
Article 6: PROSECUTOR

Section A. Ethics and Advocacy

The prosecuting attorney's highest ethical responsibility is the duty to seek justice, not merely to convict. This special duty exists because the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers such as the selection of cases to prosecute. During trial the prosecutor is not only an advocate, but he or she may make decisions normally made by an individual client in a civil case. In our system of criminal justice, the accused is to be given the benefit of all reasonable doubts. Further, the prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecution's case or aid the accused.

Section B. "No Drop" Policy

It will be made clear to the victim and the offender from first contact through sentencing, and by every person associated with the prosecutor's office, that the victim in a domestic violence case cannot "drop" or "press" charges. It will be made clear that domestic violence is a crime against the state and that only the Judge can dismiss a case.

Section C. Charging Procedure

Although some misdemeanor domestic violence cases originate with local law enforcement departments, some originate in the Prosecutor's Office intake or complaint unit. The following guidelines apply to cases originating there:

1. Filing criteria. In determining whether to file a misdemeanor charge, the prosecuting attorney will determine if the Offender has a prior domestic violence conviction and if there is sufficient evidence to prove the elements of the crime. If the offender has a prior conviction, the offender will normally be charged with a felony.
2. Referral to the Victim Advocacy Service. Early consistent contact between the prosecuting attorney and the victim, and referral of the victim to an appropriate support service agency, is important to effective prosecution of domestic violence cases. The following steps should be taken:
 - a. The prosecutor's office, upon first contact with a victim, will contact the Victim's Advocate, if this has not already been done. The Victim's Advocate will assist the victim throughout the prosecution of the case and inform him or her of the availability of support and treatment.
 - b. The prosecuting attorney will attempt to contact or interview the victim as soon as possible prior to the hearing.
 - c. The prosecuting attorney will inform the victim that the Prosecutor's Office is responsible for charging and prosecuting the case.
 - d. The Prosecutor will stress that the victim is an important witness in the case.
 - c. The victim will be instructed to report his/her address and phone number (and any changes) to the prosecutor's office and the Victim's Advocate.

Section D. Decline Prosecutions

If the Prosecutor declines to prosecute the case for reasons other than insufficient evidence to obtain a conviction, written reasons shall be provided for the file. The Prosecutor will then refer the matter to the Victim's Advocate or other appropriate agency for follow-up.

Section E. Bond

1. Marshal Information

The prosecutor should provide all relevant information reasonably accessible to the court for consideration on bond-setting and establishing terms of the temporary protection order. Such information includes: the victim's and defendant's statements, the "bond information form," physical evidence (injuries, weapons), information obtained from the advocate or victim, and any criminal history or lack thereof.

2. Fully utilize domestic violence bail statute.

The prosecutor will request that the Court consider all factors described in O.R.C. 2919.251 before setting bail. These factors -- the offender's history of violence or of violating court orders, mental health, potential threat to others -- must be considered when the offender is charged with committing domestic violence or related crimes while subject to the terms of a protection order, or has previously been convicted of domestic violence or a related crime.

3. Based on an affidavit by the victim that acts or threats of violence or intimidation were made by the defendant or at his/her direction, against the victim, the victim's family or representative, the prosecutor may make a motion that the bond of the defendant be revoked. [ORC 2930.05].

Section F. Subpoenas and Notice of Hearing

Victims and all other witnesses will be subpoenaed at the earliest possible date to allow sufficient time to achieve service of the subpoenas.

The Prosecutor shall notify the victim of all scheduled hearings.

Section G. Uncooperative Victims

Cases in which the victim is uncooperative will be dealt with individually.

1. The Victim's Advocate should be contacted for assistance in case where the prosecuting attorney determines that the victim is reluctant to testify.
2. If the victim fails to appear for trial and his or her testimony is not essential to successful prosecution (i.e., there is sufficient independent corroboration of the crime to prove the charges without the victim's full involvement), the matter should proceed to trial. ORC 2935.03(B)(e)(ii).
3. If the victim refuses to testify and/or fails to appear for trial and his or her testimony is essential to successful prosecution, the prosecuting attorney will determine on a case by case basis whether to seek to enforce a subpoena.
4. If the victim refuses to testify, the prosecutor may nonetheless subpoena him/her to court and call the victim to testify under oath, seeking a declaration that he/she is hostile witness, if necessary.
5. If the victim refuses to testify and his or her testimony is essential to successful prosecution, the case may be recommended for dismissal.
6. In cases where the prosecutor chooses to dismiss, based on the victim's refusal to testify, the victim will be required to appear in court to explain the reason for refusing to testify on the record. The Prosecutor will encourage the victim to file charges again if the violence reoccurs.

Section H. Plea Negotiations

1. Restrictive Plea Bargain Policy. Reduction of charges will be limited to those cases in which evidentiary deficiencies suggest that a conviction for the charged offense has become unlikely. In these situations, and consistent with prosecutor discretion, there will be an offer to amend the complaint or to plea bargain to the court. Dismissals are appropriate in cases where evidentiary problems preclude the possibility of proving all elements of the crime and whenever it appears that the defendant did not commit the offense.
2. Prior to the reduction or dismissal of a domestic violence case, the prosecutor should contact the victim and, in some cases, the Victim's Advocate, to explain the decision and allow the victim to express his/her feelings about this.
3. The prosecuting attorney or victim advocate shall attempt to personally contact the victim prior to disposition.
4. There shall be no pleas offered or dismissal solely because a victim so requests. Reluctance or refusal of the victim or a witness to testify shall not be sufficient basis in itself for reduction or dismissal. Cases in which the victim is uncooperative will be dealt with on an individual basis.
5. Plea offers on domestic violence charges shall not be used in domestic relations negotiations.

Section I. Alternative Dispositions

Alternative dispositions and diversion in family violence cases are frequently inappropriate, and send a message to both the victim and the offender that the crime is less serious than comparable crimes against non-family members. When a victim asks to have the complaint withdrawn or is reluctant to testify, the prosecutor should inquire about coercion and intimidation. (This may be especially true where a divorce is pending or contemplated. Victims are often coerced into "dropping" charges by empty, unenforceable promises of a favorable divorce settlement.) In cases where the victim refuses to testify, it may be possible to prove the case with other evidence.

Section J. Pretrial Conference

Given the dynamics of family violence and the existence of an ongoing intimate relationship between the defendant and the victim, speedy resolution of the case will serve to better protect the victim as well as increase the efficiency of the entire process. Therefore, the pretrial conference should take place as expediently as possible.

Cases of family violence shall not be dismissed at the pretrial conference stage if the sole reason for dismissal is the victim's unwillingness or reluctance to testify and there is other substantial evidence constituting proof of guilt beyond a reasonable doubt available for presentation at trial. The decision to subpoena such a victim to appear at trial shall be left to the discretion of the prosecutor.

Section K. Trial

If the victim who appears at trial indicates a continuing reluctance to testify, indicates that the previous statement regarding the assault was untrue, indicates she or he was mistaken as to the previous information given, or indicate that she/he can no longer remember what occurred, the prosecutor should inquire of the victim as to the reasons for the purported changes in testimony and to remind the victim of the victim's obligation to testify truthfully as to what occurred on the incident in question. The prosecutor should not unethically or illegally coerce a witness to testify contrary to the truth. If the victim continues to insist that the previous statements are untrue or unreliable, the prosecutor should re-assess the evidence to determine whether there still exists substantial independent evidence constituting proof beyond a reasonable doubt of the defendant's guilt and consequently whether to proceed to trial. If the prosecutor decides to proceed to trial, the prosecutor shall in accordance with his or her ethical obligations as a public prosecutor immediately notify defense counsel that the victim now states that her allegations against the defendant are untrue or unreliable or whatever.

Section L. Continuances

1. The prosecutor will proceed with as few continuances as possible to increase the likelihood of conviction and to protect the victim and society.
2. If a victim fails to appear for trial and the victim's testimony is essential, a continuance should be requested. If the defendant requests a continuance, it should be opposed.
3. If a continuance is granted, it should be brought to the attention of the court and made clear to the defendant on the record that any conditions of bond or order of protection remain in effect. If there has not been a previous order of protection and the victim desires one, it should be requested from the court.

Section M. Advocates Role

The Victim's Advocate should be permitted to attend hearings with the victims and to act as advocates at any and all pretrial conferences. Prosecutors should explain to defense attorneys that advocates may be present and that the prosecutors support the advocacy role. Advocates may be asked by the Court or by the Prosecutor to provide input.

Section N. Sentencing Recommendations

1. In the case of first-time offenders, the assigned prosecuting attorney should request, at a minimum, that the court (1) impose a sentence of supervised probation; (2) order an appropriate fine and costs; and (3) order the defendant to make restitution to the victim, including payment for her stay at a protective shelter; and (4) order the defendant to participate in a domestic violence treatment program. When required by the ends of justice, the prosecuting attorney should request that the court impose a period of incarceration.
2. In the case of second or repeat offenders, when required by the ends of justice, the prosecuting attorney should request that the court impose a period of incarceration. Further, special conditions of probation may be recommended, including, but not limited to, a psychiatric or psychological evaluation, substance abuse evaluation, and counseling or treatment as appropriate.
3. Prosecutors should make case by case evaluations in preparing arguments concerning post-conviction sentences. If, in the view of the prosecutor, the defendant deserves incarceration, he or she should keep in mind that the appropriate penalty may be the maximum penalty allowed: Six months incarceration and/or a fine of \$1,000.00 for an MI.

However, in the event that the prosecutor believes that the defendant is an especially good candidate for treatment as a batterer, he or she should recommend that the defendant be placed on long term probation, with the condition that such defendant complete a long term batterers treatment program. Under no circumstances will prosecutors agree to generalized "family counseling" in which the convicted defendant himself will be allowed to decide when he is "cured".

There should be a relationship between the treatment program and the probation department, such that the treatment provider is required to report the defendant's nonparticipation to his/her probation officer or the Court. Pre-conviction diversion programs should be avoided.

Section O. Notice, Case Disposition And Participation In Sentencing [ORC 2930.12]

At the victim's request the prosecutor shall notify the victim of the case disposition. In the case of a conviction, notification shall include the crimes of which the defendant was convicted, the address and telephone number of the probation office or other persons, if any, that will prepare the pre sentence investigation and the telephone number and address of the person, if any, who is to prepare the victim impact statement pursuant to 2947.051.

1. Notice that the victim may make a statement for inclusion in the pre sentence investigation report or a victim impact statement, and that either will be made available to the defendant unless exempted from disclosure by the court;

2. Notice of the victim's right to make an impact statement to the Court before sentencing;
3. Notice of date, time and place of sentencing;
4. Notice of sentence imposed and any modification of sentence.

Section P. Notice of Appeal [ORC 2930.15]

If the victim requests notice of the filing on an appeal, the prosecutor shall notify the victim and shall give the victim the following information:

1. A brief explanation of the appellate process;
2. If the defendant has been released;
3. The results of the appeal;
4. If the defendant's conviction is reversed and the case is returned to the trial court the victim may exercise all previously requested rights.

Section Q. Notice Of Incarceration [ORC 2930.16]

If the victim has requested notification, after sentencing the prosecutor shall promptly notify the victim of the defendant's incarceration. Notification must include the date of release, or the reasonably expected date of release, and information on how to contact the custodial agency. The victim shall keep the custodial agency informed of current address and phone number.

* The prosecutor shall promptly notify the victim of any motion for early release or modification of the sentence, and of the court's ruling on each.

Section R. Victim/Witness Protection Measures (ORC 2945.04)

Victim protection measures should include filing charges for victim or witness intimidation, requesting criminal protection orders, requesting bail revocation, charging probation violations, and/or seeking criminal contempt orders, as the circumstances of the case require.