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Part 9: Criminal Legal Prosecutors and System-Based Advocates

PRACTICE GUIDELINES FOR CRIMINAL LEGAL PROSECUTORS AND SYSTEM-BASED ADVOCATES

- ▶ Provide core and ongoing training on Intimate Partner Violence (IPV), sexual coercion, and stalking to prosecutors and system-based advocates.
- ▶ Training should include staff from community-based domestic violence and sexual assault programs to discuss their services and the role of community advocacy.
- ▶ Training may be extended to other support staff such as courthouse security guards and parking lot attendants who may observe abusive or threatening behaviors and have safety concerns.
- ▶ Prosecutors should set up a process to include the system-based advocate during in-person meetings with the victim.
- ▶ Prosecutors and system-based advocates should meet with their local community-based domestic violence and sexual assault advocacy programs to learn about their services and resources, and to develop referral lists specific to pregnant and parenting individuals.
- ▶ If the victim is pregnant, the system-based advocate should ask if she is able to make decisions about her pregnancy without fear of retribution.
- ▶ Display educational posters and provide hotline numbers, safety cards, and resource information addressing IPV, reproductive coercion, and healthy relationships (materials should be culturally and linguistically appropriate and should be placed in bathrooms, the reception area, hallways, and other highly visible areas).
- ▶ Prosecutors or system-based advocates should provide supported referrals to local community-based domestic violence and sexual assault advocacy programs.

Introduction

System-based advocates located within the prosecutor's office offer information and support to victims in criminal cases and work closely with the prosecutor as the case develops. This section contains certain guidelines that apply primarily to criminal legal prosecutors, some guidelines intended for system-based advocates, and other guidelines that should be useful for both. In those communities that do not have system-based advocates, prosecutors may wish to use some of the advocates' guidelines.

Training for Prosecutors and System-Based Advocates

- ▶ Provide core and ongoing training on Intimate Partner Violence (IPV), sexual coercion, and stalking to prosecutors and system-based advocates.
 - ▶ Refresher training is important to introduce advances in the field and offer opportunities for staff to discuss progress, challenges, and opportunities.
- ▶ Training should include staff from community-based domestic violence and sexual assault programs to discuss their services and the role of community advocacy.
- ▶ Training may be extended to other support staff such as courthouse security guards and parking lot attendants who may observe abusive or threatening behaviors and have safety concerns.

Training Resources

Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases. This free online course by the National Judicial Education Program, intended for judges but appropriate for all professionals involved in IPV cases, is available at www.njep-ipsacourse.org

Inform and Refer for Criminal Legal Prosecutors

Pregnant and parenting women and teens who are victims of domestic violence or sexual assault may also be experiencing coercive abuse that is not a crime.

- ▶ Prosecutors should set up a process to include the system-based advocate during in-person meetings with the victim.
- ▶ Prosecutors should meet with their local community-based domestic violence and sexual assault advocacy programs to learn about their services and resources, and to develop referral lists specific to pregnant and parenting individuals.
- ▶ Prosecutors or system based-advocates should provide supported referrals to local community-based domestic violence and sexual assault advocacy programs.

“OUR INQUIRY IS JUST FACTUAL; anything else that surrounds it is referred to the court-based advocate.”

Criminal prosecutor, Needs Assessment interview

One prosecutor who did not have a system-based advocate relied on her relationships with the community-based advocates to understand more about the victim’s behavior and used this information to provide the jury with insight and build empathy. — Criminal prosecutor, Needs Assessment interview

Inform and Refer for System-Based Advocates

Within the prosecutor’s office, the system-based advocate frequently has the first contact with a victim in a domestic violence or sexual assault case. The role of the system-based advocate is to explain the legal process and the particular status of a current case, answer questions, and provide resource information. The system-based advocate can share the victim’s questions, hopes, and safety concerns with the prosecutor. In addition, the system-based advocate can share with the prosecutor the prior case history, and the advocate’s past experience of working with parties involved in an incident. However, any information that is provided by the victim or other parties to the case will be shared with the prosecution because legal privilege and confidentiality laws do not protect the system-based advocate’s information.

“SOMETIMES SUCCESS ISN’T GOING forward. ... We care about our conviction rate, but if it is all we care about, we are not here for the right reasons. ... We don’t want another incident coming across our desk. ... Sometimes the answer is to look at the bigger picture and dismiss.”

System-based advocate in prosecutor’s office, Needs Assessment interview

When the Victim of Domestic Violence or Sexual Assault is Named as a Defendant in a Case

An experienced system-based advocate is skilled at identifying the range of behaviors that surround a single incident leading to an arrest for domestic violence, sexual assault, or stalking. The system-based advocate looks for the historic pattern of behaviors and the intent of the illegal acts that resulted in arrest of the parties involved. Armed with new information, the system-based advocate can ask the prosecutor for follow-up law enforcement investigation and to look at the prior history of court orders and other incidents or facts at the scene to have charges vacated or reassigned. The system-based advocate also may also work with community-based advocates to ensure a full range of services for victims. Community-based advocates are able to assist victims who have been arrested and charged, provide confidential advocacy, and can provide services as long as the victim wants. Community-based advocates can also support victims in sharing concerns or information with the system-based advocate or prosecutors.

Developing a referral process with community-based domestic violence or sexual assault programs will help ensure advocacy services are provided to individuals who may be victims in the relationship, but have been charged with a crime. System-based advocates will find it helpful to their work to participate in domestic violence or sexual assault criminal legal task forces or committees organized through court-based or community organizations.

System-Based Advocates and Pregnant or Parenting Victims

There are simple steps a system-based advocate can take to increase the safety and autonomy of victims who are pregnant or parenting.

- ▶ If the victim is pregnant, the system-based advocate should ask if she is able to make decisions about her pregnancy without fear of retribution.
- ▶ Display educational posters and provide hotline numbers, safety cards, and resource information addressing IPV, reproductive coercion, and healthy relationships (materials should be culturally and linguistically appropriate and should be placed in bathrooms, the reception area, hallways, and other highly visible areas).
- ▶ System-based advocates in prosecutor offices should meet with their local community-based domestic violence and sexual assault advocacy programs to learn about their services and resources, and to develop referral lists specific to pregnant and parenting individuals.
- ▶ Prosecutors or system-based advocates should provide supported referrals to local community-based domestic violence and sexual assault advocacy programs.

How to Make a Supported Referral

Supported referral may be the most important thing you can do to help pregnant and parenting victims. Supported referral is different from simply handing a client a card or suggesting that she make a call. Some elements of supported referral are:

- ▶ The system-based advocate has taken the time to get to know the agencies and individuals to whom he or she refers clients.
- ▶ The system-based advocate can clearly explain what other service providers can and cannot do for the victim, thus lessening victims' frustration at reaching out for services that may not actually be available.
- ▶ The system-based advocate may be able to identify a specific person at another agency who is likely to be able to help the victim.
- ▶ When appropriate, the system-based advocate may make a call on the victim's behalf or help the victim to make the call—for example, by calling the service provider, getting the right person on the phone, briefly explaining the situation, and then handing the phone to the victim who can then ask a question or request an appointment. This may be particularly important with victims who are very young, who have limited English proficiency, or who are especially anxious. Of course, the victim should sign a release of information form prior to any contact between the advocate and another professional.
- ▶ The system-based advocate may ask the victim whether there are any obstacles to following through with a referral, and brainstorm solutions together. Something as simple as providing a bus route map may make the difference in whether or not a person feels able to seek important services elsewhere.
- ▶ It may be helpful to remember how difficult it is for any of us to seek services for a sensitive or highly personal issue with an unknown professional. The more you know about the service provider to whom you are referring an individual, the more you can convey your own confidence that this referral will be helpful.

Sample Script

"I want to let you know about the terrific free and confidential domestic violence and sexual assault programs we have in our community. These programs may be able to help you or just give you some more information about resources, housing, or emergency shelter. They can also help you connect to health care services. You may want to contact them because they are easy to talk to, they will understand your situation, and they can provide additional support for you. Advocates at these programs can't share information with me without your permission. I'd like to give you a referral sheet with their contact information and other local resources. We also have Safety Cards that will give you important information about your health."