney of any violations of the No-Contact Order.

The process, after initial appearance, for felonies and indictable misdemeanors is different from simple misdemeanors.

Simple misdemeanor charges

Initial Appearance

At the initial appearance, Polk County schedules all domestic abuse simple misdemeanor charges for pre-trial conferences. The pre-trial conference is when the defendant can enter a guilty plea. If the defendant doesn't plead guilty, then a trial date is scheduled.

Trial

The county attorney must prove, beyond a reasonable doubt, that the crime was committed. The county attorney may call witnesses to testify in an effort to do this. The defendant is not required to call witnesses or to testify. You may receive a subpoena. If so, you must be present and you may need to testify. If the defendant is found guilty, he will usually be sentenced at that time.

Sentencing

You also have the right to make a statement at sentencing. The judge will order the defendant to the Batterer's Education Program. The judge may also order him to do community service, pay a fine, pay restitution or obtain a substance abuse evaluation. The defendant must also serve two days in jail unless the judgment is deferred. A No-Contact Order may be part of his sentence.

Indictable misdemeanors and felony charges

Initial Appearance

If the defendant is charged with an indictable misdemeanor or felony, he is advised of the charges against him in front of either a District or a District Associate Judge. The defendant may not plead guilty at this time. The defendant is provided a copy of the charge (preliminary complaint) his constitutional rights, the conditions of his release and the amount of his bond.

Pre-Trial

Before the trial, there will be a pre-trial conference between the defendant and/or his attorney and the county attorney. They will meet to discuss whether the defendant will plead guilty to the crime charged or a different offense. There may also be motions or hearings before a judge about the case. If the defendant does not plead guilty, he may choose between a jury trial or a bench (judge only) trial. If the defendant chooses a jury trial, the selection of a jury will occur at the beginning of the trial.

Plea

Many defendants will plead guilty at some time during the process. This means that the case will not go to trial.

Trial

The defendant can choose a jury trial or a bench (the judge decides if he is guilty) trial. In a trial, the county attorney must prove beyond a reasonable doubt that the defendant is guilty of committing the crime with which he is charged. The defendant does not have to call witnesses or testify, but he may if he wishes. You may receive a subpoena. If so, you must be present and you may have to testify. If the defendant is found guilty, the judge will order a pre-sentence investigation (PSI) in a felony case. A PSI is optional in an indictable misdemeanor case.

The Healing Path

Sentencing

At sentencing, the judge will consider the PSI and the probation department's recommendation. Your response will be part of the report the judge will read. You will have the right to make a statement at sentencing. The judge will order the defendant to the Batterer's Education Program. The judge may also order the defendant to do community service, pay a fine, pay restitution or obtain a substance abuse evaluation. The defendant will be ordered to serve a minimum of two days in jail unless the sentence is deferred. A No-Contact Order may be part of his sentence.



Judge Larry Eisenhauer of the 5th Judicial District counsels a defendant at the Polk County Courthouse in a domestic abuse trial.

Crime Victim Rights Act

The State of Iowa gives crime victims certain rights by law, but you must register with the County Attorney to be eligible for these rights. Below is a summary of these rights:

You have the right...

- to be reasonably protected from the accused throughout the criminal process.
- to be notified if the defendant has been released from custody.
- to receive notification of court procedures.
- to be free from threats of discharge from your employer because you are subpoenaed by the prosecutor to come to court.
- to consult with the prosecutor in order to give your views of this crime.
- to restitution.
- to receive notice of any scheduled court proceedings and any changes in that schedule.
- to receive notice if the defendant escapes custody while awaiting trial.
- to receive notice of the defendant's conviction and sentence.
- to make an impact statement to the court prior to sentencing.
- to receive an explanation of the eligibility requirements and address of the Crime Victim Compensation Program.