



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 94

The Honorable Sandy Praeger
State Representative, 44th District
3601 Quail Creek Court
Lawrence, Kansas 66047

Re: Criminal Procedure -- Preliminary Proceedings --
Domestic Violence Calls; Written Policies; Arrest
Required

Synopsis: In domestic violence calls, when a law enforcement officer has probable cause to believe a crime is being committed or has been committed, the officer is required to arrest the offender and may not simply issue a ticket with a notice to appear in court. Cited herein: K.S.A. 1991 Supp. 22-2202; 22-2307; K.S.A. 22-2401.

* * *

Dear Representative Praeger:

As representative for the 44th district, you ask whether it is permissible pursuant to K.S.A. 1991 Supp. 22-2307 for a police officer to issue a ticket with a notice to appear in court, instead of making an arrest, when probable cause exists to make an arrest.

The 1991 Kansas legislature enacted K.S.A. 1991 Supp. 22-2307 which requires all Kansas law enforcement agencies to adopt written policies regarding domestic violence calls. These policies must include certain specified statements, including:

"A statement directing that the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed. This statement shall include K.S.A. 22-2401 and amendments thereto, which allows an officer to make an arrest. . . ." K.S.A. 1991 Supp. 22-2307(b)(1). (Emphasis added).

K.S.A. 22-2401 sets forth the circumstances under which a law enforcement officer may make an arrest. These circumstances include when:

"(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 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."

"Arrest" is defined within the code of criminal procedure to mean:

"the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of a notice to appear is not an arrest." K.S.A. 1991 Supp. 22-2202(4). (Emphasis added).

Accordingly, when a law enforcement officer has probable cause to believe any of the circumstances listed in K.S.A. 22-2401

exist, the officer is authorized to make an arrest. However, pursuant to K.S.A. 1991 Supp. 22-2307, as of January 1, 1992 law enforcement agencies must have adopted a written policy requiring officers to make an arrest in domestic violence calls when the officer has probable cause to believe a crime is being or has been committed. In such circumstances the officer's discretion to exercise arrest authority has been statutorily removed and the officer is required to make an arrest, i.e. take the person into custody.

In conclusion, in domestic violence calls when a law enforcement officer has probable cause to believe a crime is being committed or has been committed the officer is required to arrest the offender and may not issue a ticket with a notice to appear in court.

Very truly yours,



ROBERT T. STEPHAN
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Camille Nohe
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