

Jackson County Council Against Domestic and Sexual Violence
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**A REPORT FROM THE 2003
DOMESTIC VIOLENCE SAFETY
AND ACCOUNTABILITY AUDIT**

Prosecution Response

to

Misdemeanor Domestic Violence Cases

JACKSON COUNTY, OREGON

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INTRODUCTION

A Domestic Violence Safety and Accountability Audit is a systematic observation and analysis of the intra and inter-agency routines and documents used and produced when institutions process “cases” of domestic abuse. A central activity is the assembling of an audit team, made up of practitioners from agencies that intervene in cases of domestic violence, to look at their collective response to those cases. The team looks at a sequence of actions—for example, the route of an offender from a 911 call to the jail booking procedure—and determines if that sequence centralizes victim safety and offender accountability. Safety audits look at the context of agency intervention, such as information-sharing mechanisms between agencies, the education of and training available to agency staff, and the resources those staff command. In so doing, the audit reveals work processes behind the problems and trends. The strength of a safety and accountability audit lies in (1) its emphasis, which is not on the competency or idiosyncrasies of individual practitioners, but rather on how, where, and if agency practices ensure the safety of victims and the accountability of offenders; (2) the participation of local practitioners as auditors of their own systems; and (3) the learning of analysis skills with which practitioners can continue to evaluate other aspects of their system.

The audit in Jackson County was conceived to examine the response to domestic violence by the misdemeanor prosecution element of its criminal justice system. An eleven-member audit team, comprised of practitioners from those agencies as well as battered women’s advocates, has been meeting and planning since 2002 to plan and organize this audit. They not only conceived of and defined the audit’s scope, but also won cooperation from their respective agencies, shared and analyzed considerable amounts of institutional data, and dedicated hours of their time to the audit process itself. This same audit team will be central to the implementation of the audit’s findings and recommendations.

The audit team mapped out every point of intervention within the misdemeanor prosecution system and collected the agency’s relevant texts—forms, job descriptions, policies and procedures, statutes, and agency descriptions—into handbooks for points of reference during the audit. The team received training on the audit process. The consultant and the audit coordinator received 102 prosecution files of domestic violence to analyze.

This sample was cases filed after September 1, 2002 and closed by December 31, 2002. Originally the audit was designed to look at the first 100 cases filed from September 1, 2002 no matter when they ended. This would have given the team a true picture of how long the cases actually took to process. The audit was changed in March 2003 due to the realization that more than half of the original cases remained open.

Of the 102 files, 16 were not of intimate partner violence (e.g., parent-child, or sibling-sibling, instead of intimate partners such as husband-wife, boyfriend-girlfriend, etc.) and thus were omitted from the audit. Thus, the consultant and audit coordinator analyzed 86 files for information available to a prosecutor to make case decisions, and for indicators of how victim safety and offender accountability are built into the job of a prosecutor.

During the twenty-six week audit, team members made twenty observations of practitioners in law enforcement (police and probation), as well as observations of arraignments and sentencing hearings at the court. They conducted seventeen interviews, including a judge, law enforcement officers, jail staff, a release assistance officer, a clerk of court, prosecutors, a probation officer, a batterer’s program provider, court officer, a defense attorney and victim services providers.

Community Works, and the Jackson County Council Against Domestic and Sexual Violence (the Council) requested that the data described above – maps, file analysis, interviews, and observations – be compiled in a brief report that compared Jackson County prosecution practices to current, national best practices in the field of domestic violence prosecution.

Enclosed you will find:

- findings of the audit team and the consultant, within the context of accepted best practices, compiled by the Battered Women's Justice Project
- recommendations of the audit team and the consultant, that the Jackson County Council Against Domestic and Sexual Violence, Community Works, and the Jackson County District Attorney's Office can work together to implement in the months ahead.

The audit team's continued analysis, discussion, and identification of problematic practices could become woven into an ongoing process of change that will, over time, result in a widespread improvement of your community's response to cases involving domestic violence. In fact, the audit coordinator and team have already done that by after this prosecution audit by going on to conduct a conducting a mini-audit of the screening and intake process at the local domestic violence shelter. The team mapped the screening and intake process, reviewed paperwork associated with this process, and interviewed practitioners involved in screening and intake. This lead to significant discussion, increased agency understanding and a modification of the process.

Community Works, and the Council, in their roles as facilitators of the safety and accountability audit undertaken by practitioners in Jackson County, is grateful for the openness shown by criminal justice practitioners to examine and change problematic practices. The audit process has, we hope, helped to strengthen the channels of communication between segments of the criminal justice system and begin the community's objective examination of the system's response to domestic violence offenders and victims.

BEST PRACTICES

In 1994, Congress passed the Violence Against Women Act (VAWA) to enhance the ability of states, territories, and Native American tribes to respond to domestic violence, stalking and sexual assault. To help communities reduce gaps in their response, the VAWA creates federal laws and establishes several grant programs. One such program is the STOP (Services * Training * Officers * Prosecutors) Violence Against Women grant program, which is administered by the Office of Justice Programs' Office of Violence Against Women (OVW) in the U.S. Department of Justice. STOP grants help states, Indian tribal governments, and local governments develop and strengthen effective law enforcement and prosecution strategies to fight violence against women, and develop and strengthen victim services in cases of violent crime against women.¹

In 1997 the OVW and the STOP Technical Assistance Project launched a Promising Practices Initiative to identify and develop information on innovative practices in the criminal justice system response to violence against women. This initiative included: (1) six days of expert panel meetings on domestic violence, sexual assault, and stalking that brought together criminal justice practitioners, victim service providers, and other nationally recognized experts in these fields; (2) a questionnaire sent to policymakers and practitioners across the country to gather further practices and program example suggestions which resulted in 500 responses; (3) in-depth interviews with practitioners to gain in-depth practice information and gather more program examples; (4) STOP staff attendance at meetings and conferences to gain information; (5) additional conference calls and meetings with advocates who worked with stalking victims, with women from underserved communities, and with women from diverse populations; and (6) two final meetings with experts to review practice development and solicit input on further development efforts.² The consultant to this safety audit, Rhonda Martinson, J.D., served on one of the expert panels.

¹ Promising Practices: Improving the Criminal Justice System Response to Violence Against Women, by the STOP Violence Against Grants Technical Assistance Project, page i (1998)

² supra at page v

The first written products of the Promising Practices Initiative were disseminated via the internet between February and July 1998: (1) “Assessing Justice System Response to Violence Against Women: A Tool for Law Enforcement, Prosecution, and the Courts;” (2) “Assessing the Justice System Response to Violence Against Women: A Tool for Community-based Victim Service Providers;” and (3) “Assessing the Justice System Response to Violence Against Women: A Tool for Communities to Develop Coordinated Responses.” A manual of over 300 pages, Promising Practices: Improving the Criminal Justice System Response to Violence Against Women was written, edited, and published in 1998.³ Ms. Martinson served as one of the project partners to the STOP Technical Assistance Project, reviewing parts of the manual and internet products and offering direction.

Practices in the manual were to offer new ideas or techniques to practitioners to improve their response to domestic violence, sexual assault, and stalking. Multiple program examples illustrate each practice, emphasizing variations in practice application in different locations and with different populations. As stated above, the programs highlighted in the manual were identified through a national survey of practitioners; consultation with local, state, and national experts in the field; and correspondence with program staff. While the practices described in the manual weren’t evaluated empirically, the anecdotal information from the jurisdictions in which they were used indicated that they showed promise in enhancing the community response to violence against women.⁴ Since then, a number of research studies have been conducted on domestic violence prosecution that are helpful in looking at these practices. See, e.g., “Evaluation of Efforts to Implement No-Drop Policies: Two Central Values in Conflict,” published by Barbara E. Smith, Robert Davis, Laura B. Nickles, and Heather J. Davies in 2001. Research conducted in Omaha, NE, Everett, WA, Klamath Falls, OR, and San Diego, CA, sought to determine if prosecution of perpetrators of domestic assault without the victim’s consent was feasible with appropriate increases in resources. Results revealed that no-drop is more a philosophy than a strict policy of prosecuting domestic violence cases. None of the prosecutors pursued every case they filed. Results also revealed that establishing a no-drop policy could increase convictions significantly. Findings also indicated that implementing no-drop policies requires significant case screening up front and that a successful no-drop policy requires judges who accept the idea of admitting hearsay or excited utterances from victims and statements from defendants, or documentation of prior bad acts. Findings also revealed that no-drop is expensive. Finally, the interview data suggested that victims may regard prosecution as beneficial, even if they did not want any action beyond arrest.

Community Works and the Council expressed a desire for this report to be in a helpful format that not only describes existing practices in the Jackson County District Attorney’s Office, but also provides a blueprint for change by pointing out nationally accepted practices in domestic violence prosecution that best keep victims safe and hold offenders accountable. The internet products of the Promising Practice Initiative were meant for this purpose. The list of best practices below is from the prosecution portion of “Assessing Justice System Response to Violence Against Women: A Tool for Law Enforcement, Prosecution, and the Courts.” They were first made available in 1998, and are still up-to-date, as one looks at other similar documents and products that have evolved. See, e.g., The Toolkit to End Violence Against Women, currently made available on the National Criminal Justice Reference Service website by the National Advisory Council on Violence Against Women and the Office of Violence Against Women (<http://toolkit.ncjrs.org/>).

³ supra at page v

⁴ supra, page i

<i>BEST PRACTICES</i>	<i>JACKSON COUNTY PROSECUTION PRACTICES</i>
<i>Help Victim with Safety Planning</i>	<p>Different jurisdictions designate the responsibility for safety planning differently. In some prosecutor’s offices, the prosecutor is responsible for these functions; in others, a victim-witness specialist employed by the prosecutor is responsible; and in still others, the office collaborates with a community-based advocacy organization to safety-plan with domestic violence victims. Frequently, these responsibilities are shared among these three entities.</p> <p>Therefore, in this report about Jackson County, Oregon, statements indicating that a particular staff position does not perform a particular safety-planning function are not meant as a negative but rather as accurate depiction of who does or doesn’t perform this function.</p>
<p>Establish early contact with the victim to emphasize the process and goals of prosecution.</p>	<p>The Jackson County District Attorney’s office has one grant-funded domestic violence prosecutor. This person is not responsible for establishing early contact with the victim to emphasize the process and goals of prosecution.</p> <p>The Jackson County District Attorney’s Office has had a Victim Witness Division for roughly 20 years. This division has included a domestic violence specialist (specialist) since 1995. The position was vacant from Sept 2001 to mid-December 2002 when it was re-staffed full-time. It is the role of the specialist to facilitate prosecution and establish contact with the victim. According to information obtained during practitioner interviews, there is an unwritten policy of making such contact within 24 to 48 hours of receiving the police report, and to address:</p> <ul style="list-style-type: none"> • who the specialist is • the role of the specialist • contact information for the specialist • information about arraignment • typical length of prosecution • the process of prosecution • restraining orders • crime victim compensation • safety needs, such as locks • referrals to community based programs <p>The specialist maintains statistical, non-confidential records of victim information. These records were not part of the text analysis of this audit, but records from the months of October, November and December 2002 were printed out for viewing. They include:</p> <ul style="list-style-type: none"> • name, address, phone, whether address is rural • race, gender, immigration status

Establish early contact with the victim to emphasize the process and goals of prosecution.

(cont'd.)

- disabilities, utilization of sign language
- relationship to offender
- civil process service
- dates of call from specialist, grand jury, CVC
- date that the victim impact statement was mailed
- date that the completed victim impact statement was returned
- defendant name
- #s of D. A. file, criminal court case, police report
- charge, disposition

Thirty-five female victims were interviewed for this audit. All were self-identified as victims of domestic violence. They were contacted through the local domestic violence shelter, support groups, and the Alternatives to Violence class. Alternatives to Violence is a 3-hour class which a victim is required to attend by the courts and probation in order to petition to lift or modify a no-contact order or to petition to drop a restraining order. Victim-witness staff experience with Alternatives to Violence participants is that often, their immediate goal is reconciling with their abuser, so they may be uninterested or hostile to contact from the D.A.'s office. Of the 35 victims interviewed for this audit, none recalled receiving an initial contact of the kind described above. These women were not involved in the audited cases, which would have been during the time the specialist position was unstaffed but rather were involved in newer cases that began during the staffed period. However, during interviews, the specialist and other victim-witness staff indicated consistent initial contacts with victims. The 2003 records produced for viewing (56 of them) indicated almost every victim had received an initial contact. The 2002 records (184 of them) indicated roughly half as much phone contact.

It is not unusual in an evaluative project such as this for an apparent conflict or two to arise between documented information and quantitative information such as observations or interviews. This does not necessarily indicate any deficiency but in this instance, may be a combination of factors:

- perhaps some of the women interviewed misidentified their cases as emanating from the staffed period in the D.A.'s office
- there may have been something about the way the question was asked that didn't "connect" with some interviewees, although the women were interviewed in several different groups and not all at the same time
- given the increase in services over the years, and the increase in positions labeled "advocate," "victim-witness," etc., some may be confused as to who has called them. For example, an audit team member reported having a conversation with a victim who reported having several positive experiences with "Tom, the D.A." in locating some stolen property (Tom is the

Establish early contact with the victim to emphasize the process and goals of prosecution.

(cont'd.)

investigator).

- some who received multiple phone calls from service providers may have forgotten the receipt of a particular call. Indeed, during her interviews, the specialist reported having this experience at times. That is, having contact with a victim at a later point in the case, and referring to the initial phone call, only to hear the victim say “I don’t remember that.”
- some battered women stay at shelters or the homes of friends or family in the days following an assault, leaving someone else to answer the phone.
- during the audit, the D.A.’s office was revising its process of getting police reports and victim information to the specialist because files were being processed by the attorney and information was not getting to the specialist. There is a process in place now that wasn’t during the audit.

The helpful bit of information here is that whatever the case, it is the women’s perception that they haven’t received a call from the D.A.’s office at the beginning of their case that explains the process and goals of prosecution. This may be more a matter of identification, length/memorability of contact, substance of contact, being overwhelmed with information from multiple sources, or not receiving/responding to messages.

The Jackson County District Attorney’s Office has also had an investigator position that also lapsed from September 2001 until July 2002 and then was reinstated. The investigator also tries to contact victims within 24 hours. When he does, he emphasizes that the goal for first-time offenders is not necessarily to send them to jail but rather to cause batterers to take responsibility for their actions, look at all aspects of their behavior, realize they are batterers and get treatment.

Practitioners were aware of Oregon’s 24-hour rule on excited utterances, and stated this as a reason to contact victims within 24 hours:

Rule 803.ORS 40.460. Hearsay Exception; Availability of Declarant Immaterial

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(26)(a) [Domestic Violence Exception] A statement that purports to narrate, describe, report or explain an incident of domestic violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after the incident occurred, if the statement:

(A) Was recorded, either electronically or in writing, or was made to a peace officer as defined in ORS 161.015, corrections officer, youth corrections officer, parole and probation officer, emergency medical technician or firefighter; and

(B) Has sufficient indicia of reliability.

<p>Establish early contact with the victim to emphasize the process and goals of prosecution.</p> <p>(cont'd.)</p>	<p><i>(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a) of this subsection, the court shall consider all circumstances surrounding the statement, the court may consider, but not limited to, the following factors in determining whether a statement has sufficient indicia of reliability:</i></p> <p><i>(A) The personal knowledge of the declarant.</i></p> <p><i>(B) Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection.</i></p> <p><i>(C) The timing of the statement.</i></p> <p><i>(D) Whether the statement was elicited by leading questions.</i></p> <p><i>(E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient reason for denying admission of a statement under this subsection in the absence of other factors indicating unreliability.</i></p>
<p>Address victim safety issues throughout the entire trial process. Assess the likelihood of continued violence by the suspect from the time of arrest through the conclusion of trial.</p>	<p>It is the role of the domestic violence specialist to address victim safety issues. The prosecutor files did not document any activity by the specialist in addressing safety, but information obtained during interviews indicated that some danger assessment did sometimes occur during the initial phone call described above, and if such information was obtained, it was provided to the domestic violence prosecutor. Information obtained through interviews indicated that the specialist encourages the victim to conduct her own danger assessment; that is, the specialist asks questions of the victim to help her to see and understand the danger, but the specialist avoids giving an opinion about the woman's safety. The specialist offers safety planning upon request and can send victims a brochure, which contains a step-by-step guide to preparing their own plan. Also, the specialist has her own files on cases, which may contain some of this information. These files were not a part of this audit.</p> <p>When charges are filed, the specialist mails a packet to the victim, including:</p> <ul style="list-style-type: none"> • victim impact statement • a statement of victim rights • an explanation of VINE (Victim Information Notification Everyday) • restraining order information • information on how domestic violence affects children • crime victim compensation information • a flyer on the prosecution process <p>After the initial phone call and mailing, the specialist does not initiate any additional safety planning or danger assessment unless contacted by the victim or someone on her behalf.</p>

<p>Work closely with community-based victim advocates to support victim through interviews, other court procedures, and with other legal and non-legal needs.</p>	<p>The term “community-based victim advocate” refers to employees and volunteers of private, non-profit agencies serving battered women. Many of these programs provide shelters, support groups, and other services besides advocacy. Some advocates work specifically with women who are involved with the court system, helping them with civil and criminal cases. These advocates work to provide for the needs of individual battered women and battered women as a class.</p> <p>The prosecution files didn’t document any referrals to community-based programs. Such referrals would be within the role of the domestic violence specialist, but there are no written agreements or protocols on connecting with or working with community-based programs on issues like language accessibility; non-criminal legal needs such as immigration, restraining orders, divorce, child custody, child visitation and child support; or non-legal needs such as housing, child care, transportation, clothing, food, etc. There are community programs that deal with such matters (Dunn House, Community Works, Center for Non-profit Legal Services) but resource/referral lists in the District Attorney’s office are outdated. The specialist does discuss protection orders with victims and mails information on protection orders to victims. She and her director are also members of the Jackson County Council Against Domestic and Sexual Violence, and the Domestic Violence Awareness sub-committee. The specialist is aware of the difference in the roles of victim-witness specialists and community-based advocates, and the occasional differences of opinion that this brings. This is a common experience across the country. The specialist thought a protocol or written guide as to collaboration with community-based advocacy programs would be helpful in creating some sort of agreement as to actions or referrals that could be made, responsibilities to update the office through meetings or trainings, etc.</p>
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<p>Work with advocates to develop a process to maintain confidentiality of victim's location when necessary.</p>	<p><i>Sec. 135.815 ORS, subsection (2)(a) states, "If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in subsection (1) of this section except for the addresses and telephone numbers of the victim and any witnesses."</i></p> <p><i>In addition, section (3)(a) states, " Unless authorized to disclose the information, a lawyer representing a defendant, or a representative of the lawyer, may not disclose to the defendant the address or telephone number of a victim or witness obtained under subsection (1) of this section."</i></p> <p>Beyond these statutes, there is no further written policy addressing confidentiality of the victim's location or written agreement with advocates around this issue, but the local shelter has a policy of not acknowledging a woman's residence there. Shelter staff will post a message for her that she can answer or not, if she is there. Staff at the District Attorney's office is aware of this policy.</p>
<p>Stay in contact with victim throughout the court process, providing her with pertinent case information (e.g., give her the docket number to help her keep apprised of court dates and pending motions), and making sure she is not being intimidated or threatened.</p>	<p>The prosecution files did not document any contacts with victims about court dates or motions. During her initial call to victims, the specialist emphasizes her availability to victims and encourages them to call back anytime. Preferring to leave the initiation of contact to the victim, the specialist does not then continue to contact the victim throughout the court process, unless the victim requests it. For victims who have requested it, the specialist and volunteers for the office will make follow-up phone calls. Of the 35 victims interviewed, a number of them indicated unawareness of court dates. Information obtained during practitioner interviews indicated that incorporating court dates into VINE (Victim Notification Everyday) was discussed in the late 1990's when VINE was being implemented, but dropped because of the additional money it would cost</p> <p>The duties of the District Attorney's investigator include locating parties for hearings, serving subpoenas, and contacting victims and witnesses for follow up. Information obtained during practitioner interviews indicated that the investigator spends half his time locating victims and witnesses that law enforcement officers don't find. Interviewees indicated that law enforcement officers often don't document contact information for victims or witnesses. That is, they may document the victim's address and phone, but not where she can be reached if she will be staying elsewhere after the assault. Most police reports contained in the audited prosecution files did not have this sort of secondary contact information for victims.</p>

<p>Encourage or guide the victim in collecting further evidence. Advise her to keep a chronology of defendant contact and history of abuse, if not already documented.</p>	<p>The Specialist and Investigator are aware of Oregon’s 24-hour rule pertaining to excited utterances. They try contacting the victim within 24 hours for this reason. The specialist has no further discussion with the victim about evidence collection. The investigator for the District Attorney’s Office may conduct interviews after the initial 24 hours and gives victims general advice on contacting law enforcement should the defendant contact the victim.</p>
<p>Utilize legal strategies to protect the victim and the integrity of the case (e.g., no-contact provision, restraining orders, and trial motions).</p>	<p>In the 86 files analyzed, 24 victims had restraining orders. Of these 86 files, the prosecutor declined to issue charges in 12 instances. In the remaining 74 files, no-contact orders were documented at arraignment in 16 cases and at disposition in 53 cases. However, information obtained during interviews indicated that no-contact orders are always issued and that just because it wasn’t noted in the prosecutor file doesn’t mean it wasn’t ordered.</p> <p>A provision of “no contact with victim” is a standard clause on Jackson County’s release agreement. Whenever a person is released from custody, no matter what the means (bail, release on recognizance, etc.), they must sign a release agreement that contains such information as their obligations to return to court. This no-contact provision prohibits the accused from having any person-to-person, written, telephonic or third party contact with any person listed as the victim of the crime. This provision is in effect until specifically released by the Judge or upon conviction. This provision is overseen by the local control unit – a staff of three or four at the courthouse who supervises individuals subject to no-contact orders through phone calls, personal contact, drug and alcohol testing, polygraph testing, etc.</p> <p>The procedure to release the no-contact provision requires the listed victim to petition the court for a hearing. In order to petition the court for a hearing the victim must attend an “Alternatives to Violence” Class conducted by domestic violence advocates connected to Community Works, the local non-profit domestic violence program. The class gives victims an overview of the power and control wheel, talks briefly about each participant’s experience, and discusses the effects of domestic violence on children as well as safety planning. Upon completion of the three-hour class the victim may request a hearing to release the no contact provision. The hearing will be on the following Monday at 3 p.m. At that time the judge will hear from the victim as to her feelings and issues surrounding releasing the no contact provision. The Judge has complete discretion regarding releasing the provision. Many times the no contact order is not released due to Judicial concern for the victim’s safety, lack of the offender taking accountability, hearing from the victim that it is her fault thereby implying that she does not understand the power and control basis of domestic violence and is at risk of being victimized again.</p>

<p>Utilize legal strategies to protect the victim and the integrity of the case (e.g., no-contact provision, restraining orders, and trial motions). (cont'd)</p>	<p>Some victims interviewed for this audit initially were upset at having to take the class but at the end of the class most expressed that they were glad to have the information and understood why it was given. Several victims interviewed had been denied contact after a hearing and were very upset – feeling like the no-contact was impractical for their lives.</p> <p>As for motions, there were none in the file but information obtained during observations and interviews indicated that motions at this stage of the prosecution process would typically be verbal. The prosecutor said he had used protective motions prior to trial, and gave the example of making a motion to prohibit defendants and/or defense attorneys from bringing in improper character evidence.</p>
<p>Encourage the victim to call police if the offender violates existing court orders.</p>	<p>When a victim contacts the Dunn House Court Advocate or the District Attorney’s Victim/Witness Specialist about restraining order violations, both advise victims of what steps to take. Several of the battered women interviewed indicated that police responding to their calls of restraining order violations seemed not to understand these violations as serious. That is, they didn’t approach them or investigate them as they would the report of an assault. On the other hand, the number of charges (39) of restraining order violations or no-contact order violations in the audited files would seem to indicate that police and prosecutors take these violations seriously.</p>
<p>Use vertical prosecution whenever possible.</p>	<p>Jackson County uses vertical prosecution. That is, the District Attorney’s Office vertically prosecutes domestic violence cases in the sense that it has a specialized attorney to do so; and also in the sense that the same attorney handles the case from start to finish.</p>

<i>Screening</i>	
Process all cases as quickly as possible.	<p>The range of time from arraignment to disposition was the same day to 72 days. Most cases were completed within 45 days, with many having only 2 hearings. The longest cases were those with deferred sentencing with complications as to needing more time to complete the paperwork and those cases that went to trial.</p> <p>This sample was cases filed after September 1, 2002 and closed by December 31, 2002. Originally the audit was designed to look at the first 100 cases filed from September 1, 2002 no matter when they ended. This would have given the team a true picture of how long the cases actually took to process. The audit was changed in March 2003 due to the realization that more than half of the original cases remained open. Two of the prosecutors interviewed noted that sampling the cases in this way probably skewed the outcome somewhat in the sense that the type of cases that get disposed of quickly did get disposed of quickly, as is indicated by these numbers. But cases that get set for trial, etc. aren't reflected in this number – these cases take longer and may have “averaged out” the numbers differently as to quickness of disposition time.</p>
Obtain and review related documentation and evidence available from law enforcement.	<p>Almost all files contained defendant criminal history and driving record. 21 files contained a full or partial copy of the restraining order. 4 files contained a printed call detail from dispatch delineating minute-by-minute radio contact between the officer and dispatch. 17 had photos. 1 had a medical record.</p> <p>Police reports are delivered from each of the thirteen agencies to the district attorney's receptionist in the morning. She gives it to a prosecutor to fill out the intake form, which indicates whether charges are filed or not. If no charges are filed, the report and the intake form are sent back to the law enforcement agency. If further investigation would make charges possible, this could be noted on the intake sheet. One of the prosecution files audited did make such a request. Information obtained during interviews indicated that such requests in the past sometimes resulted in four to five month delays before such investigation was done. Currently, the district attorney's investigator conducts such follow-up.</p>
Interview the victim, but coordinate with law enforcement to reduce the number of times the victim is interviewed. Utilize interview checklists where available. Listen, with non-blaming feedback.	<p>See above for specialist and investigator interview roles.</p> <p>The domestic violence prosecutor, the specialist or the investigator often has contact with victims during this screening phase of the prosecution process because many come to the office to recant.</p> <p>Interview checklists are not available.</p>

<p>Review with the victim the case's strengths and weaknesses; procedural considerations (preliminary hearings, motions, trial, sentencing, etc.); and time sequence of events, before, during and after the assault. Provide follow-up contacts for the victim.</p>	<p>The prosecutor does not always conduct this sort of review, although he does occasionally talk with victims about why he is not dropping a case. The specialist is available for phone contact - see previous sections.</p>
<p>Explain the victim's role as witness, and explore her ability and willingness to testify. Explain the prosecutor role and responsibilities to the victim. Consider the victim's wishes as an important, though not determinative, factor in filing or dismissing charges.</p>	<p>The prosecution files did not document explanations to the victim of her role as witness, explorations of her ability and willingness to testify, explanations of the prosecutor's role and responsibility, or the victim's wishes. See the above roles of specialist and investigator. In addition, the domestic violence specialist said the number one request she receives is to drop charges. However, the Jackson County District Attorney's Office apparently has an unwritten no-drop policy so that the victim's request to drop charges wouldn't matter.</p>
<p>Determine if prosecution will go forward, based on whether there is enough evidence to support charges. Going forward without victim testimony is acceptable, and sometimes preferable, in domestic violence cases. However, victim testimony is typically critical in prosecution of sexual assault and stalking.</p>	<p>The District Attorney's Office doesn't have a policy on determining if a domestic violence prosecution will go forward without victim testimony. However, each file contained an intake sheet that documented the filing decision. Of the 86 files, 12 were declined for prosecution. 8 of these 12 documented a reason for not going forward:</p> <ul style="list-style-type: none"> • <u>1</u> "no crime committed" • <u>1</u> "pled to original charge" • <u>1</u> "deported" • <u>3</u> "problems of proof" • <u>1</u> "truly a mutual combat" • <u>1</u> "filed different restraining order violation" <p>This intake sheet, along with the police report, goes back to the law enforcement agency.</p> <p>If the domestic violence prosecutor is not available, another prosecutor could decide whether to issue charges in a domestic violence case. The investigator is sometimes asked his opinion.</p>
<p>Recognizing the possible deterrent effect of prosecution, screen in as many cases as possible. Establish clear guidelines and rationale when not charging a case.</p>	<p>See above.</p>

<p>If the decision is made not to proceed, notify the victim immediately and explain the reasons.</p>	<p>Of 86 files, 12 were declined and 12 were dismissed:</p> <ul style="list-style-type: none"> • 4 no reason documented • 6 “pled to another charge” • 1 “victim was no show at trial” • 1 “dismissed after witness testified in a way that created reasonable doubt” <p>The victim is not notified of decisions not to proceed or reasons for them.</p>
<p><i>Pre-trial Release</i></p>	<p>.</p>
<p>Evaluate pre-trial release options. Seek victim input and determine her fear of future assaults.</p>	<p>In Jackson County, a release officer employed by the courts evaluates pre-trial release options. They use a form entitled “Affidavit for Release Consideration,” which does not contain questions or space for victim input or information about her fear of future assaults. An interview is conducted with the offender, which does not include any questions about the victim or her fear level. Databases for criminal history and court history are checked and a pre-trial release matrix is applied. Inmates receive points for certain factors such as arrest history, work history, family and employment. The release officer then makes a recommendation on release options. This affidavit is available in prosecution files where defendants were arrested. However, the prosecutor does not present this information in court - that is the responsibility of the release officer who appears at all in-custody arraignments.</p> <p>Also, the release officer is to be mindful of the jail population and not let it get above 190. If that is the case while reviewing releases, the release officer is to compare the seriousness of offense with the seriousness of the offense of others currently incarcerated. 75 to 100 inmates a week are released due to overcrowding (this is a combination of releases - i.e., early release of sentenced individuals, pre-trial release of those unable to post bond, etc.). There are no plans to build a new jail. Also, 85 additional cells were lost in July 2003 because the secondary jail in Talent closed due to lack of funding. The capacity of the jail was increased in August 2003 to 255 via the terms of a federal court settlement. The Sheriff’s Department is not currently able to take full advantage of the increased capacity due to staffing levels and safety factors.</p>

<p>Request an appropriate bail-setting based on the nature of the crime, the danger to the victim, the potential for danger to the community, the perpetrator's criminal history, his contacts with the community, and his potential for maintaining contact with his attorney and the court.</p>	<p><i>Sec. 134.240 and 134.245, Oregon Stats. (Releasable offenses and Release Decision), states: "...shall impose the least onerous condition reasonable likely to ensure the safety of the public and the victim and the person's later appearance, and if the person is charged with an offense involving domestic violence, ensure that the person does not engage in domestic violence while on release."</i></p> <p>In Jackson County, requesting an appropriate bail is the release officer's role, not the prosecutor's. The prosecutor can argue this matter, but prosecutors interviewed for this audit indicated they are happy with the decisions made by the release officer, so typically don't appear at bail hearings unless it is a unique, unusual or particularly serious case. The release officer uses criteria such as the inmate's arrest history, work history, family, employment to determine candidacy for release on their own recognizance. The forms the release office use do not have spaces for dangerousness to victim. On several "Affidavit for Release Consideration" forms the release officer wrote comments such as, four cases pending with same victim; gave same address as victim; second assault against same victim. Through these comments it appeared that there is a consciousness about victim safety issues although it is not a standard part of the form.</p>
<p>Where a systematic risk-assessment shows that the danger posed by the defendant to the victim is significant, request holding the defendant in protective custody during court proceedings.</p>	<p>This would not be a typical request in any jurisdiction in the level of domestic violence cases looked at here. In the files looked at, no defendant was held under these criteria. In Oregon, bail must be set in misdemeanor cases. However, the domestic violence prosecutor said he would interject in release proceedings in instances where there were multiple violations of a restraining order. This was observed during one observation of court proceedings, where the prosecutor interjected himself at arraignment: the defendant requested release on recognizance, whereupon the prosecutor read a list of failures to appear. The judge set bail at \$500,000.</p>
<p>Consider the range of options that can be ordered by the court (e.g., prohibition against threats to commit abuse, harassment, or stalking; no contact orders; prohibition of third parties contacting victim on behalf of defendant; weapons confiscation; liquor abstinence and participation in alcohol or drug treatment programs or support groups; compliance with all aspects of protective and restraining orders; and other orders specific to case and relevant to public safety).</p>	<p>The prosecution files didn't consistently document imposition of no-contact orders, because the no-contact is automatically ordered in every case. The presence of a no-contact order at arraignment was documented on the district attorney's arraignment data form in 16 cases where there was a not guilty plea entered and 18 cases where a guilty plea was entered. The release officer then recommends a dollar amount. None of the files documented other conditions, although audit team members noted during observations noted that some defendants were ordered to report to the probation officer, consume no intoxicants, and/or submit to drug testing. Again, the release officer, not the prosecutor, recommends these conditions.</p>

<p>Determine whether a mental health evaluation is appropriate.</p>	<p>A prosecutorial determination as to whether a mental health evaluation is appropriate wouldn't be typical in any jurisdiction; that determination would typically be performed by the defense attorney. The reason this practice is here is that a prosecutor's responsibility is not only to obtain convictions, but to seek justice for all - including defendants - and that there may be times when a prosecutor would step in to facilitate such an evaluation, if the defendant wasn't represented, for example, or if the defense attorney wasn't addressing a mental health concern.</p> <p>No defendant mental health problems were alleged in any audited cases. The domestic violence prosecutor said such problems came up a couple times in his three years of prosecuting for Jackson County, and that he suggested to defense attorneys to get their client evaluated. He said he would be careful about this, as he wouldn't want mental health to be seen as a cause of domestic violence, but rather, a parallel issue.</p>
<p>Notify the victim when the defendant is released and give the victim copy of the order outlining conditions of release.</p>	<p>The D.A.'s office is not notified when defendants are released from jail, and so aren't able to notify the victim of same. Defendant release information is contained in the VINE system, which is controlled and financed by the state. The jail inputs the data and is responsible for accuracy. Police reports didn't document giving victims this information at the time of arrest. A brochure about VINE is available at law enforcement agencies, the district attorney's office, and the courthouse. The Domestic Violence Specialist mails this information to victims after the police report is received by the District Attorney's Office.</p> <p>No one in the local criminal justice system routinely gives the victim a copy of the order outlining conditions of release. She can get a copy if she personally goes to the release office. Or the specialist or a Dunn House advocate can also find out this information for victims, discuss conditions of release with victims and refer them to the release office for a copy of release conditions.</p>

<i>File or Charge Offenses</i>	
<p>Ensure charges reflect all crimes committed. Determine if additional charges should be filed.</p>	<p>The Jackson County District Attorney’s Office caseload for the year 2002 was studied by the American Prosecutor’s Research Institute (APRI) during the time this audit was conducted. During the first 11 months of 2002, the domestic violence prosecutor had 901 cases. This put him at over 1000 for the year. The APRI study recommended 6.45 attorneys for adequate coverage of misdemeanors. There are currently four attorneys covering misdemeanors, only one of whom is covering domestic violence cases.</p> <p>Regarding the audited cases, of the 76 cases that remain after declinations and dismissals, the prosecutor charged the same crimes as the officer arrested for in 40 cases. The prosecutor changed charges in 36 cases:</p> <ul style="list-style-type: none"> • reduced charges in 15 cases • increased charges by changing the charge or adding charges in 21 cases <p>33 cases charged single counts and 43 charged more than one crime.</p> <p>Of the 33 cases where single counts were charged, 32 were contempt of court (30 violations of restraining orders and 2 violations of no contact orders) and 1 was harassment. One prosecutor felt the difference in numbers between violations of restraining orders and violations of no-contact orders was that until recently, many people didn’t know that it is a mandatory arrest situation to violate a no-contact order.</p> <p>Of the <u>43</u> cases that charged more than one crime:</p> <ul style="list-style-type: none"> ▪ 39 harassment ▪ 39 misdemeanor assault IV ▪ 10 felony assault IV ▪ 4 interfering w/making report ▪ 1 interfering w/police officer ▪ 3 resisting ▪ 7 restraining order violation (3 cases) ▪ 3 misdemeanor criminal mischief ▪ 2 menacing ▪ 2 felony assault 2nd degree ▪ 1 attempting to elude ▪ 2 burglary 2nd degree ▪ 1 felony criminal mischief ▪ 1 disorderly conduct ▪ 1 pointing a firearm at another <p>See above sections regarding victim input.</p>

<p>Determine whether there was a restraining order in effect at the time of the offense and charge accordingly.</p>	<p>When responding to a domestic violence call, officers in Jackson County check for the presence of a restraining order in one of three ways:</p> <ul style="list-style-type: none"> • the Law Enforcement Data System (LEDS, which is linked to the National Crime Information Center) • the victim herself • personal knowledge <p>The latter two would be verified thru LEDS. Officers provide that information to the prosecutor. 30 of the 76 cases had a restraining order in effect. 21 of these 30 files contained a full or partial copy of the restraining order, and 4 additional files noted the existence of a restraining order without containing a copy of it.</p> <p>Officers are not able to reliably check for the existence of, or modifications to, no-contact orders, as they are not input into a database as are restraining orders. They could call the jail, which notes conditions of release in jail files, but would not be able to confirm whether it had been dropped or modified. During the week, they could also call the local control unit – a staff of three or four at the courthouse who are authorized to supervise individuals subject to no-contact orders through phone calls, personal contact, alcohol or drug testing, and polygraphing. However, checking with this unit is not possible on weekends. And individuals subject to domestic violence related no-contact orders are often not ordered to report to this unit. High-level felony offenders, sex offenders, etc. are individuals more typically ordered to report to the local control unit. So while arrests and prosecutions of protection order violations are routine, arrests for no contact violations are not. One of the prosecutors interviewed for this audit felt this was also impacted by the fact that until recently, many people did not know it is a mandatory arrest situation to violate a no-contact order.</p>
<p>Seek out other information on suspect’s history and use in charging decisions. Prior violations against the same victim, if provable and within statute of limitations, can be charged as separate counts.</p>	<p>This best practice refers to obtaining history other than criminal convictions, such as information from the victim or from the advocate. In Jackson County, the charging process usually happens very quickly and does not involve the D.A.’s office making this sort of contact with the victim. The sources of additional information would be in the police report or in the CCH (comprehensive criminal history). If either of those places indicated that there was information that could change the charging decision then the investigator would be asked to look into it. This did not appear to have happened in any of the audit files, although during an interview for this audit, the prosecutor recalled several examples of utilizing the investigator in this fashion.</p>

<p>Seek out other information on suspect's history and use in charging decisions. Prior violations against the same victim, if provable and within statute of limitations, can be charged as separate counts.</p> <p>(cont'd)</p>	<p>When the police report arrives at the district attorney's office, the state (LEDS) and national (NCIC) criminal history checks are attached. The domestic violence prosecutor checks the criminal history against information received by the release officer and uses the investigator to clarify or add to any history information. The domestic violence prosecutor gave the example of the release officer noting a previous conviction from Arizona that wasn't indicated on the NCIC printouts. The investigator obtained confirmation of this which permitted the prosecutor to charge this case as a felony</p>
<p>Only under extraordinary circumstances should both parties be charged. Evaluate the crime to determine who the primary aggressor is.</p>	<p><i>ORS 133.055 Domestic Violence</i> <i>(2)(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:</i></p> <ul style="list-style-type: none"> <i>(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;</i> <i>(B) If reasonably ascertainable, the history of domestic violence between the persons involved;</i> <i>(C) Whether any alleged crime was committed in self-defense;</i> <i>and</i> <i>(D) The potential for future assaults.</i> <p>In several police reports the officer explicitly stated that s/he determined the primary aggressor when both parties claimed to be the victim. In case 4248 where the female was arrested, the officer specifically documented the attempt to talk with the female outside the presence of the male about whether she had been assaulted. In 2 cases, both parties were charged. In both cases where both parties were charged they each had restraining orders against the other.</p> <p>In one declined case the police department arrested both parties, one for assault 4 and menacing and the other for assault 2. Upon review, the prosecutor determined that it was "truly a mutual combat.</p> <p>The investigator stated there are cues in cases of self-defense. He looks at prior history, past abuse, preemptive strikes, and physical size. Parties may be interviewed or reinterviewed. Cases may be dismissed when that person had a legitimate self-defense claim. Sometimes the cases started out as self-defense but went beyond. The investigator will also try and determine primary aggressor in cases where not determined by police.</p>
<p>Do not require victim to sign a criminal complaint or attend pre-trial hearings.</p>	<p>Jackson County does not require victims to sign criminal complaints or attend pre-trial hearings.</p>

<p>Recommend creative sentencing options to increase victim safety and offender accountability.</p>	<p>In Jackson County, the prosecutor is able to recommend creative sentencing options, although when interviewed, he indicated he generally recommends what the courts have previously accepted. During one observation of sentencing hearings, he fashioned a creative sentence where he withdrew some recommended jail time in exchange for increased monitoring and compliance with child support payments.</p>
<p><i>Conduct Thorough Investigation</i></p>	
<p>In reviewing evidence collected by law enforcement, consider the following evidence: reports; written statements and documentation of excited utterances; signed medical releases; 911 tapes; photographs of injuries, the crime scene, the suspect, and children; weapons used; broken or damaged property; torn or bloody clothing; forensic evidence analysis; or diagrams of the crime scene.</p>	<p>All files contained police reports</p> <p>1 file had written statements in the classic sense (that is an actual statement written by the victim or suspect in their own hand). 2 additional files contained letters from victim or defendant that were sent to the DA after the fact. 10 additional files contained completed victim impact statements.</p> <p><i>ORS 40.460 Rule 803, Hearsay Exception, states, "A statement related to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."</i></p> <p>Typical training directs officers to document an excited utterance by documenting the declarant's demeanor, and documenting his/her exact words in quotation marks.</p> <p>1 file contained a police report with an utterance that was documented in that way. 10 documented something about the victim or child witness's demeanor. Most files contained police reports where officers paraphrased what a victim said. In some of these cases it appeared that an excited utterance might have been available.</p> <p>1 file contained a medical release 4 files contained a printed call detail from dispatch delineating minute-by-minute radio contact between the officer and dispatch 17 police reports documented taking photos 3 police reports documented weapon use 0 police reports had crime scene diagrams 5 police reports documented broken or damaged property, or torn or bloody clothing. 0 cases involved forensic evidence analysis. However, this would not be a typical resource used in misdemeanor cases.</p> <p>The domestic violence prosecutor reviews evidence collected by law enforcement and directs the investigator to fill in any areas above. The domestic violence specialist is aware of any victims who may wish to give additional statement and informs the investigator.</p>

<p>In addition to evidence collected at the scene, the following evidence is also relevant: medical records, child protection services records, visitation center records, letters from the defendant, jail visitation records, victim's employment records (missed work), evidence of prior felony convictions of the defendant, past and current restraining orders, and past police reports. Where they exist, court transcripts of earlier proceedings should be reviewed. Interviews with the defendant and witnesses should be conducted as well.</p>	<p>1 file referenced medical records 1 file referenced child protection service records Jackson County currently does not possess a supervised visitation site outside of the SCF program. In October 2003 Jackson County and Community Works were awarded both state and federal grants to create a supervised visitation and custody exchange program prioritizing domestic violence, sexual assault and stalking cases.</p> <p>0 files referenced jail visitation records 0 files referenced victim's employment records</p> <p>Most files contained criminal history checks on the defendant</p> <p>30 files referenced restraining orders. A copy of the Restraining Order was present in 24 of the 30 files.</p> <p>9 files referenced other current court cases. This was usually noted by the attorney on the arraignment data form and often for the purposes of sentencing such as, "motion to dismiss, pled to case #," or "pled to other charges".</p> <p>2 files contained or referenced past police reports. In one, the police officer noted that during the course of his investigation he contacted another officer who was looking for the same suspect on a similar charge of VRO from several days ago.</p> <p>13 files referenced prior court proceedings. In 2 files copies of certified convictions appeared. 11 files contained handwritten or sentencing notations of concurrent cases.</p> <p>It is the investigator's role to obtain this sort of evidence. Sometimes he is made aware of it through victim contact and gets the additional evidence. Sometimes the domestic violence prosecutor instructs him. The investigator doesn't currently have a camera so for now, police take any additional pictures. However, the money to purchase a camera has been authorized and the investigator has picked out the equipment. When this process is completed, the investigator will have the means to collect more evidence. Currently, he can collect anything that can be maintained in the file such as audio and video tapes and photos. Anything larger than will fit in a file or involving analysis, etc would require police to store it. Another limitation on the investigator's work is that he has to use his personal vehicle to do field work. With a state or county vehicle he could have more anonymity and flexibility, and in practice this would make him more amenable to working in the field.</p>
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<p><i>Use Trial Strategies</i></p>	<p>The audit team did not observe any trials. However, in the 76 cases that went forward, 6 went to trial with 5 resulting in guilty verdicts. One of the attorneys interviewed said that bench trials are usually trials for contempt of court, which are simpler fact situations, usually taking about a half hour or so to try. He felt this was important to include in viewing other practices in this report such as victim contact, case preparation, time spent with witnesses, and so on.</p>
<p>Conduct voir dire to identify potential jurors' biases, and to address and dispel myths that affect violence against women cases.</p>	<p>Of the six “trial files,” one contained jury instructions as well as notes for voir dire. The other cases appeared to be bench trials. During voir dire, Jackson County prosecutors are allowed to question jurors. One of the prosecutors interviewed for this audit indicated all of the office prosecutors have the same set of jury selection questions, which does include questions related to domestic violence cases (for example, addressing the point that the state is prosecuting, even if the victim doesn’t want to). Each attorney has tailored this list to his or her style. Another prosecutor added that there is no formula - every trial is different and unique and requires a different approach. He felt being grounded as a litigator enabled him to approach each case in a fresh way. As for addressing jurors and dispelling myths, the prosecutor said there is no cookie cutter mold for doing the job.</p>
<p>Develop a bank of briefs and model lines of questioning to support trial and pre-trial motions that can be adapted to the particular facts of a case.</p>	<p>The Jackson County District Attorney’s Office doesn’t have a bank of briefs or model lines of questioning, which is true of most smaller offices.</p>
<p>Become familiar with evidentiary rules including use of expert witnesses, forensic testimony, use of non-victim witnesses, exceptions to hearsay rule, and laying foundation for introduction of documents.</p>	<p>Expert witnesses and forensic testimony would not be typical resources used in domestic violence cases of the level seen in this audit. As for use of non-victim witnesses, in several files, non-victim witnesses were listed on the subpoena forms. Audit team members also observed the District Attorney’s investigator tracking down and talking with a non-victim witness. Regarding hearsay exceptions, the prosecutor said he finds Oregon’s unique 24-hour rule effective (see page 8). As stated in several earlier parts of this report, the victim witness specialist and the investigator are also aware of and make use of this rule. As for documents, in one of the trials, medical records were introduced. During his interview, the prosecutor said he was also able to bring in EMT records.</p>
<p>Become conversant with strategies to deal with complex cases such as strangulation, allegations of assault committed by victim, or recanting of victim's previous testimony.</p>	<p>11 police reports mention “choking” or some form of grabbing her throat. The word strangulation is rarely used. 5 restraining orders contained in the files mention past strangulation. Currently, strangulation cases in Jackson County aren’t being charged in any way other than misdemeanor assault. However, the state of Oregon just passed a law creating the new crime of strangulation.</p> <p>The Jackson County Council Against Domestic and Sexual Violence has prioritized strangulation on its training list. The domestic violence prosecutor has trained local police on strangulation in the</p>

Become conversant with strategies to deal with complex cases such as strangulation, allegations of assault committed by victim, or recanting of victim's previous testimony.
(cont'd.)

past.

Relating to crime; creating new provisions; and amending ORS 40.355, 124.105, 135.703, 135.951, 166.470 and 167.320.

SECTION 2.

(1) A person commits the crime of strangulation if the person knowingly impedes the normal breathing or circulation of the blood of another person by:

- (a) Applying pressure on the throat or neck of the other person; or*
- (b) Blocking the nose or mouth of the other person.*

(2) Subsection (1) of this section does not apply to legitimate medical procedures or good faith practices of a religious belief.

(3) Strangulation is a Class A misdemeanor.

(4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

(a) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim;

(b) The person used, attempted to use or threatened to use a dangerous weapon while committing the crime;

(c) The person caused physical injury to the victim while committing the crime;

(d) The person has been convicted previously of violating this section;

(e) The person has been convicted previously of violating ORS 163.160, 163.165, 163.175 or 163.190 and the victim in the previous conviction is the same person who is the victim of the current conviction; or

(f) The person has at least three previous convictions of any combination of ORS 163.160, 163.165, 163.175 or 163.190 or of equivalent crimes in other jurisdictions.

As for allegations of assault committed by the victim, in case 4248 where the female was arrested, the officer specifically documented the attempt to talk with the female outside the presence of the male about whether she had been assaulted. The domestic violence prosecutor looks at these on a case-by-case basis and is willing to hear information from advocates and prosecutorial staff about the dynamics of the crime. Audit team members observed the prosecutor reverse his initial decisions on two cases where the party that was arrested was later, through investigation, determined to be the victim.

There is a general expectation in the D.A.'s office and throughout the system that the victim will recant. Recanting by the victim does not appear to deter the prosecutor's willingness to prosecute. One of the prosecutors interviewed elaborated on this by saying decisions to proceed on a case are not made based on recantation, but as a practical matter, recantation does come into play. For example, when the case is a "pain only" case (that is, no visible injury), if the victim recants

<p>Become conversant with strategies to deal with complex cases such as strangulation, allegations of assault committed by victim, or recanting of victim's previous testimony. (cont'd.)</p>	<p>her initial report, such a case may be very difficult to prove to a jury. Similarly, when a police report hasn't documented any excited utterances, and that victim later recants, the usual strategy of using a police witness to prove the case is weakened.</p> <p>The prosecutor refers victims who recant to the office domestic violence specialist and to the Dunn House Outreach advocates. Also for victims who wish to recant or drop charges, the prosecutor recommends the "Alternatives to Violence" Class conducted by domestic violence advocates connected to Community Works, the local non-profit domestic violence program. The three-hour class gives victims an overview of the power and control wheel, talks briefly about each participant's experience, and discusses the effects of domestic violence on children as well as safety planning. This does not mean that the charges will be dropped.</p>
<p>Consider role of children as witnesses in consultation with psychologists or other experts</p>	<p>Utilizing this sort of expert resource in misdemeanor cases would be atypical. The police reports in the audited files typically did not document information about children that may aid a prosecutor in considering the role of children as witnesses. The domestic violence prosecutor indicated that in cases where children were witnesses, the defendant is more likely to plead guilty.</p>
<p>Utilize advanced technology to enhance the presentation of evidence to the court.</p>	<p>The domestic violence prosecutor indicated that the extent of evidence presentation during misdemeanor trials is 4 x 6 photos. He is generally able to obtain convictions without the use of dispatch tapes.</p>
<p style="text-align: center;"><i>Sentencing</i></p>	
<p>Recommend a sentencing hearing.</p>	<p>Pleas often occur at the arraignment calendar, and are handled by the arraignment deputy. The domestic violence prosecutor isn't aware of these pleas and so there isn't a mechanism in place to let the victim know. Victims are only advised of hearings by the D.A.'s office if they initiate contact or are needed as witnesses. One of the attorneys interviewed gave the example that when a victim indicated she wanted to be present at sentencing, he noted that across the front of the file. When a case is closed, whether by conviction, acquittal or dismissal, the specialist mails a close-out letter to the victim.</p> <p>Many of the victims interviewed for this audit knew of the hearing dates from the offenders. Several victims said they had no idea what was happening in the court process. Some didn't know conviction and sentencing had occurred until they were called by a probation officer asking about contact with the offender.</p>

<p>Ensure the court conducts a risk assessment of offender dangerousness as part of the sentencing process.</p>	<p>Courts do not assess risk prior to sentencing. Offenders are generally placed on probation with the no-contact order still in effect. They must attend 5 sessions of a batterer intervention program prior to contact being allowed by the probation officer.</p>
<p>Provide the victim with a pre-sentence report to help her prepare her victim impact statement. Encourage her to make a written or verbal statement concerning her sense of continued risk and give input into the conditions of release.</p>	<p>Pre-sentence reports aren't conducted on misdemeanor cases in Jackson County. Victim impact forms are mailed to the victim when the D.A.'s office gets the police report. Most completed victim impact statements in the audited files arrived at the D.A.'s office after decisions such as conditions of release or deferred sentencing were made.</p>
<p>When recommending dispositions, consider the nature and gravity of the offense, the history of sexual or physical abuse, previous efforts at rehabilitation, the defendant's character and current rehabilitative needs, and the interests of the community in protection and punishments.</p>	<p>Jackson County courts view probation as the expert in such matters and typically order "any counseling/treatment deemed appropriate by probation." Thus, the court wouldn't order and the prosecutor wouldn't ask for a specific court-ordered condition to attend substance abuse treatment. Jackson County has alcohol and drug testing and treatment as a standard rule of supervised probation.</p> <p>The domestic violence prosecutor said there's no cookie cutter approach to sentencing, and that he recommends the batterer program for every sentence in which he believes the defendant would benefit from the program.</p>
<p><i>Post-sentencing</i></p>	
<p>Preserve evidence for future use.</p>	<p>Post-sentencing preservation of evidence would be more typical in high-level felony cases such as sexual assaults than in the types of cases reviewed for this audit.</p>
<p>Respond to victim requests for assistance.</p>	<p>The domestic violence specialist in the District Attorney's office is available for the victim post-sentencing to answer system questions and for referrals to community programs.</p>

<p>Work collaboratively with probation and parole officers to ensure enforcement of probation and parole conditions. Initiate review hearings or recharge when there are violations.</p>	<p>It is the policy of the D.A.'s office to charge each new crime as a new case. Each would have its own police report, be subject to mandatory arrest and be charged. The D.A. works closely with the probation department to charge violations of probation. The probation violation, as well as the new arrest for a new crime, appears on the state criminal history database, but in order to find out the reason for the probation violation, one would have to look in the probation officer's paper file. It would be possible to be in a position of not being in a position to address numerous probation violations during the pre-trial release decision, because the officer wouldn't know what the violations were for.</p> <p>In one of the audited cases, a new crime was handled as a probation violation only, but this was because he was going to prison and the misdemeanor wouldn't have added any additional incarceration.</p>
<p><i>Data Collection</i></p>	
<p>Create databases to expedite docketing, case management, and timely victim notification.</p>	<p>The Victim/Witness program in the DA's Office has created a Quattro Pro database to track victim contacts. This program is available to the D.A. but at the time of the audit he was not aware of that and thus had not utilized it. The current data program, within the AS400, while accessible and useful for tracking charges filed and current status of the case, does not have the function of tracking victim contact. The D.A.'s office is looking into changing data collection programs. The specialist does maintain, on her own computer, dates of initial phone calls to victims, grand juries, CVC's, and mailings.</p>
<p>Automate databases to include information on each case, the nature of the charges, and the ongoing status of the case up to and after sentencing.</p>	<p>The current database system, which includes basic information on each case such as the names of the charges, includes probation violation information after sentencing. It does not have capacity for victim information in any form other than her name. The specialist does maintain, on her own computer, the nature of the charges, and the disposition.</p>
<p>Integrate data systems to include both criminal and civil histories.</p>	<p>The state run OJIN (Oregon Judicial Information System) contains information both civil and criminal. The D.A. does not typically utilize civil information in their handling of cases. The courts have been working at bundling cases based on family association for several years. This is in order to eliminate conflicting orders and to give the judge a big-picture look at each incident. This is an ongoing process.</p>

CONCLUSIONS

Safety planning. The Jackson County District Attorney's Office has a lengthy commitment to victim witness assistance. A position called domestic violence specialist is consistently used to promptly mail information to domestic violence victims after a case is received from law enforcement. Less consistent is the perception of telephone contact with victims.

The office also has a commitment to follow-up investigation. The investigator position is consistently used to promptly attempt follow-up interviews with victims and witnesses, and locate and subpoena victims and witnesses for trial. The latter responsibility is sometimes negatively impacted by police reports that don't document contact information for victims and witnesses.

The office does have a list of community-based resources to which it can refer victims; however, staff noted this list was outdated, and expressed a desire to update this information.

To assist victims in being safe, courts have adopted a no-contact provision on the release agreement. In order to petition the court to remove the no-contact provision, victims must attend a three-hour Alternative to Violence class taught by Dunn House Outreach. The class gives victims an overview of the power and control wheel, talks briefly about each participant's experience, and discusses the effects of domestic violence on children as well as safety planning. Once they have completed this class they can have a hearing set before the judge and make their request. The D.A.'s office also recommends this class for victims who wish to recant or drop charges. This does not mean that the charges will be dropped.

Screening. The Jackson County District Attorney's Office promptly disposes of cases.

The office doesn't have a written policy on case screening. This may be because the office has an investigator that can perform follow-up that may be necessary prior to charging a case. Some of the files contained police reports where photographs, physical evidence, and witness information were not documented.

The office has a low rate of declining charges. When not charging a case, most of the time, the prosecutor gives written reasons which are shared with the arresting agency. The victim is not contacted about case screening (e.g., reviewing case strengths or weaknesses when trying to make a decision) or about decisions not to issue charges.

Pretrial Release. In Jackson County, this part of the case is handled by a pretrial release officer, not the prosecutor. This officer does have a form to aid him or her in collecting information to aid the setting of appropriate bail, but the form does not instruct the officer to collect dangerousness information from the victim.

Although conditions of bail are also set at this stage, the victim isn't provided a copy of this information unless she goes to the release office and asks for one.

Filing or Charging Offenses. The Jackson County District Attorney's Office has a low rate of dismissals. The office ensures charges reflect all crimes committed, often adding charges in the cases audited. The one exception to this may be prosecutions for no-contact violations. While arrests and prosecutions of protection order violations are routine, arrests for no-contact violations are not, as these orders are not input into a database as protection orders are.

Police do provide the prosecutor with state and national criminal history checks in each case.

Oregon does have a primary aggressor statute. There were only two cases in the audit sample where both parties were arrested, although in both instances, both parties had restraining orders against each other. The office investigator is trained in self-defense issues, and will make the primary aggressor determination in instances where police did not.

Investigation. Most police reports in the audited files did not contain written statements or document excited utterances, photos or physical evidence.

Other evidence such as other court cases and past police reports was often obtained by the District Attorney's investigator.

Trial Strategies. The one attorney trying domestic violence cases in this office tried six cases in the three or four month period covered by the audit. This was without other specialized staff or police assistance, and without specialized forms, technology, and other resources that larger offices have. This is quite an accomplishment, when one looks at large, metropolitan offices in other parts of the country with several domestic violence attorneys, in-house advocates, and so on, who also may try just five or six cases during the same period.

As for special issues, though mentioned in 11 police reports and 5 restraining orders, strangulation was not investigated further. Some of those interviewed stated that recent case law in Oregon has "raised the bar" in proving substantial injury, making strangulation and other assaults more difficult to charge at higher levels. As a result, a law has just been passed creating the new crime of strangulation. Strangulation is at the top of the training priorities for the Jackson County Council Against Domestic and Sexual Violence.

The Jackson County District Attorney's Office is aware of the commonality of recantation and expects it in domestic violence cases. This doesn't affect the decision to go forward with cases. A class on domestic violence dynamics, power and control, safety planning, and impact on children, is recommended to victims who wish to recant or drop charges.

Sentencing. Sentencing hearings are conducted in Jackson County, although victims are not notified of them unless they contact the D.A.'s office. Courts do not conduct risk assessments or pre-sentence investigations for misdemeanor sentences; the D.A.'s office does mail victim impact forms to victims.

Post-sentencing. Prosecution and probation in Jackson County work collaboratively to enforce the rules of probation. It is the policy of the Jackson County District Attorney's Office to charge new crimes as new crimes and not just probation violations. This was evidenced by printouts of the criminal records of repeat offenders in the audited files.

Data collection. The office database does manage cases, but not information about the victim or about contact with her, although the domestic violence specialist does have such information on her computer. The state database does integrate both civil and criminal information, although the D.A.'s office doesn't often utilize civil court information in misdemeanor domestic violence prosecutions.

RECOMMENDATIONS AND IMPLEMENTATION SUGGESTIONS

- As some of the conclusions above deal with making contact with victims, getting information from victims or giving information to victims, we recommend clarifying the role of victim/witness work in the District Attorney's Office. A helpful guide to determining the job functions of victim-witness staff in a criminal justice office (as opposed to an advocate in a community-based program) comes from the written products of the Promising Practices Initiative, which have a section on the victim/witness specialist response:
 1. provide the victim with data about legal remedies, victim rights and community referrals.
 2. assist the victim with safety planning.
 3. work collaboratively with community-based advocates to address the full range of victim needs.
 4. serve as a liaison between the criminal justice system agencies and the victim.

5. notify the victim of her rights to state and federal victim compensation.
6. assist the victim with applications for crime victims' compensation and other financial aid.
7. provide the victim with case information on court dates and process.

This list is not to suggest that current victim-witness staff don't know about these areas or aren't addressing them to some extent. Rather, this checklist is meant to serve as a guide for policymakers who are trying to balance the difference between the work of a victim assistance professional within a criminal justice office, and the work of community-based programs who typically provide longer-term and more diverse supports. For example, in Jackson County, the district attorney could implement bullet 1 by updating resource and referral lists and establishing a protocol for making those referrals to community-based programs. Or he could implement it by training victim-witness staff about all legal remedies (protection orders, civil suits, divorce, child custody, child support, financial assistance) and victim rights (notification, speedy dispositions, presence at hearings, confidentiality, restitution), and have staff discuss these matters with victims. The D.A. could implement bullet 2 by training staff on current danger assessment factors, so that if during their contact with victims they became aware of signs of danger, they could refer victims to appropriate resources. Or he could implement it by providing more extensive training on risk, danger, lethality and safety, and establish written instruments for assessments. One could continue through the list, but suffice it to say at this point that none of these suggestions are "better;" they are a matter of discovering who is already doing such things well or who already has this knowledge and deciding where best the responsibility should then lie. This will entail meeting and collaboration between the D.A.'s office and community programs.

One of the positive things that often happens in audits is that practitioners see needs for change and begin planning to implement those changes even before the audit is done. That happened here, as victim-witness staff have already expressed a desire for a timeline upon which to implement regular (monthly or quarterly) collaborative training with community-based victim service agencies. The audit team and consultant support and recommend setting such a timeline, as it would institutionalize the collaboration we are recommending. Perhaps the current monthly inservice (four hours of victim service updates and training provided by Community Works the third Wednesday of each month) would be a good vehicle for this recommendation.

- As some of the conclusions above deal with information not collected by police, we recommend that the D.A.'s office work with Jackson County law enforcement entities to:
 - Recognize the prosecutor's role as a bridge between the police and courts
 - Advise and train law enforcement investigators on evidentiary issues
 - Keep police apprised of evolving state laws and regulations in the field of violence against women

Again, this is not to say that current prosecutors don't know about the desirability of these practices or don't address them to some extent – there were examples in this report of the prosecutor training police at different times on different topics. Rather, this recommendation is meant to encourage the institutionalization of prosecutor-police training to achieve and maintain a consistent quality of domestic violence reporting and evidence documentation.

We realize that these things are not totally under the control of prosecutors, and that prosecutors cannot accomplish them alone. Community Works, and the Jackson County Council Against Domestic and Sexual Violence, recently facilitated some movement in this area by bringing the National Stalking Resource Center to Medford to put on a two-day, multi-disciplinary training on investigating and prosecuting stalking. This was very well-received. As Community Works and the Council have been re-funded by the Office of Violence Against Women to continue their

domestic violence work in the Jackson County criminal justice system, they would be able to help facilitate this consistent linkage between police and prosecution by training, policy consultation, or further auditing or other evaluative work of other parts of the local criminal justice system:

- Jackson County, as an arrest and a rural grantee, is currently eligible to have criminal justice practitioners and service providers attend a number of upcoming arrest and rural grant trainings such as domestic violence strangulation, domestic violence stalking, battered women's use of violence, training law enforcement trainers, developing a coordinated community response, etc.
 - Jackson County, as an arrest grantee, is currently eligible to obtain technical assistance from the Battered Women's Justice Project in the way of collecting prosecution policies, law enforcement policies, prosecutor-police training materials, specialized forms and checklists, articles, research, etc.
 - Jackson County, as an arrest and a rural grantee, is eligible for individual technical assistance such as telephone consultation, telephone or video conferences with other experts in the field, etc.
 - Jackson County now has an experienced audit team that could be used to collect information, draft materials for review by supervisors, interview or observe to help problem-solve, etc.
- Some of the conclusions above deal with various aspects of no-contact orders:
 - the forms used by release officers don't provide for dangerousness information from victims
 - unlike arrests for protection order violations, arrests for no-contact violations rarely occur as no-contact information is not input into a database like protection orders are
 - the only two dual arrests/prosecutions were of couples who had restraining orders against each other

We realize these activities are not in the sole bailiwick of the prosecutor. However, we are certain the D.A.'s office would want to be involved in any changes to collecting information for bail, collecting information on no contact orders, and addressing dual orders. Therefore, we recommend that the D.A.'s office work with the release office to devise a consistent way of collecting dangerousness and no-contact information. We also recommend a multi-disciplinary (i.e., for police, prosecutors, advocates and judges) training on full faith and credit, and enforcement of, protection orders and no contact orders.

- Strangulation could be better recognized and addressed through training on investigation, prosecution and advocacy. The Office of Violence Against Women has recently funded four national trainings on this over the next year, to which Jackson County criminal justice practitioners would be entitled to attend. It may also be possible to bring the training to Medford, as was done with the National Stalking Resource Center.
- Finally, in order to institutionalize good practices already occurring, we recommend the creation of a written domestic violence prosecution plan, policy or guideline that will perpetuate the currently commendable case screening, follow-up investigation and trial practice occurring in the Jackson County District Attorney's Office's domestic violence prosecution.