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**Testimony Regarding SB 203
Submitted by Joshua P. Steward, Senior Assistant 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 203. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, we join the Kansas County and District Attorneys Association in asking the State of Kansas to better protect the interests of domestic violence victims and save valuable resources in our criminal justice system by providing options to our courts and law-enforcement when dealing with uncooperative witnesses and victims.

Currently, K.S.A. 22-2805 authorizes a court to issue a material witness warrant for witness in a criminal case when “it may become impracticable to secure the witness’ presence by subpoena”. That statute further authorizes the court to hold the witness in custody under certain conditions or to release the witness on bond with any conditions of release “to assure the witness’ appearance as a witness”. While this tool is invaluable, it can also be excessive in many cases – particularly many domestic violence cases.

I have been a prosecutor for about fifteen years – six years of that have been here in Kansas. I have specialized in the prosecution of domestic violence and sex crimes for more than ten years. One of the most frustrating aspects of domestic violence prosecution is the lack of cooperation from many victims. Victims frequently fail to cooperate because of money/job issues, childcare concerns, pressure from the defendant or his friends or family, fear of retribution, or even outright threats from the defendant. I have had many cases here in Kansas where I knew beyond any doubt that the victim or a witness is evading subpoena service or refusing to appear in court due to the meddling, pressure, or threats of the defendant. In those circumstances, my options are generally limited to dismissing my case or having the victim arrested on a material witness warrant. I believe that abusers will never cease their actions unless consequences follow, so I generally choose to ask the court for a material witness

warrant, but the cruelty of arresting a victim because she continues to be victimized is not lost on me. Further, victims rarely become more cooperative or trusting of the criminal justice system when we send officers to their homes or work, arrest them, put them in jail, and make them pay bond to be released.

Sometimes the material witness warrant process is necessary, and it is essential that it remain an available tool. There is, however, an alternative in many cases. When I was a prosecutor in Virginia (also handling domestic violence cases), I frequently had the same problem of uncooperative victims and witnesses. When a witness failed to appear on a subpoena in Virginia, however, we did not generally issue a warrant for her arrest. Instead, the courts were empowered to hold the witness in contempt (a criminal charge) and issue a “show-cause” notice to be served on the witness. This document was similar to a subpoena, but it alerted the witness that she was now charged with the crime of contempt of court, that she could be fined or jailed, and ordered her to appear in court to answer the charge. Conveniently, the courts would order the witness to appear to answer her charge at the same time as the underlying criminal case would next be heard. I would estimate that in 90-95% of cases, the witness would then appear as directed, would be available to testify as directed, and the contempt charge would be dismissed.

In domestic violence cases, this process is vastly superior to simply issuing an arrest warrant, and it could be helpful in all other types of cases as well. First, it is much less likely to cause further hardship for a victim of crime. She will not miss work, have children placed in protective custody due to being incarcerated. Second, she will not have to spend precious money on bail. Third, she is more likely to be cooperative with the courts if she is not arrested and incarcerated. Fourth, if she is victimized again in the future, she is more likely to report that victimization. Finally, the resources saved by the courts, law-enforcement, and jails justify this option all on their own.

The 20th Judicial District on its own issued 35-40 material witness warrants in 2024. According to the Sedgwick County Adult Detention Facility, it costs them approximately \$69 per day to house each inmate. K.S.A. 22-2805 permits the State to hold material witnesses up to sixty days. If even ten material witness warrants were made unnecessary each year by this legislation, that could be a savings of up to \$41,000 each year in Sedgwick County alone. That does not even take into account how this will help the overcrowding that same jails face, the risks inherent in arresting an individual, and the economic loss that occurs each time an otherwise productive member of society is incarcerated instead of going to work, caring for her children, and paying her bills. This legislation would be a benefit to the criminal justice system, to victims of crime, and to society at large.

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

Respectfully submitted,

Joshua P. Steward
Senior Assistant District Attorney