



# OFFICE OF THE ATTORNEY GENERAL

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## ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS

December 11, 2015 – 9:00 a.m.

Video Conferenced Between:

Attorney General's Office  
Mock Courtroom Room  
100 N. Carson Street  
Carson City Nevada

Sawyer Building, Room 4500  
555 E. Washington Avenue  
Las Vegas, Nevada

### AGENDA

1. Call to Order and Roll Call.
2. Public Comment. Discussion Only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.
3. Attorney General Adam Laxalt's Welcome. Self-introduction of members present, including A. J. Delap, reappointed by Governor Brian Sandoval to a term from September 23, 2015 to July 1, 2019.
4. Discussion for possible action to approve the minutes of the September 25, 2015 meeting. (See Attachment One (1) – Draft Meeting Minutes.)
5. Attorney General's report on the Domestic Violence Prevention Council meeting on November 9, 2015, NRS 228.490, and the Domestic Violence Fatality Review Statewide Team. NRS 228.495.
6. Executive Director Patricia Cafferata's report.
  - a. Successful Attorney General's Law Enforcement Summit was held on September 29, 2015.
  - b. Next Law Enforcement Summit is set for February 17, 2016, the day before the Sheriffs and Chiefs meeting in Elko, Nevada.
  - c. Technological Crime Advisory Board meeting December 10, 2015.
  - d. Working on NVPAC conference for the Fall, including sponsorships and grants for funding.

7. Discussion for possible action on Council's duties set forth in NRS 241A.070:
  - a. Develop and carry out a program for training and assisting prosecutors in conducting criminal and civil prosecutions;
  - b. Coordinate the development of policies for conducting criminal and civil prosecutions; and
  - c. Coordinate the development of proposed legislation for the 79<sup>th</sup> Legislative Session in 2017.
8. Briefing on Nevada Supreme Court Committee to Study Evidence Based Pretrial Releases and Commission on Statewide Rules of Criminal Procedure by committee members District Attorneys Chris Hicks and Steven Wolfson.
9. Briefing on the Nevada Advisory Commission on the Administration of Justice by DA Mark Jackson. NRS 176.0123.
10. Presentation by Senior Deputy Attorney General Don Winne on CLE programs offered by the Attorney General's office.
11. Discussion for possible action on offering a legal writing course at a future meeting.
12. Discussion of follow up on bills passed by the 78<sup>th</sup> Legislature in 2015, in particular AB 193 and whether all the offices should each create a log or a statewide protocol should be developed for documenting the use of both hearsay provisions and the audiovisual provisions at preliminary hearings.
13. Discussion of suggested topics on the Law Enforcement Summit on February 17, 2016.
14. Discussion of legislative proposals for the Legislative session in 2017. At the September 24, 2015 meeting, District Attorney Wolfson indicated that NRS 176A.280 on veterans courts might need clarification.
15. Discussion for possible action on updating and reprinting the pamphlet "Your Rights and Responsibilities as a Crime Victim and Witness." (See Attachment Two (2) – Current Publication.)
16. Discussion for possible action on updating "Model Policy Standard Operating Procedure for the Enforcement of Protection Orders against Domestic Violence." (See Attachment Three (3) – Current Model Policy.)
17. Discussion for possible action on updating the "Domestic Violence Prosecution Best Practice Guidelines." (See Attachment Four (4) – Current Guidelines.)
18. Discussion for possible action to schedule training on Domestic Violence cases.
19. Discussion for possible action to schedule training on Impaired Driving cases.
20. Council members' comments. Discussion only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.

21. Discussion for possible action to set the council's quarterly meeting schedule in 2016. NRS 241A.050.1.
22. Public Comment. Discussion only. Action may not be taken on any matter brought up under this agenda item, until scheduled on the agenda of a future meeting for possible action.
23. Adjournment.

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Please Note: The Advisory Council for Prosecuting Attorneys may: 1) take agenda items out of order; 2) combine two or more items for consideration; or 3) remove an item from the agenda or delay discussion related to an item at any time. Reasonable efforts will be made to assist and accommodate physically handicapped persons, who wish to attend this meeting. Please contact Patricia Cafferata, Advisory Council Executive Director, at (775) 684-1136 or [pcafferata@ag.nv.gov](mailto:pcafferata@ag.nv.gov) in advance, so that arrangements can be made.

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In accordance with NRS 241.020, this agenda was posted on or before December 8, 2015 online at [www.nvpac.nv.gov](http://www.nvpac.nv.gov) and at the following locations:

- Office of the Attorney General, 100 North Carson Street, Carson City, NV 89701
- Office of the Attorney General, 5450 Kietzke Lane, Suite 202, Reno, NV 89511
- Office of the Attorney General, Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, NV 89101
- First Judicial District Court (Carson City), 885 East Musser Street, Carson City, Nevada 89701
- Second Judicial District Court (Washoe County), 1 South Sierra Street, Reno, NV 89520
- Las Vegas Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89155

Meeting materials may be requested from Patricia Cafferata, Advisory Board Executive Director, at (775) 684-1136 or [pcafferata@ag.nv.gov](mailto:pcafferata@ag.nv.gov), and obtained from the Office of the Attorney General at any of the first three (3) locations listed above.

# Attachment One (1)

to

Advisory Council for Prosecuting Attorneys Agenda

December 11, 2015

## ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS

Minutes of the September 24, 2015, meeting of the  
State of Nevada Advisory Council for Prosecuting Attorneys

Casa Blanca Hotel Resort, Cortez/Stardust Conference Room  
950 West Mesquite Blvd, Mesquite, NV 89027

**I. Call to Order and Roll Call.** Attorney General Laxalt called the September 24, 2015, meeting of the Advisory Council to order at 12:05 PM.

Members Present:

- Adam Paul Laxalt, Nevada Attorney General
- Chris Hicks, Washoe County District Attorney
- Steve Wolfson, Clark County District Attorney
- Art Mallory (represented by Lane Mills pursuant to NRS 241A.050(2))
- Josh Reid (represented by Marc Schifalaqua pursuant to NRS 241A.050(2))
- A.J. Delap, Las Vegas Metropolitan Police Department
- Brett Kandt, Executive Director (recording secretary)

Other Attendees: See attached sign-in sheet

**II. Public Comment.** Executive Director Brett Kandt reported that he was unsure of the effective date of A.J. Delap's appointment to the Council; Delap will therefore abstain from voting on any action items.

**III. Discussion and possible action on election of Chairman and Vice Chairman pursuant to NRS 241A.040(2).** Upon a motion by Steve Wolfson, seconded by Chris Hicks, and carried unanimously (A.J. Delap abstaining), the Council elected Adam Paul Laxalt, Chairman, and Art Mallory, Vice Chairman.

**IV. Discussion and possible action on appointment of Patricia D. Cafferata as Executive Director pursuant to NRS 241A.060.** Upon a motion by Chris Hicks, seconded by Steve Wolfson, and carried unanimously (A.J. Delap abstaining), the Council appointed Patricia D. Cafferata as Executive Director effective upon adjournment of the meeting.

**V. Discussion and possible action on approval of December 12, 2014, meeting minutes.** Upon a motion by Steve Wolfson, seconded by Chris Hicks, and carried unanimously (A.J. Delap abstaining), the Council approved the December 12, 2014, meeting minutes.

**VI. Executive Director's Report.** Executive Director Brett Kandt reported as follows:

**A. Budget status and expenditures – B/A 1041.** Kandt reported that the budget was approved by the Legislature for the 2015-17 biennium.

**B. NVPAC events calendar.** Chairman Laxalt reported that he will be hosting the next Law Enforcement Summit on September 29<sup>th</sup> to further discuss issues of mutual concern and formulate responses. A future Summit is anticipated for February 2016 in conjunction with the meeting of the Nevada Sheriffs' and Chiefs' Association in Elko.

**C. Grant funding for training and technical assistance.** Kandt reported that all grant funding previously awarded to the Council had been expended.

**D. Executive Director's service on state boards and task forces.** No report.

**VII. Report from Solicitor General on cases pending before Nevada Supreme Court of possible interest and discussion of recent federal and state court rulings.** Chairman Laxalt reported that his office had filed a petition for a writ of certiorari in *Nevada v. Torres* (USSC Case No. 15-5), challenging a Nevada Supreme Court decision suppressing evidence under the 4<sup>th</sup> amendment. The petition presents two issues: 1) whether retaining Torres' identification to run a check on outstanding warrants was beyond the scope of an otherwise lawful *Terry* stop; and 2) whether discovery of an outstanding warrant can dissipate the taint of an otherwise lawful unlawful detention.

**VIII. Discussion of any bill or bill draft request listed on the Nevada Legislature website for the 78<sup>th</sup> (2015) Nevada Legislative Session.** (<http://www.leg.state.nv.us/Session/78th2015/>). Mark Jackson cautioned Nevada prosecutors to expect efforts to repeal or scale back AB 193 and recommended that all offices create an AB 193 log documenting the use of both the hearsay provisions and the audiovisual provisions at preliminary hearings. Christopher Lalli cited ADKT No. 424 adopting new Supreme Court rules regarding audiovisual appearances in criminal proceedings and advised that the Clark County District Attorney's Office was developing a protocol; the Council discussed the need for statewide consistency and requested that the protocol be disseminated by the Executive Director when available.

**IX. Discussion of and possible action response to January 2015 report from the U.S. Department of Justice Office of Justice Programs Diagnostic Center entitled "Analysis of Sentencing Reform and Offender Population for the Nevada Department of Corrections.** Brett Kandt and Mark Jackson provided background, expressed their concerns about the reliability of the report, and cautioned that it could be relied upon by the Advisory Commission on the Administration of Justice for legislative proposals.

**X. Discussion and possible action on identification of issues for consideration at future Law Enforcement Summits.** Chairman Laxalt reported that the September 29<sup>th</sup> Summit will include judges and agency heads and will feature panel presentations on issues of mutual concern, including the development of model policies on the use of body cameras.

**XI. Discussion of proposals for legislation for the 79<sup>th</sup> (2017) Nevada Legislative Session. (Discussion Only) Action may not be taken on any matter brought up under this agenda item until scheduled on an agenda for action at a later meeting.** Steve Wolfson indicated that NRS 176A.280, which authorizes courts to create a program for treatment of veterans, requires clarification on the dismissal/exclusion provisions of the statute.

**XII. Discussion of the following commissions:**

**A. Nevada Advisory Commission on the Administration of Justice (NRS 176.0123).** Mark Jackson reported that the Commission's first meeting of the interim had not yet been scheduled.

**B. Nevada Supreme Court Indigent Defense Commission (ADKT No. 411).** The Council discussed the Court's July 23<sup>rd</sup> Order adopting certain recommendations of the Rural Issues Subcommittee; the next meeting of the Commission is scheduled for November 23.

**C. Nevada Supreme Court Commission on Statewide Rules of Criminal Procedure (ADKT No. 491).** Mark Jackson reported that this Commission was created on January 23<sup>rd</sup> and included Jackson, Hicks and Wolfson as members. The Commission had held two meetings and formed four subcommittees. Hicks and Wolfson are serving on the LWOP/Death Penalty Pretrial Practice Subcommittee. Jackson and Wolfson are serving on the Motions Practice Subcommittee (intended to reconcile differences among rules of practice for local courts). Hicks is serving on the Discovery Subcommittee. Finally, Jackson is serving on the Jury Instructions Subcommittee. Hicks cautioned that trying to formulate statewide solutions for county-level problems was a challenge.

**D. Nevada Crime Commission (Executive Order 2011-24).** Kandt reported that the Commission, originally created by Executive Order on May 25, 2010, had expired by limitation on July 1, 2015.

**XIII. Report from the Attorney General on the following boards:**

**A. Nevada Technological Crime Advisory Board (NRS 205A.040).** Chairman Laxalt reported that the next meeting of the Board was not yet scheduled.

**B. Nevada Substance Abuse Working Group (NRS 228.820).** Chairman Laxalt reported that the next meeting of the Working Group was not yet scheduled.

**C. Nevada Domestic Violence Prevention Council (NRS 228.490).** Chairman Laxalt reported that the Prevention Council met July 22<sup>nd</sup> in Tonopah and that the next meeting is scheduled for November 9<sup>th</sup>, to be video-conferenced between Carson City and Las Vegas.

**D. Nevada Domestic Violence Fatality Review Statewide Team (NRS 228.495).** Chairman Laxalt reported that the next review was scheduled for December 8-9<sup>th</sup> in Ely. Mark Jackson reported that due to time constraints he would no longer be serving on the Team and requested that other prosecutors participate.

**XIV. Council comments.** Chairman Laxalt welcome input on the locations and topics for future law enforcement summits.

**XV. Discussion and possible action on time and Location of Next Meeting.** The Council instructed the Executive Director to coordinate a meeting date in conjunction with the next meeting of the Nevada District Attorneys Association in January.

**XVI. Public Comment.** None.

**XVII. Discussion and possible action on adjournment.** The Council adjourned at 1:35 PM.

#### **CERTIFICATION OF SECRETARY**

I, Patty Cafferata, the duly appointed secretary of the State of Nevada Advisory Council for Prosecuting Attorneys, do hereby certify that the foregoing is a true and correct copy of the minutes of the September 24, 2015, meeting of the Advisory Council, as approved by the Advisory Council on December 11, 2015.

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Patty Cafferata  
Secretary  
State of Nevada  
Advisory Council for Prosecuting Attorneys



# Attachment Two (2)

to

Advisory Council for Prosecuting Attorneys Agenda

December 11, 2015

**YOUR RIGHTS  
AND  
RESPONSIBILITIES  
AS A  
CRIME VICTIM  
AND  
WITNESS**



This brochure is made available to you courtesy of the Nevada Advisory Council for Prosecuting Attorneys, the Nevada District Attorneys Association and your local prosecutor's office.

# Important Telephone Numbers

## State of Nevada, Victim of Crimes Program

Southern Nevada: (702) 486-2740  
Northern Nevada: (775) 688-2900

## Domestic Violence Hotline

Statewide: 1-800-500-1556

## Nevada Parole and Probation

Southern Nevada: (702) 486-3001  
Northern Nevada: (775) 687-5040  
Website: [www.dps.nv.gov/pandp/](http://www.dps.nv.gov/pandp/)

## Nevada Board of Parole Commissioners

Southern Nevada: (702) 486-4370  
Northern Nevada: (775) 687-5049  
Website: [www.parole.nv.gov](http://www.parole.nv.gov)

## Nevada Department of Corrections

Statewide: (775) 887-3284  
Website: [www.doc.nv.gov](http://www.doc.nv.gov)

## Victim Information Notification Everyday (VINE)

Washoe County: 1-877-332-8463

## Clark County Victim Witness Assistance Center

Clark County: (702) 455-4204

## Crisis Call Center

(702) 784-8090 or 1-800-992-5757 (V/TTY):

(Crisis Intervention; Suicide Prevention; Information and Referral; Abuse and Neglect Reporting for Children and Seniors; Sexual Assault Support Services)

This project was supported by Edward Byrne Memorial State and Local Law Enforcement Formula Subgrant No. 02-NC-036, awarded by the U.S. Department of Justice, Office of Justice Programs and the Nevada Department of Safety, Office of Criminal Justice Assistance. Additional funding was provided by the Nevada District Attorneys Association. The opinions contained in this document do not necessarily represent the official position or policies of the U.S. Department of Justice or the Nevada Office of Criminal Justice Assistance.

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## THE PROCESS BEGINS

### *What Should I Do If a Crime Has Occurred?*

If you have not reported the crime, you must do so immediately by calling 911. Explain to the emergency dispatch officer what happened and if the suspect is still in the area. The dispatch officer will assign your call to the appropriate law enforcement agency to make a full report. *It is very important that you do not move, touch or destroy any evidence of the crime, as the law enforcement officer will need to photograph it and take it into evidence.*

You will be asked to fill out a statement as to what happened. It is critical that you make this statement as complete as possible. If you have trouble writing, notify the law enforcement officer of this and he/she will arrange for someone to help you. In your statement, only include what you saw or know to be true—do not speculate. *It is very important that you put down any statements the suspect made to you before, during or after the crime.* If you remember something after you have submitted your statement, you should fill out a supplemental statement and make sure it is given to the law enforcement officer who took your first statement, or the detective who has been assigned to handle the case. Even if you are not sure the information you have is important, it is better for you to fill out a supplemental statement and let the law enforcement officer or prosecutor determine whether it is necessary information. Often, cases have been lost because a witness did not give complete information to the law enforcement officer or prosecutor.

### *Your Role as a Victim or Witness*

*As a crime victim, you are essential for the prosecution of the defendant.* However, you are not a formal party to the criminal proceeding. In a criminal proceeding, the state (or city) is the plaintiff, and the accused is the defendant. It is important that you realize the prosecutor has the discretion as to whether or not to proceed on criminal charges. Even if you do not want the defendant prosecuted, the prosecutor can proceed. The same is true if you want to prosecute and the prosecutor declines. Please keep in mind that you always have the option of filing a civil lawsuit against the defendant through a private attorney.

As a witness (non-victim), you have seen, heard or know something about a crime that has been committed, and it is important that you be prepared to testify. Oftentimes, a witness' reluctance to get involved results in a suspect not being charged, convicted or punished.

## *The Charging Process*

Once the law enforcement officer has completed the investigation, there are several options:

1. The officer may arrest the suspect if the crime is a felony, gross misdemeanor, or a domestic violence battery that has occurred within the preceding 24 hours; or
2. The officer may submit the full crime report to the prosecutor for review and a charging decision, at which point if charges are filed, either an arrest warrant or summons to appear is issued to the defendant; or
3. The officer may suspend or close the case because of the lack of sufficient evidence on which to make an arrest or to submit to the prosecutor.

Once the prosecutor receives the investigation reports from law enforcement, he/she will review the case. The prosecutor has three options after reviewing the case: return the case to law enforcement for further investigation; file what he/she believes are the appropriate charges in the case based upon probable cause; or decline to prosecute.

The prosecutor has the sole discretion to decide how to handle the case. If the prosecutor decides not to file charges, it is generally because he/she believes that there is insufficient evidence to obtain a conviction. It does not mean that a crime did not occur; however, the prosecutor must prove the case "beyond a reasonable doubt," and has an ethical obligation to proceed only on those charges that are supported by the evidence.

### *Crimes*

Nevada's criminal laws are located in the Nevada Revised Statutes (NRS). A crime is defined as "an act or omission forbidden by law and punishable upon conviction," and classifies criminal offenses into three categories: misdemeanors, gross misdemeanors and felonies.

#### **Misdemeanor:**

Every crime punishable by a fine of not more than \$1000, and/or by imprisonment in a county or jail for not more than six months. Community service imposed by the court is an alternative to all or part of the punishment. These crimes are handled in either justice or city courts by a justice of the peace or city

judge. Guilt or innocence is determined solely by the presiding judge. A defendant charged with a misdemeanor does not have the right to have a jury trial. Some examples of misdemeanors are traffic offenses, battery (unlawful hitting) and property crimes with a value under \$250.

**Gross Misdemeanor:** A crime wherein the punishment is imprisonment in the county jail for not more than one year, or by a fine of not more than \$2000 or by both fine and imprisonment. Probation is possible with this crime. This crime requires a preliminary hearing (probable cause) in front of a justice of the peace and, if enough evidence exists, bound over for jury trial in district court. An example of this crime is conspiracy to commit another crime. Very few crimes come under this category.

**Felony:** Is the most serious criminal offense and is punishable by imprisonment for more than one year in a state prison and fines up to \$10,000. There are five different classes of felonies, ranging from Class E (maximum four years) to Class A (imprisonment for life or the death penalty). Probation is available in most felonies. Contact your prosecutor if you have any questions regarding the range of punishments. Anyone charged with a felony has the right to a preliminary hearing, and if bound over to district court, has the right to a jury trial. Examples of felonies are sexual assault, burglary, murder, robbery, weapon and drug violations.

## ***Arrest and Bail***

There are different procedures involved for the arrest of a defendant:

**Misdemeanor:** A law enforcement officer may issue a citation for a misdemeanor committed in his/her presence. If the misdemeanor was not committed in his presence, he/she can submit the case to the prosecuting attorney for review and possible charges. A person does

have the right to make what is known as a "citizen's arrest," but this practice is discouraged as it makes the person who made the arrest possibly liable for wrongful arrest. It is best to have the law enforcement officer either make the arrest or submit the case to the prosecuting attorney for charging.

**Gross Misdemeanor/  
Felony:**

A law enforcement officer may make an arrest if the offense is a gross misdemeanor or felony, regardless of whether he/she was present when the crime was committed if they have probable cause to believe a crime has been committed.

**Summons:**

A summons can be issued from a court, which requires a defendant to appear for arraignment and trial. A summons is generally used in misdemeanor cases where the defendant is not likely to commit anymore crimes.

**Warrants:**

A law enforcement officer may arrest a person who has a warrant issued by a court for their arrest.

**Bail Bonds:**

A bail bond is to ensure that the defendant will appear at every stage of the criminal justice process. A defendant in a criminal case is generally entitled to have bail set in a reasonable amount. Bail bonds are usually money or security that a defendant puts forth to be allowed to leave custody. The judge sets this amount. However, a judge can increase the amount based on the seriousness of the crime, the defendant's prior criminal history, or if there is evidence the defendant might leave the area or commit further crimes. If the defendant is unable to meet the bond amount, he/she usually remains in custody pending trial on the charges. The judge has the ability to release a defendant on his/her "own recognizance" without having to post bail. This is done if the judge believes the defendant will appear for all court proceedings and is unlikely to commit any further crimes.

## ***Who Will Prosecute the Crime?***

### **City Attorney:**

Responsible for prosecuting misdemeanor crimes that occur within the city limits of an incorporated city. The city attorney cannot prosecute gross misdemeanors or felonies. Trials in municipal court are held before a judge and there is no right to a jury trial.

### **District Attorney:**

Responsible for prosecuting all crimes (felonies, gross misdemeanors and misdemeanors) that occur, except for misdemeanors committed within an incorporated city.

For the purposes of this handbook, the term "prosecutor" will be used for both city and district attorneys and their deputies.

## **THE COURT PROCESS**

Once a defendant has been charged with a crime and either arrested or summoned to appear before the court, he/she is given an initial appearance or arraignment. At that time, the defendant is notified of the charges and the bail amount. Depending upon the classification of the charge, the defendant is either given a trial date (for misdemeanors), or a date for a preliminary hearing (if gross misdemeanor or felony).

### ***Arraignment***

At the time of arraignment, the defendant is read the charges and asked to enter a plea of guilty, not guilty or nolo contendere. If the defendant pleads guilty, the judge will sentence the defendant at that time. If this occurs, you may not have the opportunity to be heard for sentencing. If this is a serious concern for you, you should contact your prosecutor immediately and notify them of your sentencing concerns. This is especially important if you believe you are entitled to restitution.

A nolo contendere plea is treated as a guilty plea by the court, but allows the defendant to escape civil liability based on his plea. You always have the option of pursuing civil remedies, through a private attorney. You cannot stop a defendant from pleading nolo contendere.



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Although misdemeanor defendants routinely plead guilty at time of arraignment, the justice of the peace does not have jurisdiction to accept a guilty plea on behalf of a defendant charged with a gross misdemeanor or felony.

If the defendant pleads not guilty, the judge will then set a trial date. The defendant is entitled to a trial within 60 days. Although defendants have this right, the date for trial will usually be set several months away unless the defendant is in custody and has not been able to make bail. Do not be surprised if the trial date is many months away, or if it is continued (rescheduled) to a later date. The court system is quite busy and courts are unable to hold all trials within a short time.

### *Preliminary Hearing*

If the defendant has been charged with a gross misdemeanor or felony, he/she is entitled to a preliminary hearing. A preliminary hearing is a probable cause hearing where the judge will decide if a crime has been committed and if the defendant probably committed it. A preliminary hearing is conducted like a trial, except that often a prosecutor or defense attorney will not put on their entire case. Remember guilt or innocence is not being decided at a preliminary hearing—just probable cause to bind the defendant over for trial in district court. If the judge does not find sufficient evidence to bind the case over for trial, it will be dismissed.

Some of the larger jurisdictions (Las Vegas and Reno) have grand juries empanelled. A grand jury functions much like a judge in deciding whether there is sufficient evidence to bind a defendant, charged with a felony or gross misdemeanor, over for trial in district court. However, in a grand jury proceeding, the defendant or his attorney is not allowed to put on a case or to ask questions.

### *Subpoena*

Once a trial date is set, you will be given a subpoena, which is a court order directing you to appear in court at a specified time and place. It may be delivered to you by mail or in person. This is a court order, and if you fail to appear as ordered, you face criminal contempt of court charges. It is very important to obey a subpoena.

If you have a conflict with the date set on the subpoena, it is very important that you notify the prosecutor's office as soon as possible. You should also notify the prosecutor's office if you change your address, phone number or plan on leaving the area.

Your employer should not discharge, punish or threaten you for attending a criminal proceeding when you are subpoenaed. If you experience such problems, please contact your prosecutor's office immediately.

It is always advisable to contact your prosecutor's office upon receipt of a subpoena from either the prosecutor's office or defense attorney. That allows the prosecutor plenty of time to meet with you before you have to testify.

### ***Misdemeanor and District Court Trials***

As a victim or witness, you will be expected to appear at the time and place set for trial as set forth in your subpoena. You should contact the prosecutor when you appear for trial.

#### **Individuals at Trial:**

- Judge presides over the trial, and will determine guilt or innocence
- Prosecutor represents the state or city in the case
- Defendant the person accused of committing the crime
- Defense Attorney responsible for representing the defendant
- Bailiff law enforcement officer who guards the courtroom
- Court Clerk responsible for administering oaths
- Court Reporter records everything that is said in a trial

Once the trial begins, the judge will give you an oath to tell the truth. Once you have taken that oath, you may testify. If it is not your turn to testify, you may be asked to wait outside until you are called. This is called the rule of exclusion; the purpose of the rule is to make sure that witnesses do not listen to each other's testimony. Do not be offended if you are asked to leave.

Once you are asked to testify, you will be reminded that you are under oath (or the oath will be given). You will be asked to give your full name and to spell it for the record.

*Direct Examination:* You will be first asked questions by the prosecutor (if the prosecution subpoenaed you). This is called direct examination. In direct examination, the prosecutor will be asking you what you saw, heard or know.

*Cross-Examination:* Once the prosecutor has finished asking you questions, then the defense attorney will ask you questions. This is called cross-examination. Generally, most questions under cross-examination can be answered with a yes

or no. After cross-examination, the prosecutor has the opportunity to ask you questions based on any questions the defense attorney may have asked you. This is called rebuttal. The defense attorney then has the opportunity to ask you questions based on the rebuttal questions. This is called sur-rebuttal.

Once you have finished testifying you may either be excused by the court, or asked to remain for possible further testifying. Do not leave the area unless you have been excused by the judge or have spoken with the prosecutor.

After the prosecution has put on its case (called the case-in-chief), the defense has the opportunity to put on its case. The defense can call witnesses (including you) to try to show that the defendant is not guilty of the charged crime. The defendant has the right to take the stand and testify on his or her own behalf. Defendants also have the right not to testify. The prosecution has the right to cross-examine the defense witnesses, and the defense has the right to ask rebuttal questions. After the defense has put on its case, the prosecution has the chance to put on any additional witnesses to rebut the defense case.

Once both the prosecution and defense have put on their respective cases, the court closes that portion of the trial and asks for final arguments. You may be present for these arguments if you so desire. In closing arguments, the state tries to convince the court they have proven the crime beyond a reasonable doubt, while the defense attorney tries to show the opposite. The judge may make a ruling at that time, or may take the matter under advisement and issue a ruling later.

If the defendant is found guilty of a misdemeanor, then a sentence is generally handed down at that time. If you are a victim, you have the right to appear and be heard at sentencing. For further information on sentencing, see the Sentencing section of this handbook.

### ***Special District Court Trial Rules***

In a district court trial, a panel of 12 jurors (and several alternates) will decide if the defendant is guilty of the charged crimes. The jurors are selected through a process called *voir dire*, where the attorneys and judge, through a question and answer process, try to pick jurors who will be fair.

The district court judge will conduct the trial and will make rulings on what is admissible in court. The trial will be conducted as explained above.

The jurors will listen to all the evidence, and when the prosecution and defense have concluded their cases, will go into deliberations. During the deliberations, the jurors will decide if the defendant is guilty or not guilty of the charged crimes. Often times, deliberations can take several days.

If a defendant is found guilty of the charges, the district court judge will delay sentencing (usually 30 to 60 days) to have the Division of Parole and Probation prepare a pre-sentence investigation (see Sentencing section of this handbook).

Never attempt to talk with a juror about the case or any other matter during the trial. This includes chance meetings during recesses, in hallways, at lunch or any other place. Even if you are friends with a juror, you must not discuss the case with them.

Your conduct during a jury trial is especially critical. Dress appropriately, maintain eye contact with whoever is asking the questions, be courteous to the court and the attorneys, and always listen to the question that is being asked.

## **TESTIFYING**

The first time you are called to testify can be quite intimidating. Remember that you are there to tell the court what you know, saw or heard. The court is trying to get as much information as possible before determining whether the defendant is guilty of the charges. The defense attorney may try to confuse you about what you know, saw or heard; just tell the truth as best as you can recall.

### **General Rules for Testifying**

#### *Always Tell The Truth.*

##### *Speak Clearly.*

A court reporter needs to take down everything you say, so it is important to speak clearly. This is also very important in a jury trial.

##### *Listen Carefully to the Questions.*

If you do not understand the question, ask to have it repeated. If it is an improper question, an attorney will object.

##### *Dress Appropriately.*

Court is a very serious matter, and you should dress neatly. Shorts,

tank tops, T-shirts or clothing with offensive language or designs are not appropriate courtroom attire. Talk to your prosecutor if you have any questions about what is appropriate for court.

*Do Not Lose Your Temper or Use Foul Language.*

*Do Not Argue with the Attorneys.*

*Do Not Volunteer Information or Exaggerate.*

Answer only the questions that are asked.

*Bring Any Records or Documents that you are Requested to Bring.*

Know what is in those records and make sure the prosecutor has copies.

*Testify Only to the Facts You Observed or Know.*

Do not speculate or give your personal opinion unless asked to do so.

*If Either Attorney or the Judge Makes an Objection, STOP Until the Judge Tells You to Continue.*

*If Your Answer Was Not Correctly Stated, Then Correct it Immediately.*

*Do Not Guess if You're Not Sure.*

*After Being Excused from the Stand, Do Not Discuss the Case in Halls, Restrooms or Anywhere You Could Be Overheard.*

*If You are Asked if You've Discussed the Case, Tell the Truth. There is Nothing to Hide.*

*Your Behavior Out of the Courtroom is as Important as Your Behavior in the Courtroom.*

*Arrange for Childcare When You Come to Court.*

Children should not be brought to court unless they are included on a subpoena.

If an answer is going to make you criminally responsible for something, you can refuse to answer on the grounds of self-incrimination. You should mention this to the prosecutor prior to trial, and/or retain a private attorney.

## ***Plea Negotiations***

Many criminal cases are negotiated, whereby an agreement is reached between the State (or city) and the defendant. If a plea agreement is reached, there will be no trial. It is often to the state's advantage to enter into a plea agreement due to lack of evidence, missing witnesses or various other reasons. If you, as a victim, have concerns about restitution or other issues, you should contact your prosecutor and inform him/her of those concerns so that they might become part of the agreement. The plea agreement is not final until a judge has approved it. The judge does not have to follow any sentencing recommendations that may be part of the plea agreement.

## **AFTER THE TRIAL**

### ***Sentencing***

Whether the defendant has plead guilty, or was found guilty by either a judge (misdemeanor) or jury (felony and gross misdemeanor), the presiding judge is responsible for handing down a sentence. For the various available penalties, see the classification of crimes section. Do not try and contact the judge regarding sentencing of the defendant. Express your concerns to your prosecutor and, if a felony case, to the parole and probation officer.

A *pre-sentence investigation* is required for anyone who pleads or is found guilty of a felony, and is optional for those convicted of a gross misdemeanor. The pre-sentence report looks at the defendant's prior criminal history, employment, education, alcohol/drug abuse, and other factors in determining an appropriate range of punishment for the defendant. The judge is not bound to follow the recommendations contained in the pre-sentence report—rather, the judge uses the report as a basis for determining the appropriate punishment.

As a victim in a felony (and possibly gross misdemeanor) case, you will be contacted by the Division of Parole and Probation for a sentencing statement and any restitution to which you may be entitled. ***It is very important that you fill out the statement and return it to the parole and probation officer.*** Keep in mind that your statement will become part of the pre-sentence investigation that the judge will read.

## ***Your Right to be Heard at Sentencing***

In Article I, Section 8 of the Nevada Constitution, the Legislature is charged with making the laws that the victim of a crime, personally or through a representative, shall be:

Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;

Present at all public hearings involving the critical stages of a criminal proceeding; and

Heard at all proceedings for the sentencing or release of a convicted person after trial.

A victim's right to be heard at the time of sentencing (any type of crime) is found in the Nevada Revised Statutes (NRS). NRS 176.015(3) provides:

***Before imposing sentence, the court shall afford the victim an opportunity to appear personally, by counsel or by a personal representative and reasonably express any views concerning the crime, the person responsible, and the impact of the crime on the victim and the need for restitution.***

Additionally, the prosecutor must give reasonable notice of the sentencing hearing to the person against whom the crime was committed; a person who was injured as a direct result of the crime; the surviving spouse, parents or children of a person who was killed as a direct result of the crime; and any other relative or victim who requests in writing to be notified of the hearing. NRS 176.015(4).

## ***Restitution***

The court can order restitution against a defendant who is found guilty. Acceptable restitution includes direct costs such as medical bills, property damage and stolen property. In order for the court to order the defendant to make restitution, you must provide your prosecutor with copies of your bills and/or estimates for replacement or repair. If the crime is a gross misdemeanor or felony, you should also provide those documents to the parole and probation officer who is doing the pre-sentence report.

The court cannot order restitution for such things as pain and suffering or future loss of earnings. If you have insurance that has paid your bills or damages, the only costs you can recover are your deductibles. If your case involves a large

amount of damages, you may want to consider contacting a private attorney and filing a lawsuit against the defendant in civil court.

Unfortunately, many defendants do not have the financial means to make restitution. Do not be surprised if the defendant fails to comply with a court order to make restitution. If a defendant fails to make restitution that was a condition of his/her probation, that failure can be considered grounds for revocation of the probation.

### ***Other Compensation***

The State of Nevada has a program to compensate victims of violent crime. The compensation may be awarded for medical bills, psychological counseling, lost wages, funeral and burial expenses. You *cannot* be compensated for property loss, legal fees, phone bills, living expenses or pain and suffering. For an application form, contact the Victim of Crimes Program: 4600 Kietzke Lane I-205; Reno, Nevada 89502-5000; telephone (775) 688-2900; or 555 E. Washington Avenue, Suite 3200; Las Vegas, Nevada 89101; telephone (702) 486-2740.

As a victim of a sexual offense, there are other assistance programs. Counties are responsible for payment of sexual offense examinations and medical care for any physical injuries resulting from the offense within 72 hours after the victim arrives for treatment. Additionally, the county can pay up to \$1000 for counseling costs. Contact your prosecutor if you have any questions regarding these provisions. (NRS 217.290; 217.480; 449.244).

### ***Appeals***

*A defendant who is convicted of a crime has the absolute right to appeal that finding of guilt.* If the defendant has been convicted of a misdemeanor, the initial appeal is to a district court judge. If the defendant has been convicted of a gross misdemeanor or felony, the initial appeal is to the Nevada Supreme Court. Keep in mind that there are several levels of appeals, and thus your case may not have final resolution for some time. Ask your prosecutor about any appeals in your case.

### ***Other Rights***

There are other sections in the Nevada Revised Statutes that provide for victim's rights. Below, is a compilation of various chapters in the NRS that provide for



some of those rights. *This is not a comprehensive list of those rights.* Please contact your prosecutor if you have any questions regarding your specific rights.

**NRS 62D.440** Provides in a case where the defendant is a juvenile that the prosecutor, if so requested, must disclose to the victim or a parent or guardian of a victim, the disposition (sentence) of the case.

**NRS 176A.630** Provides in a hearing to revoke probation and modify a defendant's sentence, that the Division of Parole and Probation must notify the victim of the proposed changes and the victim has the right to be heard at the hearing. *The victim must request, in writing to the Division of Parole and Probation, that he/she be notified.*

**NRS 178.5696** Provides that during a criminal case, the court must provide a secure waiting area for victims and witnesses. This statute also provides that a court or law enforcement agency which has custody of stolen or other personal property belonging to a victim or witness shall, *upon written request*, make available a list of the property being held in custody unless disclosure or identity of the evidence would seriously hamper the investigation. Additionally, the property must be returned when it is no longer needed for evidence.

**NRS 178.5698** Provides that, *upon written request of the victim*, the prosecutor, sheriff or chief of police shall inform the victim of:

- When the defendant is released from custody at any time before or during trial.
- The amount of bail for release of the defendant.
- Of the final disposition of the case in which he/she was directly involved.
- If the defendant has been convicted of a sexual offense or a crime of threatened or actual use of violence against the victim, the court shall provide to each victim or witness certain forms and documentation outlining rights (contact your prosecutor for specifics regarding this section).

**NRS 200.591** Provides that a court may issue a temporary or extended order for protection to a person who reasonably believes that the crime of stalking, aggravated stalking or harassment is being committed.

**NRS 209.392 and .521** Provide that, *upon written request of the victim*, the Department of Corrections shall notify the victim if the defendant becomes eligible for residential confinement, or if the defendant is released from custody or escapes.

**NRS 213.010, .040, .095** Provide that, *upon written request of the victim*, the State Board of Pardons Commissioners must notify a victim when a prisoner has applied for clemency, allow the victim to submit written statements or to be heard, and notify the victim of the disposition of the hearing.

**NRS 213.130** Provides that, *upon written request of a victim*, the State Board of Parole Commissioners, must notify a victim that a prisoner is being considered for parole, and the victim must be notified of the date of the hearing and given the opportunity to testify and submit documents. Additionally, the State Board of Parole Commissioners must notify the victim of their decision on whether to grant parole.

**Note:** *As a victim, you are entitled to certain notifications if you have requested, in writing, to be notified. As part of that written request, you must provide an address where you can be contacted. If you move, you must provide notification of the new address. Your address must be kept confidential by the agency that receives your written request. Addresses for the state agencies you should notify (upon the defendant's conviction of a gross misdemeanor or felony) are provided below:*

**Nevada Department of Corrections  
Central Administrative Office  
Attn: Warrants Coordinator/Victim Notification  
P.O. Box 7011  
Carson City, Nevada 89702**

**Nevada Division of Parole and Probation  
Central Administrative Office  
1445 Old Hot Springs Road, 104 West  
Carson City, Nevada 89706**

**Nevada Board of Parole Commissioners  
1445 Old Hot Springs Road 108-B  
Carson City, Nevada 89711**

**Nevada Board of Pardons Commissioners  
1445 Old Hot Springs Road, 108-B  
Carson City, Nevada 89711**

## **Frequently Asked Questions and Definitions**

### **Can I Drop the Charges Against the Defendant?**

No. The crime has been committed against the state, and you are either the victim or witness. The decision on whether to proceed on the charges is given to the prosecutor, not the victim. Although you may be reluctant to proceed to court, keep in mind that it is important that a defendant be held responsible for his/her criminal conduct, or he/she may commit crimes against other people in the future. You cannot fail to appear for court, or you will face criminal charges. Express any concerns you have to your prosecutor.

### **What is the Difference Between Probation and Parole?**

*Probation* is when a convicted defendant is not sentenced to jail or prison, but is given a suspended sentence. Probation can be revoked if the defendant does not comply with the terms of probation. If that happens, the suspended sentence is imposed and the defendant is generally sent to jail or prison.

*Parole* is when a defendant has been sentenced to prison for a felony conviction, and has served a certain amount of time that makes him eligible for parole (early release from prison). Even though a prisoner may achieve parole, he/she is still under the jurisdiction of the Department of Corrections until his/her term of sentence has expired.

### **What if the Defendant or Someone Else Threatens Me?**

Contact 911 immediately and report it. Fill out a statement about what occurred. After the law enforcement officer has taken your report, notify your prosecutor. It is against the law to threaten, harass or intimidate any witnesses.

### **Do I Have to Talk with the Defense Attorney Prior to Testifying?**

No. If the defendant, defense attorney or private investigator contacts you prior to trial and wishes to discuss the case, you are under no obligation to discuss it with them. You always have the option of telling them that you want the prosecutor to be present for any such discussions. You should always contact the prosecutor and tell them about any such contacts. If you do discuss the case without the prosecutor present, you should take notes of what you said and the questions that were asked. Anything you say can be used in the trial.

## **What if I Need an Interpreter?**

Contact your prosecutor's office and notify them that you need an interpreter. They will arrange to have one available, at no charge, for your court appearance.

## **What is the Difference Between Criminal and Civil Courts?**

In a criminal case, a crime has been committed and the State of Nevada or a city is the plaintiff. The purpose of a criminal case is to hold the defendant accountable for his/her illegal actions. Criminal courts are concerned with punishing the defendant. A defendant in a criminal case is entitled to an attorney even if he/she cannot afford one. The standard burden of proof, which must be shown before a defendant can be found guilty, is beyond a reasonable doubt.

In a civil case, the plaintiff is a private party, who files a civil lawsuit against someone who has injured the plaintiff in some fashion. A defendant in a civil case is not entitled to representation if they can not afford an attorney. The standard of proof which must be shown before a defendant can be held liable is a preponderance of the evidence, which is a lesser standard than that required for criminal cases.

## **Do I Need to Hire My Own Attorney?**

It depends. In a criminal case, the prosecutor is given the sole responsibility for handling the case. A private attorney can not prosecute a criminal case. The prosecutor represents the state or city against which a crime has been committed.

If the case is a simple misdemeanor and the damages are minimal, you probably do not need to hire a private attorney to advise you. However, if you suffered extensive losses, you may want to consult with a private attorney regarding the possibility of filing a civil lawsuit against the defendant.

## **Are There Any Special Rules for Children Who Testify?**

Yes. NRS 174.519 provides that when the victim or witness is younger than 16, the prosecutor shall request that the court, in its discretion, consider the effect a delay in the beginning of a trial would have on the child in setting the trial date.

NRS 178.571 provides that if the victim or witness is a minor, or if the crime involves sexual assault, then an attendant may be present during the preliminary hearing and trial. The attendant may sit next to the minor, or may stand in a strategic location.

### **Can I Testify Without the Defendant Being Present?**

No. The defendant has an absolute right guaranteed by the United States Constitution to “face his accusers.” However, the defendant does not have the right to attempt to intimidate you while you are testifying. Notify your prosecutor if the defendant is trying to intimidate you while testifying.

### **Am I Entitled to a Witness Fee for Testifying?**

Yes. NRS 178.5696(3) provides that the prosecutor must inform each witness of the fee to which they are entitled for testifying and how to obtain that fee.

### **As a Victim of Domestic Violence, is There Any Additional Protection for Me?**

Yes. A court may order a temporary or extended order for protection for a victim of domestic violence, stalking or harassment. Contact your prosecutor and/or court for more information on how to obtain such an order.

### **Can I Fire My Prosecutor and Get Someone Else to Prosecute the Defendant?**

No. Remember that the prosecutor represents the state or the city, and is either elected or appointed to fulfill that function. If you have concerns about your prosecutor, contact the district or city attorney and notify them of your concerns.

- NOTES -

## **CRIME VICTIMS' BILL OF RIGHTS**

1. *You have the right to know the status of the case in which you are involved.*
2. *You have the right to be free from intimidation or dissuasion.*
3. *You have the right to know when your impounded property can be released.*
4. *You have the right to receive a witness fee for lawful obedience to a subpoena.*
5. *You have the right to understand the existing victim compensation laws and receive compensation if applicable.*
6. *You have the right to a secure waiting area, which is not available to the defendant or his relatives, when you are at court.*
7. *You have the right to know when the defendant is being released from custody before or during trial (upon written request).*
8. *You have the right to know when the defendant is being released from prison (upon written request).*

# Attachment Three (3)

to

Advisory Council for Prosecuting Attorneys Agenda

December 11, 2015



**Model Policy  
Standard Operating Procedure  
For the Enforcement of  
Protection Orders against Domestic Violence**

**Endorsed by the Nevada Sheriffs and Chiefs Association  
Loveland, NV September 27, 2001**

Recognizing the escalatory nature of domestic violence, effective enforcement of protection orders against domestic violence constitutes homicide prevention. Accordingly, this model policy is intended to serve as a guide for law enforcement executives in formulating a written procedure relative to their respective departments to govern the enforcement of these orders.

**I. Purpose**

The purpose of this policy is to provide police officers with standard operating procedures for enforcing valid domestic violence protection orders issued in Nevada or any other state, Indian Tribe, territory or possession of the United States, Puerto Rico or the District of Columbia when that order is violated in your jurisdiction.

**II. Policy**

It shall be the policy of this department to provide all victims of domestic violence, regardless of their place of residency or origin, with the fullest protection of the law and to enforce the terms of their protection orders within this jurisdiction. **Any violation of a protection order is at least an indirect threat of harm, which requires the adverse party to be held in custody for at least 12 hours before being admitted to bail, pursuant to NRS 178.484.**

**III. Full Faith and Credit**

The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C. 2265 and Chapter 33 of the Nevada Revised Statutes, require that valid foreign domestic violence protection orders be recognized and enforced as if they were issued by a court in this state. A foreign order is to be enforced pursuant to Nevada law even if:

- A. The applicant in a foreign protection order would not be eligible for a protection order in Nevada.

- B. The foreign order grants the named applicant more relief than the person would have received under Nevada's protection order statute.

#### IV. Definitions

- A. The term "protection order" includes any injunction or other order issued by judicial authority for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. There are two primary forms of protection orders against domestic violence, the temporary protection order and the extended protection order.
  - 1. In Nevada the temporary protection order is generally valid for 30 days or until the scheduled court appearance indicated in the order.
  - 2. In Nevada the extended protection order is effective for a maximum of one year and is issued at a court hearing prior to the expiration of a temporary order. Some foreign protection orders may have an indefinite expiration date.
  - 3. Orders from other jurisdictions may not resemble Nevada protection orders in format and may be valid for varying periods of time.

NOTE: Officers should enforce a foreign protection order based upon the expiration date in the order.

- B. "Foreign" protection orders include any protection order issued by any other state, Indian Tribe, territory or possession of the United States, Puerto Rico or the District of Columbia.
- C. "Applicant" means the person named in the protection order as the party to be protected from the adverse party. Other jurisdictions may use terms such as protected party, plaintiff, petitioner, etc.
- D. "Adverse party" means the person named in the protection order who must refrain from contacting the person named as the applicant in the protection order. Other jurisdictions may use terms such as suspect, defendant, respondent, etc.
- E. A "mutual protection order" is an order that purports to restrict both parties. The applicant for a protection order is entitled to relief (e.g., protection and enforcement). Officers should be aware that the adverse party is entitled to relief **only if:**
  - 1. The adverse party has filed a written request for a protection order; **and**
  - 2. The court has made a specific finding that the adverse party was entitled to a protection order. (See NRS 33.020 and 18 U.S.C. 2265.)

## **V. Responding Officers Procedures**

When responding to an incident involving the violation of a domestic violence protection order, the officer should take the following enforcement actions:

### **A. Immediate Actions at the Scene**

1. Ensure the safety of all involved.
2. Seek medical attention, if necessary.
3. Safeguard the applicant from further abuse.
4. Secure and protect the crime scene.
5. Secure any firearms or other dangerous weapons for safekeeping.
6. In accordance with departmental policy and applicable law, arrest the adverse party for offenses committed in the officer's presence and other offenses committed at the scene for which the officer has probable cause (felonies, gross-misdemeanors, domestic battery, protection order violations).

### **B. Determine whether a protection order exists and is authentic.**

1. The officer should make every reasonable effort to corroborate the existence of a protection order. In determining that a protection order exists, the officer may rely upon:
  - a. A copy of an order for protection against domestic violence that has been provided to the officer.
  - b. An order for protection against domestic violence that is included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database.
  - c. Oral or written confirmation from a law enforcement agency or court in the issuing jurisdiction.
  - d. The statement of a person protected by a protection order that the order remains in effect, included in an examination of the totality of the circumstances.
2. An officer shall determine that a protection order is authentic if the order contains:

- a. The names of the parties' involved and specific terms and conditions that the adverse party must comply with.
  - b. Information indicating that the protection order has not expired.
  - c. Information indicating that the court which issued the protection order had legal authority to issue the order as evidenced by a certified copy of the order, a file stamped copy of the order, an authorized signature or stamp of the court which issued the order or another indication of the authority of the court which issued the order.
3. An officer may determine that a protection order is authentic based on an examination of the totality of circumstances.
  - 4.
- C. Assess whether the adverse party has been served, notified or otherwise informed of the terms and conditions of the protection order.
1. If the order is a foreign protection order, the officer should presume that the adverse party has been served, notified or otherwise informed.
  2. If the order is a Nevada order, the officer should determine whether the adverse party has been served, notified or otherwise informed by utilizing any or all of the following:
    - a. Documentation contained in the applicant's copy of the protection order.
    - b. Nevada repository for protection orders.
    - c. NCIC protection order file
    - d. Communication with the court or law enforcement agency in the issuing jurisdiction.
    - e. Statements of the applicant.
    - f. Statements of witnesses, including children, family members or neighbors.
    - g. Statements of the adverse party.
    - h. An examination of the totality of the circumstances at the scene.

NOTE: The fact that an order has not been registered or included in the repository for information concerning orders for protection against domestic violence pursuant to NRS 33.095 or in any national crime information database

**is not grounds** for a law enforcement officer to refuse to enforce the terms of the order unless it is apparent to the officer that the order is not authentic.

NOTE: For information concerning enforcement of orders served by mail, see Attorney General Opinion No. 2001- 31.

- D. If the officer cannot verify that the adverse party was served with the protection order or informed of the terms and conditions of the order, the officer shall:
1. Serve a copy of the order if available, or
  2. Follow the steps outlined in section VI for notification.
- E. Determine if probable cause exists to believe that the adverse party has violated the protection order.
1. Review the terms and conditions of the protection order.
  2. Establish probable cause for violation of the terms and conditions of order by the adverse party by utilizing any or all of the following:
    - a. Statements of the applicant.
    - b. Statements of the adverse party.
    - c. Statements of witnesses, including neighbors or children.
    - d. Corroborating evidence obtained through the investigation.
    - e. Any other factor that leads the officer to believe a violation of the protection order has occurred.
- F. If, pursuant to B, C and E above, the officer determines that an authentic protection order has been served/noticed and that probable cause exists that the order has been violated, the officer shall:
1. If the adverse party is present, arrest the adverse party for violation of the terms and conditions of the protection order (and for any other violations committed at the scene); or
  2. If the adverse party has fled the scene:
    - a. Make every effort to immediately locate and arrest the adverse party.

- b. If the adverse party cannot be located, take a report and submit for an arrest warrant and/or an investigation in accordance with department policy.

3. Conduct risk assessment and provide assistance to the applicant for their immediate safety.

NOTE: NRS 178.484 requires that a person arrested for violation of a protection order shall be held in custody for at least 12 hours before being admitted to bail if the arresting officer determines that the violation is accompanied by a direct or indirect threat of harm. As set forth in section II (Policy), any violation of a protection order is at least an indirect threat of harm.

NOTE: NRS Chapter 33 provides immunity to a law enforcement officer who enforces an order for protection against domestic violence issued by the court of another state, territory or Indian tribe based upon a reasonable belief that the order is valid or who refuses to enforce such an order based upon a reasonable belief that the order is not valid (NRS 33.090).

#### **G. AN OFFICER SHALL TAKE THE FOLLOWING ACTIONS IN ALL CASES:**

1. Conduct risk assessment and provide assistance to the applicant for their immediate safety.
2. Provide the applicant with the information concerning assistance required by NRS 171.1223, including referring the applicant to the appropriate court, advocacy organization or community services for safety planning.
3. Take a report and conduct a follow up investigation according to department policy.
4. Document and report any indirect or direct threat against the applicant/victim by the adverse party and make a reasonable attempt to notify the applicant of the threat.

#### **VI. Notification of Protection Order**

Pursuant to NRS 33.070 and Attorney General Opinions 2000-02 and 2001-31, in the event an officer is conducting a standard wants and warrants check on an individual and is advised by the communications section that an active NCJIS protection order file "hit" exists for the individual and the protection order has not been served, the officer shall notify the adverse party of the protection order by taking the following actions:

- A. Verify the identity of the adverse party.
- B. Obtain the specific terms and conditions of the order and write them on the corresponding form provided by the department.
- C. Give the completed form to the adverse party or orally inform the adverse party of the terms and conditions of the order.
- D. Provide the adverse party with a copy of the appropriate set of notices (temporary or extended).
- E. Have the adverse party sign the notification form if practicable. If the adverse party refuses to sign the form, write, "refused" on the signature line.
- F. Inform the adverse party of the name, location and hours of the issuing court to obtain a copy of the order.
- G. Inform the adverse party that the adverse party now has notice of the provisions of the protection order and that a violation of any terms and conditions of the order will result in the adverse party's arrest.
- H. Request that the communications center update the protection order file with:
  - 1. Date and time notification was provided to the adverse party.
  - 2. The name and identification number of the officer who gave the notification.
  - 3. Information from the protection order hit concerning the terms and conditions of the order.
- I. Upon completion of the notification form, the issuing officer will also complete a report for the department's files.
- J. If at any point during this process the adverse party makes a threat against the victim, the officer shall make a reasonable attempt to notify the victim and document the threat in the officer's report.

## **VII. Communication Section Responsibilities**

- A. Receive and maintain hard copies or electronic files of active protection orders that contain provisions pertaining to locations in the jurisdiction, including applicant's residence, place of employment, childcare, school or other locations.
- B. Provide available information concerning status and/or content of protection orders in the Repository, upon request by law enforcement personnel.

C. Following notification pursuant to Section VI above, update the State Enter Notice Screen (SENS) with the following information:

1. The date and time that notification was provided to the adverse party.
2. The name and identification number of the officer who gave notification.
3. Information from the protection order concerning the terms and conditions.

### **VIII. Violations of Federal Law.**

A. If a foreign protection order is violated in Nevada, it is likely that there has also been a violation of federal law. These federal laws include but are not limited to:

1. Interstate travel to commit domestic violence, 18 U.S.C. 2261
2. Interstate stalking, 18 U.S.C. 2261A
3. Interstate violation of an order of protection, 18 U.S.C. 2262
4. Illegal possession of firearms and ammunition, 18 U.S.C. 922 (g) (8)

B. The officer should refer these violations to the appropriate federal authorities in accordance with departmental procedures (e.g., contact the US Attorney's Office, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco & Firearms, Bureau of Indian Affairs, etc.).

The development of this policy was supported by Grant No. 98- WR-VX-0018, awarded by the Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the United States Department of Justice.



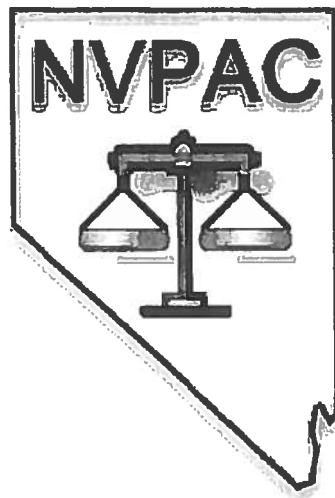
# Attachment Four (4)

to

Advisory Council for Prosecuting Attorneys Agenda

December 11, 2015

# STATE OF NEVADA



## DOMESTIC VIOLENCE PROSECUTION BEST PRACTICE GUIDELINES

As adopted by the State of Nevada Advisory Council for Prosecuting  
Attorneys pursuant to NRS 241A.070 on May 4, 2006.

## I. INTRODUCTION

### A. Purpose of Guidelines

The purpose of these guidelines is to provide a set of best practices for all levels of domestic violence prosecutions for the State of Nevada in the hope that they will be adopted in whole or in part by all agencies which have the prosecution of crimes of domestic violence as part of their duties to the community.

These guidelines are based upon the premise that domestic violence is criminal conduct. Prosecutors have the responsibility to prosecute these cases as aggressively as they do any other violent crimes. The public has a critical interest in reducing the number of incidents of domestic violence, as domestic violence tends to escalate in severity and frequency, and, unchecked, can lead to homicide.

Successful prosecution of crimes of domestic violence requires specialized techniques designed to protect the victim from retaliation by the perpetrator, allay the victim's fears of the criminal justice system, and to encourage her cooperation with the prosecution.<sup>1</sup> Adherence to these guidelines should help prosecutors to be more effective and ultimately further the goals set forth below.

### B. Goals of Prosecution

The goals of prosecution in domestic violence cases are:

1. To protect the victim from additional acts of violence committed by the perpetrator;
2. To reduce the exposure and/or possible injury to children or other family members from domestic violence;
3. To deter the perpetrator from committing continued acts of violence in the community and hold him accountable for his actions;
4. To create a general deterrence to domestic violence in the community; and
5. To serve justice.<sup>2</sup>

**NOTE:** Victims and advocates may not necessarily share all these goals, and may have their own objectives separate and distinct from those of the prosecutor. For

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<sup>1</sup> Throughout these guidelines, the victim is referred to in the feminine gender, because of the fact that in the overwhelming majority of domestic violence cases, the victim is female and the perpetrator is male. These policies should apply equally to male victims.

<sup>2</sup> These guidelines are not intended for prosecution of domestic violence victims who injure or kill their abusers in self defense. Prosecutors should be extremely careful in assessing assaults on men by their female partners to determine if the woman was acting in self defense based on the circumstances surrounding the incident and any past history of violence against her.

example, a victim may want the violence to stop, but to continue in a relationship with the perpetrator, while the prosecutor may want the perpetrator incarcerated. Prosecutors should take care to elicit the victim's objectives and to take them into consideration so as to formulate appropriate goals for each individual prosecution.

### C. Definition of Domestic Violence

Domestic violence is defined by the relationship of the victim to the perpetrator, not by the acts committed. These relationships generally include current or former family or other household members, individuals who are related by blood or by shared biological parenthood, their own minor child, the child of one of the persons described above, or a child in the care or custody of the persons described above, sexual or intimate partners (including same-sex partners), and any qualified dating relationship. See NRS 33.018.

Although the prosecutor may be facing a single incident, such as domestic battery, domestic violence generally represents a pattern of behavior. This pattern can take many forms, all of them involving physical violence or threats of physical violence. The pattern almost always includes emotional, sexual, and economic abuse as well. The perpetrator's goal in committing these crimes is to obtain and maintain power and control over the victim. The violence may be accomplished with the use of hands, feet, weapons, or other objects. Injuries inflicted on the victim may be as serious as those inflicted in violent felonies. Some examples of felonies committed in a domestic violence context include assault with a deadly weapon, battery with a deadly weapon, battery causing substantial bodily injury, aggravated stalking, kidnapping, child endangerment, sexual assault, robbery, burglary, and murder. Some examples of misdemeanors commonly committed in a domestic violence context include assault, battery, brandishing a deadly weapon, harassment, stalking, false imprisonment, violation of a temporary protective order, destruction of property, and disturbing the peace. See NRS 33.018.

Prosecutors should be aware of the following characteristics of domestic violence:

- The vast majority of adult victims of domestic violence are women;
- Domestic violence occurs in every racial and socio-economic group;
- Perpetrators use violence as a tool to achieve power and control over their partners and children;
- Violence often increases in severity and frequency at the time of separation and thereafter;
- Most of the men who abuse their partners abuse their children as well;
- Victims of domestic violence and their children are often compelled to return to relationships with perpetrators for many reasons, including economic concerns, threats to abduct children or obtain physical custody of them, and threats of death or other harm to victims and their families.

## II. CORE STRATEGIES

### A. Specialization

Specialization results in a higher conviction rate of domestic violence perpetrators. Therefore, ideally, prosecutors should establish domestic violence units in large offices, or create specialists in smaller offices, in order to permit vertical prosecution and the enhancement of expertise on domestic violence cases. Specialization can help avoid situations in which domestic violence cases are afforded insufficient preparation or attention in favor of cases perceived as being bigger, more important, or less trouble. Absent the ability to specialize, periodic training is encouraged to insure that all prosecutors understand the issues of domestic violence and are familiar with appropriate resources and referrals in the community.

In order to promote willing victim participation in the prosecution of cases, victims should be provided with emotional support, information regarding the criminal justice system, and referrals to social service and legal assistance organizations. In order to effectively perform these functions, it is suggested that the prosecutor's office utilize a victim advocate and/or establish and maintain a close working relationship with local battered women's programs. The relationship should be characterized by the ability to make informed referrals rather than an expectation that advocates will support every decision of the prosecutor's office.

### B. Early and Consistent Contact with Victims

Early, consistent contact with victims and immediate referral to appropriate support services is critical to preserving a case. The prosecutor's office should utilize available resources to create a dialogue with the victim to address their joint or individual concerns.

### C. Evidence-Based Prosecution

Due to the unique and complex dynamics of domestic violence, the victim may be unwilling or unavailable to cooperate at any point in the prosecution process. The burden of prosecuting domestic violence cases should be placed on the prosecutor and not the victim. Prosecutors should always expect the unexpected and be prepared for an evidence-based prosecution using evidence independent of the victim's testimony.

### D. Speedy Prosecution

It is essential to the successful prosecution of domestic violence cases that trials occur as rapidly as possible. The victim is often more willing to cooperate immediately after the incident, rather than later, when the abuser may have had a chance to reassert control over her. Additionally, delays in proceeding to trial increase the opportunity for additional offenses before resolution of the initial case. Therefore, prosecutors should strenuously object to any unnecessary continuances.

#### E. Working With Victim Advocates

Prosecutors handling domestic violence cases should work in close conjunction with victim advocates whenever possible and practical. Working with an advocate who has an ongoing relationship with the victim greatly facilitates communication between the prosecutor and the victim, making it more likely that the victim will continue to cooperate in the case and will provide the prosecutor with information helpful to protect her safety during the proceedings. Victim advocates can provide important background information about the victim, the perpetrator, and the family circumstances which is helpful in the prosecution of the case and at sentencing.

When hiring a victim advocate, priority should be given to survivors of domestic violence, or those experienced in working with domestic violence programs.

#### F. Coordinated Community Response

The prosecutor's office should work closely with law enforcement agencies, domestic violence groups, and other community resources. Although prosecution is just one component of a coordinated community response to domestic violence, prosecutors are in a unique position to spearhead efforts to improve the criminal justice system's handling of domestic violence cases. Examples of a coordinated community response may include referral relationships, liaisons, task forces, inter-agency agreements, and multi-disciplinary training.

### III. FILING CHARGES

In determining whether to file charges, which crimes to charge, and whether to charge them as misdemeanors, gross misdemeanors, or felonies, with or without enhancements, the prosecutor should consider and weigh a number of different factors.

Initially, the prosecutor should review all the facts of the case in light of the following:

- Existence and seriousness of the injuries and/or threats;
- Use of a weapon (including furniture or other household objects);
- Any history of violence by either party;
- Vulnerability of the victim;
- Presence and proximity of children at the location of the violence;
- Careful determination of the identity of the dominant aggressor, if any (See Appendix A);
- Potential lethality in the context of the relationship as a whole (See Appendix B);
- Strength of the case and the ability to prove the case beyond a reasonable doubt.

Where probable cause exists, the filing of criminal charges must be considered. In the filing determination, prosecutors should, at a minimum, take into account the existence of any of the following types of corroborating evidence:

- Any evidence of physical injury, including photographs;
- Any evidence of a party seeking medical attention, including medical records of injuries;
- Witnesses who observed the incident or the injuries, including competent children;
- Witnesses who heard sounds indicating that violence was taking place, i.e., screams, pounding noises, furniture being thrown, windows breaking;
- Witnesses who had contact with the victim or suspect contemporaneous with or immediately after the incident;
- Audio recordings, including 911 tapes, voice messages, monitored jail telephone calls;
- Physical evidence, i.e., weapons, broken furnishings, torn clothing;
- Admissions or other statements by the perpetrator;
- The existence of a timely report by the victim, or reasons for delay;
- Photographs of the crime scene;
- Spontaneous utterances by any person;
- Demeanor of all persons;
- Flight of either party;
- Presence or absence of written statements.

When a basis for filing charges exists, the prosecutor should determine whether to charge a felony or misdemeanor. As domestic violence incidents often constitute felonies, the prosecutor should charge accordingly. The prosecutor should also consider charging crimes, previous or concurrent, committed against the same victim if they occurred within the applicable statute of limitations. Careful consideration should be given to charging stalking, harassment, or aggravated stalking charges if there is a pattern of behavior which supports such charges.

Prosecutors of domestic violence cases will undoubtedly experience unique situations involving issues of double jeopardy and should acquaint themselves with recent and varied case law on the subject. They must be aware of and able to identify troublesome situations before they develop into a bar to a prosecution of another, perhaps much

more serious charge. In order to take advantage of this situation, a defendant may rush to plead guilty to a misdemeanor domestic battery as soon as the prosecutor, unaware of the defendant's two prior convictions, files the complaint.

Multiple prosecutions in family court, justice court and municipal court may exist simultaneously stemming from the same incident, filed by three separate prosecutors. Thus, different prosecuting agencies should communicate and be mindful of the effect of one proceeding, if any, on another possibly more serious prosecution.

The crimes of stalking and aggravated stalking, for example, require a course of conduct over a period of time which may encompass the commission of multiple criminal offenses, perhaps the subject of another prosecution(s). However, a defendant cannot be punished twice for exactly the same criminal act(s). Violations of protection orders also customarily involve separate prosecutions in civil and criminal courtrooms and may involve double jeopardy if sanctions or punishments are being sought in each case.

#### IV. PROCEDURE

##### A. Review of Arrest Cases

In all cases in which an arrest has been made and prosecution is warranted, a criminal complaint and/or indictment should be filed in a timely manner. As a matter of policy, the victim should not be expected to sign a criminal complaint in cases of domestic violence. Too often, a defendant will pressure a victim to drop the charges. This policy sends a consistent message to both victims and perpetrators that domestic violence is a crime against the community and not a private dispute.

If, after reviewing and weighing the factors set forth in Section III above, the prosecutor elects not to file charges, he or she should document the reasons why charges were not filed.<sup>3</sup>

##### B. Review of Nonarrest Cases

The prosecutor's office should establish a mechanism to review all domestic violence cases in which arrests were not made for the possible filing of charges. The decision to seek an arrest warrant should be based upon the factors set forth in Section III above. If charges are filed, a warrant should be sought, rather than a summons, since NRS 171.137 mandates arrest for domestic violence. Furthermore, NRS 171.1229 requires that subjects arrested for domestic violence be fingerprinted by law enforcement.

If charges are not filed, and the prosecutor observes deficiencies in the investigation, the prosecutor should inform the law enforcement agency of the deficiencies. Where prosecutors observe that law enforcement agencies are not making arrests when appropriate, the prosecutor should encourage and train agencies to upgrade arrest practice in domestic violence cases to conform to NRS 171.137.

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<sup>3</sup> Every jurisdiction should implement a process wherein an immediate attempt is made to notify the victim in the event charges are not filed.



## V. CASE PREPARATION

CAVEAT: DIRECT PARTICIPATION BY A PROSECUTOR IN THE INVESTIGATION OF A CASE OR IN THE COLLECTION OF EVIDENCE CAN TURN THE ATTORNEY INTO A WITNESS, UNABLE TO PROSECUTE THE CASE, AND CAN STRIP THE ATTORNEY OF PROSECUTORIAL IMMUNITY.

Allowing for available resources, preparation of a domestic violence case for trial involves a thorough investigation which should include the following:

### A. Ascertain Victim's Whereabouts

Victims of domestic violence are often forced to move with little or no notice, due to attempts to hide from abusers. In all cases the victim's whereabouts should be kept current. The prosecutor's office should establish relationships with any agencies providing victim shelter services and understand their respective processes for the release of information.

When the victim is first contacted, the prosecutor or victim/witness staff should stress the importance of keeping the office informed of any address changes. Addresses and phone numbers of close friends, coworkers or relatives who can serve as contact persons should be obtained in case the victim has to move suddenly and is unable to notify the prosecutor's office. Additional resources for locating victims may be available through animal control or other licensing authorities, utility or cable companies, felon registration authorities, traffic and other court records, DMV records, credit history records, school records, internet addresses, and businesses frequented by the victim.

INFORMATION REGARDING THE VICTIM'S WHEREABOUTS OR CONTACT PERSONS SHOULD BE KEPT CONFIDENTIAL.

### B. Document Victim's Injuries and Signs of Physical Contact

The victim's injuries should be photographed at the first opportunity, a signed medical release should be obtained, and all medical records should be obtained. Statements should be obtained from witnesses who observed the injuries when fresh. Subsequent photographs of the injuries, taken a significant time after the assault, are useful to show the severity of the attack. Photos are to be collected according to local procedures of evidence collection. Additionally, prosecutors should encourage the use of a body diagram for documentation of unphotographable injuries; for example, a knot on the head, broken bones, internal injuries, complaints of pain, or injuries which may not be apparent with flash photography.

C. Build on Police Investigation

Obtain and review any police reports immediately for accuracy and detail. Obtain any 911 tape that may exist for its potential evidentiary value, including: impeachment of recanting victims, identification of additional witnesses, and admissions, threats, or other excited utterances. If the investigation by the police was incomplete, request follow-up investigation in writing to obtain additional information, including: witness statements and contact information, photographs, and information on responding medical personnel. Explain why the information is needed to prosecute the case . . . This will serve to complete the pending case and to train the officer for future investigations.

Obtain information from the victim as to the identity and location of any corroborating witnesses

D. Statements of Witnesses

Obtain statements from any witnesses to the incident itself, including those witnesses who heard crying, screaming, gun shots, etc. Obtain statements of any witnesses who can document the relationship and the state of mind of the victim or the defendant immediately after the incident. Do not overlook children who are in the home at the time of the incident. Obtain supplemental statements as necessary.

E. Physical Evidence

The victim and any witnesses should be questioned closely about any physical evidence such as torn, wet or bloody clothing, weapons used in the incident, damaged property, or of answering machine tapes containing statements of the defendant, threats, harassment, or potential admissions. To preserve physical evidence for trial, immediately have an investigator or police obtain items of physical evidence not originally obtained by law enforcement. Consider asking an investigator or police to take photographs of the scene to show the violent nature of the incident or of the defendant, or to corroborate victim or witness statements.

F. Pleadings and Transcript From Protection Order Proceedings

If a request for a Temporary or Extended Protection Order was made, review the pleadings for supplemental information and to evaluate if any additional charges should be filed. Find out if there were hearings on a request for a Temporary Protective Order, or on contempt proceedings for violation of the Protective Order. Obtain transcripts which may contain admissions of the defendant, material for impeachment or cross-examination, or descriptions of the incident or past incidents of violence.

Beware: There may be double jeopardy implications in pursuing contempt sanctions and criminal charges simultaneously if such actions arise out of the same transaction or occurrence.

Every office should set a policy regarding prosecution of Protection Order violations, and should do so with close communication with the issuing court.

G. Ascertain Defendant's Criminal History and/or History of Domestic Violence

Whether or not the defendant has any prior convictions, he may have a lengthy history of acts of domestic violence against the present victim or other victims, which may include prior Protection Orders against him. This information is important for the purpose of enhancement, for determining the potential lethality of the present charge, and for proposing appropriate sentences to the court. The prosecutor should seek admission of this information at trial or sentencing as applicable. In contemplation of the introduction of prior bad act evidence at trial, a prosecutor should review NRS 48.045 and relevant case law.

VI. PRETRIAL ISSUES

A. Arraignment/Bail Conditions

Although prosecutors may not routinely appear at arraignments in domestic violence cases, it is critical that a prosecutor review the case in light of NRS 178.498 and 178.499 to determine if a bail increase is appropriate. In addition to the statutory considerations, the prosecutor should recommend the following conditions for any release where appropriate:

- A prohibition on any contact with the victim and/or her children and relatives either in person or by telephone, including contact through a third party;
- An order barring the defendant from approaching the victim's residence, school or place of employment;
- A prohibition on the defendant destroying or disposing of the victim's property or property held in common;
- A prohibition on drugs, alcohol or weapons;
- Any other conditions necessary for the victim's safety.

In most circumstances, release of the defendant on his own recognizance should be opposed based on the continued risk of danger posed in domestic violence situations. NRS 178.4851 *et seq.* provides for conditions of release without bail, and should be considered in recommending conditions to protect victims.

Prosecutors should help develop guidelines and training for judges, court personnel, and court services personnel regarding O.R. releases, bail and bail schedules. Prosecutors should work to establish a system in which bail conditions are specified in written orders and are registered with the local law enforcement agencies, with copies provided to the victim and the defendant.

## VII. PROTECTING THE VICTIM

The prosecutor, in conjunction with the victim advocate, should make every effort during the pendency of the case to protect the safety of the victim. These efforts should include, but are not limited to the following:

### A. Confidentiality of the Victim's Address

Pursuant to NRS 174.234(5), the prosecutor should zealously protect the confidentiality of any change of the victim's address and telephone number and this information should be redacted from police reports, witness statements, and all other discovery materials provided to the defense. In court, prosecutors should never ask for the victim to disclose her current address, should advise victims to refrain from giving an address when testifying to avoid inadvertent disclosure, and should object to requests for such information when made in the course of questioning by the defense.

If filed with the court, victims' addresses should not be placed on subpoenas or returns of service, or any other public document, to avoid disclosure of their locations to defendants.

### B. Personal Service of Subpoenas

In the absence of an oral promise to appear, any subpoena going to the victim should be personally served to avoid the possibility of the defendant intercepting it in the mail.

### C. Transportation to Court

The prosecutor's office should facilitate safe transportation for the victim to and from court, which could include police escort and the use of separate entrances at the courthouse. If the defendant is released following a court appearance, court officers should be directed to hold the defendant for a period of time sufficient to allow the victim to leave safely. Secure parking should be promoted, as should escort to and from parking facilities.

### D. Designated Waiting Areas in Court

NRS 178.5696 requires that the court provide separate and secure waiting areas for victims so they are not subject to harassment or intimidation by the defendant immediately prior to testifying. If this mandate is not being met, the prosecutor should bring this requirement to the court's attention.

### E. No Contact Orders

If appropriate, the prosecutor should request no contact orders as a condition of a defendant's release on bail, and should request revocation of bail for any violation of such orders. In addition, the prosecutor's office should advise the victim of the availability of Protective Orders, and explain the merits of such orders.

NRS 200.591 provides for both pre-trial and post-conviction "stay away" orders in stalking and harassment cases; violation of such an order is a gross misdemeanor.

F. Child Custody Considerations

Prosecutors need to be aware of the unique danger faced by domestic violence victims in the child custody context. One characteristic which distinguishes domestic violence from other crimes is that the victim and perpetrator frequently have children together. Thus, perpetrators often have long term, court-sanctioned access to victims pursuant to child custody orders which give them partial custody or visitation rights. New crimes are often committed as a result of this ongoing contact. Alternatively, if no custody order is in effect, the perpetrator has as much access to the children as their mother, and may use the threat or actuality of taking them to assert control over the victim.

Protection Orders can also be obtained to protect the victim and give her temporary custody of her children, and can impose protective conditions such as third party or supervised visitations, or supervised exchanges of custody.

VIII. VICTIM'S RIGHTS

Prosecutors should be familiar with victims' statutory rights, which are especially important in a domestic violence context. These rights include:

- Right, upon written request, to notice of any release of defendant from pre-trial custody, amount of bail, and disposition of charges [NRS 178.5698];
- Right to secure waiting areas at court separate from those used by jurors, defendants and their families [NRS 178.5696(1)];
- Right to an attendant to provide support in court during testimony [NRS 178.571];
- Right to notice of the date of sentencing [NRS 176.015(4)] and to be heard at sentencing after the defendant and/or his counsel speaks [NRS 176.015(3)];
- Right to notice of the disposition of harassment and stalking cases [NRS 200.601(1)] and a certified copy of any no contact order imposed as a condition of sentencing [NRS 200.601(2)];
- Right to notice within 30 days of the defendant's conviction under NRS 205.980 and resulting civil liability for damage to the victim's property [NRS 205.980(3)]; and
- Right, upon written request, to notice of the date of any meeting to consider the defendant for parole and to submit documents and be heard at the meeting [NRS 213.130(4)].

In addition, the prosecutor should consider responding to the victim's needs as follows:

A. Recommended Notification

The prosecutor's office should be responsible for notifying the victim, when possible, in a timely fashion of developments in the case, including, but not limited to, the following:

- Nature and type of charges filed;
- Any changes in the defendant's custodial status, including any short term release;
- Date, in advance, of any court hearing in which the victim may have an interest, including bail hearings and sentencing; and
- Outcome of all court appearances at which the victim was not present, including continuances, bail hearings, and motions.

B. Victim Input

The prosecutor should actively seek victim input throughout the pendency of the case. In particular, victim impact statements which emphasize the continuing risk of harm to the victim and her family should be utilized. In those cases, the prosecutor should make sure the victims' opinions are solicited and considered at sentencing.

Prosecutors should be aware that even in the most serious cases, the victim may try to minimize the violence. While the victim should be listened to with compassion, prosecution of the case should never be dismissed or deferred based solely upon her assessment of the violence.

C. Crime Victim Compensation/Restitution

The prosecutor should seek restitution wherever available, should notify the victim of the availability of crime victim compensation under NRS chapter 217, and make appropriate referrals for assistance in obtaining it.

NRS 176.033 requires a sentencing court, *in any case where imprisonment is required or permitted by statute*, to set an amount of restitution for each victim in cases where restitution is appropriate. There is no requirement that any portion of the sentence be suspended to order restitution in such cases.

Under NRS 205.980, a person convicted of any crime involving damage to property is civilly liable for the amount of damage done to the property, and an order of restitution signed by the judge in whose court the conviction was entered shall be deemed a judgment against the defendant for the purpose of collecting damages.

IX. VICTIM/PROSECUTOR CONTACTS

A member of the prosecutor's office, preferably a victim advocate, should attempt to contact the victim at the earliest possible opportunity to discuss any concerns and orient the victim to the process and available resources.

Different methods of contact offer different benefits:

- Face-to-face – This method offers the best opportunity to establish a rapport with the victim, determine the victim's potential impact on the case and assess the potential future risk and lethality of the situation.
- Telephonic – This method also offers an opportunity to dialogue with the victim if face-to-face contact is not possible.
- Written – Although one-sided, this method allows information on the process and available resources to be conveyed in a consistent, comprehensive manner.

The prosecutor should determine on a case-by-case basis which method of contact is most appropriate.

The prosecutor's office should explain that the ultimate responsibility for prosecuting a case lies with the prosecutor, not the victim, and that the case may proceed without her cooperation. It is important that this message be communicated as it may relieve pressure to drop charges. The prosecutor's office should also carefully explain the sentencing alternatives, negotiated pleas, and provisions for the victim's protection during the pendency of the case.

In the event the victim is reluctant to participate, prosecutors should keep in mind the goals of prosecution set forth in Section I.

## X. DISPOSITIONS

### A. Negotiated Pleas

NRS 200.485 prohibits plea bargains for a battery that constitutes domestic violence pursuant to NRS 33.018 unless it is determined that the charge is not supported by probable cause or cannot be proved at the time of trial. Before negotiating any plea, the prosecutor should consider the following factors:

- Realistic assessment of the possibility of successful prosecution without a plea;
- Seriousness of the offense;
- Prior criminal history of the defendant;
- Victim's input;
- Any history of violence in the relationship and the probability of recurrence; and
- Any other relevant circumstances.

## B. Sentencing

The prosecutor's sentencing recommendations should be commensurate with sentences for other violent crimes. In some cases, it may be argued that sentencing should be in the higher range of the sentencing limits due to the relationship between the victim and defendant. In no event should the prosecutor ever recommend or stipulate to less than the mandatory minimum provisions of the sentencing statute.

As set forth in Section VIII, the victim has a right to be heard at sentencing, generally referred to as the victim's impact statement. The sentencing hearing is also an opportunity to have the victim testify about past violent incidents that were not admissible at trial, but are admissible at the sentencing stage. Offering additional witnesses, including experts, should also be considered. The prosecutor should stress the pattern of abusive behavior, along with any violations of previous court orders, so the court can evaluate future risk to the victim and sentence accordingly. Be prepared, as even in the most serious cases the victim may try to minimize the violence.

### 1. Suspended Sentences

NRS 200.485 provides that a court shall not grant probation to and, except as otherwise provided in NRS 4.373 and 5.055, a court shall not suspend a sentence for a battery that constitutes domestic violence pursuant to NRS 33.018.

The defendant's behavior while on a suspended sentence should be carefully monitored and conditioned upon strict compliance with conditions carefully tailored to protect the victim and community.

A credible threat of incarceration must exist to ensure compliance. If not ordered by the court, the prosecutor should ask for status reviews to monitor compliance. The prosecutor should appear at such status reviews and any probation violation proceedings.

### 2. Restitution

If allowable by law the prosecutor should seek restitution for expenses resulting from the crime. The prosecutor should request payment be made prior to payment of fines or court costs, and that payment be made according to a specific, short timetable.

NRS 176A.430 requires that a court *shall* order restitution as a condition of probation or suspension of sentence, or the court is required to set forth the circumstances upon which it finds restitution impracticable.

NRS 5.055 (municipal court) and NRS 4.373 (justice court) provide for suspended sentences, and restitution as a condition thereof in the courts of limited jurisdiction.

NRS 213.126 requires that, unless complete restitution was made during a parolee's incarceration, the board *shall* impose such as a condition of parole.



### 3. Counseling and Treatment Programs

NRS 200.485 mandates counseling for a battery that constitutes domestic violence pursuant to NRS 33.018. In addition, prosecutors should recommend the following programs for the defendant when appropriate:

- Substance abuse counseling;
- Parenting classes; and/or
- Mental health evaluations.

Studies have shown that couples therapy is *not* appropriate and is often dangerous to the victim. In a couples environment, the defendant's control over the victim is reinforced and the victim is intimidated from speaking candidly and honestly.

NRS 5.055 (municipal court) and NRS 4.373 (justice court) provide for suspended sentences, and counseling as a condition thereof in the courts of limited jurisdiction.

The prosecutor should request that the court require the defendant, as a condition of sentencing, to provide the police narrative report to the court-ordered counseling program. Any report provided by the prosecutor's office should comply with any policies regarding the confidentiality of information.

#### C. Parole Hearings

If the defendant commits a felony and he is ultimately convicted and sentenced to prison, eventually he will come up for parole while serving his sentence. The State Board of Parole Commissioners, upon receiving an application from the defendant, will hold a periodic meeting to consider the application. The victim is entitled to submit documents to the board and may testify before the board at the meeting held to consider the application. No application for parole may be considered until the board has notified the victim of her rights and she is given an opportunity to exercise those rights, if she so requests in writing and provides a current address [NRS 213.130].

The prosecutor may request to be heard at a meeting to consider the application of the defendant. The prosecutor may also submit his or her name to the parole board and obtain the name and address of the victim for this purpose at the close of the case and notify the victim of any parole consideration meetings regarding the defendant when the prosecutor is notified.

#### D. Dismissals

Dismissal is a last resort. In most cases, delay dismissal until the time of trial. This gives the prosecution one last chance to persuade a reluctant victim to go forward or to otherwise develop sufficient evidence. In addition, it ensures that the defendant appears in court so that the seriousness of the domestic violence charge may be impressed upon him.

Note: Dismissal of felony charges at the time of trial acts as a dismissal with prejudice [NRS 178.554 and NRS 178.562(1)]. Unfortunately, it also may confirm in the defendant's mind his power over the victim or that she does not view the offense as being serious. Thus, it should be made clear on the record that the prosecutor, not the victim, has made the decision to dismiss.

E. Future Prosecutions

When a dismissal is granted, the prosecutor should advise the victim that the dismissal will not be held against her and that the office of the prosecutor stands ready to assist and prosecute any future domestic violence crimes.

XI. DATA COLLECTION AND EVALUATION

The prosecutor's office should collect and evaluate data concerning domestic violence prosecutions to facilitate system improvement. The prosecutor's office should also engage local victim advocates in a continuing process of evaluation of its policies, procedures and performance with regard to domestic violence prosecution.

## APPENDIX A - Determining the Dominant Aggressor

In situations where more than one domestic violence incident may have occurred, the "primary" aggressor is the person determined to be the dominant aggressor, not necessarily the first person to use force or violence. In making this determination, the following should be considered:

- a. The comparative extent of injuries or serious threats creating a fear of physical injury.
- b. The domestic violence history between the parties involved.
- c. The comparative sizes and vulnerability of the parties involved.
- d. The demeanor of the parties involved, paying attention to excited utterances and emotional state.
- e. Any weapons used or threatened for use by either party.
- f. Any claims of self-defense, defense of others, defense of property, coercion or trespass. The presence of defensive wounds, which may include scratches to the suspects, face, arms and hands or to the victim's neck in cases involving strangulation.
- g. Any witness statements.
- h. Whether there was an excessive response to the other parties' actions and/or time delay between domestic violence incidents.
- i. Whether there was a time delay between domestic violence incidents.
- j. The environment in which the violence occurred.

## APPENDIX B - Lethality Assessment

Conduct a lethality assessment by considering, without limitation, the following factors in the context of the relationship as a whole:

- a. Is there a history of domestic violence?
- b. Does the perpetrator have obsessive or possessive thoughts?
- c. Has the perpetrator threatened to kill the victim?
- d. Does the perpetrator feel betrayed by the victim?
- e. Is the victim attempting to separate from the perpetrator?
- f. Have there been prior calls to the police?
- g. Is there increasing drug or alcohol use by the perpetrator?
- h. What is the prior criminal history of the perpetrator?
- i. Is the perpetrator depressed?
- j. Does the perpetrator have specific "fantasies" of homicide or suicide?
- k. Does the perpetrator have access to or a fascination with weapons?
- l. Has the perpetrator abused animals/pets?
- m. Has the perpetrator demonstrated rage or hostile behavior toward police or others?
- n. Has there been an increase in the frequency or severity of the violence (whether documented or not)?
- o. Has the perpetrator been violent toward children?
- p. Has there been strangulation involved and how often?
- q. Is there a history of stalking behavior?