



Michigan Coalition Against Domestic and Sexual Violence
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Advocating for Women With Abusive Partners Who Are Facing Criminal Charges¹

Stage of Criminal Proceeding: Outstanding Warrant

Note: If a woman enters your shelter or begins using your services, and mentions that she has an outstanding warrant for her arrest, you are under no obligation to contact the authorities about this (nor SHOULD you) (See Best Practice Toolkit For Working with Domestic Violence Survivors with Criminal Histories, Section 4 for further information).

Possible Needs and Obstacles to Address

- Abusive partner knows there is a warrant and threatens to call the police
- Can be difficult to verify outstanding warrant
- Out of state warrant or charges pending prosecutor review
- Police may demand to know if the survivor is in shelter in order to enforce an arrest warrant or investigate parental kidnapping
- Agency confidentiality policies and practices prevent disclosure of resident/survivor identity and participation without a voluntary informed VAWA compliant release, court order or warrant for entry of shelter

- Strategy for temporary child care and placement during the time needed to effectively address the outstanding warrant
- Time in jail, if not released on Personal Recognizance or if money for bail is difficult to arrange
- Immigration status is an obstacle to addressing outstanding warrant
- Access to legal counsel is critical in order to address an outstanding warrant and secure competent legal advice
- MI law poses risk to family members who are sheltering a survivor with a warrant and when the police are attempting to apprehend the person
- MI court appointed defense counsel procedures for indigent defendants are inconsistent throughout the state and many counties are not appointing counsel for defendants charged with misdemeanors, when it is unlikely that that the Judge would sentence jail time

Advocacy Tips for DV/Worker:

Cultivate Local Resources:

- If survivor has visible bruising or injuries help the survivor document
- Develop a pro-bono attorney list, attorneys should have legal expertise that may be helpful to survivors charged with crimes
- Determine if local Legal Aid program has flexibility with representation on criminal matters or the collateral consequences of a plea, including issues surrounding custody, child protection services and the central registry and immigration
- Assist the survivor with a child care arrangement for temporary care while addressing outstanding warrants and posting bail
- Be familiar and comfortable with policy around handling situations when law enforcement is demanding access to shelter and confidential information regarding a survivor

- Assist the survivor in navigating conflicting court dates (e.g. criminal preliminary exams) that may be scheduled at the same time as custody or PPO matters. Help survivor ask for adjournment of civil matters, within the bounds of confidentiality, and ensure that a survivor’s civil and criminal attorney are each aware of the facts in both cases
- Use Michigan Immigration Legal Services Directory as a resource for immigration legal support and take steps to build relationships with programs, learning eligibility criteria and scope of representation
- Develop an understanding on what can happen when a person with a cognitive or developmental disability encounters the criminal justice system. Some people with disabilities have memory gaps, impaired judgment, and may not fully understand court proceedings, Miranda warnings, or be able to assist in their own defense
- Learn how to assist a survivor with requesting a special accommodations for an appearance in a Michigan court

Become familiar with State and National Resources:

Michigan Poverty Law Program

Resources for civil legal aid programs and other poverty law advocates in Michigan

<http://www.mplp.org/>

Michigan Immigrant Rights Center

(269) 492-7196

<http://mirc.mplp.org/>

National Clearinghouse for the Defense of Battered Women

<http://www.ncdbw.org/when.htm>

Michigan Courts – State Court Administrative Office

Public Resources for requesting an accommodation

<http://courts.michigan.gov/scao/services/access/accom.htm>

Michigan State Bar Disabilities Project, “State Bar of Michigan: Equal Access Initiative”

<http://www.michbar.org/programs/equalaccess.cfm#access>

Recommendations for Executive Leadership:

- Create relationships with local members of your county bar association. Identify defense attorneys that you may call and use as a referral source for survivors charged with crimes, or specifically BW who use force in self-defense
- Train local defense and civil attorneys on the problems facing battered women who use force (e.g. dynamics of domestic violence, failure of law enforcement to identify the primary aggressor, slow visual progression of some injuries)
- Ensure staff have training and tools to document injuries (e.g. digital camera)
- Communicate your agency confidentiality policy and procedures with Law Enforcement leadership, take time to help them understand what you can and cannot do when an officer calls asking for information about shelter residents or program participants.

Resource: NNEDV Confidentiality Toolkit <http://nnedv.org/tools/template>

See Policy Types on 1) Confidentiality and Privacy for Co-Located Domestic Violence/Sexual Assault Advocacy Programs and 2) Partners and Confidentiality and Privacy for Community Collaboration with Domestic Violence/Sexual Assault Advocacy Programs and Partners

- Ensure that DV workers/advocates are familiar with available immigration resources and how to facilitate a referral and ensure free language assistance for LEP survivors
- Train staff on how to handle police inquiries and ensure that your agency has timely “on-call” supervisory assistance for local police requests, search warrants and subpoenas
- Develop clear agency policy about how staff responds when law enforcement is on the premises and demands access to shelter or confidential information regarding a survivor
- Ensure that your agency has an auxiliary aids policy and that staff are familiar with how to help a survivor with a disability access a court accommodation
- Understand your county court appointed legal defense process and the limitations, if any, for assigned counsel for misdemeanor crimes

- Encourage staff to call the *National Clearinghouse for the Defense of Battered Women* for advocacy or technical assistance
- Work with local Child Protective Services, to foster an understanding that short term incarceration does not equal child neglect as long as provisions are made for minor children
- Work with Legal Aid to develop resources for women facing short term incarceration to ensure planning for minor children such as delegation of parental authority or, a limited guardianship with a reasonable unification plan if longer term accommodations are necessary
- Make sure survivors understand the consequences of a guardianship, through coordination with Legal Aid or private counsel, including the danger of suspension of parental rights

Stage of Criminal Proceeding: Arrest and Pre-Trial

Possible Needs and Obstacles to Address:

- Perpetrator manipulates survivor and posts bail with condition that she returns home
- Perpetrator threatens to report her for a bond/ bail violation
- While in jail, perpetrator gets temporary custody of children
- Possible employment consequences—missed work, or partner threatens to tell employer about her arrest
- Perpetrator convinces survivor that he will not testify if she returns to the home/relationship
- Perpetrator threatens survivor's safety and makes demands regarding her testimony
- Court appointed counsel does not take time to investigate survivor's defense or interview potential witnesses
- Court appointed counsel pressures the client to plea without explaining consequences of the plea
- Break-down in attorney/client relationship, survivor wants a new court appointed attorney

- Private legal counsel is retained and the survivor would like help raising funds for her defense
- County has a practice of not appointing counsel for misdemeanor cases to indigent defendants and putting the survivor in the position of deciding on a plea offered by the prosecutor without the benefit of counsel
- DV deferral offered and includes a traditional male batterer's intervention program or mandates counseling with local domestic violence program with reporting requirements to probation officer

Advocacy Tips for DV/Worker:

- Assess safety options and offer strategies that will help a survivor comply with conditions of bond and release pending trial and incorporate a risk assessment for personal safety and perpetrators' behaviors
- Work with survivor and her family to access legal services to consider options regarding guardianship, kinship care (instead of foster care) or representation for a contested custody dispute

Understand the defendant's right to be represented by counsel and to request alternate court appointed counsel if the attorney client relationship is strained

- Be prepared to support the survivor's decision to ask the court for substitute counsel. Understand how to best proceed and support the survivor with a written communication to the Judge
- Start to assess local options for alternative counsel if the Judge refuses to appoint a different attorney
- Cultivate a list of local attorneys who would be willing to advise clients on how to proceed without counsel or would be willing to represent them on a reduced fee, flat rate fee and/or accept payments
- Ask local attorneys if they would be able to represent a survivor who wants to withdraw a plea that they agreed to without the benefit of counsel
- With a release from the survivor and at her request, speak with the defense attorney and probation to have the least restrictive conditions and alternative court ordered counseling that would be more appropriate based on the context of the crime charged and survivor's abuse history

Recommendations for Executive Leadership:

- Consider establishing an emergency client financial assistance fund with unrestricted funds that would be appropriate to support the emergency financial needs of all survivors
- Commit to developing staff and securing financial resources for professional development
- Develop guidelines and procedures on how to set up and facilitate a defense fund for a survivor who uses force in self-defense. Guidelines should include a media response strategy to address public criticism of agency decision to offer support
- Develop policy to accept collect calls or correspondences from survivors in jails or other types of correctional facilities
- Review written and unwritten shelter policy that would make it difficult for a survivor calling from jail to be eligible for shelter because she is “imminently safe” and not in “imminent danger” thus providing an additional option to returning to an abusive partner
- Decide whether you will accept referrals from probation that mandate support group attendance or counseling, requiring a survivor to waive confidentiality and disclose records and attendance
- Look for alternative options for court ordered survivors. Approach skilled professionals to consider offering tailored groups and services to women charged with crimes
- Consider offering annual training for Probation and Parole Agents on IPV and safety planning for incarcerated and formerly incarcerated survivors
- Add local and state Probation and Parole departments to your organization’s “systems change work” and cultivate relationships with key agents for future assistance
- Offer to train prosecution, probation and parole on the dynamics of domestic violence, primary aggressor and the development of injuries

Stage of Criminal Proceeding: Prosecution – Trial Stage

Possible Needs and Obstacles to Address:

- Perpetrator present and threatens the survivor during trial
- Children are still in the care and custody of perpetrator with limited visitation with their mother/defendant
- Expert witness may be helpful; however, you are not able to locate someone who is willing to serve as an expert. (**Note:** It is not recommended that you act as both advocate and expert witness in the same case)
- Defense counsel does not want or does not know how to use an expert witness
- Prosecutor is angry that defendant is receiving support and advocacy from your program and questions the programs motivation, conflict of interest policies and staff integrity
- Prosecutor alleges that the program is discriminating and not providing services to the “real victim”— the defendant’s abusive partner
- Plea bargain offered during trial and survivor is asked to decide on a plea to a lesser charge—she looks to you for guidance on the consequence of her plea

Advocacy Tips for DV/Worker:

- Prepare a written communication packet for local attorneys who are requesting information about the use of expert witnesses
- Include information on free local and national technical assistance and guidance on status of expert witness use in domestic and sexual violence cases
- Assign someone to manage this communication and provide assistance with electronically or US post mailing to attorney, survivor, or family members

Realize that at times you may not agree with a community partner and they may not fully understand your role; however, be committed to a level of professionalism that values ethical communication, honesty regarding disagreement and make it known that it is ok to disagree on certain matters and that there are opportunities for further discussion

Recommendations for Executive Leadership:

- Create referral list of local attorneys who know how to introduce expert witnesses and have used them as a resource for newer counsel who request help. Help train the defense bar in the dynamics of domestic violence, primary aggressor and the progressive development of injuries (e.g. bruising and scratches), include aspects of coercive abuse such as isolating the victim from family and friends, limiting access to phone, money or transportation, threatening to take the children or deport the victim and threats to physically hurt or kill the family pet
- Develop relationships with a domestic /sexual violence program in your neighboring county. Create a process where you can share and offer trained staff to serve as an expert for DV/SA cases in each other's counties with the goal of avoiding conflicts and finding the most beneficial and capable expert

Resources

MCADSV

<http://www.mcadsv.org/>

Referrals to statewide experts on domestic violence, sexual assault and child abuse

National Clearinghouse for the Defense of Battered Women (NCDBW)

<http://www.ncdbw.org/when.htm>

(800) 903-0111 ext. 3

Institute for Native Justice, American Indian Resource Center

<http://www.institute Fornativejustice.com>

The Institute for Native Justice provides tribal communities with workshops, trainings and technical assistance related to domestic violence, sexual assault, stalking, and dating violence.

South West Center for Law and Policy, Expert Witness Articles

<http://www.swclap.org/articles.html>

- Evaluate organization's service delivery policy- which should include a commitment to serve all survivors and a clear role of offering advocacy regardless of any protected class, or pending criminal matter when a person meets the eligibility criteria for services
- Ensure that your organization's board understands the nature of domestic violence and use of force in self-defense cases. Provide training opportunities and build in time at board meetings to assess the organization's social change role and advocacy mission in regards to institutional and individual response to Intimate Partner Violence (IPV)
- Create policy on media response during high profile criminal cases including retaining public relations advice and spokesperson representation if necessary
- Understand the responsibilities of elected criminal justice officials including professional duties, ethics and legal requirements that ensure fair administration of justice
- Ensure that staff receive training specifically on these cases, during orientation and throughout employment along with timely opportunities to process challenging cases

Stage of Criminal Proceeding – Sentencing

Possible Needs and Obstacles to Address:

- Survivor wants support during the sentencing hearing
- Defense counsel requests help with sentencing memorandum regarding self-defense and the dynamics of domestic violence
- News media wants DV/SA program comments on the case
- Partner uses conviction as another means to control her and threatens to call probation officer and report violations
- Custody changes due to sentencing and incarceration
- Employment terminated
- Survivor has limited financial resources to comply with probation requirements, mandated counseling, drug testing, fees etc.

Advocacy Tips for DV/Worker:

- Offer advocacy with pre-sentencing investigations to help the probation officer understand a survivor's history of abuse and other mitigating factors
- With the permission of the survivor and her defense attorney, and in conjunction with them, meet with parole or probations officer to discuss the context in which a technical violation occurred and explore the alternative responses

- Become familiar with **Michigan’s Western Legal Services Re-Entry Law Project** website and legal support <http://www.legalaidwestmich.org/reentryproject>

This project helps survivors/persons’ with convictions understand and overcome some of the collateral consequences of a conviction. For example: expunging or correcting criminal records; employment problems; housing problems; public benefits denials or suspensions; family law issues related to criminal records

- Safety plan and talk about how the batterer may try to get her re-arrested and identify what she can do if she is re-arrested
- Evaluate whether the agency can help with covering basic needs, food, utility and rent in order to free up income to cover court ordered expenses and obligations
- If survivor is facing a period of incarceration, advocate should assist her with the transition—incarceration can exacerbate feelings of powerlessness and being out of control—through helping her to define her strengths in relationship to incarceration, and how she can find the best strategy for overall coping. It is important that she realize that although her movements and where she is housed is restricted; how she does “time” is up to her and within her power. Preparing for this early on can ease the shock of the early days of incarceration

Recommendations for Executive Leadership:

- Create organizational guidelines for engaging in advocacy at sentencing:
 - Create guidelines on writing sentencing letters for survivors
 - Be willing to draft a letter that will provide information at sentencing that clarifies the context of the abusive relationship in relationship to the crime committed
 - Review media response policy and approach, be prepared to make decisions on how your agency will respond to local media

Stage of Criminal Proceeding – Appeal, Commutation, and Clemency

Possible Needs and Obstacles to Address:

- Perpetrator and/or his family opposing any early release or other relief through Executive Office discretion
- Attorney General and local prosecutor oppose the early parole and release of the survivor
- Survivor asks you to speak at the Parole hearing or commutation hearing
- Media attention focuses on your agency's role and support of the defendant/survivor

Advocacy Tips for DV/Worker:

- Make a commitment to learn about post-conviction remedies including **Michigan Clemency Project** and advocacy strategies for women who are serving time in Michigan Correctional Institutions

Resource: Clemency for Battered Women in Michigan: A Manual for Attorneys, Law Students and Social Workers at <http://www.umich.edu/~clemency/>

- Learn about Michigan Parole Consideration Process
<http://www.michigan.gov/corrections/0,1607,7-119-1435-22909--,00.html>

Recommendations for Executive Leadership:

- Create guidelines on writing a letter of support or presenting testimony at parole or commutation hearings
- Seek out sample letters and testimony from other programs and technical assistance providers
- Be prepared for difficult conversations with local prosecutors and/or questions from police officers if you testify

- Develop and follow an agency Media Response Plan to guide decisions on when to respond to negative press and how to prepare communications during the process and final resolution of the criminal case

Stage of Criminal Proceeding – Post Conviction Parole and Probation

Possible Needs and Obstacles to Address:

- The first several weeks post incarceration can create a great deal of sensory overload for a survivor—smell, sounds, and varied environments can be extremely anxiety provoking, along with the fear that others won't feel she is capable to maintaining a lifestyle free of crime
- Some survivors may feel overwhelmed and fearful of making good decisions. As a result, a woman may perceive it easier to go back to what she already knows—which may be an unhealthy relationship with the potential for additional financial, emotional, and physical abuse
- The survivor may face continued coercive control and abusive tactics employed by the batterer targeted to sabotage her ability to meet parole/probation conditions

Advocacy Tips for DV/Worker:

- Provide survivor with a safe and supportive environment, an outlet, to talk about her feelings regarding reentry and all the complicated demands on her time
- Help trouble-shoot “systems” barriers and potential problems
- Engage in safety planning that includes a strategy for meeting all the requirements of the survivor's probation or parole
- Forge relationships with probation and parole with a goal of offering training on the dynamics of domestic and sexual abuse, cross referrals and strengthened working collaboration

Recommendations for Executive Leadership:

- Create informational brochures for incarcerated and formerly incarcerated survivors explaining batterer tactics and available services
- Prioritize the distribution of materials related to IPV to prisons, jails, probation, parole, reentry programs, soup kitchens, food pantries, free clinics, mental health services, etc.
- Create flexible funding to offer bus passes
- Develop a relationship with public housing, subsidized and supportive housing programs. Ensure that staff maintains an accurate resource list for survivors
- Work with subsidized housing to place survivors; a misdemeanor crime should not bar a survivor from subsidized housing but many housing complexes misapply the regulations
- Work with Legal Services to accept expungement cases, including addressing CPS Central Registry. Ensure that advocates refer survivors to legal counsel for expungement assistance
- Arrange for staff training on state and federal housing remedies for survivors and build advocacy skills to address housing barriers facing women with convictions.

Training Handout for DV Advocates—Case Scenarios for Discussion

Case Scenario One

Susan flees Ohio with her two children. She enters a shelter program in Monroe and enrolls her children in school. Susan is waiting for an appointment with Legal Aid. Her mother calls to inform Susan that her abusive husband went to court and received an emergency custody order and the state police are looking for Susan and her children.

Consider the following action steps:

- 1) Contact Legal Aid to see if the Susan can immediately speak to legal counsel for advice.
- 2) Use your internal Pro Bono Attorney list to see if Susan can speak to an attorney for immediate advice.
- 3) Encourage Susan to call the National Clearinghouse for Defense of Battered Women
- 4) Contact the local DV program in the county where Susan used to reside and ask for assistance in finding a Legal Aid program or pro bono attorney who could consult with Susan about her legal rights and options on how to timely respond to the Exparte Custody Order.
- 5) Discuss with Susan how she would return the children. Process safety, emotional well-being of the children and support systems in Ohio that may be available if she needs to return with the children.
- 6) Evaluate whether Susan needs transportation assistance in order to comply with the order.

Brainstorm other ideas for advocacy and providing information:

Case Scenario Two

Tamika enters shelter knowing that she has an outstanding warrant for domestic violence against her boyfriend from six months ago. The police did not arrest Tamika at the scene and she reports using a baseball bat in self-defense, striking the abuser in the arm causing injury. She fled the home and later the county, to live with a friend. She worries about being pulled over one day and being arrested for the outstanding warrant.

Consider the following action steps:

- 1) Use your internal Pro Bono Attorney list to see if Tamika can speak to an attorney for advice on how to resolve the outstanding warrant
- 2) Encourage Tamika to call the National Clearinghouse for Defense of Battered Women
- 3) Process with Tamika what her plan would be if she is pulled over and arrested. Who would she call to post bail? Does she have family or friends who would be able to come pick her up and help her with getting her car from the city lot?
- 4) Discuss whether she wants to pursue charges against her boyfriend for the assault?

Brainstorm other ideas for advocacy and providing information:

Case Scenario Three

Naomi was incarcerated for the past five years. She has just been released from prison, and has no resources other than a bus ticket and the name of a shelter program in Detroit where she must report and reside. Her relationship prior to incarceration was financially, emotionally and physically abusive; her ex-partner has custody of her children. He has maintained some contact with her over the years but has not brought her children to see her or encouraged them to be in touch with her. Naomi is also required to report in person to her parole agent within 24-hours of release and every Tuesday morning thereafter for six months. In addition she must attend daily NA meetings, reentry classes, get a job and permanent housing. The locations for the mandatory meetings are located 35 miles from the shelter program.

Consider the following action steps:

- 1) Review carefully Naomi's parole requirements and brainstorm how the program could assist with transportation to ensure attendance
- 2) Secure releases before communicating with parole and other community services
- 3) Arrange for access to a confidential office space where Naomi could use a phone to call in timely to her parole officer
- 4) Refer to legal services to review custody and parenting time options
- 5) Process job training options that may be available through the local re-entry program
- 6) Discuss which neighborhood Naomi would like to set up her permanent home and determine if she would qualify for Transitional Housing or subsidized affordable housing assistance

Brainstorm other ideas for advocacy and providing information:

(Endnotes)

- 1 MCADSV Open Doors Project Team prepared this advocacy tool with contributions by Attorney Susan Reed, Michigan Immigration Rights Center, Sarah Prout, Managing Attorney, Lake Shore Legal Aid. This resource was adapted in part from NCDBW training presentation, Advocacy with Formerly Incarcerated Survivors of Domestic Violence and Sexual Assault, presented at MCADSV Advanced Legal Advocacy Training, *Working with Survivors Who Act in Self Defense or is Charged with a Crime*, Lansing, MI, August 6, 2009.