

March 6, 2013

SB 18 Civil Procedure: restraining order.

Mr. Chairman and Committee Members,

I am writing testimony for the above mentioned bill SB 18. Once a temporary order is granted in Kansas, a hearing must be held within 20 days to determine whether it should be vacated or extended for a year. That's when the defendant gets a chance to defend themselves — in theory. The hearing, however, is usually limited to a he said/she said exchange in which, many lawyers say, the defendant is given little credit. The normal rules of evidence do not apply; hearsay is commonly allowed, while exculpatory evidence can be kept out. A defendant who insists on a full evidentiary hearing can be forced to wait for months.

The facts have become irrelevant; everyone knows that restraining orders and orders to vacate are granted to virtually all who apply, lest anyone be blamed for an unfortunate result. In most [divorce] cases, allegations of abuse are now used for tactical advantages.

While a restraining order is a civil remedy, its target is subject to criminal sanctions — up to years of imprisonment — for conduct that is not only normally legal but quite benign, like getting out of the car and holding the door for a child. (This includes contact that is clearly accidental, or even initiated by the purported victim: Even if you came over to the house at your ex-spouse's invitation, you don't have a legal excuse.) Parents are being denied all contact with their children, or allowed to see them only in a supervised visitation center — where, adding insult to injury, they must pay for the privilege.

These are the KBI's statistics to 2011 in Kansas. This is for your review. Domestic Violence Page 36 - Type of injury based on 23,695 incidents 2009-2011 (Combined - None or minor injury 97.9%, Combined - Broken bones, lacerations, internal injuries 1.4%, Unconsciousness, loss of teeth, major injury 6%). Now let's look at the abuse of the system - PFA filings pg. 42, 8,238 filings in 2011, 1994-2011 20% increase. That isn't the real story — in 2011, 790 PFAs were filed in Johnson County, (the largest populated county in the State), and in Sedgwick County (2nd largest populated) 2,332 were filed. That is 200% above what Johnson County has. Ready for some more? PFSS pg. 48 2002-2011 1,073 to 5,202 (500% increase), Johnson County 589, and Sedgwick County 1,274 (110% more). Now the real story - pg. 52 demonstrates the relationships to these individuals. This is called using the system (in Sedgwick for sure) to eliminate or stop another parent from seeing their kids!!!

What the judges and lawyers have created in Sedgwick County is extortion by any measure, by enabling bogus reports or allegations. What can we do to tighten this bill even more to keep the Judges from exercising even more poor judgment in the future? Let's save the State some major money and reduce Sedgwick County's abusive courts so that we can focus on real cases, real issues and real problems that do need their attention.

Growing public awareness of domestic violence spurred laws such as the 1978 Abuse Prevention Act in Massachusetts, which made restraining orders (usually prohibiting any contact with the complainant) easily available against current or former spouses or cohabitants. More recently, many states have moved to strengthen this legislation, extending eligibility to people who had dated but not

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lived together, and introducing tough measures against violators. A 1995 study by the Massachusetts courts showed that fewer than half of all restraining orders involved even an *allegation* of physical abuse. While a simple claim of fear was not a sufficient basis for a restraining order — and set a threshold of “reasonable” fear of “imminent serious physical harm” — courts routinely ignore this standard.

Many judges in his state approach protection orders as “a rubber-stamping exercise” and the due process hearings held later are usually a sham. Have we declared domestic violence to be an evil in our society? So we don’t have to worry about the civil rights of others? 50 percent of restraining orders are strategic ploys. When it’s a question of people being kicked out of their homes, cut off from their children, sometimes jailed and effectively branded as criminals without the safeguards of a criminal trial.

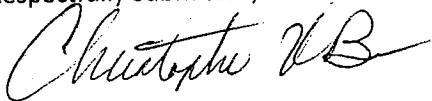
The specter of mortal danger hovers over the debate on restraining orders, often making rational discussion impossible. How do you balance [due process] with a real victim’s need for protection is a tough issue. Even when there has been no physical violence and there are no overt threats or it can be a paranoid response to media sensationalism that makes it look like slaughtering the wife and the kids is a fairly typical male response to divorce. Maybe it can be a convenient “abuse excuse.” Without mind-reading, it is often impossible for the courts to make those distinctions. But the “better safe than sorry” approach can turn into something disturbingly akin to presumption of guilt.

Ask yourself this question. Do the tough restraining-order policies help victims? A person who is hell bent or ready to kill somebody and either take their own life or face a murder rap surely won’t be deterred by a charge of violating a court order. Virtually all the research — and, most recently, two studies included in the 1996 book “Do Arrests and Restraining Orders Work?” edited by University of Massachusetts-Lowell criminologists Carl and Eve Buzawa — concludes that the orders have little if any protective effect. Peddling these orders to people in real danger is like giving cancer patients a drug that cures the common cold.

University of Rhode Island sociologist Richard Gelles, a leading authority on domestic violence, also cautions that the more the legal system is bogged down in trivial pursuits, the less likely it is to single out the serious cases that do require urgent intervention.

For this attitude to change and legislative change we would have to start seeing women and men as truly equal. Then we would recognize that women, no less than men, are capable of abusing the power they’re given, and that the protection of women does not justify the surrender of civil rights any more than the protection of men. Then we might even recognize that the sympathy for a woman who lives in fear of her abusive ex-husband should also be extended to the father who can be hauled off to jail if he makes a phone call to wish his daughter a happy birthday.

Respectfully Submitted,



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