

TONGA

2015 PILON SGBV WORKING GROUP MEETING

REPORT OF DOMESTIC VIOLENCE

- Police or the first responding officers arrive at scene.
- First responding officer may contact ambulance or take victim to hospital.
- First responders call investigating officer (from the Domestic Violence Unit/Criminal Investigating Unit) and forensic officer.

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- Investigating officer and forensic officer arrive at scene.
 - Forensic officer takes photographs of the scene.
 - Investigating officer may collect exhibits for example – if any weapon was used etc)

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- Investigating officer arrests the offender pursuant to section 115 of the Tonga Police Act 2010. Section 115 provides for police power of arrest without warrant:
 - ✘ *115 – (1) A police officer, without a warrant, may arrest a person whom the police officer believes, on reasonable grounds:*
 - ✘ *(a) is committing an offence;*
 - ✘ *(b) is about to commit an offence; or*
 - ✘ *(c) has committed an offence.*
 - ✘ *(2) The police officer may, without warrant, enter any property, vessel or vehicle to make an arrest.*
 - ✘ *(3) The police officer shall inform the person:*
 - ✘ *(a) that he is under arrest; and*
 - ✘ *(b) of the nature of the offence for which the person is arrested.*

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- The procedure of arrest is provided under section 116 of the Tonga Police Act 2010.
 - ✘ *116 – (1) A person who is arrested under section 115 shall be brought before a magistrate, or if there is no magistrate in the district, before the officer in charge of the police station, to be charged as soon as practicable after being arrested and no later than 24 hours after being arrested.*
 - ✘ *(2) A police officer may, before bringing the arrested person before a magistrate, ask the person any questions the officer thinks are appropriate in order to determine whether or not the person should be brought before a magistrate.*
 - ✘ *(3) If the person is not brought before a magistrate or the officer in charge of the police station, and charged, in accordance with subsection (1), the person shall be released unless ordered otherwise under the Bail Act by a magistrate, or if there is no magistrate in the district by the officer in charge of the police station.*

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- Investigating officer may charge the offender for the following offences:
 - (i) Domestic violence pursuant to section 28 (1) (a) of the Family Protection Act 2013.
 - (ii) Bodily harm or grievous bodily harm in the Criminal Offences Act depending on the evidence i.e. medical report from the doctor.

Section 107 – **Bodily Harm**

- × (1) Every person who wilfully and without lawful justification causes harm to any person in any manner or by any means whatsoever shall be guilty of an offence under this section.
- × (2) “Harm” for the purposes of this section means —
 - × (a) any injury which seriously or permanently injures health or is likely so to injure health; or
 - × (b) any injury involving serious damage to any external or internal organ, member or sense short of permanent disablement; or
 - × (c) any wound which is not severe; or
 - × (d) any permanent disfigurement which is not a serious nature.
- × (3) An offence under this section may be the offence of serious causing bodily harm or the offence of simple causing bodily harm.
 - × (4) The offence of serious causing bodily harm —
 - × (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - × (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
 - × (5) The offence of simple causing bodily harm —
 - × (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - × (b) shall be heard and determined by the Magistrate’s Court.

- **Section 106 – Grievous Bodily Harm**

- ✘ (1) *Every person who wilfully and without lawful justification causes grievous harm to any person in any manner or by any means whatsoever shall be liable to imprisonment for any period not exceeding 10 years.*
- ✘ (2) *“Grievous harm” means—*
 - ✘ (a) *any harm endangering life;*
 - ✘ (b) *the destruction or permanent disabling of any external or internal organ, member or sense;*
 - ✘ (c) *any severe wound;*
 - ✘ (d) *any grave permanent disfigurement;*

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- Provided that complainant does not want to complain, investigating officer may issue Police Safety Order (PSO) pursuant to section 22 of the Family Protection Act.

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- ✘ 22 – (1) If a Police officer suspects on reasonable grounds that a person who is or has been in a domestic relationship with a person at risk —
 - ✘ (a) has committed or is about to commit a domestic violence offence relating to that person at risk; or
 - ✘ (b) has breached a protection order, the police officer may issue a Police Safety Order in Form 6 of the Schedule if the officer —
 - ✘ (i) does not arrest that person for an offence against any enactment involving the use of violence;
 - ✘ (ii) but has reasonable grounds to believe, having regard to the matters specified in subsection (2), that the issue of a Police Safety Order is necessary to ensure the safety of any person at risk.
 - ✘ (2) When considering whether to issue a Police Safety Order under subsection (1), the police officer shall have regard to the following matters —
 - ✘ (a) whether there is a likelihood that the person will use, or again use domestic violence against the person at risk;
 - ✘ (b) the welfare of any children residing in the relevant household;
 - ✘ (c) the hardship that may be caused if the order is issued; and
 - ✘ (d) any other matter the police officer considers relevant.
 - ✘ (3) A Police Safety Order comes into force immediately upon being served on the person against whom the order is issued.
 - ✘ (4) A Police Safety Order continues in force for the period specified in the order, but that period shall not exceed 7 days.

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- The Police fill in a PSO Form (Form 6) established under the Family Protection Act.

FORM 6 - POLICE SAFETY ORDER

(Section 23)

To [full name, address, date of birth of person against whom the Police Safety Order is issued].

This Police Safety Order is issued against you.

1. Purpose of Order

The purpose of this order is to ensure the protection of a person or child with whom you are, or have been, in a domestic relationship.

2. This order protects the following persons —

[Full name of person to be protected and full name of each child residing with the person named above]

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

3. Commencement of order

The order comes into force immediately after a copy is served on you.

4. Duration of order

This order continues in force for [number] days.* It expires on [date and time].*

*Select one.

5. Effect of order

You shall immediately —

- (a) surrender to a constable any weapon in your possession or control used to threaten or commit domestic violence;
- (b) temporarily vacate for the duration of the order any land or building occupied by the protected person and children whether or not you have a legal or equitable interest in the land or building.

6. Conditions of Order

It is a condition of this Order that you shall not —

- (a) threaten to or physically or sexually abuse the protected person or children;
- (b) damage, or threaten to damage any property of the protected persons;
- (c) intimidate, harass or psychology abuse the protected persons or engage any person to engage in such behaviour against the protected persons;

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- The duty of police regarding PSO is provided under section 23 of the Family Protection Act 2013:
 - ✘ *23 – (1) A Police Safety Order issued under section 22 shall be served as soon as practicable on the person against whom the Order is issued.*
 - ✘ *(2) A Police Safety Order may be issued without the consent of a person at risk for whose safety the Order is proposed to be issued.*
 - ✘ *(3) A police officer who issues a Police Safety Order shall explain to the person against whom the Order is issued —*
 - ✘ *(a) the purpose, duration and effect of the Order;*
 - ✘ *(b) the consequences that may follow if the person against whom the Order is issued contravenes the Order.*
 - ✘ *(4) If a Police Safety Order has not been served within 48 hours from the time of issue, the order lapses.*
 - ✘ *(5) A Police Safety Order may be issued by a police constable or any police officer above the rank of constable.*
 - ✘ *(6) A police officer shall give priority to domestic violence cases.*

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- The Effect of a PSO is provided under section 24 of the Family Protection Act 2013:
 - ✘ 24 – (1) A person against whom a Police Safety Order is issued shall —
 - ✘ (a) immediately surrender any weapons in his possession or control, that could be used to commit domestic violence; and
 - ✘ (b) vacate any land or building occupied by a person at risk, whether or not he has a legal or equitable interest in the land or building.
 - ✘ (2) It is a condition of every Police Safety Order that the person against whom the Order is issued shall not —
 - ✘ (a) physically or sexually abuse or threaten to abuse a person at risk;
 - ✘ (b) remove, damage or threaten to damage, property or any animal belonging to a person at risk;
 - ✘ (c) harass, stalk, intimidate, follow or verbally abuse a person at risk; or
 - ✘ (d) make any contact with a person at risk except where it is reasonably necessary in any emergency.

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- Contravention of PSO is provided under section 25 of the Family Protection Act:
 - × 25 – (1) *Where a person who has been served with a Police Safety Order fails to comply with the Order or any condition of the Order, a police officer shall —*
 - × *(a) take the person into custody; and*
 - × *(b) apply to the Magistrate’s Court on behalf of the person at risk for an emergency protection order under section 13.*
 - × *(2) A person taken into custody shall, subject to subsection (3), be brought before the Magistrate’s Court within 24 hours.*
 - × *(3) If a person is taken into custody under subsection (1) and it is not practicable to bring the person arrested before a Magistrate within 24 hours after he has*
 - × *Section 26 Family Protection Act 2013*
 - × *Page 22 Act 19 of 2013 to*
 - × *been taken into custody, a police officer of the rank of sergeant or above or the Police officer in charge of the police station shall inquire into the case and, at or before the expiry of that period —*
 - × *(a) grant or withhold bail in accordance with the Bail Act; or*
 - × *(b) release the person and serve him with a summons requiring him to appear before the Magistrate’s Court at the place and time specified in the summons.*
 - × *(4) If the person who has been served with the summons under subsection (3)(b) does not attend personally at the place and time specified in the summons, the Magistrate’s Court may issue a warrant to arrest him and bring him before the Court.*

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- Investigating officer at the same time assist complainant in respect of shelter, medical treatment or counselling service, and with court processes pursuant to section 26 of the Family Protection Act 2013.
 - Most educational and victim support initiatives in Tonga are conducted by Non-Government Organisation with the support of the Government of Tonga. These NGOs provide counselling, support and a safe house for victims. They also educate the victims in how to deal with their situation.

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- Agencies/organisations providing these services:
 - Women and Children Crisis Centre
 - This organisation recently established a “one stop shop” in 2013. The one stop shop provides legal, medical and counselling services all in one place.
 - This organisation also has a “safe house” and counselling services for victims.
 - Tonga National Centre for Women and Children
 - This organisation provides a “safe house” and counselling services for victims.
 - Ma’a Fafine mo e Famili
 - This organisation provides a “safe house” and counselling services for victims.
 - Talitha Project
 - This organisation provides services for teenage girls of a specific age.
 - Salvation Army
 - This organisation provides counselling services like anger and alcoholic management.

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- Police duties in relation to domestic violence cases is provided in section 26 of the Family Protection Act 2013:
 - ✘ *26 – (1) Where there is a report of domestic violence and provided that there is sufficient evidence for doing so and either the complainant or the Attorney General supports the prosecution of the offence, every police officer handling the matter shall ensure and undertake to do all things necessary in order that a charge is laid with the Court to commence prosecution of the matter in Court.*
 - ✘ *(2) In any incident that comes to their notice, the police shall where necessary make arrangements for persons at risk to find suitable shelter and obtain medical treatment or counselling services.*
 - ✘ *(3) In every case prosecuted before the Court, it is the duty of the police —*
 - ✘ *(a) to provide information to the parties about court processes and procedures in a language that they understand, the remedies available under this Act and the right to have access to a lawyer and lodge an appeal;*
 - ✘ *(b) as far as practicable, to provide specialist female police officers to assist female victims and persons at risk of domestic violence; and*
 - ✘ *(c) where necessary, make arrangements for the complainant and persons at risk to find suitable shelter, and to obtain medical treatment or counselling services where needed.*

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- Health practitioners and social service provider also has duty of care and response to reports of domestic violence pursuant to section 27 of the Family Protection Act 2013.

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- Investigating officer collect evidence to prove charges of the offence:
 - Investigating officer and forensic officer visits the hospital to check on the status of victim and to collect medical report from doctor. Forensic officer takes photographs of injuries of victim.
 - Investigating officer may use exhibits collect from crime scene eg. if weapon was used, photographs of scene etc).
 - Investigating officer records witness statement from neighbour as evidence.
 - Investigating officer may use offender's record of interview and statement of confession as evidence if the offender admits to the offence.

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- Matter is prosecuted at Magistrate's Court or at the Supreme Court depends on the seriousness of the offence.
 - If the injuries amount to serious bodily harm or grievous bodily harm, matter is heard before Supreme Court.

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- Prosecutor draft indictment and offender is arraigned.
 - Offender makes his plea.
 - **John is found guilty and sentenced to a prison term.**

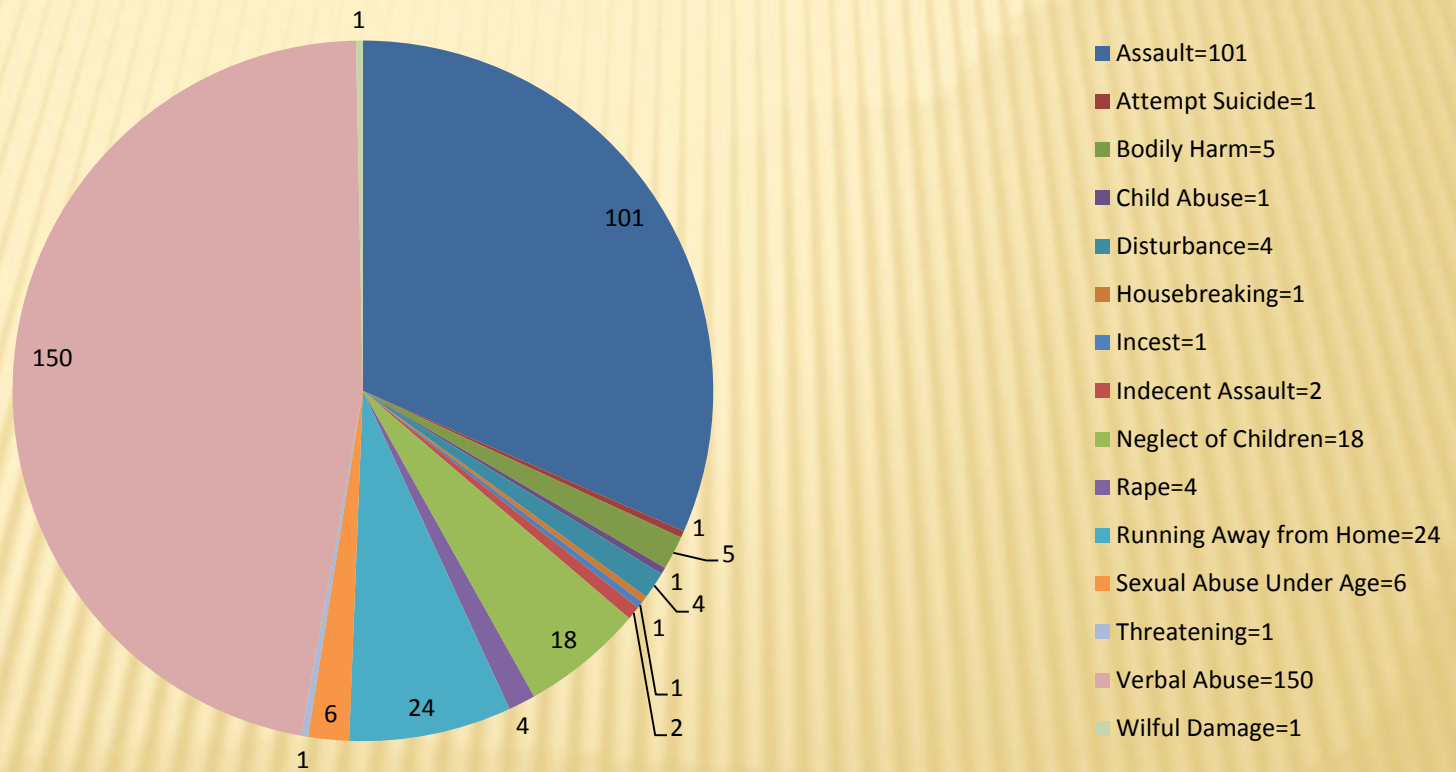
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- Penalty for domestic violence offence:
 - ✘ Section 28(2) provides for the penalty in committing domestic violence offence. It states that for a first offence, a term of imprisonment not exceeding 12 months or a fine not exceeding \$2,000.00 or both; for a second or subsequent offence, a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000.00 or both.

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- Penalty for bodily harm offence:
 - ✘ *Section 106 – (1) Every person who wilfully and without lawful justification causes grievous harm to any person in any manner or by any means whatsoever shall be liable to imprisonment for any period not exceeding 10 years.*

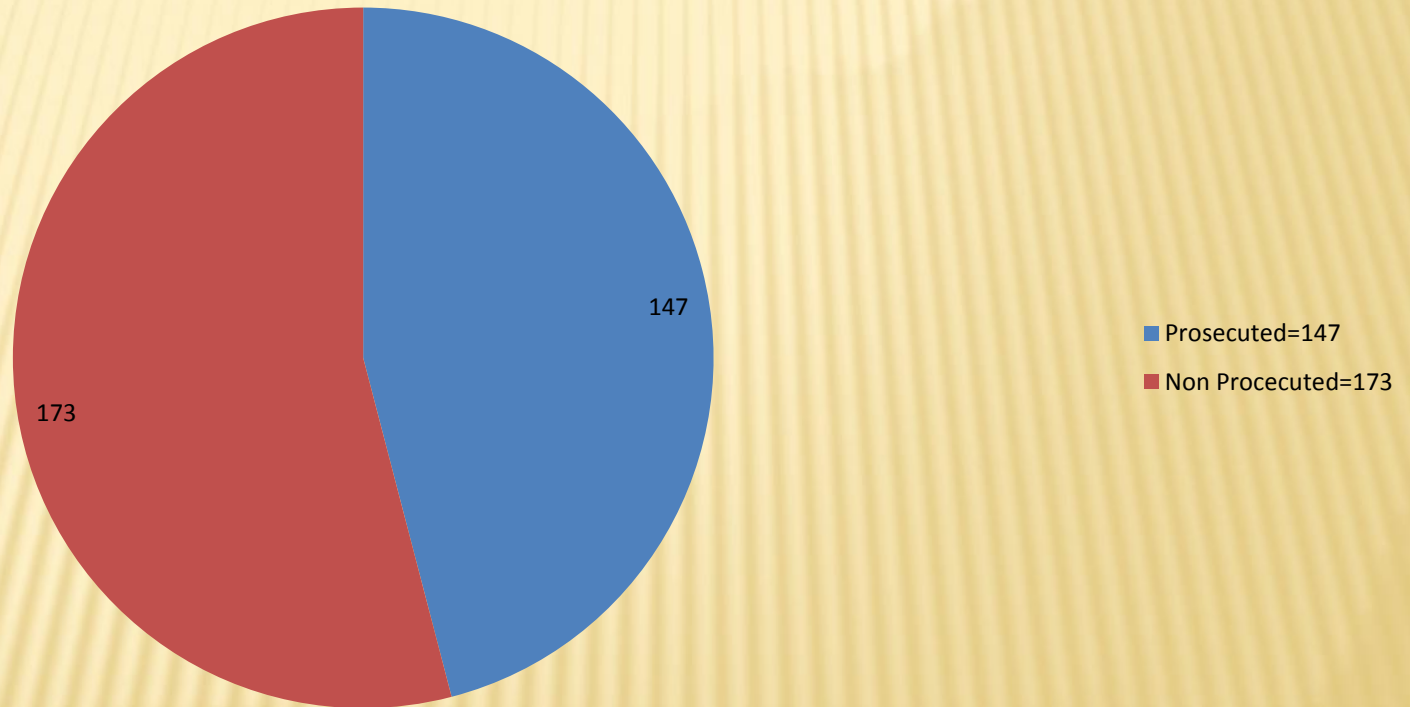
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- Penalty for grievous bodily harm offence:
 - ✘ Section 105 – (4) The offence of serious causing bodily harm –
 - ✘ (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - ✘ (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
 - ✘ (5) The offence of simple causing bodily harm –
 - ✘ (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - ✘ (b) shall be heard and determined by the Magistrate’s Court.

DOMESTIC VIOLENCE STATISTICS

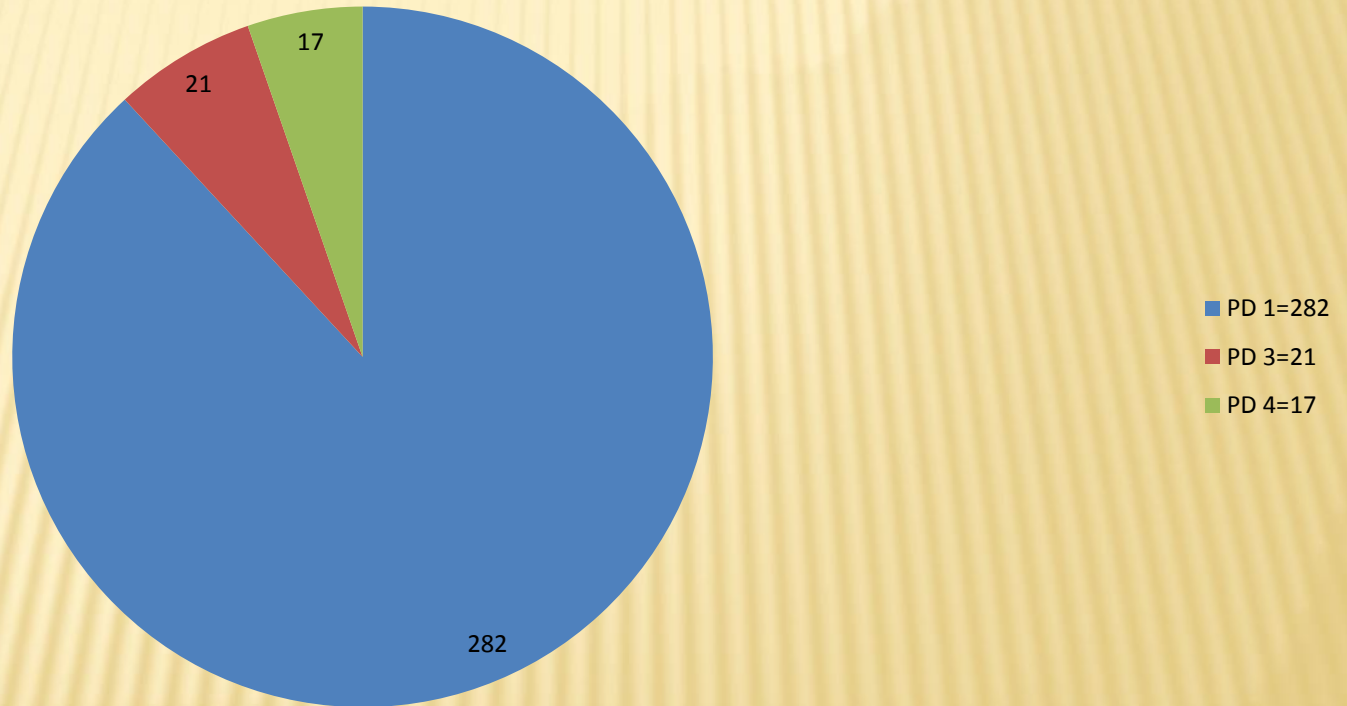
All Reported Offences January - December 2014(320)



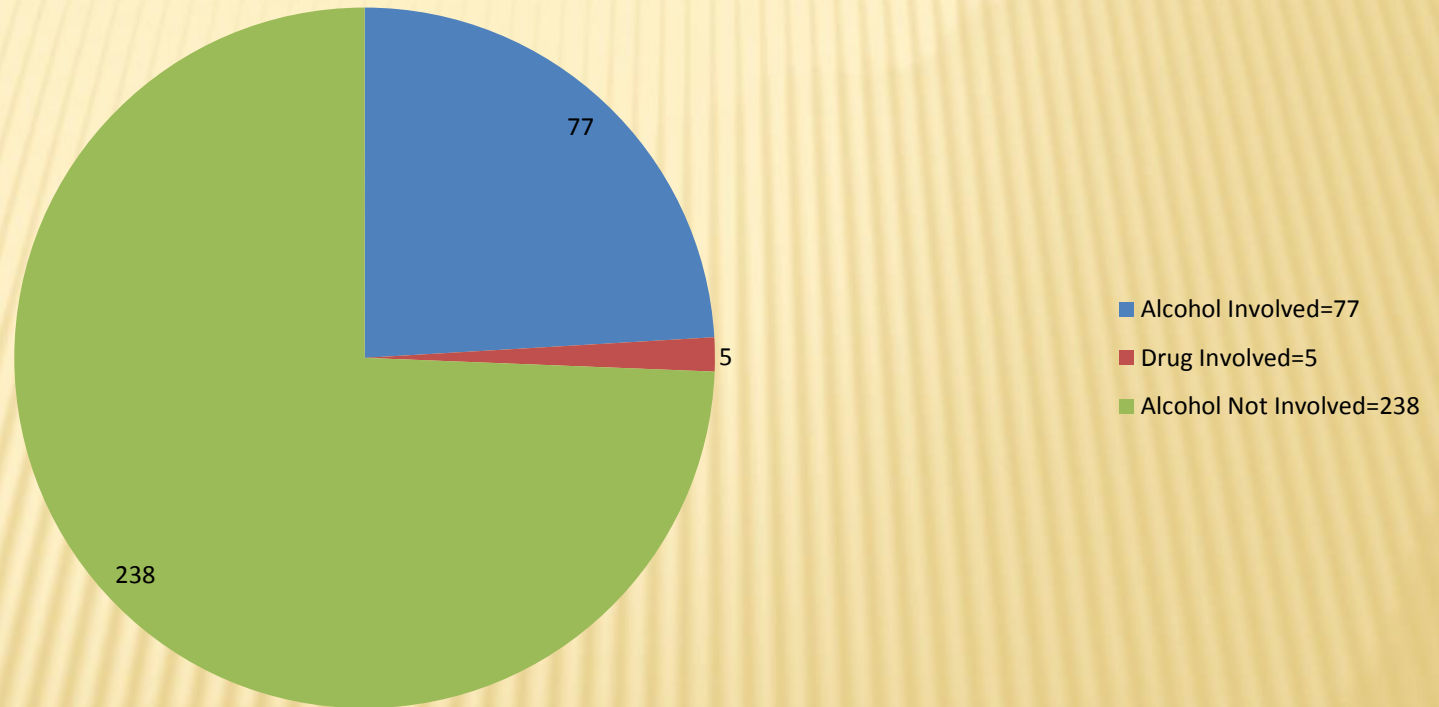
Action Taken Jan - Dec 2014(320)



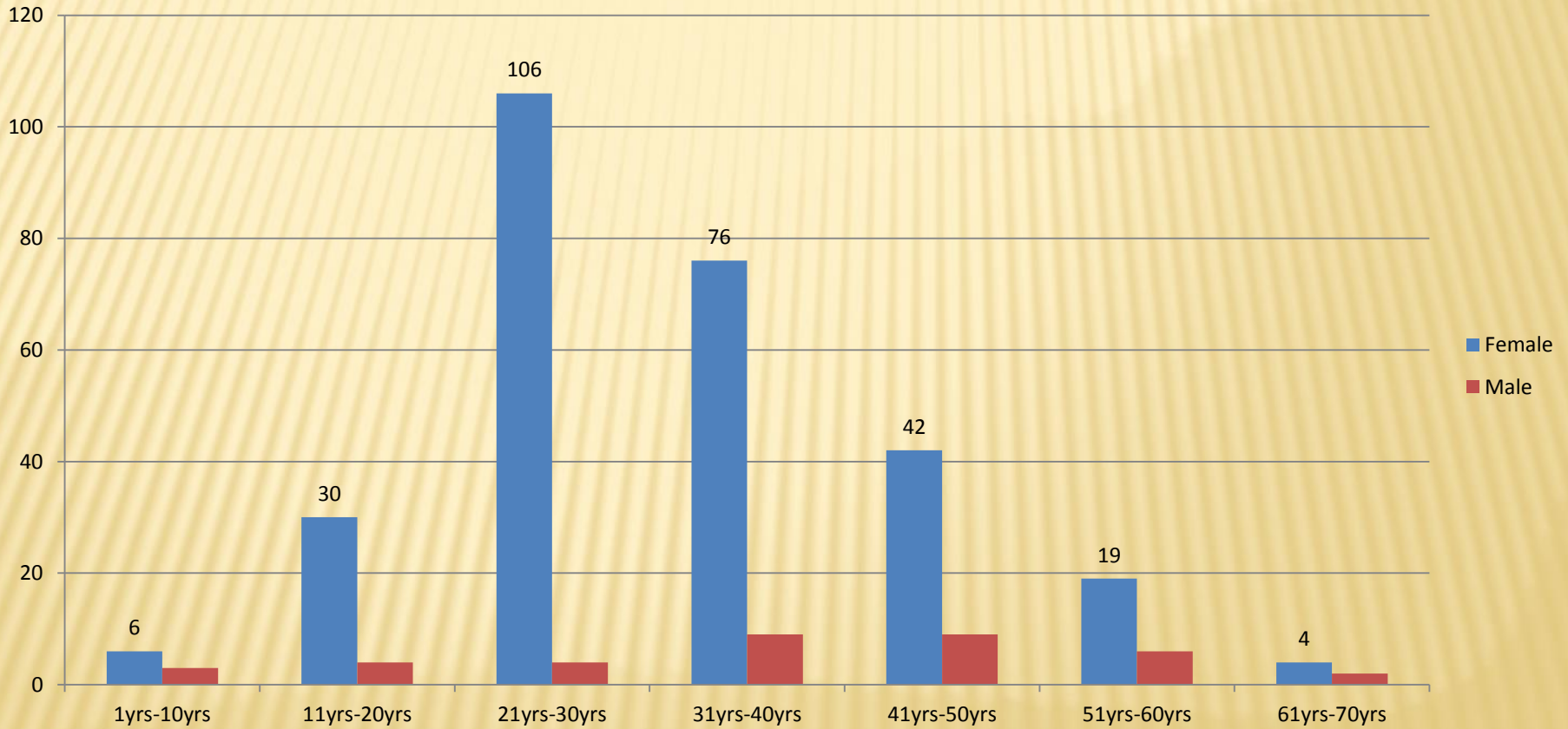
Police District Jan- Dec 2014(320)



Drugs&Alcohol Involved 2014(320)



Victim Age&Sex Jan - Dec 2014(320)



REPORTED DOMESTIC VIOLENCE OFFENCES 2015

Month/ Year	Total Cases	Prosecute d	Non- Prosecute d	PSO Issued	Protectio n Order Issued
April 2015	40	23	17	5	2
March 2015	24	16	8	5	1