

Approved

Date: 2/11/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 10:02 a.m. on February 8, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Jerry Donaldson, Research  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Julienne Maska, Victim's Rights Coordinator, Office of Attorney General (AG)  
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence (KCSDV)  
Becky Dickinson, Battered Women's Task Force  
Ron Nelson, Attorney, Rose, Nelson & Booth, Overland Park, Kansas  
Laura Patzner, Crisis Services, Great Bend, Kansas

Others attending: see attached list

The minutes of the February 7th, 2002 meeting were approved on a motion by Senator O'Connor, seconded by Senator Umbarger. Carried.

**SB 474—protection from stalking act**

Conferee Maska testified in support of **SB 474**, a bill which would create legislation to protect Kansans from stalking. She stated that the bill would allow victims of stalking to obtain a protection order against the stalker and a court hearing would be held 20 days from the date of filing the petition. She discussed provisions for issuance and enforcement of protection of stalking orders.(attachment 1)

Conferee Barnett testified in support of **SB 474**. She provided statistics on stalking, described stalking behavior, and referenced several stories about stalking victims attached to her written testimony.(attachment 2)

Conferee Dickinson testified in support of **SB 474**. She illustrated the need for this bill by sharing two composite stories about stalking victims.(attachment 3)

Conferee Nelson testified in opposition to **SB 474**. He discussed how the language in the bill is not carefully drafted and how it "injects the potential for serious misuse of statutory procedures."(attachment 4) During discussion, the conferee agreed to draft a balloon amendment and present it at the next meeting scheduled on **SB 474**.

**SB 475—protection from abuse; re: intimate partners or household members**

Conferee Maska testified in support of **SB 475**, a bill which amends the Protection from Abuse Act to include intimate partners, household members, and persons in dating relationships as individuals who may apply for protection from abuse orders. She discussed how the bill clarifies the issuance of mutual orders and further discussed the requirement that all orders of protection be entered into the National Criminal Information Center (NCIC) Protection Order File. (see attachment 1)

Conferee Barnett testified in support of **SB 475**. She discussed the bill's amendments and stated that the primary goal of the bill is to create "accessibility" for the victims and provide law enforcement with a tool to enforce the protection from abuse law.(attachment 5)

Conferee Patzner testified in support of **SB 475**. She shared a composite story from her files as a counselor to victims of abuse and briefly discussed the amendments to current law especially with regard to the exclusion of any mutual order which she stated sends the wrong message to the victim.(attachment 6)

Conferee Nelson testified in opposition to **SB 475**. He stated that the language in the bill is ambiguous and difficult to understand, expands the law and provides opportunity for misuse of the system for filing of protection from abuse actions.(see attachment 4)

Written testimony supporting **SB474** and **SB475** was submitted by the Kansas Women Attorneys Association.(attachment 7)

The meeting adjourned at 11:04 a.m. The next scheduled meeting is Monday, February 11, 2002.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 8, 2002

NAME	REPRESENTING
PHILIP HURLEY	PAT HURLEY & Co.
Midge Grinstead	Lawrence Humane Society
Jerilyn Smith	Douglas County Rape Victim-Survivor Service
Sarah Jane Russell	Douglas County Rape Victim-Survivor Service
Patty Jensen-Hansen	Family Crisis Center
Laura Patzner	Family Crisis Center, Inc. Grantland
Tiffany Muller	KCS DV
Abigail Sykes <sup>Abigail Sykes</sup>	Justice Campaign of America
DONALD W. BURGER	National Association of Human Rights Workers
Darcy Mann	Kansas Coalition Against Sexual & Domestic Violence
Susan Moran	SOS INC, Emporia
Bekky Dickinson	YWCA/Battered Women <sup>Topeka</sup> Task Force
Ron Nelson	Kansas Bar Assn
Jeff Bottenborg	Kansas Peace Officers Ass'n
MARY FEIGHNY	KANSAS Women Attorneys Assn.
JOYCE GROVER	Kansas Coalition Against Sexual & Domestic Violence
Sarah Morrison	KS Coalition Against Sexual & Domestic Violence
Kathie Porter	Judicial Branch
SCOTT SCHNEIDER	DEFENSE COUNCIL ASSOCIATION





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  
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Testimony of  
Juliene Maska, Statewide Victims' Rights Coordinator  
Office of Attorney General Carla J. Stovall  
Before the Senate Judiciary Committee  
Senate Bills 474,475,477  
February 8, 2002

Chairperson Vratil 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 Senate Bills 474, 475 and 477.

Senate Bill 474 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.

There is no empirical data available regarding how often the crime of stalking occurs or is reported to any agency. We believe that seeking assistance under this Act will apply to a small number of people. Currently, 30 states have some form of anti-stalking or anti-harassment order available for victims of stalking.

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. At the final hearing, the stalking behavior must be proven by a preponderance of the evidence. 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 of 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.

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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 Kansas Bureau of Investigation 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.

Senate Bill 475 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.

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.

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. Senate Bill 475 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.

Senate Bill 475 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

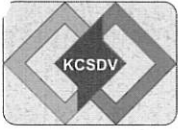
the state for safety. Requiring these orders to be entered into NCIC is another means in which law enforcement officers can verify the orders. All 105 counties have developed or are in the process of developing the means to enter the PFA orders into the NCIC Protection Order File.

Senate Bill 477 amends the Protection from Abuse Fund to allow sexual assault programs to access state funds. Currently, the state does not earmark specific state dollars for sexual assault services in Kansas. While the Legislature has provided funding sources for domestic violence services, sexual assault services do not have a specific state funding source.

In Fiscal Year 2001, domestic violence programs responded to 22,502 crisis calls, sheltered 3,875 women and children and provided 15,242 face to face services to women, children and men. Additionally, sexual assault programs provided services to 4,436 child and adult victims of sexual assault and rape.

This bill would allow funds generated from docket fees to accumulate for one year and would allow sexual assault programs, as well as domestic violence programs, to access additional money to assist with ongoing operating expenses. In addition, this bill clarifies that the Attorney General has the authority to administer the fund.

On behalf of Attorney General Carla Stovall, I urge the Committee's support for these three bills. 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

### Senate Judiciary Committee

**Re:** SB 474  
**Contact:** Sandy Barnett

### Dear Chairman Vratil 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.

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Senate Judiciary Committee

SB 474

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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 SB474 and the creation of a Protection from Stalking Act.**





P.O. Box 181

Winfield, Kansas 67156

Judiciary Committee  
Kansas State Legislature

February 7, 2002

Dear Judiciary Committee Members:

Cowley County Safe Homes, Inc. is a non profit organization dedicated to aiding victims of domestic violence and sexual assault in south central Kansas.

We support Kansas Senate Bills 475, 474 and 477.

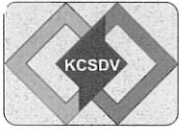
Dating violence is a problem in Kansas. Every week our program receives calls from young women in violent relationships. In the past, if there were no children in the relationship and the couple had never lived together, the victim could not file a Protection From Abuse Order. We are certainly in favor of protecting victims, whether they live together or have never lived together. Many victims in violent relationships need help in leaving the relationship safely, even dating relationships. We should, as a state, afford all victims of domestic violence the opportunity for protection.

Last week, I spoke to a student at the Winfield High School who was in a violent relationship. She is pregnant and is not living with her abuser. He has been physically abusive and threatening. She was afraid to leave the relationship and did not qualify to file a Protection From Abuse Order, because they had never lived together. Thankfully, this young woman was able to leave the relationship safely with the aid of her family, who were willing to protect her. Her family had to take her to school, pick her up, take her to work and take her other places she needed to go because they were afraid of what would happen to her if she were alone. Maybe a PFA would not have helped her, but it may have made her feel safer. It may have made her family feel more at ease. It could have saved everyone involved some trauma.

Thank you for your efforts on behalf of victims of domestic violence and sexual assault in Kansas.

Sincerely,

Michelle Knoles, LMSW  
Shelter Director  
Cowley County Safe Homes, Inc.



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

### **Ginny's Story**

Ginny was a Junior in High School when her boyfriend became extremely controlling – he prevented her from seeing friends between classes by accompanying her everywhere and demanded her attention at all times outside of school. Ginny tried to end the relationship on several occasions, but he persuaded her through promises, lies, and eventually threats that he had changed, that he loved her. Her parents tried intervention by talking with the school to ask their help; they brought Ginny to the Family Crisis Center to investigate the possibility of a protection order – all to no avail. Ginny was not eligible for a protection order because she had never lived with, nor had a child in common with, her boyfriend. The boyfriend stalked her through the hallways of school and the streets of the community. Within a month he caught up with her. After taunting and threatening Ginny, he attempted to rape her. A protection order may have sent the boyfriend a stern message that neither his girlfriend nor the community condoned his behavior. A protection order may have given the police and the school the tool they needed to restrict his access to Ginny.

### **Amy's Story**

Amy accepted numerous apologies from Juan over a two-year period, they always seemed genuine, and in fact they probably were at the time. But, one day the verbal threats and slaps changed, Juan used a knife to help him persuade Amy of his dominance. Amy stopped believing him when he promised to change and called the Family Crisis Center for help. A temporary Protection From Abuse order was granted. During the hearing for a final order the court demanded the victim return to court with the perpetrator in three months and a mutual order was granted. Amy is so fearful of appearing in court with Juan, she has gone into hiding.

### **Sarah's Story**

Sarah met him at work. After a wonderful early courtship, Sarah felt her freedom slip away. Name calling, demanding she wear certain clothes, and imposing himself into her decision making made Sarah uncomfortable enough that she ended their relationship – so she thought! He followed her, often every day. One day he grabbed her, drug into the car, threatened her, told her to be careful whom she talked to, and then he kissed her. Sarah was terrified, but like many women who have never lived with or have a child in common with their stalker/abuser, Sarah could not receive a Protection Order.

### **A Wichita Woman's Story**

My life is still on hold – after fifteen years I am still being stalked by a man I used to work with. I had to quit my job after he professed his love for me although we were both married to others, but he just began calling my home. Often when I returned home from my new job, the tape on the answering machine was full. Gifts, poems, and letters began to appear at my new place of employment and he would sometimes even wait in the parking lot for me to leave work. Police reports have not stopped him. After I got caller ID I was able to notify police of where the calls were coming from – a phone booth one

block from his home. He continued -- my children saw him drive past our house, he left messages for me, "...Rose, it's time" or "tomorrow we are going away together." I was told he had been fired from his job and had even spent six-months in the hospital for treatment of a mental illness, that did nothing to make me feel any safer. Two years ago he called me on Christmas Eve and said he was "tired of playing games." My fear rose rapidly. My every waking minute was focused on not letting him surprise me. I was advised that I was not eligible for a protection order, but if I could find an attorney, had some money, and could wait for a while then I could get a restraining order. I needed help then. I may need help tomorrow. I need to know that the police and the courts can help stop him. I need the protection of a protection order.

I still live in fear that he will call me or come to my work any day and I dread having the police tell me that there is nothing they can do. If I had a Stalking Protection Order this man could be arrested for violating the order, perhaps then intervention could occur.

### **Rose's Story**

Rose is a single mom – her daughter is seven. Rose works two jobs just to make ends meet. Almost two years ago she tried to end a brief relationship with a guy she had seen only a few times but who scared her. He called her, Rose got caller ID, he still called her, but blocked the number so she didn't answer calls without an identifying number. One night she awoke to the noise of someone breaking down her door. Rose told her advocate at the Crisis Center of Dodge City that she had at least felt pretty safe at home, until that night. She implored her advocate to help her get a protection order. Rose was turned down for the protection a PFA would have afforded her because she hadn't lived with him. "Rose has done everything to try to stay safe, but we couldn't help her," said her advocate.

### **An Anonymous Woman's Story**

The night turned dangerous, my husband was crazy. He beat me until I couldn't stand up – thank God the neighbor called the police. After he was arrested I went to the shelter for help where it was suggested I consider getting a protection order before he bailed out of jail. You can't imagine my horror when my husband was brought into the court from the jail. It was just my first hearing for a temporary order but the jailer brought him in. The judge did give me the protection order but said it was mutual. I don't know what I had done wrong, I was the one who needed protecting.

*These stories are not isolated incidents; they are the stories of many women in Kansas. Programs all across Kansas can tell you story after story of women and children who needed help, but found none.*

*Rose needed help, Sarah needed help, Amy needed help, the woman from Wichita needed help, and Ginny needed help.*

*With the Bills proposed this year each of these women would find help, Amy would not have to leave her community because she was too afraid to return with her abuser. The Anonymous Woman would also have been spared the message that she too was to blame because the protection order was mutual.*



Member Agency  
United Way of  
Greater Topeka

February 8, 2002

225 SW 12th Street  
Topeka, KS 66612-1345  
785-233-1750  
FAX 785-233-4867

To: The Kansas Senate Judiciary Committee

Dear Chairman and Committee,

**Battered Women Task Force**  
225 SW 12th St., Topeka, KS 66612  
354-7927 (234-3300 after hours)  
Toll Free (outside Topeka)  
1-888-822-2983

**Girls-to-Girls**  
Mail To: 225 SW 12th St.  
Topeka, KS 66612  
1407 S.E. 6th Street  
232-3027

**Career Assistance Network**

**Day Care**

**Kids-Quest**

**Robinson Middle School**

**Fitness/Recreation**

**Teen Pregnancy Prevention**

**Volunteer Program**

I am here today to testify as to the reasons that a protection order for stalking is needed. I am the sexual assault counselor and public education coordinator for the YWCA/Battered Women Task Force here in Topeka, Kansas. The victims that I see are those who have been abused in dating or domestic relationships or have been sexually assaulted. I wish to illustrate the need for protection from stalking with two stories. These are composite stories to protect the privacy of the victims.

One victim is disabled and lives alone in an apartment. A man who lives in the same complex took an interest in her. He made it known that he wanted to get to know her better, but she did not share his feelings and told him no. Now, he is stalking her. She has little recourse because she has never lived with him, nor does she have a child in common with him. He harasses her by telephone and has made his presence known to her by breaking into her apartment when she is gone and leaving something of his or re-arranging her things. He has flattened the tires on her van and left threatening notes, unsigned, on it. She has called the police and is keeping a journal of calls and incidents. This woman is scared to leave her home, but also afraid to be home alone. Getting into her van, which is handicapped-equipped, is scary because she does not know whether or not he has tampered with it. She has called the police to make reports, but nothing can be done. She would benefit from having an order of protection stating that he must stay away from her and not contact her.

Another situation that I see more frequently is one in which a victim of sexual assault needs protection after the rape. One victim I saw was raped by an acquaintance. She reported the rape, but the case never went to trial. The perpetrator began stalking her. He would turn up at places where she was, but he had no reason to be there. He followed her in the car and also left threatening notes on her car. The assailant caused her trouble at work. She worked in a fast food restaurant and the assailant would drive in the parking lot and sit in his car and watch her. Sometimes, he would go into the restaurant and disturb her while she was working. She almost lost her job because he

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Member Agency  
United Way of  
Greater Topeka

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**Fitness/Recreation**

**Teen Pregnancy Prevention**

**Volunteer Program**

kept showing up. Her boss got tired of it, but technically, the man was not doing anything against the law. The victim filed many police reports on this issue, but it was very hard to keep this assailant away from this victim.

These are only two cases in which a protection order for stalking victims would be helpful. In my work in the last year, I would guess that 12 victims would clearly have benefited from this type of protection.

Thank you,

Becky Dickinson

TESTIMONY OF RONALD W. NELSON  
Rose, Nelson & Booth, Overland Park, Kansas

Members of the Committee: Good morning. My name is Ronald W. Nelson. My practice is in Overland Park, Kansas. My law practice is devoted to domestic relations law, including divorce, parentage, child custody, and other areas of domestic relations law, both as an original action and post decree. My clientele is fairly evenly split between representation of men and women. I am a member of the American Bar Association Family Law Section, serving on the Custody Committee, the Kansas Bar Association, and I am a Fellow in the American Academy of Matrimonial Lawyers.

I am testifying today against Senate Bills 474 and 475, which seek to amend the Kansas Protection from Abuse Act and institute a new Protection from Stalking Act. The Kansas Bar Association opposes these bills in their current form for a number of reasons. Although it must be stressed that protection of the victims of abuse is high priority of the Bar, the statutory provisions in these bills are not well thought out and provide no direction to the courts who are expected to implement them.

With regard to the proposed amendments to the Protection from Abuse Act:

Section 1. This section inserts into the law troubling and ambiguous terms. The inserted language not only inserts ambiguous and difficult to understand language, but also unduly expands the law and provides a very high opportunity for misuse of the system for filing of protection from abuse actions.

It is well known among the bench and bar that 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 actions are often used by a spurned lover or spouse in an attempt to gain advantage in a parentage case, in a divorce, or in other domestic relations matters. The protection from abuse action is known as a powerful weapon in the use against abusers. The Act provides a speedy remedy to remove an abuser from the parties' household, to obtain restraining orders against that person and to protect an abused person from possible injury, threat or death. The act also provides this same remedy against a person who has never committed any act for which remedy may ultimately lie under the act. Many attorneys have handled cases, and many judges hear cases, in which a protection action is filed for no other reason than that there is no charge for the filing, the person filing the action wants immediate action, and that person can think of no more effective way of dealing with conflict than filing a protection action. 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.

There is a reason the legislature originally limited the beneficiaries of the protection from abuse act to persons who were married to each other, who were living together or who had a child of their relationship – that is because there is a close personal relationship which has caused the parties to have a regular, consistent and continuing contact with each other. Those persons have formed an attachment which, when disrupted by conflict, may very easily spill over into violence. Because of the continuing need for contact between those parties, criminal prosecution may not be desirable and some kind of contact is almost inevitable. Some kind of temporary order needs to be available that those people can rely upon in those situations that come short of criminal allegations. These parties are going to have to have some contact again – whether it is because of the need for a divorce, exchange of property in a non-marital relationship, exchange of a child at regular intervals, or some other similar matter. As noted by our Supreme Court in *Paida vs. Leach*, 260 Kan. 292 (1996), “the principal purpose of the legislation was to provide relief for battered spouses or cohabitants.” The inclusion of a “dating relationship” as a sufficient

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relationship for the filing of a protection from abuse action dilutes the original purpose of the Act and inserts substantial potential for misuse.

There are also significant problems with the language used in the section regarding those persons to be protected. The section extends protection to “persons who are or have been in a dating relationship.” The section provides some attempted guidance to the courts on what to consider in determining whether a relationship “exists or existed.” Those “guides” are that the court should review (1) the nature of the relationship; (2) the length of time the relationship has existed; (3) the frequency of interaction between the parties; and (4) the time since the relationship ended. However, the section itself provides that *anyone* can obtain an order against a person whom he or she “had a social relationship of a romantic nature consisting of *one* or more dates.” Thus, although the court is directed to look at the nature of the relationship, the length of time the relationship has existed, and the frequency of interaction, the section itself specifies that only one “date” is needed to trigger the Act. While laypeople may think they know what a dating relationship is, the law is concerned with details, definition and certainty – not vague terms having no set meaning or understanding. The Violence Against Women Act specifically states that the federal statute is concerned with violence between persons with “continuing” relationships and protecting against violence within those relationships. However, the definition set forth in this bill requires no continuing relationship or intended continuity of that relationship.

Further, the court is to “presume” a dating relationship existed if the plaintiff verifies that fact. What is a date? What is a dating relationship? Is an outing to the prom a date? Even if the two go together but never see each other at the prom and don’t end up going home together? Is a chance meeting and catching a soda a “date?” Is it a “date” if a boy and girl go with a large group of large friends to Pizza Hut after a high school basketball game and sit next to each other, making small talk and wishing for more? Under this bill, it *is* if one person says it is and wants an order for protection from abuse issued.

Not only that, but an order for protection from abuse can be filed by either of those two parties, at *anytime* after that one event – no matter what the context – not matter what the impetus, no matter how long after and no matter whether the parties ever again have a “date.” By merely having had contact that *one* of those two chooses to characterize as “romantic” and as a “date” that party can unleash the power of the protection from abuse act. This is so even though these parties may never again have contact and even though these parties may never again have reason for contact (unlike the situation in which the parties to the action have a minor child).

What then is the remedy for the kind of improper actions sought to be addressed? Those remedies already exist. First, 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 statutes. Additionally, the Kansas appellate courts have already determined that in appropriate cases, the district courts may use their injunction powers to protect unrelated persons from continuing harassment. *Sampel v. Balberni*, 20 Kan.App.2d 527 (1995).

Senate Bill 474 appears to address the failings of injunctive actions by instituting a new “Protection from Stalking Act.” While laudable in its attempt to address the problem, the language used is sorely lacking.

As with the proposed amendments to the Protection from Abuse Act, the language used provides little or no guidance to the courts on the kinds of actions sought to be sanctioned. The bill uses language that has no clear, understandable meaning and which is completely subject to subjective standards by judges and parties. Instead of addressing an identified problem with a

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clear and enforceable remedy, the proposed statute injects the potential for serious misuse of statutory procedures.

Section 2 provides that “ ‘stalking’ means intentional harassment of another person.” There is no requirement that any threat be explicit or implicit. There is no provision that there be any concern or fear of harm by the supposed victim. Read in its most literal terms, the proposed statute simply reads that a petition can be filed to stop one person from intentionally annoying another person. This type of statute cheapens the very real fear and threat of legitimate abuse victims. This constitutes the worst kind of legislative drafting. Instead of identification of a problem and preparation of a narrowly crafted statute meant to address those concerns, while protecting constitutional rights of the citizenry. It is often said that you can’t legislate good manners. However, that is just what this bill, in its current form, attempts. Instead of legislating good manners though, this bill seeks to criminalize and punish bad manners.

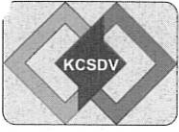
Not only does the bill punish de minimus conduct, but also there is no requirement of any continuing or future threat of harm. No “harm” need to alleged or shown.

I, therefore, urge that these bills as they are now constituted not be recommended for passage. Thank you.

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Ronald W. Nelson  
ROSE, NELSON & BOOTH  
Suite 160  
10990 Quivira Road  
Overland Park, Kansas 66210  
(913) 469-5300





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

### Senate Judiciary Committee

**Re:** SB 475  
**Contact:** Sandy Barnett

### Dear Chairman Vratil 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, KCSVD 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.

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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 SB 475.**

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# FAMILY CRISIS CENTER, INC.

*Emergency Services for Victims of  
Domestic Violence and Sexual Assault  
24-Hour Crisis Line 620-792-1885*

P.O. Box 1543  
1806 12<sup>th</sup>  
Great Bend, Kansas 67530  
Email: family.crisis@greatbend.com

Administrative Office 620-793-1965  
Administrative Fax 620-793-1964  
Shelter Office 620-793-1966  
Shelter Fax 620-793-5519

February 6, 2002

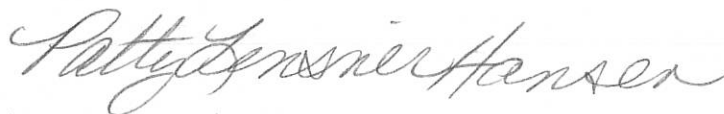
Dear Honorable Chairman Vratil:

The Family Crisis Center in Great Bend Kansas is a non-profit organization, serving victims of domestic violence, sexual assault and child abuse in 11 central and south-central Kansas counties.

On behalf of Kansas Victims, we are urging you to support SB 474 - enacting "The Protection From Stalking Act", SB 475 - amending the Protection From Abuse Act (PFAA) to include dating relationships and excluding any mutual orders, SB 477 - adding money for sexual assault victims to the Protection From Abuse Fund.

It is imperative that we put victim safety in the forefront of our efforts to end violence against women. Until we are in a position to truly hold the perpetrator accountable, we will continue to condone the criminal activity. It is the legislation we pass today that will bring honor to victims tomorrow.

Respectfully,



Patty Linsner-Hansen  
Director

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February 6, 2002

Senator David Adkins  
State Capitol Rom. 503-N  
Topeka, KS 66612

Re: Domestic Violence Legislation/2002 S.B. 474, 475, 476, 477

Dear Senator Adkins:

The Kansas Women Attorneys Association is a statewide nonprofit organization whose mission is to encourage the advancement of women in the legal profession and to promote the administration of justice, especially as it relates to women. Our membership includes attorneys in private practice, government, and business, judges, and law school faculty.

The Association supports the above-referenced bills because they promote the administration of justice for victims of violence who generally are women. Many of our members are in the front lines when it comes to these kinds of issues and, therefore, we would appreciate your favorable consideration of this legislation.

S.B.475 amends the Protection from Abuse Act (Act) to allow a person in a dating relationship who is subjected to abuse or threats of abuse to obtain a restraining order *pro se*. Currently, the Act only allows persons who have lived together or who have a child in common to obtain relief. While it's possible for a person in a dating relationship to obtain an injunction pursuant to K.S.A. 60-901,<sup>1</sup> the process is cumbersome and expensive because of the necessity of retaining counsel.

The other major change to the Act is to restrict the issuance of mutual orders of protection against a plaintiff by providing the latter with a modicum of due process. In some jurisdictions, a court that reviews a plaintiff's petition for a protection order simply issues an order restraining both parties from having any contact without any petition being filed by the defendant. S.B. 475 would address this inequity by requiring the defendant to file a petition, provide adequate notice to the initial plaintiff, and requiring the court to make findings of abuse against both the parties.

S.B. 474 creates a mechanism by which a stalking victim can obtain relief similar to that of a protection from abuse order regardless whether an intimate relationship exists. We understand that 30 states have similar civil stalking legislation.

While Kansas has a criminal stalking statute, a victim is always dependent upon a prosecutor who may or may not file charges. S.B. 474 would free a victim from this prosecutorial discretion to seek relief expeditiously with little financial expense.

Pursuant to this legislation, a victim can file *pro se* a verified petition in any district court and

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<sup>1</sup>*Sampel v. Balbernie*, 20 Kan.App.2d 527 (1995).

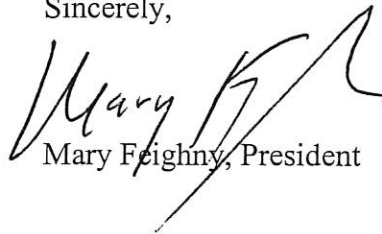
Dr. Judd  
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can obtain temporary relief *ex parte* if there is an immediate and present danger. The defendant is served by personal service and a hearing is held within 20 days after filing. If the court is satisfied that the allegation is established by a preponderance of the evidence, the court may issue a restraining order prohibiting contact with the plaintiff and/or the plaintiff's children.<sup>2</sup>

The other two components of this legislative packet address funding by increasing the docket fee by \$1 to fund both sexual assault and domestic violence programs<sup>3</sup> and to require counties to pay the cost of sexual assault examinations when performed by registered professional nurses who are specially trained to do so.<sup>4</sup> Currently, counties are required to pay such costs if the examination is performed by a physician. The reality is that sexual assault examinations are generally performed by professional nurses with specialized training.

The Association urges you to vote favorably for this needed legislation that will give victims the necessary tools to stop the violence and threatened violence in their lives.

Sincerely,



Mary Feighny, President

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<sup>2</sup>We note that the definition of "stalking" is drafted in such a way as to avoid the constitutional problems of vagueness that plagued the 1994 criminal stalking statute by creating an objective standard by which stalking is measured. *See State v. Bryan*, 259 Kan. 143 (1996).

<sup>3</sup>S.B. 477.

<sup>4</sup>S.B. 476.