

Placer County District Attorney's Office

12.00 DOMESTIC VIOLENCE PROSECUTIONS

12.01 INTRODUCTION

Violence in the home will not be tolerated. It will be the goal of this office to bring the power of the State to bear on abusers to make them realize that there are severe adverse consequences for choosing to be violent. It is hoped that this office's policy of prosecuting provable cases, regardless of a victim's lack of cooperation, will help establish an aggressive, firm and consistent approach to the prosecution of abusers.

12.02 CHARGING

A case should not be declined solely because of reluctance expressed by the victim. The decision should be based on the availability of sufficient evidence to prove the case. Where a provable case exists, the case should be filed³ unless the interest of justice dictates otherwise.⁴

If a victim is uncooperative, an examination of the evidence surrounding the crime must be made to determine whether there is sufficient evidence to proceed. Photographs, 911 tapes/printouts,

³ California District Attorney's Association's Basic Criteria for Charging-

The prosecutor should charge only if the following four basic requirements are satisfied:

- a. Based on a complete investigation and a thorough consideration of all pertinent data readily available, the prosecutor is satisfied that the evidence shows the accused is guilty of the crime to be charged;
- b. There is legally sufficient, admissible evidence of a corpus delicti;
- c. There is legally sufficient, admissible evidence of the accuser's identity as the perpetrator of the crime charged.
- d. The prosecutor has considered the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

⁴ Factors to consider: children testifying against parents, old incident and no further problems, viable parole or probation violation or facts suggest unsympathetic parties are involved (e.g. V orders a "hit" on D afterwards).

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medical records, prior incidents, the existence of reliable witnesses and other pertinent information should be considered.

12.03 CRITERIA FOR CHOICE OF MISDEMEANOR VS. FELONY

In determining whether to file a case as a misdemeanor or a felony, the reviewing DDA should consider the facts of the case in light of the following:

1. Nature and circumstances of the offense.
2. Extent and seriousness of the injuries.
3. Prior criminal record of the defendant (including incidents of arrest not resulting in convictions).
4. Past history of violence (reported or not).
5. Absent serious injury, evidence of the accuser's intent to inflict serious injury.
6. Presence of minor children.
7. Whether the accused was on probation at the time of the new offense.
8. Reasonable likelihood of conviction on felony or misdemeanor charges at trial.⁵

12.04 REDUCTION AFTER FILING

Reduction of felonies to misdemeanor charges after charging should be infrequent. Such reductions should be made only where the facts have been developed making the felony charges unprovable or in the rare occasions where the interests of justice are thereby served and the reasons noted in the file.

⁵ Is the case trialworthy?

Factors to consider: minimal injury, history of mutual violence or pending child custody battle.

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12.05 OFFERS TO SETTLE CASES

Offers to settle cases should be based on the facts of the case and commensurate with offers for other violent crimes. Offers in general should reflect the maximum sentence possible given the totality of the circumstances of the crime, criminal record of the accused and likely sentence after trial. Every effort should be made to increase (not decrease) the severity of offers as a case proceeds through the criminal justice process to encourage pleas early on in the process to alleviate further trauma to the victim.

12.06 DISMISSALS

No domestic violence case will be dismissed once formal charges have been filed unless there are compelling evidentiary reasons for doing so or when such action is in the interest of justice⁶. For example, dismissals are appropriate in cases where evidentiary problems have developed that preclude the possibility of proving all the elements of the crime. Reluctance or absence of the victim should not be the operative factor in making a determination to dismiss the case.

⁶ California Rules of Professional Conduct states:

The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.