

# Nevada Arrest and Protection Advocacy Project

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**March 2019**

Nevada Coalition to End Domestic and Sexual Violence

# ACKNOWLEDGEMENTS

Nevada Coalition to End Domestic and Sexual Violence thanks the domestic violence survivors, advocates, law enforcement officers, prosecutors, defense attorneys, government officials, and others who are on the front lines combatting domestic violence in Nevada and whose insight and dedication provided crucial guidance for the Nevada Arrest and Protection Advocacy Project.

This project and report was made possible by the Grants to Encourage Arrest and Prosecution provided by the Office on Violence Against Women and in partnership with the Nevada Office of the Attorney General, Tahoe SAFE Alliance in Lake Tahoe, and Safe Nest in Las Vegas.

Appreciation is also due to Valerie Cooney for providing critical assistance in moderating workgroup meetings to process the gathered data and develop the final recommendations and report.

Workgroup members include victim advocates, program representatives, policy advocates, government officials, law enforcement, prosecutors, defense attorneys, service providers, and survivors of various forms of domestic violence.

## DISCLAIMER

This project was supported by Grant No. 2015-WE-AX-0018 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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# INTRODUCTION & PURPOSE

In 2016, the Nevada Coalition to End Domestic and Sexual Violence conducted a series of listening sessions on the subject of the laws, enforcement, prosecution, and adjudication regarding domestic violence within the state. We also distributed surveys for those who were unable to attend the listening sessions.

Our goal was to collect information from an extensive range of Nevada stakeholders to assess the enforcement of laws relating to domestic violence, and the many aspects of Nevada's systematic response to domestic violence.

A total of 149 individuals from 55 organizations, including dozens of survivors, participated in one of 30 listening sessions or completed one of nearly 20 surveys that focused on learning each individual's unique perspective of the current laws, enforcement and justice system surrounding domestic violence in Nevada. An additional 103 tribal advocates participated in an informal listening session during the United States Department of Justice's 2016 Native American Conference.

## **PARTICIPATING STAKEHOLDERS**

149<sup>1</sup> members of the following stakeholder groups (including local and state levels) participated in this field assessment:

- Court Masters
- Defense Attorneys
- Faith Community Members
- Immigration Advocates
- Judges
- Law Enforcement
- Legal Services Advocates
- Program Advocates
- Prosecutors
- Survivors
- System Advocates

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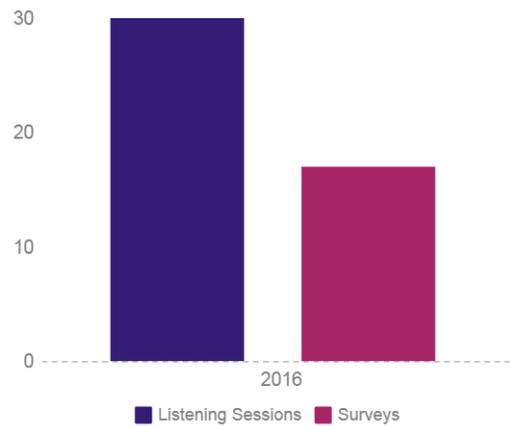
<sup>1</sup> An additional 103 Native American advocates participated in a single group setting at a conference, but are not reflected in the total due to the unique nature of the meeting.

## PARTICIPANTS' LOCATIONS



Clark County – 40%  
Rural Counties – 13%  
Washoe County – 47%

## DATA COLLECTION FORMAT



30 – Listening Sessions  
17 – Surveys  
1 – Conference<sup>2</sup>

## PARTICIPATING ORGANIZATIONS

One or more individuals from the following entities participated in listening sessions or provided information relevant to the field assessment:

- Domestic Violence Resource Center
- (formerly *Committee to Aid Abused Women*)
- City of Reno
- Clark County Family Court
- Elko Committee Against Domestic Violence
- Elko County District Court
- Elko District Attorney's Office
- Elko Police Department
- Henderson City Attorney's Office
- Henderson Police Department
- Inter-Tribal Council of Nevada
- Legal Aid Center of Southern Nevada
- Las Vegas Metropolitan Police Department
- Nevada Department of Corrections
- North Las Vegas Police Department
- Reno Police Department

<sup>2</sup> An additional 103 Native American advocates participated in a single group setting at the U.S. Department of Justice's Annual Native American conference, but these individuals are not included in the participant numbers due to the unique nature of the listening session.

- Safe Embrace
- S.A.F.E. House
- Safe Nest
- Sparks Police Department
- The Shade Tree
- Tu Casa Latina
- United States Department of Justice
- United States Department of Justice - Native American Conference
- University of Nevada Reno Police Department
- Volunteer Attorneys for Rural Nevadans
- Washoe County Court Masters
- Washoe County District Attorney's Office
- Washoe County Legal Services
- Washoe County Public Defender's Office
- Washoe County Sherriff's Department

Once the information was collected we convened a workgroup composed of non-governmental organizations and community service providers, law enforcement, prosecutors, defense attorneys, government agencies, and survivors, to review the information and make recommendations for how Nevada can improve our response to cases of domestic violence. Members that contributed to this report include:

- **Amber Batchelor**, MA, VP Advocacy and Prevention Services, Safe Nest
- **Andrea Chapman**, Crisis Advocacy Manager, Tahoe Safe Alliance
- **Valerie J. Cooney**, JD, Executive Director, Volunteer Attorneys for Rural Nevadans, Retired
- **Jan Griscom**, Domestic Violence Survivor
- **Dorie Guy**, Domestic Violence Survivor
- **April Stokes Green**, JD, Directing Attorney, Legal Aid Center of Southern Nevada
- **Ellysa Hendricksen**, JD, Deputy Attorney General, Office of Nevada Attorney General
- **Lisa Luzaich**, JD, Chief Deputy District Attorney, Clark County District Attorney's Office
- **Nicole O'Banion**, Ombudsman for Domestic Violence, Office of Nevada Attorney General
- **Priscilla Hayes Nielson**, JD, Deputy Public Defender, Washoe County
- **Chad Pace**, JD, Violence Against Women Prosecutor, Lyon County District Attorney's Office
- **Roger Price**, Special Victims Unit Lieutenant, Las Vegas Metropolitan Police Department

- **Rebecca Smokey**, Senior Legal Advocate, Volunteer Attorneys for Rural Nevadans
- **Tammy (TC) Cutler**, Court Advocate Supervisor, Safe Nest
- **Viana Zucchet**, Bilingual Advocate, Tahoe Safe Alliance

#### **ADDITIONAL WORKGROUP CONTRIBUTORS**

- Clarice Charlie-Hubbard, Inter-Tribal Council of Nevada, Domestic Violence Coordinator
- Dallas Smales, Inter-Tribal Council of Nevada, Domestic Violence Advocate
- Holly Reese, The Center Las Vegas, Manager of Senior Programs & Community Engagement

The following sections provide background on each of the topic areas; information from the discussions at the listening session and from the work group; and a resource section with information about best practices from other states and jurisdictions.

# EXECUTIVE SUMMARY

Experts estimate that one in three women and one in four men will be victimized by domestic violence during their lives.<sup>3</sup> On an average day there are over 20,000 calls to domestic violence hotlines nationwide.<sup>4</sup> However, most instances will remain unidentified or unreported to law enforcement for a variety of reasons.

The Nevada Arrest and Protection Advocacy (NAPA) Project convened listening session on the subject of the laws, enforcement, prosecution, and services regarding domestic violence within the state. The Project also convened a workgroup to review the information and make recommendations for how Nevada can improve our response to cases of domestic violence. The following is the list of recommendations from the work group:

## RECOMMENDATIONS

### STRANGULATION

- That Law enforcement officers be required to attend training on the importance of strangulation investigations, how to investigate these incidents, and report the findings necessary to make a good case for prosecutors.
- Develop and adopt tools to assist law enforcement in the investigation and reporting of findings, such as a checklist of the questions to be asked of the victim, witnesses and others.
- Develop a policy that identifies and communicates evidence-based best-practices in the investigation and reporting of strangulation case.
- The statutory penalties and prosecution for battery by strangulation, which constitutes domestic violence, should be increased to parallel the risk of further violence and lethality of strangulation.
- Update Nev. Rev. Stat. § 200.481(1)(i) to remove the word “intentionally” to assist in prosecution as it does not properly reflect the nature of the domestic violence relationship.

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<sup>3</sup> <http://ncadv.org/learn-more/statistics>

<sup>4</sup> [http://nnev.org/downloads/Census/DVCounts2013/DVCounts13\\_NatlSummary.pdf](http://nnev.org/downloads/Census/DVCounts2013/DVCounts13_NatlSummary.pdf)

## **PROTECTION ORDERS**

- Uniform, trauma-informed, and professionally developed informational materials should be available to victims of domestic violence across the state at the time of their application for a protection order.
- Victims who receive protection orders must receive comprehensive information on matters related to the content of the order, and their meaning, as well as the process and protection related to post-order matters, including renewal, extension and service of process.
- The issuance of temporary and extended protection orders should be consistent throughout the state and based on a uniform set of standards.
- Extended protection order issuance timeframes should be extended to include lifetime orders, to be utilized at the discretion of the court.

## **MANDATORY ARREST**

- Law enforcement officers receive ongoing trauma-informed training and receive the tools necessary to make an accurate determination of the primary aggressor in domestic violence cases.

## **FIREARMS**

- Creation of a statewide, searchable, and enforced system for the surrender and safe keeping of firearms.
- Authorize law enforcement to remove firearms from any person who is the subject of a protection order or has been convicted of domestic violence.
- Protection order applications should contain a provision that allows a victim the ability to ask for the surrender of firearms by abusers.
- Advocates and court staff to be instructed to ask victims about their need and or desire for the court to inquire about and enter an order regarding the surrender of firearms.

## **MATERIAL WITNESS WARRANTS**

- That prosecutors refrain from arresting victims for refusing to testify, failing to cooperate, or not showing up to court, except in exceptional circumstances.

## **U-VISAS**

- That each Nevada agency identified by Federal law as one qualified to sign the I-918 application receive detailed training on the U-Visa protections and processes, as well as the history and purpose of the law.
- That the Nevada legislature codify the provision of Federal Law 214.14 into state law in order to ensure the timely certification requirements of the statute.

## **SPECIALTY COURTS**

- Develop pilot domestic violence courts across the state to increase prevention and effective handling of domestic violence cases including the development of a bench book.

## **COURT INTERPRETERS**

- Expand programs to improve interpreting services.
- Develop education and training regarding language access issues, policies, and best practices for court personnel.
- Include language access policies and practices in mandatory judicial trainings.
- Develop access to online or video interpreter services.

## **TRAINING**

- That annual varying, realistic, updated, and trauma-informed domestic violence training be required and provided to law enforcement through a variety of formats, including roll call trainings.
- That ongoing domestic violence training be provided and required for all judicial officers. That family court judges, limited jurisdiction judges, domestic masters and pro temp judges be required to receive annual training on domestic violence.

# CHAPTER 1: STRANGULATION

## BACKGROUND

The NCEDSV's annual Domestic Violence Homicide Report shows that approximately 10 percent of domestic violence homicides in Nevada are due to strangulation. Strangulation is one of the most lethal forms of domestic violence. Strangulation is also a significant predictor of future lethal violence by an abuser, increasing the risk of being killed by an abusive partner by ten times.<sup>5</sup> Like other forms of abuse, strangulation can kill a victim within moments, but unlike other forms of physical abuse, strangulation may leave no physical signs or symptoms at the time of the attack but still lead to brain damage, internal injuries, or even death weeks later due to the lack of oxygen and nature of the attack.<sup>6</sup>

In 2009, A.B. 164 amended Nev. Rev. Stat. § 200.481 to include additional penalties for a battery by strangulation. AB 164 increased the penalty for battery by strangulation to be consistent with that of a battery that results in substantial bodily harm. The bill increased the penalty for a conviction of battery by strangulation to a category C felony with a maximum fine of \$15,000 and in certain circumstances to a category B felony. (Nev. Rev. Stat. § 200.485)

Nev. Rev. Stat. § 200.481(i) requires proof of an "intent" to do physical injury or harm to a victim by strangulation in order to obtain a conviction. The required level of proof does not reflect the nature of the use of strangulation by abusers in domestic violence, namely to exercise power and control over a victim.

The legislative record of AB 164 contains a notable discussion regarding the bill's reference to the "intent" element but fails to address the unique nature of domestic violence and a perpetrator's use of strangulation as a means to inflict fear, and to exercise power and control over a victim. The present definition requires proof of "intent" to commit physical injury on a victim by "intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm", a nearly impossible task.<sup>7</sup> It asks the State to prove physical injury and the defendant's intent to do so. The intent of an abuser is that of a lesser intent, namely to strike fear in and to dominate the victim.

Prosecutors have a difficult time convicting perpetrators of strangulation which constitutes domestic violence because of the heightened standard of proof required by NRS

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<sup>5</sup> <http://www.thehotline.org/2016/03/15/the-dangers-of-strangulation/>

<sup>6</sup> <https://www.strangulationtraininginstitute.com/impact-of-strangulation-crimes/>

<sup>7</sup> Nev. Rev. Stat. 200.481

200.481(1)(i). A more appropriate standard in cases of domestic violence by strangulation would be a gross negligence standard, one that does not require specific intent to do substantial bodily harm or cause death. Strangulation is a serious crime and marker of risk to victims, and as such should be punishable for the risks associated with the crime.

During a hearing on A.B. 164, a proponent of the measure, Lieutenant Roberts with Las Vegas Metropolitan Police Department testified, “Though all forms of domestic violence are serious and none are to be minimized, strangulation cannot be lumped in with every action that is considered domestic violence. It is much more serious because of the lethality of the action. That is what we have to bring attention to by elevating it to felony status.”<sup>8</sup>

## DISCUSSION

Both prosecutors and defense attorneys raised significant concerns about the current strangulation statute during the NAPA Project’s listening sessions. Prosecutors continue to be concerned with problems of proof of strangulation given the lack of physical evidence and inadequate documentation and investigation by law enforcement. One prosecutor recalled his experience with a victim whose abuser would “strangle her to the point of her passing out... or just to the point her legs would go numb”<sup>9</sup> without leaving a mark on her body. The abuser would taunt the victim and routinely used strangulation as his preferred form of violence.<sup>10</sup>

There was agreement among all participants statewide that law enforcement training is desperately needed in Nevada. Workgroup members expressed interest in the approach of other states that are implementing the use of strangulation checklists to investigate these offenses and offer law enforcement a step by step guide. These checklists direct officers in what to look for, what to document, techniques on how to interview victims, and provide specific questions or phrases to use.

While strangulation has been recognized as a severe form of domestic violence by statute, prosecutors and others, it continues to be overlooked, pleaded down, and under-prosecuted in Nevada.<sup>11</sup> One defense attorney recounted in a listening session his experience with clients charged with strangulation:

“When the statute first got passed, you would get a case where it was just charged with strangulation under the statute, and the district attorneys would say, okay look here’s a domestic violence strangulation, so it’s a felony. They have to plead to that. They have to do probation. They have to do all the domestic violence classes, and if they successfully complete [everything], then we’ll reduce it to a misdemeanor domestic violence. If it’s strangulation, why would you say that when that can be dismissed again? If it’s

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<sup>8</sup> Mar. 02, 2009, Nevada Assembly Committee Minutes, March 2, 2009, [NV Assem. Comm. Min., 3/2/2009](#)

<sup>9</sup> NAPA Listening Session, Prosecuting Attorneys, Reno, July 27, 2016.

<sup>10</sup> Ibid.

<sup>11</sup> NAPA Project Workgroup, First Meeting, Reno, July 13, 2017.

strangulation defined in this statute, is that really someone we should be giving a reduction to?"<sup>12</sup>

Prosecutors, defense attorneys, law enforcement, and advocates alike raised concerns in the NAPA Project Workgroup over the practice of allowing abusers to plead down, from the Class C felony of strangulation in domestic violence cases to a lesser misdemeanor offense, in order to secure a conviction. Workgroup members believe increasing the penalty to a Class B felony would not only better represent the threat and damage caused by strangulation in domestic violence cases but also offer prosecutors more flexibility to keep any negotiated deals at the felony level.

Many symptoms of strangulations can only be seen days after the event, or internally by a medical professional; "50% of strangulation victims showed no visible signs of injury, 35% showed injuries too minor to photograph, and in the 15% of cases with visible injuries, such as redness, the photographs were oftentimes too blurry to use in prosecutions".<sup>13</sup> Because symptoms of strangulation are not visible or apparent immediately following an incident, those investigating such crimes must be specially trained and able to document their findings. Many, if not most, law enforcement officers in Nevada have not been adequately trained to investigate and document domestic violence by strangulation. As a result, many such cases are difficult to prosecute successfully and abusers can plead to lesser crimes, namely misdemeanors. An abuser may continue to escalate the cycle of violence which may ultimately lead to death for their victim.<sup>14</sup>

Both prosecutors and defense attorneys in the Work Group agreed that battery by strangulation which constitutes domestic violence should remain a separate statute and that the penalties should be increased to reflect the severe nature of the crime. Prosecutors expressed the need to ensure the strangulation statutes remain non-probational offenses to reflect the level of danger they present to a victim. In contrast, some defense attorneys in the listening sessions argued that there should not be a separate statute for strangulation which constitutes domestic violence, but rather the crime should be charged as attempted murder.

One defense attorney stated in a listening session that, "There should be clearer guidelines for strangulation charges; to get the conviction is very rare. It is usually used as a tactic to plead down to a lesser charge. The statute does not define strangulation enough... there is too much gray area."<sup>15</sup>

In the trial of most domestic violence by strangulation cases, it will be impossible to offer evidence of a victim's blood or air flow at the time of the attack. At trial, impeded (or unimpeded) blood or air flow is re-envisioned through evidence such as photos, testimony,

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<sup>12</sup> Ibid.

<sup>13</sup> [http://www.ncdsv.org/NDAA\\_National-DV-Prosecution-Best-Practices-Guide\\_3-16-2017.pdf](http://www.ncdsv.org/NDAA_National-DV-Prosecution-Best-Practices-Guide_3-16-2017.pdf)

<sup>14</sup> NAPA Project Workgroup, First Meeting, Reno, July 13, 2017.

<sup>15</sup> NAPA Listening Session, Defense Attorneys, Reno, July 21, 2016.

and medical records. Both the prosecution and defendant will hire expert witnesses to give a favorable opinion of the blood or air flow. This “battle of the experts” is expensive for the public and defendant and does not reflect the percipient evidence. The better statutory language asks whether the victim experienced strangulation and not whether the prosecution can reconstruct the medical effect of strangulation after the fact.

The nature of strangulation is inherently violent and the lack of physical evidence of injury demands that investigating officers conduct a detailed and thorough inquiry, and that the findings be recorded and communicated in such a way as to aid a prosecutor to accurately demonstrate the crime at trial. Absent this type of investigation and the resulting evidence, a prosecutor will decline to move forward with a case. Equally troublesome is the fact that an abuser may realize that there will be little consequences for his dangerous actions and may continue the abuse.

The brutality of strangulation is often underestimated and not fully understood by victims, advocates, law enforcement, or others. The listening sessions, NAPA Project Workgroup, and the legislative history of A.B. 164 reveal the concern regarding the violence and lethality of strangulation. Ellen Clark, Chief Medical Examiner and Coroner for Washoe County testified at one committee hearing for A.B. 164 saying, “As a medical doctor specializing in forensic pathology, I have for many years recognized strangulation as a particularly violent, and potentially lethal, form of injury.”<sup>16</sup>

The need for adequate understanding and appreciation for the physical, mental, and emotional harm caused by strangulation needs to be reflected in both the statute’s penalty itself, as well as the interpretation and application of the statute.

In a summary of recent case law provided in the Domestic Violence Report, *People v. Figueroa*, 968 N.Y.S.2d 866 (N.Y. City Ct. 2013) is featured as a case which “provides an in-depth explanation of the history of strangulation crimes in the context of the criminal justice system. The case thoroughly details the lethality of strangulation and also the common signs and symptoms observed in strangulation assaults. In addition, the case provides a thorough analysis of the legislative intent and importance of strangulation legislation.”<sup>17</sup>

## RECOMMENDATIONS

- That Law enforcement officers be required to attend training on the importance of strangulation investigations, how to investigate these incidents, and report the findings necessary to make a good case for prosecutors.

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<sup>17</sup> [http://ndaa.org/pdf/NDAA DV White Paper FINAL revised July 2017-2017.pdf](http://ndaa.org/pdf/NDAA%20DV%20White%20Paper%20FINAL%20revised%20July%202017-2017.pdf)

- Develop and adopt tools to assist law enforcement in the investigation and reporting of finding such as checklist of the questions to be asked for the victim, witnesses and others.
- Develop a policy that identifies and communicates evidence-based best-practices in the investigation and reporting of strangulation case.
- The statutory penalties and prosecution for battery by strangulation which constitutes domestic violence should be increased to parallel the risk of further violence and lethality of strangulation.
- Update Nev. Rev. Stat. § 200.481(1)(i) to remove the word “intentionally” to assist in prosecution as it does not properly reflect the nature of the domestic violence relationship.

## RESOURCES

In 2011 the Training Institute on Strangulation Prevention was established as a program of the National Family Justice Center Alliance. One of the Institute’s goals is to “enhance the knowledge and understanding of professionals working with victims of domestic violence and sexual assault who are strangled”. The importance of training professionals on the health risks and increased dangers associated with strangulation is becoming more widely understood.<sup>18</sup>

Together the Training Institute on Strangulation Prevention and the California District Attorneys Association put together *The Investigation and Prosecution of Strangulation Cases*. On pages 14-16 of the documents, they have a section dedicated to strangulation laws across the country and the wording of statutes. Texas and Idaho are considered to have the best strangulation statutes in the country. Texas phrases their statute as “intentionally, knowingly, or recklessly”.

The document can be viewed here:

<https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=858>

Texas’ strangulation statute can be viewed here:

<https://codes.findlaw.com/tx/penal-code/penal-sect-22-01.html>

The National Domestic Violence Prosecution Best Practices Guide states that “Prosecutors should make use of forensic investigators and nurses, medical experts, emergency room physicians, and coroners during trial as a way to educate the judge and jury about non-visible symptoms and the seriousness of strangulation... as unconsciousness can occur within seconds and death within minutes or less.”<sup>19</sup>

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<sup>18</sup> <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=858>

<sup>19</sup> Ibid.

In addition to filing the domestic violence and strangulation charges, the National Domestic Violence Prosecution Best Practices Guide states,

“Prosecutors should carefully review the evidence for other charges, including attempt charges and enhancers. Including other charges may advance prosecutorial goals and serve as corroboration, provide the jury with a complete picture of the defendant, and bolster negotiation. Additional charges that are commonly supported by the evidence include assault, battery, burglary, robbery, theft, false imprisonment, carjacking, mayhem, stalking, criminal threats, kidnapping, and child endangerment. Prosecutors should also consider joining cases, which can help establish the severity of the relationship and abuse between the victim and their abuser.”<sup>20</sup>

Furthermore, the guide stresses the importance that,

“Zero tolerance and offender accountability policy considerations favor a prohibition against the use of plea bargains, diversion programs, or fine in domestic violence crimes. These tools should be used at the discretion of the prosecutor when the reduction is supported by the goals of prosecution, victim safety, and offender accountability and when the plead charge is another violent crime with a disposition similar to the domestic violence crime.”<sup>21</sup>

According to the authors of Investigation and Prosecution of Strangulation Cases, in an article in the *Domestic Violence Report*,

“Most law enforcement protocols today have developed specialized domestic violence reporting forms or checklists. We strongly support such reporting forms if they are a supplement to the narrative report. In those jurisdictions utilizing a law enforcement protocol for the investigation of domestic violence cases, officers arriving at the scene conduct a thorough investigation and prepare written reports describing all incidents of domestic violence involving the victim and perpetrator, as well as documenting individual crimes, such as a strangulation assault, committed by the perpetrator. Some jurisdictions across the country are also including lethality assessments within their domestic violence reports.”<sup>22</sup>

An initial study looking at 100 strangulation cases over a five-year period finds that law enforcement was not reporting injuries correctly and was not paying close enough attention for an effective prosecution. The study concluded that law enforcement needs to be trained on questions to ask, symptoms to look for, proper information to document, how to properly take close-up photographs and how to use medical experts. This document includes tips for investigations at the scene, appropriate and vital questions to ask, tips for taking

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<sup>20</sup> [http://ndaa.org/pdf/NDAA DV White Paper FINAL revised July 2017-2017.pdf](http://ndaa.org/pdf/NDAA%20DV%20White%20Paper%20FINAL%20revised%20July%202017-2017.pdf)

<sup>21</sup> Ibid.

<sup>22</sup> Strack, Gael B., JD, Casey Gwinn, JD, Gerald W. Fineman, JD, and Michael Agnew, Det. "Investigations and Prosecution of Strangulation Cases." *Domestic Violence Report* 19, no. 6 (August 01, 2014): 83.

photographs, and what information to document. This resource is linked below:

[http://www.ncdsv.org/images/strangulation\\_article.pdf](http://www.ncdsv.org/images/strangulation_article.pdf)

Alaska produced a 95 page in-depth document titled: *Guidelines for Law Enforcement Health Care Providers Advocates and Prosecutors*. The document includes an overview of strangulation laws, best practices for investigations, and prosecution. The document can be viewed here:

<http://dhss.alaska.gov/ocs/Documents/childrensjustice/strangulation/strangulation.pdf>

The Training Institute on Strangulation Prevention produces tri-fold brochures that include signs and symptoms of strangulation. These could be used as guides for law enforcement when responding to the scene. The brochures also include diagrams to indicate any visible signs and/or symptoms the victim may be experiencing. Both Spanish and English brochures are available for download here:

<https://www.strangulationtraininginstitute.com/resources/brochures-english-spanish/>

The National Center for Prosecution of Violence Against Women compiled a document that includes U.S. federal, state, and territorial criminal statutes related to strangulation. The document, updated as of 2016, includes all the states' statutes around strangulation and includes the penalties and prosecution for such acts. Strangulation definition and penalties vary widely amongst the states. Nevada currently has a Category C felony for domestic violence battery committed by strangulation. Alaska and Indiana punish strangulations by a class A felony; states such as Maine, New Hampshire, and Washington punish strangulation by a class B felony. The document in its entirety can be viewed here:

<https://ndaa.org/wp-content/uploads/strangulation-statutory-compilation.pdf>

# CHAPTER 2: PROTECTION ORDERS

## BACKGROUND

In 1976, Pennsylvania became the first state to pass legislation creating civil orders of protection for victims of domestic violence.<sup>23</sup> Nevada followed suit in 1979 with the passing of A.B. 479, which created Chapter 33 of the Nevada Revised Statute.<sup>24</sup> Chapter 33 introduced injunctions specifically providing “temporary restraining orders in certain situations of domestic violence,” implemented penalties for violation of the PO, and provided details related to these types of cases.<sup>25</sup>

Since adoption of Ch. 33, the provisions related to who may qualify for such protection have not changed. What has changed significantly is the manner in which the PO application process is handled within each of Nevada’s judicial districts. Each jurisdiction, whether in justice court or district court, determines by local rule and practice how the protection order process is to be handled. In the larger counties, court masters are assigned to oversee cases, and are required to be available 24 hours a day to receive applications and take action.<sup>26</sup> In less populated jurisdictions the PO process may be assigned to the justice court judge or individuals serving as Pro Tem judges. Many of the justice court judges in Nevada’s rural areas are non-lawyers and have limited legal training.

NRS 33.030 (1) sets forth those matters which can be contained within a temporary protection order. Generally, a temporary protection order restricts an adverse party from being within a specific distance of the victim, the victim’s home, work, or other location. These orders often provide for the custody and visitation of children, and the right to occupy a residence.<sup>27</sup> While recipients receive a copy of the order, little explanation or details are shared with victims by the courts. The protected party often lacks an understanding of the rights and protections that the order provides.<sup>28</sup>

In Nevada a temporary PO expires after 30 days if an extension of the order is not requested or entered *sua sponte* by the court. Upon request, an order may be extended for up to one year.

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<sup>23</sup> Andrew Klein, Re-abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don’t Work, in *Do Arrests and Restraining Orders Work?* Sage Publications, 1996.

<sup>24</sup> <https://www.leg.state.nv.us/Statutes/60th/Stats197905.html#Stats197905page946>

<sup>25</sup> Nev. Rev. Stat. 33.020 (1979)

<sup>26</sup> Nev. Rev. Stat. 33.019-33.020 (1985, 1995, 1999, 2001, 2011)

<sup>27</sup> Nev. Rev. Stat. 33.030 (1).

<sup>28</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

## DISCUSSION

During the listening sessions, survivors spoke emotionally about their experiences with the protection order process: None hesitated to voice their opinion regarding the need to update the application, issuance, and enforcement process. One survivor said, “I filed five times and [the judge] rejected all of my temporary protection order applications.”<sup>29</sup> Another survivor replied, “Courts do not want to hear about the past abuse. [You’re] trying to show a pattern in court and it is not listened to.”<sup>30</sup> A third survivor agreed, “When you are denied your TPO, you never know why you are denied. You are not able to file an appeal or file for the same instance again. It has to be something brand new in order to come back. After being denied so many times, I made a deal with my [abuser], ‘Leave my kids alone and I will come back.’”<sup>31</sup> Victim advocates expressed concern during a listening session: “Many victims cannot even talk about their story, [but] they are expected to write it down for the [protection order] application.”<sup>32</sup> In many cases, the inability of a victim to accurately recall or communicate their abuse can serve as a cause for denial of the order by the court.

While the application has been standardized and is used by thousands each year, participants in the listening sessions and workgroup identified issues related to the application process that hinder a victim’s ability to successfully apply for protection. The current protection order application consists of a multi-page fill-in-the blank form that includes a section that asks for a detailed narrative of the latest instances of abuse and/or violence. Currently, Nevada applications focus on the most recent incident, without regard for prior acts.

An example is the 2016 murder of Las Vegas resident and her three children, who were killed by her estranged husband with a firearm in a murder-suicide. Three weeks before she was killed, she had applied for and was denied a domestic violence protection order because it did “not meet statutory requirements.”<sup>33</sup> However, those familiar with the case who were also involved with the Project, believe that had the application asked for information on instances of domestic violence more than 30-days old, or asked about the most severe forms of domestic violence experienced, the court would have found cause to issue a protection order - an order that might have saved the lives of the applicant and her children.<sup>34</sup>

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<sup>29</sup> NAPA Listening Session, Survivors, Las Vegas, June 30, 2016.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> NAPA Listening Session, Advocates, Reno, July 20, 2016.

<sup>33</sup> Juhl, W. "Vegas Woman Denied Protection Order Weeks Before Husband Fatally Shot Her, 3 children." Last modified July 6, 2016. <https://www.reviewjournal.com/crime/homicides/vegas-woman-denied-protection-order-weeks-before-husband-fatally-shot-her-3-children/>.

<sup>34</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

Project workgroup members expressed concern, not only related to the application process, but also regarding the content of orders.<sup>35</sup> Members unanimously felt that orders should be uniform in their writing across the state to make them easier to enforce and accurately inform victims of their protections.<sup>36</sup> Workgroup participants agree that victims need access to information about such matters as the effect of the order on child custody, visitation, reporting and documenting PO violations, duration of the order and other restrictions, enforcement, extension and dissolution.

In another listening session, a legal service provider stated, “They [the courts] don’t assist with the [applications] because they want them to be organic, but if the documentation needs something, the victim has no idea what to do.”<sup>37</sup> While some courts offer advocates to explain the process to victims, many courts rely on domestic violence programs, volunteers, or law enforcement to serve that role if available.<sup>38</sup> Even in courts that have advocates available, some survivors are more comfortable completing the paperwork and navigating the process alone. To be successful, an applicant doing it alone will need additional resources.<sup>39</sup>

Participants endorsed the National Council on Juvenile and Family Court Judges’ recommendation from *A Guide for Effective Issuance and Enforcement of Protection Orders* that victims be presented with options that may be available to assist them to make educated decisions when choosing the best course of action for themselves.<sup>40</sup> Contact between the victim and adverse party after a PO has been entered can demonstrate the importance of understanding the PO process and legal implications. One victim advocate described, “Officers see a conversation between the victim and the batterer where he will text her saying he loves her and wants to get back together but the officer does not see that as a threat even though it is a violation of the protection order.”<sup>41</sup> Educating victims about their rights and protections can empower them to seek additional assistance when running into such barriers.<sup>42</sup>

A survey of Nevada counties by NCEDSV including Clark, Washoe, Elko, Carson City, and Humboldt counties found that each jurisdiction reported a different PO process.<sup>43</sup> The workgroup participants expressed concerns about the PO process in their respective counties, the need to improve the application process, and problems related to the type and quality of information that victims are provided about the process.<sup>44</sup> One legal services

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<sup>35</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>36</sup> Ibid.

<sup>37</sup> NAPA Listening Session, Legal Services, Reno, July 21, 2016.

<sup>38</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>39</sup> Ibid.

<sup>40</sup> [http://www.ncdsv.org/images/NCJFCJ\\_BurgundyBook.pdf](http://www.ncdsv.org/images/NCJFCJ_BurgundyBook.pdf).

<sup>41</sup> NAPA Listening Session, Advocates, Reno, July 20, 2016.

<sup>42</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>43</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

<sup>44</sup> NAPA Listening Session, Legal Services, Reno, July 21, 2016, NAPA Listening Session, Advocates, Reno, July 20, 2016, and NAPA Listening Session, Survivors, Las Vegas, June 30, 2016.

provider observed that “while the intentions of the new process are good, the judge is trying to make the process smoother, but he does not know how the changes have been making the process more difficult.”<sup>45</sup> “There is no uniformity in the rural areas,” said another.<sup>46</sup>

Victims across the state are experiencing inconsistent results when applying for protection orders.<sup>47</sup> Victims can present similar cases in different jurisdictions, courts, or even before the same judge, and still experience different outcomes.<sup>48</sup> The inconsistency of standards makes it difficult for advocates to help victims when developing their applications.<sup>49</sup> Furthermore, it teaches applicants who have been denied in the past to not reapply in the future, even if the abuse has progressed.

Another concern expressed by Project participants relates to the duration of such orders. Participants across the state believe protection order issuance timeframes should be extended. Legal service providers advocated “Two-week temporary protection orders are creating difficulties, the process and getting victims services they need in a two-week time frame. The turnaround time is too quick.”<sup>50</sup> Workgroups members believe judicial training on temporary protection orders is the most likely way to increase the length of temporary protection orders; although, it may be possible to legislate a minimum (30-60 days, etc.) to avoid two-week orders being issued by some judges.<sup>51</sup> However, members agreed that extended protection orders should statutorily be allowed to be issued by a judge for as long as deemed necessary by the court, up to lifetime orders.<sup>52</sup>

## RECOMMENDATIONS

- Uniform, trauma-informed, and professionally developed informational materials should be available to victims of domestic violence across the state at the time of their application for a protection order.
- Victims who receive protection orders must be fully informed on matters related to the content of the order, and their meaning, as well as the process and protection related to post-order matters, including renewal, extension and service of process.
- The issuance of temporary and extended protection orders should be consistent throughout the state and based on a uniform set of standards.

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<sup>45</sup> NAPA Listening Session, Legal Services, Reno, July 21, 2016.

<sup>46</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>47</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>48</sup> Ibid.

<sup>49</sup> NAPA Listening Session, Advocates for Undocumented Victims, Las Vegas, June 28, 2016.

<sup>50</sup> NAPA Listening Session, Legal Services, Reno, July 21, 2016.

<sup>51</sup> NAPA Project Workgroup, Second Meeting, Las Vegas, September 14, 2017.

<sup>52</sup> Ibid.

- Extended protection order issuance timeframes should be extended to include lifetime orders, to be utilized at the discretion of the court.

## RESOURCES

Colorado has a checklist of instructions to help individuals file for a protection order. The checklist walks one through the chronological steps of filing and clearly denotes all forms that need to be filled out and for what reasons. The application is broken down into separate forms: (1) Incident checklist, which lists different forms of abuse and asks if and where the incident happened, (2) Verified complaint/Motion for Protection Order, which gets victim information regarding the most recent and the most serious incidents (3) Affidavit Regarding Children, if there are children involved in the protection order, and (4) Information Sheet for Registering a Protection Order.

The check list can be viewed here:

- <https://www.courts.state.co.us/Forms/PDF/JDF%20400%20Instructions%20for%20Obtaining%20a%20Civil%20Protection%20Order.pdf>
- Incident Check List:  
<https://www.courts.state.co.us/Forms/PDF/JDF%20401%20incident%20checklist.pdf>
- Children Affidavit:  
[https://www.courts.state.co.us/Forms/PDF/JDF%20404%20Affidavit%20re%20children%20R8%2017%20\(FINAL\).pdf](https://www.courts.state.co.us/Forms/PDF/JDF%20404%20Affidavit%20re%20children%20R8%2017%20(FINAL).pdf)
- Application:  
<https://www.courts.state.co.us/Forms/PDF/JDF%20402%20Verified%20Complaint%20for%20Protection%20Order.pdf>
- Information Sheet:  
<https://www.courts.state.co.us/Forms/PDF/JDF%20442%20Information%20Sheet%20to%20Register%20a%20Protection%20Order%20.pdf>

California Courts has a webpage dedicated to Domestic Violence. The webpage includes information for the National Domestic Violence Hotline, as well as a hyperlink that redirects the individual to the California Partnership to End Domestic Violence's webpage. This web page lists all domestic violence programs with the ability to search by zip code. The webpage includes information defining domestic violence, restraining orders (the different types, what they can and cannot do), the restraining order process, and where to get help. Something like this could be created in a PDF or brochure format to have available at any place where a victim can file for a protection order in the state of Nevada. Link to webpage: <https://www.courts.ca.gov/selfhelp-domesticviolence.htm>

In Texas, a joint effort of legal services, non-profits, and courts have developed a webpage with helpful information for survivors and victims. The webpage includes links and

webpages for safety planning and other issues. All webpages and links can be viewed at the bottom of this webpage: <https://texaslawhelp.org/toolkit/i-need-protective-order>.

A review of other states' applications provides the following:

- Utah's application for the "Request of Protective Order" has a portion of the application for the applicant to provide information about the most recent abuse and past abuse. The application can be viewed here: [https://www.utcourts.gov/abuse/docs/01\\_Request\\_For\\_Protective\\_Order.pdf](https://www.utcourts.gov/abuse/docs/01_Request_For_Protective_Order.pdf)
- Colorado's application specifically asks for the applicant to describe the most recent incident and then below, a chance to describe the most serious incident. The application be viewed here: <https://www.courts.state.co.us/Forms/PDF/JDF%20402%20Verified%20Complaint%20for%20Protection%20Order.pdf>
- Texas provides a key for protection order applications, which guide the individual to enter certain information in different locations, highlighting where specific information should be placed. It includes a key of the variety of forms that might need to be completed, helping individuals complete the application. A form like this could be developed and translated into multiple languages, or in different formats for those with disabilities. The Texas key can be viewed here: <https://texaslawhelp.org/sites/default/files/5.8.2012-protective-order-kit-final.pdf>
- Massachusetts provides a completed sample application for their protection orders. The sample application can be viewed here: <https://www.masslegalhelp.org/domestic-violence/legal-forms/sample-209a-complaint-p1-w-affidavit.pdf>
- Texas protective orders provide a factsheet defining the protective order, how to attain one, cost, other forms needed, and outlines the process. It also includes information on how to get ready for court, making a safety plan, and instructions on how to fill out the protective order application. Link to webpage: <http://www.txcourts.gov/media/1437657/protectiveorderkit-english.pdf>
- Massachusetts domestic violence protection order application is only two pages long with prompted questions and a one-page affidavit. The application is easy to fill out in a check-the-box format. Link to webpage: <https://www.mass.gov/files/documents/2016/08/ua/fa-1.pdf>
- California offers a six page request for a domestic violence restraining order that is easy to fill out with prompt questions of personal information and check boxes regarding critical details of the family, offender, and abuse. Link to webpage: <http://www.courts.ca.gov/documents/dv100.pdf>

The use of e-Filing is another innovation from other states:

- North Carolina uses Civil Electronic Filing (e-Filing) that allows civil court documents to be filed electronically. Currently, the system can register a series of documents including domestic violence protective orders. A pilot program for domestic violence filers further expanded North Carolina's use of e-Filing. Advocates assisting domestic violence victims can file complaints from a secure location and obtain a protective order in a short amount of time.
- Link to webpage: [https://www.nccourts.gov/assets/documents/publications/Technology\\_eFiling\\_Facts.pdf?tHkIvP6bHTSnS.2SAVGpgACMKOkD6Tl](https://www.nccourts.gov/assets/documents/publications/Technology_eFiling_Facts.pdf?tHkIvP6bHTSnS.2SAVGpgACMKOkD6Tl).
- Lake County, Illinois provides E-filing for orders of protection <https://www.lakecountycircuitclerk.org/divisions/civil-division/orders-of-protection/e-filing-order-of-protection>
- Florida passed a statewide standard for electronic access to the courts (E-Court Standards) <https://www.flcourts.org/Resources-Services/Court-Technology/eFiling>

The National Center for State Courts has compiled research: *Facilitating Access to Protection Orders – Technology Solutions to Overcome Barriers*. It includes an explanation of state approaches to online filing.

- Virginia has developed I-CAN! Virginia, an online protection order form completion program that simplifies the application process for victims.
- Similar to I-CAN! Virginia, Utah has developed the Online Court Assistance Program (OCAP). The website is specifically designed to assist self-represented litigants and includes online versions of protection orders. While petitioners cannot electronically file OCAP documents with the court, Utah is in the process of designing an E-filing component to remedy this limitation.
- Indiana developed a web-based program called Advocate Access, which allows petitioners to complete and submit an online application for a protection order and avoid going to court. Link to document: [http://www.vawaandcourts.org/~/\\_media/Microsites/Files/VAWA/Facilitating%20Access%20PO.ashx](http://www.vawaandcourts.org/~/_media/Microsites/Files/VAWA/Facilitating%20Access%20PO.ashx)

NAPA Project Workgroup members discovered other states recognize the pattern of abusers and the need for victims to have substantial legal protection from being contacted by the abuser and as such, states such as Colorado offer lifetime protection orders, while others, such as California, offer up to three-year orders.<sup>53</sup> The National Center on Protection Order and Full Faith and Credit report that 22 states have lifetime protection orders.

- Alabama issues a final protection order that is permanent unless specified or modified by the courts
- Colorado issues a permanent Civil Protection order

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<sup>53</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

- Delaware issues a permanent protection order for aggravating circumstances
- Florida issues an Injunction for Protection Against Domestic Violence that is permanent
- Georgia can issue any Protection Order to become permanent
- Idaho upon motion can issue a permanent Protection Order
- Illinois issues a Plenary Order of Protection that can be extend to permanent
- Kansas issues Protection Orders that may be extended to permanent
- Louisiana issues Protection Order that may be extend to permanent
- Maryland issues Protection Orders that can be made permanent under certain circumstances
- Massachusetts issues Protection Orders that can be made permanent upon motion
- Montana issues protection orders on the basis of the respondent's history of violence, the severity of the offense at issue, and evidence
- New Jersey issues permanent protection orders
- North Dakota issues a permanent protection order
- Oregon issues a stalking protection that is permanent, unless limited by law
- Washington issues a protection order that is permanent
- West Virginia issues permanent domestic violence protection orders upon motion

<https://www.bwjp.org/ncpoffc-state-protection-order-duration-matrix.pdf>

Application guides and samples should be available for applicants to assist with completion of applications. Texas' Office of the Attorney General provides a Protection Order Kit online and in print, which serves as a user guide, provides illustrated application and order samples, answers frequently asked questions, and identifies the specific information an applicant will need to provide on their abuser (ethnicity, hair color, tattoos, etc.).<sup>54</sup>

A number of states have successfully adopted a system of uniform statewide applications and protection orders. The uniformity offers the best results for issuance and enforcement across state and interstate jurisdictions.<sup>55</sup> California requires standardized application and order forms, and Kentucky's requires standardized forms for all forms and orders entitled to full faith and credit.<sup>56</sup> Similarly, Louisiana, Missouri, Utah, and Tennessee have adopted uniform applications and order forms across the state in an effort to ease the process for courts, law enforcement, and victims.<sup>57</sup>

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<sup>54</sup> [https://www.texasattorneygeneral.gov/files/cvs/protectivekit\\_dv.pdf](https://www.texasattorneygeneral.gov/files/cvs/protectivekit_dv.pdf)

<sup>55</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>56</sup> CAL. FAM. CODE §§ 6221 and 6226 and KY. REV. STAT. § 403.737

<sup>57</sup> LA. REV. STAT. § 46:2136.2, MO. STAT. ANN. § 455.073, TENN. CODE ANN. § 36-3-604, UTAH CODE ANN. § 30-6-4

# CHAPTER 3: MANDATORY ARREST

## BACKGROUND

The response by law enforcement to cases involving domestic violence has changed dramatically over the last thirty years. During the 1970s, police sought mediation between a victim and abuser. The approach transitioned to “pro-arrest policies” in the 1980s and 1990s.<sup>58</sup> In 1985, the Nevada State Legislature passed Assembly Bill 229 to amend Nev. Rev. Stat. 171 to implement “mandatory arrest” in Nevada. Pursuant to NRS 171.137:

“Whether or not a warrant has been issued, a peace officer shall, unless mitigating circumstances exist, arrest a person when the peace officer has probable cause to believe that the person to be arrested has, within the preceding 24 hours, committed a battery upon his or her spouse, former spouse, any other person to whom he or she is related by blood or marriage, a person with whom he or she is or was actually residing, a person with whom he or she has had or is having a dating relationship, a person with whom he or she has a child in common, the minor child of any of those persons or his or her minor child.”<sup>59</sup>

In 1989 the statute was amended to address the issue of mutual battery and the need to identify the primary physical aggressor:

If the peace officer has probable cause to believe that a battery described in subsection 1 was a mutual battery, the peace officer shall attempt to determine which person was the primary physical aggressor. If the peace officer determines that one of the persons who allegedly committed a battery was the primary physical aggressor involved in the incident, the peace officer is not required to arrest any other person believed to have committed a battery during the incident. In determining whether a person is a primary physical aggressor for the purposes of this subsection, the peace officer shall consider: (a) Prior domestic violence involving either person; (b) The relative severity of the injuries inflicted upon the persons involved; (c) The potential for future injury; (d) Whether one of the alleged batteries was committed in self-defense; and (e) Any other factor that may help the peace officer decide which person was the primary physical aggressor.<sup>60</sup>

Over the last five years, domestic violence calls to Law Enforcement continue to increase, from 23,598 in 2013 to 30,303 in 2017. Participants in the listening sessions and workgroup speculated that many of such arrests continue to be inconsistent with the law and the result of poorly trained law enforcement officers in such important matters as how to effectively determine the primary aggressor in a domestic violence situation.<sup>61</sup> This has adverse effects on

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<sup>58</sup> [http://www.ncdsv.org/images/she\\_hit\\_me.pdf](http://www.ncdsv.org/images/she_hit_me.pdf)

<sup>59</sup> Nev. Rev. Stat. 171.137

<sup>60</sup> Ibid.

<sup>61</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017. Primary aggressor is defined as “the person determined to be the most significant, rather than the first aggressor,”

the victim who is often arrested and charged with domestic violence.<sup>62</sup> Some believe that victims are misidentified regularly as the abuser, and arrested under the mandatory arrest law.<sup>63</sup> According to the Nevada Department of Public Safety in their *2017 Crime in Nevada Report*<sup>64</sup>.

<b>Primary Aggressor</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Arrested	8,195	5,090	13,285
Not Arrested	11,698	4,636	16,334
Total	19,883	9,726	29,619
% of Total	67.2%	32.8%	

One case exemplifies a regular occurrence identified by advocates across the state:

Officers arrive on the scene of an emergency call and have probable cause to believe that domestic violence has occurred on the scene. The wife has acted in self-defense and struck the husband back after he attacked her. The police notify the husband and wife both that they are required by law to make an arrest. Knowing that her husband must be at work in the morning and is the sole provider for the family, the wife agrees to be arrested so her husband will not miss work. The officers comply and arrest the wife because they know she also hit the husband and believe it meets the statutory standard for an arrest.<sup>65</sup>

## **DISCUSSION**

Participants in the listening sessions spoke passionately about the mandatory arrest requirement and how it is utilized by officers across the state. One defense attorney said, “Mandatory arrest and prosecution make it difficult for an officer because they struggle to determine the primary aggressor and this leads to victims being arrested.”<sup>66</sup> Another participant state, “The laws we have now are victimizing victims. When the victim is arrested and/or convicted of domestic violence, she now cannot receive federal funding for housing, she will lose her job, and is at risk of losing other services that are state-provided because of the charge.”<sup>67</sup>

Similarly, victim advocates agree that the arrest of victims is a regular problem in Nevada. “There are many occasions where the victim is getting arrested because the abuser has defensive wounds, or both parties [are] getting arrested if they cannot determine the

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> <http://rccd.nv.gov/About/UCR/Crime-In-Nevada/> page 184

<sup>65</sup> NAPA Project Workgroup, First Meeting, Reno, July 13, 2017.

<sup>66</sup> NAPA Listening Session, Defense Attorneys, Las Vegas, June 27, 2016.

<sup>67</sup> Ibid.

aggressor.”<sup>68</sup> The same advocate continued, “[The police warn] we will arrest both of you and your children will go to foster care.” In such cases, the victim often volunteers to be arrested to ensure the children are not taken.<sup>69</sup>

Another advocate shared how abusers are able to manipulate police into arresting the victim. “They always try to arrest the primary aggressor, and so I think the real flaw in that is that some of these abusers are so incredibly manipulative that they are able to get the victim so agitated by the time the police arrive, that of course [she’s] going to look [crazy], and [the police are] like, ‘Well, I’m taking her.’”<sup>70</sup>

“Well if they don’t determine [the primary aggressor], there is no arrest. Or they’ll arrest both of them. Or if one is bleeding, then the other one is going to jail. That’s not always the right person,” responded a third advocate.<sup>71</sup> She continued, “They were arguing on the sofa, she got mad, she threw the remote control. It hit him. He comes back, grabs her by the neck, and screws her to the ground. She’s arrested.”

Survivors were adamant that in their experiences officers need more training on mandatory arrest and identifying primary aggressors. “With the mandatory arrest, officers don’t have a full understanding or enough training,” said one, while another replied, “Victims are being arrested, and this all depends on the officer. It’s not [consistent].”<sup>72</sup>

In summary, while mandatory arrest statutes are intended to protect victims, the failure of law enforcement to accurately identify the primary aggressor has led to further victimization.<sup>73</sup> When a call involving domestic violence is placed, the responding law enforcement officer is mandated to make an arrest if they believe an act of domestic violence occurred.<sup>74</sup> While law enforcement officers are trained in handling domestic violence calls, they are not adequately trained in the skills necessary to accurately determine the primary aggressor in such cases.<sup>75</sup>

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<sup>68</sup> NAPA Listening Session, Advocates, Reno, July 20, 2016.

<sup>69</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

<sup>70</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> [http://www.ncdsv.org/images/she\\_hit\\_me.pdf](http://www.ncdsv.org/images/she_hit_me.pdf)

<sup>74</sup> Nev. Rev. Stat. 171.137

<sup>75</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

## RECOMMENDATION

- Law enforcement officers receive ongoing trauma-informed training and receive the tools necessary to make an accurate determination of the primary aggressor in domestic violence cases.

## RESOURCES

Law enforcement personnel participating in the workgroup suggested that having a checklist for officers to use while on the scene may be helpful, provide direction, and confidence in the assessment of the primary aggressor.<sup>76</sup> A checklist will allow responding officers to walk through a step-by-step process when considering an arrest.<sup>77</sup>

Many jurisdictions have developed and implemented checklists for law enforcement agencies to use upon arriving at a domestic violence call. The checklists include various questions to ask, important evidence to look for and note, and guidance for determining the primary aggressor.

Examples include:

Checklist produced by Fulton County Family Violence Task Force in Georgia:

[http://fultonfvtaskforce.com/wp-content/uploads/2016/06/dv\\_law\\_enforcement\\_pc.pdf](http://fultonfvtaskforce.com/wp-content/uploads/2016/06/dv_law_enforcement_pc.pdf)

Checklist produced by New Jersey Division of Criminal Justice:

<https://www.nj.gov/oag/dcj/njpdresources/dom-violence/dv-checklist4.pdf>

Checklist produced by Virginia: <http://vscc.virginia.gov/law-enforcement-domestic-violence-investigative-checklist.pdf>

In addition to the suggested checklist to use on the scene, additional training is needed to supplement that received by officers at the academy.<sup>78</sup> There is no required number of hours or consistent curriculum on domestic violence across the academies, nor is there any requirement for any continuing education on this subject. The U.S. Justice Department Office on Violence Against Women, the International Association of Chiefs of Police and the National Sheriff's Association have all developed training materials and curriculums<sup>79</sup> that can be used to develop consistent and ongoing training for law enforcement officers in Nevada.

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<sup>76</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>77</sup> Ibid.

<sup>78</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

<sup>79</sup> <https://ojp.gov/lawenforcement/cops-ovw.htm>

# CHAPTER 4: FIREARMS

## BACKGROUND

Studies show that domestic violence is much more likely to become deadly when the abuser has access to firearms.<sup>80</sup> According to the American Journal of Public Health, the presence of firearms increases the risk of homicide by 500 percent for female victims of domestic violence.<sup>81</sup>

The 1968 Gun Control Act federally banned anyone convicted of a felony or subject to a domestic violence protection order from buying or possessing firearms or ammunition.<sup>82</sup> The Act was expanded in 1996 to expand the prohibition of firearms to those convicted of misdemeanor domestic violence.<sup>83</sup> Congress passed the expansion with almost unanimous support stating that “anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms.”<sup>84</sup>

When addressing domestic violence protection orders, the federal law only applies to specific and narrowly defined situations in which the order “(1) was issued after notice to the abuser and a hearing and (2) protects an intimate partner of the abuser or a child of the abuser or intimate partner.”<sup>85</sup> In addition, intimate partner is limited to a current or former spouse; a person who has a child with the abuser; or an individual living with or who has lived with the abuser.<sup>86</sup>

Nevada mirrors the federal law. NRS 202.360 (1) prohibits the possession, custody, or control of a firearm by those convicted of a felony, misdemeanor crime of domestic violence, or who are currently subject to a domestic violence protection order.<sup>87</sup> *NRS176.337 directs that a court notify a person convicted of domestic violence of the legal ramifications of possessing, shipping, transporting, or receiving a firearm or ammunition, including the possibility of felony charges.* However, Nevada law does not require that an abuser subject to a protection order surrender firearms.<sup>88</sup> Furthermore, the state allows an abuser who is ordered to surrender firearms the opportunity to turn them over to a family member or friend, rather than requiring they submit them to law enforcement.<sup>89</sup>

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<sup>80</sup> <https://www.thehotline.org/resources/firearms-dv/>

<sup>81</sup> *Ibid.*

<sup>82</sup> 18 USC § 922(g)(8),(9)

<sup>83</sup> *Ibid.*

<sup>84</sup> *Congressional Record*, p. S11878, September 30, 1996.

<sup>85</sup> 18 USC § 922(g)(8)

<sup>86</sup> 18 USC § 921(a)(32)

<sup>87</sup> Nev, Rev. Stat. 202.360

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

## DISCUSSION

Nevada's perpetual ranking as one of the deadliest states for female victims of domestic violence was front and center at each listening session.<sup>90</sup> Firearms continue to be the preferred method of murder by domestic abusers in Nevada.<sup>91</sup> According to the Center for American Progress, after an analysis of data collected by the Federal Bureau of Investigation and the Centers for Disease Control and Prevention to assess the scope of gun violence against women in Nevada:

- Women in Nevada are murdered with guns at a rate of 38.14 percent higher than the national average.<sup>92</sup>
- Half of those murdered by an intimate partner in Nevada are killed with a firearm.<sup>93</sup>

Additionally, domestic violence is one of the most common calls law enforcement respond to, with the threat of unknown firearms making each call complicated and extremely dangerous for officers.

Listening session participants identified many barriers to ensuring that guns remain out of reach for abusers.<sup>94</sup> Although firearm surrenders can be ordered, one court master noted, “[I] cannot order a surrender if the adverse party is not present at the hearing.”<sup>95</sup> Another master said, “Firearm surrenders are difficult to enforce and follow up on.”<sup>96</sup>

During the protection order process, victims have the right to seek the state's full protection from their abuser. Although the court may order the surrender of an abuser's firearms when issuing a protection order, the state has not developed a process or system with which to confirm that an abuser is in compliance with the surrender order.<sup>97</sup>

During the listening sessions, advocates spoke about the importance of victims who receive protection orders and their abusers being informed of the laws regarding protection orders and firearms. “If you have an extended order, you are not allowed to possess a gun. To be honest, it's not clear yet that people understand that,” said one advocate.<sup>98</sup> Another replied,

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<sup>90</sup> <http://vpc.org/studies/wmmw2017.pdf>

<sup>91</sup> Ibid.

<sup>92</sup> Based on authors' calculations of data from Centers for Disease Control and Prevention, “WISQARS™ (Web-based Injury Statistics Query and Reporting System): Fatal Injury Data,” available at <http://www.cdc.gov/injury/wisqars/fatal.html> (last accessed January 2015).

<sup>93</sup> Federal Bureau of Investigation, “Uniform Crime Reports,” available at <http://www.fbi.gov/about-us/cjis/ucr> (last accessed January 2015).

<sup>94</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

<sup>95</sup> NAPA Listening Session, Court Masters, Las Vegas, June 28, 2016.

<sup>96</sup> Ibid.

<sup>97</sup> NAPA Project Workgroup, Forth Meeting, Las Vegas, January 11, 2017.

<sup>98</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

“Unless they take them when they make the arrest. I've never heard a [protection order] court say ‘If he has a gun, we need someone to turn it in.’”<sup>99</sup>

Victims are often unaware that their abuser may be required to surrender firearms during the term of the protection order.<sup>100</sup> Victims need to know that they can and should express concerns about accessibility to firearms, whether that information is provided by an advocate, the application itself, or court staff, and that they may ask the judge to address firearms during the hearing.<sup>101</sup>

Other advocates and workgroup members expressed similar concerns. “By the time you're given that information, he's given his guns to his friend or father ... or whoever, so the guns aren't in the home.”<sup>102</sup> Members discussed the need for Nevada's protection order applications to contain questions asking for information about firearms and an opportunity for victims to be heard on the issue of surrender of firearms at the hearing on the PO.<sup>103</sup>

Victims, more than others, can provide vital information about their abuser's ownership or access to weapons.<sup>104</sup> As leaving an abuser is the most dangerous time for victims, it is imperative they understand the risks of their action and are given every opportunity to identify the threats against them. Victims may have intimate knowledge that the removal of their abuser's firearms may escalate the violence against them. When a victim has a concern about firearms, the judge should respect the victim's knowledge and address the issue to best protect the victim.<sup>105</sup>

Advocates question whether a court order is sufficient. “Masters and judges can [order] the surrender of all weapons; it is at their discretion. [But] how do we know how many weapons they have?” Workgroup discussion centered the PO court's reluctance to issue such orders, concerns about multiple or unregistered weapons, and the inability of a court to confirm whether an abuser has surrendered as ordered.<sup>106</sup> In Nevada a person ordered to surrender his/her firearms may simply give the weapons to a friend or family member and claim that they are in compliance with the order.<sup>107</sup> There simply is no way to guarantee that an abuser will not have access to weapons, their own or those from others.<sup>108</sup>

Law enforcement officers who engage with an abuser do not have up-to-date information on the threat posed during a call. “They [the law enforcement agencies] are still figuring out

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> NAPA Listening Session, Advocates, Reno, July 20, 2016.

<sup>103</sup> NAPA Project Workgroup, First Meeting, Reno, July 13, 2017.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

<sup>107</sup> Ibid.

<sup>108</sup> NAPA Project Workgroup, Forth Meeting, Las Vegas, January 11, 2017.

how to update the data systems so officers actually know when someone is prohibited [from owning a weapon],” said one officer.<sup>109</sup> Other officers confirmed the inability to verify an abuser’s firearm ownership status before engaging in a domestic violence call.<sup>110</sup>

One defense attorney pointed out that, “The threat of losing their guns commonly acts as an incentive for the batterer to push for a trial rather than plead.”<sup>111</sup> Similarly, the threat of the abuser losing their rights to own or purchase firearms has been a reason for some judges and law enforcement officers ignore an abuser’s actions because, “[They] don’t want to be responsible for him losing his gun rights.”<sup>112</sup>

## RECOMMENDATIONS

- Creation of a statewide, searchable and enforced system for the surrender and safe keeping of firearms.
- Authorize law enforcement to remove firearms from any person who is the subject of a protection order or has been convicted of domestic violence.
- Protection order applications should contain a provision that allows a victim the ability to ask for the surrender of firearms by abusers.
- Advocates and court staff should be instructed to question victims about the need and/or desire for the court to inquire about and enter an order regarding the surrender of firearms.

## RESOURCES

The John Hopkins Center for Gun Policy and Research published *Removing Guns from Domestic Violence Offenders*. The report analyzes states’ statutes that allow law enforcement to remove firearms at the scene of a domestic violence call and courts to remove firearms upon issuance of protection orders. States such as California, Illinois, Montana, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, and Utah remove firearms when responding to a domestic violence incident. The document analyzes conditions in which law enforcement are able to remove firearms in each state as well as highlighting important language for effective implementation. The full report can be viewed here:

<https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/RemovingGunsfromIPVOffenders7Oct09.pdf>

The National Firearm Resource Center: Safer Families, Safer Communities, has highlighted Wisconsin’s recently enacted firearm surrender for their state. After a successful pilot

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<sup>109</sup> NAPA Listening Session, Law Enforcement, Las Vegas, June 28, 2016.

<sup>110</sup> Ibid.

<sup>111</sup> NAPA Listening Session, Defense Attorneys, Reno, July 21, 2016.

<sup>112</sup> NAPA Listening Session, Law Enforcement, Las Vegas, June 28, 2016.

project, the state passed legislation in 2014 that revamps the surrender process. If it is found that the respondent possesses firearms, they are required to surrender said firearms within 48 hours and requires the court to hold a surrender hearing within one week of the injunction hearing to ensure compliance. If the respondent does not surrender or attend the hearing, the court will issue an arrest warrant. If the respondent wishes to surrender to a third party, the third party must be present in court and testify under oath that they received the firearm. Links to information:

<https://www.preventdvgunviolence.org/community-spotlight/spotlight-wisconsin.html>

<https://www.preventdvgunviolence.org/assets/documents/downloadable-resources/wisconsin-addresses-firearms-surrender.pdf>

Other states offer examples of how Nevada could improve their system:

- North Carolina's application includes a section for applicants to describe what firearms the defendants own. The application also has a list of all forms of relief they may ask for, the portion include an "other" box, where an individual may write in that they want the defendant's firearms removed. The application can be viewed here: <https://www.charlesullman.com/wp-content/uploads/2013/01/Domestic-Violence-Protective-Order-Form.pdf>
- Texas' protection order applications offers applicants a section to address firearms in the protection order. Number 6, section 'i' allows the applicant to ask the courts to make these orders "to suspend any license to carry a concealed handgun issues to the respondent under state law."
- New Hampshire Courts issued an overview and protocols of firearms and other deadly weapons in civil protective order cases. On page 4 of the PDF Protocol 14-9 requires that the "court must include an order directing the defendant to relinquish to peace officer any and all firearms and ammunition in the control, ownership or possession of the defendant, or any other person on behalf of the defendant, for the duration of the Protection Order." The full documents can be viewed here: <https://www.courts.state.nh.us/district/protocols/dv/c14.pdf>
- Prosecutors Against Gun Violence & The Consortium for Risk-Based Firearm Policy produced a report titled Firearm Removal/Retrieval in Cases of Domestic Violence which has best practices for law enforcement, courts staff and advocates to identify, notify, remove and store firearms. Page 8 of the report states that "in order for firearm removal and retrieval policy to be effective, it is important to identify those respondents and defendants who possess a firearm. This information cannot be acquired through just one source. Even in states that maintain a database of firearms sales and transfers, not every firearm has been lawfully acquired or registered". They recommend that prosecutors, law enforcement, domestic violence victim advocates, and the judiciary, identify and use all available, reliable sources of data to identify respondents and defendants in possession of firearms. The full report can be viewed here: <http://efsgv.org/wp-content/uploads/2016/02/Removal-Report-Updated-2-11-16.pdf>

# CHAPTER 5: MATERIAL WITNESS WARRANTS

## BACKGROUND

A material witness is someone that the state's prosecutors considers indispensable to a successful prosecution of a defendant, usually because the witness saw the crime or was the victim of the crime.<sup>113</sup> America's judicial system has a long history of requiring these witnesses to appear in court, going back to the Judiciary Act of 1789.<sup>114</sup> The statute is based on the notion that it is in the public's interest to hold a perpetrator of a crime accountable and that they not be allowed to escape prosecution because a witness is reluctant to cooperate or testify against them.<sup>115</sup>

In 1953 the U.S. Supreme Court stated in its opinion in *Stein v. New York* that, "The duty to disclose knowledge of a crime rests upon all citizens...It is so vital that one known to be innocent may be detained, in the absence of bail, as a material witness."<sup>116</sup> The opinion was upheld by Congress in 1984, which "reaffirmed the right to jail material witnesses, but also noted that their testimony should be secured by deposition rather than imprisonment, 'whenever possible.'"<sup>117</sup> So while jailing a witness or victim is legal, it is not recommended.

Nevada's statute (NRS 178.494) relating to material witnesses provides for posting a bond or bail to avoid arrest. Many victims of domestic violence do not have access to financial resources with which to post a bail, and as a result they are taken into custody.

## DISCUSSION

Victims of domestic violence can be and are arrested by prosecutors for refusing to cooperate in a criminal prosecution of an abuser and for failure to appear in court to testify against their abuser.<sup>118</sup> Under the auspices of a material witness warrant or for failure to comply with a court order, victims are arrested and jailed.<sup>119</sup> While many prosecutors

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<sup>113</sup> Ronald L. Carlson, *Jailing the Innocent: The Plight of the Material Witness* (1969).

<sup>114</sup> Warren, Charles. "New Light on the History of the Federal Judiciary Act of 1789." *Harvard Law Review* 37, no. 1 (1923): 49-132.

<sup>115</sup> Laurie L. Levenson, *Detention, Material Witnesses & (and) the War on Terrorism*, 35 *LOY. L.A. L. REV.* 1217 (2002).

<sup>116</sup> Studnicki, *Material Witness Detention: Justice Served or Denied?* *Wayne Law Review* 1533 (1994).

<sup>117</sup> Ronald L. Carlson, *Jailing the Innocent: The Plight of the Material Witness* (1969).

<sup>118</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>119</sup> *Ibid.*

maintain that the practice is done in the best interest of the victim, research tells us that the effort causes more harm than protections to victims.<sup>120</sup>

Advocates and survivors report the use of the material witness statute by prosecutors and the use of arrest warrants for a victim's failure to appear pursuant to subpoena and even for those cases where the victim recants previous sworn statements in court.<sup>121</sup> Listening session and workgroup members expressed their concerns and observations.

One prosecutor explained that "[It's difficult] getting victims to come to court. We just can't get them to come, and if they don't come, we can't prosecute a lot of the cases. Some we can, and we do the best we can."<sup>122</sup>

Another prosecutor interjected, "Yeah, even a lot of times [the ones] we actually manage to get to come to court are recanting or changing stories for a variety of reasons. A lot of them you can tell it is kind of based on a fear factor, just being afraid of [their abuser] or sticking with their story."<sup>123</sup>

"She's being victimized further, and we have to prosecute her when she recants on the stand," replied another.<sup>124</sup>

The practice by some prosecutors to threaten the use of the material witness warrant amounts to victimization by legal process.<sup>125</sup>

Often, a victim and perhaps her children are dependent on their abuser for financial support. The victim knows that if the abuser is convicted of a crime he may go to jail, lose a job and be unable to financially support the family. If convicted of a crime, he may become more aggressive and continue to focus his hostility and anger on the family. If it is a victim's goal to permanently end the relationship with the abuser, the victim knows only too well that it will be the most dangerous time for her/him.<sup>126</sup> Victims understand these consequences, created by a system that doesn't take into account the realities of domestic violence and family economics and often choose to remain with their abusive partner, others choose to end all communication and involvement.<sup>127</sup> Whatever the direction, the perils a victim must navigate when aiding the prosecution can be terrifying when neither choice realistically ensures both their financial and physical safety, often leaving the victim paralyzed to decide when there is realistically no good choice, or leads them to choose their children's or their own financial safety over their own physical and emotional safety.

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<sup>120</sup> L Han, Erin. (2003). Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases. Boston College Third World Law Journal. 23.

<sup>121</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>122</sup> NAPA Listening Session, Prosecuting Attorneys, Las Vegas, June 29, 2016.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> <https://ncadv.org/why-do-victims-stay>

<sup>127</sup> Ibid.

Victims know their abuser better than anyone, and are best qualified to determine whether assisting the prosecution in court is in his/her best interests.<sup>128</sup> It is a prosecutor's sworn duty to prosecute crimes, often in the name of the "greater good," and in direct conflict with a victim's effort to protect her/himself and perhaps their family.<sup>129</sup> A prosecutor's claim that the material witness warrant is necessary to insure public safety begs the question, how do we define "greater good" and harm to society? Furthermore, an arrest of a material witness may assure a victim's appearance in court one day, and force her/him deeper into isolation, poverty and desperation. This systemic re-victimization and misplaced penalization robs the victim of his/her personal power in the same manner as their abuser had done and may continue to do.<sup>130</sup>

## RECOMMENDATIONS

- That prosecutors refrain from arresting victims for refusing to testify, failing to cooperate, or not showing up to court, except in exceptional circumstances.

## RESOURCES

The State of Washington has produced a manual for dealing with reluctant victims in cases of domestic violence. The manual gives background as to why some victims are reluctant to testify, what a victims' rights are under law, and procedures for issuing subpoenas. While this manual does not explicitly encourage prosecutors to refrain from arresting victims, it does provide more background into the trauma of victims and may be helpful for prosecutors to conceptualize what is happening with their victims and choose a different course of action, rather than issuing warrants.

The *Reluctant Victim: Research* manual can be viewed here:

<http://www.courts.wa.gov/content/manuals/domViol/chapter5.pdf>

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<sup>128</sup> Ibid.

<sup>129</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>130</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

## CHAPTER 6: U VISAS

### BACKGROUND

The U Visa provides immigration relief to foreign nationals who are victims of domestic violence, sexual assault, human trafficking and other crimes. The U.S. Citizenship and Immigration Service's (USCIS) website states that "U.S. immigration law allows foreign nationals who have been victims of certain crimes and granted U nonimmigrant status (U visa) to become lawful permanent residents (get a Green Card)."<sup>131</sup>

The U Visa is set aside for victims of certain crimes who have suffered substantial mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in 2000. The legislation is intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of immigrants and other crimes, while protecting victims of crimes who are willing to help law enforcement authorities in their effort to investigate or prosecute criminal activity.<sup>132</sup>

Federal Law 214.14 states that immigrant victims of qualifying violent crimes are eligible for a U Visa certification as long as they are helpful or are likely to be helpful to law enforcement in the investigation or prosecution of the crime.<sup>133</sup> Nationally, law enforcement believe that these protections have been crucial to the successful investigation and prosecution of violent crimes.<sup>134</sup>

An essential part of the U Visa process requires a victim to complete the I-918 Supplement B form, and present the completed form to the investigating law enforcement agency for a signature certifying that the victim has been helpful in the investigation or prosecution of the crime. Upon obtaining the signature of certification and review by the USCIS, the victim may qualify for a work visa and other protections such as deferred action.<sup>135</sup> While U Visas issued per year are limited to 10,000, a law enforcement agency should sign the I-918 Supplement B as long as a victim has been helpful to the investigation or prosecution.<sup>136</sup>

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<sup>131</sup> <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

<sup>132</sup> <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

<sup>133</sup> <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-17197/0-0-0-21613.html>

<sup>134</sup> <https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer>

<sup>135</sup> <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

<sup>136</sup> Ibid.

## DISCUSSION

Advocates in Nevada have observed that agencies are not always prompt or willing to sign the certification.<sup>137</sup> The project workgroup members identified a number of occasions in which an agency authorized to sign the I-918 failed to do so for unknown reasons and without explanation. The workgroup commended the Reno Police Department and Las Vegas Metro Police Department for providing designated trained staff responsible for this duty, but noted that the number of staff is insufficient: In the event a designated staff member is unavailable, whether because out on leave, sick, or other reason, no alternate person is available to perform the duty. Similarly, the workgroup, recognizing that some agencies lack education or training, or inadequate staffing, expressed concern that some agencies may have ideological differences with the program.

Listening session participants discussed the importance of this program to support victims in their efforts to escape an abusive relationship. One advocate noted that “When undocumented women are in the shelter, [programs] cannot recommend that they work or get a job because it is illegal. It is so hard to get people a job when they are undocumented.”<sup>138</sup> Financial independence and security is an important and necessary step for any survivor, but often remains impossible when victims are restricted from working by law. The U-Visa process is central to the survival of many victims who are foreign nationals, prohibited from seeking employment or other relief that may aid them in their effort to protect their children and themselves. One advocate who works with marginalized populations explained how these populations suffer more than most people realize: “Mainstream DV organizations do not have any idea how bad it really is for undocumented victims. [It is] even harder to get services for undocumented people who do not speak Spanish.”<sup>139</sup>

## RECOMMENDATIONS

- That each Nevada agency identified by Federal law as one qualified to sign the I-918 application receive detailed training on the U-Visa protections and processes, as well as the history and purpose of the law.
- That the Nevada legislature codify the provision of Federal Law 214.14 into state law in order to ensure the timely certification requirements of the statute.

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<sup>137</sup> NAPA Listening Session, Advocates for Undocumented Victims, Las Vegas, June 28, 2016.

<sup>138</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

<sup>139</sup> NAPA Listening Session, Advocates for Undocumented Victims, Las Vegas, June 28, 2016.

## RESOURCES

The Department of Homeland Security (DHS) provides guidance to federal, state, local, tribal and territorial law enforcement officers regarding U visa application. The U Visa Law Enforcement Certification Resources Guide provides step-by-step instructions for filling out the I-918 form. [https://www.dhs.gov/xlibrary/assets/dhs\\_u\\_visa\\_certification\\_guide.pdf](https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf)

California has codified the federal law into state statute in order to guarantee the protections by requiring faithful execution of the I-918 application when presented by a helpful, qualifying victim. If the request is denied, the agency must state in writing the reason for the refusal to certify.<sup>140</sup> California Senate Bill 674 states that a certifying agent shall certify a U-VISA application if the application comes from a helpful, qualifying victim.<sup>141</sup> Link to bill text:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB674](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB674)

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<sup>140</sup> California Senate Bill 674, 2015.

<sup>141</sup> Ibid.

# CHAPTER 7: SPECIALTY COURTS

## BACKGROUND

Specialty Courts are judicial problem-solving courts designed to address the root causes of criminal behavior by diverting perpetrators with identified substance abuse and non-violent histories into programs that will address addiction. The effort coordinates the involvement of professionals including the judiciary, prosecution, defense bar, probation, law enforcement, treatment, mental health, social services, and child protection services in a manner not available in the criminal justice system.<sup>142</sup> Where criminal courts process cases by applying the law in a traditional, adversarial setting, specialty courts seek to restore safe and stable communities through a non-adversarial process.<sup>143</sup>

The rate of recidivism among domestic violence abusers has historically been high.<sup>144</sup> According to the National Institute of Justice, many states began to develop specialized domestic violence courts in the 1990's as a way to address the problem.<sup>145</sup> The idea was "for judges to ensure follow-through on cases, aid domestic violence victims, and hold offenders accountable, with the assistance of justice and social service agencies."<sup>146</sup> With specialized courts geared towards domestic violence, there is the possibility of rehabilitation and reducing the rate of recidivism while connecting with victims through a coordinated community response.<sup>147</sup>

Nevada currently has fifty-nine specialty courts, including fifty-two urban and seventeen rural programs.<sup>148</sup> These fifty-nine programs include twenty-four adult drug courts, one diversion and child support, five family drug courts, three mental health courts, four juvenile drug courts, seven DUI courts, six hybrid DUI/drug courts, one prostitution prevention court, five veteran's treatment courts, two medicated assistance courts, and two habitual offender courts.<sup>149</sup> At present, the AOC does not fund any domestic violence diversion courts due to lack of funding.<sup>150</sup>

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<sup>142</sup> Kirchner, Robert, "Western Regional Drug Court Model Program Designed for Multijurisdictional, Rural Settings", May 2006, p. 2.

<sup>143</sup> See e.g., 2<sup>nd</sup> Judicial District Court Family Drug Court Policies, "Traditional Court Characteristics versus Family Drug Court Characteristics".

<sup>144</sup> Heath-Throton, Debra. "A Restorative Justice Approach to Domestic Violence." *Continuing the War Against Domestic Violence, Second Edition*, 2014, 337-352.

<sup>145</sup> <https://www.nij.gov/topics/courts/domestic-violence-courts/pages/welcome.aspx>

<sup>146</sup> Ibid.

<sup>147</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>148</sup> Administrative Office of the Courts, "Specialty Court Program," [https://nvcourts.gov/AOC/Programs\\_and\\_Services/Specialty\\_Courts/Overview/](https://nvcourts.gov/AOC/Programs_and_Services/Specialty_Courts/Overview/) (accessed 5/9/2018).

<sup>149</sup> Ibid.

<sup>150</sup> Interview with Linda Aguire, 5/9/2018.

## DISCUSSION

When courts are allowed to focus on one complex issue, such as domestic violence, they become better able to serve victims and the community by processing cases more efficiently and entering consistent rulings on domestic violence statutes.<sup>151</sup> For example, legal services providers explained, “Currently, [judges] always grant the abuser visitation with the children. They don’t consider the safety of the victim or the children,” and “[Judges] are occupied with visitation and custody and not the safety of the victim.”<sup>152, 153</sup> Additionally, the courts can better serve the victim through pre-trial safety, victim services, and closer judicial oversight on the cases.<sup>154</sup>

While the majority of these courts around the country were established by the early 2000’s, Nevada has failed to implement any on a permanent basis.<sup>155</sup> Instead, courts in both Clark and Washoe County Justice Courts have established “domestic violence dockets”. Legal services providers questioned some of the court practices:

“There is a lack of uniformity as to how the cases are dealt with. The judges are either confused, or there is a lack of procedure moving forward. Clients are confused as to how to move forward. [It is] difficult to determine which court takes what and when, and it varies county to county and court to court.”<sup>156</sup>

“The court system is pushing both parties, including the victims, to dissolve the case. This leaves the victim feeling no validation.”<sup>157</sup>

“There are no safety accommodations for the victims. They [the courts] don’t hold the batterer back so the victim can leave the courthouse safely. This can be dangerous.”<sup>158</sup>

Workgroup members agreed that there are several issues of concern regarding the procedures, or lack thereof, in courts currently handling domestic violence cases. Participants also agreed that domestic violence specialty courts could be a way to protect victims further.<sup>159</sup> Courts and judges who focus on domestic violence are more likely to seek out best practices and additional training on matters that affect victims.<sup>160</sup>

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<sup>151</sup> <https://www.nij.gov/topics/courts/domestic-violence-courts/pages/welcome.aspx>

<sup>152</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Labriola, M., Bradley, S., O’Sullivan, C., et.al, “A National Portrait of Domestic Violence Courts.” National Institute of Justice, 2010.

<sup>156</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>160</sup> Ibid

## RECOMMENDATION

- Develop pilot domestic violence courts across the state to increase prevention and effective handling of domestic violence cases including the development of a bench book.

## RESOURCES

The National Institute of Justice conducted research to create *A National Portrait of Domestic Violence Courts*, which would serve as a model for courts nationally with a common goal.<sup>161</sup> These court goals include:<sup>162</sup>

1. Increase victim safety
2. Hold offenders accountable for illegal behavior
3. Deter offender recidivism
4. Penalize offenders' noncompliant court orders
5. Facilitate victim access to services
6. Apply state statutes correctly and consistently
7. Foster expertise among Judges and Prosecutors
8. Increase efficiency in domestic violence case prosecution
9. Achieve coordinated responses to domestic violence
10. Rehabilitate offenders

With proper investment and resources, Domestic Violence Specialty Courts are able to enhance victim and child safety and ensure perpetrator accountability. A study conducted in California analyzed in depth the new emerging field of DV specialty courts. They determined best practices for features of domestic violence courts: (1) case assignment (2) screening for related cases (3) intake units and case processing (4) service provision (5) monitoring. In a survey among domestic violence courts, staff perceived the benefits of domestic violence courts as reducing recidivism, improving enforcement and case processing, and providing better services for those who perpetrated violence. Domestic violence court programs can have positive effects on community relations and court personnel. Link to study: <http://www.courts.ca.gov/documents/dvreport.pdf>

The Administrative Office of the Courts (AOC) Specialty Court Funding Committee became active in 2003 as a result of NRS 176.0613.<sup>163</sup> This committee oversees the application process by Nevada courts, sets standards for minimum program and funding criteria, establishes policies and procedures, and makes recommendations to the Statewide Judicial

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<sup>161</sup> Labriola, M., Bradley, S., O'Sullivan, C., et.al, "A National Portrait of Domestic Violence Courts." National Institute of Justice, 2010.

<sup>162</sup> Ibid.

<sup>163</sup> Nev. Rev. Stat. 176.0613.

Council for the distribution of funds.<sup>164</sup> The Committee has the experience to establish a domestic violence specialty court if funding can be found.

## CHAPTER 8: COURT INTERPRETERS

### BACKGROUND

Over the last twenty years, the number of people with limited English proficiency in the United States has increased 80%, from 14 million to over 25 million.<sup>165</sup> This increase represents nearly one in ten residents, nearly 20% of whom are born in the United States, mostly to immigrant parents.<sup>166</sup> Over sixty-one million people, both US and foreign-born, speak one of over three hundred and fifty languages at home.<sup>167</sup>

Although the U.S. Constitution does not specifically guarantee the right to an interpreter for court proceedings, this right has been established in criminal proceedings by rendering of the Sixth Amendment (defendant's right to confront adverse witnesses and his/her right to participate in his own defense, including the assistance of counsel) as well as the Fifth Amendment (due process clause), as applied to the states through the Fourteenth Amendment (equal protection). The interpreter protects those rights by ensuring the defendant's "presence" when his case is heard, providing a complete interpretation of everything that is said in court. The defendant's right to be present at all stages of the proceedings has long been recognized in case law (*Lewis v. United States* 1892), and the notion of "linguistic presence" was established in *Arizona v. Natividad* (1974). A California case, *People v. Chavez* (1981), declared that appointing a bilingual defense attorney is not enough to guarantee a defendant's right to interpretation. The Court Interpreters Act of 1978 established a certification program to ensure the competency of interpreters working in federal courts, and numerous states have enacted laws or regulations concerning the quality of interpreting in the state courts.<sup>167</sup>

On the other hand, in civil proceedings, the constitutional right to the interpreter is less settled. Some states and federal cases have recognized that interpreters are necessary to ensure meaningful participation, however, courts have not uniformly held that civil litigants are entitled to an interpreter under the Constitution.<sup>168</sup>

Title VI of the Civil Rights Act of 1964 provides that: "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be

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<sup>164</sup> Ibid.

<sup>165</sup> <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>

<sup>166</sup> Ibid.

<sup>167</sup> Mikkelson, Holly, 2000, *Introduction to Court Interpreting*: St. Jerome Publishing, pages 12-13.

<sup>168</sup> National Center for State Courts, 2013, *A National Call to Action*, page 38.

denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”.<sup>169</sup>

Title VI and its regulation require recipients of federal financial assistance to take reasonable steps to ensure meaningful access to the information and services they provide to persons with limited English proficiency (LEP).

On August 11, 2000, President William Clinton issued Executive Order 13166, titled “Improving Access to Services by Persons with Limited English Proficiency.” The Order requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to LEP, cannot fully and equally participate in or benefit from those programs and activities. In other words, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons.<sup>170</sup> The U.S. Department of Justice (DOJ) published guidance to recipients of its funding programs, including the courts, in June 2002<sup>171</sup>. According to the DOJ guidance, recipients have two main ways to provide language services and therefore ensure meaningful access by LEP person: oral (interpretation) and written (translation). Quality and accuracy of the language services are critical to avoid serious consequences to the LEP person and to the recipient. DOJ guidance further deals with the issue of what constitutes reasonable steps to ensure meaningful access. That determination will be contingent upon a number of factors, including:

1. The number or proportion of LEP persons in the eligible service population
2. The frequency with which LEP individuals come in contact with the program
3. The importance of the service provided by the program
4. The resources available to the recipient

The Nevada Certified Court Interpreter Program was established in 2002 through Nevada Revised Statutes (NRS) 1.510. The Program’s primary function is to administer certification to court interpreters for courts to use with defendants, witnesses, and litigants who speak a language other than English and have limited knowledge of the English language.

## DISCUSSION

Nevada Revised Statute (NRS) 50.054 guarantees the rights and privilege of interpreters for persons with language barriers within court proceedings.<sup>172</sup> The statute specifies who may and may not act as an interpreter for official court business and guarantees that defendants and witnesses with a language barrier must have access to an interpreter in a

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<sup>169</sup> <https://www.justice.gov/crt/fcs/TitleVI-Overview>

<sup>170</sup> <https://www.lep.gov/13166/eo13166.html>

<sup>171</sup> <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/DOJFinLEPFRJun182002.pdf>

<sup>172</sup> Nev. Rev. Stat. 50.054

criminal case.<sup>173</sup> Notwithstanding the guarantees provided in criminal cases, significant problems exist in Nevada when limited English speakers appear in civil proceedings.

Advocates throughout the state have expressed their concerns with the lack of interpreters available in cases involving domestic violence victims. Most of these relate to protection order matters. Many courts within the state do not have interpreters readily available, and if they do, victims are often responsible for the costs of the service. Occasionally the local domestic violence program is able to cover the cost.<sup>174</sup> Although Spanish interpretation services are most common, other language services can be very challenging.

In Nevada, some courts allow the victim or abuser's family members to be used as interpreters in protection order cases. This practice is inappropriate and marked by bias and misinterpretation. Each party in a domestic violence court case should have access to an interpreter that is outside of their family.

Project workgroup members reiterated the same concerns heard during the listening sessions - the dire need for translators. One listening session survivor, who now works as an advocate, shared her experience trying to assist other victims: "Justice Court does not provide a translator for Spanish [speaking] clients unless it's a criminal case. In cases of protection orders, it can be difficult to find a translator for our client. At the same time, since the judge doesn't speak Spanish, she will not accept a protection order application written in Spanish. Instead, she wants it in English. This creates the problem that once something is translated to English, the victim can no longer read it. The burden of finding a suitable translator falls on the victim, and often times they don't know anyone who can provide this service for them."<sup>175</sup>

A legal services provider who works with victims on a regular basis said, "There are language barriers completing [protection order] applications. [Domestic Violence Resource Center in Washoe County] does have Spanish speaking advocates and applications which helps."<sup>176</sup> Another provider in the session said, "There is a little Spanish speaking assistance, but no other languages are offered."<sup>177</sup>

Other professionals agreed during their listening sessions and spoke on the need for interpreter services for languages other than Spanish. "[We are] struggling with outside translators if it is not Spanish," said one prosecutor.<sup>178</sup> "Other languages can also be challenges," mentioned an advocate.<sup>179</sup>

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<sup>173</sup> Ibid.

<sup>174</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

<sup>175</sup> NAPA Listening Session, Survivors, Las Vegas, June 30, 2016.

<sup>176</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>177</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>178</sup> NAPA Listening Session, Prosecuting Attorneys, Reno, July 27, 2016.

<sup>179</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

## RECOMMENDATIONS

- Expand programs to improve interpreting services.
- Develop education and training regarding language access issues, policies, and best practices for court personnel.
- Include language access policies and practices in mandatory judicial trainings.
- Develop access to online or video interpreter services.

## RESOURCES

The U.S. Department of Justice, Office of Civil Rights provides a variety of resources for courts to provide interpreter services in their "Chapter 5: Tips and Tools Specific to Courts" from DOJ, Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field (2004), available here:

<https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/Final%20Tips%20and%20Tools%20Document.%209%2021%2004.pdf>

The Office of Justice Programs also provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs, including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

# CHAPTER 9: TRAINING

## BACKGROUND

Workgroup members agreed that regular mandated and recorded training on domestic violence for both law enforcement officers and judges is crucial to assisting victims within the state.

### IMPROVING TRAINING FOR LEOS

For law enforcement officers, domestic violence calls are some of the most dangerous; they are also the most common type of call.<sup>180</sup> The response by law enforcement to these calls can vary for a number of reasons, e.g. the geographical area of the responding agency, the size of the agency, and the level of training of responding officers on best practices in response.

Recommended and required training for law enforcement officers on domestic violence is determined by each independent agency as no specific training is mandated by state statute.<sup>181</sup> The nearly eighty law enforcement agencies throughout Nevada are each responsible for setting their own requirements.<sup>182</sup> And while new law enforcement recruits attend the academy (POST) which includes in its curriculum a section on domestic violence, the training is too brief to provide an in-depth understanding of the subject. Furthermore, while a curriculum and training standard may be in place, these can be revised to accommodate the needs for schedule adjustments impacting the quality or length of the section.<sup>183</sup>

For many officers the opportunity for additional training is hit-or-miss. And while the officers in the workgroup and listening sessions advised that many agencies have veteran detectives within a specific section tasked with creating training programs,<sup>184</sup> these officers may not have technical knowledge in the specific subject that they are preparing. As a result, the scenarios and training sessions may not be as realistic or as beneficial as they could be.<sup>185</sup>

## DISCUSSION

During the listening sessions across the state, professionals from every field reiterated the need for more law enforcement training.

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<sup>180</sup> <https://www.ncjrs.gov/pdffiles1/Digitization/102634NCJRS.pdf>

<sup>181</sup> NAPA Project Workgroup, Third Meeting, Las Vegas, November 9, 2017.

<sup>182</sup> NAPA Listening Session, Law Enforcement, Reno, July 18, 2016.

<sup>183</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

One advocate explained how abusers are able to manipulate officers because of their lack of training: “Perpetrators are treated well by police because they are saying the right words, and the victims are blamed. Officers don’t understand trauma. Victims are used to shutting down and hiding it. [They are] embarrassed and don’t want the officer to look too closely.”<sup>186</sup>

“Law enforcement is not aware of the shelters of domestic violence services provided or available to the victim at the time of the event,” said one survivor.<sup>187</sup>

“Police are telling victims they need more bruises and injuries in order for the abuser to be arrested. Officers leave but say they will stay close. So the victim instigates a fight to get more injuries so the officers will respond after greater injuries.”<sup>188</sup>

“Victims are always told to leave and go to the shelter, but never him. He keeps all the privileges of staying home, but she has to leave. The police ask, “Do you have somewhere to go?” The police were nice, but the solution was not to take him,” recalled one survivor. “Police need sensitivity training.”<sup>189</sup>

“[I] recommend required annual training, more consistent training for domestic violence, with definitions, updates on arrests, etc.,” said one officer.<sup>190</sup>

“There should be training for departments, such as a mandatory 8-hour domestic violence training. It’s a maintenance issue for new officers coming in,” said another.<sup>191</sup>

“I found that victims were being arrested; I request that more training is available to [officers] to help determine. [We are] identifying the wrong primary based on bodily injury,” asserted one officer.<sup>192</sup>

“There should be better training for officers on strangulation.”<sup>193</sup>

“Getting enough training is difficult. Getting training in their quarterly trainings. Officers are on domestic violence calls all of the time. They see them every day.”<sup>194</sup> Another stated that officers were not informed of updates to the domestic violence laws; “The knowledge has not been pushed out.”<sup>195</sup>

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<sup>186</sup> NAPA Listening Session, Advocates, Las Vegas, July 1, 2016.

<sup>187</sup> NAPA Listening Session, Survivors, Las Vegas, June 30, 2016.

<sup>188</sup> NAPA Listening Session, Survivors, Reno, July 20, 2016.

<sup>189</sup> Ibid.

<sup>190</sup> NAPA Listening Session, Law Enforcement, Las Vegas, June 28, 2016.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> NAPA Listening Session, Law Enforcement, Reno, July 18, 2016.

<sup>195</sup> Ibid.

## JUDICIAL EDUCATION AND TRAINING IS VITAL

For judges, whether in criminal or civil matters, domestic violence can be a component of many different types of cases. Sadly, many judges and their court staff have a limited understanding of the complex personal and legal issues presented, and the impact that their actions or inactions may have on the lives of victims. Many of these professionals are unable to spot issues, or identify potential problems common to these cases. Some will not recognize the signs of abuse, while others may not understand trauma or the behaviors a victim may display.<sup>196</sup> As a result, victims can be subjected to further persecution by the legal system.<sup>197</sup>

Over a decade ago, the Nevada Supreme Court directed all judicial officers to receive training on this difficult and complicated subject. The order is found in ADKT 168, August 17, 2006, Nevada Supreme Court. The order reads in part, "...continuing judicial education on the causes, effects, and dynamics of domestic violence shall be mandatory for all judicial officers serving in the State of Nevada."<sup>198</sup> Although the order appears to require ongoing training in domestic violence for judges, there are no compulsory annual trainings, nor are there consequences for non-compliance.<sup>199</sup>

The Nevada Supreme Court's Judicial Education Unit makes it a practice to offer periodic domestic violence training at their various seminars, but it is not done at every seminar, and individuals are not required to attend.<sup>200</sup>

## DISCUSSION

Victims of domestic violence regularly find themselves in the civil justice system for a variety of reasons and in a variety of legal matters. This is particularly true when there are children from the relationship. Understanding the causes, effects and dynamics of domestic violence continues to be vital for any judge hearing a case involving these issues. Understanding the consequences of domestic violence on both the direct and secondary victims of the abuse for judicial officers cannot be overstated.

It should not be surprising that the effects of domestic violence on victims may vary greatly. While the most common effect of physical violence is understood to impact the physical body, mental and emotional abuse goes hand-in-hand with physical violence. A victim's mental and emotional responses, processes, thinking, behaviors and ability to make reasoned decisions are affected by victimization and can be difficult to understand.

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<sup>196</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>197</sup> Ibid.

<sup>198</sup> ADKT 168, Nevada Supreme Court, August 2006.

<sup>199</sup> Gordon, David, Manager of Judicial Education, Nevada Supreme Court (personal communication, May 18, 2017).

<sup>200</sup> Ibid.

The most threatening concerns for a victim include economic or financial hardship, the denial of medical care or services, homelessness, and the risk of losing custody of their children. When coping with these real threats to their survival, a victim is forced into survival-mode, and might turn to harmful behaviors such as self-medication with drugs or alcohol, and other self-harming conduct. In survival-mode, a victim might turn to criminal acts such as theft, shop-lifting, robbery, prostitution or more.<sup>201</sup> When a victim's response to threatened or actual loss becomes criminal, the victim becomes the offender and might find herself/himself in the criminal justice system.<sup>202</sup>

Judges in both civil and criminal matters must understand the dynamics of domestic violence, and must possess a working knowledge of abuser tactics and behaviors, and victim responses. Judges must understand these dynamics in order to impose a proportionate and just sentence, to protect the parties, and apply the law with an even hand. To this end, Judges need regular expert training of this complex subject if they are to develop the skills, understanding and perspective necessary to adjudicate these matters.<sup>203</sup>

Survivors, legal service providers, prosecutors, and advocates all expressed the need for judicial training:

Survivors recalled stories of being put in harm's way via a judge's order: "A family court judge ordered one victim to go to the DMV with her abuser."<sup>204</sup>

Another survivor agreed this is a common concern: "Judges are ordering victims to go places with their abuser, even when a protection order is in effect."<sup>205</sup>

Victims are ordered by the court to interact with their abuser when it comes to their children. "Judges order victims to supervised visitation, involving family members. The victim does not want to violate the order, so they put themselves directly at risk," one legal services provider stated.<sup>206</sup>

In addition to safety concerns, listening session participants and workgroup members expressed discomfort over judges' lack of understanding of victim trauma and response. "Judges are judging the victim for many reasons. They do not appear to understand or care about the victim's circumstances," said one legal service provider.<sup>207</sup>

"Judges need more training. They are in a position of power... Masters need more training," said an advocate.<sup>208</sup>

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<sup>201</sup> <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/domestic-violence-homelessness>

<sup>202</sup> Ibid.

<sup>203</sup> NAPA Project Workgroup, Fifth Meeting, Reno, March 29, 2017.

<sup>204</sup> NAPA Listening Session, Survivors, Las Vegas, June 29, 2016.

<sup>205</sup> Ibid.

<sup>206</sup> NAPA Listening Session, Legal Advocates, Las Vegas, June 30, 2016.

<sup>207</sup> Ibid.

<sup>208</sup> NAPA Listening Session, Advocates, Reno, July 20, 2016.

## RECOMMENDATIONS

- That annual varying, realistic, updated, and trauma-informed domestic violence training be required and provided to law enforcement through a variety of formats, including roll call trainings.
- That ongoing domestic violence training be provided and required for all judicial officers. That family court judges, limited jurisdiction judges, domestic masters, and pro temp judges be required to receive annual training on domestic violence.

## RESOURCES

The National Council of Juvenile and Family Court Judges (NCJFCJ) compiled a running list of a majority of states and whether or not they require mandatory training. California, New Jersey, and New Mexico, have a mandatory annual requirement for domestic violence training for judges. While other states have mandatory training, not all are annual and ongoing trainings. The full document can be viewed here:

<http://www.ncjfcj.org/sites/default/files/chart-mandatory-dv-training-for-judges.pdf>

Some agencies offer training that specifically addresses how to assist and recognize domestic violence situations. If an officer does not have agency training available, other options exist. The following is a short list of organizations that provide information and/or training on domestic violence for criminal justice professionals:

- National Sheriffs' Association (NSA)
- International Association of Chiefs of Police (IACP)
- National Center on Domestic and Sexual Violence (NCDSV)
- American Probation and Parole Association (APPA)