

SB157
Senate Judiciary Committee
TESTIMONY
March 7, 2019
OPPOSE

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a statewide non-profit organization whose members are the 27 sexual and domestic violence programs serving victims across Kansas. KCSDV provides information; training; and analysis and policy work on issues impacting victims of sexual and domestic violence, their families, and their communities.

KCSDV opposes SB157 and believes it is dangerous for victims of domestic violence and their children. SB157 creates a presumption that equal parenting time is in the best interests of all children, unless the challenging parent can prove by clear and convincing evidence that such a presumption should not apply. Such a high standard of proof ensures most victims will not be able to satisfy the burden, or afford competent legal representation to fight the presumption.

There are no exceptions for domestic violence in the bill's present form, and even if there were attempts to craft such an exception, KCSDV would still have strong concerns. KCSDV has reached out to other state coalitions in regards to SB157, and has been informed that this bill is currently being introduced across the nation in the same form, and with complete disregard for the safety of victims of domestic violence.

Studies have found that approximately 80% of divorce cases are settled, either up front or as the case moves through the process. Approximately 20% of divorcing or separating families take the case to court, and approximately 5% of those cases ultimately go to trial or result in a "contested" custody case, of which approximately 20-55% have documented evidence of domestic abuse. *It is KCSDV's concern that this bill will mostly impact victims of domestic violence and their children, where the cases are contested and agreements cannot be reached for safety reasons.* Research shows that the best way to protect a child from domestic violence is to protect both the non-abusive parent and the child, keeping them safe and together, and providing them with the resources they need to be safe.

Research also indicates that 30-60% of children living in homes where domestic abuse occurs are also physically or sexually abused. Even if the child is not the victim of direct physical or sexual abuse, children exposed to domestic violence can exhibit emotional and behavioral problems and

trauma symptoms. Additionally, a parent who perpetrates domestic abuse against the other parent often continues abusive behavior and intimidation by using the legal system to force long and costly custody battles. These are just a few of the reasons why consideration of domestic violence in custody decisions is so important.

Finally, KCSDV would like to take this opportunity to discuss an additional factor the court must consider in custody determinations pursuant to K.S.A. 23-3203: “the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent.” This factor is commonly referred to as the “friendly parent” factor. Although SB157 does not amend this factor, KCSDV would like to stress that this factor remains a serious concern for victims of domestic violence who are trying to protect their children from ongoing exposure to domestic violence after the marriage ends. The “friendly parent” factor, as written, fails to consider domestic abuse and all of the strategies a victim may use to protect the children from abuse. Domestic violence does not end when the marriage ends; it often continues to be perpetrated in whatever ways the abuser has access to the victim; quite frequently this is through the children.

A parent who is a victim of domestic abuse may seek to protect the children from witnessing or being a victim of the domestic abuse by requesting limited, supervised, or even no contact with the children by the abusive parent. As the “friendly parent” factor is currently written, a protective parent may be penalized for failing to, “...respect and appreciate the bond between the child and other parent and to allow for a continuing relationship between the child and other parent” (i.e., being an unfriendly parent). KCSDV believes this custody factor should be modified to take domestic abuse and safety into consideration.

Many states have done away with their “friendly parent” provisions; have allowed for an exception to this factor in cases of domestic abuse; or, allowed the court to consider if a parent was acting to protect the child from witnessing or being a victim of domestic abuse. KCSDV supports exceptions or modifications to Kansas’s “friendly parent” factor.

While KCSDV strongly opposes SB157, we believe it is also important to point out the continuing problem with this custody factor and the ongoing danger for victims and their children when this factor is not modified in cases where there is domestic abuse. This custody factor is directly implicated by SB157 which presumes shared custody if there is no agreement.

Society wants victims to protect their children by leaving the abuser, while at the same time; society punishes them and their children for protective behavior.

Respectfully submitted,
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