



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

January 26, 2015  
House Judiciary

Chris Mechler, Court Services Specialist  
Office of Judicial Administration

### Testimony Regarding the Implementation of House Bill 2024

Chairman Barker and members of the committee, thank you for allowing me the opportunity to provide testimony on HB 2024. This bill would require the court to consider current and prior protective orders issued against the defendant in determining the sentence to be imposed. The decision to have these orders considered by the sentencing court is a policy decision to be made by this committee. There is no doubt that the protective orders noted in the bill would provide information that would be valuable to the court in sentencing, if that information were readily available. My testimony is aimed solely at calling to your attention the fact that some of the protective orders listed in the bill cannot be readily obtained, if at all.

A court services officer (CSO) would search for protective orders while conducting the presentence investigation (PSI) report and would include the relevant information in his or her report to the court. The bill specifies several types of protective orders that shall be considered by the court. Each of those orders is noted below, together with information as to whether that information can be readily obtained for the court.

- Protection from abuse orders, which are required by (d)(2)(A) and (B), can be accessed through a query to the NCIC (National Crime Information Center) Protection Order file. This file contains active, cleared, and expired orders from all states. Although providing this information would take court services officers some additional time, the information is readily available and can be provided to the court for consideration at sentencing.
- Restraining orders, as described in (d)(2)(C), are orders issued in divorce and child in need of care (CINC) cases. There currently is no statewide database for these records. In addition, court records currently cannot be searched on a statewide basis and would have to be searched in all Kansas counties to determine whether these orders exist. Even if that could be accomplished, issues of identity could remain, requiring additional research time to determine if the person against whom the order was issued is the defendant in the current case. Therefore, I request that these be stricken from the bill.

- Orders issued in Kansas or any other state as a condition of pretrial release and diversion from the case types in (d)(2)(D) that order a person to refrain from having any direct or indirect contact with another person would require extensive research and may not be available in all jurisdictions.
- The orders referenced in subsection (d)(2)(E), which are orders issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal that order the person to refrain from having any direct or indirect contact with another person, would be included in subsection (d)(2)(D).
- Orders described in (d)(2)(F) are protection from stalking orders; these orders may not be entered into NCIC Protections Order File by all jurisdictions and then may not be entered until they become final. Orders that are in the database could be included in the PSI.

The concerns I have noted all relate to the bill's requirement that, in sentencing, the court "**shall**" consider "**available**" information. Even if the information is available, it will take a considerable amount of valuable CSO time to find, verify, and report the information. A fiscal note detailing our best estimate as to how much time and how many CSOs would be required to carry out the provisions of this bill has been submitted to the Division of the Budget.

While prior convictions are and will remain a factor in sentencing, the provisions of this bill introduce the possibility that persons with the prior orders listed in this bill that can be identified, verified, and brought before the court may be sentenced differently than persons with the same sort of orders that are not identified, verified, and brought before the court because the required information is lacking, is not included on a database, is not provided in a timely manner by another state, or is otherwise not available for another reason.

Thank you for your consideration of these issues. I would be happy to stand for any questions you might have.