Responding to Domestic Violence in Your Community: A Model Protocol

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Purpose of Toolkit

Responding to Domestic Violence in Your Community: A Model Protocol is a product of the lessons learned from the Enhancing Rural Strategies (ERS) grants awarded to the North Carolina Coalition Against Domestic Violence (NCCADV) from 2011-2017 by the Office on Violence Against Women (OVW). During this time, NCCADV worked with 8 counties[1] to assist their Coordinated Community Response (CCR) teams in the development of Domestic Violence (DV) Response Protocols. Much of the concepts, language[2], and best practices outlined in this toolkit can be found in the protocols developed by these teams. With their permission, some of the language in their protocols has been replicated in this toolkit. Two previous toolkits co-authored by NCCADV also serve as the basis for much of this document and some of the language in those documents has been replicated.[3] They can be found at: https://nccadv.org/coordinated-community-response or http://www.nccasa.org/projects/sart.

This toolkit is also a product of NCCADV staff's ongoing collaboration with responders throughout the state. Through both our technical assistance and training programs, we have worked with numerous community partners in both rural and urban settings. Together we have identified community strengths and built on them to develop strategies for addressing gaps in services.

The toolkit was developed to serve as a guide to responders creating or revamping their response to DV, either as individual agency policies or as part of a collaborative effort. Communities that have CCR teams or other collaborative partnerships often create response protocols, which are a set of agreed upon procedures for various agencies responding to DV. The protocol that community partners develop outlines an effective approach for meeting victims' needs and holding offenders accountable. Moreover, it addresses the most efficient manner for agencies to collaborate with one another. In the process of writing the protocol, community partners not only evaluate current procedures, but also identify and incorporate best practices. The protocol is collaboratively developed by all core responders on the team, in that they establish the procedures that each agency agrees to follow when a DV case is reported. In this toolkit, we identify four core responders: advocates, law enforcement, district attorney's office, and court officials. Response protocols can include all four of these responders, or some of them, as well as other community partners (listed below).

Developing a response protocol is one of the most essential tasks of a CCR team. Protocols can help teams create multiple access points for victims and reduce gaps in services. Protocols can also enhance a victim-centered response, which can reduce trauma for victims, increase reporting, yield better evidence collection, and improve victim participation in cases. The development of a

[1] Avery, Cleveland, Macon, Martin, Mitchell, Tyrrell, Wilson, Yancey Counties.

[2] The toolkit uses the following terms interchangeably: offender/perpetrator/defendant/abuser and victim/survivor/client. At times, certain terms are used more than others. This is often related to the terms used predominantly by each discipline. The toolkit also refers to local DV agencies interchangeably as DV agency/program/organization/service provider.

[3] Clarke, Megan, Martinez Lotz, Lisi, Alzuru, Carolina. (2014). Enhancing Local Collaboration in the Criminal Justice System Response to Domestic Violence and Sexual Assault: A CCR/SART Development Toolkit. North Carolina Coalition Against Sexual Assault and North Carolina Coalition Against Domestic Violence; Clarke, Megan, Martinez Lotz, Lisi, Alzuru, Carolina. (2014). Best Practices in the Criminal Justice Response to Domestic Violence and Sexual Assault: Guidance for CCR/SART Response Protocols. North Carolina Coalition Against Sexual Assault and North Carolina Coalition Against Domestic Violence.

protocol is a collaborative process that is unique to every community. The time-consuming, multi-layered process serves as the foundation for the collaborative response to DV. Even after it is created, it will be a document that teams return to as a means of evaluating their overall response system. It will provide the team with a quality control mechanism for service delivery, and thus contribute to the sustainability of the team and the achievement of their objectives. For more information on building CCR teams, assessing readiness to develop protocols, and/or the process of developing protocols, see *Enhancing Local Collaboration in the Criminal Justice System Response to Domestic Violence and Sexual Assault: A CCR/SART Development Toolkit*.
The toolkit can be found at: https://nccadv.org/coordinated-community-response or http://www.nccasa.org/projects/sart.

Responding to Domestic Violence in Your Community: A Model Protocol provides community partners with a guide on implementing best practices for each core discipline and describes how they can collaborate to better coordinate their response and services. Community partners working collaboratively can use it to create a response protocol, while individual agencies can use it to revise their internal policies and overall DV response. Depending on the individual needs and resources of each community, either approach can be taken or both can be initiated simultaneously.

Community partners working collaboratively to develop a response protocol and/or individual agencies revising their internal policies cannot simply adopt NCCADV's model protocol detailed in this toolkit (or sections of it). Rather, each community and agency needs to reflect on the best practices outlined, obtain buy-in from all involved parties, develop them according to community-specific gaps, and train responders on the impact of the new policies. That is why this is a process that takes time, typically 1-2 years, and why it needs to include the commitment of each participating agency.

This toolkit focuses primarily on the key partners involved in the legal system. However, there are numerous other members that are integral to a coordinated community response, including but not limited to:

- Probation
- Mental health agencies
- Department of Social Services (Child Protective Services, Adult Services, Economic Services, etc.)
- Health Department
- Child Advocacy Center
- School system
- Faith communities
- DV Survivors
- Batterer Intervention Program
- Landlords or other members of Continuum of Care team
- Animal control agencies and kennels
- Self-contained communities
    - Colleges and universities
    - Military installations
    - Prisons

    - Tribal communities
- Representation from specific communities[4]
- Services that intersect with DV (i.e., mental health, substance use disorder)

CCR teams or other collaborative partnerships do not need to focus primarily on the response to victims within the legal system. They can focus their efforts on long-term care, prevention, equitable services for survivors from specific communities, and numerous other issues. This toolkit focuses primarily on issues related to the legal system because this is the model that the ERS project chose to focus on. This does not mean that this is the only or best approach. Each community and team needs to determine for themselves what their most pressing gaps are and which approach is most suitable to meet those needs. In addition, collaborative teams can create subcommittees to work on multiple issues simultaneously.

DV best practices for the four main responders within the legal system have been outlined in the following chapters. Some practices may be new to certain communities, while many others may have already been incorporated into overall interagency processes. Responders should assess if and when to include them, which ones to focus on, and how to best adapt them. Increased coordination among agencies and system-wide adoption of best practices can lead to streamlined referral systems, improved charging and prosecution, lower recidivism rates, and greater victim safety.

In both incorporating best practices into internal policies and creating a community-wide protocol, responders need to include response and referral procedures throughout. This is the section of the protocol that details what steps each responder will take in response to a DV incident. These procedures should include both the steps individual agencies will take (questions asked, information given, evidence collected, services provided) as well as how agencies will interact with and refer to one another.

A DV response protocol articulates, in writing, a plan for identifying and responding to DV incidents. The response protocol communities develop is to be used to ensure that DV is safely, routinely, and consistently addressed and that adequate supports are in place for survivors. Additionally, it serves as a declaration to survivors, abusers, and the community at large that DV will not be tolerated. Every individual that interacts with the victim and perpetrator needs to convey the message that acts of DV are unacceptable and that consequences for committing such crimes will be pursued through the criminal justice system. This counters what abusers have told victims about not being believed or supported, while also putting the onus of offender accountability on the system. Rather than being discouraged when victims do not participate in the criminal justice process, responders should acknowledge the multiple complex reasons that contribute to that decision. Building trust and support over time can lead to an increased willingness of victims to disclose details of the abuse, participate in prosecution, and seek assistance in the future. Each interaction with victims is an opportunity to build relationships, make referrals, and enforce offender accountability.

[4] This toolkit uses specific communities to refer to communities of individuals with specific identities, including but not limited to those who are traditionally underserved by sexual and domestic violence service providers. These can include among others, people of color, people who are LGBTQ+ identified, people with disabilities, people who are elderly, people with limited English abilities, people who are undocumented, immigrants, and refugee groups.

Introduction to Response Protocol

Beyond the information in the following chapters, the response protocol should include an introduction that provides purpose and context to those who refer to it in fulfilling their job responsibilities. Below are some examples of the sections that can be included. Each community needs to create and implement a process that addresses their needs and enhances the relationships they have developed as community partners.

List of the Member Organizations

The CCR team in [insert name] county includes representatives from [insert name of domestic violence (DV) agency, Law enforcement agencies, District Attorney's Office, Clerk of Courts, Magistrate, Department of Social Services, and Hospital/Health Department, etc.].

History of the Collaboration and Purpose of the Toolkit

The team was formed in [insert year] by community agencies and members that are committed to improving services for victims and holding offenders accountable. The team meets monthly to address the response system in our county. It has created this protocol as a means of outlining current expectations, best practices, and collaborative relationships. It will use this document to 1) ensure that there is a consistent response, 2) to address challenges, and 3) to implement system changes that benefit all survivors.

Mission Statement

The mission of the team is to coordinate efforts among providers to better serve and empower DV victims and to enhance prevention efforts to decrease incidents of violence in our community. By coordinating our DV response, we can create a safe community for everyone, provide victims with equitable services, and hold abusers accountable for their criminal actions.

The CCR team believes that everyone deserves to live free of violence. Team members are committed to providing a coordinated and efficient response to all DV victims. It recognizes that marginalized communities are often at a higher risk and face greater barriers. It thus aims to eliminate barriers associated with race, gender identity, sexual orientation, age, disabilities, and any other identities or experiences that prevent individuals from accessing equitable services.

Definition of DV

The team defines DV as a pattern of coercive behavior in which one person attempts to control another through threats or actual use of tactics, which may include any or all of the following: physical, sexual, verbal, and psychological abuse. The behavior may occur during the relationship or after the relationship has ended.

Disclaimer Reference Flexibility

This protocol is intended to be a guideline to help ensure standardized response and investigation of DV. Due to the varying circumstances of each case, not all agencies will be able to adhere completely to protocol in every instance.

Guidelines for Confidentiality

CCR team members acknowledge and agree that the privacy of survivors should be strictly maintained. This agreement specifically indicates that:

- Identifying information about victims or their families will not be shared.
- Members will make every effort to avoid sharing any extraneous case information that may lead to the identification of victims by other team members.
- Case information learned through the team is confidential and will not be discussed or shared outside the meeting room except as specified.
- Case information learned through the team will not be shared by any team member with their home agency except as specified.
- No documents with case information will leave the meeting room. Should any such documentation exist, a representative from [Agency Name] will collect all documents and shred them immediately upon leaving the meeting. Members will not take notes pertaining to cases during meetings.
- No case review information will be photocopied or duplicated.
- Each team member retains the responsibility to maintain confidentiality as required by their discipline/agency.

DV Agency Advocates

By virtue of their unique position, advocates play a vital role in ensuring that the overall response to survivors of domestic violence (DV) is timely, trauma-informed, equitable, and victim-centered. The advocate's role is distinguished by their ability to offer unconditional support, as advocates are not responsible for evidentiary issues. They also advocate on behalf of the survivor by ensuring that their interests are being met and that there is a coordinated response among all the partners. Their particular role allows them to support survivors, while also offering their expertise and assistance to other responding professionals. Fostering coordination to ensure a positive response, advocates interact with numerous multi-disciplinary partners throughout the process.

Advocacy is not a means for telling victims what to do or making judgments. Working from an empowerment model, advocates assist victims in gaining the necessary confidence and information to engage with the system in the most beneficial way, while recognizing its limitations. Through a process of identifying needs, desired outcomes, and barriers, victims can better strategize and make decisions for confronting their particular situation.

Providing Services

Advocates should relay the benefits and challenges of different options early on in their interactions with clients. Survivors will thus be able to determine for themselves which services they are interested in. Advocates provide support and resources to victims engaging the legal system in many ways, including but not limited to, assisting them to:

- Pursue criminal charges
- Request a Domestic Violence Protective Order (DVPO)
- Obtain legal counsel
- Navigate court proceedings
- Apply for a U or T-Visa
- Informing them of their rights

In addition, advocates assist or make referrals for victims to meet their immediate needs and/or obtain long-term services, including but not limited to:

- Shelter and long-term housing
- Safety plans and/or danger assessments
- Accompaniment for medical services and/or evaluation
- Victim's compensation
- Address Confidentiality Program
- Counseling and/or support groups
- Immigration services
- Food
- Child care
- Employment
- Education
- ESL classes
- Financial assistance and/or counseling

- Transportation

Confidentiality

DV agencies that receive funding pursuant to the Violence Against Women Act (VAWA), Family Violence Prevention and Services Act (FVSPA) and/or Victims of Crime Act (VOCA) must follow federal confidentiality requirements. Each of these federal funding streams have identical grant requirements for funding recipients with regards to maintaining the confidentiality of personal identifying information of anyone who seeks or receives services from their agency. (See 34 U.S.C. 12291(a)(20) & (b)(2); 42 U.S.C. 10406(c)(5)); and 28 CFR §94).

Keeping all personal identifying information of someone seeking or receiving services confidential is necessary under these requirements and is critical to the relationship between advocates and survivors. These confidentiality requirements are extremely strict with very narrow exceptions. Understanding the limitations of confidentiality provides survivors an opportunity to make the best decision for themselves and their family. It also increases their trust in the advocate and the organization. It is vital that advocates explain early on in their interactions with survivors the requirements of mandatory reporting as well as when privilege does not apply.

There are only three exceptions enumerated in the Federal grants. Those three exceptions are:

- Informed, written reasonably time-limited, voluntary consent of the participant
- Statutory mandate
- Court order

Therefore, unless one of these three limited exceptions apply, DV advocates are prohibited from releasing any information about a client, including whether they are even serving the client at all. In addition, even when there is a statutory mandate or court order, by Federal statute, the DV advocate is required to:

- Make reasonable attempts to provide notice to victims affected by the disclosure of information; and
- Take steps necessary to protect the privacy and safety of the persons affected by the release of the information

A court order is an order that is signed by a judge. Therefore, it is important to understand that a subpoena is almost always not a court order. Most subpoenas are typically issued by an attorney, not a judge, and therefore do not have the same power as a court order. Programs should carefully read the court order and be sure that it is (1) addressed to the program, (2) specific to their client, and (3) clear regarding what information is to be released and to whom. Programs should only release what is listed in the court order and nothing more.

Even though a court order meets the confidentiality exception of federal guidelines, programs are still obligated to protect their clients' information to the best of their ability. If a program chooses to turn over a client's records or to testify pursuant to court order, they will likely not be in violation of the federal confidentiality guidelines. However, programs should also balance strict compliance with the goal of protecting survivors' privacy rights. Therefore, when possible, NCCADV recommends that programs still try to protect a client's records and privacy to the extent possible,

even when presented with a court order. Because North Carolina has additional protection for survivors with advocate-client privilege, programs are uniquely situated to argue that before records are released, a judge at least review the records "in camera" (meaning in chambers, or just by the judge) to determine whether all, some or none of the records truly need to be released to the party (or person) requesting them.

Advocate privilege as outlined in the NC General Statute N.C.G.S. § 8-53.12, *Communications with agents of rape crisis centers and domestic violence programs privileged*, details the circumstances under which information obtained from the victim is privileged. It explains that communications between the agency and victim are privileged unless the victim waives this right or the judge determines that an exception should apply.

Therefore, it is extremely important for advocates to keep information shared by victims confidential unless they receive their consent and to assert privilege when asked for the information to be disclosed. Absent an exception to confidentiality:

- Advocates must not discuss the details of any local DV case outside the agency.
- Advocates can neither confirm nor deny that any victim is, or has ever been, a client.
- Advocates should work cooperatively with law enforcement, medical professionals, court officials, and other community partners, but refrain from providing information without the victim's voluntary, written, time-limited, informed consent or unless another exception to confidentiality applies.
- Before communicating with others on a victim's behalf, the advocate should obtain a written release of information from the client which specifically identifies what information may be released, to whom, for what purpose, and for what period of time.
- Advocates need to take precautions to protect the confidentiality of all written materials. Computer use is acceptable, however no information regarding victims should ever be saved to a disk or hard drive outside of the agency (for example: by volunteers completing paperwork at home or in a computer lab).
- Advocates should minimize the details and information recorded in client's records, unless the victim has expressly consented otherwise, since programs cannot guarantee the ability to safeguard those records.
- When an advocate is required by statutory mandate or court order to break a client's confidentiality, they should always attempt to contact the client first to inform them. Where a mandatory report to the Department of Health and Human Services is necessary, the advocate can encourage the client to also make a self-report in addition to the advocate's report. However, the advocate must still make an independent report regardless of the client's decision to self-report.

<u>Court Advocacy</u>

In court advocacy, the advocate's role is to provide emotional support, coordinate multiple processes with responders, and provide survivors with options and resources. Advocates do not give legal advice or act as lawyers. Only the client's attorney can give legal advice and provide legal representation in court.

In North Carolina (NC), civil DV laws fall under Chapter 50B of the general statutes. This allows

a DV victim to seek relief by filing for a DVPO, a civil court order signed by a judge that offers protection to victims. Survivors can receive assistance from an advocate to complete the paperwork and for court accompaniment. Judges review each individual case to determine if the victim is eligible for an ex-parte order, or temporary order. If the ex-parte is granted, a hearing is held within 10 days to determine if a DVPO will be granted. The defendant is then served with the notice that they are to appear in court. Advocates should refer survivors to Legal Aid of NC or other legal services agencies, pro-bono attorneys, or affordable attorneys in the area that understand DV dynamics. When possible, advocates should accompany survivors to the 10-day hearing and to subsequent hearings if the case is continued. They should also accompany victims to criminal court proceedings to offer support.

DV Victims can request the following relief in a protective order:

- No contact
- For the defendant to refrain from threatening, abusing, following, harassing, or otherwise interfering with the victim and/or minor child(ren)
- Grant victim possession of the residence and exclude the defendant
- Order eviction of the defendant from residence and assist victim in returning to it
- Temporary custody of minor children and establishment of visitation rights
- Provide for possession of personal property including vehicle
- Prohibit defendant from purchasing/possessing a firearm or ammunition
- Ask that defendant must surrender firearms, ammunition, and gun permits if a high-risk factor is present
- Order completion of abuser treatment program
- Any additional prohibitions or requirements deemed necessary to protect victim

DVPOs can initially be entered for up to one year by a judge and can be renewed multiple times for “good cause” for up to two years at a time, though child custody cannot be renewed.

Advocates’ responsibilities include ensuring that victims’ rights requirements are being consistently followed. Part of an advocate’s duties is facilitating communication among responders and victims as a means of creating victim agency and ensuring that the perspective of victims is being considered whenever possible. Furthermore, advocates make certain that victims understand all options afforded to them under law, including but not limited to, their right to pursue legal action against their abuser, the limitations of confidentiality, their right to language access, and their right to apply for victim’s compensation. Advocates also ensure that requests that survivors make are properly processed by court officials, including but not limited to, separation between a victim and abuser in the courtroom, provision of a certified interpreter, and escorts to vehicles by law enforcement.

<u>Serving Survivors</u>

Due to the prevalence of DV myths in our society, victims’ experiences are sometimes minimized or negated during their interactions with responders. In order to provide a safe and supportive

environment, advocates always adopt the "start by believing" approach[5] when serving survivors. Despite this approach, local DV agencies should not continue serving someone that they have determined is not the victim. Local DV agencies sometimes encounter abusers who are posing as the victim in an effort to invalidate the survivors' account, negate them of services, and gain an advantage in legal proceedings.

In order to prevent abusers from being mistakenly served in victims' programs, and all the harms which accompany serving abusers, screenings should be standard practice for DV agencies. While screening begins at intake, screening should be considered more of a process that takes place through conversations, where an advocate asks open-ended questions and follow-up questions in a very supportive way while listening for the dynamics of DV. Advocates need to ensure that questions intended to screen out abusers do not re-victimize true survivors. This means that it is vital to utilize active listening and to ask questions in an empathetic manner so as to get enough information to truly understand the dynamics of a potential participant's relationship.

There is no single screening tool which advocates can use to determine who is a victim and who is an abuser. Rather, advocates need to listen for power and control dynamics, but make sure that they are focusing on motivation and intent, not just tactics. Listen and ask questions about whether the behavior is a pattern. Try and assess whose life is narrowing. In other words, who is having their resources and support system taken away. Along these lines, try to determine who is making decisions in a relationship and what the dynamics are to making decisions. We know isolating a victim is a tactic that abusers use since cutting off a victim's support system makes them less likely to seek help, so this is an important thing to listen for. Accountability is another aspect to listen for, though this can be tricky. Victims are often more likely to take responsibility or blame themselves for an incident than abusers, who often see themselves as victims. A more obvious indicator may be fear. But because it's more obvious, it's important to tread carefully. Abusers trying to manipulate the system know that demonstrating fear is an effective strategy. When listening for these things, advocates can certainly ask for the context in order to determine how these dynamics are operating.

Language Access

All victims, regardless of whether they are able to read and write English fluently, must have meaningful access to victim services. Title VI prohibits recipients of federal funding from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. The United States Supreme Court has interpreted Title VI to require that an organization which receives federal funding must take steps to ensure that language barriers do not exclude Limited English Proficient (LEP) individuals from effective participation in its benefits and services. Title VI applies to any agency which receives federal funds directly or as a pass-through from state administrators. Therefore if any portion of an agency's funding comes directly from a federal grant or from pass-through funding (such as Federal FVPSA funds, VOCA funds, or VAWA funds passed through the Council for Women or the Governor's Crime Commission), Title VI applies to that advocate's agency. Title VI requires all recipients of federal

[5] The "start by believing" approach developed by Ending Violence Against Women International (EVAWI) began in the sexual assault movement, but has since then been adopted by the domestic violence movement. For more information, see: http://www.startbybelieving.org/

funding to take “reasonable steps” to ensure “meaningful” access to the information and services they provide.

Every local DV agency should develop clear language access policies and train all staff members on the procedures for interacting with a LEP individuals. At a minimum, all staff members should have access to a language line in order to communicate with LEP individuals. Using non-certified interpreters or staff members who do not speak that person’s language does not provide meaningful access to LEP individuals as staff members have no way to verify the accuracy of the interpretation. The DV agency should also not be using family (especially children) or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Staff members should be trained on the effective use of interpreters.

Local DV agencies that have bilingual/multilingual advocates are ideal since they can provide survivors with services directly. The agency needs to have clear policies in regards to bilingual/multilingual advocates not serving as interpreters for community partners. Not only are they not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. It is important that community partners understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Coordination with Community Partners

Advocates work closely with law enforcement, prosecutors, court officials, and other service providers to ensure that all victims receive appropriate and comprehensive services. Advocates who coordinate efforts with other responders are better able to support victims through the difficult legal process. A coordinated response among partners increases victims’ participation in court and their overall satisfaction with legal proceedings. DV agencies also facilitate the healing process following prosecution which is why it is helpful when the advocate has a clear understanding from prosecution regarding the results of the case and its impact on the victim. Coordination among community partners leads to many benefits for responders and victims including, greater trust from victims, increased victim empowerment, stronger legal cases, and comprehensive victim-centered services.

As the victim’s confidante, advocates often have access to information that has not been disclosed to other responders. Due to confidentiality requirements, advocates cannot discuss victim’s cases or share information without their voluntary written consent. However, if consent is granted, advocates can facilitate conversations or pass along information aligned with the victim’s wishes. Community partners play different roles, and often have specific responsibilities related to their profession. Regardless of their particular perspectives, community partners should treat each other with respect and professionalism. Learning about each other’s roles helps minimize misunderstandings, while also facilitating the overall coordination of services. Community task forces that meet on a regular basis provide a productive space for community partners to learn from one another, discuss gaps in services, and strategize solutions. Advocates often provide

organizational support for community task forces and ongoing trainings on DV dynamics for community partners.

Referrals

Advocates should refer clients to the resources and services suited to meet all their needs. DV agencies serve the whole person and thus must be able to address their varied needs. At times, this requires that agencies call upon resources beyond their usual referrals or those outside of the community (i.e. specialized mental health services, support groups for LGBTQ survivors). DV agencies should not only provide all survivors with equitable services, they should also refer clients to service providers that can do the same. These may include referring to specific individuals within certain organizations as well as developing relationships with culturally-specific agencies, faith-based organizations, and/or LGBTQ centers. This requires an understanding of services and their appropriateness for clients based on their specific needs and identities.

Connecting survivors to service providers has proven to be most successful when the advocate has built relationships with the responders, and thus can provide a "warm" referral. For example, rather than giving the survivor the District Attorney's business card or brochure, they connect the survivor directly to the Victim Witness Legal Assistant (VWLA) who will be assisting them. The collaborative process related to the specific case often continues if the victim decides to grant the advocate consent to discuss their case (or aspects of their case) with the VWLA or to be present for certain meetings. The same can be true of collaborative relationships with magistrates, law enforcement, and/or other community partners.

In turn, community partners should provide information to survivors on the services available to them at the local DV agency, including but not limited to shelter, assistance with DVPO filing, court advocacy, and the 24-hour hotline. A comprehensive understanding of the DV services will allow responders to better offer options to victims. This is particularly important for law enforcement and magistrates who encounter a large number of victims in crisis. Ideally, responders should facilitate a "warm" referral by connecting the survivor and the advocate directly via phone or in person. They should also have brochures, cards, and other handouts that they can discreetly provide to victims in English as well as in any of the languages predominantly spoken by survivors in their community.

Training

It is important that advocates and other DV agency staff be trained in:

- DV basics
- Trauma-informed advocacy
- Criminal/civil legal process
- Cultural humility and culturally responsive services
- Oppression and privilege

Training will allow the DV agency to be able to best serve their clients as well as provide DV trainings to their community partners. Advocates and DV agency staff can receive training through the NC Coalition Against Domestic Violence.

Law Enforcement

Law enforcement are committed to protecting and serving the public. As part of this responsibility, law enforcement will always be involved in responding to domestic violence (DV) calls. Therefore, it is critical that agencies develop clear policies which incorporate an understanding of North Carolina (NC) law and best practices for DV response.

Law Enforcement agencies should be committed to providing a timely and effective response to DV and achieving the following goals:

- Stopping the violence
- Protecting the victim from additional acts of violence committed by the offender
- Protecting children and other family members from exposure to, or possible injury from, DV
- Protecting the public
- Deterring the offender from committing continued acts of violence
- Rehabilitating the offender
- Creating a general deterrence in the community to acts of violence
- Upholding the legislative intent to treat DV as serious criminal conduct

Defining DV

Law enforcement policies should include a definition of DV. This definition should encompass all forms of DV, including those which are not criminal, and should be clear that it covers all victims, even those not covered by N.C.G.S. 50B such as same-sex dating partners who have not lived together. It is critical that law enforcement recognize DV as broader than criminal actions in order to effectively intervene and refer victims to local resources. In addition, the policies relating to how to respond to a DV call apply regardless of whether the victim and the defendant have a "personal relationship" as defined by N.C.G.S. 50B. However, NC is one of only two states in the country which continues to explicitly exclude victims in same-sex relationships from equal protection under the law. Therefore whenever possible, the best practice is to ensure that all victims are being given full access to resources and protection. Where a relationship status might affect law enforcement response, it is noted in this toolkit.

Dedicated Resources to DV Response

Where resources allow it, it is best practice for law enforcement agencies to have dedicated officer(s) assigned to conduct follow-up for all DV cases. As a result, those officers can obtain specialized DV training to better understand the dynamics of DV, conduct a thorough investigation after patrol's initial response, provide additional resources to victims, and work closely with the prosecutor's office to hold abusers accountable. In addition, it allows those officers to become familiar with repeat offenders.

NC Victim's Rights Act

The NC Victim's Rights Act (VRA) sets out requirements by law enforcement when interacting with victims. They are a bottom threshold, not a best practice. However, it is important that law enforcement understand their responsibilities under the VRA. Law enforcement should at a

minimum be complying with the VRA. It requires law enforcement agencies to:

- *(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:*
    - *(1) The availability of medical services, if needed.*
    - *(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.*
    - *(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.*
    - *(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.*
    - *(5) Information about an accused's opportunity for pretrial release.*
    - *(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.*
- *(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.*
- *(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.*
- *(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.*

The VRA applies to victims as defined by N.C.G.S. 15A-830. This definition includes victims of all A thru E felonies, and most F thru I felonies perpetrated by an abuser against a victim. It also includes specific misdemeanors (N.C.G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3) if the offense is committed between persons who have a personal relationship as defined in N.C.G.S. 50B-1(b). The result of this definition is that it excludes victims in same sex dating relationships who have not lived together as well as victims of certain crimes which are crimes committed by one intimate partner against another but for which the legislature did not list in the

VRA. Therefore, although the VRA may not require compliance in those situations, it is best practice to comply with the VRA for all DV victims regardless of whether they meet NC's legal definition.

Language Access

All victims, regardless of whether they are able to read and write English fluently, must have meaningful access to law enforcement. "*Federal law mandates that law enforcement agencies find ways to overcome language barriers. Under Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), police agencies that receive any federal assistance must take reasonable steps to ensure that their services are meaningfully accessible to those who do not speak English well. Not to do so could constitute national origin discrimination."* (Overcoming Language Barriers: Solutions for Law Enforcement, Vera Institute of Justice Publication, 2007).

Every law enforcement agency should develop clear language access policies and train all officers on the procedures for interacting with a Limited English Proficient (LEP) individuals. At a minimum, all officers should have access to a language line in order to communicate with LEP individuals. Using non-certified interpreters or officers who do not speak that person's language does not provide meaningful access to LEP individuals as law enforcement has no way to verify the accuracy of the interpretation. Law enforcement should also not be using family or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Law enforcement should be trained on the effective use of interpreters.

Community partners often turn to the local DV agency to provide interpretation, especially when the agency employs bilingual/multilingual advocates. It is important that community partners understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Not only are advocates not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Improving Response to DV- What Victims Need According to Victims

The National Domestic Violence Hotline conducted a survey in April 2015 of 637 women who were victims of intimate partner violence. The results showed that these victims also had many concerns about involving the police. Among victims who had involved the police, one in three said that they actually felt **less safe** after having done so. One in two said they felt there was no difference in the level of their safety, and one in five felt safer. These results tell us that our current responses are not effective in having victims feel better after calling for help, which is certainly law enforcement's goal in protecting and serving the public (Law Enforcement Survey Report).

However, the survey results also give law enforcement a direction forward on how to improve DV response. The victims of this survey said that the most helpful things police have done when responding to DV were:

- Provided information about options, including specific safety suggestions and referrals
- Provided tangible help like helping the victim get a protective order, transporting the victim to safety, or connecting the victim with an advocate
- Arresting or charging the abuser
- Believing the victim and validating that what had happened to them was a crime

The International Association of Chiefs of Police (IACP) recommends a comprehensive range of strategies that law enforcement officers should use when responding to DV calls which includes many of the same practices that victims said they need. Some of the IACP's recommendations include: enforcing protection orders, conducting lethality assessments, linking survivors to community resources like housing and transportation, providing information to survivors about their legal rights, and protecting children in the household (IACP Recommendations).

Providing Information about Options

As cited by both the IACP and survivors, among the most helpful responses from law enforcement is an explanation of options, including specific safety suggestions and referrals to additional resources. Ensuring that survivors know their rights and have access to help developing safety plans is key to empowering them.

In order to do this, law enforcement should be trained on the resources in their specific community. This includes not only how the victim can access the local DV service agency, but also what culturally-specific agencies are available in their community. Law enforcement should also have a basic understanding of options for victims such as filing for a Domestic Violence Protective Order (DVPO). It is critical that law enforcement give the victim accurate information about this process. For instance, some districts allow magistrates to hear requests and issue ex parte DVPOs, while others do not. This is one example of where it is essential that law enforcement understand the process in their county so that they do not send victims to the magistrate to file for a DVPO if that is not an option for them.

Law enforcement should work with local community partners in order to have cards, brochures, or other handouts on resources to provide victims.

Providing Tangible Help

Providing tangible help like helping the victim get a protective order, transporting the victim to safety, or connecting the victim with an advocate were among the most helpful responses of law enforcement.

Our legislature recognized the importance of law enforcement providing this tangible assistance to DV victims and specifically authorized it in N.C.G.S. 50B-5. Under that statute:

"A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law enforcement agency. The local law enforcement agency shall respond to the request for assistance as soon as practicable. The local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the complainant from harm and may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law enforcement officer may transport the complainant to appropriate facilities such as

hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

This statute makes it clear that law enforcement has the power to, and should provide victims with assistance such as transportation to shelter, medical care, magistrate's care, or counseling. In addition, law enforcement should assist victims in retrieving personal belongings from a residence. The statute also gives law enforcement wide discretion to "*take whatever steps are reasonably necessary to protect the complainant from harm.*"

Connecting the victim with an advocate has been shown to reduce the risk of revictimization. Dr. Jacqueline Campbell conducted research regarding risk and lethality in DV cases. She found that women who went to shelter were significantly less likely to experience re-assault than those who did not go to shelter. Based on her research, she also identified specific factors which indicate that a victim is at higher risk of being killed by their intimate partner. From her investigation and research, the Maryland Network Against DV developed an 11-question lethality screening tool and a Lethality Assessment Protocol (LAP). LAP is a collaboration between law enforcement and local DV agencies wherein law enforcement completes a lethality screen with a victim whenever there is a "manifestation of danger." If a victim screens in as "high risk" or is determined by the officer to be "high risk," then the officer calls the DV crisis line advocate immediately while on scene with the victim. Implementing the LAP has been shown to reduce the risk of homicide and has been named a "promising practice" by the United States Department of Justice in responding to DV. The Maryland Network provides free technical assistance and training for jurisdictions which wish to implement the LAP. Jurisdictions which are not currently implementing the LAP are encouraged to discuss the possibility with their local DV program and contact the Maryland Network (LAP info).

Arresting or Charging the Abuser

Victims repeatedly report that one of the most helpful things law enforcement did was to arrest the abuser. This is particularly true for abusers who are repeat offenders or commit violence resulting in injury. It often takes a great deal of courage for victims to call the police. Abusers tell victims that they will not be believed, that the victim will be arrested, and threaten them with more harm if they call the police. Therefore, it is critical that when law enforcement are called that officers take the time to conduct a thorough on-scene investigation to determine if they have probable cause to arrest the offender.

It is also important to conduct a thorough investigation in order to assist the prosecutor's office with evidence-based prosecution. Due to the dynamics of DV, officers should actually expect that by the time a criminal case gets to court, that the victim will no longer be participating in the prosecution of the offender. Victims face an incredible amount of barriers to participating in the prosecution. After law enforcement arrests an offender, abusers escalate their threats, manipulation, and exercises of power and control over victims in order to attempt to escape accountability for the criminal charge(s). Victims are often financially dependent on abusers, are fearful of what will happen to them if they participate in prosecution efforts, or simply cannot continue to repeatedly come to court hearings due to employment obligations, transportation and

childcare difficulties, and other barriers. For survivors from specific communities, there can be additional barriers, including but not limited to, a fear of being outed by LGBTQ survivors, a dependency on abusers as caretakers for people with disabilities, and a fear of deportation for survivors who are undocumented or whose abusers are undocumented. Because the majority of DV cases result in victims not participating or recanting, it is critical that law enforcement keep this in mind when responding to DV calls and collect all the evidence that is available. In this way, abusers will not succeed in skirting accountability because of their intimidation and manipulation of victims. Rather, law enforcement and the prosecutors' office will have the ability to hold abusers accountable with other evidence when appropriate.

When officers respond to DV they should always be conscious of officer safety and the safety of the parties while on scene. Where resources allow, at least two officers should respond to DV calls. After the parties are separated, law enforcement should conduct thorough interviews of the parties. It is important for law enforcement to take into consideration the fact that trauma impacts the way the brain stores and processes memories. This necessarily affects the ability to effectively conduct an interview with a victim who has just experienced a trauma. Therefore, it is critical that law enforcement receive training on trauma-informed interviewing techniques.

Based on the totality of the circumstances, officers on scene should be assessing whether there is probable cause that a DV crime occurred. Probable cause is when the totality of the circumstances leads the officer to have a reasonable belief that a DV crime has occurred. Oftentimes, officers unintentionally oversimplify DV cases or misunderstand their internal policies and believe that an arrest decision is based on the presence of injuries alone. However, applying this perspective leads to incredibly harmful results- both in arresting a party with injuries who was not the predominant aggressor as well as in failing to arrest a party even when there is probable cause simply because the victim did not have injuries. Therefore, it is important that law enforcement are trained correctly that they are assessing for more than injuries on scene. Factors law enforcement should consider include, but are not limited to:

- Statements of the parties
- Statements of witnesses
- Emotional and physical appearance of parties (crying, fearful, torn clothing, etc.)
- Appearance of the scene (overturned furniture, destroyed property, holes in the wall, etc.)
- Relative size of the parties
- Non-verbals of the parties
- History of DV between the parties
- Presence of any current/former DVPOs or 50Cs
- Electronic evidence such as texts, voicemails, social media messages, etc.
- Presence of injuries

Law enforcement should take all steps necessary to determine the predominant aggressor. It is not best practice to arrest both parties and only in rare cases are both parties truly mutually combative. When both parties are arrested, it almost always means that law enforcement has arrested a victim. The consequences of this are severe. Victims experience abusers warnings that officers won't believe them come true and they are left feeling that they can't turn to law enforcement for assistance. Victims also suffer severe collateral consequences as the result of being arrested, even when their charges are ultimately dismissed. The charge itself will remain on their record and can

impact their ability to secure employment and housing, both of which are critical if they are to leave an abusive partner.

A few measures law enforcement can take at a DV scene which will greatly improve the ability to proceed in criminal court when appropriate without the victim include:

- Taking pictures- of the parties, the scene, and any evidence
- Collecting evidence
- Making detailed reports regarding the parties appearances and statements
- Getting handwritten statements from the victim and offender as to what occurred
- Asking the victim who else they might have talked to before or after calling 911 (in order to identify other potential corroboration witnesses)
- Collecting any potential video/surveillance evidence if incident happened in public place

Taking pictures and collecting evidence on-scene is especially important. A picture is truly worth a thousand words and more accurately conveys any injuries or the state of a DV scene better than any testimony can. If officers do not have cameras, they should contact their sergeant or other personnel on duty who has access to a camera. In the event that an agency-issued camera is not available, if allowed by agency policy, officers should consider using a personal device to take the pictures and then transfer them to agency property such as email as soon as possible and delete them from their personal phone. While some officers are concerned about using their personal phone due to discovery requests, the UNC School of Government recently posted that they do not believe there is any real danger to using a personal phone to document evidence (UNC School of Government).

Law enforcement should respect the wishes of persons who do not wish to be photographed and never attempt to force or coerce persons into having injuries documented. Law enforcement should also be aware of cultural factors which may impact a victim's wishes to have injuries photographed. Particularly when injuries are on parts of the body typically concealed by clothing, officers should ask the person if they would feel more comfortable with an officer of a particular gender taking the photos.

In addition, officers should be sure to collect evidence while they are on scene. This includes electronic evidence. Electronic evidence such as emails, voicemails, social media posts, etc. are often either corroboration or the actual crime itself (such as in violations of DVPOs or stalking cases). Evidence apparent to officers should never be left on scene. Under the "plain view" doctrine, when police officers discover evidence of a crime in plain view, without the necessity of a search, they may seize the evidence without obtaining a search warrant. *State v. Young, 21 N.C. App. 369, 204 S.E.2d 556, cert. denied, 285 N.C. 595, 206 S.E.2d 867 (1974).*

An additional resource that first responders and supervisors can use to ensure that law enforcement conduct a thorough investigation on-scene is the International Association of Chief of Police's (IACP) Domestic Violence Report Review Checklist. According to the IACP, this tool was developed to "*ensure that reports capture significant and comprehensive details and the totality of crimes that occurred. The checklists can also be utilized by first-responders as a training tool to highlight the specifics needed in a thorough report, and as a resource for first-responders as*

they complete reports, interview victims, and reflect on whether pertinent information has been effectively documented."

Once an officer has established probable cause that a crime has occurred, they have authority to and should make a warrantless arrest. This is best practice because it holds the offender immediately accountable and does not leave the victim with the offender in potentially more danger. It also sends the message to the offender that law enforcement are going to proceed with charges rather than placing the burden on the victim to go to the magistrate's office. Law enforcement arrests also result in stronger cases for prosecution purposes.

The preference that law enforcement effectuate an arrest is also reflected by our statutes. N.C.G.S. 15A-401(b) outlines when law enforcement has authority to make a warrantless arrest. Our legislature specifically granted law enforcement the power to arrest DV offenders on-scene without a warrant when they have probable cause.

There are several circumstances in which a DV offender may be arrested without a warrant pursuant to this statute. Section (b)(2)(d) outlines specific charges that trigger this authority. According to (b)(2)(d), when law enforcement has probable cause that an offender has *committed a misdemeanor under N.C.G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1*, they have authority to make a warrantless arrest. This would apply for these offenses in all intimate partner violence cases except when the defendant and victim are in a same-sex dating relationship and haven't lived together.

However, in most circumstances, due to the nature of DV, law enforcement will still have authority under (b)(2)(b) to make a warrantless arrest when the offender and victim are either 1) in a same-sex dating relationship and haven't lived together or 2) the offender has committed some other misdemeanor crime not listed in (b)(2)(d) against their intimate partner. This is because (b)(2)(b) grants law enforcement the authority to arrest an offender for a misdemeanor committed outside of their presence when either 1) the offender "*will not be apprehended unless immediately arrested*", or 2) the offender "*may cause physical injury to himself or others, or damage to property unless immediately arrested.*"

Although the widely-accepted best practice among law enforcement is currently mandatory arrest once probable cause is established in DV cases, even when the victim does not wish for the offender to be arrested, it is important to note that there is growing concern about the effectiveness of the practice. There is some evidence to suggest that mandatory arrest practices differentially impact persons of color and unintentionally result in more victims being erroneously charged. Therefore, law enforcement agencies are also encouraged to explore alternative approaches to responding to DV offenses which take into consideration the negative impact of arrest on communities and instead intervene based on risk assessment.

One such alternative to traditional internal "mandatory arrest" policies is the High Point Focused Deterrence Model. This system uses a tiered approach to responding to DV offenders, classifying offenders based on their risk. First-time offenders are treated differently from a dangerous, chronic offender and are subjected to community intervention, rather than arrest. This approach not only

lessens collateral consequences of arrest in communities, but early research has shown it is effective in reducing recidivism as well. In the first three years of implementation, the focused deterrence model resulted in re-offense rates of only 14% across over 1,200 offenders compared to a typical re-offense rate of 30-40% for intimate partner violence offenders.

Believing the Victim and Validating Them

Law enforcement can improve responses to DV victims and thereby increase their safety and that of the community by simply listening more to victims and validating their experience. End Violence Against Women International (EVAWI) is working with law enforcement agencies and jurisdictions across the country to adopt "Start by Believing", a public awareness campaign designed by EVAWI to change the way communities respond to rape and sexual assault. It has also been used to change the way law enforcement responds to DV. Arizona was the first state to become a "Start By Believing" state in 2014 when the state legislature passed a resolution. At its core, the program encourages a trauma-informed approach to policing.

The effects of trauma can often leave DV victims in a worse position than their offender when trying to interact with law enforcement immediately after an incident. DV victims, like sexual assault victims, are often doubted or blamed. These negative responses have a number of harmful effects. They also decrease the chance that victims will report the crime and reach out for help in the future.

The campaign has developed a Law Enforcement Action Kit. In it they state: *[F]or those working in the criminal justice system, some have questioned whether it is appropriate to make the pledge in a professional capacity. We believe it is perfectly appropriate, and in fact, it is the starting point for a fair and thorough investigation. First, it is important to clarify that this does not necessarily mean saying the exact words, "I believe you." Many law enforcement professionals use phrases like, "I'm sorry this happened to you." The important issue is not the exact words that are used, but the fact that victims are treated with compassion and respect, and their reports are handled professionally and fairly – instead of communicating the message that they are not believed. This undermines the ability of law enforcement to conduct an effective interview, which then limits the chance of successfully investigating the report.*"

Bond/Pretrial Release Hearings

Pretrial release for DV offenders is governed by N.C.G.S. 15A-534.1. The NC legislature has recognized that DV crimes require enhanced attention at the pretrial stage due to the intimate nature of the crime, the danger of harm to the victim, the increased likelihood of intimidation of the witness, and the need for a period of time for the victim to be able to make a safety plan while the defendant is in jail.

Law enforcement often have information regarding the dangerousness of the offender and the victim's safety which should be used when a magistrate or judge is setting an offender's bond and pretrial release conditions. Therefore, whenever possible, law enforcement involved in the investigation and arrest of the offender should convey to the magistrate and/or prosecutor's office:

- Copy of the police report from the incident
- Criminal record of the offender

- Any lethality assessment which may have been conducted on-scene
- Information from the victim regarding their desire for certain pretrial release conditions

Violations of Pretrial Release Conditions

NC law grants law enforcement the authority to make a warrantless arrest of an offender where law enforcement has probable cause to believe they are violating a condition of pretrial release (N.C.G.S. 15A-401(b)(2)(f)). Law enforcement should be particularly vigilant for offenders who have pending DV charges against them as most will violate the "no contact" provision in order to interfere with the victim.

There are several ways in which law enforcement may gain probable cause that an offender is violating the terms of their release conditions. In some jurisdictions, clerks are entering pretrial release conditions of DV offenders into NCAWARE. This allows law enforcement to access their conditions 24 hours a day, 7 days a week. If law enforcement cannot verify the pretrial release conditions in NCAWARE, they can call the clerk's office or prosecutor's office during regular business hours. In addition, the victim may be aware of the release conditions. Finally, if in the particular jurisdiction it is standard to always have a "no contact" provision in DV cases, this alone may give rise to a "reasonable belief" that the offender violated pretrial release conditions.

Upon a warrantless arrest, law enforcement should bring an offender before a magistrate for their bond to be revoked. Violation of pretrial release conditions is not a new charge. Rather, the consequence is that the offender's prior bond on the pending charge will be revoked and the offender will go back in custody on the same pending charge, but with a new bond and pretrial release conditions set.

However, law enforcement should evaluate whether there are criminal charges that may be appropriate in addition to a revocation of the prior bond. One common charge which may be appropriate includes felony stalking. Felony stalking occurs when an offender stalks someone in violation of a court order, such as a pretrial release order (N.C.G.S. 14-277.3A(d)).

Enforcing DVPOs

One of the safety tools that law enforcement and other DV professionals frequently recommend for DV victims is to obtain a DVPO. However, the DVPO is only as good as the enforcement of it. Therefore, it is necessary for law enforcement to take any violation of a DVPO seriously and enforce the provisions.

Under NC law, when an officer has probable cause that an offender has willfully violated a DVPO, this is the only time when law enforcement does not have discretion whether or not to make an arrest. According to N.C.G.S. 50B-4.1(b), *A law enforcement officer **shall arrest** and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9)* (emphasis added).

N.C.G.S. 50B-3(a)(9) includes the comprehensive provisions of preventing an offender from *1). Threatening, abusing, or following the other party. 2). Harassing the other party, including by*

telephone, visiting the home or workplace, or other means. 3). Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household. 4). Otherwise interfering with the other party. Given that this section includes the broad language of "otherwise interfering with the other party," most violations of a DVPO will initiate the mandatory arrest provision.

Law enforcement has the authority to make an arrest with or without a warrant. Therefore, if the offender is on scene and an officer has probable cause, they should immediately make a warrantless arrest. If an officer has probable cause and the offender is not on scene, under the statute law enforcement has an obligation to charge the offender. Law enforcement should go to the magistrate's office and apply for a warrant themselves. Telling the victim to do so instead is not good practice.

In addition to prioritizing the enforcement of DVPOs, law enforcement should not attempt to charge a DV victim with "aid and abet a violation of a DVPO." This is not a valid charge. Even when it appears that the victim may be consenting to the contact by the offender, there are often dynamics of power and control behind what appears to be consensual contact. Further, the offender is notified by the DVPO that the victim cannot give them permission to violate the order. It may be natural to feel frustrated when observing what appears to be victims consenting to contact when they have a DVPO, but the remedy is not to charge them with aiding and abetting a violation of a DVPO as this is not a legally sufficient charge (NC Justice Academy's 2017 DV In-Service and the UNC School of Government's Blog Post Please Don't Charge the Victim). The IACP also has recognized it as against best practice to try to arrest victims for violating their own protective orders and adopted a resolution in 2012 opposing the arrest of petitioners for violations of their own protective orders (Resolution).

Recanting Victims

Due to the dynamics of DV, including oftentimes fear and intimidation by the perpetrator, law enforcement should expect that throughout the process of prosecuting a DV case the vast majority of victims will not or cannot participate in the prosecution of the offender. In addition to integrating this knowledge into ensuring thorough on-scene investigations to assist in building an evidence-based prosecution practice, it is imperative that law enforcement take care not to re-victimize victims who do not participate in the prosecution. Law enforcement should not charge victims who recant with perjury or filing a false police report. It is understandable that law enforcement may be frustrated when victims recant. However, this frustration comes from the fact that law enforcement almost always believes that the victim's original report was true. Therefore, law enforcement will generally not even have probable cause for filing a false police report since law enforcement actually believes the original report was accurate.

Charging victims only serves to deter victims from turning to the justice system for assistance. In addition, they ruin a victim's credibility for future actions against perpetrators. They re-victimize victims who are only in the criminal justice system because of victimization at the hands of a perpetrator. The victim may not have even been the person to call for assistance to begin with; and even if they did, they were calling because they needed emergency assistance, not because they were seeking criminal prosecution against the offender. It is important that law enforcement approach DV cases differently than other crimes and keep in mind the goal of keeping the victim

safe. Ultimately if the criminal justice system leaves victims feeling more victimized, the system will fail in its overall goal.

Removing Firearms

When DV offenders have access to firearms, the risk to victims of being killed is magnified. Abusers use firearms as their primary method when committing intimate partner homicide. Between 2004 and 2014 there were 274 homicide-suicides in NC, two-thirds of which were intimate partner violence. In 98% of them, a gun was used in at least one of the deaths, and in 84% it was used exclusively. Research has shown that the removal of firearms from abusers lowers the rate of intimate partner homicide.

Unfortunately as of November 2015 with the decision in US v. Vinson, the Federal Lautenberg Amendment prohibiting those convicted of misdemeanor crimes of DV from possessing a firearm is no longer in effect in NC. However, law enforcement should prioritize the removal of firearms when a DV offender is subject to a prohibition under a protective order.

There are several circumstances in which an offender may lose rights to possess a firearm or be ordered to surrender a firearm. NC District Court Judges have the authority to order any offender subject to a DVPO to not purchase a firearm. In addition, if a judge finds a "high-risk" factor, a judge may also order the offender to surrender any firearms, ammunition, and permits and not to possess these.

Sheriffs' Departments are charged with the responsibility of serving DVPOs and therefore initially enforcing the "surrender firearm" provision. A DVPO is not a search warrant and therefore if upon service of a DVPO law enforcement instructs an offender to surrender firearms, ammunition, and permits and they deny having any, law enforcement may not search the offender, car, or premises for these items based on the DVPO alone. However, law enforcement should not stop at an offender's denial of owning firearms, ammunition, and permits. It is particularly concerning for victim safety when an offender is ordered to surrender these and refuses to do so. Therefore, it is best practice for law enforcement to apply for a search warrant and return to search for these items. In considering information to include in the search warrant application, law enforcement can rely on factors to include, but not limited to: 1) the information contained in the complaint and/or order of the DVPO regarding the offender's possession of firearms, 2) follow-up with the victim to gain more specificity than what is contained in the DVPO regarding their knowledge of firearms and location, 3) databases which document that the abuser has a pistol permit or carry conceal weapon permit, 4) interactions with the offender.

After obtaining a search warrant and returning to search, upon finding any of these items, law enforcement should both take these items and should arrest the offender for felony violation of a DVPO under N.C.G.S. 50B-3.1(j) and N.C.G.S. 14-269.8. The process of obtaining a search warrant is not limited to Sheriff's Departments. While it is best practice for this to be done upon service of the DVPO ordering surrender of firearms, any law enforcement officer who has probable cause to believe an offender possesses these items in violation of a DVPO can and should apply for a search warrant, serve it, and arrest the offender when appropriate.

Even if the DVPO does not specifically order the offender to surrender firearms, under Federal

law they may be subject to a prohibition of possessing them. 18 U.S.C. § 922(g)(8)) makes it illegal for a Defendant subject to a DVPO to possess a firearm regardless of whether the NC Court has ordered the surrender of firearms. This applies only to final/permanent orders (not Ex Parte orders). It also only applies to offenders who have the following relationship with the victim: 1) Spouse/former spouse, 2) Cohabitated in a romantic/sexual relationship, or 3) Has/had a child in common (Protection Orders & Federal Firearm Prohibitions). Local law enforcement should know who their federal field office agent is in their county and partner with Federal law enforcement to enforce this provision.

Use of Force

Every DV call is unique and potentially volatile and should be approached carefully. It is best practice to have at least two officers respond to DV calls for officer coverage, to secure the scene, and to be able to effectively separate the parties and reduce the chance for escalation on scene.

Both victims and offenders may be agitated at a DV scene. It is critical for law enforcement to have training on how to de-escalate these situations without the use of force whenever possible. Officers should also receive regular and updated training on the use of force in policing. Specifically, law enforcement agencies should revisit their use of force policies to ensure that they are in accordance with the January 2016 decision from the 4th Circuit Court of Appeals in *Estate of Armstrong v. Village of Pinehurst*. According to the decision in Armstrong, a law enforcement officer may no longer use "injurious force," like a taser, OC spray, or baton, unless an objectively reasonable officer would conclude that there was an immediate danger to the officer or others. Physical resistance alone is not the same as an immediate danger to an officer. The Court specifically said that physical resistance to an officer's manipulations of a person's body, erratic behavior, and mental illness alone, do not arise to the level of an immediate danger to officers. *Armstrong v. Village of Pinehurst*, 810 F.3d 892,896-898 (2016). Given this new ruling, agency policies may need to be revised and officers given updated training on the new use of force policy.

Policing Immigrant Communities

In January of 2017, President Trump issued "Executive Order: Enhancing Public Safety in the Interior of the United States." This Executive Order has had a negative impact on DV survivors and their families. "*This order begins with the sweeping and unsupported premise that 'many' immigrants who 'overstay or otherwise violate the terms of their visas present a significant threat to security and public safety.' It is important to note that each year, thousands of undocumented immigrant survivors of violence are ultimately granted permission to remain in the United States under long-standing statutes passed by Congress with bi-partisan support, because they have assisted in the investigation and prosecution of a crime committed against them. In fact, these undocumented [persons] help to expose dangerous criminals in our communities. In addition, some survivors' loss of legal status is directly related to the violence they face, as abusive U.S. citizen or lawful permanent resident spouses refuse to file the required petitions. Proposing measures as this order does that will deter community collaboration with policing efforts will make all Americans, and all victims of violence, less safe*." (Summary of Jan. 25 & 27, 2017 Executive Actions: Possible Impacts on Survivors of Domestic and Sexual Violence, Tahirih Justice Center, Feb 2, 2017).

The IACP also issued a statement in opposition to Trump's executive order. The IACP said: "*There have also been recent reports that the Trump Administration is considering using state and local law enforcement agencies in the apprehension and removal of illegal aliens in the United States. To be clear, President Trump's January 25th Executive Order (Enhancing Public Safety in the Interior of the United States) only directs the Secretary of Homeland Security to use his existing authority under Section 287(g) of the Immigration and Nationality Act to enter into* ***voluntary agreements*** *with state and local agencies to perform immigration enforcement duties… [T]he IACP has, and will continue to strongly oppose any initiative that would* ***mandate*** *that state and local law enforcement agencies play a role in the enforcement of federal immigration law."* (IACP statement, January 30, 2017)

"All victims of domestic and sexual violence, as well as trafficking, must feel safe in calling 911 to seek protection from local police, no matter what their immigration status, in order to prevent victimization and stop perpetrators. The order dangerously requires that local law enforcement engage in immigration enforcement, which can only lead to more unreported crimes of violence against all members of our communities, including immigrant [domestic violence victims] and other vulnerable populations." (Tahirih Justice Center)

"Immigrant [victims] who are being abused, trafficked, or assaulted are not likely to seek out the protection of their local police station or call 911 if they are concerned that they might be deported for doing so. Survivors and their children would therefore be unlikely to get help preventing further violence and will be much more vulnerable to abuse and exploitation." (Tahirih Justice Center).

For these reasons, it is best practice that law enforcement agencies do not enter into voluntary agreements with Homeland Security. Local law enforcement should not be serving as immigration officials, being directly involved in the apprehension and removal of residents who are not in the country legally, as it undermines the ability of law enforcement to protect and serve the communities they police in.

U-Visa Certifications

According to the Department of Homeland Security, U-visas not only help protect victims of crime, but are also key tools for law enforcement and prosecutors in their work. Lack of legal immigration status in the US may be among the reasons some victims choose to not come forward to work with law enforcement. Perpetrators and human traffickers use victims' lack of legal status as leverage to exploit and control them. By stabilizing their status in the US, immigration relief can be critical to providing victims of crime a greater sense of security and make it easier for them to assist with law enforcement and prosecutorial efforts. U & T Visa Law Enforcement Resource Guide

In order to qualify for the U and T-Visa, the victim must prove to US Citizenship and Immigration Services (USCIS) that they cooperated with the investigation or prosecution of the offender. One of the primary ways that a victim may demonstrate cooperation is by submitting a signed statement from law enforcement as part of the application. In the U-visa context, this statement is a required part of the petition and is known as *USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification* (Form I-918B or certification). Because these signed statements from law enforcement are such critical pieces of U and T visa applications, victims may approach law

enforcement offices to request that they certify their cooperation.

Law enforcement may certify a U-visa based on **past, present, or the likelihood of future helpfulness of a victim**. A current investigation, the filing of charges, a prosecution or conviction is **not** required to sign the certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. There is no statute of limitations on signing the certification- one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case.

Obtaining the certification is just one step in the process. The role of the law enforcement office is to provide objective information as to the cooperativeness of the victim. USCIS has the sole authority to grant or deny a U-visa. The certification does not guarantee that the U-visa petition will be approved by USCIS.

DV Perpetrated by Law Enforcement

Like all communities, the law enforcement community is not immune to perpetrating DV. The IACP published a recommended policy for DV committed by police officers in 2003. This policy should be a minimum threshold of what law enforcement agencies adopt when responding to DV within their ranks (IACP Model Policy). Some key excerpts from that model policy follow:

"It is imperative to the integrity of the profession of policing and the sense of trust communities have in their local law enforcement agencies that leaders, through the adoption of clear policies, make a definitive statement that domestic violence will not be tolerated."

"While prioritizing the safety of victims, this policy is designed to address prevention through hiring and training practices, provide direction to supervisors for intervention when warning signs of domestic violence are evident, institutionalize a structured response to reported incidents of domestic violence involving officers, and offer direction for conducting the subsequent administrative and criminal investigations. Components of the policy include: A) Prevention and Training B) Early Warning and Intervention C) Incident Response Protocols D) Victim Safety and Protection E) Post-Incident Administrative and Criminal Decisions."

The IACP policy recommends thorough screening protocols during the hiring process. "*Those candidates with a history of perpetrating violence (to include: elder abuse, child abuse, sexual assault, stalking, or domestic violence) should be screened out at this point in the hiring process. Departments should strongly consider a no-hire decision in the case of a candidate with tendencies indicative of abusive behavior."*

"A disclosure on the part of any officer, intimate partner or family member to any member of the department that an officer has personally engaged in domestic violence will be treated as an admission or report of a crime and shall be investigated both administratively and criminally."

"Departments shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case,

the department shall uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable. The department will adhere to and observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations."

It is recommended that agencies adopt more stringent response policies than some of the recommendations in the 2003 IACP policy. The law enforcement and DV community have learned a great deal over the last 15 years about the potential lethality of abusers, particularly offenders subject to protective orders or those who have access to firearms. It is recommended that any officer who is subject to a DVPO not be allowed to have a firearm under any circumstance.

In addition, it is critical that agencies conduct a parallel administrative investigation as recommended by the IACP policy. Disciplinary actions should not be dependent on the outcome of criminal investigations as criminal adjudications can be extremely lengthy and there are enormous barriers to victims participating in the criminal process and prosecutors proving cases beyond a reasonable doubt.

Whenever possible, agencies should involve the victim in administrative investigation and disciplinary decisions. Law enforcement agencies should take into consideration the victim's expressed wishes for the outcome of the investigation when determining disciplinary action. Even upon a finding of an officer having committed an act of DV, termination may not be the best recourse as victims may inform the agency that they are financially dependent upon their partner or that they are concerned that termination would escalate the danger that they are put in by their partner. However, agencies must also consider the appropriateness of the officer's assignment as it is not appropriate for an officer who has committed acts of DV to be responsible for investigating or overseeing the investigation of DV incidents in the community.

DV Training

It is important that law enforcement receive ongoing specialized DV training related to topics such as the dynamics of DV, best practices for on-scene response and investigation, the impact of trauma, and DV laws. This will allow them to be best positioned to intervene safely with DV victims and hold abusers accountable. Local DV agencies often provide trainings to their community partners. In addition, the NC Conference of District Attorneys employs a Violence Against Women Resource Prosecutor and often offers trainings for law enforcement. The North Carolina Justice Academy also offers courses in DV in addition to the mandatory DV in-service training every other year. It is recommended that agencies require officers to attend the DV in-service topic in person, rather than online. Law enforcement can also receive training through the NC Coalition Against Domestic Violence.

Equity Training

"Across racial, ethnic, and linguistic differences, women of color and Native American women bear the overwhelming and disproportionate burden of violence. Survivors of color report barriers to accessing services and experience severe acts of violence at the hands of partners. When women of color reach out for help and support, it is vital that they are met with culturally relevant

support." (Life at the Margins: Expanding Intimate Partner Services for Women of Color Using Data as Evidence, Women of Color Network, Inc. June 2017).

"Studies have shown that women of color face more, and more severe domestic violence. Black women are more likely than white women to be murdered by a partner. Approximately 4 out of every 10 non-Hispanic Black women, 4 out of every 10 American Indian or Alaska Native women, and 1 in 2 multiracial non-Hispanic women (53.8%) have been the victim of rape, physical violence, and/or stalking by an intimate partner in their lifetime. Advocates and policy makers must attend to the varying experiences of women, and specifically the differences among women of color, when considering programming and policies that impact survivors of domestic violence." (Life at the Margins).

Juxtaposed with higher rates of experiencing violence, communities of color also have less trust in the criminal justice system. A June 2017 Gallop Poll found that the percentage of Americans with positive views of police was 61% of whites and 39% of non-whites. However, only 30% of African-Americans and 45% of Hispanic-Americans surveyed had confidence that police officers would treat them fairly. This distrust of law enforcement creates a barrier for communities of color in utilizing law enforcement to intervene in DV.

The Pew Center conducted a survey between May and August of 2016 of nearly 8,000 policewomen and men from departments with at least 100 officers. One of the key findings of the survey was that *"virtually all white officers (92%) but only 29% of their black colleagues say that the country has made the changes needed to assure equal rights for blacks. Not only do the views of white officers differ from those of their black colleagues, but they stand far apart from those of whites overall: 57% of all white adults say no more changes are needed, as measured in the Center's survey of the general public."*

The Pew Center survey of officers also reported that *"striking differences emerge when the focus shifts to police relations with racial and ethnic minorities. A consistently smaller share of black officers than their white or Hispanic colleagues say the police have a positive relationship with minorities in the community they serve. Roughly a third of all black officers (32%) characterize relations with blacks in their community as either excellent or good, while majorities of white and Hispanic officers (60% for both) offer a positive assessment."*

In order to be most effective in responding to DV, it is imperative that law enforcement understand the various factors that may significantly impact police and community relations. Law enforcement should receive regular training on issues of equity such as implicit bias and historical trauma and attend dismantling racism trainings. It is also recommended that agencies require these trainings to be completed in person rather than through online forums.

In addition to training on issues of racial equity, law enforcement agencies should receive training on and take steps to prevent gender bias in responding to DV. Gender bias is a form of discrimination which *"may result in LEOs [Law Enforcement Officers] providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm a particular gender or offering less robust services due to a reliance on gender stereotypes."* The Department of Justice announced new Guidance in December 2015 designed to help law

enforcement agencies prevent gender bias in their response to intimate partner violence, focusing on the need for clear policies, robust training, and responsive accountability systems.

District Attorney's Office

The office of the prosecuting attorney should recognize that domestic violence (DV) is a crime that differs from other crimes because of the intimate relationship between the victim and the offender. Therefore, the successful prosecution of DV cases requires tailored techniques designed to prosecute the offender, protect the victim from retaliation, allay the victim's fears of the criminal justice system, and encourage a victim's participation with the prosecution of the offender.

The Prosecutor's Office should be committed to providing a timely and effective response to DV and achieving the following goals:

- Stopping the violence
- Protecting the victim from additional acts of violence committed by the offender
- Protecting children and other family members from exposure to, or possible injury from, DV
- Protecting the public
- Deterring the offender from committing continued acts of violence
- Obtaining restitution for the victim
- Rehabilitating the offender
- Creating a general deterrence in the community to acts of violence
- Upholding the legislative intent to treat DV as serious criminal conduct

Dedicated Resources to DV Prosecution

Where resources allow it, it is best practice to have dedicated prosecutor(s) assigned to DV cases. In this way those prosecutors can obtain specialized DV training to better understand the dynamics of DV, how those impact prosecution, and specific tools for effective DV prosecution. In addition, it allows prosecutor(s) to become familiar with repeat offenders.

Further, it is best to have a dedicated courtroom or court session(s) for DV cases so that these cases can be given adequate attention and so that specialized judges can also preside.

Coordination with Law Enforcement

The Prosecutors' Office should work closely with law enforcement to 1) provide support, training, and technical assistance, 2) enhance the evidence collection process, and 3) ultimately improve the outcome of cases. It is the responsibility of local law enforcement to initiate charges when a crime has occurred. Additionally, as the investigative process continues, law enforcement may increase charges as further evidence is discovered and probable cause is established.

Before dismissing cases, prosecutors should evaluate cases and communicate with investigators to determine if further evidence can be obtained to support the charges. If further evidence is not available, the prosecution should give law enforcement and victims an explanation for the decision to dismiss the case.

Role of Victim Witness Legal Assistant (VWLA)

Depending on the jurisdiction, VWLAs have varying degrees of interaction with victims. VWLAs serve a critical role of both assisting prosecutors in case preparation as well as providing support, information, and community resources to DV victims. Therefore, it is important that VWLAs are

trained in DV dynamics, trauma, and cultural responsiveness in order to be able to provide trauma-informed support for victims. Local DV agencies often provide trainings to their community partners. VWLAs can also receive training through the NC Coalition Against Domestic Violence.

Bond/Pretrial Release Hearings

Pretrial release for DV offenders is governed by N.C.G.S. 15A-534.1. The North Carolina (NC) legislature has recognized that DV crimes require enhanced attention at the pretrial stage due to the intimate nature of the crime, the danger of harm to the victim, the increased likelihood of intimidation of the witness, and the need for a period of time for the victim to be able to make a safety plan while the defendant is in jail.

When a defendant is held without a bond long enough for a district or superior court judge to set the pretrial release conditions, it is imperative that the prosecutor's office take the opportunity to provide informed input into the pretrial release conditions. Prosecutors' offices should establish a process for obtaining the names of those DV offenders on the first appearance list from the clerk's and/or magistrate's office with sufficient advance notice in order to prepare for first appearances. With adequate resources, prior to the first appearance, prosecutors would:

- Obtain a copy of the criminal process
- Run a criminal history on the defendant, including whether there are any pending charges
- Obtain the police report from the incident
- Attempt to contact the victim for input on the incident and the pretrial release conditions (can be relayed by advocate with victim's permission)
- Check for current/past DVPOs against the defendant
- Review any lethality assessment which may have been conducted on-scene by law enforcement with the victim
- Use this information to make bond and pretrial release condition recommendations

Each district has recommended bond guidelines for various levels of crimes (misdemeanors, low level felonies, etc.). Although these are helpful guides, prosecutors should take into account additional factors when making a recommendation for bond in DV cases which might warrant recommending a bond outside the guidelines. These might include, but not be limited to:

- Lethality factors such as
    - Use of or threatened use of weapons
    - Active DVPOs
    - Victim in the process of leaving or has left
    - Threats of suicide
    - Reported stalking behavior
    - Victim believes defendant might try to kill them
    - Strangulation
    - Access to firearms
    - Defendant unemployed
- Seriousness of charges
- Offender history
- Victim input specific to offender (can be relayed by advocate with victim's permission)

- Law enforcement input specific to offender
- Defendant's new charge violates a current pretrial release order and/or DVPO with the same victim

In addition, prosecutors should evaluate the case to determine if the crime was undercharged and a higher bond might be warranted based on the facts supporting a felony rather than a misdemeanor (i.e. defendant charged with Assault on a Female, an A1 misdemeanor, but defendant has two prior convictions within 15 years and caused the victim injury, so the crime is more correctly akin to habitual misdemeanor assault, so a bond for a class H felony is appropriate).

However, prosecutors should also be thoughtful about how our current bond system can be a proxy for incarcerating poor people rather than dangerous people, and allowing wealthy dangerous people to still bond out. Therefore prosecutors should carefully weigh whether a higher bond is actually necessary for the safety of the victim and community or whether more tailored pretrial release conditions are the most appropriate remedy for keeping the victim safe.

Unless a victim requests otherwise, every DV case should include no contact provisions. Districts should be utilizing the Administrative Office of the Courts AOC-CR-630 Form *"Conditions of Release for a Person Charged with Domestic Violence."* This form provides specificity with regards to prohibitions for the defendant beyond just "no contact." In addition, NCAWARE uses this form for entry of pretrial release conditions. Therefore if districts use the AOC-CR-630 form and clerks enter the conditions into NCAWARE, it will facilitate the ability of law enforcement to make warrantless arrests for violations of pretrial release conditions.

The defendant should be provided a copy of this form along with the general AOC-CR-200 *Conditions of Release* form. The District Attorney's Office should mail a copy of the release conditions to the victim so that they are aware that of the conditions that the defendant is under and are empowered to enforce them if the defendant violates them.

On the occasion when victims request to have contact with the offender against the typical wishes of the State, it is best practice to typically discuss this request with the victim to see what the victim's goal is and see how the State can support the victim. Sometimes the victim may have a need that can be met some other way than allowing for open-ended contact between the defendant and the victim. However, a trauma-informed empowerment perspective to DV prosecution supports victims' choices to have contact with the defendant. It also embraces the reality that even if the State insists on a "no contact" order, that if the victim and defendant wish to have contact, they will do so despite a "no contact" order. Beginning a criminal prosecution by having conflict with the victim rather than supporting the victim is certain to make it more difficult to gain their trust and encourage them to participate with the State in prosecution. Therefore, it is best practice when victims ask for contact to support them by letting the court know it is the victim's desire to have contact with the defendant, and then to provide the victim with community resources for safety planning.

Violations of Pretrial Release Conditions

Prosecutors should be particularly vigilant for offenders who have pending DV charges against a victim and who violate the conditions of their release. Violation of a court order is a lethality factor

and therefore should be taken into consideration when recommending bond to the court.

In addition, when an offender commits a new offense against a victim in violation of current pretrial release conditions, prosecutors should take steps to not only have the bond in the current offense reflect the offender's dangerousness, but to violate the offender on the prior pretrial release conditions. To not do so sends the message to offenders and victims that pretrial release conditions hold no true weight and will not be enforced. Setting bond conditions on a new charge is not equivalent to revoking the bond conditions on a prior charge and setting new conditions, as they are two separate offenses.

If the defendant is unrepresented in the original pending matter, then the prosecutor's office should pull the pending matter to have the bond revocation heard simultaneously at the defendant's first appearance. If the defendant is represented in the original pending matter, then the prosecutor's office must contact the defendant's counsel to set the matter for a bond revocation hearing as soon as practicable.

<u>NC Victim's Rights Act</u>
The NC Victim's Rights Act (VRA) sets out the minimum the standards by which prosecutors' offices should interact with and involve victims in the criminal justice process. They are a bottom threshold, not a best practice. However, it is important that prosecutors understand their responsibilities under the VRA. VWLAs and/or prosecutors should, at a minimum, be contacting victims in compliance with the VRA. It requires District Attorney's Offices to:

- *(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:*
    - *(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.*
    - *(2) The responsibilities of the district attorney's office under this Article.*
    - *(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.*
    - *(4) The steps generally taken by the district attorney's office when prosecuting a felony case.*
    - *(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.*
    - *(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.*
- *(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and post-trial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may*

alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

- *(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.*
- *(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.*
- *(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.*
- *(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.*
- *(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The clerk of superior court shall include the form with the final judgment and commitment, or judgment-suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.*

The VRA implies that prosecutors' offices only need to inform victims of court proceedings that the victim has elected to receive notice of. However, unless the prosecutor's office has received a form from the victim specifically requesting to not receive notices, the prosecutor's office should continue to try to notify victims of all court proceedings as there are multiple barriers to victims receiving and returning such forms.

In order to keep victims up to date with court dates, disposition, etc. it is important to try to obtain the best and current contact information for victims. Due to the nature of DV, victims contact information is often in flux and not always safe. Therefore when contacting victims, it is best to ask them for multiple ways to reach them, how they prefer to be contacted (including over email, social media, etc.), and what methods and times are safe. After obtaining the victim's permission, advocates may share this information with the prosecutor and/or VWLA.

VWLAs and/or prosecutors should involve victims in all stages of the criminal justice process asking for their input on matters relating to the offender's case such as:

- Pretrial release conditions, both original and any proposed modifications
- The scheduling of court dates, checking with the victim regarding their availability
- Explanation of the court process (continuances, plea negotiation process, trial, appeals process, etc.)
- Explanation of how trials work (openings, testimony, cross examination, objections, closings, etc.)

- If the case is for trial, meet with the victim to conduct trial prep (review direct examination questions, prepare for likely cross, etc.)
- The victim's wishes for the disposition of the case, including but not limited to:

    - Dismissal
    - Deferred prosecution
    - Prayer for judgment
    - Unsupervised or supervised probation
    - Length of probation
    - Probation conditions
    - Restitution
    - Active time
    - No contact provisions
    - Conditions of sentence such as, but not limited to:
        - Certified abuser treatment
        - Mental health assessment and treatment
        - Substance abuse assessment and treatment
        - Recommendation for drug treatment court or other specialty courts
        - Enhanced monitoring such as EHA

The VRA provides that victims have a right to confer with the attorney prosecuting the case about the disposition of the case. Specifically, the statute states that *"prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs."* The best practice is to provide victims with time outside of court to discuss the case with the prosecuting attorney. This can be in person, over the phone, or even in an email exchange. However, during a court session typically does not allow either the prosecutor or the victim with sufficient time to explain, ask, or answer questions. Therefore, it is important that prosecutors attempt to reach the victim outside of court to discuss the case, what they would like to see happen with the disposition, and the prosecutor's likely disposition.

While the prosecutor and victim often time may not be on the same page about the disposition of the case, the prosecutor should always give the victim space to voice what they want to see happen. Prosecutors should seriously consider what the victims are asking to have happen with the case in that victims know their situation and the offender better than anyone else and prosecutors should try to see if there is any part of what the victim is asking for that they can incorporate. For instance, if the victim wants the case dismissed, prosecutors can evaluate the case to see if a deferred prosecution might be appropriate rather than an outright dismissal. If the victim simply doesn't want to testify, the prosecutor can validate the victim's wishes and talk to the victim about how the prosecutor can proceed with an evidence-based prosecution or about whether the victim would feel more comfortable participating if the prosecutor's initial direct examination questions asked the victim if they were only there because they were subpoenaed and that they didn't actually want to be there. In the circumstance that the victim wants the prosecutor to zealously prosecute the offender and pursue a sentence that is unlikely to be obtained from a judge after a trial, the prosecutor can take the time to explain the sentencing charts and the strength of the case to the

victim. They should also ask the victim what their goals are and if there are ways to achieve those goals with other plea offers. At the end of the day, the most important part of involving the victim in the disposition is taking the time to really listen to the victim, explain the court process, and thoroughly explain why the prosecutor is going to make the offer or proceed with the case in a particular manner. Victims want to, and deserve to, feel involved and respected.

VWLAs and/or prosecutors should make victims aware of community and state resources for their safety including, but not limited to:

- Their local DV service provider which can be found by county. With the victim's consent, the advocate can serve as a support system for the victims during their interactions with prosecutors and/or VWLAs.
- Their right to apply for NC Victim's Compensation and assist them with an application if they want to apply.
- Information about the NC Address Confidentiality Program.
- Their ability to file for a Domestic Violence Protective Order (DVPO). Basic questions about the process should be provided. In addition, they can get support from their local DV service provider.

The National District Attorneys Association encourages prosecutors to take a victim-centered approach to responding to DV, describing the most effective policies as those that "*give victims a voice.*" (National District Attorneys Association)

VWLAs and/or prosecutors should inform victims of how to best reach them when they wish to discuss their case, have concerns, or when the defendant is violating the pretrial release conditions or has committed other crimes.

Language Access

All victims, regardless of whether they are able to read and write English fluently, must have meaningful access to the court system, including the District Attorney's Office. Using non-certified interpreters or staff members who do not speak that person's language does not provide meaningful access to Limited English Proficient (LEP) individuals as staff members have no way to verify the accuracy of the interpretation. The District Attorney's Office should also not be using family (especially children) or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Staff members should be trained on the effective use of interpreters.

The Administrative Office of the Courts published *NC Standards for Language Access Services in the NC Court System* (Updated July 1, 2017). This document establishes effective policies, procedures, and best practices for NC state courts to follow when providing language access services to LEP individuals.

Prosecutors should be responsible for ensuring that all parties in interest have meaningful access to the courts. This includes (a) A party; (b) A victim; (c) A testifying witness; (d) The parent, legal

guardian, or custodian of a minor who is a party, victim or a testifying witness in a court proceeding; or (e) The legal guardian or custodian of an adult who is a party, victim or a testifying witness in a court proceeding. (See Section 5.3)

Meaningful access means not only interpretation services for court proceedings but for out-of-court communications involving the District Attorney's Office as well. The NC Administrative Office of the Courts will provide an interpreter for out-of-court communications between the district attorney and LEP victims, witnesses and defendants, or to facilitate communication during interviews, investigations, and other aspects of general case preparation that are the responsibility of the district attorney's office. (See Section 5.4)

According to Section 7.2b, district attorneys who have court proceedings involving LEP parties in interest shall submit a written *Request for Spoken Foreign Language Court Interpreter* form once a proceeding has been scheduled for a specific court date. Requests should be submitted electronically to the Language Access Coordinator (LAC) from the Office for Language Access Services (OLAS) at http://www.nccourts.org/LanguageAccess/ at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever is earlier.

Community partners often turn to the local DV agency to provide interpretation, especially when the agency employs bilingual/multilingual advocates. It is important that community partners understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Not only are advocates not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Evidence-Based Prosecution

For a time, prosecutors' offices instituted, at least in name, "no-drop" policies for DV cases. However, of course where prosecutors' offices did not have probable cause to proceed, they were, and are, ethically obligated to dismiss the charge. Rather than a "no-drop" policy, it is best practice for prosecutors' offices to embrace an "evidence-based" prosecution policy. This policy acknowledges that prosecutors sometimes must, and other times should, dismiss cases. However, it also places emphasis on the fact that DV cases are serious and that the State will take on the burden of prosecuting these cases, rather than relying solely on the participation of the victim. Evidence-based prosecution also decreases the need for victims to confront their abusers and sends the message that the consequences for offenders' actions are being administered by the State, not the victim.

Prosecutors should review DV cases, including misdemeanor cases, prior to the court date. These cases need more attention than other district court cases as every case has a victim and needs outreach. Many cases may need additional evidence collection in order to be "trial-ready" and multiple subpoenas issued. In addition, because of the very nature of DV, prosecutors should approach these cases with the expectation that victims are likely not going to want to participate in the prosecution. Therefore, prosecutors must review each case for how they will build an evidence-based prosecution. This includes determining what additional evidence they may be able

to obtain that they don't already have. Prosecutors should look for and attempt to obtain evidence such as, but not limited to:

- Copies of 911 calls
- Photographs of injuries from the incident
- Request follow-up pictures to be taken of injuries
- Jail calls made by the defendant to the victim or others which may contain incriminating statements
- Jail letters sent to the victim
- Recorded jail visits between the defendant and the victim
- Statements made by the defendant under oath about the same incident at a DVPO hearing
- Medical and EMS records (which can be obtained by court order without the victim's consent)
- Statements of direct eye witnesses
- Statements of corroboration witnesses (such as friends and family the victim may have called close in time to the incident)
- Electronic evidence (texts, social media messages, etc.)
- Voicemails
- Physical evidence
- Admissions of the defendant

In reviewing cases, prosecutors should also evaluate whether the original charge can be elevated. Many DV cases are initially undercharged and after a review of the case can be charged as felonies due to the habitual nature of offenders. Some common felonies that are often missed that prosecutors should regularly evaluate for include, but are not limited to:

- Habitual misdemeanor assault
- Habitual violation of a DVPO
- Felony stalking (for either one prior conviction or stalking in violation of a court order)
- Interference with a State's witness
- Felony breaking and entering with the intent to terrorize
- Strangulation

When considering plea offers, prosecutors should keep in mind that if an offender is a repeat offender, or the seriousness of the crime warrants it, that plea offers should attempt to require offenders to plead to at least two assaults or at least two violations of DVPOs so that the offender is in a position to be charged with a felony the next time they offend.

Prosecutors should also evaluate whether they have a basis for a forfeiture by wrongdoing motion. DV offenders commonly interfere with victims' attendance at court hearings. If prosecutors prove the interference, then a defendant's confrontation clause right is waived. Prosecutors may then proceed with trying to admit victims' statements into evidence if they meet a hearsay exception. (See Crawford v. Washington, 541 U.S. 36, 62, 158 L. Ed. 2d 177, 199 (2004); Davis v. Washington, 547 U.S. 813, 833, 165 L. -5- Ed. 2d 224, 244 (2006); Giles v. California, 554 U.S. 353, 359, 171 L. Ed. 2d 488, 495 (2008); State v. Weathers, 219 NC App. 522, 724 S.E. 2d 114, (2012)).

Recanting Victims

Due to the dynamics of DV, including oftentimes fear and intimidation by the perpetrator, prosecutors should expect that throughout the process of prosecuting a DV case the vast majority of victims will not or cannot participate in the prosecution of the offender. In addition to integrating this knowledge into building an evidence-based prosecution practice, it is imperative that prosecutors take care not to re-victimize victims who do not participate in the prosecution. Prosecutors should avoid issuing show causes or material witness orders against victims who do not respond to subpoenas. Further, prosecutors should not charge victims who recant with perjury or filing a false police report. In addition, victims should not be charged with *"aiding and abetting a violation of a domestic violence protective order."* Not only does it undermine the policy behind DVPOs, but the law does not support it (School of Government's Blog Post: Please don't charge the victim). All of these actions only serve to deter victims from turning to the justice system for assistance. In addition they ruin a victim's credibility for future actions against perpetrators. They re-victimize victims who are only in the criminal justice system because of victimization at the hands of a perpetrator. The victim may not have even been the person to call for assistance to begin with; and even if they did, they were calling because they needed emergency assistance, not because they were seeking criminal prosecution against the offender. It is important that prosecutors approach DV cases differently than other crimes and keep in mind the goal of keeping the victim safe. Ultimately if the criminal justice system leaves victims feeling more victimized, the system will fail in its overall goal.

Victim-Defendants

It is not uncommon for DV victims to be charged with DV crimes. This occurs because of the inability of law enforcement to determine a predominant aggressor and instead charges cross-warrants. Sometimes it occurs because law enforcement misidentifies the predominant aggressor and charges only the victim. It also regularly occurs because abusers misuse the criminal justice process to retaliate against victims and pursue charges against victims, often by using the magistrate process to take out charges against victims.

Therefore, it is important for prosecutors to carefully evaluate information presented to them regarding who is a predominant aggressor in the overall relationship. Oftentimes, victim-defendants may be able to provide evidence that they have been working with a local DV agency. Prosecutors should try to keep in mind the broader consequences of what a conviction might mean for the ability of a DV victim to secure employment, housing, etc. when trying to escape an abusive partner in fashioning plea offers for victim-defendants.

Victim Impact Statements

Pursuant to N.C.G.S. § 15A-833, victims have the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following: *(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant. (2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant. (3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.*

However, no victim shall be required to offer evidence of the impact of the crime. Prosecutors should discuss with victims before sentencing their right to offer a victim impact statement as well as the option for a representative of the district attorney's office or a law enforcement officer to proffer evidence of the impact of the crime to the court on behalf of the victim if the victim would prefer.

Brady Obligations

Pursuant to both Brady v. Maryland (373 U.S. 83 (1963)) and Rule 3.8 of the Rules of Professional Conduct, prosecutors must: *make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.*

Prosecutors should be diligent in their duty to follow Brady disclosures in DV cases where victim recantation is often a regular part of criminal prosecution. Even where the prosecutor does not believe that the recantation is meritorious, prosecutors are still under an obligation to disclose to the defense that the victim has recanted an original statement regarding the defendant's guilt.

Further, pursuant to NC Rule 3.3 (Candor Toward the Tribunal), where a prosecutor knows that a victim intends to lie, a prosecutor cannot call that victim to testify. To do so would be in violation of the rules of professional conduct and would also not be victim-centered in knowingly setting the victim up for potential perjury.

Mediation

Effective mediation is based on the premise that the parties have equal power to negotiate an outcome. DV perpetrators exert power and control over their partners. Therefore, there is an inherent power imbalance between a DV defendant and the victim in a criminal case. For that reason, it is not a best practice to ever refer a DV case to mediation.

Post-Disposition

Prosecutors' duties to victims don't end when a DV case is over. Pursuant to the VRA, prosecutors' offices have the following duties to victims at the conclusion of a case:

- *(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:*
    - *(1) The final disposition of the case.*
    - *(2) The crimes of which the defendant was convicted.*
    - *(3) The defendant's right to appeal, if any.*
    - *(4) The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.*
- *(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the defendant's name and the victim's name, address, and telephone number.*

U-Visa Certifications

According to the Department of Homeland Security, U-visas not only help protect victims of crime, but are also key tools for prosecutors in their work. Lack of legal immigration status in the U.S. may be among the reasons some victims choose to not come forward to work with law enforcement. Perpetrators and human traffickers use victims' lack of legal status as leverage to exploit and control them. By stabilizing their status in the U.S., immigration relief can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist you with your law enforcement and prosecutorial efforts. U & T Visa Law Enforcement Resource Guide

In order to qualify for the U and T-Visa, the victim must prove to U.S. Citizenship and Immigration Services (USCIS) that he or she cooperated with the District Attorney's Office. One of the primary ways that a victim may demonstrate cooperation is by submitting a signed statement from the District Attorney's Office as part of the application. In the U-visa context, this statement is a required part of the petition and is known as *USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification* (Form I-918B or certification). Because these signed statements from prosecutors are such critical pieces of U and T visa applications, victims may approach the District Attorney's office to request that they certify their cooperation.

Prosecutors may certify a U-visa based on **past, present, or the likelihood of future helpfulness of a victim**. A current investigation, the filing of charges, a prosecution or conviction is **not** required to sign the certification. An instance may occur where the victim has reported criminal activity, but an arrest, prosecution, or conviction cannot take place due to evidentiary or other circumstances. There is no statute of limitations on signing the certification – one can be signed for a crime that happened many years ago or recently. A certification may also be submitted for a victim in a closed case.

Obtaining the certification is just one step in the process. The role of the prosecutor's office is to provide objective information as to the cooperativeness of the victim. USCIS has the sole authority to grant or deny a U-visa. The certification does not guarantee that the U-visa petition will be approved by USCIS.

Training

It is important that prosecutors assigned to handle DV cases receive specialized training both in DV dynamics trauma, and cultural responsiveness as well as evidentiary issues specific to DV (such as forfeiture by wrongdoing). This will allow them to be best positioned to provide a trauma-informed response and successful evidence-based prosecutions. Local DV agencies often provide trainings to their community partners. In addition, the NC Conference of District Attorneys employs a Violence Against Women Resource Prosecutor and regularly offers trainings specific to DV prosecution. Prosecutors can also receive training through NC Coalition Against Domestic Violence.

Court Officials

Victims often interact with the justice system at a time of crisis. Court systems and officials that minimize their trauma through a process that reduces the amounts of legal paperwork they need to fill out, performs trauma-informed interviewing, ensures procedures are timely and user-friendly, and promotes collaboration among partners is key to the safety and long-term recovery of survivors. One of the biggest barriers to victims seeking protection from the court system is the experience of being re-victimized by court officials or the process itself. By offering a trauma-informed response to victims within the justice system, court officials can minimize the distress that victims experience and increase the success of the legal proceedings designed to hold offenders accountable.

Advocates can assist in creating a safe space for victims and a coordinated process for court officials. The presence of advocates in court and in the magistrate's office can provide victims with emotional support, while also helping them understand and navigate the system. Court officials benefit from the presence of advocates in that they can call upon their assistance when they are concerned for a victim's safety, when they need further information on available resources, or when a victim is seeking assistance. Advocates can also facilitate the process for court officials by providing victims with support during the Domestic Violence Protective Order (DVPO) process. Some counties have advocates present in or near the courthouse, allowing for greater efficiency and an overall more positive experience for the victim since they only need to travel to one location.

The response of court officials can make it clear to both victims and offenders that the justice system has zero tolerance for acts of domestic violence (DV). This can be expressed through respectful language when interacting with victims and firm directives when addressing offenders. It is equally important that conditions and restrictions set by the court be enforced. By working together, DV advocates and court officials can establish a coordinated response that benefits responders, victims, community members, and society at large.

Clerk of Courts

Staff in the clerk of courts office are often times the first people that a victim comes into contact with in the court system when seeking protection from an abusive partner. Therefore, they play a vital role as the entry point for the system for many victims and often are critical in assisting victims in navigating the process. Clerks can facilitate a victim's experience by offering a trauma-informed response to persons seeking assistance in their offices.

When a victim comes to file a complaint for a DVPO or other civil process, they are often in crisis. DV victims who have experienced trauma may present in many different ways, including being agitated, distracted, anxious, emotional, or even completely "shut down." Although it can frequently be frustrating to have the same parties file, dismiss their orders, and then return to file in the future, or appear before clerks presenting with difficult emotional states, it is critical that front line staff in the clerk's office provide a supportive and consistent response to victims. Clerks should offer victims 1) the paperwork they need to file, 2) an explanation of the process (without legal advice), and 3) non-judgmental support and referral.

Paperwork/Accepting Filings

The clerk's office should provide the Administrative Office of the Courts forms for filing a DVPO or Civil No Contact Order to victims. Consistent with both North Carolina and Federal Statutes, these forms should be provided for free.

Clerks should accept any filings by plaintiffs related to a DVPO (Compliant, motions, etc.) without evaluating whether they meet the statutory requirements for obtaining a DVPO. Sometimes it is tempting for clerks to review a plaintiff's paperwork in order to try to determine 1) whether a plaintiff has a required personal relationship with the defendant, 2) whether the defendant has committed an act of DV as defined by the statute, 3) whether the act of violence was recent or not, and other possible screening factors. Sometimes the desire to review paperwork comes from wanting to assist the victim, increase court efficiency, or even at a request from judges in the district. However, those are legal questions to be determined by a judge and cannot be made by clerks at the time of filing. Clerks can actually lessen their workload, and simultaneously ensure that all plaintiffs have equal access to the court system, by not reading the substance of a DVPO Complaint since it is unnecessary in order to carry out the duties of their office. Clerks have the important role of accepting the filings, file stamping them, creating a court file, and setting the matter for hearing, regardless of the merits of the case.

In addition, the clerk's office should never deny a plaintiff the right to file a Complaint for a DVPO based on what county the plaintiff resides in. Although venue might be proper in a different county, the law says that only the defendant in an action may raise a complaint as to the venue being improper. Neither the clerk's office, nor even the judge, may deny a plaintiff the right to file a DVPO in a county of their choosing, even if they do not reside there (UNC School of Government). Finally, the clerk's office should be careful to not add any requirements to the filing of a DVPO which are not in place for any other civil filings (i.e. requiring plaintiffs to show ID).

Explanation of the Process

Once a victim begins the process of a filing for a DVPO, it is extremely helpful for the clerk to take the time to not just hand them the large stack of paperwork they must complete, but to take the time to explain the entire process. This includes but is not limited to: what the victim can expect that day after they complete the initial forms, what happens after the judge grants or denies the ex parte, the requirement for service of the DVPO, the need to return to court within 10 days. The court system is extremely difficult to navigate for someone without an attorney, particularly one who has experienced trauma and is in crisis. One of the most helpful things court personnel can do is to take the time to give victims concrete information about what to expect. This does not constitute legal advice as long as the clerk simply gives information about the process and not advice about what the plaintiff should or should not do.

After any hearings on the DVPO, the clerk should make copies of any orders and provide those free of charge to the plaintiff. The clerk also has the responsibility of promptly providing certified copies of ex parte and final protection orders to the appropriate law enforcement agencies. The clerk will promptly respond to request from law enforcement to verify the existence and terms of protection orders.

Support and Referral

The clerk's offices should partner with their local DV agency to be aware of the services they offer, particularly court advocacy services. It is recommended that the clerk's office work with their local DV agency to set up a process for referral for victims who file a DVPO. Some agencies may have court advocates who are regularly available at the courthouse to assist victims through the process of filing. Other agencies may not have the capacity to have someone physically available and victims might have to be referred for services at a later time. The clerk's office should be aware of the services that the DV agency in their county offers so that they can provide that information to plaintiffs. Some plaintiffs might choose to wait until they can speak to an advocate before proceeding with filing. However, it should never be made a requirement that the plaintiff must speak to an advocate before proceeding with the filing process as this creates a barrier for victims if working with an advocate is not of their own choosing. Clerks' offices can locate information for their local DV agency and relay that to the survivor.

Whenever possible, the clerk's office should provide a secure and private area for victims to complete the paperwork for a DVPO. It is also recommended that the clerk's office have on display brochures or other referral information available for victims such as 1) the local DV agency, 2) the NC Address Confidentiality Program, and 3) the local legal services agency (i.e. Legal Aid).

Registration

NC Statute does not require that out of state protective orders be registered in NC for them to be enforceable. They are automatically enforceable by Full Faith and Credit. However, if a victim chooses to register their DVPO, the clerk shall accept a copy (it does not need to be certified) and affidavit by the protected person that the order is still in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county (N.C.G.S. 50B-4(d)).

Pretrial Release Conditions in Criminal Cases

The clerk's office can play a crucial role in holding offenders accountable for violating pretrial release orders and keeping victims safe from intimidation and interference. Offenders violate pretrial release conditions by contacting victims in the majority of DV cases. They interfere with victims by threatening them, pressuring them, attempting to reconcile, or any number of power and control tactics. Law enforcement in NC have authority to make warrantless arrests of offenders who violate conditions of pretrial release. However, the majority of the time, law enforcement still do not have the tools to do so because they have no way to verify the conditions of release after business hours on evenings and weekends.

The clerk's office is in a uniquely influential position to recommend that their districts use the Administrative Office of the Courts prescribed form *"Conditions of Release for Person Charged with Crime of Domestic Violence"* (AOC-CR-630) when setting pretrial release conditions for DV offenders. This form tracks with the conditions in NCAWARE. After a DV offender's first appearance, or modification of bond, clerks should then enter the defendant's pretrial release conditions into NCAWARE. In jurisdictions which utilize the AOC form in setting pretrial release conditions, clerks have an easier time of entering the conditions into NCAWARE. By doing so, it provides law enforcement with real time information about a DV offender's pretrial release conditions and empowers them to enforce them at all times.

Language Access

All parties, regardless of whether they are able to read and write English fluently, must have meaningful access to the court system. Using non-certified interpreters or staff members who do not speak that person's language does not provide meaningful access to Limited English Proficient (LEP) individuals as staff members have no way to verify the accuracy of the interpretation. The Clerk of Courts' Office should also not be using family (especially children) or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Staff members should be trained on the effective use of interpreters.

The Administrative Office of the Courts published *NC Standards for Language Access Services in the NC Court System* (Updated July 1, 2017). This document establishes effective policies, procedures, and best practices for North Carolina (NC) state courts to follow when providing language access services to individuals with limited English proficiency.

Section 6.3.a directly speaks to the responsibilities of Clerks' Offices and states: *Use of telephone interpreting services is appropriate when a Limited English Proficient (LEP) individual contacts the clerk's office with basic questions about court operations. Clerks may use these services to assist an LEP individual in-person or on the telephone using the conference call feature. Clerks should utilize the telephone interpreting services to provide language access services for routine matters such as providing general information, paying court-ordered costs, and using other court services incidental to the resolution of a legal matter.*

Community partners often turn to the local DV agency to provide interpretation, especially when the agency employs bilingual/multilingual advocates. It is important that community partners

understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Not only are advocates not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Training

It is important that any staff at the clerk of courts office interacting with victims be trained in DV dynamics, trauma, and cultural responsiveness. This will allow them to be best positioned to provide a trauma-informed response to those seeking assistance. Local DV agencies often provide trainings to their community partners. Clerk of courts' staff can also receive training through the NC Coalition Against Domestic Violence.

District Court Judges

Judges play a critical role in ensuring victim safety, offender accountability, and a fair process for everyone. It is recommended that judges follow the best practices outlined in the North Carolina Administrative Office of the Courts *"North Carolina Domestic Violence Best Practices Guide for District Court Judges"*.

The guide lists 14 best practice recommendations and detailed suggestions for implementation strategies. The best practice recommendations include:

1. Provide Enhanced Courthouse and Courtroom Security for DV Cases
2. Schedule Court and Calendar Cases for Maximum Effectiveness and Efficiency
3. Identify and Assign Specially Trained and Dedicated Judges
4. Establish Firm Continuance Policies
5. Develop and Enforce Local Rules
6. Actively Coordinate with Community Resources and Constitute Local DV Advisory Committees
7. Establish Standard and Consistent Court Protocol that Provides Judge with all Pertinent Information
8. Consider Safety and Well-Being of Children in All DV Actions and Make Custody Determinations
9. Prepare Clear and Comprehensive Orders and Ensure Proper Service
10. Encourage Victims to Access the Courts for Protection
11. Maximize Court and Community Resources for Self-Represented Parties
12. Prioritize Victim Safety and Offender Accountability throughout the Criminal Process
13. Institute Compliance Hearings in Civil and Criminal Cases to Enhance Victim Safety
14. Consider Federal DV Law Requirements in all Civil and Criminal DV Cases

In addition, judges who hear DV cases should make every effort to keep current on new statutory and case law impacting DV cases.

Language Access

All parties, regardless of whether they are able to read and write English fluently, must have meaningful access to the court system. Using non-certified interpreters or staff members who do not speak that person's language does not provide meaningful access to LEP individuals as staff members have no way to verify the accuracy of the interpretation. The court system should also not be using family (especially children) or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Court personnel should be trained on the effective use of interpreters.

The Administrative Office of the Courts published *NC Standards for Language Access Services in the NC Court System* (Updated July 1, 2017). This document establishes effective policies, procedures, and best practices for North Carolina (NC) state courts to follow when providing language access services to individuals with limited English proficiency.

Judges have a critical role in ensuring meaningful access for parties in the civil and criminal justice system. It essential that parties can both understand and be understood during the justice process. Multiple sections throughout the NC Standards for Language Access Services model policies speak to the Court's responsibilities to ensure meaningful access. A few of the key sections include the following:

Section 4.3: "*Authority of the Court Upon receipt of a request for an interpreter for an LEP party in interest, the judicial official should provide an authorized interpreter for a court proceeding. The failure of the party in interest to request an interpreter shall not negate the need to provide an interpreter for the LEP party in interest. Absent a request, the judicial official is fully authorized to provide an authorized interpreter during a court proceeding if the judicial official has reason to believe that a party in interest is an LEP individual or an interpreter is needed to facilitate communication between the court and the LEP party in interest."*

Section 4.4: *"Presumption in Favor of Providing a Court Interpreter Absent a request, if the presiding judicial official is unsure whether an interpreter is needed, the judicial official should conduct a brief examination or voir dire of the party in interest on the record. In determining LEP status, the judicial official should err on the side of caution and provide an authorized court interpreter for a court proceeding if there is any doubt about a person's ability to read, speak, write, or understand English.*"

Section 4.5: "*Examination of Party or Witness In conducting the voir dire, the presiding judicial official should ask open-ended questions requiring elaboration rather than questions requiring a simple "yes" or "no" answer. Examples of appropriate voir dire questions include the following*:

- *Tell me about your country of origin.*
- *How did you learn to speak English?*
- *Please tell the court how comfortable you feel speaking and understanding English.*
- *What is the purpose of your court hearing today?*

Section 6.3: "*Telephone Interpreting- NCAOC provides telephone interpreting services to judicial officials and court personnel to enhance language access services to LEP individuals. The telephone interpreting services are available 365 days per year, 24 hours per day, including holidays. Judicial officials and court personnel shall utilize a telephone interpreter to communicate with an LEP individual as set forth below unless a bilingual staff member provides direct service or an authorized court interpreter is used. Such language access services are required without regard to the request provisions in Section 7."*

Section 6.3.c: "*District Court Telephone interpreting services may be used for routine matters in district court, such as continuances and first appearances, but should not be used for hearings or other types of evidentiary court proceedings.*"

Section 6.6.c: Volunteers- "*The presiding judicial official shall not allow a volunteer who is not on the Registry, or who is not assigned by the LAC or OLAS, to provide language access services in court proceedings. Volunteers, including family members, friends, law enforcement officers, or others who may be present in the courtroom, may help individuals only with incidental, limited communication with court personnel outside of a court proceeding."*

Community partners often turn to the local DV agency to provide interpretation, especially when the agency employs bilingual/multilingual advocates. It is important that community partners understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Not only are advocates not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Magistrates

Magistrates have one of the most varied and complicated roles of all the justice system players when it comes to DV cases. They interact with victims, offenders, and law enforcement. They must be familiar with civil process, criminal statutes, pretrial release procedures, and DVPOs, among many other aspects of DV. Magistrates are often interacting with victims while they are in crisis and see the same victims and offenders repeatedly over time. Their duty is carried out best when they are able to provide a trauma-informed response to victims that takes into consideration the power and control dynamics of DV cases.

Reviewing Probable Cause

Magistrates are in a unique position as an impartial neutral reviewer of criminal charges. Magistrates try to ensure that offenders are held accountable, while also preventing that the system be misused or that charges which do not rise to the level of probable cause be issued.

Magistrates review both law enforcement and victim-initiated cases to determine if there is sufficient probable cause to issue criminal process. Magistrates should consider the totality of the circumstances when determining whether it is more probable than not that a crime has occurred and that the person accused of committing the crime is the one who committed it.

Criminal Process

Due to the serious nature of DV, law enforcement-initiated cases will almost always call for a warrant rather than a summons for DV crimes. For violations of a DVPO, excluding the person from the residence or household occupied by a DV victim, or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9), magistrates *must* issue a warrant rather than a summons in compliance with N.C.G.S. 50B-4.1(b) which requires offenders to be arrested.

The only exception to whether magistrates may be issuing summonses rather than warrants for DV charges is pursuant to the changes to the state's arrest statute (N.C.G.S. 15A-304(b)) which went into effect December 1, 2017. This change only applies to "citizen's warrants" or charges pursued without the assistance of law enforcement. In those instances, it is the presumption that when magistrates find probable cause that they will issue a summons rather than a warrant. However, magistrates are still to consider several factors to determine whether that presumption should be overcome and whether a warrant is most appropriate. Those factors include:

- The accused has a history of failure to appear before the court as required, or there is other evidence that the person is unlikely to appear in response to a summons for the current proceeding.
- There is evidence that the accused is likely to escape or otherwise flee the State in order to avoid prosecution for the offense alleged.
- There is evidence of imminent danger of harm to persons or property if the accused is not taken into custody.
- The location of the accused is not readily discoverable, such that a criminal summons would be unlikely to be served before any court date assigned at the time of issue.
- A relevant statute provides that arrest is mandatory for an offense charged.
- The seriousness of the offense.

Both factors of "there is evidence of imminent danger of harm to persons or property if the accused is not taken into custody" and "the seriousness of the offense" are likely to be relevant when magistrates find probable cause for DV crimes.

Due to the regular danger of abusers misusing the "citizen's warrants" process to retaliate against victims and as another form of abuse against them, it is best practice for magistrates in evaluating the credibility of the person attempting to swear out charges to review their criminal history. They should be checking for whether they have any pending criminal charges against them with the same person or whether they are subject to a DVPO involving the same person. While the magistrate might still find probable cause, this information should be carefully weighed in determining the person's credibility.

Setting Pretrial Release Conditions

Pretrial release for DV offenders is governed by N.C.G.S. 15A-534.1. The NC legislature recognized that DV crimes require enhanced attention at the pretrial stage due to the intimate nature of the crime, the danger of harm to the victim, the increased likelihood of intimidation of the witness, and the need for a period of time for the victim to be able to safety plan while the defendant is in jail.

Pursuant to N.C.G.S. 15A-534.1, *"In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B"*, the defendant is to be held for up to 48 hours for a judge to set the defendant's bond conditions. This hold for pretrial release conditions applies to all intimate partners, including same-sex dating partners (UNC School of Government).

When a defendant who is charged with the specific crimes enumerated in N.C.G.S. 15A-534.1 appears before a magistrate and qualifies for a "hold", the magistrate should complete the AOC-CR-200 form. The 48-hour clock begins from the time of arrest.

If a defendant does not qualify for the hold or the 48 hours expire before the defendant can be brought before a judge, then the magistrate is responsible for setting the defendant's bond and pretrial release conditions. The statute contemplates that the judicial official setting the defendant's bond conditions shall consider the defendant's criminal history when setting conditions of release. In addition to the defendant's criminal history, whenever possible, the magistrate should also consider:

- Additional information from the law enforcement officer regarding the offender's dangerousness and/or likeliness to appear in court
- Attempting to contact the victim for input on the incident and the pretrial release conditions (can be relayed by advocate with victim's permission)
- Check for current/past DVPOs against the defendant

Each district has recommended bond guidelines establishing the common bond amounts for various levels of crimes (misdemeanors, low level felonies, etc.). Although these are helpful guides, magistrates should take into account additional factors when setting a bond in DV cases which might warrant recommending a bond outside the guidelines. These might include, but not be limited to:

- Lethality factors such as
  - Use of or threatened use of weapons
  - Active DVPOs
  - Victim in the process of leaving or has left
  - Threats of suicide
  - Reported stalking behavior
  - Victim believes defendant might try to kill them
  - Strangulation
  - Access to firearms
  - Defendant unemployed
- Seriousness of charges
- Offender history
- Victim input specific to offender (can be relayed by advocate with victim's permission)
- Law enforcement input specific to offender
- Defendant's new charge violates a current pretrial release order and/or DVPO with the same victim

In addition, magistrates should evaluate the case to determine if the crime was undercharged and a higher bond might be warranted based on the facts supporting a felony rather than a misdemeanor (i.e. defendant charged with AOF, an A1 misdemeanor, but defendant has two prior convictions within 15 years and caused the victim injury, so the crime is more correctly akin to habitual misdemeanor assault, so a bond for a class H felony is appropriate).

However, magistrates should also be thoughtful about how our current bond system can be a proxy for incarcerating poor people rather than dangerous people and allowing wealthy dangerous people to still bond out. Therefore, magistrates should carefully weigh whether a higher bond is actually necessary for the safety of the victim and community or whether more tailored pretrial release conditions are the most appropriate remedy for keeping the victim safe.

Unless a victim requests otherwise, every DV case should include no contact provisions. Magistrates should be utilizing the Administrative Office of the Courts AOC-CR-630 Form *"Conditions of Release for a Person Charged with Domestic Violence."* This form provides specificity with regards to prohibitions for the defendant beyond just "no contact." The defendant should be provided a copy of this form along with the general AOC-CR-200 *Conditions of Release* form.

Revoking Bond Conditions

Law enforcement has authority to make a warrantless arrest if there is probable cause to believe a defendant is violating a criminal pretrial release condition. (N.C.G.S. 15A-401(b)(2)(f)). When law enforcement brings offenders to the magistrate's office, it is not for a new criminal offense,

but for revocation of the bond. Magistrates should review the law enforcement's probable cause, and if found, should revoke the defendant's bond on the original charge. This results in the offender being placed back into custody on the original charge and the magistrate setting a new bond and pretrial release conditions.

The magistrate would check the box next to the pre-printed statement on the AOC-CR-200 form which states *"This Order is entered upon the Defendant's warrantless arrest for violations of conditions of release entered previously for the above-captioned case in the Order dated _____".*

Hearing Requests for Ex Parte DVPOs

N.C.G.S. 50B grants authority to the chief district court judge in each district to authorize magistrates to hear requests for ex parte relief in limited circumstances when a district court judge is not available. Many chief district court judges authorize some or all magistrates to grant ex parte orders. This authority is established under G.S. 50B-2(c1) and takes effect when *"the district court is not in session and a district court judge is not and will not be available for four or more hours."*

If magistrates are authorized to hear requests for ex parte relief under Chapter 50B, it is especially important that they first receive training in both DV dynamics as well as legal training in Chapter 50B.

Language Access

All parties, regardless of whether they are able to read and write English fluently, must have meaningful access to the court system. Using non-certified interpreters or staff members who do not speak that person's language does not provide meaningful access to LEP individuals as staff members have no way to verify the accuracy of the interpretation. Magistrates should also not be using family (especially children) or friends as interpreters since they are not impartial nor are they certified. In addition, the survivor may not want to share the details of their abuse or of the incident with these individuals and therefore may not feel comfortable being honest when responding. Magistrates should be trained on the effective use of interpreters.

The Administrative Office of the Courts published *NC Standards for Language Access Services in the NC Court System* (Updated July 1, 2017). This document establishes effective policies, procedures, and best practices for North Carolina (NC) state courts to follow when providing language access services to individuals with limited English proficiency.

Section 6.3.b and 7.2.a directly speak to the responsibilities of Magistrates' Offices and state respectively: "*Use of telephone interpreting services is appropriate in magistrates' offices for routine matters such as providing general information, filing court documents, paying court-ordered costs, and accessing other court services incidental to the resolution of a legal matter. Telephone interpreting services also may be used for brief matters in court proceedings, such as initial appearances and continuances, but otherwise should not be used in court hearings." (6.3.b)* "*Magistrates who have court proceedings involving LEP parties in interest shall use telephone interpreting services for criminal proceedings." (7.2.a)*

Community partners often turn to the local DV agency to provide interpretation, especially when the agency employs bilingual/multilingual advocates. It is important that community partners

understand that DV advocates serving as interpreters is not an option for community partners in meeting their legal responsibility to provide meaningful language access. Not only are advocates not certified interpreters, but there is a conflict of interest since they are unable to perform the duties of advocate and interpreter simultaneously. Each individual agency that receives any amount of federal funding is mandated by law to provide their own meaningful language access to those who they are serving.

Training

It is important that magistrates receive regular training in DV dynamics, trauma, cultural responsiveness, and DV law. Local DV agencies often provide trainings to their community partners. Magistrates can also receive training through the NC Coalition Against Domestic Violence. It is also recommended that magistrates attend the DV courses offered by the UNC School of Government.

Courthouse Deputies/Bailiffs

The possibility of intimidation, disruption, or violence always exists when parties in a DV case are together in the same courthouse or courtroom. Violence and tension increase in the time span surrounding court dates. Courthouse deputies/bailiffs can adhere to the following practices to improve safety in the courtroom and beyond.

- Courtroom deputies/bailiffs should arrive in DV court at least 15 minutes prior to when court is scheduled to begin.
- To address court security, the court should permit victims, their families, and DV advocates to use separate and secure facilities while waiting for hearings to begin and provide law enforcement escorts when requested.
- Victims, their families, and DV advocates should sit as close to the courtroom deputy/bailiff as possible when so desired.
- With victim's consent, DV advocates should communicate with the courtroom deputy/bailiff in regards to any matters of concern for safety so that a separate and secure facility can be utilized while awaiting a hearing or other court proceedings.
- Courtroom deputies/bailiffs should take a no tolerance policy to courtroom intimidation and be alert at all times to defendants intimidating victims through looks, gestures, comments, etc.
- Courtroom deputies/bailiffs should be aware during calendar call if defendants are sitting near or with victims in violation of pretrial release conditions and consult with the prosecutor regarding enforcement action.
- Courtroom deputies/bailiffs should assist with service of DVPOs, subpoenas, and other civil process for attendees in DV court.
- To ensure safety after a hearing has ended the courtroom deputy/bailiff and/or member of the judiciary should request that the defendant remain in the courtroom until otherwise notified to allow the victim sufficient time to leave.