

# **Attachment Six (6)**

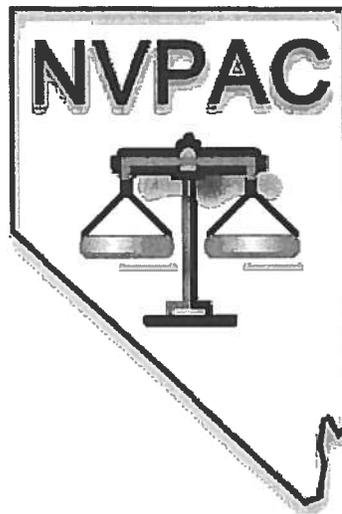
**State of Nevada**

**Domestic Violence Prosecution Best Practice Guidelines**

Nevada Council for Prevention of Domestic Violence

March 16, 2016

# 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?