



# County of Santa Cruz 0107

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## DISTRICT ATTORNEY'S OFFICE

701 OCEAN STREET, ROOM 200, P.O. BOX 1159, SANTA CRUZ, CA 95060  
(831) 454-2400 FAX: (831) 454-2227 E-MAIL: dao@co.santa-cruz.ca.us

KATHRYN CANLIS  
DISTRICT ATTORNEY

July 10, 2002

BOARD AGENDA: August 6, 2002

Members of the Board of Supervisors  
Governmental Center  
701 Ocean Street, Room 500  
Santa Cruz, California 95060

RE: FISCAL YEAR 2002-2003 SPOUSAL ABUSER PROSECUTION PROGRAM  
(SAPP) GRANT APPLICATION

Dear Members of the Board:

We are in the process of re-applying to the California Department of Justice (DOJ) for fiscal year 2002-2003 funding for our Spousal Abuser Prosecution Program (SAPP). As part of the re-application process, we are requesting that your Board adopt a Resolution authorizing the District Attorney's Office to submit an application on the County's behalf.

The amount of funds designated for the SAPP program in FY 2002-2003 is \$41,576. The program funding is comprised of an award of \$33,261 from the Department of Justice and a 20% match requirement by the County in the amount of \$8,315. This is the seventh year that we have received SAPP funding to partially finance an Assistant District Attorney to vertically prosecute incidences of spousal abuse as defined in Penal Code Section 273.5. Under the grant guidelines, we are not allowed to receive any indirect overhead costs out of grant funds. Therefore, we have not included this charge in our application.

A copy of our grant application will be placed on file for your review with the Clerk of the Board. We will continue to notify your Board of any changes or extensions to the fiscal year 2002-2003 SAPP grant in accordance with applicable County procedures.

Members of the Board of **Supervisors**  
July 10, 2002  
Page 2

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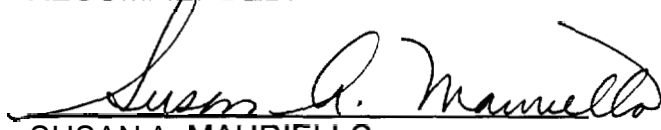

THEREFORE, IT IS RECOMMENDED THAT YOUR BOARD:

1. Adopt a Resolution authorizing the District Attorney's Office to reapply to the Department of Justice for funding for our Spousal Abuser Prosecution Program grant through fiscal year 2002-2003.
2. Waive the requirement for the recovery of indirect costs from the California Department of Justice for the Spousal Abuse Prosecution Program grant in fiscal year 2002-2003 pursuant to County Procedure Section 900A.3.

Sincere,

  
*for* KATHRYN CANLIS  
DISTRICT ATTORNEY

RECOMMENDED:

  
SUSAN A. MAURIELLO  
COUNTY ADMINISTRATIVE OFFICER 

sapp res. & ltr

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

0109

RESOLUTION NO.

On the motion of Supervisor  
duly seconded by Supervisor  
the following resolution is adopted

RESOLUTION RATIFYING THE DISTRICT ATTORNEY'S REAPPLICATION FOR FUNDS DURING FISCAL YEAR  
2002-2003 FOR A SPOUSAL ABUSER PROSECUTION PROGRAM ADMINISTERED BY THE CALIFORNIA  
DEPARTMENT OF JUSTICE

WHEREAS, the Board of Supervisors of Santa Cruz County desires to undertake a certain  
project designated the Spousal Abuser Prosecution Program (SAPP), to be funded from  
funds made available through Chapter 599 (ABNo. 801), Statutes of 1994 administered by  
the California Department of Justice.

NOW, THEREFORE, THE BOARD OF SUPERVISORS RESOLVES AND ORDERS that the District Attorney  
of the County of Santa Cruz is authorized, on its behalf to submit an application for  
state funds for a Spousal Abuser Prosecution Program to the California Department of  
Justice and is authorized to execute on behalf of the Board of Supervisors of Santa Cruz  
County the attached Grant Award Agreement, including any extensions or amendments  
thereof.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to  
supplant expenditures controlled by this body;

BE IT FURTHER RESOLVED that the County of Santa Cruz agrees to provide all  
matching funds, equaling 20 percent of the grant award, or \$8,315, for said project,  
including any amendment thereof under the program, consistent with the funding terms and  
conditions of the Department of Justice and that the cash or in-kind match will be  
appropriated as required;

IT IS AGREED that any liability arising out of the performance of this Grant  
Award Agreement, including civil court actions for damages, shall be the responsibility  
of the grant recipient and the authorizing agency. The State of California and the  
California Department of Justice disclaim responsibility for any such liability.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,  
State of California, this \_\_\_\_\_ day of \_\_\_\_\_ 2002, by the following vote:

~~VOTE:~~

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

\_\_\_\_\_  
JANET K. BEAUTZ  
CHAIRPERSON OF THE BOARD

ATTEST: \_\_\_\_\_  
Clerk of Said Board

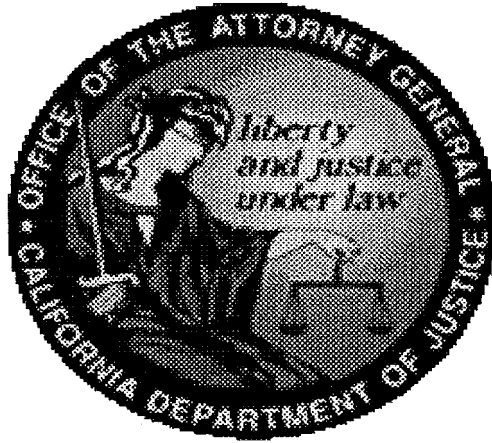
APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Counsel

DISTRIBUTION: District Attorney  
County Counsel  
Auditor, CAO

# State of California Department of Justice

0110



## 2002/2003 Spousal Abuser Prosecution Program (SAP) Continuation Application **Due Date: July 31, 2002**

**SAP Legal Applicant:** Santa Cruz County District Attorney's Office  
**SAP Program Name:** Spousal Abuser Prosecution Program  
**Contact Person:** Michael S. McFarland, Chief Deputy-Administration  
**Phone:** (831)454-2400

A complete Continuation Application Package (1 unbound original + 4 copies) includes:

1. Title Page
2. Application
3. Program Narrative (Maximum 4 Pages)
4. Budget and Budget Narrative
5. Staff Verification Forms (SAP 7A & 7B)
6. Operational Agreement between Women's Crisis Support and Victim/Witness Assistance Center
7. Santa Cruz County Domestic Violence Policy and Protocol

DOJ Use Only

**SPOUSAL ABUSER PROSECUTION PROGRAM APPLICATION - PAGE 1***Please type or print in black ink.*

0111

**1. IMPLEMENTING AGENCY**Santa Cruz County District Attorney's OfficeContact Person's Name: Michael S. McFarland Title: Chief Deputy-AdministrationAddress: 701 Ocean Street, Room 200City: Santa Cruz State: CA Zip: 95060Phone: (831) 454-2529 Fax: (831) 454-2227E-mail: mike.mcfarland@co.santa-cruz.ca.us**2. EMPLOYER ID NUMBER****3. BUDGET****2002/2003 Program Year**SAP Funds Requested: \$33,261.00Cash Match: \$8,315.00In-Kind Match: \$0.00Total Program Cost: \$41,576.00**4. SAP PROGRAM DIRECTOR****Name:** Kathryn Canlis Title: District AttorneyAgency: Santa Cruz County District Attorney's Office701 Ocean Street, Room 200City: Santa Cruz State: CA Zip: 95060Phone: (831) 454-2400 Fax: (831) 454-2227

E-mail: \_\_\_\_\_

**5. SAP PROGRAM CONTACT**Name: Michael S. McFarland Title: Chief Deputy-AdministrationAgency: Santa Cruz County District Attorney's OfficeAddress: 701 Ocean Street, Room 200City: Santa Cruz State: CA Zip: 95060Phone: (831) 454-2529 Fax: (831) 454-2227E-mail: mike.mcfarland@co.santa-cruz.ca.us**6. SAP FISCAL CONTACT/TITLE****Name:** Eric Seib Title: Admin. Services OfficerAgency: Santa Cruz County District Attorney's OfficeAddress: 701 Ocean Street, Room 200City: Santa Cruz State: CA Zip: 95060Phone: (831) 454-2596 Fax: (831) 454-2227E-mail: eric.seib@co.santa-cruz.ca.us

# SPOUSAL ABUSER PROSECUTION PROGRAM APPLICATION - PAGE 2

Please type or print in black ink.

## 7. OTHER FUNDING SOURCES (Please list other sources and amount of State or Federal DV vertical prosecution funding currently in effect.)

	Funder Name	Amount
1.	None	
2.		
3.		

01 12

## 8. SAPP PROGRAM STAFFING (PROSECUTORS & INVESTIGATORS)

The Battered Women's Protection Act (Assembly Bill 801, 1994), requires grant recipients have three staffing components as pari of the vertical prosecution team or unit in order to qualify to receive Spousal Abuser Prosecution (SAPP) grant funds. The staffing component consists of a prosecutor, an investigator, and a domestic violence counselor.

The Battered Women's Protection Act of 1994 requires that Spousal Abuser Prosecution Units receiving grant funds to assign highly qualified investigators and prosecutors to spousal abuse cases. (P.C. § 273.82(4b)).

"Highly qualified" is defined as any of the following:

- (a) Individuals with one year of experience in the investigation and prosecution of felonies.
- (b) Individuals with at least two years of experience in the investigation and prosecution of misdemeanors
- (c) Individuals who have attended a program providing domestic violence training as approved by DOJ.

How many prosecutors will be assigned to the SAPP Program?

Do all SAPP prosecutors meet the training and experience requirements of the grant?

Is there a SAPP 7 attached to this application for the prosecutor that qualifies your agency to receive grant funds, as well as, additional prosecutors funded wholly or in part by SAPP grant funds?

How many investigators will be assigned to the SAPP Program?

Do all SAPP investigators meet the training and experience requirements of the grant?

Is there a SAPP 7 attached to this application for the investigator that qualifies your agency to receive grant funds, as well as, additional investigators funded wholly or in part by SAPP grant funds?

1
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1
<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

## 9. SAPP PROGRAM STAFFING (DV Counselors or Victim Witness Advocates)

The Battered Women's Protection Act (Assembly Bill 801, 1994), requires grant recipients have three staffing components as part of the vertical prosecution team or unit in order to qualify to receive Spousal Abuser Prosecution (SAPP) grant funds. The staffing component consists of a prosecutor, an investigator, and a domestic violence counselor.

The Department of Justice requires that "Domestic Violence Counselors" involved in the SAPP program meet the California Evidence Code Section 1037.1 definition of a "Domestic Violence Counselor". The "Domestic Violence Counselor" must meet any of the following qualifications:

(a) A person who is employed by any organization providing the programs specified in Section 18294 of the Welfare and Institutions Code, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets one of the following requirements:

(1) Has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1); or is a psychotherapist, as defined in Section 1010. The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting victims of domestic violence, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in counseling victims of domestic violence.

(2) Has the minimum training for counseling victims of domestic violence required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

Please type or print in black ink.

**9. SAPP PROGRAM STAFFING (DV Counselors or Victim Witness Advocates) - Continued**

How many counselors/advocates are assigned to the project?

Do all SAP counselors/advocates meet the training and experience requirements of the grant?

Does your agency have an MOU or contract with an outside agency to provide counselors/advocates?

Note: If an MOU or contract does exist, please attach a copy to this application.

Is there a SAP 7 attached to this application for the counselor who qualifies your agency to receive grant funds, as well as, additional counselors funded wholly or in part by SAP grant funds?

1
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input type="checkbox"/> No

0113

Check the boxes that apply to the services provided to victims of domestic violence:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Initiate and maintain contact with the victim    | <input checked="" type="checkbox"/> Provide education on the legal system and the prosecution process |
| <input checked="" type="checkbox"/> Safety planning with the victim                  | <input checked="" type="checkbox"/> Keep the victim informed at all stages of the prosecution         |
| <input checked="" type="checkbox"/> Make appropriate referrals to community agencies | <input type="checkbox"/> Appear with and support the victim at court hearings                         |
| <input checked="" type="checkbox"/> Represent the wishes and needs of the victim     | <input checked="" type="checkbox"/> Coordinate with all members of the domestic violence team         |
| <input checked="" type="checkbox"/> Provide language interpreter services            |   |

**10. SAP PROGRAM STAFFING (Reduced Caseloads)**

The SAP grant requires "A significant reduction of caseloads for investigators and prosecutors assigned to spousal abuser cases".

Is there a significant reduction of caseloads for investigators and prosecutors assigned to spousal abuse cases as required by AB801, Sec. 4,273.82,(c)?

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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**11. Describe the types of crimes prosecuted under the SAP grant. (Example: Domestic Violence, Stalking, ...etc)**

The SAPP prosecutor handles crimes committed against an individual in a present or former domestic or dating relationship. These crimes include not only physical violence but also threatened violence, acts of intimidation, violations of the terms of restraining orders, trespassing, vandalism, and other property crimes.

**12. Describe the criteria utilized by your office when determining whether or not to prosecute a domestic violence case.**

(Example: extent or seriousness of the injuries; use of a gun or other weapon; defendant's prior criminal history; past history of violence whether charged or uncharged; victim cooperation.)

The Santa Cruz District Attorney's Office has a Domestic Violence Policy and Protocol which includes filing guidelines for these cases. Those guidelines are attached

As a general statement of policy, we stress that the decision to prosecute is solely the responsibility of the District Attorney. Prior to a filing decision, the victim may participate in a discussion with the prosecutor concerning the appropriateness of a criminal filing. However, we clearly explain that the victim's input is only part of the overall evaluation of the cases and the decision to pursue a criminal case rests with the District Attorney. We file cases involving recanting and uncooperative victims and those in which no injury was inflicted, depending on our ability to prove the case at trial based on the totality of the circumstances.

**13. Does your office review "Domestic Violence Incident Reports" submitted by law enforcement, which did not result in an arrest?**

☐ Yes ☐ No

**14. Describe the criteria used when determining whether a domestic violence case is prosecuted as a felony or a misdemeanor.**

(Example: extent or seriousness of the injuries, use of a gun or other weapon, defendant's prior criminal history, past history of violence whether charged or uncharged)

Factors which influence the decision to file a case as a felony or misdemeanor include the seriousness of any injury caused, the use of a weapon, any history of domestic violence between the parties, the criminal history of the defendant, and any continuous course of threatening or abusive conduct. Cases involving weapons and moderate or serious injury are filed as felonies as a general rule. Cases involving minor injury may be filed as felonies if there is a significant history of abuse and intimidation. Other cases usually are filed as misdemeanors.

**SPOUSAL ABUSER PROSECUTION PROGRAM APPLICATION - PAGE 4***Please type or print in black ink.*

15. What method of vertical prosecution does your SAPP program practice?

☒ True ☐ Major Stage☐ Unit ☐ Other

Note: If you answered "Other", please explain.

16. The SAPP grant requires that "All reasonable prosecutorial efforts shall be made to reduce the time between arrest and disposition of charge against an individual meeting spousal abuser criteria." Describe your SAPP program's success in obtaining a reduction of time between arrest and disposition of domestic violence cases. Our office attempts to resolve domestic violence cases as rapidly as possible. Generally, we oppose unreasonable continuances, and object if there is more than one continuance in a case. We remind the courts that criminal trials have priority and, specifically, domestic violence trials have priority. Our persistence has led our courts to create a special domestic violence readiness conference, prior to trial, to ensure our cases have priority.

17. The SAPP grant requires that "All reasonable prosecutorial efforts shall be made to resist the pretrial release of a charged defendant meeting spousal abuser selection criteria". Describe your SAPP program's efforts to prevent pretrial release of domestic violence defendants.

Our county has focused on preventing the early release of a defendant before he even gets to court. Consequently, we have focused on law enforcement and the jail system. We have done extensive training with the on-scene officers who call "on call" judges to request bail increases. This has the effect of preventing a defendant from being released prior to the arraignment. Further the sheriff has agreed not to "Sheriff OR" defendants prior to the arraignment and OR bail offenders to a short date within the Emergency Protective Order period. Finally, we contact the victim prior to the arraignment so we have all necessary release information. Then, when appropriate, we oppose release.

18. The SAPP grant requires "All reasonable prosecutorial efforts shall be made to persuade the court to impose the most severe authorized sentence upon a person convicted after prosecution as a spousal abuser". Describe the SAPP program's efforts to ensure that the most severe sentence is issued.

Sentencing is controlled by the courts. Thus, our long term strategy has been to educate the courts on the need for incarceration for domestic violence cases. This has been met with mixed results.

On any particular case, we try to achieve a result by presenting the best possible sentencing hearing. When applicable, we encourage all victims to attend the sentencing. Further, our office has a good working relationship with the probation department and can discuss defendants freely and openly. Finally, we file sentencing briefs when necessary.

19. Describe the SAPP programs policy concerning plea bargaining of domestic violence cases.

Generally, we seek to hold a defendant accountable for the most severe conduct that is provable. We also try to reward defendants for an early resolution of the case by agreeing to dismiss certain charges for a plea to another. However, our bargaining has limits. We do not resolve domestic violence cases for non-domestic violence charges (i.e., PC 242 or 415); nor do we agree to any sentence that does not include domestic violence probation pursuant to PC 1203.097.



**SPOUSAL ABUSER PROSECUTION PROGRAM APPLICATION - PAGE 5***Please type or print in black ink.*

20. Does your office have a "Cell Phone Program" for victims of domestic violence?	<input type="checkbox"/> Yes <input type="checkbox"/> No
21. Does your office have an automatic "Victim Information and Notification System" in place to notify victims of changes in the status (custody, location, sentence expiration) of offenders?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
22. Does your office notify victims of changes in the status (custody, location, sentence expiration, etc..) of offenders?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
23. Does your county have a "Domestic Violence Court"?	<input type="checkbox"/> Yes <input type="checkbox"/> No
24. Does your county have a "Domestic Violence Response Team"?	<input type="checkbox"/> Yes <input type="checkbox"/> No
25. Does your county have a "Domestic Violence Death Review Team"?	<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Does your county have a domestic violence outreach program?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
27. Is domestic violence training offered to the law enforcement of your county?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
28. Is domestic violence training offered to the judges of your county?	<input type="checkbox"/> Yes <input type="checkbox"/> No
29. Does the law enforcement of your county use "photodocumentation" to document domestic violence cases?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
30. Does your agency have written policy and procedures for the prosecution of domestic violence cases?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**31. Official Authorized to Sign for Applicant/Grantee**

*The grant recipient signifies acceptance of this grant award and agrees to administer the grant project in accordance with the statute(s) and the Program Guidelines as contained in the grant application prepared and submitted by the Implementing Agency and as approved by the Department of Justice (DOJ).*

Signature: Kathryn Canlis Title: District Attorney

Printed Name: Kathryn Canlis Phone Number: (831) 454-2400

Fax Number: (831) 454-2227 Email Address: dao@co.santa-cruz.ca.us

**BUDGET FORM****2002/2003 SAP Program**

0116

Please attach Budget Narrative to this page.

Implementing Agency: Santa Cruz County District Attorney's Office**A. STAFF**

	SAPP Funds Requested	Other Federal/State/ Local Funds Utilized	Total Program Funding
Salaries	\$27,381	\$6,845'	\$34,226
Benefits	\$3,350	\$838	\$4,188
Training & Education	\$500	\$0	\$500
Other: State Bar dues	\$0	\$395	\$395
Subtotal	\$31,231	\$8,078	\$39,309

**B. OPERATIONAL**

Travel	\$500	\$0 =	\$500
Transportation	\$0	\$0	\$0
Supplies	\$0	\$0	\$0
(Acquisition cost of more than \$500) Equipment	\$0	\$0	\$0
SAPP Audit	\$530	\$0	\$530
Other: Information Services	\$1,000	\$237	\$2,267
<b>SUBTOTAL</b>	<b>\$2,030</b>	<b>\$237</b>	<b>\$2,267</b>

Total Budget	\$33,261	\$8,315	\$41,576
	80.00%	20.00%	100.00%
	(max. 80%)	(min. 20%)	(Total 100%)

**C. Listing of SAPP Staff funded by the SAPP grant**

Staff Name	Position/Title (DDA, Supervisor, Investigator, etc..)
Steve Moore	Prosecutor
Tom Giblertson	Investigator
Trish Tribble	Victim Advocate

**County of Santa Cruz**  
**FY 2002-2003 Spousal Abuser Prosecution Program (SAPP)**  
**Budget Narrative**

A specific explanatory narrative to support each requested line item is included in the application's budget pages as directed in the Programmatic Instruction.

The resources requested in this application will provide direct support to project operations during the FY 2002-2003 time period. The budget will directly support the objectives and activities discussed in this application by financing the program's staffing and operational costs. Administrative costs to the grant are negligible and the requested resources are overwhelmingly allocated to personnel salary and benefits.

Personal services costs are being allocated to the project's .38 FTE prosecutor. The budget allocations have been made in response to available funds and anticipated caseloads. Although not funded by this program, an investigator and an advocate are also assigned to this grant.

It is anticipated that the .38 FTE attorney position will also work non-SAPP grant funded drug cases for the majority of the remaining .62 FTE position which will serve to more fully integrate the prosecution of domestic violence cases.

There are no plans for any subcontracts or any unusual expenditures. If the necessity arises, we will address these issues on a case-by-case basis with the Department of Justice (DOJ) and prepare any required modification forms.

Mid-year salary adjustments are reflected in the proposed budget and are based on scheduled step increases and/or changes in county pay rates as agreed to be employee bargaining units and the County Board of Supervisors. Operating expenses are limited to minimal travel and Information Services Department costs.

At this time, there are no plans to purchase any equipment during this fiscal year. If the necessity arises, we will address these issues on a cases-by-case basis with DOJ and prepare any required modification forms.

**State of California**  
**Department of Justice**  
**Verification of Staff Qualifications**

0118

*For work performed under provisions of the California Spousal Abuser Prosecution Program as established by  
California Penal Code section 273.8 and the 1994 Battered Women Protection Act AB801.*

**To:** Melanie Mercado  
SAP Program  
Office of the Attorney General  
1300 I Street, Room 1020  
Sacramento, CA 95814

**From:** Kathryn Canlis, District Attorney  
Santa Cruz County District Attorney's Office  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

**Grant Number:** \_\_\_\_\_

**Phone Number:** (831) 454-2400

**Contact Person** Michael S. McFarland, Chief-Deputy-Administration

**E-mail:** mike.mcfarland@co.santa-cruz.ca.us

**SAP Program Position:**

- ☒ Prosecutor  
(Former): Steve Moore  
(Current): Steve Moore
- ☐ Investigator  
(Former): Tom Gilbertson  
(Current): Tom Gilbertson

**Funding:**

- ☒ SAP Program 38 % Funded  
☐ Other Sources  
☐ Volunteer
- ☐ SAP Program 0 % Funded  
☒ Other Sources  
☐ Volunteer

The Battered Women Protection Act of 1994 requires Spousal Abuser Prosecution Units receiving "Spousal Abuser Prosecution Program" grant funds to assign highly qualified investigators and prosecutors to spousal abuse cases. (Pen. Code § 273.82 (4b))  
(Please see SAP Program Guidelines.)

**SAP Program Position:**

- ☒ Domestic Violence Counselor/Advocate  
(Former): Carol Blossom Sutherland  
(Current): Trish Tribble

**Funding:**

- ☐ SAP Program 0 % Funded  
☒ Other Sources  
☐ Volunteer

The Department of Justice requires that "Domestic Violence Counselors/Advocates" involved in the SAP Program meet the California Evidence Code section 1037.1 definition of a "Domestic Violence Counselor/Advocate". (Please see SAP Program Guidelines.)

I certify that the above listed prosecutor, investigator and/or counselor/advocate of the Spousal Abuser Prosecution Unit of my county or city meets or exceeds the requirements as outlined by the SAP Program Guidelines.

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Typed Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**DEPARTMENT OF JUSTICE - REVIEW AND APPROVAL**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Typed Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Women's Crisis Support and Victim/Witness Assistance Center  
Operational Agreement  
FY 2001-2002**

01 19

This Operational Agreement stands as evidence that **Women's Crisis Support (WCS)** and **Victim/Witness Assistance Center (V/WAC)** intend to work together toward the mutual goal of providing maximum available assistance for sexual assault crime victims residing in Santa Cruz County. Both agencies believe that implementation by Women's Crisis Support of the Sexual Assault Victim Services & Prevention Program grant and the Multi-Disciplinary Sexual Assault Response Team Advocate grant will further this goal.

To this end, both agencies agree to participate in the program by coordinating/providing the following services:

- WCS project staff will be available to V/WAC for phone and in-person crisis intervention to rape survivors through our 24-hour crisis line and in-person advocacy response system.
- Specifically, WCS project staff will provide:
  - a. Crisis intervention counseling, information and referrals.
  - b. On-call Advocates available for accompaniment and advocacy at the hospital or with law enforcement on a 24-hour basis. This includes participation in the Sexual Assault Response Team.
  - c. Accompaniment to criminal justice system-related appointments and appearances.
  - d. Safe shelter for women and their children at a confidential location.
  - e. TRO preparation assistance and court accompaniment.
  - f. Drop-in peer group and individual counseling at the WCS office.
  - g. Training on sexual assault-related issues and WCS services, as requested.
- ▶ On an annual basis, WCS will initiate a meeting with representatives of V/WAC staff to discuss strategies, time tables, and implementation of mandated services.
- V/WAC will biannually train WCS volunteers and staff about V/WAC procedures and services as they relate to sexual assault victims.

We, the undersigned, as authorized representatives of Women's Crisis Support and Victim/Witness Assistance Center, do hereby approve this document.

Sylvia L. Nieto 7/3/01  
Signature Date

**Sylvia L. Nieto, Program Manager**

\_\_\_\_\_  
Type Name and Title

\_\_\_\_\_  
Victim/Witness Assistance Center

Celia Organista 7-11-01  
Signature Date

**Celia Organista, Executive Director**

\_\_\_\_\_  
Type Name and Title

\_\_\_\_\_  
Women's Crisis Support

# **SANTA CRUZ COUNTY DISTRICT ATTORNEY'S OFFICE**



## **DOMESTIC VIOLENCE POLICY AND PROTOCOL**

**KATHRYN CANLIS  
DISTRICT ATTORNEY**

Adopted: June 26, 2001

## **POLICY STATEMENT**

Domestic Violence crimes cause death and injury, endanger families and individuals, impose costs on the community, and will recur without intervention. Domestic violence can occur anywhere and anytime. This complex issue crosses cultural, ethnic and socio-economic boundaries, and has ties to drug and alcohol abuse, poverty, and homelessness.

The Santa Cruz District Attorney's Office is committed to the vigorous prosecution of domestic abuse crimes. Domestic abuse is a public crime which harms both an individual and the community. Prosecution of these cases is critical to our efforts to ensure the safety of the victim and to break the cycle of abuse. Arrest alone is not sufficient. Without prosecution and consequences the abuser may believe that the criminal justice system is powerless and can be manipulated.

The decision to prosecute a case belongs to the prosecution. When the victim is relieved of responsibility for that choice, the likelihood that this victim will be intimidated or pressured by the defendant is reduced. Prior to a filing decision, the victim may participate in a discussion with the assistant district attorney concerning the appropriateness of filing criminal charges. During that dialogue, the attorney should clearly explain to the victim that this input is only one part of the overall evaluation of a case and the decision rests with the District Attorney.

The Santa Cruz County District Attorney has established a Domestic Violence Team to assure that these sensitive and difficult cases are handled appropriately. Vertical prosecution, a single prosecutor assigned to handle the case from the beginning to conclusion, is the standard for the unit. Each member of the Team will receive specialized training in domestic violence. Having a unit dedicated to crimes of domestic violence will increase our effectiveness and assure appropriate and consistent results.

The goal of the Santa Cruz County District Attorney is to protect present and future victims of domestic abuse by holding accountable those who commit these crimes. We seek to obtain convictions which assess responsibility for the most serious provable crime. These convictions should result in appropriate sentences which include required terms of probation. Finally, we provide information and resources to the victims of these crimes. In accomplishing these aims, the District Attorney fulfills an obligation to safeguard victims and the community.

## PROTOCOL

0122

### I. Filing Overview

Reluctance of the crime victim to cooperate with the prosecution is not a controlling consideration in the decision to file a case. The decision to file and prosecute a criminal case is the responsibility of the prosecuting agency. However, a victim's refusal to provide information essential to the proof of the crime may necessitate additional evidence or corroboration before a case can be successfully prosecuted.

If a case falls within the filing criteria, it should be filed. If the case does not meet these criteria, it next should be reviewed in light of whether additional investigation may be useful. Some cases, where the minimal elements of a crime are established, will need to be filed even though further investigation is needed to ensure the safety of the victim.

Charges are to be filed in cases which establish the elements of a crime and meet the standards of this office even though the incident is the first reported case against the suspect. Unless it is an element of the charge, the status of the relationship between the victim and the perpetrator is not a factor which affects filing. We generally do not consider the fact that the parties are living together, are not living together, plan to divorce, have terminated the relationship, or plan to stay together.

Allegations of self-defense should be investigated before the filing of the case. Interviews with both the suspect and the victim should be conducted and, as with all domestic abuse cases, should contain information regarding allegations of prior assaults and the dispositions of any previous contacts which appear in the criminal histories of either party. If necessary, contact with neighbors and family should be included before a filing determination is made.

### II. Definitions for Filing

Domestic Violence Crimes: Any crime committed against an individual in a present or former domestic or dating relationship is included within these policies. The list of crimes includes not only physical violence but also threatened violence, acts of intimidation, violations of the terms of restraining orders, trespassing, vandalism and other property crimes.

Domestic Violence Crime Victims: Crime victims may be spouses, ex-spouses, former or present dating partners and co-parents whether living together or not. Gay and lesbian relationships are included within these definitions.

Minor Injury: Complaint of injury without visible marks, redness, minor scrapes, and minor abrasions.

Moderate Injury: Mild soft tissue injury; light bruises, multiple scrapes, abrasions, lacerations, cut lip or mouth.

Serious Injury: Significant bruising; physical indication of choking; a swollen eye, bites through skin, marks caused by instrument, documented internal injuries; broken bones or nose, damaged teeth; assaults against victims whose physical condition makes them more vulnerable.

Great Bodily Injury: A significant or substantial injury. This is the same definition as with crimes against



strangers but has a special section, currently 12022.7(e).

Circumstantial Evidence: Physical evidence of a struggle, i.e., torn telephone cord, damage to an automobile or to other property, broken windows, photos of scene, photos of injuries, weapons.

Proof of the Crime:

- a. Victim or witness competent to testify to the incident; or
- b. Defendants' admission to police and independent prima facie evidence of crime; or
- c. Statements identifying the perpetrator and the crime which qualify for admissibility at trial, especially spontaneous statements at the scene or recorded on 911 phone calls.

### **III. Preparing Cases for Filing**

- a. Contact the victim when reasonably possible.
- b. Review the Police reports to see if the following was done:

- Statements

- Were all statements and utterances heard upon arrival included in the report?
- Were all statements at the scene recorded verbatim in the report?
- Was the interview with the victim tape recorded? If not, arrange to have an inspector tape record an interview as soon as possible.
- Was the 911 caller, if other than a victim, identified and interviewed at the scene?
- Were children, if present during the occurrence of the crime, interviewed and their statements included?
- Was the existence of a civil or criminal court protective order included in the report?
- Was the victim's statement describing previous incidents, including protective and restraining order violations documented in detail?

- Physical Evidence

- Were all weapons seized?
- Did law enforcement collect, photograph or document clothing, broken items, evidence of torn clothing, phone damage or other corroborating or eliminating facts as described by the parties?
- Were photographs taken of all claimed injuries?

- Evidentiary Considerations

1. Statements, to be admissible under Evidence Code Section 1240 must:
  - a) Narrate, describe, or explain an act, condition or event perceived by the speaker;
  - b) Have been made spontaneously;
  - c) Have been made while the speaker was under the stress of excitement caused by the event; and

- d) Must relate to the event.
- Reported statements should indicate the time between the incident and the officer's arrival and describe in detail the emotional state of the declarant.
- 2. Hearsay statements are admissible under Evidence Code section 1370 if:
  - a) The statement narrates, describes or explains infliction or threat of injury upon declarant;
  - b) The declarant is unavailable;
  - c) The statement was made at or near the time of the event;
  - d) The statement is otherwise trustworthy AND,
  - e) The statement was written, recorded or made to law enforcement, a physician, nurse, or paramedic.

#### IV. Filing Standards

A criminal case should be filed where:

1. The report presents the elements of a crime and an injury has resulted which is:
  - a. A moderate or serious injury or
  - b. The injury is minor and the case involves:
    - i) A credible threat of death or great bodily injury or
    - ii) Previous incidents of violence, as indicated by the victim's statements or by previous police reports or the suspect's criminal history or
    - iii) A restraining order has been previously served.
2. If no injury has resulted, as with a push or a shove, but the assault was witnessed and the case involved the factors included in b(i), b(ii), OR b(iii), then charges should be filed.
3. Criminal charges may be appropriate in cases of repeated acts, qualifying as a continuous course of conduct, even though each event by its self may not be significant.. For example, when on this occasion the defendant pushed the victim but the defendant's prior behavior has been repeated and used in an effort to control the victim.
  - ▲ Suggestion: Review the Declaration filed to support an application for a legal restraining order for prior assaults or other crimes as some act of violence or threatened violence is required for a protective order.

## **V. Cooperation of the Crime Victim With the Prosecution**

1. If the victim expresses an unwillingness to cooperate with the prosecution, review the report for:
  - a. Admissions by the defendant admissible at trial or
  - b. Statements admissible as Spontaneous Declarations
  - c. Statements admissible as prior inconsistent statements at trial or
  - d. A witness (including an officer) competent to testify to the incident at trial.
  - e. Statements admissible under Evidence Code 1370.
2. In cases where the victim expresses a reluctance to cooperate with the Prosecution, the assigned attorney should ensure that a Victim/Witness advocate has been assigned to the case.
3. The Prosecution shall provide information and assistance to the victim at the filing stage. When discussing the case with an uncooperative crime victim, inform the victim that the decision to prosecute a case is solely the responsibility of the District Attorney's office. Give the victim information about domestic violence and how such cases are treated. Many victims are unaware of the cyclical pattern of domestic violence and the expectation of escalated frequency and levels of violence. Victims may not know the sentencing policies of the courts which include both therapeutic and punitive consequences for the criminal conduct. Finally, victims may not be aware of the community resources available to assist them.
4. As with all filing decisions, the Prosecution must be convinced the accused committed the crime and that the case can be proven at trial beyond a reasonable doubt. The filing deputy will consider all available trial strategies and techniques available to the prosecution, including expert testimony regarding battered woman's syndrome evidence and prior acts of domestic violence admissible under Evidence Code 1109.

## **VI. Self-defense or Mutual Combat Claims, Whether Occurring in a Single Suspect Arrest or Dual Arrest, Should be Investigated Thoroughly before Filing.**

1. The Prosecution shall review the case to see if the parties were interviewed separately.
2. The Prosecution shall review the criminal history of both parties for past violent incidents.
3. The Prosecution shall review the parties history for evidence of domestic violence.
4. The Prosecution shall review the evidence to determine the dominant aggressor who may or may not be the "first" aggressor. For example, a slap to the face produces a punch in response which causes a fractured jaw requiring hospitalization. The Prosecution should file only on the punch. (PC § 693, CALJIC 5.30).
5. In dual arrest situations, the Prosecution must determine the identity of the dominant aggressor. While theoretically possible, it is the rare situation where both parties can be charged for the same incident.

Responsibilities of the Prosecutor assigned to domestic violence cases include:

1. Interview the victim with respect, compassion, and understanding and always offer to have an advocate or support person present.
2. Recommend to the victim that contact be made with a domestic violence center for support and assistance, and be prepared to provide the victim with a referral phone number.
3. Inform the victim that it is the duty of the prosecutor to proceed with the case and a dismissal is not within the power of the crime victim.
4. Convey the message that the defendant's violence is a criminal matter, and is the responsibility of the defendant alone, not a relationship problem.
5. Refer the victim to a Victim Advocate for further information and support during the prosecution.
6. Request the court to issue a written protective order prohibiting the defendant from threatening, harassing, or other violent behavior including a stay away provision if appropriate. The Prosecution should prepare the order and deliver or mail the order to the victim.
7. Inform the victim that, although protective orders, batterer's counseling, and the sanctions of the criminal justice system are effective in most cases to reduce or end the violence, these measures cannot guarantee the victim's safety, and that the defendant may become even more violent as a result of the intervention.
8. Educate themselves on the issues, trends and developments in understanding and prosecuting domestic violence cases.

## **VIII. Preliminary Hearings**

1. There are several advantages to having the victim testify at a preliminary hearing and it is recommended to have the victim available at the hearing. First, the victim's testimony is preserved should she later become unavailable or recant. Second, the Court and Prosecution can better evaluate the case. Additionally, the message is made clear to the abuser that the Prosecution is pursuing the charges.
2. Necessary officers and investigators should be subpoenaed in addition to the victim.
3. In some cases an expert may be needed at preliminary hearing.

## **IX. Trial Procedures**

1. Pending trial, contact with the victim should be maintained in order to advise of case progress and to obtain information regarding possible new assaults, attempts to intimidate or coerce the victim or violations of protective orders.
2. At trial, the Prosecution should consider use of expert witness testimony to explain to the jury behavior that is unusual without an understanding of domestic violence.

3. If a victim refuses to testify or answer a subpoena and the court decides to hold a hearing for contempt, reference should be made to Code of Civil Procedure Section 1219. This section limits the power of the court to jail the victim and requires counseling or community service before incarceration.
4. The Prosecution shall evaluate available independent evidence where the victim may be unavailable.
5. **Continuances:** Advocate strongly for priority status for domestic violence cases to avoid undue hardship for the victim. Oppose continuances as this creates the opportunity for intimidation by the defendant.

### **X. Dispositions**

1. It is the policy of this office to obtain a conviction for the most serious offense charged which can be proven. Therefore, reductions in domestic violence cases to a less serious charge should not occur without specific reasons for such a reduction.
2. Domestic Violence cases should not be dismissed unless the case cannot be proven. Reluctance of the victim to testify or a stated desire to have the charges dropped are not factors to be considered in the decision to dismiss a case. Charges shall not be reduced or dismissed in the absence of compelling circumstances or additional evidence, received after filing, which warrants this action.

### **XI. Sentencing**

1. When the Court sentences the batterer to a grant of probation, the Prosecution shall ensure the Court imposes all the terms of Probation as described in Penal Code section 1203.097
2. The Prosecution and Victim Witness advocate shall facilitate the victims right to appear and be heard at sentencing pursuant to Penal Code section 679.02.
3. The Prosecution should seek a protective order as a condition of probation. The Prosecution should advise the victim that protective orders obtained through criminal courts expire upon termination of the case, either by dismissal or expiration of probation. Accordingly, the prosecutor should refer the victim to appropriate legal assistance for a civil Domestic Violence Restraining Order.

### **XII. Education Materials in Support of Policies**

1. Prosecutors are expected to educate themselves about the concerns of victims of domestic violence and their common reactions to the abuse. See Appendix A.

### **XIII. Victim Advocates**

1. Victim Witness advocates should contact victims as early as possible to explain court procedures and the various programs available. Advocates explain the victim's perspective to prosecutors and insure that the victim's statements and concerns are taken into consideration during case evaluation and during sentencing recommendations. Advocates remain available to the victim even if she becomes uncooperative with the prosecution. Therefore prosecutors should not request or expect

advocates to insist on prosecution. The advocates are there for the victims end part of their role is to express the victim's position. The prosecution will consider this input along with other issues relevant to domestic violence cases.

2. There are other agencies which provide support or advocacy for a victim. These advocates, including crisis workers, are support people for the victim and may or may not share a similar philosophy with that of the District Attorney's office. They should be treated with respect and provided with information relating to the case which will assist their efforts to support the victim.

3. Not all advocates are covered by confidentiality in Evidence Code section 1037.1 but they should not be subpoenaed. Be careful about relying on statements relayed to you through an advocate. Make sure any new information is documented by a witness who is qualified to testify in court and all exculpatory information must always be disclosed.

## THE ABUSERS CYCLE OF VIOLENCE

An abuser has a need to feel in power and control. It is the sense of loss of power and control over time, which causes the abuser to react violently. The forms of abuse are described in Ellen Pense's *"Power and Control Wheel."* Violence is the means by which the abuser inappropriately displays frustration. The abuse may constitute a criminal activity and should be filed when the victim discloses this information. A common pattern of domestic abuse frequently appears as a "cycle of violence," rather than constant, uninterrupted violence. This cycle includes three phases of the batter's abuse: *a tension building phase, the violent incident phase, and the "honeymoon" phase.*

In the *tension building phase*, the victim senses the abuser becoming edgy and more prone to react negatively to any trivial frustration. It is commonly described by battered women as a time of "walking on egg shells," during which the abuser creates an atmosphere of impending violence, holding the victim accountable for his moods and difficulties, and threatening specific violent consequences to the victim, children and the victim's relatives. Many victims learn to recognize incipient violence and try to control it by becoming nurturing and compliant or by staying out of the way.

A victim often accepts the building rage in her partner as being legitimately directed toward her and internalizes the job of keeping the situation from exploding. As the tension builds, the abuser becomes more fearful that the victim will leave. The abuser feels a loss of power or control.

During this period, the abuser commonly screams and yells, pushes the victim and throws things. Often, the abuser destroys prized possessions, harasses the victim at work, and forces the victim into humiliating or painful sexual activity. The abuser engages in these actions to regain the power and control that seem to be diminishing.

The second phase is *the violent incident phase*. None of the victim's efforts are sufficient to avert further abuse and the abuser decides at some point to escalate the violence. The abuser often blames the event on the effects of alcohol or drugs. The abuser loses control physically and emotionally. Many abusers do not start out wanting to hurt the victim, but to only teach the victim a lesson. This is the stage where the victim, the police or the abuser may be killed. Most victims are extremely grateful when the battering ends. They consider themselves lucky that it is not worse, no matter how bad their injuries are. They often deny the seriousness of their injuries and refuse to seek immediate medical attention. They do not permit themselves to feel the pain.

The third phase is *the "contrition" phase*. In many cases, the violent assault produces genuine contrition by the abuser, who resolves never to use violence again. During this time of humiliation and embarrassment, the abuser is most fearful that the victim will leave. It is then that many abusers apologize, beg forgiveness, understanding, patience, and promise that the abuse will never happen again. The abuser may become tender and loving, producing characteristics of a "honeymoon." It is during this period that most typically, the abuser only lessens the degree of violence, while continuing other techniques of control. Such techniques include: monitoring phone calls, withholding money, guarding movements outside the home, and limiting contact with others. The abuser is described as simply being "the jealous type" or "too possessive" but with a "bad temper."

It is usually during this phase that the abuser resembles the person with whom the victim chose to begin a relationship and it is during this phase that the police arrive, the abuser is arrested, and the case is filed by the prosecutor. Prosecution frequently occurs while the abuser is carefully monitoring and modifying his behavior, both as part of the tension building phase and to avoid angering the victim while the case is pending. The involvement of the criminal justice system produces an incentive for the abuser to limit his use of violence and terror to control the victim.

The cycle can recur within a few days or require months for another violent assault. Over time, the cycle often escalates in frequency and severity. However, not all cases involve all the elements of the cycle. The common theme is the choice to use violence and 'blaming the victim for "the need to resort to abuse." Various cultural factors may determine the specific types of abuse and the rationale for the decision to use violence in the relationship.

### **BATTERED WOMAN SYNDROME**

While victim's reaction to abuse in the relationship may vary widely, many common reactions can be described under the framework of the concept of "battered woman syndrome". This reaction can very often be similar to that of a car accident victim: stunned behavior, dismissing offers of assistance, and wanting to be left alone. The effect can be described as a "post traumatic stress syndrome." Victims are publicly humiliated when the private abuse is made known through an arrest. Victims frequently just want to be left alone and requests that the charges be dropped. Victim's reactions are not dependent on experiencing the batterer's cycle of violence several times. These concerns can be evident following even the first assault.

In addition to the emotional toll, victims are commonly aware of other factors in their lives which cause them to fear an arrest and prosecution of the abuser. These include social or religious stigma, loss of income, loss of housing, religious concerns, the victim's own substance abuse, other illegal conduct (welfare fraud for example), or immigration issues.

Typically, batterers threaten to kill their victims, or the victim's family members since their whereabouts are typically known, if the police are called. The victim may have experienced failed prosecutions in the past that resulted in another beating upon the defendant's release. These fears are not unfounded. Batterers have stalked their victims for years, and killed them long after a divorce or separation.

Past experiences of failures by the police to respond to calls for help, or failing to make an arrest when they do respond also may effect the attitude of victims. The fact of disbelief by observers can carry into the jury room; many jurors believe victims make up a story to get custody of the children or to get the house in a divorce.

Battered women's shelters report that the most frequent reason for battered women to return to their abusers is a lack of an alternative, they simply have no other place to go. The statistics support battered women's fears: over half of homeless women are on the streets because they have fled a violent home. While most communities have battered women's shelters, they are required to limit the woman's stay to 30 days. Shelters are very skilled at finding housing for victims following the 30-day stay, but many women fear living alone and believe the abuser will find her anyway.



Batterers commonly threaten to fight for custody of the children, or to just take them away. The reality of this threat is abusers often have more experience in dealing with the legal system.

The victim's own parents may side with the abuser, seeing the issues as a relationship problem which is best resolved by reasserting traditional values, through a marriage counselor, or through religious faith. Many families disregard the real impact on children of witnessing violence against a parent and advocate to "stay together for the sake of the kids."

Victims just want the violence to end and are usually terrified of the possibility of testifying in court. They may know that the batterer will testify to a story that they have both made up in the past to hide previous assaults. They have received information from the defense leading them to believe that the typical sentence will be a year in jail. They are fearful of an abusive and uncaring bureaucracy.

There is a strong bond between the abuser and the victim. A victim is not crazy for staying. Victims want to be in this relationship but without the violence. Violence is only one component of the relationship. The specific reason this victim is staying in the relationship may be impossible to determine given the amount of time and the circumstances surrounding our involvement in their lives. However, by assuming she has a reason and informing her of that, a sense of respect may be conveyed to her.

## Penal Code Sections

### SPECIFIC ASSAULT CHARGES

SPOUSAL ABUSE (PC § 273.5): The statute requires that the persons be married, parents of children in common, or living together. Some “significant relationship” between the cohabitant must exist, or have existed, beyond a platonic, rooming-house relationship. The statute requires a “traumatic injury” caused by a physical force, but the level of injury may be minimal: “of a minor or serious nature.”

DATING PARTNER BATTERY (PC § 243(e)): This statute includes former spouses and current and former “dating” relationships. An injury is not required for filing a case. This statute increases the maximum jail time for a battery. It appears to be a lesser included crime to PC § 273.5.

ASSAULT WITH INTENT TO RAPE (or commit other felony)(PC 5220): File this charge when the defendant assaulted the victim with the specific intent to rape her. The defendant need only intend the rape at any moment during the assault (CALJIC 9.09).

SPOUSAL RAPE (PC § 262): Physical evidence is usually required (bruises, chemical tests, torn clothes, SART/SANE findings); and timely reporting to a friend or relative.

SEXUAL BATTERY (PC § 243.4): File charges when a non-felony sexual assault is referred for filing.

CHILD ENDANGERMENT (PC § 273a(2)): File this charge when the abuse is directed at a child. Also consider filing when the child is present, even if in an adjacent room, during the physical abuse of a parent or of defendant’s partner. This charge includes “inflicting ‘unjustifiable’ physical pain or mental suffering” or when the parent or custodian wilfully causes a situation endangering a child. Note: Penal Code section 277(b) defines, for the purpose of the statute, emotional harm as including having a parent who is the victim of emotional abuse.

- Example: The victim is struck while holding her child

### THREATS AND CRIMINAL ANNOYANCE CHARGES

CRIMINAL THREATS (PC § 422): File where witnessed or documented by a credible witness, including the victim, and the victim has taken measures indicating fear (reported immediately to police, moved, obtained restraining order). File in addition to other crimes whenever indicated. Current case law has relaxed somewhat the “immediate” language contained in the statute.

HARASSING PHONE CALLS (PC § 653m): File where documented through a phone log maintained by victim, tapes, phone trap by phone company, or additional witnesses exist. There are three types of violations. In section (a) there only has to be one call that is obscene or threatening, in section (b) there has to be repeated phone calls to the home, in section (c) the calls must be repeated to the workplace AND either (1) there is a restraining order in place or (2) there is more than 10 calls within 24 hours.

STALKING (PC § 646.9): File when there is a witness or when there is a credible victim. See People v. McCray (1997) 58 Cal. App. 4th 159. This crime does not require any injury.

► Elements:

- a. (i). Willful, malicious, and repeated: OR
  - (ii). Following or harassing; with
  - b. Intent to place victims in fear of death or great bodily injury to the victim or the victim's family;  
AND
  - c. A "credible threat" must be made, either through behavior (e.g., waving a knife) or by express statements.
- A Restraining Order is not a necessary element for filing this charge but is useful for providing the repeated element of the offense. A violation by a named respondent in a restraining order can be filed as a felony.

ASSAULT WITH DEADLY WEAPON (PC § 245a) and Brandishing (PC § 417): File when witnessed, weapons recovered, or otherwise corroborated; no injuries are required.

FALSE IMPRISONMENT (PC § 236): File under standards for crimes between strangers. No physical violence is required under this statute. When the false imprisonment is effected by violence or menace, file as a felony.

INTIMIDATING A WITNESS (PC § 136.1): Preventing or attempting to prevent a witness or victim from reporting a crime or appearing as a witness is also a crime under this section even though a case has not been filed or a complaint has not been made to the police. A common example is the prevention of completing a 911 call. This may be a misdemeanor or felony.

THREATENING A WITNESS (PC § 139 and 140): File charges under PC § 139 when the defendant has been convicted and makes a credible threat to the victim, witness, or their immediate family. This section applies to threats made from jail. PC § 140 applies when the threat is made to a crime victim or witness because that person provided information to police or assisted with the prosecution.

VIOLATIONS OF DOMESTIC VIOLENCE CIVIL RESTRAINING ORDERS (PC § 273.6): ~~File even~~ benign violations, such as sending flowers, since even this non violent contact is an attempt to coerce and intimidate. Civil orders include Emergency Protective Orders, Temporary Restraining Orders and Permanent Orders after hearing. A person who has previously been convicted of this section and violates the terms of an order within seven years by committing an act of violence or a credible threat of violence may be charged with a felony.

VIOLATIONS OF CRIMINAL PROTECTIVE ORDERS (PC § 166(c)): File when the terms of protective orders issued under Penal Code § 136.2 have been violated. A separate protective order must have been issued, a condition of probation is insufficient to file this charge. A person who has previously been convicted of this section and violates the terms of an order within seven years by committing an act of violence or a credible threat of violence may be charged with a felony.

CHILD CONCEALMENT (PC § 277): This section applies in the absence of a court order determining custody of a child, and to a parent having right to custody of a child who maliciously “takes, detains, conceals, entices” the child from the other parent without good cause. “Good cause” includes actions to prevent abuse to the child, and to prevent “immediate bodily injury or emotional harm” if the child is left with a parent, or other person with custodial rights, who has committed an act of domestic violence against the fleeing parent.

- ▶ Note: “Emotional harm” to the child specifically includes having a parent who has committed domestic violence against the fleeing parent. Since the fleeing parent is required by the statute to file a report of the action with the District Attorney, check with the District Attorney’s Child Abduction Unit before proceeding with the case.

CHILD CONCEALMENT WITH CUSTODY ORDER (PC § 278.5): This section applies when a party to a child custody order fails to return the child to the other parent pursuant to the terms of the order. As with the above, check with the Child Abduction Unit.

POSSESSING PURCHASING OR OBTAINING A FIREARM WHILE A NAMED RESPONDENT TO A DOMESTIC VIOLENCE RESTRAINING ORDER (PC § 12021(g)): The prohibition in this section applies to all persons subject to a protective order whether civil or criminal. The suspect must have been served with a copy of the order or have been present in court when the order was issued.

POSSESSION OF A FIREARM (PC § 12021): Prohibits possession of a firearm by persons with a certain status: e.g.- (a) ex-felons or addicts, (c) persons convicted of various misdemeanors, including PC §§ 273.5, 243, 242, 240, 422 and 136.1. Note 236 is not listed.

### PROPERTY CRIMES

VANDALISM (PC § 594): File where corroborated by physical evidence or observations by officer or independent witness. File by same standards as crimes between strangers. A vandalism charge may be filed on damage to community property.

THEFT (PC § 484): File by same standards as crimes against strangers.

TRESPASS IN A HOME (PC § 602.5 and 602(n)): File when corroborated by a witness or such evidence as broken or damaged doors, screens, windows. This charge cannot apply to a lawful occupant, as when victim and suspect live together, without a civil court determination of legal rights. Penal Code § 602(n) is applicable when a guest is requested to leave and refuses. Note that PC 602.5 has an aggravated section when the occupant of the home is present.