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February 9, 2018

Executive Offices and Criminal Justice Appropriations Subcommittee

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Senator Thatcher, Representative Hutchings, Representative Cutler, Members of the Subcommittee;

My name is Robert Church. For almost four years I have been the Director of the Utah Prosecution Council. To use a military term, bottom line up front: I am here asking that the .5% of the criminal surcharge that has been going to the Attorney General's Office for the training of municipal and county attorneys in the prosecution of domestic violence offenses remain with the Attorney General's office, but with specific intent language that UPC use it for its statutory purpose. UCA 51-9-404(3). Currently, Senator Allen Christensen's SB142, takes the .5% of the surcharge away from the Attorney General's office and gives it to the Division for Domestic Violence Services. We are not asking for an FTE as we have the necessary staff, we are just asking that we be allowed to use these funds for their statutory purpose.

I met with Senator Christensen earlier this week and he seemed amenable to UPC's request. He directed me to Jonathan Ball, Director of the Office of the Legislative Fiscal Analyst. I met with Mr. Ball who in turn granted me this opportunity to address you.

For those of you who don't know, the Utah Prosecution Council is created by statute. UCA 67-5a-1. I and my staff are employed by a Council of ten members, of which the Attorney General is a member. We are housed in the Attorney General's offices and are designated Deputy Attorney's General. UPC is mandated to train Utah prosecutors and keep their continuing legal education (CLE) credits current. We sponsor 8-10 major conferences per year with many other

local, regional training events. UPC's budget comes from the criminal surcharge and shows up as a separate line item on the Attorney General's budget. UCA 51-9-404(3).

Before I continue, let me briefly share with you my background. Prior to coming to UPC, I was the Orem City Prosecutor, and a cross-designated deputy Utah County Attorney, for nearly 18 years. I am the senior Judge Advocate, or military attorney, in the Utah National Guard and hold the rank of Colonel. I started my military career on active duty in the United States Navy and was stationed in Norfolk, VA for over three years. Over the course of my civilian career I have prosecuted thousands of domestic violence cases, sexual assault, child abuse and plain old simple assault. As a JAG officer, I have prosecuted, and defended, service members accused of rape, sexual assault, child sex abuse and other violent crimes.

As much as we wish it weren't true, crimes of domestic violence occur every day in Utah. The Administrative Office of the Courts provided me this information yesterday. In 2017, 4,170 domestic violence cases were filed in District Court and 5,142 cases in Justice Court for a yearly total of 9,312 domestic violence cases filed. In 2016, 4,152 cases were filed in District Court and 5,558 were filed in Justice Court for a yearly total of 9,710 domestic violence cases filed. In 2015, 3,683 cases were filed in District Court and 5,679 in Justice Court for a yearly total of 9,362 domestic violence cases filed. These numbers do not reflect whether there were multiple counts of domestic violence in each case. Nor do they represent the number of convictions entered, which I guarantee you is a substantially lower number. And, they certainly do not reflect the actual number of domestic violence related crimes that occur but go unreported.

An article published in the Deseret News on Wednesday, February 6, 2018, spotlighted the number of intimate partner deaths that occur in Utah, the fact that crisis workers, community-based programs, advocates and so many others who work with victims are being flooded with work. The article highlighted bills members of this committee are working on to offer greater protection to victims of domestic violence and traumatic events. But the reality is, unless you have a prosecutor trained in the complexities of handling crimes of domestic violence and who are getting convictions, we are not giving victims the ultimate protection they need and deserve.

Having prosecuted as many cases as I have and working with prosecutors across the state, I can tell you that DV cases are routinely plead down by either dropping the DV enhancement, amending the original charge to something else, offering a plea in abeyance or outright dismissing the charges. There are a multitude of reasons we do this, which include; the best interest of the victim and family, an uncooperative victim, a hostile victim, a recanting victim, we don't believe the victim, evidentiary challenges - many of which could be overcome if the prosecutor knew how to deal with them, inadequate investigation by law enforcement officers, we can get what we ultimately want by offering a deal, OR, we don't know how to proceed, we don't know how to effectively use expert witnesses or we don't have the tools we need to proceed.

Many prosecutors are reluctant to prosecute domestic violence cases when the victim is unwilling to cooperate, which is almost all the time. Many law enforcement officers and prosecutors are unwilling to adequately investigate and prosecute these cases when the victim is not credible, is "lying" or it "can't be that bad if she went back." Many prosecutors, especially in small offices, have no one to advise or help them with these cases. When I came off active duty and started at Orem City, it was just me and one other prosecutor. I was senior to him with only 4 years experience. We relied heavily on UPC's conferences for the mentoring and training we just didn't get from each other.

While some of these roadblocks will never be solved, many of them could be overcome with adequate education and training. Let me share just one example. I started in this position in April, 2014. In May of that year, I attended a training where Donna Kelly taught on the effects of trauma on the brain and how that translates into victim behavior. I was learning things I had never heard before. While I sat through that training, I thought back over the last year alone and all the DV cases I had handled. I could count on one hand the number of cases I plead down because I did not find the victim credible or believable. Had I been trained on these principles a year before, I would have resolved those cases much differently.

UPC currently does not have a specific, dedicated conference on domestic violence. We try and include sessions on these issues during our regularly scheduled conferences, but if the theme or focus of the conference is something else, our prosecutors can go a year or two without specific DV training. At our Basic Prosecutor course, we use an actual domestic violence case as our scenario, but it is not a DV focused course.

I previously sent you all an e-mail with a copy of a letter I drafted for Senator Christensen, detailing how those funds would be used if UPC were allowed to use them. I have extra copies of that letter if you would like to review it. The more education and training our prosecutors receive, the more cases they will be able to successfully prosecute.

Let me summarize the contents of that letter and how UPC would use these funds.

1. DV 101 Boot Camp. A week-long course for prosecutors to learn how to prosecute these complicated cases. This will be similar to our Basic Prosecutor Course.
    A. Cost: $18,000 up to $30,000, depending on how much of the student expenses we cover.

2. Advanced DV and Sexual Assault Training. A shorter course focusing on the latest science and methods.
    A. Cost: $6,650

3. Co-sponsorship of the Children's Justice Center Symposium (Note: UPC has provided funds for this conference in the past but was unable to do so for the 2018 conference.)
    A. Cost: $15,000

4. Expert Speakers/Trainers. While we have excellent resources here in Utah, and will use them, we will bring in out of state experts to train at our various conferences. The projected cost covers honorariums and all travel related expenses.

A. Cost (high): $10,000

5. Sponsor Scholarships to Send Utah Prosecutors to National DV and Sexual Assault Training. This would be a huge benefit, especially to small jurisdictions that cannot afford to send their prosecutors to this type of training.

A. Crimes Against Women, Dallas, TX

i. Cost for 2 prosecutors based on this year's location: $6,166

B. End Violence, Chicago, IL

i. Cost for 2 prosecutors based on this year's location: $3,972

C. National District Attorney's Association DV Conference, TBD

i. Cost for 2 prosecutors based on last year's location: $5,722

6. Provide Forensic Tools for Prosecutor Offices

A. Forensic Light Sources. These lights can detect bruising before the bruise actually appears, corroborating a victims statement about being assaulted. We would purchase them in waves and provide them to prosecutor and victim advocate offices across the state.

i. Cost: $3,000

B. Forensic Mannequins. A resource prosecutors can "check-out" from UPC for use at trial to demonstrate how victims are assaulted, etc.

i. Cost: $1,500

C. Forensic Posters. Provide to prosecutor offices for use at trial. They show body silhouettes and can be written on.

i. Cost: $1,000

Total: $71,515.00

In conclusion, let me share one more incident with you. As I said, we use an actual domestic violence case that one of our senior attorneys, Donna Kelly, prosecuted as the course scenario. We start out playing Rebecca's call to 911. A sobbing, highly emotional woman can be heard, telling the dispatcher that her husband hit her in front of her kids, that it's a domestic violence issue and that her husband is psycho. When asked if she needs an ambulance she says no, just that her husband threw her laptop at her face, hitting her nose, that he scratched the "shit" out of her face and pushed her around.

During the investigation officers discovered Robert had assaulted Rebecca a day or two before, but that incident was not reported. They also discovered that they had been called to this home at least three previous times with Robert being charged in at least one incident. He entered into a plea in abeyance, did anger management, and the charge was ultimately dismissed. Rebecca once sought a protective order on one of those cases, but later went in and had it dismissed.

Despite having the actual 911 recording of Rebecca's voice, she denied everything, took the stand and testified she made it all up. Only after Donna had the judge advise Rebecca she could be charged with perjury and arranged for her to meet with a public defender, did she agree to tell the truth. Before Rebecca was called back to the stand, Robert entered a guilty plea.

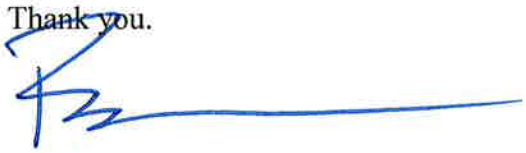
As Donna exited the court room, she feared encountering an angry Rebecca. Instead, Rebecca came up to her and apologized for how she had acted throughout the entire case. She said that Robert had threatened her if she cooperated and she was afraid for her and her children's safety. She then thanked Donna for not backing down on the case.

It was Rebecca's fear that caused her to behave the way she did. One debilitating fear many victims have, is that nothing will happen even if they do report, that he'll walk...head straight home and exact revenge on her for reporting.

Donna is a highly trained prosecutor and is one of our best trainers. Donna understood the dynamics of this case, knew the best way to proceed, knew how to use protective orders, knew how to introduce complicated evidence, understood victim behavior but most importantly, was confident in her abilities to proceed, even without Rebecca's help. For Donna, backing down was not an option.

We need more prosecutors who are equally trained and know how to handle these difficult cases. By leaving the .5% of the surcharge in the Attorney General's office with specific intent language the Prosecution Council use them to train municipal and county attorneys in the prosecution of domestic violence offenses, we will have more prosecutors like Donna Kelly.

Thank you.



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