

Voir Dire Questions

Domestic Violence

Not all questions will be appropriate for every case. Many of these questions assume the victim is reluctant, refuses, or is unable to participate in the prosecution. Others address situations where the abuse has been ongoing but the victim has remained in a relationship with the abuser. Choose appropriate questions, or use these as starting suggestions to think about unique issues that may be present in your case. Be sure any sensitive/embarrassing questions can be answered at sidebar. Begin by defining what you mean by “domestic violence” in these questions—usually, your jurisdiction’s statutory definition.

- Has anyone here ever been a victim, or had a close friend or family member who was a victim, of domestic violence?
- Did that person call the police?
 - What happened?
 - How did s/he feel about it later, if you know?
 - How do you feel about what happened?
 - Were the police fair? If the case went to court, were the court proceedings fair?
(If no, why not?)
- Has anyone here ever witnessed domestic violence?
 - What happened?
 - How do you feel about what happened?
- Has anyone here, or a close friend or family member, ever been accused of domestic violence?
 - Was there police involvement?
 - How did that person feel about it later, if you know?
 - How do you feel about what happened?

- Were the police fair? If the case went to court, were the court proceedings fair? (If no, why not?)
- Can you think of any circumstances in which physical force against a spouse or a significant other is justifiable or excusable? [This is intended to weed out abusers—pay close attention to body language and facial expressions—anything other than “self-defense” should be thoroughly explored.]
 - [If there is a claim of self-defense] If the judge explains the law of self-defense to you, and the defendant’s actions do not fit that definition, would you be able to follow the court’s instructions even if it doesn’t fit with your own ideas about what the law should be?
- For those who had a friend or family member (or yourself) who was a victim of domestic violence, do you know whether the police were called the first time something happened? (If not, do you know why not?)
- Do you have any idea how someone might feel after being abused by a loved one?
- Does it make sense to you that a victim might have conflicting feelings about an abusive intimate partner?
- Does it make sense to you that a victim might love an abusive intimate partner?
- What are some of the reasons a victim might have such feelings?
- Do you think perpetrators of domestic violence might try to use a victim’s conflicting feelings or feelings of love to manipulate the victim?
- Do you think perpetrators of domestic violence might try to get the victim to later testify in court that it didn’t happen as originally reported?
- What are some of the reasons that a victim or other witness in the case might be reluctant to go to court to testify against the defendant?
- Do you think a victim of domestic violence might be afraid of the person inflicting the abuse even while remaining in a relationship with that person?
- Do you think a domestic violence victim could feel intimidated by the abuser?
- Are there other ways beside physical violence could cause a victim to feel intimidated? Examples?
- Do you think that abusers might use threats about money or child custody or immigration or revealing personal information to intimidate their victims?

- Would it surprise you that a victim who was abused might minimize or deny the abuse in testimony about what happened?
- Would it surprise you that a victim might not appear in court as a result of being intimidated or manipulated?
- If there were credible evidence that the defendant tried to get the victim to avoid coming to court, or to be untruthful in testimony about what happened, would that indicate to you an awareness of guilt on the part of the defendant?
- Can anyone explain the difference between a criminal case and a civil lawsuit?
- Do you understand that in a criminal case, it is the State that is prosecuting, and not the victim of the crime?
- Can you accept the idea that a criminal prosecution does not require the agreement or participation of the victim?
- If the State presents enough evidence to convince you beyond a reasonable doubt that the defendant is guilty of committing the crime, would you be able to convict the defendant even if the victim minimizes or denies what happened, or if the victim fails to testify, or testifies in favor of the defense?

APPENDIX C: SAMPLE *VOIR DIRE*

"The jury selection process is the first opportunity for a prosecutor to begin educating jurors...and allows prosecutors to identify and strike jurors whose biases will interfere with their ability to follow the law and render a fair verdict."

~ Christopher Mallios & Toolsi Meisner, *Educating Juries in Sexual Assault Cases, Part I: Using Voir Dire to Eliminate Jury Bias*, 2 STRATEGIES (July 2010).

Asking intimidation-specific questions during *voir dire* can give prosecutors the opportunity to begin to educate judges and juries on the subtle and even overt forms of intimidation. This is also an opportunity to lay the groundwork for your case on three fronts: 1) where the victim will be unavailable at trial; 2) if he or she recants; or 3) to show the intimidator's consciousness of guilt. The below questions are designed as a starting point for a prosecutor to develop his or her own questions. If you would like to discuss your specific case or have any questions regarding this resource, please contact an AEquitas Attorney Advisor at <http://www.aequitasresource.org/taRegister.cfm>.

In any type of witness intimidation case:

- Can anyone explain the difference between a criminal case and a civil lawsuit?
- Do you understand that in a criminal case, it is the State that is prosecuting, and not the victim of the crime?
- Do you understand that the prosecutor in a criminal case represents the State and does not represent the victim?
- Can you accept the idea that a criminal prosecution does not require the agreement or participation of the victim?
- If the State presents enough evidence to convince you beyond a reasonable doubt that the defendant is guilty of committing the crime, would you be able to convict the defendant even if the victim minimizes or denies what happened?
- If the State presents enough evidence to convince you beyond a reasonable doubt that the defendant is guilty of committing the crime, would you be able to convict the defendant even if the victim fails to testify?
- If the State presents enough evidence to convince you beyond a reasonable doubt that the defendant is guilty of committing the crime, would you be able to convict the defendant even if the victim testifies for the defense?
- What are some of the reasons that a victim or other witness in the case might be reluctant to go to court to testify against the defendant?
- Are there other ways beside physical violence that someone can use to intimidate a victim?
- Have you ever heard the phrase "Stop snitchin"?
- Have you ever seen graffiti with the phrase "Stop snitchin"?
- Have you ever seen someone wearing a t-shirt with the phrase "Stop snitchin"?
- What does the phrase "Stop snitchin" mean?

- If the victim or other witness lives in the same neighborhood as the defendant or the defendant's family or friends, how do you think that might affect the witness's willingness to come to court and testify?
- If the evidence shows that the defendant or the defendant's friends have authority over the victim or witness in some fashion, might that affect the witness's willingness to come to court and testify?
- Do you think an innocent person charged with a crime would have to hide evidence or try to keep witnesses from testifying to the truth?
- If the judge tells you that you can consider a person's out-of-court statements as evidence, even if the person does not testify, can you follow that instruction?
- If the judge tells you that you can consider a person's out-of-court statements as evidence, even if the person's in-court testimony is inconsistent, can you follow that instruction?

As an example for tailoring voir dire to specific offenses, the following questions may be asked in domestic violence cases:

- Do you have any idea how someone might feel after being abused by a loved one?
- Does it make sense to you that a victim might have conflicting feelings about an abusive intimate partner?
- Do you think perpetrators of domestic violence might try to use a victim's conflicting feelings to manipulate the victim?
- Do you think perpetrators of domestic violence might try to get the victim to later testify in court that it didn't happen as originally reported?
- Do you think a victim of domestic violence might be afraid of the person inflicting the abuse even while remaining in a relationship with that person?
- Could a domestic violence victim feel intimidated by the abuser?
- Do you think that abusers might use threats about money or child custody or revealing personal information to intimidate their victims?
- Would it surprise you that a victim might minimize or deny the abuse in testimony about what happened as a result of being intimidated or manipulated?
- Would it surprise you that a victim might not appear in court as a result of being intimidated or manipulated?
- If there were credible evidence that the defendant tried to get the victim to avoid coming to court, or to be untruthful in testimony about what happened, would that indicate to you an awareness of guilt on the part of the defendant?

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SAMPLE VOIR DIRE QUESTIONS FOR A DOMESTIC VIOLENCE TRIAL

The following are questions that should be asked in a domestic violence case in conjunction with standard voir dire questions. To use this document, select the questions that are pertinent to the issues in your case. The questions should be made specific to the facts of your case.

A. Bias and Ability to Follow the Law

1. Do you feel that crimes that take place in the home should not be prosecuted?
2. Do you feel that family problems that lead to violence should be handled outside of court?
3. Will you base your decision in this case apart from any feelings of sympathy for, or prejudice against, either the defendant or the victim of this case?
4. Do you have a difficult time sitting in judgment on someone? If you were convinced of the defendant's guilt beyond a reasonable doubt, would it be difficult for you to vote that way because of religious, philosophical, or moral reasons?
5. Do you believe that if there are 2 different versions of what happened, you could never be convinced of either side beyond a reasonable doubt?
6. What factors would you base your decision-making on when determining who is telling the truth?
7. Can you assure the court that you can be fair and impartial to the defendant? Can you also assure the court that you can be fair and impartial to the State?

NOTE: Jurors that have strong feelings against domestic violence should not be excused for that reason. It is perfectly okay to have strong feelings against criminal behavior. The test is whether they can be fair and impartial in deciding whether the defendant committed the crime of which he is accused. (However, someone who has personal experience of a similar nature to the case (i.e. a survivor/victim) may be too emotional to handle hearing the case.)

B: Violence in General

1. Have you ever been involved in a physical altercation as a participant, victim, or witness?
2. Have you, or anyone close to you, ever been the victim of violence?
3. Have you, or anyone close to you, been involved in marital disputes that involved physical violence?
4. Have you, a member of your family, or a close friend been involved in a dispute in which the police have been called?



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5. Have you ever notified the police to respond to a neighbor's home because you thought a physical dispute was going on?
6. Have you ever heard what you believe was a physical altercation taking place at a neighbor's home?
7. Have you had occasion to call the police for your own protection from physical violence?
8. Have you had occasion to call the police to protect others from physical violence?
9. Do you have strong feelings about use of violence?
10. Have you ever experienced fear due to apprehension of violence?
11. Is it ever okay to physically assault another person? (Hint: Answer is yes...in self-defense/defense of others ONLY).
12. Have you ever known a normally pleasant person to become aggressive and violent/combatative after consuming alcohol or drugs?
13. Is there a difference between understanding why a person becomes violent and excusing that person's violence?

C. General Domestic Violence

1. Do you feel that domestic violence cases—and by that I mean violence between persons in primarily romantic relations whether they be married, not married but living together, or dating—should be handled in the home?
2. Do you feel that prosecuting crimes that occur within the family home:
 - Is a waste of taxpayer's money?
 - Causes homicide?
 - Is inappropriate compared with handling such matters privately?
3. Have you or anyone close to you ever been involved in a family violence situation?
4. Were there children present during the violence?
5. Do you think that a family member has the right to hit or punch another family member (husband/wife, brother, sister)?
6. Do you believe that the law allows family members to do so?
7. Do you think that an assault in the kitchen is different from an assault in the street?
8. Does it make a difference, legally, if a stranger breaks into your home with an axe v. someone you know? Should it?



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9. Do you believe that a household has to have a "boss" that everyone else must obey? (Children and adults)
10. If "yes," what should happen to someone in that household when they don't obey the boss? Same for adults and children?

D. Proving This Kind of Offense

1. Would you expect an assault between family members, or persons living together, to occur in public or in private? Why?
2. Do you believe that the State of _____ has a responsibility to prosecute persons who cause violence in the home even though the victim does not want to proceed either out of loyalty, love, fear, or persuasion?
3. Can you think of some reasons why a victim of domestic violence might not want to come to court to testify?
4. Can you think of some reasons why a victim of domestic violence might not tell the truth on the witness stand?
5. Do you think that if the victim does not want the case to proceed that the defendant should get a "free pass?" Why or why not?
6. What does a person who assaults his girlfriend/wife look like? Can you always spot them on the street?
7. Have you ever heard the term "wife beater?" What does it mean to you? (Note: "Wife beater" is a slang term for tank tops with really low arm holes...if your judge will allow it, this might be a good way to open a discussion about what a DV defendant looks like.)
8. Would it be fair to say that a person may be well liked and respected at work or in public, and have a completely different personality/persona at home?

E. Crimes Against Society

1. With DV being the #1 cause of injury to women (or a major cause of injury), does anyone feel uncomfortable with the state's decision to intervene even though the victim might not want to?
2. Are you familiar with the phrases, "The victim dropped the charges" and "The victim pressed charges?"



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3. Do you understand that the People of the State of _____ are entitled to prosecute the defendant for allegations of domestic violence irrespective of the wishes of the victim?
4. Do you have feelings about the government having the right to prosecute a case like this if the victim does not want the government to do so?
5. Do you believe society should be more concerned or less concerned about violence between people who know each other than people who are strangers?

F. Race/Ethnic Issues

1. Do you believe spousal abuse is confined to any one race or socioeconomic group?
2. In evaluating your own ability to judge a case such as this fairly, do you feel you have any stereotypes in your mind of who commits violent acts and who does not?

Voir Dire Questions on Domestic Violence Developed by Casey G. Gwinn, San Diego City Attorney, modified and adapted by Matthew J. Wiese, Marquette County Michigan Assistant Prosecuting Attorney's Office [1996]. Further modified and adapted by Tracy Bahm, Senior Attorney at APRI with assistance from Dan Johnson, Deputy Prosecutor for King County, Washington [2000].

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