

Beyond Arrest: The Role of Jail Calls in Domestic Violence Case

OBJECTIVES

- To give guidance on how to access jail calls and collaborate with the correctional staff.
- To give insight on common content of these calls and how it can be used during the investigative and prosecution processes.
- To encourage established procedures for proactive protective order compliance and guidance on filing subsequent criminal charges.

Identify Safety Risks

- First Priority
- Ongoing Assessment

Arrest does not equal safety.

Communications (Calls)

- Phone Calls
- Messaging & Email
- Video Calls
- US Mail

Locating Communications

Have familiarity with how the systems work before you need them.

Search by

- Account
- Known phone numbers
 - Victim
 - Friends
 - Family members
 - Abuser's number
 - Biometrics (for some systems)

Also archive call logs for both complete and incomplete calls.

When you document the calls in your report, make sure your notes easily correspond to identify the title of the file title.

Prosecution Tips

Sound quality can vary in your courtroom, especially the sound. Be sure to test your technology and consider having a high-quality Bluetooth speaker as an alternative.

You want to make sure your judge and jury can HEAR your evidence.

When trying to listen to the multitude of calls, focus on the important moments:

- Immediately after the arrest
- Immediately before and after a court setting.
- Consider having someone monitor calls while in trial as well.

Consider using interns to help review calls and/or using transcript searches to locate important calls. However, don't rely exclusively on transcripts as they don't capture inflection, tone, or demeanor.

DEFENDANT PURPOSES

- Maintain Power & Control
- Continue the Cycle of Abuse
- Get out of jail
- Get out of charges
- Keep the relationship intact



Recantation

View each case to anticipate the potential for recantation.

Focus on evidence-based investigations and prosecutions.

DEFENDANT'S TACTICS

- Promises to change
- Get counseling
- Stop Drinking/Using drugs
- Be the Man/Dad/Family she always wanted
- Find/restore religion
- Victim blaming
- Minimizing
- Love Bombing
- Isolation
- Instructions
- Claiming to be the victim
- Woe is me

Law Enforcement and Prosecutors can use all of these to their advantage.

PROSECUTION PERSPECTIVES

- To understand your case and meet victims where they are.
- To build a strong case
- To show the Defense the strength of the case
- Evidence in trial

Law Enforcement Perspective

- Thinking like a prosecutor.
- Investigating from the prosecutor perspective.
- Recognize it as you investigate it.
- Document it in detail.

Types of Evidence

- **Nature of the Relationship**
Testimony or other evidence describing the history and dynamics between the defendant and victim in DV offenses. Meant to assist jury in understanding the context of relationship, patterns of control, abuse, and intimidation. Helps explain why victim didn't come to testify or is testifying a certain way. Should get a limiting instruction.
- **Punishment**
Evidence presented after defendant found guilty to provide full picture of the defendant and the impact of his crime so the judge/jury can determine the offender's sentence.
- **Admissions/Corroboration**
Statements or conduct that acknowledge, imply, or support the criminal behavior. Admissions include direct statements, incriminating remarks, or conduct demonstrating consciousness of guilt. Corroboration includes statements, physical evidence, records, or circumstances that make the alleged criminal acts more believable.
- **Impeachment**
Evidence offered to challenge the credibility, reliability, or truthfulness of a witness's testimony. Purpose is not to prove the underlying facts but to assist the jury in evaluating how much weight and credibility to give a witness testimony.
- **Forfeiture by Wrongdoing**
Doctrine that prevents a defendant from objecting to the admission of a witness's out-of-court statements when the defendant intentionally engaged in conduct designed to make that witness unavailable to testify.

Communications can be Evidence for:

- Nature of the Relationship
- Forfeiture by Wrongdoing
- Admissions by Defendant
- Impeachment of Victim by Prosecution
- Impeachment of Defendant
- Corroborating Statements/Overcoming Impeachment of Victim by Defense

BEWARE THE "CLEVER" DEFENDANT

Attempts to Conceal

- Speaking in code
- Coordinating their story
- On a recorded line
- Using a different number

BEING A SMARTER INVESTIGATOR/PROSECUTOR

Administrative Calls Blocks

Automatic protocols for no-contact orders

- Known numbers and email addresses

Proactive Compliance Checks

- Archived records
- Covert alerts (can listen to calls in real time)

Covert Alerts

- Help monitor post-arrest abuse
- Especially for High-Risk defendants
- Can develop investigative leads

PROTECTIVE ORDER VIOLATIONS

- Direct
- Indirect
 - Another inmate's account
 - Through abuser's family
 - Another inmate's family

Consider law of parties charging for conduct which aids, encourages, solicits, or fails to stop an offense.

Coordinate with Jail staff to consider administrative sanction to include lockdown and loss of privileges for violating Inmate Rules.

Example: Violating Statement Law, Unauthorized Contact with Public

Note: US Mail is a right not a privilege and can't be interrupted. This may need to be monitored if other modes of communications are blocked.

BOND ORDERS

Coordinate new arrests with prosecutors when there is a pending case with no contact bond orders.

Prosecution may wish to hold off on filing a Motion to Increase Bond on the pending case to keep the protective layer in place.

BE AWARE OF EVIDENCE OF OTHER CRIMES

These might provide evidence that will alleviate the need for the victim's testimony.

SURVIVOR IMPACT

- When no-contact orders are followed:
- Survivors experience less pressure, guilt, or fear.
- Exposure to manipulation tactics is minimized.
- Allows for processing trauma without the influence of the abuser.
- Strengthens their ability to regain autonomy and make independent choices.
- Alleviates weight of survivor wanting no-contact.

- Preserves evidence of integrity.
- Reduces potential for recantation
- Improves chances of holding offenders accountable
- Limits children's exposure to conflict and manipulation
- Empowers a survivor's trust in the criminal justice system

No contact orders provide literal breaks in the cycle of abuse.

Victims engaging with abusers who violate no-contact orders is not a sign they don't care. It could be their simply trying to cope and survive.

AGENCY ACCOUNTABILITY

Not having a plan or failing to provide for a victim's safety:

- Is unethical
- Undermines victim safety
- Undermines integrity of prosecutions
- Shows negligence
- Diminishes agency reputation
- Increases liability risks

Agencies have a legal duty to enforce no-contact orders.



Laura Gorman
Williamson County Attorney's Office
Criminal Division Chief
Laura.Gorman@wilcotx.gov



Kimberly Korrin
The Blue Opal Collective
Detective, Retired
kimberly@blueopalcollective.com

CASE CITATIONS

How to Get Your Calls Admitted

Authentication – Business Records

- Jail Communications are Business Records
TRE 803(6)
Bahena v State, 634 S.W.3d 923 (Tex. Crim. App. 2021)
- Can use “Qualified Witness” in lieu of Custodian
TRE 803(6)
Bahena v State, 634 S.W.3d 923 (Tex. Crim. App. 2021)

Authentication – Qualified Witness

1. Use an investigator from your office as a qualified witness.
2. Investigator needs to be familiar with the case.
 - a. Read the offense report
 - b. Archived the calls
 - c. Reviewed the calls
3. Investigator must be able to say
 - a. Recordings are made at the time of the call
 - b. Kept in the ordinary course of regular business activity
 - c. The recordings is a regular practice of the business
 - d. They are a qualified witness

Contents – Hearsay Exceptions – Non-Hearsay - Confrontation

Defendant’s Statements

- Non-Hearsay: Statements by Party Opponent
TRE 801(e)(2)
FRE 801(d)(2)
- Non-Hearsay: Statements for Purpose of Impeachment
TRE 607-609, 613, 801(e)(2)
FRE 607-609,613, 801(d)(2)
- Hearsay Exception: Statements Against Interest
TRE 803(24)

There is no conflict with Confrontation if these rules apply.

Victim’s Statements

- Non-Hearsay: Not for the Truth of Matter Asserted, Provide Context
TRE 801(d)
FRE 801(c)
Sandoval v State 665 S.W.3d 496 (Texas Crim. App. 2022)

- Non-Hearsay: Previously Consistent Statement
TRE 801(e)(1)(B)
FRE 801 (d)(1)

- Non-Hearsay: Impeachment
TRE 607-609, 801(e)(1)
FRE 607-609, 613, 801(d)(1)

Depending on the circumstances, you may still have to overcome a confrontation clause objection.
Hearsay and Confrontation do not apply during hearings outside the presences of the jury to determine

- Forfeiture by Wrongdoing
- Admissibility of Nature of the Relationship Evidence