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DOMESTIC VIOLENCE FELONY PROSECUTION PROTOCOL

NCJRS

AUG 22 1988

DEVELOPED BY:

FAMILY VIOLENCE PROJECT

ACQUISITIONS

OF THE SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE
IN COOPERATION WITH

**THE COALITION FOR JUSTICE
FOR BATTERED WOMEN OF SAN FRANCISCO**



FAMILY VIOLENCE PROJECT

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**U.S. Department of Justice
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SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE

INTRODUCTION TO DOMESTIC VIOLENCE PROTOCOL

This protocol represents an important policy change for handling domestic violence cases in the San Francisco District Attorney's office. These changes have been made with recognition that domestic violence is criminal conduct and that prosecutors have the same responsibility to respond to these cases as they do to other violent crimes.

The criminal justice system is the place where victims most frequently turn for help. It can be an effective means of stopping violence between family members. The state has a strong interest in putting an end to this type of abuse which tends to escalate in severity and frequency and often leads to homicide. Last year the single largest category of homicides in San Francisco was family homicide.

The successful prosecution of domestic violence, as with any crime where the victim is related to the offender, requires specialized techniques designed to overcome the victim's fear of the criminal justice system and to encourage cooperation with the prosecution effort.

CYCLE OF VIOLENCE.

Through three stages of violence in a relationship have been identified: 1) Tension Building Phase; 2) Acute Battering Episode; and 3) Aftermath: Loving Respite.

Tension Building Phase

The first phase is a tension-building stage. The woman senses the man becoming edgy and more prone to react negatively to any trivial frustration. Many women learn to recognize incipient violence and try to control it by becoming nurturing and compliant or by staying out of the way.

A woman often accepts the building rage in her partner as being legitimately directed toward her and internalizes the job of keeping the situation from exploding. If she does her job well, he will become calm; if she fails, it is her fault. A woman who has been battered over time knows that the tension building stage will aggravate, but denies this knowledge to help herself cope with her partner's behavior. As the tension

builds he becomes more fearful that she will leave him; she may reinforce this fear by withdrawing from him to avoid inadvertently setting off the impending violence.

Acute Battering Episode

The second phase in the pattern of violence is the explosion. The batterer loses control physically and emotionally. Many men report that they do not start out wanting to hurt the woman, but want only to teach her a lesson. This is the stage where police, the victim, or the batterer may be killed. Women report the batterer telling them to kill him as he's out of control. Most women are extremely grateful when the battering ends. They consider themselves lucky that it was not worse, no matter how bad their injuries are. They often deny the seriousness of their injuries and refuse to seek immediate medical attention. They do not permit themselves to feel the pain.

Aftermath: Loving Respite

The third phase is a period of calm, loving, contrite behavior. The man is genuinely sorry for what he has done. His worst fear is that his partner will leave him so he tries as hard as he can to make up for his brutal behavior. He really believes he can control himself and will never again hurt the woman he loves. The battered woman wants to believe she will no longer have to suffer abuse. His reasonableness and his loving behavior during this period support her wish that he can really change. He lets her know that he would fall apart without her. So she feels responsible for her own conduct that led to the beating and also responsible for his well-being.

Victims most frequently enter the criminal justice system after an acute battering episode; the "loving respite" phase usually follows immediately. Both parties may be horrified by what has happened. Both feel guilty about the event and both resolve to never let it happen again. The batterer very typically will treat the victim with apparent respect, love and affection. This is a great relief to the victim and is precisely what the victim has wanted out of their

relationship all along.

This "loving respite" phase makes criminal prosecution difficult. As long as the batterer continues to behave affectionately, the victim may become increasingly reluctant to jeopardize such good behavior by "pressing charges." A prosecutor who understands the dynamics of the battering cycle can effectively intervene by reminding the victim of similar remorseful periods in the past, predicting a return to the tension building phase, and explaining the likelihood of more frequent and severe injuries.

FEARS OF THE VICTIM

Acknowledge the victim's fears: Reassuring the victim and explaining the criminal justice system to the victim will often help ameliorate these fears.

"Pressing charges" against the batterer, testifying in court and concern over the possible punishment of the batterer create the three most common fears of victims. Most victims are uncomfortable with the idea of "pressing charges" against the person they love even if that person has abused them. Often the offender puts pressure on the victim to "drop charges."

Explain to the victim that the District Attorney files charges in the name of the People. Once filed, only a court may dismiss a charge. Explain that the decision is not in the victim's hands. The victim does not have the power to dismiss or drop charges. This information will assist when the offender pressures the victim to "drop charges."

The victim believes that courtroom testimony is always required. Often a victim is more frightened of testifying in court against the batterer than of further beatings. Especially if the victim is enjoying a purposely attentive spouse and receives respite from the abuse, the victim may prefer the known risks of the relationship to the unknown hazards of the witness stand. The offender's presence in the courtroom is intimidating to the victim and often the facts are embarrassing to the victim, when told to a courtroom of strange people.

Most cases result in pretrial dispositions. If there is a

preliminary hearing or a trial, it is important that the victim understands that it is solely as a result of the defendant's choice. Explain that the prosecutor would never put the victim in the uncomfortable position of having to come to court voluntarily. If testimony is essential, the victim will be subpoenaed by the court. In this way the victim can take the position with critical family members: "I do not want to testify, but I have been subpoenaed. I have no choice."

Victims are concerned over possible punishment of the offender. They rarely have an understanding of the nature of misdemeanors or felonies and believe that lengthy imprisonment is the only outcome. The victim wishes the violence to stop but cannot bear the guilt of being the instrument of punishment for the offender.

Explain the options of probation, suspended sentence, etc. Where the victim desires to continue the relationship with the offender, probation has a very positive connotation, indicating a second chance for the offender and the possibility of continuing the relationship to the victim. By letting the victim know exactly what the prosecutor's goals are, the prosecutor develops a firm ally toward the prosecution.

CONCLUSION

The attached policies have been developed to deal with these fears and to allow deputy district attorney's to intervene successfully in serious domestic violence cases. We anticipate that the standards outlined will result in successful prosecutions by reducing victim reluctance, enhancing evidence collection, and systemizing appropriate prosecution responses and procedures.

DOMESTIC VIOLENCE PROTOCOL

I. Definition

Domestic violence includes any harmful physical contact or the threat thereof, that occurs between current or former:

1. Spouses
2. Cohabitants
3. Boyfriends or girlfriends
4. Adult family members (e.g., elderly abuse)
5. Separated and divorced couples
6. People of the same sex who have an intimate and/or sexual relationship
7. Any two individuals who have or previously have had a sexual relationship.

The close relationship involved in these cases present special difficulties that are unique. Special care will be taken to insure that these cases are treated as crimes against the state and prosecuted to the fullest extent in order to avoid continuation and escalation of the violence.

II. Felony Prosecution

A. Vertical Prosecution: A Domestic Violence Assistant D.A. (D.V.A.) has been appointed to conduct vertical prosecution of all felony domestic violence cases. This D.V.A. will:

- implement the regulations outlined herein
- rebook or issue warrants on all felonies
- handle felony prosecution from arraignment through sentencing
- approve any decisions on felony prosecution where he/she is unavailable for courtroom appearances.

B. Rebooking/Warrant

1. Criteria: In determining whether to rebook or issue a warrant, the D.V.A. will consider the facts of the case in light of the following:

- extent or seriousness of the injuries
- use of a deadly weapon
- defendant's prior criminal history
- past history of violence
- potential lethality of situation

Where factual basis exists, the case will be filed.

2. Contact with Victim: The case should be filed when a factual basis exists regardless of whether the victim has been contacted.

3. Declensions: The D.V.A. will not decline to prosecute where the Inspector has not contacted the victim.

Where the Inspector has not gained the cooperation of the victim, the Family Violence Project staff should be given the option to contact the victim to obtain additional information and to encourage cooperation.

When a declension is made the D.A. will provide written reasons in the file and the matter will be referred to the Family Violence Project for follow-up.

4. Complaints: Victims are not to be asked to sign complaints.

5. Referral to Family Violence Project: All cases brought for rebooking or warrant, whether rebooked or declined, will be referred to Family Violence Project for follow-up.

a. The D.V.A. shall direct the Inspector to place a copy of every police file brought for rebooking or warrant in the designated Family Violence Project Box, located in the rebooking office.

b. The file will include:

- police report
- Inspector's worksheet
- defendant's rap sheet
- witness' statements

c. Protecting the Case: Domestic violence is a criminal offense against the state but the close relationships of the victim and defendant present victim/witness problems. Careful preparation must be made to prevent potential problems such as lack of corroborating evidence, potential reluctance of victim/witness, and victim/witness' fear of retaliation. Early and consistent contact with the victim and referral to appropriate support service agencies is crucial to protect the case.

In an effort to minimize the possibility of these problems the following steps will be taken:

1. Role of Victim: The deputy will clarify for the victim the fact that the D.A., not the victim, is responsible for pressing charges and prosecuting the case. He or she will stress that the victim is an important witness to the crime.

2. Early and Consistent Contact with the Victim:

a. The D.V.A. or Family Violence Project will attempt to make contact with the victim within 72 hours of rebooking.

b. Family Violence Project will provide support services and maintain contact with victim throughout proceedings to keep her informed of all progress and proceedings.

3. Evidence Collection: At rebooking the D.A. will review the case file and ask the Inspector to complete the following, if not already completed by the Inspector:

- a. Take taped or written statements from all witnesses
- b. Take photos of any and all injuries of victim
- c. Review reports with victim for accuracy
- d. Complete the evidence collections checklist.

If any of the above have not been completed, efforts will be made to complete the evidence collection before the preliminary hearing.

4. Subpoenas:

- a. Victims and all other witnesses will be subpoenaed at the earliest possible time.
- b. The victim will be personally served with the subpoena to avoid the possibility of the defendant intercepting it in the mail.

5. Continuances: The D.A. will object to unnecessary continuances. The victim is more likely to follow through when a case is pursued in a timely manner.

6. Reluctant Witnesses:

a. This office will use all legal means to ensure the cooperation and participation of victim/witnesses in domestic violence cases. Before a body attachment or contempt is requested, the D.V.A. must approve. The D.V.A. should confer with Family Violence Project staff to see whether they have

information that indicates such action would be inappropriate.

b. In cases where the D.A. chooses to dismiss, the victim must testify except in exigent circumstances at the hearing on the motion to dismiss that she is freely and voluntarily declining to cooperate with the prosecution of the case.

c. If a victim who refuses to testify or cooperate in the prosecution is found to be in summary contempt of court, the D.A. will request that the disposition address her needs such as required counseling or participation in a battered women's support group.

D. Arrest and Preliminary Hearing:

1. Departmental and Deputy Assignments:

a. An effort will be made to schedule the preliminary hearing in accordance with the availability of the D.V.A. Assistants in the preliminary hearing courts shall assign, when possible, domestic violence preliminary hearings on designated days.*

b. The deputy who has put in the arrest will refer the case to the D.V.A. immediately upon arrest or plea and counsel. In cases where a pre-plea motion is filed, the arrest deputy will confer with the D.V.A. to determine who will handle the hearing.

2. Stay Away Orders:

a. At the defendant's first appearance, a written stay away order will be requested unless the victim indicates otherwise.

*
Dept. 20 - Monday
Dept. 11 - Tuesday
Dept. 12 - Wednesday
Dept. ___ - Thursday

b. A conformed copy will be mailed by the D.A. to the victim on the day of the hearing.

E. Reductions and Dismissals

1. Reduction:

a. Charges that are filed as felonies are as a matter of policy too serious to be reduced to diversion-eligible charges. All deputies will follow the Domestic Violence Diversion and Probation Guidelines in those cases indicating the need for the inclusion of a mental health requirement in the disposition. (See Appendix)

b. Reductions to misdemeanor charges with a guilty plea secured may be made when substantial evidentiary problems exist.

c. Any reduction made should be cleared through the D.V.A. If the D.V.A. is unavailable at that time, that deputy should confer with their section supervisor and the Family Violence Project staff to see if they have information that indicates reduction would be inappropriate.

2. Dismissals:

a. Dismissals may be appropriate in cases where evidentiary problems preclude the possibility of proving all elements of the crime. Reluctance of the victim should not be the operative factor in making a determination to dismiss the case.

b. The D.V.A., and any deputy handling a domestic violence cases, should confer with the Family Violence Project

in addition to their section supervisor prior to moving to dismiss the case. Additionally, if the D.V.A. has been unavailable to handle a case (or if a motion to dismiss is to be made at the arraignment), the D.V.A. or the section supervisor must give prior approval of the dismissal.

F. Sentencing

1. The D.A.'s recommendation for sentencing will be based on the facts of the case and will be commensurate with sentences for other violent crimes.

2. While the feelings of the victim should be solicited in forming said recommendation, it should be made clear to the victim that the judge has the sole discretion to impose any sentence.

3. In those cases meriting recommendations of probation, the D.A. will abide by the Probation guidelines mentioned above. (See Appendix.)

III. Data Collection

The D.A.'s office shall provide quarterly summaries of all domestic violence felonies filed and declined with details of dispositions.