

To: House Committee on Judiciary
From: Michelle McCormick, Executive Director KCSDV
Re: Proponent Testimony for SB 265
Date: March 13, 2024

Chairperson Humphries and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a nonprofit organization located in Topeka with 25 member organizations providing direct services to victims of sexual and domestic violence statewide. These are the programs that provide critical services to survivors 24 hours a day, 7 days a week and include emergency shelter, hotline support, counseling, and other supportive services.

KCSDV supports SB 265, a bill that would increase the penalties for second or subsequent violations of a Protection from Abuse Order (PFA) or a Protection from Stalking, Sexual Assault, or Human Trafficking Order (PFSSAHT). And with the amendment from the Senate Committee of the Whole to insert SB 182, the bill would also require a convicted defendant of an offense causing death or incapacitation of a victim to pay restitution in the form of child support for any minor child of the victim.

While KCSDV is also in support of the previously stated Senate amendment, most of our testimony today is regarding the increased penalties for PFAs or PFSSAHTs and an additional amendment that KCSDV would like considered.

Protection Orders

The decision to seek a protection order is difficult for a victim. While intended to provide safety to a victim, the act of filing a petition for a protection order can be dangerous in itself. Separation is considered one of the most dangerous times for a victim who is trying to leave a relationship or situation where the other person is threatening, abusing, or stalking them. Victims must engage in safety planning before, during, and after the protection order legal process because it can increase their chances of being harmed or killed by their abuser.

After a protection order is issued, the victim may or may not feel safer. The risk of their abuser violating the protection order is always present. Currently, such a violation is traumatic and harmful to the victim but is only punishable as a Class A misdemeanor, which could lead to jail sentence of not more than one year. The bill would increase a second or subsequent violation to a level 7, person felony, which would be presumptive imprisonment under the sentencing grid. Additionally, a felony conviction would lead to

more serious consequences, such as the loss of voting rights or the ability to purchase or possess firearms.

This increase in penalty could benefit victims in two ways. It would show them that protection orders truly are important and violations will be taken seriously. It could also serve as a deterrent for abusers. The potential of a felony conviction and all the potential consequences of such could prevent some abusers from violating that order and further harassing or harming victims.

KCSDV finds it important to recognize that a violation of a protection order is often one key indicator in assessing lethality and risk of harm to the victim. Increased criminal penalties are needed in order to deter defendants from ignoring court orders and to further protect victims of domestic violence, sexual assault, stalking, and human trafficking.

Requested Amendment

KCSDV's would like to statutorily clarify that victims (petitioners) should not be charged a process service fee from sheriff's offices for the civil service of the order to respondents. Although not charging victims a fee on protection order service is a widely accepted practice in Kansas, we have seen this pop up in some jurisdictions and think clarity in the law would make sure this does not become a more significant issue.

KCSDV has also learned that by not having statutory clarity on a "no fees" process for protection order service, Kansas has come under scrutiny by the Federal government because the Violence Against Women Act (VAWA) prohibits jurisdictions that receive STOP VAWA funding, which Kansas does, from charging victims any costs associated with civil and criminal cases.

So, besides having the goal of making sure a process service fee does not deter victims from using the protection order tool for their safety, we also want to make sure that those STOP funds are protected in our State. Attached to this testimony is a draft of the simple changes KCSDV is suggesting.

KCSDV respectfully requests the Committee support the passage of SB 265 and the "no fees" process statutory amendment.

Sincerely,

A handwritten signature in black ink that reads "Michelle McCormick". The signature is written in a cursive, flowing style.

Michelle McCormick, LMSW
Executive Director
KCSDV

KCSDV Proposed Statutory Amendments in Red:

KSA 28-110 Sheriff fees for service, execution and return of process; procedure; payment; exemptions. (a) Except as otherwise provided in this section:

(1) On and after July 1, 2012 through June 30, 2013, the sheriff of each Kansas county shall charge a fee of \$10 for serving, executing and returning any process.

(2) On and after July 1, 2013, the sheriff of each Kansas county shall charge a fee of \$15 for serving, executing and returning any process, **except for process for any proceeding pursuant to the protection from abuse act or protection from stalking, sexual assault or human trafficking act provided by K.S.A. 60-3104(d) or 60-31a04(e).**

(b) Subject to subsection (e), the fee described in subsection (a) shall be charged for serving, executing and returning process, as well as for any unsuccessful attempts to serve, execute or return process.

(c) If more than one process for the same person in the same case is issued and is in the hands of a sheriff at one time, the sheriff shall charge a single fee for serving, executing and returning the processes.

(d) If more than one process for different persons at the same address in the same case is issued and is in the hands of a sheriff at one time, the sheriff shall charge a single fee for serving, executing and returning the processes.

(e) Where return is not made or timely return is not made pursuant to K.S.A. [60-312](#) or [61-3005](#), and amendments thereto, no fee shall be charged for subsequent processes that may be required to effect service and the timely return of the failed service. However, if service is attempted and return is made showing no service because the person to be served cannot be served at that address or there is no such address, the fee in subsection (a) shall be charged for an alias summons at the same address.

(f) Except as provided by K.S.A. [19-269](#), and amendments thereto, a sheriff shall be reimbursed for the necessary transportation and board expenses incurred while serving under requisition made by the governor.

(g) All fees charged by a sheriff pursuant to this section for the same case may be paid in one combined payment, in a form designated by the sheriff, such as a check or money order.

(h) The state of Kansas and all municipalities in this state, as defined in K.S.A. [12-105a](#), and amendments thereto, are hereby exempt, in any civil action in which such state or municipality is involved, from paying service of process fees prescribed by this section.

(i) As used in this section, "process" means any summons, pleading, writ, order or notice issued by a court clerk or court.

KSA 60-3104 Commencement of proceedings; persons seeking relief on behalf of minor child; forms; no docket fee; confidentiality of certain matters, exceptions. (a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any judge of the district court or with the clerk of the court alleging abuse by another intimate partner or household member.

(b) The following persons may seek relief under the protection from abuse act on behalf of a minor child by filing a verified petition with any judge of the district court or with the clerk of the court alleging abuse by another intimate partner or household member: (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service and not by certified mail return receipt requested. No docket fee **or fee for service of process** shall be required for proceedings under the protection from abuse act.

(e) If the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

KSA 60-31a04 Commencement of proceedings; persons seeking relief on behalf of minor; forms; no docket fee; confidentiality exceptions. (a) A person may seek relief under the protection from stalking, sexual assault or human trafficking act by filing a verified petition with any judge of the district court or clerk of the court. A verified petition must allege facts sufficient to show the following:

(1) The name of the stalking victim, sexual assault victim or human trafficking victim;

(2) the name of the defendant;

(3) the dates on which the alleged stalking, sexual assault or human trafficking behavior occurred; and

(4) the acts committed by the defendant that are alleged to constitute stalking, sexual assault or human trafficking.

(b) The following persons may seek relief under the protection from stalking, sexual assault or human trafficking act on behalf of a minor child by filing a verified petition with the judge of the district court or with the clerk of the court in the county where the stalking, sexual assault or human trafficking occurred: (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.

(c) The following persons may seek relief for a minor child who is alleged to be a human trafficking victim under the protection from stalking, sexual assault or human trafficking act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging acts committed by an individual that are alleged to constitute human trafficking: (1) A parent of the minor child; (2) an adult residing with the minor child; (3) the child's court-appointed legal custodian or court-appointed legal guardian; (4) a county or district attorney; or (5) the attorney general.

(d) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(e) Service of process served under this section shall be by personal service. No docket fee **or fee for service of process** shall be required for proceedings under the protection from stalking, sexual assault or human trafficking act.

(f) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.