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MENDOCINO COUNTY DOMESTIC VIOLENCE

Domestic violence has long been a private matter, occurring behind closed doors in homes and treated confidentially by law enforcement and in emergency rooms. Family violence has now become a matter of deep public concern. Media coverage has brought this age old problem to the front page. A growing public awareness and understanding of the threats and effects of family violence has brought practices and policies for prosecuting and preventing family violence under public scrutiny. In the mid-1990's the California legislature added new, stricter sections to the Penal Code that underscore the criminal nature of domestic violence. In 1996 they also added a provision that requires all persons convicted of a crime of domestic violence complete a one-year batterers counseling program as a condition of probation.

In Mendocino County, it was alleged that the criminal justice system was not sensitive to the gravity of crimes of domestic violence and the prosecution and sentencing of family violence criminals was not rigorous.

Reason for Review

The Grand Jury received citizen complaints.

Method of Investigation

The Grand Jury researched the California Penal and Family Codes; the written domestic violence publications, policies, procedures and training programs of each law enforcement agency in the County; domestic violence calls and arrest records for the years 1998 and 1999 from each law enforcement agency; District Attorney domestic violence prosecution summary; the District Attorney's Policy and Procedures Manual; California Attorney General publications including the *Women's Rights Handbook*, *Mendocino County Criminal Justice Trend Data*, the *California Spousal Abuser Prosecution Program* and the *Report on Arrests for Domestic Violence in California*; Probation Department records and procedures; Police Officer Standards and Training (POST) Manuals for domestic violence, including the viewing of telecourses; The Duluth Domestic Abuse Intervention Project; general literature on battering; Sonoma State University resource guide for batterer programs; San Diego Regional Training course on Domestic Violence for First Responders; and minutes of meetings of the Mendocino County Domestic Violence Council and the county's Law Enforcement Administrators Association (LEAA).

The Grand Jury also reviewed over sixty domestic violence arrest reports and court case files, as well as attending domestic violence courtroom proceedings in Ukiah and Willits.

The Grand Jury interviewed the complainants, both past and present members of the District Attorney's Office including Victim-Witness Assistance; past and present members of the Probation Department; officers and staff of Project Sanctuary; a

counseling program facilitator; victims and perpetrators of domestic violence; peace officers from the Ukiah Police Department and the Sheriff's Office; concerned citizens and a representative of the Mendocino County Courts.

Relevant Law

The principal Penal Code Sections concerning crimes of domestic violence are 273.5 (domestic violence battery with trauma) and 243(e)(1) (domestic violence battery). However, violations of other Penal Code Sections may be crimes of domestic violence; among these are Sections 422 (terrorist threats), 646.9 (stalking), 236 (false imprisonment), 262 (spousal rape), and 273.6 (a) and (d) (violation of restraining or protective orders).

Penal Code Section 13700 covers law enforcement response to domestic violence, including mandatory reporting of incidents. The probation requirements for crimes of domestic violence and the details of consequent batterers counseling programs are stipulated in Section 1203.097 of the Penal Code. Section 6211 of the Family Code defines the victims of domestic violence. The requirements for domestic violence training of peace officers is found in Section 13519 of the Penal Code.

General Aspects of Domestic Violence

Findings

1. California law includes in crimes of domestic violence, in addition to spousal relationships, former spouses, cohabitants and former cohabitants including (as of 1994) gay or lesbian relationships, any person who is the parent of his or her child, any person with whom there is a dating or engagement relationship, a child, or any other person related by consanguinity.

Response (Sheriff): Agree with this finding, although the Sheriff would defer to the statutory definitions. California Penal Code §13700 defines "abuse" and "domestic violence" as follows:

- (1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself or another.
- (2) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons

are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff.

2. According to the California Attorney General, in over 75% of domestic violence cases either the batterer or the victim, or both, have been using alcohol or drugs. Mendocino County arrest reports indicate that weapons are involved more than 50% of the time.

Response (Sheriff): Agree with this finding.

Response (Board of Supervisors): The Board assumes this finding is accurate.

3. The California legislature passed in 1995 a “zero tolerance” statute on domestic violence that requires that all law enforcement agencies implement, by July 1, 1996, written policies that encourage the arrest of domestic violence offenders, if there is probable cause or if a protective order is violated. In the past both parties involved in a domestic violence dispute have, at times, been arrested. This statute discourages but does not prohibit dual arrests.

Response (Sheriff): Disagrees partially with this finding, but only so far as the date. Pursuant to California Penal Code §13701, subsection (a), every law enforcement agency in the state was required to implement written policies and standards for officers’ responses to domestic violence calls by January 1, 1986. Subsequent amendments to this statute have addressed the issues of mandatory arrest, dual-arrests, and identification of the primary aggressor.

Response (Board of Supervisors): The Board has not independently verified this finding. The Board does agree with the response provided by the Sheriff.

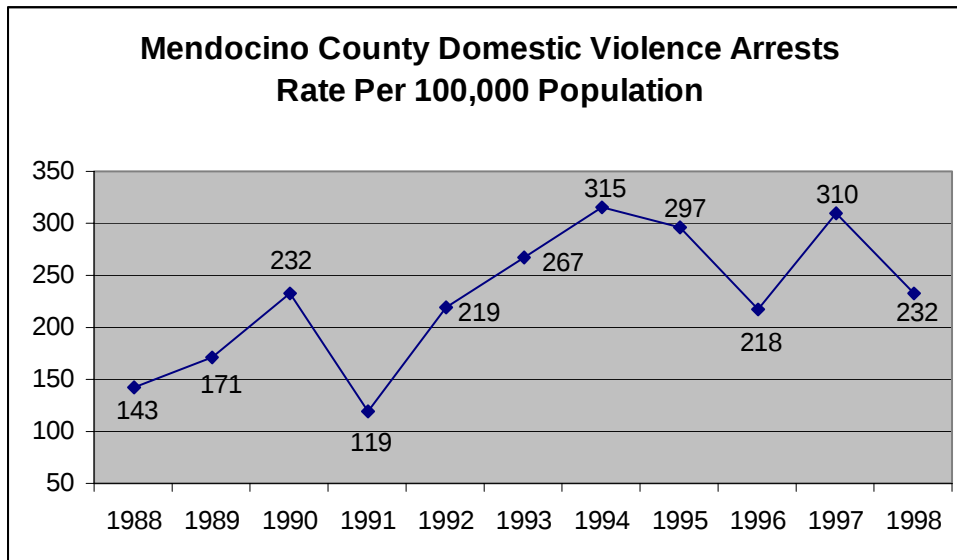
Domestic Violence in Mendocino County

Findings

4. The number of arrests in California for domestic violence, reported to the Attorney General, has risen steadily from 113.6 per 100,000 total population in 1988 to 169.9 in 1998, an increase of 49.6 %. However, in Mendocino County, during the same time frame, the domestic violence arrest rate rose

from 155.0 to 310.8, an increase of 100 %. This increase in reporting is in large part due to increased awareness and sensitivity to domestic disputes by both law enforcement and the public of Mendocino County.

Response (Sheriff): Disagrees in part with this finding. The arrest rate per 100,000 population and the rate of increase appear to be incorrect. The following chart is based on domestic violence arrest data from the California Attorney General's Office and population data from the demographic unit of the State of California Department of Finance.



Based on this data, the increase from 1988 to 1998 was 62.2%, not 100% as cited by the Grand Jury. However as the chart above shows, neither of these figures reflects the year-to-year fluctuations in arrest rates.

Response (Board of Supervisors): The Board has not independently verified this finding. The Board does agree with the response provided by the Sheriff.

5. Less than 50% of 9-1-1 domestic violence calls resulted in an arrest in Mendocino County during 1998 and 1999. The arrest rate varied among the four law enforcement agencies in the county.

Response (Sheriff): Disagrees in part with this finding, because the statistic is misleading. The classification assigned to a call by dispatch is not an accurate indication of whether conduct at the scene should lead to an arrest. Dispatchers do not investigate the circumstances of the call; they gather basic information and relay it to responding patrol units. The verbal information provided to the dispatcher does not in itself establish probable cause to make an arrest.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff. Dispatchers do not investigate the circumstances of the calls they receive. The verbal information given to the dispatcher does not, in itself, establish probable cause to make an arrest.

6. The Law Enforcement Administrators Association (LEAA) of Mendocino County brings together the heads of all county agencies involved in law enforcement, including the District Attorney, the Sheriff, the Chiefs of the three city police departments, the Captain of the local branch of the California Highway Patrol, The Chief Probation Officer, the Major Crimes Task Force Commander and the Superintendent of the California State Parks. In 1996, the LEAA issued a domestic violence policy detailing arrest and evidence gathering procedures. In February 2000, the District Attorney distributed to all LEAA members a family violence checklist which stresses the importance of taped interviews.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

Recommendation

As the chief law enforcement officer of the county, the District Attorney, in the context of the LEAA, should assume a proactive leadership role in developing county-wide domestic violence policies and procedures.

Response (Sheriff): This recommendation is directed to the District Attorney. As Sheriff and a member of the Law Enforcement Administrator's Association, I support the recommendation, but I would like to clarify that it is Sheriff, not the District Attorney, who is the chief law enforcement officer in the county. The District Attorney is the chief prosecutor in the county. The distinction is important. Although District Attorneys are not authorized or empowered to command peace officers employed by other agencies, by virtue of their prosecutorial discretion they exert significant influence on the manner in which crimes are investigated.

Response (Board of Supervisors): The Board agrees with this finding and encourages all members to fully participate in the Council.

Time frame for implementation: On-going

Finding

7. A Mendocino County Domestic Violence Council was formed in January 1995 and includes representatives from all law enforcement agencies, the District Attorney, Victim/Witness Assistance, the Court, all relevant county departments, concerned citizens, Project Sanctuary, E.S.C.A.P.E.S. (Emergency Sanctuary for Coastal Acts Providing Escape Services), and other community service agencies. The Council's stated mission is to ensure that all those affected by domestic violence are treated fairly and with respect and to promote community awareness for the purpose of reducing the incidence of domestic violence in Mendocino County. Not all Council members are active participants.

Response (Sheriff): Agrees with this finding. The Sheriff's Office is an active member of this Council.

Response (Board of Supervisors): The Board agrees with this finding but has not independently verified the statement on the number of calls.

Recommendation

All members of the criminal justice community should not only participate, but accept active roles in the Council on Domestic Violence. Advantage should be taken of the Media/Community Education Committee to inform the citizenry of the roles and accomplishments of law enforcement.

Response (Sheriff): This recommendation has already been implemented. The Sheriff's Office has played an active role in the Domestic Violence Council since its inception. The Sheriff fully supports use of the council's Media/Community Education Committee to inform the citizenry of the roles and accomplishments of law enforcement. Responsibility for implementing this portion of this recommendation rests with the Council as a whole.

Response (Board of Supervisors): The Board agrees with this finding and encourages all members to fully participate in the Council.

Time frame for implementation: On-going

Findings

8. Project Sanctuary provides an important and diverse set of services for victims of domestic violence in Mendocino County. Important among these services is the providing of shelter and assistance in obtaining temporary restraining orders (TRO's). Project Sanctuary receives approximately 1800 domestic violence calls each year. Some of these may be repeat calls involving the same victim.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding but has not independently verified the statement on the number of calls.

9. The District Attorney and Project Sanctuary have begun a dialogue and domestic violence cross-training.

Response (Sheriff): This finding is directed to the District Attorney and Project Sanctuary.

Response (Board of Supervisors): The Board assumes this statement is correct and urges the District Attorney and Project Sanctuary to continue the cross training.

Recommendation

The cross training between Project Sanctuary and the District Attorney should be expanded to include all Deputy District Attorneys who may prosecute domestic violence cases. This training program should be formalized and include regularly scheduled training sessions.

Response (Sheriff): This recommendation is directed to the District Attorney and Project Sanctuary.

Response (Board of Supervisors): The Board agrees with this recommendation but defers to the District Attorney for implementation.

Findings

10. In October 1999, using Citizens Option for Public Safety (COPS) funding, the District Attorney hired a victim-witness domestic violence advocate and brought the part-time domestic violence victim advocate to almost full-time. These advocates now provide courtroom support and services to victims and their families.

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board agrees with this finding.

11. The Sheriff's Department and other law enforcement agencies in the county possess excellent domestic violence training programs and materials. However, it is sometimes difficult, due to staffing shortages and overtime restrictions, to have officers taken off duty to attend training sessions. Penal Code Section 13519 requires all officers who respond to calls of domestic

violence to complete an updated course of instruction on domestic violence every two years.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding and urges all law enforcement agencies in the County to continue their domestic violence training efforts.

Recommendation

Budgeting of overtime and staffing decisions should give fair and thorough consideration to the training of all peace officers in the county.

Response (Sheriff): This recommendation has been implemented. In fact, the practice of using overtime to either accomplish training or back-fill vacancies created by officers in training has been an unfortunate reality for the Sheriff's Office for many years. The California Commission on Peace Officer Standards & Training (POST) allows law enforcement agencies to recoup the overtime costs of staffing a position vacated by an employee who is attending a course approved for reimbursement. The Mendocino County Sheriff's Office is an active participant in this reimbursement program. The program reduces training costs, but it is not a substitute for adequate staffing. This is especially true now, when we are forced to use overtime just to provide minimum staffing for patrol.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff.

Timeframes for implementation: Has been implemented

Finding

- 12.** Stay away orders issued by the Court are entered by the Sheriff's Department into the statewide CLETS (California Law Enforcement Telecommunications System) making this critical information available to all dispatchers. However, the paperwork must be carried to the Sheriff's Office delaying entry into CLETS. Once entered, the dispatcher can then radio data to police vehicles responding to domestic violence calls. The victim of domestic violence is still obliged to file temporary restraining orders (TRO's) with law enforcement; but once filed, they also are entered into the CLETS.

Response (Sheriff): Disagrees in part with this finding. Since the Grand Jury completed its investigation, the handling of criminal stay-away orders has changed. Bailiffs receive the signed orders from the court then fax them to the Sheriff's Dispatch Center for entry. This has

eliminated the delay of hand-delivering the paperwork or routing it through interoffice mail.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff. The handling of these orders has changed since the Grand Jury conducted their investigation. Bailiffs now receive the signed orders from the court and then fax them to Sheriff's Dispatch for entry into the system.

Recommendation

To minimize the delay in entering both restraining and stay-away orders into CLETS, procedural changes should be implemented to permit direct electronic entry by the courts or the bailiff.

Response (Sheriff): This recommendation will not be implemented because, even though the intent is good, the proposed action it is not reasonable. Entry of restraining orders requires a level of skill, training and CLETS access privileges typically reserved for dispatchers. Bailiffs cannot perform their principal duties of maintaining security in the courtroom if they are entering restraining and stay-away orders into CLETS. Court personnel are effectively prohibited from performing CLETS entries. CLETS policies and procedures, which have the force of law, require that the agency entering a restraining order or stay-away order into CLETS must have a copy of the order immediately available 24-hours a day, 7-days a week. CLETS policies also prohibit one agency from providing verification for an order entered by another agency, including the issuing court.

Delays in CLETS entry have been minimized, but by means other than those suggested by the Grand Jury. Bailiffs now fax all criminal stay-away orders directly to dispatch for entry into CLETS. Copies of temporary restraining orders must still be delivered to the law enforcement agency, but this is an important safeguard to ensure that the order contains all the information necessary for a CLETS entry. Once received, these orders are transmitted directly to dispatch. Court personnel could fax restraining orders to dispatch, but they would first have to verify that the order contains all the information required for a CLETS entry. An order sent by the courts to dispatch without the required information cannot be entered into CLETS until the person who obtained the order can be found and the required information collected.

The Sheriff's Office, the Courts and the other members of the Domestic Violence Council will continue to work on ways to improve the handling of restraining orders, including the timeliness and accuracy of CLETS entries.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff concerning this recommendation. Though the Grand Jury's intent is good, the Sheriff points out that court personnel are prohibited from performing entries into CLETS and bailiffs principal duties are to provide and maintain security in our courtrooms. The Sheriff does state that the Criminal Justice System in Mendocino County will continue to examine ways to improve the handling of restraining and stay away orders.

Finding

- 13.** Increased cooperation between law enforcement and the District Attorney's Office is needed to obtain the best possible services to the victims of domestic violence and to ensure public safety. Testimony indicates that relations between the District Attorney and the Ukiah Police Department began improving in November 1999.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board defers to the District Attorney and the City of Ukiah on this finding.

Recommendation

Open dialogue between the District Attorney and law enforcement must be established and become commonplace. Decisions to reject or dismiss a case should be discussed with the arresting law enforcement agency before they become final.

Response (Sheriff): This recommendation, as it relates to open dialogue, has been implemented in the Sheriff's Office. Discussion between Sheriff's staff and District Attorney's staff are commonplace. The department agrees that decisions to reject or dismiss a case should be discussed before they become final. However the sheer volume of cases handled by the District Attorney's Office makes discussion of every such case impractical. Currently the nature of the case dictates how the decision to reject or dismiss will be communicated. In most instances, decisions are communicated in writing via a worksheet form.

Response (Board of Supervisors): The Board agrees with this recommendation and urges the District Attorney to continue their efforts in this regard.

Finding

14. Although this investigation was prompted by citizen complaints against the current District Attorney, the Grand Jury found complaints dating back more than five years, criticizing the previous District Attorney for an “apparent lack of interest (in) pursuing domestic dispute complaints.”

Response (Sheriff): Neither agrees nor disagrees with this finding.

Response (Board of Supervisors): The Board neither agrees or disagrees with this finding.

Prosecution and Sentencing

Findings

15. Domestic violence prosecution is a complex issue that involves not only the District Attorney, but the Courts, the Probation Department, Law Enforcement and the victims themselves, who play vital roles in the determination of outcomes. The arresting agency, after completing their investigation, forwards the case file to the District Attorney for prosecution.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

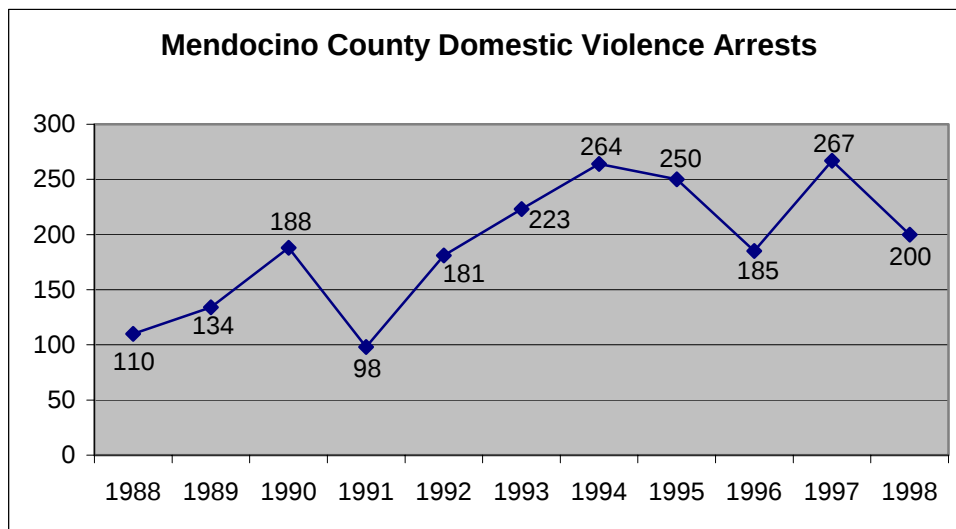
16. The review of domestic violence case files revealed some apparent inconsistencies, although there was no obvious pattern of dismissals nor in sentencing practices among the several courts in the County.

Response (Sheriff): Neither agrees nor disagrees with this finding.

Response (Board of Supervisors): The Board agrees with the response provided by the District Attorney. The ultimate decision on sentencing rests solely with the Courts.

17. The differences in domestic violence prosecution and conviction rates between 1998 and 1999 was statistically insignificant. There was however a notable drop in domestic violence arrests, from an average of 25 per month in 1998 to 20 per month in 1999.

Response (Sheriff): Disagrees with this finding, only because the arrest statistics cited by the Grand Jury do not agree with the official statistics maintained by the California Attorney General, which show that for 1998 there were an average of 16.7 domestic violence arrests per month in Mendocino County. According to the Attorney General's statistics, arrests for domestic violence in Mendocino County have fluctuated for several years.



Response (Board of Supervisors): The Board agrees with the response provide by the Sheriff. The official statistics maintained by the California Attorney General indicate that in 1998, the average monthly arrests for domestic violence was 16.7.

18. Often, the victim will recant testimony made at the time of arrest, making prosecution difficult. However, the District Attorney's Victim-Witness Protection program is a positive force in aiding the victims of domestic violence and supporting the prosecution of batterers.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

19. In 1984, the California Legislature enacted a new domestic violence law (Chapter 1609). This statute in part states: "It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. Arrests of domestic violence offenders are encouraged if there is probable cause that an offense has been committed." A review of Mendocino County domestic violence arrest records, dating back to 1988, demonstrate that the county's law enforcement agencies have clearly been responsive to this legislative directive.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding and commends all of Mendocino County's law enforcement agencies work in this area.

20. Section 243 (e) (4) of the Penal Code (domestic violence battery) states: "The Legislature finds and declares that these specified crimes merit special consideration when imposing sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed." In the Grand Jury's review of domestic violence case files, no indication of such special consideration was found.

Response (Sheriff): Agrees with this finding as it relates to the text of the statute. I neither agree nor disagree with the Grand Jury's finding regarding their review of domestic violence case files.

Response (Board of Supervisors): The Board has no specific knowledge of the cases reviewed by the Grand Jury, therefore, we cannot comment on this finding.

21. According to the District Attorney, these Penal Code Sections, that reflect the desire by the California legislature to place special emphasis on crimes of domestic violence, apply to the Court and to law enforcement and not to the district attorneys of the state. The District Attorney maintains that he treats all crimes equally and to do otherwise would expose him to censure and possible charges of misconduct.

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board of Supervisors defers to the District Attorney on this finding.

22. The goals of domestic violence prosecution, as stated in the District Attorney's Policy and Procedures Manual, are:

- (1) protection and safety for the victim and family members
- (2) punishment of the offender
- (3) referral of the victim and vulnerable family members to ... support agencies
- (4) rehabilitation of the offender

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board agrees with this finding.

23. In addition to these goals, the City of Duluth, Minnesota, the model for the batterers counseling program used in Mendocino County, has the prosecution goal "to create a general deterrence to domestic violence in the community." The Mendocino County District Attorney maintains that cases must be prosecuted on the basis of evidence and not on possible community reaction.

Response (Sheriff): Neither agrees nor disagrees with this finding. I have not read the Duluth, MN, program model. The remainder of this finding addresses statements made by the District Attorney.

Response (Board of Supervisors): The Board defers to the District Attorney on this finding.

Recommendation

In the opinion of the Grand Jury, decisions in cases of domestic violence do, in fact, send messages. The public's perception of prosecutorial behavior may well have a direct impact on the incidence of family violence in the county. It is clear that the California legislature and the citizens of Mendocino County consider crimes of domestic violence as both serious and special crimes. In this regard, the Grand Jury believes the District Attorney should follow the spirit of the law by vigorously prosecuting domestic violence offenders.

Response (Sheriff): This recommendation is directed to the District Attorney. The Sheriff's Department agrees that the public's perception of how domestic violence cases are handled can have a direct impact on the incidence of family violence. The fear of arrest, prosecution and incarceration can have a strong deterrent effect. Quick and decisive intervention also reinforces the message that there is no acceptable level of family violence. The Sheriff fully supports the spirit and legislative intent of the state's domestic violence laws, and expects every member of the Sheriff's Office to do the same.

Response (Board of Supervisors): The Board defers to the District Attorney on this recommendation. The District Attorney is fully accountable to the citizens of Mendocino County.

Finding

- 24.** The current District Attorney has instituted the use of "Cite Hearings" in selected domestic violence cases (a total of 15 through October 1999). The accused and the victim are both brought together before the District Attorney. The hearing includes a strong warning to the offender that a repeat offense within a year of the hearing will result in the reopening of the current case. The presumption by the District Attorney is that the hearing is a forceful deterrent. It is used primarily when the chance of a conviction resulting from prosecution, in the view of the District Attorney, is not certain.

Response (Sheriff): Agree with this finding.

Response (Board of Supervisors): The Board of Supervisors agrees with the response provided by the District Attorney.

Recommendation

Cite Hearings, when used, should be structured to keep the victim and the batterer separate, as indicated by expert testimony. Victims should be accompanied by an advocate at these hearings. The District Attorney should continue to track individuals offered Cite Hearings for recidivism.

Response (Sheriff): This recommendation is directed to the District Attorney.

Response (Board of Supervisors): The Board agrees with the response provided by the District Attorney.

Findings

25. In 1998 and 1999, the most common reason cited by the District Attorney when not prosecuting a domestic violence case was "Insufficient Evidence."

Response (Sheriff): Agrees with this finding. Although I have not reviewed the data used by the Grand Jury, their finding is consistent with my personal knowledge.

Response (Board of Supervisors): The Board neither agrees or disagrees with this finding.

26. When the District Attorney makes a determination that there is insufficient evidence to prosecute a case, the file is returned to the arresting law enforcement agency. The procedure followed by law enforcement when a file is returned to them for insufficient evidence, varies considerably among the four County agencies. For the most part, local law enforcement agencies do not routinely re-open investigations on cases returned for insufficient evidence, unless specific instructions from the District Attorney accompany the returned file.

Response (Sheriff): Agrees with this finding. However a rejection for insufficient evidence does not necessarily mean more evidence is available. The reason returned domestic violence cases are not routinely reopened is that all available evidence is generally gathered at the time the call is handled. The identities of the victim, suspect and witnesses are known; statements are taken; physical evidence is gathered. Follow-up is usually limited to securing medical records documenting the victim's treatment and photographing bruises that may take several hours to develop.

Response (Board of Supervisors): The Board has not conducted an independent investigation into the Grand Jury's finding, therefore we neither agree nor disagree.

27. The District Attorney does not follow-up cases that have been returned to law enforcement. The District Attorney depends on the arresting agency for gathering additional evidence to permit prosecution. Investigators in the District Attorney's staff are not used for this purpose.

Response (Sheriff): Agrees with this finding as to follow-up on returned cases and dependence on the arresting agency for gathering additional information. I cannot comment on how the District Attorney's investigators are assigned.

Response (Board of Supervisors): The Board defers to the District Attorney on this finding.

Recommendations

1. In conjunction with law enforcement, the District Attorney should implement a follow-up system that tracks cases rejected for insufficient evidence. When law enforcement is unable to obtain the evidence needed for prosecution the Sheriff or the police department should notify the District Attorney and indicate the reasons involved.

Response (Sheriff): The Sheriff's Office has implemented the first portion of this recommendation. The Sheriff's Office report management system, online since 1991, tracks the disposition of all crime reports, including reports returned by the District Attorney.

The second portion of this recommendation will not be implemented because it is not reasonable. If the case investigation presents all available evidence, then a rejection for insufficient evidence essentially means the District Attorney believes the case is not prosecutable as presented. The investigating officer is notified of the rejection. The officer can resubmit the case if there is additional information or evidence that was not included in the original case. But if there is nothing to add, notifying the District Attorney of the reasons why there is no additional evidence becomes a needless waste of staff resources. If the District Attorney believes that additional investigation may reveal facts that make the case prosecutable (i.e., the attorney reviewing the case notes a resolvable deficiency in the investigation), then the case should be returned with a request for specific follow-up. Once the follow-up is completed, the case would then be resubmitted. This procedure is currently in place.

Response (Board of Supervisors): The Board agrees with the response provided by the Sheriff. The Board defers to the District Attorney on recommendations directed toward his office.

2. When cases are rejected for interest of justice, mutual combat, cite hearing and similar causes, the District Attorney should be open to feedback from law enforcement concerning valid arguments for reconsideration. Law enforcement agencies should be encouraged to offer background information not evident in the case file to the District Attorney.

Response (Sheriff): This recommendation as it pertains to the Sheriff's Office has already been implemented. Sheriff's deputies, detectives, sergeants and lieutenants routinely contact the District Attorney's Office to express concerns about cases. Background information relevant to the case should be contained in the case narrative and not left for later discussion.

Response (Board of Supervisors): The Board agrees with the response by the Sheriff and defers to the District Attorney on his issues. Sheriff personnel routinely contact the District Attorney's Office to express concern about various cases.

Finding

28. The District Attorney's open door policy has allowed batterers and victims of domestic violence opportunity to make direct presentations of their situation. The Grand Jury has found that, in at least two instances, such conversations have resulted in decisions, which were then forwarded to the prosecuting Deputy District Attorney as directives. The knowledge of the case and the views of the Deputy District Attorney were neither solicited nor heard by the District Attorney.

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board neither agrees or disagrees with this finding, therefore we defer to the District Attorney for verification.

Recommendation

The District Attorney should consult with probation officers, the prosecuting attorneys, investigating detectives, and Victim/Witness advocates when making or reversing prosecution decisions.

Response (Sheriff): This recommendation, as it pertains to the Sheriff's Office, has been implemented. Nothing in Sheriff's Office policy prohibits the District Attorney or his deputies from contacting any member of the Sheriff's Office to discuss a prosecution decision.

Response (Board of Supervisors): The Board defers to the District Attorney on this recommendation.

Findings

29. The Court has the final say for all sentencing, though it may often rely on the recommendation of the Probation Department. Prior to preparing its recommendation, the Probation Department fully researches the case, including listing priors, making background checks, interviewing victims, and investigating all relevant information.

Response (Probation): Agrees with this finding. All felony matters are referred by the Court for a report and recommendation for sentencing; misdemeanors are discretionary.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

30. Most interviewees involved in domestic violence issues, representing a number of different agencies, expressed strong concerns regarding the inconsistent prosecution and sentencing of accused domestic batterers.

Response (Probation): Department assumes this is correct.

Response (Sheriff): Neither agree nor disagree with this finding; I was not present during the interviews. I am nevertheless aware that individuals involved in domestic violence issues have expressed strong concerns regarding what they perceive as inconsistent prosecution and sentencing of accused domestic violence batterers.

Response (Board of Supervisors): The Board neither agrees or disagrees with this finding.

31. The Grand Jury heard testimony that, at times, plea agreements are entered into. Additionally, a review of case files and court records demonstrate that when a domestic violence crime is committed by a probationer, the case is often prosecuted as a violation of probation (VOP). In the prosecution of a VOP, the burden of proof is much less demanding and the probability of conviction is generally high.

Response (Probation): Agrees with this finding.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

Recommendation

All cases of domestic violence, when the evidence is adequate, must be prosecuted. Plea agreements to lesser charges and using violation of probation should be avoided unless the reasoning is compelling.

Response (Probation): Agrees with this recommendation, but emphasize the phrase “when the evidence is adequate.” If the underlying charge for the granting of probation in the original case is directly related to the new charge, such as a second battering, pursuing a violation of probation may be adequate to ensure appropriate punishment. If there is no nexus between the charges, a new case should be filed. The determination of “adequate” evidence is the responsibility of the District Attorney, even in violation of probation cases.

Response (Sheriff): This recommendation is directed to the District Attorney.

Response (Board of Supervisors): The Board agrees with the response provided by the Chief Probation Officer. The Board defers to the District Attorney concerning his response.

Findings

- 32.** The Mendocino County Court began a vertical calendar process in February 1999. The process provides for cases to be assigned alphabetically to a court and remain with that court from arraignment through disposition. In addition, if violation of probation occurs, the defendant returns to the original court. However, this arrangement made it impossible to assign a Deputy District Attorney, who specialized in the field, to all domestic violence cases. In 1998 and earlier years, cases were routinely assigned to Deputy District Attorneys who had specific areas of specialization (for example, domestic violence, fraud, and sexual assault).

Response (Sheriff): Agrees with this finding. I also wish to note that the imposition of the vertical calendar program has had a significant, negative impact on the Sheriff’s Office. Additional personnel are needed to transport inmates to multiple courtrooms. The lack of adequate staff at the jail means these transportation duties have to be performed by patrol deputies. On some weekday mornings, all available Ukiah area day-shift deputies are assigned to transportation. This compromises public safety and creates unacceptable delays in responding to calls for service.

Response (Board of Supervisors): The Board defers to the Courts and the District Attorney to answer this finding.

Batterers Counseling Program

Findings

- 33.** According to Penal Code Section 1203.097 (a) (6), if a person is granted probation for a crime of domestic violence, mandatory attendance in a weekly, two hour, batterers counseling program for a minimum of one year is required. Imposition of this requirement is the responsibility of the Court. The District Attorney has neither power nor discretion in this matter.

Response (Probation): Agrees with this finding.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

- 34.** There are 19 approved batterers counseling programs in Mendocino County. Each program is led by a professional facilitator licensed by the State of California. The programs and their facilitators are approved by the Probation Department based upon established criteria.

Response (Probation): Agrees with this finding. The number of programs is not limited or static.

Response (Sheriff): Agrees with this finding.

Response (Board of Supervisors): The Board agrees with this finding and notes that the Chief Probation Officer stated that the number of programs are not limited.

Recommendation

Batterers program facilitators and curricula should be closely monitored by the Probation Department and re-certified each year.

Response (Probation): Agrees with this finding. Probation Department staff meet with the facilitators to monitor their programs and compliance with the established standards.

Response (Sheriff): This recommendation is directed to the Chief Probation Officer.

Response (Board of Supervisors): The Board agrees with this recommendation. Probation staff meet with the facilitators to monitor all programs and to determine compliance with accepted standards.

Findings

- 35.** Since 1997, the number of referrals to batterer counseling has been averaging 5.6 per month. However, for four months, from April through July of 1999, there was only one referral to the batterer counseling programs. The referral rate returned to normal in August. There were fourteen convictions for domestic violence in the second quarter. Of these, seven were denied probation and received jail time. One case was transferred to Marin County and two probationers failed to report to the Probation Department for their initial visit, leaving three probationers unaccounted for. The District Attorney was unable to provide domestic violence records for the first quarter of 1999. This data might have been helpful in trying to resolve the small discrepancy in the number of referrals.

Response (Sheriff): Neither agrees nor disagrees with this finding. The Sheriff's Office does not maintain countywide statistics on batterer referrals.

Response (Board of Supervisors): The Board did not independently determine the accuracy of this finding. We assume it is correct

- 36.** The effectiveness of the counseling programs is much debated in the literature reviewed. Polar opposite views were expressed by those interviewed by the Grand Jury. There are no reliable statistics that attest to the effectiveness of these classes. Violations of probation are more than 80% for domestic violence probationers and violations average two times per probationer, often as many as five times or more.

Response (Probation): Neither agrees nor disagrees with this finding. I do not know from where or how the statistic was derived, or whether it pertains to the population as a whole or just Mendocino County. As with any learned behaviors, it takes time to modify that behavior, and many probationers will have difficulties throughout the term of treatment and for the rest of their lives. As with alcoholics in recovery, recovery from the patterns of domestic violence is a continuous process. Often the violations of probation are technical, such as missing meetings or counseling, rather than repeated abuse. Continued use of drugs, detected through urinalysis, is also a recurring cause for violations.

Response (Sheriff): Agree with this finding.

Response (Board of Supervisors): The Board did not independently verify the accuracy of this finding. We assume it is correct. The Chief Probation Officer also could not verify the statement due to the uncertainty of the source.

Recommendation

The Probation Department should initiate a system of tracking domestic violence offenders for recidivism including those who elect or are sentenced to jail time in lieu of probation.

Response (Probation): Disagree with this recommendation, in that don't see this collection of data as a function of the Probation Department. We do not collect data on cases that are not referred to us, nor do we keep data on probationers who may reside in or move to other jurisdictions and become involved in subsequent violations after completion of our cases. Those who remain within our jurisdiction may be tracked.

This could be a state agency function or tracked by the District Attorney, who reviews all police reports of domestic violence and chooses which cases to prosecute. The decision not to accept probation in lieu of jail may preclude this department from knowing that a domestic violence case has been prosecuted.

Response (Sheriff): This recommendation is directed to the Chief Probation Officer.

Response (Board of Supervisors): The Board disagrees with this recommendation. This request may be better directed to the District Attorney or a State agency. Probation does not collect any data on cases that are not referred to them.

Findings

- 37.** The most common cause cited for probation violations by domestic violence probationers was drug use. Other frequently cited causes were missing appointments with the probation officer and the counseling program. New offenses, including repeat domestic violence, were the least of probation violations.

Response (Probation): Agree with this finding.

Response (Sheriff): Agree with this finding.

Response (Board of Supervisors): The Board agrees with this finding.

38. Since attendance in a batterers program is a mandatory provision of probation, the probationers are rarely asked to enroll in substance abuse programs, even though drug use is by far the most common cause for violation of probation. A majority of domestic violence incidents involve the use of drugs or alcohol or both.

Response (Probation): Agree with this finding in that substance abuse is a major contributing factor to domestic violence. A component of the educational and treatment program should and does include substance abuse counseling. We direct them to attend AA and NA meetings when we feel it is appropriate. Counseling through the Public Health's Alcohol and Other Drugs Program requires substance abuse counseling, before entering the Men's Alternatives to Violence Program. Participating in a year-long counseling program makes demands on the client's time that make it difficult to attend anything other than that program. If substance abuse is interfering with compliance with the program, further counseling may be ordered.

Most domestic violence cases are misdemeanors that do not require the presence of a court officer. The terms are decided by the court. We are in the process of revising these terms to include rehabilitation programs, such as substance abuse counseling,

Response (Sheriff): Neither agrees nor disagrees with the statement about probationers enrolling in a substance abuse program. The Department agrees with the remainder of the finding.

Response (Board of Supervisors): The Board agrees with the response provided by the Chief Probation Officer. Substance abuse is a major issue in domestic violence and Probation does direct that probationers attend AA and NA meetings when appropriate.

Recommendation

When it is clear to the probation court officer that a convicted batterer has an addiction or problem with drugs or alcohol, the suggested terms of probation recommended to the court should include a dependence rehabilitation program as well as the mandatory batterers counseling classes.

Response (Probation): Agrees with this recommendation in spirit and agree that further supplemental counseling may be necessary in certain cases

Response (Sheriff): This recommendation is directed to the Chief Probation Officer.

Response (Board of Supervisors): The Board agrees with the response provided by the Chief Probation Officer. Supplemental counseling may be necessary in certain cases.

Findings

39. Review of case files revealed instances when domestic violence charges were reduced to “aggravated assault” and “disturbing the peace” misdemeanors as part of plea bargaining. These lesser charges do not require batterer counseling classes when on probation.

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board has no independent knowledge of this finding. We assume it is correct.

40. The District Attorney disagreed that there is a deep public concern about the handling of domestic violence cases. In his view, the public uproar is the work of a few disgruntled counselors, who are unhappy that their batterers counseling programs have suffered declining enrollment.

Response (Sheriff): This finding is directed to the District Attorney.

Response (Board of Supervisors): The Board defers to the District Attorney concerning this finding.

Recommendation

The District Attorney plays a pivotal role in the criminal justice system's response to family violence. The District Attorney must, through his actions, make it known to the community that domestic violence will not be tolerated in Mendocino County.

Response (Sheriff): This recommendation is directed to the District Attorney

Response (Board of Supervisors): The Board agrees with this recommendation and urges the District Attorney to respond to our citizen's

Response (District Attorney): This office agrees in part and disagrees in part.

We appreciate the Grand Jury's time and effort devoted to this endeavor. They have taken on a monumental task with all earnestness. Their undertaking is commendable.

As a whole the report gives this office a clean bill of health because it establishes that the concerns expressed by some critics are unfounded. However, some of the recommendations require clarification and the balance of this response will be devoted to those areas:

Charging Policy

Our prosecution practices are consistent with the conventional wisdom of other jurisdictions and with the legal and ethical obligations of a public prosecutor. In this office, each case is given individual attention so an honest assessment is made of the facts, circumstances, and evidence to determine if criminal prosecution is merited. This determination involves the professional and legal judgment by an experienced attorney. Our prosecutors receive regular training on this subject so they are kept abreast with the current legal developments, theories, and concepts.

The concluding factor in most cases is its provability. This requires assessing the likelihood of conviction by a jury. However, this does not mean that we are motivated by fear of losing. Rather, it is a candid appraisal of the facts focusing on what we can realistically expect from a reasonable and prudent jury. This office does file cases that are not "sure winners". Our interests include making sure our decisions are intelligent and just.

Every charging decision is recorded on a cover sheet that is returned to the investigating agency. The form describes the judgment reached and the reasons therefor. If a case has potential, but is not prosecutable at the time of submission, it is not declined out right. Instead, it is returned to the agencies with instructions for further investigation. In major, complex cases it is not unusual to have District Attorney Inspectors render assistance.

While law enforcement must always strive to do their best when conducting investigations, it must never be shaded in favor of prosecuting someone. The objective is to get to the truth and help the prosecutor make the correct determination. A properly investigated case might compel the conclusion that it shouldn't be prosecuted.

If a case is declined for insufficient evidence, it might mean that the suspect is not guilty. Therefore, nothing can be gained by micro managing law enforcement and requiring them to flog nebulous cases when it is unlikely that those efforts will bear fruit. Of course, every filing decision is open to honest feedback and dialogue with all interested agencies and parties. This office has a true open door policy.

Cite hearings

It is true that on occasion some cases are resolved informally through alternative dispute resolution or District Attorney's Citation (Cite) Hearing. However, we carefully select the type of cases that go through this program. It is important to note that it is an adjunct to, not a substitute for, criminal prosecution. It is only intended to fill a void. The following criteria is utilized for selection: First, it must be determined that the case is unprosecutable. Second, the alleged act usually involves insignificant physical contact (the legal term for this concept is called "de minimis"). Third, there is no prior history of serious violence. The State Attorney General recognizes the use of cite hearings as one of the tools available to prosecutors. The procedures followed during cite hearings closely resemble the Grand Jury's recommendation.

Probation Violations

When a person is sentenced he is sometimes placed on probation with certain conditions. Those conditions include obeying all laws. When that person subsequently commits a crime he can be charged with both, a new offense and violating probation. Since the standard of proof for the latter is significantly less, there can be situations where there is insufficient proof to support prosecution for the new offense but enough to violate one's probation.

The standard operating procedure is dual prosecution -- the new case as well as the probation violation. Probation revocations proceedings are used as substitutes only in the following situations: the reasonable doubt standard can't be met but the evidence is enough to meet the probation violation standard; the new offense involves acts so de minimis that dual prosecution will not result in enhanced punishment; or it is strategically advantageous to go first with the probation violation. The prosecution always retains the right to file a new case after the revocation proceedings so little, if anything, is lost through this method.

Sentencing Practices

The ultimate decision on sentencing rests solely with the courts. While a prosecutor can argue and advocate for a particular sentence, one must accept the judge's ruling. Sentencing for domestic violence cases are governed in Penal Code section 1203.097. That section contains mandatory terms, which include batterer's counseling. It is important to note that the reduction in charges does not affect the applicability of that section. The court has the obligation and authority to impose counseling in domestic violence situations regardless of which crimes the defendant is convicted for.

The District Attorney is proactively getting the message out to the community. We have started issuing press releases on the sentences imposed in felony domestic violence cases so the public can be better informed as to nature of the crime and the judicial process.

Response (Fort Bragg City Council): Response not received.

Response (Ukiah City Council): Response not received.

Response (Willits City Council): Response not received.

Response Required

Mendocino County District Attorney
Mendocino County Sheriff/Coroner
Mendocino County Board of Supervisors
Fort Bragg City Council
Ukiah City Council
Willits City Council

Response Requested

Mendocino County Chief Probation Officer
Fort Bragg Police Department
Ukiah Police Department
Willits Police Department
Mendocino County Domestic Violence Council
Project Sanctuary