

**TESTIMONY OF LEGAL INTERNS DONALD I. MCCLELLAN
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IN SUPPORT OF S.B. 101**

BEFORE THE SENATE COMMITTEE ON JUDICIARY

February 16, 2017

Thank you, Chairman Wilborn and members of the Committee, for allowing us the opportunity to testify in support of S.B. 101.

We urge the Committee to recommend passage of S.B. 101 amending the Protection From Abuse Act (“PFAA”) and Protection From Stalking Act (“PFSA”). The amendments are consistent with the intent, purpose, and legal reasoning of the PFAA and PFSA. S.B. 101’s passage would (1) eliminate confusion by clearly articulating that sexual assault is a form of “abuse” and (2) provide protection for *all* victims of sexual assault.

I. Background

The PFAA was enacted in 1979 to protect individuals from abusive behavior used to gain physical and emotional control over the victim. Testimony offered to both the House and Senate shows the major concern for the bill revolved around providing space and time to allow the victim to decide an appropriate future course of action as a way of gaining control of the situation.¹ Domestic abusers often obtain control over a victim through fear, terror, manipulation, and creating a sense of hopelessness. While the abusive behavior may be manifested in different ways, such as physical violence, verbal abuse, destruction of property, etc., the need for protecting the victim arises through the victim’s vulnerability and lack of control.

By enacting the PFAA, Kansas provided a legal remedy that prevents domestic abusers from gaining permanent control over their victims, and allows victims to take control of their lives and end the cycle of abuse. In 2002, those protections were expanded and the PFSA was enacted to provide a stalking victims “relief similar to that of a protection from abuse order regardless whether an intimate relationship exists in the relationship.”² The Kansas Legislature saw the need for protecting innocent people from others who posed a significant threat to their physical safety and well-being. Although stalking is distinct from domestic abuse, the victims share common needs, which can be addressed through the protection order system.

Regardless of the type of relationship between the victim and offender, protection orders provide a civil remedy for certain forms of abuse.³ For both domestic abuse and stalking victims, the protection order process resets the power dynamic between the victim and abuser

¹*Various Testimony on H.B. 2619 Before Senate Judiciary Committee*, March 27, 1979.

²*Testimony on Senate Bill No. 474, 475, 477 Before the S. Judiciary Committee*, February 7, 2002 (statement of Ms. Goodwin, Information Network of Kansas).

³Paula Pierce, Quillen, Brian, No Contest: Why Protective Orders Provide Victims Superior Protection to Bond Conditions (2013).

and empowers victims by giving them the ability to request specific relief based upon their needs, safety, and well-being. Protection orders give victims a set period of time in which the abusers must stay away from the victims, allowing the victims to delineate a safety zone where they can begin the process of rebuilding their lives. Protection orders also give victims the security they need to pursue criminal charges in a timely manner and take any other steps necessary to recover and rebuild their lives.

Society has an interest in ensuring all victims of abuse have resources to help them regain control of their lives. Healthy, safe members of society contribute more to society than unhealthy, vulnerable members. By empowering victims, society (1) contributes to the prevention of further abuse, (2) enables victims to rebuild their lives and continue to contribute to society in positive, meaningful ways, and (3) ensures the health and survival of its members.

II. S.B. 101 Strengthens the PFAA and PFSA By Unambiguously Including Sexual Assault in the Definition of “Abuse” and By Providing Protection to *All* Victims of Sexual Assault.

A. Sexual Assault is Undeniably a Form of Abuse and Should Be Covered By the PFAA.

By definition, sexual assault is unwanted, abusive behavior in which the abuser exerts control over the victim. This is the exact type of behavior the PFAA is intended to prevent by providing protection for victims. The lack of control sexual assault victims have in their lives is similar to that of the victims the PFAA was enacted to help.

The Kansas Court of Appeals recently recognized the inclusion of unwanted sexual contact in their interpretation of “bodily injury” as used in the PFAA. In Kerry G. v. Stacy C., 386 P.3d 921 (Dec. 9, 2016), the court concluded that “*any* unwanted sexual touching would cause bodily injury for the purposes of the Act” (emphasis in original). The court does not differentiate between the amount of damage to a person’s body, but rightfully recognizes that any unwanted sexual touching results in physical harm suffered by victims. Furthermore, the court closed off the argument that unwanted sexual touching does not necessarily result in physical damage by noting (1) there is a requirement to liberally construe the PFAA, (2) Kansas defines a great many sexual offenses as “sexually violent crime[s],” and (3) the “requirement that victim suffer substantial pain or impaired physical condition applies only in context of parental discipline of a child.”

S.B. 101 serves the interests of clarity and judicial economy by specifically identifying sexual assault as a basis for a PFA, as interpreted by the Kansas Court of Appeals. This eliminates possible confusion concerning sexual assault in the PFAA for both new and seasoned attorneys, *pro se* litigants, and judges involved in these cases.

B. Victims of Sexual Assault Need and Deserve the Protection Afforded by the PFSA.

As the law currently stands, victims of sexual assault not in a relationship with their abusers are unable to obtain protective relief from the courts. The interest a victim has in protection from their abuser is not created by the type of relationship between them at the time of the abuse, but rather the risk of future encounters, continued abuse, and the inability of the victim to control their life. That risk is, of course, high among those in a relationship with their abuser, and the PFAA provides protection to those victims. However, the majority of sexual assault victims are not in a relationship with their abuser, even though they are acquainted with the abuser. These victims are also at risk and in need of protection.

According to the Kansas Bureau of Investigation, of the 1,226 rapes reported in 2015, 727 were committed by someone known to the victim, but not in an intimate relationship.⁴ Comparatively, only 252 were committed by a spouse, boyfriend/girlfriend, or former spouse, former boyfriend/girlfriend. 247 were committed by a stranger or the relationship is unknown. This means roughly 60% of Kansas rape victims are unable to obtain a PFA or PFS order, despite a high risk of another encounter, triggering the trauma of re-living the previous abuse, coupled with the terror of repeating it. In other words, most victims of sexual assault in Kansas are currently not able to obtain a civil protection from their abuser.

Sexual assault victims require the same protection as domestic abuse and stalking victims, and the fact that the majority of them are not currently able to obtain it is unacceptable and must be corrected. Studies show that victims of sexual assault suffer from physical and mental effects, including depression, eating disorders, sleep disorders, sexually transmitted diseases, and PTSD, with as many as 13% of rape victims attempting suicide.⁵ These effects demonstrate that victims of sexual assault need help in regaining control over their lives, just as victims of domestic abuse and stalking do.

Applying for the protective order, signing the affidavit, and appearing at the hearing are acts which allow the victim to exercise control over their situation which resets the victim-abuser power dynamic and empowers the victim. Surveys of victims who requested protective orders revealed that 98% of victims felt more in control of their lives as a result. In follow-up interviews, 85% of victims reported their lives have improved and 90% felt better about themselves.⁶ The interest that victims of stranger or acquaintance rape have in protection is no less real than the interest of those in a relationship with their rapists; and those victims deserve access to all of the options offered by the State to ensure their safety, including protection orders under the PFSA.

Some might argue that a victim has recourse through the criminal statute, however, this

⁴Kansas Bureau of Investigation, Domestic Violence, Stalking, and Rape in Kansas: As Reported by Law Enforcement Agencies, 2015.

⁵DG Kilpatrick, CN Edmunds, AK Seymour. Rape in America: A Report to the Nation. Arlington, VA: National Victim Center and Medical University of South Carolina (1992).

⁶Paula Pierce, Quillen, Brian, No Contest: Why Protective Orders Provide Victims Superior Protection to Bond Conditions (2013).

argument fails to account for several legal and procedural points. First, the burden of proof for a criminal conviction (beyond a reasonable doubt) is higher than that required to obtain a PFS order (preponderance of the evidence). PFS orders therefore provide an opportunity for victims to obtain protection when a conviction is not likely due to the extremely high criminal burden of proof.⁷ Second, victims do not control the arguments made by prosecutors in criminal cases and their needs are not central in that forum. There is no guarantee a judge will include necessary protections as conditions of bond or even probation, nor that a magistrate will include jail time for violation of a bond condition. In such a situation, the bond will only serve as payment to the State for permission to continue harassing or abusing the victim until a court date. PFS orders allow victims to directly pursue the protections they need and provide a basis for additional criminal charges for violations. Finally, the PFSA states that the act itself is “in addition to any other available civil or criminal remedies.” In other words, the Kansas Legislature has already taken into account the protection offered by the criminal statute and found it insufficient for the PFSA’s purposes.

As students, we would like to call attention to the particular importance of college campuses when discussing sexual assault. College women are three times more likely to experience sexual violence than all women; and for every robbery there are two college campus sexual assaults.⁸ Among undergraduate students, 23.1% of females will at some point experience rape or sexual assault through physical force, violence, or incapacitation.⁹ Kansas is not immune from these grave statistics. Just last month, a Kansas State University Student, Crystal Stroop, was featured in a national news article, “When Campus Rapists Are Repeat Offenders” in the New York Times. Ms. Stroop had been raped by a classmate that lived in the same apartment complex as she did. As a result of the rape, Ms. Stroop was under immense stress, in part because “it was impossible to avoid [her rapist] on campus and at her apartment complex. Ultimately it affected her grades and forced her to drop out of school.” Ms. Stroop’s experience is not unusual. In fact, for many student victims, their grades drop, they miss classes, or they drop out of school altogether.¹⁰ As a victim, Ms. Stroop's life was thrown off course by someone she saw regularly. Victims should not be forced to drop out of school as a result of being attacked.

Just like Ms. Stroop, student victims will likely see their abusers at the next party, in class, at a basketball or football game, where they live, and many other places. The college lifestyle is centered on campus activities, and the risk of encountering one’s abuser is increased accordingly. This increased risk can ruin the victim’s life all over again. Had S.B. 101 been enacted prior to her rape, Ms. Stroop would have been able to go to classes and complete her degree, safe in the knowledge that her rapist would suffer legal consequences for contacting her. S.B. 101 must be passed to prevent other innocent victims from having their lives ruined, and to

⁷*Id.*

⁸Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Rape and Sexual Victimization Among College-Aged Females, 1995-2013 (2014).

⁹David Cantor, Bonnie Fisher, Susan Chibnall, Reanna Townsend, et. al. Association of American Universities, Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct (September 21, 2015).

¹⁰Jordan, Carol E.; Combs, Jessica L.; and Smith, Gregory T., “An Exploration of Sexual Victimization and Academic Performance Among College Women” (2014). Office for Policy Studies on Violence Against Women Publications. Paper 38.

provide victims with the peace of mind knowing they can continue in their normal lives as planned without contact from their abuser.

III. Conclusion

S.B. 101 provides clarity that sexual assault is form of abuse and a valid reason to obtain protection from an abuser, and that all victims of sexual assault have options available to them for their physical and mental protection. For these reasons, we strongly urge the Committee to recommend S.B. 101's passage.

Respectfully submitted,
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