

# Recording Victim Video Statements as Evidence to Advance Legal Outcomes in Family Violence Cases (ReVEAL) 2.0: Case Characteristics and Initial Impact

## *Interim Report*

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### **Research Team**

The following individuals at The Institute on Domestic Violence and Sexual Assault (IDVSA) comprise the Project ReVEAL 2.0 research team: Dr. Bethany Backes, Anna Wasim, Jennifer LaMotte, Dr. Matt Kammer-Kerwick, Dr. Leila Wood, Micaela McDonald, Gabriella Fuentes, Dr. Noël Busch-Armendariz, Dr. Bruce Kellison, and Margaret Bassett. Dr. Bethany Backes is the principal investigator and Dr. Leila Wood was previously the principal investigator. Melanie Susswein and Mariel Dempster provided feedback and final editing for this report.

### **Acknowledgements**

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## Executive Summary

This interim report details the second phase of the study *Recording Victim Video Statements as Evidence to Advance Legal Outcomes in Family Violence Cases (ReVEAL)*. The ReVEAL evaluation began in 2016 with the goal of strengthening the quality of case evidence and improving prosecution rates in family violence<sup>1,2</sup> cases across the state. From 2016-2017, there were 432,089 victims of family violence in Texas (Texas Department of Public Safety, 2017). During that same timeframe, approximately 282 Texas women were killed in domestic violence related homicides (TCFV, 2016; TCFV, 2017). Project ReVEAL examines the role of video-recorded evidence through the stages of investigating and prosecuting family violence crimes. The study analyzes how video-recorded evidence impacts investigative capacity, prosecutorial case readiness, offender accountability, victim experience, and costs associated with family violence cases.

Phase I of Project ReVEAL examined the use of handheld cameras and victim video statements in three jurisdictions. Phase I focused on one site with an existing video program and two comparison sites, one urban jurisdiction and one rural jurisdiction, that were each in the process of adopting the practice of video-recording victim statements (Wood et al., 2017a). Preliminary findings from this Phase suggested potential benefits for improving the quality and availability of evidence in family violence cases as cases were significantly less likely to be

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<sup>1</sup> The Texas Family Code defines family violence as “an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm” (TX. Fam. Code § 4a-71). The definition of family under the Texas Code includes blood relatives, current or former spouses or romantic partners, biological or foster parents of the same child, and current and former members of the same household (Texas Department of Public Safety, 2016).

<sup>2</sup> This report uses the term family violence reflective of the Family Code. Language may differ throughout to reflect the language used by the authors in literature reviewed in this report.

dismissed and more likely to result in a plea in the site with an existing video-recording program (see Wood et al., 2017b).

Phase II of the project continued data collection in the two urban sites included in Phase I and added another mid-size city with a previously implemented video recording practice in place. Phase II continued the evaluation to confirm and expand upon preliminary findings from Phase I, reiterating perceptions of video evidence as a useful tool throughout the criminal justice process in family violence cases. Phase II also provided new site-specific findings and new data on victim perceptions of video evidence, defense attorney perspectives, the adoption of body-worn cameras, the fidelity of the practice over time, and challenges related to IT infrastructure and the sharing and storage of video files. Interviews in Phase II confirmed that victim video statements are a useful tool for both law enforcement officers and prosecutors in assessing cases and capturing a more thorough and accurate account of family violence incidents. While rules of evidence and two Supreme Court rulings limit the use of video evidence in court, prosecutors and defense attorneys are able to use videos to move cases forward in a variety of ways. Videos are used to prep victims and other witnesses for trial, negotiate plea deals, and capture video stills of injuries. Victims appreciated the role of video recording in helping officers capture a thorough and accurate account of an incident, but some victims were anxious about being filmed.

In Phase II, the research team expanded quantitative analysis of case outcomes and reviewed closed case data from all three sites. Consistent with Phase I findings, case outcome data indicated that video evidence is associated with pleas and fewer dismissals. Preliminary analysis also indicated that prosecutors may decline cases with victim video statements at lower rates.

Interviews conducted in Phase II revealed several recommendations related to training, IT infrastructure development, the adoption of body-worn camera technology, strategies for using video evidence in court, and practice fidelity. These recommendations will be explored in greater detail in the forthcoming Implementation Guide, which will consolidate all Project ReVEAL findings at the end of the third and final Phase.

### **Present Study**

The ReVEAL evaluation (Award #3070403) is a partnership with the Office of the Governor of Texas Criminal Justice Division (CJD) and the Texas Council on Family Violence (TCFV). In early 2016, TCFV received funding from CJD to distribute handheld video cameras to sixteen Texas jurisdictions for use in family violence cases. The cameras are primarily intended for use in collecting victim statements, as well as other supplemental statements and evidence as appropriate. Two jurisdictions with established video evidence programs provided the model for the new project. TCFV worked with the District Attorneys (DAs) from these two model jurisdictions to train the new program sites and establish guidelines; however, the sites were responsible for formally adopting policies, training, and storage practices within each jurisdiction. This Interim Report outlines the data collected and analyzed in the second year of the three-year project, indicated as Phase II throughout.

### **Literature Review**

The criminal justice system plays a crucial role in enforcing policies, disrupting patterns of violence and holding offenders accountable for abuse. Law enforcement responses and prosecutorial practices related to family violence have recently evolved with the development of *evidence-based prosecution* strategies (Messing, 2014). Evidence-based criminal justice and prosecutorial approaches rely less on victim testimony – with many jurisdictions encouraging

arrest and prosecution regardless of a victim's desire to proceed – and emphasize the totality of substantiating evidence (Gerwitz, Weidner, Miller, & Zehm, 2006; Messing, 2014)<sup>3</sup>. Such strategies emerged as an approach to maintain offender accountability in the potential absence of victim or witness testimony, as victims may be unwilling or unable to provide testimony against their abusers (Buzawa & Buzawa, 2003; Goodman, Bennett, & Dutton, 1999; Robinson & Cook, 2006).

While videos can play a critical role in quickly capturing high-quality evidence and victim statements following a family violence incident, the use of video technology in law enforcement is still relatively new, and little research has been conducted to date on its impact. Dawson and Dinovitzer (2001) found that video-recorded victim statements gathered within 24-hours of a domestic violence incident significantly increased victim cooperation and conviction rates in one Canadian jurisdiction. More recently, the increase in deploying body-worn cameras (BWC) provides more support for the role video evidence could play in adjudicating family violence cases. The Essex Body Worn Video Trial was one of the first studies to examine the role of BWC footage on charging decisions and the perceptions of law enforcement officers using the cameras in family violence cases (Owens, Mann, & Mckenna, 2014). Although the sample was limited, a significantly higher proportion of domestic violence cases with at least one BWC video resulted in higher charging rates than those without (Owens, Mann, & Mckenna, 2014). Additionally, half of the officers participating in the study reported that the videos would be helpful in obtaining domestic violence convictions (Owens, Mann, & Mckenna, 2014). A study examining the use of body-worn cameras (BWC) in Phoenix, AZ found that video

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<sup>3</sup> See Wood et al., 2017a for a review of literature on victim statements and criminal justice strategies in family violence cases.

evidence taken during domestic violence incidents was associated with more arrests, more charges filed, and more guilty verdicts and pleas compared with cases filed at the same time without video evidence (Morrow, Katz, & Choate, 2016).

More recently, research conducted in Australia and New Zealand highlighted the potential efficacy of video recorded victim statements in domestic violence cases. Westera and Powell (2017) conducted focus groups with prosecutors and found that video recording a victim's initial statement would improve the quality and availability of evidence to use in domestic violence cases. Another study conducted in New Zealand focused on the effect of victim video statements on guilty pleas for cases that went to court hearing (Walton, Brooks, & Li, 2018). The authors found that cases including a victim video statement were more likely to have early guilty pleas by 14% compared to those with written statements (Walton, Brooks, & Li, 2018). It is important to note that while these findings are promising, there are several critical differences between the ability to use video-recorded victim statements in the context of the United States' criminal justice system.

Two Supreme Court decisions constrain the use of video evidence and statements in prosecuting family violence cases. As a result of decisions in *Crawford v. Washington* (2004) and *Davis v. Washington* (2006), many statements to law enforcement cannot be admitted as evidence (Messing, 2014). In *Crawford v. Washington* (2004), the Supreme Court ruled that the Confrontation Clause "barred the admission of 'testimonial hearsay' in criminal prosecutions" (Levanthal & Aldrich, 2006, p. 77). In the Federal Rules of Evidence (FRE) (2014), hearsay is defined as a statement made by a declarant outside of "the current trial or hearing" and offered as evidence. Hearsay is considered inadmissible under both the Confrontation Clause of the Sixth Amendment, which gives criminal defendants the right to confront witnesses against them, and

under the FRE. However, the FRE allow certain exemptions such as “excited utterances” or statements made for medical diagnosis or treatment.

Under *Crawford*, decisions about whether hearsay evidence can be introduced rest on whether a statement is considered “testimonial,” but the Court failed to “spell out a comprehensive definition of ‘testimonial’” (*Crawford v. Washington*, 541 U.S. 36, 2004; Yeh, 2005). Testimonial statements may come from a variety of settings including police interrogations, depositions, affidavits, and past trials (Shanes, 2009, p. 883). The Davis Court attempted to clarify the criteria used to determine testimonial hearsay by emphasizing “the government’s purpose in obtaining out-of-court evidentiary statements for use in a later criminal prosecution” (Shanes, 2009). The evidence in question in Davis, a recording of a 911 call made by a domestic violence victim, was ultimately ruled nontestimonial in nature and was admitted (Baxter, 2008; Yeh, 2005). The Davis Court left open the possibility that 911 emergency calls might contain both testimonial and nontestimonial statements, suggesting a case-by-case approach to examining whether a statement should be considered testimonial (Yeh, 2005).

While this legal context presents significant challenges to introducing victim video statements as evidence during a trial, preliminary findings from Phase I of the study show that video statements can still be very valuable to prosecutors in building a case and preparing for trial. Videos can help “fill gaps” in a narrative report and provide prosecutors with a more objective account of what happened. Video statements also give prosecutors a better understanding of the victim’s experience (Wood et al., 2017b). Prosecutors are able to select stills from the videos and present photographic evidence of injuries, property damage, and other case elements, which often allows them to highlight visual details that were not captured in photographs taken at the scene. Video testimony is also helpful in trial preparation and can be a

powerful tool in negotiations with defense attorneys. Prosecutors use video-recorded statements to refresh their memories and/or to help victims remember “how they felt in the moment” (Wood et al., 2017b, p. 4). Video statements provide leverage in plea negotiations and can refute claims that victims were coerced by law enforcement officials to write a statement (Wood et al., 2017b).

### **Methods**

Project ReVEAL is a mixed-methods evaluation guided by the primary aim of understanding how video evidence, specifically video-recorded victim statements, can be used to improve criminal justice outcomes in family violence cases. At the end of the third and final year of this project, an implementation guide will be developed to provide an overview of current best practices for video-recording victim statements in family violence cases. Specific research questions guiding all phases of Project ReVEAL include:

1. Do videotaped victim statements improve law enforcement investigative capacity and prosecutorial readiness in family violence crimes?
2. Do videotaped victim statements increase the accountability of family violence offenders?
3. Do videotaped victim statements improve the victim experience in the criminal justice system?

Qualitative data for Project ReVEAL was gathered through interviews and focus groups in the study sites for each Phase using a purposive convenience sample. During Phase II, the research team conducted an additional interviews and focus groups with 47 participants across three jurisdictions, with two sites continuing participation from Phase I. Table 1 shows the breakdown of the interview and focus group participants by their role or profession across both Phases (Wood et al., 2017a). Some participants were interviewed more than once (once in each

Phase) and may be counted more than once in the table provided below. Interview protocols, recruiting procedures, and the consent process can be found in the methods report (Wood et al., 2017a). Few changes were made to the protocols for qualitative data collection and analyses between Phase I and Phase II. Questions pertaining to changes to case procedure and adaptations of the video-recording practice were asked in the two sites of continued study to assess fidelity of the practice. This included questions pertaining to body-worn cameras and their usefulness as a prosecutorial tool in family violence cases, given all three sites had begun to use body-worn camera and handheld camera footage interchangeably. Additional victim recruitment and interview protocols were developed to maximize outreach to victims during follow-up by the prosecutor's office. This allowed the research team to gather information about victim perceptions of video statements soon after such a recording was taken.

Table 1  
*Interview and Focus Group Participants by Profession*

<i>Professional Role</i>	<b>Phase I</b>	<b>Phase II</b>	<b>Total</b>
Prosecutors	22	16	38
Law Enforcement (Patrol, Detectives, Leadership)	22	22	44
Victim Counselors & Victim Witness Personnel (Justice System Based)	10	6	16
Victim Counselors & Advocates (Community-Based)	11	0	11
Victims	23	14	37
Others (Judges, Defense Attorneys, Dispatch, Investigators, Support Staff)	8	3	11
<b>TOTAL</b>	<b>96</b>	<b>47</b>	<b>143</b>

Quantitative data for Phase II of the study focused on closed criminal case data in the three study sites:

- Site One (continuation site from Phase I): Site with a handheld video-recording practice in place since 2011 in the municipal police department and a body-worn

camera video-recording practice adopted for prosecutorial review in 2017 by the County Sherriff's Office (SO).

- Site Two (continuation site from Phase I): A site with a handheld video-recording practice launched in 2016<sup>4</sup> in the municipal police department. Some officers also have body-worn cameras with video available for prosecutorial review, but this practice is not established as of 2018.
- Site Three (new site for Phase II): Site with handheld video-recording practice in place since 2015 in the municipal police department and a body-worn camera practice in place in the SO in 2017.

Sampling of closed case data evolved in Phase II of the project to accommodate the different data management software and capabilities of the study sites. Meetings were held with IT department personnel or points of contact at each site and across agencies (law enforcement, prosecutor) to assess the quality of available data and how to best transfer data to the research team. Unique methods were used to pull data from each site, however, similar coding approaches were used to examine the data and to create final datasets for analyses.

It is important to note that across sites, video evidence was not systematically recorded within electronic case files resulting in individual case file reviews at two sites and continued consultation with IT and other administrative personnel. Also, sites used different labels to code case outcomes that could not always be compared across sites. See Appendices A and B for coding profiles and data collected at each site.

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<sup>4</sup>See Wood et al., 2017a for an overview of the practice in this site during Phase I.

## Site Descriptions

**Site One.** Site One is a jurisdiction near the United States-Mexico border in the western region of Texas with a population of approximately 840,410 (U.S. Census Bureau, 2017). The population is over 80% Hispanic or Latino, approximately 25% foreign born, and over 70% of residents speak a language other than English (U.S. Census Bureau, 2017). In 2016, local law enforcement responded to approximately 5,295 incidents of family violence (Texas Department of Public Safety, 2017). Site One has a large military complex and a veteran population of approximately 48,216 (U.S. Census Bureau, 2017). It has a median household income of \$43,244 in 2017 inflation-adjusted dollars (U.S. Census Bureau, 2017).

**Device type.** Multiple law enforcement agencies operate within Site One, which includes both urban and rural regions. At the start of the study the municipal police department was the only agency operating a handheld video-recording program within this jurisdiction. In 2016, a second law enforcement agency, the Sheriff's Office, began to distribute body-worn cameras to its officers and the footage captured by this equipment was incorporated into the standard review process used by the DA's Office to review video during case intake in 2017.

**Updates to practice.** During Phase I of ReVEAL, the research team identified several unique approaches site one law enforcement used in handling family violence cases that continued through Phase II with no significant changes to case processing including: immediate case reviews, 24-hour contact protocols, and a specialized prosecution unit (for detailed descriptions of these processes, see Wood et al., 2017a, p.18). Additionally, the police department uses a standard set of questions to gather information in family violence cases pertaining to the relationship, frequency of the abuse, duration of the abuse, and a supplement to assess for indications of strangulation. The Sheriff's Office adopted the questionnaire as part of

their practice after the deployment of body-worn cameras to the field. This site had advanced technological capacity (e.g. software programs for timestamping videos, automatic storage processes, storage space) to document and transfer information.

**Site Two.** Site Two is a jurisdiction on the southwest border of Texas. Approximately 260,654 people resided in Site Two, with the majority of the population identifying as Hispanic or Latino at 95.4% (U.S. Census Bureau, 2017). The median household income is \$41,302 in 2017 inflation-adjusted dollars and 90.4% of families speak a language other than English in the home (U.S. Census Bureau, 2017). In 2017, the municipal police department responded to 1,388 incidents of family violence (Texas Department of Public Safety, 2017).

**Device type.** This jurisdiction did not use video recording technology to investigate or prosecute family violence cases prior to the beginning of this study. This judicial district encompasses two adjacent counties and multiple law enforcement agencies. The handheld video-recording program was launched in 2017 within the municipal police department, with 25 officers piloting the use of the equipment before full force-wide adoption later that same year. A family violence questionnaire modeled after Site One was included with the handheld video-recording equipment and officers were trained to ask these questions in collecting victim statements. In 2018, a portion of officers received body-worn cameras as a separate pilot program and these videos could be reviewed as evidence with the case, however a consistent review process or policy for body-worn camera video evidence was not yet established at the time of data collection for this report.

**Updates to practice.** Between Phase I and II of this project, the *investigation process* used by law enforcement (see Wood et al., 2017a, p.19) did not change significantly except for the addition of routinely recording the crime scene with either handheld or body-worn cameras in

family violence cases. Although the investigation process did not change, it still is lengthy and due to technology limitations, officers were required to upload videos to one centralized location, which added time to their reporting process. All victims of family violence cases may receive Emergency Protective Orders lasting between 30-90 days based on offense level. However, the process of *case review* and intake did change significantly between the two Phases at this site. Due to a shift in funds, ADAs were no longer available to review cases on a continuous basis and this created changes in the video-upload and review process, reflected in the site-specific findings below.

**Site Three.** Site Three is a mid-size jurisdiction in central Texas with a small city as well as towns and rural areas. The jurisdiction is a tourist destination for outdoor recreation activities and sees a large influx of visitors during the summer months. It is one of the fastest growing counties in the U.S. (U.S. Census Bureau, 2017). It has a population of 141,009, and its residents are 67.7% non-Hispanic white, 27.5% Hispanic or Latino, and 2.4% Black or African American. The median household income is \$73,655 in 2017 inflation-adjusted dollars (U.S. Census Bureau, 2017). In 2017, four local law enforcement agencies responded to approximately 704 incidents of family violence (Texas Department of Public Safety, 2017).

**Device type.** Although Site Three was a new addition to the current evaluation, this jurisdiction has a long-standing video practice compared to other jurisdictions in the state, with a gradual launch occurring in 2014. The program was adopted after the DA learned about the practice in Site One and applied for funding for video-recording equipment for the entire jurisdiction, although it was more readily used with the municipal police department. With the launch of the handheld video-recording practice, officers were trained to use a family violence questionnaire modeled after the supplement outlined in Site One. In 2017, the Sheriff's Office in

this jurisdiction began to use body-worn cameras with a similar protocol to that of the police department to gather statements in family violence cases. This included using a standard family violence questionnaire and strangulation supplement developed by one of the family violence detectives. Since Site Three was not included in the first year of the study, baseline information on video practices were collected through individual interviews and focus groups along with information on modifications and changes to the practice since its inception.

### **Findings**

For this interim report, qualitative data findings are discussed, that were collected through individual interviews and focus groups, and quantitative data findings stemming from family violence case files and case management records systems. Qualitative data are organized in three sections: 1) findings that support preliminary results from Phase 1 (Wood et al., 2017), 2) site-specific findings (i.e. issues unique to a particular site that may not relate to other sites); and 3) emerging findings (i.e. new themes that were reflective in all sites). Quantitative data are presented by site. Due to differing case management structures, data could not be combined across sites.

### **Qualitative**

**Support for preliminary findings.** Phase II of this study further supported the data in the Preliminary Findings Reports. This includes the findings pertaining to overall impact, law enforcement use, prosecutor use, implementation guidance, and considerations for the victim experience. Generally, the professionals working as part of the criminal justice system (e.g. police officers, prosecutors, judges, victim advocates/counselors) interviewed as part of this study find value in the videos as a tool to capture a more holistic account of the events to inform

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<sup>5</sup> See Wood et al., 2017b for a complete report of these findings.

case decision-making and consider the videos more valuable than other methods of documentation, such as written statements from the victim or by law enforcement. In addition, law enforcement was able to write more thorough offense reports using video as a tool:

I've actually had reports where the officers noted that they've gone back and watched the video, re-watched the video. I think that's helpful for them 'cause usually, at a scene, they've got at least five different things going on that they're trying to keep track of at one point of time... So, for them to be able to go back and re-watch the video when it's a quieter time, and they've got time to really sit down and focus and organize, I think is incredibly helpful for them. And I think we'd get some better reports because of it.

Video is also used as a tool to remind law enforcement of the case should they be called in to testify for a case, which both law enforcement and prosecutors suggested as a benefit to the video.

To triangulate the findings from the criminal justice system perspective, the research team conducted additional interviews with defense attorneys and victims in family violence cases. Defense attorneys generally thought videos were most helpful to prosecutors:

The use of the video actually makes it a much stronger case for the State because, what has happened in the past is... "Hey, this is what he did to me. This is how he grabbed me. This is what happened," and they write a report. Well, later on, she writes an affidavit of non-prosecution, saying, "No, it didn't really happen like that," and the only thing that they can really compare is the report that was originally written with her affidavit of non-prosecution. With video, that changes the dynamic quite a bit. You can actually see the person... it makes it more difficult for them to write an affidavit of non-prosecution, saying, "It didn't really happen like that," and they can show the film or the video back to them and say, "Look, this is exactly what you said."

That said, defense attorneys still found videos to be a powerful tool in assessing cases, verifying victim and defendant statements:

What I do is I will always review the file by myself... I'll look at the video here, I'll review everything, then I'll bring the client in – bring the client in only. Then I'll say, "Here's what we got. Here's what the evidence shows. This is the physical evidence. This is the video evidence. This is what we have. These are our options."

Victims reported mixed experiences and perceptions about having their statement video-recorded and did not always remember whether they were asked for consent, consistent with the Phase I findings. Many participants stated that they believed the video-recording was part of standard policing practices and did not find the practice unusual. For some victims, the process of having a handheld video camera pointed at them could create a sense of anxiety, while still knowing that the information could be helpful:

It's good as in video, [be]cause it actually has the person describing what happened. But me personally, I have a lot of anxiety, so when I'm talking like to the public or something I get very anxious. So I don't wanna seem like I'm saying something that you know – I just get very anxious, so I think for me personally I would prefer a written statement.

This finding was reflected throughout by victims who desired a “thorough and accurate” representation of their story.

**Site-specific findings.** Given the variation in sites, both geographically and in composition (see Site Descriptions), the three study sites have findings unique to their communities. These findings are helpful for contextualizing the variation in case approach and the potential impact this could have on the efficacy of the practice across Texas jurisdictions.

**Site One.** Site One is the most metropolitan study site and had more overall resources (e.g. storage, software, and staff) dedicated to the video-recording practice as standard protocol. Cases and all accompanying evidence, including videos, were transferred to the DA’s Office in this jurisdiction within 24-48 hours of arrest. Videos were securely transferred wirelessly in most cases and stored to a server that the DA could access and provided as discovery to the defense attorney once assigned to a case. The DA’s Office held regularly scheduled team meetings (typically weekly) to review family violence cases, had a strong relationship with local law enforcement agencies, and met regularly with community service providers which also enhanced the fidelity of the video-recording practice overall. It was clear that the use of video-recording

devices was an established practice for family violence cases and the DA's office expected to see video evidence as part of the case file when reviewing cases.

The practice had not changed from Phase I to Phase II of this study. Officers continued to administer the protocol established to obtain a recorded victim-statement as part of their investigation process. Their practice of immediately reviewing the case, following up with victims between 24-48 hours after incident, and utilizing a specialized prosecution unit for family violence cases remained consistent. New to this Phase of the evaluation was the finding that these programs were perceived as a special interest to the DA:

...it's always a little heightened in scrutiny when it's assault family violence simply because our district attorney in this jurisdiction has made it a real goal to go after the perpetrators of an assault family violence. {The DA} has implemented certain steps that don't normally occur in any other type of cases.

This participant suggested that these programs may not continue under the leadership of a different elected official which could have implications for the fidelity of the practice.

**Site Two.** Although demographically similar to Site One, Site Two is a much smaller jurisdiction with fewer overall resources. Between Phase I and Phase II of this study, Site Two experienced the loss of its *case review* program that offered law enforcement continuous prosecutor availability to help with arrest and charging assessments, as well as an evidence review at the time of booking when the videos would be uploaded for attorney use. It was during these reviews that the videos were initially transferred to the DA as evidence, and after the program ended, police officers became responsible for individually transferring the files to a centralized location at the evidence storage facility. However, this area was widely accessible to anyone within the police department and could be subject to privacy or security concerns:

The only setback is it's a room where... a lot of people going in back and forth... Whoever passes through there can watch the video of the domestic. And there are some sensitive cases where we wish we could see them there at the office.

An investigator employed by the DA's Office would go to this site on a weekly basis to retrieve the files and upload them to the DA's system, which lengthened the time in transferring the data and reviewing the file evidence compared to the previous process. Additionally, this investigator left their position and delayed a subset of files transferred to the DA's Office by several months.

Similar to Site One, this jurisdiction had a subset of officers that wore body-worn cameras during their investigations, although it was less clear on the process of reviewing the video captured during these investigations, it is an area this Site is continuing to explore to enhance its investigations. Officers and investigators continued to appreciate the utility of victim statements taken via video and discussed at length their own adaptations for using it in the field. One officer noted he worked with a friend to develop a clip-on of sorts for the camera so his hands would be free when arriving at a scene. Another discussed turning the device on and putting it in his pocket until the scene was secure and he felt confident he could begin filming. An officer with a body-worn camera demonstrated how they could use the camera in a similar manner to the hand-held devices to take a statement—the body-worn camera equipment used by the department could be detached from the vest and held in a manner similar to the hand-held devices.

*Site Three.* Informal data collected during Phase I of Project ReVEAL suggested that Site Three began recording victim statements with handheld recording equipment prior the start of this study and may have additional criminal case data for analyses due to the longer-standing nature of its implementation of the practice. Yet there were significantly fewer family violence cases processed in this jurisdiction than the other two sites in Phase II of this study, both with and without video evidence. Participants suggested this was due in part to the rapid growth experienced within this community and noted that it was rare that cases were closed in under a

year, with many going beyond this timeframe. However, participants indicated many current cases did have some type of video statements or evidence included and provided details specific to this site on how videos were used in case handling. Multiple law enforcement agencies in this site also began using body-worn cameras, and interviews indicated that officers were beginning to rely more on body-worn cameras than hand-held cameras when on-scene and taking statements. Site Three is in the process of developing an IT infrastructure to support the storage and transfer of video evidence. Current practice requires the officer to download all video evidence onto DVDs, and at times make multiple copies, for use by the DA and others involved in the case. Officers expressed frustration with this process as it was time-consuming.

Most notably, prosecutors routinely have victims re-watch their video statement as part of trial prep or to encourage victims to proceed with the case. Site Three began to explore strategies to reduce victim re-traumatization and distress when viewing the videos. Approaches included allowing victims to watch the video in a comfortable, private room with headphones, and giving them the option to watch the video with a victim advocate. One prosecutor described a victim who became physically ill after re-watching a video, suggesting a need to further develop best practices for showing video statements to victims. Defense attorneys in this jurisdiction echoed the benefit of the tool for case assessments but also thought there needed to be more information on how the videos could be used in the courtroom.

### **Emerging findings**

Several findings emerged across the study sites. Primarily, these findings were reflected of the newness of the video-recording practice coupled with the evolving nature of using technology.

*Fidelity of use and changes to practice.* As indicated throughout these findings, sites were readily adapting the handheld video-recording practice to meet their needs. Some participants suggested additional refresher training for law enforcement officers on administering family violence-specific questions. It was recommended that refresher trainings be relatively short and be co-led by law enforcement and prosecution. The use of a family violence supplement with the video increased the consistency of officers using these protocols during the practice, providing greater context and richer detail to the statements outside of the video. Officers who have more years of experience administering family violence-specific questions did not always carry the questions with them (on paper) and instead recalled the questions by memory. It appeared that over time, some officers were less likely to carry the hand-held camera with them on scene. If officers had to return to the patrol car to retrieve the hand-held camera, they felt the victim was less willing to engage with them when they returned to gather the statement. Officers also noted using the hand-held cameras for other types of crimes to capture information from witnesses and crime scene footage.

Also noted throughout these findings was how officers started to use body worn cameras as a tool to record statements and evidence in family violence cases. Some officers indicated that they would use the handheld camcorder in addition to the footage captured by their body-worn cameras, while others either removed their body-worn camera to operate it as a handheld device during the statement or simply asked the victim questions why their body-worn camera was running. This occasionally produced lower quality evidence, as the officer's body positioning could limit the video's ability to capture the victim's image or voice. Most law enforcement officers interviewed report a strong preference for body-worn cameras. Officers note the convenience and ease-of-use of body-worn cameras. Many believe that the unobtrusive camera

placement makes the process of taking a statement more comfortable and streamlined for both officers and victims. Both law enforcement and prosecutors generally provided positive feedback about the quality of the body worn camera footage due to its ability to capture the entirety of the police response during the incident. Findings suggest a possible need for additional training to ensure that officers are taking full advantage of a camera's capabilities to document statements, injuries, the incident scene, and other case elements critical to informing charging decisions and moving cases forward for prosecution.

***Technology and infrastructure challenges.*** Video files posed significant storage and transfer challenges to sites due to the size of the files, as well as the increasing availability of video in multiple forms (e.g. dash camera footage from vehicles, body-worn cameras on each responding officers, handheld cameras, videos taken by a complaining witnesses' phone). Officers had to navigate different procedures for uploading, storing, and tagging videos as they transitioned between handheld, body-worn, and other camera technologies. Meanwhile, District Attorneys' offices and defense attorneys had to navigate different procedures for requesting and accessing these various video files. In some cases, officers had to transfer the files to DVDs due to budgetary constraints and physically take them to the DA's Office. These then had to be copied as discovery and given to defense attorneys. As indicated previously, software was an important consideration to maximize the efficacy of gathering, documenting, and transferring relevant case information. At some sites, body-worn cameras were associated with more sophisticated technology allowing easier wireless uploads, but stakeholders noted a need for more clear protocols to ensure that the videos were labeled and stored consistently. In addition, body-worn camera files could contain hours of footage requiring the DA's Office to review and create timestamps of the footage to note if, and when, a victim statement was taken. On the other

hand, the hand-held camera footage was typically 30 minutes or less in length and much easier for the DA staff to review.

Jurisdictions were actively seeking solutions for obtaining additional camera equipment—specifically body-worn cameras—and for enhancing current technology infrastructure for the storage, retention, and sharing of such files.

***Lack of legal precedents and standards for using video evidence.*** Attorneys participating in this study expressed a desire for more information on case law, legal precedent, and general training on the evidentiary merit of video statements in cases generally. Prosecutors noted that rulings were often inconsistent on the type of video that could be admitted as evidence, and they spoke to a need for more opportunities to share strategies for using video evidence in court. These may include body-worn camera footage that qualifies for an “excited utterance” exemption to hearsay rules, the use of video stills, or submitting a soundless video that still captures a victim’s emotional state and demeanor. Attorneys also described the challenge of explaining to juries why they were not allowed to view the videos if a video was taken at the scene, as the legal barriers to admitting the evidence were not always understandable or easy to explain.

***Length of time challenges.*** All three sites faced challenges to quickly investigating and prosecuting family violence cases. High caseloads and limited evidence could keep investigations pending for months, sometimes even years, before being reviewed by a prosecutor. It was also time consuming to gather all of the video evidence for transfer to the DA’s office. Sites said it could take up to 6-months or longer to provide complete case information to the DA. Once filed, cases could be “kicked down the field” and reset multiple times in the courts, only to be pled out before the final court setting later. This backlog of cases

was consistent in all three sites with some indication that the video could be used to help plea cases more quickly, a finding further highlighted in the quantitative findings below. However, most agreed that despite video evidence, it was difficult to move forward without a cooperative victim or witness. Delayed cases made it difficult to remain in contact with victims and witnesses. However, having the video available was helpful in preparing victims and officers for cases if there had been a lengthy time delay between incident and case hearings.

*Adapted use of cameras and footage.* Handheld video-recording equipment provided the benefit of being adaptable and the footage could easily be reviewed to improve report quality, both in written reports and in preparation for trial in situations where an officer is called to testify. Officers could focus or zoom in on injuries, scan the scene, or follow individuals to where events occurred. Officers are also able to review video footage to fill in gaps in their memory or add additional details when preparing their report of an incident. Prosecutors indicated that the handheld video-recording equipment they used often took better still photos than many of the pictures they received from normal cameras. If someone came into the office to give a statement, officers use the tripod to station the handheld video recorder in the office and record the interview. Generally, having the equipment provided another tool for documentation that could enhance the information they provided to subsequent decision-makers for that case.

### **Quantitative**

Case file data was examined in each of the three sites based on data and case management systems in place within a particular site. See Appendices A and B for more information on available case data for each site. This study was limited to an analysis of closed case data. Although handheld video recording equipment is in use across these sites, many cases involving a recorded victim statement were still pending or open.

**Site One.** A random sample of five hundred closed cases with incident dates in 2016 or 2017 were gathered from the case management system in Site One. Case dispositions were compared between cases with and without a video-recorded victim statement (Figure 2). Approximately 332 of the cases reviewed contained a recorded victim statement. Continued analysis of closed cases in Site One supports initial findings in Phase I. Overall, few family violence cases proceed through a jury or bench trial and a majority of family violence cases end with a plea or are dismissed. However, the data indicates that having a video-recorded victim statement is associated with guilty pleas and fewer dismissals. Phase II analyses improves on the initial findings from Phase I within this site as in-depth review of these files allowed for the differentiation between the types of video evidence (e.g. body worn, dash, handheld). Prior analyses only examined the inclusion of any video evidence and did not necessarily examine whether the video evidence included a recorded victim statement.

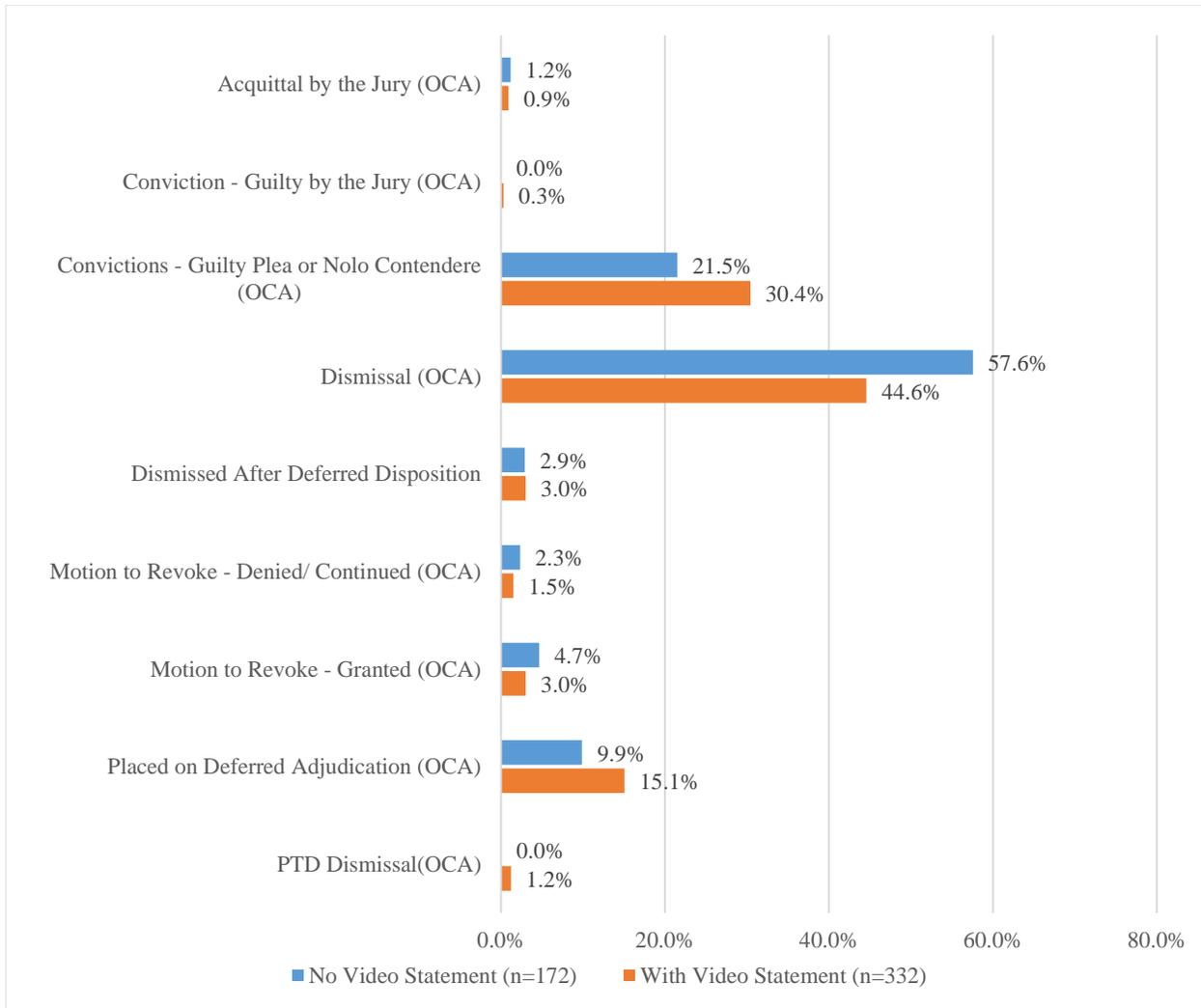


Figure 1. Site One Family Violence Case Disposition by Presence of Video Victim Statement

**Site Two.** A census of closed cases (n=1589) was examined in Site Two. Cases were closed between January 2016 and November 1, 2018. Only 27 cases with video victim statements closed during this time period. Figure 2 provides a comparison of closed case data with and without recorded victim statements, however, due to the small sample size of cases with video statements, this chart is only descriptive in nature. Similarities can be found in cases not accepted for prosecution and cases that failed to get a conviction. Approximately 77% of all cases, with or without video-evidence, fall into one of these two categories. A slightly higher percentage of cases with video statements are being referred to pre-trial diversion than those

without video victim statements. However, these data should be interpreted with caution and additional analyses of closed case data would be helpful to test these initial results.

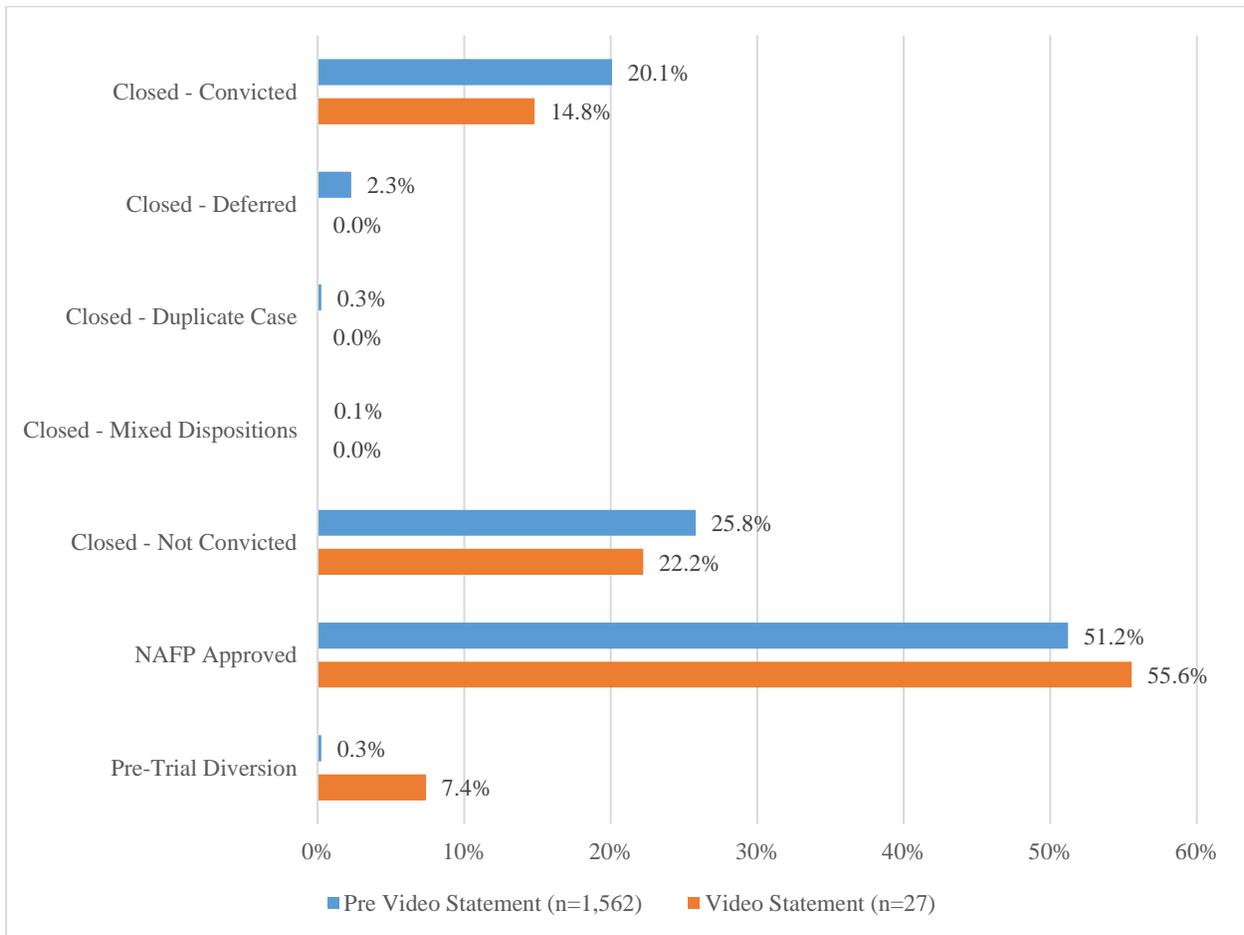


Figure 2. Site Two Family Violence Case Disposition by Presence of Video Victim Statements

**Site Three.** An in-depth examination of 65 closed cases in Site Three found few cases available for evaluation. Through case file review, it could only be determined that two cases included a video victim statement with handheld cameras and 5 cases included a video victim statement using a dash or body-worn camera. Due to the small sample size of available case data, quantitative analyses were not able to be performed. Site Three expressed concerns over the lengthy delays experienced in family violence cases that may be impacting the small number of closed cases available for analyses. In addition, Site Three was in the process of migrating to a

new case management system that may have impacted the research team's ability to access information about the presence of video statements.

### **Discussion**

The Preliminary Findings Report from 2017 provided an overview of implementation and process guidance in three diverse study sites, as well as quantitative findings examining the differences between case outcomes when video evidence was present or not present in a single site (see Wood et al., 2017b). Phase II of the study, the presence of video statements was examined more thoroughly at two sites, and positive trends in case outcomes continue to be documented.

Site One continues to demonstrate the positive impact of video evidence on the number of guilty pleas in family violence cases. Qualitative and quantitative data in Site One indicate support for establishing victim video statements as an evidence-based practice for law enforcement and prosecution. Data from Site Two provide a preliminary look into how video victim statements are impacting prosecutorial decision-making related to family violence cases, however, major differences between cases with and without video evidence are still to be determined. Quantitative analysis of Site Three data was not possible, however qualitative data from Site Three demonstrated positive perceptions of video evidence across law enforcement agencies and the DA's office. Across all sites, the length of time it takes for family violence cases to move through the criminal justice system is a barrier to understanding the full impact of this practice.

Phase II expanded upon Phase I findings, demonstrating the positive impact victim video statements can have at each stage of a family violence case. Law enforcement officials use video statements to capture a more thorough and accurate account of an incident, and many officers

review videos to ensure their own written accounts are detailed and accurate. Prosecutors use video statements to assess the strength of a new case, negotiate with defense attorneys, and prepare involved parties for trial. In fact, it appears that video evidence is a helpful tool in determining whether to accept a case for prosecution. Having access to a victim video statement allows the prosecutor to quickly assess the incident and related physical evidence. Both prosecutors and defense attorneys use videos to assess victims' injuries and demeanor and to verify statements made by victims or defendants. Available case outcome data indicates that videos are associated with more pleas and fewer dismissals. Videos can also help prosecutors remind officers and victims of the details and impact of an incident when they are preparing to testify in court months or years after an incident has occurred.

Qualitative and quantitative findings will be further explored and expanded upon in Phase III. Case outcome data will be collected in new sites, analyzed, and merged with data from prior sites. The inclusion of more case files and variables will strengthen quantitative findings. Several recommendations related to training, IT infrastructure development, the evidentiary merit of video statements, and the adoption of body-worn camera technology will all be explored in greater detail in the final Implementation Guide at the end of Phase III.

### **Next steps**

The third and final year of this evaluation will improve on the generalizability of the research examining video-recorded victim statements in family violence cases in four important ways.

### **Rural Communities**

Early findings from this evaluation focused on medium and large size jurisdictions. A rural site was included as part of Phase I of this evaluation, however, it was removed due to the

failure to implement the video-recording practice. Qualitative findings from this jurisdiction suggested several additional barriers to those outlined in this report, as well as considerations, and potential benefits for video-recorded statements and evidence if successful. The next Phase of this evaluation will focus on smaller jurisdictions to understand the role of video in family violence cases in rural areas.

### **Continued Examination of Victim Statements Taken by Body-Worn Cameras**

Phase II of this evaluation highlighted the positive perceptions of law enforcement for using body-worn cameras to record victim statements and the potential value from the attorney perspective of the video for providing more contextual information to the scene, with mixed findings on whether body-worn captured footage would fulfill the same role as handheld video-recorded victim statements. Participants also indicated there could be different legal considerations for using evidence captured by body-worn cameras in court. Examination of body-worn camera practices will be continued in this third year as more law enforcement agencies implement the use of such equipment and agency-level practices for the use of body cameras are refined.

### **Continued Examination of Case Management and Video Storage Practices**

A consistent challenge to the present study is the accessibility and usability issues of criminal case data management systems in study sites. Each jurisdiction uses different software programs at the agency level (e.g. police department, prosecution, courts, etc.), creating transfer and organizational barriers to managing the video alongside other case information. While software and data management system improvements were noted in well-resourced law enforcement agencies through body-worn camera software contracts, this technology did not always apply to other video types or to the transfer of the data as evidence with the case file. In

addition, jurisdictions did not always have the personnel available to review, tag, copy, transfer, and maintain video files. Further research in this area is necessary to ensure accurate, secure, and user-friendly file systems that do not deplete organizational resources. These challenges will continue to be examined in smaller, rural jurisdictions in this next year of the study.

### **Implementation Guide**

A forthcoming guidance and technical assistance guide for video-recorded evidence in family violence cases will consolidate the findings of the entirety of this project in its third year. Participants in this study provided valuable feedback, recommendations, and guidance on the practice. In partnership with these sites, the Implementation Guide will outline the necessary components of a successful program of video-recording victims and evidence in family violence cases. It will also outline potential barriers and considerations for implementing a similar practice in other jurisdictions while considering the rapid development of such technologies for use by law enforcement and prosecution.

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## **Appendix A: Overview of Site Case Management Systems**

### **Site One**

Site One provided the research team with a spreadsheet of closed family violence cases with incident dates in 2016 and 2017. A random sample of 500 cases was taken from this initial list. Case information included the offense description, offense date, and a statistical closure variable indicating the case outcome. While the portal included media files with video, photograph, and audio evidence, it was unable to generate reports with this data. Therefore, administrative personnel at Site one granted the research team access to its online case portal for this random sample of cases. Individual case review in the online portal was used to determine whether video evidence had been collected in each sampled case. The research team viewed each video file to determine whether a victim statement was collected on a handheld, body-worn, dashboard, or other type of camera. The research team did not review paper files at Site One. The online portal also included detailed case narratives, court files, demographic data on both defendants and victims, and defendant criminal history. Due to time constraints, the research team focused on matching video evidence data with the information already available on the closed case spreadsheet.

### **Site Two**

Site Two worked with the research team to develop a program to query case data directly from a relational database of case data. The query focused on family violence cases within this site between 2015 through November 1, 2018. Test queries were run prior to a final extraction to ensure the program was pulling data necessary for analysis. Extracted data was provided to the research team through a secure process. Data available for analysis included information on the incident, video evidence, case status, case disposition, and defendant and victim demographics.

The case disposition variable did not include plea information, making it difficult to do a direct comparison to Site One. The research team consulted with the IT contacts in Site Two as needed to clarify variable descriptions.

### **Site Three**

Site Three uses three record-keeping systems. The most detailed and comprehensive case data are stored in physical case files. Site Three also maintains an online case portal with different modules: one for law enforcement agencies, one for the district attorney's office, and one for the court system. Lastly, Site Three also keeps internal administrative case records in Microsoft Excel. The DA's office provided the research team with lists of closed cases for paper file review, and the research team was able to review 42 paper files. Administrative staff at Site Three provided information about whether a victim video statement was present in an additional 23 cases. For each of the 65 cases, the research team also reviewed the corresponding electronic case files in the online portal to verify the offense description and date, case disposition and disposition date, and the plea (if applicable). The online portal only included demographic data on the age and gender of the defendant and did not include video, photo, or audio evidence. Site Three was in the process of migrating to an online case management system, and the system had not been fully populated at the time of case review.

### **Data challenges**

Two of the sites required individual case review to determine the presence of video evidence and the type of video evidence. This process was time consuming and limited the amount of data that could be collected, particularly at the site where video evidence was stored in paper files. It also required substantial time commitment from administrative and IT staff who had to coordinate portal access for sampled cases and help the research team pull paper files.

Each site has its own unique record-keeping system, and record-keeping systems and styles vary across agencies within a single jurisdiction. Jurisdictions and individual departments or agencies also vary in the descriptive language they use to document offenses/charges, case outcomes, and other case elements. These differences limit the comparability of data across jurisdictions.

Individual case file review was completed by three research staff members with final review conducted by the lead researcher. Weekly team meetings were held to address discrepancies between individual case files and other sources of case information (e.g. spreadsheets). Follow-up with individual sites occurred as needed to obtain clarifying information regarding codes used within individual case management systems.

Appendix B: Site Data Table

Site	Data Source <sup>6</sup>	Offense description	Offense date or equivalent variable	Charge level	Case outcome, disposition, or equivalent variable	Disposition date or equivalent variable	Video evidence	Video type	Demographics: defendant & victim age, gender, & race/ethnicity <sup>7</sup>
Site 1	Multi-case data download	X	X		X	X			
	Individual case review in online case management system(s)			X			X	X	X
	Individual case review in paper file								
Site 2	Multi-case data download	X	X	X	X	X	X	X <sup>8</sup>	X
	Individual case review in online case management system(s)								
	Individual case review in paper file								
Site 3	Multi-case data download								
	Individual case review in case management system(s)	X	X	X	X	X			X <sup>9</sup>
	Individual case review in paper file						X	X	

<sup>6</sup> Indicates where research team obtained data for each variable. In some cases, data was available across multiple sources (e.g. case management system and paper files).

<sup>7</sup> Data is available, but was not analyzed in Phase II of the project due to time constraints associated with individual case file review.

<sup>8</sup> Indicators include statement type (e.g. victim, witness, or defendant statement), but not recording device type.

<sup>9</sup> Defendant age & gender only.