

Approved March 29, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on February 20, 1990 in room 514-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Representative Joan Wagnon
Attorney General Robert Stephan
Alita Brown, Director of Kansas Coalition Against Sexual and Domestic Violence
Betty Bomar, Director of Crime Victims Compensation Board
Christine Vilela, Pittsburg
Anna Forbes, Pittsburg
Susan Moran, S.O.S., Inc. Director
Dorthy Miller, SAFEHOUSE Director
Ron Wurtz, Kansas Association of Criminal Defense Lawyers
Kris Wilshusen, Wichita Area Sexual Assault Center
Helen Stephens, Kansas Peace Officers

The Chairman opened the hearings for the domestic violence bills on this day's agenda.

- SB 673 - concerning certain victims of crime; relating to confidentiality of communications with counselors.
- SB 674 - concerning crime victims compensation; relating to claims; eligibility.
- SB 680 - concerning protection from abuse; mandating the enforcement of protection from abuse orders by law enforcement officers.
- SB 681 - concerning crimes and penalties; relating to records of incidents and reporting thereof.
- SB 682 - concerning the protection from abuse act; relating to orders for relief; compensation.

Representative Joan Wagnon testified on behalf of the Topeka YWCA in support of SB 680. She presented the committee with copies of "Community Criminal Justice Protocol for Family Violence Cases in Shawnee County," a news item from The Kansas City Times, and letters in response to actual situations. (ATTACHMENTS I through V) Representative Wagnon also presented a letter from Dr. Bonnie Buchele to the committee in support of SB 673. (ATTACHMENT VI)

Attorney General Robert Stephan testified in support of SB 680, SB 681, SB 682, SB 673, and SB 674. (ATTACHMENT VII)

Alita Brown, Kansas Coalition Against Sexual and Domestic Violence Director, testified in support of mandatory reporting of crimes, SB 681. (ATTACHMENT VIII)

Betty Bomar, Crime Victims Compensation Board Director, Office of the Attorney General, testified in support of SB 674. (ATTACHMENT IX)

Christine Vilela, Pittsburg, testified in support of protection from abuse, SB 682. (ATTACHMENT X)

Anna Forbes, Pittsburg, testified in support of SB 682, protection from abuse. (ATTACHMENT XI)

Susan Moran, S.O.S., Inc. Director, testified in support of mandatory reporting of crimes, SB 681. (ATTACHMENT XII)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 20, 1990.

Dorothy Miller, SAFEHOUSE Director, testified in support of SB 673, victim/counselor confidentiality and SB 682, protection from abuse. (ATTACHMENT XIII)

Ron Wurtz, Kansas Association of Criminal Defense Lawyers, testified in opposition of SB 673 and SB 681 as being unconstitutional as written. (ATTACHMENT XIV)

Kris Wilshusen, Wichita Area Sexual Assault Center Executive Director, testified in support of SB 673, victim/counselor confidentiality. (ATTACHMENT XV)

Helen Stephens, Kansas Peace Officers Association, testified in support of SB 680. She stated that a mandate for the enforcement of protection from abuse orders would help police officers in numerous situations.

This concluded the hearings.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: FEBRUARY 20, 1990

(1)

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Susan K. Moran	P.O. Box 1191 Emporia KS 66801	S.O.S. Inc / KPSDU
Kris A. Wilkerson	215 N. St. Francis #1 Wichita 67202	Wichita Area Sexual Assault Ctr.
Alita Brown	PO Box 1311 Pittsburg KS 66762	KS Coalition Against Sexual and Domestic Violence
Jim Clark	KCSA Topeka	KE DAA
KATH R LANDIS	"	CHRISTIAN SERVICE COMMITTEE ON PUBLICATION FOR KANSAS
RON WURTZ	1729 S.W. 27th St Topeka, KS	Ks Assoc Crim Def. Lawyers
Melissa Perez	3000 N. Joplin Apt. #36 Pittsburg, KS 66762	Safehouse Center Inc.
Dorothy Miller	Box 818 Pittsburg, KS 66762	SAFEHOUSE, Inc.
Christina Wilbur	725 W 3rd Pittsburg, KS	Individual
Anna Fabes	505 W. Pth Pittsburg, KS	Individual
Brenda Coust	RR1 Box 70 Hallowell, KS	PSU Nursing Student
Kimi Murtney	1217 Crawford Parsons, KS	PSU Nrsng Student
JOHN NOLTENSMeyer	461 Hope Ln #8 Lawrence KS	INTERN SEN. POLAN
Juliane Mashu	Topeka	A.G.
Betty Doman	Topeka	Communication Comp
Linda Crookiller	3510 Laurel Apt 219, Parsons, KS	PSU Nrsng. Student
Peggy Crawley	317 So Carbon Girard, KS	PSU Nrsng Student
Judy Nelson	RR1 Box 72 Farlington, KS	PSN Nrsng Student
Stacy Hoogstraten	TOPEKA	MADI
Nancy Lindberg	Topeka	A.G. office
Sue Bond	Overland Park	
Karl Shelby	Topeka	OJA
John Wagner	Topeka	
Dave Ramsey	Topeka	Home News Serv.

COMMUNITY CRIMINAL JUSTICE PROTOCOL FOR FAMILY VIOLENCE CASES

IN SHAWNEE COUNTY

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.

Gene Olander, District Attorney

Robert Weinkauf, Chief of Police

Ed Ritchie, Shawnee County Sheriff

Joan Wagon, YWCA Executive Director

William Carpenter, Administrative Judge

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

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

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.

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.

LAW ENFORCEMENT

SAMPLE INTERNAL POLICY DIRECTIVE

Effective Date:

Subject: Domestic Violence

This policy has been formulated and initiated in order to provide departmental personnel with guidelines on how to handle domestic violence situations.

I. 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 who are or who have in the past been involved in an ongoing, intimate relationship.

3. Probable Cause - domestic violence cases should have the same standards of determination as in other criminal actions.

a. Probable Cause - defined - when a police officer believes that a crime is occurring or has occurred and that a certain person committed the crime.

b. Probable Cause to arrest under K.S.A. 22-2401 exists:

when a police officer believes that a crime is occurring or has occurred and a certain person committed the crime;

when the officer can state sound reasons for this belief;

when the officer logically believes that a cautious person would reach the same conclusion given the same facts and circumstances.

when the officer bases this belief on reasonably trustworthy information and on common sense.

c. Probable cause cannot be based upon considerations such as the potential financial consequences of an arrest, assurances that the violence will cease or speculation that a complainant may not appear in court to testify.

d. When weighing the issues of Probable Cause officers must consider:

injuries, though present, may not be readily visible; victims of domestic violence may not show the "expected" emotional response;

in some cases of mutual combat, it is preferable to charge both parties rather than charging neither;

it is not necessary for the victim to sign a complaint if the officer has Probable Cause to believe the offense occurred;

if there is doubt in the officer's mind, a supervisor should be consulted;

II. PURPOSE:

A. The purpose of this policy directive is to promote the protection of the domestic violence victim, to deter the defendant from committing continued acts of violence, and to create a general deterrent in the community toward violence.

This policy directive has been formulated to help the public safety officer recognize that appropriate arrest and subsequent services provided through the District Attorney's Office can be beneficial for the victim, defendant, law enforcement officers and the community.

B. The Shawnee County District Attorney's Office has encouraged all law enforcement agencies to arrest an assailant when there is probable cause to believe a crime has occurred, whether it is a misdemeanor or a felony.

C. The following offenses may be chargeable in domestic violence cases:

- Battery - K.S.A. 21-3412
- Aggravated Battery - K.S.A. 21-3414
- Assault - K.S.A. 21-3408
- Aggravated Assault - K.S.A. 21-3410
- Rape - K.S.A. 21-3502
- Terroristic Threat - K.S.A. 21-3419
- Harassment by Telephone - K.S.A. 21-4113
- Homicide - K.S.A. 21-3401/21-3405 (a)
- Criminal Trespass - K.S.A. 21-3721
- Obstructing Legal Process - K.S.A. 21-3808

III. POLICY:

Whenever officers respond to a domestic violence situation, they will investigate the situation thoroughly in the same manner expected of other cases, in order to determine the appropriate response to be taken. When there is probable cause to establish violations of Kansas law and where there are visible signs of injury or physical impairment or there was threat with a dangerous weapon, the officer shall arrest and charge the suspect(s) with the appropriate offense(s) (i.e., assault, disturbance, threats, etc.), in addition to any other outstanding wants or warrants.

IV. PROCEDURE:

In all domestic violence situations the officer will:

A. Assess the situation:

1. If the victim sustains any obvious and visible injuries, photographs will be taken.
2. The investigating officer must be observant of all minor children at the scene. The officer will note any signs of child abuse and take the appropriate action if the children have been physically or sexually abused.
3. The investigation will include statements from witnesses including the victim.
4. The officer will collect and preserve any physical evidence such as weapons or instruments used to inflict injury.
5. Where possible collect statements from suspect.
6. The officer will provide the victim an adult abuse information sheet prior to leaving the scene including information about the Adult Protection from Abuse Act.
7. All cases will be handled through the District Attorney's Office.

B. Determine the type of action to be taken:

1. If a victim indicates a willingness to prosecute, an arrest will be made if the defendant is present.
2. If the offense is a simple battery and there are no obvious or apparent injuries, the report should be submitted to the District Attorney's Office the next working day.
3. If the defendant is not present, the officer will prepare the necessary paperwork for presentation to the District Attorney's Office for review.
4. If it is the officer's opinion, after a thorough investigation, the situation is an obvious case of mutual combat and it is apparent there are no injuries or no felony crime has been committed, the reports will be submitted to the District Attorney's Office the next working day.

C. When contacting the District Attorney, the officer will make him or her aware of the facts surrounding the situation, as well as any background information known to the officer concerning the parties involved in the domestic violence situation.

D. Bonding Procedure: When the assailant is taken to be booked at the

Shawnee County Jail the case will be labeled domestic battering and a bail bond shall be required in the amount of \$1000.00 with professional surety.

E. Battered Women Task Force Advocates - Battered Women Task Force has available a group of volunteers who work as advocates for individual victims of battering. All local law enforcement agencies are encouraged to work with them where possible and to encourage victims to utilize their services.

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

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

ATTACHMENT 11

2-20-90

PAGE 1 OF 1

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. Shinkos, 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,

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

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.

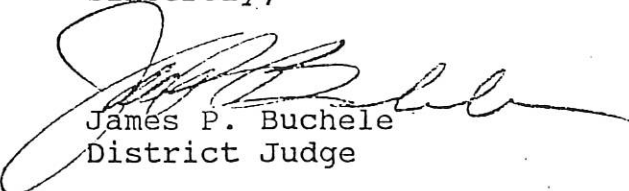
Mr. Raymond A. Bloxsom
Ms. Elizabeth Phelps
19 January 1990
Page 4

- 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 premises.

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

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.

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

ATTACHMENT IV

2-20-90

PAGE 1 OF 1

c: Honorable William Randolph Carpenter



**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,

A handwritten signature in cursive script that reads "Donald W. Marshall".

Donald W. Marshall
Assistant Chief of Police

DWM/pb

Bonnie J. Buchele, Ph.D.
3 Westboro Place
Topeka, KS 66604

February 16, 1990

Dear Senator Wint Winter, Jr., and Senate Judiciary Committee Members:

I am writing to you in regard to the "Victim/Counselor Confidentiality Act." I have been directly involved with the Topeka Sexual Assault Counseling Program since 1973 when it was started. This program offers 24-hour crisis intervention for victims of sexual assault. Volunteer counselors receive 24 hours of training before they take shifts answering calls from current and former victims of sexual assault. They frequently meet a victim at a local hospital where physical evidence is obtained and accompany the victim to the police station where a detective interviews the victim with the counselor present. The trust established during this critical time of crisis is most important. The counselor has periodic contact with the victim after the assault, at the victim's discretion, and supports the victim through legal proceedings if the case goes to court.

It is essential that the victim have this support to help in adjustment after being so traumatically assaulted. It can be devastating to the victim to learn that her counselor has been subpoenaed by the defense to testify on behalf of the assailant. When counselors have been subpoenaed, the victims and counselors have found it very upsetting. Counselors do not have access to facts unknown to investigating officers; their training addresses this issue in that when they learn information discrepant with the official statement, the counselor is expected either to encourage the victim to clear the discrepancy with the police or remove herself/himself from the case. Confidentiality is emotionally very important because providing it with the counselor provides a haven of safety and privacy in an atmosphere of terror and public humiliation.

In a recent case, although the counselor was subpoenaed, she did not have to testify; however, she missed two days of work because she was required to appear at the courthouse. Volunteer counselors who give their nights and weekends in an effort to support victims of crime will be more difficult to recruit if they are also required to give testimony against the victims they have committed to help. Sexual assault and domestic violence programs across the state rely heavily on volunteers to provide 24-hour intervention to victims. Furthermore, many counselors are concerned for their own safety if their names are revealed in open court and the accused have knowledge of their identity.

Senator Wint Winter, Jr., and Senate Judiciary Committee Members
February 16, 1990
Page 2

I urge you to protect the victims of sexual and domestic violence by assuring the confidential communication between them and their counselors.

Sincerely,

Bonnie J. Buchele, Ph.D.

Bonnie J. Buchele, Ph.D.

BJB/bc



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
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TESTIMONY OF
ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY COMMITTEE
FEBRUARY 20, 1990
RE: SENATE BILLS 680, 681, 682, 673 AND 674

Mr. Chairman and Members of the Committee:

In February 1988, I formed a 50-member Victims' Rights Task Force. The purpose of this Task Force was to insure that the rights and needs of Kansas crime victims are not neglected. Thanks to your efforts last year, the most comprehensive package of crime victims' rights legislation in Kansas history was enacted.

Kansas' first Crime Victims' Bill of Rights gave victims the right to appear and to be heard through the criminal justice process. The amount of victim compensation increased dramatically. In Fiscal Year 1989, \$621,126 in claims were awarded, and the projected amount of claims to be issued in Fiscal Year 1990 is \$1,327,500. The Crime Victims Compensation Board is projected to receive approximately 970 claims this year, compared to 555 claims received in Fiscal Year 1989. The Crime Victims' Assistance Fund provided 34 victim service organizations with a total of \$333,424 in grant funds. Also, the Office of Attorney General now has a statewide Victims' Rights Coordinator and a toll-free

hotline number, 1-800-828-9745, to assist crime victims with information.

My Victims' Rights Task Force continues to look at the continuing needs of crime victims. This morning, there will be several bills heard concerning domestic violence victims, crime reporting procedures for law enforcement agencies, and changes in the Crime Victims Compensation Board statute. Each one of these changes was considered by the Task Force as necessary for crime victims:

A number of crime victim organizations provide crisis counseling to ease the trauma of victimization. Counseling is necessary for crime victims, as well as their families. Along with the recommendation of the Task Force members and former President Reagan's Task Force on Victims of Crime, privileged communications are needed for victims seeking counseling. This provision would come under the Victim/Counselor Confidentiality Act, Senate Bill 673.

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 the crime of criminal trespassing. This is in Senate Bill 680 and 682.

Changes in the crimes being reported by law enforcement agencies is also recommended. If all incidents of misdemeanors and felonies were included, a clearer number of

crimes reported in Kansas would be achieved. This is in Senate Bill 681.

Senate Bill 674 deletes the domestic violence exclusion now in existence. This is not only being mandated by the federal Victims of Crime Office from which the Crime Victims Compensation Board receives funds, but also because all victims of violent crime should be included to receive compensation, whether or not a member of the family was the offender. The projected loss of federal funds for Fiscal Year 1991 if we do not delete this exclusion would be approximately \$141,000; and for Fiscal Year 1992, \$490,000. The federal funds are based on 40% of state monies paid out for claims during the federal fiscal year -- October 1 through September 30. Compliance must be met by October 1, 1990, in order for Kansas to continue to receive federal funds.

Today you will hear from members of my Task Force who work with crime victims. They are Alita Brown, Director of Kansas Coalition Against Sexual and Domestic Violence, Pittsburg; Susan Moran, Director of S.O.S., Inc., Emporia; Kris Wilshusen, Director of Wichita Area Sexual Assault Center; and Dorthy Miller, Director of Safehouse, Pittsburg. Also, present are two victims who will testify: Christine Vilella and Anna Forbes, both from the Pittsburg area. I ask you to support the passage of these bills. Thank you.

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE
P.O. Box 1341 Pittsburg, KS 66762
(316) 232-2757

Good morning, 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 on behalf of the coalition for taking the time today to hear this testimony. As many of you already know, the coalition is composed of programs all across Kansas that serve the needs of victims of sexual and domestic violence. We support mandatory reporting of crimes, especially domestic violence.

Research suggests that domestic violence results in more injuries that require medical treatment than rape, auto accidents, and muggings combined. National Crime Survey data show that once a woman is victimized by domestic violence, she is highly at risk for being victimized again. 95% of victims of domestic violence. FBI data indicates that 30% of female homicide is by male partners. A Police Foundation study showed that in 85 to 90% of partner homicides, police had been called to the home at least once during the two years previous to the incident; in more than half of these cases they had been called five times or more.

Those of us who work in this field understand that domestic violence is a cycle that increases in frequency and intensity. Without intervention it is lethal. four women per day die at the hands of their abusers. Each act of violence is a crime. Each act of violence accelerates the cycle. Each act of violence is a predictor of the violence to follow. In the last ten years many of our programs have quadrupled the number of victims served. Is this due to women knowing about and using our facilities more readily? Or is it an indicator of an epidemic that is not being adequately recorded and mapped by other services? We support mandatory reporting and believe that it will provide all of us with vital information for developing services and intervening in violent situations.



STATE OF KANSAS

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TESTIMONY OF
DIRECTOR BETTY BOMAR, CRIME VICTIMS COMPENSATION BOARD
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY COMMITTEE
FEBRUARY 20, 1990
RE: SENATE BILL 674

Mr. Chairman and Members of the Committee:

I am Betty Bomar, Director of the Crime Victims Compensation Board and appear this morning on behalf of the Board relative to its request for an amendment to the Compensation Act as reflected in Senate Bill 674. This amendment has been unanimously endorsed by the Victims' Rights Task Force.

Senate Bill 674 deletes the "family exclusion" provision and insures that the State of Kansas maintains its eligibility for federal funds under the Victims of Crime Act of 1984 and as amended in 1988.

The Victims of Crime Act is now requiring that compensation programs must offer the same kind and levels of benefits to victims of domestic violence as it does to other victims. The same eligibility requirements applied to other victims must be used in evaluating domestic violence claims, and no special requirements not applicable to other victims can be used to deny compensation to domestic violence

victims. Denials cannot be based solely on family / relationship and the fact that the victim and offender share a residence, either at the time of the crime or the award. Denial can be based, however, on a determination that the offender will be unjustly enriched. The determination of what constitutes unjust enrichment must be arrived at through rules and regulations, policy guidelines or a general statement.

It is the Victim of Crime's contention that with the "family exclusion" included in the Act, there appears that a certain class of victim is categorically denied compensation. Reliance on "interest of justice" as provided in the present Kansas statute provides no assurance that the waiver will be used for domestic violence victims, or guidance as to circumstances in which it can be used.

The federal guidelines (a copy is attached for your information) were not published in the Federal Register until May 18, 1989. Until that time, we were of the opinion that the provision "interest of justice" would be adequate to insure that Kansas would maintain its eligibility relative to the domestic violence requirement. However, when the federal guidelines were published, we found that it was necessary to ask for the amendment reflected on page 1, lines 22 through 27.

It should further be pointed out that all claimants must continue to report the incident to law enforcement officials within 72 hours and further that they must cooperate with law

enforcement officials. This continues to apply to victims of domestic violence.

The projected loss of federal funds for Fiscal Year 1991 if we do not delete this exclusion would be approximately \$141,000; and for Fiscal Year 1992, \$490,000. The federal funds are based on 40% of state monies paid out for claims during the federal fiscal year -- October 1 through September 30. Compliance must be met by October 1, 1990, in order for Kansas to continue to receive federal funds.

The fiscal impact of this amendment would certainly be less than what we would be losing in federal monies.

Thank you for your consideration of the Board's request. I will be glad to answer any of your questions.

II. Program Requirements for Grants

In order to be eligible for awards under the Act, a State must submit the following information and assurances:

(1) A statement certified by the chief executive of the State, State Attorney General, or the Secretary of State, of the total amount of payments made to victims during the preceding fiscal year from State sources.

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program;

(4) A certified copy of the State statute or other legal authority establishing the program.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to eyeglasses, corrective lenses, dental devices, and prosthetic devices.

Therefore, a State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

The requested information and assurances must be provided annually when the applicant State agency furnishes the Office for Victims of Crime with the total amount of payments to victims of criminal violence for the year requested.

III. State Grant Eligibility Requirements

State crime victims compensation programs which apply for a grant under the provisions of the Victims of Crime Act, as amended, must provide assurances of compliance with the requirements of section 1403(b) of the Act and these Guidelines. The definitions of terms used in section 1403(b) appear in section 1403(d): (New statutory language, from the 1988 amendments to the Victims of Crime Act, is italicized.)

(1) the term "property damage" does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) The term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses and other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes driving while intoxicated and domestic violence; and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

A State crime victim compensation program is eligible for a grant upon providing the necessary assurances, described in these guidelines, and documentation of compliance with the eight eligibility requirements in section 1403(b). The requirements are provided below with a discussion of each. New requirements, added by the 1988 amendments, are underlined and must be met by October 1, 1990.

Eligibility Requirements:

1. Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime.

Discussion: The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

The 1988 amendments require, as a new condition of eligibility, effective October 1, 1990, that a State must specifically include two categories of crime victims to those eligible for crime victims compensation. These two categories are victims of drunk driving

and domestic violence. Exclusion of victims in these two categories will not be allowable in FY 1991. Victims of drunk driving and domestic violence, including spouse abuse, child abuse, and elder abuse, must be considered for crime victims compensation on the same basis or criteria as other victims of criminal violence.

Some States include the two categories of victims identified above as eligible applicants for compensation but within one or both of the categories the State statute provides specific exceptions, conditions, or limitations which serve to eliminate some victims of drunk driving and domestic violence from compensation awards. Some of the exceptions are indicated below:

- Payments of some but not all compensable expenses available to other victims;
- Denial of compensation to relatives of the perpetrator;
- Denial of compensation to victims living with the perpetrator;
- Requiring, in all drunk driving cases, that a conviction of the offender precede the awarding of compensation.

This short list is not exhaustive. It only serves to identify *some* of the exceptions. The exceptions, or any other specific exceptions, which have the effect of establishing a categorical exclusion for the two types of victims specifically mentioned in the amendments (domestic violence and drunk driving) will not be allowable effective October 1, 1990.

This does not mean that State discretion in determining whether to make an award, has been eliminated. It only means that a denial of compensation to any victim of drunk driving or domestic violence cannot be made solely on the basis of the type of crime, the category of benefits requested, the living arrangement of the offender and victim, or the fact that victim and perpetrator are related.

Domestic Violence

In considering awards of compensation to victims of domestic violence, States should apply the same standards that are applied to claims from victims of other violent crimes, regardless of the familial relationship of the offender and the victim or the fact that they share a residence. This means that the same level of benefits available to other victims should be available to domestic violence victims, and that the same eligibility requirements, such as timely reporting and cooperation with law enforcement, shall apply.

Subsection 1403(b)(7), another new provision of the Act effective October 1,

1990, prohibits State programs from denying compensation because of the living arrangements of victim and perpetrator: "Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residency by the victim and the offender. . . ." This means that unjust enrichment, as the basis for denying crime victims compensation must be based upon written rules issued by the State crime victims compensation program. Such rules cannot have the effect of denying most domestic violence victims of compensation. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases may have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the States should consider the following:

A. Legal responsibilities of the offender to the victim under the laws of the state, and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable. For example, when the offender refuses to or cannot pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e. insurance) reimbursements.

B. The extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members. Payments to victims of domestic violence which benefit

offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant.

C. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims, is again encouraged.

Drunk Driving

Victims of drunk driving is the second category of victims specifically named in the 1988 amendment to section 1403(b)(1). Effective October 1, 1990, State programs will be required to offer compensation to victims and survivors of victims of "drunk driving."

Section 1403(d) defines the term "compensable crime" to include victims of those "driving while intoxicated." In these Guidelines, the Office for Victims of Crime does not make a distinction between the terms "drunk driving" and "driving while intoxicated." By using both terms in the amendments to section 1403 of the Victims of Crime Act, Congress signaled its interest in the inclusion of victims of drunk driving and driving under the influence of other intoxicants. States use these two terms, and others, in their statutes to denote offenses associated with the operation of a motor vehicle while chemically impaired. In addition, the specific classification of offenses is contingent upon the results of appropriate tests to determine intoxication or the influence of drugs or alcohol.

In FY 1991, States will be required to offer crime victims compensation to victims and survivors of victims of vehicular crashes attributable to drunk or intoxicated driving. Consistent with the practice of awarding compensation to all other victims of criminal violence on the basis of a law enforcement officer's investigation report establishing the commission of a crime, victims of drunk driving crashes should be considered for compensation on the same basis. It is acknowledged that occasionally a police report may not be sufficient to establish that a crime took place. With drunk driving cases, as with other cases, individual decisions will have to be made on the basis of available documentation.

2. Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

Discussion: This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

3. Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation:

Discussion: The Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3).

The non-supplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. More specifically, the States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

4. Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State:

Discussion: This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other States, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

5. Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes:

Discussion: This does not constitute a new eligibility requirement, rather it is a rewording of the requirement in a

Senate Judiciary Committee

Testimony of Christine Vilela

725 W. 3rd St.

Pittsburg, Kansas 66762

February 20, 1990

My name is Christine Vilela and I am from Pittsburg, Kansas. My testimony is in reference to Senate Bill 682. When I left my abusive husband 2 years ago, something inside of me knew it was for the last time. Emotionally, I was as prepared for it as one can be under the circumstances. My dependence on him had become almost insurmountable. The problems that lay before me were:

1. I needed to remove Randy from my home-to establish support and to file a Protection From Abuse order.
2. I needed a job to support myself.
3. I needed a car to get to a job.
4. I needed money to buy a car and pay for legal services.

Safehouse introduced me to the PFA, and it enabled me to get all of the above. To me it was a Godsend and because of it I finally knew I could do it and would never have to go back to him. I think for the first time I was aware of the terrific impact these physical difficulties had on me leaving him.

The PFA was filed within a couple of days. I was granted child support, a car (owned by Randy) and the home. Visitation was set up by mutual agreement, and he was restrained from being around me. That was 2 years ago in April. Randy was served

papers to move out of the house. He simply never did. Since that time Randy has paid child support only five times. I took this to the Child Support Office, they suggested I go to the welfare office and get assistance until they could collect from Randy. I am still on welfare. They are just now making some progress, I received the car granted to me in December. To this day I have not received the title for it. My attorney is looking into this for me and hopefully it will be resolved soon.

Randy has not followed the situation set up at all. He sees his daughter less than once every 2 months.

Randy has broken into my home twice. On both occasions I called the police. I reported that I have a PFA order and both times I was told I would need a lawyer to fight Randy's continual harassment and to get the damages fixed in my home. Both times Randy was still present when the police arrived, yet no arrest was made, and I have had to go back to Safehouse due to this. I did get an attorney at my expense. We went to court and we won both times. However, the process took approximately and cost me \$250.00. During that time I lived in a house with a broken door and felt unsafe. I am a Junior at PSU, on welfare, and trying to set up a new life for myself. The facts are Randy did not follow the procedures of the PFA. The fact is I had to get a lawyer for my protection, and so far it has cost me 2 years, alot of doing without and \$250.00. It is my opinion that the most damaging thing that happened by Randy getting away without following the PFA procedures was that he knew he was getting away with it. By not doing anything about it the law told him it was ok. This

made me his victim again. Had he been arrested the first time, I believe I would not be on welfare today. I believe I would have a legal car, he would follow the visitation rules as they were set up and my daughter would not feel as rejected as she does today. I believe that he would not have broken into my house the 2nd time. I urge you to strengthen the Protection From Abuse Order so it can do what it was intended to: that is, protect victims from this type of abuse. Thank you.

Senate Judiciary Committee

Testimony of Anna Forbes

505 W. 8th St.

Pittsburg, Kansas 66762

February 20, 1990

My name is Anna Forbes. I am here to testify for the Senate Bill 682. I have been a victim of abuse for 7 years. I have been totally separated from my abuser since October 1989.

I have a PFA that became effective November 1, 1989. The first time my abuser broke the court order I pressed criminal trespassing charges, so he was arrested. The Judge asked him over the phone if he promised not to go back to my house, he said 'yes', so he was released. My 3 children and I had to go into Safehouse until he calmed down and I felt I was safe.

The second time he broke the PFA 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. He then became the victim of abuse, when he was 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 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?



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



SOS

P.O. Box 1191
Emporia, KS 66801

Senate Judiciary Committee
State Capital
Topeka, KS. 66612

February 19, 1990

Thank you for the opportunity to speak on behalf of the victims we serve. I am the director of S.O.S., Inc. of Emporia. Since 1976 we have provided services to victims of sexual and domestic violence. It has become increasingly apparent that a key element in finding solutions to the problem of family violence begin with the involvement of the criminal justice system. A uniform system for reporting incidents, including domestic violence, is but one small step in recognizing the rights of the victims we serve.

Too often, after escalating acts of violence, a woman is seriously injured or killed and the judicial system becomes involved. A "paper trail" is, for the most part, non-existent. The five to ten times law enforcement was called prior to a felony charge were never recorded.

It is imperative that our society begin to recognize the magnitude of domestic violence. A permanent record of all incidents is but one small piece of the puzzle. These records have the potential to add volumes to the current research on the cycle of violence.

Again, I urge you to consider this small but extremely important piece of legislation.

Sincerely,

Susan K. Moran
Exec. Dir.



Senate Judiciary Committee

Testimony of Dorthy Miller

Box 313

Pittsburg, Kansas 66762

February 20, 1990

Committee Members:

I am Dorthy Miller, and I am here today to provide testimony in reference to 2 Bills before you: Senate Bill 673, which is in reference to privileged information, and Senate Bill 682, which is in referenced to 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, privileged information. The need for this became very apparent to me approximately 6 months ago when a Sheriff from one of the counties we serve called me and demanded information concerning a prior domestic violence victim I worked with. When I explained I could not provide that information, he assured me I would when subpoenaed to court. This created quite a dilemma for me because, first of all, I felt the need to honor the victim's right and need for privacy and confidentiality. Secondly, our Agency receives Victim of Crime Assistance monies. To receive these monies we have to sign an agreement assuring that we will maintain confidentiality and not provide information for the legal process (see enclosure). I certainly did not want to be

held in contempt of court, nor go back on my word to the victim or grantor. Fortunately, in this case, the subpoena never materialized. Unfortunately, with other cases, subpoenas have materialized. Both the Topeka and Lawrence programs recently had crisis counselors subpoenaed to court, though they were not called to testify. It is only a matter of time before this real dilemma creates a significant problem for someone.

The advantage of having privileged information is that it allows the victim, who generally feels powerless and has difficulty trusting anyone, to determine whether or not that confidential information remains confidential. It also allows the counselor to maintain the bond with the victim since that trust is not broken.

Another advantage of having privileged information is that it would enable agencies to maintain more necessary information in the victims' file and therefore, better serve the victims needs. Right now, the fear of being subpoenaed into court is so great across the state that very little information concerning the victim is filed. As more and more victims are being served, it would be beneficial to be able to refer back to the individual's file for pertinent information which is often now missing. I, therefore, encourage the passage of this bill.

The other bill I want to address is Senate Bill 682, concerning the Protection From Abuse Orders. 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 as SAFEHOUSE. I have enclosed a chart which 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 Bill to clarify arrest when violated and adding a compensation clause is necessary.

Although I have reviewed this Bill and the weaknesses in the PFA Order from an agency perspective, I believe the primary

reason to strengthen the PFA is to give the victims the protection they deserve.

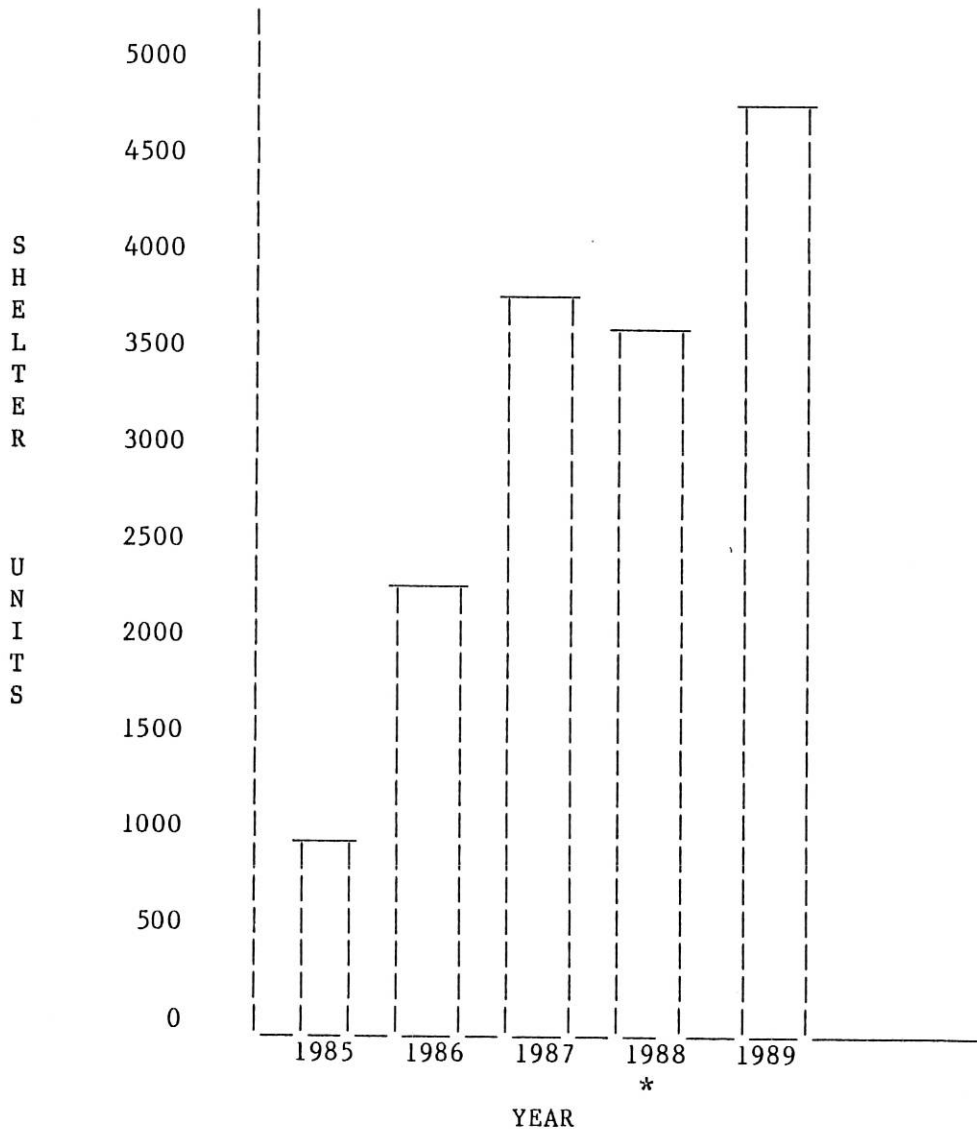
Thank you for your consideration of my remarks. If I can be of further assistance or provide further information, please contact me.

Sincerely,

Dorothy Miller, Director

SAFEHOUSE, INCORPORATED

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.

- b. Type of program (rape crisis center - nonmedical; rape treatment center - medical; domestic violence shelter; domestic violence project - non shelter; victim services - law enforcement; victim witness - prosecutor; victim assistance - community).
- c. Summary project statement (purpose, goals, objectives).
- d. Amount and each source of funding for the project.
- e. Victim statistics (total number of victims served by the project; by type of crime; by type of provided services; by criminal justice status; e.g. reporting or non - reporting, prosecution or non - prosecution).
- f. Staff information (number of hours contributed to project by paid and volunteer professional and clerical staff; interns; number of hours of training received by staff by type of training).
- g. Project information and activities (number of referrals to the project by type of source; number of referrals to other agencies by type of agency; number of hours of presented training by type of training and type of audience; number of hours of presented public information and education programs).
- h. Changes made in the project since receiving the funds.
- i. A short description of how the funded project has coordinated its activities with other service providers in the community.
- k. A short description of how the funded project has assisted the crime victims in seeking available crime victim compensation benefits.

VIII CONFIDENTIALITY OF INFORMATION

The Grantee agency shall not use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than for which the information was obtained. The information must not be used in the legal process. The information must not, without the consent of the person furnishing it, be admitted as evidence or used in any action, suit, or other judicial, legislative, or administrative proceeding.

IX CIVIL RIGHTS

The Act provides that no person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in any activity receiving funds on the basis of race, color, religion, national origin, handicapp, or sex.

Testimony of the Kansas Association of Criminal Defense Lawyers Regarding Senate Bill 673 relating to certain victims of crime and relating to confidentiality of communications with counselors.

This Committee should seriously consider the impact of this bill. A study of its provisions has led this organization to suggest that:

I. The bill may be unconstitutional,

II. The bill is unnecessary, and

III. The bill is unwise.

I. SB 673 is unconstitutional in that it violates an accused's right to due process of law.

The United States Supreme Court, in Pennsylvania v. Ritchie, 107 S.Ct. 989 (1987), held that it was unconstitutional to prohibit one accused of a felony from seeking access to records which may contain exculpatory information. In that case the accused sought to obtain records of a child protective agency concerning the incident from which the charges arose and records of previous reports of abuse. The Pennsylvania Supreme Court held the privilege to unconstitutionally infringe the accused's right to compulsory process and confrontation. The U.S. Supreme Court, using the Due Process Clause of the Fourteenth Amendment, narrowed the holding of the state court, but affirmed that the complete denial of the right to seek such information would clearly violate an accused's right to a fair trial.

This bill would confer an extremely broad privilege on one who has claimed to have been a victim of either sexual assault or family violence. Neither the prosecution nor counsel for the accused could ask the alleged victim if he/she had counseled with anyone regarding this incident in order to obtain either consistent or inconsistent statements traditionally used to test credibility.

In the case of a child victim the bill further complicates matters for both the prosecution and the defense when the provisions of K.S.A. 60-460 (dd) are invoked. Under Coy v. Iowa, 487 U.S. ____, 101 L.Ed.2d 857, 108 S.Ct. 2798 (1988) and State v. Eaton, 244 Kan. 370 (1989) the testimony of a counselor is often a necessary element to the issues precedent to permitting the use of the 60-460(dd) hearsay exception. This overbroad bill could tie the hands of a prosecutor or it could result in the denial of the accused's right to present evidence in opposition of the 60-460(dd) motion. That denial itself could result in the dismissal of the case.

II. The adoption of SB 673 is unnecessary as present statutes provide sufficient protections to the confidentiality of the alleged victim.

Kansas statutes provide for privileges between physician-patient, K.S.A. 60-427; psychologist-client, K.S.A. 1989 Supp. 74-5323; and social worker-client, K.S.A. 1989 Supp. 75-5360.

These statutes, along with the privileges given to those in alcohol treatment (K.S.A. 65-4050); drug treatment (K.S.A. 65-5225); and mental health counseling (K.S.A. 59-2931), and other treatment (K.S.A. 65-5601 et. seq.) provide wide-ranging protection to alleged victims while considering the rights of others who may be affected by the privilege.

III. The adoption of SB 673 is unwise from a public policy standpoint.

A. The bill as introduced is far too broad. The privilege granted is broader than either the physician-patient privilege, the psychologist-client privilege which is co-extensive with the attorney-client privilege, or the social worker-client privilege. In fact, the bill presently is broader than the clergy-penitent privilege. This bill would even prohibit the "victim counselor" from disclosing a stated intent of the "victim" to commit a crime in the future, including the intention to commit perjury in the prosecution.

B. The bill grants a greater privilege to "victim counselors" who are far less qualified to give "treatment" than the others protected by existing privilege laws. The corollary is that this bill appears to shield less qualified "counselors" to a greater degree than it gives the highly educated and licensed. Great thought was given the rules of evidence which provided a complete privilege to the physician-patient relationship, but, because of the significant impact on others charged with felonies, the privilege was waived to protect the interests of the state and an accused. The other privilege acts recognize responsibilities to society in limited circumstances, and they clearly state those reasons as exceptions to the privilege. They must report patients who state the intent to commit crimes, and they are required to testify upon an order of a court. Under this bill the "victim counselor" has no such responsibility.

C. The bill presents the potential for abuse of the privilege.

For example, the "victim counselor" may be present when the "victim" is interviewed by the police. An argument could be made that the policeman is the "third party who is necessary to facilitate communication. . ." referenced in Sec. 2(a). An aggressive prosecutor could possibly claim that the statement made by the "victim" was therefore not discoverable upon the testimony of the "victim."

Another example may be that the "victim" may authorize the "victim counselor" to discuss her case or provide records to the prosecutor, but forbid it to be given to the defendant's

lawyer. Since the bill does not provide for waiver of the privilege, the prosecution could utilize this information to develop further evidence while denying the defendant that same right or the right to challenge the accuracy of the information through investigation.

D. The bill, as drafted, could effectively take control of the prosecution from the prosecutor. If the victim refuses to waive the "victim counselor privilege, the prosecutor loses significant control. The result could be the dismissal of prosecutions where the prosecutor cannot disclose exculpatory evidence or the defendant is judged to have his/her right to confrontation denied by the "victim's" refusal to answer questions concerning prior statements about the events which form the basis of the charge.

SELECTED PRIVILEGE STATUTES

60-427. Physician-patient privilege. (a) [definition section.]
. . .(b) Except as provided by subsections (c), (d), (e) and (f) of this section, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that (1) the communication was a confidential communication between patient and physician, and (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (3) the witness (i) is the holder of the privilege or (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as a result of an intentional breach of the physician's duty of nondisclosure by the physician or his or her agent or servant and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for him or her.

(c) Exceptions for mental illness commitments, recovery of damages resulting from felony by patient, will contests, and other estate disputes.

(d) Exception/waiver when patient places condition in issue in suit.

(e) Exception for information required to be reported to a public official by physician.

(f) Exception when judge finds services of physician sought to aid commission of crime or avoidance of punishment.

(g) Waiver by intentional disclosure when patient causes physician to testify regarding communication or part thereof.

Psychologists

74-5323. Privileged communication. The confidential relations and communications between a licensed psychologist and the psychologist's client are placed on the same basis as provided by law for those between an attorney and the attorney's client. Nothing in this act shall be construed to require such privileged communications to be disclosed.

60-426. Lawyer-client privilege. (a) General rule. Subject to K.S.A. 60-437 [waiver by contract or previous disclosure], and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he or she is the witness to refuse to disclose any such communication, and (2) to prevent his or her lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated by the client, or (iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.

(b) Exceptions. Such privileges shall not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is the attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. . . .

Social Workers

75-5360. Disclosure of information, limitations. (a) No licensed social work associate, licensed baccalaureate social worker, licensed master social worker, person licensed in a social work specialty, secretary, stenographer or clerk of a licensed social

worker or anyone who participates in the delivery of social work services or anyone working under the supervision of a licensed social worker may disclose any information such person may have acquired from persons consulting such person in the person's professional capacity or be compelled to disclose such information except:

(1) With the written consent of the client, or in the case of the death or disability, of the personal representative of the client, other person authorized to sue or the beneficiary of an insurance policy on the client's life, health or physical condition;

(2) that no information shall be treated as privileged and there shall be no privilege created by this act as to any information acquired by a licensed social work associate {etc.} . . . when such information pertains to criminal acts or violations of any law;

(3) when the person is a child under the age of 18 years and the information acquired . . . indicated that the child was the victim . . . of a crime, the [social worker] may be required to testify fully in relation thereto. . . .

(4) when the person waives the privilege by bringing charges against the licensed social worker. . . .

Testimony

by

Kris Wilshusen

Executive Director

Wichita Area Sexual Assault Center

February 20, 1990

In 1989 victim advocates from the Wichita Area Sexual Assault Center supported 181 sexual assault victims through the local hospitals in Wichita. Each time we dealt with a unique victim who found herself in a situation completely different than any other victim. We saw a variety of reactions and coping mechanisms. Yet, these nearly 200 victims shared many things in common. Each was fighting to save her sanity, to regain some sense of normalcy in her life. We saw victims beginning their roads to recovery. And on that road victims move through very similar patterns. The name for this pattern is the rape trauma syndrome.

Immediately after an assault victims are in the acute phase. As noted on the attached page, this phase usually lasts a few days, although it can linger for weeks. At this point victims are in a state of shock - their world has been shattered. Their home or apartment, workplace, church, places that used to be viewed as safe havens are often suspect, and terrifying. Trusted friends may be avoided for fear the victim may be unfairly judged. To begin reducing that vulnerability and insuring the recovery process, a victim must be able to put unqualified trust in someone. And often, that someone is a victim advocate. Someone with whom the victim has no history, but someone who is depended upon to help insure a future.

In the acute phase victims may not be thinking clearly. It may be hard for them to concentrate and they may be unable to recall all the important details. This is often a defense mechanism which helps a person survive one of the most violent, humiliating crimes in our society.

Victims move from the acute phase into the outward adjustment phase. This stage is characterized by denial and change. Victims will deny the aftereffects of the assault. "I'm okay" is a typical statement. Through this denial there are usually many changes made. She or he may change residences, change jobs, change her or his appearance, change friends, change spouses. For some victims this becomes a way of life and the recovery process becomes arrested at this point.

For others the denial creates unmanageable problems. But during this time victims are garnering inner strength to confront troublesome issues. This strength can help a victim face the sleep disturbances, the eating disturbances, the flashbacks. This strength combined with some trusted sources of support can help move the person from the stance of a victim to that of a survivor. And thus, move into the third phase of recovery - resolution.

While I've tried in a few short minutes to summarize their struggle, victims of sexual and domestic violence can take months, years, or a lifetime to recover. Many changes occur as they move through the recovery process. Through these changes acceptance is crucial. A source of support which they can trust to not divulge information or make judgments about disclosures is extremely important.

The assurance of privileged communication to a victim, as well as to the victim advocate, can only enhance the recovery process and the services offered to victims of sexual and domestic violence. Privileged communication could allay many of the fears

victims have in searching out services. At the same time it can allay many of the fears of a victim advocate in rendering crisis counseling.

Sexual and domestic violence victims have had their dignity stripped away. I urge you to help restore some of this dignity by granting privileged communication between victims and crisis counselors. Encourage this recovery process by allowing victims control over what is publicly disclosed.

PSYCHOLOGICAL TRAUMA

Generally speaking, there are three predictable and sequential phases in the normal cycle of emotional responses by victims of attempted or completed rape. These, however, should not be confused with responses of child victims who have been victimized by relatives or other non-violent sex offenders; i.e., some child molesters. Neither should the responses described below be seen as universal ones, as reactions may vary.

I. Stage One/ Acute Phase

Usually 24-48 hours in duration, this stage is one of intense emotional shock for the victim. Though many professionals who might come in contact with her during this stage expect her to be hysterical, her behavior often is not. The range of behavior manifested by this stage should be seen as a continuum that looks like this:



Her behavior may fall anywhere on the continuum. The victim's feelings during this period include shock, anger and disbelief, followed by anxiety and fear.

II. Stage Two/ Outward Adjustment

The duration of this stage varies in accordance with the presence or absence of several factors (e.g. coping mechanisms, support of significant others, etc.) from several weeks to several years. It is a stage during which the victim tends to repress and consciously suppress memories and thoughts of the incident. She may be reluctant to talk about it and may have difficulty recalling the details. She would like to forget the experience or pretend it never happened. Her interest in seeking help may wane as a result. She may resume her normal activities and appear to be adjusting to the assault. However, often during this phase other problems of living may surface and her behavior may cause professionals to doubt her sincerity.

III. Stage Three/ Resolution

Typical of this period may be victim flashbacks of the original rape incident triggered by an isolated incident or accumulated inner anxiety leading the victim to relive the experience. Feelings of guilt and anger are prevalent and need to be resolved by the victim if she is to make a final adjustment to the experience and is to integrate it into her life in some meaningful way.

Reference:

Sutherland, Sandra and Scherl, Donald J., "Crisis Intervention with Victims of Rape", Social Work, January, 1972, pp. 37-42.

October, 1979.

XV 6/6