

March 13th, 2024

In Support of Senate Bill 265

By the Hon. Phillip B. Journey, Judge District Court 18<sup>th</sup> Judicial District

Testimony before the Kansas State House Judiciary Committee

Members of the Committee, Ms. Chairman, thank you for the opportunity to address the Committee in support of Senate Bill 265. Senate Bill 265 amends K.S.A. 21-5924. It enhances the existing statute that created the criminal penalty for violating a protective order. It is the intent of this bill to subject a repeat offender to increased penalties for violation of the protective order. On the Senate Floor Sen Haley amended the bill with an unrelated topic from one of his proposals.

I am asking the House Committee to strip the amendment out and return the bill to its original form.

The original statute simply makes each violation of a protective order a class A misdemeanor (KSA 21-5924(b), (1)). The penalty for a class A misdemeanor is up to 12 months in the county jail and/or a \$2500.00 fine. SB265 elevates the penalty for a second or subsequent offense to a severity level 7, person felony (SL7 PF). A SL7 PF has a penalty range of 11 to 34 months and is presumptive probation unless the offender has a criminal history score of "B" (2 prior person felony convictions) or higher.

Final protective orders are statutorily, one year in duration. That final order may be extended by court order upon the required evidentiary showing. Under current law violation of an extended order is a severity level 6, person felony (SL6 PF). A SL6 PF is 17 to 46 months and only presumptive probation if the offender has no prior felony conviction. This provision of current law is KSA 21-5924 (b), (2). The bill makes a second or subsequent conviction a severity level 4 person felony (SL4 PF). A SL4 PF has a sentencing range of 38 to 172 months and is presumptive prison with no prior criminal history. Enhanced penalties for subsequent convictions do not count the offender's conviction used to enhance the severity level of the crime charged in the criminal history score.

The current fiscal note states; " The Office of Judicial Administration and the Department of Corrections indicate enactment of the bill would not have a fiscal effect."

In 2019, SB 88 was identical to SB265. The SB88 Fiscal Note prepared by the Division of Budget noted the potential of lost revenue from supervision fees and expenses of increased rates of incarceration. No total annual expenses were estimated by the Office of Judicial Administration or the Kansas Sentencing Commission. I submit that this Committee should balance these costs, as

nebulous as they are, with the potential for reduction of the societal costs of Domestic Violence in our State. We did not have unused capacity in KDOC at that time.

The 2021 KBI Domestic Violence, Stalking and Sexual Assault In Kansas reported the following. 32 of 173 2021 homicides or 18.5% were domestic violence. 4 of the previous 6 years were higher than 18.5%. According to the KBI Crime Clock there is a DV homicide in Kansas every 11 days, 9 hours and 45 Minutes, A DV report every 23 minutes and a DV arrest every 47 minutes.

Filings for Protection from Abuse (PFA) petitions are up significantly. Statewide in 2021 there were 8,505 petitions filed up 21.7% from the previous year. (pg. 45 KBI report)

Filings for Protection from Stalking (PFS) petitions are also up significantly. Statewide in 2021 there were 4,975 petitions filed up 18.5% from the previous year. (pg. 52 KBI report)

Criminal prosecutions for Felonious Stalking are way up too, with a statewide total of 735 convictions up 16.7% from 2020 to 2021. (pg. 55 KBI report)

Kansas City Star, Nov. 8, 2018: Tabitha Birdsong had an order of protection folded in her back pocket when she was found dead Tuesday near Roanoke Park in Kansas City. The man named on the order, Gene A. Birdsong, is charged with killing her. According to Johnson County court records, Gene Birdsong was convicted in 2009 and 2010 of domestic battery against Tabitha Birdsong.

In 2015, she filed a protection order request in Johnson County in which she said she was “terrified” for her safety.

In 2016, Gene Birdsong was charged in Johnson County with violating a protection order Tabitha Birdsong had obtained in Wyandotte County. He spent 86 days in jail earlier this year after violating his probation in that case and was released from custody in June.

The Wichita Eagle: October 6, 2018, Kristin Florio-Gile was killed by her estranged husband, Randy “Rocky” Gile shortly after 5 p.m. Oct. 6 on 63rd Street South between Rock and Greenwich. He then killed himself. Both were in their early 30’s.

Ms. Florio-Gile was in an abusive marriage, which she was trying hard to get out of, according to information posted on a gofundme page. It stated that she sought protection in a women’s shelter and had filed a protection from abuse order against Gile. Randy Gile had been in legal trouble, but was never in a Kansas prison, according to state records. Last month, he was booked into the county jail on a count of criminal threat and seven counts of aggravated assault.

Information shared also stated that Florio-Gile’s 55-year-old father had been shot three times on the side of his stomach but was not seriously hurt. “Rick tried everything in his power to protect Kristin, who was in her SUV, and was desperately trying to get away, but the husband sideswiped her and ran her off road,” the statement read.

These two tragedies are illustrative of the societal cost this bill is intended to prevent. These two incidents are extreme but not unique; tens of thousands of Kansans are stalked, battered, and abused annually. Call the Judges in your districts I know you will be surprised. The KBI report contains a wealth of information and breaks numbers down by county, law enforcement agency and many other factors. It is useful to see the numbers for your district. I hope that the Committee will support this legislation and consider passing it out of Committee favorably or amending it into the Committee report prepared for other legislation dealing with Domestic Violence or other criminal law subjects.

Please, after removing the Senate floor amendment recommend SB265 favorably out of committee.

Respectfully Submitted,

Phillip B. Journey

Division 1, 18<sup>th</sup> Judicial District