

# PLEA AGREEMENT AND SENTENCING CONSIDERATIONS IN DOMESTIC VIOLENCE CASES

Based on The Blueprint for Safety  
Domestic Violence Cases

# Goals

- ▣ Enhancing Victim Safety
- ▣ Holding Offenders Accountable
- ▣ Providing Opportunities for Rehabilitation

# Basic Considerations

- ▣ Utilize All Available Information
- ▣ Obtain Input from Victim
- ▣ Needs of the Victim, Defendant
- ▣ Public Safety
- ▣ Statutory Requirements - § 611A

# Available Information

- ▣ Current Reports/Evidence
- ▣ Prior Incident Reports
- ▣ History of Violence?
- ▣ Other Open Files?
- ▣ Prior Convictions/Criminal History
- ▣ Victim Input
- ▣ Risk Factors

# Current Reports/Evidence

- ▣ Photographs
- ▣ Broken Phones
- ▣ Ripped Clothing
- ▣ 911 Calls
- ▣ CAD Reports
- ▣ Jail Calls
- ▣ Recorded Statements
- ▣ Emails, Voicemail, Texts, Letters

# Prior Incident Reports

- ▣ Police Reports
- ▣ Probation Violation Reports
- ▣ DANCO, OFP, HRO Pleadings/ Affidavits
- ▣ Medical Records
- ▣ Family Court Files
- ▣ Child Protection Records

# History of Violence?

- ▣ Prior Arrests?
- ▣ Victim's Responses to the RISK Assessment Questions
- ▣ Information given to Victim/Witness Staff

# Prior Convictions/Criminal History

- ▣ NCIC
- ▣ Public Records
  - If a domestic is pled down to a Disorderly Conduct, it is not reported to NCIC
  - Most states have online search tools available to the public

# Victim Input

- ▣ Nature and Impact of Current Offense
- ▣ Context and History of Violence in this Relationship
  - Is this an ongoing pattern of intimidation or abuse or violence?
- ▣ What sanctions are most likely to meet Defendant's needs? Victim's needs?
- ▣ Victim's prior contacts with Law Enforcement and the impact those have on reaction to/support for prosecution.

# Risk Factors

- ▣ Type/Severity of Assault
- ▣ Level of Injury
- ▣ History of Violence
- ▣ Strangulation/Stalking?
- ▣ Threats
- ▣ Intimidation/Witness Tampering
- ▣ Controlling Behavior
- ▣ Sexual Aggression
- ▣ Criminal History
- ▣ Access to Firearms
- ▣ Current/Past Harassment or Protective Orders
- ▣ Alcohol or Drug Use by Defendant
- ▣ Mental Health Issues

# Plea Agreements

- ▣ Should Reflect:
  - Context and Severity of the Offense
  - Danger Defendant Poses to Victim
  - Safety Needs of the Victim
  - Safety Needs of the Public
  - Strength of Your Case

# Terms of the Agreement

- ▣ Which Count?
- ▣ Jail/Prison?
- ▣ Probationary Term
- ▣ Chemical Dependency Issues?
- ▣ Mental Health Issues?
- ▣ Mandatory Minimums/Sentencing Guidelines
- ▣ Victim Defendant?

# Which Count?

- ▣ If information suggests pattern of intimidation or coercion or violence towards the victim, then generally seek a plea to the most serious charge and recommend a more severe sentence as a means to place controls on Defendant.
- ▣ If the victim is not cooperative or your case dictates, consider plea to lesser offense in order to help place at least some controls on the Defendant.
- ▣ Future enhancement requires a conviction for a “qualified domestic violence related offense”

# Jail/Prison/Probationary Time

- ▣ Offer can include executed or stayed time or a combination of both
- ▣ Release at Plea? Release at Sentencing?
- ▣ In most cases, prosecutors should seek the maximum probationary period allowed in domestic violence cases
  - § 609.135
    - ▣ Misdemeanor/Gross Misdemeanors – 2 years
    - ▣ Felonies – 4 years or period equal to maximum allowable sentence

# Mandatory Minimum Sentences Upon Conviction

- ▣ Misdemeanor Violation of an OFP – 518B.01, subd. 14(b)
  - 3 Days Imprisonment
  - Must be ordered to participate in counseling or other appropriate programs selected by the court
- ▣ Gross Misdemeanor Violation of OFP – §518B.01, subd. 14(c)
  - 10 Days Imprisonment
  - Must be ordered to participate in counseling or other appropriate programs selected by the court
- ▣ Felony Violation of an OFP – 518B.01, subd. 14(d)
  - 30 Days Imprisonment
  - Must be ordered to participate in counseling or other appropriate programs selected by the court

# Mandatory Minimums Cont'd

- ▣ Gross Misdemeanor Domestic Assault  
609.2243, subd. 1
  - Court must order at least 20 days incarceration, Defendant must serve at least 96 hours consecutively
    - ▣ Remainder of 20 day minimum sentence may be stayed pending completion of anger therapy or counseling
- ▣ Felony Domestic Assault
  - Court must order at least 45 days incarceration, Defendant must serve at least 15 days consecutively
    - ▣ Remainder of 45 day minimum sentence may be stayed pending completion of anger therapy

# Statutory Requirements - § 611A

- ▣ Victim Impact Statement - § 611A.038
- ▣ Restitution - § 611A.04
- ▣ Right to Notice of Plea Agreement Prior to Entry of Factual Basis - § 611A.03
  - Contents of Plea
  - Right to be present at sentencing hearing and make statement
- ▣ Notice of Final Disposition - § 611A.039
- ▣ Decision to Decline Charges - § 611A.0315