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Kansas House Committee on Judiciary
Representative John Barker, Chair

RE: 2015 HB 2147: Amending PFA and PFS Statutes; creating protection from stalking and sexual assault act

**TESTIMONY OF RONALD W. NELSON**
**OPPOSING HB 2147**

Chairman Barker and Members of the Committee:

I am a family law attorney in Johnson County. I've practiced family law for over 25 years. My practice is focused on complex issues in family law and high conflict child custody litigation. My practice frequently involves representing clients in family law disputes at the trial court level and in the appellate courts. In that time, I've handled many protection from abuse – and stalking – cases, representing both victims and accused. I've often wrestled with the difficult issues that arise when trying to advise my clients about how to deal with abusive partners, boyfriends and girlfriends, and strangers. I've also seen how the existing laws that seek to protect against abuse and inappropriate behavior fail to properly protect those victims. But I've also seen how those laws have been co-opted by abusive, vindictive, malicious, malevolent, and mentally ill litigants – and lawyers.

While undoubtedly well-meaning and intended to address behaviors that should not be condoned, I believe this bill would have far ranging negative impact in the court system. And that in trying to protect victims from one kind of abusive behavior would subject others to a different kind of abusive behavior – likely in a greater number that those whom it would protect. The way in which the proposed language is inserted into existing law would *encourage* misuse and abuse of those statutes.

There is already a problem in protection from abuse and protection from stalking cases of evidence coming down to "he said/she said" testimony, with the judge expected to decide which of the two competing parties is "telling the truth." Sadly, litigation between former intimate partners is already too often a "liars' game" where the judge has a difficult or impossible task to sort out what really happened with two widely disparate versions of the same events.

Currently law now allows the entry of a protection from abuse order when an intimate partner:

> "Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury. [or]

"Intentionally placing, by physical threat, another in fear of imminent bodily injury."

But this proposal would also allow entry of a protection order against an intimate partner for:

"(3) Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent."

The situations covered by this broad language are staggering. The language does not require actual contract; it does not require completion of an act; it does not contain any limiting language on the situations in which it may apply. The language is not limiting; it is expansive. The language is not directed to specific situations, but covers nearly every situation in which sexual contact is sought, but declined – whether in a threatening or non-threatening manner, whether innocent or malicious, whether anything came of it or not.

And the bill proposes that this language not only apply to an "intimate partner" situation, but to any situation – defining that broad range of activities as "sexual assault" and allowing the filing of a petition for stalking against anyone *not* an intimate partner for those same actions. Again, whether threatening or non-threatening, innocent or malicious, knowing or unknowing.

There is no excuse for sexual abuse. But this bill does not address that issue in a well-defined, well-crafted way. This bill would instead open a Pandora's Box of abusive litigation. I fear the harm created by this bill would be much greater than the wrongs it seeks to correct – and that it would negatively affect many more people than it would benefit and more serious ways.

Ronald W. Nelson