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House Judiciary Committee

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Hearing on House Bill 2480

Proponent Testimony of
Ann Sagan, Executive Director
Kansas State Board of Indigents' Defense Services

Chair Humphries, Vice-Chair Williams, Members of the Committee and Legislative Staff,

Thank you for the opportunity to testify in support of HB 2480. The Kansas State Board of Indigents' Defense Services (BIDS) is the public defender agency for the state of Kansas. We provide constitutionally required counsel to every adult who is charged with a felony and qualifies for appointed counsel because they are unable to pay to hire an attorney. Our clients are often Kansans who have faced multiple challenges, including poverty, substance abuse issues, mental health issues, and homelessness. HB 2480 would allow our agency to fully integrate licensed social workers into our work by creating an exception for mandatory reporting requirements for licensed social workers who work under the supervision of an attorney. This bill would allow social workers to fully participate in public defense representation, which would improve the effectiveness of our representation and increase the positive impact that our work has on the lives of our clients and the community.

Social workers have specialized skills that most attorneys do not have, but which are impactful in criminal cases. Social workers are trained to build connections with clients and their families, including through evidence-based and trauma-informed interviewing. Social workers build a record of a defendant's life history to help the attorney understand their experiences and motivations. They gather records and other documentation to build a full picture of the defendant, which the attorney may then share

with the judge for consideration at sentencing. Social workers are also experts at connecting defendants with community resources while a case is pending. Our clients' success while released on bond often depends on their ability to access crucial resources in the community, such as housing, drug treatment, mental health services, and food pantries.

However, currently, licensed social workers in our offices cannot be fully integrated with the defense team in every case because the attorney's duty of confidentiality is not compatible with the requirements of mandatory reporting for social workers. The attorney's duty of confidentiality is fundamental to our ethical requirements and practice. All staff working under the supervision of the attorney must also adhere to the confidentiality requirements. The Kansas Rules of Professional Conduct, enacted by the Kansas Supreme Court, outline attorneys' ethical obligations regarding the duty of confidentiality to our clients. Rule 1.6(b) lays out limited exceptions in which an attorney may reveal information about the client.

For reference, Rule 1.6 states the following:

"(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a crime;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to comply with other law or a court order; or

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

If House Bill 2480 becomes law, the existing reporting requirements for licensed social workers in K.S.A. 2024 Supp. 38-2223, K.S.A. 39-1402 and K.S.A. 13-1431, will continue as they are now, with the narrow exception of information obtained when a licensed social worker is working under the supervision of an attorney. HB 2480 will not impact the many layers of protection that Kansas's robust system of social workers provides in schools, doctor's offices, day care providers, and through the Department for Children and Families. Instead, this bill will allow licensed social workers to assist clients in the important context of attorney representation, which will further our agency's work to aid Kansans who often struggle to gain the community connections and services needed to successfully leave the criminal justice system behind.

Thank you for your consideration of HB 2480, which will allow BIDS to provide more effective services to the individuals we represent.

As always, if you have any further questions, please do not hesitate to contact us.

Thank you for your time and consideration. I am happy to answer questions at the appropriate time.

Ann Sagan
Executive Director
Kansas State Board of Indigents' Defense Services