

**GUIDELINES AND PROCEDURES**  
**FOR**  
**DOMESTIC ABUSE-RELATED CRIMINAL CASES**

Updated September 1, 2013  
4<sup>th</sup> Edition

**SECOND JUDICIAL DISTRICT**  
**FAMILY VIOLENCE COORDINATING COUNCIL**

Approved September 11, 2013

## PREFACE

The Second Judicial District Family Violence Coordinating Council was formed as an interdisciplinary working group, as were similar councils in every judicial district throughout the state, on recommendation of the Minnesota Conference on Family Violence and the Courts held in November 1993. The Council has met regularly since that time to work on improving Ramsey County's handling of domestic violence cases in all parts of the system.

In 1997, the Minnesota Legislature passed into law Minn.Stat. §484.79 establishing Family Violence Coordinating Councils (FVCC).

“A judicial district may establish a Family Violence Coordinating Council for the purpose of promoting innovative efforts to deal with family violence issues. A coordinating council shall establish and promote interdisciplinary programs and initiatives to coordinate public and private legal and social services and law enforcement, prosecutorial and judicial activities.”

The chief judge appoints the members of the FVCC with representatives from judges, court administrators, probation; domestic abuse advocates and social services; health care and mental health care providers; law enforcement and prosecutors; public defenders and legal aid; educators and child protection works; and public officials and other public organizations.

Since 1997, the Second Judicial District Family Violence Coordinating Council (FVCC) has continued as an interdisciplinary working group pursuant to the statute. The original *Guidelines and Procedures for Domestic Abuse-Related Criminal Cases* was prepared by the FVCC and working subcommittee with adoption by the bench on February 18, 1999. The FVCC has been responsible to periodically update the *Guidelines* with a working subcommittee, approval by the FVCC and subsequent approval by the bench. The Second Edition was approved by the bench on September 3, 2003. The Third Edition was approved by the bench on January 2, 2008. Through the years, the guidelines has served everyone working on domestic violence cases in Ramsey County as a tool for interdisciplinary training, assisting in identification of weaknesses in the system and ways to improve systemic handling of domestic abuse, developing protocols when needed and coordinating proceedings involving family violence issues in keeping with Minn.Stat. §484.79, Subd. 3.

This Fourth Edition of *Guidelines and Procedures for Domestic Abuse-Related Criminal Cases* was approved by the Second Judicial District Family Violence Coordinating Council on May 14, 2013. [See, endnote 1 at conclusion of the preface for a list of 2013 FVCC members]. All updated changes were reviewed and input was provided from all members of the FVCC. The *Guidelines* was reviewed and approved by the criminal team of the Ramsey County bench on August 14, 2013. The Second Judicial District Court bench approved the Fourth Edition of *Guidelines and Procedures for Domestic Abuse-Related Criminal Cases* on September 11, 2013. The Fourth Edition incorporates statewide legislative, case law developments, and local procedural changes for the handling of criminal domestic abuse-related cases since 2008 including statutory changes which took effect August 1, 2013.

The working subcommittee of the FVCC assigned to update this manual consisted of:

Janice Barker, Ramsey County Attorney's Office, Chair  
Judge Gary Bastian, Second Judicial District Court  
Jennifer Dickinson, Tubman  
Deputy Chief Dave Kvam, Maplewood Police Department  
Mary Pat Maher, Project Remand  
Rebecca McLane, St. Paul Intervention Project  
Jan Peterson, Court Administration

Additional contributors to the subcommittee consisted of:

Kevin Beck, Suburban Prosecution, Kelly & Lemmons, PA  
Caroline Beckman, Suburban Prosecution, Erickson and Erickson, PA  
Subia Beg, Ramsey County Attorney's Office  
Mark Forliti, Ramsey County Community Corrections Department  
Danielle Kluz, Bridges to Safety  
Therese Skarda, St. Paul City Attorney's Office

This comprehensive reference on all aspects of criminal domestic violence cases for our bench and Ramsey County agencies has proven helpful through the years. We received very positive feedback from the original 1999 edition and subsequent editions. We are confident you will find the current edition equally useful.

### *St. Paul Blueprint for Safety*

In 2007 the Minnesota Legislature awarded a grant to the City of St. Paul to write a comprehensive plan integrating the knowledge gleaned from thirty years of research, demonstration projects and practice into a "blueprint for city and county agencies responding to misdemeanor and felony assaults. There are two versions of the Blueprint, one specifically for the City of Saint Paul and one for other Minnesota communities and the country to use as a template or guide to create their own customized version.

The collective work of ten agencies took up the challenge to write a blueprint for every Minnesota community struggling with the destruction caused by violence in our homes. The content of the Blueprint was shaped by experts from the St. Paul/Ramsey County judicial system and domestic violence programs, national experts, the voices of victims, and research and proven best practices from across the nation. The creation of *The St. Paul Blueprint for Safety* came from the St. Paul Police Department, the St. Paul Intervention Project, the St. Paul City Attorney's Office, the Ramsey County Emergency Communications Center, the Ramsey County Attorney's Office, the Ramsey County Sheriff's Department, the Ramsey County Department of Corrections, Project Remand, and Praxis International, with the support of the 2<sup>nd</sup> Judicial District Bench. The Second Judicial District Family Violence Coordinating Council *Guidelines and Procedures for Domestic Abuse-Related Criminal Cases*, 3<sup>rd</sup> Edition, was a pivotal resource in developing the Blueprint.

The *St. Paul Blueprint for Safety* is a valuable tool that defines in detail, each agency and practitioner's roles, duties and responsibilities under our collective response at each point of case processing. It acts as a guide for (a) increasing the criminal justice system's accessibility, accountability, services and protections to all victims of domestic abuse (and their children), and (b) improving the response of intervening practitioners to ensure consistency with the level of violence of the crime/incident and dangerous actions of the assailant.

The generic *Blueprint for Safety* is receiving international interest and being adopted in communities across the U.S. As its creators, St. Paul, Ramsey County, is considered the national model for the *Blueprint for Safety*.

For more information and to access *Blueprint for Safety* go to:

[www.stpaulblueprintspip.org](http://www.stpaulblueprintspip.org)  
[www.stpaul.gov/police](http://www.stpaul.gov/police)  
[www.praxisinternational.org](http://www.praxisinternational.org)

Endnote 1: Members of the 2013 Second Judicial District Family Violence Coordinating Council  
(members in bold served on the working subcommittee for updating the Guidelines or as contributors):

Judge Robert Awsumb, District Court  
**Judge Gary Bastian, District Court**  
**Janice Barker, Ramsey County Attorney's Office-Adult Criminal, Chair**  
**Kevin Beck, Suburban Prosecutor**  
Shawn Betts, Defense Attorney  
Bree Adams Bill, St. Paul Intervention  
Bret Byfield, South Metro Human Services  
Maria DeWolf, St. Paul City Attorney's Office  
Patty Dunder, St. Paul Public Schools  
James Erickson, Jr., Suburban Prosecution  
Jill Gerber, Ramsey County Attorney's Office-Adult Criminal  
Sara Gonsalves, State Court Administration  
Corey Hazelton, Corrections  
Amanda Jameson, District Court  
Peter Jessen-Howard Juvenile Corrections  
Sgt. Sean Johnson, St. Paul Police Department-Family Violence  
Bob Kelly, Bob Kelly Programs  
Joe Kelly, Suburban Prosecution  
**Danielle Kluz, Bridges to Safety**  
**Dep. Chief Dave Kvam, Maplewood Police**  
Carolina Lamas, Neighborhood Justice Center, Defense Attorney  
**Mary Pat Maher, Project Remand**  
Cmdr. Rollie Martinez, Sheriff's Office  
Tami McConkey, Victim/Witness, Ramsey County Attorney's Office  
**Rebecca McLane, St. Paul Intervention**  
Heather Nelson, RN, Regions Hospital  
Denise Oleary, Emergency Communications Center  
Karen Oleson, Tubman  
Cmdr. Joe Paget, Ramsey County Sheriff's Office  
**Jan Peterson, District Court**  
Dave Pinto, Ramsey County Attorney's Office-Juvenile Division  
Jackie Powell, Women's Advocates  
Michael Davis, Ramsey County Public Defender's Office  
Robert Sierakowski, Ramsey County Corrections  
Val Snyder, SMRLS, attorney  
Ref. Jim Street, District Court  
Noelle Volin, Breaking Free

## TABLE OF CONTENTS

INDEX OF APPENDICES	6
SECTION 1: ARREST PROCEDURES	7
SECTION 2: POST-ARREST POLICE PROCEDURES AND WEEKEND JUDICIAL REVIEW	9
SECTION 3: DOMESTIC ABUSE CHARGING IN RAMSEY COUNTY; DOMESTIC VIOLENCE VICTIM SERVICES INFO.	11
SECTION 4: FIRST APPEARANCE	16
SECTION 5: TIMELINES FOR FUTURE COURT APPEARANCES	28
SECTION 6 ELEMENTS OF A PLEA	30
SECTION 7: SPECIAL EVIDENTIARY ISSUES IN DOMESTIC ABUSE TRIALS	32
SECTION 8: ISSUANCE AND VIOLATION OF NO CONTACT ORDERS IN DOMESTIC ABUSE-RELATED CRIMINAL CASES	35
SECTION 9 STATUTES THAT APPLY TO SENTENCING IN DOMESTIC ABUSE CASES; CONSECUTIVE SENTENCING	45
SECTION 10 WORKHOUSE RESTRICTIONS FOR DEFENDANTS CONVICTED OF A DOMESTIC ABUSE-RELATED OFFENSE	48
SECTION 11 CORRECTIONS DEPARTMENT POLICY ON NO CONTACT ORDERS AS CONDITION OF PROBATION; WHEN SENTENCE IS EXECUTED	49
SECTION 12: CORRECTIONS DEPARTMENT POLICY ON PROBATION VIOLATIONS IN DOMESTIC ABUSE CASES	51

## INDEX OF APPENDICES

1. Ramsey County Post-Arrest Bench Order for Domestic Abuse, Violation of an Order for Protection, Violation of Domestic Abuse No contact Order and Harassment Cases p. 52
2. "Domestic abuse" and "Family or household member" defined (Minn. Stat. § 518B.01); Offenses qualifying for Domestic Abuse No Contact Order (Minn. Stat. § 518B.01, subd. 22); Targeted Misdemeanors under the Minnesota Sentencing Guidelines. p.53
3. Weekend Post-Arrest Procedure for Domestic Abuse, Violation of an Order for Protection, Violation of Domestic Abuse No Contact Order and Harassment Cases p.54
4. A. Comparison between 36-Hour and 48-Hour Rules p. 55  
B. Chart Outlining Expiration of 36 and 48-Hour Rules p. 56
5. Harassment and Domestic Abuse-Related Crimes Subject to Heightened Bail and Conditional Release Requirements; Conditions of Release Which May Be Imposed for Harassment and Domestic Abuse-Related Crimes (Minn. Stat. §629.72) p. 57
6. *Blueprint* excerpt Practitioner's Guide to Risk/Danger in DV p. 58
7. Judicial Determination of Probable Cause to Detain (Form) p. 61
8. Domestic Violence Lethality Screen for Suburban Ramsey County First Responders p. 62
9. Confidential Victim Information Form p. 63
10. Project Remand Pretrial Bail Evaluation Form p. 64
11. Domestic Abuse Enhancements; QDVRO convictions list p. 65
12. Order of Conditional Release (Form) p. 67
13. A. Pretrial No Contact Order (Form) p. 68  
B. Probationary No Contact Order (Form) p. 69  
C. Cancellation of No Contact Order (Form) p. 70
14. A. Pretrial Domestic Abuse No Contact Order (DANCO) (Form) p. 71  
B. Probationary DANCO (Form) p. 72  
C. Cancellation of DANCO (Form) p. 74
15. Bench Policy on language defining Reasonable Distance for Protective Orders p. 75
16. Bench Policy regarding guidelines for DANCO exceptions (goldenrod on bench) p. 76
17. Domestic Violence Victim Services Available in Ramsey County p. 78
18. Memorandum on Consecutive Sentencing in Domestic Abuse Cases p. 80
19. Memorandum on History of Relationship Evidence in Domestic Abuse Cases p. 84
20. Memorandum on Domestic Violence Probation Violations p. 91

## SECTION 1: ARREST PROCEDURES

The 1992 Minnesota Legislature<sup>1</sup> required each law enforcement agency to develop, adopt and implement a written policy regarding arrest procedures for domestic abuse incidents. A statewide Domestic Abuse Model Arrest Policy was subsequently created to provide guidelines and procedures to be followed by peace officers throughout the state, and, with some variation among departments, law enforcement agencies throughout the Second Judicial District have adopted domestic abuse arrest policies. Both the model policy and individual policies adopted by Ramsey County law enforcement agencies generally discourage dual arrests, including an assessment of who is the primary aggressor and consideration of whether one of the parties acted in self-defense, and provide guidance to officers regarding victim safety.

Police officer authority to arrest includes the following:

**I. Arrests with a Warrant.** An officer may execute an arrest warrant for any offense at any time or place (including entry into a home where s/he has reason to believe the defendant to be) pursuant to the terms of the warrant.

**II. Warrantless Arrests.**

A. Felony Arrests. An officer who has probable cause to believe that a person has committed a felony may arrest the person. If the officer has reason to believe the person is in a residence, s/he may enter only with a warrant, consent or exigent circumstances. Minn. Stat. §629.34, subd. 1(c)(2) and (3).

B. Offense in Officer's Presence. An officer may arrest for any offense committed in his/her presence. Minn. Stat. §629.34, subd. 1(c)(1).

C. Domestic Abuse. Pursuant to Minn. Stat. §629.341, a peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that within the preceding 24 hours the person has committed domestic abuse against a family or household member, as defined in Minn. Stat. §518B.01, subd. 2. (See Appendix 2 for definitions of "domestic abuse" and "family or household members"). The arrest may be made even though the domestic abuse did not take place in the presence of the peace officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to Minn. Stat. §629.341, subd. 1, is immune from civil liability that might result from the officer's action.

In addition, notwithstanding any other law or rule, an arresting officer may *not* issue a citation in lieu of arrest and detention to an individual charged with domestic abuse, harassment, violation of an order for protection or violation of a domestic abuse no contact order. Minn. Stat. §629.72.

Depending on the person's conviction history, this offense may be a misdemeanor, a gross misdemeanor or a felony.

---

<sup>1</sup> 1992 Session Laws, ch. 571, art. 6, sec. 22. Minn. Stat. §629.342, subd 2.

#### D. Violation of Order for Protection (OFP)

Pursuant to Minn. Stat. §518B.01, subd. 14(e), a peace officer shall arrest and take into custody without a warrant a person whom the peace officer has probable cause to believe has violated the restraint or exclusion section of an order for protection. Such an arrest shall be made even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. There is probable cause if the person knows of the existence of the order. However, if the order has not yet been served, the officer shall immediately serve it whenever reasonably safe and possible (including service of the short form OFP) but may not arrest the person even if s/he knows of the order and is in a location barred by the order without first giving the person a reasonable opportunity to leave in the presence of the officer. Out of state or tribal orders are entitled to the same weight and enforceability as orders issued by a Minnesota court.

Depending on the person's conviction history, this offense may be a misdemeanor, a gross misdemeanor or a felony.

#### E. Violation of Harassment Restraining Order (HRO)

A peace officer shall arrest and take into custody a person who the peace officer has probable cause to believe has violated a harassment restraining order pursuant to Minn. Stat. §609.748, Subs. 4 or 5, if the existence of the order can be verified by the officer. Minn. Stat. §609.748, subd. 6(e).

Depending on the person's conviction history, this offense may be a misdemeanor, a gross misdemeanor or a felony.

#### F. Violation of Domestic Abuse No Contact Order (DANCO)

An officer shall arrest and take into custody a person whom the officer has probable cause to believe has violated a DANCO even if the violation did not occur in the presence of the peace officer provided the existence of the order can be verified. Minn. Stat. §629.75, subd 3. The defendant shall be held in custody for at least 36 hours unless released earlier by a judge.

Depending on the defendant's conviction history for "qualifying domestic violence-related offenses", this violation of a domestic abuse no contact order may be a misdemeanor, a gross misdemeanor or a felony. (Appendix 11).

[Reference: For more information on DANCO/NCO, see Section 8-Issuance and Violation of Protection Orders in Domestic Abuse-Related Criminal Cases.]

#### G. Violation of No Contact Order (NCO) [Contempt of Court]

An officer may arrest without a warrant any person who the peace officer has probable cause to believe has violated the provisions of a no contact or restraining order issued by a court. Minn. Stat. §629.34, subd. 1(c)(6). This is a general provision for any court no contact order not covered by the specific orders set forth above. This type of violation is chargeable as contempt of court and is a misdemeanor. Minn. Stat. §588.20, subd 2(4).



## **SECTION 2: POST-ARREST POLICE PROCEDURES AND WEEKEND JUDICIAL REVIEW**

When a warrantless arrest is made for stalking, domestic abuse as defined in Minn. Stat. §518B.01, subd. 2 (see Appendix 2), violation of an order for protection, or violation of a domestic abuse no contact order, the suspect must be taken into custody. The officer may not issue a citation in lieu of arrest and detention. Minn. Stat. §629.72, subd. 1a(a).

The statute also provides for detention of persons arrested for stalking, domestic abuse, violation of an order for protection or violation of a domestic abuse no contact order if it reasonably appears to jail authorities that release of the person:

- (1) poses a threat to the alleged victim or another family or household member,
- (2) poses a threat to public safety, or
- (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings.

Minn. Stat. §629.72, subd. 1a(b).

A peace officer shall make a warrantless custodial arrest if there is probable cause to believe a person has violated a domestic abuse no contact order even if the violation does not occur in the presence of the officer. The arrestee must be held at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. Minn. Stat. §629.75, subd. 3.

The individual must be charged or appear before a judge within the 36 hour or 48 hour time limit. (Appendices 4A and B).

For weekday arrests for domestic abuse, stalking, violation of an order for protection or violation of a domestic abuse no contact order, the arrestee will remain in custody until court per Ramsey County bench policy. (Appendix 1). For weekend arrests for domestic abuse, stalking, violation of an order for protection or violation of a domestic abuse no contact order, per Ramsey County bench policy, the weekend judge will review detentions in the same manner as felony arrests to determine if there is probable cause to detain until court. (Appendices 1 and 3). Bench practice since this policy was first adopted in 1993 has typically been to hold these offenders for subsequent first appearance court calendar.

Minn. Stat. §629.72, subd. 2, specifically provides that in judicial review of persons arrested for domestic abuse, stalking, violation of an order for protection or violation of a domestic abuse no contact order, the court shall review the facts and determine whether:

- (1) release of the person poses a threat to the alleged victim or another family or household member,
- (2) poses a threat to public safety, or
- (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings.

Appendix 5 contains the complete list of crimes subject to the heightened bail and release requirements of Minn. Stat. §629.72.

A domestic violence risk assessment should be made based on all the information before the judge. The Second Judicial District Violence Coordinating Council (VCC) recommends using the research-based risk assessment tool review of the lethality considerations adopted by the VCC. (Appendix 6). If the weekend judge decides the person should be held for court, s/he will sign the Judicial Determination of Probable Cause to Detain form. (Appendix 7). Project Remand will provide the weekend judge both a bail evaluation of the arrestee and a confidential Victim Information form. (Appendices 9 and 10). Minn. Stat. §629.72, subd. 2(b) expressly authorizes the court to impose *both* conditions of release *and* bail in cases of domestic abuse, stalking, violation of an order for protection and violation of a domestic abuse no contact order and provides that these conditions may include any of the following:

1. Enjoining the defendant from further domestic abuse or harassment/stalking against the alleged victim;
2. Prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, directly or indirectly;
3. Directing the defendant to stay away from the alleged victim's home or any other location the alleged victim is likely to be;
4. Prohibiting the defendant from possessing a firearm or other weapon specified by the court;
5. Prohibiting the defendant from possessing or consuming alcohol or controlled substances; and
6. Specifying any other matter required to protect the safety of the alleged victim and to ensure the appearance of the defendant at subsequent proceedings.

(Minn. Stat. §629.72 is summarized in Appendix 5).

### **SECTION 3: DOMESTIC ABUSE CHARGING IN RAMSEY COUNTY; DOMESTIC VIOLENCE VICTIM SERVICES INFORMATION**

#### **A. RAMSEY COUNTY ATTORNEY'S OFFICE: FELONY DOMESTIC ABUSE CHARGING; JOINT DOMESTIC ABUSE PROSECUTION UNIT**

The Ramsey County Attorney's office definition of "domestic abuse" is a broad one. The focus is on whether the crime arises because of a domestic relationship and is intended to injure, intimidate, terrorize or control the victim. Frequent felony domestic abuse charges in Ramsey County include:

1. terroristic threats,
2. assault 1 (great bodily harm), 2 (dangerous weapon) and 3 substantial bodily harm),
3. domestic assault by strangulation,
4. felony-enhanced assault 5 or domestic assault,
5. felony enhanced violation of an OFP, HRO or DANCO,
6. felony stalking or pattern of stalking conduct,
7. burglary 1 or 2,
8. criminal damage to property 1,
9. kidnapping, false imprisonment,
10. criminal sexual conduct 1 through 4,
11. tampering with a witness 1,
12. robbery, or
13. malicious punishment of a child.

The Ramsey County Attorney has exclusive jurisdiction over charges of malicious punishment of a child and criminal sexual conduct 5 (whether as a gross misdemeanor or a felony). Any other crime against the person may also be, depending on circumstances, a domestic-related charge and each has, on occasion, been charged by this office in domestic situations.

The county attorney's office believes that aggressive prosecution of domestic assaults sends a message to the community at large and to abusers and victims that domestic abuse is a crime and will not be tolerated. The goals of prosecution are to protect victims of domestic abuse from future violence, to hold abusers accountable for their behavior, to deter abusers from committing violent acts against both the victim and other persons and improving the accessibility of the criminal justice system and victim services to the victim.

Charging for general felony domestics in Ramsey County and JPU cases in St. Paul is primarily done by one experienced domestic charging attorney in RCAO for consistency with an emphasis on evidence-based prosecution. The charging attorney has past JPU experience and is cross-deputized by both the St. Paul City Attorney's Office and the RCAO so charging can be handled for general felony domestics and JPU cases. In addition, a specialized domestic violence paralegal assists the charging attorney in gathering evidence and beginning the prosecution process. The county attorney's office is committed to providing ongoing police training as needed to heighten officers' awareness of the potential chargeable felonies in domestic situations.

In determining whether to charge a domestic case, charging attorneys consider and review documentation of the current offense (including physical corroboration, medical reports, excited utterances and evidence from the victim and other witnesses) as well as past records of abuse (both charged and uncharged) and the existence of present or past OFPs. The decision on

whether to charge is based on an objective assessment of all the evidence. A victim's expressed desire not to prosecute a case is not determinative if sufficient other evidence exists to prove the defendant committed a crime.

A case may be declined for felony prosecution due to insufficient evidence or referred to the local city prosecutor for misdemeanor/gross misdemeanor charging review. Upon the county's decline to prosecute, the victim receives a letter pursuant to Minn. Stat. §611A.0315 advising of the decision not to charge and referral for seeking OFP/HRO.

If charges are declined, either the investigator or the victim (or an advocate on behalf of the victim) can request a second opinion. The county attorney's office also maintains a cooperative working relationship with city prosecutors to review cases already charged by the city which subsequently appear to have felony potential. Most commonly these referrals arise because of documentation of predicate enhancement convictions or medical opinion substantiating the elements of felony assault. The term, "qualified domestic violence-related offense" (QDVRO) defines which predicate convictions will enhance the level charge when a new domestic crime occurs. Minn. Stat. §609.02, subd. 16. See Domestic Abuse Enhancement Chart, Appendix 11.

In many domestic abuse cases, especially where a defendant has no prior felonies, it is desirable to give a defendant a chance to succeed under strict conditions of felony probation supervision rather than immediate commitment to prison—especially where this is the strongly expressed wish of the victim. A probationary disposition is negotiated when appropriate to provide conditions of probation that address accountability and rehabilitation. In other cases, because of problems of proof (including victim recantation, unavailable victims, or reluctant victims), a negotiated plea to a lesser offense is better, from the prosecution and community safety viewpoint, than the risk of acquittal or an evidence-compromised trial. From a defendant's perspective, the negotiated settlement gives an abuser a chance to turn his/her life around and avoid the risk of being convicted of a greater offense. Just because there is a recantation, however, does not mean the case must be dismissed. Some of these cases may be successfully prosecuted even with a non-cooperating victim. Whether by plea or conviction after trial, the county attorney's office goal is a disposition which will contribute to protecting victims of domestic abuse from future violence, holding abusers accountable, and deterring abusers from committing violent acts against both this victim and other persons.

Immediately after a case is charged, the county attorney's office assigns a victim-witness advocate to work with the victim until final disposition of the case. The advocate will attempt to make contact with the victim before arraignment so that the victim's wishes will be known in the event early resolution of the case is feasible. After the trial attorney is assigned, the advocate coordinates all contacts between the victim and the prosecutor. The advocate has the responsibility of advising the victim of statutory rights under Minn. Stat. Ch. 611A (Victims Rights Act) and assisting the victim in the exercise of those rights. Advocates also are familiar with community services available to domestic abuse victims and make referrals to these services.

### **Joint Domestic Abuse Prosecution Unit (JPU)**

Since 2000, the Ramsey County Attorney's Office and the St. Paul City Attorney's Office joined forces in an effort to more efficiently and effectively prosecute those St. Paul domestic assault cases in which children are present during the abuse. Attorneys in JPU are cross-deputized by both the St. Paul City Attorney and Ramsey County Attorney. Their cross-deputization allows

them to prosecute from charging through post-sentencing appropriate counts, from misdemeanors up to and including felonies, or a combination thereof. This joint collaboration minimizes any inherent delays in transferring cases from one prosecutor's office to another. Periodically, criteria for cases referred to JPU are modified for purposes of simplifying referrals to JPU and manage caseloads, however, overall the JPU handles domestic violence cases where a child is present.

If a child was present during the commission of a felony or gross misdemeanor domestic abuse-related offense which involves any violence and which occurs in the City of St. Paul, cases are reviewed by RCAO domestic charging attorney. The child need not have been actively involved in the incident.

JPU cases focus on the domestic relationship between the defendant and the victim as defined in Minn. Stat. §518B.01, subd. 2(b)(1)(5)(7) who are spouses, persons having a child in common, or involved in a significant romantic or sexual relationship. JPU works towards breaking the cycle of violence in families by focusing on the impact domestic violence has not only on adults but the children who are impacted by the crime.

Each JPU case has a RCAO victim/witness advocate assigned. The advocate attempts to make very early contact with each victim and maintain on-going contact throughout the case. JPU works closely with the Ramsey County Community Corrections Department and the St. Paul Police Department's family violence unit.

## **B. SAINT PAUL CITY ATTORNEY'S OFFICE MISDEMEANOR AND GROSS MISDEMEANOR DOMESTIC CHARGING**

The criminal division of the Saint Paul City Attorney's Office (CAO) is responsible for prosecuting all misdemeanor and gross misdemeanor domestic-related crimes which occur in the City of Saint Paul. The CAO also partners with the Ramsey County Attorney's Office in the prosecution of domestic-related crimes where children are present in Joint Prosecution Unit (JPU).

The most frequently charged domestic-related crimes in the CAO are domestic assaults and court order violations. First time offenders are charged as misdemeanors. Domestic-related crimes are charged as gross misdemeanors when the accused has a prior conviction for a qualified domestic violence related offense (QDVRO) within the last ten years.

Domestic assault charges include:

1. Domestic Assault
2. Assault in the Fifth Degree.

Court order violation charges include:

1. Violation of an Order for Protection
2. Violation of a Domestic Abuse No Contact Order
3. Violation of a No Contact Order, and
4. Violation of a Harassment Restraining Order.

The CAO charges other domestic-related crimes including:

1. Interference with an Emergency Call
2. Stalking
3. Disorderly Conduct
4. Criminal Damage to Property

5. Assault on an Unborn Child, and
6. Tampering with a Witness.

The CAO works closely with officers and investigators assigned to the Saint Paul Police Department's Sexual and Family Violence Unit (FSVU). A "family violence" investigator is located in the CAO. The FSVU investigators and officers respond to requests for further investigation, such as additional photographs of a victim's injuries, which may lead to a more successful prosecution.

Paralegals at the CAO are responsible for keeping victims up to date on each step of the criminal process. Paralegals and clerical staff notify victims of charging decisions and keep them informed of court hearings and case outcomes. In addition, they direct victims to available services and encourage them to seek protective orders when appropriate. The CAO has been an integral part of the formation of Bridges to Safety and often meets with victims at Bridges to discuss court procedures for trial preparation.

At Bridges to Safety, the CAO works closely with investigators from FSVU to prosecute gone on arrival (GOA) cases. In these cases, the suspect of the domestic-related crime has fled the scene prior to police arrival at the time of the initial report. Every morning prosecutors sit down with investigators to go over the GOA cases from the night before. The prosecutors and investigators discuss what further investigation needs to be done in order to have a stronger case. This cooperation has resulted in more effective charging, prosecution, and ultimately conviction for these typically difficult-to-prove cases.

### **C. SUBURBAN MISDEMEANOR AND GROSS MISDEMEANOR DOMESTIC CHARGING**

The Ramsey County suburban cities each retain their own city attorney whose office handles the prosecution and charging of gross misdemeanor and misdemeanor domestic assaults, violations of orders for protection, violation of domestic abuse no contact orders, emergency call interference and other related domestic violence crimes. The city attorneys each work with the city's law enforcement agency to prosecute these cases. In addition, the cities and their attorneys utilize the advocacy services of Tubman to provide victims with advocates and other related services, including assistance with orders for protection, crisis shelter services, counseling and therapy, youth services, legal services and advocacy both in and out of the court.

The suburban law enforcement agencies and attorneys believe that domestic violence is a community crime that affects not only the involved household or family but the community at large. For this reason, the suburban cities believe that domestic violence is a crime that impacts the entire community and the quality of life in the city. The goal of prosecution of misdemeanor and gross misdemeanor level domestic violence crimes are to protect victims of domestic abuse from future violence, to hold abusers accountable for their behavior, to prevent recidivism and to provide resources and services to prevent future domestic violence.

The Tubman organization is a non-profit domestic violence organization that provides an array of service to victims of domestic violence in all 15 Ramsey County suburbs. Primarily for law enforcement they provide an intervention phone line that officers call upon a domestic violence related arrest. This provides the law enforcement officer and victim with an immediate resource at the time of crisis. Legal advocates are then able to contact the victim prior to the defendant's first appearance for safety planning, court updates, and other services. This immediate response

by Tubman is an effective service in that victims are more likely to participate in the legal process; therefore, giving better conviction results.

An arrest, where appropriate, is preferable; however, officers have the discretion and authority to issue a citation for misdemeanor-level offenses. If a citation is issued, preapproval by the city attorney is not required if the officer believes probable cause exists. Sometimes an officer will request the city attorney to review and advise of appropriate charges. In determining whether to charge a domestic case, charging attorneys consider and review documentation of the current offense (including photos, 911 tapes, physical corroboration, medical records, excited utterances and evidence from the victim and other witnesses) as well as past records of abuse (both charged and uncharged). The decision on whether to charge is based on an objective assessment of all the evidence. A victim's recantation or desire not to prosecute a case is not determinative if sufficient other evidence exists to prove the defendant committed a crime. Moreover, a victim's cooperation or lack thereof may impact the prosecutor's plea bargaining.

The respective law enforcement agencies are responsible for providing the prosecutor with police reports, criminal history, and other relevant documents necessary to charge a case as a gross misdemeanor. It is a priority of the suburbs to charge these cases in a timely manner and to have a complaint filed before the defendant is released from custody so that appropriate conditions of release (most important a Domestic Abuse No Contact Order) may be set. If a suspect is released before a complaint is filed, the prosecutor may file the complaint as a warrant or summons. The suburban prosecutors make themselves available 24 hours a day, seven days a week, for questions and authority to detain. On occasion felony cases are declined for charging and referred to the individual city attorney office (i.e., strangulation cases and enhanceable offenses). When these cases are returned to the city attorney's office, the prosecution carefully reviews for appropriate charging.

## **DOMESTIC VIOLENCE VICTIM SERVICES INFORMATION**

Appendix 17 contains a summary of Domestic Violence Victim Services available in Ramsey County including Bridges to Safety at the Ramsey County Courthouse, SPIP and Tubman.

## **SECTION 4: FIRST APPEARANCE**

The following procedures apply to first appearances on all cases of domestic abuse offenses as defined in Minn. Stat. §518B.01, subd. 2, harassment/stalking and violation of an OFP or DANCO. (See, Appendix 2 for complete list of crimes constituting domestic abuse and related offenses). These offenses trigger the heightened bail and conditional release requirements of Minn. Stat. §629.72, subd. 2.<sup>2</sup> For purposes of this section, these offenses will be designated "domestic abuse-related offenses." Per Ramsey County bench policy (see Appendix 1); defendants arrested for domestic abuse-related offenses generally remain in custody until their first appearance.

### **I. Felony First Appearance Procedures**

All felony first appearances, both custody and non-custody, are held Monday through Friday at 1:30 p.m. in Courtroom 102 at the Law Enforcement Center (LEC), 425 Grove St., St. Paul, MN 55101.

### **II. Misdemeanor/Gross Misdemeanor Custody First Appearance Procedures**

All custody first appearances for St. Paul misdemeanor/gross misdemeanor domestic cases are held in the LEC Courtroom 101. These custody first appearances are held Monday through Friday at 9 a.m. (This calendar includes JPU cases prosecuted by the county attorney's office. See Section 3, *infra*.)

All custody first appearances for suburban misdemeanor/gross misdemeanor domestic abuse-related offenses are held in LEC Courtroom 101. These custody first appearances are held Monday through Friday at 1:35 p.m.

### **III. Misdemeanor/Gross Misdemeanor non-custody First Appearance Procedures**

Some defendants arrested for domestic abuse-related offenses are released pending charge and first appearance in court. When a suspect is gone on arrival (GOA) when police arrive at the scene of the crime at the time of the incident, these cases are charged by subsequent summons or warrant complaint.

All non-custody first appearances for domestic abuse-related offenses arising out of St. Paul are held in Room 131A of the courthouse. These first appearances are held Tuesdays and Thursdays at 12:30 p.m.; Mondays and Wednesdays at 8:30 a.m.

---

<sup>2</sup> Appendix 5 contains the list of offenses (including domestic abuse as defined in Minn. Stat. §518B.01, subd. 2) subject to the heightened bail and conditional release provisions of Minn. Stat. §629.72.



All non-custody first appearances for suburban harassment and domestic abuse-related offenses are held in the Maplewood courthouse. The schedule is as follows:

Mondays at 8:15 a.m.	Maplewood
Tuesdays at 8:15 a.m. Every other week	New Brighton, Mounds View Lauderdale and Falcon Heights
Wednesdays at 8:15 a.m. Every other week	White Bear Lake, Little Canada, Gem Lake, North Oaks, Shoreview, and Arden Hills
Thursdays at 8:15 a.m.	Roseville, North St. Paul, Vadnais Heights, White Bear Township

Because of Ramsey County bench policy to hold persons arrested for domestic abuse-related crimes for court or judicial review (see Appendix 1), non-custody appearances for domestic abuse-related crimes should be primarily defendants who were gone on arrival. If a judge releases a defendant on conditional release (CR) or bail after weekend judicial review, the case is set for first appearance on the next Thursday if it is a St. Paul charge. For defendants released on suburban charges over the weekend, the case is set on the next regular arraignment calendar for the given suburban jurisdiction (generally not more than 1-2 weeks out); however, pretrial will then be expedited for these domestic abuse-related cases. Maplewood, Roseville, North St. Paul, Vadnais Heights, and White Bear Township have exclusive domestic abuse pretrial calendars.

A. Unlocking the Calendar: "Unlocking" the calendar means the clerk of court will call a supervisor to unlock a date, add the case and relock the date. This bypass procedure is intended to minimize the delay in getting domestic cases through the system. The same "unlock" procedure may be used when a defendant makes a first-time request at pretrial for appointment of the public defender. Domestic pleas may be rescheduled from any jury trial and placed on any calendar including locked calendars. Domestic cases not blocked to a particular judge (ie. suburban caseloads) may be scheduled for an early plea prior to jury trial and scheduled on any calendar.

Upon request and with the court's order, defendants charged with a domestic-related offense who appear on the custody arraignment calendar but do not qualify for (or do not want) the public defender will be added on to the out-of-custody arraignment calendar as soon as possible within the next full week (allowing enough time for the prosecutor to get reports).

B. Order for Booking (non-custody defendants): A domestic abuse defendant, not previously arrested and booked, may receive a summons with a court date by mail. Included in the mailing with the summons are instructions for booking before the court appearance. The clerk at first appearance will check whether booking has been completed. If not done, the clerk will advise the court and the court will issue a booking order. Booking is particularly important in domestic abuse-related cases because of the statewide computerized tracking system for domestic abuse no contact orders which include photo identification of the defendant. (See Section 4.V.H.I., *infra*.) The booking photo is the only fingerprint-verified form of identification. If defendant fails to appear for booking order, a warrant is issued to book and release defendant.

#### **IV. Participants at First Appearance**

A. Prosecutors: An attorney from the St. Paul City Attorney's office will appear on all misdemeanor or gross misdemeanor cases arising in St. Paul. Suburban jurisdictions each have their own prosecutors who appear on the day assigned to that jurisdiction. An attorney from the Ramsey County Attorney's office appears on the afternoon felony calendar. This felony calendar will include all felony level domestic abuse-related cases as well as gross misdemeanor malicious punishment, child endangerment or neglect and criminal sexual conduct in the fifth degree, offenses for which the county attorney's office has statutory jurisdiction. Certified student attorneys may also appear under supervision of these attorneys.

B. Defense Attorneys: Attorneys and certified student attorneys from the Public Defender's office will be present to represent defendants who are deemed eligible for the Public Defender's services. In addition, defense attorneys from the Neighborhood Justice Center, Criminal Defense Services and private defense attorneys may be present. Criminal Defense Services, Inc. (CDSI) is a non-profit organization operating in Ramsey County to provide legal services to serve poor and low-income criminal defendants in misdemeanors, gross misdemeanors and certain low-level felony offenses. CDSI consists of a panel of 20-25 private attorneys who volunteer as a community service and fill the gap for those who do not qualify for the public defender but have little funds for a private attorney. Defendant's pay a reduced rate for legal representation.

C. Project Remand: On custody calendars, two to three court counselors from Project Remand will be in the courtroom to provide bail evaluation information/recommendations, to execute conditional release orders and to assist with referrals to Probation.

#### **D. Statutory Victim Notification for First Appearances in Domestic Cases**

Statutory victim notification for first appearances in domestic cases is handled by different public or private agencies depending on the charging jurisdiction. For felony cases and JPU cases charged by the Ramsey County Attorney's Office, victim notification is handled by assigned Victim/Witness advocates in the Ramsey County Attorney's Office. For domestic cases charged by the City of St. Paul, St. Paul Intervention, a domestic violence/community program provides victim notification services. For domestic cases charged by suburban prosecutors within Ramsey County, Tubman, a domestic violence/community program provides victim notification services.

##### **1. City/Suburban Misdemeanor/Gross Misdemeanor Calendars**

In non-felony custody first appearances, advocates from the St. Paul Intervention Project will be available to assist victims who have domestic abuse-related non-felony cases (including harassment) pending in St. Paul. Advocates from Tubman will be present to assist victims who have domestic abuse-related non-felony cases (including harassment) pending in the suburbs. These advocates will also be monitoring the court proceedings. Advocates from these organizations will meet with victims, if they are present, in court to provide information on the criminal justice process and on OFPs, shelters, support groups, financial resources, etc. If a case is dismissed and/or the defendant is released, the advocate will attempt to contact the victim immediately to notify of release and to provide safety planning. If the victim is not in court, the advocate will attempt to contact the victim by phone or mail.

## 2. Ramsey County Attorney's Office Calendars

For county attorney cases, the Ramsey County Attorney's Office (RCAO) victim/witness advocate handles all victim notifications and victim assistance for the prosecutor's office. These cases include all felony domestic prosecution and Joint Prosecution Unit (JPU) misdemeanor, gross misdemeanor and felony domestic abuse cases in St. Paul where children are present at the time of the incident.

- a. JPU Prosecutions: For JPU cases, the RCAO victim/witness advocate contacts the victim immediately after charging by phone call and by letter. The advocate attends court hearings with the victim and provides information and assistance throughout the trial, sentencing and post-conviction phase.
- b. Felony Prosecutions (non-JPU): For all other felony domestic cases, the RCAO Law Enforcement Center (LEC) victim advocate contacts the victim by phone and by letter at time of charging, then attends the first court hearings with the victim if the victim is in attendance. If a case resolves at the Omnibus Hearing, the case is assigned an ongoing RCAO victim/witness trial advocate to assist the victim with the sentencing process and any post-conviction issues. If a case is scheduled for pretrial/trial after the Omnibus Hearing, the case is assigned an ongoing RCAO victim/witness trial advocate who assists the victim through the sentencing process and any post-conviction issues. The same procedure is used for all gross misdemeanors prosecuted within the exclusive jurisdiction of the county attorney's office that are domestic abuse-related such as malicious punishment, child endangerment or neglect and criminal sexual conduct in the fifth degree.

E. Deputies: Deputies from the sheriff's department will be present to monitor custody defendants and to ensure the safety of the court personnel and the public.

F. Court Staff: Clerks from the district court will be in the courtroom to enter dispositions in the court's information system and to assign future court dates. Administrative court clerks will call the calendar and record information real time in MNCIS.

## V. Release Issues

### A. Constitutional Issues

The prosecutor advises the defendant of the nature of the charge(s) and gives him/her a copy of the complaint or confirms the defendant has a copy of the citation. If the defendant is eligible for a public defender, the court appoints counsel. The court then addresses the issue of release.

Four important constitutional principles underlie all pretrial release decisions:

1. All criminal offenses in Minnesota are bailable.
2. Bail may not be excessive.
3. Bail cannot be used to punish the accused.
4. At the pretrial release stage, the accused is presumed to be innocent.

## B. Purpose of Bail and Conditions of Pretrial Release

In general, the purpose of bail or other types of pretrial conditions of release is threefold:

1. To ensure the re-appearance of the accused at subsequent court appearances;
2. To prevent interference with the investigation or the orderliness of trial; and
3. To ensure the safety of the community or any person.

## C. Considerations for Pretrial Release Decisions

Minn. R. Crim. P. 6.02, subd. 1 addresses conditions of release. A person charged with an offense must be released on their personal recognizance or bond unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's future court appearance.

Conditions of release may be ordered in lieu of or in addition to personal recognizance/bail/bond to include single conditions or any combination of the following conditions (Minn. R. Crim. P. 6.02, subd 1):

1. place the defendant under the supervision of an organization or person who agrees to supervise;
2. place restrictions on travel, association, or residence during release;
3. require an appearance bond, cash deposit, or other security; or
4. impose other conditions necessary to assure appearance as ordered.

In determining conditions of pre-trial release pursuant to Minn. R. Crim. P. 6.02, subd 2 lists some of the information the court must consider in making pretrial release decisions:

1. Nature and circumstances of offense charged.
2. Weight of the evidence against the accused.
3. The accused's
  - a. family ties
  - b. employment
  - c. financial resources
  - d. character
  - e. mental condition
  - f. length of residence in the community
  - g. criminal convictions
  - h. prior history of appearing in court
  - i. prior flight to avoid prosecution.
4. The safety of
  - a. the victim
  - b. any other person
  - c. the community.

In addition, Minn. Stat. §629.72, subd. 2, specifically provides that for harassment/stalking, violations of orders for protection or DANCOS and domestic abuse-related offenses the court shall review the facts, including relevant information involving the victim's or the family's account of the alleged crime, and determine whether:

1. Release of the person poses a threat to the alleged victim, another family or household member or public safety; or
2. There is a substantial likelihood the person will fail to appear in subsequent proceedings.

Before releasing a person charged with these crimes, the court is expressly required to make findings *on the record*, to the extent possible, concerning these factors.

The same statute also expressly authorizes the court in these cases to set *both* bail *and* conditions of release. Conditions of release may include an order:

1. Enjoining the defendant from threatening or committing domestic abuse or harassment against the alleged victim, family or household members or violation an order for protection or domestic abuse no contact order;
2. Prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, directly or indirectly;
3. Directing the defendant to vacate and/or stay away from the alleged victim's home or any other location the alleged victim is likely to be;
4. Prohibiting the defendant from possessing a firearm or other weapon specified by the court;
5. Prohibiting the defendant from possessing or consuming alcohol or controlled substances; and
6. Specifying any other matter required to protect the safety of the alleged victim and to ensure the appearance of the defendant at subsequent proceedings.

***As of August 1, 2010, pretrial DANCO orders are issued under Minn. Stat. §629.75. A pretrial DANCO order is independent of any condition of pretrial release and is issued in a proceeding separately from but held immediately following a proceeding in which any pretrial release issues are decided. Minn. Stat. §629.75, subd 1(b)(c). (See, Second Judicial District Judicial Policies, P 10.06 of Appendix 15 and goldenrod of Appendix 16, Guidelines with respect to exceptions to DANCOS.)***

In addition to Minnesota statutes and rules, the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) have both adopted Standards on Pretrial Release. Both sets of standards presume that a defendant is entitled to release on personal recognizance on condition that the defendant attend all required court proceedings and not commit any criminal offenses. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or threat to the safety of the community or any person, victim or witness. If a defendant is not qualified for release on personal recognizance, the court should consider imposing conditions of release. The court should impose the least restrictive release conditions reasonably necessary to assure the defendant's appearance in court, to protect the safety of the community or any person, and to prevent intimidation of witnesses or interference with the orderly administration of justice.

The ABA and NAPSA Pretrial Release Standards provide that courts may consider:

1. The defendant's age, physical condition, community ties, past conduct and history related to drug or alcohol abuse;
2. Whether at the time of the current offense or arrest, the defendant was on probation, parole or release pending trial, sentencing or appeal;
3. Availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community; and
4. Any facts justifying a concern that the defendant will violate the law if released without restrictions.

D. Notice to Victim of Bail Hearing

Minn. Stat. §629.725, Notice to Crime Victim Regarding Bail Hearing of Arrested or Detained Person provides that notice shall be given to the victim of a crime of violence or attempted crime of violence regarding the bail hearing and the right to be present at such hearing. "Crime of violence" has the meaning given in Minn. Stat. §624.712 (crimes which make a person ineligible to possess a firearm if convicted: all are felonies except harassment) plus gross misdemeanor assault in the fifth degree and non-felony violations of an OFP or HRO. As a matter of practice, the prosecuting attorney's office makes reasonable efforts to contact the victim domestic abuse-related crimes prior to the hearing. In addition, Project Remand attempts to contact victims of domestic abuse-related offenses prior to the hearing for bail evaluation input (see Section 4, V.E. below) and to provide notice regarding the bail hearing.

E. Bail Evaluation

To determine conditions of release, the court may investigate the defendant's background before or at the defendant's court appearance. Minn. R. Crim. P. 6.02, subd 3.

In order to provide the information necessary for determining a defendant's conditions of release, Project Remand completes bail evaluations for every criminal defendant in Ramsey County after arrest and formal charging. (See Appendix 10: Project Remand Pretrial Evaluation Form). Project Remand is a private, non-profit agency which operates on a contract basis with Ramsey County Corrections. Project Remand has been providing bail evaluations for Ramsey County District Court since 1972. In 1994, the legislature mandated that county corrections departments complete bail evaluations for each defendant arrested and detained for committing a crime of violence, including domestic abuse crimes. Minn. Stat. §629.74.

The bail evaluation instrument which Project Remand uses has been formally approved by the board of directors of Project Remand, the Ramsey County district bench and the Judicial Council. The bail evaluation attempts to predict an individual's likelihood of pretrial misconduct. Pretrial misconduct is primarily defined as failing to appear in court or pretrial re-arrest. The bail evaluation process includes contacting and obtaining input from the victim. This information is summarized on a victim sheet which is given to the judge. (Appendix 9) In addition, Project Remand receives the police report for all Saint Paul domestic abuse cases. These police reports contain the victim's answers to four lethality questions. These answers are summarized on the Project Remand victim sheet and used by Project Remand to do a dangerousness assessment. Project Remand will also be receiving the Suburban Law

Enforcement Domestic Violence Lethality Screen (Appendix 8), once it is fully operational, and will use this information to do dangerousness assessments. In addition, Project Remand uses an additional research-based tool, “Domestic Violence Risk Assessment Bench Guide” (Appendix 6), adopted by the Second Judicial District Violence Coordinating Council to complete dangerousness assessments at the time bail evaluations are completed.

As part of the arraignment process, a court counselor from Project Remand will give the judge a bail evaluation for every custody defendant appearing in arraignment court. Copies of each bail evaluation are also provided to the prosecutor and defense attorney. Based on the defendant's information on the bail evaluation, and his or her total score, Project Remand will make a recommendation to the court about pretrial release. There are three main types of pretrial release used in Ramsey County:

1. **O.R.:** Own recognizance release in which a defendant is released on his or her own promise to reappear as ordered. A defendant must score zero or higher on the bail evaluation in order for Project Remand to recommend an OR release.
2. **C.R.:** Conditional release in which the court sets conditions of release which the defendant must follow in order to remain out of custody. A defendant must score -1 to -10 on the bail evaluation in order for Project Remand to recommend a CR.
3. **Bail:** The court may set an amount of monetary bail which the defendant must post before he or she is released from custody. If a defendant scores -11 or lower on the bail evaluation, Project Remand will recommend that the court set bail. Bail may be set in addition to conditions of release and issuance of NCO's or DANCO's.

If Project Remand is recommending that the judge set bail, Project Remand will not recommend a specific amount of monetary bail. The prosecutor and defense attorney will present arguments concerning the amount of monetary bail.

The maximum cash bail that may be required for misdemeanor/gross misdemeanor violations of Minn. Stat. §518B.01 domestic abuse-related offenses/OFP; domestic assault and DANCO's is ten times the highest cash fine for the offense charged. Minn. Stat. §629.471, subd 3a (2010).

The maximum cash bail that may be required for misdemeanor/gross misdemeanor violations of assault in the fifth degree and malicious punishment is six times the highest cash fine for the offense charged. Minn. Stat. §629.471, subd 3 (2010).

**NOTE:** Minn. Stat. §629.72, subd. 2(b) expressly provides in harassment, violations of OFP's/DANCO's and domestic abuse-related cases the court may impose both conditions of release *and* bail. This overrides the general release provisions of Minn. R. Crim. P. 6.02, subd. 1, which could be read to mean that either bail or conditions of release may be set but not both.

#### F. The Value of Domestic Violence Risk Assessment Tools

Identifying and assessing risk in the wide array of domestic violence cases that come before the civil and criminal courts constitute a critical aspect of judicial intervention in domestic violence cases. A baseline recognition and understanding of risk and lethality markers in domestic violence cases greatly enhance a judge's ability to effectively adjudicate these cases. While judges do try to assess risk in these cases, most have no validated tool with which to do so. By

using a tool such as the Domestic Violence Risk Assessment Bench Guide in Appendix 6, judges will be better equipped to make informed and accurate decisions in cases in which domestic violence is involved. The tool is intended not only for bail issues but for any point in the case when victim safety is at issue (such as NCO violations, sentencing and probation violations).

Extensive research based literature exists regarding the use and accuracy of various risk and lethality assessment instruments. A summary checklist drawn from the literature entitled, “Practitioners’ Guide to Risk and Danger in Domestic Violence Cases” may be found on pages 14-15 of The Saint Paul Blueprint for Safety. The most commonly identified risk and lethality factors are listed in Appendix 6 used by our bench in Ramsey County. This tool is research-based. Of course, risk and lethality factors are not one-hundred-percent determinative. Most notably, while assessment tools often correctly predict the most dangerous offenders/individuals, such tools are sometimes under-inclusive and can fail to identify some dangerous individuals. Therefore, judges should utilize this tool to improve risk assessment accuracy but be vigilant of the risk inherent in *all* domestic violence cases.

Risk assessment instruments, such as the one appended here, have a proven ability to identify some of the highest-risk abusers. The overall goal in using this risk assessment tool in Ramsey County is to assist judges in taking appropriate measures regarding the safety of domestic abuse victims and their children. It will be of greatest value when other participants at first appearance, including Project Remand and counsel, also use it in preparing information presented to the court on the issues of bail and conditions of release.

The use of this formal assessment tool can save lives, but is not intended to, nor should it be used to, prejudge any case on the merits.

#### G. Conditional Release

When a judge orders a conditional release for a defendant, a court counselor from Project Remand will execute the release order and monitor the conditions of release. (Appendix 12). Before the defendant is released, the court counselor will meet with the defendant and explain the conditions of release. The defendant is required to agree to follow the conditions of release and must sign the conditional release order before he or she is released from custody. Project Remand’s standard conditions of release include: make all court appearances, reside at a verified address, maintain weekly contact with Project Remand, notify Project Remand of any change in address or employment within 24 hours, obtain prior permission before leaving the metro area, remain law-abiding and report all new arrests within 24 hours. Additional conditions may include: complete a chemical health assessment and follow the recommendations, random drug testing, breathalyzers, office visits, psychological evaluations, twice weekly contact, surrender house keys, etc. Project Remand is to contact the judge if the Defendant fails to follow conditions of release.

#### H. DANCO/NCO Orders Issued at First Appearance

In domestic abuse cases, a *domestic abuse* no contact order is a usual additional condition of release. (Appendix 14A) The *domestic abuse* no contact order usually includes no contact whether in person, directly or indirectly through others (except court personnel), by telephone, by mail, or by any other means until further order of the court.



There are two kinds of pretrial no contact orders used in Ramsey County: the standard no contact order for non-domestic cases (NCO) and the Domestic Abuse No Contact Order (DANCO) pursuant to Minn. Stat. §629.75.

**NOTE:** In determining whether to issue a DANCO or a general NCO, the DANCO is issued based upon the qualifying crime charged and the relationship between the Defendant and the protected party qualifying under Minn. Stat. §518B.01, subd 2(b) as a “family or household member”. A general NCO is issued to cover all other protected individuals.

It is important that the correct order be used, whenever applicable, because violation of the Domestic Abuse No Contact Order (DANCO) is a domestic abuse-related offense subject to different arrest, bail, charging and sentencing consequences as well as enhancement. In order for a successful electronic pass to BCA, DANCO needs full name, dob and gender of the victim. All information needs to be legible in order to match parties in MNCIS. This is critical to match the correct party in MNCIS and for subsequent enforcement.

A DANCO may be issued *only* when the underlying crime being prosecuted is "domestic abuse" within the meaning of Minn. Stat. §518B.01, subd. 2, harassment/stalking under Minn. Stat. §609.749 (when committed against a family or household member as defined in section §518B.01, subd 2), violation of an order for protection or violation of a prior DANCO. "Domestic abuse" means any assault, any criminal sexual conduct, terroristic threats or interference with an emergency call when committed against a family or household member. (See Appendix 2 for complete crime list and applicable statutory definitions.) This expanded list of offenses which qualify for a DANCO covers most domestic-related charges.

***In a domestic prosecution, it may be important to issue appropriate no contact orders for victims and/or witnesses during the pretrial stage of the proceedings. When multiple victims are identified, some victims may not be involved in a qualifying domestic relationship with the defendant. In these circumstances, a general pretrial no contact order should be issued. A DANCO should be issued for those victims/witnesses who have a qualifying domestic relationship with the defendant.***

If the person is convicted, a DANCO may be replaced by a probationary **DANCO** no contact order. In the same manner, a general pretrial no contact order may be replaced by a probationary no contact order for those persons not involved in a qualifying domestic relationship with the defendant. (See Section 8 for further discussion of no contact orders generally.)

As part of the bail evaluation process, Project Remand contacts alleged victims of domestic abuse and makes inquiry about the issuance of a no contact order. Part of the bail evaluation contains a recommendation regarding the issuance of a no contact order. It is Project Remand’s policy to relay accurately to the court what the victim requests. However, in order to take the spotlight off the victim, Project Remand will write on the bail evaluation: “Project Remand recommends a NCO” whenever the victim expresses a desire for a no contact order. If the victim objects to the issuance of a no contact order, Project Remand will write: “Victim does not want NCO.”

The 2<sup>nd</sup> Judicial District Violence Coordinating Council recommends the following with regard to DANCO's or NCO's in domestic abuse-related cases:

1. Unless exceptional circumstances exist, judges should issue a DANCO in any domestic abuse-related case. (A NCO is issued for secondary protected parties who may be witnesses or additional victims that do not have a qualifying domestic relationship with the Defendant.)
2. On behalf of the state, prosecutors should request a DANCO. Those requests may be based on information from police reports, the Project Remand bail evaluation, defendant's prior record, victim information and the domestic violence risk assessment. (See Appendix 6)
3. Where either the defendant or the victim objects to the issuance of a DANCO, the presiding judge carries the burden of decision-making and should make an objective assessment of the facts including a review of:
  - a. Police reports.
  - b. Any other information relevant to danger assessment and victim safety.

**NOTE:** A check mark in the over-ride box and the word "threat" in the comment section of the Project Remand bail evaluation is a red flag for lethality which deserves close attention. (Appendix 10)

4. Victim input: Judges should listen respectfully to the victims and take their concerns into consideration. Victims have a right to speak and be heard in open court; they should not, however, be required to speak or voice an opinion. A judge's contact with victims should be confined to information-gathering, not discussion and/ or problem solving. The court has no jurisdiction over domestic abuse victims in criminal cases. The Council recommends against *ex parte* meetings with the victim.

**NOTE:** A DANCO or NCO is entirely independent of any order for protection involving the same parties which may be issued in civil court. A DANCO can only be modified or cancelled by the criminal court regardless of whether an order for protection has been issued or cancelled.

While a 1991 amendment to statute permits the criminal court issuing a no contact order in a domestic abuse case to simultaneously issue an order for protection under Ch. 518B, this is not the practice in Ramsey County. The 2<sup>nd</sup> Judicial District Violence Coordinating Council recommends obtaining Orders for Protection separately in Family Court since that court is set up to handle other family issues (such as visitation and support) which are beyond the scope of the criminal court.

(See Section 8 No Contact Orders for further information on all types of no contact orders and procedures for handling violations.)

## I. Court Verification of Defendant's Identity When DANCO Issued; Booking Order

There has long been a statewide OFP data base. In 2007, the Legislature enacted new provisions to improve enforcement of OFPs and DANCOs by adding DANCOs to the BCA data base and, if verified by the court, a photo of the person against whom the order is issued. If a photo is available to the court from the defendant's driver's license, the court should verify on the record that the photo is an image of the defendant so that the photo may be entered into the data base along with the order. Minn. Stat. §299C.46, subd. 6.

All courtrooms are equipped with computer monitors which are used by court clerks to access booking photos to facilitate this in-court photo identification. The state has mandated that only driver's license photos can be used for this purpose. We do not use other forms of identification such as booking photos. Verification of the photographs is currently being done in court.

Whenever a defendant appears in court on a domestic abuse-related charge but has not yet been booked, a booking order must be issued so that photo identification linked to the current offense is possible. However, the court may still be able to verify photo identity on the basis of an older booking photograph or driver's license.

## **VI. Monitoring/Enforcement of Domestic Abuse No Contact Orders**

If the judge issues a DANCO in conjunction with a conditional release, the defendant must arrange to reside at an alternative address, separate from the victim. Project Remand verifies this alternative address with a third party before the defendant is released from custody. In addition, Project Remand and the Sheriff's Department make attempts to contact alleged victims of stalking/harassment and domestic abuse-related offenses before defendants are released from custody. Minn. Stat. §629.725. (See also Section 8 Protection Order section of this domestic abuse guidelines and procedures manual for further details on others who notify victims and law enforcement agencies about no contact orders.)

## SECTION 5: TIMELINES FOR FUTURE COURT APPEARANCES

### I. Felony Defendants

If a felony defendant does not plead guilty at the first appearance, the case is continued two weeks for an Omnibus Hearing at which the judge, based on the complaint and police reports, makes findings of probable cause that a crime has been committed and that the defendant committed it. The defendant is then arraigned. If a plea of not guilty is entered, the matter is set for a pretrial conference. A trial date is also set. A defendant has a right to demand trial within 60 days of arraignment.

### II. Gross Misdemeanor Defendants.

Custody and non-custody gross misdemeanor defendants who do not plead guilty at the first appearance return for an arraignment at an Omnibus Hearing/domestic pretrial conference three weeks later. If the case is not resolved at that time, a trial date is usually set within three to five weeks of arraignment.

### III. Misdemeanor Defendants

#### A. Out-of-Custody Defendants Who Plead Not Guilty

All defendants charged with domestic abuse who plead not guilty and are able to make bail will receive a pretrial conference court date and a trial court date at their first appearance. Typically the domestic pretrial conference date is set three to five weeks out from the first appearance.

Unlocking the Calendar: Defendants charged with a domestic-related offense who are on the custody arraignment calendar but do not qualify for the public defender will be added on to the out-of-custody arraignment calendar as soon as possible. Upon request to "unlock" the calendar, the clerk of court will call a supervisor to unlock a date, add the case and relock the date. This bypass procedure is intended to minimize the delay in getting domestic cases through the system. The same "unlock" procedure may be used when a defendant makes a first-time request at pretrial for appointment of the public defender.

#### B. Custody Defendants Who Plead Not Guilty

Custody defendants charged with misdemeanor domestic abuse-related offenses are entitled upon demand to a speedy trial within 10 days of their first appearance. These defendants are not scheduled for a domestic pretrial conference but are assigned a trial date within 10 days.

### IV. Sentencing

Per Minn. Stat. §609.2244, a PSI must be ordered for all convictions (by plea or trial) for any offense arising out of a domestic abuse incident even if the conviction itself is not for one of the enumerated crimes under Minn. Stat. §518B.01, subd. 2. (See Minn. Stat. §609.2244, subd. 1 and Section 9 of this manual). For example, a plea to disorderly conduct arising out of a domestic abuse charge requires a PSI. All defendants who enter a guilty plea should typically be given a sentencing date six weeks after plea or verdict to allow the probation department time to complete the PSI. If there has been a recent PSI, a PSI update (including sentencing worksheet update, if the new crime is a felony) may suffice and can be completed in less time.

Exception: No PSI is necessary when a defendant has already served expiration of the maximum applicable misdemeanor or gross misdemeanor sentence or agrees at the time of his plea to serve the maximum sentence. However, if the court orders execution of the maximum sentence but it has not already been served, the defendant should *not* be released pending sentencing and given a "stay to serve." This unsupervised time period creates grave safety and supervision concerns in domestic abuse cases.

Note: Even if a full PSI is not ordered, the victim has a right to give an impact statement and to request restitution.

## **V. Docket Priority**

For all levels of charges, domestic abuse (see Appendix 2 for definition) has statutory trial priority. Per Minn. Stat. §630.36, the docket priority for criminal cases is:

- felony custody cases
- misdemeanor custody cases
- non-custody child abuse cases
- non-custody domestic abuse cases
- other felonies
- other misdemeanors

All St. Paul misdemeanor and gross misdemeanor cases (including JPU cases prosecuted by the county attorney) are scheduled for the first and third weeks of a judge's 3-week misdemeanor trial block. Suburban cases are scheduled for the second and third weeks of the same trial block.

Giving domestic abuse cases statutory docket priority ahead of other felonies and misdemeanors is a statement of legislatively-enacted state policy to expedite trial in these cases. Whenever requested by either party, the court should give domestic abuse trials the priority to which they are entitled under the statute.

## SECTION 6: ELEMENTS OF A PLEA

- 1. Plea Petitions.** A petition to enter a plea of guilty is required in all felony and gross misdemeanor pleas. A petition is also required for all enhanceable misdemeanors (such as domestic assault, assault in the fifth degree, violation of an OFP, HRO or DANCO and interference with privacy). (See Appendix 11)(Advisory Committee for Minnesota Rules of Criminal Procedure recommends execution of a plea petition as noted in comments to Minn. R. Crim. P. 15. This is the practice in the 2<sup>nd</sup> Judicial District Court.)
- 2. Waiver of Trial and Trial Rights.** It is necessary to establish a valid waiver of the trial and trial rights. This is covered by a plea petition which is required for a plea of guilty to domestic assault. In cases where no plea petition is required, it is important to get the waiver of trial and trial rights on the record. Minn. R. Crim. P. 15.01; 15.02.
- 3. Factual Basis.** It is necessary to include sufficient facts to support the elements of the crime being pled to. Typically, the prosecutor will provide the factual basis for the record covering the elements of the crime. Minn. R. Crim. P. 15.01, subd 1 for felonies and gross misdemeanors. Minn. R. Crim. P. 15.02, subd 2 for misdemeanors.
- 4. Plea Negotiations.** A defendant should be advised that a negotiated settlement assumes the defendant will comply with the following conditions between time of plea and date of sentencing:
  1. No violations of conditions of release and to remain law-abiding;
  2. Abide by the terms of any NCO or DANCO;
  3. Cooperate with the preparation of the presentence investigation report; and
  4. Appear for sentencing date as ordered.

If the defendant fails to comply with any of these conditions between the time of the plea and sentencing, the court will not be bound by the negotiation (specifically, any negotiated cap on jail time is not a limitation on the defendant's sentence) and may sentence the defendant in disregard of the negotiation terms and in accordance with the law. Further, the defendant will not be allowed to withdraw his or her guilty plea.

Some judges also inform the defendant at the time of the plea that any recommendations made by the attorneys are just that, recommendations, and that the court is not obligated to follow those recommendations if information surfaces in the PSI that the attorneys and the court are unaware of at the time of the plea. The defendant should be advised that any cap on jail time is subject to change if the pre-sentence investigation contains significant new negative information about the defendant that the defendant was aware of at the time of the plea but that the court was not; e.g., a more extensive criminal record or past failures on probation.

Finally, the court should explain to the defendant that an otherwise valid plea will not be allowed to be withdrawn simply because the defendant does not like the court's subsequent sentencing decision.

In the event a motion is made to withdraw a plea for legitimate legal grounds, the state should be notified in advance and allowed to respond before a decision is made.

**5. Plea Acceptance.** The Council recommends acceptance of the plea on the record at the time it is entered. A plea of guilty accepted and recorded by the court constitutes a conviction. Minn. Stat. §609.02, subd. 5. Failing to state that the court has accepted the plea, or specifically withholding acceptance of the plea until sentencing, precludes using the plea for enhancement of any offense which may occur between the time of the plea and the time of the sentence. Acceptance of the plea will also help expedite probation violation proceedings, if applicable.

**6. Victims Rights at the Time of the Plea.** The prosecutor shall make a reasonable, good faith effort to notify the victim of the plea agreement prior to the entry of the plea. If the victim objects to the plea agreement, the prosecution shall make these objections known to the court. Minn. Stat. §611A.03.

**7. Alford/Goulette and Norgaard/Crossley Pleas.** There are two situations in which a defendant can make a valid plea of guilty without admitting guilt. In an *Alford/Goulette* plea the defendant denies, or does not expressly admit his/her guilty as he maintains his innocence, but where the State demonstrated a strong factual basis for the plea and the defendant clearly expresses his desire to enter the guilty plea based on his belief that the State's evidence would be sufficient to convict him. Usually the defendant enters an *Alford/Goulette* to obtain the benefit of a plea negotiation. In a *Norgaard/Crossley* plea, the defendant wants to enter a guilty plea, usually in order to take advantage of a plea agreement, but the defendant is unable to recall facts due to intoxication or amnesia. In a *Norgaard/Crossley* plea a defendant does not make a claim he is innocent.

In both cases, the prosecutor should set forth on the record a summary of the evidence the state would present in the case which would support a finding of guilty, and the defendant should acknowledge on the record that, based on those facts, a jury would likely find him or her guilty. In either case, the record should clearly identify whether the Defendant is entering an *Alford* or a *Norgaard* plea. The *Norgaard* plea should include inquiry as to either intoxication or the fact the defendant has no recollection of the events that occurred but has no reason to doubt the accuracy of the reports. Further, the *Norgaard* plea may include a statement that the defendant wants to gain the benefit of the plea negotiation.

When this is done, either of these pleas is the legal equivalent of a straight plea. If the plea is to a QDVRO, the conviction arising from the plea may be used to enhance a subsequent offense in exactly the same manner as a straight plea. Whenever a domestic abuse defendant will be on probation and required to participate in treatment, a factual admission of guilt is preferable to a *Alford/Goulette* plea. A defendant who denies his/her guilt may be unamenable to treatment, thus undermining rehabilitation as a probation goal. (If a felony prison sentence is executed, or a misdemeanor or gross misdemeanor sentence fully executed, this is immaterial since the court can no longer enforce a treatment requirement.)

**8. PSI.** Whenever a defendant is convicted of any domestic abuse offense (see Appendix 2 for definition) or any other offense arising out of the same circumstances surrounding a domestic abuse arrest, the court must order a presentence domestic abuse investigation. Minn. Stat. §609.2244, subd. 1.

## SECTION 7: SPECIAL EVIDENTIARY ISSUES IN DOMESTIC ABUSE TRIALS

Although not necessarily unique to domestic abuse cases, the following issues commonly occur in these cases.

- 1. Spreigl evidence.** The test for admission of Spreigl evidence was clarified in State v. Ness, 707 N.W.2d 676 (Minn. 2006). The 5-part test was adopted in Minn. R. Evid. 404 (b) eff. 9/1/06. See also the Judges Criminal Benchbook, Ch. 10, for an excellent discussion of this evidence.)
- 2. Minn. Stat. §634.20.** This statute specifically addresses the issue of domestic conduct in domestic abuse cases. Evidence of domestic conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion, undue delay or needless presentation of cumulative evidence. "Domestic conduct" includes, but is not limited to, any offense enumerated in Minn. Stat. §518B.01, Subd. 2(a) (assault, terroristic threats, criminal sexual conduct or interference with an emergency call) as well as violation of an OFP or HRO, harassment or harassing phone calls. "Domestic" conduct does not have to be similar to the charged offense. This is *not* Spreigl evidence and need not be proved by clear and convincing evidence. State v. McCoy, 682 N.W.2d 153 (Minn. 2004).
- 3. History of Relationship.** A long body of Minnesota case law supports the admissibility of relevant evidence of the history of the relationship of the parties, particularly in domestic abuse cases. (Appendix 19)
- 4. Hearsay (Minn. R. Evid. 8).** Commonly raised hearsay exceptions in domestic abuse cases include: 803(2) [excited utterance]; 803(3) [then existing mental, emotional or physical condition]; 803(4) [statements for purposes of medical diagnosis or treatment] and 807 [catch-all exception].

Prior consistent statements of a witness testifying at trial are not hearsay and are admissible to assist the trier of fact in determining the credibility of the witness. 801(d)(1)(B).

Prior statements of a recanting victim may be admissible at trial under 801(d)(1)(D) [present sense impression], the hearsay exceptions listed above or for impeachment (Minn. R. Evid. 607 and 613).

Pursuant to the United States Supreme Court's decision in Crawford v. Washington, 541 U.S. 36 (2004), admission of any out-of-court statement at trial violates a defendant's Sixth Amendment right to confrontation *if* (1) the declarant does not testify and (2) the statement is testimonial. As long as the victim in a domestic abuse trial testifies at trial (even if she recants), there is no Crawford problem. The Crawford court did not define "testimonial," leaving this to subsequent decisions and to the states. At a minimum, formal police interrogations (such as Scales interviews) are testimonial. In its subsequent decisions in Davis v. Washington and Hammon v. Indiana, 126 S. Ct. 2266 (2006), it refined Crawford slightly by holding that when a police interrogation is made "under circumstances objectively indicating the primary purpose...is to enable police assistance to meet an ongoing emergency," the statement is non-testimonial. See also State v. Wright, 726 N.W.2d 464 (Minn. 2007)(statements by victims to 911 operator not testimonial, statements made to officers in the field after emergency had ended were



testimonial); State v. Warsame, 735 N.W.2d 684 (Minn. 2007)(domestic abuse victim's initial volunteered statement to police about assault, while in obvious distress and while defendant was still at large, and her responses to police interrogation about her medical condition were non-testimonial responses to ongoing emergency); State v. Krasky, 736 N.W.2d 636 (Minn. 2007), *pet. for review filed Oct. 25, 2007* (statements made by child abuse victim to MCRC nurse, after a joint police and child protection referral, were not testimonial because primary purpose was to assess and protect child's health and welfare). Forfeiture by wrongdoing is a specific exception to Crawford.

If the victim testifies but recants and out-of-court statements are admitted substantively under any exception to the hearsay rule, the jury may choose to credit an out-of-court statement over the sworn trial testimony. *See*, McCoy, *supra*.

**5. Enhanced offenses; defense offer to stipulate.** Many domestic-related misdemeanor and gross misdemeanor offenses are enhanceable. (See Appendix 11) Specifically, a QDVRO ("qualified domestic violence-related offense") misdemeanor or gross misdemeanor may be chargeable as a gross misdemeanor or felony if the defendant has had the requisite QDVRO past conviction(s)--whether misdemeanor, gross misdemeanor or felony--within 10 years of commission of the new offense. The enhanceable domestic-related offenses are: Assault in the fifth degree, domestic assault, malicious punishment, violation of an OFP, HRO or DANCO and stalking. Interference with privacy is also an enhanceable offense (regardless of whether domestic-related). The following crimes qualify as QDVRO predicate convictions: murder 1 or 2, assault 1-5, domestic assaults, domestic assault by strangulation, terroristic threats, stalking/harassment; violation of DANCO/OFP/HRO, interference with emergency call, malicious punishment, CSC 1-4, female genital mutilation, attempts to commit any of these offenses and violations of similar laws of other states or federal law. *See*, Minn. Stat. §609.02, subd. 16.

When charged with an enhanced offense, the defense at trial may offer to stipulate to the prior conviction so it is not included as an element of the offense charged. This is the tactic now generally accepted in enhanced DWIs and in felon in possession of a firearm cases. *See*, State v. Clark, 375 N.W.2d 59 (Minn. Ct. App. 1985) (DWI conviction reversed for court's refusal to accept defense offer to stipulate to prior DWI); State v. Allen, 375 N.W.2d 82 (Minn. Ct. App. 1985) (reversing court's refusal to accept defendant's stipulation to his felony status as element of offense). Unless the prior conviction is admissible for other reasons (such as Spreigl or impeachment), these cases held the defense offer to stipulate must be accepted because of the great potential for improper use (prejudice) as against its probative value. State v. Davidson, 451 N.W.2d 8 (Minn. 1984).

The general rule of law stated in these and underlying cases is that a defendant's offer to stipulate does not take away the state's right to offer evidence, especially when the evidence has relevance beyond the stipulation; i.e., a defendant should not be able unilaterally to control the admission of relevant evidence. Davidson, *supra*; State v. Stillday, 646 N.W.2d 557 (Minn. App. 2002). But relevant evidence must, in turn, be assessed in terms of the balancing test of Minn. R. Evid. 403. State v. Berkelman, 355 N.W.2d 394 (Minn. 1984); Clark, *supra*.

No published appellate case has yet expressly ruled that the trial court must accept a domestic abuse defendant's offer to stipulate to prior QDVRO convictions used to enhance the current charge. However, the competing principles stated above are equally applicable to this situation.

If the prior QDVRO conviction involved the same domestic abuse victim, or another family member, or even a victim of domestic abuse in another relationship, both the offense and the facts underlying it may have relevance beyond the stipulation. A defense offer to stipulate to the prior conviction to remove it as an element of the offense does not eliminate the potential admissibility of the offense under different grounds such as Spreigl, Minn. Stat. §634.20, history of the relationship or, if the defendant testifies, impeachment by prior conviction. If the evidence is admitted for any of these other purposes, it is unlikely denial of a defense offer to stipulate to the fact of the prior conviction to remove it as an element would be an abuse of discretion. See Davidson and Stillman, *supra*.

On the other hand, if the predicate conviction did not arise in a domestic abuse situation and the facts are not otherwise relevant, it would likely be an abuse of discretion to refuse a defense request to stipulate to the prior conviction in order to remove it as an element. Clark and Allen, *supra*.

Note: The defendant personally (not his attorney) must stipulate to the waiver of an element on the record, orally or in writing. State v. Wright, 679 N.W.2d 186 (Minn. Ct. App. 2004); State v. Barker, 705 N.W.2d 768 (Minn. 2005).

\*\*\*

Excellent additional resources on these issues are found in the Judges Criminal Benchbook.

## **SECTION 8: ISSUANCE AND VIOLATION OF PROTECTION ORDERS IN DOMESTIC ABUSE-RELATED CRIMINAL CASES**

### **I. Overall summary of Protective Orders**

Protective Orders may be issued in criminal or civil courts.

#### **A. Criminal Court Protection Orders are issued in the Criminal Division of the Second Judicial District Court serving Ramsey County.**

In criminal cases, protective orders include no contact orders (NCO) and domestic abuse no contact orders (DANCO) prohibiting a defendant charged with a crime or convicted of a crime to have no contact directly or indirectly with another party. These orders will prohibit the defendant from having any contact, directly or indirectly, with the protected party and may also protect the protected party at home, work, school or a radius surrounding those locations. In criminal cases, a pretrial NCO or pretrial DANCO may be issued. At time of sentencing in a criminal case a probationary NCO or DANCO may be issued as a condition of a defendant's sentence.

For purposes of domestic-abuse related criminal cases, protection orders include OFPs and DANCOs.

The Second Judicial District Court Bench policy P10.06 adopted on September 15, 2010 recommended standard language be used for any distance restrictions in all protective orders including OFPs and DANCOs. The policy provides:

“When judges use a distance restriction in harassment restraining orders, no contact orders, domestic abuse no contact orders, and orders for protection, the judges are encouraged to describe the reasonable are of the restriction as, “\_\_\_\_\_city blocks or \_\_\_\_\_mile, whichever is greater,” or otherwise with as much specificity as feasible.

[See Appendix 15].

The Second Judicial District Court Bench approved guidelines with respect to exceptions to DANCOs in May 2012 with regard to time with children. No exception should be made unless the protected party has had the opportunity for full input in the issue. Even with full input from the protected party, no exceptions should be made:

1. If the children in question are alleged to have been involved in the incident or another OFP exists prohibiting contact with the children
2. To permit the defendant to be at the protected person's residence
3. Unless the specified third person has agreed to serve as ordered
4. Until after the first appearance.

[See Appendix 16, goldenrod copy on the bench in the courtroom].

#### **B. Civil Court Protection Orders are issued by Domestic Abuse/Harassment Court within the Juvenile and Family Division of the Second Judicial District Court serving Ramsey County.**

In civil cases, private parties may seek a civil Order for Protection when involved in a domestic relationship. Alternatively, a Harassment Restraining Order may be obtained in civil court for a private party to be protected from another person. These orders will order the respondent to have no contact, directly or indirectly with the petitioner. Terms of the order may include prohibiting

the respondent from the petitioner's residence, a radius surrounding the residence, place of employment, school or daycare. The order may also address issues of visitation with minor children shared in common. Parties involved in a domestic abuse-related criminal case, may have an Order for Protection (OFP) in effect.

## **II. Procedures for issuance of DANCO's.**

### **A. Minn. Stat. §629.75 (effective August 1, 2010)**

The issuance of a pretrial or probationary DANCO is independent of any condition of pretrial release or probation imposed on the defendant. Minn. Stat. §629.75. The DANCO "is issued in a proceeding that is separate from but held immediately following a proceeding in which any pretrial release or sentencing issues are decided." Minn. Stat. §629.75, subd 1(c). The criteria required for issuance of the DANCO is the relationship between the defendant and the protected party in addition to the type of offense charged or the set of circumstances in which the charges arise from. These criteria coupled with the probable cause determination for the charged offense sufficiently limits the judge's discretion. Further, Minn.Stat. §629.72, subd 2 and Minn.R.Crim.P. 6.02, subd 2 contain the factors for a court to consider in setting terms of conditional release. State v. Ness, 819 N.W. 2d at 229.

In State v. Ness, 819 N.W.2d 219 (Minn.Ct.App. 2012), the court of appeals held the procedures in Minn. Stat. §629.75 are constitutionally sufficient, provides a defendant with notice and an opportunity to be heard and is not void for vagueness. The court found the statute does not violate the due process requirements of the United States and Minnesota Constitutions.

A pretrial DANCO is issued pursuant to Minn. Stat. §629.75 in a pending criminal or juvenile delinquency case involving a domestic relationship between the defendant and a "family or household member" and one of the following charges:

1. Domestic abuse: physical harm, bodily injury or assault or infliction of fear of imminent physical harm, bodily injury or assault
2. Terroristic Threats
3. Criminal Sexual Conduct 1-5
4. 911 Interference with an Emergency Call
5. Stalking
6. Violation of an Order for Protection
7. Violation of a Domestic Abuse No Contact Order

Minn. Stat. §629.75; 518B.01, Subd 2; 518B.01, Subd 22.

A probationary DANCO may be issued for any of the charges above **or** for a conviction of **any offense arising out of the same set of circumstances as the charges above** for crimes committed on or after August 1, 2010. Minn. Stat. §629.75, subd 1(b).

In contrast, a pretrial or probationary general NCO is issued to protect persons who are either not involved a "family or household member" relationship with the defendant **or** the crime charged is not a domestic abuse crime as defined by Minn. Stat. §518B.01, subd 22.

### III. Types of No Contact Orders in Domestic Abuse-Related Cases.

A. **Pretrial Domestic Abuse No Contact Orders (DANCO).** A pretrial DANCO will almost always be requested by the prosecutor at the first appearance. A DANCO is used, rather than a general no contact order, when the underlying offense is domestic abuse as defined by Minn. Stat. §518B.01, subd. 22 against a family or household member. Minn. Stat. §518B.01, subd 22 defines the underlying offense being prosecuted as assault, criminal sexual conduct, terroristic threats or interference with an emergency call committed against a family or household member or violation of an OFP or prior DANCO. (See Appendix 2) A DANCO should be issued whenever applicable because violation of this more specific order has enhanced arrest, bail, charging and sentencing implications.

A criminal domestic case may involve multiple victims. DANCOS are issued for victims involved in a domestic relationship constituting a “family or household member” with the defendant. For those victims not involved in a domestic relationship with the defendant, general no contact orders are issued.

Even if the victim is present and requests that no order be issued, a court-ordered DANCOS assist in reducing pretrial witness tampering, enhancing victim safety and making clear both to the victim and to the defendant that a criminal case is not a private matter. If the victim objects to a pretrial DANCO, the court should make an objective assessment in light of all the facts.

A conditional release to Project Remand is worth considering in domestic abuse cases, especially when a DANCO is issued, because Project Remand will monitor all conditions set by the court, including DANCOS. In addition, Project Remand staff is able to respond quickly in the event of violation. If Project Remand has reason to believe that the defendant has violated a no contact order and poses a threat to the victim and/or is a flight risk, it will seek a warrant for the immediate arrest of the defendant.

1. **Terms and Distribution of the Order.** In Ramsey County, a DANCO is generally signed by the judge and issued at the defendant’s first appearance in court. (Appendix 13). By its own terms, this order terminates upon final disposition of the case, sentencing or dismissal. The details of the order (name of the defendant, crime with which he/she is charged, name(s) and addresses the defendant is prohibited from contacting) are usually filled out before court by the city or county attorney’s office (or, in suburban misdemeanor cases, by Tubman legal advocate). However, the clerk of court should always have a supply of blanks for unexpected requests or modifications. The pretrial DANCO may be issued in addition to other conditions of release, including bail and/or conditional release to Project Remand. Criminal courts should avoid dealing with visitation and related family issues in pretrial NCOs. These are best addressed by the family court or in an OFP hearing.

The original of the signed pretrial DANCO remain in the court file. The defendant, the prosecutor and Project Remand receive their copies in court. The prosecutor (city or county attorney) is responsible for sending a copy of the pretrial order to the victim. In suburban misdemeanor cases, the Tubman legal advocate, who is present in court, sends the order to the victim. The Court handles notification to local police departments by making copies available electronically through MNCIS/Odyssey so the existence of the order can be immediately verified in case of violation at the victim’s

home. Victims are also encouraged to keep their copy of the order with them to show police in the event of a violation at any location.

2. Duration of the Order. Pretrial DANCOs expire at sentencing or dismissal unless modified or cancelled by written court order before this final disposition. Because it is impossible at the time a pretrial order is issued to know when the case will reach final disposition, the endpoint of these orders is indefinite. (For cancellation of pretrial orders see 3 below.)

In many domestic abuse cases if the defendant is convicted, the pretrial DANCO is replaced with a probationary DANCO in effect until further order of the court or expiration of sentence. (see B below).

3. Cancellation of the Pretrial DANCO. It is not uncommon in domestic abuse cases for the defendant, the victim or both to request that the DANCO be cancelled at or before final disposition of the case. Occasionally, the victim may even contact the court directly outside of regularly scheduled court appearances with such a request. Pretrial DANCOs should never be cancelled based on an *ex parte* communication alone. They should also never be cancelled without notifying and obtaining input from the prosecutor. The preferred practice is to make all such changes *at the next regularly scheduled appearance in court* on the record in the presence of and with notice to and input from all interested parties (including the prosecutor and Project Remand, if applicable).

Before a pretrial DANCO is cancelled, the court should consider the stated wishes of the victim and the defendant in light of the facts of the case, the defendant's history, the current posture of the case and the position of the prosecutor. The court should never ask the victim in the presence of the defendant to state whether he or she is afraid of the defendant but make its own objective assessment. Because a primary purpose of DANCOs is victim safety, it may be useful to review Appendix 6 (Lethality Considerations). It rarely, if ever, makes sense to cancel a DANCO when the facts of the underlying crime charged are still in dispute. A recantation prior to trial does not mean the facts are no longer in dispute. Domestic abuse defendants can be convicted even when there is a recantation. *See, McCoy, supra.*

If the pretrial DANCO is cancelled at any time before final disposition of the case, it should be done on the record with a Cancellation of DANCO signed by the judge and copies distributed to the defendant and to the prosecutor (or, in suburban misdemeanor cases, to the Tubman legal advocate). (Appendix 14C). The clerk of district court enters the cancellation order in MNCIS/Odyssey for immediate access to law enforcement. The prosecutor notifies the victim of early cancellation of the order except in suburban misdemeanor cases. In these cases, this function is performed by the Tubman.

If a victim requests that the pretrial DANCO be cancelled during the time between a plea (or verdict of guilty) and sentencing, the issue should be addressed in the PSI and decided at sentencing. If the presentence investigator is unable to reach the victim, the investigator may contact St. Paul Intervention Project (St. Paul misdemeanor cases) or Tubman (suburban misdemeanor cases) or the victim-witness advocate at the county attorney's office (felony cases and JPU cases) for assistance in reaching the victim. If

unable to obtain victim input for the PSI and a DANCO is already in effect, probation will recommend that the DANCO be continued.

The most common time a victim requests that a DANCO be cancelled is at sentencing: The case is at final disposition, the defendant, prosecutor, probation officer and frequently the victim or victim advocate are present and the court has the benefit of a completed PSI. (See B., below) The pretrial order will expire at this time, and the court may be asked to decide whether a new probationary DANCO should or should not issue. If no contact is to be a condition of probation, a new probationary DANCO must be issued (see B below).

If a pretrial DANCO is modified (but not cancelled) before final disposition of the case, it must be done on the record with a new written pretrial DANCO signed, served on the parties and entered into MNCIS/Odyssey for law enforcement access to the order.

**B. Probationary DANCOs.** While the facts of each case are different, in a domestic abuse-related case the probation officer who prepares the presentence investigation (PSI) may recommend probationary DANCO be issued as a condition of the defendant's probation. A probationary DANCO will always be recommended if the victim tells the PSI investigator she wants it. Probation generally will not recommend a probationary DANCO if, after talking to the victim, she does not want it. If the department has been unable to contact the victim and a pretrial DANCO is in effect, the department will recommend the probationary DANCO. The prosecutor may still request a DANCO, over a victim's objection, where there is a serious public safety concern. Because of the presence of children in JPU cases, JPU prosecutors generally request the continuation of the DANCO until the defendant has completed counseling or treatment as ordered.

The standard Ramsey County probationary DANCO is appended hereto. (Appendix 14B). As with the pretrial orders, if the underlying offense of conviction is domestic abuse as defined in Minn. Stat. §518B.01, subd. 2 or harassment against a family or household member or violation of an OFP or prior DANCO (see Appendix 2), a Probationary DANCO should be issued.

1. Terms, Duration and Distribution of Order. The probation officer will usually have prepared the probationary DANCO for the sentencing judge's signature with the relevant details: name of defendant, name(s) and addresses the defendant is prohibited from contacting (unless the victim is in hiding from the defendant at an address unknown to him), the duration of the order. Unlike the pretrial DANCO with its indefinite termination date, probationary DANCOs are generally issued for the statutory term of probation which is known and can be stated specifically in the order. The original signed order stays in the court file with copies distributed to the defendant, the corrections department and the prosecutor. The court enters a copy of the order into MNCIS/Odyssey for immediate access to law enforcement. The St. Paul city attorney's office and the Ramsey County attorney's office send a copy to the victim. For suburban cases, Tubman sends a copy to the victim.
2. Cancellation of the Probationary DANCO. If during the probationary period the victim requests the DANCO be cancelled, the court should contact the probation officer for his/her input. The court should be reluctant to change these orders without evidence of substantial change in circumstances.

If a victim requests that a probationary DANCO be cancelled, the probation officer will refer the victim to the county attorney's office assigned victim advocate (for county cases) or to St. Paul Intervention Project aka SPIP (for city of St. Paul prosecutions) or Tubman (for suburban city prosecutions) to contact the victim regarding safety issues and other concerns he/she may have. SPIP or Tubman advocates will confirm to the PO that they have discussed safety issues with the victim but will not make a recommendation as to whether or not the DANCO should be cancelled. County attorney advocates may make a recommendation.

Probation will not address issues relating to cancelling a probationary DANCO in domestic abuse cases *unless* the defendant has completed the domestic abuse counseling program ordered by the court. If the defendant has completed court-ordered domestic abuse counseling (as directed by the PO), the PO will write a memo to the judge summarizing the defendant's progress on probation, including compliance with other conditions of probation (such as completing CD evaluation and treatment, results of UAs, compliance with NCO, etc.). The memo will include the PO's contact with the victim advocate or appropriate advocacy group and whether or not safety issues have been discussed with the victim as well as the address or phone contact for the victim, if known. This memo will be provided to the court along with the PSI so that the court can make an informed decision. The PO will not make a recommendation on whether the DANCO should be cancelled.

After receiving the memo from probation, the judge will decide whether or not to set a hearing. If a hearing is set, the judge's clerk will notify the defendant, the victim, the prosecutor and advocacy agency. The parties may waive their appearance.

If the judge decides to cancel the DANCO, the judge's clerk will send copies of the Cancellation of DANCO to the defendant, probation officer and prosecutor on St. Paul cases and to the victim-advocate in the county attorney's office for county cases. The clerk of district court enters copies of the DANCO cancellation in MNCIS for law enforcement access.

3. Effect of Warrant of Commitment on DANCOs/No Contact Orders. Whenever a workhouse or prison sentence is executed, the clerk of court will prepare a warrant of commitment. This document accompanies the prisoner to the institution. The warrant of commitment contains a check-off for the clerk to enter whether a DANCO/no contact order remains in effect or is cancelled. This may be used whenever a defendant's probationary sentence is partially executed (i.e., some workhouse time is required but the balance of a sentence is stayed). If the defendant's entire sentence is executed (either to the workhouse, for misdemeanors or gross misdemeanors, or to the Commissioner of Corrections for felonies), the district court's jurisdiction—including its authority to issue or continue a DANCO/no contact order—terminates. In these cases, if there is a concern about the defendant contacting the victim while incarcerated, the court, probation department or prosecutor may provide the workhouse superintendent or the Commissioner with the victim information and requesting that authority to issue the inmate a direct order not to contact the person(s) named. Violation of this direct order cannot lead to a probation violation since probation has been terminated by execution of the sentence. However, violation of a direct order is subject to internal disciplinary proceedings.



**C. Civil Orders for Protection (OFP).** Separate from the DANCOS/no contact orders issued by the criminal court in the pendency of or during the probationary period for the criminal case, a domestic abuse victim may also obtain a civil order for protection (OFP) from the family court pursuant to Minn. Stat. Ch. 518B. Prosecutors and their in-house victim advocates generally encourage domestic abuse victims to obtain an OFP in addition to the criminal no contact order because of additional protections it can provide the victim as well as the additional consequences to the defendant in the event of violation. (See II.C below.). Further the OFP provides ongoing protection for the victim if a defendant is committed to prison and no DANCO/NCO continues to remain in effect.

In addition to ordering no contact, the OFP court also has jurisdiction to decide who must vacate the family home and to deal with child custody, visitation (including supervised visitation), child support and related matters. Occasionally a domestic abuse criminal defendant will ask the criminal court judge to allow visitation. Defendants must always be referred to the family court on these issues. The criminal court is in no position to assess whether a defendant even has the legal right to visitation or, even if he does, whether it is in the children's best interest.

The typical OFP is issued for one year but it can also be issued for any longer period depending on the facts of the case. For example, when a domestic abuse defendant is not placed on probation but sentenced to the Commissioner of Corrections for a specified time period, it is useful to have the OFP extended to cover the critical period of the defendant's expected release date and post-release supervision. Minn. Stat. §518B.01, subd. 6a specifically provides that it is grounds for a subsequent or extended OFP if the respondent is incarcerated and about to be release or has recently been released from incarceration.

**D. Entry of DANCOS in BCA Data Base; Court Verification of Defendant Photo for Enforcement Purposes; Booking Order.** To heighten enforceability of pretrial DANCOS, DANCOS are entered in the BCA's criminal justice data communications network along with a photo of the defendant, if a photo is available and verified by the court to be an image of the defendant. Minn. Stat. §299C.46, subd. 6 (Laws 2007). If the person has been arrested, a mug shot should be provided to the court for this purpose. If no mug shot is available, driver's license or state ID photo may be used. If the defendant has not been booked on the charge, a booking order should be issued so that a photo linking the defendant to the current charge is available for entry into the BCA data base.

With this technology, statewide 24-hour verification of the status of pretrial DANCOS is possible thereby eliminating the need to track paper records with multiple law enforcement agencies.

OFPs are verified through the BCA database.

#### **IV. Consequences for Violation of DANCOS in Domestic Abuse-Related Cases**

Whenever an explicit order of the court is violated, it is the responsibility of the court to hold the violator accountable. The violation may be brought to the court's attention in any of the following ways:

**A. Violation of Conditions of Release.** When there is probable cause to believe a pretrial DANCO has been violated, either Project Remand (if the defendant is under their supervision) or the prosecutor may apply for a warrant for the defendant's arrest. For misdemeanors, if the

defendant has not yet pled guilty, the application will be brought to an arraignment judge. For felonies, if the defendant has not yet appeared for a pretrial conference, the application will also be brought to an arraignment judge. Upon receiving such an application and finding that probable cause exists to believe the defendant violated the order, the judge shall issue a warrant directing that the defendant be arrested and brought immediately before the court. Minn. Stat. §629.72, subd. 5. Probable cause is usually based on the affidavit of the applicant accompanied by a police report describing the violation.

For misdemeanors, Ramsey County District Court practice is that conditional release violation hearings are held before the next available arraignment judge unless the defendant has already pled guilty and is awaiting sentencing. If that is the case, the hearing will be before the sentencing judge. For felonies, Ramsey County practice is that the hearing will be before the next available arraignment judge unless the defendant has already pled guilty or has already had a pretrial conference. If the defendant has pled guilty or has already appeared before the assigned trial judge for pretrial conference, the hearing will be set before the trial/sentencing judge.

If after a hearing the judge finds the defendant has violated conditions of release, additional conditions may be set. Minn. R. Crim. P. 6.03, subd. 3. If the defendant was previously released without bail, bail should be set. If bail was previously set, the court may consider revocation of bail or setting of new or higher bail. A person who violates a condition of release set by court order no longer has the same entitlement to bail s/he had initially.

**B. Violation of a Domestic Abuse No Contact Order (DANCO).** Violation of either a pretrial or a probationary Domestic Abuse No Contact Order (DANCO)-- a no contact order issued in connection with a criminal proceeding for domestic abuse as defined in Minn. Stat. §518B.01, subd. 2, or harassment against a family or household member or violation of an OFP or prior DANCO-- constitutes the misdemeanor offense of Violation of a Domestic Abuse No Contact Order in violation of Minn. Stat. §518B.01, subd. 22. This offense is a qualifying misdemeanor for purposes of calculating a defendant's criminal history score under the Minnesota Sentencing Guidelines. It is also an offense which qualifies for the special domestic abuse bail and release considerations of Minn. Stat. §629.72. (See Section 4: First Appearance, above, for further discussion of this statute.) It is also, by its very name and location in Minnesota statutes, immediately identifiable as a domestic abuse-related crime. It is enhanceable to a gross misdemeanor if it occurs within 10 years of a prior conviction or juvenile adjudication for a QDVRO and to a felony if it occurs within 10 years of the first of 2 or more QDVRO convictions or adjudications *or* if the defendant possesses a dangerous weapon while violating the DANCO. There is no requirement that the victims be the same.

**C. Contempt of Court.** Prior to the enactment of the DANCO statute in 2000, violation of either a pretrial or a probation no contact order was chargeable by the city attorney as the misdemeanor offense of Contempt of Court in violation of Minn. Stat. §588.20. This offense is a general crime which could be applied to the violation of any court order as well as other behavior deemed contemptuous of the court. Unlike Violation of a DANCO (above), contempt conviction is *not* a qualifying misdemeanor for purposes of calculating a felon's criminal history score under the Minnesota Sentencing Guidelines. (See Appendix 2.) Convictions are not enhanceable. Since enactment of the more specific Violation of a DANCO crime, there is no longer any reason for violations of DANCO cases to be charged as Contempt.

**D. Violation of an Order for Protection (OFP).** The first violation of an OFP under Minn. Stat. §518B.01, subd. 14 is a misdemeanor. However, conviction of this misdemeanor, unlike contempt of court (but like a DANCO violation), is a qualifying misdemeanor for purposes of calculating a felony defendant's criminal history under the Minnesota Sentencing Guidelines.<sup>3</sup> (See Appendix 2 for list of common qualifying misdemeanors in domestic abuse-related cases.)

Violation of an OFP is enhanced to a gross misdemeanor if the new offense occurs within 10 years of conviction or juvenile adjudication for any QDVRO offense. The victim of the predicate conviction need not be the same as the current victim.

A defendant on gross misdemeanor probation for a qualifying offense also receives a custody status point (as does a defendant on felony probation).

Violation of an OFP becomes a felony (chargeable by the county attorney) if it occurs within 10 years of the first of 2 or more of the predicate convictions listed above. The victims do not need to be the same.

A similar enhancement to both gross misdemeanor and felony charges also applies to assault in the fifth degree, domestic assault, malicious punishment and violation of an HRO. Stalking is enhanceable from a gross misdemeanor to a felony when there is a QDVRO conviction or juvenile adjudication within 10 years of the new offense. (See Enhancement Chart, Appendix 11.) Record keeping and verification of these convictions and juvenile adjudications has therefore assumed heightened importance in the Minnesota criminal justice system. In Ramsey County, city attorneys increasingly frequently identify cases they have charged as potential felonies and refer them to the county attorney's office.

**E. Violation of Probation.** Whenever a DANCO/no contact order is an express condition of probation and the probation officer has probable cause to believe that condition has been violated, the probation officer will/should ask the sentencing judge to issue a probation violation pickup for the defendant. If the sentencing judge has retired or is unavailable, the pickup will be presented to the sentencing judge's successor or back-up. The signing judge specifies on the pick-up order whether the defendant is to appear before him/her or on the LEC calendar (if the latter, the matter will be heard by whichever judge has the 1:30 calendar). The defendant is entitled to appear before a judge within 36 hours of his arrest on a probation violation warrant.

At his first appearance on the violation, the defendant may admit or deny the violation. If denied and the defendant is in custody, he may make a bail motion, and the court may set bail or other conditions of release or order the defendant held pending the violation hearing.

The defendant is entitled to a probation violation hearing within 7 days at which witnesses are called by the state to prove the violation. The standard of proof is clear and convincing. If the court finds the violation occurred, it may impose the sentence originally stayed in its entirety (thereby terminating probation) or such lesser amount of time or other conditions as it deems appropriate (thereby continuing probation). The determination of probation violation and additional sanctions, if any, is separate from the issue of whether the defendant will be charged with an additional criminal offense (such as violation of a DANCO or standard NCO or violation

---

<sup>3</sup> Conviction of any four targeted misdemeanors or gross misdemeanors within 10 years of the date of sentencing on a felony will give a defendant an additional criminal history point. A defendant may only accrue one point for these offenses, no matter how many targeted misdemeanor or gross misdemeanor convictions s/he has.

of an OFP). Probation officers may bring the probation violation to the judge before a new criminal charge arising from the violation is resolved, **particularly where the violation consists of disobeying a DANCO/no contact order and involves victim safety**. Immediate action is the preferred route whenever the victim may be endangered by delay and the defendant has already demonstrated his unwillingness to abide by the court's order. For legal authority to set probation violation hearing immediately, see Appendix 20.

**F. Assessment of Dangerousness When Violations Occur.** The Domestic Violence Risk Assessment Bench Guide (Appendix 6) may be useful in assessing the danger to the victim and/or family when consequences for violating the order are considered.

## **SECTION 9: STATUTES AND POLICIES THAT APPLY TO SENTENCING IN DOMESTIC ABUSE CASES; CONSECUTIVE SENTENCING CONSIDERATIONS**

**1. PSI.** (Minn. Stat. §609.2244, subd. 1) A presentence investigation report must be completed on all domestic abuse cases. This includes convictions for any offense arising out of the same circumstances as a domestic abuse incident even if the conviction itself is not for one of the domestic abuse crimes enumerated in Minn. Stat. §518B.01, subd. 2. Example: If the arrest was for domestic assault but the plea was to disorderly conduct, a PSI must still be done. Having the victim's input at the time of the plea does not eliminate this requirement. Exception: No PSI is necessary if the defendant has either already served expiration of the maximum sentence or agrees at the time of his plea to serve the statutory maximum sentence. However, if the maximum sentence has not already been served, the defendant may not be released pending sentencing and given a "stay to serve." This unsupervised time period creates grave safety and supervision concerns.

**2. Firearm Prohibition.** (Minn. Stat. §609.2242, subd. 3) Whenever a defendant is convicted of domestic assault or of assault in the fifth degree against a family or household member, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for 3 years from the date of conviction. It is a gross misdemeanor to violate this prohibition. Minn. Stat. §609.2242, subd. 3(d). In addition, when a person is convicted of assault (any degree) and the court makes **written findings on the record** that: (1) the assault was committed against a family or household member, (2) the defendant owns or possesses a firearm **and** (3) the firearm was used in any way during the commission of the assault, the court **shall** order the firearm forfeited and **may** order that the defendant is prohibited from possessing any firearm for any period longer than 3 years or for life. Minn. Stat. §609.2242, subd. 3(a), (b) and (d).

In addition, under federal law, it is a crime to possess a firearm after conviction of a qualifying state misdemeanor crime of domestic violence. A "qualifying misdemeanor" is one which has an element the use or attempted use of physical force or threatened use of a deadly weapon committed against a spouse, former spouse or intimate partner. 18 U.S.C. §2261(a)(1); 18 U.S.C. §922(g)(9). It is also a crime to possess a firearm while subject to a qualifying protective order. A "qualifying protective order" is one issued after a hearing of which the defendant had actual notice and an opportunity to participate and which contains explicit provision restraining the person from harassing, stalking or threatening the intimate partner or child of the intimate partner or placing the partner or child in fear of bodily injury and which also contains explicit finding that the person represents a credible threat to the physical safety of the intimate partner or child or explicitly prohibits domestic abuse (as defined in Minnesota law) against the intimate partner or child. 18 U.S.C. §922(g)(8).

**3. Minimum Sentences for Domestic Assault.** (Minn. Stat. §609.2243) A person convicted of gross misdemeanor domestic assault under Minn. Stat. §609.2242, subd. 2, shall be sentenced to a minimum of 20 days imprisonment, at least 96 hours of which must be served consecutively (i.e., without interruption). Execution of this minimum sentence may be stayed on condition that the person sentenced complete anger therapy or counseling and fulfill any other condition ordered by the court. For a person convicted of a felony under Minn. Stat. §609.2242, subd. 4, the presumptive minimum sentence is 45 days of which at least 15 days must be served consecutively.

**4. Minimum Sentences for Violation of an Order for Protection.** Minn. Stat. §518B.01, subd. 14 (b), (c) and (d). Upon a misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of 3 days and appropriate counseling. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of 10 days and participate in appropriate counseling. Upon a felony OFP conviction, the defendant must be sentenced to a minimum of 30 days and appropriate counseling.

**5. Minimum Sentences for DANCO Violations.** Minn. Stat. §629.75, subd. 2(c). Upon a gross misdemeanor conviction for a DANCO violation, the defendant must be sentenced to a minimum of 10 days and appropriate counseling; for a felony conviction, the defendant must be sentenced to a minimum of 30 days and appropriate counseling.

**6. Victim's Rights at Sentencing.** The victim has the right to be present at sentencing and to express, orally or in writing, any objection to the plea agreement. (Minn. Stat. §611A.03) If the victim requests, the prosecutor must orally present the victim's written impact statement to the court. The contents of the statement may include (1) a summary of the harm or trauma suffered by the victim as a result of the crime; (2) a summary of economic loss or damage sustained, and (3) the victim's reaction to the proposed disposition. (Minn. Stat. §611A.038)

**7. Assessment of Dangerousness at Sentencing.** The Domestic Violence Risk Assessment Bench Guide (Appendix 6) may be useful in assessing the danger to the victim and/or family when conditions of probation are considered.

**8. Restitution.** Victims also have a right to have restitution ordered at sentencing. (Minn. Stat. §611A.04) The request for restitution may include, but is not limited to, out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services and funeral expenses. Restitution requests shall be submitted in affidavit form and must be notarized. The affidavit provides the basis for the specific amount ordered. (Generally, the affidavit is submitted before sentencing. If the affidavit has not yet been received, the court may order restitution and leave the amount open for a limited period to allow an affidavit to be submitted).

For felony defendants who are committed to the Commissioner of Corrections, the court may order restitution to be collected from prison wages. It is essential that restitution be ordered at sentencing for this to occur. The order of commitment should include the order for restitution.

It is always preferable to make restitution part of the court's sentencing order, including specific dollar amounts, if known. This gives probation officers precise and unambiguous directives for setting a restitution payment schedule as well as the full probationary period for obtaining compliance. A clear court order also reduces the likelihood of subsequent disputes by the defendant on the amount owed. The law, does, however, provide for restitution to be set after sentencing by return to court. Minn. Stat. §611A.04, subd. 1(b). The primary reason for deferring restitution decisions should be that amounts are not known at sentencing.

The crime victim rights statute expressly allows the amount ordered as restitution to be docketed as a civil judgment. Minn. Stat. §611A.04, subd. 3. The restitution order must contain specific amounts (rather than a general order of restitution) in order to be entered as a judgment.

A defendant may challenge restitution but must do so within 30 days of receiving written notification of the amount requested or within 30 days of sentencing, whichever is later. Minn. Stat. §611A.045, subd. 3(b).

**9. Reparations.** Victims of violent crime are eligible to apply for reparations through the MN Crime Victims Reparations Board in order to receive funds quickly rather than delayed payment from the defendant until criminal proceedings have concluded. When the Board has paid the victim, the Board must provide the court or the probation department representative with information about the amount of the expenditure. It is recommended that criminal restitution orders specify that restitution should be paid to the victim or to the Crime Victims Reparations Board. It is important that crime victim funds be replenished and criminal defendants should not be absolved of their responsibility when a victim is reimbursed by the board.

**10. Consecutive sentencing.** Consecutive sentencing for domestic abuse-related offenses may be appropriate when multiple current crimes are being sentenced or when a domestic abuse-related crime is being sentenced and the new offense also constitutes a probation violation for a prior similar crime. (See Appendix 18: Memorandum on Consecutive Sentencing in Domestic Abuse-Related Cases).

**SECTION 10: RAMEY COUNTY CORRECTIONAL FACILITY (RCCF)  
RESTRICTIONS FOR SENTENCING AND PROGRAMS FOR DEFENDANTS  
CONVICTED OF A DOMESTIC ABUSE-RELATED OFFENSE**

1. **Electronic monitoring and home confinement:** Automatic disqualification if current conviction is for domestic abuse-related offense (including disorderly conduct arising from domestic abuse charge) or if current conviction for any offense and defendant has had a domestic abuse-related conviction within 5 years.
2. **Work release:** No automatic disqualification (unless specified by commitment order) but if there is either a current no contact order or past conviction for violation of an OFP or no contact order, the work circumstances (such as proximity to the victim, degree of supervision and freedom to leave the work site) will be scrutinized closely.
3. **Sentence-to-service:** Automatic disqualification. Disorderly conduct convictions arising from a domestic assault or domestic assault related convictions are included in this automatic disqualification.
4. **Victim notification:** Will notify the victim when the defendant is released if requested. Minn. Stat. §611A.06.



## **SECTION 11: RAMSEY COUNTY CORRECTIONS DEPARTMENT POLICY ON NO CONTACT ORDERS AND DANCOS AS A CONDITION OF PROBATION; WHEN SENTENCE IS EXECUTED**

### **1. Corrections policy on no contact orders and DANCOS:**

All victims who can be located are sent victim impact statements. Note: Victim impact statements included in the PSI are confidential.

Investigators follow this up with a phone contact asking if the victim wants a probationary no contact order. If so, this is stated in the confidential section of the PSI and recommended as a condition of probation. In rare instances, the department will recommend a probationary no contact order over a victim's objection.

If the investigator cannot reach the victim, a probationary no contact order/DANCO is always recommended as a condition of probation unless the order was cancelled prior to sentencing, or if there was no pretrial NCO/DANCO.

The probation no contact order/DANCO is prepared by probation and presented for signing by the judge at sentencing. A Probationary Domestic Abuse No Contact Order (DANCO) may be issued for domestic related convictions. (See Appendix 2). The defendant is given a copy after the signing and verbal notice in court at the time of sentencing. Copies of the orders are provided to corrections and the prosecution. The prosecutor or designee notifies the victim of the order. (The victim-witness unit of the county attorney's office handles notification for the county attorney. Tubman handles notification for suburban city prosecutors.)

The probation no contact order/DANCO supercedes the pretrial NCO/DANCO previously issued in the case.

Probationary NCO/DANCO orders are entered into MNCIS for all law enforcement to have access.

### **2. Early discharge from probation is rare in domestic cases:**

Misdemeanor and gross misdemeanor defendants in domestic abuse cases are generally not discharged early from probation. In the case of felony defendants, who often have very lengthy periods of probation, the department may on occasion recommend early discharge upon satisfactory completion of all terms of probation. When a defendant who has a probationary no contact order/DANCO in effect is discharged early from probation, or when the court authorizes cancellation of the probationary NCO/DANCO for other reasons, an NCO/DANCO Cancellation Order must be signed, filed and entered into MNCIS for all law enforcement to have access.

### **3. Revocation of probation (unsuccessful early discharge) and execution of sentence:**

Misdemeanor/gross misdemeanor: If a misdemeanor or gross misdemeanor domestic abuse defendant violates his probation, probation is revoked and a RCCF sentence executed in its entirety. The defendant should be expressly advised that the NCO/DANCO remains in effect during the period of incarceration and any violation of a DANCO while incarcerated may be charged. The court loses jurisdiction over the defendant upon completion of sentence.

Felony: If a felony domestic abuse defendant violates probation, probation is revoked and a prison sentence is executed. The court loses jurisdiction upon execution of sentence. A NCO/DANCO Cancellation Order should be signed, filed and entered into MNCIS for all law enforcement agencies to have access. However, whenever the court deems it appropriate, the court should notify the Minnesota Department of Corrections in writing recommending the defendant have no contact with the protected party.

NOTE: Whenever a previously stayed felony sentence is executed, under NO circumstances should the execution of the sentence be stayed. Upon execution of a prison sentence, the court no longer maintains jurisdiction of the defendant. The defendant is remanded to the custody of the Commissioner of Corrections and is under their jurisdiction from that time forward.

## **SECTION 12: CORRECTIONS DEPARTMENT POLICY ON PROBATION VIOLATIONS ON DOMESTIC ABUSE CASES**

Probation violations are filed most commonly for:

- Failure to remain law-abiding
- Failure to maintain contact with probation
- Failure to keep probation informed of whereabouts
- Failure to complete chemical dependency evaluation or treatment
- Failure to abstain from alcohol or mood altering chemicals
- Violation of the no contact order (including Probation DANCO, where applicable)
- Failure to complete domestic abuse counseling

Probation violations for failure to comply with a DANCO in most cases will be filed immediately upon knowledge of the incident and probable cause can be established. Often a new criminal charge is pending. If probable cause can be established, probation violations will be brought to the attention of the court prior to resolution of the new case.

Probation violations are drafted by probation officer, reviewed and signed by the supervisor. No-bail warrants are normally requested by probation in domestic cases. (The probation violation order form does provide for the alternative mechanism of summons; however, normally this is not recommended in domestic abuse cases.) The paperwork is sent to the original sentencing judge, if available, otherwise to his/her successor or back-up, for review and signing of the pick-up order. The issuing judge specifies on the order whether the hearing is to be set before the issuing judge or on the LEC arraignment calendar for the judge assigned to the day. The order then goes to the clerk's office for processing and the sheriff's office for the warrant.

The amount of bail and/or other conditions of release may be set by the issuing judge and endorsed on the warrant. Minn. R. Crim. P. 27.04, subd. 1(2).

When a defendant is arrested on the probation violation, s/he must appear before a judge within 36 hours of the arrest exclusive of the day of arrest, or as soon thereafter as a judge is available. Minn. R. Crim. P. 27.04, subd. 1(2). If the case is heard on an arraignment calendar by a judge other than the issuing judge, the matter should be continued to the issuing judge whenever possible.

If the violation is denied, the probationer is entitled to a revocation hearing within 7 days of the initial appearance. Minn. R. Crim. P. 27.04, subd. 2(4). (See also Section 8, II.D.)

When a defendant is on probation for a domestic violence-related conviction and charged with a new domestic violence-related crime, a probation violation may be filed for failure to remain law-abiding or for violating a no-contact order as a condition of his/her probation. The court may consider the new domestic violence-related crime immediately as a probation violation instead of waiting for the new charge to be resolved by a conviction. See Appendix 20, Memorandum on Domestic Violence Probation Violations regarding competing considerations to be weighed in deciding to proceed immediately or to defer the decision to a later time.

**APPENDIX 1**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

---

**ORDER ADOPTING POST-ARREST RELEASE POLICY FOR  
DOMESTIC ABUSE, VIOLATION OF AN ORDER FOR PROTECTION, VIOLATION  
OF DOMESTIC ABUSE NO CONTACT ORDER AND HARASSMENT CASES**

---

WHEREAS the Second Judicial District Judges recognize the need to set a post-arrest release policy for domestic abuse (as defined in Minn. Stat. § 518B.01, subd. 2), violation of an order for protection, violation of a domestic abuse no contact order and harassment cases; and

WHEREAS Minn. Stat. § 629.72, as amended in 2001, sets forth specific heightened judicial review and release requirements for these cases; and

WHEREAS the Second Judicial District Bench voted on a Post-Arrest Release Policy for domestic assault cases on November 10, 1993, which policy should now be expanded to conform to the broader list of offenses encompassed by Minn. Stat. § 629.72;

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the post-arrest release policy for domestic abuse, violation of an order for protection, violation of a domestic abuse no contact order and harassment cases is as follows:

WEEKDAYS: Hold without bail until court appearance or charge the next morning.

WEEKENDS: Hold without bail until 4 p.m. Saturday (or 4 p.m. Sunday for 3-day holiday weekends). Duty judge will review and decide whether to set bail and/or conditions of release or hold until Monday (Tuesday for 3-day holiday weekends).

A copy of this order shall be distributed to the Watch Commander/Supervisor for each Ramsey County law enforcement jurisdiction.

Dated: 9/4/03

/s/ J. Thomas Mott  
J. THOMAS MOTT  
Chief Judge  
Ramsey County District Court

## APPENDIX 2

**"Domestic abuse"** defined in Minn. Stat. §518B.01, Subd. 2(a) means any of the following crimes committed against a family or household member:

- Physical harm, bodily injury or assault (assault first through fifth degree, domestic assault, domestic assault by strangulation)
- Infliction of fear of imminent physical harm, bodily injury or assault
- Terroristic Threats
- Criminal Sexual Conduct first through fifth degree
- Interference with an Emergency Call

**"Family or household members"** defined in Minn. Stat. §518B.01, Subd. 2(b) means any of the following relationships:

- Spouses and former spouses
- Parents and children
- Persons related by blood
- Persons who are presently residing together or who have resided together in the past
- Persons who have a child in common regardless of whether they have been married or have lived together at any time
- A man and woman if the woman is pregnant and the man is alleged to be the father regardless of whether they have been married or have lived together at any time
- Persons involved in a significant romantic or sexual relationship

### **Offenses qualifying for Domestic Abuse No Contact Order (DANCO)**

Minn. Stat. §629.75

- Any "domestic abuse" offense (see list above). Minn. Stat. §518B.01, Subd 2.
- Harassment or stalking against a family or household member. Minn. Stat. §609.749.
- Violation of an Order for Protection (OFP). Minn. Stat. §518B.01, Subd 14.
- Violation of a Domestic Abuse No Contact Order (DANCO). Minn. Stat. §629.75.

### **Targeted Misdemeanors/Gross Misdemeanors for Criminal History Points under Minnesota Sentencing Guidelines**

(maximum 4 equals 1 criminal history point):

- Assault 5 or Domestic Assault
- Violation of OFP, HRO or DANCO
- Interference with Privacy
- Indecent Exposure
- DWI

Minn. Sent. Guidelines II.B.6.a: Provides a targeted misdemeanor/gross misdemeanor may be used for a custody status point when sentencing for a felony conviction.

Minn. Sent. Guidelines II.B.6.b: If a targeted misdemeanor/gross misdemeanor is used to enhance the felony to be sentence, then it is not to be used for a targeted misdemeanor/gross misdemeanor point. However, all prior felony convictions, even if a prior qualifying felony conviction is used to enhance the felony conviction to be sentenced, are used for calculating prior felony points.

## APPENDIX 3

### WEEKEND POST ARREST PROCEDURES FOR DOMESTIC ABUSE, VIOLATION OF AN ORDER FOR PROTECTION, VIOLATION OF DOMESTIC ABUSE NO CONTACT ORDER AND HARASSMENT CASES

(Revised 9/3/03)

Per Ramsey County bench policy (see Appendix 1), the designated weekend duty judge shall be responsible for reviewing the status of all persons being held for domestic abuse, violation of an order for protection, violation of a domestic abuse no contact order or harassment at the 4:00 p.m. Saturday meeting with the Duty Officer (Station Commander). (The misdemeanor domestic abuse-related cases will therefore be excluded from the telephone conference held with the Remand Screener on Saturday morning.)

1. Prior to the 4:00 p.m. meeting, the following should occur:
  - a. Any agency wishing to continue detention of a person arrested for a domestic abuse (*or any other felony and gross misdemeanor case*) beyond 48 hours shall have available at the Duty Officer Unit a completed "*Judicial Determination of Probable Cause to Detain*" form (Appendix 7). The facts supporting probable cause shall be written in the space provided *at the top of the form*. *Relevant police reports should be attached.*
  - b. The Remand Screener on duty shall, prior to the meeting, forward to the Duty Officer (Station Commander) a copy of the *Pretrial Bail Evaluation* form (Appendix 10) regarding the arrestee and a copy of the *Project Remand Confidential Victim Information* form (Appendix 9).
2. Based upon the above information, the judge shall then determine whether the Defendant should be held for court or released and if released, under what conditions. Bail, no contact order and other conditions of release may be set (see Appendix 6).
  - a. If arrestee is to be held for court after the weekend, *the Judicial Determination of Probable Cause to Detain* form needs to be completed and signed by the judge.
  - b. If the judge determines that the arrestee may be released, a copy of the attached *Judicial Release Order* (Appendix 8) authorizing the release shall be completed and signed. This is in addition to the *Judicial Determination of Probable Cause to Detain* form.)
  - c. If the judge determines that the arrestee may be conditionally released; the judge shall sign a *Conditional Release Order* (Appendix 12).
  - d. The weekend judge shall also consider whether a no contact order is appropriate and if so, complete and sign the pretrial no contact order checking the "yes" or "no" box determining whether the order is or is not a Domestic Abuse No Contact Order. If the arrest is for assault, criminal sexual conduct, terroristic threats or interference with an emergency call committed against a family or household member, check "yes." The Remand Screener will serve the order upon the arrestee.

The procedure outlined above is intended to parallel that presently being followed for felony and gross misdemeanor cases and the distribution of the paperwork shall be made accordingly. *Failure to have the proper documentation available at the review in the Duty Officer Unit (Station Commander's) office will result in the arrestee being released because of the expiration of the McLaughlin 48 hour time limit.*

## APPENDIX 4A

### COMPARISON BETWEEN THE 36-HOUR AND 48-HOUR RULES

#### 36-HOUR RULE (Rule 4.02)

1. Only applies to warrantless arrests where Defendant is NOT released immediately.
2. Requires that defendant be brought before a judge within 36 hours of arrest.
3. Only an appearance before a judge will satisfy the rule.
4. In computing time elapsed, date of arrest, Sundays and legal holidays are NOT counted (time begins to toll at midnight and therefore always expires at noon).
5. Unless satisfied, defendant must be released.

#### 48-HOUR RULE (Rule 4.02)

1. Only applies to warrantless arrests where Defendant is NOT released immediately.
2. Requires that a probable cause determination be made by a judge within 48 hours of arrest.
3. Can be satisfied by: (a) complaint signed by a judge; or (b) judge signing a "judicial determination of probable cause to detain" form filled out by police (usually a homicide detective).
4. Time starts to toll upon arrest without interruption.
5. Unless satisfied, defendant must be released.

#### GENERAL COMMENTS:

1. Which rule expires first depends on the day and time of the arrest. Therefore, each rule must be evaluated independent of the other.
2. In Ramsey County, all cases involving persons whose 48 hours will expire before Monday court are reviewed by a judge in the St. Paul Police watch Commander's office on Saturday at approximately 4 p.m. Therefore, a probable cause summary written by the arresting officer must be in the Watch Commander's office by then.
3. The Ramsey County District Court has a bench policy (see Appendix 1) which specifically requires judicial review of **weekend domestic abuse-related offenses and harassment** to be reviewed. Police reports for all weekend warrantless domestic abuse, violation of an OFP, violation of a domestic abuse NCO and harassment arrests must also be in the Watch Commander's office by 4 p.m. on Saturdays.
4. When Monday is a legal holiday, another judicial review also takes place on Sunday at 4 p.m.
5. If the original arrest was made on a felony or GM and the charge is subsequently reduced, there is **no** change in computing the time. Both are still figured from the time of arrest.

## APPENDIX 4B

### CHART OUTLINING THE EXPIRATION OF 36 AND 48 HOUR RULE (assumes NO legal holidays)

ARREST TIME		48-HOUR RULE EXPIRES AT:		36-HOUR RULE EXPIRES AT:	
Monday	1:00 a.m.	Wednesday	1:00 a.m.	Wednesday	Noon
Monday	Noon	Wednesday	Noon	Wednesday	Noon
Monday	4:00 p.m.	Wednesday	4:00 p.m.	Wednesday	Noon
Monday	11:00 p.m.	Wednesday	11:00 p.m.	Wednesday	Noon
Tuesday	1:00 a.m.	Thursday	1 00 a.m.	Thursday	Noon
Tuesday	Noon	Thursday	Noon	Thursday	Noon
Tuesday	4:00 p.m.	Thursday	4:00 p.m.	Thursday	Noon
Tuesday	11:00 p.m.	Thursday	11:00 p.m.	Thursday	Noon
Wednesday	1:00 a.m.	Friday	1:00 a.m.	Friday	Noon
Wednesday	Noon	Friday	Noon	Friday	Noon
Wednesday	4:00 p.m.	Friday	4:00 p.m.	Friday	Noon
Wednesday	11:00 p.m.	Friday	11:00 p.m.	Friday	Noon
Thursday	1:00 a.m.	Saturday	1:00 a.m.	Saturday	Noon
Thursday	Noon	Saturday	Noon	Saturday	Noon
Thursday	4:00 p.m.	Saturday	4:00 p.m.	Saturday	Noon
Thursday	11:00 p.m.	Saturday	11:00 p.m.	Saturday	Noon
Friday	1:00 a.m.	Sunday	1:00 a.m.	Monday	Noon
Friday	Noon	Sunday	Noon	Monday	Noon
Friday	4:00 p.m.	Sunday	4:00 p.m.	Monday	Noon
Friday	11:00 p.m.	Sunday	11:00 p.m.	Monday	Noon
Saturday	1:00 a.m.	Monday	1:00 a.m.	Tuesday	Noon
Saturday	Noon	Monday	Noon	Tuesday	Noon
Saturday	4:00 p.m.	Monday	4:00 p.m.	Tuesday	Noon
Saturday	11:00 p.m.	Monday	11:00 p.m.	Tuesday	Noon
Sunday	1:00 a.m.	Tuesday	1:00 a.m.	Tuesday	Noon
Sunday	Noon	Tuesday	Noon	Tuesday	Noon
Sunday	4:00 p.m.	Tuesday	4:00 p.m.	Tuesday	Noon
Sunday	11:00 p.m.	Tuesday	11:00 p.m.	Tuesday	Noon



## APPENDIX 5

### **Minn. Stat. §629.72**

#### **Subject to Heightened Bail and Conditional Release Requirements for Harassment and Domestic Abuse-Related Crimes listed below**

Minn. Stat. §629.72, Subd 1

Court may impose conditions of release or bail or both

- "Domestic abuse" defined in Minn. Stat. §518B.01, Subd. 2 to mean any of the following committed against a family or household member:
  - Physical harm, bodily injury or assault (includes assault first through fifth degree, domestic assault by strangulation or domestic assault)
  - Infliction of fear of imminent physical harm, bodily injury or assault
  - Terroristic Threats
  - Criminal Sexual Conduct (first through fifth degree)
  - Interference with an Emergency Call.
- Violation of an Order for Protection (Minn. Stat. §518B.01, Subd. 14)
- Violation of a Domestic Abuse No Contact Order (Minn. Stat. §629.75)
- Harassment/Stalking (Minn. Stat. §609.749)

#### **Conditions of Release Which May Be Imposed by the Court for Harassment and Domestic Abuse-Related Crimes**

Minn. Stat. § 629.72, Subd. 2(b)

- Enjoining the person from threatening to commit or committing acts of domestic abuse or harassment against the alleged victim or other family or household members or from violating an order for protection or a domestic abuse no contact order
- Prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly
- Directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the alleged victim is likely to be
- Prohibiting the person from possessing a firearm or other weapon specified by the court
- Prohibiting the person from possessing or consuming alcohol or controlled substances
- Specifying any other matter required to protect the safety of the alleged victim and to ensure the appearance of the person at subsequent proceedings

## APPENDIX 6

Content excerpted from *The Saint Paul Blueprint for Safety-An Interagency Response to Domestic Violence Crimes* on pages 14 & 15 regarding a Practitioner's Guide to Risk and Danger in Domestic Violence Cases:

This is an abbreviated list of factors related to risk and danger in domestic violence. Most of the research is based on violence toward women, which reflects the majority of cases coming into the criminal justice system and the majority of research. These indicators suggest one of the following likely outcomes without effective intervention: the violence will (1) probably continue, (2) escalate, and/or (3) become lethal.

### Using this risk guide

- Each *Blueprint* protocol includes specific instructions for documenting and responding to risk. Practitioners should also read the related training memo and participate in the *Blueprint* training on risk and danger.
- Elicit and document the risk factors contained in this guide. Whenever possible, talk with the victim; engage in a discussion about danger rather than just asking if these things have happened. Victim perceptions and interpretations are important.
- Communicate risk factors to other intervening practitioners in a timely manner.
- Be attentive to the factors in a given case; use experience, common sense, and training to make judgments about the level of danger that both the offender and the set of circumstances pose.
- Adjust the response to each case based on the level of risk and dangerousness.
- Protect the victim from retaliation when soliciting or using safety and risk information.
- Link victims with risk factors to an advocate.
- Stay alert; the level and type of risk will likely change over time and as circumstances change. Determining and managing risk is an ongoing process.
- A victim's attempt to terminate the relationship is a major change that poses increased risk.
- Victim's perceptions of high danger are typically accurate; their perceptions of low danger are often not.

### Acts or threats of violence associated with risk & lethality:

Factors listed in italics are particularly associated with lethal violence.

- *Stalking*
- *Strangulation; attempts to "choke"*
- *Threats to kill the victim*
- *Threats to kill that the victim believes or fears*
- *Threats to kill that are conveyed to others*
- *Threats of suicide*
- *Forced sex or pressuring for sex even when separated*
- *Serious injury to the victim*
- *Carries, has access to, uses, or threatens with a weapon*
- *Violence outside of the home*
- Aggression toward interveners
- Threats to family, coworkers, victim's new partner
- Animal abuse or killing pets
- Damages victim's property
- Violent during pregnancy or shortly after birth
- Hostage-taking; restraint
- Acts exhibiting extreme hostility toward the victim

## COERCION

**Violence with a pattern of coercion is a serious marker of high risk violence.** Coercion may be displayed as control of children, finances, or activities; sexual aggression; intimidation; hurting pets; or isolating the victim from support systems.

### **Risk is higher when the violence is accompanied by:**

- *An increase in frequency, severity, or type of violence over recent months*
- *Almost daily impairment by alcohol or drugs*
- *The victim attempting a permanent break*
- *Estrangements, separations, and reunions*
- *Failure of prior interventions to affect the offender*
- *A victim who expresses fear of threats to kill*
- *A victim making no attempt to leave despite severe abuse*
- *Prior arrests, police calls, and/or protection order(s)*
- Isolation of victim (physical or social)
- A victim seeking outside help in the past year
- A victim has a child who is not the offender's
- An abuser leaves before police arrive; eludes warrants
- An abuser's:
  - Lack of remorse
  - Mental Health issues
  - Financial difficulty; unstable housing
  - Generalized aggression or violent acts
  - Ongoing efforts to take children from their mother
  - History of violence in multiple relationships
  - First act of violence is life-threatening or brutal
  - *Obsessive control of victim's daily activities*
  - *Obsessive jealousy*
  - Significant and harmful use of a child
  - Drawing others into the abuse (e.g., children, family, friends)
  - Non-compliance with probation or pretrial release conditions

### **Homicide-Suicide accounts for 27-32% of the lethal domestic violence incidents.**

*Predominant risk markers: guns, patterns of estrangement and reunion and offender's poor mental health.*

Additional markers:

- Obsession or jealousy
- Alcohol impairment (23 to 38% of perpetrators)
- History of domestic violence
- Suicide attempts or threats
- Personality disorder
- Depression of offender (46%)

### **Women who kill male partners**

*Predominant risk markers: severe, increasingly frequent, and recent violence by male partner against the defendant; a defendant who is isolated and has fewer social resources.* Additional markers:

- Access or prior use of weapons
- More than 10 violent incidents in the last year at the hands of the person killed
- Prior police intervention in one or more domestic violence calls in past year
- Prior strangulation by person killed

- Traditional relationship (married, children, lengthy relationship)
- Trapped and isolated in violent relationship
- Defendant sought help

**J. C. Campbell**, D. Webster, et al., “Assessing Risk Factors for Intimate Partner Homicide,” NIG Journal No. 250 (2003); 15-19. <http://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

**P. R. Kropp**, Intimate Partner Violence Risk Assessment and Management, Violence and Victims 23(2), (2008); 202-220.

**J. Roehl**, C. O’Sullivan, et al., “Intimate Partner Violence Risk Assessment Validation Study, Final Report,” (2005). NIJ at <http://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>

**N. Websdale**, “Lethality Assessment Tools: A Critical Analysis,”(2000). VAWnet at [http://new.vawnet.org/category/Main\\_Doc.php?docid=387](http://new.vawnet.org/category/Main_Doc.php?docid=387)

**APPENDIX 7**

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

**JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN**

Name of Arrestee: \_\_\_\_\_ D.O.B. \_\_\_\_\_

CN# \_\_\_\_\_ Arresting Agency \_\_\_\_\_ Arresting Officer: \_\_\_\_\_

Employee # \_\_\_\_\_ Date of Arrest: \_\_\_\_\_ Time of Arrest: \_\_\_\_\_

Offense(s) \_\_\_\_\_

Facts constituting probable cause to believe a crime was committed and arrestee committed it:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(police reports or additional narrative may also be attached) \*Approved by Prosecutor:  YES Name \_\_\_\_\_  NO \_\_\_\_\_

The Complainant, being duly sworn, swears the above facts are true and correct to the best of his knowledge and belief and constitute probable cause to believe the above-named arrestee committed the offense(s) described herein.

Complainant's Signature \_\_\_\_\_ Agency \_\_\_\_\_ Time \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Judicial Officer or Notary Public (expiration date if notary \_\_\_\_\_)

**FINDING OF PROBABLE CAUSE AND ORDER FOR DETENTION**

From the above sworn facts (and the following supplemental sworn testimony): \_\_\_\_\_

None

I have determined probable cause exists to detain the above-named arrestee. It is hereby ordered that the above-named arrestee be detained subject to the requirements of Minnesota Rules of Criminal Procedure and further order of this Court.











Dated \_\_\_\_\_ Time \_\_\_\_\_  
\_\_\_\_\_, (Judicial Officer)

This proceeding was held  in person  telephonically  by Fax

**Complainant, please note:  Jail Notified of Probable Cause to Detain**

**JUDICIAL RELEASE ORDER COMPLETED:  YES  NO \_\_\_\_\_**

APPENDIX 8

							
		<b>DOMESTIC VIOLENCE LETHALITY SCREEN FOR SUBURBAN RAMSEY COUNTY FIRST RESPONDERS</b>					
Officer:		Date:		Case #:			
Victim:		Offender:			City:		
<input type="checkbox"/> Check here if victim did not answer any of the questions. <input checked="" type="checkbox"/> A "Yes" response to any of Questions #1-3 automatically triggers the protocol referral.							
1. Has he/she ever used a weapon against you or threatened you with a weapon?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
2. Has he/she threatened to kill you or your children?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
3. Do you think he/she might try to kill you?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
<input checked="" type="checkbox"/> Negative responses to Questions #1-3, but positive responses to at least four of Questions #4-11, trigger the protocol referral.							
4. Does he/she have a gun or can he/she get one easily?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
5. Has he/she ever tried to choke you?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
6. Is he/she violently or consistently jealous or does he/she control most of your daily activities?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
7. Have you left him/her or separated after living together or being married?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
8. Is he/she unemployed?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
9. Has he/she ever tried to kill himself/herself?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
10. Do you have a child that he/she knows is not his/hers?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
11. Does he/she follow or spy on you or leave threatening messages?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
12. Has he/she ever forced you to have sex when you did not wish to do so?						<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Answer	
<input checked="" type="checkbox"/> Any officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whatever the officer believes the victim is in a potentially lethal situation.							
Is there anything else that worries you about your safety? (i.e. "yes") What worries you?  							
Check one: <input type="checkbox"/> Victim screened in according to the protocol <input type="checkbox"/> Victim screened in based on the belief of officer <input type="checkbox"/> Victim did not screen in							
If victim screened in: After advising her/him of all the danger assessment, did the victim speak with domestic counselor? <input type="checkbox"/> Yes <input type="checkbox"/> No							
<b>LAW ENFORCEMENT TUBMAN CONTACT NUMBER: 651-770-8994</b>							
PLEASE FAX THIS FORM TO TUBMAN AT 651-770-8806							
PROJECT REMAND FAX NUMBER 651-266-9446							

**APPENDIX 9**

PRIVATE

Ramsey-County-Project Remand Pretrial Evaluation-Victim Information Form

PRIVATE

SPID                      DEFENDANT                      CHARGE                      DATE

VICTIM NAME \_\_\_\_\_ DOB \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE \_\_\_\_\_

VICTIM REQUESTS NCO \_\_\_\_ YES \_\_\_\_ NO

RISK QUESTIONS:

• DO YOU THINK HE/SHE WILL SERIOUSLY INJURE OR KILL YOU OR YOUR CHILDREN?                      \_\_\_\_ YES \_\_\_\_ NO

WHY OR WHY NOT? \_\_\_\_\_

• HOW FREQUENTLY AND SERIOUSLY DOES HE/SHE INTIMIDATE, THREATEN, OR ASSAULT YOU? \_\_\_\_\_

IS IT CHANGING? \_\_\_\_\_ IS IT GETTING BETTER OR WORSE?

• DESCRIBE THE TIME YOU WERE MOST FRIGHTENED BY HIM/HER

\_\_\_\_\_  
\_\_\_\_\_

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ PER POLICE REPORT

\_\_\_\_\_ NO POLICE REPORT

\_\_\_\_\_ PER PHONE CONTACT w/REMAND

\_\_\_\_\_ NO PHONE CONTACT w/REMAND

SCREENER \_\_\_\_\_

Current Bail Evaluation Form (as of January 1, 2013) used by Project Remand is an automated form. The following information is collected in addition to one question regarding Defendant's veteran status.

### APPENDIX 10

#### Ramsey County – Project Remand Pretrial Evaluation

Fel: <input type="checkbox"/>	GM: <input type="checkbox"/>	Misd: <input type="checkbox"/>	Div: <input type="checkbox"/>	Cell: <input type="checkbox"/>	Screener: _____	SPID# _____
Court Date: _____			Booking Time & Date: _____			
Time & Location: _____			Interview Date: _____			
Annex Disposition: _____			Soc. Sec. # _____			
Name: _____			DOB: _____		Sex: <input type="checkbox"/>	Race: <input type="checkbox"/>
AKA: _____			Address: _____		How Long?: _____	<input type="checkbox"/>
Phone: _____			Lives w/: _____		Metro Area: _____	
Prior Address: _____			Def was born in: _____		Attended: Y/ <input type="checkbox"/>	
Marital Status: _____			Dependents #: _____		Ages: _____	
Charge: _____			Weapon Used: Y/ <input type="checkbox"/>		N/ <input type="checkbox"/>	
Pending Charges: _____			(charges)		(location)	
Holds: _____			(charges)		(location)	
Prob: <input type="checkbox"/>			Par: <input type="checkbox"/>		Remand: <input type="checkbox"/>	
Comments: _____			Victim Contacted: Y/ <input type="checkbox"/>		N/ <input type="checkbox"/>	
Unsuccessful CR: Y/ <input type="checkbox"/>			N/ <input type="checkbox"/>		(date/exp): _____	
Victim Comments: _____			Employed: Y/ <input type="checkbox"/>		N/ <input type="checkbox"/>	
Other Income Sources: _____			or Student: Y/ <input type="checkbox"/>		N/ <input type="checkbox"/>	
Care of Physician: Y/ <input type="checkbox"/>			N/ <input type="checkbox"/>		Psych. Tx: _____	
C.D. Treatment: _____			Type/How Often: _____		Chemical Use: Y/ <input type="checkbox"/>	
Medication: _____			CAGE Score: _____		N/ <input type="checkbox"/>	
Threat to Self: Y/ <input type="checkbox"/>			N/ <input type="checkbox"/>		Source: _____	
MH Score: _____			Public Defender Eligible: Y/ <input type="checkbox"/>		N/ <input type="checkbox"/>	

Date	Agency	Charge/Disposition	Charge/Disposition

Verifiers: _____ (name) (phone) (relation)	BW's: <input type="checkbox"/>
Comments: _____ Verified: Y/ <input type="checkbox"/> N/ <input type="checkbox"/> If no, why: _____	Prior Record Score: <input type="checkbox"/>
Recommendation: O.R. <input type="checkbox"/> C.R. <input type="checkbox"/> Bail <input type="checkbox"/> Override <input type="checkbox"/>	Total Score: <input type="checkbox"/>
Disposition of Current Charge: _____	

Current Bail Evaluation Form (as of January 1, 2013) used by Project Remand is an automated form. The following information is collected in addition to one question regarding Defendant's veteran status.



**APPENDIX 11**  
**DOMESTIC ABUSE ENHANCEMENTS FOR REPEAT CONVICTIONS**

<b>New Offense</b>	<b>Statute</b>	<b>Victim of this Crime</b>	<b>Time Limit</b>	<b>Prior Conviction</b>	<b>New Offense Level</b>
Assault 5	609.224, Subd 2a	same victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.224, Subd 2b	any victim	w/in 3 years of conv/adj	QDVRO (1)	GM
	609.224, Subd 4a	same victim	w/in 10 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
	609.224, Subd 4b	any victim	w/in 3 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
Domestic Assault	609.2242, Subd 2	any victim *amended 2013	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.2242, Subd 4	any victim *amended 2013	w/in 10 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
*Violation of DANCO	629.75, Subd 2(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	629.75, Subd 2(d)(1)	any victim	w/in 10 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
*Violation of OFP	518B.01, Subd 14(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	518B.01, Subd 14(d)(1)	any victim	w/in 10 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
*Violation of HRO	609.748, Subd 6(c)	any victim	w/in 10 years of conv/adj	QDVRO (1)	GM
	609.748, Subd 6(d)(1)	any victim	w/in 10 years of 1 <sup>st</sup> of 2 or more conv/adj	QDVRO (2)	F
*Stalking	609.749, Subd 2, 4(a)	any victim	w/in 10 years of conv/adj	QDVRO (1)	F (5 year felony)
	609.749, Subd 2, 4(b)	any victim	w/in 10 years of 1 <sup>st</sup> of 2 or more	QDVRO (2)	F (10 year felony)
Malicious Punishment	609.377	any child (by caretaker)	w/in 5 years of discharge	Ass. 1-5; Domestic Assault; Mal. Punishment; Terroristic Threats; CSC 1-4	F
Interference w/ Privacy	609.746	any victim	None	Interference w/ Privacy or Harassment/Stalking	F

\*NOTE: These offenses have other provisions that are felonies without prior conviction enhancement due to facts such as dangerous weapons, age differentials, pattern of stalking. See next page for other types of domestics for these crimes that are felonies due to additional offense elements.

**ENHANCEMENT REACHBACK**

Conviction = plea of guilty or verdict of guilty accepted by court (Minn. Stat. §609.02, Subd. 5); alternative: juvenile adjudication.

**Sample Enhancement:**

Arrest for assault 5	1/1/07
Plea (accepted) **to assault 5	6/1/07
Sentence	8/1/07

\*\* Some judges may not formally accept the plea until sentencing.

Calculating the enhancement reachback can always be done from the sentencing date as the conviction is final. If a plea has been accepted and the offender commits a new crime prior to sentencing, then the accepted plea date is used to calculate the enhancement reachback for charging the new offense.

**Unique Elements for Felony Domestic-Related Offenses Requiring No QDVRO**

<b>New Offense</b>	<b>Statute</b>	<b>Unique Element</b>	<b>New Offense Level</b>
Violation of DANCO	629.75, Subd 2(d)(2)	possess dangerous weapon	F
Violation of OFP	518B.01, Subd 14(d)(2)	possess dangerous weapon	F
Violation of HRO	609.748, Subd 6(d)(4)	possess dangerous weapon	F
	609.748, Subd 6(d)(6)	victim under age of 18, offender more than 36 mos older	F
Stalking	609.749, Subd 2, 3(3)	dangerous weapon	F
	609.749, Subd 2, 3(5)	victim under age of 18, offender more than 36 mos older	F
	609.749, Subd 5	pattern of stalking	F

**QDVRO:** a “qualified domestic violence-related offense” is any of the following convictions:

- Assault 1-5
- Domestic Assaults
- Domestic Assault by Strangulation
- Terroristic Threats
- Stalking/Harassment
- Violations of DANCO/OFP/HRO
- Interference with Emergency Call
- Malicious Punishment
- CSC 1-4
- Female Genital Mutilation
- Murder 1 & 2

QDVRO includes attempts to commit as well as committed offenses listed above. Minn. Stat. §609.02, Subd 16.

APPENDIX 12

STATE OF MINNESOTA  
COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT COURT  
FILE# \_\_\_\_\_

\_\_\_\_\_, Plaintiff  
-Vs-

ORDER OF CONDITIONAL RELEASE

\_\_\_\_\_, Defendant

The defendant appeared in Court on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, charged with the offense(s) of: \_\_\_\_\_

It is hereby ORDERED that the defendant be released from custody under, and subject to the following conditions:

- 1) Defendant shall make all appearances in this Court as ordered. The next Court date is: \_\_\_\_\_.
- 2) (\$ \_\_\_\_\_ (Cash bail) or (Bond) must be posted before defendant is to be released. In the event defendant fails to make any court appearances or violates any of the conditions of this order, said bail shall be forfeited.
- 3) Defendant shall reside at: \_\_\_\_\_
- 4) Defendant shall have no contact with \_\_\_\_\_, whether in person, directly or indirectly through others, (except court personnel), by telephone, by mail, or by any other means until further Order of the Court.
- 5) Defendant shall obey all conditions imposed by Project Remand, 266-2992, including: weekly contact, 24-hour notification of address or employment change, and prior permission for leaving the metropolitan area.
- 6) Special conditions include: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 7) Defendant shall remain law-abiding in all respects; specifically, defendant shall not violate any State or Federal criminal law or any local criminal ordinance. Defendant shall report all new arrests to Project Remand within 24 hours of the arrest.

All conditions imposed by this Order are effective from the date and time the defendant signs this Order and shall remain in effect until defendant is either sentenced or acquitted following trial, or the charges against him/her are dismissed. Once the defendant signs this Order, the defendant may not post alternative bail until the matter is reviewed again by the court. Any Violation of Paragraph \_\_\_\_\_ shall be considered a violation of the conditions under which the defendant is released.

TO ALL LAW ENFORCEMENT PERSONNEL:

A defendant who is in violation of this Order shall be arrested for Contempt of Court and shall be held in custody without bail until further order of the Court.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

I have received a copy of this Order. I understand that a violation of this Order is a Contempt of Court and may cause me to be arrested and be subject to possible further criminal charges. I also understand that once I sign this Order, I may not post alternative bail in lieu of following these conditions.

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
PROJECT REMAND COUNSELOR  
121 Seventh Place East, Suite 2500  
St. Paul, MN 55101  
651-266-2992

\_\_\_\_\_  
DATE/TIME

Revised 08/12

**APPENDIX 13A**

STATE OF MINNESOTA  
COUNTY OF RAMSEY  
Vadnais Heights

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

D.C. File No. 62SU-CR-12-4253  
C.A. File No.  
CN# 12027231

STATE OF MINNESOTA

Plaintiff,

**NO CONTACT ORDER**

Is this a Domestic Abuse No Contact Order  
as defined by Minn. Stat. 518B.01, Subd .22

-vs-

**JARROD LOQUTIS BOSTON**

Defendant.

DOB 03/31/1992

You have been charged with **Domestic Assault-Misdemeanor-Intentionally Inflicts/Attempts to Inflict Bodily Harm** committed on **August 08, 2012** against .

You are hereby ordered to have **NO CONTACT**, whether directly or indirectly, in person, by telephone, in writing or through others with

Name DOB .

(If victim's initials are used, the prosecutor must complete the law enforcement identifying information below and send it to the law enforcement agency where the victim resides).

You are also ordered to **STAY AWAY** from the following Location (s):

This ORDER may cause you to be arrested and subject you to possible further criminal charges.

WHEN A LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT YOU HAVE VIOLATED THIS ORDER, THE OFFICER MAY ARREST YOU WITHOUT A WARRANT AND TAKE YOU INTO CUSTODY. THIS VIOLATION NEED NOT TAKE PLACE IN THE PRESENCE OF THE OFFICER TO EFFECT THE ARREST.

THIS ORDER WILL REMAIN IN EFFECT UNTIL FURTHER ORDER OR MODIFICATION, OR UNTIL A CANCELLATION ORDER IS FILED.

DATED February 07, 2013

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

NOTE: A DUPLICATION OF THIS ORDER IS AS VALID AS THE ORIGINAL

Law enforcement identifying information (to be completed on prosecutor/corrections copies only if initials are given above)		
VICTIM'S FULL NAME _____	DOB _____	BY _____
VICTIM'S CURRENT ADDRESS _____	DATE _____	
Revised 9/10/03		

APPENDIX 13B

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

STATE OF MINNESOTA,  
Plaintiff,

PROBATION NO CONTACT ORDER

v s

Jarrold Loqutis Boston,

Defendant

District Court File No.  
62SU-CR-12-4253  
C.A. File No.  
CN# 12027231

Is this a Domestic Abuse No Contact Order as  
defined by Minn. Stat. 518B.01, Subd .22?

DOB: 03/31/1992

You have been convicted of the charge(s) of Domestic Assault-Misdemeanor-Intentionally Inflicts/Attempts  
to Inflict Bodily Harm against .

As part of your sentence, and as a condition of your probation, you shall have NO CONTACT, whether directly or  
indirectly, in person, by telephone, in writing, or through others with: , DOB:. (If victim's initials are used,  
prosecutor must complete law enforcement identifying information below and send to law enforcement agency were  
victim resides).

You are also ordered to STAY AWAY from the following Location(s):

**A violation of this Order is a violation of the terms and conditions of your probation and may subject you to  
being brought before the court to determine if additional sanctions are warranted, including incarceration.  
In addition, a violation of this Order may cause you to be arrested and subject you to possible further  
criminal charges.**

WHEN A LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT YOU  
HAVE VIOLATED THIS ORDER, THE OFFICER MAY ARREST YOU WITHOUT A WARRANT  
AND TAKE YOU INTO CUSTODY. THIS VIOLATION NEED NOT TAKE PLACE IN THE  
PRESENCE OF THE OFFICER TO EFFECT THE ARREST.

This order is effective for year(s) from this date or until further order of this Court.

(Check if pretrial No Contact Order was issued.) This probation No Contact Order  
replaces the original No Contact Order signed on by Judge

Dated:

\_\_\_\_\_  
Hon.  
Judge of the District Court  
Second Judicial District

NOTE: A DUPLICATION OF THIS ORDER IS AS VALID AS THE ORIGINAL

Law enforcement identifying information (to be completed on prosecutor/corrections copies only if initials are given above)	
_____	_____
VICTIM'S FULL NAME	DOB _____
VICTIM'S CURRENT ADDRESS	DATE _____

**APPENDIX 13C**

STATE OF MINNESOTA

COUNTY OF RAMSEY  
VADNAIS HEIGHTS

Jarrold Loqutis Boston  
DOB: 03/31/1992

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Court File Number: **62SU-CR-12-4253**

**Cancellation of No Contact Order**

**State of Minnesota vs Jarrold Loqutis Boston**

The No Contact Order issued by this court and signed on by Judge requiring that the defendant have no contact with

DOB,

(If victim's initials are used, prosecutor or corrections must complete law enforcement identifying information below and send to law enforcement agency where victim resides)

or is hereby vacated.

Dated: February 7, 2013

\_\_\_\_\_  
Hon.  
Judge of the District Court  
Second Judicial District

**Note:**

**Prosecutor (or designee) will notify law enforcement and victim of cancellation orders issued before or at sentencing.**

**This cancellation applies only to the order named and does not alter the enforceability of any other order for protection, harassment, restraining order or probationary no contact order in effect against the defendant.**

Law enforcement identifying information (to be completed by prosecutor/corrections copies only if initials given above)		
VICTIMS' FULL NAME	DOB	BY
VICTIM'S CURRENT ADDRESS		DATE

APPENDIX 14A

CRIMINAL DOMESTIC ABUSE NO CONTACT ORDER

MINN. STAT. § 629.75 (PRETRIAL ORDER)

Amended Order

State of Minnesota  
Ramsey County

District Court  
Second District

Court File Number: 62SU-CR-12-4253

Case Type: Crim/Traf Mandatory

State of Minnesota vs Jarrod Loqutis Boston

**Defendant:** Jarrod Loqutis Boston, Male, 03/31/1992

Protected Person:	Gender	D.O.B.
-------------------	--------	--------

THE COURT FINDS:

That it has jurisdiction over the parties and subject matter, and the Defendant has been or will be provided with reasonable notice and opportunity to be heard.

THE COURT ORDERS:

You are ordered to have no contact directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means with the protected person(s) named above.

You may not go to the following location(s):  
or wherever the victim resides.

Except with a police escort to recover prescription medications, personal clothing and toiletries.

Other:

You are also restrained from harassing, stalking, or threatening the protected person(s), or engaging in other conduct that would place the protected person(s) in reasonable fear of bodily injury to that person; and You are prohibited from the use, attempted use, or threatened use of physical force against the protected person(s) that would reasonably be expected to cause bodily injury.

**THIS ORDER WILL REMAIN IN EFFECT UNTIL DISPOSITION OF THE CASE OR UNTIL FURTHER ORDER OR MODIFICATION**

WARNINGS TO DEFENDANT:

This order is entitled to full faith and credit and shall be enforced anywhere in the U.S. including Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. § 2262).

Federal law prohibits shipping, transporting, possessing or receiving firearms or ammunition while this order is in effect and upon conviction of a crime of domestic violence. 18 U.S.C. § 922(g)(8),(9).

This order applies regardless of whether you are in jail or at the courthouse for a court appearance.

Compliance with this Order is a condition of your release and is in addition to any other conditions of release that may be imposed. Your release status may be revoked if you violate any aspect of this Order.

A violation of this order is a crime and may cause you to be arrested and subject to possible further criminal charges.

DATED: February 7, 2013

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

Defendant served on \_\_\_\_\_ (date) By: \_\_\_\_\_ (initials)  Court Staff  Jail Staff

APPENDIX 14B

CRIMINAL DOMESTIC ABUSE NO CONTACT ORDER MINN. STAT. § 629.75 ("Probationary" Order)
Amended Order

State of Minnesota
Ramsey County

District Court
Second Judicial District

Court File Number: 62SU-CR-12-4253

Case Type: Crim/Traf Mandatory

State of Minnesota vs Jarrod Loqutis Boston

Defendant: Jarrod Loqutis Boston, Male, 03/31/1992

Protected Person: Gender D.O.B.

THE COURT FINDS:

That it has jurisdiction over the parties and subject matter, and the Defendant has been or will be provided with reasonable notice and opportunity to be heard.

THE COURT ORDERS:

You are ordered to have no contact directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means with the protected person(s) named above.

You may not go to the following location(s):
or wherever the victim resides.

Except with a police escort to recover prescription medications, personal clothing and toiletries.

Other:

You are also restrained from harassing, stalking, or threatening the protected person(s), or engaging in other conduct that would place the protected person(s) in reasonable fear of bodily injury to that person; and You are prohibited from the use, attempted use, or threatened use of physical force against the protected person(s) that would reasonably be expected to cause bodily injury.

The terms of this order will remain in effect until:

[Empty box for date]

Further Order or Modification

OR

OR

WARNINGS TO DEFENDANT:

This order is entitled to full faith and credit and shall be enforced anywhere in the U.S. including Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. § 2262).

Federal law prohibits shipping, transporting, possessing or receiving firearms or ammunition while this order is in effect and upon conviction of a crime of domestic violence. 18 U.S.C. § 922(g)(8),(9).

This order replaces any prior no contact order issued in this case.

Compliance with this order is a condition of your probation or stay and is in addition to any other conditions that may be imposed. Your probation/stay may be revoked if you violate any aspect of this Order

A violation of this order is a crime and may cause you to be arrested and subject to possible further criminal charges.



DATED: February 7, 2013

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

Defendant served on \_\_\_\_\_ (date) By: \_\_\_\_\_ (Initials) COURT STAFF JAIL STAFF

**APPENDIX 14C**

State of Minnesota  
Ramsey County

District Court Second District  
Court File Number: 62SU-CR-12-4253

Case Type: Crim/Traf Mandatory

State of Minnesota vs Jarrod Loqutis Boston

CANCELLATION OF  
DOMESTIC ABUSE NO  
CONTACT ORDER  
(DANCO)

Defendant's D.O.B.: 03/31/1992

---

The Domestic Abuse No Contact Order (DANCO) issued by this court and signed on by Judge  
requiring that the defendant have no contact with:

NAME:

D.O.B:

Or location(s) is hereby

vacated.

THE PROSECUTOR (OR DESIGNEE) SHALL NOTIFY THE PROTECTED  
PERSON(S) OF THIS CANCELLATION ORDER.

THIS CANCELLATION APPLIES ONLY TO THE ORDER NAMED AND DOES NOT ALTER  
THE ENFORCEABILITY OF ANY OTHER ORDER FOR PROTECTION, HARASSMENT  
RESTRAINING ORDER OR NO CONTACT ORDER IN EFFECT AGAINST THE  
DEFENDANT

DATED: February 7, 2013

\_\_\_\_\_  
JUDGE OF DISTRICT COURT



**Second Judicial District  
Judicial Policies**

Action No.  
**P 10.06**

**REASONABLE DISTANCE FOR:**

- **Orders for Protection**
- **Harassment Restraining Orders**
- **Domestic Abuse No Contact Orders**
- **No Contact Orders**

**Background**

At its meeting on June 8, 2010, the Violence Coordinating Council recommended specific language be used when judges restrict defendants from coming within a certain distance of a protected person or location. When a distance restriction is included in an order, the Council recommends that "standard, uniform language describing 'reasonable area' be used to enhance clarity and enforcement." As an example, the Council recommends that specific language be used to define the distance restriction, (e.g. "Two city blocks or one-quarter mile, whichever is greater"). Suburban jurisdictions do not have the typical 10 blocks per mile grid layout like most of St. Paul. Using specific distances will aid in the enforcement throughout Ramsey County.

In 2010, the Legislature changed Minnesota Statute 51813.01, the Domestic Abuse Act. The change allows courts to exclude abusing parties from a reasonable area surrounding the dwelling or residence. The reasonable area must be specifically described in the order.

The Council recommends that the descriptive distance language be used in Harassment Restraining Orders, No Contact Orders, Domestic Abuse No Contact Orders, and Orders for Protection. The forms for these orders would not be changed, but a clerk would insert the language in the spaces provided in the forms.

**Policy**

When judges use a distance restriction in harassment restraining orders, no contact orders, domestic abuse no contact orders, and orders for protection, the judges are encouraged to describe

the reasonable area of the restriction as, "\_\_\_\_\_ city blocks or \_\_\_\_\_ mile, whichever is greater," or otherwise with as much specificity as feasible.

Page 1 of 1	Attachments: None
Date of Adoption:	September 15, 2010
Effective Date:	September 15, 2010
Revisions:	

## APPENDIX 16

Approved by 2" District Bench, May 2012

### GUIDELINES WITH RESPECT TO EXCEPTIONS TO DANCOs

#### General

It is essential that the terms of a domestic abuse no-contact order (DANCO) be clear on the face of the order. Such clarity enables both the defendant and the protected person to understand the defendant's obligations, it enables law enforcement to enforce those obligations, and it communicates to all the seriousness of the order.

**Any exception to a DANCO detracts from this clarity**, increasing the likelihood of ambiguity and confusion and making the order more difficult to enforce. Exceptions can cause particular difficulties for law enforcement officers responding to a scene; they may know through electronic means that a DANCO exists **but** be unable to see the text of the order itself.

For these reasons, exceptions to DANCOs should be made only in very limited circumstances. **Exceptions which permit direct contact between the defendant and the protected person or the protected person's residence (even if he or she is not home) are particularly problematic and should almost never be made;** such contact, even by phone, significantly undermines the effect of the order. But even exceptions permitting indirect contact should be quite rare as well.

#### Time with Children

A defendant against whom a DANCO has been issued may move for an exception to the DANCO to permit third-party contact, in order to spend time with minor children.

**No such exception should be made unless the protected person has had the opportunity for full input on the issue.** (Such input may not, of course, be procured via contact with the defendant.) If the protected person expresses support, then the court should consider factors such as the following (drawn from the Blueprint for Safety) in deciding whether an exception should be made:

- the nature and severity of the alleged offense,
- the defendant's criminal history,
- any prior court orders,
- any coercion or threats against the protected person,
- the relationship among the defendant, protected person, and children, and
- lethality and victim safety.

If the protected person is either opposed or silent, then no exception should be made, unless a family court order issued following the criminal charges — and taking into account the charges, DANCO and full input from the protected person — has granted the defendant parenting time.

If the court determines that an exception should be made, the following language should be used:

*Except for indirect contact via [[specified third person]], but only for arranging time with children, if protected person consents. This order does not change or create any right or obligation related to time with children.*

Regardless of the expressed wishes of the protected person:

- **No such exception should be made if the children in question are alleged to have been involved in the incident** or if another order (such as an OFP) exists prohibiting contact with the children.
- **No such exception should permit the defendant to be at the protected person's residence, whether or not he or she is not home.**
- **No such exception should be made unless the specified third person has agreed** to serve as go-between and meets with the approval of both the defendant and protected person.
- In general, **no such exception should be made until after the first appearance,** if at all, in order to have time to ensure full input from the protected person, identify and verify the proposed third person and, and assess the six factors above.

## APPENDIX 17

# DOMESTIC VIOLENCE VICTIM SERVICES AVAILABLE IN RAMSEY COUNTY

### BRIDGES TO SAFETY AT THE RAMSEY COUNTY COURTHOUSE

Bridges to Safety (BTS) is the domestic abuse service center located in Room 140 at the Ramsey County Courthouse. BTS provides centralized safety and services for victims of domestic violence in Ramsey County. It is a program of the Partnership for Domestic Abuse Services, a collaborative of 19 nonprofit and government member agencies.

At Bridges to Safety, victims of domestic violence may receive the following services: crisis intervention and personal advocacy; legal advocacy; legal consultation and representation depending on eligibility; access to law enforcement investigation and prosecution of offenders; Order for Protection writing/filing; childcare while the parent/guardian is accessing services; access to safe child visitation services; enrollment in the State of Minnesota's Safe at Home address confidentiality program; and referral to shelter, permanent and transitional housing, employment, personal counseling, and other community partners. All services are survivor-centered, culturally appropriate, and free of charge.

Bridges to Safety is open Monday-Friday from 8:00 am to 4:30 pm and can be reached by phone at (651) 266-9901. Walk-in participants are very welcome, although if a victim is seeking an Order for Protection, we highly recommend making an appointment with the Second Judicial District Court Domestic Abuse and Harassment Office ahead of time, if possible, by calling (651) 266-5130. For more information, go to Bridges to Safety website at [www.bridgestosafety.org](http://www.bridgestosafety.org).

### ST. PAUL DOMESTIC ABUSE INTERVENTION PROJECT (SPIP)

St. Paul Domestic Abuse Intervention Project (SPIP) is a non-profit agency that provides a wide array of services to victims of domestic abuse. SPIP's programs include: The Acute Intervention; The System Advocacy Program, working effectively within the criminal justice, law enforcement and social service systems to improve their responses to domestic violence; the First Light Program, working in conjunction with St. Paul Police, to reach out to victims of highly lethal/chronic offenders; Latina Family Violence Program; the Twilite Program, serving older battered women's unique needs; the Hospital/Clinic Advocacy Program; the Southeast Asian Battered Women's Program; and The Family Transitional Program.

Our Acute Intervention Program provides 24-hour outreach services to victims after the St. Paul Police are called due to domestic related crimes, both on arrests and when the suspect is gone on arrival. SPIP's culturally and linguistically diverse staff provide comprehensive services to victims from the first contact through arraignment court, and subsequent court hearings, as well as post-sentencing services as needed. SPIP advocates attend misdemeanor/gross misdemeanor arraignment (custody) court, pre-trial and trial appearances for St. Paul criminal cases. SPIP advocates provide victims with court

information, safety planning, information on crime victim's rights, assistance with reparations, etc. Advocates assist victims in obtaining Orders for Protection (OFPs), and in finding legal advice and representation in the areas of family law, immigration, housing, etc. Services are offered and provided to victims regardless of whether or not the criminal case is charged. SPIP provides a full time legal advocate to work with victims at Bridges to Safety, the victim service center located at the main courthouse.

SPIP provides ongoing short and long term follow-up services for as long as the victim needs services. All services are confidential and free of charge. In addition, SPIP provides comprehensive training and community education on domestic violence related issues.

## **TUBMAN**

Tubman is a non-profit agency that provides a wide continuum of free, confidential services for victims of domestic violence in Suburban Ramsey County. Tubman has a 24-hour crisis line and two metro-area domestic violence shelters. Law enforcement contacts Tubman's intervention line after an arrest is made so that an advocate can make contact with the victim to provide immediate safety planning and information on the criminal justice process. Advocates assist victims with a wide array of services including criminal and civil legal advocacy, safety planning, victims' rights information, assistance with OFPs, the Pro Bono Safety Project, finding safe housing, financial and legal resources, support groups, mental health and chemical dependency counseling, elder abuse intervention and prevention, follow-up services, on-site advocacy at Bridges to Safety, etc.

Advocates from Tubman will monitor court proceedings on all non-felony domestic abuse-related cases, including stalking, as defined by statute (including intimate relationships, parent/child, siblings, and roommates) from the point of arrest to the final disposition of the case. In each case, Tubman will assign an advocate to the victim in order to build a trusted rapport and provide consistency throughout the court process. The advocate will attempt to contact the victim by phone before each court appearance to relay all court information. At the arraignment stage, this includes charging information, input regarding DANCOs, possibilities for release, etc. At court, the advocate will, with permission, relay the victim's input to the court. If the victim is present at court, the advocate will also meet with the victim and help facilitate any conversations with the city prosecutor. The advocate will then attempt to contact the victim immediately after court in person (if present) or by phone to relay all court results, including the defendant's conditions of release, status of the DANCO, next court date, etc. If immediate contact is not successful, the advocate will make every effort to contact the victim by phone or in writing. The Tubman advocates' role also includes faxing copies of the DANCOs to appropriate law enforcement and providing a copy to the victim.

## APPENDIX 18

### MEMORANDUM ON CONSECUTIVE SENTENCING IN DOMESTIC ABUSE CASES

(Rev. March 27, 2012)

#### **Identified Problem:**

Domestic abusers often reoffend. Domestic violence criminal acts may be committed between the time of the plea and the time of sentencing; or, during the period of probation. If the sentence for any subsequent offense is not specifically stated to be consecutive, the law presumes it to be concurrent. Minn. Stat. §609.15, subd.1(a). If a person is arrested and ultimately convicted of a new offense between plea and sentence on another charge or during probation (or supervised release), Minnesota law requires the same jail credit to be applied both to the old and new offenses unless the subsequent sentence is expressly stated to be consecutive to the first. The result can be, particularly for multiple misdemeanor and gross misdemeanor offenses, that a repeat offender may get two, three, or four sentences for the price of one unless sentences are consecutive. In domestic abuse cases, this sends the counter-productive message to the abuser that there is no additional consequence for repeat offenses against a domestic partner. Consecutive sentencing, on the other hand, sends a clear message of accountability.

#### **LEGAL ANALYSIS**

##### **A. The Principle of Accountability**

In order to make both conditions of release and conditions of probation effective in domestic abuse cases, it should be made clear to a defendant at the time conditions of pretrial release or probation are ordered and whenever a defendant is returned to court for violation, that court orders must be obeyed and that, if they are not, a defendant will be held accountable. This is particularly imperative if the order violated relates to victim safety.

##### **B. Statutory and Case Law Basis for Consecutive Sentencing**

A consecutive sentence is one which commences at the termination of another term of imprisonment; i.e., the prisoner with consecutive sentences can serve only one sentence at a time. *State v. Morrissey*, 135 N.W.2d 57 (Minn.1965).

Minnesota statutes clearly contemplate that misdemeanor and gross misdemeanor sentences may be consecutive. Minn. Stat. §609.15, subd.2 provides the outer limit for such sentences: one year of jail if all are misdemeanors; four years if all are gross misdemeanors; if sentences are for a gross misdemeanor and one or more misdemeanors, the total of the sentence of incarceration and not to the period of probation (the period for which all or a portion of the permissible jail time is stayed). *State v. Aleshire*, 451 N.W.1d 66 (Minn.App.1990).



The period of probation for multiple offenses can also be ordered to be run consecutively. As with consecutive jail time, the court must expressly state its intention to order consecutive service or the periods of probation are presumptively concurrent. See *Aleshire, supra* (four year probationary period on two consecutive gross misdemeanor sentences upheld.) A defendant, however, has the right to demand execution of consecutive probationary sentences, especially when conditions of probation are more onerous than an executed sentence. *State v. Rasinski*, 472 N.W.2d 645 (Minn.1991). A probationary sentence may also be ordered consecutive to one being served on an earlier offense; i.e., probation for a second offense may be ordered to commence after release from confinement for an earlier offense. *State v. Hague*, 229 N.W.2d 168 (Minn.1975). Minn. Stat. §609.135, subd. 2, sets forth the maximum probationary period for felonies, gross misdemeanors, and misdemeanors.

Consecutive sentencing has great value in impressing upon a defendant the consequences of repeated unlawful acts. Concurrent sentences for multiple offenses—especially those in flagrant violation of court order, such as an OFP or other no contact order or the general order to remain law-abiding—undermine the authority of the court. Many serious domestic abuse offenses (assault, violation of an OFP or a DANCO) are only misdemeanors with a 90-day maximum sentence. When a defendant commits multiple such misdemeanor violations, it should never be with the expectation that all will be subsumed under the same 90-day maximum.

The provisions of Minn. Stat. §609.15 make no limitation on the application of consecutive sentencing by type of misdemeanor or gross misdemeanor crime. Case law affirms the imposition of consecutive gross misdemeanor sentences even in property crimes. *Aleshire, supra*.

At the felony level, the Minnesota Sentencing Guidelines control the application of consecutive sentences. Felony crimes against persons are singled out for special consideration in consecutive sentencing. Felony consecutive sentences are permissive and not a departure from the guidelines when the defendant is being sentenced for a crime against a person and has an unexpired sentence for a crime against a person. Consecutive sentencing is also permissive without any departure from the guidelines when a defendant is being sentenced for multiple crimes against the person. Minn. Sent. Guidelines II.F. 1 and 2. This principle now applies even when the multiple crimes are against the same victim and even when they involve a single course of conduct. Minn. Sent. Guidelines II.F.04 (2000)(this is a change from earlier guidelines under which multiple crimes against the same person could be sentenced consecutively only with a departure from the guidelines).

Misdemeanor and gross misdemeanor domestic abuse crimes are inherently crimes against the person. By analogy to felony sentencing principles, the case for the application of the consecutive sentencing provisions of Minn. Stat. §60915 to domestic abuse misdemeanors and gross misdemeanors is even more compelling than for other crimes. In addition, violations of express orders of the court aimed at protecting a victim (such as an OFP or NCO) are offenses against the court as well as the victim. Repeat violations of this nature, whether they occur before or after sentencing, are compelling reasons for consecutive sentencing.

### C. Jail Credit

The seminal case on jail credit, *State v. Goar*, 453 N.W.2d 28 (Minn.1990), is routinely cited for the proposition that jail credit applies to all offenses for which a defendant is in custody or could have been in custody at the same time. It stands for the general proposition that the proper amount of credit a defendant receives against a prison or probationary jail term should not be dependent on matters subject to manipulation by the prosecution or a defendant's exercise of his right to trial. Therefore, in all concurrent sentences, a defendant being sentenced for multiple offenses is entitled to credit for any time served in custody since commission of each of the offenses, even if there is a delay in charging or final disposition of the particular offense being sentenced. *Id*; *State v. Morales*, 532 N.W.2d 268 (Minn.App.1995). *Goar* charges the trial court with ensuring that the withholding of jail credit does not result in de novo consecutive sentencing when there is no express intention to sentence consecutively. However, *Goar* has no application to expressly ordered consecutive sentences. In applying jail credit to consecutive sentences, credit should be applied only to the first sentence, since to do otherwise in these circumstances would result in unjust "double credit" and would defeat the purposes of consecutive sentencing. *State v. Allen*, 482 N.W.2d (Minn.App.1992); *State v. Elting*, 480 N.W.2d 152 (Minn.App.1992); *State v. Anderson*, 520 N.W.2d 184 (Minn.App.1994); *State v. Cameron*, 602 N.W.2d 847 (Minn.App.1999).<sup>4</sup>

When the trial court specifically orders consecutive sentences in a domestic abuse case because of repeat crime against person or repeat violations of court order, there is therefore no violation of *Goar*.

### D. Consecutive Sentencing in Light of Blakely

In *Blakely v. Washington*, 542 U.S. 296 (2004), the United States Supreme Court held that before a criminal defendant may be sentenced to any sentence beyond the presumptive sentence, he is entitled to a jury trial on any departure factors. This decision has no application to misdemeanors and gross misdemeanors, but does impact aggravated upward durational and dispositional departures for felonies under the Minnesota Sentencing Guidelines. Numerous questions concerning the application of *Blakely* in Minnesota continue to be address by our appellate courts on a case-by-case basis. The question of whether *Blakely* applies to consecutive sentences, however, has been resolved: it does not. *State v. Sense*, 692 N.W.2d 742 (Minn.App.2005).

As of March 27, 2012, the Minnesota Sentencing Guidelines now contains a list permissive consecutive sentences that may be imposed without departure from the guidelines; i.e., what were previously simply referred to as crimes against person. This list includes not only the assault and terroristic threats offenses commonly seen in domestic abuse cases, but also offenses with no assault or threat, such as burglary 1 and

---

<sup>4</sup> The post-*Goar* court of appeals decision in *State v. Fritzke*, 521 N.W.2d 859 (Minn.App.1994) is sometimes erroneously cited for the proposition that a defendant is entitled to jail credit even on consecutive sentences for all time spent in custody, including time spent in custody on other charges, beginning on the date the prosecution acquires probable cause to charge the defendant with a crime. Such an assertion misapprehends *Fritzke*. *Fritzke* involves a prior and a current charge for theft with concurrent sentencing. It has no application to consecutive sentences. The *Fritzke* court, moreover, cites and relies upon *Goar*.

2, and violations of an OFP. Minn.Sent.Guidelines VI. The Minnesota Sentencing Guidelines, of course, are only applicable to felonies, but these principles support arguments by analogy for consecutive misdemeanor or gross misdemeanor sentences for violation of an OFP or DANCO.

## APPENDIX 19

### MEMORANDUM ON HISTORY OF RELATIONSHIP IN DOMESTIC ABUSE CASES BEFORE AND AFTER *MCCOY*

(Rev. October 2012)

**Before *McCoy*: History of Relationship, Minn. Stat. §634.20 and *Spreigl*.** The general and well-established rule in Minnesota is that “evidence pertaining to the relationship between a defendant and homicide victim is ordinarily admissible in criminal prosecutions, regardless of its reference to another crime. *State v. Blanchard*, 315 N.W.2d 427, 431 (Minn.1982). It is also admissible in non-homicide cases to show history of the relationship to the victim and the context for the crime charged. Domestic abuse (including child abuse) cases are the most frequent kind of cases in which Minnesota’s appellate courts have endorsed the admission of history of relationship evidence because it is in these cases, where the relationship of the victim to the defendant is intimate and long-standing, that this evidence is most obviously relevant to an understanding of how the crime occurred and to an assessment of the credibility of both the victim and the defendant. (See attached case law compendium for homicide and non-homicide domestics).

Although history of relationship evidence has some commonalities with *Spreigl* evidence, the two are not identical. For history of relationship evidence, the State need not follow *Spreigl* notice requirements. *State v. Boyce*, 170 N.W.2d 104 (Minn.1969); *State v. Black*, 291 N.W.2d 208 (Minn.1980); *State v. Enger*, 539 N.W.2d 259 (Minn.App.1995). The rationale for this policy is one of common sense: a defendant with an on-going relationship to a victim knows the nature of that relationship will be a trial issue and cannot claim he was unprepared, for lack of *Spreigl* notice, to refute such evidence. *State v. Doughman*, 384 N.W.2d 450 (Minn.1986); *Enger, supra*.

Separate and apart from any *Spreigl* theory of admissibility (such as proof of identity, common scheme or plan, motive, premeditation, intent, or absence of mistake or accident), history of relationship evidence is admitted to illuminate the relationship between the parties and to place the crime charged in context. See *State v. Bauer*, 598 N.W.2d 352 (Minn.1999)(evidence of prior abuse, threats, existence of OFP, financial troubles, defendant’s status as beneficiary of his wife’s life insurance policy all properly admitted in trial for wife’s murder); *State v. King*, 367 N.W.2d 599 (Minn.App.1985)(evidence of defendant’s prior telephone threats to victim, pouring coffee and hitting her on the head were highly relevant in establishing strained relationship and intent of defendant when he attempted to murder victim); *State v. Langley*, 354 N.W.2d 389 (Minn.1984)(prior assault on victim when defense was accident); *State v. Rediker*, 8 N.W.2d 523 (Minn.1963)(course of conduct showed defendant’s mental attitude and malice toward wife). Note that relationship evidence is broader than just “bad acts” within the meaning of *Spreigl*.

Relationship evidence has also been held to encompass evidence of a defendant’s assertive conduct toward a third party related to or a close friend of the victim. See *State v. Diamond*, 241 N.W.2d 95 (Minn.1976) (series of prior threats with weapons made by the defendant on the victim over past three years, and assault by defendant on friend of victim, admissible to prove intent and refute claim victim was aggressor); *State v. Swain*,

269 N.W.2d 707 (Minn.1978)(ten month old threat to kill victim related wife angry to a third person admissible because it bore on intent); *State v. Blanchard*, 315 N.W.2d 427 (Minn.1982)(evidence of prior abuse of mother and children admitted to show relationship of victim and other family members to defendant and to place charged incident in proper perspective); *State v. Ostlund*, 416 N.W.2d755 (Minn.App.1987)(other bad acts against victim and other children admitted to illuminate relationship); *State v. Williams*, 539 N.W.2d 227 (Minn.1999)(evidence of prior abuse of girlfriend in trial for attempted murder of girlfriend and murder of her grandmother); *Bauer, supra* (prior abuse of the child of the parties admissible in trial of husband for murder of wife). But see *State v. Copeland*, 656 N.W.2d 599 (Minn.App.2003)(strained relationship between defendant and his girlfriend inadmissible in trial for defendant's assault of a third party who intervened in their argument except as impeachment to show girlfriend's bias).

In addition to history of relationship case law, the Minnesota Legislature has enacted a statute supporting the admission of this kind of evidence in domestic abuse criminal cases. Minn. Stat. §634.20 expressly allows in domestic abuse prosecution evidence of domestic conduct involving the same victim or other family or household members.<sup>5</sup> “Domestic conduct” is defined to include, but is not limited to, evidence of domestic abuse, violation of an order for protection or harassment order, harassment/stalking or harassing phone calls. Domestic conduct does not have to be similar to the conduct in the charged offense. Although the statute is similar to history of relationship case law, it is narrower in the sense that it applies only to domestic-abuse related bad acts. On the other hand, it is broader in the sense that domestic conduct with another family or household member could include persons with whom the defendant previously had this relationship, regardless of whether the past victim and the current victim are in the same family or household. *State v. Manley*, 664 N.W.2d 275 (Minn.2003). Prior “domestic conduct” is inadmissible as relationship evidence under Minn. Stat. §634.20 when a defendant has been previously acquitted of criminal charges for that specific conduct evidence offered. *State v. O’Meara*, 755 N.W.2d 29 (Minn.App. 2008).

Minnesota case law has now established a basis for the introduction of relationship evidence independent of Minn. Stat. §634.20, Spreigl/rule 404 (b) process, or the immediate-episode doctrine: relationship evidence is character evidence that may be offered to show the strained relationship between the accused and the victim, and such evidence has further probative value when it serves to place the incident for which appellant was charged into proper context. *State v. Hormann*, 805 N.W.2d 883 (Minn.App.2011); see also *State v. Loving*, 775 N.W.2d 872, 880 (Minn.2009).

From approximately 1997 until 2004, the distinction between history of relationship/634.20 evidence and *Spreigl* evidence was blurred by a series of cases which blended discussion of them. In *State v. Mills*, 562 N.W.2d 276 (Minn.1997) followed by *State v. Buggs*, 581 N.W.2d 329 (Minn.1998) and *Bauer, supra*, the Minnesota Supreme Court commented generally as dictum, without expressly addressing the distinction between these two theories, that before admitting such evidence, the trial court must determine that evidence of the prior bad act is clear and convincing (the requirement for *Spreigl* evidence) and that its probative value outweighs its prejudice. In each of these

---

<sup>5</sup> “Domestic abuse” and “family or household member” have the meanings given in Minn. Stat. §518B.01, subd.2 (a) and (b).

cases, this evidence was (as is typically the case with history of relationship evidence) offered as part of the case-in-chief, not (as with *Spreigl* evidence) after the state had concluded its case-in-chief. In none of these cases was there a formal *Spreigl* evidentiary hearing. Since prosecutors routinely sought admission of this evidence under alternate theories and since the distinction between the two was not expressly raised on appeal, it is not surprising that appellate court decisions would blend them.

**After *McCoy*.** In *State v. McCoy*, 682 N.W.2d 153 (Minn.2004), the Minnesota Supreme Court finally did squarely address these alternate theories and expressly found them to be conceptually distinct. Specifically, the Court held that history of relationship evidence does not involve evidence of collateral bad acts against another person, but is instead evidence of other conduct between the accused and the victim offered to illuminate their relationship. *Id.* at 59. In *State v. Lindsey*, 755 N.W.2d 752 (Minn.App.2008) the court found that evidence of subsequent conduct as well as prior conduct is admissible as relationship evidence. The Court also expressly held that, unlike *Spreigl* evidence, evidence admitted pursuant to Minn. Stat. §634.20 need not first be proved by clear and convincing evidence. *Id.*

In reaching this conclusion, the court cite its history of relationship cases and noted in a footnote that to the extent recent cases (*Bauer, Buggs, and Mills, supra*) have suggested that the clear and convincing standard applied, that was dicta which was expressly overruled. *Id.* at 159-60, FN 6. Finally, the *McCoy* court reiterated its recognition of the special circumstances of domestic abuse cases that support different treatment. *Id.* at 161 (citing *State v. Cross*, 577 N.W.2d 721, 727 (Minn.1998)). The Court has subsequently been asked to reconsider this ruling in light of *State v. Ness*, 707 N.W.2d 676 (Minn.2006)(a case clarifying its *Spreigl* analysis) and expressly declined to do so. *State v. Bell*, 719 N.W.2d 635 (Minn.2006)(in deciding to admit evidence pursuant to Minn.Stat. §634.20, the trial court is not required to place its analysis of probative value versus prejudice on the record). *Bell* also notes the evidence in that case could likewise have been admitted under relationship evidence case law. *Id.* at 640-1.

As a result of *McCoy*, as reiterated in *Bell*, it is now clear that in a domestic abuse prosecution, evidence of other similar conduct under Minn. Stat. §634.20, is presumptively admissible unless the trial court finds that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Evidence admissible pursuant to this statute—or the broader class of evidence encompassed by history of relationship case law—is not subject to the formalities of *Spreigl* requirements, even if the evidence includes what might otherwise be described as *Spreigl* “bad acts.”

The result in *McCoy* also makes sense in terms of practical trial practice. History of relationship/§634.20 testimony usually comes from the victim or other witnesses who are already testifying at trial. Unlike *Spreigl* evidence, it is evidence directly relevant to proof of the crime charged as part of the case-in-chief precisely because it illuminates the relationship of the victim and the defendant and puts the crime charged in context. It is (as noted in *Cross, supra*) the evidence which helps a jury understand and assess such characteristics common to domestic abuse cases as reluctance to report, underreporting, and recantation. In short, it gives the necessary “big picture” in determining where the truth lies about the crime charged because the truth lies in deciphering the relationship of the principals not just at the moment of the crime, but before and after.

It would be artificial, inefficient, and nonsensical to require the victim in a domestic abuse case to testify in the case-in-chief, to complete the case-in-chief and then, after a hearing at which the judge would determine which of the defendant's other bad acts against the victim were clear and convincing, recall the victim at the conclusion of the state's case to testify again. The same principle applies to the testimony of friends, family members and other witnesses routinely called to in the case-in-chief to give evidence relating to the context of the crime, if not the crime itself. If, however, the other similar conduct evidence involves a family or household other than that of the victim in the charged case, it makes sense to offer it at the conclusion of the state's case.

Although evidence of similar domestic abuse conduct is not *Spreigl* evidence, *State v. Meldrum*, 724 N.W.2d 15 (Minn. App. 2006) indicated a strong preference for giving jury instructions when domestic abuse conduct is admitted into evidence. Although the Courts continue to use a harmless error analysis when no instruction is given for domestic abuse conduct evidence, the Minnesota Practice Jury Instruction Guide committee recommends cautionary and final instructions be given to avoid review on appeal.

Minnesota Practice Jury Instruction Guide provides Cautionary and Final instructions for receipt of testimony of other domestic abuse occurrences. CRIMJIG 2.07 provides such a cautionary instruction. CRIMJIG 3.30 provides a final instruction for this evidence.

**Past Pattern of Abuse Domestic Abuse/Child Abuse Homicide.** The Legislature has elevated murder under circumstances manifesting an extreme indifference to human life and occurring after a past pattern of domestic abuse against the same victim or another family or household member to first-degree murder. Minn. Stat. §609.185 (a)(6). Murder under the same circumstances against a child when the defendant has committed a past pattern of child abuse against the same or a different child is also first-degree murder. Minn. Stat. §609.185 (a)(5). A "past pattern of abuse" is automatically admissible in these cases because it is an element of the offense *State v. Robinson*, 539 N.W.2d 231 (Minn.1995); *State v. Kelbel*, 648 N.W.2d 690 (Minn.2002); *State v. Manley*, 664 N.W.2d 275 (Minn.2003). Only the past pattern needs to be proved beyond a reasonable doubt, not the individual acts of abuse making up the pattern. *Id.* No cautionary instruction is required because the past pattern is an element of the crime charged. *Id.*

## DOMESTIC HOMICIDE HISTORY OF RELATIONSHIP CASES

*State v. Rediker*, 8 N.W.2d 527 (Minn.1963)

*State v. Martin*, 197 N.W.2d 219 (Minn.1972)

*State v. Diamond*, 241 N.W.2d 95 (Minn.1976)

*State v. Swain*, 269 N.W.2d 707 (Minn.1978)

*State v. Blanchard*, 615 N.W.2d 427 (Minn.1982)

*State v. Langley*, 354 N.W.2d 427 (Minn.1982)

*State v. King*, 367 N.W.2d 599 (Minn.App.1985)

*State v. Ostlund*, 416 N.W.2d 755 (Minn.App.1987)

*State v. Thieman*, 439 N.W.2d 1 (Minn.1989)

*State v. Robinson*, 539 N.W.2d 231 (Minn.1995)

*State v. Folkers*, 562 N.W.2d 5 (Minn.1997)

*State v. Mills*, 562 N.W.2d 276 (Minn.1997)

*State v. Harris*, 566 N.W.2d 672 (Minn.1997)

*State v. Miller*, 573 N.W.2d 231 (Minn.1998)

*State v. Buggs*, 581 N.W.2d 329 (Minn.1998)

*State v. Williams*, 593 N.W.2d 227 (Minn.1999)

*State v. Bauer*, 598 N.W.2d 652 (Minn.1999)

*State v. Oates*, 611 N.W.2d 580 (Minn.App.2000)

*State v. Rhodes*, 627 N.W.2d 74 (Minn.2001)

*State v. Lee*, 645 N.W.2d 74 (Minn.2001)

*State v. Quick*, 659 N.W.2d 701 (Minn.2003)

*State v. Asfeld*, 662 N.W.2d 534 (Minn.2003)

*State v. Sanders*, 743 N.W.2d 616 (Minn.2008)

*State v. Johnson*, 773 N.W.2d 81 (2009)

*State v. Anderson*, 763 N.W.2d 9 (2009)

Please note, in 2013 Minn. Stat. §634.20 was amended to change the term to “domestic conduct” not “similar conduct”. Changing the term provides conduct does not have to be “similar” to the charged domestic abuse incident, but includes all “domestic conduct” as admissible evidence.

#### **NON-DOMESTIC HISTORY OF RELATIONSHIP CASES**

*State v. Schweppe*, 237 N.W.2d 609 (Minn.1975) (domestic terroristic threats)



*State v. Williams*, 361 N.W.2d 473 (Minn.1985) (domestic attempted murder, kidnapping, assault)

*State v. Kannianen*, 367 N.W.2d 104 (Minn.App.1985) (domestic/CSC)

*State v. Waukazo*, 374 N.W.2d 563 (Minn.App.1985) (domestic/CSC)

*State v. Currie*, 400 N.W.2d 361 (Minn.App.1987) (family/child abuse)

*State v. Thompson*, 520 N.W.2d 468 (Minn.App.1994) (CSC/domestic abuse)

*State v. Enger*, 539 N.W.2d 259 (Minn.App.1995) (domestic CSC/theft)

*State v. Nelson*, 562 N.W.2d 324 (Minn.App.1997) (child abuse)

*State v. Williams*, 593 N.W.2d 227 (Minn.1999) (domestic attempted murder of girlfriend and murder of her grandmother)

*State v. Reckinger*, 603 N.W.2d 331 (Minn.App.1999) (domestic child sexual abuse, state's appeal: no abuse of discretion for trial court not to admit prior CSC with victim found not to be clear and convincing)

*State v. Waino*, 611 N.W.2d 575 (Minn.2000) (domestic assault)

*State v. Copeland*, 656 N.W.2d 599 (Minn.App.2003) (assault of third party intervening in argument between defendant and his girlfriend: evidence of defendant's prior abuse of girlfriend improperly as history of relationship but harmless because properly admitted to show her bias after recantation)

*State v. McCoy*, 682 N.W.2d 153 (Minn. 2004) (reversing court of appeals and reinstating domestic abuse conviction in which trial court allowed impeachment of recanting victim's prior domestic abuse report; *Spreigl* and history of relationship held conceptually distinct)

*State v. Bell*, 719 N.W.2d 635 (Minn.2006) (evidence that defendant violated two prior OFPs properly admitted in burglary/violation of DANCO case involving same victim)

*State v. Meldrum*, 724 N.W.2d 15 (Minn.App.2006) (domestic abuse/domestic terroristic threats)

*State v. O'Meara*, 755 N.W.2d 29 (Minn.App.2008) (domestic harassing conduct)

*State v. Word*, 755 N.W.2d 776 (Minn.App.2008) (domestic abuse)

*State v. Meyer*, 749 N.W.2d 844 (Minn.App.2008) (domestic abuse)

*State v. Valentine*, 787 N.W.2d 630 (Minn.App.2010)

*State v. Barnslater*, 786 N.W.2d 646 (Minn.App.2010) (domestic abuse)

## PAST PATTERN OF ABUSE MURDER ONE CASES

*State v. Robinson*, 539 N.W.2d 231 (Min.1995) (domestic abuse)

*State v. Cross*, 577 N.W.2d 721 (Minn.1998) (domestic abuse)

*State v. Crowsbreast*, 629 N.W.2d 433 (Minn.2001) (domestic abuse)

*State v. Kelbel*, 648 N.W.2d 690 (Minn.2002) (child abuse)

*State v. Asfeld*, 662 N.W.2d 534 (Minn.2003) (domestic abuse: prior abuse of victim and of prior girlfriend properly admitted)

*State v. Manley*, 664 N.W.2d 275 (Minn.2003) (child abuse; sex crime murder: evidence of defendant's physical abuse of victim's sister properly admitted)

*State v. Sanchez-Diaz*, 683 N.W.2d 824 (Minn.2004) (domestic abuse)

*State v. Laine*, 715 N.W.2d 425 (Minn.2006) (domestic abuse)

*State v. Goelz*, 743 N.W.2d 249 (Minn.2007) (domestic abuse)

*State v. Clark*, 739 N.W.2d 412 (Minn.2007) (domestic abuse)

*State v. Matthews*, 779 N.W.2d 543 (Minn.2010) (domestic abuse)

## APPENDIX 20

### **DOMESTIC VIOLENCE PROBATION VIOLATION MEMORANDUM: Should the court act immediately when a domestic violence probationer commits a new domestic crime?**

(Rev. March 27, 2012)

**ISSUE:** While on probation for a domestic violence-related conviction, a defendant is charged with a new domestic violence-related crime (e.g., violation of a DANCO, domestic assault, violation of an OFP, 911-interference, etc.). The defendant's probation officer files a probation violation based upon the new charge, prior to the charge's resolution at pretrial or trial. Can the court act immediately and hear a probation violation based upon the new charge, or should the court wait to hear the probation violation after disposition of the new charge?

**ANSWER:** The court may consider the new domestic violence-related crime immediately as a probation violation instead of waiting for the new charge to resolve in the form of a guilty plea or conviction. In deciding whether to proceed immediately with a probation violation hearing, two competing considerations need to be weighed. First, hearing the probation violation immediately may force the defendant to incriminate himself on the witness stand while defending the probation violation. Second, waiting for later resolution of the new charge as a guilty plea or trial conviction will cause a delay that may put the victim at additional risk.

### **Background**

A sad reality of domestic violence is that domestic abusers often commit new crimes against their victims, even while on probation. The second offense may be something violent, such as an assault, or non-violent, such as violation of a DANCO or 911-interference. In situations where a domestic violence defendant re-offends while on probation, the court faces a dilemma in deciding whether to immediately hear a probation violation or to wait. On one hand, an immediate probation violation hearing may force the defendant to testify in an attempt to defend against the allegations of the violation. Such testimony may be self-incriminating. The prosecutor could later use the testimony in a trial on the new charge. On the other hand, the domestic victim's safety is at risk as the defendant has committed a new offense against her. The delay in waiting for resolution of the new charge may create more danger.

### **Law**

The Minnesota Rules of Criminal Procedure speak to the issue of whether the court can proceed with a probation violation on a new charge before later resolution or the charge as a guilty plea or verdict. "If the probationer is in custody because of a violation report, a hearing must be within seven days. If the violation report alleges a new crime, a revocation hearing may be postponed pending disposition of the criminal case." Minn. R. Crim. P. 27.04 (2012). The rule seems to favor hearing the violation prior to disposition of the new charge. The term "may be postponed" implies an expectation that the probation violation would be heard previous to the new case's resolution.

The Minnesota Court of Appeals has ruled that a court may hear a probation violation hearing and grant a defendant limited-use immunity regarding any testimony that the defendant gives. *State v. Phabsomphou*, 530 N.W.2d 876 (Minn.App.1995). The recommended method, however, is to wait until the second charge is resolved. *Id.* at 878. But with the protection of limited-use immunity, a defendant may freely testify without fear that testimony, or anything derived from it, might be later used against the defendant during prosecution of the second offense. *Id.* at 879. By granting limited-use immunity, the defendant's Fifth Amendment privilege against self-incrimination is protected. *Id.* In practice, the court is able to hold the defendant accountable for the new crime by hearing the probation violation immediately.

Another approach, different from the limited-use immunity scenario described in *Phabsomphou*, is to condition the defendant's probation on having no new charges supported by probable cause. In *State v. Hamilton*, the Minnesota Court of Appeals affirmed a district court's decision to hear a probation violation prior to resolution of a new charge. *Hamilton*, 646 N.W.2d 915 (Minn.App.2002). In *Hamilton*, the defendant was on probation for kidnapping. One of his conditions of probation was to have no new arrests or charges supported by probable cause. While on probation, defendant was charged with a new offense and the trial court decided to hold a probation violation hearing prior to resolution of the new charge. The Court of Appeals affirmed the district court's decision, holding that it properly considered the probation violation, even though the district court did not grant limited-use immunity as in *Phabsomphou*. *Hamilton* at 919. The court reasoned that limited-use immunity was not necessary given that the violation was premised upon the low proof threshold of probable cause. *Id.*

**SUGGESTIONS:** When faced with the decision of whether to proceed immediately with a probation violation based upon a new domestic violence charge, the court should consider the approaches described in *Phabsomphou* and *Hamilton*. In one method, *Phabsomphou*, the court could allow the defendant limited-use immunity for any testimony he gives in the probation violation hearing. The defendant could then freely testify without fear of self-incrimination. However, it is questionable that the court has authority to sua sponte grant limited-use immunity. Of course, the prosecutor could agree to move for immunity. In another method, *Hamilton*, the court could condition a defendant's probation on no new offenses supported by probable cause. If a probation officer brings a violation based upon probable cause for a new charge, the court can hear the violation without granting immunity.

The Domestic Violence Risk Assessment Bench Guide (Appendix 6) may be useful in assessing the danger to the victim and/or family when probation violations occur.