

COMMUNITY PROTOCOL FOR DOMESTIC VIOLENCE CASES

PURPOSE: The County Attorney, Sheriff, Police Chief, Court Service Officer and DV Agency have mutually agreed upon this community protocol to encourage the criminal justice system to deal more effectively with domestic violence cases. These agencies join together to adopt this policy which calls for aggressive enforcement of the laws governing domestic violence/abuse, recognizing that appropriate arrests and subsequent services can prove beneficial to protect the victim, to deter the abuser from committing further acts of violence, and to raise community awareness of the problem of domestic violence.

A. DEFINITIONS:

1. Domestic Violence and Battering:
 - a) Illegal domestic violence is any harmful physical contact or threat thereof or destruction of property between certain associated individuals or formerly associated individuals used as method of coercion, control, revenge or punishment. Battering (some acts are illegal and others are not) within an intimate relationship is a systematic pattern of physical, sexual, and psychological abuse. Rather than a series of independent acts or events, it is most often part of a process by which the batterer maintains control and domination over the victim.
2. Associated Individuals and Formerly Associated Individuals:
 - a) Spouses, whether residing together or not;
 - b) Former spouses, whether residing together or not
 - c) Persons who are involved in an ongoing, intimate relationship with each other regardless of whether they currently live together or have done so in the past;
 - d) Persons who have in the past had an ongoing intimate relationship with each other regardless of whether they lived together or not;
 - e) Persons, eighteen years of age or older who are blood or step-related to one another (e.g., brother/sister, etc.).

B. LAW ENFORCEMENT RESPONSE:

This section outlines those procedures necessary to implement a proactive arrest policy in cases of domestic violence for XXXXX County.

1. Arrest:

Arrest shall be the appropriate response where there is probable cause to establish violations of Kansas law and where one of following is present:

- a) There are visible signs of injury or physical impairment and/or destruction of property; or
- b) There was a threat with a dangerous weapon; or
- c) There has been a violation of protection from abuse order or a restraining order issued by a judge unless circumstances indicate otherwise.

K.S.A. 22-2401 is as follows: Arrest By Law Enforcement Officer. A law enforcement officer may arrest a person under any of the following circumstances:

- (a) The officer has a warrant commanding that the person be arrested
- (b) The officer has a probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.
- (c) The officer has probable cause to believe that the person is committing or has committed:
 - (1) A felony; or
 - (2) a misdemeanor, and the law enforcement officer has probable cause to believe that:
 - (A) The person will not be apprehended or the evidence of the crime will be irretrievably lost unless the person is immediately arrested:
 - (B) the person may cause injury to self or others or damage to property unless immediately arrested; or
 - (C) the person has intentionally inflicted bodily harm to another person.
 - (D) Any crime, except a traffic infraction has been or is being committed by the person in the officer's view.

2. Victim Assistance:

On each domestic call, the officer should inform the victim of resources and assistance available for dealing with domestic violence in the community.

3. Law Enforcement Reports:

- a) The officer shall promptly forward to the County Attorney all reports where the officer believes that there is probable cause that a crime of domestic violence has occurred. Said crime should be clearly marked as Domestic Violence.
- b) Data should be gathered on each response by law enforcement for each domestic call. A standard offense report should be used and sent to the Kansas Bureau of Investigation in Topeka.

4. Arrest Warrant:

The County Attorney will issue warrants for arrest in appropriate cases. Statistical data should be gathered for each incident.

5. Training:

Appropriate law enforcement officers should receive XXX hours of training, at least annually, related to domestic violence procedures and available resources.

6. Internal Policy:

There will be an internal written policy for both the sheriff's department and police departments.

C. PROTECTION SUMMARY:

1. Arrest:

Where the factual situations permit the officer to make an arrest, the officer will be expected to do so.

2. Filing of Complain/Case Management:

When reports have been received by the County Attorney, charges will be filed in all cases in the District Court where there is sufficient evidence to prosecute. The determination that must be made in each case as to its legal sufficiency to be prosecuted will be made by the County Attorney. The victim will not be responsible for filing the complaint. Domestic

violence cases will be investigated and evaluated in the same manner as is expected in other cases. Once a case is filed, it will not be dismissed simply because the victim is unable to cooperate in the prosecution.

3. Warrants for Assailants:

Prompt attention shall be given to domestic violence cases where the assailant was not at the scene when the officers arrived. Warrants shall be requested within five (5) court days, whenever possible.

4. Arrests/Bonding:

a) The bond schedule as set by the administrative judge(s) will reflect the seriousness of the charge.

5. Training:

The County Attorney's office along with area domestic violence programs will participate in training law enforcement officers, community and criminal justice personnel in handling domestic violence cases in XXXXX County.

6. Victims' Rights:

The prosecutor will work cooperatively with law enforcement officials, victims and victim advocates to provide information about the proceedings to the victim. The victim shall be advised of the following:

- a) Their rights as a crime victim.
- b) Use of subpoena – at the request of the victim the prosecutor will issue a subpoena to the victim as a shield against pressure from the assailant or other parties notified to participate in the case as a witness. If necessary, the County Attorney will issue a subpoena to insure the presence of the victim at any hearing.
- c) Plea negotiations – the prosecutor shall approach plea negotiations with the intent to holding the abuser accountable and protecting the victim from further abuse.
- d) Sentencing recommendations – the prosecutor should advise the victim of the sentence which may be imposed by the court. The prosecutor shall attempt to consult with the victim prior to entering into a plea agreement, dismissing the case or amending the charges.

- e) At the time of sentencing, the prosecutor shall present to the court information regarding prior acts of violence, history of alcohol or drug abuse, and any other relevant information.
- f) DV AGENCY or other area domestic violence programs will assist the prosecutor in assuring that the rights of the victims are met.

7. Dismissal:

Once a domestic violence case is filed, it will be prosecuted through conviction and sentencing. Prosecutors should listen to victims, and explain to them (and, as important, to defendants) that the decision to prosecute cannot be based solely on victims preferences. A victim should be connected with advocacy and/or support resources to safety plan if they believe that case prosecution increases their danger level. Cases should not be dismissed while the defendant is on diversion even if divorce proceedings or reconciliation occurs. The ultimate decision to dismiss a case will be left to the County/District Attorney.

D. DOMESTIC VIOLENCE PROGRAM RESPONSE:

Another step to protect the victim and to deter the abuser from committing further acts of violence is referral to a community intervention program where both victim and assailant can receive help.

1. DV AGENCY offers shelter, counseling and referrals to community services for victims of domestic violence. These services are available 24 hours daily at no charge.
2. The Batterer Intervention Program offers opportunities for change for perpetrators of domestic violence. This service is available by appointment or court mandate. This is a fee based program. Referral should only be made to a Certified Batterer Intervention Program from the Office of the Attorney General (see list at www.ksag.org)

E. BATTERER INTERVENTION PROGRAM:

1. Perpetrators who enter the intervention program should sign a contract which requires attendance, participation, and payment for services and a statement that they will cease the violence. Contracts should also include a broad release of information to allow providers to maintain contact with the victim of the abuse and others who would provide essential information or who have a legitimate need to be informed of the perpetrator's progress. Failure to sign proper releases will constitute non-acceptance or grounds for dismissal from the program.

2. In the event that the facilitator determines that the perpetrator should not be in the program due to failure to keep the contract or for other clinical reasons, a written report must be made to the court for judicial determination.
3. Intervention programs or personnel should provide written reports to the courts, prosecutor and referred agencies related to the perpetrator at assessment, mid-point and conclusion of services. Dismissal guidelines as recommended by the intervention program should include:
 - a) Serious recidivism of violence or any recidivism of violence which is not self-reported.
 - b) Failure to attend scheduled appointments.
 - c) Failure to cooperate with Batterer Intervention Program staff.
 - d) Failure to assume financial responsibility for services in accordance with the established fee schedule of the provider agency.
4. The court mandated intervention must designate a minimum number of sessions for perpetrator to complete the program. Each session should last no less than one (1) hour and the sessions must continue for at least twenty-four (24) weeks.
5. The court mandated intervention program must operationally define completion of the program.