

Appendix 5H

Sentencing Guidelines Departure in Domestic Violence Cases

Note: See the presentence investigation policy and **Protocol 1: Domestic Violence Presentence Investigation** in Chapter 7 of the Blueprint and *Appendix 7B: Training Memo—Conditions of Probation* included in the Blueprint supplement.

- 1) Recommend that all felony defendants be sentenced in accordance with state sentencing guidelines unless there are grounds for departure under the guidelines.
- 2) In felony cases where there is no durational departure, consider risk and lethality factors as well as the following in recommending what sentence should be imposed within the guideline range:
 - a) Aggravating factors:
 - i) Re-offense while on probation, particularly re-offense involving assaultive, threatening, coercive, harassing or stalking conduct
 - ii) Multiple violations of no-contact orders, domestic assault no-contact orders, harassment restraining orders, or orders for protection involving this or any other victim
 - iii) Multiple domestic violence treatment failures
 - iv) Multiple probation or conditional release failures
 - v) Significant injury to the victim which is not an element of the offense
 - vi) Injury to the victim that is more severe than is typical for the conviction offense
 - vii) Victim vulnerability stemming from factors including :
 - (1) Physical or developmental disabilities,
 - (2) Age
 - (3) Defendant's prior pattern of coercion, violence or intimidation
 - (4) Pregnancy
 - (5) The need to shield or protect children

- (6) Cultural or religious influences that make it difficult for the victim to leave the relationship
- viii) Subjecting the victim to sexual aggression or coercion, including:
 - (1) Assaults targeting the intimate parts of the victim
 - (2) Assaults including the removal of victim's clothing
 - (3) Assaults which involve covering the victim with the defendant's body
 - (4) Assaults related to demanding sex or punishing victim for being sexual with someone other than the defendant.
- ix) As the result of the past pattern of violence by this defendant, the defendant's actions during the offense caused the victim to fear death, great or substantial bodily harm or sexual assault
- x) The offense was committed with reckless disregard for causing physical harm to the victim or others.
- xi) The offense drew the children into the abuse.
- b) Mitigating factors:
 - i) The defendant is the victim of ongoing domestic violence by the victim in the current case.
 - ii) The defendant in the current case shows no indication of engaging in a pattern of control or intimidation of the victim
- 3) Consider recommending the maximum time within the guideline range when any of the following circumstances apply:
 - a) Increased risk of lethality, recidivism, or severe abuse, as described above
 - b) Severe abuse in the past
 - c) High risk to children
- 4) Consider recommending a stay of imposition, the minimum time within the guideline range or a downward durational departure when the following circumstances apply:
 - a) The defendant in the current case has been the victim of ongoing domestic abuse from the victim in the current case, and
 - b) The violence appeared to be an attempt to control or cope with that domestic abuse, and

- c) The violence did not result in substantial bodily harm.
- 5) Consider recommending a stay of imposition, the minimum time within the guideline range or a downward durational departure when the following circumstances apply:
- a) The defendant in the current case shows no indication of engaging in a pattern of control or intimidation of the victim, and
 - b) The violence used was not severe or potentially lethal and did not result in substantial bodily harm.
- 6) In general, recommend that the suspended sentence be set at the maximum allowed for gross misdemeanor and misdemeanor cases.
- 7) In general, recommend probation for the maximum period allowed by law for all offense levels involving probation.
- 8) Where authorized by statute, recommend that the second year of probation in misdemeanor cases shall be supervised probation when any of the following aggravating circumstances applies:
- a) A pattern of actions associated with lethality, recidivism, or severe abuse are present. (See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases* and *Appendix 1B: Training Memo—Risk and Dangerousness*.)
 - b) The defendant will be unlikely to be able to complete the conditions of probation in one year.
- 9) In recommending an amount of time to serve as a condition of probation, consider the following factors as they apply to the circumstances of the case:
- a) Any mandatory minimum sentence
 - b) Aggravating and mitigating factors addressed previously in this protocol
 - c) That victims and defendants may interpret the length of the sentence to serve as a statement regarding the seriousness of the offense
 - d) That where the risk to the victim is low or moderate and the defendant is a good candidate for probation supervision, suspended time of sufficient length may be sufficient to motivate change and to respond to violations
 - e) Offender accountability, without regard to the considerations of motivating change or responding to violations, as the primary goal where the risk to

the victim is high or the defendant is not considered a good candidate for probation supervision

- 10) Identify for the court which of the following notices appears to be required at sentencing:
- a) In violation of orders for protection, assault, and stalking/harassment cases where the victim was a family or household member and a firearm was used in any way: “You are prohibited from possessing a firearm for a period of ____ years. Violation of this prohibition is a gross misdemeanor.”
 - b) In convictions of crimes of violence as defined by Minn. Stat. §624.712, subd. 5: “You are prohibited from possessing firearms for the remainder of your life. Violation of this prohibition is a felony.”
 - c) In all cases: “Failure to abide by any condition of probation is a probation violation. If you violate probation, you may be required to comply with additional probation conditions and/or be required to serve all or part of your remaining sentence.”