

Testimony Before the  
Kansas State Senate Judiciary Committee

On Friday, February 22nd, 2019,

In Support of Senate Bill 88

Members of the Committee, Mr. Chairman, thank you for the opportunity to have a hearing before your Committee in support of Senate Bill 88. Senate Bill 88 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.

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. SB88 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 a required 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 has no prior felony or the equivalent 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 Fiscal Note prepared by the Division of Budget noted the potential of lost revenue from supervision fees and expense of increased rates of incarceration. No total annual expense was estimated by the Office of Judicial

Administration or the Kansas Sentencing Commission. I submit 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.

According to the Kansas Coalition Against Sexual and Domestic Violence. Nearly 13 percent of homicides in Kansas in 2016 were related to domestic violence. I believe that is a significant underestimation.

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 30s.

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 led 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 with one grazed, one puncture, and one metal piece wound, 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; thousands of Kansans are stalked, battered and abused annually. Call the Judges in your districts I think you may be surprised. 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.

Respectfully Submitted

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