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House Judiciary Committee

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Hearing on Senate Bill 128

Proponent Testimony of
Heather Cessna, 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 SB 128. The Kansas State Board of Indigents' Defense Services (BIDS) exists to provide the constitutionally required counsel to every felony defendant who qualifies for appointed counsel in every court across the state. The provisions of SB 128 would allow licensed social workers to fully participate in BIDS' defense teams and provide more effective representation for all of our clients.

As the attorneys in the room know, confidentiality between a client and their attorney is the foundation of effective legal representation. The attorney needs to have all of the pertinent information to do their job of effectively representing the client, and the client needs to trust that the attorney will maintain the confidentiality of all information the client provides.

The Kansas Supreme Court enacted the Kansas rules of professional conduct to outline attorneys' ethical obligations, include our duty of confidentiality to our clients. Rule 1.6 of the Kansas rules of professional conduct 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.”

While Rule 1.6(b) lays out limited exceptions in which an attorney may reveal information about the client, those exceptions do not include circumstances when a licensed social worker employed by an attorney has reporting requirements that conflict with attorney-client confidentiality.

If Senate Bill 128 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, with the narrow exception of information obtained when a licensed social worker is working under the supervision of an attorney.

The benefits of having social workers on legal teams are significant. Social workers bring a number of specialized skill sets that most attorneys and other members of traditional legal teams do not possess. Social workers' evidence-based and trauma-informed interviewing skills lead to an understanding of each client's life experiences and stated desires that are crucial to advancing advocacy efforts for appropriate community

alternatives to incarceration and to ensuring clients are referred to individually targeted treatment and educational programs, potentially reducing their risk of recidivism.

BIDS worked with social workers and other attorney organizations to carefully craft narrow language to preserve the protections in the existing statutes regarding licensed social workers' reporting obligations while allowing them to bring their specialized skills to work with attorneys to provide the most effective legal representation for the attorneys' clients.

Thank you for your consideration of SB 128, which will allow BIDS to provide more effective, client-centered 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.

/s/ Heather Cessna

Heather Cessna
Executive Director
Kansas State Board of Indigents' Defense Services