

Best Practices in the Criminal Justice Response to Domestic Violence and Sexual Assault: Guidance for CCR/SART Response Protocols

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This project was supported by Grant No. 2011-WR-AX0022 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, finding, conclusions, and recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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Introduction: Developing CCR/SART Response Protocols

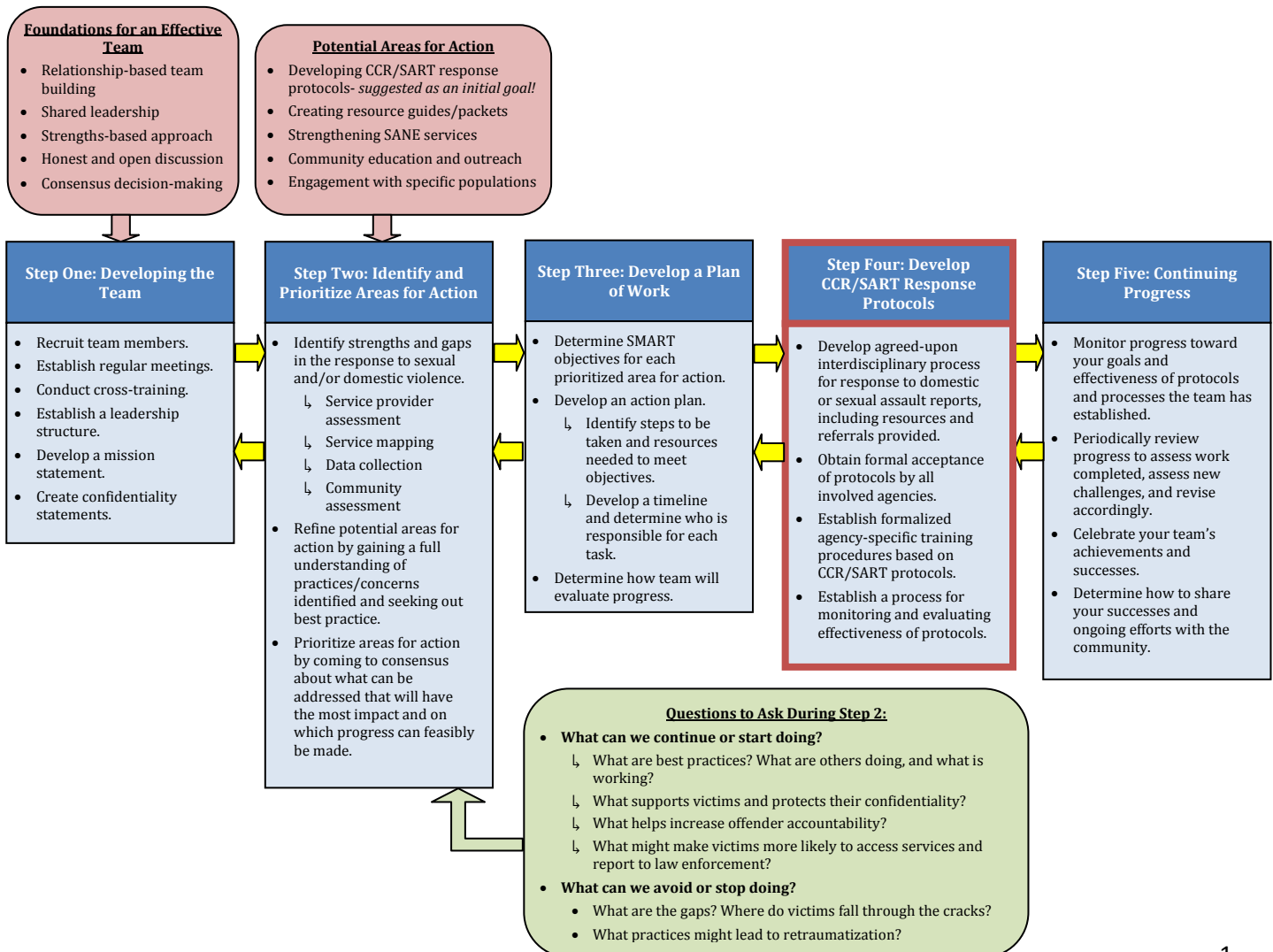
What are CCR/SART response protocols?

CCR/SART response protocols are a set of agreed upon procedures for various agencies responding to domestic or sexual violence in your community. The protocols that your team will develop will outline an effective approach for meeting victims' needs and holding offenders accountable. Moreover, they will address the most efficient manner for agencies to collaborate with one another. In the process of writing protocols, teams will not only evaluate current procedures, but they will also identify and incorporate best practices.

"It is very helpful to have protocols to ensure agencies know and understand their roles with survivors. It has helped our community better respond to assaults and other needs of survivors, and given the medical professionals and law enforcement agencies a clear understanding of what our role as advocate is and how it can be beneficial to them."

-Watauga County DART/SART

According to both research and experience, developing response protocols is one of the most essential tasks of a CCR/SART. Protocols can help teams create multiple access points and reduce gaps in services. Protocols can also enhance a victim-centered response, which can reduce trauma for victims, increase reporting, yield better evidence collection, and improve victim cooperation in cases.



The process of establishing protocols is most likely to be successful when approached as a step in a careful, strategic CCR/SART development process, as depicted in the flowchart on the previous page. The effective implementation of a CCR/SART is outlined in detail in the resource, ***“Enhancing Local Collaboration in the Criminal Justice Response to Domestic Violence and Sexual Assault: A CCR/SART Development Toolkit”***. In addition to helping teams establish a strong foundation, the CCR/SART Development Toolkit also outlines in detail the following process for developing protocols:

1. Review other CCR/SART response protocols.
2. Determine the scope of your protocol.
3. Establish a timeline.
4. Review current local policies.
5. Review best practices.
6. Discuss collaborative response procedures.
7. Adapt or develop protocols.
8. Obtain team member approval.

“Best Practices in the Criminal Justice Response to Domestic Violence and Sexual Assault: Guidance for CCR/SART Response Protocols” is intended as an accompanying resource to the larger CCR/SART Development Toolkit. It serves as a guide for teams to use as they review best practices during Step Five in the protocol development process.

This toolkit primarily emphasizes the roles of core responders and service providers coordinating efforts within the criminal justice system. CCR/SARTs often include a number of additional service providers coordinating short- and long-term victim services, such as housing, mental health, long-term health care, job placement, and childcare. Some CCR/SARTs choose to outline the roles of these service providers in their protocols as well.

We strongly encourage teams, no matter how long they have been in existence, to review the CCR/SART Development Toolkit and to consider the strategies offered for laying a strong foundation and for establishing a successful protocol. Much of the information found here is expanded on in greater detail throughout the CCR/SART Development Toolkit.

Response protocols for dual teams

Dual teams (teams addressing both sexual assault and domestic violence) should choose which set of protocols they want to develop first. Although many of the responders addressing domestic and sexual violence are similar, the procedures, evidence, and court processes are very different. Even the needs of victims can vary significantly between a sexual assault case and a domestic violence case.

Protocol development is a lot of work and can be extremely time-consuming. After creating the protocol, CCR/SARTs should go through a process of acceptance by the relevant member agencies, as well as establishing a review process that allows the team to assess the adherence to and effectiveness of the protocol. After completing this process for their first set of protocols, it will be important for CCR/SARTs to honestly assess whether they have the capacity to develop the second set. They should either set a timeline to do so or transition their CCR/SART to a single focus team so that other stakeholders in the community can form a separate team to adequately address the other issue.

What might CCR/SART response protocols include?

CCR/SART response protocols vary drastically from team to team. They differ in length and scope. The main purpose of having a protocol is to address the overall system that responds to domestic or sexual violence. Establishing a shared understanding of individual agency roles, their collaborative work, and the overall functionality of the system is fundamental. Elements that are often included in CCR/SART response protocols include:

- CCR/SART mission statement
- Response and referral procedures
- Disclaimer about flexibility
- Guidelines for confidentiality and maintaining privilege
- Training recommendations for new staff
- Relevant information and resources

In addition to specific elements that should be included in CCR/SART response protocols, there are also important principles that teams may want to consider addressing and including throughout their protocol.

Principles of the most effective approach to domestic violence and sexual assault cases

The following principles are paramount to the most effective approach to domestic violence and sexual assault cases. When responders are guided by these principles, investigations tend to yield more evidence and are more likely to keep the victim engaged throughout the court process. Sexual assault and domestic violence cases are strengthened when responders' approach is:

Trauma-informed

Victims of domestic and sexual violence experience significant trauma, which impacts their behavior following an assault as well as their interaction with responders. In order to effectively investigate cases of sexual and domestic violence, investigative and response strategies must be informed by an understanding of the neurobiological, emotional, and physical impacts of trauma on victims.

Offender-focused

Responders need to convey to victims and offenders that domestic violence and sexual assault are crimes that will be pursued through the criminal justice system. Offender accountability is the responsibility of the inter-agency system, not the victim. Investigations should be focused on gathering information from and about suspects, rather than focusing on proving credibility of victims before pursuing leads.

Victim-centered

A victim-centered response means recognizing and prioritizing the needs and rights of victims whenever possible. It considers not only victim safety, but also victim self-agency. In addition to better treatment of victims, a victim-centered approach also has implications for criminal justice outcomes. Victims are significantly more likely to remain engaged with the criminal justice system, including testifying if and when necessary, when their needs and rights are prioritized.

Commitment to "Start by believing"

The most effective way to ensure that our criminal justice system is holding offenders accountable is to start from a position of belief. Victims of sexual and domestic violence often experience immediate suspicion as to the validity of their report and how they may have contributed to their own victimization. If

a victim feels that they are being interrogated and will not be believed, it is likely that they will not disclose all of the relevant information out of fear for their own safety and security.

Inclusion of specific populations

Response to sexual and domestic violence on military bases, Indian reservations, campuses, or prisons requires additional stakeholders and various additional procedures. When communities include or are adjacent to any of these institutions, CCR/SARTs often choose to add a specific section to their response protocols outlining the particular requirements and best practices in these cases.

In addition, teams must ensure that they are incorporating the needs of *all* victims in their communities. Your team should take time to consider whether the procedures outlined by your protocols are relevant and accessible to traditionally underserved communities and whether responding agencies need further resources and/or training in order to provide effective services.

When ensuring that your response protocols adequately address the needs of all victims, your team may want to consider the following specific communities:

- People of color
- People who are LGBTQ-identified
- People with disabilities
- People who are elderly
- People with limited English abilities
- People who are undocumented
- Immigrants
- Refugee groups

Ask representatives from agencies working with specific communities to review your protocols, and ask if any additional steps or considerations are needed to effectively serve victims from these communities.

Reviewing best practices for incorporation in your CCR/SART response protocols

As indicated in the above process for protocol development, it is important to review best practices in order to ensure that the procedures outlined in your protocols are most likely to achieve your desired criminal justice outcomes. Across the country, communities have documented particular practices that have helped them gather and retain more evidence, conduct victim interviews that produce more reliable information, build and prosecute stronger cases, and better support victims. The following sections outline some of these best practices for your team to consider for sexual assault response protocols and domestic violence response protocols. Every community is different, so feasibility and implementation of these practices will vary. Ensure that agencies and responders in your community are ready, willing and have the capacity to follow best practice procedures prior to including them in your response protocols. Gaining buy-in will make it more likely that the protocols your team develops will actually be implemented. Determine which best practice changes can be incorporated now, and make a note of other practices that you can work toward including in the future, once you have built buy-in and readiness.

For more information about these and other best practices, see the following resources:

- North Carolina Coalition Against Domestic Violence, www.nccadv.org
- North Carolina Coalition Against Sexual Assault, www.nccasa.org
- Ending Violence Against Women International, www.evawintl.org
- Battered Women's Justice Project, www.bwjp.org
- National Network to End Domestic Violence, www.nnedv.org
- Praxis International, www.praxisinternational.org
- AEquitas, www.aequitasresource.org

Sexual Assault Response Protocols: Best Practices

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The following practices have been identified as promising strategies most likely to lead to desired criminal justice outcomes in sexual assault cases. These practices can help responders to sexual violence gather and retain more evidence, conduct victim interviews that produce more reliable information, build and prosecute stronger cases, and better support victims. Every community is different, so ensure that agencies and responders in your community are ready, willing and have the capacity to follow best practice procedures prior to including them in your response protocols. You can adapt the following practices as needed to fit the specific systems and agencies in your community.

Sexual assault advocates

For the purposes of this toolkit, the role of “sexual assault advocates” refers to advocates working at rape crisis centers and sexual assault agencies. Other advocates housed within law enforcement agencies, District Attorneys’ Offices, and other organizations can play an invaluable role in cases of sexual assault. However, advocates from sexual assault agencies should always be included, regardless of the involvement of other supportive persons. Advocates from sexual assault agencies are uniquely positioned to provide confidential and comprehensive supportive services that are extremely important.

Support and resources

Victims of sexual assault should be provided the option of advocacy accompaniment prior to, during, and after all medical and legal proceedings, as well as throughout the healing process. A primary role of the advocate is to listen and to provide support, information, and resources to victims. Advocates inform victims of the importance of seeking medical care, immediate evidence collection, and early reporting to law enforcement. Advocates assist victims in gaining the necessary confidence and information to make their own decisions about how and when to move forward with any of these steps, without judgment or blame. In addition to the counseling and support group resources offered by the Rape Crisis Center, advocates should assist victims to access resources including Crime Victims Compensation, child care, food assistance, transportation, and safe shelter. Advocates *do not* participate in the gathering of evidence or fact-finding during the investigation of the assault and should never give legal advice.

Hospital accompaniment

Local Rape Crisis Centers should offer hospital advocacy accompaniment for victims 24 hours/day. The advocate should report to the hospital and wait for hospital staff to get informed consent from the victim prior to receiving any identifying information or introducing themselves to the patient. During the forensic medical examination, advocates provide support and can get snacks, drinks, blankets, and other comfort measures (as permitted by the examination process and with agreement of the medical forensic examiner). Advocates should not interrupt the examiner’s process (especially during the medical forensic history) and should never assist in collecting evidence. Advocates should never share information that the victim has disclosed to them privately.

Advocate accompaniment during interviews and court proceedings

Advocates are also available to accompany victims during law enforcement and prosecutor interviews and court proceedings. In both interviews and court proceedings, the advocate's role is to be a source of support and comfort. Advocates should not interrupt a law enforcement/prosecutor interview, and they should never share information during interviews that the victim has disclosed to them privately.

Victims' rights

A primary role of the advocate is to ensure that victims' rights are being respected at all times. All SART members ensure that victims' rights requirements are being met, but the victim advocate has a particular mandate to do so. Advocates ensure that the victim's perspective is being considered to the extent possible and that victims understand all options afforded to them under law. Advocates facilitate communication about the victim's perspective and are tasked with representing the victims' rights and wishes to other responders throughout each case.

Communication

Advocates, as the responders who most likely interact with the victim most closely and consistently, can facilitate communication with the victim throughout the case. Advocates must understand the criminal justice process and facilitate communication to the victim, by providing information concerning investigation and prosecution, explaining to victims how the process will work, helping victims get information about their cases, and helping victims to get information about their cases. Advocates facilitate communication to responders, by sharing information (as permitted by a release of information) about the victim's perspective and wishes. Using the unique, consistent role of the advocate to help facilitate communication can help to keep victims engaged in and informed about the criminal justice proceedings.

Confidentiality

Sexual assault agencies that receive funding pursuant to the Violence Against Women Act (VAWA), Family Violence Prevention and Services Act (FVPSA), and/or Victims of Crime Act (VOCA) must follow federal confidentiality requirements. Advocates must also be cautious about what information they share in order to protect advocate privilege. Advocate privilege as outlined in the NC General Statute N.C.G.S. § 8-53.12, *Communications with agents of rape crisis centers and domestic violence programs privileged*, details the circumstances under which information obtained from the victim should be kept confidential. It explains that communications between the agency and victim are privileged unless the victim waives this right or the judge determines that an exception should apply.

In order to adhere to these requirements and to maintain the trust and safety of victims, advocates should not share any information about a client (including whether or not they are receiving services from the Rape Crisis Center) without a release of information signed by the victim. Releases of information should be specific about what information can be released and to whom it can be released. Even with a release of information, advocates should be cautious about the information they share and should seek the guidance of their local District Attorney's Office in determining how to best protect advocate privilege.

Law enforcement

Start by Believing¹

Sexual assault victims are often reluctant to report their assault, particularly to law enforcement, in part because they fear that they will not be believed. If a victim feels that they are being interrogated and not taken seriously, it is likely that they will not disclose all of the relevant information out of fear for their own safety and security, weakening the investigation. The most effective way to ensure that our criminal justice system is holding offenders accountable is to start from a position of belief. For criminal justice professionals, “start by believing” does not mean ignoring the facts. In a sexual assault case, often the only way for investigators to get all of the facts is to establish rapport and trust with the victim. Officers should take accounts of sexual assault seriously, without judgment or any suggestion that the victim has in any way “brought the crime on themselves”. After a thorough investigation has occurred, case determinations can be made according to the evidence.

Initial statement

Immediately following an assault, officers should collect only a brief description of the assault from the victim. Officers must conduct this initial interview to establish elements of the crime, identify and locate any possible suspects, and begin the investigation. Due to the impact of acute trauma on a victim’s ability to recall events and communicate information, they should not attempt to glean extensive details regarding an assault from a victim immediately following a traumatic event. However, if a victim is providing details, officers should not stop them from talking. It is important to listen and document what the victim says (verbatim as much as possible).

In-depth interview

The investigating officer should wait at least two full sleep cycles after the incident prior to conducting an in-depth interview. The victim’s account of the event will be more complete and accurate after two full sleep cycles than immediately following the event. If possible, the officer should provide the victim the opportunity to exercise control by asking them where and when they prefer to do the interview. The victim’s preference should be accommodated, when possible and within reason. The victim should be made as comfortable as possible during the interview, and a sexual assault advocate should be offered. An advocate is preferable to another support person, as an untrained support person, family member, or friend may be distracting, uncomfortable, or intimidating for the victim. Polygraphs should *never* be used when interviewing victims.

Sexual Assault Evidence Collection Kit chain of custody

If the victim reports to the hospital for a forensic medical examination, a medical professional at the hospital will collect a Sexual Assault Evidence Collection Kit. Once the examination is complete, the medical professional will place all evidence in the Kit and seal it with the tape provided. If the victim has chosen to report the assault to law enforcement, the medical professional will sign the chain of evidence form and turn the Kit over to a law enforcement officer. Evidence should be locked in the Evidence Room until it is delivered to the State Crime Lab. Only evidence collection kits containing blood or urine must be refrigerated.

¹Learn more about the “Start By Believing” campaign, launched by Ending Violence Against Women International, at www.startbybelieving.org.

Victims have the right to have evidence collected at the hospital but not to immediately report to law enforcement if they are not ready to make that decision. This federally mandated policy is called “Anonymous Reporting”, and it allows evidence to be collected and preserved in cases where the victim is not immediately ready to speak with an officer. In Anonymous Reporting cases, the hospital will package the Kit in a pre-addressed package with no identifying information visible. The hospital will contact a law enforcement agency to pick up and ship the package to LESS. The medical professional will sign the package over to the officer to maintain chain of custody, and the officer will immediately send the unopened package to LESS C.O.D. If the post office is not open when law enforcement collects the package from the hospital, law enforcement will store the Kit in the Evidence Room until the post office opens. An MOU should be established with the local hospital and rape crisis program concerning Anonymous Reporting procedures. (Please contact NCCASA, www.nccasa.org for more information and assistance on Anonymous Reporting procedures.)

Evidence collection

Officers should collect and preserve the following evidence and any other evidence that may be relevant to investigation or prosecution:

- *Victim body:* If the assault has occurred within 120 hours, encourage the victim to go to the hospital to have a forensic medical examination conducted. If the victim declines a forensic medical examination, request permission to collect all clothing the victim was wearing at the time of the assault and any clothing the victim has changed into since the assault. Ask if photographs can be taken of any bruises, scratches, or other signs of trauma. (Be sensitive about taking any photographs of injuries concealed by clothing.)
- *Suspect body:* When a suspect is identified, conduct or arrange for a forensic examination of the suspect as needed. Suspect examinations can be court-ordered or done with the consent of the suspect. If evidence will be collected from the suspect, it should be done as soon as possible to avoid evidence degradation. If the suspect examination is conducted at the hospital, it should never be conducted by the same examiner who examined the victim.
- *Location of assault:* Search for and collect the following evidence and any other evidence that may be relevant to investigation or prosecution: photographs of the area; latent fingerprint lifts; any articles possibly handled or left by the suspect; foreign items such as buttons, hair, and pieces of torn clothing; any evidence which suggests force; any items the victim or suspect used to clean with after the assault; surfaces where the sexual assault occurred; stains (using an alternative lighting source); if a drug-induced assault is indicated, drugs, beverage containers, or other paraphernalia that may have transmitted a drug to the victim.
- *Secondary locations:* Collect evidence from any secondary location where the suspect took the victim or where the victim went after the assault (including vehicles).
- *Witnesses:* Obtain the names, addresses, work and home/cell numbers of potential witnesses. Obtain statements from witnesses as soon as possible.
- *911 tapes:* Obtain any relevant 911 tapes that were made prior to the assault (in the case of intimate partner sexual assault), at the time of the assault, or following the assault.
- *Electronic evidence:* Collect evidence from cell phones or computers, such as a record of phone calls made, voicemails, text messages, or messages sent over social media sites, such as Facebook or Twitter. If you cannot collect the victim’s phone, take pictures of any relevant records or messages.

Writing report and other documentation

When writing the report or any other documentation, officers should not use language that implies consensual sex when describing sexual assault. Terms such as “had sex”, “sexual intercourse”, “oral sex”, “performed vaginal/anal/oral sex”, etc should be avoided. It is preferable to use objective language to describe specific body parts and actions, such as “he penetrated her vagina with his penis”.

Coordination with prosecutors

Investigating officers should be in communication with prosecutors throughout the investigation, and especially when making charging decisions. Law enforcement should contact prosecutors soon after the initial report is made, and they should keep them informed of any new evidence or additional charges.

Coordination with sexual assault advocates

Law enforcement should provide all victims with contact information for the local rape crisis center. Offer and encourage use of an advocate during interviews and the forensic medical examination. During an investigation and the court process, officers can keep the advocate assigned to the case informed of any updates or developments. This allows the advocate to facilitate communication with the victim.

Hospital

ESI (Emergency Severity Index) Level 2 prioritization

Sexual assault patients should be triaged as ESI level 2, and special efforts should be made to ensure their privacy and confidentiality. These patients are a high priority and should be treated as emergent cases. Extended waiting times may further traumatize the patient and compromise the collection of evidence needed for successful prosecution.

Private waiting area

Providing privacy and confidentiality for a sexual assault patient is extremely important. The patient should be escorted to a private waiting room or a private examination room as soon as possible after they arrive at the Emergency Department.

Contacting a sexual assault advocate

Medical professionals should immediately contact a sexual assault advocate as soon as they are informed that the patient is present in the health care facility or en route. The advocate should be alerted to the presence of a sexual assault patient but should not be provided any identifying information about the patient. Consent should be obtained from the patient *after* the advocate arrives at the facility. This process is important, because patients are significantly more likely to accept advocacy support services if the advocate is already present at the facility. This process maintains compliance with the HIPAA Privacy Rule: *“With respect to disclosures to victim advocacy*

*organizations, the HIPAA Privacy Rule permits hospitals and other health care providers to alert a victim advocacy organization to the presence of a victim of sexual assault at the hospital without giving any identifying information about the victim. Further, once the advocate is at the hospital, if the victim is informed in advance and agrees or does not object, or the hospital reasonably infers from the circumstances, based on professional judgment, that the victim does not object, then the Privacy Rule permits hospital staff to introduce the advocate to the victim and share information pertinent to the advocate's involvement in the victim's care."*² If the patient declines advocate accompaniment, ensure that they receive contact information for the local Rape Crisis Center.

Options for treatment and evidence collection

Law enforcement should *not* automatically be contacted in all cases of sexual assault. Medical providers should discuss with the patient the following options and the pros and cons of each: 1) medical treatment and evidence collection with law enforcement notification, 2) medical treatment and Anonymous Reporting evidence collection (no law enforcement notification), or 3) medical treatment only (no evidence collection or law enforcement notification). This information should be provided without judgment and in a language the patient understands. The patient has the right to choose any of these options, unless they are younger than 18 years of age or if other mandatory reporting requirements apply. Law enforcement should only be contacted with the patient's permission after they have been fully informed of all treatment, evidence collection, and law enforcement notification options.

Informed consent

Written consent must be obtained from the patient before beginning the medical forensic examination, unless conditions warrant immediate medical care for life threatening conditions. Separate consents should be obtained for the forensic medical examination, evidence collection, digital photography, and advocacy accompaniment. (For sample informed consent forms, please contact NCCASA, www.nccasa.org.) Patient consent forms related to evidence collection are included in the Sexual Assault Evidence Collection Kit and must be completed prior to collecting evidence. The patient has the right to decline any portion of the forensic medical examination or evidence collection at any point in the process.

Evidence collection and chain of custody

If the assault has occurred within the past 120 hours and with patient consent, identify, document, collect, and preserve forensic evidence during the medical forensic examination, using the Sexual Assault Evidence Collection Kit. Once the examination is complete, place all evidence in the Kit (except for clothing bags and other large items), and seal it with the tape provided.

If the victim has chosen to report the assault to law enforcement, contact the appropriate law enforcement agency (if they are not already present at the hospital), sign the chain of evidence form, and turn the Kit over to the responding officer. Inform the officer if the Kit needs to be refrigerated (contains blood or urine) or if the Kit contains clothing or anything else requiring further drying.

² Department of Justice, Office of Violence Against Women. (2013). A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents: 2nd edition.

In Anonymous Reporting cases, package the Kit in the designated Anonymous Reporting package with no identifying information visible. Contact the appropriate law enforcement agency, and sign the package over to the officer to maintain chain of custody. An MOU should be established with the local law enforcement agency and rape crisis program concerning Anonymous Reporting procedures. (Please contact NCCASA, www.nccasa.org for more information and assistance.)

Emergency contraception

A pregnancy test should be administered for all patients of childbearing age at the time of the medical forensic examination. If the patient is not currently pregnant, discuss the option of emergency contraception (EC). EC is most effective when taken as soon as possible after the sexual assault and therefore should be provided on site at the hospital. Inform patients of side effects and consider administering an anti-emetic secondary to medication-induced nausea. Advise patients not to have unprotected intercourse until after their next period or after a negative pregnancy test a week after the administration of EC.

STI/HIV risk evaluation and prophylaxis

Examiners should not routinely conduct STI/HIV testing immediately after sexual assaults, unless clinically indicated, because testing at the time of the assault will not indicate new infections. Gonorrhea, trichomoniasis, chlamydia, and bacterial vaginosis are the most frequently diagnosed infections among women who have been sexually assaulted. Medical professionals should offer STI prophylaxis and counsel patients regarding the possible side effects and the importance of abstinence from sexual intercourse until STI prophylactic treatment is completed.

The medical professional should assess any available information concerning characteristics of the assault and HIV risk behaviors of the *suspect(s)* in assessing the patient's risk of HIV transmission, according to CDC guidelines³. If the patient presents within 72 hours of possible exposure and is considered high-risk for HIV transmission, offer HIV nPEP (non-occupational Post-Exposure Prophylaxis) as soon as possible and counsel patients regarding potential side effects and the critical importance of strict compliance with the treatment. An initial three to seven day supply of medication should be provided with a prescription. The hospital should establish relationships with local Health Departments and make appropriate referrals, especially for patients who cannot afford the expensive medications.

Rape Victim Assistance Program and Crime Victims' Compensation Program

According to the federal Violence Against Women Act (VAWA), medical providers cannot bill sexual assault patients or their insurance for the collection of forensic evidence. The Rape Victims Assistance Program (RVAP), which is administered by the North Carolina Department of Public Safety, provides up to \$800.00 in reimbursement directly to health care facilities for the collection of forensic evidence. Patients can apply to Crime Victims Compensation to reimburse them for additional medical costs (and other expenses) incurred as a result of the assault. Patients must report their assault to law enforcement within 72 hours of when the crime occurred in order to be eligible to apply for these funds, and they can be eligible regardless of their decision to have a Sexual Assault Evidence Collection Kit collected. Inform the patient of this additional reimbursement option.

³ <http://aidsinfo.nih.gov/contentfiles/nonoccupationalexposuregl.pdf>

Testifying in court

At times, medical professionals who conducted medical forensic examinations are subpoenaed to testify at a trial. Medical professionals who are not SANE-certified can only testify to the objective facts of what they saw or heard during the medical forensic examination. SANE-certified nurses can also offer an expert opinion as to whether injuries are consistent with sexual assault and the patient's account. Medical providers, regardless of SANE certification, cannot make a conclusive determination as to whether a sexual assault occurred.

Prosecutors

Coordination with law enforcement

Prosecutors should be in communication with investigating officers throughout the investigation, regarding collecting evidence, the taking of witness statements, case development, arrests, and charging decisions. Prosecutors are compelled to decline to file a charge if there does not exist a reasonable likelihood of conviction, regardless of whether the prosecutor assesses the victim's claim to be truthful. In consultation with law enforcement prior to arrest, prosecutors can provide guidance as to any additional evidence necessary in order for them to file charges and successfully prosecute a case.

Coordination with sexual assault advocates

Advocates can accompany victims during prosecutor interviews and court proceedings as a source of support. They can help clarify issues and ensure the victim's understanding during and after meetings and hearings. The District Attorney's Office can coordinate with advocates to facilitate necessary communication, consultation, and notification of victims throughout the court process. Advocates can also assist prosecutors to build trust and gain greater participation from victims throughout the case. It should be noted and explained to the victim that while Victim Witness Legal Assistants (VWLAs) in the District Attorney's Office are a valuable resource and should be utilized, they do not have a confidential relationship with the victim. Therefore, coordinating with victim advocates from the local Rape Crisis Center in addition to VWLAs is vital.

Communication with victims

If charges are filed, the District Attorney's Office should schedule a meeting with the victim for the prosecutor to introduce themselves and conduct an interview. Prosecutors should inform the victim of charges, information about the preliminary hearing, and victim rights information. They should explain court proceedings and the victim's potential role during court proceedings. During this meeting, the victim should be given an opportunity to ask questions and express their wishes regarding trial involvement and case outcomes. Prosecutors strive to listen to victims, fully answer any questions, address concerns, and make the best possible decisions about how to proceed.

Pre-trial preparation

If a case is going to trial, the prosecutor should meet with the victim in order to explain the stages of the trial and to prepare them for all aspects of the trial, including testifying and cross-examination.

If needed, the District Attorney's Office should ensure that appropriate interpreting services are available for victims (and other witnesses) as necessary.

Prosecutors should also meet with other witnesses, such as SANEs or another medical professionals who conducted the forensic medical examination prior to trial. Expert witnesses should be utilized to explain the dynamics of sexual assault and any findings (or lack thereof) of the forensic medical examination, such as SANEs and sexual assault experts/advocates. Advocates providing direct services to the victim involved in a particular case should not be called as expert witnesses.

Victim safety

The District Attorney's Office should seek to ensure the victim's safety throughout the criminal justice process, both in and outside of the courtroom. If possible, they should provide a waiting area for the victim during court proceedings that is separate from that of the defendant, the defendant's relatives or friends, and any defense witnesses.

Prosecutors should seek protection and no-contact orders as conditions of bail or own recognizance release, and they should pursue to the fullest extent of the law any defendants who directly or indirectly harass, threaten, or attempt to intimidate or retaliate against victims or other witnesses.

Victim consultation

Prosecutors must exercise prosecutorial discretion in representing the state and seeking justice. The ultimate decision of how the case will proceed rests solely at the discretion of the District Attorney, but input from the victim is an important component when making those decisions. Prosecutors should consult with the victim in advance of the trial, and to the extent possible, prior to making decisions concerning reduction of charges, negotiated pleas, dismissal, or other disposition. When possible, prosecutors should offer advocates an explanation regarding their charging decisions, to help advocates better support the victim and facilitate their understanding.

Victim impact statements

At their discretion, prosecutors should communicate to the court the views of the victim on bail decisions, plea bargains, dismissals, sentencing, and restitution. Victims should be informed of their right to make an impact statement and to attend and be heard at the sentencing hearing.

Victim notification

It is important for the District Attorney's Office to keep victims notified about developments in the case and the date, time, and location for any critical hearings or stages of the proceedings. If victims choose not to attend the sentencing hearing, they should be notified about the sentence imposed. Victims should also be notified about: bond modifications and pre-trial release, post-trial filings and hearings, and the North Carolina Statewide Automated Victim Assistance and Notification system (N.C. SAVAN).

Domestic Violence Response Protocols: Best Practices

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Domestic violence best practices for the four main responders have been outlined below. This guideline can offer teams support in better serving victims and holding offenders accountable during protocol development. Some practices may be new to your community, while many others may have already been incorporated into your overall inter-agency process. Your team should assess if and when to include them, which ones to focus on, and how to best adapt them. Increased coordination among agencies and system-wide adoption of best practices can lead to streamlined referral systems, improved charging and prosecution, lower recidivism rates, and greater victim safety.

Every individual that interacts with the victim and offender needs to convey the message that acts of domestic violence are unacceptable and that consequences for committing such crimes will be pursued through the criminal justice system. This counters what abusers have told victims about not being believed or supported, while also putting the onus of offender accountability on the system. Rather than being discouraged when victims choose not to participate in the criminal justice process, responders should acknowledge the multiple complex reasons that contribute to that decision. Building trust and support over time can lead to an increased willingness of victims to disclose details of the abuse, participate in prosecution, and seek assistance in the future. Each interaction with victims is an opportunity to build relationships, make referrals, and enforce offender accountability.

“Offenders need to know that the system is coordinated, the players speak to each other, and they cannot successfully play one against the other. Most importantly, batterers have to see that the violence, coercion, and intimidation are the focus of the state’s intervention, and not the victim’s behavior. In this specific respect, there is no neutrality available to law enforcement officers, prosecutors, or judges; every message either challenges an abuser’s sense of entitlement or reinforces it.”

-The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes, 2010, p. 8.

Domestic violence advocates

For the purposes of this toolkit, the term “advocate” refers to advocates working within domestic violence agencies. Other advocates housed within law enforcement agencies, District Attorneys’ Offices, and other organizations can play an invaluable role in cases of domestic violence. However, advocates from domestic violence agencies should always be included, regardless of the involvement of other supportive persons. Advocates from domestic violence agencies are uniquely positioned to provide confidential and comprehensive supportive services that are extremely important.

Support and resources

The main role of advocates is to provide support and resources to victims. They inform them of their right to pursue criminal charges, request a protective order, and apply for victim's compensation. Advocates also relay the limitations of confidentiality as well as the requirements of mandatory reporting. By helping them to file police reports, referring them to legal counsel, and accompanying them to court proceedings, advocates offer valuable support and guidance to victims navigating the legal system. In addition, advocates assist or make referrals to victims to meet their immediate needs and/or obtain long-term services (for example, shelter, safety planning, counseling, food, child care, and transportation).

Advocacy is not a means for telling victims what to do or making judgments. Working from an empowerment model, advocates assist victims in gaining the necessary confidence and information to use the system to their benefit, while recognizing its limitations. Through a process of identifying needs, desired outcomes, and barriers, victims can better strategize and make decisions for confronting their particular situation.

Coordination with prosecutors and court officials

Coordination among advocates, prosecutors, and court officials can help to build victims' trust, create a space for victim agency, and ultimately produce stronger cases. As the victim's confidante, advocates often have access to information that has not been disclosed to other responders. However, they should never disclose evidence or victim's statements without written, informed consent by the victim. Moreover, advocates' direct connection to the victim can facilitate victims' attendance in court and their overall satisfaction with court proceedings. Advocates serve a vital role in court, but it is imperative that they never give legal advice or act as lawyers.

Coordination with law enforcement

Working with law enforcement can strengthen the victim referral system and ultimately contribute to victim safety and empowerment. Many jurisdictions have adopted a process in which the officer asks the victim on the scene if they would like to talk to an advocate. If the victim consents, then the officer calls the domestic violence agency's 24-hour hotline and puts the victim on the phone. This immediate connection to an advocate increases the likeliness that victims will seek help. Another less-ideal method is for departments to provide domestic violence agencies with victim information and have the advocates reach out to the victim. Law enforcement does not have to consider confidentiality in doing so, but the advocate needs to receive victim's consent to talk to law enforcement at a future date. Advocates need to be mindful of victim safety by calling from a blocked number and asking for them by name without identifying that the call is coming from a domestic violence agency. They also need to be respectful of victim's wishes if they choose to not engage. At the very least, it should be protocol that every officer gives the victim information regarding their options including their ability to file protective orders, the specifics about release and court dates, and the number to the domestic violence agency.

Confidentiality

Domestic violence agencies that receive funding pursuant to the Violence Against Women Act (VAWA), Family Violence Prevention and Services Act (FVPSA), and/or Victims of Crime Act (VOCA) must follow federal confidentiality requirements.

Keeping confidentiality is necessary under these requirements, but it is also critical to the relationship advocates build with victims. In fact, it is so pivotal that the law recognizes that there is a need to ensure and protect that trust. Advocate privilege as outlined in the NC General Statute N.C.G.S. § 8-53.12, *Communications with agents of rape crisis centers and domestic violence programs privileged*, details the circumstances under which information obtained from the victim should be kept confidential. It explains that communications between the agency and victim are privileged unless the victim waives this right or the judge determines that an exception should apply. Therefore, it is extremely important for advocates to keep information shared by victims confidential unless they receive their consent and to assert privilege when asked for the information to be disclosed.

Victim's rights

Among the advocate's responsibilities is ensuring that victims' rights requirements are being consistently followed. This is a task taken on by all CCR team members; however, advocates have a particular mandate to do so. Part of an advocate's duties is facilitating communication among responders and victims as a means of creating victim agency and ensuring that the perspective of victims is being considered whenever possible. Furthermore, advocates make certain that victims understand all options afforded to them under law.

Law enforcement

Communication with victims and offenders

Intolerance for domestic violence should be (and can be) adopted throughout the police and sheriff's departments. Officers can convey to abusers and victims through their attitude, language, and behavior that acts of domestic violence are illegal and punishable by law. They should never treat the abuse as a personal or relationship issue that continues because the victim tolerates it. Telling victims that they need to leave or that they need to stop calling law enforcement if they are going to stay is a form of victim blaming. It is counterproductive and dangerous. Moreover, it puts the responsibility on the victim, rather than the perpetrator and the criminal justice response system.

Responders to domestic violence are often discouraged by what seems to be a never ending cycle of violence; however that frustration should be directed at creating a system that holds the offender accountable and supports the victim. Part of doing that has to do with the language we use to describe a victim's role in domestic violence. Statements such as "the victim refuses to cooperate" contributes to victim-blaming in that it implies that the victim is complicit in the crime and doesn't want to change their situation. Revising it to "the victim has chosen to not participate" recognizes the complexity of the victim's situation. Moreover, it should never be stated that the victim has "dropped the charges." Not only is this statement inaccurate since only prosecutors can "drop charges," but it implies that proceeding with the case is solely under the victim's control. It leads to responders relying on victim participation, rather than building a case on multiple sources of evidence. It also empowers offenders to use intimidation, threats, and manipulation to hamper victim's participation and avoid criminal consequences.

Coordination with advocates

Coordination between law enforcement and advocates can facilitate relationship building with victims and ultimately lead to increased victim safety and stronger outcomes in prosecution. In particular, collaboration can strengthen the victim referral system. Advocates can also assist in identifying additional evidence as they often see injuries, and their progression, and are privy to victim statements. Evidence may be disclosed to advocates to support current allegations as well as subsequent crimes. If advocates receive victims' consent, they can share this additional information with law enforcement or accompany victims to see law enforcement.

Coordination with prosecutors

The role of law enforcement in the prosecution outcome is paramount. They are not only responsible for providing prosecutors with all the evidence necessary to build a case, they are also deciding on the initial charges to pursue. Law enforcement is also privy to evidence that can contribute to additional charges after the initial incident. They should quickly and consistently report any new evidence to prosecutors and inform them of charges on additional crimes, including violations.

Victim safety

Some jurisdictions use risk and/or lethality assessments as a tool for determining victim safety. The data collected can be used by prosecutors, judges, and magistrates in considering appropriate pre-trial release conditions for offenders. It can also be employed by advocates to discuss victims' safety options. Responders should recognize that assessing risk is an ongoing process since it can change over time. Police officers can contribute to victim safety by providing victims with information that allows them to assess all their options. In addition to connecting them with an advocate, officers should inform victims of their right to be present at first appearance and to discuss pre-trial release conditions with the prosecutor. They could also provide victims with the number to the local jail in order for them to determine when the offender will be released as well as information about the North Carolina Statewide Automated Victim Assistance and Notification system (N.C. SAVAN).

Interviewing the victim and offender

When at the scene or interviewing victims, law enforcement should recognize that there is no one way for victims to react. Fear, anger, confusion, and shock are among the many complex emotions victims express, and none of them are more valid than the other. Coercion and threats from the abuser may also hamper their ability to give details about the incident in that retaliation could be a real threat. Officers can minimize some of the intimidation by separating the victim and offender. Interviewing the parties separately conveys the message that the issue is between the officers and the offender since a crime has been committed. Officers should not place the victim in a situation where they have to confront the offender. Law enforcement should never disclose the victim's account of events to the abuser and should be vigilant in keeping their personal information confidential, including the victim's address.

Dual arrest

Every effort possible should be made to determine the primary aggressor. Injuries on both parties does not mean that they are both to blame or that they are both offenders. Officers need to examine the scene fully, look for self-defense injuries, interview all parties and witnesses, and establish if

there is a pattern of violence. Not only are dual arrests counter to offender accountability and victim safety, but they are also very difficult cases to prosecute.

Probable cause

If law enforcement determines that they have probable cause that a domestic violence crime has occurred, they should proceed with charging regardless of whether the victim wants the offender arrested. Moreover, the investigation of a crime needs to be carried out as thoroughly as possible in order to not rely on victim participation.

Law enforcement needs to carefully examine the evidence to decide on whether crimes committed are misdemeanors or felonies. It is especially important to interview victims thoroughly and conduct further investigation in cases involving strangulation, stalking, or sexual assault. Police involvement should not end after the initial investigation. Officers should follow up with victims to receive updates on symptoms, take follow-up photos, and/or obtain additional evidence as needed. Officers should not ask victims to hold on to or bring to court evidence, but rather should collect all evidence immediately, including electronic evidence such as emails, text messages, and voicemails.

Citizen-initiated charges

In North Carolina, individuals can go to the magistrate's office to ask that charges be taken out on their behalf. This law can lead to devastating consequences in domestic violence cases. It often encourages law enforcement to not thoroughly investigate for probable cause, but rather inform the victim that they can go ask the magistrate's office to take out charges. This leads to weak cases with little evidence and no police report, resulting in cases often being dismissed in court. It reiterates the abuser's claim that no one will believe or support the victim, and makes criminal acts a dispute between two individuals, rather than a concern of the criminal justice system. Law enforcement should determine probable cause, rather than putting the responsibility on the victim.

Witness tampering

Abusers almost always use threats, intimidation, promises to change, and pleas to attempt to keep victims from testifying and participating in the prosecution. Jail calls and letters often provide evidence of witness tampering, while sometimes abusers use third parties to assist them in communicating their message. These attempts constitute the crime of interfering with a state witness, regardless of whether the abuser threatened the victim or simply asked the victim to not come to court or "drop the charges". This contact is considered interfering with a state witness irrespective of whether the defendant is successful in their attempts. Law enforcement should not overlook evidence of interference with a witness, but rather charge the defendant to send the clear message that witness tampering will not be tolerated and that it is the state prosecuting the defendant, not the victim. In addition to charging the defendant with interference with a state witness, law enforcement should evaluate whether the interference was also a violation of any existing court order, such as pre-trial release conditions or civil restraining orders. If the defendant violated a pre-trial release condition, their original bond can be revoked and replaced with a higher bond. If the defendant violated a civil restraining order by contacting the victim, law enforcement should also charge the defendant with the violation. A strong response to interference with witnesses is crucial to protecting victims from further harassment by the abuser and to send the clear message to the abuser that they will suffer more, not fewer, consequences by engaging in witness tampering.

Prosecutors

Communication with victims

Statements made by victims provide context on specific incidences and charges as well as on any pattern of abuse. Additional evidence that supports the police report may be disclosed during interviews. It is also a time in which prosecutors can ask about new symptoms or bruises, further acts of violence, or contact made by abusers. Information can lead to further charges or a change in charges from misdemeanors to felonies. Prosecutors should make sure that victims are informed of pre-trial release conditions, reporting procedures for violations, and court dates, while also answering any questions they may have about the case and its possible outcomes. Prosecutors should consider inviting advocates to be present during the interview, since it offers victims support and leads to further collaboration between prosecutors and advocates. Prosecutors should also be familiar with NC Crime Victims Rights Act requirements, including but not limited to victims' rights to confer with the prosecutor about the disposition of the case and to provide a victim impact statement.

Coordination with advocates

Advocates support victims throughout the process. As a result, they are often privy to information that cannot be found in the police report or that has occurred after the incident. Having a close working relationship with advocates can assist prosecutors in building trust with victims and gaining greater participation from victims during the case. It can also facilitate the collection of additional evidence since victims often disclose valuable information to advocates. Due to confidentiality requirements, the advocate must obtain the victim's permission before sharing this evidence with the prosecutor. When possible, prosecutors should offer advocates an explanation regarding their charging decision. This will foster greater understanding of one another's roles.

Coordination with law enforcement

Working closely with law enforcement improves the evidence collection process and consequently the outcome of cases. Before dismissing cases, prosecutors should communicate with investigators the need for further evidence. If further evidence is not possible, prosecutors should give them an explanation for their decision to dismiss the case.

Pre-trial release conditions

When recommending pre-trial release conditions, prosecutors need to consider multiple factors including history of violence, seriousness of injuries, victim safety, and offender accountability. In North Carolina under N.C.G.S. 15A-534.1, it is mandatory that prosecutors present criminal background information to court officials for consideration in setting pre-trial release conditions. However, the more sources of information available, the more fitting the conditions will be. Valuable knowledge can be gained from risk assessments performed on the scene, evidence provided by the investigator, statements made by victims, and feedback from advocates (given only with victim's consent). When possible, prosecutors should ask victims for their input regarding pre-trial release conditions, including no contact orders and safety concerns. Prosecutors should encourage the magistrates, judges and clerks in their district to utilize the Administrative Office of the Courts form AOC-CR-630 for use in setting specific, detailed pre-trial release conditions in cases of domestic violence. It can be found at: <http://www.nccourts.org/Forms/Documents/1081.pdf>.

Evidence-based prosecution

Both the Crawford case in 2004 and the Davis case in 2006 make it clear that prosecutors need to build a case on multiple sources and pursue the prosecution of charges whenever possible regardless of a victim's choice to not participate in the prosecution. Much can transpire between the time of the incident and the court date. A victim's decision whether or not to participate is based on multiple factors, including fear and intimidation. Prosecutors should not issue a show cause against a victim who chooses to not comply with a subpoena or charge them with filing a false police report when they choose to recant. Doing so, revictimizes them and defeats the greater purpose of creating safety and building their trust in the system. Moreover, most often prosecutors and law enforcement don't actually believe that the victim filed a false police report, but rather recognize that they recanted. Therefore, it would be unethical to charge them since they don't actually have probable cause.

Respecting a victim's decision and not holding them in contempt or charging them acknowledges that the system recognizes the varied reasons why they choose not to participate, and thus facilitates increased participation at a later time. Evidence-based prosecution also decreases the need for victims to confront their abusers and sends the message that the consequences for offenders' actions are being administered by the state, not the victim.

Charging decisions

Prosecutors should pursue the maximum charges that can be justified by probable cause, while evaluating the potential consequences of charging all crimes. The police report should be reviewed in order to assess whether further charges can be made or whether misdemeanors can be charged as felonies. Careful consideration can disclose acts of strangulation, stalking, felony assaults, and/or sexual assault which were initially overlooked. By carefully looking at criminal records, prosecutors can determine whether multiple DVPO violations or habitual misdemeanors can produce felony charges. Further examples of charges that are often disregarded or missed are: Interference with emergency call, disorderly conduct, burglary, trespassing, and interference with a state witness.

Negotiated plea agreements and sentencing recommendations

Whenever possible, prosecutors should reduce their number of plea bargains in domestic violence cases. Prosecuting charges should be based on the entirety of the present case as well as the history of violence. Prosecutors should request incarceration especially for cases involving repeat offenders, serious incidences, a pattern of escalating violence, and/or use of a deadly weapon. However, it is recommended that when offering pleas prosecutors do so as a means of setting the foundation for prosecuting the defendant as a habitual offender in the future (for example, requiring the defendant to plead to at least two assault charges or at least two violations of DVPOs).

Court officials (judges and magistrates)

Communication with victims and offenders

Court officials need to make it clear to both victims and offenders that the criminal system has zero tolerance for acts of domestic violence. This can be expressed through respectful language when

questioning victims and firm directives when addressing offenders. It is equally important that conditions and restrictions set by the court be enforced.

Coordination with advocates

The presence of advocates in court and in the magistrate's office can provide victims with emotional support, while also helping them understand and navigate the system. Court officials benefit from the presence of advocates in that they can call upon their assistance when they are concerned for a victim's safety, when they need further information on available resources, or when a victim is seeking assistance. Advocates can also facilitate the process for court officials by providing victims with support during the DVPO process. Some counties have advocates present in or near the courthouse, allowing for greater efficiency and an overall more positive experience for the victim since they only need to travel to one location.

Pre-trial release conditions

Before making decisions on pre-trial release conditions, it is mandatory in North Carolina under N.C.G.S. 15A-534.1 for court officials to obtain criminal background information on offenders. They should also consider the patterns of abuse, escalation of violence, and the seriousness of charges. This information can be obtained from criminal background records, police reports, risk assessments, victim statements, prosecutor recommendations, and advocate input (given only with victim's consent). Magistrates, judges and clerks should utilize the Administrative Office of the Courts form AOC-CR-630 to efficiently and effectively set pre-trial release conditions. The forms can be found at: <http://www.nccourts.org/Forms/Documents/1081.pdf>. Magistrates and judges should enforce pretrial release conditions by revoking original bonds when there is probable cause of a violation and consequently set a new, higher bond.

Timely resolution of cases

Responding with consistent and timely consequences for further abuse or violations establishes criminal justice boundaries and promotes victim safety. It conveys the message that every act of violence has a tangible consequence. Judges should not issue continuances of new charges in order to wait for current charges to go through the court system, but rather hold the offender accountable every time they commit a crime. In general, judges should attempt to have as few continuances as possible, since it will increase likelihood of victim participation and safety.

Sentencing

Judges should make sentencing decisions based on all the information available, not just the specifics of the case. They should consider the following when giving each case thorough consideration: the facts of the specific case, the severity of the charges, the severity of injuries, the defendant's prior domestic violence history, prior DVPOs issued against the defendant, the defendant's general criminal record, the defendant's employment status, the defendant's prior incarceration or probation attempts, the defendant's prior violations of probation, the victim's wishes, the need for restitution, and the prosecutor and defense attorney's recommendations. If the defendant receives probation, it should be supervised for greater accountability for offenders and increased communication by probation officers with victims. Moreover, probation violations should be processed right away. Probation conditions that include counseling should refer abusers to certified Batterer Intervention Programs, as required by statute, not marriage counseling or anger management.

Citizen-initiated charges

Magistrates in North Carolina can take out charges on behalf of an individual, rather than relying on the probable cause presented by law enforcement. When not handled correctly, this process can cause problems for domestic violence cases. It contributes to the notion that domestic violence is an issue between the abuser and victim, rather than the responsibility of the state. Abusers often take advantage of this process by asking magistrates to take out charges against the victim. Magistrates should be wary of abuser's misuse of this law before issuing charges. They should check whether the person before them has pending charges against them or past convictions, and should overall carefully consider the dynamics of domestic violence.