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ATTORNEYS AT LAW

February 13, 2018

Russell Jennings
Chairman
House Committee on Corrections and Juvenile Justice
Room 512-N
Capitol Building
Topeka, KS 66612

RE: House Bill 2621

Dear Chairman Jennings and Committee Members:

Thank you for the opportunity to address the Committee on Corrections and Juvenile Justice regarding House Bill 2621. The bill addresses a critical gap in Kansas law that presently allows law enforcement officers to have sexual relations with persons who are in their custody or with whom they interact in an investigation. Such sexual acts can never be “consensual.” They are inherently coercive, given the enormous disparity in power between the officers -- who have badges, official authority and the ability to arrest -- and their victims, who usually have no power whatsoever.

As a lawyer who has spent years deeply involved in impoverished neighborhoods, I have direct knowledge of this type of sexual exploitation by officers who engage in predatory behavior. The typical victims are powerless – with no resources, little education and often no stable address. They have no voice, no perceived ability to seek redress. They believe they have no choice but to submit to a demand for sexual relations. In return for sex, they may be provided money or drugs or promised official “favours.” Or, they may comply for the most basic reason – the officer has threatened arrest or some other feared consequence. This is rape, pure and simple.

I know my words may sound like the stuff of fiction, but sexual exploitation is all too real. I have spoken to and obtained statements from many women who have been sexually exploited. They feel enormous shame and embarrassment. And, more than anything, they feel helpless – they view complaining as a futile or potentially harmful act that could spur retaliation.

Please understand that I am not suggesting that predatory officers lurk throughout law enforcement. In fact, they are a small minority. But even a small minority can be exceptionally dangerous to the community they patrol. Although many officers serve impoverished neighborhoods with great integrity and dedication, others view those assignments as an opportunity to exploit the most powerless and vulnerable citizens.

Although I have encountered this horrible situation in a Kansas community, I want to be clear that sexual exploitation happens *everywhere*. It is certainly not unique to any particular locale. A November 2015 investigative article by the Associated Press quoted a police chief in Florida stating that sexual exploitation probably occurs in every law enforcement department in the country. "It's so underreported, and people are scared" to make a complaint, the chief stated. <https://apnews.com/fd1d4d05e561462a85abe50e7eaed4ec/ap-hundreds-officers-lose-licenses-over-sex-misconduct>. Only a minority of states presently outlaw sexual relations between police officers and an individual in their custody. In 35 states, a police officer can defend against a charge that he had sex with a detainee by claiming that person "consented." https://www.buzzfeed.com/albertsamaha/this-teenager-accused-two-on-duty-cops-of-rape-she-had-no?utm_term=.ykdDq98dM#.ceXzZpDI.3

Public officials are becoming more aware of the problem, however, and more recently are voicing determination to address sexual exploitation by law enforcement. Just yesterday, on February 12, the New York Times ran an editorial praising the New York State Assembly for passing a law that would remove the "consent" defense for law enforcement officers who have sex with persons in custody. The Times stated that the bill comported with the "common-sense principle" that people in custody "are legally incapable of consenting to sexual acts with officers, who hold enormous power over them." <https://www.nytimes.com/2018/02/12/opinion/police-rape-loop-hole.html?hpw&rref=opinion&action=click&pgtype=Homepage&module=well-region®ion=bottom-well&WT.nav=bottom-well>.

Kansas similarly needs to close a troubling gap in its laws and pass a bill that makes it illegal for a police officer to have sexual relations with an individual he has in custody or has contact with in the course of an investigation. Any time that a law enforcement officer is acting in his official capacity, he has enormous power over any individual he arrests or otherwise encounters.

I strongly support House Bill 2621, and urge its passage. It is indeed a common-sense measure that would fix a troubling gap in Kansas law and would help protect our most vulnerable citizens.

Thank you for your attention to this vital issue.

Sincerely,

Cheryl A. Pilate/moe

Cheryl A. Pilate
CAP:moe

Enclosure