



Kansas County & District Attorneys Association

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From: Todd Thompson, Leavenworth County Attorney
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Date: March 11, 2021

Re: Proponent Testimony for Senate Bill 204

Representative Patton and Members of the Committee.

Thank you for giving me the opportunity to propose the adoption of SB 204. The language of SB 204 is the language from 2020 SB 355 as it passed out of this Committee and the Senate on a vote of 39 – 0. It was heard in this Committee before the legislature was forced to adjourn due to Covid. We are asking that you pass it this year.

To understand our proposal, I want to share the testimony from last year by our prosecutor coordinator, Kim Parker. She explained the legal evolution of this law very clearly:

The Kansas law currently allows a court to order the mental, psychiatric or psychological testing of a victim of sexual abuse upon the request of a defendant who is charged with the sexual assault of the victim. This archaic law stems from a court rule in Kansas allowing the psychiatric or psychological examination of a witness stems from a 1979 Kansas Supreme Court case *State v. Gregg* that relied on **outdated and false understandings of criminal sexual abuse, assault and rape and gender biased notions about female sexual assault victims**. In the *Gregg* case, the adult defendant was charged with the sexual assault of an 8-year-old girl. The 8-year-old victim had stated that defendant forced her to fellatio with him. The defendant's version was that he was high on drugs and liquor and that the little girl had, on her own initiative, committed the act before he was aware of what was occurring.

In deciding whether Kansas Courts could order and require a victim of a sexual attack they relied on reasoning used to decide a 1966 California case, *Ballard v. Superior Court*. In *Ballard*, a physician charged with the rape of a patient asked the trial court to order the victim of the rape to undergo psychiatric examination for the purpose of determining whether her mental and emotional condition affected her veracity or truthfulness. The charged defendant and his defense attorney suggested that **psychiatric interviews of a victim in a sex case, were necessary because a woman or girl may falsely accuse a person of a sex crime because of a mental condition that transforms into fantasy, a wishful biological urge**. Also, that a **sexual assault accusation may flow from an aggressive tendency directed to the person accused or from a childish desire for notoriety**. The reasoning in the *Ballard* case was based on a legal treatise written in 1940 that claimed that “No judge should ever let a sex-offense charge go to the jury **unless the female complainant's social history and mental makeup have been examined** and testified to by a qualified physician.” The author of the treatise, Professor Wigmore, was concerned that a victim of a sexual assault may suffer from an emotional condition inducing her belief that she has been subjected to a sexual offense and that there is a danger of psychotically induced accusations of sexual assault.

Fast forward 1940 to 2020, eighty years later **we know this thinking is archaic, biased and unsupported by any valid evidence. In fact, in the *Gregg* case even the Kansas Supreme Court recognized that the defense motion to require the 8-year-old to submit to such an exam was merely a fishing expedition and was not required**. Unfortunately, their ruling left open a door to allow courts to continue to order a mental exam. **We ask that you close that door because it is extremely invasive and because there are no known mental examinations that determine the truthfulness of a report of sexual assault. The current state of the law only serves to further unfairly brand and silence those who are among the most vulnerable and invaded victims**. This type of court ordered evaluation is never applied to any other type of victim and is a shameful reminder of society’s failure to acknowledge the reality and prevalence of crimes of sexual assault.

Currently, defense attorneys are still making harmful requests for these evaluations of victims and courts are still granting them. I know this because we just had one of these motions granted in the last month. A young girl, 11 when the alleged crime took place, now has to be subjected to an evaluation because our laws say she has a mental condition that transforms into fantasy, a wishful biological urge. This law only harasses and insults a victim of a sexual assault. These evaluations do nothing to determine truthfulness of the victim.

Sexual assault victims should be treated the same as all other victims in the justice system As Ms. Parker stated, “The veracity of a sexual assault victim should be subject to the same tests as all other victims, solid investigations, a prosecutor’s careful review of the facts, through cross examination and the determination by a court or jury as to the credibility of the evidence and testimony.”

We urge you to adopt the needed provisions of SB 204.

Respectfully submitted,

Todd Thompson, Leavenworth County Attorney
Legislative Chair and Past President
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