

Planning and Conducting Best-Practice Assessments of Community Response to Domestic Violence

Criminal Justice System Response: Prosecution Charging Decisions

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Domestic Violence Intervention Best Practice Checklists

Prosecution Charging Decisions

Best practices in the intervention response to domestic violence maximize safety for victims, hold offenders accountable while offering opportunities to change, and set an expectation of agency and practitioner accountability to one another and to victims and offenders. Characteristics of such best practices include:

1. Adherence to an interagency approach and collective intervention goals
2. Attention to the context and severity of abuse into each intervention
3. Recognition that most domestic violence is a patterned crime requiring continuing engagement with victims and offenders
4. Sure and swift consequences for continued abuse
5. Use of the power of the criminal justice system to send messages of help and accountability
6. Actions that reduce unintended consequences and the disparity of impact on victims and offenders

The attached best-practice assessment checklists have been designed to assist emergency communications (911), police patrol services, and CCRs in answering questions like Are we centralizing and strengthening safety for victims of domestic violence in our community? How are we doing? Are we making things better or worse? Do our efforts enhance or diminish offender accountability?

The checklists lend themselves to a relatively quick review of case files or reports by an interagency team to help your community's intervention agencies determine their adherence to best practices. We recommend that you follow these simple steps in conducting the case review.

1. Determine which intervention agency or agencies will be reviewed. Do so with their full knowledge and consent of the nature and scope of your review. Transparency is key.
2. Assemble a small group of practitioners who will review the files and report their collective findings and feedback to agency heads. This process benefits from the dialogue, reflection, and discussion that is possible with a small set of experienced practitioners, rather than relying on the limited perspective of a single person.
 - ✓ The work group consists ideally of three to eight members.
 - ✓ The team should have relevant interagency representation. For example, an assessment focused on police patrol would include representation from 911, patrol and prosecution.
 - ✓ The team should also contain at least one member who is a community-based advocate for victims of domestic violence.
 - ✓ Develop a confidentiality agreement governing how case file information will be treated and when and to whom it will be released. (It is equally important to protect the confidentiality of parties involved in a domestic violence incident as it is to protect the reputation of the officer who responded to the call and the respect of the agency head who generously offered reports for review.)
3. Identify and appoint a team leader who will:
 - ✓ Identify, gather and photocopy "case files" (e.g. investigation or patrol reports).
 - ✓ Schedule and facilitate work group meetings.
 - ✓ Keep a written record of the work group's discussions and findings.

4. Gather and photocopy case files and schedule all of the meetings.
 - ✓ We recommend meeting four to ten times total, completing all the work within a period of three months.
 - ✓ Use these guidelines for the numbers of files to sample, based on the scope of your review:
 - 911 call receiving and dispatching: 15 to 50 audio recordings of domestic violence–related calls (and, if possible, a printed transcript of the call) AND recordings and printouts of the corresponding contact between dispatchers and patrol officers for each call (typically referred to as “CAD” or computer-aided dispatch), if available
 - Police patrol response: 15 to 50 patrol incident or arrest reports for domestic violence–related cases, divided between arrest and non-arrest cases
 - Police follow-up investigations: 15 to 50 follow-up investigation reports for domestic violence–related cases
 - Prosecution charging: 15 to 50 sets of prosecution case files, divided equally between cases charged, declined, and any deferred prosecution or other diversion
5. Review the files:
 - ✓ Team members use the worksheet as a guide to identify practices that are included or missing in the response.
 - ✓ Work through each case file paying close attention to whether and how it reflects the practices listed on the worksheet (use one worksheet per case).
 - ✓ Check off all practices that are evident in the call, report, or file.
 - ✓ Note what is missing.
 - ✓ Use the notes column to record additional observations, questions, or examples related to the case and the practitioner’s response.
 - ✓ Complete the case review summary at the end of the worksheet.
6. Work as a team to articulate feedback and recommendations for agency heads:
 - ✓ **NOTE: Because a practice is not evident in the case record does not necessarily mean that it does not happen.** It may happen but not be documented.
 - ✓ Affirm that team members are in agreement on the conclusions.
 - ✓ Identify any areas of practice where the team is not in agreement or where additional investigation is necessary in order to reach any conclusions.
 - ✓ Provide specific feedback to the appropriate agency on its response to domestic violence cases, including examples of best practices that are in place, as well as recommended changes.

Casefile ID# _____

Review prosecution casefile

Best Practices in Domestic Violence Case Charging Decisions	Notes NA = Not applicable
Instructions: Check all practices evident in the case file and the charging decision process; note specific examples.	
1. Request and consider a wide range of information, including:	
<ul style="list-style-type: none"> <input type="checkbox"/> Police reports of the current offense <input type="checkbox"/> Past DV-related police reports involving suspect <input type="checkbox"/> Summary of the presentence investigation on offenders previously convicted <input type="checkbox"/> Evidence such as photos, broken phones, ripped clothing, e-mails, voice mails, damaged property, and medical records <input type="checkbox"/> 911 recordings and CAD reports <input type="checkbox"/> Jail call recordings, jail logs of visitors or mail, or booking or custodial information of threats or threatening behavior <input type="checkbox"/> Past and current protection order and harassment order pleadings and affidavits <input type="checkbox"/> Arrests and convictions <input type="checkbox"/> Victim's responses to dangerousness or risk assessment questions in current and past police reports <input type="checkbox"/> Communication with victim or, with victim consent, communication with the victim's advocate <input type="checkbox"/> Defendant's behavioral history in relation to possible harassment or stalking charges <input type="checkbox"/> Family court files 	
2. Evaluate the history, context, and severity of violence, including:	
<ul style="list-style-type: none"> <input type="checkbox"/> Extent to which there is a pattern of ongoing intimidation, coercion, and violence <input type="checkbox"/> Severity and frequency of the violence <input type="checkbox"/> Seriousness of injuries and the parties' level of fear <ul style="list-style-type: none"> <input type="checkbox"/> Who has been injured and how <input type="checkbox"/> Who is afraid of whom and in what ways <input type="checkbox"/> What kind of threats have been made or coercion used to dissuade the victim from participating in the prosecution <input type="checkbox"/> Who is most vulnerable to ongoing intimidation, coercion and violence 	
3. Consider harm to children and use of children as instrument of abuse.	
<ul style="list-style-type: none"> <input type="checkbox"/> Evaluate whether abusive party physically harmed the children, and in what way. <input type="checkbox"/> Evaluate whether victim has been threatened that the children will be harmed, and in what way. <input type="checkbox"/> Evaluate whether victim fears the children will be taken by the abuser (via abduction or custody actions) in retaliation for participating in the prosecution. 	
4. Evaluate and pay attention to risk and lethality factors, including:	
<ul style="list-style-type: none"> <input type="checkbox"/> Stalking <input type="checkbox"/> Strangulation 	

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Instructions: Check all practices evident in the case file and the charging decision process; note specific examples.	
<ul style="list-style-type: none"> <input type="checkbox"/> Threats to kill the victim <input type="checkbox"/> Threats of suicide <input type="checkbox"/> Forced sex or pressuring for sex when separated <input type="checkbox"/> Serious injury to the victim <input type="checkbox"/> Carries, has access to, uses or threatens with a weapon <input type="checkbox"/> Violence outside the home <input type="checkbox"/> Aggression toward interveners <input type="checkbox"/> Threats to family, coworkers or victim's new partner <input type="checkbox"/> Abuse of or killing of animals <input type="checkbox"/> Damaging victim's property <input type="checkbox"/> Violence during pregnancy or shortly after giving birth <input type="checkbox"/> Hostage-taking or restraint <input type="checkbox"/> Acts exhibiting extreme hostility toward the victim 	
<i>5. Charge with attention to victim safety, including safety of victim defendant.</i>	
<ul style="list-style-type: none"> <input type="checkbox"/> Charge the highest level and broadest possible crimes committed as supported by evidence, except where considerations of victim safety, including the safety of a victim defendant, warrant otherwise. <input type="checkbox"/> Give precedence to charging most dangerous cases, based on evidence and victim's response to risk questions <ul style="list-style-type: none"> ○ Charge cases where the offender is out of custody or gone on police arrival (GOA) according to the same risk evaluation as in-custody cases. <input type="checkbox"/> Pay attention to charges that may have been historically underutilized but are characteristic of domestic violence: <ul style="list-style-type: none"> ○ Illegal behavior that occurs after police arrive on the scene ○ Strangulation ○ Harassment/stalking ○ Terroristic threats ○ Sexually aggressive behavior ○ Pattern of harassing conduct ○ Witness tampering <input type="checkbox"/> Where the defendant is a victim of ongoing domestic violence, charge the case so that the outcome places controls on the person's continued use of violence without increasing vulnerability to ongoing violence. <input type="checkbox"/> Where both parties used illegal violence, neither engaged in self-defense, and the predominant aggressor was arrested, review the case and consider whether to charge the second party in addition to the predominant aggressor. <input type="checkbox"/> Re-evaluate the case for additional charges when new information is available. 	

Best Practices in Domestic Violence Case Charging Decisions	Notes NA = Not applicable
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6. Understand factors related to victim availability to the prosecution process.	
<ul style="list-style-type: none"> <input type="checkbox"/> Understand that the availability of victim testimony may not be known at the charging stage. <input type="checkbox"/> Plan for post-<u>Crawford</u> and <u>Davis</u> legal developments and strategies. <input type="checkbox"/> Minimize dependence on the victim in evidence-gathering and maximize other sources of evidence. <input type="checkbox"/> Be aware of intimidation and coercion directed at victims to prevent participation in prosecution. <input type="checkbox"/> Apply knowledge of the doctrine of forfeiture by wrongdoing and strategies for utilizing it in domestic violence cases. 	
7. Evaluate prior incidents and convictions.	
<ul style="list-style-type: none"> <input type="checkbox"/> Review prior recent incidents and charge if sufficient evidence. <input type="checkbox"/> Evaluate prior convictions to determine if they allow enhancement of the current offense with additional penalties. <ul style="list-style-type: none"> <input type="checkbox"/> Consider pursuing charges but not enhancing a charge if enhancement won't achieve or will undermine the goals of offender accountability, victim safety and justice. 	
8. Consider options in declining cases.	
<ul style="list-style-type: none"> <input type="checkbox"/> If a felony charge is declined, consider whether a misdemeanor charge is still possible. <input type="checkbox"/> If a misdemeanor charge is declined because the case may be appropriate for felony charges, transfer the case immediately to the appropriate prosecuting authority and inform the investigator. <input type="checkbox"/> Consider further investigation rather than declining a case if it might be charged with the availability of additional information. <ul style="list-style-type: none"> <input type="checkbox"/> Note the potential of additional investigation related to charging strangulation, stalking and crimes involving threats. 	
9. Engage and collaborate with victims in making charging decisions.	
<ul style="list-style-type: none"> <input type="checkbox"/> Minimize the need for the victim to confront the offender. <input type="checkbox"/> Take care not to endanger victims with what they've shared of their lives, subject to constitutional constraints and discovery rules. <input type="checkbox"/> Engage in dialogue with the victim rather than treating her or him simply as an information source. <input type="checkbox"/> Offer clear, alternative messages to the abuser's messages (e.g., the abuser is unstoppable or that the victim is crazy, at fault, unbelievable or unable to make decisions). 	

Best Practices in Domestic Violence Case Charging Decisions	Notes NA = Not applicable
Instructions: Check all practices evident in the case file and the charging decision process; note specific examples.	
10. Communicate charging decisions and respond to inquiries.	
<ul style="list-style-type: none"> <input type="checkbox"/> When a decision is made to decline charges, promptly communicate the decision to the investigator. <input type="checkbox"/> Consult with the investigator to determine if additional evidence can be gathered to support a charge. <input type="checkbox"/> Once a final determination has been made whether or not to charge the case, inform the following individuals: <ul style="list-style-type: none"> o The investigator o The victim and victim advocate o The arraignment attorney o Victim/witness personnel o Pretrial release personnel o Arresting officer o Probation officer o The defense attorney or, if the defendant is not represented by an attorney, the defendant <input type="checkbox"/> Respond to inquiries about the charging decision from community domestic violence advocates. 	
Prosecution Charging Decisions – List gaps in best practice	