

**Testimony of Grier Weeks,  
Executive Director of the National Association to Protect Children  
Before the Kansas Senate Judiciary Committee**

**In Support of Senate Bill 66**

**Tuesday February 19, 2013**

Senator King, Ranking Member Haley and distinguished members of this Committee, thank you for the opportunity to testify in support of Senate Bill 66.

I am Grier Weeks, Executive Director of the National Association to Protect Children. Since 2003, we have worked with lawmakers in state legislatures and in Congress on over 40 legislative initiatives. We've gotten bills introduced and passed in a dozen state legislatures from Virginia and Arkansas to California and Illinois, and been very active in Congress since 2006.

We pride ourselves in being the most fiercely bipartisan group in America.

By the way, I was in a taxi cab in Washington not long ago and used those two words together—"fiercely" and "bipartisan"—and the cab driver burst into laughter. Encouraged by my fellow passenger, who was a political partisan, the driver thought he'd rake me over the coals for being so naïve as to think anyone in the middle of road could be fierce. I guess it was Jim Hightower who said the only thing in the middle of the road was yellow lines and dead armadillos.

But if you are a single issue partisan, as I am, and the issue you care about more than anything in the world is protecting children from harm, you have to be bipartisan. When the house is on fire, you don't stand at the gate and ask firefighters what party they're in. And after you've stood shoulder to shoulder with the real fighters—and you know they're from both parties—you laugh at the partisans. That's why we're fiercely bipartisan.

I also want to say on the record that I am fiercely pro-prosecution. My entire career is dedicated to getting people who prey on children prosecuted and removed from society. Some of my greatest heroes are prosecutors.

The National Association to Protect Children strongly supports this bill. It is a nationally significant advance for both transparency and accountability in the criminal justice system, which will lead to better performance and outcomes in the area of public safety. Our exclusive interest, of course, is crimes against children. However all of the provisions of this bill apply to those crimes.

We would also like to recommend one change that would substantially improve this legislation and the outcomes that could be expected from it. We believe that it would

be very important to add one category of data for collection and reporting: cases *referred for* prosecution, regardless of whether they are ultimately prosecuted or not. I will elaborate on that below.

In 2011, the House Committee on Corrections and Juvenile Justice was kind enough to allow our testimony on a predecessor bill to S.B. 66. I will reiterate a couple of points from that testimony here.

First, we noted that, as elected representatives, each one of you is subject to a great deal of transparency in the work you do. You are asked to take positions on a variety of controversial subjects. Your votes are recorded. Your name is on the sponsor line. The news media covers what must seem like your every move sometimes. And voters expect you to explain the results.

The same can be said for other public servants. The medical field is perhaps the best example. Extremely detailed records are made of vital statistics, diagnoses, treatment plans, medication and patient outcomes. And when something goes wrong in a hospital, there is typically rapid, meaningful peer review. It's never a defense to say that very basic data just wasn't collected.

Unfortunately, none of this can be said about our child protection or justice systems. A typical crime—as it moves from initial report, through investigation, to referral for prosecution, then plea bargaining and sentencing—is handled by multiple agencies, who communicate haphazardly at best. Typically, at the local, state or federal level, these agencies' computer systems are not even technically capable of talking to each other.

In most of the states we have experience in, it is rare for counties and districts to report data consistently and *completely* to a centralized statewide database. I believe this is an issue in Kansas, or else this legislation would not be necessary. In our state work—including California, Virginia and Florida, we have found these problems to be endemic.

Without transparency there can be no accountability. And without accountability, there is almost no hope or mechanism for deliberate improvement. The business world understands this, and I know this Committee does too. We should apply these principles to our criminal justice system, because the performance of that system directly impacts the lives and safety of our citizens.

Another point I'd like to emphasize is the tremendous importance of prosecution data—the subject of this legislation. In general, the public and the mass media grossly misunderstand how the criminal justice system really works, "Law and Order" television shows notwithstanding. When a judge is failing in his duty to respond to violent crime seriously, everyone understands that. He could end up with a Bill O'Reilly camera crew paying a visit.

But that's a mostly a caricature. The vast majority of all criminal cases in Kansas and the United States are disposed of by plea bargain. This is not inherently good or bad, it's just a fact of life in an overwhelmed and underfunded justice system. Charging decisions, charge-bargaining and plea-bargaining is all done by prosecutors before a judge is ever involved. Much of a judge's life is presiding over plea agreements. Prosecutors hold the most power of anyone in the criminal justice system, and their performance is of the utmost importance.

What do we need to know about prosecutor performance? The last thing we should care about are so-called "conviction rates." Show me a District Attorney with a 100% conviction rate, and I'll show you a DA who is risk-averse, who carefully selects slam-dunk cases. Why should those DAs be rewarded, at the expense of other, fiercely dedicated prosecutors who stick their necks out to try tough, complicated rape or child abuse cases?

What we should care about is knowing which prosecutors seem to be eagerly taking cases from police... and which send police packing if their case isn't perfectly tied up with a bow. We should care about dismissal rates, and what kind of cases appear to be routinely disposed of with overly expedient plea bargains. We should care about how many serious crimes are being aggressively prosecuted... and in which places less serious crimes are made a bigger priority than violent crime.

You can't answer any of these questions without the facts. And I want to reiterate here that transparency isn't just about exposing failure. It's about exposing and rewarding excellence also.

Finally, I'd like to suggest a very important amendment to this bill. Both Section 1 and Section 2 of the bill begin the enumerated list of data to be collected with subsection (2)(A): "the total number of cases charged" by either the county attorney or the District Attorney.

There is a crucial step *before* charging that should not be left out. This is the total number of cases **referred to** prosecutors, which occurs prior to any decision on whether or not to file charges. Knowing this is very important because it is a strong indicator of how prosecutors work with police, social service agencies and the public. If you ask any law enforcement officer (off the record) how important this is, you'll get an earful. A prosecutor who is dramatically more selective in filing charges may be sending a powerful message to police and social workers not to bring him or her cases unless they are effortlessly "winnable." Conversely, that data might mean something very different. It might mean that criminal investigators are doing a poor job, bringing the DA cases he doesn't think he can prove. Either way, you will never know there's an issue unless you see the data.

There is another reason why it's important to add *cases referred*. If the legislature mandates reporting of case data, you will increase scrutiny on prosecutor caseloads. Inevitably, some DAs and county attorneys will show better performance than

others. It's just human nature that you could, in the process, create new incentives for poorly performing prosecutors to be even *more selective than ever* in filing charges. This would be a very negative, unintended consequence of this legislation.

The clear remedy for this would be to require prosecutors to include in their reports all cases referred to their office. That would level the playing field and provide a much better picture of what's actually going on. Over time, we would hope that you would continue to expand this legislation, requiring data collection and reporting from other agencies and actors across the criminal justice continuum.

I would refer you to our work in Virginia. Our "Alicia's Law" has mandated this kind of transparency, and each year we have worked with lawmakers to expand transparency. But Senate Bill 66 is an excellent start, and I believe other state legislatures will take notice and follow in your footsteps.

I want to thank Senator Smith for introducing this smart legislation. Thank you again for the opportunity to testify. It is my hope and belief that by passing this, you will make everyone better at their jobs, and better at protecting Kansas families.