

**IOWA ATTORNEY GENERALS OFFICE
PROCEDURES AND POLICIES
FOR PROSECUTION OF DOMESTIC ABUSE CASES**
Iowa Code § 13.2(14) (2007)

I. Policy statement.

A. Overview.

Iowa county attorneys have made significant strides in the prosecution of domestic violence over the past two decades. Recognizing domestic abuse as serious criminal behavior, many prosecutors have taken on sharply increased caseloads and devoted substantial resources to address the complexities of this crime. County attorneys also have sought to be better informed about this complex issue by participating in continuing legal education sessions and multi-disciplinary training, publishing a manual for the prosecution of domestic abuse in Iowa, and providing a representative to the state-wide domestic violence death review team.

Despite these efforts, domestic abuse continues to be a major problem warranting special attention. From 1995 to 2006, one hundred and sixty seven Iowans were killed in domestic abuse incidents. Two decades of experience in prosecuting these offenses and continued study into the dynamics of domestic violence have revealed the following facts that are essential to consider in order to effectively prosecute domestic violence cases, maximize community and victim safety, and minimize the negative effects of the criminal justice process on domestic violence victims:

- * Domestic violence rarely is an isolated incident of uncharacteristic behavior but, rather, is more often an act consistent with a pattern of violence and other abuse inflicted on a domestic partner by the abuser to exert power and control over the victim.
- * This pattern of abuse frequently involves a cycle of violence where episodes of abuse and violence against the victim are followed by periods of apology and promises of change by the perpetrator only to revert to further acts of violence.
- * This cycle of violence, coupled with economic, family and societal pressures and threats or promises by perpetrators, frequently causes victims of domestic abuse to seek dismissal of charges, change their account of what happened in the incident or otherwise not cooperate in the prosecution.
- * The most lethal period of risk for victims occurs around the end of a relationship or separation. Many domestic abuse homicides in Iowa occur around the end or threatened end of a relationship.
- * Many domestic abuse homicides are preceded by threats of homicide or suicide by the perpetrator.
- * Parties to domestic abuse homicides often have had prior involvement with the criminal justice system regarding domestic abuse.
- * Firearms are used in the majority of domestic abuse homicides.

Prosecutors should be aware of these dynamics and react to the challenges they pose for prosecution of domestic abuse cases in a way that does not further victimize those who suffer domestic abuse, discourage victims from seeking help in the future or embolden those who choose to perpetrate abuse.

The continuing violence in homes across Iowa is the impetus for these guidelines. If a prosecutor's intervention into domestic violence is to be effective, a consistent approach needs to be developed and followed. Such a consistent approach is the aim of these procedures and policies developed by the Iowa Attorney General's Office, in conjunction with the Iowa County Attorneys Association, pursuant to S.F. 367 enacted in 1995.

Variation in resources from county to county requires these guidelines to be flexible and invites individual county attorneys to develop more particularized standards for their own jurisdictions. No matter the size of the county or the resources available, however, prosecutors should promote the ethic that domestic abuse is a crime and should help mobilize the resources of the community to reduce its incidence, protect victims and hold offenders accountable for their actions.

These standards for prosecuting domestic abuse cases should be read as consistent with the Iowa Rules of Professional Conduct and the Iowa County Attorneys Association Prosecutorial Standards. Ultimately all decisions as to charging and prosecuting any crime remain in the sound discretion of the county attorney.

B. Goals in domestic abuse prosecutions.

Iowa county attorneys should focus on the following goals when prosecuting domestic abuse cases:

1. Recognize domestic violence as a serious, life-threatening crime.
2. Stop the violence.
3. Keep the victim, affected children, family members, and general public safe.
4. Hold the batterer accountable for violent conduct.
5. Provide resources and restitution for the victim.
6. Rehabilitate the batterer.
7. Deter the batterer and others from perpetrating acts of domestic violence.

II. Outreach.

A. Leadership.

County attorneys should use their official position in the community to provide leadership in developing a community-wide response to domestic violence.

B. Community response.

County attorneys should actively foster and participate in multi-disciplinary efforts to maintain an effective and accountable justice system response to domestic violence and to encourage community-wide efforts to end the problem.

III. Education

A. Continuing education of county attorney staff on domestic abuse issues.

As resources permit, prosecutors should avail themselves of opportunities for continuing education on domestic abuse issues including understanding the dynamics

of domestic abuse and the seemingly paradoxical methods victims use to negotiate safety such as remaining in abusive relationships, or testifying on behalf of the defense.

B. Working with local law enforcement.

1. Prosecutors should inform local law enforcement officers of prosecution policies and procedures. Prosecutors should update officers on applicable changes in the domestic abuse law. Prosecutors should also work with law enforcement to develop ways in which cases supported by probable cause can be prosecuted, whether or not the victim is available to testify.

2. **Evidence gathering.** Prosecutors should encourage local law enforcement to thoroughly investigate domestic abuse assaults, including the collection of evidence that would support a case even without the victim's testimony. Evidence useful to prosecutors may include, but is not limited to the following:

- * photographs of the victim's injuries, including depictions of bruising at various stages following the assault to show evolution of the injuries;
- * photographs of the crime scene;
- * witness statements;
- * 911 tapes;
- * excited utterances;
- * admissions by the defendant; and
- * medical records and statements made for purposes of medical treatment.

3. Prosecutors should be aware of the admissibility limitations of out of court statements imposed by *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct.1354, 158 L.Ed.2d 177 and *Davis v. Washington*, 541 U.S. 36; 126 S.Ct. 2266; 165 L.Ed.2d 224. Prosecutors should also be knowledgeable about developing case law in this area and assist law enforcement in investigative procedures to maximize the admissibility of such statements.

IV. Communicating with victim.

A. Early contact.

Prosecutors should attempt to have early contact with the victim. Such contact should emphasize the process and goals of intervention by the criminal justice system in domestic abuse cases and should include a victim counselor as defined by Iowa Code §915.20A (2007).

B. Victim registration.

Pursuant to Iowa Code § 915.12 (2007), in cases where the crime is not a simple misdemeanor, the county attorney shall provide the victim written notice of the victim's registration rights including the right to register under the automated victim notification system (IowaVINE) available at 1-888-742-8463 or www.vinelink.com. The county

attorney shall provide the notices to the victim required by Iowa Code §915.13 (2007).

C. Notification of case progress.

Prosecutors should keep domestic abuse victims who have not registered under Iowa Code §915.13 (2007) informed of the progress of the case. Whenever practical, prosecutors should attempt to notify victims before entering into a dispositional agreement with the defendant.

D. Support services.

County attorneys should provide domestic abuse victims with information about available support services such as contact information or literature of the Iowa Domestic Abuse Hotline, the nearest domestic abuse program, and the Crime Victim Compensation Program. County attorneys should assist domestic abuse victims in exercising their rights to have victim counselors present at all proceedings related to the offense under Iowa Code §915.20 (2007).

E. Subpoenas, non-compliance and material witness warrants.

Prosecutors should carefully consider the potential risks and advantages of issuing a subpoena to a domestic violence victim. Compelling testimony may cause increased danger to a victim. Conversely, placing responsibility on the prosecution for deciding if the victim will testify may remove pressure placed on the victim by the offender and others not to testify. Prosecutors should be sensitive to these concerns in evaluating whether to compel a victim's testimony through subpoena power, and should consider these along with the facts and circumstances known about the pending case in making this decision. Similarly, before seeking sanctions for non-compliance with a subpoena, prosecutors should consider whether such sanctions would further the goals of domestic abuse prosecution, should recognize that sanctions may result in victims choosing not to seek help from law enforcement in the future, and that use of such sanctions may be used by the perpetrator to exert power over the victim. The use of material witness warrants to compel testimony from domestic abuse victims is disfavored and is inappropriate if used to prevent the recantation of the victim's account of the abuse.

F. Safety of the victim.

Prosecutors should consider potential risks to victims' safety caused by communication with them and should consult with victims to develop contact methods that minimize these risks.

V. Charging decisions.

A. Doing justice. Prosecutors should consider all of the available evidence, the goals of prosecution set out herein, and the ethical rules and duties applicable to all criminal matters to do justice when making charging decisions regarding domestic abuse cases.

B. Requirements of the Victim. Prosecutors should not require victims to

sign criminal complaints or require victims to attend the initial appearance or other pretrial hearings as a condition for proceeding with a prosecution.

C. Considering victim's wishes. Prosecutors should consider the victim's wishes as one of many factors in the decision whether to file or dismiss charges, but should not allow the victim's desires to be solely determinative of the case disposition.

D. False report and perjury charges. Prosecutors considering charges for false report to public safety entities or perjury against domestic abuse victims for recanting a report of abuse or testifying inconsistently with such report should carefully consider the dynamics of domestic abuse and victimization, the potential of witness tampering by defendants, the chilling effect on future reporting of abuse such charges may cause, and that such sanctions may provide the defendant with another method to exert control over the victim. Prosecutors should not bring false report charges against a domestic abuse victim for making a statement to peace officers that the prosecutor believes in good faith to have been truthful at the time it was made. Prosecutors should be diligent as to their ethical responsibility to disclose exculpatory evidence to defendants with regard to such recantations.

E. Bail and conditions of release. Prosecutors should carefully consider the potential danger posed to the victim and other persons; prior criminal record including nature of the offenses, prior compliance with terms of probation or parole and conditions of release; prior failures to appear at court proceedings; prior violations of no contact and/or protective orders; and other information relevant to the risk of flight with regard to a defendant and make recommendations to the Court on issues of bond and conditions of release that comport with these concerns.

VI. Case Management.

A. Plea negotiations.

1. Prosecutors should approach plea negotiations with the intent of serving the goals of prosecution.

2. Before making a plea agreement in a domestic abuse assault case, prosecutors should consider numerous factors, including but not limited to the following:

- * the strength of the evidence;
- * seriousness of the offense, including such factors as: injuries inflicted, presence of children, harm and risk of harm to children both mental and physical, access to, and use or threatened use of weapons, threats of suicide and/or homicide by defendant;
- * history of abuse to this and other victims including strangulation, threats of suicide and or homicide, and sexual assault within the intimate partner relationship;
- * defendant's prior criminal record including violations of no contact and protective orders and violations of prior sentencing provisions;
- * general deterrence value;

- * the value of sanctions available in domestic abuse assault convictions;
- * the potential for federal firearms law application to convictions.

B. Dismissals.

1. Prosecutors should not dismiss domestic abuse charges solely because the victim refuses to cooperate. Prosecutors should evaluate the totality of the available evidence, including, but not limited to:

- * photographs of injuries;
- * 911 tapes and other non-testimonial hearsay;
- * potential testimony of witnesses other than the victim;
- * certain hearsay exceptions not dependant on proof of declarant's unavailability; and
- * expert testimony.

2. Prosecuting attorneys are prohibited under Iowa Code §236.13 (2007) from dismissing domestic abuse charges on the condition that the parties involved participate in mediation or other nonjudicial procedures.

C. Assignment.

To the extent possible, domestic abuse cases should be assigned to prosecutors with specific training and experience in this area.

D. Continuances.

Prosecutors should vigorously resist continuances in domestic abuse trials unless necessary for the State's case.

VII. No-Contact Orders.

A. Obtaining.

Prosecutors should communicate expeditiously to the court any request or need for protective conditions of release. Iowa Code §664A.3 (2007) requires issuance of a no-contact order upon initial appearance if the Court finds probable cause that a defendant has committed domestic abuse assault or violated a no-contact order, protective order, or consent agreement and that the defendant poses a threat to the safety of the victim or member of the victim's family. When obtaining a protective order, prosecutors should request the Court to inquire of defendants on the record if they are in possession of firearms or ammunition and to identify the firearms possessed. Prosecutors should ask for an order to surrender custody of such firearms and ammunition to the sheriff; for the Court to order the defendant not to possess a firearm while the order is in effect; and request the Court to advise defendants they are prohibited from possession of firearms and ammunition consistent with 18 U.S.C. 922 (g)(8)&(g)(9).

B. Lifting.

When formulating a position on the victim's request to modify or lift a no-contact order, a prosecutor should consider numerous factors, including but not limited to the following:

- * risk of future violence (considering defendant's prior criminal record, substance abuse, history of violence, suicide or death threats, access to weapons).
- * possibility that if contact is allowed defendant will intimidate or coerce victim regarding his or her role as a witness.
- * likelihood that victim and defendant will have contact even if the order remains in place, subjecting the victim to liability for aiding and abetting violation of the order.
- * knowledge that the victim has been apprised of available services.
- * probability that the victim's request to lift or modify the order is a product of coercion.

C. Enforcing no-contact orders.

Violation of a no contact or other protection order by a defendant is an indication of increased threat of violence to a domestic abuse victim. When a no-contact order issued as part of a criminal case has been violated by the defendant, county attorneys should consider initiating contempt proceedings or criminal charges under Iowa Code §664A.7 (2007) and consider stalking charges under Iowa Code §708.11 (2007). County attorneys should also consider seeking to revoke or modify the conditions of release under Chapter 811 or pursuing probation violation proceedings. When a protective order issued pursuant to a petition filed under Iowa Code §236.3 (2007) or a valid foreign protective order as provided under Iowa Code §236.19 (2007) has been violated, county attorneys should strongly consider initiating contempt proceedings in the name or on behalf of the county or state, or alternatively filing a criminal charge under Iowa Code § 664A.7(2007) or stalking under Iowa Code §708.11 (2007). Nothing in these Procedures and Policies should be construed to mandate county attorneys to assist a party in a Chapter 236 proceeding, although Iowa Code §236.3B (2007) does permit the county attorney to aid in the filing of victims' pro se petitions.

County attorneys should consider referral of no contact, pretrial release, and probation violations involving firearms to the United States Attorneys office for review of potential federal firearms charges.

County attorneys should carefully consider the dynamics of domestic abuse and the potential chilling effect for future reporting of abuse by the victim and other victims when considering proceeding with no contact violation charges against domestic abuse victims under a theory of aiding and abetting the defendant in a no contact violation.

VIII. Final disposition.

A. Victim recommendation.

Prosecutors should encourage domestic abuse assault victims to complete a victim impact statement and give victims notice of a plea agreement and the right to make an impact statement to the sentencing court as provided by Iowa Code

§915.13(1) (2007) if they so desire.

B. Sentencing recommendations.

When deciding what sentence to recommend, prosecutors should consider numerous factors including, but not limited to, the following:

- * defendant's criminal record;
- * whether defendant was previously on probation;
- * history of violations of protective orders and conditions of release with this and other victims;
- * history of violence with this and other victims;
- * impact of the crime on the victim;
- * seriousness of victim's injuries;
- * use of, or threatened use of, and access to weapons;
- * defendant's potential for rehabilitation;
- * whether the offense involved drugs or alcohol;
- * whether minors are present in the home;
- * impact of the crime on children;
- * general and specific deterrence value of the sentence

C. Sentencing.

1. Prosecutors should request appropriate sentencing provisions, including screening and treatment for substance abuse, required batterer's education programming, extending no-contact orders as appropriate including children as protected parties if necessary to assure their safety, and restitution.

2. In assault cases involving intimate partners as defined by Iowa Code §236.2(e) (2007), prosecutors should seek batterer's education programming as allowed by Iowa Code §708.2B (2007).

3. Prosecutors should request the Court to inquire of defendants on the record if they are in possession of firearms or ammunition and to identify the firearms possessed. Prosecutors should ask for an order to surrender custody of such firearms and ammunition to the sheriff, and request the Court to advise defendants that they are prohibited from possession of firearms and ammunition consistent with 18 U.S.C. 922 (g)(8),(g)(9).

4. Prosecutors should promptly pursue sanctions where a defendant has violated the terms and conditions of his or her sentence including seeking contempt or probation violations, and referrals to the United States Attorneys office for violations involving firearms.

IX. Monitoring and Evaluating

Prosecuting attorneys should continually monitor their domestic abuse caseload and adjust their policies and procedures where the goals of prosecution are not being met.