



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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**Testimony Regarding SB 127
Submitted by Aaron Breitenbach, Deputy District Attorney
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District,
And the Kansas County and District Attorneys Association**

Honorable Chairwoman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 127. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, we join the Kansas County and District Attorneys Association in supporting a needed change to support victims of crime.

In April 2024, the Rural Health Information Hub found roughly two-thirds of Kansas counties have a doctor shortage (<https://www.ruralhealthinfo.org/charts/5?state=KS>). This is particularly dire for rural counties where some have no doctors practicing at all. To make up for this deficit, some people turn to telehealth providers, travel to population centers (sometimes hours away), or simply attempt to diagnose and treat themselves. In most instances, however, this gap is filled by nurses or other medical professionals.

Even in areas not suffering from as severe of a doctor shortage, it is rare for a patient to spend much meaningful time with licensed physicians. Most medical history, patient interaction, and care is directly provided by nurses.

Kansas, like every other jurisdiction in the United States, generally prohibits hearsay evidence from being admitted in criminal trials and preliminary hearings. Also, like every other jurisdiction, there are many exceptions to this rule for hearsay that has been found to be generally reliable. One of those exceptions is statements made to a medical provider for the purpose of medical diagnosis and treatment. Kansas has codified this exception in K.S.A. 60-460(l)(2). Unlike many, if not most, jurisdictions, however, Kansas has limited this exception to only statements made by a patient to a physician.

The limitation of this exception may have made sense when people were more likely to be seen by doctors as opposed to other medical professionals. Given modern trends in healthcare, this limitation is now antiquated. The justification for the exception is that people do not generally lie to their doctors about their physical conditions when seeking treatment. There is no reason to believe that people are more likely to lie to their nurse or EMT when those are the people who actually provide treatment these days. As a prosecutor, I frequently work with medical professionals when seeking justice for

victims of crime. Most often, victims are primarily treated by nurses with doctors mainly providing a supervisory role in the treatment process. At times, parties (both prosecution and defense) need to admit statements a witness made while being treated. As the law currently stands, the party seeking admission of the statement would need to subpoena the doctor as opposed to a nurse or other medical professional. This can result in doctors being in courtrooms instead of emergency rooms where their services are more desperately needed. The current law can create a burden on an already over-taxed medical system. The bill before you now is one small thing we can do to bring our laws into conformity with the realities of our current medical profession while ensuring reliable statements are available in court.

Thank you for your time, attention, and consideration in this matter.

Respectfully submitted,

Aaron Breitenbach
Deputy District Attorney