TESTIMONY OF RONALD W. NELSON
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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 it 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

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

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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