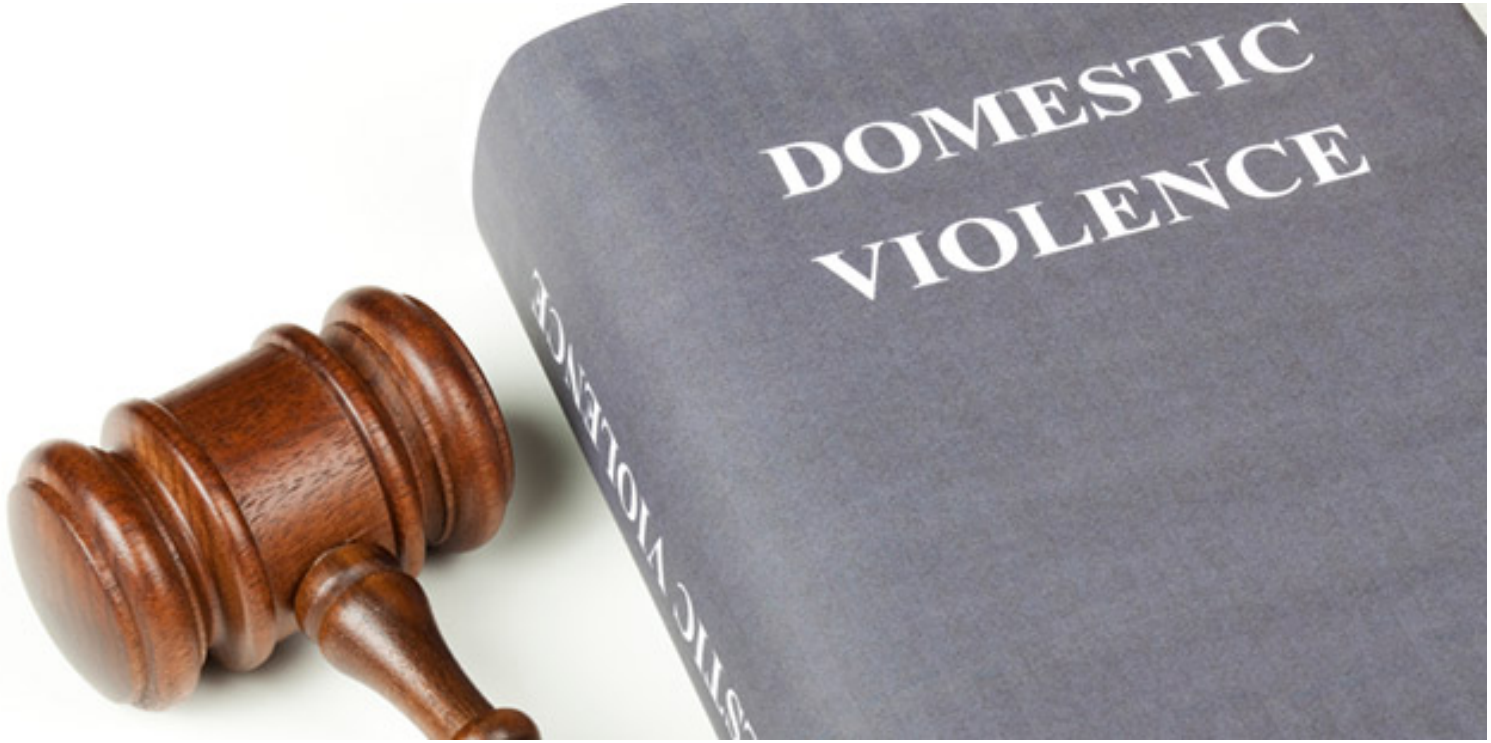
Domestic Violence Prosecution



Diana Becton, District Attorney
Dana L. Filkowski – Domestic Violence Supervisor

Evidence-Based Prosecution

DA'S FILING STANDARD

Diana Becton, District Attorney
Dana L. Filkowski – Domestic Violence Supervisor

Filing Standard

- Prosecutors are held to a higher standard than imposed on other attorneys because of the unique function they perform in representing the interests, and in exercising the sovereign power, of the state.
  - *People v. Sanchez* (2014) 228 Cal.App.4th 1517.
- We can't file criminal charges or permit such charges to remain pending in the absence of sufficient admissible evidence to support a conviction.
  - CA Bus. & Prof. Code Sec. 6068(c); American Bar Assoc. Criminal Justice Standards, Standard 3-3.9(a).

Filing Standard

- Which means…
  - With the *admissible evidence* identified in the investigation
  - Can we overcome the presumption of innocence
  - And prove the case beyond a reasonable doubt
  - To a unanimous jury of 12 members of this community
  - Considering equities and affirmative defenses

Evidence-Based Prosecution

- Considered a “best practice” nation-wide for domestic violence and sexual assault cases
- If evidence sufficiently supports prosecution, case is filed even if victim is uncooperative / doesn’t want to “press charges”
- If evidence does not, no case filed – even if victim desires prosecution

Evidence-Based Prosecution

- "He-said" / "She-said" cases can't get filed
  - Presumption of innocence requires not guilty verdict
- Can't do "bad guy" filings
- **Corroboration** of victim's statement is critical
- Same standard for homicide
  - Dead victim can't come tell us what happened but we still prosecute when we have the evidence

Corroboration is Key

- 911 Call
  - Contemporaneous Statement (can hear threats, yelling, crying kids, smashing sounds)
  - Excited Utterances
- Body Cam
  - Emotional, bloody V
  - Crying kids
  - Trashed apartment
  - Angry / scary looking D

Corroboration is Key

- Scene
  - Evidence of struggle
    - Holes in wall
    - Broken furniture, pictures, knick-knacks
    - Blood
- 3d Party Witnesses
  - Kids (CIC)
  - CAD Log!!!!

Corroboration is Key

- CFS
  - You can review file
  - Must file 827 to use contents in court

Corroboration is Key

- Injuries
  - To V: Photos day of and follow up days later
  - To D: Hands, scratches
  - Medical records
    - Hospital (not Crawford, 1370)
    - AMR (not Crawford, 1370)
- Physical evidence
  - Weapons
  - Bloody or ripped clothing

Corroboration is Key

- Fresh Complaint Witnesses
  - Who does V always run to?
    - Mom, sister, girlfriend
    - D will often apologize / explain / blame
  - Who else did V run to this time?
    - Apartment / hotel manager
    - Good Samaritan
  - Prior consistent / inconsistent stm. Of V
  - Pictures, evolving injuries
    - Take own or emails/texts selfies of injuries

Corroboration is Key

- Prior Victims or Same Victim, Prior Violence
  - 1108 / 1109 / 1101(b)
- Jail Calls
  - Dissuasion
    - 166? 136.1?
  - Apologies / blaming