

# **Case Processing of Misdemeanor Domestic Violence Cases: Arraignment to Sentencing**

## **Progress Report on Implementation of Safety Audit Recommendations from Year 1**

*A Report from the BWJP Safety and Accountability Audit*

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# **I. Executive Summary of 2001 Safety Audit Recommendations**

Engaging in a systematic analysis of an institutional response in a community as large as Minneapolis has been challenging and presented many avenues of inquiry that required more investigation than we had anticipated. As this was the first audit of prosecution procedures ever undertaken, we were unprepared for the range of documents which had to be examined before we could initiate a meaningful analysis. We sincerely apologize for the lateness of this report.

The Safety Audit process presents a “snapshot” of institutional actions at a given time. By the time data was analyzed from that “snapshot”, some details of the institutional landscape had changed. During the past two and a half years, audit activities and other court improvement efforts have identified institutional practices or omissions which negatively impact victim safety and offender accountability, and practitioners have developed and implemented solutions in policy and practice. As a result, the local criminal justice response to misdemeanor domestic assault has been in constant flux. Since the initial period of observation for this phase of the audit, positive major changes have occurred in the Fourth Judicial District court processing of misdemeanor domestic assaults.

In particular, since the audit was completed, the Domestic Calendar has been enhanced through the assignment to the court of a limited number of judges for a longer period of time. This has been accomplished through the support of Chief Judge Burke, the leadership of Judges Mabley and Eagon, and many hours of work by the members of the Domestic Violence Steering Committee which made this initiative a reality in Hennepin County. It is notable that the judiciary acted in the spirit of collaboration by including representatives from advocacy groups (WATCH, DAP, BWJP) on the Steering Committee and in the ongoing planning and development of the dedicated DV Court.

Information about implementation of the DV court and recent related policy changes are described in Section III. In presenting this year’s audit findings, it’s important to acknowledge that some of the recommendations in this report are already being addressed by the relevant agencies or working committees of the FVCC.

## **Scope of the 2001 Audit**

Safety Audit activities and efforts were focused in two major areas: 1) an audit of the procedures involved in the court processing and disposition of misdemeanor domestic violence assaults; and, 2) the implementation efforts of the system’s change recommendations from the first year audit. The audit team mapped out every point of intervention within the process of prosecuting misdemeanor domestic violence crimes and collected relevant texts—forms, job descriptions, policies and procedures, statutes, and agency policies. The audit tried to determine what information was provided to the prosecutor, when in the process the information was available, and how this information was related to the prosecutor’s decision-making during the case. The team analyzed not

only the above, but also texts arising from actual cases involving domestic violence: 67 incident reports written by Minneapolis police officers, and 60 misdemeanor prosecution files corresponding to the above police reports. The audit team invested over 200 hours in observation of all court proceedings related to the 60 domestic arrests, including arraignments, first appearances, pre-trials, and sentencing hearings. As part of this analysis, a specific study of bail determination was completed.

Following these interviews and observations, BWJP staff and text analysis consultants from Praxis International conducted in-depth analyses of the arrest reports that corresponded to the cases observed. These police reports were compared to the quality of reports generated during the summer of 1998 which were analyzed in the previous audit to evaluate the impact of additional training and policy changes introduced by the department. In addition, the reports were analyzed as to their comprehensiveness when compared to the MPD Domestic Abuse Report-Writing Checklist that had been introduced to the officers at trainings.

### **General Audit Recommendations**

The audit produced specific recommendations related to the court procedures that were examined in depth. In addition, several themes arose from the study of the process as a whole which are important for the FVCC to consider further.

One of the themes throughout this report is “information collected but not used.” From the list of over 70 potential pieces of information that could be in a prosecutor’s file, to the defendant’s criminal records, to victim input collected by victim liaisons, to the danger assessment conducted via the pre-trial release evaluation, to evidentiary problems documented on the Domestic Abuse Disposition form, to the pre-sentence investigation – the prosecutor’s file is goldmine of information from a variety of sources about the defendant’s prior history and the victim’s safety concerns. However, it is gold that is often hoarded, not spent or used by others as they act on the case. These nuggets of information are often not used in court appearances like bail or sentencing, which result in similar outcomes no matter what victim information was collected in the file or what has been learned of the defendant’s prior history. Similarly, this information doesn’t appear to affect charging decisions or plea negotiations. The *exercise* of collecting information seems to have value, but the next step of consistently *applying* that information to promote victim safety and offender accountability hasn’t been reached yet.

In other jurisdictions, this information is used to direct limited resources toward the offenders who pose a heightened risk to their victims. The current approach in Hennepin County results in the similar treatment of offenders who appear very different in their criminal histories and the risk they pose to their victims. Battering is a patterned offense; some forms of domestic violence are not. Is the violence an ongoing form of intimidation and coercion, used by one person over another to gain dominance? This is by far the most common form of domestic violence to which the criminal justice system responds. However, it may also be violence in reaction to that dominance, or a one-time event of someone who is not engaged in battering behavior, or an assault committed by a person

who is mentally ill, or who has some other diminished capacity. Our system should address the specifics of each case.

Several factors operate to level the court's response. As noted above, information that is vital to an understanding of the defendant's dangerousness and prior criminal history is sometimes not gathered, but more often not used by the prosecutor or court to justify the imposition of stronger controls over the defendant. The general perception that misdemeanor cases should rarely go to trial creates particular pressure on prosecutors to settle all cases, and certainly provides no motivation for defense attorneys to agree to pleas they deem unfavorable. Problems with the procedures for referring cases to the county attorney's office for consideration as felonies also work to discourage these charges. As a result, the standard approach of the criminal justice system to apply proportionally greater social control over defendants who repeatedly commit criminal acts and pose a greater threat to others is not being achieved.

Lastly, though not directly studied in depth, it was apparent to the auditors that the system's response to the victim is extremely fragmented. Victims may be contacted by a number of system practitioners, victim witness liaisons, and advocates, each fulfilling a limited function. In this uncoordinated response, it is not easy for a victim to establish a meaningful relationship that is more likely to elicit her trust, promote her understanding of the justice system's process, or ensure that information about the context of the violence in her life is inserted into the case file. As a result, her situation, needs and wishes are frequently lost to the practitioners who must make case decisions that profoundly affect her safety and autonomy. The FVCC should direct its attention to this issue and prioritize attempts to improve it.

Many agencies involved in the Fourth Judicial District's institutional response to domestic violence have been actively participating for several years. Policy makers have been prepared to listen to constructive criticism, review their practices, and commit staff and resources to meetings, working groups, training and resource development. This commitment must continue or systems will naturally revert to stasis. It will be important to ensure continuation of leadership and support services for the Family Violence Coordinating Council, its sub-committees and workgroups, and re-convene the multi-disciplinary DV Court Steering Committee. This group was highly successful in the implementation of both the DV calendar and the assignment of a limited number of judges. Even greater opportunities now exist to enhance the effectiveness of a focused intervention within the DV Court.

### **Specific Audit Recommendations**

#### **Law Enforcement Response:**

1. The leadership of MPD should commit to developing strategies/protocols that would address several problems that were identified in the last Audit report.
  - Improve photo documentation of injuries and the crime scene.
  - Resolve issues related to documenting information from the suspect.

- Train officers to ask risk assessment questions included in the DV report checklist.
  - Develop supervisory procedures to review arrest reports.
2. The MPD should develop and implement a departmental policy regarding the officer response to child witnesses of domestic violence.

### **Bail Determination:**

1. The judges assigned to the DV court should develop guidelines for the determination of bail and conditions of release that are related to the information gathered by prosecution (criminal history, pattern, injuries, severity of assault) and the level of risk as determined by the DVSI.
2. The judges assigned to the DV Court should directly address offenders about their use of violence at every opportunity. Arraignment, pre-trial, sentencing, violations of probation and conditions of release, are all opportunities to speak directly to the offender about violence and its impact on the community and the victim.
3. The judges of the DV court and Domestic Abuse Team attorneys should reconsider the practice of imposing no contact orders in *all* cases.
4. Domestic Abuse Team Attorneys should take a more proactive approach to providing arguments requesting increased bail amounts or special conditions of release when the totality of circumstances indicates heightened levels of danger to the victim if the defendant is released.

### **Prosecution Procedures:**

#### **Screening Cases: Policy Development**

The Minneapolis City Attorney's Domestic Violence Unit has indicated it would like to develop a domestic violence prosecution policy. This policy should include a section on case screening. The case screening section should include the following:

1. The Minneapolis City Attorney's Office should share the information collected on the Domestic Abuse Disposition form with the Minneapolis Police Department (i.e., the frequent lack of photographs, excited utterances, defendant statements, etc.). The agencies should engineer a solution to share this information on a regular basis and use it to solve the problems that lack evidence or documentation creates (e.g., inability to go forward with prosecution).
2. When reviewing police reports, prosecutors should request further investigation when the report is insufficiently documented, or when the criminal history of the

offender or the presence of dangerousness factors indicate heightened risk to the victim.

3. The Minneapolis City Attorney's Office should re-examine the effectiveness of the current process of early victim contacts to determine the desired role of these contacts. The Minneapolis City Attorney's Office should work collaboratively with other agencies and advocates to develop ongoing victim contacts that better promote their safety.
4. The Minneapolis City Attorney's office should develop guidelines regarding when and how victim input into case disposition is relevant.
5. The Minneapolis City Attorney's office should develop a policy or protocol to guide prosecutors in what to do when encountering evidence of language difficulty on the part of the victim and/or the defendant.

### **Training**

The Minneapolis City Attorney's Office should collaborate with the Minneapolis Police Department to conduct police training on evidence-gathering needs and strategies.

### **Filing or Charging Offenses: Policy Development**

The domestic violence prosecution policy should include a section on charging. The charging section should include the following:

1. The Minneapolis City Attorney's Office should collaborate with the Minneapolis Police Department on charging guidelines for offender conduct that is directed toward police or displayed in front of police during domestic violence arrests.
2. The Minneapolis City Attorney's Office should develop charging guidelines for repeated OFP violations that ensure victim safety, offender accountability and confidence in the orders of the court.
3. Prosecutors should exert their authority to change, add or heighten charges when evidence exists to do so and when in the interest of victim safety and offender accountability, rather than relying solely on the tab charge issued by police.
4. Prosecutors should request follow-up investigation when they receive additional information about previous but uncharged assaultive or threatening conduct that has occurred within the time limit set forth in the statute of limitations.
5. The Minneapolis City Attorney's office should continue discussions with the Hennepin County Attorney's office about triaging cases and removing obstacles

to referrals for felony charges, including but not limited to terroristic threats and strangulation.

### **Training**

Minneapolis Domestic Abuse Team attorneys and County Attorneys should receive training on:

- recognition of strangulation cases,
- strategies to hold offenders accountable, and
- enforcement of court orders.

### **Conducting a Thorough Investigation: Policy Development**

The Minneapolis City Attorney's Office should join with the Minneapolis Police Department to develop procedures to obtain medical records when necessary.

### **Appropriate Plea Negotiations: Policy Development**

The domestic violence prosecution policy should include a section on appropriate plea negotiations. The plea negotiations section should include the following:

- As stated in the "Screening Cases" section earlier, the Minneapolis City Attorney's Office should develop guidelines regarding victim input into case disposition.
- The Minneapolis City Attorney's Office should develop criteria for when it is appropriate to offer a Continuance Without Plea (CWOP) as a disposition to a domestic violence case. These criteria should uphold the concepts of victim safety and offender accountability.

### **Pre-trial Procedures: Policy Development**

The Minneapolis City Attorney's Office should participate with the judiciary in the establishment of:

- a consistent approach to courtroom decorum, and
- the consistent use of the microphone system so that those attorneys, victims, defendants, court personnel and observers can hear decisions and orders issued.

### **Developing Sentencing Strategies: Policy Development**

The domestic violence prosecution policy should include a section on sentencing which includes the following:

1. Regarding Continuances Without Pleas (CWOP's), the Minneapolis City Attorney's Office should clarify who is responsible for oversight, what constitutes appropriate supervision, procedures for holding violators accountable, and appropriate penalties to recommend when a violation has been found.

2. The Minneapolis City Attorney's Office should develop criteria for conditions of sentencing (length of supervision, jail, restitution, etc.) appropriate to the severity of the crime, to the defendant's prior history, to services or punishments already applied to the defendant in the past, and to the victim's safety.
3. As stated in the "Screening Cases" section above, the Minneapolis City Attorney's office should develop guidelines regarding victim input into case disposition.

## II. 2001 Safety Audit Findings and Recommendations

### A. Introduction to Safety Audits

Under grants from the U.S. Department of Health and Human Services and the U.S. Department of Justice, the Battered Women's Justice Project provides training and technical assistance to advocates, law enforcement, probation staff, prosecutors, judges and other criminal justice system personnel, on all aspects of the criminal justice response to crimes of domestic violence. The Safety and Accountability Audit, a methodology which assesses case processing from the perspective of its promotion of victim safety, was developed by Ellen Pence, Ph.D. of Praxis International of Duluth, MN. Since 1995, staff from Praxis and BWJP have partnered in conducting safety audits to improve law enforcement and court procedures in communities around the country.

#### *How a Safety Audit Works*

The Safety Audit is rooted in the work of sociologist Dorothy Smith who developed a research process called an "institutional ethnography," a way of analyzing people's everyday working lives within an institution. The way they are organized to work produces the reality of that institution, which in turn shapes the everyday world of citizens whose lives are managed by that institution. An ethnomethodological investigation challenges the "naturalness" of these structures and exposes them as individual interactions and experiences. This analysis can provide direction on how to change the interactions, and thus result in a change of the institution itself.

The Safety Audit is an application of this theory to the processing of domestic violence cases by the criminal justice system, involving a systematic observation and analysis of intra- and interagency routines and paper trails. Those of us working within these systems know that too often our agencies respond to reports of domestic violence in ways that are fragmented, incident-based, cumbersome, slow, and often escalate the danger to victims by placing them in an adversarial relationship to the perpetrator. Too often, our systems leave victims unprotected by the very agencies designed to protect them.

The purpose of the Safety Audit is to see how and if existing practices – both those documented in forms or policies, or those that evolve within a work culture – ensure the safety of victims and the accountability of offenders. Where these practices fail to consider, or possibly exacerbate these concerns, they can be redesigned. The Safety Audit is not an assessment of the work performance of individual staff, but rather a holistic examination of the processes, practices, routines and functions that comprise the criminal justice response to domestic violence. What an audit examines is how the actions of offenders and the information gathered by staff are recorded, distributed, analyzed, and used by other people within the same or complementary systems. Individual staff members may be more or less effective, but that is not the point of auditing their work. *It is to see how, where, and if their practices—both those in their job descriptions and those that*

*evolve in their work culture—ensure the safety of victims and the accountability of offenders.*

In a Safety Audit, interviews and observations are organized to collect data that address specific questions related to these issues: 1) How does the worker's access to technology or lack of resources affect victim safety or promote offender accountability? 2) How do laws, rules, and policies require or prohibit staff from accounting for victim safety? 3) Do forms, reports and worksheets used in domestic violence cases capture not only the context of the incident, but also the more complete context of the violent relationship? 4) Is each worker linked to other workers in the criminal justice system so that each has the information required to make decisions that promote victim safety and offender accountability? 5) What relevant training has this staff person received? What additional training would be helpful? 6) What priority is given to domestic violence by the leadership in this agency? How is this demonstrated?

The Safety Audit uses both qualitative and quantitative research in collecting data. Experiential interviews with and observations of staff involve subjective perspectives on how processes do or do not work to the benefit of victims of domestic violence. However, the interviews and observations also allow the auditors to objectively map the exact chronology of "steps" that occur as a case is processed through the system. Text analysis is a close examination of paper trails that is used to identify the frequency with which certain categories of information are included in institutional documents. This analysis allows auditors to see how information relevant to victim safety is included or excluded in the official record of the case, which forms the basis for all institutional response.

The Safety Audit also involves participatory action research, whereby the audit teams themselves become catalysts for system-change. As the audit teams identify, map and discuss various processes, team members and their agencies may initiate or participate in system reforms that fall within their authority to change.

## **B. Scope of the 2001 Minneapolis Safety and Accountability Audit**

In 2000, BWJP completed a safety audit that focused on the initial police response to domestic assault and case processing functions up to the time of arraignment. This project was supported by the leadership of the Fourth Judicial District Coordinating Council, and participating agencies included the Minneapolis Police Department, the Minneapolis City Attorney's Office, the Hennepin County Department of Community Corrections-Adult Field Services Division, and the Hennepin County Attorney's Office. The results of the first year audit were well-received and BWJP sought funding to continue the Safety Audit process.

During the second year, Safety Audit activities and efforts were focused in two major areas: 1) an audit of the processes involved in the court processing and disposition of misdemeanor domestic violence assaults; and, 2) the implementation efforts of the system's change recommendations from the first year audit. Some time was also spent investigating related issues: access to and availability of civil and criminal legal advocacy

services, legal representation for victims of domestic violence, and the availability of language and culturally-specific services throughout the intervention process.

The prosecution of a case does not produce text or products for analysis like a police report or a pre-sentence Investigation. Instead, prosecutors receive information from various sources and combine these resources to guide their decision-making, maintaining a balance among considerations of victim-safety, due process and offender accountability. To gauge whether this balance was reflected in the case disposition, the audit tried to determine what information was provided to the prosecutor, when in the process the information was available, and how this information was related to the prosecutor's decision-making during the case.

The audit team mapped out every point of intervention within the prosecution process of the City of Minneapolis and collected relevant texts—forms, job descriptions, policies and procedures, statutes, and agency policies. The team analyzed not only the above, but also texts arising from actual cases involving domestic violence: **67** incident reports written by Minneapolis police officers, and **60** misdemeanor prosecution files corresponding to the above police reports. The audit team invested over 200 hours in observation of all court proceedings related to the 60 domestic arrests, including arraignments, first appearances, pre-trials, and sentencing hearings. Several cases were set for trial, but no cases actually went to trial during the period of observation. BWJP staff attorneys observed plea negotiations on six mornings and conducted four in-depth interviews with Domestic Abuse Prosecutors. As part of this analysis, a specific study of bail determination was completed.

Following these interviews and observations, BWJP staff and text analysis consultants from Praxis International conducted in-depth analyses of the arrest reports that corresponded to the cases observed. These police reports were compared to the quality of reports generated during the summer of 1998 which were analyzed in the previous audit to evaluate the impact of additional training and policy changes introduced by the department. In addition, the reports were analyzed as to their comprehensiveness when compared to the MPD Domestic Abuse Report-Writing Checklist that had been introduced to the officers at trainings.

Examples the spreadsheets used to analyze the police reports and prosecution files are included in the appendices. The complete spreadsheets were provided to the appropriate agencies.

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## C. Analysis of Police Reports: 1998 & 2001

In misdemeanor domestic assault cases, a well-written police report is a crucial element of the prosecutor's case. To assess the quality of the reports written by Minneapolis police officers after responding to a domestic violence incident, the auditors: 1) compared the reports written in 1998 (previously studied in the first audit) with reports written in 2001; and 2) analyzed the compliance of 2001 reports with a domestic violence checklist introduced to officers during recent trainings.

### Comparison of reports: 1998 & 2001

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#### 1998 Reports

- Only 34% (27 of 79 total) of reports noted the presence or absence of children. Through observations, auditors noted that officers checked on children if they were obviously present; however, this is not documented in the reports. Only 2 of the 79 reports contain officers' observations as to the status of the children. Also, no routine checks were conducted for non-obvious children
- Almost half of the reports (35 of 79) note the presence or absence of alcohol/drug use by either of the parties.
- Officers noted victim's account of some history of abuse in 35 of the 79 reports (44%)
- Officers also noted in 9 cases the presence or absence of a civil protection order. (11%)
- Officers recorded excited utterances in only 3 of the 31 Arrest reports. None of the 48 GOA reports contained any quoted excited utterances. While some reports did contain quoted words and/or phrases, none correctly constituted this exception to the hearsay rule.

#### 2001 reports

- Only 13% (8 of 62) reports referenced the absence or presence of children. In 4 of the 8 cases (50%) the officer described how the children were involved: eyewitness, heard the incident etc. There is no documentation about routine checks or questions asked about non-obvious children.
- 31 of 62 (50%) reports note the presence of alcohol /drugs. In 9 (30%) arrest reports the officers document some relationship between the alcohol/drug use and the violence.
- Officers noted victim's account of some abuse history in 25 of 62 cases. (40%)
- Officers noted that they checked on the presence of OFP's in 12 cases. (20%)
- Officers recorded excited utterances by the victim or quotes from witnesses in 21 of 62 cases (30%)

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- 12 of 79 reports (15%) noted the victim's nonverbal communication (e.g. "victim visibly upset and crying") in the narrative.
  - As noted from reports and observations, officers are not obtaining 3<sup>rd</sup> party contact information (someone through whom the victim can always be reached) as a matter of routine.
  - Officers regularly allow suspects to explain their account of events, as noted from observations; however, these accounts are rarely documented in reports. Only a couple of the reports documented any comments or statements by the suspect.
  - Victims' injuries (or lack thereof) noted fairly regularly in reports. Notably, 65 of the 79 reports studied involved allegations of physical assault. In 41 of those 65 reports (63%) officers noted whether injury visible and provided description of injury if visible.
  - In 4 of 79 reports analyzed, physical evidence was inventoried. In 2 of those 4 cases, evidence was drug-related.
  - Only 33 of 79 reports contained officers' independent observations, including everything from parties' state of intoxication to description of physical injury, to parties' behavior, to physical evidence at scene.
  - No pictures were taken.
  - As a matter of routine, witness information is not consistently documented in reports. It is unclear from reports whether no witnesses were present, or whether they were but not noted. Through observations, auditors noted incidents where witnesses
  - 42 of 62 (67%) noted the victim's non-verbal communication in the reports
  - Officers rarely obtain 3<sup>rd</sup> party contact information for the victim. The CAPRS reports now have additional space to report cell phone and pager numbers.
  - 20 of 62 (32%) arrest reports contained good/fair description of suspects' account of what happened. Since there is currently limited follow-up investigation on misdemeanor domestics; very little information is ever obtained from the suspect if not collected at the scene.
  - 41 of 62 ((66%) reports contain statements of victim injuries. In 29 of these 41 reports (71%) officers noted whether injury was visible and provided description if visible.
  - In 2 of 62 cases, physical evidence was inventoried, 1 was drug related
  - 60 of 62 reports (97%) contained officers' independent observations, including information about the crime scene, damaged property, corroborating evidence, victim level of fear, history of abuse, documenting use of language line etc. This was the area of most significant improvement.
  - In 5 of 62 reports pictures were taken
  - Witnesses were noted in 40 of 62 reports. In 26 of these reports officers described what the witness said about the incident. Contact info was obtained for

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were present but not noted in the report or questioned at the scene.

- Not clear from text analysis whether officers are consistently conducting self-defense analyses or whether officers are applying primary aggressor policy
- Follow-up investigation is not a matter of routine in domestic violence-related misdemeanors.
- Current review procedures are not ensuring that reports include all the information that would improve the handling of these cases. The Department does not have an adequate procedure for reviewing arrest reports.

witnesses in 33 of 40 cases (83%)  
BIG improvement!

- In 9 of 62 cases officers determined that both parties had used force. A self-defense determination was made by the officers in 8 of 9 cases.
  - Currently 24% of cases assigned for follow-up investigation are misdemeanor assault referrals from the City Attorney's office or from DASC after review of the GOA incidents.
  - There has been no change in policy or practice at the precinct level to ensure supervisory review of misdemeanor arrest reports. GOA reports are reviewed by the precinct supervisors. The Domestic Investigations Team leader is reviewing reports and flagging those that need more information as well as those that are exemplary.
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## Comparison of 2001 Police Reports to Domestic Abuse Report Writing Checklist

The Domestic Abuse Report Checklist was introduced in trainings of all officers in the fall of 2000. Its use was encouraged, but is not required by MPD policy.

### Domestic Abuse Report Checklist

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#### *Scene Description/Management*

- ✓ Take pictures of scene, victim, and suspect.
- ✓ Collect evidence and inventory property, (broken phone, torn clothing, bloody items, etc.)

#### *Victim/Suspect*

- ✓ State relationship of victim to suspect.
- ✓ What does suspect say happened? What does victim say happened? (Put each party's responses in quotes.)
- ✓ What did *you* observe related to the accounts of events/ injuries?
- ✓ Describe injuries to both parties (type, size, location, color)
- ✓ Describe physical/emotional state of each party (crying, shaking, flushed face, etc.).
- ✓ Obtain name, address and phone number of person who will know how to reach victim at all times. Witnesses (children, neighbors, etc.) children present or involved? How?
- What did witnesses see or hear?
- Obtain thorough contact info for all witnesses.

#### GENERAL FOLLOW-UP

- ➔ IS THERE AN OFFP? SUSPECT ON PROBATION?
- ➔ SUSPECT AND/OR VICTIM INTOXICATED? DESCRIBE.
- ✓ Medical attention required? Facility? Release signed?
- ✓ Suspect GOA? Ascertain whereabouts,

assess dangerousness.

Include all details in your report

#### INVESTIGATORY PROCEDURE

Step 1. Did either or both parties use force?

Step 2. If both parties used force, did either party use force in self-defense? If so, make arrest

Step 3. If neither party used force in self-defense, was either party the predominant aggressor? (make arrest)

#### Self Defense

- Did either person believe they were in danger of being harmed? Was it a reasonable belief?
- Was the harm imminent?
- Was the responding force reasonable?

#### Predominant Aggressor Considerations

- severity of harm, injury
- who is most afraid
- relative size and strength
- credibility of the parties, prior history, likelihood of future harm

#### Dangerousness Assessment

**Ask victim these questions and include responses at the end of your report.**

- Do you think suspect will seriously injure or kill you? Why or why not?
- What concerns do you have that suspect will use a weapon?
- Has suspect threatened suicide? When?

- Has suspect demonstrated behavior that s/he is obsessed with you or stalking you?
- What reaction has suspect had to a recent OFP, divorce or separation?

**Analysis of Minneapolis Police Reports compared to DV Checklist – November 2001  
n= 62 Arrest reports**

	Good	Fair	Yes/No
<b>Scene Description/Management</b>			
Take pictures of scene, victim, and suspect			5 of 62 cases
Collect evidence and inventory property			2 of 62 cases
<b>Victim/Suspect</b>			
State relationship of victim to suspect			97% (61)
What does suspect say happened?	Good – 16%	Fair – 16%	None – 68%
What does victim say happened?	Good – 85%	Fair – 15%	None – 0%
Officer observations re. accounts of events/injuries?	Good – 40% (e.g. Case #17)	Fair – 15%	None – 29% (N/A – 16%)
Describe suspect's injuries			N/A – 100%
Describe victim's injuries	Good – 66% (27 of 41 cases)	Fair – 3% (2 of 41)	None – 29% (12 of 41) N/A – 34% (or 21 cases where she was not injured)
Describe victim's physical/emotional state	Good – 62%	Fair – 5%	None – 33%
Describe suspect's physical/emotional state	Good – 24%	Fair – 3%	None – 73%
Obtain contact info for victim	Yes – 98%		None – 2%
<b>Witnesses (children, neighbors, etc.) Documentation</b>			
Children present?	(referenced in 8 cases)		
How are children involved?	Good – 3 of 8	Fair – 1 of 8	No – 4 of 8
What did witnesses see or hear?	Good – 50% (20 of 40 cases)	Fair – 15% (6 of 40)	No – 35% (14 of 40)
Obtain contact info. for witnesses			Yes – 83% (33 of 40 cases) No – 17% (7 of 40 cases)
<b>General Follow-up Documentation</b>			
OFP? Suspect on probation?			Checked – 12 cases (18%) No documentation - 50 cases (82%)
Describe suspect intoxication	Good – 3 of 23 cases	Fair – 20 of 23 cases	

Describe victim intoxication	Good – 1 of 8 cases	Fair – 7 of 8 cases	
Medical attention provided			Yes 10% (6 cases) No – 87% Refused – 3% (2 cases)
Medical release signed	0 of 6 cases		No – 6 of 6 cases
Medical facility specified			Yes – 5 of 6 cases No – 1 of 6 cases
If suspect GOA, ascertain whereabouts			N/A in this sample
Document Procedure/Interviewing			
Both parties used force			Yes- 9 cases No – 51 cases
Self-defense considered			Yes - 8 of 9 cases No – 1 of 9 cases
Predominant aggressor considered			Yes - 0 of 1 case No – 1 of 1 case
<b>Dangerousness Assessed (5 questions)</b>			No – 100%

## Summary of Findings

### Areas of Improvement

1. In 70% of reports in which the victim was alleged to have been injured, the officer's description of victim's injuries was excellent or adequate.
2. Witnesses to the assault were referenced in 40 of 62 cases. Contact information was obtained for 33 (83%) of these witnesses.
3. Documentation of officer's observations regarding the account of events or injuries was fair to excellent in 35 of 52 applicable reports.
4. In all but one case, officers obtained contact information for the victim.
5. Both parties were alleged to have used violence in 9 of 60 arrests. In only one incident did the officer fail to make a predominant aggressor determination.

### Areas of Concern

1. Photos of injuries or property damage were only taken in 5 cases. Although disposable 35mm cameras have been issued to each precinct to provide such documentation, officers are not consistently taking photos.
2. In none of the reports did the officers document asking any questions that assess the dangerousness of this particular offender or the level of risk posed to the victim. Officers

rarely ask about history of violence, responding to each incident as a single event rather than as a patterned crime. Determining the context of the assault would aid officers in assessing heightened risk to the victim. This information is also vital to judges when determining conditions of release and to prosecutors in determining charges. For example,

- BWJP case #24 –Female victim calls police for alleged assault. Apartment is trashed, broken furniture, smashed fish tank, slashed couch, suspect admits to damaging the property. He also states that he is leaving because of her abuse, and that the fight started because she would not let him leave. His clothing is stretched. In this incident completing a history check or risk assessment would have helped to explain the situation and determine who is doing what to whom.
  - BWJP case #51 – Victim alleges that suspect chokes her to unconsciousness, physically assaults her for several hours, threatens to kill her, pours beer on her, does not allow her to dress, she’s running around outside in the winter with only a towel on, and later says he assaulted her “with a fork.” Victim states that he is known to have a gun. Suspect is GOA, officers linger outside her house while writing a report because she’s scared, but they take no further steps to assure her safety. While police are still outside, the suspect returns and chases the victim out of the house. He does eventually assault an officer while being arrested. They take lots of photos of the officer’s injuries but none of the victim’s. He threatens the victim in front of the officers, saying “I’ll be back Monday, bitch, and I’ll get you for this.” Later on, suspect says he “had sex” with the victim after he choked her, but this likely sexual assault is not pursued or discussed with the victim. Officers charged him with assaulting an Officer and 5<sup>th</sup> degree domestic assault. The possible sexual assault and strangulation are indicators of elevated risk to the victim.
3. It appears that officers are asking some victims what they want done at the time of the assault, sometimes in front of the suspect. Officers do not report asking victims if they want to press charges, but they frequently document that the victims said they wanted to press charges, or promised to “follow through this time.” In addition, at a meeting of the FVCC Advocacy Issues Sub-committee, advocates reported that many victims have said that the police asked them if they wanted to press charges.
  4. No statements are being taken from the Suspect, except in case #51 when the suspect assaulted an officer. Even more troublesome is the practice of regularly making arrests without talking to the suspect - e.g. #11, 46. Interviews with Patrol Officers and Investigators revealed divergent opinions about this practice. Patrol officers stated that *interviewing* the suspect was the job of the investigator, and that they didn’t get paid enough to be investigators. Investigators stated that standard practices for first responders included documenting questions asked of the suspect. Street officers do interview suspects while making arrests for other misdemeanor crimes (DUI, burglary, assaulting an officer, etc.)
  5. Interviews with Minneapolis officers in the first year of the Audit indicated that it is a common belief that Minneapolis has a mandatory arrest policy. “ if we go to a Domestic,

somebody is going to be arrested” Two arrest reports in this sample fail to document that probable cause existed to justify the arrest.

6. Information about presence and/or involvement of children at the scene is inconsistent. The presence of children were referenced in 8 cases, in four of those cases there was no other information related to the children (awake, sleeping, in the same room, witness, etc.)

## **Recommendations:**

**1. The leadership of MPD should commit to developing strategies/protocols that would address several problems that were identified in the last Audit report.** MPD Domestic Violence Unit investigators and supervisors have shown much initiative in responding to previous recommendations for their department. However, addressing the first three recommendations will require direction and commitment from Patrol Supervisors and MPD leadership.

- **Improve photo documentation of injuries and the crime scene.**

More emphasis should be given to the need for and effectiveness of photos taken at the scene, both of victim injuries and crime scene documentation. This could be accomplished through training and a strong message from the Patrol Supervisors that photos are expected to be taken when there are visible injuries and /or property damage.

- **Resolve issues related to documenting information from the suspect.**

The fact that responding officers are not recording any suspect statements at the scene of misdemeanor domestics creates a significant barrier to the successful prosecution of these cases. Clarification is needed to determine whose job it is to gather information from suspects (responding officers or investigators) and what type of information is to be gathered from suspects at the scene. It is evident that there is no clear understanding between patrol officers and investigators on the answer to these questions. The Police Federation has also been referenced as an element that needs to be involved to solve this problem as it may pertain to officer duties within job classifications.

- **Train officers to ask risk assessment questions included in the DV report checklist.**

It is evident that officers do not understand the need for or relevancy of asking the victim for information that would aid in the determination of the level of dangerousness posed by the suspect to this particular victim.

**2. The MPD should develop and implement a departmental policy regarding the officer response to child witnesses of domestic violence.**

There is no MPD policy regarding the role of the officer's interaction with children who witness domestic assault. A following policy was discussed at the Police Steering team meetings and suggested for adoption.

### **INTERVIEWING CHILD WITNESSES OF DOMESTIC VIOLENCE**

Officers will check on the welfare of all minors present at the scene. An Officer who suspects that a child may be physically or sexually abused must report it to child protection services.

Officers should consider the following in determining whether to interview the child:

- The weight of child's interview in establishing probable cause; and/or
- The likelihood the child will suffer adverse consequences, or retaliation by the suspect,
- The child's physical, emotional, or psychological ability to give a statement;
- The child's age and ability to understand questions and formulate responses;

An officer should not interview a child if he or she feels it is not safe for the child to be interviewed.

## **D. Bail Determination: Findings & Recommendations**

### **Bail Determination: Findings**

Observations of arraignment spanned a 3 week period, with most cases heard during the morning court with in-custody defendants. At this time District Court had implemented a Domestic Calendar with all Domestic and OFP violations heard in one courtroom. Several judges were presiding somewhat consistently, but others rotated in as well. As a result, seven different judges conducted court hearings during the observation period. Domestic Abuse Team attorneys were assigned on Mondays and were occasionally scheduled on other days. There was no dedicated representation from the public defender's office. The lack of dedicated DV Court personnel at this time (March, 2001) affected the consistency of proceedings regarding release from custody.

Observations at arraignment included documenting the following information at each appearance:

- who represented the voice of the victim,
- what did she want the court to know,
- comments of the Prosecutor,
- comments of Defense,
- comments by the Judge,
- initial bail, requested bail, and bail granted,

- conditions of release, and,
- other comments from the Bench.

The SIP printout and police report for each case were analyzed for the description and severity of the assault, related criminal or prior domestic violence criminal history, and risk factors noted in the text of the police report.

### *Voice of the victim*

From the very beginning of the court processing of Domestic Assault, the presence of the victim is literally and figuratively absent. It is probable that some victims were present at the arraignment and we did observe Crime Victim Liaisons and DAP advocates asking some women if they were in court for their case. During the period of observation, only one victim spoke directly to the court. She was not accompanied by an advocate and seemed confused about where to go or who to talk to. This lack of contact with the victim prior to arraignment has a negative impact on both victim safety and offender accountability. Lack of information from the victim regarding the impact of the assault, and her level of fear of the defendant seriously diminishes the ability of the court to make relevant decisions regarding the level of risk posed by the release of the defendant, and to impose meaningful and appropriate Conditions of Release.

In observations of 67 arraignments:

- No information was presented from the victim and no comments were made indicating attempts made to contact the victim 48
- Public defender indicated that they had contacted the victim 3
- Prosecutor had information from the victim 5
- Victim was present and spoke on her own behalf 1
- Interpreter had spoken with victim 1
- CVL presented victim concerns 6
- CVL indicated inability to contact victim 2
- CVL indicated inability to speak with victim due to language issues 1

Information from the victim was presented in 16 cases. In 6 of these cases the victim requested contact with the defendant, but contact was only granted twice: to a victim who spoke on her own behalf and in a case where the Public Defender had spoken with the victim. No Contact Orders are routinely imposed by the court in almost every case regardless of the severity of the assault or prior history of violence with the victim. Interviews with prosecutors indicate that they believe this practice serves as a potential deterrent to further violence and decreases the ability of the defendant to influence or threaten the victim before the next court appearance.

### *Determination of Bail and Conditions of Release*

The prosecutor usually has the police report, SIP history of the defendant, and the bail evaluation of in-custody defendants available to them at arraignment. Depending on resources available from the City Attorney's paralegal staff, they may have NCIC and BCA

criminal background checks as well. In 49 of 67 cases the prosecutor summarized the assault, extent of the injuries and relevant prior history to inform the bench of their rationale for bail requests and release conditions. It is important to note that during this period of court observation Domestic Abuse Team Attorneys were not scheduled for every arraignment. The difference in the prosecution presentation was obvious, supporting the need for prosecutors who are trained in the dynamics of domestic violence, understand the relevance of history and victim level of fear, and present the assault in context to the court.

Analysis of bail arguments revealed the following information:

A. # of times Prosecutor requested higher bail than the standard \$ 1200	8
response to request, higher bail was granted	2
response to request, 0 bail was granted	2
standard bail was granted	4
B. # of times prosecutor requested standard \$1200 bail	20
received requested bail	10
received lower bail	8
received higher bail	2

In the remainder of the cases the bail set while in custody was allowed to stand or was altered by the judge with no input from the prosecutor. Prosecutors only argued for bail higher than the standard \$1200 on eight occasions, while it is clear from the arrest reports and SIP histories that higher bail was warranted in many more cases. Bail arguments present an opportunity for prosecutors to provide education to the bench about the dynamics of domestic violence and to impose conditions that may enhance victim safety. The judge has to rely on information presented by the prosecutor and defense attorney to make bail and release determinations. At the time of this observation the bench did not routinely have the police report and three times they asked the prosecutor to give them the police report to read. In one case the Judge specifically mentioned that they wanted more information from the victim before setting bail. It appears that further analysis and discussion is needed to identify practices that would support the ability of the Bench to have sufficient information available to them at arraignment about the crime, the history of the defendant, and consistent input from the victim.

In only 7 cases did the Bench address the defendant directly about their use of violence, or convey a message that domestic violence is wrong, or explain to the defendant why a no contact order was issued. This is a lost opportunity for education of the defendant, the victim, and the general public present in court that domestic violence is a crime that the Court takes seriously. Research has shown that, the demeanor of the judge and his/her treatment of the parties and statements to the parties has an impact on how the offender relates to the victim after the hearing.<sup>1</sup>

Although the Domestic Abuse Team Attorneys did present information in most cases that indicated factors related to severity and level of risk posed to the victim, this information

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<sup>1</sup> One study found that “Judicial warnings or lectures to defendants concerning the inappropriateness and seriousness of their violent behavior apparently improved the future conduct of some defendants.” Goolkasian, at p.4, citing Barbara Smith, *Non-Stranger Violence: The Criminal Court’s Response*, National Institute of Justice, Washington, DC, 1983

did not appear to be relevant to the final bail determination. In most cases, as apparent in the examples below, it is difficult to establish a pattern for bail determinations that is related to the level of risk posed by the defendant to the victim as documented by criminal history, severity of assault and victim input.

Examples:

# 10: Charged with DASLT5, interference with 911, DISORD.

**History:** No prior related history

**Police report:** Punched victim in head and body, tore phone off wall, Injuries documented in Police report. Threatened to kill her in front of police.

Victim reported history of assaults and fear of retaliation

Bail granted – 0, and No contact

#25: Charged with DASLT5

**History:** No prior history

**Police report:** Suspect was drinking and threatened to assault wife, witness intervened.

Suspect hit witness.

Victim said she was afraid of what he would do.

Bail granted – 0, No contact, random UA, Rule 25

#41: Charged with DASLT5

**History:** 3 DASLT5 prior with same victim in 4 yrs

**Police report;** While in bar, suspect threatened to beat her

Victim and ex-boyfriend now separated, she reported stalking behavior

Bail granted – 0, No contact

#55: Charged with DASLT5

**History:** Drug possession, trespassing

**Police report:** Suspect pushed victim, no injuries. Arguing over his failure to attend drug Tx.

Victim reported suspect uses drugs and is gang member

Bail granted – 5000, after suspect refused Conditions and asked for speedy trial

#56: Charged with DASLT5

**History:** No prior history

**Police report:** Suspect pushed victim, fight ensued, took her car keys, and chased her out of house to the store where victim called police

Bail granted – 500, No contact

#57: Charged with DASLT5

**History:** 5 months ago, DASLT5 lowered to DISORD – continued to 5/01, different victim 1999 – 2 different DASLT charges, dismissed

**Police report:** While in car, in front of children, suspect grabbed victim in semi-choke hold, cut off her airway, and threatened to kill her.

Victim said he has been arrested numerous times for DASLT5. She stated she was very fearful.

Bail granted – 200, No contact

### *Changes introduced since observations*

The Office of the City Attorney now has Domestic Abuse Team Attorneys assigned to all domestic assault arraignments, pre-trials, and OFP violations. The Executive Committee of District Court has agreed to a proposal that would provide a limited number of judges assigned for longer periods of time to the DV court. These changes should provide an opportunity for more consistency in crafting appropriate recommendations regarding release from custody. The Pre-trial Evaluation Unit of Corrections has implemented the use of a risk assessment tool, the Domestic Violence Screening Instrument, to be completed with each defendant charged with Domestic Assault or a Domestic-related crime, such as interference with 911, terroristic threats, etc. A determination of level of risk posed by the defendant to the victim is available to the bench at arraignment. The use of the DVSI is currently being “normed” to Hennepin County defendants.

### **Bail Determination: Recommendations**

- 1. The judges assigned to the DV court should develop guidelines for the determination of bail and conditions of release that are related to the information gathered by prosecution (criminal history, pattern, injuries, severity of assault) and the level of risk as determined by the DVSI.**

Changes were made to Minn. Stat. sec. 629.72 to provide greater detail on factors that judges must consider in detention and pre-trial release decisions in domestic abuse and related cases. Based on recommendations from the National Council of Juvenile and Family Court Judges, the new standards provide more focus on reasons for setting conditions and on victim and public safety. Under the new law, detention decisions must include consideration of whether release of the person (1) poses a threat to the alleged victim or another family or household member; (2) poses a threat to public safety; or (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings. Similarly, in making decisions concerning pretrial release, judges must review the facts of arrest and detention and determine whether: (1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or (2) there is substantial likelihood the person will fail to appear at subsequent proceedings. The judge must make findings for decisions on the record “to the extent possible,” and the judge may impose conditions of release or bail to protect the alleged victim or other family members.

An example of one community’s response to the new legislation has been to develop and implement a graduated system of response to defendants appearing at arraignment. This practice applies to felony, gross misdemeanor and misdemeanor defendants. Using information collected by interagency partners,

the bench will respond to defendants in five general categories, according to their dangerousness. For offenders with a history of domestic violence, in accordance with the new amendments to MN statute 629.72, the prosecutors will argue for combinations of conditions that best address victim's safety needs. Because of the known risk of further offending where there is a pattern of abuse, domestic abuse defendants should not be able to post bail or bond without conditions. Supervised visitation of children will be available where required and deemed safe. The five general categories of dangerousness are referenced in Appendix A.

**2. The judges assigned to DV Court should directly address offenders about their use of violence at every opportunity.**

Arrestment, pre-trial, sentencing, violations of probation and conditions of release, are all opportunities to speak directly to the offender about violence and its impact on the community and the victim. Research shows that what the bench says does have an impact on domestic violence offenders.<sup>2</sup> The treatment of the parties, the demeanor of the judge and the statement to the parties has an impact on how the offender relates to the victim after the hearing. Judges have an opportunity to warn offenders not to use further violence or controlling behavior. There are many opportunities to convey a social message to offenders that are not being taken. New approaches can capitalize on these opportunities.

**3. The judges of the DV court and Domestic Abuse Team attorneys should reconsider the practice of imposing no contact orders in *all* cases.**

In some cases, a no contact order may not be desired by the victim, or needed. The DV court bench could formulate guidelines that identify when an order would not be issued, such as the victim's request appears uncoerced, the victim is not fearful of the suspect, or the suspect has no criminal history.

**4. Domestic Abuse Team Attorneys should take a more proactive approach to providing arguments requesting increased bail amounts or special conditions of release when the totality of circumstances indicates heightened levels of danger to the victim if the defendant is released.**

In addition, MCAO should develop a policy that outlines how and what additional steps will be taken to increase the safety of these high-risk victims.

## **E. Case Prosecution: Findings & Recommendations**

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<sup>2</sup> James Ptacek: Battered Women In The Courtroom - The Power of Judicial Responses. Northeastern University Press Boston, MA. 1999.

BWJP would like to particularly acknowledge and thank the leadership and staff of the Office of the Minneapolis City Attorney for their remarkable openness in sharing their expertise and in providing access to observe their practice. It would have been impossible to truly examine prosecution procedures without their collaboration in this effort.

## **Methodology**

In this safety audit, the goal was to identify issues related to safety at arraignment and bail hearings, pretrial hearings, and at the dispositional stages. BWJP sought to provide observations of the processing of domestic violence–related misdemeanors that could guide future policy-making. The audit team tracked 67 misdemeanor domestic violence–related cases that were arraigned as misdemeanors during the period of February 24<sup>th</sup> to March 11<sup>th</sup>, 2001. While the overwhelming number of cases tracked were domestic violence–related assaults, other cases included restraining order violations, probation violations, and failures to appear for court hearings.

Staff collected public information on each case observed, including Minneapolis Police Department Incident Reports, Hennepin County “Subject In Process (SIP)” records, and daily court dockets. Staff also recorded all actions taken on these cases that were observed in court. They conducted several interviews with city prosecutors. The audit team mapped out every point of intervention by the city prosecutor’s office of Minneapolis’s criminal justice system and collected relevant texts: forms, job descriptions, policies and procedures, statutes, and agency descriptions. Additionally, in August, 2001, the Minneapolis City Attorney’s Office provided the BWJP staff with the prosecution files of 60 of the tracked cases. Access to the cases depended on whether a case was closed, and BWJP’s compliance with the Minnesota’s Data Practices Act.

For the purposes of this safety audit, BWJP staff synthesized data from their court observations as well as their review of the prosecution’s files, summarizing the data in several charts and spreadsheets. It’s important to note that some of these charts are based only on the data available to BWJP staff through August, 2001. Data from cases still open in August is incomplete, because staff could not access prosecution files for those cases. Obviously, dispositional information on pending cases was not yet available.

BWJP employed qualitative methods for synthesizing and examining the information collected for this audit. In Appendix C we provide an example of categories of information collected from MPD arrest reports. The subsequent arraignment proceedings for these arrests were observed and charted to record specific types of information and behavior, a sample is found in Appendix B. In addition, because the outcomes of every case at each stage of court processing depended on a large number of variables, BWJP also chose to examine the Court processing of each case in its entirety, allowing many variables to be studied for each case outcome. A sample of case summaries, formatted as spreadsheets, is located in Appendix D. Through the review of the case summaries, BWJP distilled several observed trends in how cases are processed through the City Attorney’s Office at both the pretrial and dispositional stages.

The observations listed below spring from examinations of the 67 cases tracked by BWJP. For this safety audit report, findings are noted, followed by recommendations for changes to address identified problems. A list of nationally-accepted best practices is provided for additional context. It must be noted in particular that prosecutors do not operate in isolation. Their actions and routines are affected by the whole court environment. Therefore, the audit of prosecution procedures also identified issues or problems with the court response and other agencies within the criminal justice system.

## Screening Cases

### **Best Practices:**

1. Avoid delays and continuances in domestic violence cases that do not take victim safety or the deterioration of evidence into account.
2. Obtain and review related documentation and evidence available from law enforcement.
3. Establish early contact with the victim to emphasize the process and goals of prosecution.
4. Interview the victim, but coordinate with law enforcement to reduce the number of times the victim is interviewed. Utilize interview checklists where available. Be sure to listen, with non-blaming feedback.
5. Review with the victim the case's strengths and weaknesses, procedural considerations (preliminary hearings, motions, trial, sentencing, etc.), time sequence of events, before, during and after the assault. Provide a process to maintain follow-up contacts for the victim.

### **Screening Cases: Findings**

#### *Appropriate Expediency of Case Processing*

Delays and continuances in domestic violence cases are often a problem in courts across the country, but is not the case in Minneapolis. Of the 67 prosecution files analyzed, 65 were examined for the length of time between arrest and sentencing:

0-7 days	7-14 days	15-30 days	Over 30 days
20	12	14	19

As the chart indicates, the Minneapolis City Attorney’s office processed 71%, or 46 of these 65 misdemeanor domestic violence cases in less than a month. 49% were resolved in the first two weeks.<sup>3</sup>

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<sup>3</sup> This does not contradict findings by the Hennepin County District Court Research Division in the October 29, 2001, report entitled, “Fourth Judicial District: Preliminary Evaluation of Domestic Violence Court.” While the audit project measured the length of time passing between the offenses and the eventual disposition of cases, the Court Research Division measured that time that passed between an offense and case acceptance, and the time that passed between case acceptance and the eventual disposition. The District Court report found that the average total days between an offense

The prosecutors observed and interviewed were all very aware of the frustration and safety issues experienced by domestic violence victims when the criminal cases against their abusers are delayed or continued. This appears to be one of the forces behind the quickness with which these cases are resolved by the Minneapolis City Attorney's Office. This is indicative of a good level of training and thinking about domestic violence; that is, domestic violence prosecutors today are encouraged to go beyond the "let's get the bad guys" to incorporate victim safety considerations in all aspects of criminal justice processing.

On the other hand, a cautionary note is appropriate regarding the danger of speed and efficiency becoming goals or ends in themselves, to the detriment of victim safety and offender accountability. The basis for auditing is institutional ethnography, which helps us understand how and why procedures of public safety agencies, and the methods by which they communicate, fall short of protecting individual victims of abuse and instead become an assembly line for "handling" cases." As will be demonstrated in this report, there are times when it would have been better to have taken more time to clarify existing information or obtain additional information about a case. For example, sometimes the contacts with victims produce conflicting information; many times prosecutors aren't getting what they need from police for a strong case; and sometimes the existing information makes the reader wonder if felony charges would have been more appropriate.

*Quality & Use of Documentation & Evidence*

In misdemeanor cases, the Minneapolis City Attorney's office obtains the related documentation and evidence available from law enforcement. See the chart below, which shows that in addition to the police report of the current incident, the assistant city attorneys frequently collect the 911 tape, the CAD printout and some form of the defendant's prior record. Occasionally, prior police reports (for motions to admit other offenses) were obtained. On a few occasions, prosecutors also received photos, property inventories, booking sheets and records of prior arrests.

Items Found in the 60 Minneapolis City Attorney Domestic Violence Prosecution Files

<b>Item/Form</b>	<b>number of files containing form</b>
Abridged Record	11
Agreement to Suspend Prosecution	4
Ambulance Run Sheet/Report	3
Ambulance Record Release	1
BCA Run	4
Booking Photo	5
Booking Sheet	7
CAD Print-out	29

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and case acceptance was four days in Minneapolis in 2001, and that the average time that elapsed between case acceptance and disposition was twenty-five days.

CAPRS	21
CGIS Report	1
Complaint	7
Complaint Denial	1
Complaint Referral	1
Complaint Review Instructions	9
Consent to Release Medical Records	1
Data Practices Compliance Form	29
Driving Record	2
Domestic Abuse Disposition Form	53
Domestic Assault Victim Input	44
Domestic Case Trial Preparation Request Form	16
Felony Referral Form	6
Felony Report	1
Firearms Order	6
Handwritten notes (stickies, etc.)	12
Investigation Division of Adult Corrections Dept. Court Referral Form	1
Jury Demand Case History	58
Jury Trial Notice	9
Letter (Discovery)	11
Letter Requesting Copy of Accident Report	1
Letter (Trial)	5
Letter (Victim Liaison)	49
Letter (P/O)	2
Medical Record	2
Medical Release	4
Motion to Admit Other Offenses	6
Motion to Dismiss	5
NCIC Run	11
911 Tape	29
No Contact Form (Victim Liaison)	23
No Contact Form Before Arraignment (Council on Crime and Justice)	25
Notice of Evidence and Identification Procedures	11
Notice of Witness List	13
OCM Pre-screening Form	4
Offender Tracking Form	2
Order for Conditional Release	10
Order for Protection	6
Order Revoking Conditional Release	1
Police Report	60
Pre-sentence Investigation	27
Pre-trial Release Evaluation	53
Probation Agreement	1
Probation Report from another Jurisdiction	1
Property Inventory Report	6
Property Search Result	2
Report of Adult Corrections Department & Order of Court for Defendant's Arrest	2
Response Card	2

Request for Investigative Assistance	2
SIP	54
State's Request for Disclosure	8
Subpoena Ambulance Attendant	1
Subpoena Ambulance Run Record (Custodian)	3
Subpoena (Jailer)	1
Subpoena (Medical Records)	5
Subpoena (911 Operator)	8
Subpoena 911 Tape Maker	7
Subpoena (Witness)	13
Subpoena (Victim)	12
Supplemental Letter	1
Supplementary Information Form (Council on Crime & Justice)	2
Trial Notice to Officers	14
Trial Worksheet	12
Victim Liaison Arraignment Memo	28
Victim Notification Letter	3
Victim's Statement	2

When the City Attorney's Office needs more information on a domestic violence case, it can make a Request for Investigative Assistance or a Domestic Case Trial Preparation Request to ask investigators and/or prosecutor's staff to obtain the information desired. This happened in 16 of the 60 files audited.

When planning this audit, a critical question to be answered was, "In order to make decisions that result in the best disposition of a domestic violence case from the perspective of victim safety and offender accountability, what information is relevant and available to the prosecutor?" This list is indicative of the wealth of information potentially available to prosecutors: criminal history information (Abridged Record, BCA run, CAPRS, NCIC run, SIP), evidence (911 tape, medical record), victim impact or victim safety concerns (Domestic Assault Victim Input, Victim Liaison Arraignment Memo), corrections evaluations or reports (pre-trial release evaluation, pre-sentence investigations) and reasons for the disposition of the case (Domestic Abuse Disposition Form). The list indicates that quite often prosecutors are getting some kind of criminal history information about defendants and getting help in evaluating a defendant's appropriateness for pre-trial release. Whether and how this information is used to inform charging, bail and sentencing decisions is discussed in the following sections.

Although the pre-trial release evaluation does contain the victim's wishes and concerns about contact with the defendant, the list above indicates that prosecutors receive information on victim impact or safety concerns less frequently, even though several mechanisms exist to obtain it (the Domestic Assault Victim Input form, the Victim Liaison Arraignment memo, and the rare Victim Impact Statement). A number of times the victim liaison or staff from the Council on Crime and Justice documented their failure to contact the victim: 23 of these files contained a No Contact by Victim Liaison form and 25 of these files contained a No Contact before Arraignment form. This may be a result of the fact that often police fail to collect contact information about witnesses (see Case Problem Chart below).

However, when failed attempts at victim contact were documented, it was not indicated whether the caller had no contact information, or did have a phone number but simply didn't receive any answer.

The other types of information listed in the chart are related to case management; for example, Jury Demand and Case History, subpoenas, discovery requests, etc. Their inclusion depends on the status of the case at the time it was disposed, e.g., was it going to trial, had the defendant failed to appear for court, etc. As such, the frequency of their inclusion is not significant, but rather illustrates the number of instruments prosecutors are expected to consider in the management of domestic violence cases.

*Case Problems Noted on Domestic Abuse Disposition Forms*

Prosecutors are required to fill out a Domestic Abuse Disposition Form on each case. When lack of evidence causes a prosecutor to reduce or dismiss a charge, the Domestic Abuse Disposition Form notes the problem; for example, indicating if excited utterances were not recorded or if photos were not taken. Of the 60 prosecution files, 57 Domestic Abuse Disposition Forms were examined. In 9 of these 57 cases, the defendant pled to the charge, while the remaining 48 cases were disposed of through dismissals, pleas to reduced charges, or CWOPs, a category which includes cases that are continued without a plea (CWOP) or a similar diversion disposition, a stay of imposition. In both dispositions, if the defendant completes conditions set by the prosecutor or court, there is no conviction on his/her criminal history record. The lack of a conviction also means that a subsequent charge would not be automatically enhancible to a higher charge as allowed in statute.

The reasons for dismissals, CWOPs or pleas to reduced charges are documented on the Domestic Abuse Disposition form. The City Attorney's Office uses these forms to internally track the actions and decisions of prosecutors, and the reasons influencing their decisions. Of the 57 cases, 8 lacked this form. The remaining 49 cases were examined for these influences on the prosecutors' decisions, which are listed in the following chart.

Evidence not adequately documented in police report/or not collected	14
Witness issues	25
No defendant statement	32
No civilian witness	10
No excited utterance	22
No injury	14
Victim unsupportive of prosecution	17
No photos	36
No witness information	21
Victim recantation	12
Victim unavailable	7

Prosecutors must evaluate the available evidence when making decisions to dismiss cases, engage in plea negotiations or refer for felony charging. These files demonstrate several problems:

- in 28% of these 49 cases, prosecutors noted that evidence was not documented or collected in police reports;
- in 43% of the cases, no information was collected about witnesses;
- in 45% of the cases, excited utterances were not documented;
- in 65% of the cases, no statement was taken from the defendant; and,
- in 73% of the cases, no photographs were taken.

Prosecutors who don't receive defendant statements at the time of arrest are "sand-bagged" at trial by defendants and defense attorneys who have not only had weeks or months to come up with an explanation for the victim's injuries (accident, intoxication, self-defense, etc.) but also can imply to judges or juries the poor quality of the investigation because "they didn't even ask him for his side of the story." As previously noted, the current MPD practice which does not require responding officers to take these statements impedes the prosecutor's ability to hold offenders accountable.

Victims of domestic violence frequently are reluctant to testify in court and may fail to appear, or appear and recant. Their excited utterances to police – a legitimate exception to the general rule against hearsay – may be the only statement left of what happened that night. Prosecutors who don't receive documentation of excited utterances will not be able to use police witnesses at trial to testify to excited utterances made by the victim. If the victim then doesn't appear, or appears and recants, the prosecutor most likely won't be able to proceed.

When prosecutors don't receive photographs, they are in the position of trying to explain in words the seriousness of something the average juror needs to see to comprehend. Photographs can also overcome the dryness and minimizing effect of written descriptions, and remind judges and other court personnel who regularly review these reports of the severity of injuries and the impact on victims' lives. In addition to being perhaps the most important piece of evidence at trial, photographs of injuries or the crime scene are used in other jurisdictions at bail hearings to express public safety concerns, at sentencings to articulate the seriousness of the crime and the appropriate punishment, and at referral to probation to inform the probation officer about restitution and the appropriateness of no contact provisions.

Because victims of domestic violence frequently are reluctant to testify in court, other witnesses to the criminal conduct (neighbors, family members, passersby, etc.) can be critical to proving the case. When prosecutors don't receive information on how to contact these witnesses, they may have to dismiss a case that could have been prosecuted successfully.

### **Quality of Early & Ongoing Contacts with Victims: Findings**

#### *Early Contacts*

Assistant city attorneys do not themselves establish early contact with the victim; rather, the office contracts with the Council on Crime and Justice (CCJ) to contact and

maintain relationships with victims. These contacts are documented on the Domestic Assault Victim Input form, the Victim Liaison Arraignment Memorandum, and the Supplementary Information form. Lack of contact is documented via the No Contact Form and the Arraignment No Contact Form. As noted previously, CCJ staff were often unable to contact victims, as at least 23 of the 60 files documented no contact with the victim.

Some information in the Domestic Assault Victim Input and the Victim Liaison Arraignment Memorandum reflects the victim's wishes regarding possible outcomes for the offender. The Domestic Assault Victim Input notes whether the victim has a relationship with the defendant, has children, suffered injuries, is aware of photos or other witnesses, will support prosecution, will attend court, will testify, suffered previous assaults, has a protection order, knows of prior arrests, or has opinions/wishes regarding bail and sentencing. The Victim Liaison Arraignment Memorandum notes whether the defendant is on probation, has a relationship with the victim, or inflicted injuries. This memo also indicates if the victim is aware of other witnesses, and her opinion/wishes as to the defendant's release from custody and his ability to have contact with her. Notably, however, it does not appear from the face and content of these forms that another purpose of these contacts is to explain the process and goals of prosecution, except for one question that asks the victim what the court should do with the offender. The files also documented early contacts with victims by pre-trial release evaluators.

Meaningful victim input is crucial to a prosecutor's case file. This information helps indicate what level of danger a victim faces, clues to the defendant's history with violence, and the likelihood of escalation of violence. The CCJ was frequently unable to elicit this needed information. The forms that staff submitted to the city attorney's office often contained little information, or information inconsistent with that collected by law enforcement and probation.<sup>4</sup> In some instances the most illuminating victim input came from law enforcement's initial contact with victims and through pretrial release agent's contact with victims. Possible explanations for this include: 1) victims refuse to speak to CCJ staff; 2) victims do not answer phone calls or return phone messages; and 3) law enforcement officers may collect incorrect victim contact information. The CCJ documents many of these reasons on their forms.

The examination of the files also revealed that victims did not have consistent relationships with CCJ staff. Different staff attempted contacting victims at various stages of case processing. Victims who did have contact with CCJ liaisons often had contact with different staff throughout the case.

In Domestic Violence Court, auditors did observe several instances in which the judge's only source of victim input came from the public defender's office. In many instances, a victim is more likely to communicate with the defendant's attorney than with the

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<sup>4</sup> For example, in BWJP case file number 40, the pretrial release agent reported that the victim stated she had been assaulted in the past, and reported otherwise to the Council on Crime and Justice staff person. In BWJP case file number 54, the victim reported to CCJ that there was no history of violence and that there was no real assault; whereas, in her report to the police and to pretrial, she reports a significant history of violence, a high level of fear, and the exacerbating circumstances of the assault.

State. Possible reasons for this include: 1) victims are pressured by their abusers to work with the abusers' attorneys; 2) victims feel it is safer for them to cooperate with their abusers' attorneys; 3) the public defenders' office might have more resources allocated to contacting victims; and 4) victims do not want their abusers to serve time in jail. However, as long as the court's best victim input comes from the defense, it's likely that safety concerns for victims are not being identified and communicated.

### *Ongoing Contacts with Victims*

As stated above, assistant city attorneys do not routinely interview domestic violence victims themselves, which is not uncommon in most large cities. They might interview a domestic violence victim if a trial is imminent, but do not use checklists. Prosecutors do receive the Domestic Assault Victim Input and the Victim Liaison Arraignment Memorandum, which are checklists of interviews from CCJ.

As the case proceeds, assistant city attorneys do not routinely review the cases' strengths and weaknesses, or procedural considerations with victims. They might review these things with a victim if a trial is imminent, but do not themselves provide a process to maintain follow-up contacts for the victim. CCJ performs some case review with victims, but as stated earlier, successful victim contact by CCJ is inconsistent. Further, the forms used by the CCJ do not address whether case details have been relayed to victims. The forms are geared toward information gathering *from* the victim, rather than relaying information *to* the victim. The CCJ does send a form letter to victims that offers some information about the court process, but there is no indication that this information is communicated in person or orally.

The lack of coordination among the agencies has a particularly negative impact on non-English speaking victims and raises due process concerns regarding non-English speaking defendants. The chart below indicates the identification of language difficulties in the police report.

#### Non-English Speakers

40 of the 60 prosecution files were examined for language or communication difficulties. Six police reports in these 40 files did document language barriers.

Ethnic/Racial/Cultural Identification	How Language Difficulty Presented Itself
"West African"	Victim described injuries in "broken English." Defendant did not speak – "glared and stared" at victim who appeared to cower.
"Hispanic"	"No English was spoken in this apartment . . . Through non-verbal communication officers could make out that the female was struck by the male . . . Further interpretation through language line confirmed this."
"Hispanic"	Victim did not speak English, so reporting party (cousin) helped translate.
"Hispanic"	"Officers met with victim . . . There was a slight language barrier . . . [Defendant] was yelling things in Spanish I could not understand. My partner was later informed by a witness that he was yelling 'When I get out, I'm going to kill you' and he was yelling it to the victim."

"Hispanic"	"Used the language line...since neither person spoke good English." Officer then had operator talk to victim, suspect and witness.
"Hispanic"	Police report does not indicate any language difficulty but PSI says "defendant limited English."

Police had to use the language line or an interpreter in four of these six cases. However, in only one of these six cases do any of the forms or notes in the prosecution files mention any language difficulty (the PSI in the last case above). Yet all six of these files documented several system contacts (domestic assault victim input, pre-trial evaluation, pre-sentence investigation, etc.) with both the victim and the defendant. It is troubling that victims who are documented by police as being unable to communicate in English are subsequently interviewed by other justice system practitioners *without an interpreter* on important victim safety and offender accountability concerns such as release from custody, no-contact provisions, and sentencing. If interpreters were indeed used, this is not documented in the files.

During one day of court observation, three cases involving Hispanic defendants were heard. When no victim information was presented during the first two cases, the auditor asked the CCJ liaison if she had been able to speak with the next victim. The CCJ staff responded that no information was available because the victim only spoke Spanish and no one on staff did. When asked if CCJ had a process to handle non-English speaking victims, she said they used the language line, but she had no access to it in the courtroom, so she couldn't reach the victim. She stated: "It's not feasible to think that we could talk with everyone who speaks a different language."

Part of the difficulty prosecutors may have with these cases is lack of policy or training on what to do when such difficulties arise. This is not to say that some practitioners do not have good instincts or strategizing abilities when it comes to these cases. For example, one prosecutor reported that after a domestic violence court appearance in which an interpreter was used, the defendant, who sat near his wife and made gestures to her during the hearing, then walked with the interpreter from court to the elevator. He said he hated American justice. He didn't know why the prosecutor wasn't prosecuting his wife and why the judge didn't take his wife to jail. The interpreter told the defendant that the court had no jurisdiction over his wife; the court only had jurisdiction over him because the case was against him. The defendant replied that he would take matters into his own hands; he was going to get a gun and put a bullet between her eyes.

The interpreter made a report to the sheriff's department, but the problem the prosecutor had in following up on it was that the prosecutor didn't know for sure whom the defendant was threatening. It sounded like it was his wife, but he also said he didn't like the prosecutor or judge, both of whom are female. The prosecutor got mug shots of the defendant to put at the front desks of the offices of the city attorney and judge. The prosecutor then asked a Spanish-speaking advocate to call the victim. A woman answered in Spanish and whispered either that the woman didn't live here anymore, or that this was a wrong number. When a subsequent call had the same result, the advocate decided not to pursue the matter, so as not to endanger the victim. The prosecutor wanted to prosecute the threat but was unsure if she could because it wasn't clear to whom it was directed - who

is "her?" This threat precipitated a discussion in the prosecutor's office about what could have been done differently in resolving the case.

This situation points to the need for a policy or protocol that guides the prosecutors in what to do when encountering evidence of language difficulty either in the file or in direct contact with litigants. Should an interpreter be called? When? Should interpreters used in these instances have domestic violence training? What safety precautions should be taken? We would further recommend that the policy or protocol then be the subject of training, in which real case examples, such as the one above, be used to show participants how to apply policy to safety-related decision-making.

## **Screening Cases: Recommendations**

### **Policy Development**

**The Minneapolis City Attorney's Domestic Violence Unit has indicated it would like to develop a domestic violence prosecution policy. This policy should include a section on case screening. The case screening section should include the following:**

1. The Minneapolis City Attorney's Office should share the information collected on the Domestic Abuse Disposition form with the Minneapolis Police Department (i.e., the frequent lack of photographs, excited utterances, defendant statements, etc.). The agencies should engineer a solution to share this information on a regular basis and use it to solve the problems that lack evidence or documentation creates (e.g., inability to go forward with prosecution).
2. When reviewing police reports, prosecutors should request further investigation when the report is insufficiently documented, or when the criminal history of the offender or the presence of dangerousness factors indicate heightened risk to the victim.

For example, a mechanism exists for prosecutors to request additional investigation of a case. In the 60 cases studied, this request was made 16 times; yet there were many more than 16 cases where prosecutors did not receive pictures, defendant statements, etc. from the police.

3. The Minneapolis City Attorney's Office should re-examine the effectiveness of the current process of early victim contacts to determine the desired role of these contacts. The Minneapolis City Attorney's Office should work collaboratively with other agencies and advocates to develop ongoing victim contacts that better promote their safety.
4. Determine the desired role of early contacts. Is it investigatory? Is it to provide advocacy? Is it to "emphasize the process and goals of prosecution?"

5. Determine who – whether it is CCJ or another entity -- has enough time allocated to contact victims meaningfully and at what point in time. Consideration of whether some contacts can be made in person and how to do that safely should be part of this examination.
6. Formulate a policy on the role of these contacts, who should make them and how. Since there is rotation of prosecutors from arraignment to pretrial to trial, it is especially important that victims have contact with a single victim/witness liaison who can maintain meaningful relationships with victims throughout the court process.
7. Change the forms used by CCJ to include documentation of case information provided to victims.
8. Address how the City Attorney's Office can have more successful relationships with individual victims, and collect more probative and reliable information from victims.
9. The Minneapolis City Attorney's office should develop guidelines regarding victim input into case disposition.
10. The Minneapolis City Attorney's office should develop a policy or protocol to guide prosecutors in what to do when encountering evidence of language difficulty on the part of the victim and/or the defendant.

## **Training**

**The Minneapolis City Attorney's Office should collaborate with the Minneapolis Police Department to conduct police training on evidence-gathering needs and strategies.**

The MCAO and the MPD should collaborate to conduct police training on evidence gathering needs and strategies, especially once the MPD has addressed the barriers to taking photographs and recording excited utterances, defendant statements and witness information. Such training should include real life scenarios and case examples to work through, so that both groups hear questions and complaints and work through them together to arrive at a common understanding of how this evidence is used in court.

## **Filing or Charging Offenses**

### **Best Practices:**

1. Ensure charges reflect all crimes committed. Determine if additional charges should be filed.
2. Determine whether there was a restraining order in effect at the time of the offense and charge accordingly.

3. Seek out other information on the suspect's history and use it in charging decisions. Prior violations against the same victim, if provable and within the statute on limitations, can be charged as separate counts.
4. Consider local conditions and policies in assessing the severity of the charges and the best strategy for obtaining a conviction or harsher penalty.
5. Do not require the victim to sign a criminal complaint nor attend pre-trial hearings.

**Filing or Charging Offenses: Findings**

**Charging Additional Offenses**

At the scene of a domestic assault, whether a suspect is arrested or not, police officers must under Minnesota law provide a written report of the incident. When making an arrest, police also make an initial charging decision and "tab charge" the offender. The case proceeds to arraignment where it is then that prosecutors assume their role as system responders. Virtually all the arrests for misdemeanors result in charged cases. Tab charging is permitted and governed in Minnesota by the Rules of Criminal Procedure.

The assistant city attorneys review the cases at the defendant's arraignment. This is an opportunity for heightened charging, which is sometimes missed. For example, cases involving strangulation or actions occurring in front of police officers are situations in which it is often possible to add or enhance the initial charges. The charts below outline an analysis of these cases.

Strangulation

Victims, in statements to police in these 60 prosecution files, alleged strangulation in seven cases:

Allegation	Police Investigation	Disposition
Pushed victim against door, grabbed her throat with hand, would not release hold until she screamed for help from her nephew. BWJP Case File #2	No visible injuries; no investigative questions. Victim refused medical attention. No arrangement for follow-up photos.	Domestic assault with fear.
Over several hours, punched victim's face, slapped her, poked her with a fork and choked her to unconsciousness with both hands. BWJP Case File #51	Victim ran naked from her house. Red marks on victim's neck; she appeared shaken. No investigative questions. No photos.	Dismissed – felony referral
While victim was in driver's seat of car, defendant got in back and put arm around her neck in choke hold, saying "I'll kill you" in front of four children. Defendant then had friend block victim's vehicle with another car while he took victim's purse and cell phone. BWJP Case File #57	No signs of injury. No investigative questions. Victim declined medical attention. No arrangement for follow-up photos to be taken.	Domestic assault reduced to disorderly conduct.
Pulled victim's coat over her head and tried to strangle her. As she broke free, he pulled clump of hair from her head. She locked herself in car; he jumped on hood and tried kicking in windshield. Victim drove to cousin's house with defendant still on hood. BWJP Case File #22	Victim showed police clump of hair defendant pulled from her head. No investigative questions. No photos or collection of hair.	Domestic assault reduced to disorderly conduct.

Victim has OFP against defendant. While she was trying to call 911, he took phone, threw victim to floor, put both hands around neck and strangled her. Threatened to find someone to hurt her while he is jail and threatened to hurt her parents. BWJP Case File #72	Red marks on victim's neck. No investigative questions. Victim did not need medical attention. No photos.	Defendant allowed to plead to domestic assault. OFP violation dismissed.
Pulled victim to the floor, put his hands around her neck to strangle her and pulled her hair. BWJP Case File #7	No note of injuries, or investigative questions	Domestic Assault
Bit victim's wrist and strangled her until she passed out. BWJP Case File #76	Victim had fresh injury to the wrist and red scratch marks on her neck. No investigative questions	Domestic Assault reduced to Disorderly Conduct

Strangulation is an interference with a natural function necessary for the life of a human being. "Best practices" training of police and prosecutors about strangulation in domestic violence cases encourages heightened investigation (see, e.g., the strangulation checklists for law enforcement produced by the City of San Diego and by the Duluth Law Enforcement Curriculum) and charging. Here, police did examine the necks of the victims for injuries, but did not ask questions or take pictures. Prosecutors only considered felony charges in one of these seven cases.

When interviewed, several attorneys from the county attorney's office expressed concern over how one would charge a case where strangulation was alleged. Assault? If so, what level of felony? What sort of substantial injury or impairment could be proved? Attempted homicide? How would one show the imminence of death and that the perpetrator knew or should have known that this was the case? These questions point up the fact that it is not only police who should receive training in this area but also city and county prosecutors, and that all should be trained together to develop a team approach to the charge that is going to be issued in strangulation cases and the evidence needed to substantiate the elements of that particular crime.

### Conduct in Front of Police Officers

40 of the 60 prosecution files were examined for additional criminal conduct that occurred after police arrival. Seven of these 40 cases describe the defendant first committing an assault or a protection order violation which results in police intervention and then committing subsequent disorderly, threatening, resistive, criminal damage or protection order violations in front of police.

Conduct	Impact on Charges
After assault, defendant left scene, only to return while police were there to yell, "Fuck you and the cops!" and "You got to catch me!" Defendant then	Defendant was charged only with the domestic assault and not for any subsequent conduct. The assault was later reduced to disorderly conduct

took off running. When officers tackled him, he fought with them. When officers put him in squad, he kicked and head-butted windows.	because the initial charge "was insufficient to prove without the victim."
After assault, defendant left. While police in squad in front of residence writing report, victim ran out with defendant chasing. Officers exited car, guns drawn. Defendant said "What are you going to do? Pop me?" Defendant had big coat on and refused to go to ground. When officers tried to knock him to ground to check for weapons, defendant punched one officer so hard in face he knocked him to ground, causing swelling and cut to officer's face. He continually yelled to victim in front of police, "I'll be back Monday, bitch. I'll get you for this."	Defendant was charged only with the domestic assault and not for any subsequent conduct. The assault was later dismissed because it was referred to the county attorney's office to charge as a felony. The file did not indicate what felony or felonies were contemplated, or if a felony or felonies were in fact charged.
Officers responded to a complaint of a man violating a protection order by knocking on the victim's door. When officers arrived, the man was standing at the victim's door.	Defendant charged with violating OFP. Charge reduced to disorderly conduct even though the police officers were available as witnesses. Prosecution file gave reason as 'other'. Defendant assaulted same victim in 1995 and violated OFP with same victim in 2000.
Officers responded to a complaint of a man violating a protection order by knocking on the victim's door. While police were inside the victim's residence, there was a knock at the door. When police opened it, the victim said, "There he is."	Defendant was charged with gross misdemeanor violation of a protection order.
Officers were dispatched to domestic assault after dispatch received four 911 calls from four different callers. On arrival, officers saw defendant throw TV set through second story window.	Defendant was charged with assault, which was later reduced to disorderly conduct. The prosecution file gave the reason "intensive probation conditions" which were included in the sentence.
Officers responded to a complaint of a man violating a protection order. While police were inside, the defendant telephoned twice.	Defendant was charged with violating a protection order.
While being arrested for domestic assault, the defendant repeatedly yelled to the victim in front of police officers, "When I get out, I'm going to kill you."	Defendant was charged only with domestic assault and not for any subsequent conduct.

It is common in domestic violence prosecutions for victims to avoid involving themselves in the prosecution, which can affect the prosecutor's ability to proceed. An exception to this is when conduct occurs in front of witnesses other than the victim. If a victim becomes unavailable, the observations of these other witnesses can support charges that still result in domestic violence offenders being held accountable. In 2 of these 7 cases, defendants who violated protection orders in front of police were charged with violating a protection order. In the other 5 cases, defendants were not held accountable for post-assault criminal conduct committed in front of police officers.

### *Charging of OFP Violations*

Prosecutors receive the Domestic Assault Victim Input, which notes the existence of a protection order. Of the 60 prosecution files, 9 contained charges for violating a protection order. Victims' concerns regarding whether current charging practices hold violators accountable are exemplified in the disposition spread sheet. See, for example:

- BWJP Case File #30, where the Victim Liaison Arraignment Memo quotes the victim as saying the defendant has ignored the OFP since day one. She has called police and advocates over and over, asking what to do. The Domestic Assault Victim Input quotes the same victim as saying nothing has helped so far and nothing will; the defendant is sick and makes threats - he's obsessed. The victim is afraid of what he'll do to her. The defendant told the pre-sentence investigator he and the victim were in a 20 year relationship and he "didn't believe it was over but now I do." The defendant has a previous mental health diagnosis, has previously undergone anger management counseling, has undergone substance abuse treatment twice, and continues to use alcohol and cocaine.
- BWJP Case File #43, an OFP violation prosecution, where a police report of a previous, apparently uncharged, violation also appeared in the file. The defendant broke the victim's window but fled before police arrival.
- BWJP Case File #64, an OFP violation prosecution, where five police reports of previous, apparently uncharged, violations also appeared in the file. The defendant was permitted to plead guilty to a reduced charge of disorderly conduct. No reason for the reduction was documented.
- BWJP Case File #72. In December, 2000, the defendant blackened the victim's eye and punched her chest six or seven times so that she was bruised and had difficulty breathing. He was gone when police arrived. The victim obtained a protection order. Her petition says that after the December assault, the defendant tried entering her apartment three times. He left a note on her parents' car saying "I beat her but she deserved it." The victim described two other assaults, one of which left her walking with a cane for a month. She stayed with her parents, during which time her roommate told her the defendant's friend came to her apartment and said, "Did you see what happened to the last guy who called the police?" Then the defendant committed the current assault, which also violated the OFP. He was charged with an assault and an OFP violation. While being interviewed by his pre-sentence investigator, the defendant said he telephoned the victim from jail, which would again have violated the OFP. There is no indication this violation was charged.

Although police do tab-charge OFP violations, and prosecutors do proceed on those charges, it appears that OFP violators are not held accountable for repeat violations or when they are GOA.

### *Use of Suspect's History in Charging Decisions*

In addition to information on prior criminal convictions, assistant city attorneys do receive other information on the suspect's history from victim statements to police, the Domestic Violence Victim Input form, old police reports and the pre-trial release evaluation.

11 of the prosecution files studied in this audit contained this sort of prior history information. However, it did not appear to be used in charging decisions. For example:

- BWJP Case #38. The victim told the suspect that she did not want to argue with him, whereupon he struck her forehead, knocking her glasses off. A witness heard the blow being struck. The defendant then began screaming, "Bitch, you better get back here. I'm gonna kill you." The defendant's criminal record indicated one 5<sup>th</sup> degree assault from 1993; however, the police report documented the victim's statements that the defendant "hit her numerous times in the past." The prosecutor file did not document any investigation into these previous assaults. The defendant was charged with one count of 5<sup>th</sup> degree domestic assault for the current incident.
- BWJP Case #50 The defendant is the victim's ex-boyfriend and lives with his parents. The victim brought their child there so he could see the child. The victim and the defendant got into an argument which lasted two hours until the defendant punched the victim's head and face. His family had to intervene to stop him. Police saw that the victim had a lump on her forehead, two black eyes, and swelling and abrasions on the bridge of her nose. In addition to the police report of this incident, the prosecutor's file contained a police report from 2000 about property damage involving the same victim. The defendant's lengthy criminal record, which was also in the file, did not indicate an arrest or conviction arising out of this property damage incident. Also in the file was an e-mail from someone saying the victim said a woman has been calling the victim's employer (a bank) saying that the victim is stealing checks and money. The victim's landlord phoned her to say someone had reported that the victim was selling drugs from her home. The victim feels the defendant is behind these things. The prosecutor's file did not document any request for investigation of these harassing phone calls, or any further investigation into the 2000 property damage incident. The defendant was charged with one count of 5<sup>th</sup> degree domestic assault for the current incident.
- BWJP Case # 55. The victim and the defendant argued over the defendant's failure to go to a drug rehabilitation appointment. The defendant pushed the victim. Two children were present. The police report documented the victim's statements that the defendant was a gang member and had threatened her in the past and broken windows out of her house. The prosecutor's file also contained a Domestic Assault Victim Input form which quotes the victim as saying that during the incident, the defendant unplugged her phone and took her car keys. She felt like a hostage. She also said the defendant has a history of taking things from her purse and beating her. The file doesn't indicate any contemplation of criminal charges for preventing the victim from leaving or calling for help. The defendant's criminal record, also in the file, doesn't reflect arrests or convictions for the past threats, broken windows, thefts or beatings; and the prosecutor's file doesn't document any investigation of them. The defendant was charged with one count of 5<sup>th</sup> degree domestic assault for the current incident.
- BWJP Case # 63. The defendant came home and demanded \$400 from the victim to buy drugs. When she refused, he threw her on the couch, put his fist to her face and said, "Bitch, give me the money or I'm going to break your back." The victim told police

she was afraid for her life. Her 11 year old son called police. One of the responding officers stated in the police report of this incident that he had responded to this location several times in the past on domestic calls. The prosecutor's file contained two police reports of assaults in 2001 where the defendant was gone upon police arrival. The defendant's lengthy criminal record, also in the file, shows no arrests or convictions in 2001 for these assaults. The prosecutor's file documents no further investigation of them. The defendant was charged with one count of 5<sup>th</sup> degree domestic assault for the current incident.

- BWJP Case 70. The victim said the defendant, her ex-boyfriend, called, wanting to get back together and have sex. The victim hung up and soon after, the defendant was pounding on her door. She eventually opened the door; the defendant was in his car and said "Get your new boyfriend out here. I've got something for him." The victim closed the door and then heard her front window break. The victim's son saw the defendant's arm come through the window. The officer who stopped the defendant's vehicle found a bloody towel and a hammer in the defendant's car. In the police report of this incident, the police documented the victim's statements that her ex-boyfriend has been phoning her and harassing her, and on one occasion said he was stalking her. The prosecutor's file also contains the pre-trial release evaluation, which quotes the victim as saying that the defendant calls her at work and comes to her home saying "I am stalking you." The prosecutor's file does not document any investigation of these harassing phone calls or stalking conduct. The defendant was charged with one count of 5<sup>th</sup> degree domestic assault and one count of criminal damage to property for this incident.

Previous assaultive or threatening conduct, if a provable violation of the law and within the statute of limitations, can be charged as additional counts. The statute of limitations appears at Sec. 628.26 (j), Minn. Stats, which says that in cases other than homicide, arson, sexual assault, bribery, and certain kinds of fraud and environmental crimes, indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense.

Prosecutors' files contained a wealth of information on the prior history of the defendant, so it is clear that prosecutors understand that it is important to collect the information. However, the information does not then appear to be used to request further investigation, consider additional or more serious charges, or otherwise hold the defendant accountable for his previous assaultive or threatening conduct.

### *Strategies for Obtaining Convictions or Harsher Penalties*

Minneapolis Assistant City Attorneys expressed awareness of criticism directed at them about cases never going to trial, about the fact that some cases could support additional misdemeanor charges or be referred to the county attorney's office, and about the fact that when convicted, defendants rarely receive any imposed jail. In interviews, the attorneys expressed frustration and discouragement in addressing these concerns, citing the following barriers:

- Tab charging prevents the “quality control” that most prosecutors in other jurisdictions have over their cases.
- Referrals to the county attorney’s office take a long time. Safety concerns for domestic violence victims and the knowledge that the city attorney’s office resolves cases quickly causes the prosecutors to weigh the value of referring for a felony which takes considerable time against simply proceeding on the misdemeanor charge.
- Referrals to the county attorney’s office for terroristic threats have often been unsuccessful.
- There is no leverage with defendants or defense attorneys in going to trial in the original charge rather than permitting a plea to a reduced charge, as sentences are pretty much the same.
- Some judges express concern or reluctance to impose jail at sentencing because of jail overcrowding.

While our observations uncovered indications of the issues raised by the city attorneys related to felony referrals, an analysis of the county’s procedures for accepting referrals was outside the scope of this audit.

Likewise, observations also noted indications of the bench’s attitude toward misdemeanor trials. Some judges made their disapproval of using trial time for misdemeanor domestic violence cases clear. Some auditors scheduled to observe trials noted that the presiding judge left the courtroom and went into his or her chambers, with the expectation that the attorneys would then resolve the case. One auditor observed the following exchange between an attorney and a member of the judge’s staff:

“Where did the judge go?”

“In chambers.”

“How come?”

“I don’t know but don’t try going in there.”

“When will the judge come back?”

“Usually just before lunch.”

“Will there be enough time to have the trial then?”

“Probably not.”

The auditor waited until lunch and did observe the judge re-enter the courtroom at five minutes of twelve to be told that the attorneys had agreed upon a plea.

Again, further analysis to determine the reality of the perceptions about the bench’s attitudes toward trials was outside the scope of this audit. This issue should be examined in future however, as it’s clear that the perception affects case decision-making by the city attorneys.

The audit did examine the issue of the effects of tab-charging in greater depth. Through interviews, auditors noted the prosecutors’ perceptions on why tab-charging is problematic:

- 1) a number of arrests are referred to the office which fail to rise to the higher legal standard required for prosecution and must be dismissed; as a result, the dismissal rate is increased which reflects badly on the office;
- 2) this also causes scarce resources to be directed toward inappropriate cases; and,
- 3) the office cannot exercise the quality control it needs to obtain required information before the case is charged.

Whereas in many jurisdictions, initial charging decisions are made by prosecutors and encompass a range of prosecutorial activities (weighing the merits of the case, assessing the quality of the evidence, determining what charges should be amended, added, or enhanced under one of the several enhancement statutes), tab charging allows law enforcement to initiate cases into the court process and relieves prosecutors of the need to file formal complaints on each of the charged cases. The defendant can request a formal complaint, but most do not.

Given the huge number of cases generated by tab-charging, one can understand Minneapolis prosecutors' concerns about how this process takes away the discretion or quality control prosecutors usually have in declining or charging cases. In November of 1998, the Institute for Law & Policy Planning (ILPP) presented Hennepin County Criminal Justice System Assessment: Final Report to the Hennepin County Criminal Justice Review Committee. The report said that 40% of these cases result in dismissals due to legal insufficiency. The report also contained a discussion of the use of tab charging and a recommendation that it be replaced by prosecution screening.<sup>5</sup>

The ILPP report recommends a reallocation of system resources to replace tab charges with prosecution screening, assuming the elimination of tab-charging would necessarily reduce the number of cases. However, this assumption may be incorrect. Given the enormous numbers of incident reports where suspects are GOA, the number of charged cases could potentially stay the same or even increase if resources were available to determine the merits of all the uncharged GOAs.

A legislative elimination of the tab charging option would burden prosecutors with the need to file complaints. Many smaller jurisdictions probably could not afford the technology or staff to facilitate filing complaints for the cases now being tab charged. Since prosecutors do have the authority to dismiss, add to, or change the charges initially imposed, there may be another option to addressing the criticism of tab charges. The most constructive activity at this point may be the creation of a work group, or utilization of an existing work group,

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<sup>5</sup> "... whether an arrest becomes a "case" depends upon a decision by the prosecutor. The charge(s) can be declined, diverted, reduced or filed. In Hennepin County, the law enforcement agencies responsible for initiating the flow also have primary responsibility for initiating misdemeanor cases into the court process through the "tab" charge (in which the arrest report is treated as the charging document) and citations (which are initially handled by the Violations Bureau, a unit of district court). Tab charges and citations are not reviewed by a city attorney prior to court appearance except when a person who received a non-traffic misdemeanor citation fails to contact the Violations Bureau within the required time ("unanswered tag"). A city attorney will review a tab charge if the defendant requests a formal complaint after first appearance. The charging unit does review all gross misdemeanors, after investigation by law enforcement has been completed." Institute for Law & Policy Planning, Hennepin County Criminal Justice System Assessment: Final Report, Presented to the Hennepin County Criminal Justice Review Committee, November, 1998.

composed of city prosecutors, police, advocates and court administrators to come up with a way of asserting the following prosecutorial functions without eliminating, police tab-charging:

- Initial screening of misdemeanor domestic violence cases
- Initial charging of misdemeanor domestic violence cases
- Charging GOA's
- Charging repeat violations

### *Requiring Victims to Sign Complaints or Attend Hearings*

The Minneapolis City Attorney's Office does not require domestic violence victims to sign criminal complaints or attend pre-trial hearings.

### **Filing or Charging Offenses: Recommendations**

#### **Policy Development**

**The domestic violence prosecution policy should include a section on charging. The charging section should include the following:**

1. The Minneapolis City Attorney's Office should collaborate with the Minneapolis Police Department on charging guidelines for offender conduct that is directed toward police or displayed in front of police during domestic violence arrests.
2. The Minneapolis City Attorney's Office should develop charging guidelines for repeated OFP violations that ensure victim safety, offender accountability and confidence in the orders of the court.
3. Prosecutors should exert their authority to change, add or heighten charges when evidence exists to do so and when in the interest of victim safety and offender accountability, rather than relying solely on the tab charge issued by police.
4. Prosecutors should request follow-up investigation when they receive additional information about previous but uncharged assaultive or threatening conduct that has occurred within the time limit set forth in the statute of limitations.
5. The Minneapolis City Attorney's office should continue discussions with the Hennepin County Attorney's office about triaging cases and removing obstacles to referrals for felony charges, including but not limited to terroristic threats and strangulation.

Assistant city attorneys and assistant county attorneys have already begun discussions about triaging cases. This audit report would recommend that that continue, with an eye toward policy and protocol development, especially as regards common domestic violence felonies like terroristic threats. Prosecutors may want to consider the development of a checklist and training for investigators about the elements of terroristic threats, strangulation and other domestic violence felonies, and the evidence needed to support them.

## **Training**

Minneapolis assistant city attorneys should receive training on:

1. the recognition of strangulation cases,
2. strategies for holding offenders accountable, and
3. the enforcement of court orders.

# **Conduct a Thorough Investigation**

## **Best Practices:**

1. In reviewing evidence collected by law enforcement, consider the following: reports; written statement and documentation of excited utterances; signed medical releases; 911 tapes; photographs of injuries, the crime scene, the suspect, and children; weapons used; broken or damaged property; torn or bloody clothing; forensic evidence analysis; or diagrams of the crime scene.
2. In addition to evidence collected at the scene, the following evidence is also relevant: medical records, child protection services records, visitation center records, letters from the defendant, jail visitation records, victim's employment records (missed work), evidence of prior felony convictions of the defendant, past and current restraining orders, and past police reports. Where they exist, court transcripts of earlier proceedings should be reviewed. Interviews with the defendant and witnesses should be conducted as well.

## **Thoroughness of Investigation: Findings**

### *Thorough Collection of Evidence at the Scene*

Minneapolis assistant city attorneys document their review of evidence collected by law enforcement on the Domestic Abuse Disposition Form. The form requires the prosecutor to evaluate evidence prior to plea negotiations. Prosecutors don't document their review of medical releases, 911 tapes, weapon usage, or diagrams. Only 4 of the 60 files contained medical releases. Interviews with police have alluded to a resistance on the part of medical staff in permitting releases to be presented to victims for signature on hospital premises. Regarding evidence from dispatch, 29 of the 60 prosecution files contained a print-out from the computer-aided dispatch (CAD) and 29 contained a tape of the actual 911 call. It was evident from notes in the files that prosecutors listened to the tapes and used them to evaluate quality of evidence, check for other witnesses, listen to the demeanor of the caller, etc. Whether weapons were used, or whether evidence like torn clothing was collected is indicated on the police report. None of the 60 cases contained diagrams of the crime scene.

### *Collection of Additional Evidence*

Only two of the 60 files examined contained medical records. None contained records from child protection, jail visits or employers. A few files did note awareness of child visitation arrangements. Almost all files had some form of criminal record information. 6

files contained copies of past or current protection orders. No files contained transcripts of earlier proceedings. Many, if not most, police reports did not have interviews with the defendant.

## **Conducting a Thorough Investigation: Recommendations**

### **Policy Development**

- 1. The Minneapolis City Attorney’s Office should join with the Minneapolis Police Department to develop procedures to obtain medical records when necessary.**

On only a couple of occasions were medical records found in the prosecutor’s files. Police did try getting victims to sign consent forms but were apparently discouraged by medical practitioners from continuing that practice. Prosecutors need to help police get things they do not receive. If there is a medical professional barrier to these requests, prosecutors need to overcome such barriers with hospital policymakers or use the power of subpoenas to obtain the records through the court process.

## **Appropriate Plea Negotiations**

### **Best Practices:**

1. Use plea negotiations to further trial goals, not to result in lower charges and penalties.
2. 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 victim's bill of rights.
3. Inform the victim of reasons to consider a negotiated plea. Describe options to plea negotiation and consider the victim's input. Consider the needs of the victim in accepting a plea (e.g., restitution, protection or emotional security).
4. If the victim objects to plea negotiations and the decision is made to accept, provide her with the opportunity to put objections on the record.

### **Appropriate Plea Negotiations: Findings**

Minneapolis assistant city attorneys hold themselves accountable in plea negotiations by the usage the Domestic Abuse Disposition Form. Prior to plea negotiations, the form requires the prosecutor to evaluate evidence (documentation of evidence in the police report, defendant statement, excited utterance, injuries, photographs, etc.) and state a reason for the plea negotiation. 49 of the 60 files stated the reason for the plea.

Intensive probation conditions	2
Insufficient to prove without victim	9
Insufficient to prove with victim	8

Defendant criminal history	9
No victim support	3
Immigration issues	2
Dismissed for enhanced	1
Defendant going to prison on DWI	1
Revocation consequence in another case	1
Pleaded guilty to another case	1
Other	1
No reason stated	11

There isn't a formal supervisory review of these forms or the reasons given for plea negotiations, but interviews with practitioners indicated that plea negotiations resulting in reduced charges or CWOP's are often discussed with other domestic violence prosecutors in the office, either before the negotiation to obtain input, or after the negotiation to obtain feedback as to whether it was appropriate.

The most common reasons for the plea negotiation are insufficient to prove without the victim, insufficient to prove with the victim, or no victim support. This finding supports earlier assertions that many times prosecutors are not getting what they need from police to prosecute a domestic violence case without the victim's participation. The Case Problem Chart at the beginning of this report indicates that many files lack defendant statements, photographs of injuries or crime scenes, or documentation of excited utterances.

#### DISPOSITIONS

Of the 60 files, 58 were examined for types of pleas.

Plea to charge	Plea to more appropriate	Plea to one of charges	Plea to reduced	Continued without plea	Dismissed	Not indicated
7	1	5	21	10	12	2

Plea negotiations are expeditious, but as one reads the disposition spread sheet, some concerns are raised about victim and community safety and offender accountability. See for example:

- BWJP Case File #18. The defendant was charged with domestic assault after he pushed the victim into a door and yelled. He threatened to kick the victim's daughter's "ass" and set a pit bull on her. The defendant was convicted of assault in 1991 and marijuana possession in 1996. In 1999 he was charged with criminal damage to property and disorderly conduct, to which he pled guilty to disorderly conduct and the criminal damage charge was dismissed. The current charge was reduced to disorderly conduct and CWOP'd. The reason given for this reduction was "no victim support."
- BWJP Case File #22. The defendant was charged with domestic assault after pulling the victim's coat over her head and trying to strangle her. As she broke free, he pulled

clump of hair from her head. She locked herself in her car; he jumped on the hood and tried kicking in windshield. The victim drove to her cousin's house with the defendant still on hood. The defendant left the scene before police arrival but then returned while they were talking to witnesses, yelling "Fuck you and the cops!" and "You got to catch me!" He took off running and police had to chase and tackle him in order to arrest him. The defendant was convicted of theft in 1994, riding in a stolen vehicle in 1994, disorderly conduct in 1997, criminal damage to property in 1999, and obstructing in 2000. At the time of arrest, there was a warrant from another county for failing to appear on a pending case of aggravated DWI. The current case was resolved with a plea to a reduced charge of disorderly conduct. The reason given for this reduction was "insufficient to prove without victim."

- BWJP Case File #50. The defendant, who is the victim's ex-boyfriend and lives with his parents, was charged with domestic assault after the victim brought their child there so he could see the child. The victim and the defendant got into an argument which lasted two hours until the defendant punched her head and face. His family had to intervene to stop him. Police saw that the victim had a lump on her forehead, two black eyes and swelling and abrasions on the bridge of her nose. The defendant's record is as follows: 37 traffic violations 1994-2000, auto theft 1995 (dismissed), domestic assault 1995 (amended to disorderly conduct), gross misdemeanor carrying a pistol without a permit 1995, felony carrying a weapon without a permit 1996, sale of controlled substance 1998 (disposition marked "B"), two charges of giving false information to a police officer 1998-2000 (dispositions marked "C"), and possession of a controlled substance 1999 (disposition marked "B"). Arresting officers found five outstanding warrants: two for felony narcotics, two for gross misdemeanor DWI and one for giving false information. In addition to the police report of the current incident, the prosecutor's file contained an additional police report from 2000 about property damage with the same victim. The prosecutor's file contained an e-mail from someone indicating that the victim said a woman has been calling her employer (a bank) to say the victim is stealing checks and money. The victim's landlord phoned her to say someone had reported that the victim was selling drugs from her home. The victim felt the defendant was behind these things. The prosecutor's case notes say this current case was CWOP'd because victim failed to appear and there were no excited utterances. The Domestic Abuse Disposition Form says that the defendant is going to prison and is pleading guilty to gross misdemeanor DWI.
- BWJP Case File #78. The defendant was charged with domestic assault after coming home after night of drinking and becoming upset that a child was crying. He yelled at the victim and tried punching her head. When she covered her head with both arms, he punched her forearms four or five times. Police saw two large, red, raised marks on her right forearm. A witness told police that the defendant also kicked the victim. The defendant's record is as follows. He was charged in 1996 with kidnapping, robbery and assault (pled to assault and sentenced to 90 days jail with 78 days stayed for one year). SIP indicates a 1993 disorderly conduct conviction that was plea bargained from an assault, a 1995 weapons offense for which no disposition is listed, and a 1998 assault for which no disposition is listed. At the time of arrest, police found two outstanding gross

misdemeanor warrants from another county. The victim told police the defendant assaulted her in the past but she didn't report it. The pre-sentence investigation indicates that one of the defendant's previous assaults was an assault on a former partner after which he enlisted several gang members to also assault his partner. The defendant told the pre-sentence investigator he had already been through anger management. The pre-sentence investigator also noted that the defendant's conditional release had been revoked due to failing to maintain contact with probation and testing positive for marijuana and cocaine. The defendant told the pre-sentence investigator he was living with the victim, which violates the no-contact order previously issued by the court. This case was resolved with a plea to the reduced charge of disorderly conduct. The reason given for this reduction was "insufficient to prove without victim."

Even though there is plenty of information regarding criminal history, this is not used in taking a more aggressive stance regarding the reduction of charges, as is exemplified by the egregious records above. Information about other areas of concern such as probation failures, violations of no-contact orders, substance abuse, etc. also did not seem to precipitate a more aggressive stance on plea negotiations.

This situation is exacerbated by or intertwined with evidence problems that hamstring prosecutors by making it difficult to proceed without the victim. The findings in the Case Problem Chart indicate that on a number of occasions, prosecutors are documenting the lack of defendant statements, witness information, photographs or excited utterances in police reports on domestic violence crimes.

### *Informing Victims of Negotiated Pleas*

Minneapolis assistant city attorneys do not routinely inform the victim of reasons to consider a negotiated plea. They may if the victim happens to be in court. This is a role that might be performed by CCJ staff, but there was no documentation in the files to indicate whether or not this was happening.

### *Victim Objections*

Auditors did not observe any victim put her objections on the record during their courtroom observations. However, victims who appeared in court were addressed by the judge or defense attorney regarding no-contact orders.

## **Appropriate Plea Negotiations: Recommendations**

### **Policy Development**

**The domestic violence prosecution policy should include a section on appropriate plea negotiations. The plea negotiations section should include the following:**

1. As stated in the "Screening Cases" section earlier, the Minneapolis City Attorney's Office should develop guidelines regarding victim input into case disposition.

2. The Minneapolis City Attorney's Office should develop criteria for when it is appropriate to offer a Continuance Without Plea (CWOP) as a disposition to a domestic violence case. These criteria should uphold the concepts of victim safety and offender accountability.

## **Conduct Pre-trial Procedures and Discovery**

### **Best Practices:**

1. Use pre-trial motions to avoid injection into trial of matters which are irrelevant, inadmissible or prejudicial to victims and to gain admission into evidence that which is uniquely relevant in domestic violence cases, such as other or prior acts, expert witness testimony, etc.
2. Strenuously resist continuances.

### **Pre-trial Procedures: Findings**

Though none of the 60 cases resulted in a trial, it is evident that attorneys are aware of the value of pre-trial motions, as 6 files contained a motion to admit other acts evidence and 8 contained a reciprocal discovery request.

Continuances do not seem to be the problem in Minneapolis misdemeanor domestic violence prosecution that they are in other jurisdictions; the audit found that the length of time elapsing between an offense and the disposition of the case was typically under a month.

The auditors noted that observations of hearings were sometimes difficult due to lack of protocol regarding decorum in the courtroom. A microphone system exists for the judge, defense counsel and prosecution, with speakers so that court observers can hear even the softest voice. However, neither the judges nor attorneys observed by auditors used them. Many arraignments, pleas and sentencings appeared more like murmured private conversations between the judge and two attorneys standing close to the bench than hearings of public record. The near impossibility of hearing was exacerbated by the difference in courtroom protocol from court to court. Although one judge did request a bailiff to announce to spectators the rules of the courtroom, and did maintain a quiet courtroom with proper decorum, other judges permitted talking, and the use of cell phones and pagers. During one observation two attorneys sitting in the spectator area were talking so loudly and continually that the court reporter could not hear the court activity being conducted at the bench. She kept saying "Shhh" to the attorneys but the judge did not intervene and the attorneys kept talking. Auditors often noted victims or defendants turning to neighbors and saying, "What did he say?" or "What just happened?" Attorneys and other criminal justice practitioners such as advocates or probation officers were observed to approach court clerks or court reporters after court dockets were completed to confirm what the court did or didn't say.

## **Pre-trial Procedures: Recommendations**

### **Policy Development**

The Minneapolis City Attorney's Office should participate with the judiciary in the establishment of:

1. **A consistent approach to courtroom decorum.**
2. **The consistent use of the microphone system so that attorneys, victims, defendants, court personnel and observers can hear decisions and orders issued.**

## **Develop Sentencing Strategies**

### **Best Practices:**

1. Ensure the court conducts a risk assessment of offender dangerousness as part of the sentencing process.
2. Help the victim prepare a victim impact statement. Encourage her to make a written or verbal statement concerning her sense of continued risk and give input into the conditions of release.
3. When recommending dispositions, consider the nature and gravity of the offense, the history of sexual or physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs, and the interests of the community in protection and punishments.

### **Developing Sentencing Strategies: Findings**

#### *Risk Assessments*

Minnesota law requires a pre-sentence investigation of everyone convicted of a misdemeanor or felony domestic violence crime. Pre-sentence investigators have received domestic violence training and are specially assigned to conduct domestic violence pre-sentence investigations. The form they use prompts them to collect information related to risk assessment of offender dangerousness: aliases, other probation or parole supervisions, a description of the current offense(s), the offender's acceptance or denial of this description, the relationship with the victim and the existence of any children, the offender's exposure to violence as a child, any history of past abuse with the current or previous partners, current or past protection orders, substance abuse, and mental and emotional health.

If there was a pre-trial release evaluation conducted of the defendant at earlier stages in the case, it is attached to the pre-sentence investigation. This form also prompts the collection of some risk-related information. In addition to the items listed above, the pre-trial evaluation also notes whether the defendant voluntarily turned himself in or not, if a weapon

was used during the offense and a list of how many times in the last three years the defendant failed to appear for court.

The law requiring pre-sentence investigations is only a few years old, and some of the prosecutors interviewed for this audit said that some judges still do not routinely ask for pre-sentence investigations. These prosecutors indicated that they then remind the judge or note on the record that the law requires this.

Some of the subjects interviewed expressed concern over the lack of time pre-sentence investigators have to do their job. After a plea, a sentencing is often scheduled for later the same day or within several days. An investigator often has a number of domestic violence cases to prepare within a day, often resulting in less than an hour to prepare the pre-sentence investigation. This time crunch is exacerbated by the fact that state criminal records are not routinely centralized. That is, one cannot expect to make a single computer data request of a single entity and receive a complete history of the defendant's criminal activity within the state of Minnesota. Generally speaking, to be thorough, one would check each county where the defendant is known to have been, which would be a time-consuming venture.

However, it was the auditors' observation while examining the 60 prosecution files that the richest and best quality sources of risk information were the pre-trial evaluation and the pre-sentence investigation reports. Of the 60 files, 53 contained pre-trial release evaluations but only 27 contained pre-sentence investigations.

### *Victim Statements*

In the 60 prosecution files, two contained written statements from victims. Minneapolis assistant city attorneys do not help the victim prepare a victim impact statement. Typically, staff from the Council on Crime and Justice would perform this task, but this occurred very rarely.

The victim's verbal statements concerning her sense of continued risk and input into the conditions of release are captured in the Domestic Assault Victim Input, Victim Liaison Arraignment Memorandum, the pre-trial release evaluation and the pre-sentence investigation. Minneapolis misdemeanor domestic violence prosecutors receive all of these documents for their prosecution files.

The Domestic Assault Victim Input form prompts the Council on Crime and Justice interviewer to ask the victim if she is going to get a protection order, and if there have been previous assaults or arrests. 44 of the 60 prosecution files contained Domestic Assault Victim Input forms. The quantity and quality of information documented on these forms varied greatly.

The Victim Liaison Arraignment Memorandum prompts the CCJ interviewer to ask the victim if the defendant's release from custody and subsequent contact with her/him is "ok." Only 28 of the 60 files contained Victim Liaison Arraignment Memorandums.

Pre-trial release evaluations are general forms, not specific to domestic violence. However, it is obvious that evaluators have training regarding risk assessment and victim safety, as all the forms seen by auditors noted victims' comments and safety concerns. Evaluators did not recommend the defendant's release in any case until contact was made with the victim. When recommending release, evaluators did take the victim's information into account when recommending conditions of release such as no-contact provisions. 53 of the 60 files contained pre-trial release evaluations.

Pre-sentence investigations are conducted by investigators who have received domestic violence training and are specially assigned to conduct pre-sentence investigations of domestic assault defendants. The forms they use contain a "Victim Impact and Desired Outcome" section. Victims are also asked if there were children present during the incident. In addition, the pre-trial evaluation is also attached to the back of this section. When making sentencing recommendations, pre-sentence investigators do take victim input into account when recommending conditions of probation such as no-contact provisions. Only 27 of the 60 files contained pre-sentence investigations.

### *Disposition Recommendations*

Minneapolis assistant city attorneys receive information on the nature and gravity of the offense, history of physical abuse, previous efforts at rehabilitation, and the defendant's current rehabilitative needs. Except for a couple instances of straight jail, the sentences include little or no imposed jail, no matter the defendant's prior record or gravity of current offense. When jail was imposed, it appeared to be credit for time in jail awaiting arraignment or the awarding of bail.

A significant observation arising from the analysis of these cases is the lack of follow-through on re-offenses, as well as violations of release or sentencing, including violations of stays of imposition by the City Attorney's Office. In the cases examined, some defendants were under court supervision for prior offenses. For the sake of this report, "court supervision" includes: 1) probation for prior domestic assaults (MN Stat. 609.2242) or domestic-related disorderly conduct (MN Stat. 609.72) in Hennepin County and other counties; 2) subject to conditions as part of a stay of imposition of sentence (MN Stat 609.135) or a Continuance Without a Plea (CWOP); and 3) subject to conditions imposed on pretrial release for a pending case.

Auditors observed little difference between the dispositions of cases where the defendants were subject to court supervision, and where defendants were not subject to court supervision. Often, the violations of sentencing or release conditions from a previous case have little to no impact on the current case at all.<sup>6</sup> Typically, if the defendant is subject to supervision as part of a Stay of Imposition (continuance), there is no added repercussion (the previous case is not re-opened, and sentences are not executed).<sup>7</sup> Auditors noted that defendants who had previous domestic-related CWOPs within the past year did not

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<sup>6</sup> For example, see Case File #'s 5, 21 and 71

<sup>7</sup> For example, see Case File # 19

ultimately receive tougher sentences than those defendants who were not subject to a CWOP.<sup>8</sup> Instead, violations of release conditions were ignored or merged into the existing cases.<sup>9</sup>

Auditors did observe that the most reliable follow-through on violations of release came from probation departments. If an individual probation officer filed an Arrest & Detention on a defendant who had violated the conditions of his/her probation by committing an assault, that defendant might actually serve time.<sup>10</sup> This would be a more stringent repercussion that the defendant would face on the current case alone.

The auditors did not observe any instances in which a repeat domestic-assault offender had a fifth degree assault conviction that was used to enhance a second fifth degree assault to a gross misdemeanor. Instead, most repeat offenders had dismissals, CWOPs and pleas to lesser charges (DOC) on their record, so their subsequent assaults were not enhancible.

## **Developing Sentencing Strategies: Recommendations**

### **Policy Development**

**The domestic violence prosecution policy should include a section on sentencing which includes the following:**

1. Regarding Continuances Without Pleas (CWOP's), the Minneapolis City Attorney's Office should clarify who is responsible for oversight, what constitutes appropriate supervision, procedures for holding violators accountable, and appropriate penalties to recommend when a violation has been found.
2. The Minneapolis City Attorney's Office should develop criteria for conditions of sentencing (length of supervision, jail, restitution, etc.) appropriate to the severity of the crime, to the defendant's prior history, to services or punishments already applied to the defendant in the past, and to the victim's safety.

Prosecutors, probation, advocates, and representatives of the judiciary should work together to identify offenders who are more dangerous, assess the availability of incarceration and other conditions of intensive supervision, and come to a common understanding as to how and when those resources will be utilized.

Many jurisdictions have expressed concern about the practice of using similar sentences for all misdemeanor defendants. Some are experimenting with risk assessment strategies to guide their sentencing. Reviewing examples of work in this area conducted by other jurisdictions might be helpful. For example, see the sentencing matrix developed in St. Louis County, Minnesota (Appendix E).

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<sup>8</sup> *Id.*

<sup>9</sup> For example, see Case File # 29.

<sup>10</sup> See Case File #'s 21 & 28.

3. As stated in the "Screening Cases" section above, the Minneapolis City Attorney's office should develop guidelines regarding victim input into case disposition.

### **III. Progress Report: Implementation of Previous Audit Recommendations**

Each agency was asked to submit a description of their efforts to implement the previous audit recommendations. In this section, the original audit recommendation is followed by the progress report, and occasionally by additional comments from the BWJP auditors.

#### **A. Initial Response/ Minneapolis Police Department**

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**REPORT WRITING:** Overall, officers are documenting too little of the information that is available at the scene of domestic assaults. While officers consistently produce reports in accordance with state law, the reports often contain too little information for other agencies to successfully move ahead on a case. Departmental policy could mandate that certain threshold features be included in every domestic violence-related report. The department could require that officers use the DV checklist to assist them in information gathering at the scene and in developing their reports. The department should plan for the consistent implementation of the report writing checklist.

**Progress Report:**

- The Family Violence Unit of the MPD has been working to consistently send feedback to precinct commanders on the quality of police reports. One Team Leader was assigned this task in 2001 and was able to accomplish it sporadically. We are working to develop a more formal feedback system that would include the identification of deficiencies by investigators and the unit commander contacting the precinct commander to address any issues.
- FVU developed and distributed a domestic report checklist for street supervisors. This checklist will be redistributed, as there has been some turnover amongst street supervisors. The second distribution will include a cover letter explaining the need to improve the quality of reports.
- Operations development is producing a "Model Domestic Assault Report" which will be kept in patrol cars. Officers will be able to review the "model report" as a reference tool.
- MPD will soon be fielding Mobile Data Computers in squad cars. This system will allow officers to upload police reports into the CAPR's system directly from the patrol cars.

**EVIDENCE GATHERING/PHOTOGRAPHING THE SCENE:** The department should continue to pursue funding to provide cameras to all responding officers. In lieu of photographs, a complete and accurate depiction or diagram of injuries and the scene should be included in a comprehensive written report.

**Progress Report:**

- FVU has purchased and assigned a 35mm camera to each investigator. This will allow investigators to document injuries in cases where they were not previously documented.
- FVU developed and implemented the practice of fielding a nighttime investigator position. This investigator is able to respond to scenes, coordinate the collection of evidence and the interviews of victims and suspects, and to act as a resource for other street officers.
- MPD received a grant that allowed the purchase of disposable 35mm cameras. These cameras are available to uniformed officers and used to document crime scenes and injuries.
- FVU received grant funding to purchase an in-squad video camera. This camera will be installed in the vehicle of the nighttime investigator and used to collect evidence at crime scenes.
- MPD has received funding to purchase in-squad video cameras for a significant portion of its fleet. Having this equipment in the field will allow officers to improve evidence collection at crime scenes.

**IMPOUNDING WEAPONS:** The department should determine when it is appropriate to search for and seize weapons at the scene of a domestic and standardize this operation by policy and training.

**Progress Report:**

- It is a common MPD practice to search for and recover weapons at the scene of violent crimes when there is evidence that such weapons exist. Research is being conducted to determine if a specific policy needs to be developed to address this issue.
- As a unit goal for 2002 FVU will work to examine the issue of collecting weapons from the scene of domestic situations.

**PROVIDING INFORMATION TO THE VICTIM:** The current procedure directs officers to provide “blue cards” to victims and tell victims that the Council of Crime and Justice will contact them about the case. The “blue cards” should be revised to be more user-friendly and understandable, and translated into the currently needed languages.

**Progress Report:**

- As a year 2002 goal, FVU will work to determine a process for reviewing the content of the MPD “blue cards”.
- FVU currently has a victim witness liaison assigned to the unit. The liaison is providing advocate service information to victims who previously may have been overlooked for service. In addition, the liaison coordinates with advocacy agencies to ensure victims do not fall through the cracks.

**SUPERVISORY OVERSIGHT:** Current supervisory procedures to review incident reports are not producing consistent and comprehensive information that is the most useful for

other subsequent intervenors in the court system. For example, supervisors must routinely review Arrest, as well as GOA, reports. Additional supervisory procedures should also be considered in conjunction with training efforts. Officers who consistently submit incomplete reports should be directed to remedial training.

**Progress Report:**

- As a year 2002 goal, FVU is working to develop a domestic assault report writing course. Coupled with the report writing suggestions we hope to see implemented this course will give pct commanders a training resource for officers who are having difficulty producing quality police reports.

**DANGEROUSNESS ASSESSMENT:** Currently, patrol officers are not making any type of formal assessment of the level of danger and violence involved in a domestic assault case. The department should consider adopting and implementing dangerousness assessment procedures.

**Progress Report:**

- As a unit goal for 2002, FVU can look at the possible application of a domestic assault, dangerousness assessment tool. FVU will try to coordinate this examination with the MPD Domestic Assault Steering Committee.

**TRAINING ISSUES:** The audit team identified several areas that should be focused on for further trainings: report writing improvements, review and clarification of MN laws and departmental policies regarding domestic violence, self-defense and predominant aggressor analyses at the scene, evidence of strangulation and defense wounds, and identification of dangerousness indicators.

**Progress Report:**

- FVU received a grant to develop a program to certify police officers in domestic assault preliminary investigations. The certification process includes 40 hours of specialized training, focusing on domestic violence awareness, state and local domestic violence laws, and the criminal investigation process. The goal is to develop a minimum of 60 certified officers.
- FVU has established a partnership with the Upper Midwest Community Policing Institute. To date we have two officers that have been become certified instructors in domestic violence training.
- As a unit goal in 2002, FVU will work to develop a course in domestic assault report writing. This course will be made available to precinct commanders who determine there is a need for an officer to receive the training. FVU is working to provide feedback to precinct commanders when substandard reports are discovered.
- FVU will work to determine which additional training courses should be developed.

**RESPONDING TO GONE ON ARRIVALS:** The Department should institute a stronger response to misdemeanor domestic assault Gone-On-Arrivals. The current practice of not

regularly pursuing GOA's may result in further endangering victims. According to a recent study, GOA's often involve the most dangerous domestic violence offenders. GOA's constitute a large percentage of the domestic violence-related calls, and as a matter of process, receive inconsistent follow-up. The department should encourage by policy and training the importance of pursuing many GOA's, and protocols should be established to identify which GOA's must be pursued immediately. At a minimum, officers should ascertain a detailed physical description of the suspect, including the suspect's clothing. Whenever possible, officers should collect a photograph of the suspect, to enhance likely identification. Finally, when officers do locate and apprehend a suspect, they should have the victim and any witnesses confirm the suspect's identity.

**Progress Report:**

- MPD is working to develop the KOPS program, an information-based system that operates state wide to broadcast vital information to patrol officers. Information on subjects who are wanted for probable cause domestic assault, including misdemeanor cases, will be entered into the system, which is expected to go on-line in 2002.
- FVU is working to develop new initiatives to encourage the arrest of domestic assault offenders, particularly in GOA cases.

**TECHNOLOGY AND RESOURCE ISSUES:** The city should provide funding for, and the department should prioritize, better equipping officers responding to these cases. As a matter of routine, officers should have cameras, cellular phones, and audio recorders. Further, officers need quick and easy access to criminal history information from their squads. Until this equipment is available, officers need to utilize the services of pretrial release, where agents are available 24 hours a day, 7 days a week.

**Progress Report:**

- In 2001, FVU issued each investigator a new, 35mm camera to document evidence, a new, micro-cassette tape recorder, a cellular telephone to improve team coordination, and an alpha-numeric pager to improve communication.
- In 2002, FVU will develop a system to allow the effective and efficient tape recording of telephone interviews.
- FVU has received authorization to pursue acquiring a mobile video camera to assist investigators with the collection of evidence in the field.
- MPD has issued disposable 35 mm cameras to each precinct. Officers use the cameras to document injuries and damage to property at the scene of domestics.
- Many patrol officers routinely carry and use micro cassette tape recorders during field interviews.
- MPD is in the process of installing Mobile Data Computers (MDC's) in marked squad cars. MDC's will allow officers to access a number of computer applications that will increase the information officers have access to in the field.
- FVU will work to promote the use of pretrial release as a resource for street officers.

**COMMUNITY OUTREACH:** When considering policy or procedural changes in the response to domestic violence, the department should collaborate with other governmental or advocacy agencies that subsequently intervene in these cases to enhance law enforcement's ability to better prepare the case for later action and to better anticipate possible impacts on victim safety, especially those victims in ethnic-minority, or immigrant/refugee communities.

**Progress Report:**

- FVU routinely attends the Family Violence Coordinating Council's monthly meeting.
- The FVU Commander has participated on two FVCC subcommittees.
- FVU routinely meets with staff from the City Attorney's Office, County Attorney's Office, and advocacy groups.
- FVU is actively working to develop the Child Development Community Policing program.
- FVU is working to develop additional grant programs to broaden community-based partnerships.

**Other Initiatives by MPD in Year 2001:**

- On January 1, 2001 the Family Violence Unit (FVU) was formed. The former Child Abuse Unit and the former Domestic Assault Unit's were merged together to create the Family Violence Unit.
- January 1, 2001, also brought the creation of a new investigator supervisory position. The Investigative Team Leaders were added to key investigative teams to provide additional oversight into handling of major crimes.
- The FVU established the Domestic Assault Steering Committee, comprised of partners in the domestic assault intervention arena, to make recommendations on how FVU could improve the prosecution of domestic assault cases. Committee partners include the City Attorney's Office, the County Attorney's office, the Domestic Abuse Service Center, the Battered Women's Justice Project, the Domestic Abuse Project, and the Hennepin County Sheriff's Office – Civil Division. The committee focuses on system change and pursuing alternative funding sources.
- The FVU added the full time services of a cross-deputized City/County Attorney to its staff, using a combination of grant funding and contributions by the County Attorney's Office. The FVU attorney reviews completed cases to ensure they are adequately prepared for charging; provides technical assistance to aid in the investigation process; reviews case deferrals and makes recommendations to improve the efficiency of the investigative process; and acts as a liaison between the City Attorney's Office, the County Attorney's Office, and the FVU.

- The FVU added the services of a three quarter time Victim/Witness Liaison, whose position is funded through a grant. The Victim/Witness Liaison coordinates with a number of agencies to help provide advocacy services directly to victims of domestic assault. The V/W Liaison also provides direct services to victims and their children, while investigators work to collect evidence. The V/W Liaison has been very instrumental in helping FVU build positive working relationships throughout various communities.
- The FVU made significant steps towards building relationships with partner agencies. BWJP sponsored a strangulation training for FVU staff. Partner agencies were invited to attend, including the Hennepin County Sheriff's Office and the Minneapolis City Attorney's Office. FVU attended a lunch meeting with the City Attorney's Office – Domestic Assault Team. This offered the opportunity to share ideas and improve relations. FVU significantly improved its attendance at meetings of the Family Violence Coordinating Council and the Serious Child Abuse and Neglect Team meetings.

## **B. Post-arrest to Arraignment Procedures: Recommendations**

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### **Bail Evaluation/Release from Custody**

**CRIMINAL HISTORY CHECKS:** Bail evaluators obtain criminal histories on defendants and add a summary sheet of the history to the case file. This information gathering process is repeated by City Attorneys or paralegals, but in some cases, due to lack of personnel, a full criminal history is not obtained and added to the file. This duplication wastes scarce resources and results in inconsistencies in the relevant criminal history gathered. Management from Corrections and the City Attorney's office should determine more efficient procedures for transferring pertinent information gathered by Bail Evaluators to the prosecutor.

#### **Progress Report:**

- Probation has begun to meet on a regular basis with the City Attorney's Office to discuss issues of mutual importance, develop a better understanding how our work is interdependent, and identify areas where we can work together to enhance victim safety and offender accountability. Collection of criminal history data is on the agenda for discussion the 1st quarter of 2002. We agree that it is inefficient to duplicate this effort.

**EVALUATIONS OF DEFENDANTS:** The Sheriff's Department (Jail) and Corrections (Bail Evaluation) should create a process that will ensure that all defendants are evaluated prior to release from custody. This process would ensure that prosecutors have some basic background information for out-of-custody arraignments.

**Progress Report:**

- The difficulty is that everyone has a right to bail and it is currently not feasible to complete a bail evaluation before suspects can bail out. Corrections staff do and will make themselves available at the first appearance to do a DVSI (Risk Assessment) if the judges so order, and then will provide Conditional Release supervision (plus bail) as ordered. Bail evaluators have made progress with evaluating suspects sooner in the Public Safety facility (PSF) since problems with the JMS (jail management system) system have been ironed out.

**ACCESS TO CATS:** 24-hour access to CATS should be provided in both the offices of the bail evaluators and the City Attorney. Research has shown that the existence of an Order for Protection is one of the most significant predictors of risk for victims. Access to this information could aid the bail evaluators and judicial review members in making release determinations.

**Progress Report:**

- Access to CATS is now available in the offices of the bail evaluators. Senior Corrections staff have completed two training sessions with our staff on the use of CATS to obtain civil court information related to Orders of Protection. Obtaining information from CATS data collection system is part of the DVSI screening process and is also available to Corrections staff from the courtroom.

**TRAINING:** All bail evaluators should receive regular training on DV issues and interactions with DV victims. They should have immediate access to victim resource information at their work stations, and be familiar with information on the MPD blue card.

**Progress Report:**

- Corrections has instituted extensive DV training for all staff in the past year related to the implementation of risk screening tools: the DVSI and the SARA. As part of the Audit, BWJP brought trainers to present the DVSI and SARA Risk assessment models to Senior Hennepin Corrections staff.

**MONITORING CONDITIONS OF RELEASE:** Corrections and the Bench should assess the feasibility of proactive pretrial monitoring of a defendant's compliance with Conditions of Release (Predispositional Reviews) as a component of the proposed dedicated DV court.

**Progress Report:**

- The feasibility and effectiveness of this strategy has been discussed by the DV Court steering and implementation committee. It was decided that this was not a priority at this time given the stage of development of the DV court. Correction staff continue to take a "best practices" approach and are open to making changes to our current practices as suggested by our efforts to "norm" the DVSI scores.

**VIOLATIONS OF CONDITIONS OF RELEASE:** The Sheriff's Department, the Bail Evaluation Unit, the City and County Attorney's offices need to determine who is responsible

to create and implement institutional practices and data collection systems that respond to changes in legislation regarding violations of Conditions of Release (CR). Once determined, the responsible agency should:

1. • ensure that victims will be notified of CR prior to defendant bailing out of jail;
2. • amend the current automated notification recording to include CR information needed by victims, i.e., CR violations are misdemeanors and how to report CR violations;
3. • amend the Order of Conditional Release form immediately to include information on criminal penalties for CR violations and provide contact information for victims;
4. • determine how Conditions of Release (prior to arraignment ) can be available to police officers from their squad cars; and,
5. • educate all CJS personnel on recent law changes and the corresponding institutional response.
- 6.
- 7. Progress Report:**
8. • Corrections officers continue to send out victim letters on all cases we supervise. We complete No Contact Orders in the DV court.
9. • We are accessing CRIMNET and the state wide probation database on all cases.
10. • We have worked with the City Attorney's Office to address VDANCO laws. This information is available on cases through our 24 phone line answered in the Pretrial Unit, and will also be part of the statewide database; however it has not been included to date.
11. • The DV Steering Committee should and does take an active role here.
- 12.

**DETERMINATION OF DANGEROUSNESS:** Corrections should adopt the use of dangerousness assessment procedures to assist bail evaluators in their work with victims and their recommendations on release from custody; implement the use of this information in court proceedings; and train criminal justice staff and the bench on its application in their decision making.

**Progress Report:**

- In response to the audit and a state corrections mandate, the Hennepin County Department of Community Corrections sought to identify and implement a tool which would provide an assessment of dangerousness which could be used in conjunction with case planning to address the issues affecting offender risk and victim safety. We chose a model recently implemented in the State of Colorado pretrial assessment using the 12 item Domestic Violence Screening Instrument (DVSI) and further screening and case planning for those scoring at higher levels on the DVSI using the more intensive Spousal Assault Risk Assessment (SARA). Our goal was to use instruments that would utilize and build upon information collected at each of our department contacts from pretrial through probation supervision, and fit within our existing service delivery structure.

With technical assistance from BWJP, we were able to provide “training for trainers” on these instruments for a team of 15 probation officers and corrections unit

supervisors, together with a group of advocates, in December 2001. We put together some additional forms and materials that could be utilized in our assessment process, including a Victim Impact Statement and interviewing aids such as the Tolman and Marshall Scales. We then began training each of our units on these instruments: pretrial probation (all shifts), misdemeanor investigation units at all Divisions, and lastly the supervising probation officers at Probation Services North and Probation Services South. These initial trainings were completed in March, and we began a "practice" period for staff to begin using the instruments and troubleshoot any problems they might encounter.

As of May 1, 2001, pretrial staff are completing a DVSI on every offender referred for bail evaluation on domestic abuse related charges. Those who were not held in jail and are subsequently referred to probation are assessed with the DVSI prior to a referral for supervision. Initially the supervision units completed a SARA on every offender referred with a DVSI score of 8 and above from May through August, believing that this would be a reasonable cut-off for more intensive services. However, in an effort to more carefully "norm" these instruments to our population, we are completing a SARA on every offender referred for supervision by the court during the months of September, October and November, as well as completing an independent DVSI on every third offender in this group. This careful examination and comparison of the scoring is necessary to achieve inter-rater reliability and to ascertain any inconsistencies in application or data access. When this assessment process is complete, our Research & Systems Technology Department will evaluate the scoring distribution for reliability and provide us with the threshold score on the DVSI which will identify those cases which will be subject to enhanced supervision with the SARA assessment and case plan. While this validation process is lengthy and laborious, it will give us more confidence in the instruments themselves and a meaningful context for the scores in our jurisdiction. It is our expectation that this process will be completed early in 2002.

The feedback from staff utilizing these instruments is that the areas of inquiry are appropriate and helpful to a meaningful assessment of these offenders. While we have always attempted victim contact at all levels of intervention, use of these instruments and the supporting forms has provided more consistency in information gathering, and enabled us to capture information along the way without requiring victims to repeat their story at each juncture as the offender moves through the process. It is our hope that victim safety will be enhanced by this actuarial determination of risk and the development of case plans directed at those issues identified.

We have continued to provide sessions at least quarterly to train new staff in each of these units, and have scheduled training in February and March to which we have invited the domestic abuse prosecutors. Additionally, there has been considerable interest in our domestic abuse risk assessment project from other Minnesota counties, and we have trained a number of probation officers in our regular training sessions and at the state corrections conference in October. Several of these

jurisdictions are also preparing to pilot risk assessment/case planning projects utilizing these instruments. We have made presentations on the instruments to a number of groups, including the Fourth Judicial District Family Violence Coordinating Council and the Domestic Abuse Court Steering Committee. The training and implementation team is available to provide information or training on the instruments to other interested groups upon request.

## **C. Office of the City Attorney**

### **Prosecutory Oversight**

**MODEL PROSECUTION PLAN:** City Attorney management should convene a multi-disciplinary committee comprised of representatives from the Domestic Abuse Team, probation, police, and community-based advocates to review model prosecution plans, revise the existing local plan, and implement it. To inform their decision-making about the new protocol, the Office of the City Attorney has agreed to participate in auditing of misdemeanor case processing and case disposition as correlated to victim safety, risk factors present, availability of evidence, and other factors yet to be identified.

#### **Progress Report:**

- City Attorney management participates in several multi-disciplinary committees regarding domestic violence prosecution. Management participates in the monthly Family Violence Coordinating Committee. The CAO cooperated fully with the FVCC in their report released last year regarding misdemeanor domestic assault prosecutions.

Management has participated for the last year in the bi-weekly Domestic Court Steering Committee, comprised of the Hennepin County bench, Public Defender's Office, court administrative staff, Community Corrections, WATCH, etc. to discuss issues regarding implementation of the Domestic Court.

City Attorney management also participates in the monthly DV Steering Committee comprised of MPD, DAP, BWJP, DASC, Hennepin County domestic prosecutors, and the Hennepin County Sheriff's Office to discuss ways to more effectively hold offenders accountable and keep victims safe. The committee has coordinated exchange information related to available grants. It is developing a coordinated response plan to improve domestic assault law enforcement and prosecution. The MPD, DAP and the CAO applied for and received one grant, which has placed a prosecutor and advocate in the Family Violence unit at MPD. The Committee is coordinating to apply for other domestic assault related grants.

City Attorney management actively cooperated in the audit of misdemeanor case processing and case disposition. CAO management is currently reviewing its prosecution plan, and is in the process of redrafting. After the completion of the BWJP audit, management will convene a committee of representatives from the

many participants in the criminal justice and advocacy groups it routinely meets with to discuss an updated prosecution plan.

**GONE ON ARRIVAL CASES:** Only 2 of 48 GOA's (which comprised 61% of our total incident sample) were later charged by the City Attorney. It could not be determined how many were presented for charging. Given the danger these suspects pose to their victims, this area requires attention to practice and protocol development.

**Progress Report:**

- As part of the State VAWA grant coordinated by MPD, DAP and the CAO, a prosecutor and an advocate are currently housed at the Family Violence unit of MPD. The prosecutor reviews all police reports, to assess those that may pose significant risk to the victim. Included in these are the GOA reports. The prosecutor coordinates with DASC as to charging.

MPD and DAP are coordinating to apply for a VAWO grant. MPD is considering several methods by which to address the issue of GOAs, and what MPD, DASC and City Attorney protocols might be established to increase the arrest rate.

**TRAINING:** The City Attorney and MPD should develop a memorandum of agreement to define and institutionalize cross-training procedures and a feedback process on police reports.

**Progress Report:**

- No memorandum of agreement has been set in place as yet to define and institutionalize cross-training procedures and a feedback process on police reports. Such cross-training and review is, however, in fact occurring. The aforementioned grant provides a prosecutor who is reviewing each domestic assault police report and provides written feedback directly to the officer. The CAO also has in place a division wide policy whereby one of the managing attorneys collect feed-back on police reports and directs comments to the officer and supervisor. Regular meetings of the DAT team members and the Family Violence unit have commenced. Understanding the need to institutionalize such practices, however, the CAO will endeavor to prepare such a memorandum for consideration by the MPD.

**IMPROVING DV HISTORY DATA:** The City and County Attorney offices should determine how to implement a data flagging system to identify all misdemeanor charges that are committed within the context of an intimate relationship, i.e. disorderly conduct, property crimes, etc., so that recorded criminal history will more accurately capture the context of domestic violence committed by a perpetrator, and to more accurately track the number and disposition of domestic violence cases among adult intimate partners.

**Progress Report:**

- The County Attorney is able to flag felony intimate relationship domestics only because they have access to SIP, a county computer system, such that they can download data onto a separate system and flag it there. The City Attorney's Office does not have the same access to SIP, and must pay for each time the system is accessed. The City does not have the same opportunity to download data to flag domestics. The Court system is also handicapped in its data gathering abilities regarding misdemeanor domestics. By cooperation with the City, however, the Court was recently able to pull together dispositional data regarding misdemeanor domestics for its initial report regarding Domestic Court.

**WITNESS FEES:** The City Attorney should ensure that all witnesses are informed of their right to receive witness fees for transportation, lost wages, childcare and other expenses incurred when subpoenaed to testify (MN statutes, Section 357.22).

**Progress Report:**

- The CAO currently sends each witness a form along with a subpoena to testify that informs them of the right to a \$20 witness fee plus mileage. The form will be amended to inform witnesses of their rights under MS 357.24 to receive reasonable expenses incurred for meals, loss of wages and child care, not to exceed \$60 a day.

**BAIL SETTING:** Discussions with prosecutors have indicated that they and judges hold conflicting interpretations about factors that can be considered when setting bail, which may prevent dangerousness assessment procedures from being introduced. The City Attorney's office should work cooperatively with other relevant agencies to explore statutory changes or other strategies that could allow victim safety to become a more important factor in setting bail.

**Progress Report:**

- As is evident from the recent WATCH report on Judicial Demeanor and the effect in Domestic Assault cases, the setting of bail remains very inconsistent. Last April CAO management added an additional prosecutor to the DAT team, which allows DAT members to handle arraignment. DAT team members have all been trained with respect to the importance of setting significant bail and not placing the victim on the spot in court regarding contact with the offender. CAO management believe that with the new year and the limitation to ten judges on the Domestic Court calendar, increased consistency in bail setting policy from the bench will be possible. Statutory changes in criminal process have not been entirely implemented by the Hennepin County bench to date, i.e., legislation which requires a PSI be completed prior to sentencing in domestic cases has been difficult to put into practice and just recently the necessity of following this law was publicly questioned by a judge.

**VICTIM CONTACTS:** A committee of representatives from the office of the City Attorney, DASC, corrections, crime victim liaisons, and community-based advocates should reassess

current practice and develop coordinated post-arrest victim services that would support the prosecutor's efforts and increase victim safety. Steps should be taken to:

- a) minimize and coordinate the number of different contacts made with victims by criminal justice staff and community advocates, eliminating duplication as appropriate, and clarifying who should be contacting the victim for what purpose
- b) specify how, when and what relevant information will be obtained the victim at each stage of the case (such as history of violence, mental health/substance abuse issues, prior unreported violence), with whom and how this information will be shared, and how the victim will be informed about the confidentiality status of any information she discloses;
- c) examine how written information is sent to victims, and the impact of the use of City Attorney letterhead on the victim's safety;
- d) provide needed legal and social service information to the victim at each stage of the intervention process;
- e) determine how victim safety will be assessed and addressed (including development and implementation of risk assessment procedures);
- f) increase communications between victim liaisons and community advocates through regularly scheduled meetings; and,
- g) require consistent and regularly scheduled DV training (dynamics of domestic violence, victim safety, community resources, legal rights and remedies) for both day and night CVL staff.

**Progress Report:**

- The City Attorney's Office agrees that a committee is needed to discuss and develop coordinated post-arrest victim services to support prosecution and increase victim safety. Discussions have already occurred with Community Corrections about reducing the number of post-arrest victim contacts. The DAT team commenced scheduled meetings with Community Corrections this fall, where the issue was preliminarily discussed. After a Hennepin County judge ordered disclosure of the safety information collected by the CAO CVL liaisons, both agencies at least temporarily have ceased collecting the data. We anticipate bringing DAP into the discussion to ask their advocates to complete the safety assessment, so that victim information can remain confidential.
- During the past year substantial amounts of time have been devoted to City Attorney participation in the implementation of the Domestic court and start up of the grant project with the Family Violence Unit. More attention is needed with respect to the most efficient and effective way for the many players in the criminal court system to interact with victims to enhance prosecution and increase safety. The CAO has taken the lead in getting the players to have significantly increased communication over the past year, with scheduled meetings now occurring on a multi-disciplinary basis as well as regularly scheduled meetings with the DAT team and Community Corrections and also with the Family Violence unit.

**PROTECTION OF VICTIM INFORMATION:** The City Attorney should develop a written protocol for Victim Witness liaisons and prosecutors which addresses the safety and ethics

issues of interactions with victims, particularly regarding protection of victim disclosures and avoidance of threatening statements or consequence-driven actions intended to compel disclosure or inferences that assistance is contingent upon her disclosure.

**Progress Report:**

- The CAO agrees that a written protocol is desirable for victim witness liaisons and prosecutors with respect to interactions with victims, but this has not been accomplished to date.

## **D. Victim Advocacy by Community-based Advocates**

**DEVELOPMENT OF A COMMUNITY-WIDE ADVOCACY RESPONSE:** A multi-disciplinary committee comprised of criminal justice personnel and community-based advocates should develop recommendations and strategies to create and implement a community-wide response which will ensure that victims have immediate access/referral to independent advocates who can provide:

- a) confidentiality,
- b) safety planning and dangerousness assessment,
- c) accompaniment and advocacy throughout the court process; and,
- d) support and assistance with other issues, such as housing, relocation, financial aid, or child-care, which facilitate her ability to address the violence in her life, and
- e) culturally-competent services.

A number of domestic violence agencies and other community agencies (often working in a particular neighborhood or ethnic population) employ advocates that provide legal advocacy to victims. Despite historical efforts at organizing, advocates working in Minneapolis have not built a network by which their shared experiences working with individual women are translated into effective system change efforts. As a result, there is currently no organized and consistent way to document and present a comprehensive view of system's problems to criminal justice agencies. Nor is there an identified means by which criminal justice personnel can communicate with advocates and obtain a unified and culturally-competent response to their issues or proposals. Staff time and leadership needs to be devoted to system's advocacy as well as individual advocacy. This process requires a concerted effort and intentional planning to network advocates, some of whom work in isolation, coordinate their activities, identify and prioritize system's issues and create a collaborative process for system's change efforts.

**Progress Report:**

- A proposal to form an Advocacy issues Sub-Committee was approved by the Family Violence Coordinating Council in November 2001. The advocacy issues sub-committee will;
  - 1) identify institutional and systemic practices and resource/services gaps in our community that are barriers to safety for victims of family violence,

- 2) develop system change recommendations and implementation strategies which would increase safety, options and access to resources for victims and their children,
- 3) serve as a resource to the Family Violence Coordinating Council regarding the impact of policy and practice on the lives of domestic violence victims and their families, especially in immigrant communities and communities of color, and
- 4) provide a forum for advocates to collaborate with each other.

## **E. Related Issues for the Family Violence Coordinating Council / DV Court Implementation Committee**

**VICTIM SAFETY AT ARRAIGNMENT:** At arraignment victim safety should be a prime consideration. Observations at these hearings found that victims were placed in the position of publicly responding to questions about what she wants done to the perpetrator, or if she wants him released. Training should be initiated to educate Prosecutors, Defense, CCJ Liaisons, and the Bench about inherent safety risks involved in this practice.

### **Progress Report:**

- This practice has been officially discouraged and for the most part discontinued. Observation at arraignment did see this occur one time. Internal training for the Domestic Abuse Team attorneys was provided, a direct message sent from the Deputy City attorney to her staff, and discussion at the FVCC.

**JUDICIAL CHECKLIST ON RELEASE CONDITIONS:** The City and County Attorney, advocates and the Bench should develop a judicial checklist to assist in determination of release conditions and bail in domestic cases.

### **Progress Report:**

- This has not been addressed to date. There has been interest expressed by some members of the Bench assigned to the DV court in the development of a more consistent philosophy and offender accountability measures from the bench.

**BARRIERS FOR UNDERSERVED & IMMIGRANT POPULATIONS:** A multidisciplinary committee should develop strategies to remove barriers facing underserved and immigrant populations that prevent them from using the criminal/civil justice system (e.g., translation of materials into relevant languages, 24-hour access to translation, and interpreter services). Women from non-English speaking communities should be involved in the planning and implementation of solutions.

### **Progress Report:**

- A subcommittee of the FVCC was convened in 2001 to address these complex issues. In addition, the newly created FVCC Advocacy issues sub-committee has

formed a work group to identify strategies that will address language accessibility issues in Hennepin County.

## **Appendices**

- A. Pre-Trial Release Dangerousness Determinations (St. Louis County, MN)**
- B. Arraignment Observations – sample**
- C. MPD Arrest report Analysis –sample**
- D. MCAO Case file and Disposition Analysis – sample**
- E. Sentencing Matrix (St. Louis County, MN)**

**Pre-Trial release-Dangerousness determinations  
St. Louis County, MN**

**CATEGORY A – NO APPARENT RISK OF FURTHER HARM TO VICTIM AND/OR CHILDREN**

*Released on own Recognizance. No Conditions or Bail.*

Defendants where there is no pattern of abuse, there appears to be no risk of further offending, and the defendant is very unlikely to flee. This category may include victims of battering who use illegal violence or activities to control or stop violence used against them. It may also include offenders who commit an act uncharacteristic of their typical behavior.

**CATEGORY B - LOW RISK OF FURTHER HARM TO VICTIM AND/OR CHILDREN**

*Use current supervised release with or without bail*

- No use of violence.
- Violate no law or ordinance.
- No-contact order (if requested by victim).
- Supervised access to children through visitation center when the incident involved children, or children are involved in the pattern of abuse.
- Make all court appearances.
- \_\_\_\_\_Cash bail or bond must be posted in this amount. Following any conviction, cash bail may be applied to fines, restitution or program fees regardless of the source. Cash bail will be returned upon acquittal or dismissal of all charges.
- Totally refrain from the use of any alcoholic beverages or mood-altering chemicals not prescribed by a doctor. Subject to testing to verify sobriety on request of law enforcement or probation.
- Report as directed to supervised release agent.
- Notify supervised release agent immediately of any change of address.
- Other:

**CATEGORY C - PROBABILITY OF CONTINUED HARASSMENT TO VICTIM AND/OR CHILDREN**

*Bail with conditions*

These defendants may or may not have a significant criminal record, but there is information that indicates escalating violence or serious concern by victim and/or interagency partners. There is evidence of a pattern of abuse. Release conditions could include:

- No use of violence.
- Violate no law or ordinance.
- No contact order (if requested by victim).
- Supervised access to children through visitation center when the incident involved children, or children are involved in the pattern of abuse.
- Make all court appearances.

- ❑ \_\_\_\_\_Cash bail must be posted in this amount. Following any conviction, cash bail may be applied to fines, restitution or program fees regardless of the source. Cash bail will be returned upon acquittal or dismissal of all charges.
- ❑ Weekly in-person reporting to supervised release agent, with self-review form and structured interview.
- ❑ Totally refrain from the use of any alcoholic beverages or mood-altering chemicals not prescribed by a doctor. Subject to testing to verify sobriety on request of law enforcement or probation.
- ❑ Do not enter bars or liquor establishments.
- ❑ No firearms.
- ❑ Notify supervised release agent immediately of any change of address.
- ❑ Other:

**CATEGORY D – HIGH PROBABILITY OF FURTHER HARM TO VICTIM AND/OR CHILDREN:**

*Bail with conditions, including supervision by adult intensive supervision unit.*

These are defendants with a serious history of offending and/or used serious violence causing injuries that required hospitalization. Conditions of release could also include:

- ❑ No use of violence.
- ❑ Violate no law or ordinance.
- ❑ No-contact order (if requested by victim).
- ❑ Supervised access to children through visitation center when the incident involved children, or children are involved in the pattern of abuse.
- ❑ \_\_\_\_\_Cash bail must be posted in this amount. Cash bail will be forfeit upon violation of any of these conditions. Following any conviction, cash bail may be applied to fines, restitution or program fees regardless of the source. Cash bail will be returned upon acquittal or dismissal of all charges.
- ❑ Totally refrain from the use of any alcoholic beverages or mood-altering chemicals not prescribed by a doctor. Subject to testing to verify sobriety on request of law enforcement or probation.
- ❑ Do not enter bars or liquor establishments.
- ❑ Notify supervised release agent immediately of any change of address.
- ❑ No firearms.
- ❑ Other:

**CATEGORY E - HIGH PROBABILITY OF SERIOUS HARM TO VICTIM AND/OR CHILDREN:**

*Jail*

These are defendants with a serious and lengthy history of violent offending, and/or the incident involved extreme violence, (e.g. murder,) where there release would be inimical to public safety or it is extremely unlikely they will reappear at court. These defendants will be held in jail without bail.

**Appendix E.  
Domestic Violence–Related Misdemeanor Sentencing Recommendation Matrix**

Category one	Category two	Category three	Category four	
<p><b>The offender</b> commits an offense against the victim but there is no evidence to suggest the offender is battering the victim. The offender has no history of battering.</p> <p><b>This category may include</b> offenders who commit an act uncharacteristic of their typical behavior. It may also include victims of battering who use illegal violence or activities to control or stop violence used against them.</p> <p><b>Considerations:</b> If the offender in this case is experiencing ongoing battering by the person assaulted, the probation officer considers safety measures for both parties. Specialized programming is recommended, and the probation officer does not consider executed jail time unless the assault is severe.</p>	<p><b>The offender</b> engages in battering behavior against the victim, but there is no indication that the battering is escalating in severity or frequency, or that this offender has battered another person.</p> <p><b>This category may include</b> batterers whose histories include using low levels of violence and activities which threaten or intimidate the victim.</p> <p><b>Considerations:</b> Recommendations focus on victim safety and rehabilitation programming rather than sanctions.</p>	<p><b>The offender</b> has established a clear pattern of battering with this or past victims. The PSI indicates the battering will likely continue and possibly escalate in severity and frequency.</p> <p><b>This category may include</b> batterers whose histories include multiple domestic violence–related contacts with the police; demonstrated harassing behavior* toward the victim; violation of an OFP; or repeated threats or assaults against this or other victims. The victim may be in fear of serious bodily harm.</p> <p><b>Considerations:</b> Victim safety recommendations are combined with more sanction-oriented sentencing, such as the maximum probationary period, some executed jail time, and rehabilitation programming.</p>	<p><b>The offender’s PSI</b> demonstrates that the heightened, obsessive, and/or unrelenting nature of the battering poses a high risk of serious harm to this or other victims.</p> <p><b>This category includes</b> offenders with histories similar to those of category 3 offenders but may also include stalking behavior,* threats to seriously harm or kill; use of weapons or threats to do so; and injuries that require medical attention.</p> <p><b>Considerations:</b> Recommendations include the strongest victim safety measures possible, including working with child protection on children’s safety. A substantial jail term and long-term probation may be combined with programming if offender is amenable.*</p> <p><i>*terminology on page five</i></p>	
<b>Incarceration or other correctional programming*</b>				
30 days stayed jail	60 days stayed jail	60 days stayed jail 10-30 days executed jail	60-90days stayed jail 20-30 executed jail	30 days stayed jail 60 days executed jail or 90 days straight time
Gross misdemeanor incarceration or other correctional programming*				
	91-120 days stayed jail 0-45 days executed jail	91-120 days stayed jail 45-120 days executed jail	120-180 days stayed jail 120-180 days executed jail	180-365 days stayed jail 180-365 executed jail
Probation duration (Gross misdemeanor convictions routinely receive 2 years probation)				
1 year			2 years	

