

WATCH

Bringing a public eye to justice



PROMOTING VICTIM SAFETY
AND OFFENDER ACCOUNTABILITY:

*Improving the Response to Misdemeanor
Domestic Violence Cases*

April 2011



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WATCH's mission is to make the justice system more effective and responsive in handling cases of violence against women and children, and to create a more informed and involved public.

Every day trained WATCH volunteers observe court and report on what they see. WATCH follows up with court staff and committees to recommend improvements. Our experience shows that when the public is present in court, everyone does a better job.

- WATCH was founded in 1992 in Minneapolis, Minnesota
- Trained WATCH volunteers monitor over 5,000 hearings each year in several Hennepin County courts
- Court personnel and advocates for women agree that public scrutiny of the courts leads to improvements
- WATCH trains court monitoring groups across the U.S. with manuals, site visits, and web-based training

WATCH is committed to ending racial, cultural, and gender bias in the courts and to reflecting that commitment at all levels of our organization.

ACKNOWLEDGEMENTS

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I. Executive Summary

“...each encounter between someone living with [domestic] violence and a practitioner in the ‘system’ is an opportunity to interrupt the actions and patterns that sustain battering.”¹

Domestic violence is a challenge for entire communities. We rely on the justice system to provide legal protections and hold perpetrators accountable, but expecting the justice system to solve domestic violence is like expecting the educational system to solve poverty. Domestic violence is a crime that more often than not escalates without intervention and how the justice system responds to initial assaults and calls for help can significantly impact whether or not battering will continue or be deterred.

This report focuses on how misdemeanor cases of domestic violence are handled in Hennepin County’s three suburban courts. But the observations by WATCH court monitors and the recommendations have broader impact as communities across the United States grapple with what seems to be an intractable social problem. First and foremost, ending or reducing domestic violence requires commitment and constant attention by community leaders and our courts to the batterer intervention services available, shelter and support offered to victims and their children, and consequences batterers receive for their violence. Each municipality should focus efforts on eliminating domestic violence and putting in place policies that will make this a reality.

About WATCH

WATCH is a court monitoring and research organization that monitors cases of domestic violence, sexual assault, and child abuse in Hennepin County. In 2009, for the first time in its 17-year history, WATCH was able to expand outside of the downtown Minneapolis courts and conduct a 21-month monitoring project to evaluate how misdemeanor domestic violence cases are treated in the three suburban courts of Brookdale, Ridgedale, and Southdale.

Hennepin County is the largest county in Minnesota and includes the city of Minneapolis and 44 surrounding suburbs. The suburban courts of Brookdale, Ridgedale, and Southdale are responsible for all non-felony traffic and criminal cases that occur within those 44 municipalities. According to the Fourth Judicial District Research Division, the suburban courts handle approximately 30,000 cases per year, accounting for 55% of all non-felony filings in Hennepin County. All non-felony cases occurring within the city of Minneapolis are held in the downtown courts, which include a specialized domestic violence court.

The purpose of this report is to outline how Hennepin County suburban courts can improve their response to domestic violence cases and to make specific recommendations for key changes. WATCH spent more than 2,000 hours monitoring nearly 1,500 court appearances and gathered input from inside and outside the criminal justice system to inform our recommendations. With few exceptions, the primary causes of the issues

¹ St. Paul Blueprint for Safety. “The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes.” St. Paul Blueprint for Safety, 2010.

described in the report are system-wide and not the result of individual behavior. The key findings identified in the report are:

- A lack of accountability for repeat offenders
- A lack of emphasis on victim safety
- A need for improvements in courtroom environment

While the report notes areas that need improvement WATCH does not support the dismantling of the current structure, and instead supports increased communication and coordination as primary solutions. An effective response to domestic violence is a shared responsibility and requires that each part of the judicial system considers the impact it will have on victim safety and offender accountability. It is easy to focus on individual jurisdictions and disregard the bigger picture. Interconnectedness among the suburban municipalities, and with Minneapolis and Hennepin County, would help ensure that the response to these cases is consistent, regardless of where the offense occurs. These efforts can be strengthened by instituting the recommendations outlined in the report and the following:

- Update or create domestic violence prosecution plans according to state statute² with the goals of incorporating best practices adopted in part from The Blueprint for Safety³, and the recommendations outlined in this report.
- Develop a multi-disciplinary domestic violence steering committee in the suburban courts to oversee how cases are handled and to monitor progress towards an improved response.

WATCH has observed many positive and encouraging steps already taken to improve the functioning of the suburban courts. In January 2010, Hennepin County District Court launched a pilot project at Ridgedale that blocked cases to one judge from the initial appearance through the sentencing, and created a four-judge team. Southdale and Brookdale followed suit in May 2010. Block teams and court personnel are meeting regularly to address concerns and discuss possible improvements, and District Court has plans to conduct its own evaluation of the efficacy of these changes and the overall efficiency of the suburban courts. In November 2010, a best practices committee was established to review the current best practices document, created in 2005 for Minneapolis' designated domestic violence court, for export to the suburbs, a crucial step in addressing specifically how domestic violence cases should be handled. The suburban courts continue to be a work in progress, and District Court demonstrates an on-going commitment to making improvements. WATCH hopes this report will enhance current efforts and lead to the development and implementation of more effective policies and protocols.

² Minn. Stat. § 611A.0311.

³ St. Paul Blueprint for Safety.

II. Project Design

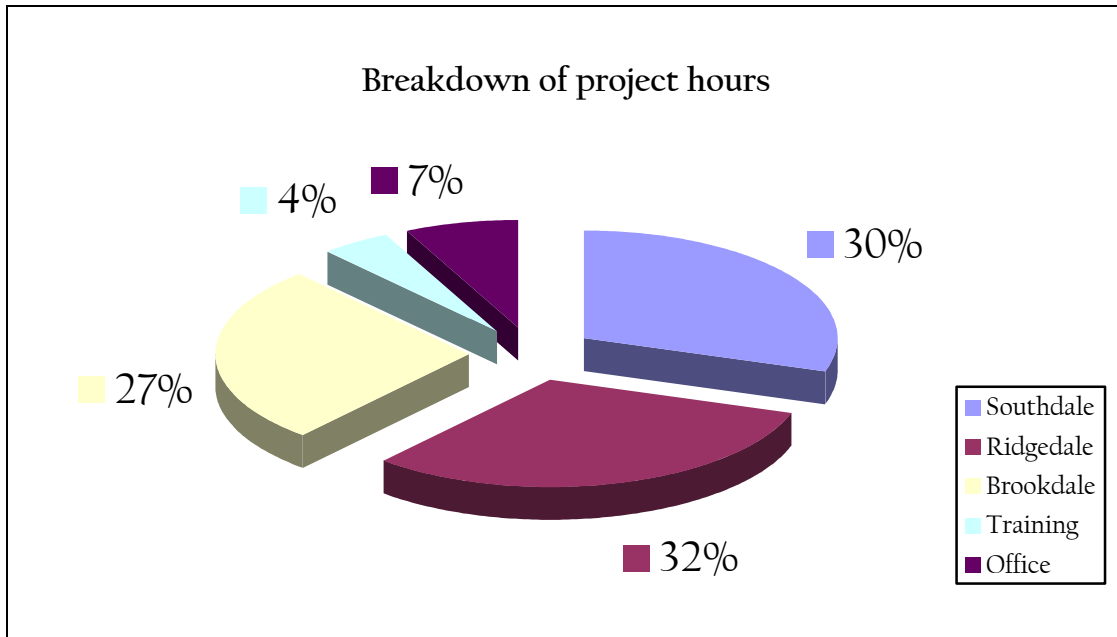
In August 2009, WATCH volunteers began monitoring how domestic violence⁴ cases were handled at the Brookdale, Ridgedale, and Southdale courts. Our focus was to evaluate both the *process* – courtroom environment and efficiency, and the *substance* – individual case outcomes. In conjunction with daily monitoring, WATCH conducted quarterly meetings with volunteer monitors to address concerns and offer feedback; facilitated two meetings with stakeholders representing system personnel and community advocates; held informal interviews with advocates, probation officers, and court administrators to gather input; and conducted a wrap-up focus group with monitors.

Volunteer monitors completed a mandatory six-hour training that included an overview of the criminal justice system, an introduction to the dynamics of domestic violence, a review of monitoring guidelines, and guidance in how to fill out forms specifically designed for monitoring the suburban courts. Upon successfully completing the training, monitors were accompanied by WATCH staff during their initial monitoring shifts. Volunteers were required to fulfill a minimum of two, four-hour shifts per month, a requirement several exceeded. Each monitor was assigned to one courthouse for the duration of the project.

The project coordinator maintained weekly communication with grant partners from advocacy agencies who provided lists of scheduled domestic violence hearings. This information was combined with that from the Minnesota Court Information System (MNCIS) to create a daily calendar of domestic violence cases to monitor at each courthouse. Between August 1, 2009, and October 31, 2010, volunteers monitored the three courts on a nearly daily basis, observing cases from the 44 cities represented in the suburban courts. (See Appendix A for the number of cases monitored per city and per courthouse.) Thirty-one volunteers and six staff members spent 1,915 hours monitoring 1,419 appearances.⁵ Three interns contributed a total of 138 hours doing data entry and providing office support.

⁴ Cases of violence involving a “family or household member” as defined in Minn. Stat. § 518B.01 subd. 2.

⁵ Volunteer data was tracked in a database WATCH created and maintained.



WATCH used several sources of data throughout the project. The primary source of data was monitoring forms that tracked individual cases,⁶ documented courtroom atmosphere and decorum, provided an overall evaluation of appearances, and recorded monitors' subjective observations. (See Appendix B for sample monitoring forms.) All forms were submitted to and reviewed by the project coordinator to ensure comprehensive and accurate information and consistency of reporting. MNCIS provided court records and calendars; criminal complaints and police reports provided substantive information for case reviews.

⁶ Individual case data collected was recorded in a database created and maintained by WATCH and included defendant name, case number, charges, dispositions, city of offense, and judge.

III. Domestic Violence Cases in the Suburban Courts

WATCH tracked 948 non-felony domestic violence cases involving 846 defendants between August 1, 2009, and October 31, 2010.⁷ Our goal was to identify ways in which victim safety and offender accountability could be enhanced. In order to improve our understanding, we compared outcomes to those in Minneapolis' specialized domestic violence (DV) court.

Case outcome data

Of these 948 cases:

- 45% (417) resulted in a plea and either a stay of execution⁸ or an executed sentence⁹
- 22% (213) were dismissed¹⁰
- 15% (144) were continued for dismissal¹¹
- 12% (116) were given a stay of imposition¹²
- 6% (54)¹³ were given a stay of adjudication¹⁴
- <1% (4) went to trial, with three resulting in acquittals and one resulting in a guilty verdict.

The overall conviction rate was 56% (534).¹⁵

Of the 1,319 cases heard in Minneapolis' DV court between August 1, 2009, and October 31, 2010:¹⁶

- 47% (635) resulted in a plea and either a stay of execution or an executed sentence
- 27% (360) were dismissed
- 18% (234) were given a stay of imposition

⁷ Case outcomes only include monitored cases which were resolved prior to October 31, 2010. Of the 846 defendants, 75 had two or more cases.

⁸ The court imposes a sentence but suspends it, allowing the defendant to remain out of custody.

⁹ The defendant must serve the sentence imposed by the court.

¹⁰ Dismissals may include cases referred to the county for felony charges.

¹¹ The defendant does not enter a guilty plea and the case is continued for a set amount of time to be dismissed if the defendant follows conditions set forth in an agreement between the defendant and the prosecutor.

¹² The defendant enters a guilty plea, but the court does not impose a sentence. The conviction remains on the defendant's record for the duration of the stay. If conditions are met, the conviction will be vacated.

¹³ This number includes cases with two or more counts where only the domestic violence-related count was given a stay of adjudication.

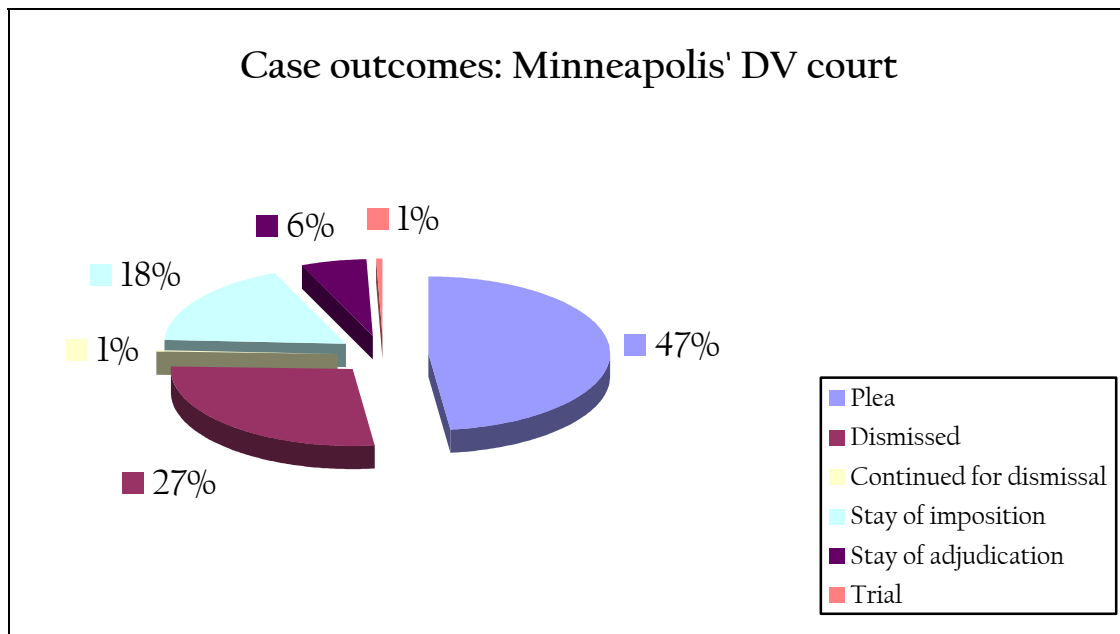
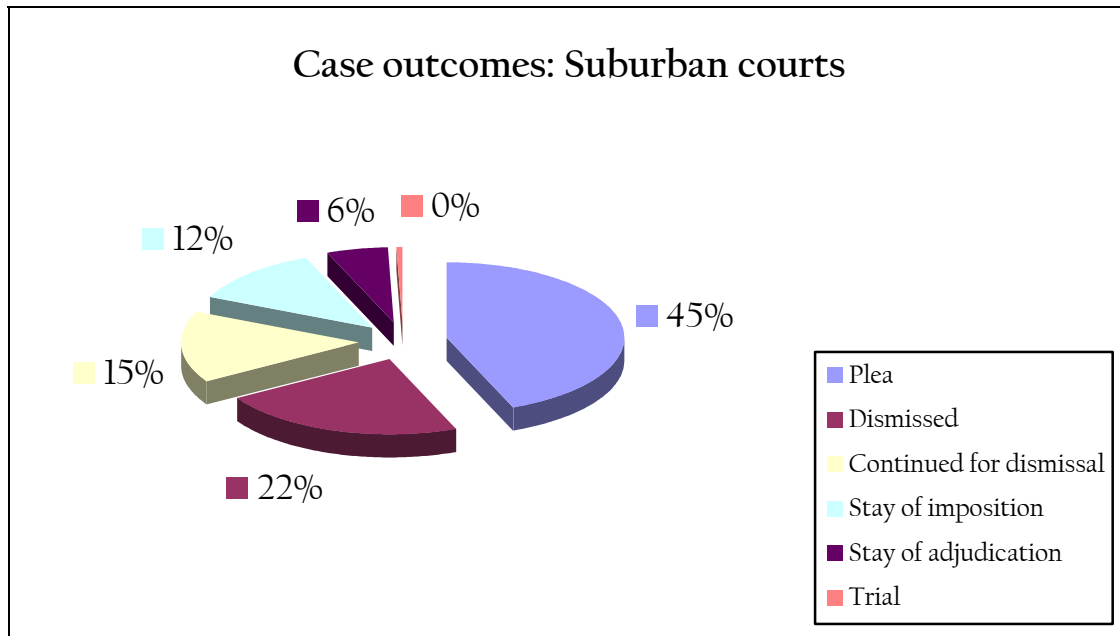
¹⁴ The defendant enters a guilty plea, but the admission is not accepted by the court unless conditions set under the agreement are not met.

¹⁵ The conviction rate includes stays of imposition, pleas, and guilty verdicts. See also Minn. Stat. § 609.02 subd. 5.

¹⁶ Data was provided by the Minneapolis City Attorney's Office.

- 6% (76) were given a stay of adjudication
- <1% (7) were continued for dismissal
- <1% (7) went to trial with six resulting in a guilty verdict, and one in an acquittal.

The overall conviction rate was 66% (875).



Non-enhanceable offenses

Of the 588 suburban court cases that resulted in a conviction, less than half (49%) were resolved with a qualified domestic violence-related offense.¹⁷ This translates to just 30% of all DV cases monitored in the suburban courts.¹⁸ The remaining 51% were resolved with a disorderly conduct¹⁹ or other non-enhanceable offense, eliminating the opportunity to use the conviction to enhance future misdemeanor domestic violence crimes to a gross misdemeanor or felony, a key component of offender accountability in these cases.

In a June 2009 report, the National Institute of Justice (NIJ) stated that, based on current domestic violence research, “[i]t is safe to assume that, more often than not, the typical abuser who makes it to the prosecutor’s office has a high likelihood of continuing to abuse the same or a different victim, both in the short term and over the subsequent decade at least.”²⁰ Nearly 10% of all defendants WATCH tracked in the suburban courts had two or more domestic violence-related cases within the 15-month monitoring period.²¹ To hold offenders accountable, the NIJ report advises that case resolutions “address long-term patterns of criminal behavior and are based on abuser risk for reabuse.”

Sentences must provide for intervention at the first offense and increased consequences for repeat offenders. In cases where a conviction on an enhanceable count is unlikely, a plea to disorderly conduct or other non-enhanceable offense provides the opportunity to place conditions on an offender, such as domestic abuse programming. Because this approach allows the court to intervene, it is preferable to a dismissal. However, routinely resolving domestic violence cases in this way allows repeat offenders to avoid increased penalties.

- *Case example* – A defendant was charged with gross misdemeanor domestic assault, gross misdemeanor fourth degree assault of a police officer, and misdemeanor obstruction of legal process for assaulting his girlfriend and resisting arrest (Case 1).

According to the criminal complaint, the defendant refused to leave the victim’s apartment stating, “B***h, b***h, I’m not going anywhere unless you’re going with me.” He grabbed the victim by her head and hair and pulled her down to the couch. When she tried to stop him, he kicked her in the stomach, knocking her to the ground.

¹⁷ Once a defendant is convicted of one of the domestic-violence related offenses listed in Minn. Stat. § 609.02, subd. 16, future domestic violence-related charges may be enhanced to a gross misdemeanor or felony if occurring within the same 10-year period.

¹⁸ WATCH randomly sampled 80 cases from Minneapolis’ DV court between August 1, 2009, and March 31, 2010, and found that nearly 60% of cases were resolved with an enhanceable offense.

¹⁹ Minn. Stat. § 609.72.

²⁰ Klein, Andrew R. “Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors, and Judges.” National Institute of Justice, June 2009. <http://www.nij.gov/nij/topics/crime/intimate-partner-violence/practical-implications-research/welcome.htm>

²¹ This statistic reflects cases occurring within the jurisdictions of the suburban courts. It does not account for charges defendants may have incurred at the felony level or in other jurisdictions.

When police arrived, the defendant resisted arrest and claimed to be having a heart attack. While at the hospital, he threatened officers, saying, “If I had the chance, I would kill all of you.” Officers issued a no contact order, stating that he was to stay away from the victim and her residence. The defendant told officers he would not abide by the order, and shortly thereafter called the victim. Officers arrested the defendant as he was leaving the hospital, and he was charged with gross misdemeanor violation of a no contact order (Case 2).

Less than a month after a pretrial hearing for the two cases, the defendant was arrested again and charged with gross misdemeanor violation of a no contact order (Case 3). According to the police report, he approached the victim in her garage and, when she was on the phone with 911, he chased her around the house attempting to get the phone away. Before leaving, he told her, “Don’t worry, I’ll be back.”

The defendant’s criminal history includes five prior domestic violence-related offenses, three of which occurred in the last 10 years. Two of these cases were reduced from gross misdemeanor domestic assault to misdemeanor disorderly conduct. According to the police report, after his arrest in Case 1, “The defendant stated he knew how the system worked, and he knew how to get out of it.” Had the prior cases resulted in convictions of enhanceable offenses, the three most recent cases could have been charged as felonies.

The defendant pled to misdemeanor obstruction of legal process (Case 1), gross misdemeanor violation of a no contact order (Case 2), and misdemeanor violation of a no contact order (Case 3). Finally, after 16 years and eight domestic violence cases, the defendant could now face felony charges for any future domestic violence offenses.

Continuances for dismissal

The most notable difference in case outcomes between the suburban courts and Minneapolis’ DV court are the number of cases continued for dismissal. While it was the third most common resolution in suburban court cases (15%), it was rarely used in Minneapolis’ DV court, making up less than 1% of cases.

The frequent use of continuances for dismissal causes concern about offender accountability. These cases are not heard by a judge; instead they are resolved by an agreement between the city and the defendant that is solely at the discretion of the prosecuting attorney.²² The agreement stipulates the rules, or conditions, the defendant must follow in order to have the case dismissed. Because the defendant is not convicted, no probation officer is assigned to monitor compliance. With the exception of new charges, there is little recourse if the defendant does not abide by the conditions. Further,

²² Minn. Stat. § 609.132.

without a conviction, these cases cannot be used to enhance future domestic violence-related charges.

The lack of accountability in these cases is compounded by how seldom consequences are imposed when there is a violation of conditions. Domestic violence, or battering, describes a repeated pattern of abuse used to control an intimate partner. This pattern suggests a high likelihood of subsequent offenses and emphasizes the need for sure and swift consequences. The *2008 Minnesota Crime Survey* reports that domestic violence victims experienced violence an average of more than three times over the course of the year.²³ However, WATCH is unaware of any defendants brought back to court for violating conditions outlined in the agreement. Continuances for dismissal are problematic because there is no oversight for a defendant who reoffends.

If the agreed upon conditions of the continuance for dismissal are violated by the defendant, the prosecutor must take affirmative action to bring the defendant back to court prior to the date of dismissal. If this is not done, the case will be automatically dismissed by the court, effectively erasing any criminal record of domestic violence. Before dismissing such cases, court clerks routinely check under the case number for a new hearing date or a warrant for failure to appear, but their process does not currently include alerting the prosecutor if an entirely new case is pending. Prosecutors need to develop a standardized process for responding to new charges during periods of continuance for dismissal. This must include a process for communicating with each other, as well as Minneapolis and county prosecutors if a new charge occurs in a different municipality or is charged at the felony level. Holding these offenders accountable must be a shared responsibility, regardless of where the offense occurs. Prosecutors and court administration must work together to address this current gap.

- *Case example* - A defendant was charged with misdemeanor domestic assault stemming from an assault against his girlfriend on August 5, 2009 (Case 1). On November 20, 2009, he was given a continuance for dismissal and ordered to probation to the court²⁴ with the condition of no same or similar offenses. Four days later, on November 24, 2009, the defendant was arrested and charged with felony domestic assault by strangulation and gross misdemeanor interference with an emergency call for an assault against the same victim (Case 2). According to the criminal complaint, the defendant placed her in a “choke hold” until she started to lose consciousness and told her he could kill her.

On February 9, 2010, he was convicted of felony domestic assault by strangulation and given a stay of imposition and credit for time served (Case 2). At the same time, the misdemeanor domestic assault case was dismissed (Case 1). The entry in MNCIS indicates the conditions were met, even though the defendant violated his one condition four days after receiving his continuance for dismissal. At the sentencing for the felony charge, the victim stated that she would “remember those hands around my neck for the rest of my life.”

²³ Minnesota Department of Public Safety, Office of Justice Programs. “Domestic Violence: Results from the 2008 Minnesota Crime Victim Survey.” Minnesota Department of Public Safety, July 2009.

²⁴ Probation to the court means the defendant is unsupervised. If there is a violation of conditions, it is up to the prosecutor to bring the matter before the court.

After agreeing to have no same or similar offenses, the defendant's actions suggest he did not believe the court would hold him accountable. Rather than facing consequences for violating this condition, Case 1 was dismissed.

Some speculate that cost-savings is driving the use of continuances for dismissal. In these cases, the defendant agrees to pay a fee, all of which is returned to the city prosecuting the case. WATCH documented instances where fees ranging from \$50 to \$1,000 were returned to the municipality in domestic violence cases. The city is then also spared the expense of additional prosecution or trial. Though an in-depth analysis of these financial incentives is beyond the scope of this project, WATCH contends that cities should not be cutting costs and increasing revenue at the expense of victim safety and offender accountability.

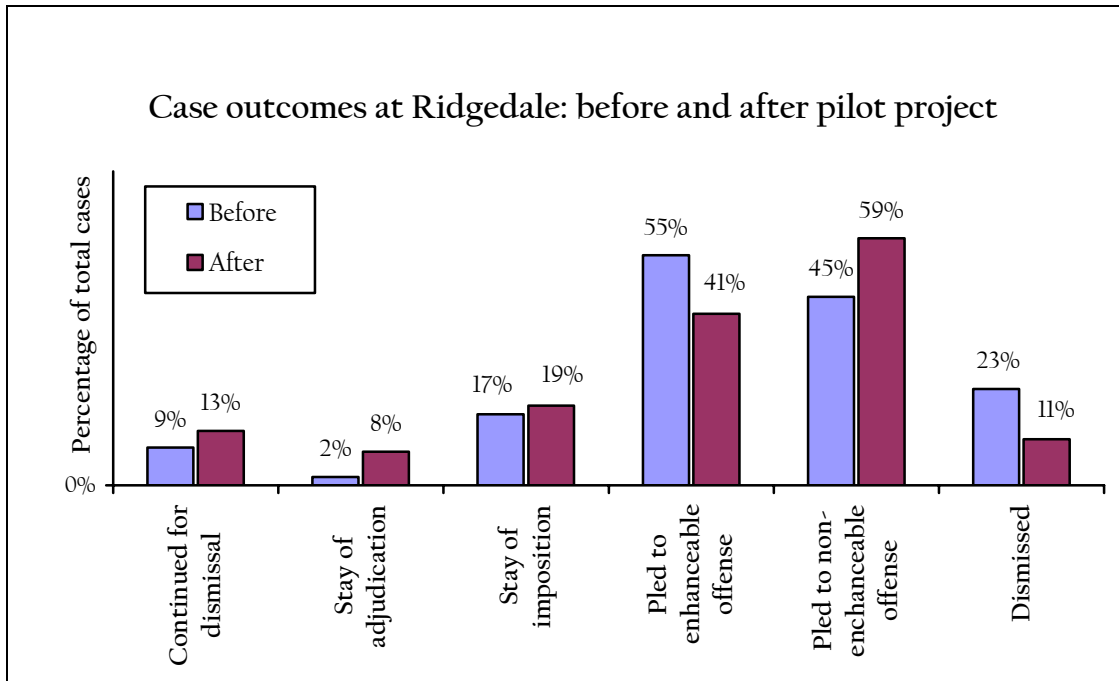
Recommendations:

- ✓ Develop a process for responding to and enforcing violations of continuances for dismissal, including communicating with other prosecutors if a new case occurs within a different jurisdiction.
- ✓ Remove the financial incentive from continuances for dismissal for domestic violence cases through legislative changes.

Blocking pilot project: before and after

A closer look at the data shows some significant changes in case outcomes following the start of the blocking pilot project at Ridgedale in January 2010. WATCH monitored 64 cases prior to its start and 196 cases after implementation. WATCH selected every third case from the 196 case set and compared those cases (64) to the 64 earlier cases.²⁵ The conviction rate increased slightly from 66% before the blocking to 69% after the blocking and there was a decrease in the number of dismissals. Continuances for dismissal, however, increased, and fewer offenders pled to enhanceable offenses. As previously noted, these resolutions diminish the court's ability to hold the offender accountable.

²⁵ Cases monitored at Ridgedale between January and March of 2010 were not included to allow for an adjustment period following the start of the pilot project.



Prior to the blocking system, each of the suburban courts operated two courtrooms with two judges more than a third of the time. Following the blocking system, each courthouse was reduced to one judge. The week following the start of the pilot project a monitor heard a judge announce from the bench a “new goal” to resolve cases without a continuance. While WATCH cannot demonstrate a definitive cause and effect, there is a correlation between reduced judge time and resolutions that reduce offender accountability. This finding suggests that further research is needed to address the extent to which court funding levels influence how cases are resolved.

Probation

Monitoring forms reflect a pattern of defendants being ordered to “probation to the court” and of the court’s failure to order pre-sentence investigations (PSIs). WATCH tracked how often a PSI was ordered and, if a defendant was placed on probation, whether it is probation to the court or supervised probation.

Pre-sentence investigations

Minnesota statute requires a PSI be completed when a defendant is convicted of a domestic violence-related offense or arrested for a domestic violence-related offense but convicted of another offense arising out of the same circumstances surrounding the arrest.²⁶ The PSI is conducted by a probation officer who evaluates the defendant and considers the impact of the defendant’s crime on the victim and the defendant’s willingness to participate in and complete domestic abuse programming. Recommendations pertaining to contact with and safety of the victim must be included.

²⁶ Minn. Stat. § 609.2244, subd. 1.

Monitors' observations, combined with case information gathered from MNCIS and Hennepin County probation records, reflect that PSIs were ordered in 72% of cases in the suburban courts with this requirement. In contrast, PSIs were ordered in 93% of cases with this requirement in Minneapolis' DV court.²⁷

Prosecutors have commented to WATCH that a PSI is sometimes a deal breaker for the defense attorney. If a defendant is willing to take a plea only if a PSI is not ordered, the prosecutor may agree to it to get a conviction. That PSIs were not ordered in more than 25% of the required cases suggests that oftentimes, judges do not deviate from the agreement set forth by the attorneys. When required by statute, such as in domestic violence-related offenses, judges should order a PSI even if the parties have agreed to dispense with it.



During a plea hearing for a defendant charged with misdemeanor domestic assault and misdemeanor violation of an order for protection, the prosecutor and defense attorney stated their agreement to the judge. In response, the judge asked if the "plea contemplated a PSI"; the defense attorney said that it did not. In response to the judge's question regarding conditions of sentence, the prosecutor answered, "No same or similar." The judge proceeded to sentencing.

A PSI is sometimes ordered after sentencing and referred to as a "post-PSI". Not only is this a contradiction in terms, but it is a violation of the statute. In these cases, the defendant is given the condition to "follow all instructions of probation." A monitor noted that one day a judge was asking defendants if they wanted to waive their right to know the probation recommendations prior to sentencing. When this occurs, the defendant blindly agrees to comply with conditions that will be imposed later by a probation officer, and the judge does not receive crucial information regarding the victim's safety and wishes. According to Minnesota case law, a probation condition must be ordered by a judge to support a probation revocation. Abdicating this authority to the probation officer further erodes the justice system's ability to hold the offender accountable for any violations.²⁸ Conducting a PSI after sentencing minimizes its importance, disregards victim input, and makes revocations difficult. As one probation officer put it, this practice is akin to a doctor writing a prescription without an exam.

When a PSI is ordered, unless the sentencing is rescheduled for a new date, probation officers in the suburbs only have a four-hour window in which to complete it. This is a significant difference from the one week turnaround provided in Minneapolis' DV court. Although the courts are handling the same type of cases, probation is not provided the same time to complete the PSI. Monitors' observations reflect that probation officers often do not even get four hours. Monitors observed cases being sent to probation as late as 12:15 p.m., with the expectation they would be returned that same afternoon for sentencing. The time allowed in these cases is inadequate to fulfill the requirements of a PSI. Due to time constraints, probation may not be able to contact the victim, which can

²⁷ WATCH randomly sampled 80 cases monitored in the downtown DV court between August 1, 2009, and March 31, 2010.

²⁸ State v. Behr, A04-571, 2004 WL 2857571 (Minn. Ct. App. Dec. 14, 2004) (unpublished).

have an adverse effect on victim safety and violates the victim's right to be involved in the process.²⁹

The recent implementation of judge blocking in the suburban courts is conducive to switching to a one-week turnaround, allowing more time for PSIs to be completed. If a plea is accepted by the blocked judge one week, the next judge in the rotation could handle the sentencing the following week, a practice that occurs among the blocked judges in Minneapolis' DV court. Under the blocking system, judges are in a better position to communicate about cases and presumably could share sentencing responsibilities.

Priority should be put on completing PSIs prior to sentencing and allowing adequate time for probation officers to contact victims and make informed recommendations. A strengthened relationship between probation officers and victim advocates could help in this effort. Judges then need to be responsible for ordering conditions based on the information gathered in the PSI. These suggested changes would likely increase victim participation and safety, ensure that the programming ordered is appropriate for each defendant, and result in more effective sentencing and better long-term outcomes.

Recommendation:

- ✓ Require that PSIs be conducted in all domestic violence cases regardless of the convicted offense and allow probation officers more time to complete PSIs.

Probation to the court

Of all suburban cases with a conviction, 25% resulted in the defendant being ordered to probation to the court,³⁰ something that occurs rarely in Minneapolis' DV court. When defendants are placed on probation to the court, they are not required to report to a probation officer, and no system is in place for the victim to report safety concerns or violations. Further, a PSI is not necessarily ordered in these cases. This represents a missed opportunity for victim input, and the court forfeits the opportunity to evaluate the offender for appropriate programming and conditions. Without a method of enforcement, the message sent to both victims and defendants is that orders imposed by the court are meaningless.

Recommendation:

- ✓ Reduce or eliminate probation to the court in domestic violence cases, and create a system for victims to report violations when offenders are unsupervised.

²⁹ Minn. Stat. § 611A.037.

³⁰ Continuances for dismissal are not convictions and therefore are not counted in this number.

In-custody cases and conditions of release

Monitors, prosecutors, probation officers, and advocates all raised concerns about how in-custody cases are handled, including probation revocations, and inconsistency among judges in explaining conditions of release, specifically domestic abuse no contact orders and firearms prohibitions.

In-custody cases

Monitors observed in-custody cases being handled without input from a prosecutor and/or probation officer. This is, in part, due to the structure of the suburban court calendars. Cities are assigned to specific day(s) of the week and prosecutors are often not available on the other days. If a defendant is in custody on a day the prosecutor is not scheduled to be in court, a judge's decision regarding bail and conditions of release may then be based on insufficient information and without the statutorily required input from the victim.³¹ Judges must require this information from all parties before making a decision. Likewise, prosecutors must be aware of the in-custody cases scheduled on the days they are not available and pass on relevant information to the court. When sufficient information is provided, it is imperative that judges review the material prior to the hearing.

Given the number of municipalities supported by each courthouse, restructuring of the suburban court calendar would be complicated. However, procedures need to be established to ensure that in domestic violence cases, a bail evaluation and input from the prosecutor, including whether the victim is requesting no contact, is provided to the judge prior to the hearing. A monitor observed that a prosecutor who could not be present for an in-custody case had provided a letter to the judge prior to the hearing. This is just one example of how prosecutors can communicate this critical information to the judge.

Better communication between advocates and probation, and advocates and prosecutors could also improve the likelihood that information reaches the judge on days the prosecutor is not in court.³² Additionally, suburban prosecutors should communicate amongst themselves to ensure the court receives the appropriate information from a prosecutor who cannot be in court. Considering the availability of email, text messaging, and video chat, this could be accomplished in a timely and efficient manner and further promotes the idea that offender accountability and victim safety is a shared responsibility. If information is not available, the judge must consider the safety implications and defendant's history and not make orders in the absence of prosecutors, probation officers, and victim advocates.

³¹ Minn. Stat. § 629.715, subd. 1(a).

³² Additional research is needed in order to determine how often judges are making decisions regarding bail and conditions of release without input from probation, prosecutors, or advocates.

Recommendations:

- ✓ Request and review information from both the prosecutor and, if applicable, the probation officer prior to ruling on in-custody cases.
- ✓ Ensure the court receives adequate information on in-custody cases that are scheduled for a day when the prosecutor is not present in court.

No contact orders

Monitors often noted that the judge did not explain the conditions of release, including no contact orders, to defendants. “The judge really sped through domestics, was not stern, did not inquire about the victim, facts or other safety issues, and did not detail no contact orders.” According to monitoring forms, one in every three defendants left the courtroom without a detailed description of the no contact order. While this is concerning, it is even more so when, as one monitor noted, “[t]he judge did not explain no contact orders in any case...even in cases that involved violations of a no contact order or an order for protection.”

Failing to explain these orders is a disservice to both defendants and victims. Violations of the order can result in the defendant’s re-arrest and additional criminal charges, and they can argue they did not understand its extent. With each violation, victim safety can be compromised if the defendant engages in ongoing abuse, harassment, or threats.

Monitors took note when judges did explain these orders and impress upon the defendants their seriousness. For example, one monitor wrote, “[t]he judge explained no contact orders well, making it clear that defendants needed to stay away from victims’ homes and work places. She explained that defendants could not use any type of electronics, including social networking sites, to contact victims and could not try to contact victims through third parties.” The appropriate language should also be used in judges’ explanations. Monitors noted two cases in which judges explained the orders, but concluded with “no smoke signals” and “no carrier pigeons,” statements that likely diminished the seriousness of their directives.

Occasionally, monitors observed judges calling victims forward to address the court regarding the no contact order. When issuing or modifying a no contact order, judges should not ask for the victim’s input in open court as it may put them at risk. As noted in *Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders*,³³ “any [victim] statements made in open court may be designed to protect or mollify the defendant.” Instead, it is preferable to call on the prosecutor and/or victim’s advocate for information pertaining to the victim’s safety needs and wishes.

When a domestic abuse no contact order is issued, judges should, in accordance with state law, complete a separate order, independent of any condition of pretrial release

³³ Long, Jennifer G. et al. “Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders.” Battered Women’s Justice Project, February 2010. http://www.bwjp.org/files/bwjp/articles/Judges_Model_Policy_No_Contact_Orders.pdf

or probation, and ensure that all parties receive a copy (including the victim advocate if the victim is not present).³⁴

Recommendations:

- ✓ Repeat conditions of release at each hearing and on the record, including the details of no contact orders.
- ✓ Refrain from asking victims to address the court about whether to issue or modify a no contact order.

Firearms prohibitions

Defendants convicted of a felony or a domestic violence misdemeanor and those subject to an order for protection are prohibited from possessing firearms under state³⁵ and federal law.³⁶ However, monitors recorded that judges discussed the firearms prohibitions in only 10% of these cases at the time of sentencing.



The judge read the defendant's history which included illegal possession of firearms and a number of domestic assaults. The defendant was charged with violation of an order for protection and the judge failed to mention the firearms prohibitions.

According to the Minnesota Coalition for Battered Women's 2010 Femicide Report, 60% of intimate partner homicides last year were committed using a firearm.³⁷ Failing to notify defendants of the firearms prohibitions and surrender requirements is a grave misstep that leaves them unaware of their legal obligation, and places victims at increased risk of escalating violence.

Recommendation:

- ✓ Explain firearms prohibitions and surrender requirements to defendants.

³⁴ Minn. Stat. § 629.75.

³⁵ Minn. Stat. § 609.2242, subd. 3, §518B.01, subd. 14.

³⁶ 18 U.S.C. §922(g)(8), 922(g)(9).

³⁷ Minnesota Coalition for Battered Women. "2010 Femicide Report." Minnesota Coalition for Battered Women, 2010. http://www.mcbw.org/files/images/2010_Femicide_Report_FINALpdf.pdf

IV. Courtroom Environment, Decorum and Safety

The unique structure of the suburban courts presents challenges for the courtroom environment and decorum. Each of the 44 municipalities holds court one to three days a week. In addition, as many as three different city prosecutors could be present in court on the same day, meeting with several defense attorneys, defendants, probation officers and victims. Domestic violence cases are heard alongside other petty misdemeanor, misdemeanor, and gross misdemeanor cases including traffic, driving while intoxicated, and theft. The seriousness of a repeat domestic violence offender in court for violating a no contact order is diminished when it is bookended by a defendant who is charged with stealing food from a grocery store. Domestic violence cases are scheduled on the 8:30 a.m. calendar, ahead of traffic and theft cases, but in practice cases are heard in the order they are ready.

Courtroom environment

Monitors raised several concerns regarding courtroom environment. Monitoring forms point to lengthy delays, loud and chaotic courtrooms, lack of privacy for both victims and defendants, and confusion about the process. Monitors documented that it was difficult or impossible to hear proceedings more than half of the time (54%), and disruptions occurred 32% of the time, ranging from a cell phone ringing to a defendant being held in contempt of court for being hostile towards the judge. This type of environment makes it difficult for victims, defendants, or family members attending court to hear and understand the proceedings, and gives the impression that court is not being taken seriously by those who are determining the outcome of cases.



The area in front of the gallery was very crowded when the judge was on the bench. Several people were conferring with the clerks, and several attorneys were talking, all at normal conversational levels. This created confusion when cases were being heard. The judge had a hard time getting the attention of the clerks and prosecutors at times.



Conversations between attorneys and defendants went on in various places in the courtroom. All of these conversations could be overheard by anyone in the vicinity. It was obvious very personal information was being discussed in a very public setting.

Monitors also expressed frustration at the few cases they heard on the record relative to the number of domestic violence cases scheduled. One volunteer noted, “out of 11 domestic assault cases on the calendar, only two were heard on the record.” Although domestic violence cases are scheduled for 8:30 a.m., the average start time was 9:30 a.m., and judges took on average more than one recess, and explained the reason to the gallery less than half the time. The average end time was 11:23 a.m. In summary, judges in the suburban courts spent on average one hour and 49 minutes of the four-hour morning session hearing cases. While it is difficult to determine the reason a case is not heard on

the record, spending such a limited time on the bench contributes to cases being resolved off the record or in chambers and to the perception of the gallery that cases are not being processed.



During a recess, a lot of attorneys are standing around waiting for the judge. A lot of them seem ready to go and appear impatient, commenting about the long wait and wondering aloud who is in chambers talking to the judge.

Monitors documented victims, witnesses, and family members waiting for long periods of time often with no information regarding when, or if, their case would be heard. This scenario overlooks that many of those waiting are missing work or paying for childcare and that victims may have to wait in close proximity to their abuser. Delays affect court staff as well. Regardless of court policy that states cases requiring an interpreter should be prioritized, interpreters were sometimes left to wait, and oftentimes for just one case. This is an inefficient use of vital resources.³⁸



Three women were in court, apparently family members of someone in custody. They came to court at 8:30 a.m., and at 9:30 a.m. the deputy asked why they were there. He politely told them that no one in custody would be heard until at least 11:30 a.m. They left for a while and then came back. The defendant was never seen on the morning calendar. One of the women said that they were told to come at 8:30 a.m.



The victim is present and waiting for an in-custody case to be called. She has been here since 8:30 a.m. I overheard an advocate telling her that the case might be heard this morning, but also may not be heard until the afternoon. She said there is no way to be sure. A few moments later, at 10:15 a.m., the victim left. She returned at 10:50 a.m. At 11:25 a.m. she was sleeping in the courtroom, still waiting.



An interpreter had been waiting a while and at 11:00 a.m., she commented to a prosecutor that her case was supposed to be heard first. He responded by saying everyone wants to be first. She replied it's her understanding that it does work that way. The interpreter told the clerk she can't wait any longer then spoke to the defendant in the gallery and left the court. The hearing was rescheduled.

While the examples above highlight areas in need of improvement, monitors also noted examples of when court ran efficiently and without disruption:



Overall, court went relatively smoothly. The gallery remained quiet, and the judge remained on the bench. The judge and clerks worked well together to maintain courtroom decorum, with the deputies occasionally stepping in to

³⁸ Hennepin County District Court is aware of this inefficiency and has begun installing interactive television in numerous court facilities to allow for remote access to interpreters.

explain the courtroom process.



The judge thanked everyone for waiting patiently and explained the need to allow a defendant in custody to be sentenced ahead of other defendants.

Following the start of the blocking system, monitors found that judges on average spent nearly 30% more time on the bench, and began commenting that they were observing more domestic violence cases being heard on the record. The environment and efficiency of the courtroom can be improved by increasing communication between the gallery and the court and the amount of time judges spend on the bench, and decreasing the amount of business that is conducted in the courtroom.

Courtroom decorum

Monitors' notes suggest that, in general, the judge's presence in the courtroom contributed to overall courtroom decorum. However, before court started in the morning and during long recesses, decorum of court personnel – including clerks, deputies, and attorneys – played an important role in creating a serious and orderly atmosphere.

Judicial demeanor

Overall, monitors had positive examples of judicial demeanor. With few exceptions, judges exhibited appropriate and professional behavior, were respectful towards victims and defendants, and demonstrated knowledge of domestic violence issues. Appropriate demeanor contributed positively to the overall environment of the courtroom and the behavior of others.



When attorneys were explaining rights and cases, the judge looked at defendants and made sure they were paying attention. He was very aware of defendants, and it was clear that he cared and was listening.



I heard the judge ask the clerk to wait before calling more cases because the sentencing forms for domestic assaults were outdated versions and did not include the firearms prohibition.



The judge required each city attorney to appear on the record and participate in the proceedings.

In a few instances, some judges displayed an apparent lack of understanding of domestic violence and insensitivity towards victims:



The judge didn't appear to understand the role of the advocate and twice asked what her position was regarding the no contact order. The advocate explained it was not her position to offer her opinion, and that she only relays to the court what the victim asks her to.



The defendant refused to speak to the court when the victim was in the courtroom. It was decided the victim would wait in chambers while the case was heard, even though she had been waiting for a couple hours and wanted to be present for the hearing.

In a particularly concerning instance, the judge spoke to the victim in open court, saying, "You yourself should be in counseling personally," and, "The incident on Sunday should never have happened, but you instigated it." While this type of response was isolated, it is important to acknowledge how damaging such comments can be to victims emotionally and how they can bolster the defendant's attitude and perspective. Victims are not under the jurisdiction of the court and should not be held responsible for the defendant's actions. Engaging in such victim-blaming behavior takes the responsibility away from the offender and reinforces his abusive behavior. The court's role is to hold the offender accountable and provide an opportunity for rehabilitation, not to repair the family or relationship.

Clerk demeanor

Clerks in the suburban courts play a significant role in communicating the court process to the gallery and maintaining efficiency. Monitors recorded instances where the clerks' behavior contributed to a more organized courtroom:



When the judge recessed, the clerk stood and announced clearly how to check in and how and where to apply for a public defender. After checking people in, the clerk said to the gallery, "You are all waiting to talk to the same prosecutor. He will move as quickly as possible, and your patience is appreciated."



The clerk was very efficient when checking people in. She made several announcements for defendants to check in, spoke loudly and clearly, and was pleasant and patient when talking to both attorneys and defendants. She explained the new blocking rules to attorneys and enforced them. She seemed to be paying close attention to what was happening in every case.



Both the clerk and the deputy worked well together to maintain an orderly courtroom. They maintained an awareness of the courtroom and who was present in the gallery. They directed defendants to next steps and explained the process, exhibiting a level of patience and respect in all their interactions.

At other times, monitors commented that clerks were "impatient" and "short in their responses." In one instance, the clerk left while the judge was still on the bench

without telling him if more cases were ready to be heard causing some confusion. With clear and consistent announcements and demonstrated patience, clerks are in a position to positively influence both the efficiency of the process and the courtroom environment. Monitors' comments also suggest that, given the amount of traffic in the suburban courts, having two clerks in the courtroom contributes to a more organized process.

Attorney demeanor

Monitors frequently commented on attorney demeanor, in part because a significant amount of business is conducted in the courtroom and can be seen and heard by the gallery. As previously noted, the suburban courts have a unique calendar arrangement that results in prosecutors from various cities occasionally handling cases simultaneously in one courtroom. Monitors observed that attorneys did not always act professionally and contributed to the perception that cases were not being taken seriously. Furthermore, attorneys often appeared distracted during their cases and, as a result, caused delays.



The prosecutor seemed unorganized and didn't appear to be familiar with his cases. He routinely requested time to review files and case facts.



A private defense attorney arrived at 10:25 a.m. By this time, the clerk had already spoken to the prosecutor about a continuance because the defendant couldn't reach her and wasn't sure she was coming.



The prosecutor was reading the news and doing a crossword on her computer and missed her case being called. The judge asked, "And for the state?" She stood for the case, then returned to the counsel table and completed her crossword and was checking Facebook.

Monitors also recorded instances of attorneys talking to one another about baseball games, vacations, and having other extended personal conversations, all within hearing range of the gallery. At times, conversations rose to a level that elicited a response from the judge to be quiet.

On a positive note, monitors also noticed prosecutors exhibiting sensitivity to domestic violence cases:



The prosecutor sat down with the victim seated behind me and told her all about the local advocacy center's services and how they can help. He told her that sometimes people think it's their fault and told her it's not her fault and that an advocate can help her to understand that.



The prosecutor made an offer to the defense attorney and when the defense attorney made a comment about the victim, the prosecutor responded, "We're not here to blame [the victim]...we're not talking about the victim's problems

today. We're talking about your client's."



A victim was present in court and asked to talk to the victim advocate, but she had not yet arrived. The prosecutor asked her to speak with him instead. When she agreed, he thanked her for coming in and said she needs to be safe and he doesn't know if she is safe with the defendant in the relationship.

Attorneys must be aware of their demeanor at all times when conducting business in the courtroom. Collegiality is acceptable as long as it does not affect the integrity of the court. Extended casual conversations and inappropriate comments give the impression to the gallery that handling cases is not a priority. On the other hand, expressing concern towards victims, connecting them to advocacy services, and considering their wishes can leave them with a more positive outlook on the criminal justice system, and may increase the likelihood they will seek its help in the future.

Recommendations:

- ✓ Make routine announcements to the gallery regarding process and safety, including how to check-in for court, how to apply for a public defender, and notification that no contact orders will be enforced.
- ✓ Increase the number of hearings heard on the record, especially in cases where conditions are modified and/or a no contact order is in effect.
- ✓ Increase the amount of time judges spend on the bench to minimize the perception from the gallery that the calendar is not moving and to promote transparency of the process.
- ✓ Turn off the microphones at the counsel tables to minimize noise resulting from business being conducted in the courtroom and improve the privacy of conversations. Attorneys should stand and use the podium microphone during proceedings.
- ✓ Improve check-in procedures and explore options that would reduce confusion and increase efficiency in the courtroom.
- ✓ When cases are ready to be called, prioritize domestic violence cases.

Safety and security

Each of the three suburban courthouses are within a Hennepin County Service Center; a public building that also houses a library, community meeting space, and county licensing offices. Safety and security is not only a concern for victims, but also for community members and county employees using the space on a daily basis. Failing to have security measures in place puts everyone at risk.

Courtroom safety was a concern highlighted in monitoring forms and emphasized by court personnel and advocates alike. It was the issue that everyone overwhelmingly agreed upon – the lack of weapons screening and other safety measures is unacceptable and contributes to a sense of unease in the suburban courts. Monitors' observations

frequently noted examples of safety and security being compromised in the suburban courts:



There should be a metal detector to screen everyone who enters the courtrooms. Some of the defendants were obviously angry and could pose a threat, despite the presence of deputies – that is when the deputies were in the courtroom. In sum, security was lacking, except for in-custody cases.



A defendant approached the clerk and was quite insistent that she do something for him, which she refused to do. She told him his attorney would have to take care of it. He became very incensed and she remained very assertive. I was concerned for her safety, and the deputy who had been sitting next to her was gone.



A defendant who had been told by the judge to wait in the jury box while more information was collected regarding possible new charges resulting from an alleged violation of a no contact order ran from the courtroom. The judge yelled “Hey stop!” and a deputy ran after him.

Monitors noted that deputies were only in the courtroom sporadically, and several minutes may go by without one present. In one instance, a judge had to ask court personnel to find a deputy after she took the bench and realized none was at hand. Advocates have told WATCH that both they and prosecutors at times feel unsafe and that deputies “are never close enough to stop anything” from happening in the courtroom or waiting areas.



The deputy was chewing tobacco and didn’t seem to be paying much attention to the gallery.



The deputies popped their heads in and out of the courtroom and were not present when the judge was on the bench. They did not address the rules of the courtroom – there were people talking, using cell phones, and sleeping.



The clerk spent nearly 15 minutes looking for a deputy so she could call the in-custody cases.

Victim safety should be a foremost concern. With the large number of people in and out of the courtrooms, and deputies who are inconsistently present, little comfort is provided to victims who must wait in the same gallery as the defendant. Monitors documented victims and defendants seated together in the courtroom, leaving the courtroom together, and in other cases advocates taking victims into private offices to avoid defendants. These scenarios demonstrate violations of the victim’s right to a

separate waiting area or other safeguards.³⁹ As one volunteer noted, “[t]he process in general is insensitive for victims choosing to attend court. They should either have a specific waiting area for victims or schedule them at accurate times to decrease the time victims have to be exposed to defendants.”

Violations of no contact orders are more likely to occur in situations where victims and defendants are waiting in the same area for long periods of time. Out of 315 responses to the question, “Were you aware of any violations of the no contact order in court or in the hallway?” monitors responded “yes” 32 times.⁴⁰ When documenting violations, monitors commented that often the judge or an attorney acknowledged the violation and reminded the parties that an order was in place, but in only one instance did a monitor observe a defendant being arrested for the violation. Violations in the courtroom occur in the presence of deputies, attorneys, and judges, and should be treated the same as if they were occurring elsewhere – as a crime.

One of the recommendations in the 2010 Hennepin County Fatality Review Annual Report is that legislative or policy-making organizations “[r]equire all law enforcement agencies to maintain a formal relationship with a domestic violence intervention agency to provide independent advocacy support and services to victims of domestic violence.”⁴¹ While most suburban municipalities have such a relationship with a community agency, not all of them do. This service gap is particularly concerning in the suburban courts where cities do not have victim/witness coordinators on staff to assist the victim through the court process. Law enforcement agencies should seek out and maintain this relationship, and prosecutors should communicate with the victim’s advocate as necessary. Victim safety would be enhanced by treating advocates as equal partners in the criminal court process.

The observations noted above show an environment that raises many concerns. Most notable is the lack of metal detectors or other weapons screening. Monitors, advocates, attorneys, and probation officers have expressed concern over the real possibility that an individual could carry a weapon into the courthouse undetected, particularly given the high volume of defendants, victims, attorneys and observers moving in and out of the courtrooms. Long wait times contribute to an air of agitation and impatience that increases as the day moves on.

³⁹ Minn. Stat. § 611A.034.

⁴⁰ Affirmative responses were not included in this count if the monitor was unable to positively identify the victim. Violations likely occurred that monitors were unable to record with certainty.

⁴¹ Fourth Judicial District Domestic Fatality Review Team. “A Matter of Life and Death.” Fourth Judicial District Domestic Fatality Review Team, 2010.

Recommendations:

- ✓ Use empty courtrooms as victim waiting areas or ensure that at least one deputy remains in the courtroom at all times.
- ✓ Install weapons screening at the entrance to each suburban courthouse.
- ✓ Provide signage and announce that no contact orders and orders for protection apply in the courtroom, and that violations are a criminal offense. Defendants should refrain from communicating with the victim and out-of-custody defendants should sit on the opposite side of the gallery.
- ✓ As a matter of policy, request the services of a domestic violence advocate throughout the court process.

V. Conclusion and Recommendations

Every stage of a domestic violence case in the justice system must be considered through the lens of victim and community safety and offender accountability. Former New York chief judge Judith S. Kaye wrote, “[i]f domestic violence defendants present a particular risk of future violence, then why not enhance monitoring efforts to deter such actions? If victims remain in abusive situations due to fear for their own and their children’s well being, then why not provide links to services and safety planning that may expand the choices available to them? If cases are slipping between the cracks of a fragmented criminal justice system, then why not work together to improve coordination and consistency?”⁴²

A coordinated response necessitates that each member of the justice system views domestic violence as a shared responsibility, and requires looking beyond one’s own cases or jurisdiction. Moreover, at a time when budgets are stretched thin, courts must find solutions that increase efficiency without sacrificing safety and accountability. WATCH is hopeful that the recommendations offered in this report will contribute to the positive steps already in place to improve the treatment of domestic violence cases in Hennepin County.

Recommendations:

As stated at the outset of this report, each municipality within Hennepin County should focus their attention to eliminating or significantly reducing domestic violence and create policies to that end. Current efforts would be enhanced by implementing the following:

- ✓ Update or create domestic violence prosecution plans according to state statute with the goals of incorporating best practices adopted in part from The Blueprint for Safety, and the recommendations outlined in this report. (See Appendix C for a sample.)
- ✓ Develop a multi-disciplinary domestic violence steering committee in the suburban courts to oversee how cases are handled and to monitor progress towards an improved response.

More specifically, the creation of a domestic violence steering committee would ensure the same consideration is given to the suburban courts as is given to Minneapolis’ DV court. Once established, WATCH urges the committee to consider the specific recommendations outlined throughout the report, and summarized below, as a starting point.

⁴² Judith S. Kaye and Susan K. Knipps. “Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach.” *Western State University Law Review* 27:3 (1999-2000).

Recommendations regarding case outcomes:

- ✓ Develop a process for responding to and enforcing violations of continuances for dismissal, including communicating with other prosecutors if a new case occurs within a different jurisdiction.
- ✓ Remove the financial incentive from continuances for dismissal for domestic violence cases through legislative changes.
- ✓ Request and review information from both the prosecutor and, if applicable, the probation officer prior to ruling on in-custody cases.
- ✓ Ensure the court receives adequate information on in-custody cases that are scheduled for a day when the prosecutor is not present in court.
- ✓ As a matter of policy, request the services of a domestic violence advocate throughout the court process.

Recommendations regarding probation:

- ✓ Require that PSIs be conducted in all domestic violence cases regardless of the convicted offense and allow probation officers more time to complete PSIs.
- ✓ Reduce or eliminate probation to the court in domestic violence cases, and create a system for victims to report violations when offenders are unsupervised.

Recommendations regarding judicial communications:

- ✓ Repeat conditions of release at each hearing and on the record, including the details of no contact orders.
- ✓ Refrain from asking victims to address the court about whether to issue or modify a no contact order.
- ✓ Explain firearms prohibitions and surrender requirements to defendants.

Recommendations regarding courtroom environment:

- ✓ Make routine announcements to the gallery regarding process and safety, including how to check-in for court, how to apply for a public defender, and notification that no contact orders will be enforced.
- ✓ Increase the number of hearings heard on the record, especially in cases where conditions are modified and/or a no contact order is in effect.
- ✓ Increase the amount of time judges spend on the bench to minimize the perception from the gallery that the calendar is not moving and to promote transparency of the process.
- ✓ Turn off the microphones at the counsel tables to minimize noise resulting from business being conducted in the courtroom and improve the privacy of conversations. Attorneys should stand and use the podium microphone during proceedings.
- ✓ Improve check-in procedures and explore options that would reduce confusion and increase efficiency in the courtroom.
- ✓ When cases are ready to be called, prioritize domestic violence cases.

- ✓ Use empty courtrooms as victim waiting areas or ensure that at least one deputy remains in the courtroom at all times.
- ✓ Install weapons screening at the entrance to each suburban courthouse.
- ✓ Provide signage and announce that no contact orders and orders for protection apply in the courtroom and that violations may result in new criminal charges.

APPENDIX A: CASES MONITORED PER CITY

Brookdale:

City	Population ¹	# of Cases Monitored (of 948 total)
Brooklyn Center	29,810	98
Brooklyn Park	75,306	107
Champlin	23,934	32
Corcoran	5,842	1
Crystal	22,014	35
Dayton	5,026	5
Greenfield	2,940	1
Hanover	579	0
Hassan	2,803	0
New Hope	20,718	37
Osseo	2,499	6
Robbinsdale	13,775	30
Rockford	361	0
Rogers	7,497	2
City unknown	n/a	14
TOTAL	213,104	368

Ridgedale:

City	Population	# of Cases Monitored (of 948 total)
Deephaven	3,814	0
Eden Prairie	62,536	54
Excelsior	2,360	12
Golden Valley	20,312	29
Greenwood	806	0
Hopkins	17,290	40
Independence	3,739	1
Long Lake	1,745	2
Loretto	609	0
Maple Grove	62,660	43
Maple Plain	1,932	0
Medicine Lake	382	0
Medina	5,026	4
Minnetonka	51,451	54
Mntka Beach	614	0
Minnetrista	6,296	1
Mound	9,787	19
Orono	7,980	3
Plymouth	71,930	57
Shorewood	7,618	1
Spring Park	1,868	6

¹ <http://www.mn2010census.org/resource.html?Id=19243>

APPENDIX A: CASES MONITORED PER CITY

St. Bonifacius	2,363	3
Tonka Bay	1,549	3
Wayzata	4,115	9
Woodland	503	0
City unknown	n/a	12
TOTAL	349,285	353

Southdale:

City	Population	# of Cases Monitored (of 948 total)
Airport (MAC)	n/a	3
Bloomington	84,701	127
Edina	49,491	11
Richfield	33,859	41
St. Louis Park	46,293	45
TOTAL	214,344	227

APPENDIX B: MONITORING FORMS

WATCH Monitoring Cover Sheet – Suburban Project

Please take a minute to complete this form and return it with your other forms to the WATCH office at:
608 2nd Ave S. • Northstar East • Suite 465 • Minneapolis, MN 55402
Phone: (612) 341-2747 • Fax: (612) 339-1171 • Email: khovde@watchmn.org

Your Name: _____

Date: _____

Court/Calendar Monitored (please circle all that apply):

SOUTHDAL

RIDGEDALE

BROOKDALE

Hours Spent Volunteering: _____

of DV cases heard on the record: _____

***Please count all hours you volunteer, including completing forms, debriefing, etc.**

Feedback, Comments & Recommendations

Use the space below and on the back of this page to comment on any aspect of the criminal justice system that was particularly interesting or troubling to you today. Include any suggestions you have for improvements and issues you would like to see WATCH investigate further. **Please be specific in identifying what behavior caught your attention and why, i.e. “The judge was reading the newspaper during the victim impact statement,” is preferable to “I found the judge insensitive to victims.”**

APPENDIX B: MONITORING FORMS

Thank you for your assistance in monitoring the proceedings at Hennepin County's suburban courts. When referring to specific cases ***please include the case number and/or defendant name*** so that we can follow up on individual cases.

Name of courthouse and room #: _____ Name of judge: _____

What time did you arrive at court? _____

Were there any announcements prior to the start of court? Yes No If yes, what was stated?

If the judge took a recess, was that recess explained to the gallery? Yes No If yes, what was stated?

*Please record each time the judge takes
the bench and when he/she leaves the
courtroom:

	Time on	Time off
1	:	:
2	:	:
3	:	:
4	:	:

Courtroom Staff:

Please provide information on the following personnel, noting such things as: arrival time, demeanor, interaction with other staff, efficiency, interaction with victims/defendants, etc. You do not need to limit yourself to these questions.

One judge: *Did the judge appear prepared? Did he/she cause a delay in proceedings? How was his/ her demeanor?*

One clerk: *Did the clerk call the calendar in an efficient manner? Were you able to hear her/him?*

Name (if known):

City attorney(s): *Were they prepared? Did they cause a delay in proceedings?*

Name(s) (if known):

Defense attorneys: *Were they prepared? Did they cause a delay in proceedings?*

Names (if known):

Victim advocates: *Were advocates present and checking in with victims when they arrived?*

Names (if known or name of advocacy organization represented by advocate):

APPENDIX B: MONITORING FORMS

Sheriff's deputy: *Was the deputy in control of the courtroom? Was anyone asked to leave? If so was it handled respectfully?*

Names (if known):

Probation officer(s): *Did probation have a presence in the courtroom? Were they asked to provide information regarding cases?*

Name(s) (if known):

Appearance Information:

Do you feel no contact orders were adequately described? Yes No If no, please explain.

If there were any sentencings, did the judge speak in a manner and tone that expressed the seriousness of the offense?
Yes No If no, please explain.

Was the firearm statute discussed at sentencing? Yes No

Did any of these cases involve strangulation? Yes No If yes, please list the defendant's name(s).

Were there any interpreters in court today? Yes No If yes, what language(s) was/were spoken?

Were there any issues or problems related to the interpretation that you would like to comment on?
(we understand that you may not speak the language in question)

Courtroom Decorum:

Were you able to adequately hear the proceedings? Yes No Sometimes Please explain if needed.

Were there any disruptions in court today? Yes No If yes, explain how they were handled.

Were you aware of any violations of the no contact order in court or in the hallway? Yes No
If yes, please explain what happened and how it was handled.

Did you feel the participants understood the process? Yes No If no, explain.

Is there anything else you would like to mention? Use cover sheet if needed.

APPENDIX B: MONITORING FORMS

Domestic Violence Case Form – Suburban Project

Case Information

Defendant name: _____ Case number: _____

Charge: _____ Prosecuting city: _____

Scheduled Start Time: _____ Actual Start Time: _____

What was the relationship between the defendant and the victim? _____

Was this appearance a: ☐ ARRAIGNMENT ☐ PRE-TRIAL ☐ PROBATION VIOLATION ☐ SENTENCING ☐ OTHER _____

Was the defendant in or out of custody *at the beginning of the hearing*? ☐ IN CUSTODY ☐ OUT OF CUSTODY ☐ CAN'T TELL

What was the defendant's gender? _____

What was the defendant's apparent race/ethnicity: ☐ AFRICAN ☐ AFRICAN-AMERICAN/BLACK ☐ ASIAN/PACIFIC ISLANDER*
☐ CAUCASIAN ☐ HISPANIC/LATINO ☐ NATIVE AMERICAN
☐ MIDDLE EASTERN/ARAB ☐ CAN'T TELL ☐ OTHER (PLEASE DESCRIBE)

What, if any, information was given about the victim? _____

Was the case heard on the record? ☐ YES ☐ NO If no, how did you receive information about the case? _____

Hearing Information

What statements did the prosecutor make? _____

What statements did the defense attorney/defendant make? ☐ PRO SE _____

Did the judge order bail? ☐ YES ☐ NO If yes, how much and what were the reasons? (check conditions below) _____

If it was a sentencing, what was the sentence? _____

Conditions included (check all that apply):

☐ **No contact** with victim and victim's family ☐ **Stay away** from victim's residence and work ☐ No same or similar **offense** ☐ No same or similar **charges** ☐ No alcohol or drug use ☐ Random urine analysis or breathalyzer ☐ Complete domestic abuse counseling/treatment ☐ Complete chemical abuse counseling/treatment ☐ Complete anger management program ☐ Complete sex offender treatment ☐ Register as a sex offender ☐ Supervised probation ☐ Provide a DNA sample ☐ No firearms ☐ Remain law abiding

☐ Pay restitution \$ _____, \$ _____ was stayed for _____ months

☐ Other: _____

When is the next appearance scheduled? _____

Your Notes and Questions *use back if necessary

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DOMESTIC ABUSE PROSECUTION PLAN

I. DEFINITIONS:

- A. "Domestic Abuse" (Minn. Stat. § 518.01, Subd. 2) means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.345, or 609.3451; terroristic threats pursuant to 609.713, Subd. 1; or interference with an emergency call, under 609.78, Subd. 2., committed against a family or household member by a family or household member. "Family or household member" is defined as spouse, former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, a man and woman if the woman is pregnant and the man is alleged to be the father, persons who have a child in common, or persons involved in a significant romantic or sexual relationship.

"Domestic abuse" as used in this plan includes assaults, violations of orders for protection and violations of restraining orders. Similar related charges including, but not limited to, criminal damage to property, disorderly conduct, harassing phone calls, false imprisonment, violation of a domestic abuse no contact order, harassment/stalking, harassment restraining order violations, terroristic threats, burglary and trespassing, which result from a domestic situation should be handled with the same considerations. The victim may be male or female or transgender. The defendant may be male or female or transgender. The sexual relationship may be homosexual or heterosexual. The parties may be legally married, separated, single or divorced, cohabitants, relatives or those in a dating relationship.

- B. "Advocate" as used in this plan refers to any victim-witness assistant within a prosecutor's office, domestic abuse intervention advocate, battered women's shelter advocate, community advocacy group, or other community representative assisting victims. At the time of the implementation of this policy, "advocate" usually refers to persons acting on behalf of "[name of partner advocacy agency]," the domestic abuse intervention project on behalf of the City of [insert city name]. In the alternative, "advocate" may refer to the victim services liaison at the [insert city name] City Attorney's Office.

II. DOMESTIC ABUSE PROSECUTION GOALS

The primary goal of prosecuting domestic abuse cases is to hold abusers accountable for their acts by conviction and appropriate punishment. Treatment and other interventions may also be considered including batterer's intervention programming. The following is a list of additional goals for domestic abuse prosecution:

- A. Protecting victims of domestic abuse from future violence, threats, and harassment by their abusers.
- B. Deterring abusers from committing violent acts against other persons, including children or family members or other members of the public.
- C. Increasing the accessibility to the criminal justice system and services for victims of domestic violence; improving coordination between the criminal justice system and victim services.

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- D. Creating a general deterrence to domestic violence in the community.
- E. To hold the abuser accountable for violent criminal conduct.
- F. Enhancing the response of the criminal justice system to domestic violence cases.

III. BASIC PROSECUTION POLICIES

- A. Prosecutors will make charging decisions in domestic abuse cases as quickly as possible, given available resources. In general, domestic abuse cases will be handled expeditiously and continuances avoided absent unusual circumstances. Prosecutors shall determine whether the suspect's case could be enhanced to a felony based on prior convictions, terroristic threats, or strangulation, and shall refer the case to the Hennepin County Attorney's Office for review when appropriate. Prosecutors shall review all police reports for gone on arrival cases involving domestics within 24 hours of receipt from the police department if possible.
- B. Prosecutors will maintain contact with victims personally or through advocates in a professional and supportive manner consistent with other responsibilities and available resources.
- C. Prosecutors will work with advocates and other agencies to sustain victim cooperation and involvement through the prosecution process.
- D. Prosecutors will consider the use of evidence of defendant's guilt other than the victim's trial testimony, including photographs, medical records, admissible hearsay, jail phone calls, written or taped statements, excited utterances, prior relationship evidence under Minn. Stat. § 634.20, Spreigl evidence, defendant admissions, 911 calls, video, on scene audio recordings, and testimony from witnesses other than the victim.
- E. Prosecutors will attempt to fashion dispositions that balance protection for the victim, available corrections and prosecution resources, the community's need for just and sure punishment, offender accountability, and the victim's wishes regarding sentencing.
- F. Prosecutors will seek to develop and maintain ties with shelters, advocates, the police, probation, and other criminal justice agencies in order to improve the prosecution of domestic abuse cases.
- G. Prosecutors will attempt to protect the confidentiality of victim contact information where deemed appropriate on a case by case basis. Prosecutors may support the redaction of such information including addresses, phone numbers, or email addresses, by filing a motion for confidentiality, notifying opposing counsel of the redaction and the opportunity to schedule a motion, and/or filing a prosecutor certificate on a case by case basis. The prosecution office shall attempt to ensure that information needing to be kept confidential is redacted from reports prior to disclosure. The prosecutors may assume that prior phone numbers and addresses were known to the suspect depending on the relationship and facts in the reports. Prosecutors will make appropriate referrals to stalking resources for victims and to the safe at home program.
- H. Prosecutors will keep current on caselaw and laws pertaining to domestic abuse cases, including forfeiture by wrongdoing, Crawford and Spreigl analysis. Prosecutors should also be generally

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familiar with the information in the 2010 Quick Reference Guide and commonly used statutes and laws regarding issues of domestic violence.

IV. DOMESTIC ASSAULT PROCEDURES

- A. **Charging/Declining Cases.** In deciding whether to decline a case, prosecutors will assess not only the willingness or availability of the victim to testify but also other evidence. Where the victim is unwilling to testify, the prosecutor will consider other evidence to determine whether such evidence is sufficient to prove the case beyond a reasonable doubt. The evidence may include police officer testimony, medical records, other crime scene evidence, excited utterances by the victim or witnesses, injuries, statements by the defendant, statements of other witnesses, photographs, jail phone calls, written or taped statements, prior relationship evidence under Minn. Stat. § 634.20, Spriegel evidence, 911 calls, on scene audio recordings and video.

A determination of whether to proceed with the case will be made on a case-by-case basis. The prosecutor recognizes that there can be pressures on the victim to request that charges not be brought or dismissed; generally if a domestic abuse can be proved, a charge will be issued. If there is a decision not to prosecute, the prosecutor shall make reasonable efforts to notify the victim promptly pursuant to Minn. Stat. 611A.0315. Generally, victim initials should be used in the complaint.

- B. **No Contact Orders.** Victims will be informed of their right to request a No Contact Order. When circumstances prevent the prosecutor from learning the victim's wishes in this regard prior to the defendant's first appearance, a No Contact Order will generally be requested by the prosecutor. Absent unusual circumstances, the prosecutor should not agree to ask the Court to lift a No Contact Order without an in person appearance by the victim; the advocate should be suggested as the appropriate person to speak on the victim's behalf at such a hearing pursuant to best practices. Even if the victim personally appears and requests that the no contact order be lifted, the prosecutor shall consider the circumstances of the offense, the relationship between the parties, risk assessment factors, and/or the offender's history in determining whether to oppose the lifting of a no contact order. The prosecutor may object to lifting the no contact order even if this goes against the wishes of the victim. The prosecutor may seek to obtain a modified no contact order to permit visitation, phone or email contact only, or whatever other limitations deemed appropriate based on the above circumstances. Restriction of internet use or contact should also be considered.

Victims will also be informed by the advocate and/or City Attorney's Office of their right to seek a civil Order for Protection.

- C. **Right to a Speedy Trial.** Although the defendant has an absolute right to demand a speedy trial, the victim also has a right to request that the prosecutor make a demand for a trial within 60 days. Minn. Stat. § 611A.033, Subd. 1.
- D. **Subpoenas.** In the usual case, victims will not be subpoenaed to appear at pretrial hearings. This will minimize problems such as finding and/or paying for daycare, transportation, missing days of work, etc. Victims and witnesses will be subpoenaed for trial and other times at which their appearance is necessary. The prosecutor and/or advocate will explain to the victim that she/he is

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not responsible for the prosecution but is a subpoenaed witness like any other in a prosecution brought not by the victim but by the state.

When a victim fails to respond to a validly served subpoena, the prosecutor will, after consultation with the advocate, if any, determine the appropriateness of taking further action to compel the victim's appearance in Court. That determination will be made on a case by case basis. Punitive measures taken against a victim may result in diminishing the victim's safety and increasing the offender's control. If deemed appropriate, a welfare check may be requested on the victim by the appropriate law enforcement jurisdiction.

E. **Victim Recantation, Refusal to Testify, Disappearance.** Any time a recantation, refusal or disappearance occurs, the assigned prosecutor will make an assessment of the case, in consultation with the advocate (if any) and the victim (if available), to determine the feasibility and merits of proceeding with the prosecution with or without the victim. In assessing the merits of proceeding with a case when a victim recants or refuses to testify, the assigned prosecutor will consider:

- 1) The likelihood that the defendant will reoffend;
- 2) The likelihood of future injury to the victim;
- 3) The victim's wishes, including the reasons for the recantation, refusal or disappearance;
- 4) The victim's credibility, including the credibility of any recantations, in the light of all other evidence in the case;
- 5) The defendant's criminal history;
- 6) The seriousness of the charges and the victim's injuries;
- 7) Whether the victim, however reluctant, is likely to testify truthfully if compelled by subpoena;
- 8) The feasibility of proving the case without the victim or with impeachment of an uncooperative victim using evidence-based prosecution.

No one factor or set of factors mandates continued prosecution in these circumstances. Some cases require prosecution regardless of the victim's position. The ultimate decision can only be made on a case by case basis. The prosecutor should consider use of evidence of the victim's statements at trial under forfeiture by wrongdoing if the facts demonstrate forfeiture of Defendant's right to cross-examine based on behavior. By relying on an evidence-based prosecution model rather than solely on victim testimony, the prosecutor may be able to reduce the risk of retaliation by the suspect against the victim and increase the likelihood of a successful prosecution. While the possibility of continuances for dismissal should not be ruled out, their use in domestic cases is discouraged based on the lack of supervision or monitoring for offenders, and lack of any conviction or recording of a guilty plea.

F. **Dismissals.** Whenever possible, the prosecutor will consult with the advocate, if any, and the involved police personnel prior to making the decision to dismiss domestic abuse charges. When a prosecutor does dismiss a domestic abuse case, a record should be made of the specific reasons for the dismissal. If dismissal is due to the unavailability of the victim, the specific reason for the unavailability will be indicated if known.

G. **Harassment of Victim.** The City Attorney's office will attempt to advise the victim that any harassment of the victim or other witnesses by the defense should be promptly reported to the

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police and the prosecutor in the pending case. Similarly, information about violation of domestic abuse no contact orders shall be reported to the police and prosecutor and considered for additional charges. The prosecutor should also consider issuing a violation of conditional release summons or warrant based on this information, and should consider referral for additional charges.

- H. **Plea Negotiations.** Victims will be told of plea agreements under consideration by the prosecutor for resolving cases. Prosecutors will attempt to obtain victim input in all domestic abuse cases. In determining an appropriate disposition of the case, the prosecutor will take into consideration the victim's stated preferences with regard to disposition, the seriousness of the defendant's conduct, the extent of the victim's injuries, any possible mitigating circumstances, relationship between the parties, background and criminal record of accused, attitude and mental state of accused, vulnerability of victim, deterrent value of prosecution, possession of weapons, access to weapons, threats, harassment/stalking of victim, the credibility of witnesses, the defendant's prior history, and the likelihood of success at trial. The ultimate decision of whether to enter into a plea negotiation or set a case for trial is made by the prosecutor. The fact that a victim requests dismissal is not dispositive and the State is free to pursue charges or require a plea to an offense despite such a request given the unique dynamics of domestic violence cases. The presence of a child during the assault may also be used and considered as an aggravating factor by the prosecutor for negotiations. Prosecutors should carefully evaluate any self-defense claims and be familiar with commonly inflicted defensive injuries. Prosecutors should also be familiar with the police department's predominant physical aggressor policy and prosecute cases considering those factors. Protocols should discourage the routine use of deferred prosecution and continuances for dismissal. These types of disposition do not promote offender accountability and generally do not include monitoring of the offender for compliance with court orders. Further, they fail to identify repeat offenders resulting in a lost opportunity for deterrence through application of increasingly severe sanctions.
- I. **Trial.** Separation of Witnesses. Every effort will be made during trial to keep the domestic assault victim in a safe area separate from the defendant and his/her family and friends while waiting to testify. Also, efforts should be made to introduce as much evidence of the assault as possible through other sources to minimize the victim's role if possible on a case by case basis. Prosecutors should consider use of school liaison officers to facilitate attendance of child witnesses.
- J. **Sentencing.** The prosecutor's office will be responsible for advising the victim of his or her rights under Chapter 611A regarding sentencing, including restitution, the right to make a victim impact statement, the right to be present and to speak at sentencing, and the right to notice of final disposition. Whenever the victim is working with an advocate, the advocate will be encouraged to attend the sentencing especially if the victim is not present. Prior to sentencing, the prosecutor shall request the required presentence investigation pursuant to Minn. Stat. § 609.2244. The prosecutor should present any victim impact statement information as requested by the victim at sentencing. Victims should be encouraged to complete victim impact statements and allowed to have their input known to the court.
- K. **Probationary Violations.** Generally, the prosecutor will request additional jail time whenever a domestic abuse probationary violation related to victim safety occurs. The prosecutor may choose to refer to the Domestic Violence Probation Violation Guidelines prepared by Hennepin

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County District Court Domestic Violence Judges in 2005. Whenever a domestic assault defendant placed on probation violates conditions related to the victim's actual safety (e.g. assault or violation of an Order for Protection or No Contact Order,) or related to the victim's potential safety (e.g. failure to complete treatment or dismissal from treatment), an attempt will be made to notify the victim regarding potential dispositions. When the prosecutor's office has not received sufficient notice of the alleged violation to make contact with the victim, a continuance may be requested. Generally speaking, probation violations should be sought to be addressed prior to resolution of the new case if possible.

- L. **Law Enforcement Investigation and Training.** Law enforcement in domestic assault cases will be instructed to identify, gather and preserve evidence that will enhance the ability to prosecute. This includes:

- 1) documentation of physical evidence of a victim's injuries (including photographs, medical records, written descriptions and detailed observations);
- 2) other crime scene evidence;
- 3) interviewing the victim about the assault, prior assaults, existing or past Orders for Protection or other court order (audio or video recorded if possible);
- 4) interviewing the suspect (audio or video recorded if possible);
- 5) interviewing all other witnesses;
- 6) notation of any excited utterances made by the victim and eyewitnesses (including 911 calls);
- 7) statements made for purpose of medical diagnosis or treatment;
- 8) collection of other crime (634.20/Spreigl) evidence even if no charges resulted from the prior act; and
- 9) video or other audio.

When resources allow, the prosecutor's office will cooperate with local law enforcement agencies in preparing and participating in law enforcement training on domestic assault as requested by those agencies.

A copy of this domestic abuse prosecution plan will be provided to all law enforcement agencies within the prosecutor's jurisdiction.

- M. **Domestic Abuse Victims – Miscellaneous Contact.** Occasionally, a victim will come into contact with the City Attorney's Office or criminal justice system through another role – for example, as a witness to another case or as a defendant to another type of charge. When the prosecutor is made aware of someone's status as a victim of domestic abuse or stalking, even if the State is in an adverse role to that person, the prosecutor should attempt to discretely ensure that the victim has access to resources and assistance as deemed appropriate, including safety planning, community based advocates, stalking resource center, information about obtaining restraining orders or orders for protection, etc.
- N. **Implementation and Review.** This Domestic Abuse Plan will be reviewed annually by the City Attorney's Office in order to evaluate whether it is meeting its goals and whether revisions are needed.