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GUIDELINES FOR THE PROSECUTION OF DOMESTIC BATTERY

In the 1996 legislative session, Kansas lawmakers mandated that effective January 1, 1997, guidelines must be established and followed in all domestic violence motivated crimes:

“...all prosecuting attorneys, as defined in K.S.A. 22-2202, and amendments thereto, if such prosecuting attorney prosecutes crimes relating to domestic violence, shall adopt and put into effect written policies regarding the prosecution of crimes related to domestic violence. Such written policies shall include, but not be limited to, the effective prosecution of such crimes and the protection and safety of victims and such victim's children from domestic violence...” (K.S.A. 22-2309).

Policy Statement:

Violence or threats of violence are crimes and must be treated equally under the law regardless of the relationship of the parties to one another.

It will be the established policy of the Crawford County Attorney for the 11th Judicial District to aggressively prosecute violent crime, including those categorized as domestic violence. These written guidelines are consistent with existing policy, legislative intent and the continued goal of prosecution to provide justice through offender accountability, safety for the victim and such victim's children, as well as protection of the community from future violence, whatever its source.

Policy for Prosecutions:

- A. The County Attorney's Office will vigorously prosecute misdemeanor and felony cases as a form of community intervention in an effort to address the violence before it escalates and produces more serious physical and emotional injury.
- B. The County Attorney's Office will encourage all police departments and the Sheriff's Department to arrest a suspect where there is probable cause to believe a crime has been committed (misdemeanor or felony).
- C. When police reports are forwarded to the County Attorney's Office for review for charging or an arrest has been made and charging is being considered, the prosecuting attorney reviewing the case will consider the facts of the case, in light of the following:
 - 1. The extent or seriousness of the injuries;
 - 2. Use of a gun or other weapon;
 - 3. Defendant's prior criminal history;

4. Past history of violence, whether charged or uncharged;
5. Whether or not children were present when the incident occurred.

D. Criminal charges should be filed in domestic violence cases regardless of the desires of a victim where the evidence presented satisfies the elements of the crime and there is independent corroboration sufficient to overcome a defense motion for directed verdict.

Independent corroboration may include:

1. Excited utterances by either party;
2. Injuries documented by a person other than the victim;
3. A medical report that indicates injuries;
4. Witnesses who saw the actual crime take place;
5. Witnesses who heard noises indicating that a domestic violence incident was taking place, i.e., screams, furniture being thrown, etc.;
6. Physical evidence present, i.e., weapon, broken furniture, disarray, torn clothes;
7. Admission by the defendant.

E. Prompt attention shall be given to domestic violence cases. If an arrest is not made at the scene, the County Attorney's Office will request a warrant as soon as possible.

F. When no arrest has been made and cases are sent for review for charging, charging will not be considered until the following corroboration has been pursued:

1. Corroborating witnesses have been interviewed;
2. Names, addresses and phone numbers of all witnesses are included in the report;
3. 911 tape has been reviewed;
4. Medical treatment report is obtained;
5. Reports of prior incidents of domestic violence by this same suspect are collected;
6. Photographs of the victim's injuries are collected;
7. Suspect has been questioned.

If an emergency exists or the victim appears in need of immediate protection, any case with apparent independent corroboration should be issued immediately. The victim will be notified by telephone or mail that the case is being filed.

G. Whenever possible, the state will proceed to fully prosecute the case without the assistance of the victim.

H. Mutual combat cases will not be filed if one of the following is true (Mutual combat cases will be filed regardless of whether the conditions have been met if a minor child was present during the altercation):

1. Admission by both parties that it was mutual combat;
2. Independent witnesses who verify that it was mutual combat.

- I. When there has been a significant delay in receiving police reports for review, the prosecuting attorney may consider the following in determining whether or not a case should be filed.
1. Suspect is currently under court supervision on a subsequent case.
 2. Violation of a Protective Order is the basis of the charge and the order has been dismissed.
 3. There has been a significant time lapse and the victim no longer has contact with the suspect.
- J. Once a domestic violence is filed, the County Attorney's office will follow a "no drop" policy. Consideration may be given to extenuating circumstances on a case-by-case basis.
- K. At first appearance, the County Attorney and/or the victim may make suggestions to the Court regarding bond conditions, including, but not limited to, a no contact order. A No Contact Order will prohibit the defendant from contacting or causing the contact of all endorsed witnesses in the criminal case.
- L. The County Attorney will take appropriate action in the District Court if it is determined that:
1. There has been a violation of a Protective Order.
 2. Intimidation of a witness has occurred.
- M. Qualified defendants may apply for the Crawford County Attorney's Diversion Program. Diversion may be considered for the defendant in an effort to create alternatives to criminal prosecution and maximize the benefits to the victim, the offender, and the community. **A defendant will be ineligible for diversion if a minor child was present during the altercation.**

Considerations:

1. Prior record;
 2. Will defendant benefit from program?
 3. What is the likelihood of repeated conduct?
 4. Safety of victim and family assured;
 5. What is offender's attitude and will the offender acknowledge the problem?
 6. History of violence in relationship;
 7. Input of victim.
 8. Input of law enforcement.
- N. In cases where diversion is not appropriate, the prosecutor will attempt to proceed with the case with as few continuances as possible to increase the likelihood of a conviction and decrease the opportunity for the defendant to continue to commit violent acts against others.
- O. The prosecutor will work in cooperation with law enforcement officials and victim advocates to provide information about the proceedings to the victim.

1. **Use of subpoena.** In an effort to shield the victim from pressure by the offender or other parties not to participate in the case as a witness, the prosecutor will issue a subpoena to the victim.

2. **Plea negotiations.** The prosecutor shall approach plea negotiations with the intent of holding the abuser accountable and protecting the victim from further abuse.

3. The prosecutor shall contact the victim prior to entering into a plea agreement, dismissing the case, or amending the charges.

4. **Sentencing recommendations.** The victim's input will be considered and they will be advised of their right to speak at sentencing.

5. 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.

P. A diversion application must be completed by the defendant along with the application fee of \$85.00. In the event that the defendant is approved for diversion, as part of the diversion agreement the defendant must also pay court costs, a fine of \$100.00, and a diversion fee \$250.00.

Q. The application for Diversion **must** be filed within (30) days of arraignment if the case is a misdemeanor. **Applications not so filed will not be considered unless agreed to and the time line waived by the County Attorney.**