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**Testimony to the Senate Judiciary Committee
In Support of a Portion of SB215 Changing Domestic Violence Laws
January 22, 2020**

Chairman Wilborn and Committee Members,

We support section 1 of SB215 amending the sentencing provisions of the Domestic Battery Statute (KSA 21-5414) to require the court to order the domestic violence offender assessment upon conviction. We believe these assessments are fruitful in guiding the offender to understand their potential for reoffending and giving them guidance on changing their risk of doing so. We are submitting this testimony as “supportive” based on this section of the bill.

On section 2 of the bill amending the Endangering a Child statute (KSA 21-5601), we are concerned with some aspects of the proposed amendments, but we are reserving our ultimate position on the bill as we learn more about how this provision is intended to work. Our members are well aware of the trauma any violence, especially domestic violence, inflicts on children. In the case of domestic battery, KSA 22-2307 already requires the perpetrator must be arrested if probable cause exists. Adding the charge of endangering a child will not add any immediate relief of removing the person committing the crime not already in place.

The new provisions in section 2 clearly apply to *any child* being present, not just the child of one of the involved parties. How will the parents of those children not related to or under the care of the offender or the victim respond when we attempt to find out the exposed children’s identities and verify their ages? We get the concern with a child in a home where violence takes place. But it may be a reach to cover other children that happen to be around without evidence the actions creating an articulable danger to those children. And if that occurs, we can charge child endangerment under current law.

We are not clear how the provision of whether a child is “present” at such act will be interpreted. Is this element of the crime of endangering a child created without any indication the child’s safety is at risk? Will that “present” merely be anywhere within the same residence or does it require the child to be in a proximity where the child is aware of or views the battery occurring? If the battery occurs in a building other than a residence (perhaps in a Wal-Mart) does any child in the building satisfy the element of being “present?” If the battery occurs outside, what distance from the battery or other facts constitute being “present,” would it include the neighbor children who are outside or a child in the parking lot or playground? Does it matter if the child is unaware of the act of the domestic battery?

KSA 38-2231(b)(1) already requires us to take a child into protective custody from a place or residence where the officer has reason to believe a child will be harmed if not immediately removed. We are also not clear whether the change to the endangering a child statute will be interpreted to require more children to be taken into police protective custody. If the legislature establishes policy that a child being “present” at a domestic battery is endangering the child, is that a legislated establishment of reason to believe the child is in danger and require the officer to take the child into custody since the child will potentially be in the same volatile environment in the near future? Does it require the officer filing a report with DCF to follow up on? If the batterer is not present and still at large, is it reasonable for the officer to believe the child will be in immediate danger until the batterer is taken into custody? What about after the batterer bonds out? We don’t believe that would apply to the child of another, but what if the child is the child of one or both parties involved in the battery? Could this create a liability issue for the officer if they don’t take the child into protective custody in any domestic battery case involving one of the child’s parents or caretaker when the child is present?

We can already consider charging the crime of endangering a child if the situation creates probable cause the actions place a child in danger. However, this bill will greatly expand the number of people charged with this crime.

We are also aware of the potential trauma to children when we arrest a parent for any crime, including domestic battery. There are training programs about mitigating this trauma when possible. What trauma will be added if the events result in a DCF investigation or removing the child from the home without an articulable direct danger to the child? Currently such decisions are based on the facts of each individual case. At the time we are preparing this testimony, we have not seen any data on how many children we would potentially need to consider for police protective custody if this bill passes.

For these reasons we need more information before taking an opposition or supportive position on section 2 of the bill.

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