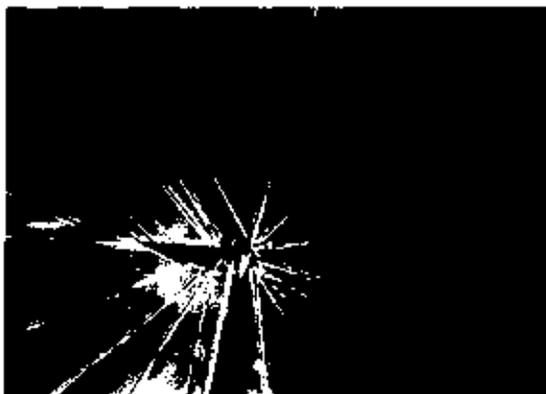


## Promising Practices: A Checklist for Prosecution Response to Domestic Violence and Stalking



### Domestic Violence and Stalking in America

The negative consequences of domestic violence and stalking, whether measured in economic terms or by their impact on quality of life, reach far beyond the victim and her immediate family to friends, coworkers, neighbors, and society as a whole. These crimes can result in injury and even death, and they can occur in virtually every culture and population in our society. The overwhelming majority of victims of stalking and domestic violence

are women. It is estimated that in America one woman out of every four will be assaulted by an intimate partner at least once during her lifetime.<sup>1</sup> Nearly half of all battered women report some type of injury as a result of their victimization.<sup>2</sup> The violence is not only debilitating; it can also be deadly. Three out of every ten women murdered in the United States are killed by an intimate partner.<sup>3</sup>

Frequently, the crime of stalking occurs within the context of domestic violence. Many criminal justice officials consider the possibility of stalking in each domestic violence case they handle. An estimated 1,006,070 women are stalked each year in the United States.<sup>4</sup> The *National Violence Against Women Survey* found that for 59 percent of female victims of stalking, the stalker was a current or former intimate partner.<sup>5</sup> The survey also revealed that intimates who stalk their partners are more likely to assault their victims physically and sexually before the termination of the relationship.<sup>6</sup> It is estimated that stalkers commit acts of violence against their victims in 25 to 55 percent of all stalking cases.<sup>7</sup>

Stalking behaviors immediately precede many domestic homicides.<sup>8</sup> Therefore, the crime of stalking must be treated as conduct that has the potential to result in homicide. When a woman leaves her abuser, he often turns to stalking behavior in an attempt to regain control and dominance over the woman.

Not all stalkers are involved in intimate relationships with their victims. In 25 percent of stalking cases, the stalker is a coworker, neighbor, acquaintance, or even a complete stranger.<sup>9</sup> In such cases, prosecutors may face unique challenges in court, such as proving the identity of the stalker, particularly in cyber-stalking cases.

Stalkers may be charged under a variety of traditional criminal statutes, including laws on harassment, battery, menacing, trespass, cyber crimes, violation of orders of protection, forcible entry, terroristic threats, or assault. Anti-stalking laws afford prosecutors the rare opportunity to intervene in cases before they escalate to more violent or even lethal tragedies.

In 1994, Congress passed the Violence Against Women Act (VAWA, codified as 18 U.S.C. 2265), to help communities develop programs and strategies to better respond to crimes like domestic violence and stalking. The Act was reauthorized in 2000. The Violence Against Women Office, under the U.S. Department of Justice, has supported the Promising Practices Initiative to inform criminal justice officials and victim service programs of practices that represent the most innovative responses to violence against women.

## **Checklist for Prosecution Response to Domestic Violence and Stalking**

This **Checklist for Prosecution Response to Domestic Violence and Stalking** is one in a series of two publications designed to help prosecutors evaluate and enhance their response to violence against women. The responses to domestic violence and stalking are integrated because of the likelihood that stalking will take place in the context of violence by an intimate partner and because the strategies to ensure the safety of the victim and the containment of the offender are so similar. The Checklist provides guidance to prosecution staff on how to enforce the law effectively and fulfill their responsibilities to protect and serve these victims. Victims of domestic violence and stalking may be sexually assaulted. Thus, prosecutors who want to develop comprehensive strategies to address domestic violence and stalking should consult the Checklist entitled “The Prosecution Response to Sexual Assault” in this series.

By using this Checklist, prosecution offices and individual staff members can evaluate their response to domestic violence and stalking cases. This Checklist will help practitioners evaluate the effectiveness of policies and practices already in place and identify weaknesses or gaps to be addressed in their current approach to such cases. Fully implementing the Checklist’s practices will increase the likelihood of successfully prosecuting these cases while reducing the possibility of additional harm to victims of domestic violence and stalking.

### **The Importance of Prosecution Response to Domestic Violence and Stalking**

Everyone involved in the criminal justice system’s response to domestic violence and stalking, from police dispatchers to prosecutors to judges, must understand the complexity of these crimes and know how to intervene effectively. Criminal justice agencies must develop clear policies, provide training for all personnel, and ensure strict compliance with policies in order to meet the serious and unique challenges of domestic violence and stalking cases.

As the link between the police and the courts, prosecutors are in a unique position to influence other sectors of the criminal justice system about the gravity of these crimes, both in general and with reference to specific victims. Prosecutorial strategy, including recommendations on charging and sentencing issues, can influence the court’s response. Through monitoring and observation, prosecutors can identify gaps in the system and make informed recommendations for policy change to colleagues in other sectors of the criminal justice system.

The safety and welfare of the victim is an important goal of any prosecution intervention. This means that prosecutors and victim service providers<sup>10</sup> should offer immediate protection, monitor the victim’s safety on a continuous basis, and adjust their interventions to address the changing safety needs of the victim. Prosecutors must take into account the full extent of violent and controlling tactics used by offenders and the cumulative impact these tactics may have on the victim. In the absence of appropriate intervention, offenders often escalate the frequency and severity of their violence. Consistent appropriate and responsible prosecution of domestic violence and stalking maximizes the effectiveness of the criminal justice response and enhances the safety of the victim.

This Checklist will prove most effective when offered as part of prosecution training and when integrated into protocols in conjunction with other sectors.

## How to Use This Checklist

This Checklist is divided into sections that correspond to the roles and responsibilities of prosecution staff involved in the office's overall response to domestic violence and stalking. Some jurisdictions with more limited resources may find that responsibility for functions described rest with a smaller number of staff or even a single prosecutor. These smaller offices may need to set priorities and customize their response in keeping with their limitations.

Individual prosecution staff members can use the Checklist to (1) evaluate their own response during the course of a current case and (2) measure their past performance in domestic violence and stalking cases. The Checklist can also be used to train new personnel or provide continuing education to current staff. Supervisors can use the Checklist to evaluate how their personnel are performing as individuals and how their unit is responding as a whole. Managers can use the Checklist to determine the entire office's effectiveness in responding to domestic violence and stalking and to develop an action plan to improve response.

The Checklist is not intended to provide prosecution offices with all the information they need to create and implement comprehensive programs, policies, and protocols. This packet includes references to publications, organizations, and agencies that can provide technical assistance on program development and implementation.

*Review the points on the following list that are relevant to your role in responding to domestic violence and stalking cases. Check off those points that you (or your agency) successfully perform. Make note of the remaining items and develop a strategy for addressing them.*

- The points written in regular type and noted by a square are those practices that relate to both domestic violence and stalking.
- Those points in italics and noted with a circle are those practices that are unique to stalking.

*Thus, the reader who is interested in developing a comprehensive response to stalking should employ all the practices described in the Checklist, unless noted otherwise.*

## Prosecutor Response

### Screen Cases:

- Process cases as quickly as possible. Ideally, a misdemeanor case should be assigned a trial date no more than 30 days from arraignment or information.
- When more than one party has been involved in committing the crime of stalking (e.g., stalker's family members, friends, other agents), charge each as appropriate.
- Establish early contact with the victim to emphasize the process and goals of prosecution.
- *Set policies to ensure that if information on the victim is gathered for analysts, the data collection methods do not require any identifying information that can be traced back to the individual victim.*
- Obtain and review all case-related documentation and evidence presently available from law enforcement.
- Develop strategies to address issues related to multiple victims (e.g., a domestic violence offender who abuses an entire family or a stalker who stalks the victim's partners, family members, coworkers, or other associates).



- *Give as full and fair an evaluation of the available evidence in a stalking case initiated through a private criminal complaint filed by a victim as one initiated by an arrest.*
- *Pursue stalking cases involving acquaintances and intimate partners as vigorously as cases involving strangers.*
- Assign highest prosecution priority to repeat offenders (based on prior arrest, conviction, and reports).
- Evaluate the merits of the case as early in the process as possible. Determine if there is adequate evidence to convict the defendant without the victim's testimony. Be prepared to proceed to trial without the victim's testimony (e.g., an evidence-based prosecution using other witnesses, hearsay exceptions such as excited utterances, 911 tapes, the defendant's computer files/tracking records, admissions by the defendant). If the victim testifies, this evidence will corroborate her testimony; if she does not testify, this information will form the basis of the case.
- In domestic violence cases involving immigrants, consider the consequences that prosecution decisions may have on the victim. For example, conviction may lead to the deportation of the victim and her children, or the perpetrator, on whom she may be financially dependent. Consider alternatives that may meet the goals of victim safety and offender accountability. Make referrals to qualified attorneys and allied professionals who can assist such victims and address their immigration issues. Obtain the services of a bilingual and bicultural interpreter to assist in developing an approach that best serves the interests of the immigrant victim.
- *In a case of cyber stalking, determine whether the perpetrator's actions on line (through use of the Internet or related technology), taken together with his conduct off-line, provide sufficient basis for prosecution.<sup>17</sup>*
- If the decision is made not to proceed, notify the victim immediately and explain the reasons to her. Ask victim service specialists and community-based advocates to answer the victim's questions and address her needs.

- ❑ Offer the victim all available referrals, assistance, protection, and support, whether or not she is prepared to testify or otherwise participate in the criminal proceedings.
- ❑ Make sure that the prosecutor or senior supervisor “signs off” on all decisions to decline prosecution in domestic violence and stalking cases.

### Conduct an Interview with the Victim:

- 1. As the prosecutor assigned to the case, spend some time with the victim to build her trust and to better understand her experience of the crime. Do not delegate all the interviews with a victim to others.
- 2. Evaluate the need for an interpreter for sign language or for non-English-speaking victims. Do not ask family members, particularly minor children, to translate for the victim.
- 3. Before each interview, explain that the prosecutor’s legal obligation to disclose exculpatory evidence means that a victim’s comments to any prosecution staff, including victim/witness specialists, may not always be kept in confidence. Inform the victim that her communications with victim advocates in community-based victim assistance programs will usually be confidential.
- 4. Coordinate with law enforcement and victim advocates to reduce the number of times the victim is asked to recount her experience. Permit victim advocates or mental health professionals to be present to provide support for the victim if she wishes.
- 5. Conduct the interview in private, without interruption. Use checklists where available to help a victim focus on her general and sensory memory of the crime.
- 6. Ask questions in a supportive and matter-of-fact tone of voice. Be calm, direct, and patient. Give the victim sufficient time to consider and respond to each question. Be sure to listen and give nonblaming feedback. Use simple language when questioning or soliciting information from the victim so that she will not feel overwhelmed and intimidated.
- 7. Beginning with the first interview, show compassion, empathy, patience, and sensitivity toward the victim, who may find it very difficult to talk openly about the traumatic events related to her victimization. Make sure she understands that she is not to blame for her situation, and stress that her safety is the top priority.
- 8. Review relevant case-related issues with the victim, including procedural considerations (e.g., preliminary hearings, motions, trial, sentencing, violations of probation or protective orders) and time sequence of events before, during, and after the crime.
- 9. *To help establish the elements of a cyberstalking crime, ask the victim if she has any further knowledge about the stalker’s use of the Internet or related technologies in order to help establish the elements of a cyberstalking crime.*
- 10. Explain the role of the victim as a witness, and explore her ability and willingness to testify in court. Explain the prosecutor’s role and responsibilities to the victim. Prosecutors should consider the victim’s wishes as an important factor, but not necessarily the determinative one, in decisions concerning filing or dismissing charges. Absent a compelling reason to the contrary, the victim’s views should be carefully considered as part of the decision-making process. Make sure that both the victim and the suspect understand that the victim does not have the power to determine charges or to “drop charges.”
- 11. *Explain the critical nature of the victim’s role in stalking prosecutions. Make every effort to address the victim’s concerns (e.g., fear of stalker, loss of time from work, trauma related to facing and perhaps testifying against the stalker). Where a victim is unwilling to participate in the investigation and there is insufficient evidence to go forward (as sometimes happens in cases where the stalker is a stranger), explain the reasons for not going forward to the victim.*

- *Provide the victim with counseling and information concerning safety planning, such as a referral to a community-based domestic violence or sexual assault advocacy program.*
- Provide the victim, in writing, information on how to contact both you and the victim/witness specialist in your office.
- Work closely with community-based victim advocacy programs to support the victim through interviews and other court procedures, as well as to provide assistance with other legal and non-legal needs. In particular, enlist the assistance of a trained advocate to help the victim address her emotional/psychological needs, prepare her for the prosecution process, and provide help in connection with safety planning.

### **Request Pre-trial Release Options:**

- Carefully evaluate pre-trial release options. Seek the victim's views and determine her fear of assault if the defendant were to be released.
- Argue that the defendant should not be eligible for post arrest pre-trial release until the prosecution has had the opportunity to review his entire court file, relevant protective order registries, and criminal record.
- *If circumstances warrant, consider requesting a mental health evaluation to determine whether involuntary commitment to a mental health facility in addition to, or as an alternative to, prosecution of the stalker will better serve the interests of the victim and of justice.*
- Provide the court with all evidence available to support a request for denial of bail or for high bail. In making bail recommendations, use a pre-release checklist to ensure that relevant factors are considered, including the defendant's history of physical or sexual violence toward the victim or others (from sources such as incident reports, the victim's statements, medical records, or protection orders); whether the frequency or severity of abuse/stalking is escalating; whether the defendant has threatened retaliation against the victim or her children, family, or friends; evidence of the defendant's violence against pets; damage to the victim's property; use or threatened use of a weapon or strangulation; prior criminal history; the danger the defendant poses to the victim, her family, friends, and coworkers, and the community;

the defendant's use of drugs or alcohol; the defendant's access to the victim; the defendant's mental and physical health; and the defendant's threats of homicide or suicide. Evaluate the defendant's contacts with the community and the likelihood that he will maintain contact with his attorney and the court.

- Where a systematic risk assessment shows that the defendant poses significant danger to the victim, request that he be held in protective custody during court proceedings.
- If a request for high bail is denied, request release conditions that will maximize the victim's safety. Consider the range of options that can be ordered by the court (e.g., a prohibition against threats to commit abuse, harassment, or stalking; no contact orders; prohibition of third parties contacting the victim on behalf of the defendant; confiscation of weapons; liquor abstinence and participation in substance treatment programs).
- Request a no contact order at the arraignment, bail, or other preliminary hearing to enhance the victim's safety. Any violations of that order can be used strategically to develop a record of domestic violence related or stalking-related crimes and to form the basis of an argument for revocation of bail and pre-trial incarceration.
- *If a stalking defendant is to be jailed before trial, contact the administrators of the detention facility to screen the defendant's communications to prevent direct or indirect contact with the victim. In stalking cases where bail is granted, consider requesting home arrest, intensive monitoring/supervision, or electronic monitoring as conditions of release (particularly in cases where the stalker is a stranger).*
- *Request that the no contact/restraining order extend to the victim's place of business or school. If circumstances warrant, work with the victim's employer in obtaining a restraining order for the victim's worksite. In addition, or as an alternative (where such orders are not available), encourage the victim to provide her employer or school with a copy of the no contact/restraining order and to talk to her employer or school about developing protocols or security procedures to enhance her safety there.*

- *Request that the no contact/restraining order be extended specifically to any attempt by the defendant to contact the victim directly or indirectly through use of the Internet or related technologies. The order should cover any attempt by the defendant to assume the victim's identity on line or to harass or damage her reputation, business, or interests through use of the Internet or related technologies.*
- *If the stalking defendant is to be released on bond, request intensive supervision and a frequent reporting requirement (e.g., twice weekly) to appropriate authorities (e.g., the probation officer).*
- *Request a no contact order at the arraignment, bail, or other preliminary hearing in stalking cases to provide for the victim's safety and to establish a pattern of conduct by the defendant and fear on the part of the victim, in order to satisfy elements of the state stalking statutes.*
- Consider requesting a no contact order even in cases where the victim is contemplating the possibility of remaining with the defendant. Such orders provide for a "cooling off" period (usually from 24 hours to seven days), which may reduce the likelihood of additional acts of violence.
- *Carefully weigh whether the defendant is an appropriate candidate for electronic or global positioning system monitoring before recommending it as a condition of bail or sentencing. If you determine that the offender poses a high safety risk to the victim, object to proposals to use such monitoring systems.*
- Notify the victim in advance and in a timely fashion before the defendant is released. Give the victim a copy of the order outlining the conditions of the release. Make sure a comprehensive system is in place to provide the victim with timely notification of all major developments in the case, including release, charging decisions, plea agreements, hearing dates, rescheduling, and sentencing.
- Establish a reliable system to allow the victim to report violations of protective/no contact orders after hours and on weekends. Suggest that the victim keep a copy of the order with her at all times, ready to present to law enforcement if the need arises. The system should include the means to facilitate an immediate response by law enforcement. Help the victim to get her protective order/no contact order entered into a local and state registry of protection orders as well as into the National Crime Information Center's Protection Order File.
- Make sure the defendant fulfills all requirements related to system monitoring and compliance with bail and/or temporary release conditions, including compliance with all provisions of protection, restraining, and child support orders; surrender of passport, bankbooks, and credit cards to decrease the risk of flight; submission to electronic monitoring; and compliance with all other pretrial conditions related to the safety of the victim and the public.
- Use any violations of such orders to immediately revoke the defendant's bond/pretrial release and to keep him in custody for the duration of the case.
- *If the stalker violates the terms of release while subject to electronic or global positioning system monitoring, use such violations as the basis to revoke release, as evidence of violation of a protection order, and as evidence of continued stalking behavior at trial.*
- Fully prosecute any violation of protection orders, regardless of the jurisdiction in which they were issued (as provided for by the full faith and credit provisions of the Violence Against Women Act, 18 U.S.C. §2265). To establish prima facie violation of an out-of-state protection order, it will be necessary to establish the validity of the protection order. Therefore, obtain records from the issuing court, including affidavits of service or transcripts of the protection order proceeding if the requirements for validity are not adequately recited on the face of the protection order.

#### **File or Charge Offenses:**

- When filing charges or reviewing charges filed by law enforcement, ensure that they reflect all crimes committed by the defendant. Consult with law enforcement to substantiate the basis for all charges brought. Encourage law enforcement to contact your office to discuss issues related to arrest and evidence collection to further support such charges.

- *Assign specific staff members to be responsible for reviewing all charging decisions in stalking cases. Establish mechanisms by which the charges can be amended in order to add charges for additional acts of stalking, other criminal offenses, or violations of court orders.*
- Consult with the victim to determine if any previously unreported or uncharged crimes exist.
- Use lethality/dangerousness assessments as a guide in charging decisions.
- Avoid listing information that would identify the victim on court documents, and request waivers as needed in pleadings.
- Seek out other information on the defendant's history and use it in charging decisions. Prior violations against the same victim, if the charges are otherwise viable for prosecution (e.g., burden of proof, statute of limitations), may be charged as separate counts.
- Consider the advantage of charging lesser included offenses for purposes of plea negotiations.
- *File charges for the most serious stalking crime available under law and as the facts warrant. Resist the inclination to file only lesser charges for related crimes (e.g., harassment, property damage, trespass) rather than charging the crime as one of stalking. Charging these traditional crimes alone (though they may be more easily proved) may not reflect the nature or seriousness of the stalker's conduct and may undermine enhancement for future stalking violations by the defendant. Consider filing charges under the state stalking statute, even if stalking is a lesser included crime of a violent felony. Apart from providing leverage during plea negotiations, doing so may serve to establish the basis of a sentencing enhancement in all subsequent stalking convictions. However, where circumstances warrant, consult with the victim and law enforcement to evaluate the advisability of charging the stalker with a lesser crime (e.g., trespass, property destruction) at the earliest point possible in order to manage the case and prevent escalation to more serious stalking related crimes.*
- If both parties have been arrested and both claim to be the victim, carefully evaluate the facts and circumstances surrounding the crime to identify the primary or predominant aggressor. When the initial incident report is unclear, seek and consider other evidence and factors that independently establish who was the predominant aggressor. (See office policy related to charging "predominant aggressors" in the management section.) [This point relates primarily to domestic violence cases.]
- Develop procedures to amend the charging decision if new information or evidence is received. Encourage law enforcement to communicate any new information immediately, and make yourself available to discuss evidentiary and investigative issues with law enforcement officers.
- Do not require the victim to sign a criminal complaint or to attend pretrial hearings if she chooses not to.

**Resolve Charging Issues Related to Protection Orders:**

- Determine whether a restraining order in effect at the time of the crime would establish the basis for charging additional or enhanced crimes. Consult relevant state and national registries of protection orders to determine the existence and status of such orders.
- *Determine whether the stalker's acts in violation of a restraining order in effect at the time of the stalking constitute a more serious crime (felony vs. misdemeanor) or trigger a sentencing enhancement under the state's stalking statute.*
- *Consider prosecuting stalking cases as violations of protection orders. Violation of a protection order could result in the stalker's immediate confinement in jail or a mental health facility, or provide a legal basis for a civil proceeding to commit the stalker to long-term care in a mental health facility. When appropriate, refer cases involving interstate violations of protection orders to the FBI or the U.S. Attorney's Office for possible federal prosecution under the 14) 4, 18 U.S.C. §2262.*

- *When charging a violation of a protection order in addition to underlying crimes, consider which single charge or combination of charges will best serve the interests of the victim (for example, charging violations of protection orders as individual incidents (i.e., stalking violations) versus charging them as a continuous course of conduct. Consider stalking charges in cases involving repeated violations. Consider any double jeopardy implications in deciding how to charge.*

### **Resolve Charging Issues Related to “No-Drop” Policies:**

- Follow statutory mandates or established office protocol on “no drop” policies. Communicate such policies to both the victim and the defendant to reduce the likelihood of victim coercion on behalf of the suspect.
- Do not use “no drop” policies to penalize a victim (e.g., by issuing warrants or body attachments to compel her testimony).
- To discourage intimidation of the victim, make every effort to convey to the defendant that all decisions with respect to prosecution, including charging decisions, rest solely within your discretion.

### **Conduct a Thorough Investigation:**

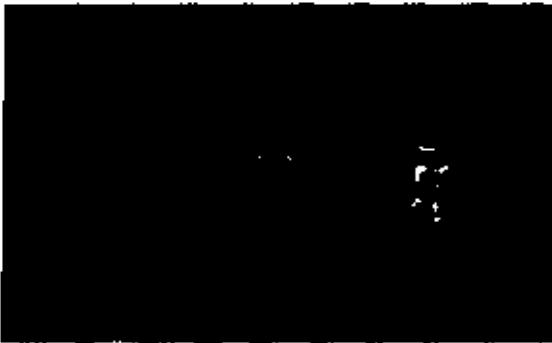
- When possible, use investigators specially trained to investigate domestic violence and stalking cases and trained to work with victims in a sensitive, effective manner.
- *Work closely with investigators to gather sufficient evidence and testimony to prove each element of the crime of stalking as defined by the state stalking statute. Seek evidence to corroborate the victim’s statement, particularly as it relates to implied threats.*
- *Assist law enforcement in obtaining warrants necessary to conduct counter-stalking surveillance (e.g., telephotography, phone wire taps, phone traps).*
- Investigate high-risk misdemeanor cases thoroughly, and prepare for the trial as though for a felony assault or homicide case.

- In reviewing physical evidence collected by law enforcement at the scene, consider the following evidence: complete incident reports; written statements and documentation of excited utterances; signed medical releases; 911 tapes; Caller ID boxes; photographs of injuries; photographs of the crime scene; photographs of the suspect; photographs, or other evidence, of the presence of children; weapons used; ballistics report; broken or damaged property; broken or disabled telephones; torn or bloody clothing; forensic evidence analysis; or a diagram of the crime scene. Adhere to all guidelines on proper collection and storage of evidence and maintaining the chain of custody. Use a checklist to ensure that all such evidence is in the file and admissible at trial.

- In addition to physical evidence collected at the scene, the following evidence may be relevant: medical records; child protective services records; child visitation center records; letters from the defendant; electronic messages (e.g., e-mail or on-line chat transcripts); records reflecting the stalker’s attempt at identity theft (e.g., posted messages or e-mails signed in the victim’s name); the victim’s employment records (e.g., missed work); evidence of the defendant’s prior felony convictions (for use to impeach the defendant’s testimony); past and current restraining orders; and past police reports. Where they exist, and as appropriate, review court transcripts of earlier proceedings. Also conduct interviews with the defendant and defense witnesses.

- *In cases involving cyber-stalking, request search and seizure warrants for all hardware (particularly hard drives), software, and any other electronic recording media that the defendant owns or to which he may have access (e.g., a work computer or a school computer). Request search warrants to secure records or other evidence in the possession of the defendant’s Internet service provider (ISP) or other Internet entities that may have provided the suspect with communication capacity. Suggest that investigators use tracer programs to track the stalker’s electronic messages to the source.*

- Elicit from the victim a complete picture of the defendant's past behavior that may not appear in any official record. The victim may not offer this kind of information if not specifically asked, and the offender profile may underestimate the defendant's potential for increased violence.
- Help the victim to understand that she should never underestimate her stalker or his potential for danger. Advise her to take very seriously any implied or direct threat (whether made in person or by phone, regular mail, e-mail, or some other means) and to report all incidents to law enforcement.



- Encourage and guide the stalking victim in collecting further evidence, if she can do so safely. Advise her to keep a journal or chronological documentation of all sightings or contact with the defendant (e.g., calls, letters, e-mails, objects left, property damage, and any other case-related events, as well as her own reaction to these contacts). She should note the date, time, location, circumstances, and names of any witnesses to any such contacts. Advise the victim to call law enforcement immediately if she identifies any additional evidence. Instruct her on the importance of preserving all evidence (e.g., photographs of damaged property, unwanted gifts, notes, letters, e-mails, unswerving messages).
- Use any information the victim supplies to develop a profile of the offender that indicates risks he poses to the victim and the community and that the prosecution can use to make recommendations on bail and bond levels, conditions of pre-release, sentencing, parole, and probation.

- If the defendant has been jailed before trial, contact the administrators of the detention facility to determine if he has made any attempts (successful or otherwise) to contact the victim. Gather such evidence (e.g., letters mailed from jail, telephone calls, conversations with others) to strengthen the case against the defendant.
- Complete a multi-victim assessment as part of the investigation to determine if there are other victims in the household. Stalkers may stalk, threaten, harass, or assault other household members, especially children and older or disabled persons. Ask the victim whether the offender has harassed any family or household members, friends, coworkers, or other associates. Explain to the victim that revelations of such activity will both strengthen the case and allow the prosecution to offer further protection from the stalker.

### Conduct Pre-trial Procedures and Discovery:

- Bring the case to trial as soon as possible after the incident. The time between the incident and the trial or disposition is crucial for victims of stalking because a long gap between the incident and the trial date allows offenders to continue to manipulate or terrorize victims.
- Strenuously resist continuances. When delays are necessary, procedures should be established to ensure that the case is continued to a date agreeable to the victim and the witnesses, that the date is secured in advance, and that the reasons for the continuance are adequately explained to the victim.
- Avoid listing information that would identify the victim on court documents, and request waivers as needed in pleadings.
- Use motions *in limine* to establish the admissibility of evidence, identify potential defenses, compel discovery from the defendant, pave the way for expert witnesses, educate the court about key issues, and address victim safety issues.
- File motions to exclude irrelevant and prejudicial evidence specific to the unique facts related to domestic violence and stalking cases.

- *Use mental health experts as consultants to prepare stalking cases to evaluate the defendant's mental state; create a profile of the defendant; develop questions for cross examination of defense experts, the defendant, and other defense witnesses, as needed, and to explain the stalker's behavior or the impact of stalking on victims to the trier of fact in layperson's terms.*

- Issue warrants or body attachments to compel the victim's testimony *only* when doing so will shield her from reprisals by the defendant and when she is otherwise willing to testify. Take all steps necessary to address risks posed by victim's participation in the trial.

- *Notify a stalking victim in advance of any subpoena, warrant, or body attachment that will be issued to facilitate or compel her presence during trial and related hearings. Explain the purpose, function, and implications for the victim.*

#### **If Appropriate, Negotiate a Plea:**

- Use plea negotiations to further the goals of successful case outcome. Resist any plea that lowers charges and penalties, particularly if it substantially alters the nature of the underlying crime (e.g., from a violent crime such as assault and battery, to a nonviolent crime such as disorderly conduct or destruction of property).

- Balance the safety of the victim and the community with holding the offender accountable and expediting prosecution goals. Consider the seriousness of the offense, past record of the defendant, likelihood of rehabilitation, likelihood of future violence and intimidation, effective impact of jail time, availability of community supervision, and the victim's bill of rights.

- Object to requests for pre trial diversion or deferrals of domestic violence cases on the basis that such programs support neither offender accountability nor victim safety. If your objection is overruled, request that other sanctions or conditions accompany a diversion to enhance offender accountability and victim safety (e.g., no contact with the victim, court monitoring). (See policy on diversion and deferrals in the management response section.)

- Agree to a defendant's participation in a batterer's intervention program *only* as part of sentencing. Request that the judge make clear that participation in such a program is part of the sanction. (See sentencing section below.)

- *Strenuously object to attempts by the defendant to enter a nolo contendere or Alford<sup>22</sup> plea to stalking charges. Push for a complete disclosure from the offender in the plea, if possible.*

- Strongly urge forfeiture of firearms by the defendant as part of plea negotiations. Draft the forfeiture order for the court.

- Consult the victim regarding plea negotiations, and consider her views on the crimes pleaded to and the penalty contemplated. Take into account the interests of the victim in the plea (e.g., restitution, safety, security). Explain to the victim the reasons for the decision to accept a plea (e.g., weakness of evidence).

- If the victim objects to a plea yet the prosecutor decides to proceed with the plea, the victim should have the opportunity to state to the court her objection and the reasons for it, either through an oral or written impact statement at the plea hearing or through the prosecutor upon submission of the plea.

#### **Use Trial Strategies:**

##### ***Voir Dire***

- Conduct *voir dire* to identify potential jurors' biases and to dispel myths that have a negative impact on the successful prosecution of cases involving violence against women. Be prepared to argue against any defense motion to eliminate jurors solely on the basis of their personal or professional involvement with issues of crime or violence against women, where you believe they would otherwise be qualified to serve.

- *Educate the jury about your theory of the case whenever possible during voir dire.*

- File a motion *in limine* to allow the 911 tape to be played during your opening statement.

- ☐ Develop a trial notebook of arguments and examination questions to support trial and pre-trial motions and strategies.
- ☐ Be creative and persistent in using memoranda and briefs to support every motion or argument advanced, as a means of judicial education.
- ☐ Determine whether your state allows the admission of prior uncharged acts of domestic violence.
- ☐ Become familiar with a range of evidentiary rules, including the use of expert witnesses, lay experts, and non-victim witnesses; forensic testimony; exceptions to the hearsay rule; and laying the foundation for admissible evidence (e.g., medical records, counselor credentials for lay experts).
- ☐ Explore using expert witnesses to educate judges and juries about the unique dynamics and factual circumstances that often accompany domestic violence and stalking cases. Be aware that many victim service specialists and advocates and experienced law enforcement officers may qualify as experts or lay experts in such cases.
- ☐ Become familiar with strategies to deal with complex issues that arise in such cases (e.g., assault involving strangulation, allegations of child sexual abuse committed by the victim, cross complaints of violence by the defendant against the victim, refusal by the victim to take the stand or recantation of previous statements or testimony).
- *Become familiar with technologies and legal issues related to cyber-stalking cases. Develop trial strategies to educate judges and juries on technology and how offenders use it to stalk their victims.*
- ☐ Anticipate defenses (e.g., self-defense, alibi, consent) and develop a strategy to rebut them.
- ☐ Bring the crime scene to the courtroom through physical evidence, photographs or videos, and graphic descriptions from witnesses. Use advanced technology to enhance the presentation of evidence to the court.
- ☐ If photographs are ruled admissible, publish them to the jury to give jurors a clear indication of the nature and extent of the crime and its consequences on the victim.

### ***Victim-Related Issues and Testimony***

- ☐ Identify and plan for the victim's safety needs during the trial (e.g., extra bailiffs, positioning of victim relative to defendant, weapons search). Establish a separate and safe waiting room for the victim. Make arrangements to ensure that the victim is never left alone while waiting and that she has an escort when moving from the waiting area to the courtroom.
- ☐ Develop strategies on how best to inform the judge or jurors if the victim will not be testifying for the prosecution and determine whether it is appropriate to explain why she is not testifying.
- ☐ If the victim testifies, conduct the direct examination to allow her to re-create the crime for the jury in as much detail as possible. Introduce the victim's testimony with some personal history to allow the jury to identify with the victim and her perspective.
- *Ask the victim to recount her feeling of fear, panic, or other emotions she experienced in addition to her physical and sensory perception at the time of the crime in order to establish the "fear" element of the crime of stalking. Use experts to testify about the psychological, physical, and financial impact of stalking on the victim.*
- ☐ Be prepared for the possibility that the victim may recant on the stand. Establish strategies to explain to the judge or jury the reasons victims may recant (e.g., fear for herself or her children, emotional exhaustion). Use the victim's recantation to further validate her victimization. Even if the victim recants and is declared a hostile witness, continue to treat her with compassion and respect. Tapes of 911 calls, medical records, witnesses, and statements of prior violent incidents may all be used to impeach the witness. Consider calling an expert witness to explain the recantation to the jury.
- ☐ Evaluate the appropriateness of asking children to be witnesses in light of the potential trauma and emotional impact it may impose on them. Consult with child psychologists or other experts beforehand.

### ***Defense-Related Testimony and Evidence***

- ❑ Always fully cross-examine the defendant if he takes the stand. Phrase questions simply so that the defendant must testify to the sequence of events in detail. Ask the defendant only those questions to which you can anticipate the answers. If you cannot be reasonably sure of the answer, reserve the issue for closing argument.
- ❑ Adapt to each case a set of questions designed to draw out evidence of the defendant's power over the victim, as well as his tactics of manipulation, intimidation, and degradation.

### **Develop Sentencing Strategies (also see Court Response Checklists in this series):**

- ❑ File a sentencing memorandum to provide the court with the basis for all sanctions and provisions requested, including those related to the disposition of the offender and the safety of the victim.
- ❑ Recommend a sentencing hearing to permit for full disclosure of relevant information and to afford the victim the opportunity to present an impact statement. Where appropriate, consider requesting that the defendant be placed in custody pending the outcome of the hearing.
- ❑ Provide the victim with a pre-sentence report to help her prepare her impact statement. Provide her with assistance in preparing such a statement if she desires. Encourage (but do not require) her to make a written and oral statement reflecting how the crime has affected her life. Encourage her to include her sense of the continued personal risk the defendant poses and her opinion on potential safety measures (e.g., sentence, conditions of release, no contact, weapons seizure). Ensure that the completed statement is included in the case record and court file, with appropriate measures to protect confidentiality of the victim's current address.
- ❑ When recommending dispositions, consider the nature and gravity of the offense; the defendant's history of sexual or physical abuse; previous efforts at rehabilitation; the defendant's character and current rehabilitative needs; the risk the defendant poses to the victim, the family, or the general public; and the interests of the community in protection and punishments.
- ❑ Make recommendations for enhanced penalties, pursuant to statutory provisions, for defendants who have been previously convicted of one or more crimes, or for whom there is evidence of a long history of violence against women.
- *Use lethality/dangerousness assessments as a guide in sentencing and post-trial release decisions. Providing the court with evidence that the current violent incident is part of a pattern of escalating violence will allow the court to craft more appropriate sentences.*
- ❑ Request that repeat offenders, including those who continue to violate protection orders, have their future conduct and whereabouts closely monitored and restricted to maximize victim safety and offender accountability.
- *When available, and when the stalking victim so desires, request the issuance of a lifetime, permanent protection order against the offender that, among other things, bars him from contacting the victim and from possessing firearms or ammunition.*
- ❑ Ensure that there are sufficient conditions on the offender's release (e.g., no contact with the victim, surrender of firearms, restitution for expenses, abstinence from drugs/alcohol).
- ❑ Argue against home arrest for a convicted offender if he lives with the victim.
- ❑ If completion of a batterers' intervention program is recommended, request that it be combined with other sanctions (e.g., incarceration, intensive probation, no contact orders, community work service). Suggest that the court consider specific sanctions for noncompliance, including the imposition of no contact orders or even incarceration, if warranted.
- ❑ If a defendant has not been convicted and incarcerated, encourage the victim to petition for a civil protection order after acquittal. Refer the victim to community-based domestic violence and sexual assault programs to assist with safety planning and to refer her to a qualified civil attorney who can discuss other legal options with her, such as civil tort remedies.

**Develop Post-sentencing Strategies (also see Court Response Checklists in this series):**

- *If the stalking offender is sentenced to incarceration, encourage the victim to seek a restraining order that prohibits mail, e-mail, or phone contact from the defendant or his agents while he is serving his sentence. File the order with the defendant, the warden of the correctional facility, and the state department of corrections.*
- ┆ Preserve evidence for use in future proceedings (e.g., appeals, motions to modify/reduce the sentence, request for clemency, or violation of protection orders, or in case of future assault charges).
- ┆ Work collaboratively with probation and parole officers and victim service specialists and advocates to ensure enforcement of probation, parole, and sentencing conditions. Initiate review hearings or recharge when there are violations.
- *Respond promptly to requests from the parole board for information or comment on the stalking offender's release or temporary release from incarceration.*
- *Request that the court specifically grant probation officers the authority to search the probationer's home or vehicle to seize any evidence of further stalking activities.*
- ┆ In the case of a high risk victim, contact her at regular intervals to evaluate her safety needs and the risks posed by the offender. High-risk victims include those with particularly dangerous perpetrators, such as perpetrators who threaten homicide or suicide or have a history of attempted homicide or suicide, who acquire weapons such as firearms, who have a history of physical or sexual violence against the victim and others, who suffer depression or harbor rage toward the victim because she left or ended the relationship, or who display an obsession or fixation on the victim. Use such contacts as an opportunity to inquire about the victim's other needs, such as those related to counseling, finances, or trauma to children.

- ┆ Respond to all post-sentence requests by the victim for assistance, and coordinate with other criminal justice system practitioners (e.g., probation, parole, or victim services provider) to address her continuing safety needs.
- ┆ Develop a system to ensure that the victim continues to receive notice of post sentencing developments related to probation, parole, release, commutation, or other developments (i.e., provide information to the victim on contacting victim services personnel in probation, corrections, or the Attorney General's Office and make sure that information on contacting the victim is available to those agencies or offices so they can provide appropriate notice beyond sentencing).

**Address Victim Interests and Safety Issues Throughout the Process:**

- ┆ Address victim safety issues throughout the entire criminal justice process. Discuss safety issues with the victim at the earliest point possible. Try to evaluate the likelihood of continued violence by the suspect from the time of arrest through the conclusion of the trial. Use specialized domestic violence and stalking risk assessment tools to assist in making these determinations.
- ┆ Regardless of the reported circumstances of the case, provide the victim with strategies to respond to any attempt by the suspect to intimidate, threaten, or harass her (e.g., report violations of no contact orders, temporary relocation, safety escort services, enhancement or revocation of bail).
- *Consider proactive and progressive programs to enhance the victim's safety (e.g., victim relocation assistance combined with address confidentiality programs to protect her location, including witness protection programs, anonymous remail services, assistance with name and social security number changes).*
- *In cases of cyber-stalking, provide the victim with strategies to enhance her safety while using the Internet (e.g., change Internet service providers, change e-mail and on line identities, install identity trace blocking software, install firewalls on personal or business Web sites).*

- *After addressing immediate safety concerns, refer the victim to community-based stalking support groups for help in securing her future safety and that of her family.*
- Work with advocates in developing a process to maintain the confidentiality of the victim's location. Include strategies to notify the victim of any case developments, events, and proceedings without disclosing her location to inappropriate parties.
- Adhere to office policy to refrain from releasing any of the victim's personal information to any third party without her permission. (See policy related to confidentiality of victim information in the management response section, below.)
- If information is to be released to the media, make every effort to inform the victim before it is made public. Appropriate discretion should be used regarding the details of the case (e.g., circumstances that might prove embarrassing to the victim or details offensive to specific cultural sensitivities).
- Encourage the victim to keep her contact information current with your office and to provide the name and number of a family member or other confidant who will always know how to reach her.
- Observe all of the victim's statutory rights to be notified, consulted, and present and to participate throughout the process. Unless it is to be provided by a victim/witness specialist, provide the victim with pertinent case information (e.g., give her the criminal court docket number to help her track court dates and pending motions).
- Use legal strategies to protect the victim and the integrity of the case (e.g., no contact provision, restraining orders, trial motions).
- Whenever possible, arrange with law enforcement to provide the victim with a security escort to and from the courthouse. Where available, ensure that a security check of the defendant (e.g., a metal detector scan) is conducted before all proceedings to protect the victim and all others involved in the case.
- Consult with the victim to determine the advisability of obtaining a protection order. Explain in detail the nature, scope, and implications of such orders. Explain to her that only the defendant can be arrested for a violation—not her. Convey to her the importance of strict enforcement of the orders for her protection. Be sure to not give the victim an inaccurate sense of safety based on a protection order. State to her, in clear terms, that securing a protection order is not a guarantee of safety.
- Encourage the victim to carry a copy of the protection order with her at all times. Deliver copies to local law enforcement, her employer or school, and any other appropriate authority. Also let her know that the order is entitled to nationwide enforcement pursuant to the full faith and credit provision of the VAWA, 18 U.S.C. §2265. Encourage her to call law enforcement immediately if the offender violates any existing court order.
- *In addition to reporting all contacts with the stalked offender, ask the victim to maintain a chronology of all contacts and events related to the case. Encourage the victim to report all violations of protection/no contact orders or provisions of bail, probation, or parole. Remind her that only the offender is subject to such orders and that she cannot violate her own order.*
- Develop or re evaluate the victim safety plan when circumstances create heightened risks (e.g., issuance of a restraining order; release of defendant/offender from detention, incarceration, probation, or parole). Where the updated evaluation reveals increased potential for lethality, increase the resources committed to the case.

## Victim/Witness Specialist Response

### Implement Victims' Rights Laws and Assist Victims Accordingly:

- Notify the victim of her rights (e.g., right to be present, informed, and heard at critical steps in the criminal justice process; right to consult with the prosecutor where allowed or mandated by state law).
- Provide the victim with information about legal remedies (e.g., civil remedies related to protection, custody, or support).
- Notify the victim of her right to state and federal victim compensation.
- Assist the victim with applications for crime victim compensation and other financial aid.
- Provide assistance to the victim on witness fee applications and reimbursement forms. Explain what reimbursement victims can receive for testifying.
- Assist the victim in preparing a victim impact statement, and ensure that the completed statement is included in the case record and court file, with any necessary measures to protect the confidentiality of the victim's current address.
- Provide the victim with case information on court dates and the court process.



Promising Practices: Prosecution Response

- Confirm service of subpoenas and protection orders.
- Ensure that the victim is notified of offender release information.

### Work with the Prosecutor Assigned to Each Case to Assist the Victim:

- Serve as a liaison between criminal justice system agencies and the victim. Provide the victim with information about her rights to be present, informed, and heard at critical hearings throughout the criminal justice process and her right to consult with the prosecutor where allowed or mandated by state law.
- Provide the victim with accompaniment during all hearings, if she desires.
- Work with law enforcement, community-based victim advocates, and other allied agencies and professionals to develop a comprehensive safety plan for the victim. The plan should include strategies to enhance the victim's safety at home, in public, at work, and while participating in the criminal justice process.
- Develop a process to familiarize victims with the criminal court system, general trial procedures, and courtroom protocol (e.g., written materials, videos the victim can review on her own, orientation sessions for groups of victims that include an opportunity to ask questions).
- Familiarize the victim with her role in the criminal justice process, and involve her in decision-making processes regarding charging, preparation for trial and plea negotiations, sentencing, and pre- and post-trial conditions of release.
- Protect the victim's privacy and confidentiality. However, make it clear to the victim that communications with you or other prosecution staff may not be confidential, and that, by law, exculpatory evidence must be turned over to the defendant. Inform her that communications with community-based advocates may provide a higher degree of confidentiality.

- Intervene with employers or schools on behalf of the victim. Explain the nature of the crime and the issues involved. Explain the importance of the victim's participation in the criminal justice system and why it is critical that she have access to assistance programs, advocates, and other professionals. Inform the victim of any laws that protect her as a victim/witness/employee, and provide references and referrals to assist her in exploring related employee rights to address other issues that may arise.
- *Educate employers regarding the role they can play to enhance the safety of stalking victims in the workplace (e.g., parking lot escorts for the victim, phone and visitor screening, site specific restraining order filed by employer). Suggest that employer or campus security officials participate in a multidisciplinary team response.*
- Provide the victim and witnesses (particularly child witnesses) with courtroom orientation and trial preparation to minimize the trauma of testifying in a criminal court case.
- Contact a high risk victim at regular intervals to evaluate her safety needs and the risks posed by the offender, even in cases where the defendant has been successfully prosecuted and sanctioned. Such offenders may continue to harass, threaten, stalk, or assault their victims. Use the contact as an opportunity to inquire about her other needs, such as those related to counseling, finances, or trauma to children.

## Supervisor Response

- Oversee the prosecution's compliance with agency and interagency policies and procedures related to violence against women.
- Develop standards for personnel performance reviews that include criteria that measure policy compliance and effectiveness in response to domestic violence and stalking cases.
- Create forms and checklists to facilitate compliance with office policies.
- Problem-solve and engage in critical thinking with assistant prosecutors and other staff on handling complex domestic violence and stalking cases. Meet with these prosecutors on a regular basis to review their response and to address the effectiveness of strategies, policies, and protocols related to such cases.
- Determine the need for additional training and supervision of prosecution staff.
- Evaluate whether the prosecution's response meets the goals of victim safety and offender accountability. Where it fails to do so, advise management and make recommendations for change.
- Establish and develop working relationships with the U.S. Attorney's Office and prosecutors from neighboring jurisdictions.

## Data Collection

- Establish policies, protocols, and information systems to identify and track domestic violence and stalking cases. Compile statistics to assist in qualitative and quantitative analysis of the office's response to these cases.
- Create databases to expedite docketing, caseload management, and timely victim notification.
- Include in the office databases information on each case, the nature of the charges, and the current status of the case up to and after sentencing. Make sure that protection orders are entered into local, state, and federal registries. If the offender is barred under state or federal law (18 U.S.C. §§922(g)(8) or (g)(9)) from possessing a firearm or ammunition, make sure this information is entered accurately into local, state, and federal databases.
- Use criminal databases to elicit information on the offender's prior offenses or criminal history. Also use registries to verify the existence and status of protection orders.
- Integrate data systems to incorporate both criminal and civil histories, including any pending no contact/protection orders.

- If victim information is gathered for policy analysis, ensure that data collection methods do not require any identifying information and that the data cannot be traced back to victims.

## Management Response

### Develop Personnel Policies to Enhance Prosecutor Response:

- Build a staff who reflect the demographics of the community they serve. Develop programs and protocol to address the needs of domestic violence and stalking victims in underserved or unserved populations.
- Allocate funds, resources, and personnel to cases involving violence against women.
- Create incentives so that assignment to domestic violence and stalking cases will be viewed as a position of elevated authority and autonomy or a promotion.
- Avoid assigning to any aspect of domestic violence or stalking cases a prosecutor who lacks knowledge of or sensitivity to the issues surrounding such cases and is not fully committed to the prosecution of such crimes.
- Establish job performance standards for response to domestic violence and stalking cases. Reward prosecutors and office staff who meet those standards; provide additional education or corrective measures for those who fail to meet them.
- Mentor new or less experienced prosecutors. Have new prosecutors serve as “second chair” to seasoned prosecutors experienced with domestic violence and stalking cases.

### Set Tone Through the Development of Protocols and Practices, Training, and Other Mechanisms:

- Establish protocols and practices that are grounded in an understanding of violence against women and that embody values such as ensuring the safety of the victim, keeping the victim’s case confidential, respecting the victim’s autonomy, and holding offenders accountable. Revise protocols as needed.

- *Draft policies for stalking cases that will strengthen the prosecution’s ability to respond to cases consistently and proactively, regardless of which prosecutor is responsible for the case.*

- Promote proactive intervention in all cases involving violence against women.
- Draft up-to-date policies for domestic violence cases that will strengthen the prosecution’s ability to respond to cases consistently and proactively, regardless of which prosecutor is assigned to the case.
- Use vertical prosecution whenever possible (i.e., assigning the same prosecutor to handle the case from screening through post-sentencing) to promote a consistent prosecutorial approach and to afford the victim the maximum opportunity to establish a degree of comfort and trust. If a new prosecutor is assigned the case at any point, immediately provide the victim with information on how to contact that prosecutor.
- Establish specialized units in larger offices or create specialists in smaller offices. (Address the possible challenges posed by specialization, including losing expertise as a result of staff turnover, limiting expertise to a small number of personnel, or failing to have an adequate supply of qualified prosecutors to meet demand.)
- Place equal emphasis on misdemeanor and felony offenses, and give special attention to the cumulative effect of a series of misdemeanors or felonies. Assign experienced prosecutors to handle misdemeanor cases.
- Develop a policy to screen in as many cases as possible, consistent with prosecutorial ethics and resources, and in accordance with office policy. Have a supervisor sign off on all cases where prosecution is declined.

- ☐ Establish a basis to support requests for higher bail in domestic violence cases in your jurisdiction. For example, compare average bail amounts in domestic violence cases versus cases involving drugs or property crimes. If the judges in your jurisdiction are not inclined to follow your recommendations, use statistics and anecdotal information demonstrating the danger of further violence or homicides as a component of domestic violence.
- *Establish a strategy of early intervention in stalking cases in order to stop the behavior or prevent it from escalating, and to reduce the risk of injury to the victim.*
- ☐ Establish a strategy for obtaining the services of specially trained investigators to work domestic violence and stalking cases, either by establishing training programs to create such expertise on staff or by ensuring that other agencies will make their investigators available.
- ☐ Reinforce the efforts of those involved in the prosecution of cases whose contributions further the interests of stalking and domestic violence victims and the goals of prosecution (e.g., share the judge's or jurors' compliments on the effectiveness of a victim's impact statement or a law enforcement officer's testimony).
- ☐ Develop policies and programs to ensure that sign language and non-English-speaking translators are available to any victim who may need them throughout the criminal justice process. Include policies that preclude the use of friends or family, especially children, as interpreters for the victim.
- ☐ Establish office policy and protocols to prevent the release of the victim's personal information without her prior written permission.
- ☐ Establish guidelines for identifying the predominant or primary aggressor in cases where both parties to a crime of domestic violence have been arrested. Establish guidelines to charge only the primary aggressor in such cases of dual arrests. Train all prosecutors in the proper application of the guidelines.
- 1. Establish a policy to object to requests for pre trial diversion and deferral in every case. If diversion or deferral is granted over such objections, request conditions that will enhance the safety of the victim and hold the offender accountable.
- ☐ Develop policies and protocols for addressing the issues related to cases involving multiple victims.
- ☐ Ensure that prosecution protocols specifically prohibit charging victims who recant their testimony with perjury or other penalties. Include a provision in the protocol that details how prosecutors should work with victims and advocates and explore their actions. For example, if the victim recants as the result of a specific or continuing threat to her safety, that fact can be used to convince the jury not only that the defendant committed the crime charged, but that his continued threats are part of a pattern of behavior to control and dominate the victim to the point where she is forced to recant to save herself from further violence.
- ☐ Develop strategies to remove barriers facing underserved populations that prevent them from using the criminal justice system (e.g., translation of materials into relevant languages, 24-hour availability of translation and interpreter services, transportation, caregiving services).
- ☐ Develop a system to monitor prosecution compliance with protocols, and revise policies and practices as necessary.

## Provide Appropriate Training:

- 1. Support continued training on violence against women for all staff, including training to build cultural competency among prosecutors and staff.
  - ☐ In training of prosecutors and law enforcement officers, emphasize that effective intervention of these cases at the misdemeanor level can prevent serious felony cases.
  - ☐ Advise and train law enforcement investigators on evidentiary issues; repeat as often as necessary. Offer periodic refresher courses and updates in law-related classes.
  - *Establish programs to provide training for prosecution staff on issues related to stalking, including background information on the psychology and behavioral patterns related to stalking; stalking laws (state and federal); psychological impact of stalking on victims; trial tactics; evidentiary and procedural rules; and sentencing, parole, and probation issues related to stalking.*
  - *Develop and implement training programs to educate prosecutors about the nature and issues related to cyber-stalking, including how stalkers use the Internet and related technologies to threaten and harass victims; how to track and gather evidence in cyber-stalking cases; how to link defendants to evidence of cyber-stalking (e.g., tracing e-mail or chat communications, examining computer use logs); how to educate judges and juries about cyber-stalking technology; and how to establish the elements of cyber-stalking crimes.*
- 1. Provide prosecutors with specialized training on such topics as using the full range of evidence; complex litigation issues (e.g., double jeopardy, search and seizure, jurisdiction); protection orders and full faith and credit; state and federal laws and their limitations; creative and comprehensive charging; strategic use of witness tampering charges; child endangerment charges in cases in which children were threatened or assaulted in the incident; terroristic threat charges; criminal mischief charges; appropriate bail and bond conditions; safety planning; victim-sensitive interviewing techniques; strategies for responding to controversial or complex cases; how to handle hostile witnesses; jury selection techniques; expert testimony; effective use of hearsay exceptions; sentencing strategies; victim rights under federal and state law; working with community-based advocates; and a teamwork approach to handling cases and protecting victims.
  - *Provide training for prosecution staff on the provisions of the federal Interstate Stalking Punishment and Prevention Act (1996), 18 U.S.C. §2261A, and other federal legislation that pertains to stalking (e.g., 18 U.S.C. §§2261, 2262, 922(g)(8) and (g)(9)).*
  - ☐ Include panels of survivors in prosecutor training to help prosecutors understand the experience of a victim of stalking or domestic violence, the gaps in the criminal justice system, and how prosecutors can help meet the needs and address the concerns of victims.
  - ☐ Elicit input from victim advocates and survivors in developing materials on planning for the victim's safety to be offered by prosecution staff.
  - ☐ Require senior prosecutor staff to attend the specialized trainings, to send a clear message to the assistants and deputies that domestic violence stalking cases are a priority target within the office.
  - *Provide technical assistance to other criminal justice agencies and allied professions in the creation and implementation of stalking-related training programs (e.g., law enforcement, courts, probation and corrections, medical professionals, fire officials).*
  - ☐ Provide training on domestic violence and stalking to judges and other court staff. Participate in community educational efforts to raise awareness of stalking among the general public and to inform victims about available legal remedies.

## Provide Leadership in Justice System and Community Initiatives to Stop Violence Against Women:

- Support coordination among all branches of the criminal justice system and between the system and the community, particularly with regard to community-based advocates. Develop inter-agency agreements as appropriate.
- Create multidisciplinary teams to work with professionals in other agencies and organizations, such as probation officers, health professionals, and professionals in community agencies and organizations.
- Keep police informed of evolving state laws and regulations in the field of violence against women through roll call trainings, in-services, and educational materials. Elicit input from victim advocates and survivors in materials on planning for the victim's safety to be offered by prosecution staff.
- Coordinate with federal, state, and other local prosecutors to ensure that individual cases are brought in the right jurisdiction and that the fullest possible range of charges are brought, including interstate domestic violence or stalking, weapon possession/confiscation or transport, and full faith and credit for protective orders under the provisions of the Violence Against Women Act (VAWA, 18 U.S.C. 2265).
- Work with members of communities of color and other underserved populations to identify community specific problems in response to domestic violence, sexual assault, and stalking, and explore solutions. Based on community input, make changes to eliminate the barriers that deny victims from underserved populations the availability of appropriate services.
- Promote community education and zero tolerance of violence against women.
- Use community education to inform citizens, who will comprise future jury pools, about the issues surrounding domestic violence and stalking crimes and prosecutions.

## Endnotes

1. Patria Tjaden and Nancy Thoennes, *National Violence Against Women Survey*, National Institute of Justice, U.S. Department of Justice, Washington, D.C. (2000). *Editor's note:* While victims and offenders of domestic violence, sexual assault, and stalking are both men and women, the vast majority of victims are female and offenders are male (see Tjaden and Thoennes). For this reason, as well as for consistency of style, this manual refers to victims as women and offenders as men.
2. Lawrence A. Greenfeld, Michael Band, Dana-L Eaven, Ph.D., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, or Girlfriends*, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C. (March 1998).
3. *Callie Marie Brempson and Sarah Welchans, Intimate Partner Violence*, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C. (May 2000).
4. Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, National Institute of Justice and Centers for Disease Control and Prevention, Washington, D.C. (1998).
5. *Ibid.* In addition, the study showed that 21 percent of these victims said the stalking occurred before the relationship ended, 43 percent said it occurred after the relationship ended, and 36 percent said it occurred both before and after the relationship ended.
6. *Ibid.*
7. J. Reid Meley, ed., *The Psychology of Stalking: Clinical and Forensic Perspectives*, Academic Press, San Diego, Calif. (1998). These statistics include both stranger and non-stranger stalking cases.
8. A recent study of the relationship between stalking and intimate partners found that 76 percent of the cases in which victims were murdered and 85 percent of cases of attempted murder involved at least one incident of stalking within one year of the murder. Victims in 69 percent of female homicide cases were stalked while in a relationship with their stalker, and 98 percent of victims were stalked after the relationship ended. See Judith M. McFarlane, et al., "Stalking and Intimate Partner Femicide," *Homeland Studies*, 3(4) (November 1999).
9. Violence Against Women Grants Office, *Domestic Violence and Stalking: The Second Annual Report to Congress under the Violence Against Women Act*, Office of Justice Programs, U.S. Department of Justice, Washington, D.C. (1997).
10. Those who provide services to victims are based both inside and outside the criminal justice system. While they may perform many of the same functions, the scope of their work and even the law that governs the delivery of their services may vary considerably. In addition, their titles may vary from jurisdiction to jurisdiction. Service providers based in prosecution offices are often referred to as victim witness coordinators or specialists. Those who operate through community based nonprofit programs may be referred to as crisis counselors or victim advocates. For purposes of this publication, the term "victim witness specialist" is intended to refer only to system-based service providers. The term "victim advocate" refers only to community based service providers. The phrase "victim service provider" is used generically to refer to both.
11. In many states, stalking that occurs on the Internet or through related communication technologies is covered by the language of the state's standard definition of stalking behavior. Some states have passed specific laws to address cyber stalking conduct.
12. *North Carolina v. Hoff*, 100 U.S. 23 (1970) (establishing the defendant's right to accept a guilty plea and still maintain innocence of the crime for which the defendant is charged).

# Resources

## Publications

***Building Alliances: Responding When Your Patient Has Experienced Domestic Violence or Sexual Assault.*** Rhode Island Network, 1993. To order, contact the Network (a joint project of the Rhode Island Rape Crisis Center and the Rhode Island Coalition Against Domestic Violence): (401) 421-4100.

***Domestic Violence and Stalking: The Second Annual Report to Congress under the Violence Against Women Act.*** Violence Against Women Grants Office, Department of Justice, Office of Justice Programs, July 1997. To order, call the National Criminal Justice Reference Service: (800) 851-3420.

***Domestic Violence: The Criminal Justice Response.*** Eve S. Buzawa and Carl G. Buzawa, 2nd Ed. Sage Publications (1996).

***Drug-Facilitated Rape: Overview and Investigative Considerations and Using Pretext Phone Calls in Sexual Assault Investigations.*** Law Enforcement On-line Network (LEO), Federal Bureau of Investigation, 1998. This online network is free and is limited to law enforcement agencies. Agencies wishing to access LEO should contact the LEO Program Office: (202) 324-8833.

***Ending Violence Against Women: An Agenda for the Nation.*** STOP Violence Against Women Grants Technical Assistance Program, Office of Justice Programs, U.S. Department of Justice (2000).

***Evaluation Guidebook for Projects Funded by STOP Formula Grants under the Violence Against Women Act.*** Washington, DC: The Urban Institute, 1997. Contact the Urban Institute's publication office, (202) 857-8687, to order a copy for \$18.00. The guidebook is also available on the Urban Institute's Web site ([www.urban.org/crime](http://www.urban.org/crime)).

***Family Violence: A Model State Code.*** National Council of Juvenile and Family Court Judges, Reno, NV, 1994. For copies of the Model Code, contact NCJFCJ: (800) 527-3223.

***Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers.*** Family Violence Prevention Fund, San Francisco, CA, 1996. To order, call (415) 252-8089.

***Legal Advocacy Training Curriculum.*** Alaska Network on Domestic Violence and Sexual Assault, Anchorage, AK, 1997. To order a copy, call ANDVSA: (907) 586-3650.

***Looking Back, Moving Forward: A Guidebook for Communities Responding to Sexual Assault.*** National Victim Center, Arlington, VA, 1993. To obtain a copy, call the National Victim Center: (800) 394-2255.

***The Michigan Law Enforcement Response to Domestic Violence.*** State of Michigan, Department of State Police, Commission on Law Enforcement Standards and Domestic Violence Prevention and Treatment Board, Lansing, MI,

1997. Contact the STOP TA Project for information about this publication: (800) 256-5883.

***Model Guidelines and Sex Crimes Investigation Manual for Illinois Law Enforcement.*** Illinois Law Enforcement Training and Standards Board and Illinois Coalition Against Sexual Assault (ICASA), IL, 1996. To order, call ICASA: (217) 753-4117; fax (217) 753 8229.

***Polaroid's Law Enforcement Programs.*** Call (800) 811-5764 (ext. 227).

***Police Response to Crimes of Sexual Assault (2nd Ed.).*** Connecticut Sexual Assault Crisis Services, Inc. Hartford, CT, 1997. Cost: \$10.00. To order, call CONN-SACS: (860) 282-9881; fax (860) 291-9335; or write to 110 Connecticut Blvd., East Hartford, CT 06108.

***Police Response to Crimes of Sexual Violence.*** Pennsylvania Coalition Against Rape, Knola, PA, 1997. To order, call PCAR: (717) 728-9740.

***Promising Practices: Improving the Criminal Justice System's Response to Violence Against Women.*** STOP Violence Against Women Grants Technical Assistance Program, Office of Justice Programs, U.S. Department of Justice (1999).

***Research in Action: Sex Offender Community Notification.*** National Institute of Justice, Washington, DC, 1996. The document is available through the National Criminal Justice Reference Service: (800) 851-5420.

***Seeking Justice: Legal Advocacy Principles and Practice.*** Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA. Cost: \$50.00. To order, contact PCAADV: (717) 546-9456.

***The Sexual Assault Nurse Examiner (SANE) Development and Operation Guide.*** Office for Victims of Crime, Washington, DC, 1998. To order, contact the OVC Resource Center: (800) 627-6872 (Request NCI# 170609).

***Strategies for the Treatment and Prevention of Sexual Assault.*** American Medical Association, Chicago, IL, 1995. To order, contact Mary Haines at the AMA: (312) 464-5563, or download the document from their Web site ([www.ama-assn.org/public/releases/assault/sa\\_guide.htm](http://www.ama-assn.org/public/releases/assault/sa_guide.htm)).

***Violence Against Women: Law Enforcement Training Program.*** Governor's Justice Commission, Rhode Island, 1996. To order free copies, call the Governor's Justice Commission: (401) 277-2620; fax (401) 277-1294.

***When Will They Ever Learn? Educating to End Domestic Violence.*** American Bar Association Commission on Domestic Violence, Washington, DC, 1997. To order, contact the Office for Victims of Crime Resource Center: (800) 627-6872.

## Organization Referrals

### **American Probation and Parole Association**

2760 Research Park Drive  
Lexington, KY 40511-8410  
(859) 244-8203  
fax: (859) 244-8001  
e-mail: appa@csq.org  
www.appa.net.org

### **Battered Women's Justice Project**

*Civil Justice Center*  
PCADV- Legal Office  
6400 Plank Drive, Suite 1300  
Harrisburg, PA 17112  
(800) 903-0111  
fax: (717) 871-5542  
e-mail: justproj1@aol.com

### **Battered Women's Justice Project**

*Criminal Justice Center*  
4032 Chicago Ave., S.  
Minneapolis, MN 55407  
(800) 903-0111, ext. 2  
fax: (612) 824-8965  
e-mail: bwjpp@aol.com

### **Battered Women's Justice Project**

*National Clearinghouse for the Defense of Battered Women*  
125 South 9th Street, Suite 302  
Philadelphia, PA 19107  
(215) 351-0010  
fax: (215) 351-0779

### **Cangleska, Inc./Sacred Circle**

National Resource Center to End Violence  
Against Native Women  
722 St. Joseph Street  
Rapid City, SD 57701  
(605) 341-2050/(877) 733-7623  
fax: (605) 341-2472  
Catherine Grey Day  
cgreyday@sacred-circle.com

### **Family Violence Prevention Fund**

383 Rhode Island St., Suite 304  
San Francisco, CA 94103  
(415) 252-8900  
fax: (415) 252-8991  
e-mail: fund@fvpf.org  
www.fvpf.org

### **Full Faith and Credit Project**

1601 Connecticut Avenue, NW, Suite 701  
Washington, DC 20009  
(800) 256-5883  
fax: (202) 265-5085

### **Institute for Law and Justice**

1018 Duke St.  
Alexandria, VA 22314  
(703) 684-5300  
fax: (703) 739-5535  
www.ilj.org

### **Legal Assistance Providers and Technical Outreach Project**

1601 Connecticut Avenue, NW, Suite 701  
Washington, DC 20009  
(800) 256-5883

### **Mending the Sacred Hoop**

202 E. Superior St.  
Duluth, MN 55802  
(888) 305-1650  
fax: (218) 722-5775  
e-mail: mshla@gala.duluth-model.org  
www.msh-la.org

### **Minnesota Center Against Violence & Abuse (MNCAVA)**

School of Social Work, University of  
Minnesota  
105 Peters Hall, 1404 Gortner Avenue  
St. Paul, MN 55108-6142  
(612) 624-0721  
fax: (612) 625-4288  
mncava@che.umn.edu  
www.mncava.umn.edu

### **National Coalition Against Domestic Violence**

PO Box 18749  
Denver, CO 80218  
(303) 839-1852  
fax: (303) 831-9251  
e-mail: ncadv2@sprynet.com  
www.ncadv.org

### **National Council of Juvenile and Family Court Judges**

P.O. Box 8970  
Reno, NV 89507  
(800) 527-3223  
fax: (775) 784-6160  
e-mail: info@dvlawsearch.com  
www.nationalcouncilfvd.org

### **National Health Resource Center on Domestic Violence**

Family Violence Prevention Fund  
383 Rhode Island Street, Suite 304  
San Francisco, CA 94103-5135  
(415) 252-8900  
fax: (415) 252-8991  
e-mail: fund@fvpf.org  
www.fvpf.org

### **National Legal Aid and Defender Association**

1625 K St., NW, 8th Floor  
Washington, DC 20006  
(202) 452-0620  
fax: (202) 872-1031  
e-mail: info@nlada.org  
www.nlada.org

### **National Network to End Domestic Violence**

666 Pennsylvania Ave., SE, Suite 303  
Washington, DC 20003  
(202) 543-5566  
fax: (202) 543-5626  
www.nnedv.org

### **National Training Center on Domestic Violence and Sexual Assault**

2300 Pasadena Dr.  
Austin, TX 78757  
(512) 407-9020  
fax: (512) 407-9022  
www.ntcdsv.org

### **National Immigration Project of the National Lawyers Guild**

14 Beacon St., Ste. 602  
Boston, MA 02108  
(617) 227-9727  
fax: (617) 227-5495  
www.nlg.org under "National Immi-  
gration Project (domestic violence)"

### **NOWLDEF**

*Immigration Project*  
1522 K Street, NW  
Suite 550  
Washington, DC 20005  
(202) 326-0040  
fax: (202) 589-0511  
e-mail: iwpp@nowldef.org  
www.nowldef.org

### **PRAXIS**

202 East Superior Street  
Duluth, MN 55802  
(218) 722-4820  
fax: (218) 722-1035  
e-mail: Ruralta@aol.com  
www.praxisinternational.org

### **The National Judicial Education Program**

**NOWLDEF**  
395 Hudson Street  
Fifth Floor  
New York, NY 10014  
(212) 925-6635  
fax: (212) 226-1066  
www.nowldef.org

### **Vera Institute of Justice**

233 Broadway, 12th Floor  
New York, NY 10279  
(212) 334-1300  
fax: (212) 914-9407  
www.vera.org