

FREEBORN COUNTY DOMESTIC
ABUSE PROSECUTION POLICY

I. DEFINITIONS:

- A. "Domestic Abuse" (M.S. 518B.01 subd. 2) means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between family or household members; or criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.345, committed against a family or household member by an adult family or household member (spouse, former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time or have a pregnancy in common).

Domestic abuse as used in this plan includes assaults, violations of orders for protection and violations of restraining orders. Similar related charges including, but not limited to, criminal damage to property, disorderly conduct, harassing phone calls, false imprisonment, burglary and trespassing, which result from a domestic situation should be handled with the same considerations. The victim may be male or female. The defendant may be male or female. The sexual relationship may be homosexual or heterosexual. The parties may be legally married, separated, single or divorced, co-habitants, relatives or those in a dating relationship. Domestic violence generally represents a pattern of behavior rather than a single, isolated event.

- B. "Advocate" as used in this plan refers to any victim-witness assistant within a prosecutor's office, domestic abuse intervention advocate, battered women's shelter advocate, community advocacy group, or other community representative assisting victims.

II. DOMESTIC ABUSE PROSECUTION GOALS

Aggressive prosecution of domestic assaults sends a message to the community at large and to abusers and victims that domestic abuse, like other crimes, will not be tolerated. While the primary goal of prosecuting domestic abuse cases, as with all criminal prosecutions, is to hold law violators accountable for their acts by conviction and appropriate punishment, prosecutors should bear the following public policy goals in mind in their handling of these cases:

- A. Protecting victims of domestic abuse from future violence by their abusers.
- B. Deterring abusers from committing violent acts against both the victim and other persons.

(The authority of the criminal justice system can be used effectively to improve the likelihood of accomplishing these goals.)

- C. Increasing the effectiveness of domestic abuse prosecution by improving coordination between the criminal justice system and victim services and advocacy groups in the community.

- D. Increasing the accessibility of the criminal justice system to victims of domestic violence.
- E. Coordinating prosecution of domestic assaults with various community resources.

(The success of these prosecutions bears a direct relationship to accessibility of the system and coordination with victim support services.)

- F. Exercising precautions to insure that the process does not discourage the victim from seeking further assistance in the future.

The prosecutor's office will do all it can 1) to provide the domestic assault victim with support services available to enhance her/his ability to participate; 2) to develop all corroborating evidence available to support the victim's testimony; and 3) to diffuse the victim's feeling that the sole onus of the prosecution is on her/him. The domestic assault victim has the responsibility, as do all witnesses, to comply with a subpoena and testify truthfully concerning the facts of the case. For more insight of the risks and obstacles for victims, please see the Educational Section, Appendix C.

- G. Developing all relevant evidence of domestic assaults, including evidence from sources other than the crime victim.

III. DOMESTIC ABUSE PROSECUTION POLICIES

Because of the complex dynamics involved in most domestic abuse cases, this office recognizes that extra time, effort and cooperation among law enforcement, prosecution and advocacy services are required to effect a resolution that protects the victim and serves the state's interest in prosecuting crimes. The following general principles should be observed:

- A. Prompt Charging. Charging decisions should be made promptly, whether or not the abuser is in custody. Law enforcement officers should investigate these cases and promptly present them for charging consideration.
- B. Caseload. Whenever possible, domestic abuse cases should be assigned as a part of a specialized caseload which should be smaller than other caseloads because of the more intensive nature of the assignment.
- C. Advocacy Services.
 - 1) Community Advocacy Groups. The prosecutor should provide domestic assault victims with information on outside community advocacy services available locally. When community advocacy groups are active with a victim at a victim's request, the trial prosecutor should, whenever feasible, coordinate efforts with those advocates and share information concerning the status of the case and the victim. Meetings with the victim and trial attorney should also include the advocate if available and requested by the victim. The victim should be referred to appropriate community services as needed.

- 2) **In-house Victim-Witness or Advocacy Services.** Each domestic abuse case should be assigned to an advocate immediately upon charging so as to facilitate the earliest possible contact with the victim as well as to monitor needs of the victim throughout the pendency of the case. The purpose of early contact is to acquaint the victim with how the criminal justice process works (including the use of subpoenas), the victim's legal rights, the victim's role in the prosecution and the services available to the victim. (When no in-house advocacy services are available, these responsibilities are the prosecutor's.) The prosecutor's office should coordinate both in-house and community advocacy efforts when both groups are working with the same victim.

The assigned advocate shall maintain contact with and provide support to the victim throughout the pendency of the case. Duties also include making information available and referrals for orders for protection and to appropriate outside agencies such as shelter, economic assistance, and support groups if requested by the victim and helping the prosecutor fashion an appropriate disposition of the case. The advocate shall also keep the trial prosecutor informed of the status of the victim and coordinate contacts between the trial attorney and victim as requested. (These latter functions can also be performed by community advocates. Particularly when no in-house advocate services are available, the prosecutor will benefit from a close working relationship with community advocates to assure these services are provided.)

- D. Prosecutor's Contact with Victim. The trial prosecutor should be assigned promptly to facilitate early and consistent contact with the victim and to facilitate follow-up investigation. The assigned prosecutor shall coordinate with any advocate involved with the victim to maintain close contact with the victim for the purpose of trial preparation and in order to be informed of the victim's wishes regarding disposition of the case. Whenever possible, the disposition should attempt to balance the victim's wishes, long-term protection of the victim and the public safety needs of the community. While the prosecutor should solicit and consider the expressed views of the victim, the ultimate decision on charging, plea negotiation offers and case dismissals is the prosecutor's responsibility. Unless authorized by the victim, the victim's views will not be disclosed to the defendant or defendant's counsel prior to the settlement of the case. Victim's confidential views are properly documented in the pre-sentence investigation (P.S.I.).
- E. Corroborative Evidence. Prosecutors should be alert to the benefits of obtaining several types of evidence, including but not limited to, victim's statements. Prosecutors should require investigators to develop all relevant evidence of the victim's testimony including medical records, evidence of prior conduct (M.S. 634.20), prompt complaint evidence including *res gestae* statements (excited utterances) as well as statements of non-victim witnesses and Spreigl evidence. A cassette copy of any 911 call should be ordered in appropriate cases.

All visible injuries, however faint, should be described by the reporting officer and photographed. It is often appropriate to photograph injuries a day or two after the assault when bruises are frequently more prominent (e.

g., visible but faint fingermarks on the neck described on the day of the assault and photographed both then and the next day when they are more noticeable makes dramatic and convincing evidence.). Also, a heavy set person may not show obvious swelling that a thinner individual would show. Therefore, a description of the trauma and the pain it caused the victim should be noted.

Since injuries may not be immediately visible on darker skinned individuals, a more detailed description of the specific assaultive behavior and witness account, if any, should be documented. For example, a woman of color with very dark skin who was kicked in the thigh may never show bruises. Also, because of variations in facial features (i.e. a broad or low bridged nose), a swollen or dislocated nose may be overlooked by the investigating officer who is looking for "normal" characteristics and injuries.

If the assailant/defendant raises issues of self defense, injuries should be documented as part of the evidence.

- F. Avoidance of Delay. Domestic assault cases in general should be handled expeditiously and continuances avoided absent unusual circumstances. (See "Right to a Speedy Trial," Section IV.D.) If a new offense occurs during the pendency of a prior offense involving the same victim, the first case should not be continued or delayed to the later trial date.

IV. DOMESTIC ASSAULT PROCEDURES

- A. Charging/Declining Cases. If medical records which might substantiate felony-level injuries are not immediately available, the investigator should be asked to contact the doctor, read the appropriate statutory definition and write a supplement covering the doctor's oral conclusion that the harm is covered by the appropriate definition, including what specific medical facts are the basis of that conclusion.

In deciding whether to decline, prosecutors should assess not only the willingness or availability of the victim to testify but also other evidence. Where the victim is unwilling to testify, the prosecutor should not decline if there is sufficient other evidence to prove the case.

If a case is declined, the "decline" letter required by M.S. 611A. 0315, subd. 1, must be sent to the victim.

If a case was originally declined because the victim was unavailable or unwilling to cooperate, but the victim subsequently reappears and wants prosecution, the case should be resubmitted and reconsidered by the original reviewing attorney whenever possible. In appropriate cases, the attorney may request the advocate to meet with the victim to assist in assessing strengths or weaknesses as a witness and the feasibility of proceeding.

- B. Bail. In most domestic assault cases some bail is appropriate in addition to the No Contact order. It gives an economic incentive to the defendant to comply with other requirements of the court, including the No Contact order.

In addition to the usual bail arguments, a defendant's prior record of domestic assault arrests may be relevant even if the prior case was dismissed. Historically, there is a high correlation between victim intimidation and dismissal in domestic assault cases. See M. S. 629.72 regarding bail specifically in cases of domestic assault. Note: this statute was amended in 1987 to require that the safety of the victim be considered (in addition to the usual release criteria of public safety and likelihood of reappearance).

- C. No Contact Orders. In the usual domestic assault case, a No Contact order should be sought at the first appearance, even if the victim appears and says s/he does not want it. In the latter event, the victim should be informed that it is office policy to request no contact as a temporary measure, at least until the victim has had an opportunity to discuss the issue with an advocate and the attorney. Absent unusual circumstances, No Contact orders should not be lifted.

Note that No Contact orders can prohibit the defendant's appearance at or near the victim's residence and place of employment as well as contact by phone, in writing or through third parties.

The victim may also seek a separate civil order for protection under Chap. 518B, violation of which is a misdemeanor. The advocate and prosecutor should tell the victim how to obtain an order for protection.

A 1991 amendment to the domestic assault bail statute (M. S. 629.72, subd. 2(c) provides that if the court imposes a No Contact order as a condition of the defendant's release in a domestic assault case, the court may also simultaneously issue an *ex parte* temporary order for protection under Chap. 518B effective until the defendant is convicted or acquitted or the charge dismissed. However, it is recommended that prosecutors urge the criminal judge to defer the OFP to the usual separate civil proceeding. Reasons include the following:

- 1) the victim may not be informed of the judge's *ex parte* order;
- 2) if the defendant demands a hearing on the OFP, it should be heard as part of a civil (not criminal) proceeding;
- 3) the "petition" for such an order would have to be the sworn complaint which rarely details all the facts the usual OFP history would contain;
- 4) the complaint also would not address other important issues, such as support and child visitation/custody routinely addressed in civil OFP's;
- 5) any hearing demanded by the defendant would be limited to the facts stated in the complaint;
- 6) a separate civil OFP would be needed in many cases anyway to deal with other issues and longer order duration;

reason for the unavailability shall be indicated if known. M.S. 611A.0135, subd. 1(b).

- H. Trial Preparation. Whenever possible, the trial prosecutor should meet in person with the victim before pre-trial. The victim advocate should participate in these meetings whenever possible. This allows not only for a more accurate assessment of the case but also for the development of additional information which may substantiate more serious or different charges as well as Spreigls (evidence of other crimes committed by the defendant). See M. S. 634.20 which specifically addresses Spreigl evidence in domestic assault cases.

Early consultation with the victim also gives the prosecutor and the advocate a chance to explore all possible dispositional options, including the victim's wishes.

- I. Harassment of Victim. Prosecutors should advise the victim that any harassment of the victim or other witnesses by the defense should be reported. The harassment may include such things as calls or visits from the defendant, third party, or the defense attorney and investigators.

- J. Plea Negotiations. A probationary disposition may be appropriate even in a felony domestic assault case which carries a presumptive prison sentence. Factors which may be relevant to such a probationary disposition include and are not limited to:

- 1) case assessment by the prosecutor;
- 2) the wishes of the victim;
- 3) the defendant's treatment needs (and amenability to treatment);
- 4) the benefits of a supervised long-term no contact order (with the possibility of prison for non-compliance); and
- 5) the benefits of other probation conditions such as domestic abuse counseling, chemical dependency treatment, restitution, etc.

In the usual domestic assault case, a pre-sentence investigation should be requested. Whatever settlement is reached, whether between the prosecution and the defense or the defense and the court, the victim must be notified of all terms and conditions, including any limitation on jail time including good time, furlough, credit for time served, work release, and any other factors which effect the length of time served. For a prison sentence, the prosecutor should explain to the victim how to notify the Commissioner of Corrections for notification of release, escape or failure to return from furlough.

In felony cases, when probation is otherwise appropriate, a dispositional departure on a presumptive prison offense can be preferable to a plea to a presumptive probation offense because probation can be for a longer period of time and the incentive to comply with conditions of probation is greater. Alternatively, a double duration departure on a presumptively stayed sentence may be considered where there are aggravating circumstances (such as when the factors would also substantiate the elements of a greater offense or when there is a past conviction for a felony against the person where the victim was injured). Some felonies, however, will clearly mandate prison regardless of a victim's stated wishes.

- K. Trial. Separation of Witnesses. Every effort should be made during trial to keep the domestic assault victim in a safe area separate from the defendant and his/her supporters while waiting to testify. A request to the court administrator for available space should be made. (M. S. 611A. 034). Refer to Section I above regarding "Harassment of Victim."
- L. Sentencing. The prosecutor should advise the victim of all rights under Chapter 611A regarding sentencing, including restitution, the victim impact statement and the right to be present and to speak at sentencing and the right of notice of final disposition. Whenever victim is working with an advocate, the advocate should be encouraged to attend especially if the victim is not present. The trial attorney should attend the sentencing whenever possible and make sure the sentencing attorney is aware of all terms and condition which are documented in the file regarding the plea negotiation.
- M. Notice of Release from Prison. The prosecutor should advise the victim regarding the process of notifying the Department of Corrections Commissioner (or head of the prison) for release or escape from prison information, or victim's change of address (M.S. 611.06).
- N. Probationary Violations. Generally, the prosecutor should request additional jail time (or prison, where appropriate), anytime a domestic abuse probationary violation related to victim safety occurs. Whenever a domestic assault defendant placed on probation violates conditions related to the victim's actual safety (e.g. violation of an OFP or No Contact order, or an assault) potential safety (e.g. failure to complete or dismissal from treatment facility), or restitution issues, and attempt should be made to notify and consult with the victim regarding potential dispositions. When the prosecutor's office has not received sufficient notice of this kind of problem to make contact with the victim, a continuance should be requested. Frequently, the advocate will be the first person to be informed of such a violation. In such cases with the victim's permission, the advocate should notify the trial attorney (or the attorney handling the violation) of the situation and any victim requests.
- O. Grand Jury. The use of the grand jury may be considered in unusually egregious circumstances where there is a need to preserve the victim's testimony under oath. Such testimony may be videotaped. The videotape, as other grand jury records, may, however, not be disclosed without a court order. In an appropriate case where intimidation of the victim by the defendant can be proved, such testimony may be admissible at trial. See *State v. Black*, 291 N.W. 2d 208 (Minn. 1980).
- P. Law Enforcement Investigation and Training. Law enforcement in domestic assault cases should be instructed to identify, gather and preserve evidence that will enhance the ability to prosecute. This includes:
- 1) documentation of physical evidence of a victim's injuries (including photographs, medical records, written descriptions and detailed observations) and self-defense injuries;
 - 2) other crime scene evidence;
 - 3) interviewing the victim about the assault, prior assaults, existing or past OFPs or other court order;

- 4) interviewing the suspect;
- 5) interviewing all other witnesses;
- 6) notation of any *res gestae* statement made by the victim and eyewitnesses (including 911 calls); and
- 7) collection of other crime (Spreigl) evidence.

The prosecutor's office shall cooperate with local law enforcement agencies in preparing and participating in law enforcement training on domestic assault as requested by those agencies.

A copy of a prosecutor's domestic abuse plan shall be provided to all law enforcement agencies with the prosecutor's jurisdiction.

- Q. Implementation and Review. This Domestic Abuse Plan shall be reviewed annually by the prosecutor's office, in consultation with the advocates, to evaluate whether it is meeting its goals and whether revisions are needed.

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Reviewed & affirmed

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