

To: Senate Committee on Judiciary

From: Michelle Ewert, Director of the Washburn Law Clinic

Date: February 11, 2025

Re: Support for SB 128 (Creating an exception to certain mandatory reporting obligations for licensed social workers when working under the supervision of an attorney)

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I write this honorable committee to express my strong support for SB 128. I am a Professor of Law at the Washburn University School of Law and Director of the Washburn Law Clinic. My students and I provide free legal services to low-income Kansans who would not otherwise have access to counsel. I previously served as staff attorney and housing law supervisor at the Homeless Persons Representation Project in Baltimore, Maryland, and as staff attorney for HOPE Fair Housing Center in Wheaton, Illinois, and Central California Legal Services in Visalia, California. In each of these positions, I have represented low-income individuals who were struggling to overcome very significant barriers to moving out of poverty.

An attorney's duty of confidentiality is the cornerstone of the attorney-client relationship. Knowing that their attorney will keep what they tell them confidential makes it easier for the client to be completely open about the facts of their legal matter. This enables the attorney to accurately assess the client's options and provide the best legal advice.

Attorneys frequently utilize the services of other professionals as they work on cases. These non-lawyers could be inside or outside the firm. For example, an attorney might ask an accountant to analyze financial records since they have expertise the lawyer doesn't have. The Kansas Rules of Professional Conduct are clear that the lawyer has an obligation to ensure that the non-lawyer's services are provided in a way that is consistent with the lawyer's professional responsibilities—including maintaining confidentiality. See Kansas Rule of Professional Conduct 5.3, comment 3.

In the cases that I have worked on over the years, I frequently benefitted from the assistance of social workers. Their training helps them understand mental health, trauma, and behavioral health more broadly. They also are familiar with community resources for a range of social and economic needs. Studies have documented the positive impact of case workers' involvement in legal cases.<sup>1</sup>

However, social workers' mandated reporting duties for suspected child abuse and neglect are at odds with attorneys' duty of confidentiality. SB 128 would address this conflict. Social workers would generally retain their mandated reporting duties. However, social workers embedded in law offices or retained for outside assistance on cases would not be required to report suspected abuse or neglect learned about through the course of the legal representation.

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<sup>1</sup> See, Assessing a Social Worker Model of Public Defense (March 2021); Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York (February 2012).

Thus, the attorneys would gain the benefit of the social worker's expertise without compromising confidentiality.

Other jurisdictions have already implemented this solution to exempt social worker mandated reporters working for an attorney.<sup>2</sup> Kansas should do the same. I ask you to vote in favor of SB 128.

*The ideas expressed in this statement are mine as an individual faculty member at the law school and do not represent Washburn University or Washburn University School of Law.*

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<sup>2</sup> Code of the District of Columbia § 4-1321.02(b)(2)(B); Cal. Penal Code § 11165.7(a)(18).