



## **Survivors in the Criminal Court: Frequently Asked Questions and Answers**

Immigrant survivors often find Navigating systems based response to address domestic violence challenging. One's experience outside of the United states may play a role as well as lack of culturally responsive services providing language access could discourage a survivor from pursuing the institutional rejoinder. At Maitri, we help a survivor journeying through legal systems whether they become willing participants or find themselves trapped in it. This is true in situations involving the police or the criminal justice system more than others. We partnered with Pro Bono Project and documented some of the frequently asked questions from survivors involved with the criminal justice systems. The following section is purely of informational nature and in no way constitute legal advice.

We acknowledge that:

- individuals have the rights to make choices for themselves involving the court systems
- emotional, financial, physical, immigration related, cultural conditioning and other intersectional barriers exist in the way of participating in court processes
- survivors do not have to justify their choices to advocates while making choices
- information is a tool that empowers individuals to make informed choices; the following FAQs stemmed from experiences of many reaching out to Maitri and do not purport to be the exhaustive lists of concerns Advocates often hear from Clients;

**\*Maitri and The Pro Bono Project of the Silicon Valley put together these questions and answers for survivors as information before engaging as a witness in the Criminal Justice system**

### **1. Do I have to testify? What happens if I don't?**

You may need to testify. Please talk to the Assistant District Attorney who is handling your case. Make sure to let them know that you are reluctant/fearful/unwilling to testify - they may take that into consideration as they move forward with your case.

### **2. Is my spouse/partner going to be deported if found guilty?**

Immigration is a complex issue and there is rarely a Yes/No answer. Deportation is the most extreme consequence for an immigrant who commits a crime. Whether or not your spouse/partner will be deported depends on the type of crime, conviction by the judge and

further proceedings in front of an immigration judge. For specific questions relating to immigration consequences, you should reach out to an attorney.

**3. Is my spouse /partner going to jail?**

This depends on the nature of the conviction. Punishment can range from fines, probation, or incarceration, depending on the facts of the case.

**4. What happens if a judge does not believe me?**

There still may be other evidence available for a conviction.

**5. Do I have to testify in front of my abuser?**

Currently all the witnesses testify in open court which means the abuser may be present. You are allowed to have an advocate with you at the hearing, and at all times you are in court. Witness intimidation is a crime, and you will be able to report any intimidation from the other party. During the COVID-pandemic, certain court appearances may be remote, and you may not need to be in the same room as your abuser, but you should be aware that the other party may be on the same call or video conference.

**6. Can I ask the Court not to punish the abuser?**

As the victim of a crime, you can relay your feelings about the incident to the DA, and what you would like to see happen to the defendant. It does not guarantee that charges will be dropped, that is at the discretion of the DA. [As noted above, a judge can also determine a range of punishments based on the severity of the crime.]

**7. Can I tell the court that I want to give the abuser another chance?**

As the victim of a crime, you can relay your feelings about the incident to the DA, and what you would like to see happen to the defendant. It does not guarantee that charges will be dropped, that is at the discretion of the DA.

If the abuser is found guilty, there is an opportunity for the survivor to make a victim's impact statement. This can be a written statement provided to the DA and or the Judge, or a speech made, or statement read by the survivor.

**8. I didn't call the police. I don't want a protection order. What can I do?**

Anyone can report domestic violence or call 911/police, including neighbors, or other individuals, if they notice/hear or see the incident. Once the police arrive at the scene, they

often offer Emergency Protective order as an option. If you do not want a protective order, you can let the responding police officer know. If the abuser is arrested, the court often issues a no contact order. There is a process to modify a no contact order to a peaceful contact with the permission of the court. More information here:

[https://www.sccourt.org/self\\_help/restraining/crim\\_ro.shtml](https://www.sccourt.org/self_help/restraining/crim_ro.shtml)

**9. I am asked to testify against my spouse/partner. Do I need a lawyer?**

No, but you may always seek legal advice.

**10. How long is the court process going to take?**

This depends on the circumstances individual to each case. Speak with the District Attorney's Office to gain a better idea of the length of time.

**11. What do I do if CPS/DFCS calls?**

When a police report is generated for an incident where children are present and / or involved, a report is sent to CPS / DFCS. Depending on the circumstances of the incident, CPS / DFCS may contact the survivor to assess the safety, risk, and well-being of the children. Reach out to your Victims Advocate for support.

**12. What can I do if the kids go with the abuser if he/she is deported?**

Child custody is a matter of family law and not directly connected with immigration status. Reach out to a Family Law Attorney mentioned in the resources page with details of your case for an accurate answer.

**13. What does it mean if the abuser was given Diversion? (For Santa Clara County)**

Diversion is a program where the perpetrator is put on probation (usually) and sent to various classes to help rehabilitate them. Discuss diversion more in depth with the District Attorney's Office if you have questions.

**14. Will my children be asked to testify?**

In most cases, children, usually depending on their age, will not have to testify.

**15. What happens if I do not come to court?**

If you are subpoenaed to come to court to testify, and do not appear, it is possible a warrant may be issued to have you come to court. You must show up at the hearing if the Court has issued a subpoena.

**16. What happens to my immigration status?**

Immigration is a complex process and there is hardly any easy answer. However, domestic violence victims are eligible to apply for immigration relief based on their cooperation with prosecution of crime. For more information, reach out to organizations mentioned in our resources page.

**17. Family court says child visitation can happen. Criminal court gave a protection order. Is it my responsibility to modify the CPO?**

No, but the CPO will need to be modified to allow for visitation. Either party can ask for this change.

**18. Can I lose custody of the children if I testify or not against Abuser?**

Custody is determined by the Family Court. The Criminal court does not make orders on custody matters. Please reach out to an attorney for a detailed discussion on whether your participation in the criminal case may directly or indirectly affect your custody case in the family court.

**19. If the abuser is found guilty, will the children be able to see the other parent?**

Generally, children are able to see the parent even if there is a conviction. However, if the court finds that the children may not be safe with the parent who is found guilty, then the court can make other orders. [The court may in some cases, depending on the danger or potential danger to the child, limit custody and visitation.]

**20. If the abuser is found not guilty, is there another way I can protect myself and my family?**

A survivor can file for a protective order in family court at any time.

**21. What does “proof beyond a reasonable doubt” mean?**

Proof beyond a reasonable doubt is the standard the evidence you must show in a criminal court. In other words, for someone to be found guilty, the evidence presented must be able to

show that the other party committed the acts that you or the DA are seeking to prove and no other reasonable conclusion can be drawn from the evidence. Put more simply, if there is any doubt that the alleged abuser could be innocent, then the court will not convict them.

**22. How is it different from “preponderance of the evidence”?**

Preponderance of the evidence is the standard of evidence used in Family Court. In other words, if the judge believes the evidence to tip the scales of justice by just the weight of a feather (51%), then the judge can rule in favor of that evidence. [For clarity, this is a lower level of burden than “beyond a reasonable doubt.” Family court is able to make decisions based on evidence presented, if it is more likely than not that the other party committed the act he/she is accused of.]

\*This informational material has been developed by Pro Bono Project of the Silicon Valley and (<https://www.probonoproject.org/>) and Maitri ([www.maitri.org](http://www.maitri.org)). This is not meant to serve as advice.