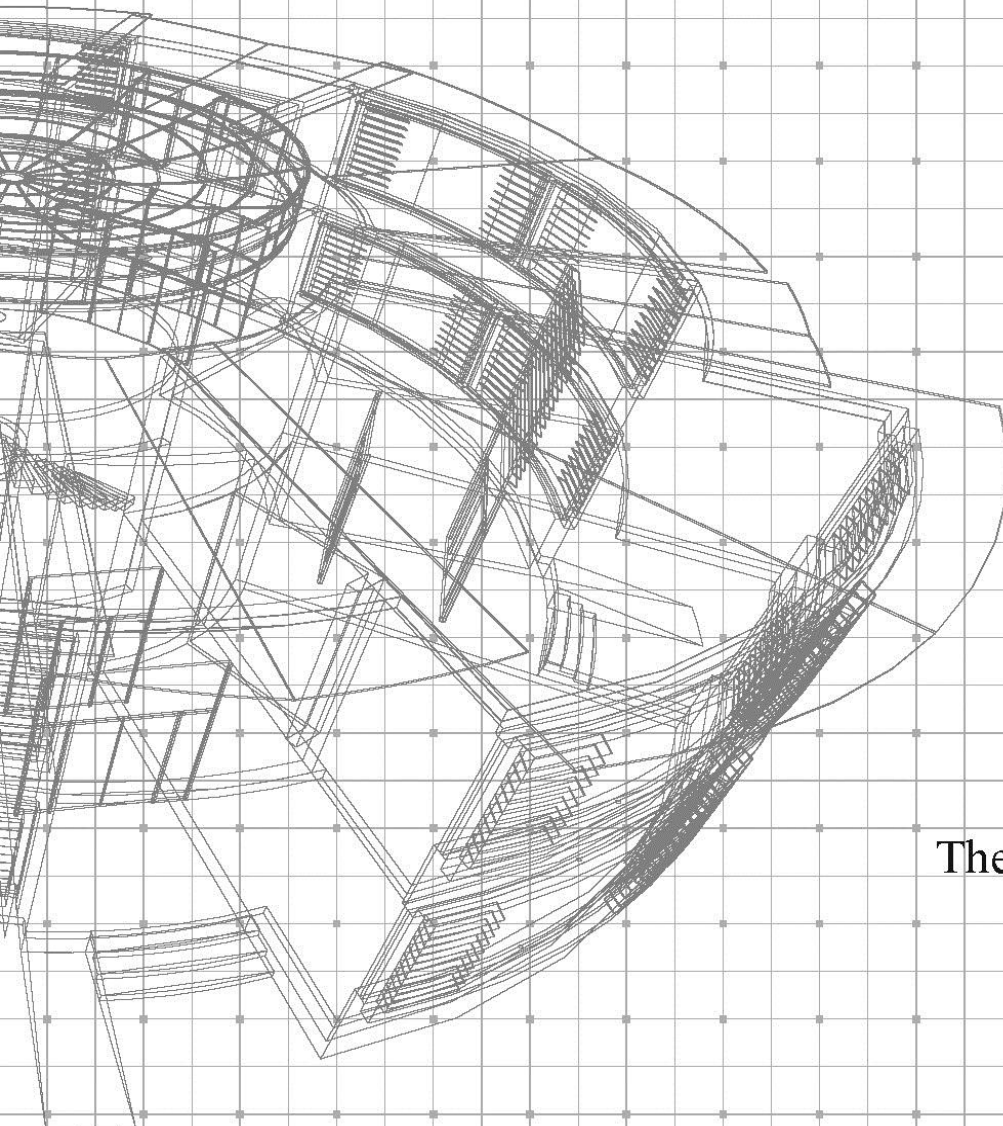


# Prosecution

Duluth City Attorney's Office  
St. Louis County Attorney's Office



The Duluth  
**blueprint**  
*for* **safety**

# Prosecution

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## Duluth City Attorney's Office: Domestic Violence Policy

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### Preface

The Duluth City Attorney's Office is committed to engaging in a coordinated, community-based approach to intervening in domestic abuse incidents. The prosecution of these cases builds the foundation for determinations of justice. The Duluth City Attorney's Office prioritizes the goals of victim safety, offender accountability, and creating a general deterrence to domestic violence in the community.

In addition to following general agency policy, City prosecutors will observe these policies in domestic abuse-related cases, using the training memos referenced and included.

These policies 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 the prosecutor's office.

These policies should be reviewed yearly by supervisory personnel.

### Table of Contents

The prosecution policy consists of the following sections and attachments:

#### Sections

- Making Charging Decisions
- Determining Bail and Pre-Trial Release Conditions
- Negotiating Plea Agreements and Making Sentencing Recommendations
- Prosecuting Cases in Which the Defendant Has a History of Physical Abuse by the Victim of the Offense: The Duluth City Attorney's Office Crossroads Program
- Collaborating with Other Criminal Justice and Community Agencies
- Policy Implementation and Compliance

## **References**

The following attachments are included with this chapter:

- Crossroads Program Prosecution Guidelines
- Crossroads Program Evaluation Guidelines for Probation Officers and Prosecutors

The following appendices and training memos referenced in this chapter are available online from Praxis International's *Blueprint* Materials

([http://www.praxisinternational.org/blueprint\\_materials.aspx](http://www.praxisinternational.org/blueprint_materials.aspx)):

- *1A Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *1B Training Memo - Risk and Dangerousness*
- *1C Training Memo - Intervention with Victims of Battering as Suspects or Defendants*
- *1E History of Domestic Violence Summary*
- *3I Training Memo - How a Defense Attorney Reads a Police Report*
- *3J Training Memo - How a Prosecutor Reads a Police Report*
- *5A Training Memo - Implications of Crawford and Davis for Prosecution of Domestic Abuse Cases*
- *5B Training Memo - The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases*
- *5C Training Memo - Use of Expert Witnesses in Domestic Violence Cases*
- *5D Sample Policy Language - When to Compel a Victim to Testify*
- *5E Guide to Bail Setting, Conditional Release and Enforcement*
- *5F Training Memo - Addressing Uncharged Sexual Abuse in Domestic Abuse Cases*
- *8A Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases*

## **Making Charging Decisions**

### **Introduction**

Charging decisions should further the multiple goals of enhancing victim safety, holding the offender accountable for his or her behavior, controlling an offender's behavior, providing rehabilitation services to appropriate offenders, and deterring future violence by the offender or others. Four types of cases come to the Duluth City Attorney's Office for charging: gone-on-arrivals, the uncharged parties in predominant aggressor arrests, formal complaint requests, and miscellaneous cases.

### **Determining Prosecutorial Authority**

**Policy 1: In the following circumstances, return the case immediately to law enforcement with an explanation as to why it is being referred back.**

- Cases in which prior convictions would enhance the current charge to a gross misdemeanor or felony
- Cases in which a consideration of the evidence suggests that gross misdemeanor or felony charges would be appropriate, such as degree of injury, terroristic threats, stalking, strangulation, and sexual assault

### **Compiling Evidence**

**Policy 2: Use the widest possible range of information sources and request additional evidence as needed to evaluate the case and make the charging decision, including a request for further investigation to avoid having to decline a case.**

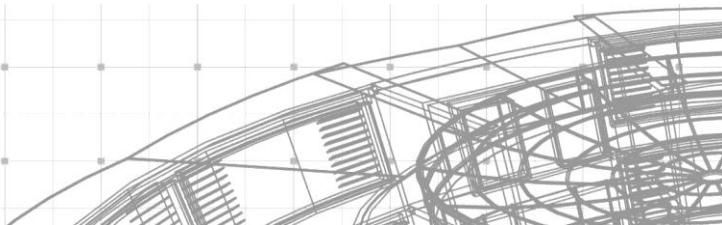
- If more investigation is needed, contact the DVRT investigator. Specify what additional information is needed, including information from other jurisdictions. Evaluate the case for additional charges or amended charges as additional evidence is gathered.

### **Resources for Gone on Arrivals, Predominant Aggressor, Formal Complaint Requests, and Miscellaneous cases:**

- Law enforcement reports for the current offense
- CAD Reports
- Body cam recordings
- Arrests and convictions, including all available databases

### **Additional resources for Gone on Arrivals, Predominant Aggressor, Formal Complaint Requests, and Miscellaneous cases:**

- Past law enforcement reports regarding the suspect
- Past and current protection orders, harassment restraining orders, and no contact orders, including affidavits
- Summary of any previous presentence investigation reports on the suspect
- Evidence collected at the scene (such as photos, broken phones, ripped clothing, or other damaged property)
- Victim's responses to dangerousness or risk assessment questions documented in current and past law enforcement reports



- Communication with the victim, either directly or, with victim consent, via community advocate and/or victim services staff
- Emails, voicemails, text messages, letters, and other communication
- Medical records
- Jail phone call recordings

### **Filing Charges**

**Policy 3: File charges against the offender that reflect the broad range of crimes committed in the case as supported by the evidence, such as trespassing, criminal damage to property, disorderly conduct, violation of a restraining order, and witness tampering.**

**Policy 4: Give precedence to domestic cases appearing to present the greatest risk (based on the evidence and the victim’s responses to risk questions) over non-domestic, non-custody requests for charges.**

- Charge gone on arrival cases within 30 days, even if an interview with the suspect has not been obtained.
- Request a warrant in those cases in which the suspect poses high risk and the determination is made that charges should be filed.

**Policy 5: At the request of the Domestic Violence Response Team (DVRT), and upon review of the facts in a domestic-related offense for the purposes of establishing bail and pre-trial release recommendations, the prosecutor may choose to file with the court a written complaint setting forth the facts establishing probable cause for the charged offense. This election to submit a written complaint will be at the discretion of the prosecutor for cases in which the prosecutor believes that the defendant’s behavior is egregious.**

### **Declining Charges**

**Policy 6: If a decision is made to not charge the case, make a reasonable effort to notify the victim, pursuant to Minn. Stat. § 611A.0315. Additionally, provide information to the victim about the method and benefits of seeking an order for protection or a restraining order.**

## **Determining Bail and Pre-Trial Release Recommendations**

### **Introduction**

By making bail and pre-trial release recommendations, prosecutors play an important role in helping courts understand the risks posed to victims and the public by domestic violence offenders. Domestic violence-related cases present unique circumstances in which victims may be especially vulnerable to coercion and intimidation. Consequently, the goal of protecting victims requires

specific attention to victim safety and the defendant's risk of causing further harm to the victim. Minnesota law specifically requires the court to decide whether the release of someone arrested for a domestic abuse-related offense poses a threat to the alleged victim, another family or household member, or public safety. Minn. Stat. § 629.72 requires this determination when setting conditions of release for an arrest for domestic abuse, harassment, or violations of an order for protection or a domestic abuse no-contact order. This statute also requires the court to make a determination of the defendant's potential risk to victim safety and the likelihood that the defendant will fail to appear at subsequent proceedings. The prosecutor provides the State's position to the court regarding both victim safety and the defendant's likelihood to appear.

### **Obtaining Information**

**Policy 7: Obtain the DVRT file to determine bail and pre-trial release conditions that best meet the safety needs of the victim and others.**

In-custody cases:

- The DVRT File and Bail Request Form will be sent from the Domestic Violence Response Team to the Duluth City Attorney's Office prior to arraignment.

Non-custody citations:

- In cases viewed as high risk, the Domestic Violence Response Team will send a DVRT file and Bail Request Form to the City Attorney's Office prior to the defendant's scheduled arraignment.

Warrant requests:

- The Domestic Violence Response Team will send a DVRT file and Bail Request Form to the City Attorney's Office with each warrant request.

Formal complaint requests:

- If not already received, the City Attorney's Office may request a DVRT file and Bail Request Form from the Domestic Violence Response Team.

### **Using the Information**

**Policy 8: Use the information in the DVRT file, along with any input provided by the victim or victim's advocate, to assess the risk posed by the offender to the victim, family, or the public, and the likelihood of the offender to appear at subsequent proceedings.**

- Consider all contents of the DVRT file, including law enforcement reports, the risk factors related to the current offense, and the Summary Risk Management Sheet.

- Consider the context and history of past violence when reviewing the victim’s input and answers to risk questions. (For example, a victim may downplay the risk, but all other information about the situation indicates high risk.)

Low risk cases may include:

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

High risk cases may include:

- Active chemical abuse
- Threats to use firearms
- History of ongoing abuse and violence
- Behaviors that are sexually abusive and/or attempts at strangulation

### **Making Recommendations**

**Policy 9: Use the Bail Request form to make bail and pre-trial release recommendations for in-custody cases and for high risk non-custody cases.**

- Review and complete the Bail Request form, using the contents of the DVRT file.
- Make determinations about whether to request a DANCO, a bail amount, and/or bail with conditions. Request a DANCO in all cases unless information is provided that the victim requests contact. In those situations, evaluate the victim’s request using *8A Training Memo—Use of No-Contact Orders in Domestic Violence Criminal Cases*.
- Electronically transfer the Bail Request form to court administration.
  - For in-custody cases, transfer the form prior to the in-custody arraignment.
  - For non-custody cases, transfer the form prior to the non-custody arraignment.

## **Negotiating Plea Agreements and Making Sentencing Recommendations**

### **Introduction**

Negotiated plea agreements and sentencing recommendations are critical to furthering the goals of enhancing victim safety, holding offenders accountable for their behavior, 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, and the safety needs of the victim and the public. In so doing, prosecutors help

build the foundation for the behavioral controls that the criminal justice system can place on defendants' future conduct.

### **Compiling Evidence and Information**

**Policy 10: Compile the widest possible range of information sources to evaluate the case and determine the conditions of the negotiated plea and sentencing recommendations.**

Resources include:

- Law enforcement reports of the current offense, including CAD reports
- Body cam recordings
- Evidence collected at the scene, e.g., photographs, ripped clothing, other damaged property
- 911 tapes
- Arrests and convictions
- Medical records
- The DVRT file
- Past law enforcement reports involving this suspect, if appropriate
- Past and current DANCOs, OFPs, and HROs
- Email, voice mail, text messages, letters, and other communication
- Communication with the victim, either direct or via the victim's advocate

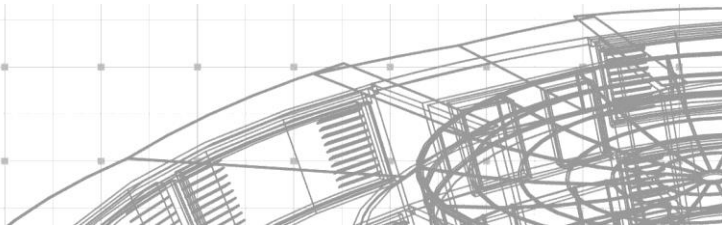
**Policy 11: Obtain input from the victim, or victim's advocate, to establish the following:**

- 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
- Impact of a conviction on the economic resources of the victim

### **Working with Victims**

**Policy 12: Provide information to the victim of her/his statutory rights under Minnesota Statutes 611A.**

- Send a resource packet to the victim by mail. The resource packet contains a cover letter, a victim impact statement to complete and return, and a brochure outlining the statutory rights of victims. Send the packet allowing sufficient time for the victim to complete and return it before pretrial.





- Attempt telephone contact with the victim prior to the pretrial conference, using all sources of information provided to the office, including contact information for someone who the victim has indicated will always know how to reach her or him.
- Respond to contacts from the victim or victim’s advocate.
- Be prepared to communicate in the victim’s first language and in ways that address limited English proficiency and literacy, and accommodate for those with disabilities. If a victim’s language is known to be other than English, send the resource packet in the victim’s first language.

**Policy 13: Act in ways that prioritize safety and respect the victim’s circumstances and fear of the defendant.**

- Approach domestic violence–related cases in ways that minimize the participation of the victim, understanding that she or he may be unavailable to testify. Do not threaten or place the victim in custody to ensure witness availability.
- Be mindful of the often dangerous consequences of a victim’s collaboration with interveners. When using information provided by the victim, attempt to protect her or him from retaliation and stay alert to attempts at intimidation and coercion designed to prevent the victim’s participation. Do not file criminal charges against a recanting victim.
- Consider the impact of involvement with the criminal justice system in the life of the victim, including financial, social and emotional consequences.
- Be prepared to take prompt action for witness tampering by the defendant and to use the doctrine of forfeiture by wrongdoing. (See *5B Training Memo - The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases.*)
- Emphasize at every opportunity that pursuing charges is not the victim’s decision. Instead, it is the prosecutor’s decision on behalf of the state and the community.
- Make a reasonable effort to keep the victim informed of the status of the case, including a negotiated plea agreement and final disposition. (See Minn. Stat. § 611A.03 and 611A.039.)
- Make a reasonable effort to ensure that the victim has been offered the opportunity to:
  - Submit a victim impact statement. The impact statement may be presented to the court orally or in writing, at the victim’s option. If the victim requests, the prosecutor will orally present the statement to the court. (See Minn. Stat. § 611A.038.)
  - Submit an affidavit for restitution, when applicable. (See Minn. Stat. § 611A.04 and 611A.045.)

### **Using the Evidence and Information**

**Policy 14: Evaluate the case from the standpoint of whether there exists sufficient admissible evidence to sustain a conviction.**

Use the following training memos when evaluating a case:

- *5A Training Memo - Implications of Crawford and Davis for Prosecution of Domestic Abuse Cases*
- *5B Training Memo - The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases*
- *5C Training Memo - Use of Expert Witnesses in Domestic Violence Cases*

**Policy 15: Consider the nature and history of violence and coercion between the parties involved in the case.**

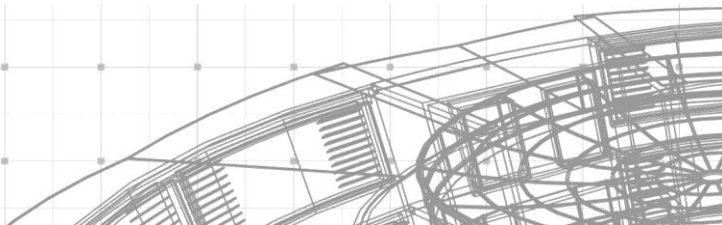
- To what extent is there a pattern of ongoing intimidation, coercion, and violence?
- Who is perpetrating any such pattern, and against whom?
- What is the severity of the violence?
- What is the frequency of the violence?

**Policy 16: Consider the seriousness of injuries and level of fear expressed by the parties.**

- 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?

**Policy 17: Consider the following additional factors when 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
- Forfeiture by wrongdoing
- Whether and in what ways children were drawn into the abuse
- The need for active supervision of the defendant by Probation
- Opportunity for rehabilitation
- Sufficient stayed time to influence the defendant to abide by the conditions of probation



- Whether the defendant is engaging in an ongoing patterned use of intimidation, coercion, and violence toward the victim
- Whether the defendant appears to be a victim of ongoing domestic violence. If so, refer to the policies and procedures for the Duluth City Attorney's Office Crossroads Program

### **Negotiating an Agreement**

**Policy 18: If possible, when the defendant is engaging in an ongoing, patterned use of intimidation, coercion, and violence toward the victim, seek an enhanceable conviction as a means of placing controls on the defendant's behavior and promoting victim safety.**

### **Participating in the Sentencing Process**

**Policy 19: Provide the Probation pre-sentence investigation writer with information already obtained by the prosecutor that is not contained in the law enforcement reports and DVRT file.**

This can include, for example:

- Victim's viewpoints and wishes
- Medical records (if appropriate)
- Current contact information for the victim

**Policy 20: When possible in high risk cases or at the request of probation, attend sentencing hearings and argue for appropriate conditions of probation.**

- At the request of Probation, review the pre-sentence investigation report and, if in agreement with the conditions recommended, be prepared to argue that the conditions be imposed.
- In most cases, ask for the defendant to be ordered, as a condition of probation, to attend and complete DAIP programming and, if appropriate, substance abuse treatment.
- In most cases, ask for a probationary no contact order, at the victim's request. In rare cases it may be appropriate to request a probationary no contact order over the victim's objection if the risk of further harm is high.
- Argue for different and/or additional conditions if, in the prosecutor's judgment, the pre-sentence investigation report 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.

**Policy 21: When possible in high risk cases or at the request of probation, appear at proceedings that address violations of sentencing conditions, 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.**

## **Prosecuting Cases in Which the Defendant Has a History of Physical Abuse by the Victim of the Offense: The Duluth City Attorney’s Office Crossroads Program**

### **Introduction**

Cases in which victims of battering fight back against their abusers present special challenges to prosecutors who are seeking justice in domestic violence cases. How can the multiple goals of enhancing victim safety, holding offenders accountable for their behavior, and deterring future violence be furthered when the defendant is the victim of ongoing physical abuse by the person now alleged to have been assaulted? The City Attorney’s Office created the Crossroads Program to guide us as we make decisions in these difficult cases.

### **Making Charging Decisions**

Refer to the section of the prosecution policy, “Making Charging Decisions.” In addition, see Policy 22 below:

**Policy 22: If the offender has a history of physical abuse by the victim in the offense, consider whether charging the widest range of crimes or the most severe crime furthers the goal of enhancing the safety of either person. Given the circumstances of the case, consider whether less severe charges or no charges should be brought.**

### **Determining Bail and Pre-Trial Release Recommendations**

Refer to the section of the prosecution policy, “Determining Bail and Pre-Trial Release Recommendations.” In addition, see Policy 23 below:

**Policy 23: If the defendant reasonably appears to have a history of physical abuse by the victim in the incident, consider whether more limited pre-trial release conditions will meet the goals of victim and public safety and prevent the defendant from becoming more vulnerable to abuse.**

### **Negotiating Crossroads Agreements: Procedures for Admitting a Defendant into the Crossroads Program**

Refer to Duluth City Attorney’s Office, “Crossroads Program Prosecution Guidelines” and “Crossroads Program Evaluation Guidelines for Probation Officers and Prosecutors.” The

Crossroads Program involves a two-step evaluation process. Initial eligibility is considered, followed by a second step involving a complete evaluation. Probation assists the City Attorney's Office with the second step by interviewing the defendant.

#### Evaluating the Case

**Policy 24: Review the case for eligibility for initial consideration, according to the Crossroads Program Prosecution Guidelines. If the case meets the requirements for initial consideration, determine whether the defendant is willing to be considered for admission to the program. If so, refer the case to Probation for input. Reset the case to another pre-trial date at least four weeks out to allow time for Probation to provide input and discuss the matter with the assigned prosecutor.**

**Policy 25: Review the case with Probation to determine whether the defendant meets the criteria for admission into the Crossroads Program. Evaluate all information related to the factors considered for admission, including any input received from the defense attorney or battered women's advocate. As the prosecutor, make a decision as to whether the defendant should be admitted.**

#### Making a Record in Court

**Policy 26: If the defendant agrees to participate in the Crossroads Program, make a record at the next pre-trial hearing of the defendant's admission into the program, with the defendant present.**

- In most cases, defer prosecution for one year, on the condition of participation in the women's non-violence group at the DAIP (or equivalent individual programming for a male defendant.)
- In cases in which abuse of alcohol appears to be directly related to increased safety risks for the defendant, consider requiring alcohol treatment or no use of alcohol as a condition of participation in the Crossroads Program.
- In many cases, require a factual basis on the record from the defendant. If the defendant's safety is likely to be further compromised by an admission to the facts, consider waiving an admission to the offense(s).
- Complete the "Crossroads Program – Duluth City Attorney's Office" deferral agreement form. Obtain the defendant's signature and file the original form with the court at the pre-trial hearing. Provide copies to the defendant, defense attorney, and Probation. File a copy in the City Attorney's Office file.

Monitoring the Defendant's Participation in the Program

**Policy 27: Communicate with Probation about the defendant's compliance with the terms of the Crossroads Program deferral agreement and follow up accordingly.**

- If the defendant fails to comply with the conditions of the deferral, reinstate the charges and continue prosecution of the matter.
- Dismiss the deferred criminal charge(s) if the defendant complies with all of the terms of the deferral agreement.

**Collaborating with Other Criminal Justice and Community Agencies**

**Introduction**

Consistent with the development and practices of the Duluth Model, coordination with other agencies in our criminal justice system and in the community create a foundation for implementing the goals of enhancing victim safety, holding offenders accountable for their behavior, and deterring future violence by the offender or others. The *Blueprint for Safety* is building on the coordinated, community-based approach facilitated by the DAIP. Consequently, cooperative working relationships by criminal justice and community domestic violence agencies are crucial to achieving just results in domestic violence cases.

**Working with Law Enforcement**

**Policy 28: Work with law enforcement to advance the goals of victim/public safety, offender accountability, and rehabilitation.**

- Meet annually with the DAIP, law enforcement, and prosecutors from relevant prosecutorial jurisdictions to review the thoroughness of investigations, discuss declined cases, and address any concerns that either investigators or prosecutors identify as needing resolution.
- Periodically select five cases at random and complete a case review with the law enforcement officer and prosecutor responsible for each reviewed case.
- Work with local law enforcement to train officers on relevant legal issues and investigation techniques that will reduce the court system's need for testimony from victims of domestic violence.

**Working with Probation**

**Policy 29: Work with Probation to advance the goals of victim/public safety, offender accountability, and rehabilitation.**

- Meet with the DAIP and Probation on an as-needed basis to discuss cases and address any concerns that probation officers or prosecutors identify as needing resolution.

- Work with Probation to draft conditions of probation for domestic violence cases that are clear, concrete, and enforceable.

### **Working with the DAIP**

#### **Policy 30: Work with the DAIP to advance the goals of victim/public safety, offender accountability, and rehabilitation.**

- Meet with the DAIP on an as-needed basis to discuss cases and address any concerns that the DAIP identifies as needing resolution.
- Annually review a random sample of cases to ensure that policies for setting bail amounts and conditions of pre-trial release are being followed.
- Annually review a random sample of negotiated pleas to ensure that related policies are being followed.
- Annually review a random sample of sentencing recommendations to ensure that related policies are being followed.

### **Policy Implementation and Compliance**

#### **Policy 31: The City Attorney will provide that the above policies are implemented and followed to ensure that actions taken in handling cases 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.**

- Meet periodically with law enforcement and prosecutors from relevant prosecutorial jurisdictions to discuss cases that have been declined for prosecution and the thoroughness of investigations.
- Meet with law enforcement as requested to review individual cases that have been declined for prosecution.

#### **Policy 32: The City Attorney will help facilitate prosecutors' participation in ongoing interagency monitoring, evaluation, and maintenance and arrange for training as applicable to prosecutors, law enforcement, probation, and the judiciary on topics related to successful intervention in domestic violence–related cases, such as:**

- Risk factors
- Role of thorough and complete investigation in establishing a sufficient evidentiary base to negotiate an appropriate plea agreement

## Chapter 5: Prosecution

- Case preparation and evidence-gathering that can reduce the court system's need for testimony from victims of domestic violence
- Pre-sentence investigations that include thorough consideration of risk



# Crossroads Program: Prosecution Guidelines

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## Introduction

The Crossroads Program is a program intended for victims of ongoing domestic abuse who are charged with criminal offenses against their partners. It is designed to provide participants an opportunity to address their use of violence within the larger context of their victimization. The program seeks to hold participants accountable without invoking the full ramifications of the criminal court process.

## Definitions

The guidelines rely on the following definitions:

- A defendant is a person who is charged with a domestic-related offense and has a history of physical abuse by the complainant.
- A complainant is a person who is the victim of a domestic-related offense and has a history of physically abusing the defendant.
- A deferral is the agreement of the State and defendant to a stay of prosecution for a specified time period, after which criminal charges against the defendant will be dismissed if the defendant successfully completes the terms of the stay.

## Goals

The goals of prosecution in these cases are:

- To protect the complainant from additional acts of violence committed by the defendant.
- To hold the defendant accountable for using violence without creating greater vulnerability to continued abuse.
- To deter either person from committing continued acts of violence against others.
- To create a general deterrence to domestic violence in the community.

## Eligible Offenses

Domestic-related criminal charges, particularly assault or disorderly conduct, will be considered for deferral under this program.

## Eligibility for Initial Consideration

- The defendant must have a history of physical abuse by the complainant.

## Chapter 5: Prosecution

- The defendant should not have any pending or previously deferred charges or convictions under any state laws or any local ordinances for:
  - assault
  - gross misdemeanor obstructing legal process

It is highly unlikely that an applicant would be fully reviewed for admission into the program with any pending or deferred charges or convictions noted above. A record of other violence may also preclude the defendant from full consideration.

- The defendant must submit a written application to the City Attorney's Office
- The defendant has not previously been admitted to the Crossroads program.

### **Factors Considered for Admission**

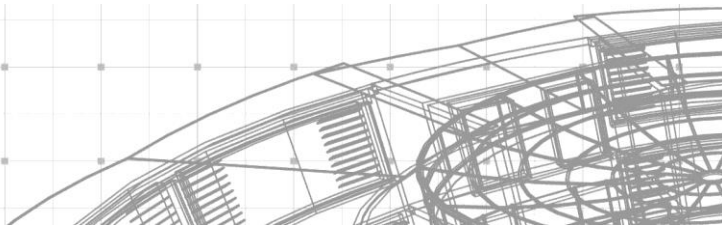
The prosecutor will review each case file and make a determination regarding admission into the program based on consideration of the following factors:

- the probation department's recommendation
- the defendant's criminal history
- the defendant's history of violent behavior
- the defendant's history of victimization by the complainant
- the severity of the incident
- the nature of the defendant's admission to the charged offense(s)
- the views of the complainant
- the circumstances surrounding the use of violence
- the motives for the use of violence
- the defendant's willingness to participate in recommended education and counseling programs

### **Deferral of Case**

Upon admission into the Crossroads Program, the prosecutor will defer the criminal charge(s) against the defendant for an agreed-upon time period. Conditions of the deferral program may include, but not be limited to:

- full admission to the charged offense(s)
- successful completion of recommended education and counseling programs



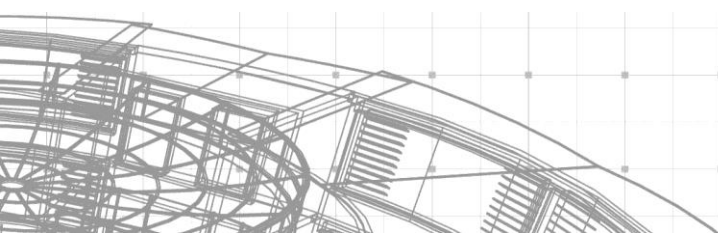
- no same or similar incidents
- restrictions on the use of alcohol

### **Reinstatement of Charges**

The prosecutor may reinstate the criminal charge(s) at any time before the expiration of the deferral period if the defendant fails to comply with any of the conditions of the agreement.

### **Dismissal of Charges**

The prosecutor will dismiss the deferred criminal charge(s) if the defendant complies with all of the terms of the deferral agreement.



## **Crossroads Program: Evaluation Guidelines for Probation Officers and Prosecutors**

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### **Defendant's Criminal History**

To be eligible for the Crossroads Program, the defendant should not have any pending or deferred charges or convictions under any state law or local ordinance for assault or gross misdemeanor obstructing legal process. In order to account for some rare situations in which a previous conviction would not compromise the intent of the program, the policy uses the words should not, rather than, must not. Typically a past conviction will result in immediate rejection from consideration. However, if the defendant makes a reasonable argument that a past conviction does not compromise the intent of the program, then the probation officer should proceed with the investigation. The interviewing probation officer should document all other convictions, arrests, and police incident reports involving the defendant. In doing so, the probation officer provides the prosecutor with a general picture of the scope and nature of any criminal activity in which the defendant has been involved. The intent of these guidelines is not to exclude people with a previous criminal history from this program but rather to exclude people who have a history of aggressive, abusive, and violent behavior. If the probation officer believes that a pattern of criminal activity indicates that the defendant does in fact have an ongoing problem with aggressive and violent behavior, the probation officer should recommend against acceptance into the program.

### **Defendant's History of Violent Behavior**

In this category the probation officer will be documenting the history of violence that the defendant has used against his or her partner and the history of violence that the person has used in other situations not reflected in the criminal background check. The probation officer would obtain this information from interviews with the defendant and the complainant and from their statements. It would be expected that the defendant may have been violent more than once with this partner if both the relationship and the complainant's abuse have existed over an extended time period. However, if the defendant shows a pattern of widespread use of violence in many different relationships or circumstances, then the probation officer should recommend against admittance into the program.

### **Defendant's History of Victimization by the Complainant**

The assumption of the Crossroads Program is that the defendant is being battered by the complainant, i.e., that the complainant has established a pattern of coercion and intimidation, threats, and the use of physical and/or sexual violence. Battering does not refer to isolated incidents of violence, nor for the purposes of this program does it refer to abuse which is exclusively psychological or emotional. The intent of the program is to protect the safety of both parties and to

avoid making victims of ongoing coercion, intimidation, and violence more vulnerable to this violence through the actions of the criminal justice system. With this primary purpose in mind the probation officer should review the defendant's documentation of assistance sought through visits to the shelter, calls to 911, affidavits from previously filed protection orders, and police reports or statements from others such as social workers, counselors, and family or friends. While the defendant is not required to document a severe pattern of high-risk violence, the probation officer must have strong indicators that there is definite pattern of battering by the complainant against the defendant.

### **Severity of the Incident**

The Crossroads Programs addresses misdemeanor domestic-related criminal offenses. This limitation itself will exclude most serious assaults. However, occasionally a misdemeanor assault can be quite brutal in nature, or it can result in the infliction of severe harm to the victim. The probation officer should consider recommending against acceptance into the program in these cases.

### **Nature of the Defendant's Admission to the Charged Offense(s)**

The applicant will not be required to make a written statement of admission but will be required to provide an oral statement to the probation officer. This statement must be sufficient to establish that he or she admits to committing the offense and admits to facts sufficient to support the criminal charges. This admission is one indication of a defendant's willingness to participate fully in recommended education and counseling. If the defendant describes a set of circumstances that the probation officer believes constitutes self-defense, the probation officer should document those statements and make a recommendation to the prosecutor that the case be further reviewed for either dismissal or alternative disposition. The program is not intended to be a substitute for the proper raising of self-defense in cases in which the defendant claims not to have committed a criminal act.

### **Views of the Complainant**

The probation officer should contact the complainant and take a statement from him or her regarding the impact of offering a deferral on the complainant's ongoing safety. If the complainant feels that such a disposition of the case would compromise his or her safety, the probation officer should explore the reasons for the complainant's statement and convey this information to the prosecutor for consideration.

### **Circumstances Surrounding the Use of Violence**

This program is intended to deal with a broad range of behaviors of victims of ongoing physical and/or sexual abuse, including the use of violence as a form of retaliation or as a means of coping with the violence used against them in intimate relationships. It is not intended to be used to resolve

assault cases in which there is no apparent link between the use of violence by the defendant and ongoing victimization by the complainant. If the complainant has not been engaging in intimidating, coercive, or physical abuse for an extended period of time, or if the incident itself was not related to the experience of previous violence, the probation officer should consider recommending against admittance into the program. This would mean that in cases where there has been a past history of abuse but no violence, threats or intimidation for a period of time, the defendant is not necessarily appropriate for this program.

### **Motives for the Use of Violence**

In interviews with both the defendant and the complainant, the probation officer should try to establish the reasons the defendant used violence. It is not the intent of the City Attorney's Office to establish acceptable or unacceptable motives for an assault against a partner, even when that partner is engaging in ongoing acts of battering. However, it is the intent to exclude those applicants whose motives are the ongoing domination of their partners. If the probation officer finds that the defendant's motive tends to be inconsistent with the fairly broad scope of cases that this policy is intended to cover, then the probation officer should document this concern.

### **Defendant's Willingness to Participate in Recommended Education and Counseling Programs**

This program is designed for defendants who are beginning to use violence against their batterers in ongoing abusive relationships. Defendants who are appropriate for the program are those who have not engaged in patterns of violence in other situations. The probation officer should expect to hear from the defendant a clear willingness to participate in recommended education and counseling. If a defendant does not express such a willingness, the traditional court process with its additional controls may be more appropriate.

# St. Louis County Attorney's Office: Domestic Violence Policy

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## General Policy

The St. Louis County Attorney's Office subscribes to and recognizes the *Blueprint for Safety* as a model policy in domestic abuse and domestic violence-related prosecutions. To that end, it is the policy of the St. Louis County Attorney's Office to charge and prosecute these cases in a uniform manner throughout all of St. Louis County while being mindful to our ethical responsibilities and the likelihood of successful prosecution. Prosecutors are charged to seek justice in domestic abuse and domestic violence-related prosecutions and, in so doing, will weigh the goals of victim safety and offender accountability and rehabilitation. The St. Louis County Attorney's Office at all times will work to expedite and improve efficient and just resolution cases involving domestic abuse.

The St. Louis County Attorney's Office recognizes that cases involving domestic violence present several factors to consider in exercising discretion to charge including, but not limited to: (1) the history and context of violence between the defendant and victim, (2) the severity of injury and level of fear expressed by the victim, (3) the involvement of children as either witnesses or pawns in a pattern of abuse and violence, (4) the negative ramifications versus beneficial impact of aggressive pursuit of convictions over less aggressive approaches. When evaluating a case that presents a high risk of lethality to the victim, the Office may charge a case in the absence of optimal facts or evidence and request additional investigation.

Where interventions are required involving a victim defendant, the St. Louis County Attorney's Office will undertake a careful appraisal of the ways in which charges may adversely affect her or his safety by the unintentional reinforcement of batterer control. Law enforcement is discouraged from use of dual arrests and encouraged to engage in an analysis and determination of predominant aggressor when both parties use illegal violence. Prosecutors are likewise to evaluate cases referred for determinations and proper screening of self-defense by victim defendants.

The St. Louis County Attorney's Office further recognizes that prosecutions should be centered on victim safety, but are not victim dependent. As such, the Office subscribes to a focus on evidence-based prosecution and will pursue the widest range of charges supported by probable cause when feasible to do so, when in the victim's best interest, and will do so in an ethical manner not intended to harass a defendant but, rather, in recognition that it is a means of strengthening public safety and offender accountability.

## Definitions

Domestic Abuse (MSA §518B.01, subd.2) means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm or assault between family or household members, or criminal sexual conduct, within the meaning of §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 have resided together within 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, and persons involved in a significant romantic or sexual relationship).

Domestic abuse include assaults, strangulation, violations of orders for protection, violations of domestic abuse no contact orders, terroristic threats, interference with emergency calls, stalking, malicious punishment of a child, and violations of restraining orders. Domestic violence-related prosecutions include, but are not limited to criminal damage to property, false imprisonment, burglary, and witness tampering which result from a domestic related situation. Such matters should be handled with the same considerations as defined domestic abuse cases. The *Blueprint* is designed primarily to address cases of battering, meaning those cases that include an ongoing pattern of intimidation, coercion, and violence. The patterned nature of battering requires careful attention to the nature, context, and severity of the violence in every individual domestic violence related case. Most cases of battering in heterosexual relationships involve men's violence against women. It is not rare for heterosexual women to use violence, but rarely is it used in a pattern of aggression, coercion, intimidation, and violence intended to establish control and dominance over a partner. Individuals in same-sex relationships may also batter their partners and use their vulnerable social status as a tactic of control. Prosecutors must be alert to the reality of same-sex battering and respond accordingly.

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

## Charging Decisions

Charging decisions should be made promptly, whether or not the abuser is in custody. Non-in custody matters should be reviewed with a warrant request within 14 days of receipt from law enforcement or sooner in high risk cases. A warrant request is preferred in all non in-custody domestic related matters unless exceptional circumstances exist that are documented by the prosecutor justifying a case to be brought by summons.



In addition to adhering to the general policy of the St. Louis County Attorney's Office, prosecutors will take the following actions in determining whether and what to charge in domestic violence-related cases:

1. Review all available sources of information including that provided by the Domestic Violence Response Team (DVRT), Safe Haven Shelter, Advocates for Family Peace, Domestic Abuse Intervention Programs (DAIP) and the Safe Haven Resource Center (SHRC), when available and request additional evidence as needed to evaluate the case and make charging decisions.
2. Take into consideration the history and context of violence between the parties involved, the seriousness of injuries and/or level of fear expressed, use of children as part of the pattern of abuse, consequences of no intervention or less aggressive intervention on the potential lethality of the case
3. File charges that reflect all crimes committed in the case as supported by the evidence balanced by considerations for victim safety including that of a victim defendant if applicable.
4. If the offender has a history of physical abuse by the victim in the offense, consider whether charging the widest range of crimes or the most severe crime furthers the goal of enhancing the safety of either person. Given the circumstances of the case, consider whether less severe charges or no charges should be brought.
5. Review a case with an eye towards evidence based prosecution understanding the availability of a victim may not be known at this stage of the proceeding.
6. In setting priorities, give precedence to those cases appearing to present the greatest risk, based on the evidence and the victim's response to risk questions. The Office recognizes as a general policy cases where an offender is gone-on-arrival (GOA) generally present a high risk of lethality or harm to the victim and should be given high priority with a preference of a warrant being requested if charges are to issue.
7. Evaluate prior convictions to determine if they allow enhancement of the current offense with additional penalties and where enhancement furthers the goals of offender accountability, victim safety, and justice.
8. In cases where the St. Louis County Attorney's Office is not the municipal charging authority and it is determined that felony and gross misdemeanor charges are not appropriate, the file shall be returned to the investigating agency with the recommendation for a referral to the appropriate charging agency. Where there is an imminent time deadline, the referral will take place before the time expires.
9. Work in collaboration with victims, advocates, and investigators as permitted and appropriate prior to charging, in keeping with the ethical duties of prosecutors. Once a

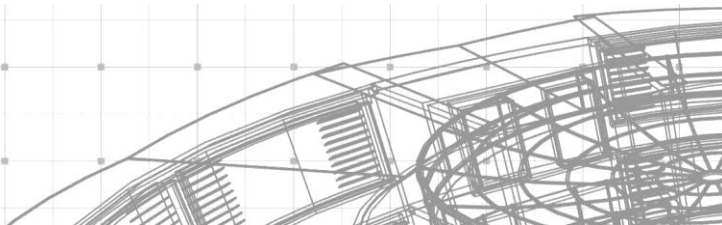
charging determination is made, prosecutors will inform investigators, the victim, and advocates as soon as possible and in accordance to statutory requirements.

## **Bail**

Prosecutors will make written argument or personal appearance on all domestic abuse cases in regard to bail and/or conditions of release. Prosecutors will seek appropriate bail and make recommendations to the court for conditions of pre-trial release. Said recommendations will include considerations to the context and severity of the offense, the danger that the defendant poses, and the safety needs of the victim and the public. Prosecutors should pay close attention to these recommendations in the case of the victim defendant as to not unintentionally reinforce batterer controls. In making recommendations for bail, prosecutors shall consider the following information:

1. Law enforcement reports for the current offense including but not limited to information regarding risk assessment questions
2. 911 tapes, recorded statements, and computer-assisted dispatch reports
3. Past law enforcement reports involving this defendant
4. Portions of previous PSIs written on this offender including Minnesota Sentencing Guidelines Worksheets where available
5. Arrests and convictions
6. Input from the victim or the victim's advocate if available regarding the circumstances of the offense, its context and severity, and pretrial release conditions likely to promote victim safety.
7. Probation status and compliance
8. DVRT team reports and ODARA risk score where available
9. Defendant's history of non-appearance
10. If the defendant reasonably appears to have a history of physical abuse by the victim in the incident, consider whether more limited pre-trial release conditions will meet the goals of victim and public safety and prevent the defendant from becoming more vulnerable to abuse.

In general, prosecutors will recommend a Domestic Abuse No Contact Order issue pursuant to Minn. Stat. § 629.75. However, in so doing, prosecutors should first consider input from the victim where available. Where a victim is opposed to a no contact order, prosecutors should consider options that allow contact under limited conditions where risk factors are low and there is no evidence of coercion. In all other cases where a victim requests contact, prosecutors should consider the following factors prior to requesting a no contact over the victim's objection:



1. The hardship imposed on a victim, specifically financial impact, which may further isolate the victim or increase the safety risk for that particular victim
2. Other implications of a no contact including but not limited to transportation issues, child care, and employment
3. The context and history of past violence
4. The nature and impact of the current offense
5. Whether other mechanisms of limited contact are available to minimize the impact on the victim while still addressing coercion and intimidation

### **Negotiated Plea Agreements and Sentencing Recommendations**

The St. Louis County Attorney's Office recognizes plea agreements and sentencing recommendations are critical to furthering goals of enhanced victim safety, offender accountability through swift and sure response, and opportunities for rehabilitation. By engaging in plea negotiations, prosecutors are uniquely situated to communicate and emphasize the message of accountability by focusing consequences on those which accurately reflect the context and severity of the offense, the danger the defendant poses, and the safety needs of the victim and community. The resulting consequences form the foundation for further controls and impact recidivism. The central factors in determining appropriate plea agreements are the type of violence and its context and severity. In making agreements and recommendations, prosecutors should draw from the following sources of information:

1. Supervised release evaluations and compliance with pre-trial release conditions
2. Law enforcement reports on the current offense
3. Past law enforcement reports involving this suspect
4. Past history of violence reports from other sources
5. Past record on probation
6. Evidence collected in the current offense including but not limited to 911 calls, audio recordings, jail call recordings, photographs, and physical evidence.
7. Past and current DANCO, OFP, and HRO pleadings including affidavits
8. Any intervening communications between the defendant and the victim
9. Arrest and convictions
10. Risk assessment responses from law enforcement reports
11. Victim input regarding:
  - Nature and impact of the current offense

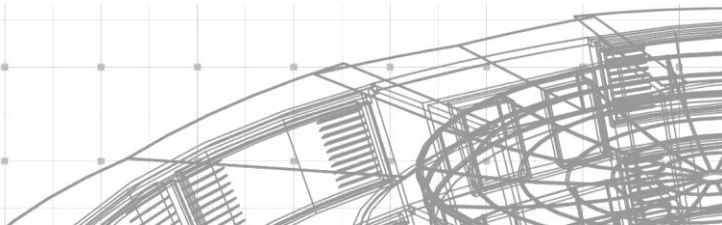
- Context and history of past violence
- Sanctions that are most likely to meet the victim’s safety needs
- Victim’s relationship with the criminal justice system and its impact on her or his reaction to and support for prosecution

12. Collateral agency information including but not limited to Social Services and advocates.

The St. Louis County Attorney's Office recognizes the value in treatment and enhanced victim safety when a defendant provides admissions to the abuse. As such, when a defendant enters a guilty plea, prosecutors shall endeavor to obtain a detailed factual basis from the defendant in support of entry of said plea.

### General Considerations

1. Right to Speedy Trial—Although the defendant has an absolute right to demand a speedy trial, the victim also has a right to request that the prosecutor make such a demand pursuant to Rule 11.10 of the Minnesota Rules of Criminal Procedure. Prosecutors shall invoke such a demand upon the request of the victim or in situations where it is needed to minimize the effects of intimidation, coercion, and re-offense.
2. Victims as reluctant witnesses—Any time a victim recants, declines to continue to participate in the prosecution, or cannot be located, the prosecutor shall make an assessment of the case, in consultation with the advocate and the victim (if available) to determine the feasibility and merits of proceeding with the prosecution with or without the victim. In assessing the merits of proceeding with a case when a victim recants or refuses to testify, the assigned prosecutor should consider:
  - a) The likelihood the defendant will re-offend
  - b) The likelihood of serious future injury to the victim
  - c) The victim’s wishes, including the reasons for recantation, refusal, or disappearance
  - d) The likelihood of success at trial, considering:
    - i. How the victim is likely to testify
    - ii. The likelihood of recantation
    - iii. The weight of other evidence
    - iv. Whether expert testimony is available
    - v. Whether evidence exists to support a motion for forfeiture by wrongdoing
  - e) The defendant’s criminal history
  - f) The seriousness of the charges and the victim’s injuries
  - g) The feasibility of resolution with evidence supported non-domestic charges
  - h) Whether the defendant reasonably appears to be the victim of ongoing domestic violence. If so, consider a plea to a lesser offense or an agreement to a stay of imposition or a stay of adjudication 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.
- i) No one factor or set of factors mandates continued prosecution in these circumstances, but there are occasional cases in which every effort in the prosecution must be made regardless of the victim's position. The ultimate decision can only be made on a case-by-case basis.
3. Dismissals—Unless the court finds dismissal is warranted for lack of probable cause or unwarranted delay, only the prosecutor may dismiss a case. Whenever a prosecutor dismisses criminal charges against a person accused of domestic assault, a record should be made of the specific reasons for the dismissal as long as it does not impact victim safety, empower the offender, and doesn't negatively impact potential, future prosecutions. In all cases, the prosecutor's file should document the reason for the dismissal.
  4. Trial Preparation—The prosecutor should meet, in person, with the victim before the trial date. 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 (634.20)/Spreigl evidence. Early consultation with the victim also gives the prosecutor to explore all possible dispositional options, including the victim's wishes and understanding of the impact of prosecution on her life. Early consultation also provides opportunity to explore the availability of any evidence of tampering or support for proceeding with forfeiture by wrongdoing.
  5. Harassment of victim—Prosecutors should advise the victim that any harassment of the victim or other witnesses by the defense should be reported to the prosecutor's office and to law enforcement. Harassment may include calls or visits from the defendant or a third party, unwanted contacts by the defense attorney or investigators, or other unwanted communication.
  6. Probation Violations—Generally, the prosecutor should request additional jail time, or prison where appropriate, any time a domestic abuse probationary violation relating to victim's safety occurs. In such cases where the violation is directly related to new charges and victim safety, such violations should not be tagged to the new charges, but should be proceeded upon when feasible to address swift and sure consequences to the offender.
  7. 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. Law enforcement should do so according to the best practices and protocols as identified by *The Blueprint for Safety*. The prosecutor's office shall cooperate with law enforcement agencies in preparing and participating in law enforcement agencies in preparing and participating in law enforcement training on domestic assault as requested by those agencies.

## Training Memos

The Blueprint Training Memos are reference tools to aid prosecutors. They are available online from Praxis International's *Blueprint Materials* ([http://www.praxisinternational.org/blueprint\\_materials.aspx](http://www.praxisinternational.org/blueprint_materials.aspx)).

### **General:**

- *1A Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *1B Training Memo - Risk and Dangerousness*
- *1C Training Memo - Intervention with Victims of Battering as Suspects or Defendants*
- *1D History of Domestic Violence Summary Instructions and Sample*
- *1E History of Domestic Violence Summary*
- *1F Justice Involved Military Personnel and Veterans*

### **Prosecution-specific:**

- *5A Training Memo - Implications of Cranford and Davis for Prosecution of Domestic Abuse Cases*
- *5B Training Memo - The Implications of Forfeiture by Wrongdoing for Prosecution of Domestic Abuse Cases*
- *5C Training Memo - Use of Expert Witnesses in Domestic Violence Cases*
- *5D Sample Policy Language - When to Compel a Victim to Testify*
- *5E Guide to Bail Setting, Conditional Release and Enforcement*
- *5F Training Memo - Addressing Uncharged Sexual Abuse in Domestic Abuse Cases*
- *5G Framework for Recommending Time to Serve and Length of Probation*
- *5H Sentencing Guidelines Departure in Domestic Violence Cases*

