

## GUIDELINES RELATED TO INTIMATE PARTNER DOMESTIC VIOLENCE CASES

The most common form of criminal homicide in Vermont is domestic homicide by a family or household member. Domestic homicide is often the result of a predictable escalation of threatening and violent behavior that may begin with verbal threats, but can also include emotional abuse, concerning behavior on social media/text message/phone, violence against pets, violence against loved ones other than the victim, followed by violence against the eventual victim. Your job is to prevent this escalation of violent behavior.

When prosecuting cases involving domestic violence (in particular, Domestic Assault, Aggravated Domestic Assault, or VAPO), please keep in mind the following:

1. **Risk Factors.** Be cognizant of risk factors and patterns that may be drivers of the criminal conduct. In particular, be cognizant of controlling behavior, dominant behavior, mental health issues, alcoholism or other substance abuse, and housing instability. These issues may also be present in other pending dockets. Identifying these underlying causes is a significant factor in determining appropriate sentencing goals. A “Lethality Risk Assessment” provided by law enforcement may be particularly useful in identifying these factors.
2. **Discovery Obligations.** If victim tells you/advocate that something in their statement (or something they told police) isn’t true/accurate, that’s potentially exculpatory evidence you have to disclose. An email to defense counsel will suffice (“V told victim advocate that they didn’t feel pain when defendant hit them” or “V confirmed that D did push them, but that D did so only after they struck D first” or “V advises they was drinking heavily that night, their memory of the incident is fuzzy, and they no longer remember if what they told Officer Jones is accurate.”).
3. **Context.** Vermont case law allows for the introduction of evidence of prior bad acts in a domestic violence case, in order to put a specific act of violence in context within the relationship. (See e.g. State v. Sanders and many others.) If you identify specific prior acts that would seem to fit (including other conduct that would constitute coercion/control/manipulation), consider seeking to admit evidence of this conduct and file a prior bad acts notice.

Additionally, expert witnesses can be extremely helpful in explaining victim behavior which is normal in the DV context but may make little sense to outsiders. Consider an expert to explain issues such as:

- Recanting/minimizing
  - Failing to report
  - Returning to/staying with abuser
  - Hiding abuse
  - Self-blame
  - Power & Control dynamic
  - Trauma response (may require psych expert)
4. **Sentencing Options.** Sentencing goals should include protecting the public in general, and the victim(s) in particular. Programming that is targeted at curbing cycles of violence or underlying risk factors should be included wherever appropriate and possible. Review prior criminal history

and look to avoid repeating similar sentences that have proven ineffective in the past, particularly if prior sentences included amendments and/or lacked DV programming. Suggested sentencing options to consider include:

**a. Circles of Peace**

- See Circles of Peace policy for full details.

**b. Fully suspended probation sentence**

- Suggested conditions include no abuse harass condition for victim, condition requiring the completion of DVAP, no contact with victim unless approved by PO, substance abuse and mental health conditions and programming if present, no violence or threatening conduct, curfew as directed by PO, foot restriction from victim (plus others as needed)

**c. Split to serve with probation sentence**

- (see above for suggested conditions)

**d. Pre-Approved Furlough (PAF) sentence**

- Getting a PSI is recommended to see if DOC will approve Defendant for PAF sentence

**e. Zero minimum to serve sentence**

**f. Straight to serve sentence**

- If DVAP is intended to take place in the facility, ensure sentence is sufficient for it to be completed, and remember to calculate for any credit that may have accumulated.

Importance of DVAP – In 2015 independent outcome study of Emerge (the curriculum used by both of Windsor County's two BIP programs since 2015) conducted by the Kennedy School of Government at Harvard found that the recidivism rate for program completers was 11.6%, compared with 29.9% for noncompleters and 20% for participants in programs with other curricula. Emerge completers were 2.6 times less likely to re-offend than noncompleters.