

**CASCADE COUNTY ATTORNEY'S OFFICE
PARTNER/FAMILY MEMBER ASSAULT PROSECUTION
PLAN**

I. DEFINITIONS

A. (a). Partner/Family Member Assault, § 45-5-206 MCA, means the following, if committed against a partner or family member by a partner or family member:

- (1) bodily injury;
- (2) negligently causes bodily injury with a weapon;
- (3) reasonable apprehension of bodily injury.

(b) Family member means:

- (1) Mothers, fathers, children, brothers, sisters, and other past or present family member of a household;
- (2) These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents
- (3) These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) Partner means:

- (1) Spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

II. PARTNER/FAMILY MEMBER ASSAULT PROSECUTION GOALS

A. Appropriate prosecution of partner/family member assault crimes sends a message to the community at large and to

abusers and victims that crimes involving partner/family member assault, like other crimes, will not be tolerated. While the primary goal of prosecuting partner/family member assault cases, as with all criminal prosecutions, is to hold criminal accountable for their acts by conviction and appropriate punishment, prosecutors should bear the following public policy goals in mind in their handling of these cases:

(a) Protecting victims of abuse crimes from future criminal actions by their abusers.

(b) Deterring abusers from committing criminal acts against both the victim and other persons.

(c) Insuring prompt accessibility to the criminal justice system and appropriate services for victims of partner/family member abuse and improving coordination between the criminal justice system and victim services.

(d) Upholding professional obligations as officers of the court and stewards of taxpayers' funds in decisions regarding the disposition of cases.

III. PARTNER/FAMILY MEMBER ASSAULT PROSECUTION POLICIES

B. The following general policies should be observed in the prosecution of partner/family member assault crimes:

(a) The expeditious and just resolution of partner/family member crime prosecutions benefits crime victims specifically and the community as a whole.

(b) Law enforcement officers will be more effective investigators of partner/family assault crimes if prosecutors advise them about the kinds of evidence that will assist prosecutors in corroborating and proving such crimes.

(c) A copy of the Cascade County Attorney's Office Partner/Family Member Assault Prosecution Plan shall be provided to all Cascade County/Great Falls law enforcement agencies.

(d) The prosecutor and/or the Cascade County Attorney's Office Victim Witness/Paralegal should coordinate with a

Victim-Witness Assistance Services (VWAS) counselor to maintain close contact with the victim for purpose of trial preparation and to fashion an appropriate disposition of the case. While the prosecutor should solicit and consider the expressed views of the victim, the ultimate decision on what plea negotiation is offered, if any, remains with the prosecutor.

IV. PARTNER/FAMILY MEMBER ASSAULT PROSECUTION PROCEDURES

A. ASSESSMENT/ASSIGNMENT OF PARTNER/FAMILY ASSAULT CRIMES

(a) The prosecution of violent crimes, including partner/family assault crimes, should take priority over other matters assigned to the prosecutor.

(b) Decisions on whether or not criminal charges should be brought by complaint/information shall be made promptly. Within seven (7) days of receipt of a completed law enforcement investigation, an attorney shall be assigned to evaluate the case for charging. The assigned attorney will then make all reasonable efforts to make a charging decision within fifteen (15) days of assignment. Whenever possible, the assigned attorney will be responsible for the continuing prosecution of the case.

(c) Early contact between the prosecutors of the Cascade County Attorney's Office and the victim will be coordinated with Victim-Witness Assistance Services and the Cascade County Attorney's Office Victim/Witness paralegal, which will provide continuity between the victim and the Cascade County Attorney's Office.

B. VICTIM NOTIFICATION

(a) The Cascade County Attorney's Office shall make every reasonable effort to notify the victim that the prosecutor has decided to decline prosecution of the case or dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority: (1) contacting the victim or a person designated by the victim by telephone; and (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

(b) The Victim-Witness Assistance Services (VWAS) and the Cascade County Attorney's Office Victim/Witness paralegal will coordinate and facilitate contact between the Cascade County Attorney's Office and the victim. The Cascade County Attorney's Office Victim/Witness paralegal will promptly contact the victim by telephone or mail after a charging decision has been reached. If a partner/family member assault crime has been charged, law enforcement and the VWAS will provide the victim with information regarding the criminal justice system, victim rights, available partner/family member assault and victim services, any proposed settlement offers. The Cascade County Attorney's Office shall be responsible for informing the victim of the final disposition of the case.

C. COORDINATION OF PROSECUTION EFFORTS

The Victim-Witness Assistance Services will direct a victim to, and as necessary, facilitate the provision of support services to the victim. In addition, the VWAS and the Cascade County Attorney's Office Victim-Witness paralegal will coordinate input to the prosecutor from the victim and the appropriate support persons.

D. PARTNER/FAMILY ASSAULT PROSECUTION CASE EVALUATION

(a) The decision to prosecute partner/family member assault crimes, or to continue the prosecution, will be based on the ability to prove the crime beyond a reasonable doubt. Factors to be considered include specific evidence, or lack thereof, as set out in E below.

(b) The refusal of a victim to testify or the recantation of the victim's statement is not an automatic reason to dismiss charges. However, discretion remains with the prosecutor to determine whether the individual case can proceed without the victim's cooperation.

E. INVESTIGATION OF PARTNER/FAMILY MEMBER ASSAULT CRIMES

(a) Law enforcement will be instructed that the information gathering process is important because the more supportive evidence gathered, the less a successful prosecution will rest solely on the testimony of the victim witness and that a thorough investigation of partner/family member assault crimes, which is necessary to enhance the ability to successfully prosecute these cases, includes:

(1) documentation of physical evidence of a victim's injuries (including photographs, medical records, written descriptions and detailed observations);

(2) gathering other crime scene evidence;

(3) interviewing the victim, utilizing either audio or video equipment, about the assault, prior assaults, existing or past orders for protection, partner/family member assault on contact orders, or other court orders as soon as possible;

(4) interviewing the suspect, utilizing audio or video equipment, as soon as possible;

(5) interviewing all other witnesses, utilizing audio or video equipment, as soon as possible;

(6) notation of any other statements made by the victim and eyewitnesses (including 911 calls);

(7) saving 911 calls and having the tape placed in evidence;

(8) collection of other crime (404b) evidence.

F. LAW ENFORCEMENT TRAINING

(a) Training for local law enforcement regarding the contents of this Plan and law enforcement's role in its implementation will be conducted by the Cascade County Attorney's Office on an annual basis.

(b) The Cascade County Attorney's Office will cooperate with local law enforcement agencies in preparing and participating in law enforcement training on partner/family member assaults as requested by those agencies and approved by the Cascade County Attorney.

G. PROSECUTION

(a) Prosecutors will not motion for the release, or reduction in bond, of a person held in custody for a criminal violation concerning partner/family member assault without consultation with the County Attorney and/or consultation concerning the case at a County Attorney staff meeting.

(b) Prosecutors will make all necessary motions to ensure that defendants are booked, photographed, and fingerprinted because records of prior convictions are vital to the appropriate charging and disposition of partner/family member assault cases.

(c) Whenever a prosecutor dismisses criminal charges against a defendant, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable.

(d) Victims, like important witnesses in all cases, should be subpoenaed for trial. The prosecutor and the Victim-Witness Assistance Services should explain to the victim that the victim is not responsible for the prosecution but is a subpoenaed witness like any other in a prosecution brought by the state and that the subpoena is an order to appear in court, which the Cascade County Attorney's Office will seek to have enforced.

H. ANNUAL REVIEW

The Cascade County Attorney's Office Partner/Family Member Assault Prosecution Plan shall be reviewed annually to evaluate whether the Plan is meeting its goals effectively and whether improvements or changes are needed. Partner/Family Member Assault advocates, law enforcement officials, and other interested members of the public shall have an opportunity to have input in the annual review.

I. IMPLEMENTATION

The Cascade County Attorney's Office Partner/Family Member Assault Prosecution Plan shall be effective upon the written approval of the Cascade County Attorney.

Approved on this _____ day of _____, 2004

Brant S. Light
Cascade County Attorney

