

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael O'Neal at
Chairperson

3:30 ~~xxx~~ a.m./p.m. on March 14, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Lawrence, Moomaw and Peterson, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Cal Karlin, Attorney, Lawrence
Representative Joan Wagnon
Dorothy Miller, Director, Safehouse, Pittsburg
Alita Brown, Executive Director, Kansas Coalition Against Sexual and Domestic Violence, Pittsburg
Anna Forbes, Pittsburg
Marilyn Ault, Battered Women's Task Force
Ron Smith, Kansas Bar Association
Jim Kaup, General Counsel, League of Kansas Municipalities
Juliene Maska, Victims Rights Coordinator, Office of the Attorney General

HEARING ON SB 527 Unenforced foreclosure judgments, cancellation and renewal affidavits

Matt Lynch, Judicial Council, informed the Committee the bill was recommended by the Kansas Judicial Council to deal with the problem that exists in bankruptcy proceedings when executing on judgments is prevented but the time period continues to run regarding dormancy. The Judicial Council also recommended a renewal affidavit as a means of keeping judgments alive.

Cal Karlin, Attorney, Lawrence, stated this legislation is very necessary. SB 527 establishes an added way to stay the triggering of the dormancy provision regarding real estate foreclosure judgments.

There being no other conferees, the hearing was closed.

HEARING ON SB 680 Mandating the enforcement of protection from abuse orders by law enforcement officers

Representative Joan Wagnon testified in support of SB 680. SB 680 amends the Protection from Abuse Act. The new section states that any person that violates a protection order shall be arrested by law enforcement officers for indirect contempt. She distributed copies of the Shawnee County Community Protocol for Family Violence Cases, see Attachment I. Supporting letters and articles were included in Attachment I.

She stated this bill requires a personal appearance before a magistrate judge and a professional surety bond. This assures that once the abuser is arrested the abuser is not released in 10 minutes. She stressed under this bill the person that violates a Protection from Abuse Order shall be arrested.

Dorothy Miller, Director, Safehouse, testified there is a need for SB 680. She stated Protection from Abuse Orders in case after case are defied and without enforcement, rendered useless. Strengthening this Order to clarify that an arrest can take place when violated is necessary. It is also necessary that, when arrested, these abusers cannot bond out on their own recognizance as this puts the victim in extreme danger, see Attachment II. She said SB 682 makes it clear that a person the defies the order is guilty of criminal trespass.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 14, 1990

Alita Brown, Executive Director, Kansas Coalition Against Sexual and Domestic Violence, testified in support of SB 680. She said when the Protection from Abuse Orders are not upheld this reinforces the behavior of the abuser. SB 680 would change this. By defining violation as indirect contempt and making violation an arresting offense, the order would become more enforceable, see Attachment III. She informed the Committee the State of Minnesota has a mandatory arrest law.

Anna Forbes, Pittsburg, testified she has been a victim of abuse for seven years. She related her experiences to the Committee, see Attachment IV. A letter was attached to her testimony from the Assistant Chief of Police of Pittsburg.

Marilyn Ault, Battered Women's Task Force, testified in support of SB 680. She stated it is crucial that abusers be held responsible for their behavior. She said there is clear evidence that criminal justice intervention reduces domestic violence. Violators of Protection from Abuse Orders must be arrested, see Attachment V. SB 682 makes it clear that violation of Protection from Abuse Orders is a criminal act, however, she said the bill still needs the phrase "must arrest".

Ron Smith, Kansas Bar Association, stated Section 1 of SB 680 creates a statutory duty to arrest where there is a violation of a Protection from Abuse Order. This creates a tort claim liability under the Kansas Tort Claims Act. He cited the case of Fudge v. City of Kansas City, see Attachment VI.

Jim Kaup, General Counsel, League of Kansas Municipalities, testified SB 680, as drafted, proposes to statutorily create a mandatory duty on law enforcement officers to arrest certain persons which could expose cities and counties to unique and potentially costly tort liability. He said the League of Kansas Municipalities recommends changing "shall" to "may" in line 17. The amendment would still give law enforcement officers new legal authority to place persons under arrest for violation of Protection from Abuse Orders, see Attachment VII.

Juliene Maska, Victims Rights Coordinator, Office of the Attorney General, submitted testimony recommending strengthening the Protection from Abuse Act by enforcing arrest in violation of indirect contempt of the Protection from Abuse Act, see Attachment VIII. She said the Victims Rights Task Force conducts training on domestic violence. They are also working with law enforcement and municipalities to assist them to develop written policies in regard to domestic violence.

There being no other conferees, the hearing on SB 680 was closed.

The Chairman announced the minutes of February 27 and 28 and March 2 would be approved Thursday, March 15, 1990, at 3:30 p.m. if there were no additions or corrections.

The Committee meeting was adjourned at 5:30 p.m. The next meeting will be Thursday, March 15, 1990, at 3:30 p.m. in room 313-S.

COMMUNITY PROTOCOL FOR FAMILY VIOLENCE CASES

PURPOSE: The District Attorney, Sheriff, Police Chief, Shawnee County Administrative Judge and Battered Women Task Force staff have mutually agreed upon this community protocol to encourage the criminal justice system to deal more effectively with family 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 family violence.

A. DEFINITIONS:

1) "Domestic violence" - harmful physical contact, or the threat thereof, between couples of the opposite sex, married or unmarried, including the destruction of property, as a method of coercion, control, revenge, or punishment, or the threat thereof.

2). "Unmarried couples" means persons of the opposite sex who are or who have in the past been involved in an ongoing, intimate relationship.

B. LAW ENFORCEMENT RESPONSE:

Recent research by the Police Foundation and other agencies has indicated that arrest is the most effective intervention in domestic violence cases in reducing the incidence of further violence.

This section outlines those procedures necessary to implement a proactive arrest policy in Shawnee County.

1. Arrest

Arrest shall be the appropriate response where

- (a) there is probable cause to establish violations of Kansas law and where
- (b) there are visible signs of injury or physical impairment, or
- (c) there was a threat with a dangerous weapon.
- (d) there has been a violation of a Protection from Abuse order or a restraining order issued by a judge unless circumstances indicate otherwise.

K.S.A 22-2401 permits a law enforcement officer to arrest a person when the officer has probable cause to believe that the person is committing a crime in the officer's view; or has committed a felony; or a misdemeanor, and the law enforcement officer has probable cause to believe that the person will not be apprehended or evidence of the crime will be lost, or the person may cause injury

3/14/90
H. Jud Com

Attachment I

to self or others or damage to property unless immediately arrested, or has intentionally inflicted bodily harm to another person. (The underlines portion was added by the Legislature specifically for domestic violence cases.)

2. Victim Assistance

In cases where the abuser has left the residence prior to arrival of the officer, the officer should inform the victim of resources and assistance available in the community through the Battered Women Task Force at the YWCA. BWTF will provide materials for law enforcement officers to give to victims.

3. Law Enforcement Reports

The police shall forward to the District Attorney all police reports where the officer believes that there is probable cause that a crime occurred, whether arrest is made at the scene or when suspect has left the scene. These reports shall be labeled "Domestic Battery".

4. Arrest Warrants

The District Attorney will issue warrants for arrest in appropriate cases when the assailant had left the scene. These should also be noted, "Domestic Battery". Statistical data should be gathered for each response by BWTF.

5. Training

Appropriate law enforcement officers should receive training, at least annually, related to these family violence procedures. BWTF will provide training if requested.

6. Internal Policy

The internal policy for both the Sheriff's Department and Topeka Police Department is attached.

C. PROSECUTION RESPONSE:

Research also indicates that the crime of domestic violence is against society as well as the victim; therefore the burden of filing charges should not rest solely on the victim.

This section outlines those procedures necessary to coordinate a vigorous prosecution policy with the efforts of law enforcement in Shawnee County once an arrest is made.

1. Arrest

The District Attorney will encourage all police departments and the Sheriff's Department to arrest an abuser when there is probable cause to establish violations of Kansas law and when there are visible signs of injury or physical impairment, or a threat with a dangerous weapon. Where the factual situations

3/14/90
H. Jud Com
Att I

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

2. Filing of Complaint/Case Management

When police reports have been received by the District Attorney, charges will be filed in all cases where there is sufficient evidence to prosecute. Misdemeanor cases will be prosecuted as a form of community intervention in an effort to address the violence before it escalates producing more serious physical and emotional injury.

The determination that must be made in each case as to its legal sufficiency to be prosecuted will be made by the District Attorney or an Assistant District Attorney. Actual filing and handling of a case will be by an assistant district attorney or a legal intern. Once a case has been assigned, evaluated and filed, it will remain the responsibility of the attorney or intern originally assigned. The victim will no longer be required to file the complaint.

The policy which will be in force will remove the control of the prosecution of domestic violence cases from the influence of waxing and waning emotions and place them on similar footing with other criminal cases. 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 becomes unwilling to cooperate in the prosecution.

3. Warrants for Assailants

Prompt attention shall be given to family violence cases where the assailant was not at the scene when the police/sheriff arrived. The District Attorney's office will label all arrest warrants as "Domestic Battery" cases so that expedited service of process can be made where possible. Warrants shall be requested within three court days whenever possible.

4. Bond

A person arrested for a crime resulting from domestic violence should be subject to the additional precaution of requiring a bond with professional surety. At first appearance, the District Attorney will ask the court for a no contact order as a condition of bond. This will prohibit the defendant from contacting or causing the contact of all endorsed witnesses in the criminal case. A defendant charged will be required to appear at the first appearance (for felony) or arraignment (for misdemeanor).

5. Diversion

In domestic violence cases, subject to the approval of the victim, a defendant who has not previously been convicted of an offense involving domestic violence will be considered eligible for participation in a domestic violence diversion program. As a condition of participation in that program, the defendant must agree to enter and successfully complete the Shawnee County Battered Women Task Force's Alternatives to Battering Program or any other counseling program that may be agreed to by all parties.

The District Attorney will take appropriate action in the District Court if it is determined that:

- 1) There has been a violation of the no contact order.
- 2) Intimidation of a witness has occurred.
- 3) There has been violation of a civil protection order, involving a criminal offense.

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 pressure and opportunity of the abuser to continue to commit violent acts against any other.

6. Training

The District Attorney's Office will participate in training law enforcement officers, community and criminal justice personnel in handling family violence cases in Shawnee County.

7. 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. Diversion Program -- at the request of the victim, diversion may be considered for the defendant in an effort to create alternatives to criminal prosecution.
- b. Use of subpoena -- at the request of the victim, the prosecutor will issue a subpoena to shield the victim from pressure from the assailant or other parties not to participate in the case as a witness.
- c. Plea negotiations -- the prosecutor shall approach plea negotiations with the intent of 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.

8. Dismissal

Once a family violence case is filed, it will be prosecuted through conviction and sentencing. Requests made by the victim to dismiss will be refused. Cases should not be dismissed while the defendant is on diversion even if divorce proceedings or reconciliation occurs. Dismissals will be allowed only for reasons having to do with the legal merits of the case.

3/14/90
H. J. Com
Att I
4

D. COURT RESPONSE:

In successful programs which have been studied, the most effective way for intervention programs to contact assailants has been to approach them in the jail following arrest.

The following change in bonding procedure has been implemented to facilitate this contact.

1. Bonding Procedure

Persons arrested for a "domestic battery" will be required to post a bail bond in the amount of \$1,000 with professional surety. A "domestic battery" is a battery against a member of the opposite sex. The arresting officer will indicate "domestic battery" at the time of booking into the county jail.

2. Protection from Abuse Orders and Restraining Orders

Any violation will result in arrest of the person violating the order unless circumstances indicate otherwise.

E. BATTERED WOMEN TASK FORCE RESPONSE:

The final 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. BWTF offers shelter, counseling and referral to community services for victims of domestic violence. These services are available 24-hours daily at no charge.

2. The Alternatives to Battering Project (ABP) offers client assessment, case monitoring, education, referral and post treatment assessment to assailants on either diversion or probation/parole. Services are also available to those individuals who may be self-referred. Fees are based on a sliding income scale; no one is denied service because of inability to pay.



POLICE DEPARTMENT PITTSBURG, KANSAS 66762

611 N. Pine

Phone 231-1700

RALPH W. SHANKS
Chief of Police

DONALD W. MARSHALL
Asst. Chief of Police

February 8, 1990

Ms. Anna Forbes
505 W. 8th
Pittsburg, Kansas 66762

Dear Ms. Forbes,

I would like to be able to say that with your P.F.A. your troubles are over with. I can not, however, make that statement. The interpretation and decisions of our local judges dictate how we can respond to P.F.A.'s. Presently, we can not arrest anyone for violating a P.F.A. The violator must commit an act in violation of other ordinances or laws in the officers presence before an arrest can be made. We can make him leave the property, to the street, but not the area. You must now contact your attorney to file contempt charges for violating the P.F.A. The judges have determined that it is a civil instead of a criminal violation.

Regarding the radio that was confiscated, we have had numerous unauthorized, at times vulgar, transmissions on our frequency. The F.C.C. has advised us to confiscate any radio that is found to be used on our frequency without authorization. The F.C.C. should be contacting your brother regarding his radio and it will be their decision on the disposition of his radio. The radio will remain in our custody until we are advised by the F.C.C. of their determination.

If you are divorced, which you didn't indicate in your letter, you can file criminal trespass, theft, burglary or any charge that pertains to the actions that occur. Of course, you can file the same charges if you are separated. However, a divorce indicates a desire for no further contact.

We will continue to try to help you if you have further problems with him. I would recommend that you not initiate any contact with him and continue to file charges against him if he violates your P.F.A.

Sincerely,

Donald W. Marshall
Assistant Chief of Police

DWM/pb

3/14/90
H. J. Com
Att I 6

District Court of Kansas
Third Judicial District

Shawnee County Courthouse
Topeka, Kansas 66603-3922

Chambers of
James H. Buchele
Judge of the District Court
Division Twelve

(913) 291-4405
Esther E. Shinkas, C.S.R.
Official Reporter
Judy A. McCurry
Administrative Assistant

19 January, 1990

Mr. Raymond A. Bloxson
Legal Counsel
Topeka Police Department
204 S.W. 5th Street
Topeka, KS 66603

Ms. Elizabeth Phelps
Legal Counsel
Shawnee County Sheriff's Department
200 East 7th Street
Topeka, KS 66603

PROTECTION FROM ABUSE ACT, K.S.A. 60-3101 ET SEQ.

Dear Ray and Elizabeth:

I am writing this letter to you in your capacity as advisors to the major law enforcement agencies in Shawnee County. I served a duty week rotation the week between Christmas and New Years and in one day signed between fifteen and twenty Protection from Abuse Complaints.

In going through this ordeal I was presented with several cases that are clearly beyond the pale of the Protection from Abuse Act which had been referred to the Clerk of the Court by law enforcement authorities. While all of the bad advice given the applicants cannot be attributed to police or sheriff, I felt I would begin with the two of you, reviewing what I believe to be the scope of the Protection from Abuse Act and to encourage you to incorporate this information in future training so that inappropriate referrals will not be made to the Clerk of the District Court.

It is the purpose of the Act to give protection to victims of domestic violence, K.S.A. 60-3101. The word domestic means belonging to or relating to a common home or domicile. (See Black's Law Dictionary). I believe the foregoing understanding is important as many persons focus on the relationship of men and women, e.g. husband/wife,

3/14/90
H. Jud Com
Att I 7

Mr. Raymond A. Bloxsom
Ms. Elizabeth Phelps
19 January 1990
Page 2

boyfriend/girlfriend, ex-husband, etc. as being "domestic problems." This conclusion is of course incorrect as domestic matters are between parties that share a common home or residence.

The foregoing concept of common domicile is incorporated in the definition of abuse which is given in the Protection from Abuse Act.

"60-3012. Abuse defined. As used in this act 'abuse' means the occurrence of one or more of the following acts between persons who reside together, or who formerly resided together and both parties continue to have access to the residence."

Abuse as defined by the Protection from Abuse Act is domestic abuse. A reasonable construction of the foregoing statutory language and the common legal definition of the term domestic dictates that for the Protection from Abuse Act to be applicable the parties must be currently residing together or have mutual access to the same residence.

I would specially direct attention to the statutory language which requires that persons who formerly resided together must continue to have mutual access to the residence. If there is no right of mutual access to a residence, it is not a protection from abuse case.

Specifically, I would suggest that the Act is not applicable to post divorce situations where property has been divided by the Court, once the proper party has been put in possession of the residence. A former spouse returning to the parties former joint residence without permission of the party in possession should be treated as a trespasser and an arrested.

If the party is no longer present when law enforcement arrives, the proper advice would be to file a complaint with the D.A. or City Attorney for criminal trespass not to file a Protection from Abuse case.

Parties who are not domiciled together, e.g. sleep over boyfriends or girlfriends, that have not established a regular pattern of access to a residence which is rented or owned by another are also trespassers if they fail to leave

3/14/90
H. Jud Com
Att I 8

Mr. Raymond A. Bloxsom
Ms. Elizabeth Phelps
19 January 1990
Page 3

another person alone. The personal relationships of the parties do not make it a domestic abuse case. The focus of determining applicability of the Act must be the right of access to the property. If a right of access exists, the Protection from Abuse Act would be applicable. If a right of access does not exist, the intruding party is a trespasser.

I appreciate that the term "access" as used in the statute does not differentiate between legal right of access and access by permission. If the terms of the act are to be given liberal construction a legal access standard would be too rigid. However, the time to time sleep over guest or former spouse who has been asked to leave and stay away should not be considered as having access. A person giving permission for entry into a home also has the right to revoke it. Absent permission, these persons have no right to stay.

It has been argued that if a person who rents or owns an apartment or house has given a key to another that this constitutes mutual access. I disagree. A tenant or owner of a living unit has the right to permit access to anyone they choose. They also have the right to limit access and to revoke prior permission. The act of giving permission to enter or a key does not, standing alone, constitute mutual access.

What I am driving at, is that there are a good number of these cases that are unnecessarily being filed because law enforcement do not seem to recognize what a trespasser is! They are referring the complainant for a Protection from Abuse Order rather than dealing with the matter on the spot or advising how criminal complaints can be filed.

It would seem to me that there are a few bright line rules that could be used as a guideline to help weed these cases out.

- If the parties do not share a key to the same residence, the party without a key clearly does not have access.
- A person who has moved into someone else's home or apartment may have had his/her access terminated by the lessee or owner. A person no longer has access when it has been terminated by the party in legal possession of the property.

3/14/90
H. Jud. Com.
Att I 9

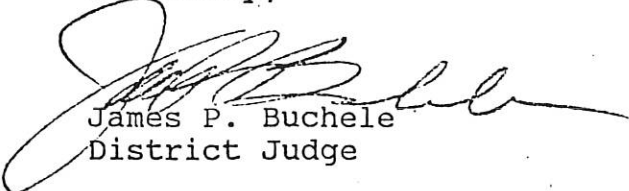
Mr. Raymond A. Bloxsom
Ms. Elizabeth Phelps
19 January 1990
Page 4

- If a party has no obligation to the owner of the property, they are not a co-tenant. Sharing rent or utilities does not make a person a co-renter or create a legal right of access if they are not a party to the rental agreement
- Personal property in an apartment does not give a person a right of access if they are not the lessee or owner. Replevin of property is a civil matter between the parties.

Persons with no right of access to a property should be removed by law enforcement officers upon the request of the person with the legal right to possession of the property. A Court order is not necessary. The person should be asked to leave or face arrest for trespass. Law enforcement officers should assist in recovery of keys if the complaintant can demonstrate to the officer that they are the lessee or owner of the property and the other person cannot demonstrate a legal right to access of the permises.

If the foregoing guidelines are implemented I believe that police will be in a position to solve many problems on the spot. It is certainly safer for the parties than waiting until a restraining order can be procured. In the long run it should save work for everyone and certainly would help screen out the number of protection from abuse cases which will relieve considerable work in the Clerk's office, for judges and for the process servers in the Sheriff's office.

Sincerely,



James P. Buchele
District Judge

jmc

pc Joyce D. Reeves
District Attorney's Office
District Judges
Brian Moline
Battered Women's Task Force

3/14/90
H Jud Com
Att I 10

PROTECTION FROM ABUSE ACT
(K.S.A. 60-3101 et seq)

The Protection from Abuse Act provides for a civil (non-criminal) restraining order and other orders against a person with whom you share a residence or if separated, if you have joint access to the same residence. Further, to obtain a protection order, you must also be able to show that either you or your minor child feel an immediate physical threat of violence.

The Act allows you to get the necessary form to file for protection from the Clerk of the District Court. By filing these forms, you have initiated a civil court case. When your case is set for hearing, you will need to appear in court and tell the judge why you need protection. You are responsible for appearing at each of your court hearings. If you fail to appear, your case will be dismissed.

DOES THE PROTECTION FROM ABUSE
ACT APPLY TO MY SITUATION?

You must answer questions 1 or 2 and 3 yes to be eligible for a Protection Order.

1. Are you presently living with the person against whom you are seeking the protection order?
_____ yes _____ no

2. Have you recently separated from the person and do they still have access to your residence? (For example, does the person have a key, a joint lease or joint ownership of the property?) _____ yes _____ no

3. Has the person done at least one of the following to you or your minor child? _____ yes _____ no
(If yes, please indicate.)

_____ A) Purposely tried to cause physical injury?

_____ B) Purposely caused physical injury?

_____ C) Purposely placed you or another member of your household in fear of bodily harm by a physical threat OR

_____ D) Engaged in sexual activity or offensive sexual touching with a minor child under the age of sixteen (16) who is not his/her spouse?

If you answer no to questions 1 and 2, you are not eligible for a protection order under the Protection from Abuse Act. You should speak with an attorney or local legal services office to determine what your legal options are. Your local domestic violence shelter may be of help in finding an attorney with which to speak.

3/14/90
Hquid.Com
Att I
11

3/14/90
Al Good Com
Att I 12

New domestic violence law explored

By Beverly Potter
Of the Metropolitan Staff

While the trial of a man accused of murdering his estranged wife continued Friday in Independence, police and prosecutors across town praised a new domestic violence law that they hope will save lives.

About 50 prosecutors, judges, lawyers, police and victim advocates met Friday at Independence City Hall for a panel discussion of a law that allows police to arrest alleged abusers, regardless of whether victims are willing to sign a complaint or whether police see the violence.

Proponents of the new state law say the policy is an effective way to deter assaults in domestic disputes. It also takes pressure off victims — who often are afraid to prosecute — if police become the complainants.

The new state law also requires police to make an arrest if they have probable cause to think a court order of protection has been violated. And they must arrest an offender if police are called twice within 12 hours to the same address of a violent domestic dispute and they think a crime has occurred.

The new state law goes into effect in a couple of weeks, but several area police departments have already adopted policies that change the way they respond to domestic violence calls.

Kansas City police enacted a new law after Police Chief Larry Joiner was named as co-chairman of the Force on Domestic Violence

Statute will make it easier to arrest abusers

ence and decided that a change was needed, said Col. Richard Fletcher, commander of the department's investigations bureau.

During 1988, under the department's old policy, police made an average of 178 arrests a month. This year police have averaged 450 arrests a month under the new policy, Fletcher said.

The policy also requires that victims and family members be referred to advocacy programs within 48 hours after the incident.

Fletcher warned area law officials that the policy takes a toll on the police overtime budget, court time and detention facilities, and that it may skew police crime statistics.

However, the policy provides better protection to the victim and gets the aggressor, victim and children into counseling programs that it is hoped will improve their lives.

Independence Sgt. Ron Hagan, field sergeant in the operations bureau, said that city's newly adopted pro-arrest policy should help reduce the frustration of police who repeatedly must return to the same domestic calls as well as the danger of violence to police.

Independence police will begin training later this month to learn the new policy, which advocates intervention rather than mediation in domestic disputes.

Raytown police have also enacted a similar policy. And Lee's Summit prosecutor Judy Gibbs is working with police there on a new policy that includes refusing to dismiss charges even when requested by the victim.

She subpoenas the victim to testify if necessary and, when that fails, enlists testimony from other family and neighborhood observers of the crime, Gibbs said.

"I tell them I file charges on behalf of the people of Lee's Summit and the people of Lee's Summit won't put up with (this type of behavior)," Gibbs said.

In response to a question from police, Jackson County Prosecutor Albert Riederer said his office did not prosecute domestic violence cases if the victim refuses to testify.

One officer asked whether that meant police were wasting their time trying to send a case to the county level.

If a victim won't testify, Riederer said, his policy has been not to force them to do so. Unlike most city cases, in county cases prosecutors have to anticipate the reaction from a jury and not just the judge, Riederer said.

Most domestic cases are handled in city court, unless the violence has escalated to a felony charge.

Sue Else, executive director of the

Hope House for abused women, said abused women often returned home after being abused because of economic reasons, because they truly think their husbands or boyfriends will change and because they often think the incident was their fault.

She said law officials needed to realize that when an abuser is arrested the woman may defend him and be angry and frightened. She may be hysterical and he may be calm, Else said.

She said it was important to separate the man and woman to learn the truth about injuries, which an abuser may have inflicted between the woman's shoulders and her knees to keep them hidden from authorities. And, she suggested that a woman officer be sent to the dispute if possible.

Independence Mayor Barbara Potts, who moderated the discussion, said law enforcement officials needed to keep in mind the "big picture" — protecting the victim's rights.

She said officials hoped the new law would be an effective tool and reminded law officials of the importance of talking to each other.

Joy Rushing, assistant city counselor, said the panel discussion was planned because police were concerned that prosecutors and judges "be there to back them up" on the new procedures. The discussion was an effort to get law officials to work together, she said.

get build drafted

Battered Women Task Force

at the YWCA

Box 1883 • Topeka, KS 66601 • (913) 354-7927

January 18, 1990

[REDACTED]
[REDACTED]
Shawnee County Courthouse
200 S.E. 7th
Topeka, Kansas 66603

Dear [REDACTED]

I am the Program Director for the Battered Women Task Force. Recently we took a client to the clerk's office to file a Protection Order. We were surprised to find that her husband had already filed a Protection Order, signed by you, restraining her from their home. Our client was given temporary custody of the three small children.

One of the husband's reasons for asking for a Protection Order was that his wife "provoked him to anger". One of the places he gave that she could be served was the Battered Women shelter.

At the Battered Women Task Force we are concerned that the Protection Order, that was conceived to allow women and children to keep possession of their homes, may be used by the batterer to evict them.

In this particular case the wife and children were staying at our shelter, even though he was hospitalized in a drug and alcohol program, because he had broken furniture and shot holes in the walls. The house was not habitable.

This client took the news that she was being served with a Protection Order as a message from the law that she had "done something wrong".

We wanted to let you know our concerns about the spouses of our residents filing Protection Orders against them and to let you know some further details about this particular case.

Thank you for your consideration. We would welcome an opportunity to visit with you about our program.

Sincerely,

Marilynn Ault

Marilynn Ault
Program Director

MA/fmo

c: Honorable William Randolph Carpenter

3/14/90
N. Jud Com
Att I
13

House Judiciary Committee
Testimony of Dorthy Miller
Box 313
Pittsburg, Kansas 66762
March 14, 1990

Committee Members:

I am Dorthy Miller, and I am here today to provide testimony in reference to Senate Bill 680, involving Protection From Abuse Orders. As Director of SAFEHOUSE, a non-profit organization which provides services to victims of domestic violence and sexual assault in the 12-county area of Southeast Kansas, I have become aware of both the need for, and advantages of adopting Senate Bill 680.

I believe the Protection From Abuse Orders originated as a way to assist victims in obtaining and maintaining protection from abuse. However, in case after case, these orders are defied and, without enforcement, rendered useless. What we continuously hear in many areas of the state is that judges, attorneys, and law enforcement personnel believe they cannot make an arrest when the order is violated. Instead, they instruct the victim to hire an attorney and find the perpetrator in contempt of court. Many of these victims don't have the funds to hire an attorney. Furthermore, prior to this court action the victim remains unprotected and often shelter in an agency such as ours is necessary for them to remain safe. We certainly felt the impact of this at SAFEHOUSE. I have enclosed a chart which

3/14/90
H Jud Com
Attachment II

indicates the amount of Shelter Units we have provided each year for the past 4 years. You will see that in 1988, when the Protection From Abuse Orders were new, the number of Shelter Units actually decreased slightly. Unfortunately, as perpetrators challenged them and found them to be largely unenforced we again found the amount of Shelter Units to skyrocket, as women had to come back into shelter for safety time and time again. Even though we have doubled our budget in this 4 year time frame, our income per person per day in shelter is only about 1/3 what it was in 1985 (see chart). It is very apparent to me that resheltering these victims every time the perpetrator becomes explosive is no longer practical. And, providing funds to continually replace the locks and windows they break is no longer practical. Strengthening this Order to clarify that an arrest can take place when violated is necessary. It is also necessary that, when arrested, these abusers can't bond out on their own recognizance, as this puts the victim in extreme danger.

Although I have reviewed this Bill and the weaknesses in the Protection From Abuse Order from an agency perspective, I believe the primary reason to strengthen this Order is to fulfill this Order's original intent and give the victims the protection they deserve.

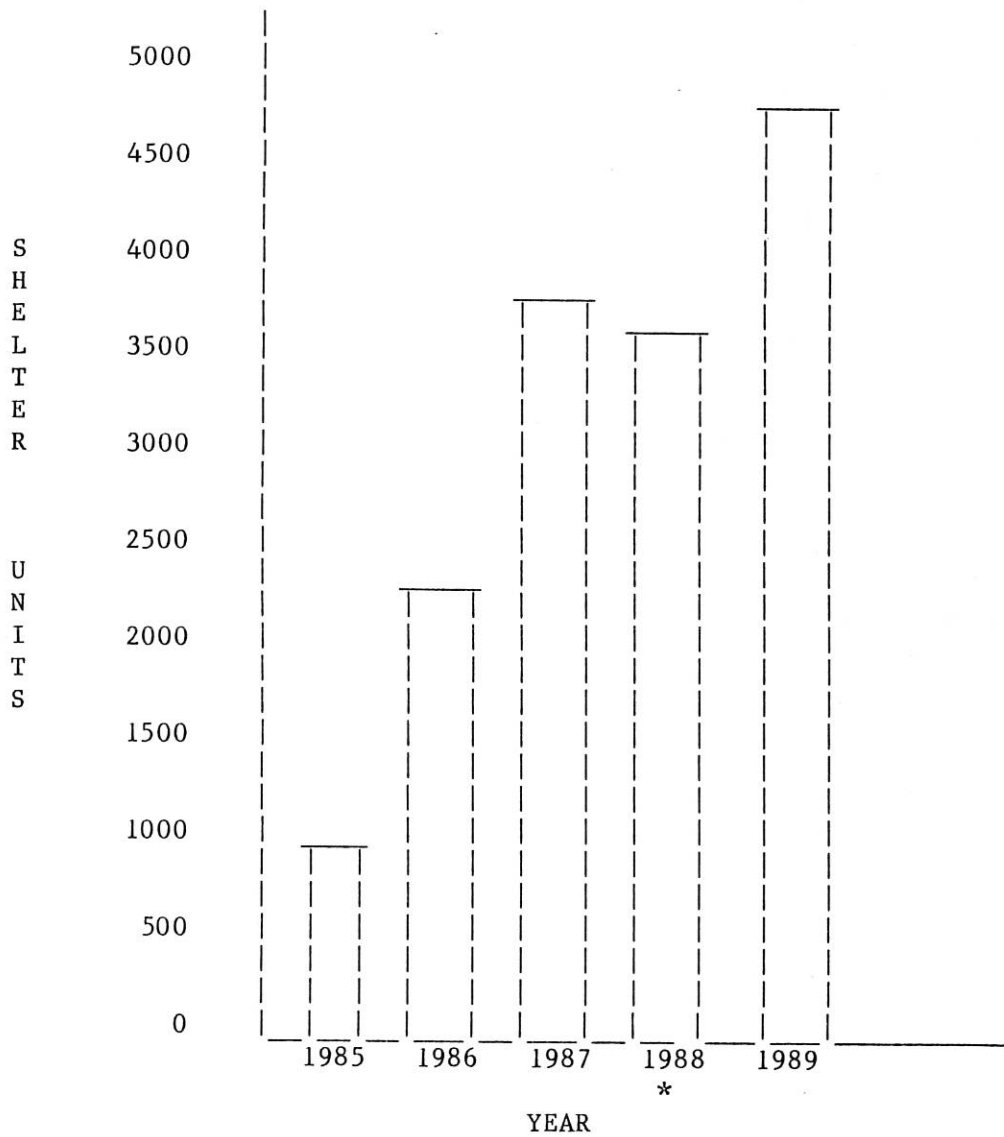
Thank you for your consideration of my remarks. If I can be of further assistance or provide further information, please contact me.

Sincerely,

Dorothy Miller, SAFEHOUSE INC.

3/14/90
H. Judd Com.
Att II 2

SAFEHOUSE, INCORPORATED
 Statistical Evaluation of Shelter
 Units Per Year



actual--> 877 2248 3895 3506 4747

1985	\$65,237.00	\$74.38 per shelter unit
1989	\$130,711.00	\$27.53 per shelter unit

*1988--Slight drop due to Protection From Abuse Act.

3/14/90
H. Jud Conn.
Att II

TESTIMONY FOR HOUSE JUDICIARY

1972
Lawrence

1974
Wichita

1976
Emporia
Lawrence
Wichita
Hutchison

1977
Topoka
McPherson

1978
KOSAC

1979
KAVVP
Manhattan
Pittsburg
Overland Park

1980
Salina
Kansas City
El Dorado

1981
Dodge City
Great Bend
Garden City
Liberal

1983
Winfield
Scott City

1984
Iola
Leavenworth

1985
Hillsboro

1989
Atchison

My name is Alita Brown and I am the Director of the Kansas Coalition Against Sexual and Domestic Violence. I would like to thank you for this opportunity to express my support for Senate Bill 680. The Coalition is network of more than 25 programs across the state that provide services to the victims of sexual and domestic violence and although I represent the programs, I believe that speak on behalf of the thousands of victims who have sought the safety and support of our services.

We have been providing services for more than ten years and we have learned many, many, things. We know for instance that domestic violence is a complex, multifaceted problem, the very core of which is the abuser's struggle for power and control over their victims. Violence, threats, intimidation and isolation are but a few of the weapons that are used. For many years we have been asked "why does she stay?" While I could spend hours guiding you through the complex dynamics of violent relationships, I will limit my focus to a frequently disregarded phenomenon - fear - and to its impact which is often underestimated and misunderstood.

The victims we serve have shared with us for years their reality of fear, hopelessness, and helplessness, which is only now being legitimized by research and statistics. It is now well documented that a woman is most likely to be severely damaged or killed when she is leaving or has left the abusive relationship. As long as she remains in the relationship, the balance of power and control is still the abuser's. It is when she has finally made the step to move beyond his power and control that he is most likely to brutalize her in a final, last ditch effort to regain control. It is also at this point that he often feels he has little, if anything, left to lose.

The great tragedy, which this bill promises to redress, is that it is at this very point, when she is most at risk, that our system fails victims the most. Women come to our programs after uprooting their children, leaving their possessions, and fleeing their homes in fear of life and limb. They ask for safety, they ask for protection, so that they may resume their

Serving Victims Throughout Kansas

3/14/90
N. Gud Corn

Attachment III

KCSDV**KANSAS COALITION AGAINST
SEXUAL & DOMESTIC VIOLENCE**

P. O. BOX 1341

PITTSBURG, KS 66762

316-232-2757

1972
Lawrence

1974
Wichita

1976
Emporia
Lawrence
Wichita
Hutchison

1977
Topeka
McPherson

1978
KOSAC

1979
KAVVP
Manhattan
Pittsburg
Overland Park

1980
Salina
Kansas City
El Dorado

1981
Dodge City
Great Bend
Garden City
Liberal

1983
Winfield
Scott City

1984
Iola
Leavenworth

1985
Hillsboro

1989
Atchison

lives and so that their children may resume theirs. In good faith, they turn to the courts and in filing their PFA's believe that their rights will be upheld. Yet, all across our state, women have seen their good faith reduced to hopelessness as those PFA's are violated without consequence. It is the sad truth that very few women are protected from threats of abuse, harassment or actual abuse which often intensify after she leaves. Those who are fortunate enough to have their orders enforced are often disenchanted by the fact that the abusers have often been released before the victim has finished filing reports. This is not safety, nor is it protection. At this most critical and deadly time, we protect the abuser's - the criminals - rights more carefully than we do the victims.

Bill 680 would change that. By defining violation as indirect contempt and making violation an arresting offense, the order would become more enforceable. Through adequate enforcement, the criminals would pay the consequences of the crime, rather than the victims. The integrity and intent of the law would be restored.

We ask a great deal of the victims of domestic violence. We ask that they be willing to leave the social, economic and emotional structure that has defined their world. We ask them to leave all that is familiar and face an uncertain future; without knowing if they can support themselves and their children, without knowing if decent and affordable housing is available, without knowing if family, friends or society will condemn her or blame her for her victimization. We ask battered women to do all these things in the face of great danger. Today I ask you to consider giving her at least this one small assurance: that if she will have the faith and the courage to leave the arena of her abuse, that we, through our laws and their enforcement, will recognize her danger, respect her fear, and provide for her rights - especially her right to safety and protection under the law.

← **Serving Victims Throughout Kansas**

3/14/90
H. Jud Com
Att III 2

KANSAS DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

KANSAS COALITION AGAINST SEXUAL
AND DOMESTIC VIOLENCE (DV/SA)
Contact: Alita Brown
P.O. Box 1341
Pittsburg, Kansas 66762
(316) 232-2757 (office)

ALLIANCE AGAINST FAMILY
VIOLENCE (DV)
Contact: Marilyn Oden
P.O. Box 465
Leavenworth, Kansas 66048
(913) 682-9131 (crisis line)
(913) 682-1752 (office)

BATTERED WOMEN'S TASK FORCE
(DV/SA)
Contact: Marilyn Ault
P.O. Box 1883
Topeka, Kansas 66601
(913) 233-1730 (crisis line)
(913) 354-7927 (office)

BUTLER COUNTY ASSOCIATION TO
COUNTER ABUSE (SA)
Contact: Cathy Martin
2365 West Central
El Dorado, Kansas 67402
(316) 321-7491 (crisis line)
(316) 321-6069
(316) 321-4717

COWLEY COUNTY SAFE HOMES
(DV/SA)
Contact: Diane Baucom
P.O. Box 181
Winfield, Kansas 67156
(316) 221-4357 (crisis line)

CRISIS CENTER, INC. (DV/SA)
Contact: Kim Blubaugh
P.O. Box 1526
Manhattan, Kansas 66502
(913) 762-2333 (crisis line)
(913) 539-2785 (crisis line)
(913) 456-8229 (crisis line)

CRISIS CENTER OF DODGE CITY
(DV/SA)
Contact: Vicki Strawn
P.O. Box 1173
Dodge City, Kansas 67801
(316) 225-6510 (crisis line)
(316) 225-6987 (office)

DOMESTIC VIOLENCE ASSOCIATION
OF CENTRAL KANSAS (DV/SA)
Contact: Marlene McLean
1700 E. Iron
Salina, Kansas 67401
(913) 827-5862 (crisis line)

DOUGLAS COUNTY RAPE VICTIMS'
SUPPORT SERVICE (SA)
Contact: Sarah Jane Russell
1419 Massachusetts Street
Lawrence, Kansas 66044
(913) 841-2345 (crisis line)
(913) 843-8985 (office)

DOVES (DOMESTIC VIOLENCE
EMERGENCY SERVICES) (DV)
Contact: Shirley Munsen
P.O. Box 262
Atchison, Kansas 66002
(913) 367-2358 or
(913) 367-2112

FAMILY CRISIS CENTER (DV/SA)
Contact: Lisa Hoffman
P.O. Box 1543
Great Bend, Kansas 67530
(316) 792-1885 (crisis line)
(316) 792-3672 (office)

FAMILY CRISIS SERVICES (DV/SA)
Contact: Eva Vale
P.O. Box 1092
Garden City, Kansas 67846
(316) 275-5911 (crisis line)
(316) 275-2018 (office)

H.E.L.P. (DV/SA)
Contact: Jan Kuhlman
Scott City Police Department
301 Court
Scott City, Kansas 67871
(316) 872-2133 (crisis line)

HOPE UNLIMITED (DV/SA)
Contact: Delma Rourk
P.O. Box 12
Iola, Kansas 66749
(316) 365-3144 (crisis line)
(316) 365-7566 (office)

LABETTE SAFEHOUSE SERVICES
(DV/SA)
Contact: Sheila Simmons
Parsons, Kansas 67357
(316) 421-1400 (crisis line)
(316) 421-2528 (office)

3/14/96
H. Jud Com
Att III 3

LEAVENWORTH COUNTY RAPE CRISIS ORGANIZATION (SA)
Contact: Bobbie Jo Johannes
P.O. Box 484
Leavenworth, Kansas 66048
(913) 682-9131 (crisis line)

LIBERAL AREA RAPE AND DOMESTIC VIOLENCE SERVICES (DV/SA)
Contact: Gretchen Loucks
P.O. Box 1707
Liberal, Kansas 67901
(316) 624-8818 (crisis line)

MARION COUNTY DOMESTIC VIOLENCE ASSOCIATION (DV/SA)
Contact: Cay Siebert
400 Floral Drive
Hillsboro, Kansas 67063
(316) 947-2466

MCPHERSON COUNTY COUNCIL ON VIOLENCE AGAINST PERSONS (DV/SA)
Contact: Patty Sargent
P.O. Box 406
McPherson, Kansas 67460
(316) 241-6615 (crisis line)
(316) 241-3510 (office)

METROPOLITAN ORGANIZATION TO COUNTER SEXUAL ASSAULT (MOCSA) (SA)
Contact: Paile Rilinger
3515 Broadway, Suite 301
Kansas City, Missouri 64111
(816) 531-0233 (crisis line)
(816) 931-4527 (office)

NORTHEAST KANSAS FAMILY VIOLENCE PREVENTION PROGRAM (DV)
Contact: Frank Wahwassuck
P.O. Box 264
Hiawatha, Kansas 66434
(913) 486-2131 (office) or
(913) 486-2824 (office)

NORTHEAST KANSAS FAMILY VIOLENCE PREVENTION PROGRAM (DV)
Contact: Frank Wahwassuck
Route 1, Box 157A
Horton, Kansas 66439
(913) 486-2131 (office) or
(913) 486-2824 (office)

NORTHWEST KANSAS FAMILY SHELTER (DV/SA)
Contact: Deidre Strohm
P.O. Box 284
Hays, Kansas 67601
(913) 625-3055 (crisis line)
(913) 625-4202 (office)

REBECCA VINCSON CENTER (DV)
Contact: Glori Hegge
P.O. Box 1514
Kansas City, Kansas 66117
(913) 321-0951 (crisis line)

S.O.S., INC. (DV/SA)
Contact: Susan Moran
P.O. Box 1191
Emporia, Kansas 66801
(316) 342-0548 (crisis line)
(316) 343-2626 (office)

SAFE HOUSE (DV/SA)
Contact: Dorthy Miller
P.O. Box 313
Pittsburg, Kansas 66762
(316) 231-8251 (crisis line)

SAFEHOME, INC. (DV/SA)
Contact: Cindy Zickefoose
P.O. Box 4469
Overland Park, Kansas 66204
(913) 262-2868 (crisis line)
(913) 432-5158 (office)

SEXUAL ASSAULT & DOMESTIC VIOLENCE CENTER OF RENO COUNTY (DV/SA)
Contact: Lucki Boyd
1 E. 9th
Hutchinson, Kansas 67504-2856
(316) 663-2522 (crisis line)
(316) 665-3630 (office)

WICHITA AREA SEXUAL ASSAULT CENTER (SA)
Contact: Chris Wilshusen
215 North St. Francis, Suite 1
Wichita, Kansas 67202
(316) 263-3002 (crisis line)
(316) 263-0185 (office)

WOMEN'S TRANSITIONAL CARE SERVICES (DV)
Contact: Stephanie Coleman-Marks
P.O. Box 633
Lawrence, Kansas 66044
(913) 841-6887 (crisis line)

YWCA WOMEN'S CRISIS CENTER (DV)
Contact: Lynn Tunin
P.O. Box 1740
Wichita, Kansas 67201
(316) 263-9806 (crisis line)
(316) 263-2313 (office)

House Judiciary Committee

Testimony of Anna Forbes

505 W. 8th St.

Pittsburg, Kansas 66762

March 14, 1990

My name is Anna Forbes. I am here to testify for the Senate Bill 680. I have been a victim of abuse for 7 years. I stayed in the relationship for this long due to the fear that my life and my family were in jeopardy every time I would attempt to leave. Each time I left he would find me, beat me, and convince me that the only chance I had for survival was to remain with him. I have been totally separated from my abuser since October 1989.

I have a Protection From Abuse Order that became effective November 1, 1989. The first time my abuser broke the court order I attempted to press criminal trespassing charges immediately. My request was ignored by the officers. Instead, two officers handcuffed my husband and made the statement that it was up to the judge on what was to be done. When they left, I contacted Safehouse and an advocate went with me to the police department to again attempt to press charges. At this time I was told the judge had been contacted and had talked to Steve on the phone and asked him if he promised he would not come back to my house. Steve said yes, and was released. I was allowed to go ahead and press charges at that time, but due to him being released, I and my three children had to go back into shelter until he calmed

3/14/90
H. Jud Com

Attachment IV

down and I felt safe.

The second time he broke the Order, he broke into my house. I got away from him in the car but he tried to run me and my 3 children off the road. When I arrived at the police station, he assaulted an officer, disobeyed a lawful order, and I pressed criminal trespassing charges and reckless driving against him. He was released before I was even let out of the police station. I had to go back into shelter again, until his rampage cooled off.

The third time he broke the PFA my brother was present. My abuser was guarding the phones and started becoming violent towards me. My brother stepped in to protect me, and then became the victim of abuse, when shoved several times across the room. My brother picked up a shovel in self-defense, ran out of the house and radioed the police (he has clearance to use such a radio).

When the officers arrived I was yelled at by one of them and my brother was almost arrested for using the Police frequency and had his radio confiscated. My abuser was allowed to leave with a lot of my possessions. The police officers suggested I drop the whole matter because they would allow him to press charges against my brother if I pressed charges against him. Feeling helpless at this point, I agreed.

I then wrote two letters to the police department concerning this incident. There was no response the first time. The second time there was a response, which I have enclosed with my testimony. Their response clearly indicates they do not believe

3/14/90
H. J. Com

Attachment IV
2

they can arrest when the PFA is violated. With the adoption of this Bill, they would know that they can arrest when a violation of the PFA occurs.

I have had to go into shelter 4 times. I feel if my abuser would have been arrested and held for a minimum amount of time, he would have taken the court order seriously.

I believe he wouldn't have come back again and again. I wouldn't have had to go into shelter so many times. My fear is that there will be another time, and what will happen then?

3/14/90
H. Jud Com
Att IV



**POLICE DEPARTMENT
PITTSBURG, KANSAS 66762**

611 N. Pine

Phone 231-1700

RALPH W. SHANKS
Chief of Police

DONALD W. MARSHALL
Asst. Chief of Police

February 8, 1990

Ms. Anna Forbes
505 W. 8th
Pittsburg, Kansas 66762

Dear Ms. Forbes,

I would like to be able to say that with your P.F.A. your troubles are over with. I can not, however, make that statement. The interpretation and decisions of our local judges dictate how we can respond to P.F.A.'s. Presently, we can not arrest anyone for violating a P.F.A. The violator must commit an act in violation of other ordinances or laws in the officers presence before an arrest can be made. We can make him leave the property, to the street, but not the area. You must now contact your attorney to file contempt charges for violating the P.F.A. The judges have determined that it is a civil instead of a criminal violation.

Regarding the radio that was confiscated, we have had numerous unauthorized, at times vulgar, transmissions on our frequency. The F.C.C. has advised us to confiscate any radio that is found to be used on our frequency without authorization. The F.C.C. should be contacting your brother regarding his radio and it will be their decision on the disposition of his radio. The radio will remain in our custody until we are advised by the F.C.C. of their determination.

If you are divorced, which you didn't indicate in your letter, you can file criminal trespass, theft, burglary or any charge that pertains to the actions that occur. Of course, you can file the same charges if you are separated. However, a divorce indicates a desire for no further contact.

We will continue to try to help you if you have further problems with him. I would recommend that you not initiate any contact with him and continue to file charges against him if he violates your P.F.A.

Sincerely,

Donald W. Marshall

Donald W. Marshall
Assistant Chief of Police

DWM/pb

3/14/90
H. Jud. Com.
Att IV

4

House Judiciary Committee 3/14/90

For those of us who work in the domestic violence area it is frustrating to be asked constantly why women don't just get out of abusive relationships. The frustration stems from our knowledge that it is not as simple as it may seem to those who have not been in a violent relationship. The victim is at greatest risk when she does try to leave. The violence usually escalates at that stage and that is when women often get severely injured or killed. Black eyes, cut lips and cracked ribs are seen routinely among residents at the shelters in this state. Gunshot and stab wounds are not an uncommon sight..

If enforced, PFA's can be a great help in making a woman safe in her own community. In Topeka law enforcement officers rarely arrest if a PFA is violated. The officers usually tell the abuser he should leave the house and often minutes after leaving the abuser returns. The women report that they soon give up trying to call the police since "they don't do anything" and their abusers know that. Once the abuser realizes that there is no penalty for violation of a PFA the victim is once more at his mercy.

In our work with abusers in our Alternatives to Battering program we have learned that batterers minimize and deny their violence and place blame on others. It is crucial that abusers be held responsible for their behavior. There is clear evidence that criminal justice intervention reduces domestic violence . Being arrested can be very therapeutic. Clarifying that

3/14/90
H. Jud. Com.

Attachment V

violators of PFA's must be arrested will be a great help to victims who are trying to be free of their tormentors.

On behalf of the staff, volunteers, and victims we serve, I urge you to vote for passage of SB 680.

Marilynn Ault, Program Director
Battered Women Task Force
Topeka, Kansas

3/14/90
H Jud Com.
Att V

SB 680
March 13, 1990

Mandatory Arrest Situations

Mr. Chairman, members of the House Judiciary committee. I am Ron Smith. I represent the Kansas Bar Association.

KBA has no position on this bill. However, Section 1 creates a statutory duty to arrest where there is a violation of a protection of abuse order. There is no discretion. The duty is absolute.

Some of you may recall 1987 legislation by the League of Municipalities and the case of Fudge v. City of Kansas City.^{1/} In that case a police department personnel manual prescribed when and under what conditions a police officer must take an intoxicated person into custody. Failure to do so was a breach of the guidelines, and in Fudge resulted in a later fatal car accident. The heirs sued the city.

The Court reasoned that if the duty to arrest is discretionary, the discretionary function exception to the tort claims act's general rule of liability may protect police departments from liability. When there is no discretion, either by a city-imposed guideline, or statute, that exemption section doesn't apply. As was stated in Fudge:

"Where the police are subject to guidelines or owe a specific duty to an individual, the general rule (of non-liability) does not apply and the police owe a special duty accordingly."^{2/}

This bill is analogous to Fudge. You create a non-delegable duty to act by a municipal employee, and which is an independent duty to arrest in certain situations. Police have no discretion. A special relationship between the battered person and the police. Liability lies for violation of the duty under the Kansas Tort Claims Act.

¹239 Kan. 369 (1986)

²239 Kan. at 372.

3/14/90
H. Jud. Com.

Attachment VI

The 1987 legislature handled Fudge by amending K.S.A. 75-6104(d) to exempt actions "adopting or enforcing" written personnel policy which protects persons safety "unless a duty of care, independent of such policy, is owed to the specific individual injured."^{3/}

Section 1 of SB 680 appears to create independent new liability under the Tort Claims act. If that result is the intent of SB 680, then it is accomplished. If not, Section 1 should be reconsidered.

Thank you.

³K.S.A. 1989 Supp. 75-6104(d).



**League
of Kansas
Municipalities**

**Municipal
Legislative
Testimony**

An Instrumentality of Its Member Cities. 112 West Seventh Street, Topeka, Kansas 66603 913-354-9565 Fax 354-4186

TO: House Committee on the Judiciary
FROM: Jim Kaup, League General Counsel
RE: **SB 680; Mandatory Enforcement of Protection
from Abuse Orders**
DATE: March 14, 1990

The League does not now have a formal position on SB 680. The League has, however, taken action to encourage its 520-plus member cities to deal locally with the subject matter of SB 680--domestic violence. The League's convention-adopted Statement of Municipal Policy provides:

G-6. Domestic Violence. Municipalities should adopt written policies stipulating that domestic violence will be treated as other battery and assault cases, including a specific policy concerning how to handle domestic violence cases when probable cause exists for arrest.

Further, the League has established a "domestic abuse committee" comprised of local government officials. That committee's job is to develop a "model" domestic violence policy which would be used by law enforcement agencies around the state, and which would serve as a public policy statement that domestic violence is not acceptable in our society. Finally, the League serves as an information clearinghouse by collecting city and county-adopted domestic violence policies, and distributing those to our member cities upon request.

While not having a formal position on this bill, and while supportive of enactment of state law permitting law enforcement officers to arrest persons violating protection from abuse orders, the League does feel it important to bring to the Committee's attention our concern that what SB 680, as drafted, proposes to do--to statutorily create a mandatory duty on law enforcement officers to arrest certain persons--could expose cities and counties, and thereby the taxpayers of Kansas, to unique and potentially costly tort liability.

Mandatory Arrest Under SB 680. Section one of SB 680 is a state mandate upon all law enforcement officers. It would require officers to arrest "any person violating a protection from abuse order" (K.S.A. 60-3107). To our knowledge this mandatory arrest provision would be unique to Kansas law. We know of no criminal statute relating to the arrest authority of a law enforcement officer that mandates arrest. Those statutes, including K.S.A. 22-2401, 12-4212, 8-2111 and 8-2109, all identify the authority to arrest, but leave the decision to arrest a given person to the discretion of the law enforcement officer. The question, therefore, is what is the public policy justification for mandating a police officer to arrest John Smith who has violated a protection from abuse order, when the law does not mandate that same officer to

*3/14/90
H. J. Kaup*

Attachment VIII

arrest Mary Doe who has committed an armed robbery, or a felony drug transaction, in that officer's presence?

We do not contend that domestic violence is not a serious matter. We only note that so is murder, rape, and kidnapping--criminal acts which do not carry with them the mandatory arrest requirement that is found at line 17 of SB 680.

Tort Liability for Failure to Arrest. The unique duty to arrest created by SB 680 would be less troublesome to local governments were it not for the 1986 Kansas Supreme Court decision of Fudge v. City of Kansas City, 239 Kan. 369. The Fudge case, in a nutshell, held that the "discretionary function" exception to tort liability under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.) will not be available where the allegedly negligent act of a police officer is one that is guided by a mandatory guideline or standard. The public duty doctrine is abrogated and a special duty of care is created. Consequently, tort liability can result--to be paid for by the public.

To better appreciate how Fudge-type tort liability can follow from an officer's failure to arrest someone as mandated by SB 680, additional materials relating to the Fudge decision have been attached to this testimony.

In response to Fudge the League went to the 1987 Legislature to seek a legislative overturning of the decision. What resulted was codified at K.S.A. 75-6104(d). That amendment to the Tort Claims Act provided limited relief from Fudge--relief which the League believes would not apply to negligence cases involving SB 680: "A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:...(d) adoption or enforcement of, or failure to adopt or enforce, any written personnel policy which protects persons' health or safety unless a duty of care, independent of such policy, is owed to the specific individual injured, except that the finder of fact may consider the failure to comply with any written personnel policy in determining the question of negligence;"

Language Used in Section One. The League believes that if the Legislature makes the public policy decision that mandatory arrests are proper in this context, questions will arise regarding the meaning of the terms used in section one of SB 680. Among those questions are:

(1) Arrest is to follow from either a determination of probable cause to believe an order of protection from abuse has been violated or there is "immediate and present danger" of abuse. Can we assume that such determinations are solely in the discretionary judgment of the law enforcement officer on the scene? To what standard of review will that discretionary judgment be held?

(2) SB 680 says a person "shall be arrested... on indirect contempt". Does this mean that, for example, in an actual assault or battery situation the arresting officer must charge the perpetrator with indirect contempt under K.S.A. 20-1204? Would that charge be in addition to or a substitute for the more serious criminal charge of assault, battery, etc.?

(3) Other than potential tort liability for negligent failure to arrest, what is the "penalty" for noncompliance with SB 680?

3/14/90
H. Jud. Com.
Att VII
2

Summary. It is the League's general policy position that the law enforcement aspect of domestic violence can best be addressed by the adoption of investigation and arrest standards and policies at the city and county level, rather than by state mandates. Those local standards and policies are being adopted and applied today, and will continue to be, as communities recognize the scope and nature of domestic violence.

SB 680 not only would create a unique state mandate upon an area historically left to the discretionary judgment of law enforcement officers, it would also create exposure for tort liability under the Fudge decision. That tort liability is the taxpayer's liability.

The League asks for your consideration of the above concerns, all of which can be easily resolved by changing "shall" to "may" at line 17. Such an amendment would still give law enforcement officers new legal authority to place persons under arrest for violation of protection from abuse orders--state authority which the League would support.

If such an amendment is not the Committee's pleasure, we would ask for your consideration of the problems with the technical wording of section one, as noted above.

3/14/90
H.Jud.Com.
Att VII 3

Attachment: Fudge v. City of Kansas City

Fudge involved two Kansas City police officers called to a tavern to deal with a disturbance caused by an intoxicated patron. Upon arrival the police officers determined a disturbance was no longer occurring, and that the bar patrons had left the bar and were assembled in the tavern parking lot. While conflicting testimony was presented as to whether the police officers observed the state of intoxication of one of the patrons, that patron proceeded to drive from the premises and almost immediately was involved in an accident fatally injuring a third party.

A Wyandotte County District Court jury found the decedant 7% at fault, the intoxicated driver 75% at fault, and the City of Kansas City and its police officers 18% at fault. Total damages awarded were \$1,095,103.66.

The holding of the Kansas Supreme Court in Fudge was that where police officers are subject to a specific, mandatory set of guidelines to use those police officers and the employing city are subject to liability under the Kansas Tort Claims Act for the failure to follow those guidelines.

In the decision the Court specifically dealt with the public duty doctrine--the tort concept of no governmental liability absent a special duty to act. The Court noted that police officers have a duty to the public-at-large rather than to any individual citizen. The Court held that where the police are subject to guidelines or owe a specific duty to an individual the public duty doctrine does not apply and the police owe a special duty accordingly. In Fudge, the Kansas City police department had a standard operating procedure manual which set out mandatory procedures for handling a variety of police situations. One of those situations involved handling intoxicated individuals. Specifically, that order states, in part, "an individual... who is incapacitated by alcohol... will be taken into protective custody...". The existence of that general order led the Court to conclude that the police officers had a duty to take the intoxicated driver into protective custody.

The Court then went on to discuss its 1982 decision in Schmeck v. City of Shawnee which adopted the Restatement of Torts, Section 324A which provides in part: "One who undertakes... to render services to another which he should recognize as necessary for the protection of a third party... is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm...".

The Court stated the police officers should have realized that taking the intoxicated driver into protective custody was necessary for the protection of third parties. "Their failure to do so significantly increased the risk that (the intoxicated driver) would cause physical harm to others." Therefore, once having established a special duty to take the intoxicated person into protective custody, they were able to extend this special duty to the deceased plaintiff. In other words, **it was the court's holding that the failure to enforce a law, in this case the police department's own general order which sets out mandatory arrest guidelines, creates a special duty owed by the police to a third party who suffers injury because of that failure to follow the department's general order.**

3/14/90
H. Jud. Com.
Att VII 4



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF
JULIENE A. MASKA, STATEWIDE VICTIMS' RIGHTS COORDINATOR
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 14, 1990
RE: SENATE BILL 680

Mr. Chairman and Members of the Committee:

In February 1988, Attorney General Robert Stephan formed a 50-member Victims' Rights Task Force. The purpose of the Task Force was to insure that the rights and needs of Kansas crime victims were not neglected.

The Victims' Rights Task Force continues to look at the continuing needs of crime victims. The Protection from Abuse Act came about to protect individuals who live in the same household from abuse. The Task Force is recommending strengthening this Act by enforcing arrest in violation of indirect contempt of the Protection from Abuse Act.

I would also like to point out that in line 17 of page 1, the K.S.A. referred to should be K.S.A. 20-1204a -- not 1209a.

On behalf of the Attorney General's Victims' Rights Task Force, I strongly urge your support of Senate Bill 680.

3/14/90
H. Jud Com

Attachment VIII