

To: House Committee on Corrections and Juvenile Justice
From: Michelle McCormick, Executive Director KCSDV
Re: Neutral In-person Testimony for HB 2630
Date: February 7, 2024

Chairperson Owens 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.

We offer neutral testimony on HB 2630 today – a bill that would amend the Kansas Rules of Evidence to allow previous domestic violence offenses to be admitted during the prosecution of a domestic violence offense.

The criminal justice response to domestic violence can get complex. To be successful, there is a need to have nuanced solutions that center victim/survivor safety and offender accountability. This has created challenges for even the most skillful law enforcement officers, prosecutors, and victim advocates who work in a system that tends to function best when there are orderly processes that create standardized solutions. Victim advocates have for years asked this system to challenge its “incident-based” structure when it comes to DV cases and adapt practices that incorporate the critical context of domestic violence needed to be understood, which would lead to better outcomes for survivors and their children. For example, one piece of critical context that is frequently missing is the understanding that many victims of domestic violence do not engage in the criminal justice process until physical violence has escalated (if they call law enforcement at all). So, when someone is convicted of a “domestic battery—first” (a misdemeanor) this often is not the “first time” that violence, coercion, control, or abuse has occurred in the relationship. KCSDV believes that this bill, by changing the Kansas Rules of Evidence to allow for the admission of prior acts of domestic violence could add much needed context to domestic violence prosecutions.

However, we would like to raise a nuanced concern that could impact a few victims and create unintended consequences. The reality is that some victims react to the abuse they experience by also using physical violence. It can be a challenge, when responding to these situations, to determine if this act was in self-defense or in response to violence they were experiencing and so, at times, victims are charged with DV offenses. I believe that most first responders and criminal justice professionals would agree that treating the person who is the primary victim as the abuser does not

serve justice. It is important to build in opportunities to analyze the motivations for the violence, the root causes, and who is the dominant aggressor in these situations, so that nuanced and effective solutions can be accomplished.

In other states, there is statutory language that requires a dominant aggressor analysis be completed by responding law enforcement. Kansas has not yet included this statutory requirement. I will note that [2023 SB 267](#) was introduced in the 2023 session and is currently in the Senate Judiciary Committee with no hearing to date. SB 267 would define “primary aggressor” which is similar to the dominant aggressor – as the person determined to be the most significant aggressor.

Though this bill is specific to the rules of evidence for prosecutors and not law enforcement, we ask the Committee to consider this an opportunity to add a similar practice of requiring a prosecutor complete a dominant aggressor analysis, as part of being able to introduce the evidence of prior domestic violence in the case. A proposed draft of an amendment is included below.

Again, KCSDV supports the request to amend the Kansas Rules of Evidence as described, with the caveat that there be consideration of how to build in a “back stop” for prosecutors, so that unintended harm does not come to victims whose situations do not fit neatly into the checkboxes of our system.

For the reasons stated above, KCSDV offers neutral testimony for 2024 HB 2630.

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

Draft Proposed Amendment:

K.S.A. 22-3201 is hereby amended to read as follows: 22-3201 (h) Except as otherwise provided, the prosecuting attorney in filing a complaint or indictment for a domestic violence offense as defined in KSA 21-5111 and amendments thereto, a prosecutor shall affirm in the written statement that an analysis of primary aggressor was completed as part of the complaint or indictment filing.

K.S.A. 2022 Supp. 21-5111 is hereby amended to read as follows: 21-5111. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

"Primary aggressor" means the person determined to be the most significant aggressor, rather than the first aggressor. In determining the primary aggressor, the prosecutor shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, the nature of the injuries suffered or inflicted on another and whether either person acted in self-defense.