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# Nevada Domestic Violence Prosecution Best Practices Project



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# The Role of the Prosecutor

“Henceforth there shall be in every County a sober, discreet and religious person appointed by the county court to be Atturney for the Queene to prosecute and implead in the lawe all criminall offenders and doe all things necessary or convenient as an atturney to suppress vice and immoralitie.”

Connecticut, 4 Colonial Records 468 (1704).

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# The Prosecutor's Primary Responsibility

Not to win a case, but to see that justice is done.

Berger v. United States, 295 U.S. 78 (1935); *see also* NDAA National Prosecution Standard § 1.1, 2<sup>nd</sup> Ed. 1991.

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# Project Goals

- Although prosecution is just one component of a coordinated community response to the crime of domestic violence, prosecutors are in a unique position to spearhead efforts to improve the criminal justice system's handling of domestic violence cases.
  - Project to enhance Nevada's ability to provide safety for victims and accountability for perpetrators through system improvement and the promotion of best practices in the prosecution of domestic violence cases throughout the state.
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# Project Goals continued

- Project to promote consistency in the prosecution of domestic violence, recognizing that each jurisdiction is unique in its demographic and geographic composition and available resources.
  - Project to complement the *Nevada Model Policy and Standard Operating Procedure for the Enforcement of Protection Orders against Domestic Violence* and the *Nevada Model Domestic Violence Protocol for Law Enforcement*.
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# Project Advisory Team

Brett Kandt, Project Advisory Group Chairman

Leon Aberasturi, Lyon County District Attorney

Kathe Berning, Former Chief Deputy City Attorney, City of Reno

Alexandra Chrysanthis, Chief Deputy District Attorney, Clark County

David W. Clifton, Chief Deputy District Attorney, Washoe County

Larry Etter, Eureka County Sheriff

Lori Fralick, Victim Advocate, Reno Police Department

Ben Little, Chief Deputy City Attorney, City of Las Vegas

David Mincavage, Assistant City Attorney, City of Henderson

Susan Meuschke, Executive Director, NNADV

Kareen Prentice, Nevada Domestic Violence Ombudsman

Dina Salvucci, Deputy District Attorney, Douglas County

Lt. Brad Simpson, Las Vegas Metropolitan Police Department

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# Best Practice Guidelines



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# Goals of Prosecution

The goals of prosecution in domestic violence cases are:

- To protect the victim from additional acts of violence committed by the perpetrator;
  - To reduce the exposure and/or possible injury to children or other family members from domestic violence;
  - To deter the perpetrator from committing continued acts of violence in the community and hold him accountable for his actions;
  - To create a general deterrence to domestic violence in the community; and
  - To serve justice.
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# Core Strategies

1. Specialization
  2. Early and Consistent Contact with Victims
  3. Evidence-Based Prosecution
  4. Speedy Prosecution
  5. Working With Victim Advocates
  6. Coordinated Community Response
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# Prosecutorial Discretion



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# Basis of Charging Decisions

- The prosecutor shall refrain from prosecuting a charge not supported by probable cause.
  - The prosecutor should require sufficient admissible evidence to support a conviction (i.e., proof beyond a reasonable doubt).
  - The prosecutor should only file charges that adequately encompass the offense(s) believed to have been committed and rationally address the nature and scope of alleged criminal activity.
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# Filing Charges in Domestic Violence Cases

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
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# Filing Charges continued

Prosecutor should review all the facts of the case in light of the following:

- Presence and proximity of children at the location of the violence
  - Careful determination of the identity of the dominant aggressor, if any
  - Potential lethality in the context of the relationship as a whole
  - Strength of the case and the ability to prove beyond a reasonable doubt - corroborating evidence
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# Case Preparation

- Ascertain Victim's Whereabouts - CONFIDENTIAL
  - Document Victim's Injuries and Signs of Physical Contact
  - Build on Police Investigation
  - Statements of Witnesses
  - Physical Evidence
  - Pleadings and Transcript From Protection Order Proceedings
  - Ascertain Defendant's Criminal History and/or History of Domestic Violence
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# Arraignment/Bail Conditions

- The prosecutor should recommend any conditions of release 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.
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# Responsibility Towards Victims





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# 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:

- Confidentiality of the Victim's Address [NRS 174.234(5)]
  - Personal Service of Subpoenas
  - Transportation to Court
  - Designated Waiting Areas in Court
  - No Contact Orders
  - Child Custody Considerations
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# Rights of Victims of Crime

Victims have a constitutional right to 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.

Nevada Constitution Article I, Section 8.

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# Statutory Rights of Victims of Crime

- 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)]
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# Statutory Rights continued

- 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)]
  - 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)]
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# 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.
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# The Reluctant Victim

- In the event the victim is reluctant to participate, prosecutors should keep in mind the goals of prosecution.
- The prosecutor should at all times be zealous in the need to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion.

NDAA National Prosecution Standard § 1.3, 2<sup>nd</sup> Ed. 1991.

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# Dispositions



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# Negotiated Pleas

NRS 200.485(7) prohibits plea bargains unless it is determined that the charge 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.
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# Sentencing

- The prosecutor's sentencing recommendations should be commensurate with sentences for other violent crimes
  - Suspended Sentences
  - Restitution
  - Counseling and Treatment Programs - NRS 200.485 mandates counseling for a battery that constitutes domestic violence pursuant to NRS 33.018.
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# Best Practice Implementation



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# A Coordinated Community Response

- Jurisdictions form multidisciplinary implementation teams and use free technical assistance to identify and achieve local goals by building one or more Best Practices into the current infrastructure, given existing limitations in each jurisdiction.
  - Use Safety and Accountability Audit process not as an evaluation tool to identify shortcomings in the current practices of a jurisdiction, but rather as an implementation tool for system improvement.
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# Pilot Sites

- City of Henderson
  - City of Reno
  - Churchill County
  - Eureka County
  - Humboldt County
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# Disclaimer

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