

# STOP Newsletter

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## Evidence-Based Prosecution and Surviving Domestic Violence

### Reasons Domestic Violence Victims Stay in Abusive Relationships

- ◆ Fear of retaliation from abuser
- ◆ Economic hardship
- ◆ Pressure from friends and family to give the batterer another chance

Police officers work to serve and protect the public. Prosecutors seek justice in the legal system. Community-based domestic violence advocates ally themselves with domestic violence victims to help them become survivors. When a victim calls the police the immediate goal is safety. The victim wants to stop the violence. The police respond and the immediate goal is met, but the legal system's response does not stop with arrest. Criminal charges are filed. A hearing is set, but the victim may be reluctant to testify. This leaves police and prosecutors wondering how their goals of protection and justice are achievable in domestic violence cases.

Victims of domestic violence are often reluctant to proceed with prosecution for many reasons. Whatever the victim's reason, it is important that police, prosecutors and advocates respect and consider the victim's concerns as the case moves forward.

### Evidence to Collect

- ◆ Photographs
- ◆ Damaged property
- ◆ Sworn victim and witness statements

The objective of evidence-based prosecution is to gather extensive evidence of battering to offer in the commonwealth's case, thereby not relying solely on victim testimony. This is good police work in any case but is critical in domestic violence cases. Prosecution and conviction provide the victim with important safety options. Evidence-based prosecution allows the police and prosecutor to achieve

their goals of protection, service and justice without further compromising a reluctant victims' safety.

Victim safety is achieved not only through arrest of perpetrators but also by way of trust in the legal system, resources that allow self-sufficiency, and batterer accountability. Police, advocates and prosecutors should work together to understand and support each other's roles in building the victim's trust by recognizing and responding to her needs. Quick police response will help victims feel protected. Respectful and private interviews with detectives and officers allow the victim to fully describe the abuse. Referrals to community-based advocates allow confidential support and resources that enhance options. A trained prosecutor who understands victims' perspectives allows them to trust the legal system.

Evidence-based prosecution is more than collecting evidence and doing good police work. It allows the legal system to respond with flexibility and provides victims options for safety, restoration to a life without violence and batterer accountability. Victim-focused, evidence-based prosecution will make our communities safer and increase transformation opportunities for domestic violence victims everywhere.

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## Seven Things Investigators Can Do To Help Prosecute Sexual Assaults

As they say on “Law & Order,” the people are represented by two separate yet equally important groups – the police who investigate crime, and the district attorneys who prosecute the offenders.

Both groups must work together, especially when the crime is sexual assault. By working as a team, the police and prosecutors share a common goal: identifying offenders so that they may be punished and prevented from violating others.

Prosecutors carry a heavy burden in convincing a jury beyond a reasonable doubt that the defendant actually committed a heinous act. How can investigators help prosecutors meet this burden? Here are seven suggestions from senior sexual assault prosecutors across the state.

### 1. Involve the prosecutor.

Thorough investigations are a team effort. Prosecutors have a wealth of experience and legal knowledge to share. Their specialized skills will help evaluate and investigate sexual assault cases. By involving prosecutors early in the process, legal problems such as suppression issues can be identified and addressed.

### 2. Document everything.

Accurate and detailed reports are crucial. Document all evidence and record every witness statement. Omissions and mistakes give defense attorneys fodder for cross-examination. Investigators must be prepared for defense questions not only about what they did, but about what they didn't do and why.

Beware the heightened expectations of jurors created by TV shows like “CSI.” Defense attorneys use examples of technology from television shows or movies to plant seeds of doubt in jurors' minds. Even if no physical evidence is recovered, processing the crime scene thoroughly can combat “CSI” defenses.

By-the-book investigations project credibility. They keep the focus on the defendant rather than on whether the police followed procedure.

### 3. Handling the victim.

The victim is expected to divulge the most sensitive personal information to complete strangers after suffering a highly traumatic experience. Treating victims with respect and without judgment can help create an atmosphere in which they will speak truthfully and completely to investigators. The initial interview is just the beginning. Victims who shade the truth for whatever reason will pose serious problems down the line.

Special considerations must be given to cases where the victim knows the suspect, is a child, or both.

### 4. Handling the suspect.

Lock the suspect into his story as early as possible, even if it's a denial. It prevents the suspect from changing or adding details to his advantage at trial. A suspect's story can help prove the case if it contradicts other evidence. If an alibi is provided, check out every detail.

If the suspect is unaware the assault has been reported, discuss delaying an arrest with the prosecutor. An investigation may turn up more evidence if the suspect is not in custody. Plus, if the victim knows the suspect, a consensual wiretap is an excellent way to obtain incriminating statements.

### 5. Take detailed statements from all witnesses.

All statements should be recorded, reviewed by the witness, and signed. Also, note the demeanor of the person giving the statement to help the jury gauge credibility.

Direct witnesses to a sexual assault are rare. Seek statements from tangential witnesses, such as neighbors, coworkers, and family members. Remember that the testimony of the first person the victim told about the assault (the “prompt complaint witness”) may be admissible in court.

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## Seven Things Investigators Can Do

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### 6. Seek out corroborating evidence.

As one senior prosecutor put it, "Rape cases cry out for corroboration." Corroborative evidence takes many forms, including torn clothing, soiled bed sheets, 911 tapes, and prompt complaint witnesses.

### 7. Use sexual assault response teams (SARTs).

SARTs are multidisciplinary teams that provide a coordinated and specialized response to sexual assaults. These teams may consist of prosecutors, law enforcement officers, victim advocates, and medical personnel (sexual assault nurses/forensic examiners, medical directors, emergency room personnel).

SARTs have been used successfully in many counties, including Erie, Lycoming, Mercer, and Union. PCAR has established excellent guidelines for SARTs that can be found on its Web site: [http://www.pcar.org/med\\_adv/index.html](http://www.pcar.org/med_adv/index.html).

## Enforcement of Out-of-State Protection Orders

The Violence Against Women Act (VAWA) became federal law in 1994. One of the provisions of VAWA was the Full Faith and Credit section found in 18 U.S.C. § 2265. In June 2001 the Pennsylvania Legislature passed Senate Bill 130, which enacted changes to the Pennsylvania Protection From Abuse Act that brought Pennsylvania law into conformity with the federal full faith and credit provisions. [See 23 Pa.C.S.A. §§ 6104 and 6105(h).] Both of the aforementioned laws give greater protection to victims of domestic violence who need to have their protective orders enforced across state and territory lines.

Generally speaking, the issuing jurisdiction decides if a protective order can and should be granted, and the enforcing jurisdiction decides how to enforce the order. Furthermore the issuing jurisdiction determines the terms and conditions of the order. Pennsylvania and federal law define a foreign protective order broadly to include those issued to prevent domestic violence or stalking, as well as divorce and separation orders that have special protective provisions proscribing contact or harassment.

Pennsylvania law enforcement must enforce a valid foreign protective order even if it is not registered in a Pennsylvania court. Both federal and state laws make it clear that filing protective orders is not a prerequisite for enforcement. Furthermore, the common pleas court is the only entity that can decide if a protective order is invalid and not eligible for enforcement. Both federal and state law require officers to enforce a foreign protective order until the order is declared invalid by the court. Foreign protective orders are presumed valid until declared otherwise. [23 Pa.C.S.A. § 6105(h) (1)]

In December 2002, the Armed Forces Domestic Security Act was amended to make it clear that civil protective orders are enforceable on military installations. (See 10 U.S.C. §1561.) The superior officer must enforce the order as if it had been issued on the military base. However, because military orders do not satisfy due process requirements for full faith and credit enforcement, state courts will likely deem them invalid. This is because persons subject to a military protective order have no opportunity to be heard or to contest the order, which is usually issued by the commanding officer.

Police and prosecutors who have questions about full faith and credit enforcement may call the National Center for Full Faith and Credit at 800-256-8553 ext. 2.

## Domestic Violence and Confidentiality

Victims of domestic violence may feel reluctant to speak with anyone about their abuse. Confidential communication between a victim and a domestic violence counselor/advocate allows victims to talk about their lives and safety concerns without fear that others will know.

The Protection From Abuse Act allows victims to talk freely with their advocate as prescribed in 23 Pa.C.S.A. § 6102, "Confidential Communications." This definition includes "All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship." The Pennsylvania Superior Court also held this communication is an *absolute privilege*. [*V.B.T. v. Family Services*, 705 A.2d 1325 (1998), aff'd 556 Pa. 430, 728 A.2d 953 (1999).]

This absolute privilege is critical for the safety of domestic violence victims. When an advocate says, "I cannot confirm or deny whether a victim is here," you know that advocate is doing her job to promote victim safety and protect the privilege.



## Sexual Assault and Confidentiality

Confidentiality is the cornerstone of the provision of services to victims of sexual violence. These victims need to know that the extremely painful and personal details of their victimization are protected from disclosure.

In Pennsylvania, victims and those who have a significant relationship with them are protected by law from having their confidences revealed. In 1990, after years of struggle, a state law (42 Pa.C.S. Section 5945.1) established confidentiality for communications with sexual assault counselors. Communications with private mental health professionals were already protected, but victims who sought services from sexual assault counselors were afforded no such protection. Legislators reasoned that a lack of financial resources should not subject less affluent victims to public scrutiny.

Sexual assault counselors in Pennsylvania must undergo 40 hours of training and work under the control of a direct services supervisor. The law states that a sexual assault

counselor or an interpreter translating communication between a victim and a counselor shall not testify in either a criminal or civil proceeding without the *written* consent of the victim. The Pennsylvania law grants an *absolute* privilege and applies to both the testimony and counseling records of sexual assault counselors. Further, no coparticipant present during counseling may disclose a victim's confidential communication.

When Pennsylvania's confidentiality statute was being contested in court, rape crisis centers experienced a significant drop in the numbers of victims seeking the services of a sexual assault counselor. Clearly, our confidentiality statute is a key element in helping victims to take the first step toward healing.

For more information about the assistance your county may receive under the STOP grant, call PCAR at 800-692-7445 or PCADV at 888-235-3425. With your help we can all work to achieve the goals of the Violence Against Women Act!