FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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PROSECUTING A DOMESTIC VIOLENCE CASE

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Distributed by:

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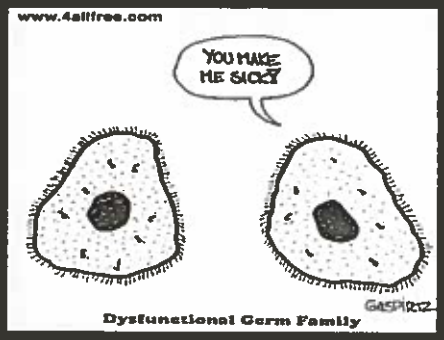
Prosecuting Domestic Violence Cases

Strategies for Prosecutors

Bill Burke, Tempe City Prosecutor



Domestic Violence in Arizona

From 2001- 2010, the number of arrests flagged for DV increased by 17.8 %.

Almost half were for assault and assault-related offenses.

Of these, 365 counts were for homicide.

Arizona Criminal Justice Commission Report, June 2013

Domestic Violence Law in Arizona

A.R.S. § 13-3601 Domestic Violence

"Domestic violence" means any act that is a dangerous crime against children as defined in §13-705 or an offense prescribed in § 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, § 13-2904, subsection A, paragraph 1, 2, 3 or 6, § 13-2910, subsection A, paragraph 8 or 9, § 13-2915, subsection A, paragraph 3 or § 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

A.R.S. § 13-3601

1. Marriage or former marriage, or living together or previously did live together
2. Victim and defendant have child in common
3. Victim or defendant is pregnant by the other
4. Victim related to defendant by blood/court order (see list of relationships)
5. Current or previous romantic or sexual relationship

A.R.S. § 13-3601.01 DV Treatment

If Convicted of a Misdemeanor:

- Must complete an approved DV offender treatment program
- A second conviction within 60 months - a judge may require supervised probation and
- May require incarceration as a condition of probation
- Defendant pays for treatment program

A.R.S. § 13-3601.02 Aggravated DV

- If a person commits a third or subsequent offense within 84 months
- Must serve at least FOUR MONTHS in jail
- If convicted of three or more prior DV offenses, must serve at least EIGHT months
- Aggravated DV is a class 5 felony

A.R.S. § 13-2921.01 Agg. Harassment

If defendant commits harassment (§ 13-2921):

AND

- The victim has an OOP in place against D

OR

- The person has previously committed an offense included in § 13-3601 against same victim
- Both are felonies

Barriers to Effective Prosecution

Or the Top 5 Reasons Why LEO Typically Dislike DV Cases and What You Can Do About It

Top Five Reasons to Dislike DV Calls

5. Underlying civil issues make investigation difficult and resolution impossible.

Top Five Reasons to Dislike DV Calls

4. Cases frequently involve children, which can be logistically and emotionally difficult

Top Five Reasons to Dislike DV Calls

3. The "Frequent Flyer" Syndrome.

Same players, different days.

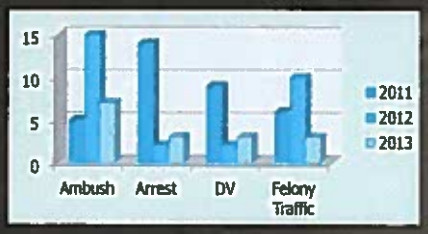
Sometimes with roles reversed.

Top Five Reasons to Dislike DV Calls

2. *Victims are often unreliable:*
   - They lie to protect the aggressor.
   - They are afraid.
   - They expose themselves & their children to violence.
   - Determining the actual victim can be difficult.
   - They blame themselves.
   - They blame you.

Top Five Reasons to Dislike DV Calls

1. These calls often involve drugs/ETOH and are statistically dangerous for LE.



National Law Enforcement Officers Memorial Fund - nleomf.org

Barriers to Effective Prosecution

Challenges for Prosecutors

The Investigation

Homicide Investigation

- Victim cannot tell you who did it.
- Case is proven by extrinsic evidence
- Witness interviews
- Physical evidence
- Other

DV Investigation

- Victim will not tell you who did it.
- Case is proven by extrinsic evidence
- Physical evidence
- Witness interviews
- Other

The Victim

I lied about what happened
I started it-- it's my fault
I love him
I hate you
I should never have called 911
I'll lose my kids
I'm leaving town
I won't testify
I'm afraid

The Victim—Communication

Meet with your victim outside of court

Listen to what he/she has to say

How can you lessen fear / anger/ etc?

Let her listen to what she *had* to say.

How Can You Prove Your Case *(without victim testimony)?*

- Physical evidence
- Non-victim witnesses
- Defendant's admissions
- Interview with LEO
- Jail phone calls
- 911 calls
- Medical/EMS records
- Letters / email / text
- Other?

The Plan

Improving Outcomes in Your Jurisdiction

THE PLAN

- Review defendant's criminal history
- OOP / Injunctions, etc.
- Maintain contact with victims
- Work with LEO—offer to train
- Identify policies / practices that are barriers
- Make a list and discuss with LEO & neighboring prosecutors
- Get involved in DV prevention / fatality review

THE PLAN

Resources

- Victim Services
- Child/Adult Protective Services
- Child / Family Advocacy Center
- Coordinated Community Response Team
- Domestic Violence Fatality Review Team

Final Thoughts

Everyone you meet is fighting a hard battle.

Plato

At the end of the day, don't forget that the most important family is your own.

Thanks For All You Do!

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