

Magistrates Courts

Practice Direction No. 1 of 2025

Issued: 23 January 2025

Amended: 26 May 2025

Summary proceedings for domestic violence offence – Brisbane Magistrates Court

Introduction

1. This Practice Direction commences on 24 January 2025 and applies to all summary proceedings under the *Justices Act 1886* for a Domestic Violence Offence (“DV offence”) in the Brisbane Magistrates Court. *Domestic Violence Offence* is as defined in s. 103B of the *Evidence Act 1977*.
2. As from 24 January 2025 a summary callover list (“Summary DV List”) will manage all summary DV offences in the Brisbane Magistrates Court.

Aims

3. The aims of the Summary DV List are to:
 1. promote faster resolution of DV offences while ensuring matters are dealt with fairly, effectively and efficiently;
 2. divert eligible DV offenders at an early stage to promote ongoing behavioural change;
 3. resolve contested DV offences within six months from the first appearance;
 4. ensure that case management practices are applied to support the timely resolution of DV offences; and
 5. begin the process of integrating the summary DV List into the Brisbane Magistrates Court Specialist Domestic and Family Violence Court model.

Overview

4. Only DV offences which may be dealt with summarily will be listed in the Summary DV List. If a defendant has other charges, those charges will progress through the usual callover process for criminal matters unless:
 1. A plea of guilty is indicated and will be entered on those other charge/s after the trial of the DV offences; or
 2. The charge for the non-DV offence is joinable with the DV offence/s.

The charges in (a) and (b) will be referred to as “eligible non-DV offences”.

5. The Summary DV List will be heard on the 2nd and 4th Friday of each month in Court 25.
6. Dedicated Magistrates will be assigned to the Summary DV List to ensure consistency in case management.

First appearance – Brisbane Arrest Court (Custody/Bail/Notice to Appear)

7. All DV offences and eligible non-DV offences will be adjourned to the next Summary DV List in three weeks unless they are:
 1. Finalised as a sentence in the Brisbane Arrest Court; or
 2. Listed for a sentence; or
 3. Adjourned for a suitability assessment for a diversion order.
8. A matter may only be adjourned for a suitability assessment for a diversion order if an eligibility screening form, completed by the referring party, has been submitted to the Court and the Court is satisfied that the eligibility criteria under Section 135C of the *Domestic and Family Violence Act 2012* (DFVPA) are met namely:
 1. The defendant is an adult and
 - (a) the defendant has been charged with an offence of contravening a domestic violence order or police protection notice (the *alleged offence*); and
 - (b) the alleged offence is the only offence of contravening the domestic violence order or police protection notice that the defendant has been charged with; and

- (c) the facts constituting the alleged offence are not otherwise charged as an indictable offence; and
- (d) the defendant has accepted responsibility for the alleged facts constituting the alleged offence detailed in the prosecution's written summary; and
- (e) the defendant has been granted bail in relation to the alleged offence; and
- (f) another domestic violence order or police protection notice has not previously been made or issued against the defendant; and
- (g) the defendant has not previously been convicted of any of the following offences committed when the defendant was an adult –
 - (i) an offence of contravening a domestic violence order, police protection notice or release conditions; or
 - (ii) any other offence involving domestic violence; and
- (h) the defendant has not previously been referred to participate in an approved diversion program or counselling with an approved provider under the scheme; and
- (i) the defendant indicates a willingness to participate in an approved diversion program or counselling with an approved provider under the scheme, including a willingness to be assessed for suitability to participate in the scheme under s.135F.

2. However, despite (1)(b), the court may decide the defendant meets the eligibility criteria if –

- (a) the defendant has been charged with the alleged offence and 1 or more other offences of contravening the domestic violence order or police protection notice; and
- (b) the charges are for offences of the same character, or offences committed in the prosecution of a single purpose, and there is a strong factual and temporal connection between or among the offences; and

Example –

The defendant is charged with 2 offences of contravening a domestic violence order. Each contravention is the sending of an SMS message and the messages were sent separately on the same day.

- (c) the defendant has accepted responsibility for the alleged facts constituting the other offence or offences detailed in the prosecution's written summary; and
- (d) the defendant is appearing before the court in relation to all the charges mentioned in 2(a); and

- (e) the defendant has been granted bail in relation to the other offence or offences.
3. If subsection (2)(a) to (e) applies, a reference to the alleged offence in another provision of this part includes a reference to the other offence or offences.
 4. Despite subsection (1), the court may decide that the defendant is not eligible for the scheme, having regard to—
 - (a) the seriousness of the conduct constituting the alleged offence or other offence or offences; and
 - (b) the defendant's criminal history and domestic violence history.
 9. If so satisfied, the matter will be adjourned for at least 6 weeks to the Summary DV List and an order made using the **Form DV47 - Order for a Suitability Assessment Report**.
 10. The defendant is to enter a bail undertaking requiring them to attend for the suitability assessment.¹
 11. Paragraphs 30 – 45 of this Practice Direction set out the procedures for the making of a Diversion Order.
 12. If the matter is listed for sentence, the Court will make directions in accordance with **Annexure A – Summary DV Offence Sentence Directions**
 13. If the defendant is granted bail, the defendant is to enter a separate bail undertaking for the DV offences/eligible non-DV offences, and other offences.
 14. Defendants remanded in custody without legal representation are to appear in person in the Summary DV List.

Second appearance – Summary DV List Callover (3 weeks after First Appearance)

15. At the second appearance the Court will consider whether to make directions relating to disclosure and case conferencing.
16. If such orders are made, the matter will be adjourned for a third appearance in six weeks with directions providing for:

¹ Failure to attend for the suitability assessment will not result in an offence under the *Bail Act 1980* for the breach of the defendant's bail due to the voluntary nature of the program: see ss. 11(9) and 29(2) of the *Bail Act 1980*.

1. Disclosure within three weeks and
 2. Case conferencing within three weeks of disclosure.
17. The defendant should be ready to indicate pleas at the third appearance.
 18. Each defendant is to be provided with a copy of **Annexure B** – Information About Protected Witnesses.
 19. If a defendant is unrepresented or represented by a Duty Lawyer an order is to be made in accordance with **Annexure C** – Order for Protected Witnesses.

Third appearance (6 weeks after second appearance)

20. The defendant will be asked to indicate pleas and make required elections.
21. If a plea of guilty is indicated the matter will be listed for sentence.
22. If the matter is listed for sentence, the Court will make directions in accordance with **Annexure A** – Summary DV Offence Sentence Directions
23. If a plea of not guilty is indicated, the parties will advise the Court:
 1. which charges can be joined for a summary trial, or if there is to be a contested joinder application;
 2. whether the defendant will be legally represented;
 3. whether case conferencing has been finalised and issues in contest, determined or narrowed; and
 4. witness availability.
24. If the Court is advised that a Defendant will not be legally represented at their summary trial, but want a protected witness cross examined or has not complied with the direction made in Annexure C, an order will be made in accordance with **Annexure D** – Order under s.21O of the *Evidence Act 1977*.

The matter will then proceed as follows:

1. The matter will be adjourned for eight weeks for further review mention, to allow the defendant time to make an appointment with Legal Aid Queensland.
2. An order made that a full brief of evidence must be made available for collection by the defendant within five weeks.

3. The matter will be allocated a trial listing no earlier than 10 weeks.
25. When the Court is advised the Defendant will be legally represented at their summary trial, the matter will proceed as follows:
1. The matter will be adjourned for eight weeks for further review mention.
 2. An order made that the full brief of evidence must be available for collection by the defendant within five weeks.
 3. The matter will be allocated a trial listing no earlier than 10 weeks.

Fourth Appearance – Review mention (8 weeks after Third appearance)

26. The defendant must attend in person unless legally represented.
27. The purpose of the review mention is to ensure that all pre-trial steps have been completed and all necessary arrangements are in place for the trial to proceed on the date listed. To this end, the parties will be expected to inform the Court:
1. There are no pre-trial issues to be finalised.
 2. The complainant has been notified that if the defendant is convicted of a DV offence, the complainant will have the opportunity to present evidence and make submissions about the making or variation of a domestic violence order under s.42 of the *Domestic and Family Violence Protection Act 2012*.
 3. Formal admissions have been made and settled under s.148A of the *Justices Act 1886*.
 4. The defendant is legally represented, and any grant of legal aid has been finalised.
 5. Any special requirements with respect to technology including equipment to play video footage, enable telephone evidence to be given, any pre-recording of evidence, WebEx links to be provided to witnesses.
 6. Whether there are any affected child witnesses and whether any draft orders are required for pre-recording of evidence.
 7. Pre-trial applications to be made.
 8. Any special witness arrangements to be made.
28. As to special witness arrangements (noting that a defendant may be a special witness), the parties should have instructions in respect of:

1. Testimony
 - (a) Whether the witness is to give evidence by audio visual link.
 - (b) Whether pre-recording or recording of the witness' evidence is sought.
 - (c) Whether a screen is required.

2. Supports
 - (a) Whether the witness would be assisted by the presence of a support person when giving their evidence. If yes, who the proposed support person is and what their relationship is to the witness.

3. Breaks
 - (a) Whether the scheduling of regular breaks would assist the witness in giving their best evidence.

4. Health
 - (a) Whether the witness has any health condition/s which may impact on their ability to give evidence.
 - (b) Whether the health condition/s (if any) impact on when in the day it would be best for the witness to give evidence or the timing of breaks.

5. Communication
 - (a) Whether there is visual, hearing, cognitive, cultural, or other considerations impacting how the witness would be questioned.

Trial

29. Before the trial begins:
 1. The Court Service Officer is to check that the Registrar has made available to the trial Court any Domestic and Family Violence (civil) file/s relating to the defendant.
 2. The prosecution is to remind the complainant that if the defendant is convicted of a DV offence, the complainant will have the opportunity to present evidence and make submissions about the making or variation of a domestic violence order under s.42 of the *Domestic and Family Violence Protection Act 2012*
 3. The prosecution and defendant or their legal representative should advise the Court of the correct pronunciation of names and preferred forms of address in accordance with [Practice Direction 2 of 2023 – Pronunciation of names and preferred forms of address.](#)

DFV Diversion Orders

30. The approved provider will:

1. conduct the suitability assessment²
 - (a) provide the defendant with information about the approved diversion program or counselling and its expectations
 - (b) make a written Suitability Assessment Report for the defendant using the **Form DV48 – Suitability Assessment Report**, which states whether the defendant is suitable to participate in an approved diversion program or counselling.
2. If the defendant is suitable for participation
 - (a) the day on which it is anticipated the defendant will start attending the approved diversion program or counselling
 - (b) the name of the approved provider who will provide the approved diversion program or counselling
 - (c) the estimated period within which the defendant is likely to complete the approved diversion program or counselling.³

The defendant has 14 days to attend upon the Approved Provider for their suitability assessment, or a longer period allowed by the Court.

31. If the defendant fails to report to the approved provider, as required under a Suitability Assessment Order, the approved provider must advise the registrar of the court within 2 business days after the failure to report using the **Form DV49 – Notice of Failure to Report for a Suitability Assessment**.
32. The Suitability Assessment Report must be provided to the Court within 14 days after completing the assessment, or a longer period allowed by the Court. Copies of the Suitability Assessment Report will be provided to the defendant, their legal representative (if they have one), and the prosecutor.⁴
33. If the Court is satisfied that:
 1. the defendant still meets the eligibility criteria in s. 135C of the DFVPA); and
 2. the defendant consents to the making of the order; and
 3. that immediately or within a reasonable period, the defendant will be able to start attending an approved diversion program or have counselling with an approved provider, that is accessible and otherwise suitable for the defendant; and
 4. if the order was made, the defendant would not pose an unacceptable risk to the safety, protection or wellbeing of –
 - (a) the aggrieved or a named person in the domestic violence order or police protection notice; or
 - (b) a person who is in a relevant relationship with the defendant; or
 - (c) a person employed or engaged by an approved service provider; and

² The assessment is conducted in accordance with s.135F of the DFVPA.

³ See s.135G(1) of the DFVPA.

⁴ See s.135G(2) and (3) of the DFVPA.

5. having considered:

- (i) the principles mentioned in s.4 of the DFVPA; and
- (ii) the Suitability Assessment Report; and
- (iii) any other relevant matter including any expressed wishes of the aggrieved
- (iv) the purpose of making a diversion order set out in s. 135B(2) of the DFVPA; and
- (v) whether it is appropriate and desirable to make a diversion order

the Court shall order whether the defendant is, or is not, to complete the approved diversion program or counselling.

34. If the Court orders the defendant to complete an approved diversion program or counselling, the Court will make a diversion order in the **Form DV50 – Diversion Order** requiring the defendant to report to the approved provider in accordance with the date that the program is to commence (on the suitability assessment report) and will adjourn the matter for at least 4 months to allow the defendant to attend and complete the approved diversion program or counselling under the order.
35. A bail condition is to be added to the bail undertaking requiring the defendant's participation including compliance with all reasonable directions of the approved diversion program or counselling staff.⁵
36. Upon receipt of such notice the matter will be re-listed, and a Notice of Adjournment will be sent to defendant requiring a personal appearance before the Court. A Notice of Adjournment will also be sent to the prosecution and to the approved provider.
37. A defendant not ordered to complete an approved diversion program or counselling is to be remanded to appear before the Court and the matter will be dealt with in accordance with paragraphs 7 and 12 - 29 as the Court considers appropriate.
38. An application to vary or revoke a diversion order using the **Form DV51 – Application to Vary or Revoke a Diversion Order** may be made by the defendant, their legal representative (if they have one) or the prosecution at any time before the completion of the approved diversion program.
39. While the DFVPA does not require service of an Application to Vary or Revoke a Diversion before the hearing of it, service of the application will expedite the hearing of the matter in a court.

⁵ Non-participation will not result in an offence under the *Bail Act 1980* for breach of the defendant's bail due to the voluntary nature of the approved diversion program: see ss. 11(9) and 29(2)(b) of the *Bail Act 1980*.

40. The defendant, their legal representative (if they have one), the prosecution and the approved provider may be served with a copy of the application in accordance with rule 17 of the *Criminal Practice Rules 1999*.
41. When considering whether to continue, vary, or revoke the diversion order the Court will have regard to matters set out in s.135M of the DFVPA. An order to vary or revoke the diversion may be made using the **Form DV52** – Order to *Vary* Revoke a Diversion Order.
42. If the approved provider becomes aware that the defendant has contravened a diversion order, the approved provider must give the Court and the commissioner of police a notice in the **Form DV53** – Notice of Contravention of a Diversion Order, within 7 days after the approved provider becomes aware of the contravention.
43. Upon receipt of such notice the matter will be re-listed, and a Notice of Adjournment sent to defendant requiring a personal appearance before the Court. A Notice of Adjournment will also be sent to the defendant's legal representative (if they have one), the prosecution and the approved provider.
44. The matter will then be dealt with in accordance with paragraphs 7 and 12 - 29 as the Court considers appropriate.
45. The diversion order ends when a **Form DV54** - Notice of Completion of an Approved Diversion Program or Counselling is given to the registrar of the court. The charge is taken to be dismissed by the Court and the defendant is taken to be discharged by the Court and the proceeding for the alleged offence ends.



Judge Janelle Brassington
Chief Magistrate
26 May 2025

ANNEXURE A to Practice Direction 1 of 2025

SUMMARY DV OFFENCE SENTENCE DIRECTIONS

Police v

The Defendant having pleaded guilty/indicated an intention to plead guilty, the sentence hearing is listed for Court at am/pm on/..../.....

I direct:

1. Any material to be relied on at the sentence hearing is to be disclosed and filed by/..../..... (That material may include a victim impact statement, an agreed schedule of facts and/or any reports.)
2. The prosecution is to notify the complainant of the sentence date and advise of their opportunity to present evidence and make submissions about the making or variation of a domestic violence order under s 42 of the *Domestic and Family Violence Protection Act 2012*.
3. The Court Services Officer is to advise the Registrar to have available at the sentence hearing any Domestic and Family Violence (civil) files relating to the Defendant.

Magistrate

Date:

ANNEXURE B to Practice Direction 1 of 2025

INFORMATION ABOUT PROTECTED WITNESSES-

A PERSON WHO IS NOT REPRESENTED BY A LAWYER MAY NOT BE ABLE TO CROSS-EXAMINE A PROTECTED WITNESS AT A HEARING UNDER SECTION 210 OF THE EVIDENCE ACT 1977.

For a summary proceeding for a domestic violence offence a *Protected Witness* is:

- a. An alleged victim of an offence. An alleged victim of an offence means a person, other than you, who is (a) alleged to be a person in relation to whom the offence was committed; or (b) alleged to have been subject to violence in relation to the offence;**
- b. A witness under 16 years of age;**
- c. A witness who is a person with an impairment of the mind;**
- d. For a proceeding for a domestic violence order – related offence a person who:
 - i. is named as the aggrieved, or a relative or associate of the aggrieved, in the domestic violence order; and**
 - ii. the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.****

If a person is a protected witness you may not cross-examine the protected witness in person and the court will arrange for you to be given free legal assistance by Legal Aid for the cross-examination unless you —

- (i) arrange for legal representation; or**
- (ii) do not want the protected witness to be cross-examined.**

AT THE REVIEW MENTION THE COURT WILL CONSIDER MAKING ORDERS ABOUT PROTECTED WITNESSES

ANNEXURE C to Practice Direction 1 of 2025

ORDER FOR PROTECTED WITNESSES

- I am satisfied that this is a summary proceeding for a domestic violence offence.
- I am satisfied that the following person/s is/are protected witnesses for the proceeding:
 -an alleged victim of a domestic violence offence.
 -a child under the age of 16 years of age
 - A witness who is a person with an impairment of the mind;
 - who is named as the aggrieved, or a relative or associate of the aggrieved [*strike out those that do not apply*], in the domestic violence order and who I consider would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.

Therefore, under s. 21N of the Evidence Act 1977.....,the defendant, may not cross-examine a protected witness in person.

- I advise the defendant who is present before the court that—
 - (a) they may not cross-examine the protected witness(s) in person; and
 - (b) the court will arrange for them to be given free legal assistance by Legal Aid for the cross-examination unless the person charged—
 - (i) arranges for legal representation; or
 - (ii) does not want the protected witness to be cross-examined.
- I require the person charged to advise the Court by[14 days] whether s/he has:
 - Arranged a legal representative to act for them
 - Arranged a lawyer to act for them for cross-examination of the protected witness
 - Has decided not to cross-examine the protected witness.

Magistrate
Date:

ANNEXURE D to Practice Direction 1 of 2025

ORDER UNDER S. 210 OF THE EVIDENCE ACT 1977

Police v

Having not received advice from an unrepresented person as to whether they have arranged for legal representation or having been advised that an unrepresented person does not have legal representation and wants the protected witness cross examined:

- [the defendant] be given free legal assistance by Legal Aid for the cross-examination of the following protected witness/s by a lawyer:

.....
.....
.....
.....

- The date of the trial is [At least 6 weeks from today]

I further request:

- The Registrar of this Court to give to the Director of Grants Legal Aid this order.

Magistrate

Date: