

# The Hardest “No”:

## Meeting with Survivors when Prosecutors Decline to Charge

*By Kristina Korobov, J.D., Zero Abuse Project*

This project was supported by Grant No. A-VAWA-2023-MCAA-00009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

---

As Special Victim Prosecutors, we aim to say “yes” to the challenging cases and support vulnerable victims in their pursuit of justice. We endeavor to respond with a resounding “yes” to those seeking accountability, especially in cases where abusers may believe they can evade consequences for the harm they have caused. We want to say “yes, I do” to children who were told no one would believe them.

However, our work is conducted within the framework of legal standards and burdens of proof. While we empathize with survivors of sexual trauma or domestic violence, a significant gap exists. This gap lies between believing their accounts and successfully convincing a jury of guilt beyond a reasonable doubt. Consequently, there are occasions when we must reluctantly decline filing a case, even when the survivor desires to pursue legal action. This decision is influenced by numerous factors that may render a successful conviction unlikely at trial, necessitating the sobering response of “no” Under Minnesota law, victims of domestic violence, sexual assault, and stalking have the right to be informed by the prosecutor of any decision to decline or dismiss a case.<sup>1</sup> Nevertheless, conveying this decision to a survivor remains one of the most challenging aspects of our role, given the delicate nature of the message and the emotions involved

---

<sup>1</sup> [Minn. Stat. Ann. § 611A.0315](#) (a) A prosecutor shall make every reasonable effort to notify a victim of domestic assault, a criminal sexual conduct offense, or stalking that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority: (1) contacting the victim or a person designated by the victim by telephone; and (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

When you determine that declining to file charges is the appropriate course of action but perceive that the survivor genuinely desires the case to proceed, it is crucial to prepare for that discussion. This is because the survivor will recall not only the content of your message but also the way it was delivered. This article offers guidance on having this conversation while respecting the survivor's experience and perspective.

**First, be certain your decision is the best given the facts and circumstances of the case.**

- Whenever possible, seek feedback on your decision and rationale from a prosecutor experienced in responding to crimes similar to those alleged in the case you are handling. This feedback may prompt you to reconsider your decision or further solidify your conviction in the correct course of action. Regardless of the outcome, this process can instill greater confidence in the decision you ultimately make.

**Second, collaborate with your detective to plan what you will say.**

- Utilize the investigator's established rapport with the survivor to tailor the conversation to the survivor's needs and preferences. If the survivor faces cognitive or communication challenges or requires an interpreter, make necessary accommodations to ensure effective communication.
- Strive to reach a consensus with your detective, or at least a mutual understanding of your decision when the investigator also advocates for filing charges. Before the meeting with the survivor, agree on how to manage any disagreements that may arise. If the detective strongly dissents or is likely to challenge you during the meeting, it may be best for the detective not to participate.
- If you have not previously communicated with the survivor, allow the detective to lead the discussion, with the prosecutor providing input on legal decision-making.
- When planning your dialogue, consider explaining potential evidentiary rulings, particularly those that might appear unfair to the victim, such as the admissibility of character evidence against them. Also, consider discussing the criminal justice process, including the possibility of appeals.

- When planning your dialogue, consider the possibility that the survivor may record the meeting and share it online. Explain the importance of confidentiality to the survivor, stating that what is discussed in the meeting should remain private. Clarify that maintaining confidentiality allows for an open dialogue and ensures that any further developments in the case can proceed without being influenced by the shared recording. With this explanation, the survivor is less likely to conclude you are attempting to hide anything from them or the public. Even with this explanation, be conscious of the possibility that what you say may end up in the public domain and thus make sure what you say is factually accurate and ethical.

### **Third, consider location and survivor support.**

- Carefully consider the location of the meeting. Opt for professional settings such as a conference room in your office or the police department, avoiding personal locations like the survivor's home or workplace. While professionalism is key, it does not have to feel sterile. Aim for a comfortable environment, such as a soft interview room, rather than a setup that feels adversarial, like sitting across a conference table.
- When determining who will attend the meeting:
  - Ensure survivor support is included when scheduling the meeting. It is highly advisable to have a victim advocate present, and if the victim has another support person, they should also attend.
  - You will require a witness in attendance to document the meeting. Ideally, this individual should be your detective. In the event of their unavailability, consider engaging an office investigator or another law enforcement officer adept at collaborating with the victims to fulfill this role.

### **Keep the meeting focused and on track.**

- Ascertain how the survivor is doing, considering not only the survivor's status regarding the case but also the survivor's general health and daily life. If the survivor is experiencing a crisis, it may be necessary to address those immediate needs before proceeding with a case status meeting.

- Provide the survivor with an update on the investigation's progress. This is an excellent way to ensure that they are informed about the efforts made on their behalf and the evidence obtained. Particularly in cases where the investigator performed well, this update conveys the message that every effort has been made to seek justice for the survivor.
- Engage the survivor in a discussion about their thoughts on the case's current status. You can ask questions like: *"In light of what we have, how are you feeling about the case?"* or *"Are there any thoughts you have about the case itself?"* This approach does not burden the survivor with making a decision but opens the door for them to express their feelings or concerns. It is possible that the survivor may no longer wish to proceed with charges, which would simplify the conversation. They may even prioritize other aspects of the case, such as relocating from the site of the assault. In such situations, your actions beyond the case decision may have a more significant impact on the survivor's well-being.
- Communicate clearly and directly with the survivor, stating: *"Based on my professional assessment, we do not have a reasonable likelihood of conviction at trial."* Regardless of other considerations, the bottom line is the probability of conviction at trial. You may explain to the survivor, *"We lack corroborating evidence needed to persuade a jury,"* *"We hoped to find \_\_\_ in the testing of \_\_\_, and we did not find it,"* or *"We can't prove element \_\_\_ because of a valid defense."* Emphasize to the survivor, *"It is not what I think or believe. It is what I can prove."*

### **Recognize the importance of tone.**

- Express confidence in your decision and be concise. As the representative of your office, you bear the responsibility for making this decision. The survivor should not be left with any doubt regarding the chosen course of action.
- Avoid attributing your decision to the survivor's action or inaction (e.g., "If you had gone to the hospital sooner, we might have forensic evidence that would let us try the case"). Survivors often blame themselves for what happened; it is crucial not to exacerbate their feelings of guilt.

- Refrain from discussing how you are sparing them/their child the trauma of testifying. This survivor, or someone else close to the survivor, may have to testify in court in the future, and we aim to avoid portraying the courtroom as a traumatic environment.
- Avoid comparing this case to any others. Every case is unique and should be treated as such.
- Prevent the meeting from turning into a debate. The responsibility for the decision lies with you, so allow the survivor to respond, but it should not escalate into an argument. Communicate the finality of your decision and avoid leaving open doors unless there are genuine possibilities for further examination of action. (e.g., later examination of a phone if software one day allows that).

### **Provide alternatives for support and restoration for the survivor.**

- Civil litigation could be an option, especially if you have trauma-informed civil litigators able and willing to work with abuse survivors.
- Continued counseling is always recommended.
- Safety planning, such as obtaining personal orders of protection, may be in the survivor's best interest. Empowering survivors through safety measures is vital for reclaiming their lives.
- Victim assistance funds may still be available, and you can assist in certifying that the survivor "fully cooperated with police and prosecutor," making them eligible for assistance.

### **Facilitate the transition.**

Once your office and law enforcement are no longer involved, inform the survivor about other sources of support and advocacy. Your local shelter or coalition may have a community advocate or be aware of such services. If possible, arrange for that person to be "on-call" to speak with your survivor, providing an additional layer of support.

## Some final advice...

If you have the opportunity, observe such a meeting before leading the discussion as the prosecutor. It is not an easy conversation to navigate, and attempting to “wing it” could have negative consequences. It is crucial to remain supportive and encouraging. Remind the survivor that you believe their account, but the law requires more than just the belief of a prosecutor and a police officer. Above all, be kind. During my father’s final days, I did not remember every doctor’s name or every medical term. Yet, I distinctly recall who showed kindness. If the survivor requires assistance again, I want them to know they can reach out to me, and I will endeavor my utmost support.

If you are facing this difficult conversation and want assistance, contact Zero Abuse Project. Not only do we have former prosecutors who can assist you with the legal aspects of your decision and provide support, but we also offer support for survivors of sexual and child abuse at SurvivorSpace.<sup>2</sup> The survivor is not alone in this, and neither are you. In prosecution, everything revolves around doing the next right thing. It is our responsibility to guide you through that next right step.

---

<sup>2</sup> <https://survivorspace.org/>



This project was supported by Grant No. A-VAWA-2023-MCAA-00009 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.