

Municipal Litigation Checklist

Prosecution of Domestic Violence Ordinance

Domestic violence is criminal behavior that affects the entire community. Local units of government are granted the authority to regulate criminal domestic violence activity within the penalty guidelines provided by statute. Basically, this means that the local ordinance shall not exceed the imposition of a fine of \$500 or imprisonment of 90 days or both. However, a local ordinance may provide that a violation is punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both, *if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.*

Domestic violence crimes are different from most other types of crime because these offenses often occur as part of an abusive *pattern* that may tend to escalate over time. In the long run, the effectiveness of dealing with serious domestic violence may hinge upon the ability to address the issues and behaviors of the repeat offender. With respect to how a local unit of government addresses its enforcement of its domestic violence ordinances, the option to adopt an ordinance substantially corresponding to state law is *critical* in terms of subsequent prosecution under state statute of an offender who commits domestic violence crimes on a repetitive basis

In 2001-2002, a comprehensive package of domestic violence legislation was enacted. In part, the legislation was adopted to provide a framework of the most sensible and effective measures to confront the problem of domestic violence, significantly, in those cases involving repetitive criminal behavior. In particular, legislation affects the availability of deferred sentencing options and imposes enhanced sentences for the repeat offender. State Police records are a critical source of information about the prior history of a repeat offender.

For these reasons, the following guidelines are offered as recommendations for a local unit of government if it decides to enforce and prosecute domestic violence assaults in its community. These guidelines are not intended to be comprehensive. Rather, they are intended to be specific to local government consideration of domestic violence prosecution.

- Adopt ordinance** substantially corresponding to crimes outlined in MCL 750.81 and classifying violation as misdemeanor, punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both. *See* Home Rule Cities Act, MCL 117.3(k), 4i(k); Home Rule Village Act, MCL 78.24(b), or General Law Village Act, MCL 66.2(5). A 93 day penalty is necessary to trigger the state's central reporting requirements.

Note: MCL 750.81(1) sets forth the offense commonly referred to as *assault* or *assault and battery*. MCL 750.81(2) sets forth the offense commonly referred to as *domestic assault*. A domestic assault is an assault or assault and battery involving a victim who is the assailant's spouse or former spouse, a victim who has had a child in common with the assailant, a victim who is a resident or former resident of the same household as the assailant or a victim who has had a dating relationship with the assailant. A *dating relationship* means frequent, intimate associations primarily characterized by the expectation of affectional involvement. The statute specifically states that the term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context. MCL 750.81(6)

- Implement** State of Michigan Model Policy/the Law Enforcement Response to Domestic Violence http://www.michigan.gov/documents/Model_Policy_5-06_2_164561_7.pdf

- Comply** with Crime Victim's Rights Act. **Note:** A violation of MCL 750.81 is statutorily defined as a *serious* misdemeanor resulting in application of the Crime Victim's Rights Act, MCL 780.751 et. seq. See Municipal Litigation Checklist: Compliance with Crime Victim's Rights Act.

- Provide** victim with statement in accordance with MCL 764.15c(1).

- Prepare** State of Michigan Domestic Relationship Incident Report Form
http://www.michigan.gov/documents/StandDomesticRelation_41573_7.pdf MCL 764.15c (2) See also State of Michigan Domestic Relationship Incident Report Form cover letter
http://www.michigan.gov/documents/StandFormCover_41572_7.pdf

- Forward** copy of State of Michigan Domestic Relationship Incident Report Form to local city or village attorney (prosecutor) within 48 hours after the domestic violence incident has been reported. MCL 764.15c(3)
Note: An appearance ticket may not be issued to person arrested for domestic violence.

- Take fingerprints** upon arrest. The arresting law enforcement agency should take fingerprints upon arrest. MCL 28.243. Upon conviction, a copy of the fingerprints and copy of disposition of conviction should be forwarded to the Department of State Police within 72 hours of receiving the copy of conviction from the court.
Note: A person shall not be released on an interim bond as provided in MCL 780.581 or on his or her own recognizance if arrested without a warrant under MCL 764.15a (domestic assault or local ordinance substantially corresponding to domestic assault) or with a warrant for assault (MCL 750.81 or local ordinance substantially corresponding to MCL 750.81). Arrestees must be held until they can be arraigned or have interim bond set by a judge or district court magistrate. In setting interim bond, the judge/magistrate must consider and may impose the condition that the person released shall not have or attempt to have contact with the victim pending formal arraignment. Court-ordered bond conditions shall immediately be entered into the LEIN network.

- If deferred proceedings are considered, **comply** with MCL 769.4a. A defendant who is found guilty of, or pleads guilty to a local ordinance substantially corresponding to MCL 750.81 may be eligible for deferred proceedings under MCL 769.4a. Proceedings under MCL 769.4a are authorized only if the defendant has no previous conviction under MCL 750.81 or local ordinance substantially corresponding to MCL 750.81, the defendant consents to deferred proceedings, and the prosecuting attorney, in consultation with the victim, consents to the deferred proceedings.
 Probation should include reporting requirements and participation in a counseling program. The statute specifically outlines for the revocation of probation under certain conditions. Revocation is mandatory if certain conditions of probation are violated. The municipal prosecutor may need to petition for revocation.
 See State of Michigan Batterer Intervention Program Standards
http://www.michigan.gov/dhs/0,1607,7-124-5460_7261_18139---,00.html and
http://www.michigan.gov/documents/FIA-BISBrochure_71188_7.pdf.

Resources

Department of Human Services/Domestic Violence/Overview http://www.michigan.gov/dhs/0,1607,7-124-5460_7261---,00.html

Michigan Resource Center on Domestic and Sexual Violence <http://www.mcadsv.org/mrcdsv/>

The Michigan Law Enforcement Response to Domestic Violence/Officer Manual/Department of State Police (MCOLES) State of Michigan. Training offered through MCOLES to law enforcement agencies. http://www.michigan.gov/documents/DV_Officer_Manual_-_2004-adobe_164562_7.pdf

Domestic Violence: A Guide to Civil & Criminal Proceedings, 3rd Ed., Michigan Judicial Institute. <http://courts.michigan.gov/mji/resources/dvbook/dvbook.htm>

Domestic Violence Trial Manual, Herb Tanner, Jr., Prosecuting Attorneys Association of Michigan and Michigan Domestic Violence Prevention and Treatment Board. Contact: PAAM 517-334-6060 for copy \$30 (available to full time city attorneys.)

Summary of Domestic Violence Legislation Passed in 2001-2002, prepared by the Michigan Domestic Violence Prevention & Treatment Board

http://www.michigan.gov/documents/DVlegislation2001_21670_7.pdf

This document is not intended to be legal advice. It does not identify all the issues relative to the particular topic. Local units of government are encouraged to review procedures with the city or village attorney.

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