

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 14, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Karen DiVita-Johnson - Excused  
Representative Judy Morrison - Excused  
Representative Dean Newton - Excused  
Representative Rick Rehorn - Excused  
Representative Candy Ruff - Excused  
Representative Clark Shultz - Excused  
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research  
Jill Wolters, Department of Revisor of Statutes  
Sherman Parks, Department of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Rocky Nichols  
Representative Kathe Lloyd  
Juliene Maska, Victims Right Coordinator, Office of Attorney General  
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence  
Marg Yaroslaski, Crises Center of Dodge City  
Laura Patzner, Family Crisis Center, Great Bend  
Paul Davis, Kansas Bar Association

Hearings on **HB 2730 - protection from stalking act & HB 2732 - protection from abuse act**, were opened.

Representative Kathe Lloyd commented that in **HB 2730** the reference of "dating relationship" was excluded from the bill and requested that it be included. (Attachment 1)

She addressed **HB 2732** in that protection from abuse orders are very important and she has received some information that many are being used as a "leg up" in divorce negotiations. (Attachment 2)

Representative Rocky Nichols appeared in support of both bills. He informed the committee that 30 states already allow victims of abuse who are in a dating relationship to obtain protection from abuse orders. It is estimated at 25% of dating relationships have some type of physical abuse. One in every 12 women are stalked at one point in her life and 25% of them try to obtain restraining orders against their assailant. (Attachment 3)

Juliene Maska, Victims Right Coordinator, Office of Attorney General, addressed **HB 2730** by stating that the proposed bill would make stalking victims feel that they have a civil remedy and that they are safe. She requested an amendment on page 2 in which the judicial council would be the ones to prescribe the orders. (Attachment 4)

Ms. Maska turned her attention to **HB 2732** and informed them that the proposed bill has the same language as last year with new restrictions on the issuance of mutual orders. (Attachment 5)

Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence, commented that stalking behavior is not just a nuisance; it can be lethal. 77% of female victims were stalked by someone they knew. (Attachment 6)

Ms. Barnett commented that **HB 2732** would allow victims to obtain protection orders when they are subject to violence during a dating relationship. She touched on the amendments to the mutual protection orders and stated that the language would clear up the act and require due process for the plaintiff. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 14, 2002 in Room 313-S of the Capitol.

Marg Yaroslaski, Crises Center of Dodge City, & Laura Patzner, Family Crisis Center, Great Bend, relayed stories of people who have come into their offices seeking protection from stalkers and others that were in dating relationships wanting to get protection from abuse orders, but due to the current law, were not able too. (Attachments 8 & 9)

Chairman O'Neal commented that Kansas already has stalking laws and that maybe the prosecutors need to be more diligent in prosecuting these type of cases.

Paul Davis, Kansas Bar Association, appeared in support of what the bill stands for but believe it is a major departure from current law and that it will cause a serious burden on the courts that are already underfunded and over worked. (Attachment 10)

Hearings on HB 2730 & 2732 were closed.

Committee minutes from January 28, 29, February 4 & 5 were distributed.

The meeting adjourned at 6:15 p.m. The next meeting was scheduled for February 18, 2002.

KATHE LLOYD  
417 NORTHRIDGE COURT  
CLAY CENTER, KANSAS 67432  
(785) 632-5989  
FAX 785-632-5989  
Email: lloydsk@kansas.net



TOPEKA  
HOUSE OF  
REPRESENTATIVES

REPRESENTATIVE, SIXTY-FOURTH DISTRICT  
CLAY, DICKINSON, GEARY,  
RILEY COUNTIES

STATE CAPITOL  
ROOM 182-W  
TOPEKA 66614-1504  
(785) 296-7637

COMMITTEE ASSIGNMENTS  
VICE-CHAIR: K-12 EDUCATION  
MEMBER: CORRECTIONS & JUVENILE  
JUSTICE  
JUDICIARY  
PUBLIC SAFETY BUDGET

Testimony in regards to  
HB 2730

Thank you Mr. Chairman for allowing me to talk to the committee today in regards to HB 2730. I will not speak long or eloquently in regards to this legislation. I have attached some information in regards to stalking which I have found interesting and useful.

Present today are people which can address this issue from a professional and personal standing and I want to yield to them.

Kathe Lloyd  
Representative 64<sup>th</sup> District

# Stalking Statistics

*National Sample of 16,000 individuals interviewed through a random telephone survey (Tjaden, P., 1997, Center for Policy Research, Denver, CO)*

- Approximately 1.4 Americans are stalked annually.
- 8% of women and 2% of men have been stalked at some point in their lives. (Lifetime estimates for 8.2 million women and 2 million men)
- Most cases lasted less than one year, but some continued beyond 5 years.
- For female victims, 21% of the stalkers were strangers.
- 87% of stalkers were men/ 13% women.
- Most victims were between the ages of 18 and 29.
- 80% of victims were females/ 20% males.
- 45% of victims were threatened.
- 75% of victims were followed.
- Half of victims filed police reports.
- 25% of victims obtained restraining orders and 80% of these were violated by the stalker.
- 24% of female victims who reported to police had their cases prosecuted. Of these, 54% of the stalkers were convicted.

*Stalking on a College Campus: two samples utilizing written surveys (Fremouw, W., Westrup, D., & Pennypacker, J. 1997, West Virginia University)*

- Between 26.6 and 35.2% of female students have been stalked.
- Between 14.7 and 18.4% of male students have been stalked.
- Female victims relationship to stalkers: 16-18% strangers, 16-18% friends, 16-26% casual date, 40-47% serious date.
- Male victims relationship to stalkers: 17% stranger, 22-43% friend, 17-37% casual date, 24% serious date.

**STALKING** is committed when a person willfully, maliciously, and repeatedly follows or harasses another person.

*\*Harass: to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.*

**AGGRAVATED STALKING**, which is a felony, may be committed in one of two ways:

- a. When the stalker makes a credible threat to cause physical harm or death; or
- b. When the stalker continues after an injunction for protection or any other court imposed prohibition that has been filed for protection.

*\*Credible Threat: A threat made with the intent to cause the person to have reasonable fear for his or her safety. The threat must be against the life of, or to cause bodily injury to that person.*

*Bureau of Justice Assistance Model Codes for Anti-Stalking Legislation*

*Return to Stalking Page*

*Return to Victim Advocacy Center Home Page*



KATHE LLOYD  
 417 NORTHRIDGE COURT  
 CLAY CENTER, KANSAS 67432  
 (785) 632-5989  
 FAX 785-632-5989  
 Email: lloydsk@kansas.net



TOPEKA

HOUSE OF  
 REPRESENTATIVES

Testimony in regards to HB 2732

REPRESENTATIVE, SIXTY-FOURTH DISTRICT  
 CLAY, DICKINSON, GEARY,  
 RILEY COUNTIES

STATE CAPITOL  
 ROOM 182-W

TOPEKA 66614-1504  
 (785) 296-7637

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Thank you Mr. Chairman for holding a hearing today on HB 2732. Last year we looked at this issue and once again, like many bills, it has returned. This year we are asking for this legislation to be amended to include persons involved in "Dating Relationships." As incidences of dating abuse seem to be increasing (or we have better reporting mechanisms) I believe this is an important amendment.

Not included in HB 2732 is an issue brought to me by a constituent this summer. I live in a community of 4500 people; we have a nightly newspaper which reports court filings, etc. This includes protection from abuse orders. Surprisingly, to people that were friends or even acquainted with this man, his name appeared as having a protection from abuse order against him by his wife. People immediately started talking and wondering what had he "Done" to her. They were going through a divorce and her attorney asked her if they had ever had a fight, yelling, etc. Consequently, the PFA was filed under the "potential of fear from bodily injury." This couple has never had an incident of abuse reported or talked about in the community.

His attorney told the man it was too bad they hadn't gotten that filed first because it was used very commonly to get a "leg up" in the negotiation process.

In my opinion this is a misuse of a law put in place to protect people not give a "leg up" in divorce negotiations. I do not know how to fix this and ask the committee to put their collective (brilliant, I might add) minds together and come up with a solution.

Kathe Lloyd

**ROCKY NICHOLS**STATE REPRESENTATIVE  
58TH DISTRICTHOME

2329 S.E. VIRGINIA

TOPEKA, KANSAS 66605-1358

(785) 357-6262

E-MAIL—[rnichols@kscable.com](mailto:rnichols@kscable.com)

Internet Homepage—

<http://www.rockynichols.com>HOUSE OF  
REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

RANKING MEMBER: APPROPRIATIONS COMMITTEE

MEMBER: EDUCATION BUDGET COMMITTEE  
LEGISLATIVE BUDGET COMMITTEE  
KANSAS FILM COMMISSION  
REDISTRICTING COMMITTEEOFFICESTATEHOUSE—284 WEST WING  
TOPEKA, KANSAS 66612-1504  
(785) 296-7651

February 14, 2002

Chairman O'Neil and Members of the House Judiciary Committee:

Thank you for taking the time to hear these two important pieces of legislation, HB 2732, which amends the statute concerning protection from abuse orders, and HB 2730, which creates a new protection from stalking order. These bills are part of the vision of a bi-partisan group of legislators from the House and the Senate who are working to bring positive changes in domestic violence and stalking laws in Kansas.

As members of the House Judiciary Committee, you know that I do not often become directly involved in bills before your committee. These bills are different, because I have a personal passion for the issue of domestic violence. For those of you who do not know, on July 31, 2001, my family suffered the loss of my big sister Risa. Risa was the victim of domestic violence ... a violence that eventually escalated to the point where Risa was taken away from my family. After years of abuse, last summer Risa had finally gotten up the courage to leave her abusive marriage. Risa filed for divorce, got a job, moved out into her own apartment – taking her twin daughters with her. With the help of our local domestic violence shelter, Risa was starting to get her life back in order. But it was just as Risa was getting her life back together that she was killed by her abusive husband, who also took his own life.

I share this personal story with you to help you understand where I am coming from and why making positive, progressive changes in Kansas laws dealing with domestic violence and stalking is so important to me.

**HB 2732 – Strengthening and Expanding Protection from Abuse Orders**

- Allows for persons in dating or intimate relationships to apply for a protection from abuse order. 30 states already allow victims of abuse who are in dating relationships to obtain these protections.
- Amends the statute regarding mutual orders of protection to:
  - Require a petition filed by both parties,
  - Requires reasonable notice to be given by both parties,
  - Amends the statute to require Judges to make a finding of abuse before entering any order against both parties.
- Requires these orders to be entered into the NCIC (National Criminal Information Center) Protection Order File.

Expanding the ability for victims of violence in intimate and dating relationships to obtain protection from abuse orders is important because studies show that the onset of domestic violence often begins during the dating period. In fact, according to the report "Documenting Domestic Violence Among Ethnically Diverse Populations," commissioned by the New Mexico Coalition Against Domestic Violence, for 20% of long-term abusive relationships, the abuse actually began during the dating period. Also, according to two national surveys conducted a decade apart, more than 25% of dating couples surveyed reported experiencing at least one incident of physical aggression during their intimate/dating relationships (Straus MA, Gelles RJ, Steinmetz SK, "Behind Close Doors: Violence in the American Family," 1980; Straus MA, Gelles RJ, "Physical Violence in American Families," 1990). Many studies have also concluded that once domestic violence occurs in a dating or intimate relationship period, the abuse often becomes chronic (Bowker LH, "Beating Wife Beating," 1983; Straus MA, Gelles RJ, Steinmetz SK, "Behind Close Doors: Violence in the American Family," 1980). In 1998, 7.7 per 1,000 women and 1.5 per 1,000 men were victims of violence at the hands of intimate partners. During that same year, 1,830 murders were attributed to intimate partner violence (Rennison, May 2000). Finally, studies have proven that teenage dating violence is unfortunately as prevalent as marital abuse. Over one-third of teenagers in dating relationships have reported being the victim of violence during their dating history – a statistic eerily similar to the rates of spousal violence (Hotaling and Sugarman, "Dating Violence: A Review of Risk Factors").

### **HB 2730 – Creating a new Protection from Stalking Act**

- Gives victims of stalking the ability to obtain a protection order from the stalker. Again, 30 other states currently have some form of a protection from stalking or anti-harassment order.

The statistics about stalking are just as sobering as the studies about domestic violence:

- One in every 12 women is stalked at some point in her life (US Department of Justice reports).
- Each year over 1 million women and 370,000 men are stalked in the United States (US Department of Justice reports).
- 10% of female stalking victims and 12% of male victims are less than 18 years old (US Department of Justice reports). More than 13% of college women in a national survey indicated that they had been the victims of stalking. The average length of the stalking was 60 days (Fisher, 1999).
- 25% of victims of stalking try to obtain restraining orders against their assailant (US Department of Justice reports).

By working together we can prevent as many Kansans as possible from becoming part of these growing and alarming statistics. As Kansas policy makers, we can do much to prevent domestic violence and help the victims of domestic violence. I urge you to take the opportunity presented by these two bills to exercise your roles as policy makers and offer Kansans more protection from the horrors of domestic violence. Obviously, no law is going to bring back my big sister. However, if passing more progressive laws in the area of domestic violence and stalking can help prevent even one more lost life, then we as policy makers have the duty and obligation to pass such laws.

Thank you for taking the time today to hear these important bills. It is now time for Kansas to do its part to help people who are often helpless by joining the other 30 states that have strong protections for victims of domestic violence and stalking.





State of Kansas

## Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: (785) 296-6296

Testimony of  
Juliene Maska, Statewide Victims' Rights Coordinator  
Office of Attorney General Carla J. Stovall  
Before the House Judiciary Committee  
House Bill 2730  
February 14, 2002

Chairperson O'Neil and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall in support of House Bill 2730.

House Bill 2730 would allow victims of stalking to obtain a protection order against the stalker. It is important that victims of stalking have a civil remedy, which is easily accessible, in order to make them feel safe. Currently, 30 states have some form of anti-stalking or anti-harassment order available for victims of stalking.

There is no empirical data available regarding how often the crime of stalking occurs or is reported to any agency. The Kansas Bureau of Investigation (KBI) states that in calendar year 2000, law enforcement agencies reported 230 cases of stalking and in 1999 there were 172.

This order can be obtained pro se and after filing a petition and proper service to the stalker, a hearing is held within 20 days. The stalking victim can obtain an order which prohibits the stalker from contacting the victim or the victim's children by any means. It should be noted that the remedies available in the Protection from Stalking Act are not as broad as what is available in the Protection from Abuse Order as this Act is meant to provide protection from stalking perpetrated by stranger and acquaintance stalkers.

The bill also provides provisions for issuance and enforcement of protection from stalking orders. Violation of a Protection from Stalking Order is subject to criminal penalties under amendments made to Violation of a Protective Order, Criminal Trespass and subject to enhanced penalties under the crime of stalking. The final order can be granted up to one year or upon motion by the plaintiff for an additional year.

The crime of stalking is a difficult one to prove. In many instances the victim is often the one who must prove that the action has taken place. The Attorney General had provided a grant to the

House Judiciary  
Attachment 4  
2-13-02

a number of years ago to develop stalking kits which were provided to law enforcement agencies and victim service providers throughout the state. The kit contains useful tools so that victims could document the stalking behavior. Some of the items in the kit were; a camera, tape recorder, personal door alarm, harassment log, resource directory, etc.

We believe that stalking victims also need a civil remedy to assist them in developing their safety plan and providing them a sense of security. The current system places the burden of documenting and proving stalking on the victim. While we understand that this civil order does not guarantee the stalking behavior will stop, it will let the stalker know that the courts, law enforcement and the community do not tolerate stalking behavior and action will be taken against them if they persist in violation of the order. It may be the only time that someone is telling the stalker to stop his or her behavior and that it is against the law.

We would like to offer an amendment to this bill. It is my understanding that the Judicial Council and not the Supreme Court actually prescribes the forms. The proposed amendment is on page two line one “. . . **which shall be prescribed by the judicial council.**” Attached is a balloon with this amendment change.

I urge the Committee's support for House Bill 2730. Thank you

1 orders, which shall be prescribed by the ~~supreme court~~  
2 (d) Service of process served under this section shall be by personal  
3 service. No docket fee shall be required for proceedings under the pro-  
4 tection from stalking act.

5 (e) The plaintiff's address and telephone number shall not be dis-  
6 closed to the defendant or to the public, but only to authorized court or  
7 law enforcement personnel.

8 New Sec. 5. (a) Within 20 days of the filing of a petition under the  
9 protection from stalking act a hearing shall be held at which the plaintiff  
10 must prove the allegation of stalking by a preponderance of the evidence  
11 and the defendant shall have an opportunity to present evidence on the  
12 defendant's behalf. Upon the filing of the petition, the court shall set the  
13 case for hearing. At the hearing, the court shall advise the parties of the  
14 right to be represented by counsel.

15 (b) Prior to the hearing on the petition and upon a finding of good  
16 cause shown, the court on motion of a party may enter such temporary  
17 relief orders in accordance with section 6 and amendments thereto, or  
18 any combination thereof, as it deems necessary to protect the plaintiff or  
19 minor children from being stalked. Temporary orders may be granted *ex*  
20 *parte*. Immediate and present danger of stalking shall constitute good  
21 cause for the purposes of this section.

22 (c) If a hearing under subsection (a) is continued, the court may make  
23 or extend such temporary orders under subsection (b) as it deems  
24 necessary.

25 New Sec. 6. (a) The court shall be empowered to issue a protection  
26 from stalking order to bring about the cessation of stalking of the plaintiff  
27 or grant any of the following orders:

28 (1) Restraining the defendant from following, harassing, telephoning,  
29 contacting or otherwise communicating with the plaintiff or any minor  
30 children of the plaintiff. Such order shall contain a statement that if such  
31 order is violated such violation may constitute stalking as provided in  
32 K.S.A. 21-3438, and amendments thereto, and violation of a protective  
33 order as provided in K.S.A. 2001 Supp. 21-3843, and amendments  
34 thereto.

35 (2) Restraining the defendant from abusing, molesting or interfering  
36 with the privacy rights of the plaintiff or of any minor children of the  
37 plaintiff. Such order shall contain a statement that if such order is violated,  
38 such violation may constitute stalking as provided in K.S.A. 21-3438, and  
39 amendments thereto, assault as provided in K.S.A. 21-3408, and amend-  
40 ments thereto, battery as provided in K.S.A. 21-3412, and amendments  
41 thereto, and violation of a protective order as provided in K.S.A. 2001  
42 Supp. 21-3843, and amendments thereto.

43 (3) Restraining the defendant from entering upon or in the plaintiff's



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## Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: (785) 296-6296

Testimony of  
Juliene Maska, Statewide Victims' Rights Coordinator  
Office of Attorney General Carla J. Stovall  
Before the House Judiciary Committee  
House Bill 2732  
February 14, 2002

Chairperson O'Neil and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall in support of House Bill 2732.

House Bill 2732 amends the Protection from Abuse Act (PFA). During calendar year 2001, 8,140 protection orders were filed in Kansas. This bill would expand the definition of who could obtain an order, clarifies the issuance of mutual orders and would require that all orders of protection be entered into the National Criminal Information Center (NCIC) Protection Order File.

These amendments would allow persons in a dating relationship to apply for a protection from abuse order. The language used to define dating relationship closely mirrors the federal definition under the Federal Violence Against Women Act which was reauthorized in 2000. Thirty states currently include victims of dating relationships in their protection order laws. Last year this Committee heard and passed the same language that is proposed in the bill.

The bill also requires new restrictions on the issuance of mutual protection orders. Prior to issuing a mutual order both parties must file a petition, provide reasonable notice and the Court must make specific findings of abuse against both parties. The findings must show that both parties acted as aggressors prior to issuing a mutual order. Currently, some jurisdictions in the state, issue only mutual orders. Thirty-five states address the issuance of mutual orders.

Under the full faith and credit provisions of the Federal Violence Against Women Act, mutual orders are not entitled to interstate and tribal enforcement unless each party filed a petition, complaint, or other written pleading seeking a protection order and the court made specific findings that each party was entitled to an order. This bill ensures that mutual orders issued by Kansas courts are entitled to full faith and credit nationwide. House Bill 2732 would allow the court to hear evidence and consider a mutual order based on the facts presented. It is important that both parties are afforded due process rights when these orders are issued.

House Judiciary  
Attachment 5  
2-13-02



House Bill 2732 would also require all orders of protection from abuse to be entered into NCIC. Law enforcement must have the ability to retrieve information about emergency and temporary orders as well as the final order of protection. Too often a victim who seeks relief may go to another part of the state for safety. Requiring these orders to be entered into NCIC is another means in which law enforcement officers can verify the orders. All 105 counties have developed or are in the process of developing the means to enter the PFA orders into the NCIC Protection Order File.

On behalf of Attorney General Carla Stovall, I urge the Committee's support for House Bill 2732. Thank you for your consideration.



UNITED AGAINST VIOLENCE

## KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • [coalition@kcsdv.org](mailto:coalition@kcsdv.org)

### **House Judiciary Committee**

**Re: HB 2730**  
**Contact: Sandy Barnett**

### **Dear Chairman O'Neal and Members of the Committee:**

Under current law, Kansas does not offer victims of stalking this type of protection. Again, general injunctive relief might be available but the process is cumbersome and expensive.

Research by the National Institute of Justice and the Centers for Disease Control and Prevention shows that 1 out of every 12 women will be stalked during her lifetime, 1 out of 45 men will be stalked during his lifetime, 1,006,970 women are stalked annually 370,990 men are stalked annually. In addition the research showed that 94% of stalkers identified by female victims were men, 60% of stalkers identified by male victims were men, and 87% of stalkers overall were men.

A woman can be stalked by someone she knows, by someone she has merely seen around, or by a stranger. The NIJ and CDC research showed that 77% of female victims were stalked by someone they knew; 59% of female victims were stalked by an intimate partner; 64% of male victims were stalked by someone they knew; and 30% of male victims were stalked by an intimate partner. Other survey results may be found at the National Stalking Resource Center website:  
<http://www.ncvc.org/src/statistics/nvawsurvey.htm>

Stalking behavior is not just a nuisance; it can be lethal. Stalking behavior can include repeated telephone calls, unsolicited or undesired gifts, constant following, waiting and watching outside the victim's house, classroom, church, gym, or place of employment, repeated emailing, assault, battery, and murder. In Kansas, a recent case decided by the Kansas Supreme Court highlights the potential lethality of stalking behavior. In *State v. Doyle*, \_\_\_ Kan. \_\_\_ [2002], an elderly widow befriended her neighbor, giving him a key to her house so that he could help with her pet and do other chores while she was traveling. When she later remarried, the defendant began stalking her. The victim expressed concern about the stalking but was told to let it go. One night, the defendant entered her home, beat her new husband to death, and severely injured her, putting her in a nursing home. Perhaps these victims of stalking would have benefited from the Kansas Protection from Stalking Act.

Stalking victims attempt to stop the stalking behavior in a variety of ways. The National Stalking Resource Center, reporting on a study conducted with college students, listed the following actions taken by stalking victims: Avoidance of or attempting to avoid the stalker, confronting the stalker, not acknowledging messages and emails left or sent by the stalker, purchasing caller ID, installing or improving a residential security system, traveling with a companion, seeking a restraining order, filing a grievance with the university, and seeking psychological counseling. It would be wonderful if not answering the door or hanging up the telephone would make the stalker cease the behavior. However, that is not the nature of stalking violence. The Protection from Stalking Act would give stalking victims another option for dealing with the stalking.

**The Kansas Coalition Against Sexual and Domestic Violence urges passage of HB 2730 and the creation of a Protection from Stalking Act.**



UNITED AGAINST VIOLENCE

## **KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE**

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

### **House Judiciary Committee**

**Re: HB 2732**  
**Contact: Sandy Barnett**

### **Dear Chairman O'Neal and Members of the Committee:**

First, these amendments to the PFAA will allow pro se victims to obtain protection orders when they have been subjected to violence during a dating relationship; they need not have lived with the abuser or had a child with the abuser to qualify for relief. Without this protection, victims are forced to resort to obtaining general injunctive relief found in K.S.A. 60-901, et seq. While the Kansas Court of Appeals has indicated that this statutory remedy is available to victims involved in domestic incidents (*Sampel v. Balbernie*, 20 Kan. App. 2d 527 [1995]), it is an expensive and complex process.... one that would be very difficult for most victims to complete pro se or even with the assistance of an attorney. See Carpenter, "Wyandotte-Leavenworth Legal Services Fights Domestic Violence," 65 J. Ks Bar Assoc. 12 (July, 1996). Women who are injured or threatened with injury need fast and immediate access to the system to obtain a protective order. They should not have to wade through a process that is difficult to understand or hard to access. The civil protection order may be one of the most important tools the judicial system offers to protect domestic violence victims from ongoing abuse. P. Finn & S. Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, National Institute of Justice (1990). This critical legal remedy should not be denied to those victims who have not lived with or had a child with their abuser, or to those victims who cannot afford or cannot find an attorney who will quickly file a petition for general injunctive relief.

Second, KCSDV supports the addition of K.S.A. 60-3107(a)(10) to the PFAA. This "catch-all" provision would allow courts to order additional provisions specific to that victim's situation. For example, some battered immigrants are abused and controlled by the perpetrator's threats to their immigration status. Studies have indicated that in these types of situations when an abuser threatens immigration status or family members back in the woman's country of origin, the threats represent an increase in the lethality of the abuse and are an integral part of the abuse. These same abusers refuse to turn over important immigration documents that would allow a battered immigrant to self-petition to adjust her immigration status under the federal Violence Against Women Act. With this amendment, the courts could order, as part of the PFA order, that abusers turn over these important immigration documents and/or refrain from further abusing the victim through threats of violence toward members of her family and through threats to her immigration status.



Third, some courts are issuing mutual orders of protection as a matter of course. The suggested amendments to K.S.A. 60-3107(b) and throughout the PFAA would not only require due process for the original plaintiff, but would also clear up language throughout the Act that makes mutual orders of protection appear to be a standard option. In effect, by adding K.S.A. 60-3107(b), if the original respondent believes he should also have a protection order, he must file a petition, have it served, and provide proof, just as the original petitioner has done and must do. The court then must make findings of abuse against both parties before issuing a mutual protection order. Programs tell us that many battered women walk into a hearing for a final protection order unaware that they may have to defend against a counter petition. In addition, mutual orders are often issued without a finding of abuse against the petitioner.

By eliminating some of the problems with mutual orders of protection, KCSDV also believes this amendment will improve the portability of Kansas protective orders in light of the full faith and credit provisions of the federal Violence Against Women Act. The federal Violence Against Women Act states that "A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such order." 18 U.S.C. §2265(c). Mutual orders issued as a matter of course cloud the question of enforcement when a battered woman takes the order with her to another state. By requiring due process, any mutual order issued in Kansas would be enforceable by another State or Indian tribe without law enforcement officers having to unnecessarily review the order to see if it meets the requirements of the federal laws.

Fourth, K.S.A. 2001 Supp. 60-3112 addressing entry of orders into the NCIC protection order database is both a clean-up amendment and an expansion. The current new statute as enacted is unclear. This amendment would make the language cleaner and would assure that all protection orders issued under the Protection for Abuse Act are entered into the NCIC protection order database.

**KCSDV urges you to favorably report HB 2732.**

# Crisis Center of Dodge City

*Services for Victims of Sexual and Domestic Violence*

*In Ness, Hodgeman, Edwards, Ford, Clark, Meade, and Gray Counties*

P.O. Box 1173  
Dodge City KS

Office: (620) 225-6987  
Fax: (620) 225-3522

## House Judiciary Committee

RE: HB 2730  
Contact: Marg Yaroslaski, Executive Director

Dear Chairman O'Neal and Members of the Judiciary Committee:

A young woman came into my office a few months ago – she needed my help. 1 year ago she had started dating a man. They dated for six months. They never moved in together, they never had a child. She broke off the relationship when she became concerned about his temper. She moved on with her life – he did not. Now whenever she looks around he is there. He comes to her work place, he comes to her home, he comes to the places where she is relaxing with friends. He always manages to have an excuse that partially explains his presence. She wears her blue dress to work and she gets a message on her answering machine about how glad he is that she remembers his favorite color is blue. The gestures he makes seem innocent – the flowers, the cards, the phone messages. It is hard to explain to law enforcement officers how his constant presence is frightening. It is hard for her to prove the tangible threat she feels. She has been told by law enforcement there is nothing they can do- he hasn't hit her or threatened her directly. They sent her to the Crisis Center. She wants me to send him a message that he needs to leave her alone.

My hands are tied – they never lived together, they do not have a child together. I cannot help her file for a PFA. So instead I talk with her about safety plans, changing her phone number, getting caller ID, keeping a log of the times he contacts her. These things might help her be a little safer and they might someday help demonstrate a pattern that allows the police to act. They give her no peace of mind or sense of safety. She wants him to be told to leave her alone – she wants us to help her before she is physically harmed. I promise to stay in touch and ask her to keep me informed. She leaves feeling more alone and more frightened – now truly no one can help her.

So I sit before you and ask you to help me help her. Every week people approach us asking for our help with stalking cases. We take court orders very seriously. The judges we work with take court orders very seriously. We respect their power and appreciate their full value. The protection from stalking act is not a tool we would use lightly or without full consideration of all options. House Bill 2732 will not fix all problems, but it is certainly a critical step in providing protection for women in great jeopardy. I urge you to support its passage.

# FAMILY CRISIS CENTER, INC.

*Services for victims of  
Domestic violence and sexual assault*

P.O. Box 1543  
Great Bend, Kansas 67530

Office: 620-793-1965  
Fax: 620-793-1964

House Judiciary Committee

Re: HB 2732  
Contact: Laura Patzner

Dear Chairman O'Neal and Members of the Committee:

I would like to share two cases with you to illustrate the need for these changes in the PFA statute. Amy, a 17-year old female, dated an 18-year old classmate. They began dating and then his behavior turned extremely controlling: not allowing her to go out with friends, telling her what to wear, and had to check-in with him. Amy then began to question the relationship. At that point, he became physically abusive: shoving and pushing her around. She disclosed the abuse to her parents and the entire family contacted The Family Crisis Center in Barton County. Services were provided, but Amy was not eligible for a PFA because they had never lived together. The young man made contact with her and through manipulation and coercion, was successful in getting back with her. This time the abuse was much worse and included punching and strangling her. In her attempt to leave him, he forced her inside his apartment and attempted to rape her. If Amy could have obtained a PFA, there may have been a course of action that could have prevented him from further abusing her.

The second scenario that I would like to share with you today is about a woman who sought shelter with her 18-month old son after being punched in the face by her husband. With the assistance of staff, the woman (Susie) obtained a PFA. At the final hearing, the judge asked Susie if she still wanted the restraining order and if so, why. With her eye still discolored, she told the judge about the abuse and that she was still fearful. The judge said, "You both stay away from each other" and ordered a mutual PFA. After the hearing she asked me what she had done wrong and if her behavior had caused him to hit her. A mutual order gives the impression that both parties are at fault, and with no factual basis gives a strong message to victims that they are responsible for their abuser's behaviors.

I urge you to strongly support HB 2732.



**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
www.ksbar.org

**LEGISLATIVE TESTIMONY**

February 14, 2002

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE  
HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, LEGISLATIVE COUNSEL

RE: HOUSE BILLS 2730 AND 2732

Chairman O'Neal and Members of the Committee:

My name is Paul Davis and I appear today on behalf of the Kansas Bar Association. The KBA understands and appreciates the impetus for the legislation that is before you today. However, we are concerned with a number of provisions, most specifically the definitional sections, that are provided in these two bills. As you may be aware, the KBA voiced concern with this legislation when it was considered last session and when the Senate Judiciary Committee held hearings on the Senate companion bills last week.

Let me first discuss House Bill 2732. When the protection from abuse statutes were originally enacted, the legislature restricted their application to persons who are married, who are living together or who have a child together. You did this because the close personal relationship that exists in these circumstances frequently causes the parties to have regular contact with each other. Because of the continuing need for contact between these persons, criminal prosecution may not be practical. We believe this represents wisely crafted public policy.

The bills before you today propose a significant expansion of the current law regarding protection from abuse orders. Under the proposed legislation, a new class of persons would be able to obtain a protection from abuse order. We believe that the legislature should proceed very cautiously regarding these proposals.

Our concerns with the bills are twofold. First, seasoned family law practitioners and many judges will tell you that the protection from abuse



procedure is widely abused. As Ron Nelson, the Past President of the Kansas Bar Association Family Law Section told the Senate Judiciary Committee last week, “a significant minority of people who file petitions for protection from abuse under the current statute have other motivations than protection of themselves from physical or emotional abuse.” Protection from abuse orders are frequently used to gain advantage in divorce and child custody cases. Because of the strength of this law, and its potential for misuse itself, there is a need for balance in considering any changes to the law or expansion of the people it protects.

Unfortunately, we are here today because many victims of domestic violence are unable to obtain the type protection they need from law enforcement. All the acts that are sought to be addressed by this legislation as to people who have been in a “dating relationship” are covered by existing criminal laws. Undesirable touching, threatened or actual injury to another is covered by assault or battery laws. Sexual contact with a minor is covered by statutory rape, indecent exposure and indecent liberties laws.

The other major concern we have with this legislation is the burden that it places on the judicial system. There are thousands of protection from abuse orders that are filed every year. We are now proposing to significantly expand the eligibility to obtain a protection from abuse order. Will there be additional resources provided to the court system to deal with this? Not likely. We are probably here today because of an underfunded, overburdened judicial and law enforcement system and the solution that is proposed will only add to the burden with no additional funding.

With regard to House Bill 2730, we are troubled with the definition of stalking, which is stated to be the “intentional harassment of another person.” This definition is vague and ambiguous and does not correlate with the criminal definition of stalking.

With this said, we do recognize the very legitimate concerns expressed by the proponents of this legislation and should the legislature want to take action on this issue, the KBA would like to work with the proponents and you to improve House Bills 2730 and 2732. We have discussed our concerns with the proponents and committed to them that we will work to provide alternative language which speaks to our concerns and strives to preserve the intent of the legislation. We are currently reviewing a draft of proposed amendments to the bill and we will share this suggested language with the proponents and the committee as soon as it is available.

I thank you for the opportunity to voice our concerns about these two bills. I would be happy to stand for any questions you have.