

Kittitas County Prosecuting Attorney

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DOMESTIC VIOLENCE PROTOCOLS AND GUIDELINES

KITTITAS COUNTY DOMESTIC VIOLENCE COMPREHENSIVE PLAN UPDATE

PREAMBLE:

In May of 1993, the Kittitas County Domestic Violence Task Force, of which the Kittitas County Prosecuting Attorney's Office is a member, adopted a Comprehensive Plan for addressing Domestic Violence in Kittitas County. As a result of adoption of that plan, the responsible agencies within Kittitas County have taken significant steps to unite and give meaning to that Comprehensive Plan.

The Prosecutor's Office recognizes the importance of a community-wide response to domestic violence, the importance of multiple agencies and programs for the treatment of domestic violence victims, and the importance of rehabilitation of domestic violence offenders. Due to our commitment to work with agencies and task force members to achieve coordination of services to victims and offenders, we have re-visited and updated the plan to reflect the changes that have taken place since the original adoption in 1993.

The Domestic Violence Task Force and ASPEN have been, essential in developing an effective prosecution response to domestic violence cases. Victim advocates can address victim reluctance, fear of retaliation, safety concerns, and misconceptions about the criminal

justice system. They have also assisted our office in understanding the unique dynamics present in such cases.

This office and ASPEN have in place a valuable and beneficial working relationship. Victims coming to the office of the Prosecuting Attorney are referred to ASPEN for assistance, and those making their way to ASPEN first may be referred to our office or to the appropriate law enforcement agency.

The prosecuting attorneys at all times will respect the confidential nature of the advocate's relationship with a victim. The prosecuting attorneys do not expect, and will not request from the advocates, privileged information about their clients, nor shall we seek to have the advocates act as an extension of this office for evidence collection.

However, there will be times when information may be provided through ASPEN that is not violative of the confidential relationships of their clients, and this information shall be provided when possible. No information will be sought or provided without consideration having been given to the victim's safety.

The attorneys and support staff of the office of the Prosecuting Attorney have and will continue to participate in trainings concerning the laws surrounding domestic violence. They will also participate in educational programs geared to increasing their knowledge about the dynamics of domestic violence, the needs of victims, the efficacy of treatment for offenders, and other related topics. The staff of the Prosecuting Attorney's Office will also participate, to the extent possible, with committees and organizations with these goals and objectives.

This office will continue our efforts with the Domestic Violence Task Force to further improve education, performance and coordination of all agencies bearing on this problem.

The Kittitas County Prosecuting Attorney's Office has added to their staff a full time victim/witness

position, and a part-time victim/witness position. While these individuals assist with all courts, on all cases, the major emphasis has been on addressing the needs of victims of crimes against persons, and in particular, domestic violence and sexual assault.

To insure that there is a consistent exercise of prosecutorial discretion in domestic violence cases, it is necessary that this office adopt and periodically review domestic violence guidelines for the charging and disposition of these cases in such a manner that coordination with other agencies is achieved wherever possible. These guidelines are advisory in nature, and a failure to follow them in a given case shall not give rise to any liability on the part of this office. Nor do these guidelines create rights in any individual.

DOMESTIC VIOLENCE GUIDELINES
KITTITAS COUNTY PROSECUTING ATTORNEY'S OFFICE

I. DISMISSAL OF DOMESTIC VIOLENCE
CASES/CHARGES:

In all cases, the prosecuting attorney must determine whether the case meets the general charging standards for legal sufficiency. If a case does not meet those criteria, then further investigation shall be requested from the responsible law enforcement agency. If such further investigation cannot be conducted, or does not result in sufficient evidence to meet the charging dispositions, the case shall be dismissed. A case of domestic violence will not be dismissed because of a victim's desire for that result absent other considerations. Nor shall a case be dismissed because the victim is not available; provided that there is sufficient other admissible evidence to believe a conviction is obtainable. The desires of the victim, or their availability, however, shall be considered during the negotiation phase of any case.

A charge of Assault 4/DV may be dismissed as part of plea agreement, wherein other charges are pled, or more serious charges are pled, in conjunction with an appropriate sentence.

II. STAYS OF PROCEEDINGS:

In certain cases of Assault 4/DV, defendants may be offered, at the sole discretion of the prosecutor assigned to the case, a Stipulated Stay of Proceedings.

A Stipulated Stay of Proceedings shall not be available in a felony case of domestic violence, and will not be available if a charge is reduced from a felony to a gross misdemeanor for disposition.

A Stipulated Stay of Proceedings shall not be available to any person previously convicted of domestic violence, as such agreements are intended to give the true "first time offender" the opportunity to correct their behavior, while maintaining accountability for their actions.

A. LENGTH OF STAY OF PROCEEDINGS:

The length of time that the case is stayed would be determined on a case-by-case basis, depending upon the treatment recommendations of the Certified Domestic Violence Batterer's evaluation required in all such cases.

In no case, shall a stay of proceedings be less than one year in duration, absent a request from a treatment provider **and** probation services for an earlier termination.

B. FACTORS TO BE CONSIDERED:

The following non-exclusive list of factors may be considered by the Prosecutor in determining whether or not the Defendant will be offered the option to enter into a Stipulated Stay of Proceedings:

1. Use of or reference to a weapon during the commission of the crime;
2. Prior convictions for Domestic Violence;

3. Prior acts of aggression by the defendant, upon the current victim or others;
4. Level of injuries sustained by the victim;
5. Presence of children during the commission of the crime;
6. Use of alcohol or illegal drugs prior to the commission of the crime;
7. Patterns of deliberate physical or emotional abuse or cruelty with the same or other victims;
8. Agreement of the victim;
9. Past manipulatory behavior towards the victim;
10. Any factors concerning the credibility of the defendant, or impacting upon his desire or amenability to treatment;
11. Any facts from the police reports, 911 calls, victim information, or victim family information, etc.; and
12. Any reliable knowledge obtainable from the community.

The strength or weakness of a case **MAY** be a valid consideration in determining to offer a stay, but must be weighed against the prosecutorial standards that guide us in our decisions as well as the objectives of these protocols.

C. ONLY ENTERED WITH STANDARD STAY OF PROCEEDINGS WAIVER BY THE DEFENDANT AND INCLUSION OF FOLLOWING CONDITIONS:

In order to enter a Stipulated Stay of Proceedings, the defendant must be willing to provide the following waivers and stipulations, and abide by the following conditions:

1. Provide a Waiver of the right to a speedy trial for the duration of the stay, plus an additional 90 days;
2. Provide a Waiver of the right to a jury trial;
3. Stipulate to the admissibility of all police reports and witness statements without further requirement for the

state to present witnesses to testify to the facts or for foundational requirements;

4. Stipulate that the facts contained in the police reports and witness statements are sufficient for the court to enter a finding of guilty as to the defendant if the stay should be revoked - leaving only the length of sentence to be argued;
5. The defendant must obtain a Domestic Violence Batterer's Evaluation from a qualified and certified provider/program, and abide by all recommended treatments as indicated by the evaluator, which may include not only the domestic violence component, but a substance abuse component and a mental health component. The cost of the evaluation and treatment shall be the sole responsibility of the defendant, and a financial inability to obtain or complete shall not be a valid justification to avoid revocation, although it may be considered in not allowing entry into a Stay of Proceedings;
6. The defendant must agree to be under the supervision of the Misdemeanant Probation Department for the period of the stay, and must abide by all of their rules. The costs of supervision shall be the sole responsibility of the defendant, and a financial inability to meet said obligations shall not be a valid justification to avoid revocation;
7. The defendant must agree to entry of, and abide by the terms of, a No Contact Order between the defendant and the victim, unless modified by Court Order upon recommendation of the treatment provider, Misdemeanant Probation, and the Prosecuting Attorney, **AND WITH AGREEMENT** by the victim. The defendant shall be responsible for assuring that the No Contact Order is not violated,

- and the fact that the victim made the contact will not be a valid justification to avoid revocation;
8. Payment of any and all restitution to the victim, including both personal and property damage, mental or physical health treatments, and other expenses directly related to the crime; and
 9. The defendant shall not commit any criminal offenses or offenses that could lead to the filing of criminal charges.

III. DISPOSITION OF OTHER CASES:

Cases that are not dismissed or subject to a stay of proceedings, shall either go to trial for resolution, or result in a plea of guilty to the charges brought (Because our investigations continue throughout the course of a prosecution, there are times when evidence will lead to a disposition other than as originally charged).

Every conviction or plea shall result in a recommendation by the Prosecuting Attorney that any sentence shall include a Batterer's Evaluation by a Certified Treatment provider/program.

Every sentence recommendation/offer shall require a provision for payment of any and all restitution to the victim, including personal and property damage, mental or physical health treatments, and other expenses directly related to the crime.

Every sentence recommendation/offer, in Gross Misdemeanor cases, shall include a request for probation for a period of no less than one year, but typically should include a request for two years of supervision upon plea or conviction.

Every sentence recommendation/offer shall include a provision for a No Contact Order until further order of the Court, based upon recommendations by the Treatment Provider, Misdemeanant Probation, the Prosecuting Attorney and the agreement of the victim (Agreement as to the lifting of NCO, not original imposition except in the rare case with special

circumstances that would create an undue burden upon the victim).

Every sentence recommendation/offer, in Gross Misdemeanor cases, will include a request for the imposition of the maximum 365 days of incarceration, with an appropriate amount of time suspended based upon proper considerations as presented by the facts and circumstances of the case.

"Defendants of felony cases of domestic violence will be expected to go to trial or plead as charged unless the prosecutor handling the case has made an effort to contact the victim and to discuss possible plea negotiations with the victim based upon the evidence available for trial.

Reductions or amendments of the charges may be made in the interests of justice, following the prosecutorial standards set forth in the Sentencing Reform Act. The sentence in every case will be based upon the facts and circumstances of the case as presented, as well as the history of the defendant.

In every case resulting in a plea or conviction, community custody should be sought if available, and should be ordered for the longest period possible, such that all of the conditions mentioned above for supervision can be sought, ordered, and complied with by the defendant (Batterer's evaluation, restitution, etc.).

IV. RIGHTS OF VICTIMS:

Every victim shall be notified by the prosecuting attorney handling their case of any decision to dismiss a case, to offer a stay of proceedings, or the offer made to reach settlement of a case, within five (5) days of making such decision.

Every victim will be informed of the dates of hearings, and shall be informed of their right to participate at sentencing if they desire.

Participation may take any lawful form permitted by law, and may include actual victim testimony at sentencing, or the recitation by the assigned

prosecutor of a written victim impact statement and submission of the written statement into the court record/file. The desire of a victim to present their position at sentencing in other mediums shall be honored to the extent allowed by the judge, and if not prohibited by court rule, the prosecutor shall advocate for the use of such non-traditional presentation styles.

Every victim will be informed of their right to be present at post-sentencing hearings, and efforts will be made to inform them of such hearings in a timely fashion.

A victim of domestic violence has the right to inform the prosecutor and the judge of their wishes and desires concerning disposition of their case. However, neither the prosecutor nor the judge is obliged to follow such recommendations/desires.

In addition, the victim will be subpoenaed to testify in court, and their presence will be expected as with any other witness to a criminal case. While rarely used and loathed by prosecutors, law enforcement and victim advocates, a material witness warrant is a tool that may be used by the prosecuting attorney to obtain the victim's presence at the time of trial. The use of a material witness warrant, however, shall be restricted to those cases where the other admissible evidence will not be sufficient to obtain a conviction, and where the ends of justice and the protection of the victim, the community, and future victims cannot be assured by a resolution short of conviction.

V. VICTIM WITNESS UNIT:

The Victim/Witness Unit within the Office of the Prosecuting Attorney acts as a liaison for victims and witnesses. They request and assist in the computation of restitution. They assist in getting information from victims to the prosecutor, and assist the prosecutor in providing information to victims and coordinating meeting times, which are also functions that may be handled by the responsible secretary assigned to the cases as well.

The Victim/Witness Unit will assist at the time of hearings, if requested, to provide access to a secure waiting area for victims and witnesses, so that they can avoid contact with the defendant, defendant's witnesses, or defendant's family.

The Victim/Witness Unit attempts to address all of the concerns of victims and witnesses that are not routine, and cannot be expeditiously handled by the prosecutor and responsible secretary.

The Victim/Witness Unit also assists in coordinating defense interviews. While the Victim/Witness Unit is available to support victims and witnesses, they will not duplicate services provided by ASPEN. The Victim/Witness Unit may provide services similar to those provided by ASPEN if a victim or witness has not made, or is not willing to make, a connection with ASPEN's advocates.

CONCLUSION:

Domestic Violence was historically treated as a family problem, to be addressed by families without outside intervention. History has demonstrated that Domestic Violence is not a family problem; it is a community and societal problem. In 1993, a group of committed individuals created our first countywide Plan for Domestic Violence. This plan was the result of much work, many debates, a great deal of soul searching and a certain amount of disagreement.

Much has happened since 1993, including the benefit of increased trust, respect and admiration by all individuals in the criminal justice arena of the respective jobs that we all perform. This has been accomplished only through a willingness to communicate with one another. While we may still disagree at times, it is clear that all participants realize that we are in this together. And together, we will have an impact in reducing, and hopefully one day, eliminating the pain, hurt and injury of domestic violence.

The Prosecuting Attorney's Office is committed to these goals and objectives. We look forward to expanding our collaborative process, adding new partners, learning new techniques, discarding old

tools that don't work, and enjoying much success in our efforts. It is our hope and desire that some day in the not to distant future, there will not be a need to prosecute these cases, as the cycle will have been broken.

Adopted this the 5th day of April, 2006.

Gregory L. Zempel
Prosecuting Attorney