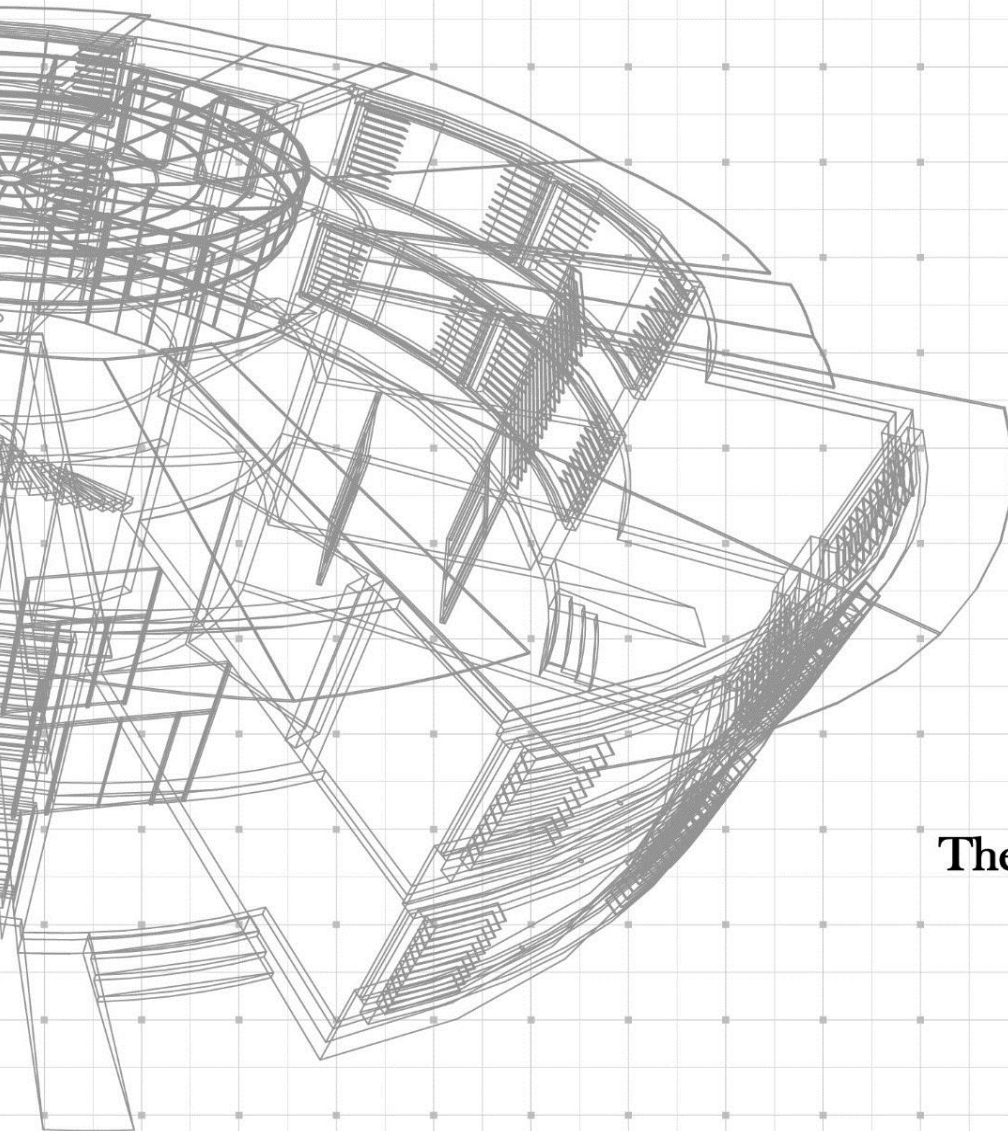


## CHAPTER FIVE

# Prosecution

Office of the Orleans Parish District Attorney



The New Orleans  
**blueprint**  
*for* **safety**

# Prosecution

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## Foundational Principles

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The collaboration of criminal justice agencies within New Orleans to develop a coordinated criminal justice response to domestic violence is the City's *Blueprint for Safety*. The Orleans Parish District Attorney's Office, along with the city's other *Blueprint for Safety* agencies, is committed to a set of shared foundational principles that maximize safety for victims of domestic violence and holds offenders accountable while offering them opportunities to change. These foundational principles are:

1. Adhering to an interagency approach and collective intervention goals;
2. Building attention to context and severity of abuse into each intervention;
3. Recognition that most domestic violence is a patterned crime requiring continuing engagement with victims and offenders;
4. Ensure sure and swift consequences for continued abuse;
5. Send messages of help to victims and messages of accountability to offenders;
6. Act in ways that reduce unintended consequences and the disparity of impact on victims and offenders.

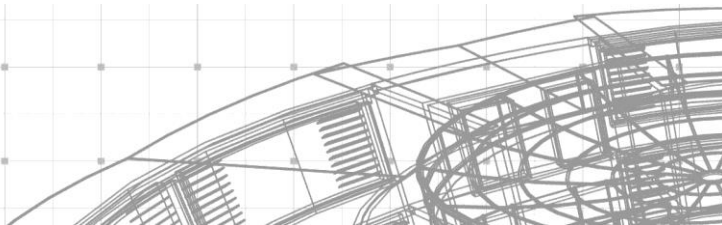
The Orleans Parish District Attorney's Office shall ensure participation in ongoing interagency *Blueprint* monitoring, evaluation, and maintenance.

## Victim Engagement guidelines

The District Attorney's office is committed to a victim-centered approach in the handling of domestic violence and domestic violence related cases. All attorneys who handle domestic violence cases shall abide by the following guidelines.

1. Work in collaboration with victims, cognizant of the principles of “continuing engagement”:
  - a. Minimize the victim's need to confront the offender.
  - b. When using information provided by the victim, attempt to protect her or him from retaliation.
  - c. Treat each interaction with the victim as an attempt to build collaboration over multiple criminal justice system interventions.
  - d. Be mindful of the complex and often dangerous implications of a victim's collaboration with interveners.
  - e. Be aware that the fundamental purpose of battering, which characterizes the majority of domestic violence criminal cases, is to control what the victim says, thinks, feels, and does. Victims are rarely in a position to “tell all,” although they may do so in unguarded moments. Take great care to not endanger victims with what they have shared about their lives subject to constitutional constraints and rules of discovery.
  - f. Engage in dialogue with the victim, thereby avoiding inadvertently treating her or him as simply an information source.
  - g. In order to avoid unintentionally replicating or reinforcing the actions of the abuser, offer a clear alternative to messages that the victim is crazy, at fault, unbelievable, and unable to make decisions and that the abuser is unstoppable.
2. Act in ways that prioritize safety and respect a victim's precarious circumstances and fear of the offender's aggression. The prosecutor or the victim/witness advocate acting on the prosecutor's behalf should:
  - a. Provide information about likely pre-trial release conditions and answer the victim's questions.
  - b. Request a stay away order. If the victim requests contact, however, consider each request individually and keep in mind that in some cases a prolonged stay away order may result in hardship for the victim.
  - c. If the victim requests that a stay away order not be issued and the request is not the result of coercion, consider honoring the request or tailoring the stay away order to maximize its benefits and minimize its burdens for the victim.

- d. When a defendant is not held in custody, request pre-trial supervision when there is indication of escalating violence or a serious concern by a victim or interagency partners about the probability of continued harassment and harm.
  - e. Answer questions about the risks and benefits of testifying and the risks and benefits of not testifying.
  - f. Although a subpoena may be issued, in some circumstances, it may be advisable to send a patrol officer or detective to the victim's residence to facilitate the victim's appearance at trial.
3. Respond to domestic violence crimes in ways that are victim safety-centered but not victim- dependent.
- a. Approach each case with an understanding that the victim may be unavailable to testify or may recant.
  - b. Pursue possible charges and utilize all available sources of evidence that support charges independent of a victim's direct testimony.
  - c. Seek charges stemming from a defendant's actions after officers' arrival on the scene, witness tampering from jail, and violations of pre-trial release conditions.
  - d. If the victim has a safe address unknown to the defendant, and does not wish to share this information on the public record, have the victim register with The Louisiana Department of State Address Confidentiality Program (La. R.S. 44:52).
  - e. Protect victims from retaliation because of their participation in prosecution.
  - f. Emphasize at every opportunity that it is the prosecutor's decision on behalf of the community and the state to pursue charges, and not the victim's decision.
  - g. Stay alert to intimidation and coercion directed at victims to prevent their participation.
  - h. Be prepared to take prompt action for witness tampering by the defendant and utilize the doctrine of forfeiture by wrongdoing.



# Training

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The District Attorney's Office shall provide, at least annually, training on domestic violence and these policies and protocols to all attorneys who handle domestic violence cases. Annual training shall incorporate, but are not limited to, the following:

- Assessing for risk and danger in domestic violence cases
- Prosecuting domestic violence cases with defendants who are victims of battering
- Implications of *Crawford* and *Davis*
- Implications of forfeiture by wrongdoing
- Use of stay away orders
- Recommendations on time to serve and length of probation
- How prosecutors and defense attorneys utilize police reports
- Use of expert witnesses
- Addressing uncharged sexual abuse

The following policies and protocols are generally applicable to domestic violence cases. However, there may be instances in which, due to the circumstances and facts of the case, another course of action may be required to better serve the goals of victim safety, community safety, and offender accountability. All attorneys and supervisors shall communicate in a person's first language, utilizing translators when necessary and available, and in ways that address limited English proficiency and literacy when executing these policies and protocols.

All of these policies and protocols should be reviewed by supervisory personnel on a yearly basis.

## Charging Decisions Framework

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Prosecutors play a key role in the *Blueprint* approach to intervention. They are in a central position to integrate the *Blueprint* foundational principles into the resolution of every case. Because they have broad discretion in deciding whether and what to charge in any particular case, they hold the key to applying the principle of adjusting the response to severity and context.<sup>i</sup> In that same capacity they are best positioned to act affirmatively to avoid unintended consequences of state intervention. Every court appearance affords the prosecutor the opportunity to make the violence visible and to send powerful messages to victims and offenders.

In every case, a prosecutor must evaluate the likelihood of conviction. At the same time, a prosecutor is charged to act in service to justice rather than to achieving convictions.<sup>ii</sup> Seeking justice in domestic abuse-related cases includes weighing the goals of victim safety and offender accountability and rehabilitation. Domestic violence cases introduce several additional factors to consider in exercising the discretion to charge, including:

1. The history and context of violence between the defendant and the victim;
2. The seriousness of injuries and/or the level of fear expressed by the victim;
3. Ways in which children have been used as part of a pattern of abuse and violence; and
4. The possible negative or beneficial impact of aggressive pursuit of convictions and enhancement or the impact of less aggressive approaches to a case.<sup>iii</sup>

When evaluating domestic violence-related cases that present a high risk of harm or lethality to the victim, a prosecutor may charge a case in the absence of optimal facts or evidence and request additional investigation.

In any criminal case, the decision whether to charge and what to charge depends heavily on the information gathered by law enforcement's initial response and evidence-gathering and subsequent follow-up investigation. The closer prosecutors and law enforcement are linked, the more likely there will be sufficient information available to prosecutors to make timely decisions under deadlines for charging or releasing a suspect.<sup>iv</sup> In many domestic violence cases, sure and swift consequences are the most effective way to reduce further abuse. Prosecutors can contribute to that deterrence by issuing the highest level charge possible within the framework of ethical practice and the goals of victim safety and offender accountability and rehabilitation.

Most domestic violence cases coming to the attention of the criminal justice system are part of an ongoing pattern of intimidation, coercion, and violence (i.e., battering) that began prior to the specific incident and arrest that brought the case to the prosecutor's office.<sup>v</sup> While most criminal domestic violence cases do involve this pattern of abuse, some cases are clear exceptions requiring different intervention approaches. Offenders who are mentally ill and use a more generalized, less

targeted form of violence, are not deterred by the same interventions as a batterer. While many batterers are also addicted to alcohol or drugs and will use violence regardless of their dependency status, some offenders only use violence when under the influence and do not engage in a pattern of coercion. They can be stopped by discontinuing the substance abuse. A final exception involves cases in which the victim of ongoing abuse uses violence against the abuser.

In cases of battering (ongoing pattern of coercion, intimidation and violence), the violence is likely to continue beyond closure of that specific case, particularly if there is no coordinated, interagency response. It may take repeated interventions to control the behavior of a defendant who is engaging in ongoing intimidation, coercion, and violence. Each intervention should be seen as part of a continuing effort to contain the abuser's violence. Most victims of domestic violence try multiple times to leave the relationship before successfully freeing themselves. Some victims live with abusers because the alternatives for them and their children upon leaving are bleaker and more precarious to their overall well-being than conditions in the relationship.<sup>vi</sup> As a result, prosecutors will often be working with a victim who is entrapped in the relationship.

Many victims of battering face intense pressure to oppose prosecution,<sup>vii</sup> even as they want the criminal legal system to impose significant consequences for the harm they have experienced. The fundamental purpose of battering, which characterizes the majority of domestic violence criminal cases, is to control what the victim says, thinks, feels, and does.<sup>viii</sup> Victims are rarely in a position to 'tell all' and cooperation with interveners often creates concerns for them<sup>ix</sup> and has complex and dangerous implications. Prosecutors can work in collaboration with victims in ways that acknowledge that reality, minimize the victim's need to confront the offender,<sup>x</sup> and protect victims from retaliation.

Prosecution should be centered on victim safety, but not be victim-dependent. The Crawford case and its progeny make it critical that prosecutors approach domestic violence cases and direct evidence-gathering in ways that minimize dependence on the victim, maximize other sources of evidence, and stay mindful of intimidation and coercion directed at victims to prevent their participation in the prosecution process.

The District Attorney's Office has adopted evidence-based prosecution—building a case with multiple sources of evidence. An evidence-based approach that builds on as many non-victim sources as possible, however, does not mean that a prosecutor assumes at the charging stage that the victim will be unavailable to testify and thus declines the case as unwinnable. Prosecutors should not assume, for the purpose of charging, that the victim will be unavailable. Nor should the victim's testimony, when obtainable, be discounted. The uncorroborated testimony of an available victim may be sufficient to proceed with the case.

Pursuing the widest range of charges supported by probable cause, as described in these policies and protocols, can provide avenues for sanctioning and supervising domestic violence offenders that are less reliant on direct victim testimony: for example, charges stemming from a defendant's actions

after officers arrive at the scene,<sup>xi</sup> either directed at officers or exhibited in front of officers, or engaging in witness tampering through calls from the jail. Such behavior demonstrates the defendant's willingness to continue abusive behavior even when independent authority figures are present or the defendant is confined. Charging such crimes offers the potential to utilize law enforcement witnesses, which may lessen the need for the victim to testify. Thorough attention to the range of possible charges can also help illuminate crimes of strangulation and stalking. Because stalking is a patterned crime and strangulation does not always manifest visible injuries, they can be easy to overlook.<sup>xii</sup> Both are markers of serious danger to the victim<sup>xiii</sup>

This approach—charging all crimes supported by the evidence—requires strong linkages between prosecutors and law enforcement in order to produce thorough investigations, reports and evidence-collection that clearly substantiate each charge. Multiple charges must not be pursued as a form of harassment against a particular defendant, however, but as a legitimate means of strengthening public safety and accountability for the harm done. There are times when charging misdemeanor crimes along with one or more felony crimes can weaken a prosecutor's case by giving the defense attorney and jury the opportunity for a compromise verdict. Prosecutors must consider the possibility of lesser charges having this effect in some cases.

While the approach of charging all crimes supported by the evidence generally enhances victim safety and offender accountability, there may be situations where safety considerations and justice require a more limited range of charges, particularly in responding to defendants who are victims of ongoing abuse. In prosecuting cases involving victims of ongoing abuse who have used illegal violence against their abusers, the prosecutor must consider the safety needs of both the victim of the immediate offense and the defendant in the case.

Maximizing safety for a defendant who is a victim of ongoing domestic violence (or “victim defendant”) requires careful appraisal of the ways in which multiple charges may adversely affect her or his safety. Pursuing multiple charges may unintentionally reinforce the batterer's control via such actions as threats to make reports to law enforcement or probation or to use the charges against the defendant to influence child custody decisions.<sup>xiv</sup>

Law enforcement discourages dual arrests and directs officers to arrest the predominant aggressor when both parties use illegal violence. When officers are skilled in making self-defense determinations and apply the predominant aggressor arrest policy properly, most victim defendants are screened out of the system.<sup>xv</sup> Prosecutors may decide that a case was more likely than not self-defense and further screen victims of abuse from the criminal justice system.

Nevertheless, cases will be presented to the prosecutor when the victim defendant was clearly the predominant or only aggressor in the instant offense. Prosecutors may also identify domestic violence victim defendants in cases which are not initially identified as domestic violence cases.

Such cases present prosecutors with a number of complex questions in determining who should be protected from whom and in what ways. Prosecutors should make distinctions when particular



factors are present in order to ensure a just approach that meets the goals of victim safety and offender accountability and rehabilitation.

The prosecutor's decision to charge can send powerful messages of help and accountability to victims and defendants on behalf of a community that recognizes domestic violence as serious and unacceptable. To victims: *You have the right to live without violence and no one has the right to abuse or hurt you. The criminal justice system will intervene to stop the violence and place controls on abusive behavior. If you are a victim of ongoing abuse and have used illegal violence in response, that violence is not acceptable; there are alternatives and we will act in ways that maximize your safety and connect you with those alternatives.* To defendants who have engaged in intimidation, coercion, and violence toward an intimate partner: *You are not entitled to abuse another person; the criminal justice system will hold you accountable and there will be consequences for the harm you have caused, along with opportunities for you to change your behavior.*

# Charging Decisions Policy

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In addition to adhering to general agency policy, prosecutors will abide by the following policy and protocol on making decisions about whether to charge and what to charge in domestic violence cases.

In Municipal Court, charges for misdemeanor cases shall initially reflect the police charges listed in the arrest affidavit and gist filed with the court. ADA's handling misdemeanor domestic cases shall assess police charges in order to determine if any charges will be amended or dismissed after the filing of the affidavit and gist.

Charging decisions in felony cases shall be made by the felony case screener. Felony charging decisions shall be filed as the Bill of Information in Criminal District Court. When the felony case screener makes a charging decision, and attorneys handling misdemeanors cases assess the police charges in their case, they shall abide by the following:

## Sources of Information

1. Utilize the widest possible range of information sources, and request additional evidence as needed to evaluate the case and make the charging decision.
2. Approach each case with an understanding that the victim may be unavailable to testify while recognizing that at the charging stage the availability of victim testimony may not be known.
  - a. Request that evidence-gathering be done in a way that minimizes dependence on the victim and maximizes the sources of evidence.
  - b. Stay alert to intimidation and coercion directed at victims to prevent participation in the prosecution process. Evaluate prior recent incidents to determine whether the offender engaged in prior criminal conduct against the same victim. If so, consider charging those incidents where there is sufficient evidence.

## Consideration of the Charges

1. File charges that reflect all crimes committed in the case as supported by the evidence, except where considerations of victim safety, including the safety of a victim defendant would warrant otherwise.
  - a. If the defendant is engaging in a patterned use of intimidation, coercion, and violence toward the victim, file all charges that will likely result in a disposition that places controls on the defendant's behavior, holds the defendant accountable for the behavior, enhances safety of the victim, and allows for the possibility of rehabilitation, as appropriate.
  - b. If the defendant is a victim of ongoing domestic violence ("victim defendant"), consider whether charging the widest range of crimes or the most severe crime

further the goal of enhancing the victim/defendant's safety or whether, given the circumstances of the case, less severe charges or no charges should be brought.

2. Review the following considerations as they apply to the circumstances of the case:
  - a. History and context of violence between the parties involved
  - b. Seriousness of injuries and/or level of fear expressed by the parties
  - c. Use of children as part of the pattern of abuse
  - d. Consequences of no intervention or less aggressive intervention on the potential lethality in the case
3. In setting priorities, give precedence to those cases appearing to present the greatest risk, based on the evidence and the victim's responses to risk questions.
4. Prioritize cases where the offender is out of custody according to the same risk evaluation as in-custody.
5. In evaluating cases for charging, pay particular attention to charges that may have been historically underutilized but are characteristic of domestic violence cases, such as:
  - a. Illegal behavior that occurs after officers arrive on the scene
  - b. Strangulation
  - c. Harassment/Stalking
  - d. Sexually aggressive behavior
  - e. Pattern of harassing conduct
  - f. Witness tampering
6. Evaluate prior recent incidents to determine whether the offender engaged in prior criminal conduct against the same victim. If so, consider charging those incidents where there is sufficient evidence.
7. Evaluate prior convictions to determine if they allow enhancement of the current offense with additional penalties. If charging LA R.S. 14:35.3 Domestic Abuse Battery, consider the sentencing enhancements available when there are prior Domestic Abuse Battery convictions.
  - a. Where possible and appropriate, consider the use of an enhancement to support more flexibility in negotiating a resolution that serves both victim safety and offender accountability.

- b. Enhancements, even when available, should not be utilized automatically. They are intended to further the goals of offender accountability, victim safety, and justice. Avoid using enhancement when those goals are not met.

### **Transfer of Cases**

1. In the following circumstances, transfer the case immediately to the appropriate prosecuting authority and promptly inform the domestic violence unit detective, if one is working on the case, of the transfer and reason for the transfer:
  - a. If prosecutors at the felony level determine not to charge a case and misdemeanor charges may be possible
  - b. If prosecutors at the misdemeanor level determine that the case may be appropriate for felony-level charges

### **Information Sharing**

1. Be responsive and provide information to Family Justice Center or other community domestic violence advocates' inquiries and consult with FJC or other community domestic violence advocates as consented to by the victim.
2. Inform the detective, the victim, and others designated in the Charging Decisions Protocol once a final determination has been made whether or not to charge the case.

### **Supervisors**

Supervising prosecutors will take the following actions to implement and maintain this policy and related procedures:

1. Review three files per prosecutor semiannually for policy and protocol compliance.
2. Meet quarterly with the police Domestic Violence Unit and the supervisor of the victim witness program to discuss cases that have been declined and the thoroughness of investigations.
3. The attorney co-located at the FJC, with the police Domestic Violence Unit, shall be available to meet with the police Unit as requested to review individual cases when necessary, including cases that have been declined for prosecution that the Unit would like to continue investing.

# Charging Decisions Protocol

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Charging decisions should further the multiple goals of controlling an offender's behavior, holding the offender accountable for his or her behavior, providing rehabilitation services to appropriate offenders, deterring future violence, and enhancing the safety of victims of the offense and possible future victims of the defendant.

When the felony case screener makes a charging decision, and attorneys handling misdemeanors cases assess the police charges in their case, they shall abide by the following guidelines on charging decisions:

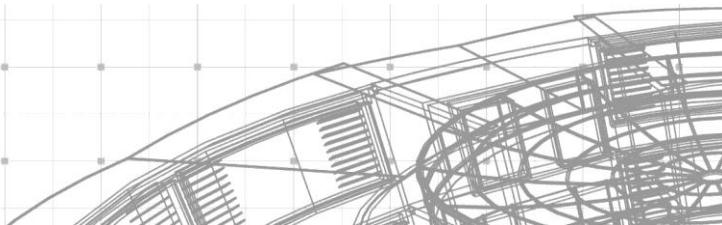
## Sources of Information

1. Use the following sources of information as available and provided by law enforcement to evaluate the case and decide whether and what to charge:
  - Law enforcement reports of the current offense
  - Past law enforcement reports involving this suspect
  - Evidence collected at scene, e.g., photographs, broken phones, ripped clothing, other damaged property
  - 911 tapes and Incident Recall reports
  - Video recordings
  - Jail phone call recordings or other related documents
  - Past and current protective orders (hereinafter P.O.) and harassment restraining orders, and pleadings, including affidavits
  - E-mail, voice mail, text messages, letters, and other communication
  - Arrests and convictions, including all available data bases
  - Victim's responses to risk assessment questions in current and past law enforcement reports.
  - Communication with victim, either direct or (with victim consent) via community advocate or victim/witness advocate.
  - Defendant's behavioral history in relation to possible harassment/stalking charges
  - Medical records
2. Approach the cases in ways that minimize dependence on the victim and maximize other sources of information by abiding by the following guidelines:
  - Stay mindful of intimidation and coercion directed at victims to prevent participation in prosecution.
  - Know the implications of the Crawford and Davis decisions and strategies to maximize non-victim sources of information in light of those decisions.

- Know the doctrine of forfeiture by wrong-doing and strategies for applying it in domestic violence cases, including training law enforcement on needed evidence gathering.
- Expand the focus of attention to illegal behavior after officers' arrival.
- Develop access to multiple sources of information in addition to the victim.

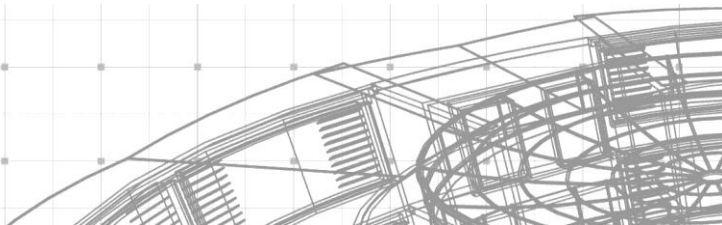
## Consideration of the Charges

1. Re-evaluate the case for additional charges or amend charges as additional evidence is gathered and developed.
  - a. In order to meet legally imposed deadlines, all information may not be available at the time of initial charging.
  - b. Additional charges could include harassment/stalking, strangulation, witness tampering, or enhancement of charges. When charging 14:35.3 Domestic Abuse Battery, consider the sentencing enhancements available under LA R.S. 14:35.3.
  - c. In considering additional charges, refer to LA R.S. 14:35.3 (J) and 14:2(B). Any crime of violence, as defined in R.S. 14:2(B), against a person committed by one household member against another household member, shall be designated as an act of domestic violence.
2. Request further investigation rather than decline cases that might be charged with additional information.
  - a. Focus especially on additional investigation related to charging strangulation, harassment, and stalking.
  - b. In requests to law enforcement, specify what additional information is needed, including obtaining information from other jurisdictions.
3. Evaluate the nature and history of violence between the parties involved in the case to understand the context of the violence, fully inform prosecutorial decision-making, and advance the goals of victim safety and offender accountability and rehabilitation. Ask:
  - a. To what extent is there a pattern of ongoing intimidation, coercion, and violence?
  - b. Who is perpetrating any such pattern, and against whom?
  - c. What is the severity of the violence?
  - d. What is the frequency of the violence?



4. Evaluate the seriousness of injuries and/or level of fear expressed by the parties. Ask:
  - a. Who has been injured and how?
  - b. Note: Consider the sentencing enhancements available under LA R.S. 14:35.3 (L) and (M) when the domestic abuse battery involves strangulation or is committed by burning that results in serious bodily injury.
  - c. Who is afraid of whom and in what ways? Note: include fear of losing children, homelessness, loss of family, job, etc.
  - d. What kind of threats have been made or coercion used to dissuade the victim from participating in the prosecution?
    - a. Who is most vulnerable to ongoing intimidation, coercion, and violence?
5. If children are involved, evaluate whether they have been present, were themselves assaulted, or were used as an instrument of abuse by the party engaging in intimidation, coercion, and violence against the other. Ask:
  - a. Has the abusive party physically harmed the children? If so, in what ways?
  - b. Has the victim been threatened that the children will be harmed? If so, in what ways?
  - c. What is the status of any family court action?
  - d. Does the victim fear that the abuser will take the children in retaliation for cooperation?
  - e. Was the victim assaulted during pregnancy and the defendant had knowledge of the pregnancy?
  - f. Note: Consider the sentencing enhancements available under LA R.S. 14:35.3 (K) when the victim of Domestic Abuse Battery is pregnant.
  - g. Was a child 13 years of age or younger present during the incident?
  - h. Note: Consider the sentencing enhancements available under LA R.S. 14:35.3 (I) when a child 13 years old or younger was present at the scene at the time of the commission of the offense.
6. If the defendant is engaging in a patterned use of intimidation, coercion, and violence toward the victim in this case, file charges that will likely result in a disposition that will place controls on the defendant's behavior, enhance victim safety, and allow for the possibility of rehabilitation, as appropriate.

7. If the defendant is a victim of ongoing domestic violence (victim defendant), use a course of action that will help place controls on the person's continued use of violence without making her or him more vulnerable to ongoing battering or abuse.
  - a. Specifically, consider whether charging the widest range or most severe crime furthers the goal of enhancing victim safety or whether, given the circumstances of the case, charges that do not trigger the full range of domestic violence consequences or filing no charges may be appropriate.
8. File charges that reflect the broad range of crimes committed in the case, except where considerations of victim safety, including the safety of victim defendants, warrant otherwise. As it applies to the circumstances of the case, consider the impact of no intervention or less aggressive intervention on potential risk and lethality as well as charging all crimes committed.
  - a. Evaluate the risk and lethality factors evident or suggested in the case.
  - b. Assess the possible consequences or benefits of charging all crimes, filing fewer charges or deciding not to charge the case.
9. The most appropriate charge may be a charge not specifically addressing domestic violence. Prosecutors shall consider all appropriate charges, including but not limited to:
  - Harassment
  - Stalking/cyberstalking
  - Violation of a P.O. or a domestic abuse stay away order
  - Domestic abuse aggravated assault
  - Simple Battery
  - Aggravated assault with a firearm
  - Assaults on witnesses
  - Terrorism
  - Disturbing the peace
  - Criminal damage to property
  - Assaults on responding officers
  - Witness tampering
  - Sexual assault
  - Home Invasion
  - Burglary
  - Trespassing





- Depriving another of custodial or parental rights
- Identity theft
- Animal abuse

## Information Sharing

1. When a decision is made to decline charges, promptly communicate that decision to the detective, if one is assigned to the case. If the detective believes there is merit to the case, discuss the case with the detective to determine if additional evidence can be gathered to support a charge.
2. Make information regarding the charging decision available to the following individuals and agencies, as applicable:
  - Prosecuting attorneys
  - DA victim/witness advocate
  - Victim and victim advocate
  - Detective
  - Arresting officer (in cases where there is no further investigation)

## Supervisors

1. The supervising prosecutor shall hold quarterly meetings with the police Domestic Violence Unit and the supervisor of the victim witness program, to review the thoroughness of investigations, discuss declined cases, and address any concerns that either detectives or prosecutors identify as needing resolution.
2. The supervising prosecutor shall periodically, select five cases at random and complete a case review with the law enforcement officer and prosecutor responsible for each reviewed case.
3. Supervisors shall work with local law enforcement to train law enforcement on relevant legal issues and investigation techniques that support minimizing dependence on victims of domestic violence.

## Bail and Pre-trial Release Framework

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Courts have two primary goals in setting the conditions under which a defendant will be released prior to trial: (1) ensure that the defendant will make future court appearances and (2) protect the community, the alleged victim, and any other person. Because of the unique circumstances of domestic violence-related cases, in which victims may be especially vulnerable to coercion and intimidation, the goal of protecting victims requires specific attention to victim safety and the defendant's risk of causing further harm to the victim.<sup>xvi</sup> Many jurisdictions require that both goals be taken into account when setting bail and pre-trial release conditions. For example, Louisiana law specifically requires that the judge determines whether the release of someone arrested for domestic abuse-related offenses poses a threat to the alleged victim, any other person or the community.<sup>xvii</sup> La C.cr.P. Arts. 334.2, 335.1, and 335.2 require a determination of the threat or danger to a victim when setting conditions of release for a defendant who is alleged to have committed any offense as defined in R.S. 46:2132(4) (offense against family or household member), R.S. 42:2151 (offense against dating partner), R.S. 14:35.3 (domestic abuse battery), or R.S. 14:40.2 (stalking).

Building sound pre-trial release practices involves paying increased attention to safety at the front end of the criminal justice process,<sup>xviii</sup> both in the specific conditions of release and through the wider interagency response. Elements in the interagency response include expanding victim/witness support, expediting access to orders for protection (which can provide broader, longer-lasting restrictions than pre-trial release conditions alone), prompt revocation of pre-trial release for new acts or threats of violence, and aggressively pursuing witness tampering and intimidation.

In an interagency effort to establish and enforce specific conditions of release for domestic violence crimes, the following elements, as part of an interagency response, involving the pre-trial release agency and the court, as well as the prosecutor's office, reinforce victim and community safety and address the high rate of re-abuse in domestic violence cases.

1. Advocates contact a victim as soon as possible, in ways that respect her or his fear and circumstances.
  - Determine whether the victim is afraid and if so, in what ways.
  - Follow up on responses to the risk questions documented in the patrol report and in the investigators report.
  - Tell the victim that in domestic abuse related cases the prosecutor generally requests a stay away order to shield the victim from retaliation or intimidation from the suspect.
  - Ask if a stay away order might have some negative consequences and probe to fully understand those consequences.
  - Ask about changes in injuries or new symptoms from the incident.

- Provide information about likely pre-trial conditions, including a written copy if requested, and answer the victim's questions.
2. Attorneys use all available sources of background information (e.g., patrol report, criminal history records, and databases, order for protection records) to ascertain the danger that a defendant poses to a victim; and
  3. Review responses to risk assessment questions and results of risk assessment tools when considering appropriate conditions of release to recommend.
  4. If the victim requests contact, consider each request on an individual basis, evaluating the risk to the victim if a stay away order is not issued and the difficulty faced by the victim if it is ordered. In most cases, request a stay away order.
  5. Take prompt action on violations of release conditions.
  6. Request pre-trial supervision of defendants where there is indication of escalating violence or serious concern by a victim or interagency partners about the probability of continued harassment and harm to the victim or children.
  7. Request that bail be set at an appropriate amount to not only ensure the defendant's appearance but to enhance the safety of the victim and the public.

Prosecutors are in a distinct position to articulate the nature of any threat and the related safety needs of the victim and others to the court and to make recommendations for conditions of pre-trial release that fit the circumstances of the case. They also have a distinct role in establishing and reinforcing an interagency response to develop guidelines for bail and conditions of release in domestic abuse cases. Additionally, the prosecutor plays a key role in ensuring that violations of conditions of release are handled promptly and that the consequences for violations are sure and swift.

## Bail and Pre-trial Release Policy

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Bail and pre-trial release settings shall be handled by Municipal Court attorneys for misdemeanor cases and by Magistrate attorneys for felony cases. All contact with and information needed from victims, in felony cases, shall be obtained by the DA victim/witness advocate assigned to the case in order to avoid the victim sharing her or his experience with several different practitioners.

In addition to adhering to general agency policy, prosecutors will abide by the following policy and protocol on bail and pre-trial release settings in domestic violence cases:

1. Utilize the widest possible range of sources of information to determine bail and pre-trial release conditions that ensure the safety of the victim and others, in accordance with the Bail and Pretrial Release Protocol.
2. Consider input from the victim and/or the victim's community advocate to assist in determining the circumstances of the case, the context and severity of the offense, and the bail and pre-trial release conditions that are most likely to ensure the victim's safety and the safety of others involved and the public.
  - a. In all cases, request a stay away order. If the victim requests contact, consider each request on an individual basis. In general, the prosecutor will request a stay away order be issued in domestic violence cases. However, if the victim requests contact, the prosecutor shall consider the request keeping in mind that in some cases a prolonged stay away order may result in hardship for the victim.
  - b. Consider the risk to the victim, if any, if a stay away order is not issued and the difficulty, if any, faced by the victim if it is ordered.
3. Use the factors included in Bail and Pretrial Release Protocol to determine the nature of the threat that the defendant presents to the victim and other persons and the related safety needs.
4. Make recommendations to the court for bail and conditions of pre-trial release that reflect the context and severity of the offense, the danger that the defendant poses, and the safety needs of the victim and the public, in accordance with Bail and Pretrial Release Protocol.
  - a. If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, consider the full range of conditions of release that will likely result in placing controls on the defendant's behavior and enhancing victim safety during the pre-trial period.

- b. If the defendant reasonably appears to be the victim of ongoing domestic violence consider whether requesting the full range of conditions of release in domestic violence cases is appropriate. Consider whether more limited conditions will meet the goal of victim and public safety and prevent the defendant from becoming more vulnerable to abuse.
5. In recommending bail and pre-trial release conditions, describe in detail to the court the violence that has occurred in this incident, the history of violence between the parties, the danger posed by the suspect to the victim and others based on this incident, the responses to the risk questions in the law enforcement reports, and the history between the suspect and the victim.
  6. In felony cases, provide the below listed risk information to the court that the Judge must consider in setting bail under Code of Criminal Procedure Article 330.3, newly enacted on August 1, 2014.
  7. The court shall take into consideration the previous criminal record of the defendant and any potential threat or danger the defendant poses to the victim, the family of the victim, or any member of the public, especially children. The court also shall perform a risk assessment giving ample consideration to risk factors including:
    - substance abuse
    - record of violence
    - prior threats with a dangerous weapon
    - gun ownership
    - employment status
    - threats to kill
    - forced sex
    - choking
    - control of daily activities
    - threats of suicide
    - threats to harm children; and
    - other relevant factors.

8. Take prompt action upon notice of a defendant's violation of conditions of pre-trial release to ensure sure and swift consequences. If defendant's violation is an act of violence, threat of violence, coercion, intimidation, or presents an increased risk to the victim, recommend that consequences include but not be limited to, forfeiture of bail and revocation of conditions.
9. Unless undertaken by an interagency partner, have the victim/witness advocate keep the victim informed of bail and pre-trial release conditions and procedures for reporting violations.

### **Supervisors**

1. Supervising prosecutors will conduct a quarterly review of a random sample of cases to ensure that bail amounts and conditions of pre-trial release account for the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
2. The review will also involve violations of conditions of bail to ensure that sure, swift and appropriate consequences for violations have been requested.

# Bail and Pre-trial Release Protocol

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Municipal and Magistrate attorneys shall abide by the following protocols in bail and pre-trial release settings in domestic violence cases.

1. Use the following sources of information as available to determine bail and pre-trial release conditions that best meet the safety needs of the victim and others.
  - a. Law enforcement reports of the current offense
  - b. 911 tapes and Incident Recall reports
  - c. Video recordings
  - d. Arrests and convictions, including all available databases
  - e. Input from victim or victim's advocate
  - f. Probation status and compliance
2. In determining the nature of the threat that the defendant presents to the victim and other persons, and their related safety needs, consider the risk information related to the current offense and past actions listed below (when available):

[NOTE: Evaluating dangerousness to the alleged victim as a basis for setting bail and imposing certain conditions of release may generate controversy. The defense bar and some judicial officers might consider it inappropriate to inquire into these factors at the pre-trial stage since the defendant is presumed innocent and such inquiries might bias the court. However, it is now well recognized in policy and statute that in order to fashion conditions of release the judicial officer should take into account the safety of the community, the alleged victim, and any other person. See e.g., ABA Standard 10-1.2; Bail Reform Act of 1984, 18 USC §§ 3141-3150; La C.cr.P. Arts. 334, 334.2, 335.1, and 335.2.]

- Information obtained from domestic violence-specific risk assessment questions
- Severity of the assault, how frequent and how recent
- Serious injury in this or prior assaults
- History and nature of past violence toward this victim and others
- Whether the parties are recently separated
- Specific attention to strangulation and stalking
- Threats to harm the victim or the children
- Threats of homicide or suicide
- Intimidation of the victim if she/he seeks help

- Indicators of extreme jealousy, controlling behavior
  - Sexual aggression and coercion
  - Violence towards pets
  - Criminal history and current probation status or other pending charges
  - Access to firearms and their use or threatened use
  - Current and past protection or harassment order, obtained by this or other victims
  - Excessive alcohol or drug use and its impact on defendant's actions
  - Mental health concerns and impact on defendant's actions
3. In recommending bail and pre-trial release conditions, describe to the court in detail (when known) the:
- a. Violence and coercion that has occurred in this incident
  - b. History of violence and coercion used by the defendant in this and other relationships.
  - c. Danger posed by the suspect to the victim and others based on this incident
  - d. Responses to the risk questions in the law enforcement reports
  - e. History of abuse between the suspect and the victim.
4. In determining what bond amount and which standard and domestic violence-specific conditions of bail and pre-trial release to recommend to the judge, consider the context and severity of the offense, the danger the defendant poses to the victim, and the safety needs of the victim and the public. Some risk factors and conditions to consider:

### **Misdemeanor Risk Factors**

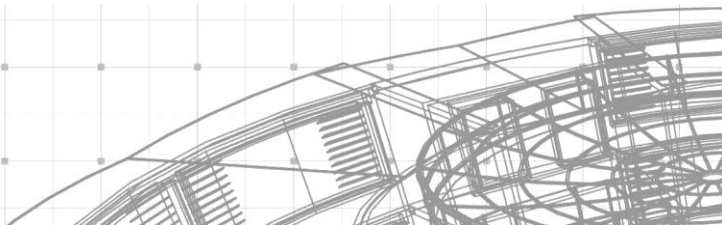
Low Risk: Conditional release or lower bail; little or no supervision

- No injury or harm
- No history of abuse
- Victim credibly expresses no fear
- Little or no risk of future harm
- No criminal history

### **Misdemeanor and Felony Risk Factors**

High Risk: High bail & extensive conditions; close supervision

- Severe injury, harm, or extreme violence
- History of ongoing abuse and violence





- Likely risk of future harm
- Criminal history
- History of non-appearance in court

### **Conditions of pre-trial release in domestic abuse cases**

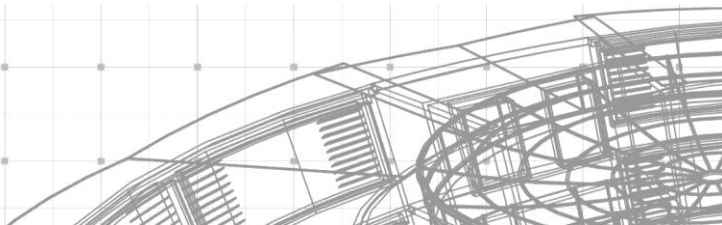
Standard conditions:

- No act prohibited by state, federal, or local law, even if it is not charged as a crime or does not result in a criminal conviction
- No violations of the law
- Make all court appearances

Domestic abuse–specific conditions:

- No contact with victim or victim’s family, direct or indirect, or through a third party (subject to considerations noted in the protocol)
  - No contact with or appearance at the victim’s residence, home, place of employment, school, or other designated locations
  - If the parties live together, a provision permitting the defendant to return to the residence to obtain personal belonging only if accompanied by an officer
  - Weekly in-person reporting to pre-trial supervision staff or supervising probation agent
  - No firearms possession
  - No use of alcohol or mood-altering chemicals not prescribed by a doctor
  - Periodic alcohol and drug testing
  - If applicable, contact with children to be supervised and defendant must obtain a family court order
  - In stalking and other appropriate cases, restrictions on offender’s movement and communication with or about the victim
5. Obtain and consider input provided by the victim or victim’s community advocate to establish the following in relation to bail and pre-trial release recommendations:
- a. Nature and impact of the current offense
  - b. Context and history of past violence
  - c. Consequences of imposing specific conditions of bail and pre-trial release, with particular attention to stay away orders (as noted in number 6)

- d. Conditions of bail and pre-trial release that are most likely to meet the victim's safety needs
6. Request a stay away order in all cases unless the victim requests contact. If the victim requests contact, consider the following factors in making recommendations regarding stay away orders:
    - a. A stay away order can impose significant hardships for a victim, particularly economic hardships which may increase risk given the victim's particular life circumstances.
    - b. Obtain information from the victim about the implications of a stay away order for the victim and her or his family.
    - c. Evaluate each case in the context and totality of the circumstances involved, taking into account: victim opposition; offender intimidation; victim fear; economic impact; and dangerousness of the offender.
    - d. Consider options that allow contact under limited conditions in cases where the risk factors indicate minimal risk, the victim has requested contact, and there is no evidence of coercion. Such conditions might include:
      - Allow contact but prohibit assaultive, harassing, threatening or stalking behavior.
      - Impose active pre-trial supervision.
      - Request pre-trial conditions such as counseling, weapons restrictions, and random drug and alcohol testing.
      - Allow contact by e-mail, phone or only in public places.
      - Request a time limitation on the stay away order, e.g., until enrolled in and attending domestic abuse counseling.
      - Allow contact but exclude the offender from the victim's residence.
  7. Unless undertaken by interagency partners, have the victim/witness advocate keep the victim informed of the status and enforcement of bail and pretrial release conditions.
  8. If defendant's violation is an act of violence, threat of violence, coercion, intimidation, or presents an increased risk to the victim, request forfeiture of bail and revocation of conditions (La C.cr.P. Art. 335.1(D)).



# Negotiated Plea Agreements & Sentencing Framework

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Negotiated plea agreements and sentencing recommendations are critical to furthering the goals of enhancing victim safety, holding offenders accountable for their behavior with a sure and swift response, and providing opportunities for rehabilitation. Prosecutors are in a position to reach agreements and emphasize consequences that reflect the context and severity of the offense, the danger that the defendant poses to the victim(s), and the safety needs of the victim and the public. In so doing, prosecutors help set the basis for the behavioral controls that the criminal justice system can place on defendants' future conduct. The plea agreement and sentencing recommendations are the foundation for future action by a number of others, including:

## **Probation**

The plea agreement and sentencing recommendations set the outside parameters and framework within which probation creates its plan for services and supervision of the defendant.

## **Victim**

The plea and sentence set the framework within which the victim and offender have or do not have contact and provide controls on offender behavior that enhance victim safety.

## **Law Enforcement**

The plea and sentence determines, in some cases, whether officers can arrest and hold for future enhanced charges and signals the relative dangerousness of the offender in future calls.

## **Prosecutor**

The plea and sentence affect the ability to charge an enhanced crime and/or to pursue a probation violation if a violation or a new case occurs.

## **Family Court**

The sentence affects decisions related to custody, visitation, and access to children.

The resulting sanctions and consequences can influence whether there is a subsequent arrest or incidence of violence. One researcher indicates that *“more rigorous sentences, including jail, work release, electronic monitoring, and/or probation, significantly reduce re-arrest for the domestic violence over the less intrusive sentences of fines or suspended sentences without active probation.”*<sup>xix</sup> Dispositions that address risk factors and impose appropriate sentences, including incarceration and supervised probation, can reduce the severity of ongoing abuse.

The type of violence and its context and severity are central factors in determining the terms of a plea agreement or sentencing recommendation that will best reflect the circumstances of the offense, the danger the defendant poses to the victim, others, and the victim's safety needs.<sup>xx</sup> When the defendant's actions are part of an ongoing pattern of intimidation, coercion and violence, requiring a plea to the most serious charge and a more severe sentence is appropriate.<sup>xxi</sup> When the defendant is a victim of ongoing violence who has used illegal violence in return (a "victim defendant"), an appropriate disposition may be a plea to a lesser offense and/or an agreement to a stay of imposition with probationary conditions that include support services that will aid in reducing the likelihood of the victim defendant using violence in the future.

A prosecutor is presented with a unique set of circumstances when negotiating a plea agreement with a victim defendant or making sentencing recommendations in such cases. Safety concerns and risk factors apply to both the victim in the current case and the victim defendant. While the statutory crime charged might be the same, there are significant differences *between the violence a victim defendant is using in response to abuse, and the violence they are experiencing* by this ongoing abuse.<sup>xxii</sup> In these cases, it is not a question of treating like cases alike, but rather of treating dissimilar cases differently.

# Negotiated Plea Agreements & Settlement Policy

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Negotiated plea agreements and sentencing recommendations shall be determined by the District Attorney and 1<sup>st</sup> Assistant District Attorney for all felony cases and shall be determined by the Chief of Trials at Municipal Court for all misdemeanor cases. District Court attorneys and Municipal Court attorneys shall provide information to their respective superior to make the plea offer decision based on the following policy and protocol. All contact with and information needed from victims, in felony cases, shall be obtained by the DA victim/witness advocate assigned to the case in order to avoid the victim sharing her or his experience with several different practitioners.

In addition to adhering to general agency policy, prosecutors will abide by the following policy and protocol on negotiated plea agreements and sentencing in domestic violence cases:

9. Utilize the widest possible range of sources of information to reach a negotiated plea or make sentencing recommendations that best meet the victim's safety needs, in accordance with the Negotiated Plea Agreements and Sentencing Protocol.
10. Consider input from the victim and/or the victim's community advocate to assist in determining the negotiated plea agreement or sentencing conditions that best reflect the circumstances of the case, the context and severity of the offense, and the victim's safety needs.
11. Ensure that the victim has the necessary information on and that processes are in place to secure victim's rights as required by law.
12. Negotiate plea agreements and make sentencing recommendations to the court that reflect the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public, in accordance with the Negotiated Plea Agreements and Sentencing Protocol.
  - a. If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, generally require a plea to the most serious charge(s) and recommend a more severe sentence as a means of placing controls on the defendant's behavior and enhancing victim safety.

- b. If the defendant reasonably appears to be the victim of ongoing domestic violence, consider a plea to a lesser offense or an agreement to a stay of imposition with probationary conditions that include support services that will aid in reducing the likelihood of the victim defendant using violence in the future and preventing her/him from becoming vulnerable to more abuse.
13. Recommend the judge order a presentence investigation in all felony domestic violence cases.
14. Review the presentence investigation report when available and at sentencing support the imposition of conditions recommended by probation. Alternatively, support and argue for different or additional conditions if in the prosecutor's judgment the PSI or probation recommendations do not contain complete and appropriate conditions in light of the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
15. In cases where charges include a non-domestic-related felony and a domestic-related misdemeanor that is not pursued, recommend conditions of probation include adequate domestic violence-related programming to the judge. If a pre-sentence investigation is ordered, discuss the domestic-related elements of the case with the PSI writer to ensure conditions of probation include domestic violence programming.
16. Appear at any proceedings that address violations of sentencing conditions, including admit or deny hearings, and argue for imposition of more severe consequences in all cases involving new threats or acts of abuse. If the violation involves an act of violence, threat of violence, coercion, or intimidation, take immediate steps to revoke probation.

## Supervision

1. Supervising prosecutors will provide or arrange for training as applicable to prosecutors, law enforcement, probation, and the judiciary on topics related to successful intervention in domestic violence-related cases, in accordance with Negotiated Plea Agreements and Sentencing Protocol.
2. Supervising prosecutors will conduct a quarterly review of cases in which a violation of probation involved violence, threat of violence, intimidation or coercion to ensure that immediate steps were taken to revoke the defendant's probation.

# Negotiated Plea Agreements & Settlement Protocol

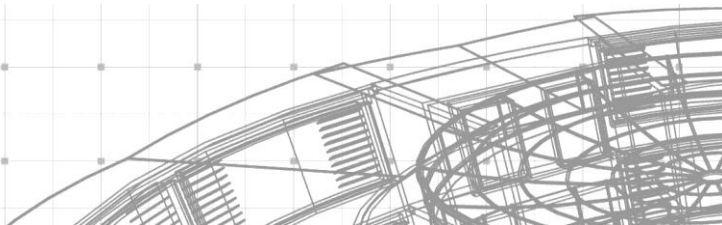
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Negotiated pleas and sentencing recommendations should further the multiple goals of controlling offenders' behavior, providing rehabilitation services to appropriate offenders, deterring future violence, and enhancing the safety of victims.

Municipal and District attorneys shall abide by the following protocols on negotiating plea agreements and making sentencing recommendations in domestic violence cases.

1. Use the following sources of information available to the prosecutor to evaluate the case and determine the conditions of the negotiated plea and sentencing recommendations:
  - Pre-trial evaluation and summary of compliance with conditions of release
  - Law enforcement reports of the current offense
  - Past law enforcement reports involving this suspect
  - Evidence collected at scene, e.g., photographs, broken phones, ripped clothing, other damaged property
  - 911 tapes and Incident Recall reports
  - Video recordings
  - Jail phone call recordings or other related documents
  - Past and current stay away orders, including P.O. pleadings (request a fax copy from the Louisiana Protective Order Registry).
  - E-mail, voice mail, text messages, letters, and other communication
  - Arrests and convictions, including all available data bases
  - Victim's responses to dangerousness or risk assessment questions
  - Communication with victim, either direct or (with victim consent) via community advocate or DA victim/witness advocate
  - Defendant's behavioral history in relation to possible stalking charges
  - Medical records

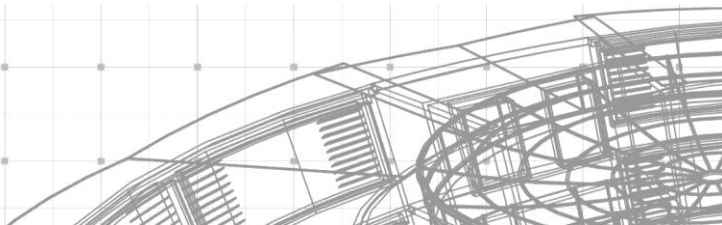
2. Consider input from the victim, the victim's community advocate, or DA victim/witness advocate to establish the following in relation to the terms of the negotiated plea and/or sentencing recommendations:
  - Nature and impact of the current offense
  - Context and history of past violence
  - Sanctions that are most likely to meet the victim's safety needs
  - Victim's relationship with the criminal justice system and its impact on her or his reaction to and support for prosecution
3. Ensure that the victim has the necessary information and that processes are in place to secure the following victim's rights:
  - Right to submit a victim impact statement (La. R.S. 46 § 1844(K)). The impact statement shall be read on the record in court, but the victim/witness advocate may read the statement at the victim's option. Request that proper court decorum be maintained while the impact statement is being communicated to the court.
  - Right to restitution. (L.A. Const. Art. I § 25; La. R.S. 46 § 1844(M)).
  - Right to notice of plea agreement, final disposition, any appeal, and expungement. (L.A. Const. Art. I § 25; La. R.S. 46 § 1844(B)).
4. Consider the following risk factors (when available) related to the current offense and past actions, with the victim in the current case, in determining the terms of the plea agreement and sentence, as obtained from a domestic violence-specific risk assessment, patrol and investigation reports, and other sources of information, e.g., an advocate
  - Type and severity of assault; how frequent, how recent
  - Serious injury in this or prior assaults
  - History and nature of past violence toward this victim and others
  - Current or recent separation between victim and defendant
  - Specific attention to strangulation and stalking
  - Threats to harm the victim or the children
  - Threats of homicide or suicide
  - Intimidation of the victim if she/he seeks help
  - Indicators of extreme or obsessive jealousy or controlling behavior
  - Sexual aggression and coercion
  - Violence towards pets
  - Criminal history and current probation status or other pending charges
  - Access to firearms and their use or threatened use
  - Current and past protection or harassment orders, obtained by this or other victims





- Alcohol or drug use and its impact on defendant's actions
  - Mental health concerns and impact on defendant's actions
5. Establish the nature and history of violence and coercion between the parties involved in the case in order to understand the context of the violence, fully inform the plea negotiation and sentencing recommendations, and advance the goals of victim safety and offender accountability and rehabilitation. Ask:
- To what extent is there a pattern of ongoing intimidation, coercion, and violence?
  - Who is perpetrating any such pattern, and against whom?
  - What is the severity of the violence?
  - What is the frequency of the violence?
6. Establish the seriousness of injuries and level of fear expressed by the parties. Ask:
- Who has been injured and how?
  - Who is afraid of whom and in what ways?
  - (Note: include fear of losing children, homelessness, loss of family, job, etc.)
  - What kind of threats have been made or coercion used to dissuade the victim from participating in the prosecution?
  - Who is more vulnerable to ongoing intimidation, coercion, and violence?
7. If children are involved, establish whether they have been present and/or used as an instrument of abuse by the party engaging in ongoing intimidation, coercion, and violence against the other. Ask:
- Has the abusive party physically harmed the children? If so, in what ways?
  - Has the victim been threatened that the children will be harmed? If so, in what ways?
  - Does the victim fear that the children will be taken by the abuser (abducted or via custody) in retaliation for participating in the prosecution?
  - Was the victim assaulted during pregnancy or shortly after giving birth?
  - Was a child 13 years of age or younger present during the incident?
8. Take the following factors into consideration in negotiating a plea agreement:
- Victim input
  - Severity and extent of harm to the victim
  - Difficulties with evidence that constrain the likelihood of success at trial
  - The need for active supervision of the defendant; in most cases request the maximum period of probation supervision
  - Opportunity for rehabilitation and offender's likely compliance

- Sufficient suspended sentence/probation to be a deterrent to continued wrongful conduct
  - A combination of time to serve, suspended sentence, active and inactive probation, appropriate to the severity of the crime and the harm caused.
  - Whether a defendant in custody at the time of a plea should remain in jail pending sentencing
  - Whether a defendant who will be released pending sentencing should be placed under supervised release
  - For felonies, sentencing ranges applicable to the jurisdiction, including, where appropriate, factors supporting departure
  - The sentencing enhancements available under LA R.S. 14:35.3 Domestic Abuse Battery
9. If there is information to strongly suggest that the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim, generally require a plea to the most serious charge(s) and recommend a more severe sentence as a means of placing controls on the defendant's behavior and enhancing victim safety.
10. If the defendant reasonably appears to be a victim of ongoing domestic violence, consider a plea to a lesser offense and/or an agreement that will help place controls on the person's continued use of violence without making her or him more vulnerable to ongoing battering or abuse. Consider whether a plea to the widest range and/or most severe crime furthers the goal of enhancing the safety of the victim of the ongoing domestic violence and the victim in this offense or whether a plea that does not trigger the full range of domestic violence consequences is instead appropriate.
11. Take into account the particular circumstances of the victim and defendant and attempt to minimize the potential disparate impact of the plea agreement, with specific attention to the following:
- Stay away orders and consideration of when a stay away order should be cancelled or modified based on risk factors and possible adverse impact related to economic support, isolating victim from her or his cultural community, and impact on children. Given the potential adverse impact on the victim and the effect on the victim's willingness to be supportive of probation supervision and enforcement of probation conditions; except in rare circumstances, probationary stay away orders should not be imposed over the objection of the victim.
  - Fines and costs of mandated programs, probation supervision, and incarceration on economic well-being of victim and children



- A defendant who is the victim of ongoing violence
  - A victim with a disability who is reliant on the perpetrator for ongoing care
12. Disseminate information regarding the negotiated plea and sentencing to the following individuals and agencies, as applicable:
- Victim
  - Community advocate
  - DA Victim/witness advocate
  - Detective assigned to the case
  - Arresting officer (in cases where there is no further investigation)
13. Provide the Probation Agency or presentence investigation report writer involved in the case information already obtained by the prosecutor when requested, e.g., past and current stay away orders, P.O. pleadings, including: affidavits, arrests and convictions; pre-trial evaluation; medical records (when appropriate); and all current and past domestic violence-related law enforcement reports.
14. Take an active role in recommending conditions of probation and responding to violations.
- Work with probation to craft conditions of probation that are clear, concrete, and enforceable.
  - Be prepared to request specific and additional consequences in the event of a defendant's violation of a condition of probation. If the violation involves an act of violence, threat of violence, coercion, or intimidation, take immediate steps to revoke defendant's probation.
  - When prepared, review the presentence investigation prior to sentencing and prepare to argue that conditions recommended by probation be imposed, if in agreement with the conditions.
  - Argue for different and/or additional conditions if in the prosecutor's judgment the PSI or probation officer's recommendation does not contain complete and appropriate conditions in light of the context and severity of the offense, the danger that the defendant poses to the victim, and the safety needs of the victim and the public.
  - Appear at any proceedings that address violations of sentencing conditions, including admit or deny hearings and argue for consequences that account for the egregiousness of the violation, impact on the victim's safety and other circumstances, and impact on public safety.

## Supervision

1. Provide training as applicable to prosecutors, law enforcement, and probation on the following topics related to successful intervention in domestic violence-related cases:
  - Risk factors
  - Role of thorough and complete investigation in establishing a sufficient evidentiary base to negotiate an appropriate plea agreement
  - Case preparation and evidence-gathering that reduces dependence on the victim
  - Presentence investigations that include thorough consideration of risk

## Chapter Five Endnotes

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- <sup>i</sup>. Vorenberg, (1981, pp. 1521, 1555).
- <sup>ii</sup>. National Prosecution Standards (§ 1.1 NDAA, 2nd Ed. 1991), asserting that the primary responsibility of prosecution is to see that justice is accomplished.
- <sup>iii</sup>. Long and Kristiansson (2007, p. 1-6).
- <sup>iv</sup>. Police report writing and investigation are important to successful evidence-based prosecution and convictions (Buzawa- et al., 2003, p. 22; Worden, 2003, p.).
- <sup>v</sup>. Asmus et al.(2005, p. 115); Dutton and Goodman (2005).
- <sup>vi</sup>. From a study of women’s responses to battering, Campbell et al. report that severity of abuse was only one factor in women’s decisions to remain in a violent relationship (1998, p. 757).  
  
Victims weigh safety and extralegal realities such as finances or housing against the potential for effective treatment and cessation of violence from the criminal justice system’s intervention. (Worden, 2003, p. 4).
- <sup>vii</sup>. For victim ambivalence regarding prosecution, see: Buzawa, Hotaling, and Byrne (2003); Buzawa et al. (2000); Ford and Breall (2000).
- <sup>viii</sup>. Dutton and Goodman (2005) and Johnson and Ferraro (2000).
- <sup>ix</sup>. See discussion of threatened retaliation and re-assault under Hart in Chapter 1, endnote #6.
- <sup>x</sup>. Belknap and Sullivan (2003); Buzawa, et al. (2003); Ford and Breall (2000); Goodman and Epstein, (2008).
- <sup>xi</sup>. McFarlane, et al. (2002): 51-68; Strack and McClane (1999).
- <sup>xii</sup>. McFarlane, et al. (1999); Campbell, et al. (2003).
- <sup>xiii</sup>. Ford and Breall (2000).
- <sup>xiv</sup>. In addressing issues related to defendants who are victims of ongoing abuse, prosecutors are encouraged to read Mary Asmus, *At a Crossroads: Developing Duluth’s Prosecution Response to Battered Women Who Fight Back* (2004, Rev. 2007).
- <sup>xv</sup>. Johnson and Ferraro (2000) use the term violent resistance to differentiate acts that do not necessarily meet the legal standards for self-defense.

<sup>xvi</sup>. Prosecutor’s Toolkit published by the National Center for the Prosecution of Violence Against Women of the American Prosecutors Research Institute. Available at: [http://www.ndaa.org/apri/programs/vawa/vaw\\_home.htm](http://www.ndaa.org/apri/programs/vawa/vaw_home.htm).

Long and Kristiansson (2007).

<sup>xvii</sup>. Determinations regarding the nature and seriousness of danger to other persons or the community are required under La C.cr.P. Art. 334 when setting the bail amount for any crime. Determinations of threat or danger to the victim are required under La C.cr.P. Arts. 334.2, 335.1, and 335.2 when setting conditions of release of a defendant who is alleged to have committed an offense as defined in R.S. 46:2132(4), R.S. 42:2151, R.S. 14:35.3, or R.S. 14:40.2.

<sup>xviii</sup>. This discussion and list of pre-trial release practices that maximize safety for victims of domestic violence has been adapted from Sadusky (2006).

<sup>xix</sup>. Klein (2008, Part II, p. 40).

<sup>xx</sup>. Dutton and Goodman (2005); Johnson and Ferraro (2000).

<sup>xxi</sup>. Erskine (1999) argues that when high-risk markers are visible, additional charges of coercion, intimidation, harassment, or stalking present a more complete picture of the nature and harm done to the victim.

Hofford (1991; pp. 12-17) promotes maximum supervision of domestic violence offenders. She argues that “the risk of recidivism is extremely high; felonious assaults are frequently reduced to misdemeanors in these cases; the community is at risk of future violence; a great majority of offenders have substance abuse problems. In addition, it is likely that perpetrators of family violence have committed the crime a number of times in the past; these offenders typically rationalize their criminal behavior; they know and have easy access to their victims.”

Buzawa et al. (2003, p. 20) suggest that prosecutors “strive to file felony charges as opposed to misdemeanor charges, especially in very serious cases with hardcore offenders.” Also see Ford and Breall (2000).

<sup>xxii</sup>. Johnson (2008, p. 10) discusses defendants who are also victims of domestic violence. He points to a pattern that is visible in these relationships where one partner uses violence but not coercive control and the other partner uses both physical violence and coercive control.