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 House Substitute for House Bill 2077, which seeks to amend the Kansas Protection from Abuse Act in various ways. The Kansas Bar Association opposes this bill in its 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 amendments this bill seeks to enact are not the way in which those matters should be handled. There are three ways in which we believe this bill inappropriate:

First, Section 1 of the Bill provides that all orders issued under the protection from abuse act shall be entered on the national criminal information center protection order file. This amendment is presumably so that law enforcement officials both inside and outside the state of Kansas know when a protection from abuse order is issued and they are better able to verify claims that a protection order has been issued and protect anyone who seeks their assistance in enforcing that order. However, although this section has a laudable purpose, we oppose this section because it is too broad and provides the potential for entry of incorrect records on the system.

The section provides that *all orders for protection* be entered. This includes orders that are granted *ex parte* without presentation of both sides of the issue to a judge (which includes both "emergency orders" and "temporary orders") and provides no means by which any of this information may be deleted from the system if any orders issued are later determined improperly granted. This also includes orders for protection which have been agreed to by the parties although there is no actual determination of abuse or the need for any such protection than the agreement of the parties. It should be noted that these kinds of orders are not recognized as valid orders under provisions of the federal Violence Against Women Act (VAWA). It should be noted that of the two appellate court cases decided in Kansas which interpret the Kansas Protection from Abuse statute, although a temporary order for protection from abuse was entered in both cases, the appellate courts ultimately decided that there was no basis for coverage of the acts alleged in those cases, and that no order *should* have issued. Inclusion of temporary or emergency orders does not provide any due process or other protections to the person against whom any such case may be filed and inserts potentially wrong and damaging information into a national database.

Additionally, this section provides that even the orders of "another jurisdiction which are entitled to full faith and credit in Kansas" shall be entered by the sheriff of the county on the national criminal information center protection order file. This provision also is fraught with problems. There is no way a sheriff can know what orders of another jurisdiction are entitled to "full faith and credit." Such a determination requires court intervention and determination.

This section, in effect, provides for a significant increase in information being placed in the national criminal information center database which is or may be erroneous subjecting innocent persons to serious consequences. The fact that records may be "cleared as an active record" if a court determines that matter improperly filed, does nothing to erase the harm that may have occurred.

Section 2. This section inserts into the law troubling and ambiguous terms. The inserted language not only inserts ambiguous and difficult to understand language, but 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 which comes short of criminal allegations. These parties are going to have to have some contact again – whether it be 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.

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 unlease 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).

I, therefore, urge that this bill not be recommended for passage. Thank you.

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