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# DOMESTIC VIOLENCE FELONY PROSECUTION PROTOCOL

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## INTRODUCTION

Domestic violence is rooted in our social institutions and customs. It is supported by social beliefs that perpetrate the use of violence as a legitimate means of controlling particular family members at certain times. Most often, these beliefs are used to justify violence as an effective way to maintain control over women, children, and/or the elderly.

Until recently, domestic violence was viewed as a private family matter. The response of the criminal justice system reflected this view. Police were trained to mediate and abate family "disputes," and to avoid making arrests except in the most serious cases. Prosecutors saw only the most serious domestic violence cases, and were reluctant to pursue domestic violence cases because of the difficulties presented by these cases, and the belief that they would have little success with the prosecution. The courts shared the view that these cases did not belong in the criminal courtroom, and were best handled through mediation, marriage counseling, or civil proceedings. These traditional approaches left the victim, the children, and the public unprotected from the devastating consequences of domestic violence.

The lethal consequences of domestic violence are well documented. FBI homicide studies report that one-third of female homicide victims are murdered by their partners, making domestic violence the single largest category of homicide for women. Two million women are victims of domestic violence every year; 30 percent of the victims are pregnant. Domestic violence victims account for the single largest category of women seeking care in hospital emergency rooms, greatly outnumbering victims of automobile accidents. Indeed, domestic violence accounts for more injuries to women than muggings, rapes, and automobile crashes combined.

But the toll is not limited to the partners of offenders. The effect of domestic violence on the children who witness the abuse is well documented. Children who witness domestic violence are effected in the same way as children who are physically and sexually abused. Children who grow up in violent homes often commit violent crimes against others, abuse alcohol and other drugs, become teenage runaways and in the case of males the next generation of domestic violence perpetrators.

Research demonstrates that without intervention, domestic violence increases in both frequency and severity. To end violence within the family, a coordinated community response is required. Each part of the community has a role to play: the criminal and civil justice systems, mental/medical health personnel, educators, clergy, social activists, the media, etc.

Research also shows that the response of the criminal justice system plays a critical role in stopping domestic violence and

several studies have indicated that arrest acts as a deterrent to domestic violence. This has also been the finding in many jurisdictions which have instituted pro-arrest or mandatory arrest policies in these cases<sup>1</sup>.

In San Francisco, all branches of the criminal justice system have developed protocols and training programs designed to effectively respond to domestic violence cases. The San Francisco District Attorney's Office has been a leader in developing appropriate responses to domestic violence.

This protocol was jointly developed by the District Attorney, Arlo Smith, members of the Domestic Violence Vertical Prosecution Unit, the Victim/Witness Assistance Program, the Family Violence Project, and members of the domestic violence service community. It guides the prosecution of all felony domestic violence cases handled by the San Francisco District Attorney's Office.

## I. DEFINITIONS OF DOMESTIC VIOLENCE<sup>2</sup>

Domestic violence is assaultive behavior perpetrated by one intimate adult against another. It is a pattern of threats and physical, sexual, and/or psychological attacks directed at the victim, the children, other family members, and the victim's property and pets. The result is a pattern of control and domination exerted by one person over the other. The various attacks interact with one another and profoundly affect the victim. Without intervention the assaultive behavior will escalate in frequency and severity.

The term "Domestic Violence" describes many kinds of criminal conduct. Most common charges include spousal battery (PC §273.5); battery of a former intimate (PC §243(e)); violation of a restraining order (PC §273.6); and spousal rape (PC §262). However, many other statutes are frequently encountered. These include: false imprisonment (PC 236); trespass (PC 602); kidnapping (PC §207); felonious assault (PC §245a); mayhem (PC §203);

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<sup>1</sup>Although the most recent data is conflicting, there is still conclusive evidence supporting the use of arrest in domestic violence cases.

<sup>2</sup>National crime statistics show that approximately ninety-five percent (95%) of all spouse abuse victims are women. Klaus, Patsy and Michael Band, "Family Violence," Bureau of Justice Statistics Special Report, U.S. Department of Justice, Washington, D.C., 1984, p.4. Given the overwhelming prevalence of male to female domestic violence, this protocol will refer to defendants as male and the victim as female although there are cases where the defendant is female and the victim is male.

malicious mischief (PC §594a); threats (PC §422); intimidating a witness (PC §136); stalking (PC §646.9); burglary (PC §459); attempted murder (PC §664/187); and murder (PC §187).

Legal definitions of domestic violence are marked by the special relationship which exists between the defendant and the victim. Several California statutes define the term "domestic violence." The following chart illustrates the range of coverage of each.

**Special Relationships Provided For By Domestic Violence Statutes**

	Law Enforcement Response	Spouse/Cohabitant Assault	Domestic Violence Diversion	Restraining Orders	Confiscating Deadly Weapons	Victim Counselor Privilege	Domestic Violence Battery
Victim's Relationship to Defendant	PC 13700	PC 273.5	PC 1000.6	CCP 542	PC 12028.5	EC 1037.7	PC 243(e)
Spouse	X	X	X	X	X	X	
Former Spouse	X		X	X	X	X	X <sup>d</sup>
Cohabitant	X	X <sup>a</sup>	X <sup>b</sup>	X	X	X	
Former Cohabitant	X		X <sup>bc</sup>	X	X	X	
Dating Relationship	X			X	X	X	X <sup>c</sup>
Fiance/Fiancee	X			X	X	X	X
Co-parent	X	X	X	X	X	X	
Child	X			X	X	X	
Parents & Other People Related by Consanguinity (aunts, uncles, grandparents, etc.)	X		X	X	X	X	
Household Members, Current or Last 6 Months	X		X	X	X	X	

- a Applies only to opposite-sex cohabitants.
- b Cohabitants are impliedly included under household residents.
- c Cohabitation must be within the last six months.
- d Must be non-cohabiting
- e Current or former

## II. THE DOMESTIC VIOLENCE OFFENDER

Domestic violence offenders come from all ethnic, economic, and social categories. They do not fit into a specific "personality profile." Their primary commonality is that they batter their intimate partner as a means of maintaining power and control.

A batterer believes he is entitled to use violence against a spouse or intimate partner. This belief is reinforced in part by the power inequities inherent in rigid social gender roles, and by the offender's upbringing. The two greatest risk factors for a man to batter a woman are having witnessed his own father batter his mother or having himself been abused during childhood<sup>2</sup>.

Many batterers know that it is not acceptable to assault bosses, friends, or acquaintances, and therefore find alternative methods to solve problems while at work or with friends. At home, however, any real or perceived disagreement may lead to a violent incident. The offender finds his use of violence to be an effective means of getting what he feels entitled to. The violence is then reinforced if he gets what he wants without any negative sanctions resulting from the behavior.

Without sanctions for the use of violence, the batterer will continue to use violence as an effective means of getting the victim to "behave" in a manner prescribed by the batterer. Violence becomes the abuser's method of choice to achieve control because it works.

Batterers rarely assume responsibility for their behavior. They commonly blame others ("She was late. She is a bad mother"); minimize ("It was only a push. I was drunk."); or deny ("I didn't do it.").

A batterer must first assume responsibility for his violence before he can stop it. Only then can he begin to develop a plan for changing his behavior. The batterer will not take responsibility for his violence if he believes it is caused by someone else. Excusing a batterer's violence as something that may not have occurred if his partner had not made him so angry only allows him to deny responsibility for his abusive behavior and continue his violence. It also reinforces his belief that he is entitled to be violent.

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<sup>2</sup>Gerald T. Hotaling and David B. Sugarman, "An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge," Violence and Victims, Vol. 1, Summer 1986.

### III. HOW THE OFFENDER MAY APPEAR IN COURT

The offender may view the court system as another means of continuing to exercise his power and control over his victim. He may employ several strategies within the courtroom to achieve this end. The following are examples of behaviors that a batterer may use to manipulate the criminal justice system and remind the victim that he remains ultimately in control of her:

- Assaulting the victim as she is going to or from the courthouse, or during the court hearing;
- Threatening the victim with further violence if she does not "drop charges", or tells lies on the witness stand;
- Requesting repeated changes of counsel;
- Forcing her to avoid or ignore subpoenas;
- Requesting repeated continuances;
- Threatening other witnesses;
- Accompanying the victim to the prosecutor's office, police detective's office, or courtroom;
- Using the proximity to the victim in the courtroom to continue his intimidation and violence, e.g. sending the victim notes or looks during the proceedings, following the victim in and out of the courtroom, bringing family or friends to the courtroom to intimidate the victim, threatening to physically assault the victim or her family;
- Falsely claiming to be a victim of her assault.

The prosecutor must act to communicate the message that the court, and not the offender or the victim, is in control of the case. The prosecutor should employ the procedures described in the section entitled, "Policies to Reduce Case Attrition" to convey this message.

During every phase of the prosecution of a domestic violence case the focus must remain on the offender's criminal behavior. His violence is the problem and he is ultimately responsible for controlling his violent behavior. Focusing on the victim's behavior as an excuse for why the offender was violent undermines the achievement of the goals of prosecution, and results in an escalation of the offender's violence.

#### IV. THE DOMESTIC VIOLENCE VICTIM

Battered women, like offenders, come from all ethnic, economic, and social categories. They do not fit into one specific "personality profile." Their primary commonality is that they are victims of assaults by their partners. Contrary to popular mythology, many battered women are problem solvers and help seekers, as is evidenced by the numerous attempts they may have made in the past to stop the violence or sever their relationship with the abuser.

Batterer's often isolate their victims from family, friends, and other possible sources of help. Some of the victim's behaviors within the criminal justice process can be understood in light of the control the batterer has managed to achieve through his isolation of the victim. Through incremental isolation of the victim, some batterers can increase their psychological control of the victim to the point that they literally determine reality for the victim. At first, batterers cut victims off from other supportive relationships by claims of "loving her so much and wanting to be with her all the time." In response to these statements, the victim initially spends ever-increasing amounts of time with the batterer. These tactics are replaced with more overt controls, such as verbal and physical assaults, in order to separate the victim from family or friends. Without outside contact, it becomes more and more difficult for victims to avoid the psychological control of the batterer.

The control tactics used by batterers are similar to those used in the brainwashing of prisoners of war and hostages. The batterer may be maintaining his control over the victim by alternating displays of affection with threats of violence. A threat or verbal attack done by a person who has not been physically assaultive in the past does not have the same power as a threat by someone who has been violent in the past. It is the batterer's use of physical force that gives power to his verbal abuse.

The more successful a batterer has been in isolating the victim, the more he controls what she believes and does. Breaking the victim's isolation requires intervening in the control that the perpetrator has imposed on the victim.

A victim of domestic violence who calls the police has the same goal as the officer responding to the call, the prosecutor, and the court: to stop the violence. While the court can stop the violence in the long run using the legal remedies available, the victim's behavior during the criminal justice process may be aimed at avoiding the violence in the short term by stopping the batterer from carrying out his most recent threat. Using a variety of strategies that may have worked in the past to avoid another physical assault, (i.e. agreeing with the perpetrator's denial and minimization of the violence in public, accepting promises that it will never happen again, requesting that the court terminate the

protective order, not showing up to court hearings) the victim will again attempt to stop the violence, even if just temporarily.

The criminal justice system will be most effective if it anticipates concerns that the victim may have regarding testifying against the defendant, and provides her with the support she needs to address these concerns.

The reasons given by victims of domestic violence who are initially reluctant to testify are often the same as those given by victims of other types of violent crime. These include:

- Fear of retaliation by the defendant.
- Unwillingness to face the assailant again in the courtroom; afraid of his anger against her for involving the justice system.
- A feeling of shame or guilt that her own behavior may have caused the attack in some way or that the court may perceive the victim's behavior as causative.
- A desire to put the whole incident behind her and move on with her life.
- Denial, ambivalence, withdrawal and emotional swings as a result of being a victim of severe trauma.

The above reasons are often heightened for victims of domestic violence by the following realities:

- The defendant may be living with the victim, be familiar with her daily routine, and have on-going access to her at home, work, or at the homes of relatives or friends. The existence of an intimate relationship between the defendant and the victim/witness in these cases, creates a unique vulnerability resulting from the defendant's knowledge of details about the victim's life not found in cases where the defendant and victim are strangers. Since domestic violence is often not considered by civil courts in determining child visitation and custody, the defendant may have continuing access to the victim and the children through arrangements for child visitation.
- The victim may have nowhere to stay where the defendant will be unable to find her. Leaving her home often means becoming hunted and homeless. She may decide that life with the batterer is better than the unknown.
- The victim's past efforts to leave the perpetrator or to seek protection from the justice system may have resulted in further violence. The victim has learned that the defendant

will follow through with his threats of retaliation for the victim's efforts to leave or to seek help from the justice system. Leaving is often the most dangerous time for a woman. "Separation is one of the most dangerous times for partners in a violent relationship... Evidence suggests that, in many cases, the man's violence continues to escalate after a separation."<sup>3</sup>

- The victim and defendant may have children together, and she may believe his threats to kidnap the children if she testifies against him. This is particularly true if the defendant is from another country or state and has threatened to take the children "home" with him.
- A victim/witness may not understand how the criminal justice system will respond to the violence, and may even be unaware that domestic violence is a crime. Her only source of information may be the defendant. The victim and/or children may be dependent on the defendant for economic support. Thus, the victim may have conflicting feelings about the possibility that criminal justice intervention may result in incarceration of the defendant and the loss of support. A clear explanation of the realities of the possible sentence and how prosecution can deter future acts of violence will alleviate some of the victim's anxiety about testifying against the defendant.
- The victim may want to believe the defendant's promises that the physical abuse will never happen again. However, in order for the batterer to change his behavior, he has to acknowledge that the violence is his responsibility, and he has to be willing to seek help from a domestic violence intervention program. It is important that the victim/witness be told that her behavior will not change the defendant's behavior. The defendant, and only the defendant, is responsible for his violence and he determines if, and when, his abusive behavior will end. Understanding this will help the victim/witness separate her hope that the defendant will stop the violence from the reality of what is actually required for him to change his behavior.
- The defendant may be dependant on the victim for economic support, thus increasing the likelihood of further acts of intimidation by the defendant.
- The victim and children may be dependent on the defendant for economic support. This may be of particular concern when the victim is not eligible for public benefits.

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<sup>3</sup>Angela Brown, When Battered Women Kill, New York, The Free Press, 1987, p. 115

- The victim's cultural, religious community and/or family supporters who have previously provided protection from abuse, may be threatening to withdraw their support and protection if the victim testifies. They too may share the erroneous belief that domestic violence is a private family affair that is best worked out privately between the victim and the batterer.
- In cases where the victim is an immigrant or refugee, the defendant may be threatening to have her deported if she testifies. Even when the victim's immigration status is not dependent on the defendant's petitioning for legal status, the victim may still believe his threats.
- Immigrant and refugee battered women may not be familiar with the legal system in this country, and therefore may not understand that domestic violence is a crime. They may not know that there are legal protections available here which may not exist in their country.
- The victim may believe that the intervention of the criminal justice system will not be effective in stopping the violence, or in protecting the victim and children. This belief may be a result of past experience where the system did indeed fail to prevent the violence, and/or it may be based on the perpetrator's ability to convince the victim that "nothing will stop him." A domestic violence victim knows that law enforcement cannot provide constant protection. She also knows that when she leaves the court she goes home alone without around-the-clock police protection. She knows that even if the defendant is convicted he will someday be released from custody and may find her, her children, or her family.

#### V. HOW THE DOMESTIC VIOLENCE VICTIM/WITNESS MAY APPEAR IN COURT

Domestic violence cases can present special problems for the prosecutor if the victim appears to be reluctant to testify against the offender. It should be remembered however, that not all victims of domestic violence are reluctant to testify. Those of us working in the criminal justice system tend to remember the victims who were reluctant to testify more clearly than we remember the victims who agreed willingly to testify.

It is important for prosecutors to distinguish between victims who are reluctant to testify, and those who refuse to testify. The majority of victims who are initially reluctant to testify will do so if provided with adequate support through the victim advocacy unit during the criminal justice process. What appears to be victim reluctance to testify is more often an indicator of the batterer's continuing control over the victim than of the victim's inability to follow through with the case. In only rare cases will

a domestic violence victim refuse to testify after being provided with support and accurate information regarding the criminal justice process.

A victim/witness may have developed behaviors which allow her to survive the violence. Many of these behaviors may seem self-defeating from the perspective of the criminal justice system. Behaviors such as failure to report abuse, failure to follow through with complaints, and recanting, forgetting, or minimizing the violence, and/or returning to the defendant during or after prosecution of the case may be perceived as masochistic or crazy. Instead, they may be tactics the victim chooses or is forced to use in the hope of avoiding future violence.

## VI. GOALS OF THE PROSECUTION

Domestic violence will be treated as a serious crime against the state and prosecuted fully to avoid continuation and escalation of the violence. Special policies shall be implemented to protect the case and achieve the goals of prosecution. These goals are:

- To stop the violence;
- To protect the victim, children, and other family members;
- To protect the public;
- To hold the batterer accountable for the violent conduct;
- To uphold the legislative intent to treat domestic violence as serious criminal conduct;
- To provide restitution for the victim;
- To rehabilitate the batterer.

Domestic violence cases, like other crimes where the victim is related to the offender, require specialized approaches which are designed to overcome the victim's fear of the criminal justice system and to encourage the victim's cooperation with the prosecution effort. The following procedures will be followed in order to protect the case and achieve the goals of prosecution previously set forth.

### 1. Vertical Prosecution

Because of the nature of domestic violence and the need for specially trained attorneys, a vertical prosecution unit to handle all felony domestic violence cases has been created. The unit is composed of a Team Leader who oversees the day-to-day operation of

the unit and the charging of all domestic violence cases and Superior Court trial attorneys who prepare and present all felony cases.

In Municipal Court, the unit attorneys appear at contested bail hearings, special arraignments, preliminary hearings, and pre-hearing conferences. They conduct Grand Jury proceedings; and in Superior Court participate in all pre-trial conferences, motions, trials, sentencing proceedings after trial, and probation revocation hearings.

The attorneys respond to all pre-hearing motions, prepare all witnesses for testifying, obtain all evidence, prepare exhibits for court, provide discovery, request supplemental case investigation, and determine (in consultation with the unit supervisor) sentencing recommendations.

The prosecutor shall take control of the cases and prosecute them to the fullest extent possible. While consultation with the victim is strongly encouraged, case decisions are made by the prosecutor and not the victim. Victims are not asked if they wish to prosecute.

The unit also works closely with the Family Violence Project advocates, Victim-Witness Program advocates, law enforcement agencies, and community and court agencies which serve the victims of domestic violence and their batterers.

## **2. Coordination Between the Prosecutor and Victim Advocacy Services**

Victim Advocacy Services are essential in developing an effective prosecution response to domestic violence cases. Victim advocates can address victim reluctance, fear of retaliation, safety concerns, and misconceptions about the criminal justice system.

To effectively intervene in domestic violence cases, prosecutors will work closely with the Family Violence Project, referring cases and victims to them. In addition, the advocates in the Family Violence Project will refer cases and victims to the unit attorneys.

The attorneys will respect the confidential nature of the advocate's relationship with a victim and not ask advocates to provide privileged information or to take statements or collect evidence from victims or other witnesses.

### **3. Role of the Victim**

The victim is an important witness but does not decide whether a case will be filed or the nature of the final disposition. Victims should be encouraged to provide information about the case, the defendant, need for protective orders, and recommendations for disposition. Victims should not be asked if they want the case prosecuted or to sign complaints.

### **4. Charging Criteria**

The charging decision is made by experienced trial attorneys who have previously handled domestic violence cases.

Where a provable case exists, it should be charged. A case should not be declined solely on the basis of reluctance expressed by the victim. Rather the decision should be based on the availability of sufficient evidence to prove the case.

Victims are not asked to sign complaints.

### **5. Coordination Between the Prosecutor and Community Agencies**

The District Attorney's office recognizes the importance of a community-wide response to domestic violence. It commits itself to working with agencies and task forces which seek to improve coordination of services to victims and offenders.

Shelters and other community agencies assisting victims of domestic violence serve a critical role in providing safety for battered women and their children. Effective intervention by the prosecution requires that prosecutors recognize their valuable contribution, respect the confidentiality of their relationship with their clients, and ensure that their staff members have accurate information about the criminal justice process, the goals of the District Attorney's office, and the legal options available through the criminal justice system. This Office is committed to providing information and meeting with staff and clients of the community agencies who serve domestic violence victims.

## **VII. THE ROLE OF THE PROSECUTOR**

### **1. At Charging**

In deciding whether to charge a case, the Intake attorney will determine whether there is sufficient admissible evidence to sustain a guilty finding and a reasonable probability of conviction. Relevant considerations include: availability of

witnesses, including the victim; and existence of corroborating evidence such as the 911 tape, formal statements to responding officers or investigators made by witnesses including the victim or the defendant, photographs, medical reports, physical evidence and/or observations by officers or investigators.

In deciding whether to charge a felony or a misdemeanor offense, the charging attorney should consider the following: extent or seriousness of the injuries; use or threatened use of a weapon; defendant's prior criminal history; past history of violence with the victim; potential lethality of the situation; threats; pattern of violations of restraining orders; stalking; past grants of batterer's treatment as part of diversion or probation order; reassaults during the pendency of a domestic violence case; defendant's use of alcohol or other drugs; and prior incidents between defendant and other current or former family members.

Prior to charging, the Intake attorney should review the following:

- A formal statement from victim, obtained within 24 hours of the incident whenever possible, preferably tape recorded.
- Statements from all potential witnesses.
- Any statement made by a suspect. Investigators are strongly urged to provide defendants with the opportunity to provide statements.
- Photographs of all injuries of the victim. Whenever possible this should be done at the time of the initial report and then several days later to show the progression of the injuries.
- Photographs of the crime scene, whenever possible.
- A copy of the taped telephone call reporting the incident to the police (911 call) and the law enforcement agency written record of requests for service received and units dispatched in response (CAD printout). If not available at charging, these should be ordered immediately.
- A medical release from the victim, and if possible or appropriate, from the defendant.
- Copies of all prior and subsequent police reports pertaining to the defendant or the victim, including reports from outside jurisdictions in which the defendant and/or victim may have worked or lived.
- A physical description of the defendant and victim: height, weight, age, etc. (especially important in cases where the defendant may allege self-defense).

- Alternate contact telephone numbers for the victim and all potential witnesses.
- Additional information relevant to whether a Stay Away order should be requested (e.g. Is victim afraid of defendant? Has defendant threatened victim? Are there prior incidents? If so, where, when, and was medical treatment required?).
- Copies or descriptions of available physical evidence.
- Copies of any civil restraining orders obtained by the victim against the defendant.

If any of these are not available, the inspector should be asked to obtain them immediately.

If a case is not filed, the Intake attorney shall note the reasons for this decision in the file.

If a case is initially discharged and sufficient evidence is later developed, the case may be re-submitted for possible issuance of an arrest warrant.

If a case is not initially filed, it may be charged with a subsequent domestic violence case if the reasons which gave rise to the earlier declination no longer apply and the defendant's due process speedy trial rights will not be violated.

When a case is filed, the case file should be placed in the Family Violence Project intake box for prompt victim contact.

When a case is charged, the Intake Attorney should determine if the victim, the children, other family members, and/or third parties may be in danger. If so, a written Stay Away order shall be prepared by the Intake attorney.

Domestic violence files shall be charged on special carbonized charging sheets and the box indicated "Domestic Violence" shall be marked. The yellow copy of the form shall be placed in the "Domestic Violence Box" in the Support Staff Unit. The Work Product Sheet shall be marked "Domestic Violence" as well.

If the case requires special handling at Arraignment, the Intake attorney shall notify the Domestic Violence Unit attorneys and request that they attend the arraignment.

## 2. At Arraignment

At the first court appearance, the arraignment attorney shall be familiar with the case facts so as to be able to effectively argue pre-trial release issues and obtain protective orders.

Because of the lethal nature of domestic violence and the fact that it is a recurring and escalating pattern of violence, the primary goals at arraignment are to separate the parties in order to protect the victim and other family members. Release of a defendant on his/her own recognizance (OR) is seldom appropriate in felony domestic violence cases and should rarely be agreed to by the prosecutor.

In all appropriate cases, whether or not defendant is in custody, a written stay away order should be requested. A copy shall be promptly mailed to the victim.

Unnecessary continuances should be opposed and preliminary hearings set on a no-time waiver basis.

If a victim or other witness appears at the arraignment, the prosecutor should ask the court to order the witness to appear at the next court date and should immediately refer the victim to the Family Violence Project and Domestic Violence Unit Attorney.

The Deputy should deliver the file to the Domestic Violence Unit the same day as the arraignment occurred.

### **3. At Probable Cause Hearing: Preliminary Hearing**

The unit attorneys receive cases from the Arraignment deputy, and subpoena and prepare them for hearing. The unit attorneys immediately contact the victim and discuss the case facts, victim needs, and court procedures. They also refer all cases to the Family Violence Project for their follow-up and victim contact. The unit attorney works closely with the victim advocacy unit to ensure that the victim knows the dates of scheduled court hearings, knows where to report and what to expect, is provided with a safe waiting area, is supported in court, and is informed of events occurring in the courtroom.

### **4. During Superior Court Proceedings**

The case attorney who handled the matter in municipal court continues with it throughout the Superior Court proceedings. At arraignment, a new written Stay Away order shall be obtained and a copy sent to the victim.

### **5. At the Time of a Guilty Plea**

Where a victim is present when a guilty plea is entered, the victim's concurrence or disagreement should be placed on the record. The victim should, whenever possible, actually state if the disposition has been discussed with him/her and if she/he

agrees or disagrees with it.

## 6. At Disposition

The goals of any disposition are to challenge the conditions in which domestic violence has occurred. The prosecution must clearly indicate to the offender that violence within the home will not be tolerated and that batterers will be held accountable.

In general, early dispositions are encouraged. Court-mandated treatment based on viewing battering as learned behavior should always be sought as a condition of probation. Dispositions which address the batterer's denial, externalization, and minimizing are favored.

### Felony Sentencing

- The District Attorney's recommendation for sentencing will be based on the facts of the case and will be commensurate with sentences for other violent crimes.
- While the feelings of the victim should be solicited in forming a recommendation, it should be made clear to the victim that the judge has the sole discretion to impose sentence.
- Victims are encouraged to participate in sentencing by contacting the probation officer or victim advocate, preparing a victim-impact statement, and/or appearing and speaking at the time of sentence.
- If a defendant is placed on probation, court-mandated batterers treatment shall be requested.
- A defendant convicted of a felony domestic violence charge should serve time in custody commensurate with the seriousness of the case.
- When appropriate, stay away orders should be sought as conditions of probation whether or not defendant will serve a period of custody. Copies of orders should be given to the victim, Family Violence Project, and Probation Department.
- Where victim safety is a concern, the prosecutor shall vigorously oppose grants of sheriff's parole or home detention in lieu of regular jail custody.
- The prosecutor should tell the victim of the Sheriff's Department and Department of Corrections procedures for notification when an inmate is to be released.

## Reductions

- Charges that are filed as felonies are as a matter of policy too serious to be reduced to diversion-eligible charges.
- Reductions to misdemeanor charges with a guilty plea secured may be made when substantial evidentiary problems exist/or when the facts otherwise support the appropriateness of a misdemeanor disposition.
- Reductions should be discussed in advance with the unit Supervisor. Unit attorneys should confer with the Family Violence Project staff to see if they have information which the victim has authorized them to release that indicates reduction is inappropriate.
- Any plea in a domestic violence related misdemeanor case must include, in addition to other appropriate terms and conditions, attendance at, and completion of, an approved batterer's counseling program.

## Dismissals

- 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 sole factor in deciding to dismiss the case.

## **7. At Motions to Revoke Probation Hearing**

Violations of probation are serious matters deserving prompt investigation and intervention. When allegations are supported by competent evidence, motions to revoke will be filed and then handled by the Domestic Violence Unit. All such files should be promptly routed to the Family Violence Project so they can contact the victim as soon after the violation as possible.

In-custody holds authorized by Penal Code Section 1203.2a shall be considered in any case where a probationer is in custody and shall be placed where there has been violence, a pattern of stalking or violations of restraining order, or where there is a threat to the life of the victim or other family member.

## VIII. POLICIES TO REDUCE CASE ATTRITION

### 1. Early and Consistent Contact with the Victim

The Inspector is directed to contact the victim prior to charging.

Once a case is charged and referred to the Domestic Violence Vertical Prosecution Unit, the attorney will immediately attempt to contact the victim and refer the case to the Family Violence Project.

The attorney assigned to the case will clarify for the victim that the prosecutor, not the victim, is responsible for filing and prosecuting the case and the victim's role is as an important witness.

The attorney and Family Violence Project will maintain contact with the victim throughout the proceedings and keep her/him informed of case progress.

### 2. Use of Hearsay and Grand Jury

With the passage of Proposition 115, prosecutors may now present the testimony of witnesses at a preliminary hearing through their hearsay statements to officers. Generally, this Office does not favor use of hearsay in lieu of victim testimony in a domestic violence case because it may compromise the prosecution. Use of hearsay is recommended only when using it will not place the victim in greater danger of threats and intimidation, the victim is committed to the prosecution, the testimony is clear, the victim will remain available and cooperative, the victim's testimony is not critical to the case, or the facts and circumstances are otherwise unusual.

Since the grand jury is now available as a means of establishing probable cause, it may be a useful tool in some domestic violence cases. It should not be used where a witness' testimony needs to be perpetuated, where the case facts are unclear, where cross examination is needed to test the witnesses and reveal potential defenses, or where use of grand jury may otherwise compromise the prosecution.

Decisions to refer a domestic violence case to the grand jury must first be discussed with the unit supervisor and then with the Chief Assistant and Head of the Special Prosecutions Unit.

### 3. Subpoena the Victim in All Domestic Violence Cases

Victims and all other witnesses will be subpoenaed at the earliest possible time. The victim will be personally served with a

subpoena to avoid the possibility of the defendant intercepting a mailed subpoena.

#### 4. Avoid Unnecessary Continuances

A victim is more likely to follow through when a case is pursued in timely fashion. Therefore, the prosecutor will object to all unnecessary continuances.

#### 5. Determine the Reasons Underlying a Victim/Witness' Apparent Reluctance to Testify

Where it appears that a witness may be reluctant or will refuse to testify, the witness should be encouraged to confer with a victim advocate at the Family Violence Project. Thereafter, the witness should be sworn and asked general, non-leading questions. If a victim/witness refuses to testify the court should order the witness to answer. If the witness still refuses, the prosecutor should attempt to determine the reasons for the reluctance or refusal. The following questions may be helpful:

- Would you prefer to talk with the judge privately in the chambers?
- Are you aware that you are under oath to tell the truth?
- Are you aware that the People of the State of California are bringing these charges, and that the decision to prosecute the defendant is up to the prosecutor rather than you?
- (If victim was subpoenaed) You don't want to be here, do you? Why are you here? ("Because I was subpoenaed by you" -- this helps protect the victim from the defendant.)
- Are you aware that the fact that you have been subpoenaed means that you have been called as a witness, that you must testify, and that you may be held in contempt if you do not do so?
- When did you become reluctant (or decide to refuse) to testify?
- Were you living with the defendant when the incident happened?
- Are you living now with the defendant? or with the defendant's family?
- (If not) Does the defendant know where you are staying?
- Are you financially dependent on the defendant?

- Do you and the defendant have children together?
- Have you discussed the case with the defendant?
- Has the defendant made any promises to do something for you if you do not testify?
- Is that promise to do something the reason you do not wish to proceed/or testify?
- Has the defendant or anyone else threatened you or told you not to testify or told you to tell a different version than what really happened?
- Has the defendant or anyone else threatened your children, family, or close friends?
- Is there some other reason you are afraid of the defendant?
- Are you aware that this court can issue an order telling the defendant to stay away from you and have no contact with you or your family?
- Are you aware that if the case is prosecuted that the defendant can be required to get counseling, pay for your damages, and/or stay away from you and your family?
- (If injuries alleged or visible) How did you receive the injuries (allude to police reports, medical reports, photos, injuries still visible in court, etc.)? (District Attorney can introduce police communication tape in which victim called police, to refresh victim's memory and encourage her to testify, or to stand by her original version.)
- Have you discussed your desire not to testify or to change your version of what happened with an advocate from the Family Violence Project or staff of the local domestic violence agency?
- If not, would you be willing to talk with them now?
- Would you like to have a bailiff or officer escort you from the courthouse when you leave today?

If after the questioning, the witness agrees to testify or has provided sufficient information to permit the case to proceed, it should continue to be prosecuted.

Because of the danger posed by domestic violence cases, this office will use all legal means to ensure the presence, cooperation, and participation of victim/witnesses. Before a body attachment or contempt finding is requested, the case should be discussed with

the Team Leader and the Family Violence Project to determine if there is information that indicates that such an action is inappropriate.

The prosecutor who requests and obtains a body attachment shall notify the Inspector and the Family Violence Project of its issuance and shall, whenever appropriate, request that the court make it returnable to the courtroom.

If a victim is found in contempt, the District Attorney shall request that the disposition address the victim's needs, such as counseling or participation in a battered women's support group.

#### **IX. THE FAMILY VIOLENCE PROJECT, VICTIM ADVOCACY UNIT**

The District Attorney's Office will provide victim advocacy services to victims of felony domestic violence assaults through the Family Violence Project Victim Advocacy Unit. Information and support will be provided to victims of felony domestic violence throughout the criminal court process. Services offered will include information on the criminal and civil justice system's response to domestic violence, crisis and options counseling, and referrals to additional services whenever needed.

Services will focus on addressing the concerns that victims of domestic violence may have regarding their participation in the criminal justice process. The advocate's goal will be to assist, empower, and advocate for the victim.

Advocates will receive specialized training on the social dynamics of domestic violence and the civil and criminal options available to victims of domestic violence. This training will be a minimum of two weeks in length. At the end of the training, interns will receive domestic violence victim advocate certification by the District Attorney's office, as specified under Penal Code §1035.

Communications between a client seeking assistance and the domestic violence victim advocate will be confidential as specified by law. Exceptions include information specifically ordered released by the court, and/or information concerning child abuse, elder abuse, suicide, or threats to injure another person that the advocate has reasonable cause to believe to be true. Advocates will not conduct case investigation, or collect evidence for law enforcement or the prosecutor.

The San Francisco Police Department Investigative Details and the ADAs handling domestic violence cases will provide the Family Violence Project with written referrals of felony domestic violence cases. Referrals will also be accepted from law enforcement officers, community agencies, and from victims themselves.

The advocate will document only information essential to providing future services to the client. Documentation will begin at the point of the first contact with the client or from the time the advocate receives the referral, to the point of case disposition.

The following services will be provided by the Family Violence Project:

**1. Intake Interview**

The intake interview will be scheduled, or will occur during the first contact with the client. The length and depth of the interview will be determined by the urgency of the client's situation and her goals. The purpose of the intake interview is to obtain the details necessary to evaluate the client's need for services, and to provide the appropriate referrals.

**2. Development of a Client Safety Plan**

The advocate will discuss with the client the danger of the situation and the precautionary measures available to her. Some of the precautionary measures that will be discussed include:

- staying at a battered women's shelter or with family/friends;
- obtaining a restraining order from the civil courts;
- informing the local police station of the potential for future violence at the victim's address.

**3. Referral to Additional Services**

Information and referrals to a wide variety of agencies such as emergency shelter programs for battered women, domestic violence counselors and support groups, public assistance and food stamps, transitional housing, legal assistance for dissolution, child custody, temporary restraining orders, and immigration matters, etc., will be given to the client as deemed appropriate for her situation.

**4. Requesting Criminal Court Stay Away Orders**

The advocate will inform the client that a criminal court judge can order a defendant to have no physical, telephonic, written, or third party contact with a victim/witness in the case. The advocate, upon the client's request, will prepare the written order and deliver it to the ADA at the earliest possible court date. The advocate will explain to the client the procedure used by the criminal justice system to enforce the order.

## 5. Preparation for Testifying in Court

Prior to the preliminary hearing or trial the advocate will meet with the client to familiarize her with court hearing procedures, and to discuss any concerns she may have about testifying in court. The advocate will inform the client that on the day of the hearing an advocate will accompany her to the hearing and that prior to the hearing the client may wait in the victim/witness center. The client will be informed that she can be present at all court hearings but is legally obligated to appear only at hearings for which she is subpoenaed. She is advised that if she fails to appear at a hearing for which she personally received a subpoena, a judge can issue a warrant for her arrest and instruct officers to go to her home/place of employment and bring her to court. She is also advised that a judge can hold her in contempt if she refuses to testify.

## 6. Victim Participation at Sentencing

The advocate will make sure that the wishes of the victim regarding the sentencing of the defendant are communicated to the ADA prior to the case disposition. The client will be told that she/he has a right to be present at the sentencing of the defendant, and to make a victim impact statement, but that the final decision regarding sentencing will be determined by the judge.

## 7. Post Sentencing

The advocate will explain to the client the terms of the defendant's sentence and the procedure for reporting any violation of the terms of the sentence to the appropriate authorities. If the defendant is placed on probation, the client is instructed that either the probation officer or the prosecutor can file a motion to revoke the defendant's probation upon any violation of probation conditions.

## X. Data Collection

Data collection is critical to assess whether policies are properly implemented and effective. Therefore, the District Attorney's office staff will work with Victim Advocacy staff to periodically collect, collate, and provide information on requests for service, filings, and case dispositions.

Data on domestic violence cases are collected in order to assess the magnitude of reported violence and the criminal justice system's response to it. Data will be analyzed for several purposes: to provide an overview of how many domestic violence incidents are reported and what happens to these incidents once they enter the criminal justice system; to highlight points at which domestic violence cases are more vulnerable to dropping out

of the criminal justice system and why; to assist in determining what dispositions are occurring in these cases; to compare data over time to detect trends and measure criminal justice interventions; to compare criminal justice response between domestic violence and other crime categories; and to compare domestic violence and criminal justice system response in San Francisco with data in other jurisdictions. This information will be used to enable members of the criminal justice system to make the system as responsive as possible to victims of domestic violence and increase case successes.

#### DATA TO BE COLLECTED

1. Number of domestic violence calls for assistance to law enforcement. Available through the dispatch data of the San Francisco Police Department.
2. Number of domestic violence police incident reports. Available through the San Francisco Police Department.
3. Number of arrests made in domestic violence cases. Available through the San Francisco Police Department.
4. Number of domestic violence cases investigated by inspectors. Available through the General Works Investigative Detail.
5. Number of domestic violence cases filed. Available through the Rebooking Unit of the District Attorney's office.
6. Number of warrants issued in domestic violence cases. Available through District Attorney warrant files.
7. Number of domestic violence victims receiving victim advocacy services through the Family Violence Project. Available through the Family Violence Project.
8. Number of domestic violence defendants convicted. Available by computer on an individual case basis.
9. Number of domestic violence cases in which charges were reduced to misdemeanors. Available by computer.
10. Number of domestic violence offenders who received jail or probation as part of their sentences. Available by computer.
11. Number of domestic violence defendants who were diverted under 1000.6 of the penal code. Available by computer.