



Legislative Committee

SB 73
House Committee on Corrections and Juvenile Justice
Opponent Testimony
March 7, 2023

Chairman Owens and Members of the Committee:

The Kansas State Board of Indigents' Defense (BIDS) provides defense counsel for people who have been charged with felonies and cannot afford an attorney. We represent 85% of adults charged with felonies across the state. Our public defender offices and appointed counsel work to protect the constitutional rights of some of the most vulnerable populations in every county. The BIDS Legislative Committee was established to advocate on legislative matters consistent with the goals of a holistic defense of indigent people.

The BIDS Legislative Committee strongly opposes the passage of SB 73.

This bill would modify the statute to add domestic battery and violation of a protective order as underlying crimes for burglary and aggravated burglary. This is a significant departure from how the statute is currently written. Under the current law, a person commits burglary when they enter a home or vehicle without permission in order to commit an additional crime.

A burglary typically requires the intent to commit a felony, with limited exceptions. The proposed revisions would not be the most practical places to start down this path. While the sponsors of the bill are no doubt well-intentioned, they have overlooked the potentially disastrous impact this bill could have on victims of domestic violence. These victims are regularly arrested and charged in relation to their victimization. Law enforcement officers are not always able to accurately identify a batterer when they are called out to investigate an incident of reported domestic violence. In some jurisdictions, this results in dual arrests. In other jurisdictions, this results in victims being blamed for the abuse and charged with domestic battery.

Protective orders are frequently entered in domestic battery cases based on nothing more than a probable cause affidavit, without any sort of evidentiary hearings or findings. Additionally, a person can get a Protection from Abuse (PFA) order that can lead to charges even BEFORE an evidentiary hearing—a person just has to be served with the temp one for the PFA violation law to apply. They can be very difficult to have removed, even at the request of the alleged victim. Additionally, violation of a protective order is basically a strict liability crime. Any contact, even invited contact, can result in an arrest or conviction. These situations play out across the state every day and adopting the proposed changes in the law would result in likely unintended but catastrophic consequences.

Take, for example, the story of Troy. Troy is a large man. He is over 6'3 and fit. So when his petite wife used to hit him and throw things at him when she was angry, he had a tendency to shrug it off. Then came the day she came at him with a knife. He responded by pushing her down

and calling the police. He was horrified when they showed up and ended up arresting him instead of her. Troy knew he was innocent so he was not too worried about being convicted. Despite the no-contact order the court issued, he was still able to see his children regularly through orders in their pending divorce.

That all changed on a snowy afternoon a few months later. Troy picked up his two young children from their elementary school in the middle of winter to discover that they had been dropped off without their coats. After texting with his ex and getting permission, he went to their former home, where she was still living with the kids to pick up their coats. She was there and invited him in while she went to “find the coats.” When the cops arrived minutes later and arrested Troy, he was shocked. It took him months to fully process the length his ex-wife would go to punish him for leaving the relationship. As is so frequently the case with batterers, she was outraged to have lost control over her victim and was determined to make him pay. Troy was ultimately convicted of violating a protective order. He was acquitted of the domestic battery charge. Under the proposed change in the law, Troy would likely have been charged and convicted of a level four, person felony. Even with no criminal history, he would have been looking at a presumptive prison sentence of anywhere from 38 to 43 months.

These are not the only facts that would lead to this sort of miscarriage of justice. The scenarios aren’t difficult to imagine. During a parenting exchange, a young mother gets into her ex-boyfriend’s car on a 100-degree summer day to discuss the child’s cold medication schedule. Again, this could be charged as a level nine felony if he has a Protection from Abuse order against her. As a reminder, a person can be guilty of violating a PFA even before there has been an evidentiary hearing in the matter. A couple has separated after an altercation that resulted in law enforcement being called. They decide to meet at their marital home to discuss whether they want to pursue marriage counseling to try to heal their relationship. Another couple has reconciled but one partner forgot to dismiss the Petition for a PFA and they are driving to dinner together. Any of these situations would result in felony convictions under this proposed law.

Batterers already know how to weaponize protective orders and civil courts to continue to punish victims who are getting out from under their controlling behaviors. Adding this as a weapon to their arsenal would result in more victims losing their freedom and their children.

For the aforementioned reasons, we strongly oppose the passage of SB 73.

Sincerely submitted on behalf of the BIDS Legislative Committee,

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