



# Family Violence **Improving** the response to children in domestic violence cases

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Traditionally, law enforcement have been trained to focus only on the adult victim and offender when responding to a domestic violence call. Likewise, the follow-up investigation and prosecution rarely paid attention to the child witnesses, unless they had been physically abused. However, the Austin Police Department, Travis County Attorney's Office, and TDCAA have collaborated to create a training program with a new emphasis on the children caught in the family violence crossfire that covers response, investigation, and evidence collection. As a result, prosecutors now have more information regarding the incident and its impact on the entire family, enabling them to increase victim safety and the likelihood of conviction. The Austin Police Department's Victim Services Division and the Travis County Attorney's Office also collaborate to provide initial intervention to child witnesses at the domestic violence crime scene and subsequent assistance, ranging from counseling to financial compensation.

The first step is to bring together prosecutors and law enforcement to co-train each other. In January of this year, Assistant Travis County Attorney Mike Denton organized a full-day training for the prosecutors handling domestic violence cases. Mike and

I, along with Lt. Mike Kimbro who is Chief of the Austin Police Department's Assault Unit, all stressed the importance of addressing the issues of children at the crime scene. In walking through the phases of trial preparation and practice, we explained that prosecutors must expand their focus, not only to help counteract the backlash against victims who cannot testify, but also to begin including children within the rubric of our safety planning. We need to adapt our practices to reflect the correlation between domestic violence, child abuse, and juvenile delinquency. When we let the traumatized children know that the adults in their community will do their best to shield them from the harm, they are less likely to turn to criminal behavior as adolescents and adults. After discussing how to improve the law enforcement response to children at the scene of domestic violence calls, we highlighted possible prosecutorial uses of additional data collected as a result of including factors affecting the children in the crime report.

A federal COPS grant allowed Lt. Kimbro to organize eight three-hour law enforcement seminars on children issues for every officer within the "Charley" sector, covering East Austin. Kim Bird, APD's child advocate, outlined the trauma and recovery process experienced by these child witnesses.

The other APD victim advocates, Kim Eerkes and Juliet Walters, assured officers of their availability to help with adult and child victims. Mike and I explained to the officers how we can use excited utterances and other hearsay exceptions to bring forward domestic violence cases with and without the victim's testimony. We made clear to the officers that we can most effectively prosecute if they respond, investigate, collect relevant evidence, and write comprehensive incident reports that pay special attention to the children. Based on input from prosecutors, law enforcement, survivors, advocates and child therapists, we taught that:

① **EVERY** incident report must indicate if children live in the home, what their location was during the incident (*upstairs, neighbors, etc.*), and when the children went to that location. Previously, if officers did not see a child, the assumption often was made that none lived in the home. However, we find that sometimes the children have been sent next door or gone to their rooms, and we are missing out on valuable eyewitness testimony about the incident.

② The children must be interviewed **ALONE**. If parent(s) object, the officer is to respectfully explain that *all* witnesses to a crime must be interviewed. In recognition of the fact that the child is un-

likely to disclose the abuse in the presence of the adults, this valuable witness is taken aside and given the opportunity to reveal his/her account. Officers often find the children's reports entirely credible and full of excited utterances, thus allowing the prosecutor to use the information *without* having to put the child on the stand at trial.

③ If the child is behind a closed closet or bedroom door, the officer should first say, "I am a police officer. I am here to protect you. I will count to five and then slowly open the door." Child therapists have taught us that most child witnesses to domestic violence have not slept through the incidents, but rather have hidden under the bed or covers or inside a closet or other room. Some children have armed themselves in a desperate attempt to ward off the perpetrator, and in their hypervigilant state, could harm an officer who does not forewarn that s/he is present to ensure safety.

④ **RAPPORT BUILDING** with the child can greatly increase the amount of information the child is willing to reveal. The officer should first get down to the child's level, then speak in a calm, soft tone and ask open-ended questions. Especially with small children, start by asking about their teddy bear, best friend, school, video game, etc. The officer should ask about a past event or interest of the child to gauge the degree of trauma and level of communication possible.

⑤ The topic of concern may need to be approached gradually. The officer can say, "I need to ask you a few questions. If you don't understand any of them, just tell me." It is important to reinforce often that you are there to help.

⑥ If the child will not answer questions about the incident, talk about other interests and work up

to "Do you ever feel scared at home?" or "Does your Mom get scared?" or "Does your sister get scared?" Then you can say, "I have heard that you were scared here tonight," or "I heard you tell the neighbor that your Dad hit your Mom. Please tell me what you saw."

⑦ Ask the child, "How can I help?"

⑧ Once the child is engaged, you can say, "Please tell me everything that happened. What did you see?" Pause after the child's answer to let them elaborate, then ask, "What did you hear?" Researchers have found it effective for interviewers to keep repeating the request, "Please tell me everything." Do not interrupt or correct, but you can use general prompts: "What happened next?" or "Tell me about that."

⑨ Concluding the interview should begin by thanking the child for talking with you. Explain what will happen next, e.g. "What your Daddy did was wrong; it is not okay for him to hit your Mom. We will arrest him and take him to the police station, but he will get out soon. I am going to give you a SAFETY PLAN. If you are ever scared, you can call 911. Do you have any questions?"

⑩ Officers are trained to photograph every child, whether

s/he is huddled in the corner crying, calmly playing video games, or talking openly. They are also taught to take photos of the crime scene and all parties. In one case, a diligent officer photographed a 4-year-old girl, crouched in a corner, sobbing, and clutching her teddy bear. At trial, the battered Mom testified for the abuser, stating that she had sustained her injuries after falling down. Although the jury reported that they were confused by the conflicting stories, they could not get the picture of that little girl out of their minds and brought in a "guilty."

⑪ For each child, the incident report must include:

- ✓ name, age, school and teacher;
- ✓ all statements;
- ✓ demeanor;
- ✓ full description of injuries;
- ✓ history of abuse;
- ✓ physical evidence from the scene, and
- ✓ any other relevant evidence.

Armed with the report reflecting the above, the prosecutor is generally afforded the luxury of the upper hand with the defendant. The batterer who is confronted with the impact of the violence on his/her children can sometimes be motivated to plead guilty. However, even for those abusers who are not



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moved by the children's terror, their defense attorneys may help them understand that such information will likely sway the jury in favor of the State. The photographs can be used first during our opening statement, as well as in every other phase of the trial, including punishment. In opening the prosecutor might say, "Ladies and gentlemen of the jury, you are not going to hear from little 4-year-old Janey Doe, but you will have the chance to look up-close at this photograph, showing how she felt about this defendant beating up her mother."

In direct examination, the officer can be questioned in detail about the crime scene, helping the jury and judge to understand the victims' terror, including that experienced by the children. Assuming the victim is unable or unwilling to testify, this corroborative evidence from the children is particularly compelling. The officer's ability to recreate the children's traumatic responses can greatly impact the victim (*who may be in the courtroom to testify for the defendant*), as well as the jury. On cross examination, it will be difficult for defense counsel to badger the officer about the appearance of the children and equally tough to counter their outcry statements. Closing arguments can be made that much more persuasive by photos of the children at the scene and the children's excited utterances evidence.

By collaborating in our efforts to ensure that children of domestic violence get the attention they deserve, law enforcement and prosecutors can increase all victims' safety and more successfully prosecute such crimes.



# Comp Corner

## Help available for child victims

The emotional toll of crime on child victims is all too clear to those who work in prosecutors' offices. The financial costs can also be overwhelming as parents and guardians struggle to pay for medical and counseling services needed to help the child. The prosecutor and his or her staff can be an important link to the Crime Victims' Compensation Fund which can provide financial assistance with certain expenses related to the crime.

Parents or guardians of child victims may apply for crime victims' compensation on behalf of the child. The applicant could be a nonoffending parent or the grandparents who become legal guardians of their grandchildren when the parental rights are terminated.

Crime victims' compensation can give support and services to everyone affected by the crime. For example, crime victims' compensation can pay the medical bills for treating the injuries suffered by the child. It can also pay for counseling for the direct victim of the abuse and assist with counseling for members of that child's imme-

diately family. Counseling is also available for household members who are related to the victim by blood or marriage, so step-parents and some extended family members could be covered.

The Crime Victims' Compensation Fund is a secondary source that pays after other collateral sources have been tapped, such as insurance or Medicaid. Any out-of-pocket expenses related to health care co-pays or deductibles may be reimbursable. The staff at the Office of the Attorney General will work with claimants to ensure that these resources are coordinated in the best interest of the child.

The Crime Victims' Compensation Division has a number of resources the prosecutor's staff may use to spread the word about how the program can help child victims of crime. Brochures, applications, and posters in English and Spanish may be ordered free of charge. Special training sessions can be set up by calling Melda Benavidez, Manager of Outreach and Public Policy, at 1-800-983-9933, Ext. 6-1233.

