

APA Position Statement on Pretrial Release in Domestic Violence Cases

The Association of Prosecuting Attorneys (APA) is a national association dedicated to supporting and enhancing prosecutors' effectiveness in their efforts to create safer communities, ensure justice, and uphold public safety. APA's Domestic Violence Prosecution Committee, composed of supervising prosecutors and advocates from around the country, created this position statement to offer a practitioner's perspective on pretrial release in domestic violence cases and support victim-centered and evidence-informed prosecutorial practices that prevent crime, ensure equal justice, and ultimately make communities safer.

Current Landscape and Bail Reform Efforts

There is a significant national movement to reform bail and pretrial detention. Pre-trial detention can be vital in ensuring victim safety, especially in cases of domestic and sexual violence. Poor and uninformed pretrial detention decisions in domestic violence (DV) can and do end in serious injury and death for victims and their children. As bail reform efforts are underway across the country, pretrial detention decisions in DV demand detailed and professional information about risks and needs.

As DV practitioners operating daily in courtrooms, in person and virtually, across the country, it is crucial to balance victim safety with necessary bail reform efforts. Prosecutors must make sure that pretrial detention is requested on appropriate high-risk DV cases, and that meaningful and safe alternatives to release are made available for less lethal and lower-risk cases. Pretrial detention decisions in DV cases require sufficient information, resources, and funding to develop accurate and effective conditions that ensure victim and community safety. As jurisdictions throughout the country are grappling with equitable and safe provisions surrounding bail and pretrial detention, DV practitioners must ensure that pretrial detention decisions are well-informed about domestic violence:

1. The victim's voice and wellbeing should be included in pretrial detention decisions.

Pretrial detention and pretrial services are instruments that must successfully ensure safety and justice for both the survivor and the accused. We encourage early and meaningful advocacy services that hear and support victims' voices and inform all parties about available pretrial services. Especially within DV cases, bail on its own may not sway someone from committing violent acts upon release. In addition to seeking input in pretrial detention decision-making, DV practitioners can empower a survivor by ensuring access to resources that provide immediate notification of a defendant's release.

2. Training should be required for prosecutors, public defenders, and court staff to understand DV and risk factors.

Women with marginalized identities are at particular risk of intimate partner homicide. Approximately two-thirds to three-quarters of women murdered by a current or former intimate partner are abused by that partner before being killed. Unfortunately, the current rules and practices that set bail and pretrial conditions are often unable to incorporate the historical relational and behavioral factors (e.g., prior abuse, coercive and controlling behaviors, presence of children) that provide a more complete picture of risk in a DV case.

Many courts lack rules or systems to gather or incorporate DV information when making decisions about pretrial release and conditions of release. Court rules on pretrial release rarely incorporate DV. Pretrial risk assessment tools are overly general, parsimonious, and fail to include basic important domestic violence risk information. General pretrial risk assessment tools are not specific to DV, omit the victim's voice, and diminish the importance of abuse.

To ensure judges appreciate the severity of DV cases, there needs to be information sharing with the courts. There also needs to be training of judges and prosecutors to better recognize that fear, manipulation, and tampering may be the underlying cause when victims recant—a factor amplified by the COVID-19 pandemic and remote courts.¹

3. Have systems in place that provide courts, counsel, and advocates accurate and reliable information/training about DV and risk.

More than any other crime, DV cases involve intricate family dynamics, trauma, and often, financial and housing interdependence. An understanding of these complicating factors and their impact on risk analysis is critical for pretrial release determinations. Unfortunately, many DV practitioners, specifically at the misdemeanor level, lack the necessary resources and training related to trauma and risk, motivational interviewing, and DV-specific challenges to make informed recommendations on pretrial release and/or accompanying conditions. Incorporating regular DV updates and reliable information into training regimens at all levels of the criminal justice system can ensure that any individual who handles DV cases has the requisite level of knowledge to make informed pretrial release decisions and recommendations.

4. If your jurisdiction uses a pretrial risk assessment tool, ensure that a lethality assessment is included.

Many pretrial risk assessment tools do not take into account DV specific cases and history. Pretrial risk assessment tools are targeted strategies to determine the likelihood of a person appearing at future court dates or re-offending if released prior to trial. While these tools are helpful for general defendants, they lack to historical questions and victim-centered components that DV cases often require. However, many police departments utilize lethality assessments either at the site of an incident or shortly after arrest. These documents can be particularly helpful in determining the dangerousness of a DV situation, including any prior abuse incidents, how many times the victim or accused has called the police, or other forms of control (i.e., financial, familial, friends) that the accused exercises over the victim. Be mindful of the tool your jurisdiction is using. If only a risk assessment tool is presented during the pretrial detention determination, strategize with other community stakeholders to ensure that a lethality assessment is conducted and presented to accompany the pretrial risk assessment tool.

5. Ensure alternatives to incarceration made for DV defendants are effective and safe for victims.

The current practices of bail, detention, and pretrial conditions are often unable to incorporate the unique facts of a DV case, jeopardizing survivors' and their families' safety. As prosecutors, we have an ethical responsibility to victims and the community to trust the programs and release conditions that we recommend. If a decision is made to release a defendant pretrial, the focus of the release needs to be on effective supervision and pretrial services. If the services and supervision are ineffective, victims may have a false sense of security at a dangerous time. Additionally, if the release conditions and supervision are violated, swift action should be taken to revoke the defendant's bond.

6. Support DV victims, not just with safety planning but with meaningful resources, too.

In DV cases, informed pretrial conditions and detention play a crucial role in ensuring victims' safety and stopping the cycle of violence. Survivors are exposed to the greatest danger when they attempt to leave their abuser and are often unable to access adequate medical care or shelter for themselves and their family without the protections and physical separation from their abusers afforded by pretrial detention and pretrial conditions. Survivors rarely receive the support they need in the pretrial process, and the children who witness DV are sadly often an afterthought.

7. Firearms are the single greatest risk to DV victims. Ensure a meaningful system is in place for removal of firearms.

Release decisions must also be informed by other factors outside of bail, such as possession of firearms. We acknowledge that survivors and their families will never reliably have protection until systems can exercise meaningful firearm removal and effective treatments that are tailored to both the defendant's and survivor's needs. Firearm removal is the most basic and effective risk reduction tool and must be thoroughly addressed as a condition of release. Even when risks particular to DV are acknowledged, courts often lack the means to ensure the safety of survivors and their communities, such as having no effective process to remove firearms from defendants. The result is a process that fails to adequately reduce the risk to victims. Systems must focus on providing transparent, informed, effective, and meaningful responses to defendants and victims in the pretrial process.

Conclusion

We recognize that the current pretrial detention system is based on the accused's economic status and has placed undue economic burden on impoverished communities. The balance must be struck between effective measures to ensure returning to court and protecting DV victims from further harm. In addition to the above suggestions, innovative programs such as day reporting centers, educational programs that include trade and craft certification, no cost intense bond supervision, and electronic tracking are all possibilities that can be built into pretrial initiatives and achieve pretrial reform while simultaneously improving victim safety. Advocates, law enforcement, prosecutors, and courts must work together to create community-specific systems that address defendants' risk and needs upon arrest while simultaneously

addressing the lethality risk for the victim and any safety concerns. We advocate for the availability of civil counsel to address civil legal needs. Individual jurisdictions are currently implementing new bail and pretrial programs that hold the promise of reducing the risk of harm to both the defendant and survivor. With adequate funding, resources, and research, practitioners can identify successful avenues of bail and pretrial service reform while maintaining safety and sufficient resources for victims.

Examples/References

- Firearms Removal Programs: King County, WA, Regional Domestic Violence Firearms Enforcement Unit, <https://kingcounty.gov/depts/prosecutor/ellies-place/rdvfeu.aspx>
- Day Reporting Centers: East Baton Rouge, LA, Day Reporting Center Orleans Parish Sheriff's Office, https://www.opso.us/index.php?option=com_content&view=article&id=275:day
- Diversion Program: Milwaukee, WI, Treatment Alternatives and Diversion (“TAD”) Program, <https://www.safetyandjusticechallenge.org/challenge-site/milwaukee-county/>
- Pretrial DV Lethality Assessment Tool: Arizona intimate Partner Risk Assessment Instrument System (APRAIS) Lethality Assessment, <https://nau.edu/family-violence-institute/welcome-aprais/>

¹ *Domestic Violence during COVID-19*, NAT'L COMMISSION ON COVID-19 & CRIMINAL JUSTICE, (February 2021),

https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Domestic_Violence_During_COV.pdf. See also, Knowles, H. *A Zoom Hearing for her Domestic Violence Case Went Viral. No People are Blaming Her, She Says*, Washington Post, (Mar. 12, 2021, 7:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/03/12/mary-lindsey-coby-harris-zoom-hearing/>.