

Senate Judiciary Committee
January 22, 2020

Senate Bill 215
Testimony of the Kansas Association of Criminal Defense Lawyers
Presented by Jennifer Roth, Legislative Committee co-chair
Opponent

Dear Chairman Wilborn and Members of the Committee:

SB 215 would do two things: 1) instead of being at the court's discretion, makes it mandatory that a person convicted of a first-time domestic battery undergo a domestic violence offender assessment conducted by a certified batterer intervention program; and 2) amends the crime of endangering a child to include committing a domestic battery or aggravated domestic battery when the person knows or reasonably should have known that a child under 18 was present. **KACDL opposes SB 215 because of the negative impacts on survivors of domestic violence who use acts considered crimes under our laws to resist or survive the coercive control perpetrated by their partners.**

Two contexts collide when we talk about domestic violence. First, there are the terms we use to describe what exists between two people in a relationship that includes intimate partner violence — there is a person (often called a batterer or perpetrator) who establishes a pattern of power and control over their partner (often called the survivor or victim). Second, there are terms we use to evaluate a moment in time when a criminal act has allegedly occurred — there is the victim against whom a statutory crime has occurred, and a suspect who is accused of that act. The collision occurs when the victim/survivor of intimate partner violence “offends” against their batterer. In that case, the former may be charged as a defendant, and the batterer would be the complaining witness/victim. In this situation, the person charged is sometimes referred to as a “survivor-defendant”, i.e. when a person in an abusive relationship uses violence or criminal acts against their batterer in order to survive the abuse.

Generally speaking, a law enforcement officer is responsible for arresting a person who has committed a crime in the officer's presence or who the officer has probable cause to believe has committed a crime. If a person admits to a crime, the officer arrests them. If the person does not dispute the allegations of the alleged victim, the officer arrests the alleged perpetrator. The officer is evaluating a moment in time and deciding whether an act was illegal. The officer has very little discretion to consider the larger context of these two people's lives and simply walk away from an arrest because one person is using illegal acts to resist or survive.

But a law that results in survivors of domestic violence being required to have an assessment or, even worse, be charged and possibly convicted of child

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endangerment — which is a crime that can never be expunged from one’s record, at least under current law — does further harm to domestic violence survivors, and only furthers a batterer’s goals of power and control. And if survivors end up with convictions for child endangerment, it will put up more barriers for them: they may not be able to access services and, if they are women, they may lose their jobs in traditionally “women’s work” (ex. nursing, teaching, child care).

Our members have represented clients (usually women) who are charged with crimes against their batterers. Again, two worlds collide – for example, the criminal legal system’s definition of what constitutes self-defense versus the genuine feelings of self-defense a survivor was acting upon when they committed an offense.¹

We acknowledge the impact of domestic violence on children, and understand that an assessment may be better sooner rather than later. But issues surrounding domestic violence are not easily solved. The Legislature has a duty not to make things worse. The criminal legal system ideally posits everyone as equal under the law, but we know that is not true in the context of an abusive relationship. Batterers assume power and control over their partners by changing them from people with the power to act, reflect and act again into things that are acted upon. Before subjecting people to mandatory assessments and further criminalizing acts concerning domestic violence, the Legislature needs to delve into the impact of this proposal on survivors.² Thank you for your time and consideration.

Sincerely,

Jennifer Roth
Legislative Committee co-chair, on behalf of the
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¹ See, e.g., <https://www.theatlantic.com/politics/archive/2019/05/new-york-domestic-violence-sentencing/589507/>.

² We made these same types of arguments on 2009 HB 2335 (which included the “DV tag” provisions), which was sent to Judicial Council for study, and an amended version came back in 2010 as HB 2517.