

KITTITAS COUNTY PROSECUTING ATTORNEY'S OFFICE
MATERIAL WITNESS WARRANTS IN DOMESTIC VIOLENCE CASES

1. BASIC PRINCIPLES:

One of our primary goals as prosecuting attorneys is to try to protect domestic violence victims, keep them involved in and informed about their cases, and to restore some of their sense of control over their own lives. Because the issuance of material witness warrants for our victims has equity concerns, and because the use of such warrants tends to alienate victims and deprive them of any sense of control, the use of such warrants is disfavored.

Balanced against that concern is our duty and responsibility to preserve public safety and offender accountability. A warrant may be necessary when case facts or the history of the victim and defendant indicates that the victim's life or her children's lives are in serious danger, for example because the defendant has made disturbing threats, has committed especially bad acts, or has concerning criminal history. Material witness warrants should **never** be discussed with any domestic violence victim, however, unless there have been internal consultations in advance which, at a minimum, include the responsible deputy's supervisor and the victim advocate assigned to the case. When warrants do issue, it is the policy of this office to structure their service to avoid jailing the victim if at all possible.

2. OFFICE POLICY ON ISSUANCE OF WARRANTS IN DOMESTIC VIOLENCE CASES:

Our office policy requires that all of the following factors, A through E, be present before a warrant will issue for a victim in a domestic violence case:

A. CASE CHARACTERISTICS:

- i. There must be a history of domestic violence (including prior reports of domestic violence without convictions and unreported history); and
- ii. The case must also involve:
 1. Suicidal or homicidal acts or threats; OR
 2. Use or implied use of a deadly weapon; OR
 3. Need to protect a child, e.g., child witnessed the violence, intervened, or has been threatened through words or acts; OR
 4. A defendant with a significant criminal history; OR
 5. Stalking behavior; OR
 6. Uniquely egregious conduct e.g., sadism, torture, lengthy imprisonment.

B. The assigned Deputy Prosecutor and their supervisor must agree in documented form that the case cannot be proved without the victim.

C. All other efforts to obtain the victim's presence must have failed.

- D. The victim advocate assigned to the case and their supervisor must be consulted in making the decision.
- E. The elected prosecuting attorney must approve the issuance of the warrant.

3. OFFICE PROTOCOL TO BE FOLLOWED BEFORE ISSUING A MATERIAL WITNESS WARRANT IN A DOMESTIC VIOLENCE CASE:

The following protocol should be followed in all domestic violence cases in which a material witness warrant issues for the victim:

- A. The case should be assessed early to determine if the victim is necessary for prosecution (Suggested practice is to make a preliminary determination of this in every case, and take steps to have LE collect what you need to move the case forward if necessary without a victim);
- B. Efforts by our office to locate the victim and gain cooperation should be documented. This includes regular contact with the assigned lead officer or detective for follow-up. Damion note by attorney, legal secretary, and victim witness specialist are critical.
- C. Advocate input must be solicited. It is important for the prosecution team to understand what reasons may exist to risk dismissal of the case. If dismissal is necessary, the dismissal order should be structured to document the reasons for it.
- D. A subpoena should if possible be personally served on the victim **EXCEPT** that subpoenas should never be served at DV shelters.
- E. The prosecuting attorney's approval of the decision to discuss or obtain the material witness warrant should be documented.
- F. The responsible deputy prosecuting attorney, working with their legal secretary, is responsible to obtain the proper and necessary forms for issuance of the material witness warrant. It is the deputy prosecutor's responsibility to complete the information necessary for all forms, including an affidavit on why the victim is necessary to prosecution, the fact that a subpoena has been personally served, and/or what other efforts have been made to secure the victim's presence.
- G. The court in which the case is assigned should be contacted to secure an attorney for the victim.
- H. A judge must sign the material witness warrant. The warrant must include an expiration date. What expiration date is set should be discussed in advance with a supervisor.
- I. If at all possible, a detective or lead officer should be made available to take the warrant and serve it.
- J. Personal service of a material witness warrant by an officer involved with the case and with knowledge of the victim and facts of the case is preferable if at all possible.
- K. If at all possible, the victim should be brought directly to court. If informed of service of the warrant outside of the county, every effort must be undertaken to

- coordinate with the appropriate LE agency to send a representative with a transport order from the court to retrieve the material witness, unless not practical.
- L. If our office has any control, victims should be booked into **jail only** in the following instances:
- i. Victim safety concerns (lethality assessment to be considered if available) or victim is very unlikely to reappear;
 - ii. Agreement as to appropriateness of jail by deputy prosecutor, victim witness specialist, and supervisor; and
 - iii. Jail commander is contacted to ensure a “keep separate” order if the offender is in custody and such arrangements can be made.
- M. The deputy prosecutor and victim witness specialist shall consider and discuss in advance what impact an arrest will have upon a victim’s child (ren). If the decision is made to obtain the warrant, consideration of how best to coordinate service without impacting children should be discussed and considered. If an arrest and jail is to be undertaken, the prosecuting attorney and police should have a plan in place for addressing the need for care of a victim’s child (ren) and to the extent possible have a plan in place that produces the least amount of trauma to the children and to the relationship between the victim and children.

MATERIAL WITNESS WARRANT PROTOCOL FOR VICTIM-WITNESS SPECIALISTS:

It is sometimes necessary for a prosecutor to assess a case for a Material Witness Warrant against a victim on Domestic Violence Cases. There is an office policy regarding these requests that requires the deputy to make this request to their supervising attorney. If agreement is reached at that level, a meeting is then held with the attorneys, the assigned victim witness specialist and their supervisor to discuss the request. A recommendation from that meeting shall be forwarded to the Prosecuting Attorney for the final decision, including the use of jail. These meetings can be challenging and at times difficult, but it is felt that they are extremely useful for several reasons:

- A. So victim witness specialists understand that these decisions are thoughtful;
- B. So victim’s voices and opinions and history are considered, to the extent known and able to be communicated by a victim witness specialist;
- C. And so that despite the fact that the conversations may be emotional, all involved can focus upon the legal and factual components of the case and future needs of all participants impacted, as opposed to making a decision solely upon the emotional aspects involved.

It is the intention of this protocol to set the expectations for the victim witness specialists and their role in the process. It is the intent that these protocols will allow for the victim witness specialist to present the victim’s perspective during these meetings and also preserve documentation, if necessary, for the future.

When a victim witness specialist becomes aware that a deputy prosecutor is considering requesting a Material Witness Warrant (it should not come as a surprise as the expectation in this office is that deputy prosecutors work closely with assigned victim witness specialists), the victim witness specialist should do the following:

- A. Notify their supervisor via email about the request and give a brief history of the events leading up to the request;
- B. Put together in writing a memorandum that documents any contacts with the victim and which sets out the victim's wishes/concerns/requests concerning the prosecution of the case;
- C. Forward the memorandum via email to the supervisor;
- D. Retain a copy of the memorandum in the advocate case file (later inclusion in Damion file)
- E. After sending the email, make personal contact with the supervisor (in person or by phone) immediately (or as soon as practical) to discuss the matter.


The Office is not asking victim witness specialists to give their personal thoughts on the request. It is understood that as advocates for the victim, the specialists do not "support" these requests. The victim witness specialists may understand the reasons why the request has merit on an individual case, but their personal position on the warrant is not what is considered during the Material Witness Warrant meeting. The role of the victim witness specialist is to provide victim information relating to the relationships with the victim's abuser, children, family available for care of children, contacts, and positions about the case, defendant, or personal safety as relayed by the victim to the victim witness specialist.

Because we start with the assumption that a victim witness specialist is not required to make a decision in these matters, and because we assume their position is not in favor of issuance, the victim witness specialist is freed and expected to remain neutral and loyal to the victim's desires. Removing their personal feelings from these discussions allows for a decision to be made based on case history, criminal history, strength of case and what we would request if the defendant were to be convicted.

4. NON DOMESTIC VIOLENCE CASES:

Material witness warrants in all other cases must be approved by the Chief Criminal Deputy Prosecuting Attorney.

Dated this the 4th day of April, 2019



Gregory L. Zempel
Kittitas County Prosecuting Attorney