

Sentencing in Felony Domestic Violence Cases - Phase 2

INTRODUCTION

Building on a preliminary analysis of sentencing data in felony domestic violence cases, the New Mexico Sentencing Commission (NMSC) sought to partner with District Attorneys across the state to collect detailed information from prosecuting attorneys at the time of sentencing. In discussions with the project advisory group, it was agreed the prosecuting attorney is very familiar with the details of the cases at the time of sentencing and would be the most appropriate person to fill out the data collection form. In the initial analysis, all data was collected by NMSC staff retrospectively, meaning after the case was closed which required that staff pull the files. In some cases the files were already archived, or we were unable to determine the DA case number since our sample was based on court case numbers. Having the prosecuting attorney file out the data collection form was thought to be the most efficient way to collect the data for the second phase of the project. It was estimated that completing the form would take 5-10 minutes.

Ultimately, only the District Attorneys in the First and Second Districts agreed to participate. NMSC staff attempted to get buy-in from other districts, but concerns over the additional time requirements for attorneys or their staffs was the main reason cited for not participating.

METHODOLOGY

A data collection form was developed with assistance from the Second District Attorney Domestic Violence Division. The following variables were collected:

- Names of offender and victim
- Offender DOB
- Court filing date
- Court closing date
- Arrest characteristics
- Disposition
- Sentence
- Victim cooperation

A copy of the judgment and sentence was included with the data collection form. Prior criminal history and protective order information was looked up using public resources available from the courts and the New Mexico Justice Information Sharing Council.

Case Selection

Only cases from Second Judicial District are included in the analysis. Although the First Judicial District participated in the study, only a small number of cases were disposed from the time they agreed to complete the form and the end of the study.

FINDINGS

In the analysis below, we first describe the data we were able to collect on all 525 intimate partner cases disposed of from January 1, 2008—December 31, 2009. All cases were handled by the Second District Attorney Domestic Violence Division.

Gender of Victim

Nearly 90% of victims were female. Table 1 lists the number of male and female victims. We were unable to determine the gender of 13 victims.

Table 1. GENDER OF VICTIM

County	Number of Cases	Percentage
Male	54	10.5%
Female	458	89.5%
Total	512	100.0%

Charges

Table 2 reports the most serious charge in the case. The charges have been recoded into 16 categories. The types of charges vary widely. The most common charge was aggravated battery against a household member (HHM) (all subsections of NMSA 30-3-16) (25.0%) followed by battery against HHM (18.1%), and False Imprisonment (16.0%).

Tables 3 and 4 look at the overall case disposition. In 8.2% of cases, all charges were dismissed. Nearly 91% of cases resulted in a conviction meaning either a probation or jail/prison sentence. In 71.6% of cases offenders were placed on probation. Suspended sentences, deferred sentences and conditional discharges usually carry probation terms. The most common case disposition was a suspended sentence (34.1%). A suspended sentence occurs when a judge gives a jail or prison sentence and then suspends the entire sentence contingent on the offender's successful completion of probation for usually the same period of time. Twenty-four percent were conditional discharges and 13% were deferred sentences. A deferred sentence is similar to a suspended sentence however after successfully completing probation the offender can request that the court dismiss the charge. In both a deferred and suspended sentence there is an adjudication of guilt. In a conditional discharge an offender also is required to complete a term of probation, however there is no adjudication of guilt and after a successful completion of probation the charge does not appear on the offender's record.

Nineteen percent of offenders received either a jail or a prison sentence. The breakdown between jail versus prison was nearly identical (9.7% and 9.5% respectively). The percentage of offenders that receive a jail/prison sentence may seem small. However, in conversations with officials from district

Table 3. OVERALL CASE DISPOSITION

Case Disposition	Number of Cases	Percentage
Dismissed	43	8.2%
Conditional Discharge	127	24.2%
Deferred Sentence	68	13.0%
Suspended Sentence	179	34.1%
Judgment & Sentence (jail or prison)	101	19.2%
Judgment & Sentence (probation)	7	1.3%
Total	525	100.0%

Table 2. MOST SERIOUS CHARGE IN THE CASE

Most Serious Charge	Number of Cases	Percentage
Battery HHM	95	18.1%
Aggravated Assault HHM	32	6.1%
Child Abuse	29	5.5%
Aggravated Battery HHM	131	25.0%
Assault/Battery	6	1.1%
Assault HHM	7	1.3%
Criminal Damage to Property	9	1.7%
Burglary	28	5.3%
Stalking	5	1.0%
Resisting/Battery on a Peace Officer	11	2.1%
CSP	8	1.5%
False Imprisonment	84	16.0%
Judicial Interference	7	1.3%
Kidnapping	55	10.5%
Attempted Murder 1 st degree/2 nd degree	4	0.8%
Other	14	2.7%
Total	525	100.0%

attorney offices, sentencing an offender to probation is seen as an effective way to get an offender under the supervision of the court. If a violation occurs during the probation term an offender faces the possibility of the probation being revoked and the original sentence being imposed. Attorneys in the Second District Attorney's office routinely add special conditions in addition to the regular probation conditions in the plea agreement that become part of the judgment and sentence.

Table 4. COLLAPSED OVERALL CASE DISPOSITION

Case Disposition	Number of Cases	Percentage
Dismissed	43	8.2%
Probation	381	72.6%
Jail/Prison	101	19.3%
Total	525	100.0%

Determinants of Overall Case Disposition

Given the small number of dismissed cases, we were not able to include dismissed cases in a regression model. We did however conduct bivariate analysis with overall case disposition and the following variables:

- Children present at time of incident
- Defendant present at time police arrived
- Adult witnesses
- Prior Convictions
- Obvious victim injuries
- Prosecutor's assessment of victim cooperation
- Gender of victim
- Past protective order same parties

In the bivariate analysis, there was not a statistically significant relationship between the variables children present, defendant present or adult witnesses and case disposition. The crosstab tables are presented only for the variables with a statistically significant relationship. Remember that the bivariate analysis does not account for the effect of other variables and only considers the interaction between the two variables in the crosstab. The purpose of this analysis is to provide some possible explanations for differences in case disposition.

Prior Criminal History

For each offender, we looked for both misdemeanor and felony convictions prior to this case. We found that 60% of defendants had at least one prior conviction. The average number of prior convictions for defendants whose cases were dismissed was 0.4, indicating that they were more likely to not have prior convictions. The average number of prior convictions for defendants who received a probation sentence was 1.8 and the average for defendants who received a jail/prison sentence was 3.5. The most common prior offense category was DWI with 27.6% of defendants having a prior conviction. Just over 25% of defendants had a prior domestic violence conviction. Nearly 14% had a prior conviction for a public order offense (unlawful carrying of a deadly weapon, possession of a firearm by a felon etc...). Table 5 contains prior convictions by charge category.

Looking at whether or not a defendant had any prior convictions and overall case disposition, 2.2% of defendants with a prior conviction had dismissed cases compared to 74.0% who got a probation sentence and 23.7% who got a jail/prison sentence. Table 6 compares case disposition with prior conviction.

Table 5. PRIOR CONVICTIONS BY CHARGE CATEGORY

Case Category	Number of Cases	Percentage
Arson	1	0.2%
Assault	17	3.2%
Battery	29	5.6%
Burglary	28	5.3%
Domestic Violence	132	25.1%
Drug Possession	49	9.3%
Drug Trafficking	21	4.0%
DWI	145	27.6%
Fraud	7	1.3%
Judicial Interference	59	11.2%
Kidnapping	9	1.7%
Larceny/Theft	42	8.0%
Motor Vehicle Theft	17	3.2%
Other Homicide	4	0.8%
Other Offense	35	6.7%
Other Property	46	8.8%
Other Public Order	72	13.7%
Other Sexual Offense	1	0.2%
Other Violent Offense	35	6.7%
Robbery	9	1.7%
Sexual Offense	1	0.2%
Stolen Property	8	1.5%
Weapons	8	1.5%

Offender and Victim Characteristics

Nearly 90% of offenders were men. Male offenders were more likely to have prior convictions, although the difference was not statistically significant. Sixty-one percent of males had prior convictions compared to 51.8% of females. Female offenders were more likely to have their case dismissed (14.8% to 7.4%) and male defendants were more likely to have jail/prison sentence (20.4% to 9.3%). These differences were statistically significant. The average age of offenders was 31.6 years.

Cases where the victim was male were more likely to be dismissed (14.8% to 7.6%). Table 7 contains the crosstab of victim gender and case disposition.

Case Disposition		Prior Convictions		Total
		No	Yes	
All Charges Dismissed	Count	36	7	43
	Percentage	17.22%	2.22%	8.19%
Jail/Prison Sentence	Count	26	75	101
	Percentage	12.44%	23.73%	19.24%
Probation Sentence	Count	147	234	381
	Percentage	70.33%	74.05%	72.57%
	Count	209	316	525
	Percentage	100.00%	100.00%	100.00%

Note: p < .001

Case Disposition		Gender of the Victim		Total
		Male	Female	
All Charges Dismissed	Count	8	35	43
	Percentage	14.8%	7.6%	8.4%
Jail/Prison Sentence	Count	3	96	99
	Percentage	5.6%	21.0%	19.3%
Probation Sentence	Count	43	327	370
	Percentage	79.6%	71.4%	72.3%
	Count	54	458	512
	Percentage	100.0%	100.0%	100.0%

Note: p < .01

Case Disposition		Did Victim have obvious injuries?		Total
		No	Yes	
All Charges Dismissed	Count	27	16	43
	Percentage	9.5%	6.7%	8.2%
Jail/Prison Sentence	Count	42	59	101
	Percentage	14.7%	24.6%	19.2%
Probation Sentence	Count	216	165	381
	Percentage	75.8%	68.8%	72.6%
	Count	285	240	525
	Percentage	100.0%	100.0%	100.0%

Note: p < .05

Incident Characteristics

Twenty-five percent of cases where the victim had obvious physical injuries resulted in a jail/prison sentence compared to 14.7% of cases in which the victim did not have obvious physical injuries. Table 8 contains the crosstab of victim injuries and case disposition.

Only 2.6% of cases where there was ever a protective order between the two parties resulted in a case

Case Disposition		Protective Order		Total
		No	Yes	
All Charges Dismissed	Count	39	4	43
	Percentage	10.5%	2.6%	8.2%
Jail/Prison Sentence	Count	62	39	101
	Percentage	16.7%	25.7%	19.3%
Probation Sentence	Count	271	109	380
	Percentage	72.8%	71.7%	72.5%
	Count	372	152	524
	Percentage	100.0%	100.0%	100.0%

Note: p < .01

Case Disposition		Victim Cooperated with Prosecution		Total
		No	Yes	
All Charges Dismissed	Count	40	3	43
	Percentage	13.5%	1.4%	8.5%
Jail/Prison Sentence	Count	47	50	97
	Percentage	15.8%	23.8%	19.1%
Probation Sentence	Count	210	157	367
	Percentage	70.7%	74.8%	72.4%
	Count	297	210	507
	Percentage	100.0%	100.0%	100.0%

Note: p < .01

dismissal. Over 25% of the cases where there was a protective order between the parties resulted in a jail/prison sentence compared to 16.7% without. Table 9 contains the crosstab of case disposition and protective order with same parties.

Only 1.4% of cases where the victim cooperate resulted in a dismissed case. In 23.8% of cases where the victim cooperated resulted in jail/prison sentences compared to 15.8% of cases where the victim did not cooperate. Table 10 contains the crosstab table of victim cooperation and case disposition.

Table 11. SUMMARY OF REGRESSION ANALYSIS FOR VARIABLES PREDICTING SENTENCE LENGTH (N = 101)

	B	SE B	Beta
Adult Witness**	21.741	8.734	.245
Victim Cooperation*	16.773	8.058	.238
Felony*	16.691	8.339	.226
R Square	0.289		

Note: * p < .05 ** p < .01

Sentence Length

For the 101 cases that resulted in a jail/prison sentence we ran a stepwise regression model. The following variables were included in the model:

- Defendant age
- Children present at time of incident
- Defendant present at time police arrived
- Adult witnesses
- Number of prior convictions
- Obvious victim injuries
- Prosecutor's assessment of victim cooperation
- Gender of victim
- Past protective order same parties
- Felony lead charge

Theoretically we thought that all the independent variables included were potential explanatory variable for sentence length. Stepwise regression is a useful technique when you are there are a large number of independent variables and you are trying the work on the overall model.

The three variables that were statistically significant in the stepwise model were adult witnesses, victim cooperation, and felony initial charge. All three variables are dichotomous scales, meaning that 0 is the absence of the variable and 1 is the presence of the variable.

In cases with adult witnesses, controlling for all other variables, sentence lengths were 21.7 months longer than in cases without adult witnesses.

In cases where the victim cooperates with the prosecution, controlling for all other variables, sentence lengths were 16.8 months longer than in cases without victim cooperation.

In cases where the defendant was charged with a felony sentence lengths were 16.7 months longer than in cases where the defendant was charged with a misdemeanor.

Disposition by Most Serious Charge

Figure 1 reports the disposition type by most serious charge. The number of cases is listed on each bar.

Probation Sentence Lengths

The average sentence length in months for defendants who got a probation sentence was calculated. The average probation sentence for all defendants who got probation was 24 months. Figure 2 compares the average probation sentence by most serious initial charge. The number of cases is listed on each bar.

Jail/prison Sentence Lengths

For defendants that received a jail/prison sentence, two components were looked at – the total sentence and any partial suspensions. For example a defendant may be sentenced to three years of which one year is suspended for a sentence of two years to be served in a NM Corrections facility. Partially suspending a portion of the sentence is a strategy in plea negotiations in cases where there will be jail/prison sentence and a probation term after the jail/prison sentence. If the defendant violates probation after serving the jail/prison sentence the suspended portion of the sentence could be reinstated if the defendant is found to have violated their probation. The average total sentence and partial suspensions were computed. The overall average sentence for all cases before partial suspension was 31.6 months.

The bars in Figures 3 illustrate the average suspension and the portion of the sentence that defendants will serve by most serious charge. The longest average sentence is for cases where Attempted Murder in 1st Degree/2nd Degree Murder is the most serious charge (124 months before partial suspensions and 94 months after). The next longest sentence is for cases where burglary is the most serious charge (116 months before partial suspension and 85 months after). Figure 4 lists the average sentence to be served by the most serious charge.

It is important to note that 75% of the cases that receive jail/prison sentences have Battery HHM, Kidnapping, False Imprisonment, or Aggravated Battery HHM as the most serious charge. Information on all other charges on figures 3 and 4 represent a small number of cases and the findings are not representative.

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 - ◆Ann Badway Director of the Violence Against Women Division of the Attorney General's Office
 - ◆Alisha Maestas, Assistant District Attorney, State of New Mexico Second Judicial District

Figure 1. OVERALL CASE DISPOSITION BY MOST SERIOUS CHARGE

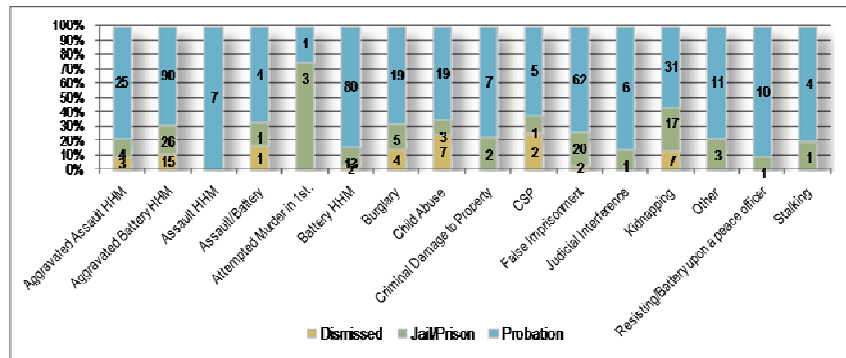


Figure 2. AVERAGE PROBATION SENTENCES BY MOST SERIOUS CHARGE

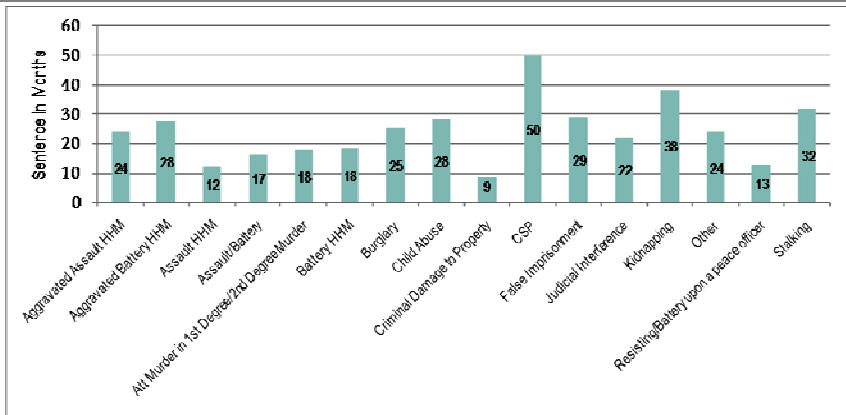


Figure 3. PERCENT OF SENTENCE SUSPENDED

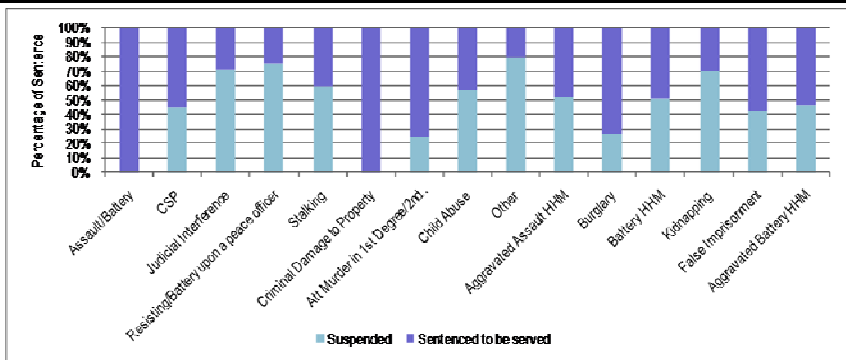


Figure 4. AVERAGE JAIL/PRISON SENTENCES TO BE SERVED

