

DESCHUTES COUNTY BEST PRACTICE ASSESSMENT: FOLLOW-UP INVESTIGATIONS & PROSECUTION CHARGING DECISIONS

INTRODUCTION

Deschutes County is the grant recipient of an Office on Violence Against Women Grant to Encourage Arrest Policies and Enforcement of Protection Orders Programs (also known as “Arrest Grant.”)

In addition to implementation of the Lethality Assessment Program and an Intensive Supervision Parole & Probation Program, select MOU partners of the Arrest Grant agreed to embark on a Best Practice Assessment of 911, Police Patrol, Police Follow-Up Investigations and Prosecution Charging Decisions. This report reflects findings and recommendations from the Follow-Up Investigation and Prosecution Charging Decision review. The Assessment occurred over a period of several months in 2014 and was completed Sept. 2014.

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ACKNOWLEDGEMENTS

The MOU partners on the Arrest Grant who took part in the Best Practice Assessment (BPA) include: Deschutes County Sheriff’s Office, Bend Police Department, Redmond Police Department., Deschutes County District Attorney’s Office, and Saving Grace. Thanks are in order to all agencies for gathering the requisite information needed to conduct the BPA, meeting over several months to assess the information, and collectively viewing the findings to propose recommendations. Particular thanks go to participants Lt. Deron McMaster with Deschutes County Sheriff’s Office, Lt. Brian Kindel and Lt. Paul Kansky with Bend Police Dept., Lt. Mike Kidwell with Redmond Police Dept., Victims Advocate Debbi Wise and Deputy DA Drew Moore with Deschutes County District Attorney’s Office, and Trish Meyer, Assistant Executive Director with Saving Grace, who coordinated the BPA.

METHODOLOGY

Praxis International, a domestic violence training and technical assistance organization based in St. Paul, MN, developed a publication for conducting Best Practice Assessments entitled, *“Planning and Conducting a Best Practice Assessment of Community Response to Domestic Violence”* (see Appendix A). This publication provides step by step instructions for: developing a “case processing map” which captures the community’s general procedures for 911 call receiving, dispatching and police patrol response; randomly selecting domestic violence cases for assessment; analyzing individual agencies’ domestic violence policy/protocol; and conducting the assessment itself.

In the first Best Practice Assessment dealing with 911 and Patrol, Deschutes County 911 randomly selected 30 domestic violence cases which occurred between May and August of 2012.

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Both arrest and non-arrest cases were selected. Of the 30 cases, 20 closed cases were selected for review which would provide an even balance of cases among the three participating law enforcement agencies and which focused on intimate partner violence specifically.

Following the 911 and Patrol BPA, the group first selected cases that were reviewed in the 911 BPA to see the case all the way through to prosecution. Some cases did not go to prosecution and some ended up not being suitable for review due to reasons including a major changeover in the DA's Office case management software. As a result, additional Domestic Violence cases were selected at random from a similar timeframe that had more complete information included in the files in order to complete the requisite number of cases needed for the BPA.

Information reviewed included police reports, charging instruments, judgments, and case notes. The full file was also made available to go through in order to review additional information if needed such as correspondence between attorneys and law enforcement or staff.

LIMITATIONS

This assessment reflects 15 domestic violence incidents that went through to prosecution. While it is possible findings would be different if a larger sample size were utilized, it is also important to note some findings were consistent and therefore bear consideration.

Assessments were conducted by reviewing police reports and prosecution files. The police response assessments were generally clear based upon information provided in the report and notes in prosecution files regarding follow-up. As will be discussed later, a significant barrier to review of the "Follow-up Investigation" portion was that typically cases are handled by patrol rather than having designated a follow-up investigator so that much of the assessment review tools seemed geared towards having such personnel.

Additionally, it was apparent that with the new software change within the DA's Office, prosecutors' notes or communications may not have been available for review as the capabilities of the software were being learned during this timeframe (i.e. while learning to use the new software, capabilities of the software evolved and prosecutors familiarity with the software likely had some impact on the completeness of notes kept within the software on some of the cases).

OVERVIEW OF CASES

Of the 15 cases reviewed, 14 resulted in convictions. Each of these 14 cases that included a charge for Assault IV DV resulted in an Assault IV DV conviction (10 cases). Other convictions obtained included Interfering with Making a Report, Strangulation, Reckless Endangering, Unlawful Use of a Weapon, Menacing, and Harassment. The only case that did not obtain a conviction was a female that participated in the Domestic Violence Deferred Sentencing Program and received a dismissal after entering a plea of guilty to Assault IV DV.

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Five of the cases involved Deschutes County Sheriff's Office response, five of the cases involved Bend Police Dept. and five of the cases involved Redmond Police Dept. All cases were prosecuted by the Deschutes County District Attorney's Office.

FINDINGS

There were findings which reflected an exemplary response from the investigating law enforcement officers and prosecutors involved in the cases (as evidenced by the very high conviction rate). The intent of the assessment, however, is to identify where gaps may have occurred and propose recommendations to mitigate the gaps. Following are findings of the gaps.

FOLLOW-UP INVESTIGATION

A brief overview of aspects analyzed include: 1) witness identification and interviews; 2) considerations in interviewing children; 3) victim interviews; 4) Risk and danger assessment; 5) medical reports; 6) records check and documentation of past abuse; 7) evidence collection; 8) link with probation; 9) suspect gone on arrival; and 10) victim engagement and collaboration.

- Patrol may receive information regarding a person's criminal history from dispatch including protective orders. However, in most instances, patrol does not run a full criminal history report. It should be noted it is the practice of the DA's Office to run a criminal history report with each case that comes in.
- In 3 of the cases reviewed there was physical evidence used during the criminal incident, however, these weapons were not seized (1 wine bottle, 2 knives).
- It does not appear that patrol collects 911 recordings as part of their investigation. However, the DA's Office can also order 911s and often does so. During discussions with law enforcement it was learned that the process for the DA's Office to order them is much easier.
- Patrol did a good job of documenting injuries and crime scenes with photographs in their initial response, however, it did not appear that follow up photographs were being taken.
- Additional records from past DV incidents, restraining orders etc. did not appear to be collected during the investigations reviewed.
- There was irregularity in how often/whether police interviews were recorded.

PROSECUTION CHARGING DECISIONS

A brief overview of aspects analyzed include: 1) request and consider a wide range of information; 2) evaluate the history, context, and severity of violence; 3) consider harm to children and use of children as instrument of abuse; 4) evaluate risk and lethality factors; 5) charge with attention to victim safety including safety of victim defendant; 6) understand factors related to victim availability to the prosecution process; 7) evaluate prior incidents and convictions; 8) consider options in declining cases; 9) engage and collaborate with victims in making charging decisions; and 10) communicate charging decisions and respond to inquiries.

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- In several of the files reviewed, it did not appear that all information available was collected at the front end of the cases such as photographs and 911 calls.
- While we found gaps in the follow up investigation portion regarding not having follow up photos taken, there did not appear to be requests for law enforcement to take follow up photographs either.
- Potential underutilized charges for prosecutors to review when filing a case include menacing, stalking, and strangulation.
- In 2 of the cases that were not typical domestic violence assaults but involved domestic violence (VRO, Interference with Making a Report), the dispositions were straight sentences rather than including probationary terms with programs such as BIP.

RECOMMENDATIONS

After the workgroup reviewed the case processing map, whether policies are in place related to domestic violence response, and the assessment of 911 and police patrol, the following recommendations are suggested:

- Physical evidence such as weapons used during a crime should be collected by law enforcement for a number of reasons including potential forensic testing, use at trial, and removal from the home so they are not used in future incidents.
- Follow up photographs are important to obtain in prosecuting DV cases because of how often evidence of injuries sustained during an assault become more apparent over time. None of the files included follow up photographs. Both law enforcement and prosecutors could be more proactive about obtaining or requesting follow up photographs.
- It is recommended that prosecutors obtain all the information they can at the front end of the case. Ordering all photos, audio/video recordings, 911 calls, past police reports, restraining orders etc. when charging is recommended.
- Recording interviews with suspects, victims, and witnesses in DV cases is recommended. With the frequency with which recantation, minimization, or other disputes to what was reported occur, having recorded interviews in these cases is important. There are also hearsay exceptions that can be utilized in prosecution to allow use of these recordings at trial (subject to Constitutional restrictions as well).
- When making sentencing recommendations in DV related cases, utilizing probationary controls and programs that are available in the community to address DV should be considered.
- Consider a wide range of potential DV charges when filing DV cases. For example, if an offender is strangling a victim, it is likely that he is also committing the crime of menacing, reckless endangering, and/or assault.
- Ensure each agency has a domestic violence-specific policy/protocol. Ensure staff are aware of, and follow, domestic violence protocols. There are a number of protocols available as examples for law enforcement such as the International Association of Chiefs of Police online. Additionally, for prosecution, there is a Best Practices in Domestic

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Violence Prosecution resource available from the Oregon DOJ that can be adopted or used as an example to develop a protocol.

- Consider stalking charges in more cases. Although stalking can be difficult to prosecute in Oregon based on the statutory language and case law, it can likely be charged in more cases and could be considered from different perspectives (i.e. while it may be difficult to charge some cases that appear to be more typical stalking behavior, there may be other situations different that typical stalking where the charge is appropriate and useful).
- A major part of our findings indicated that more police follow up would be very beneficial in the investigation and prosecution of DV crimes. Many times patrol officers that are taking the initial calls are not able to do additional follow up needed due to resources and scheduling conflicts. Furthermore, many of the steps that would be beneficial in further investigation would be ideally suited for a follow up investigator specially trained in Domestic Violence cases. While a lot of the leg work is being completed by prosecutors and the DA staff (e.g. looking up court records for previous protective orders, requesting police reports, 911 calls, jail calls, etc.), it would likely be more effective and productive to have an investigator specifically tasked to conduct follow up investigations including things like gathering prior history, taking follow up photos, and collecting additional evidence.

CONCLUSION

The Best Practice Assessment was a great opportunity for the various disciplines to come together and assess the coordinated response to domestic violence. The workgroup was pleased to see that law enforcement and prosecution are generally well-aligned with best practices. The findings and recommendations are helpful tools in improving upon our current response.