"WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE RIGHTS." - U.S. Declaration of Independence

From:
3UP OF KANSAS
To:
SENATE COMMITTEE ON JUDICIARY

WRITTEN TESTIMONY
SENATE BILL NO. 101,

Dear Senate Committee Members,

3UP of Kansas represents a State wide network of United Kansas Patriots who are dedicated to support and defend the Constitution of the United States and the State of Kansas, who loves their country/state and supports its rightful legal authority and interests. We are the embodiment of mankind's desire for freedom, believing in the fundamental unalienable rights of all human beings.

There are a number of issues with SB101 that would cause grave concern to any citizen concerned with fair and impartial justice. First and foremost is the punitive nature in which a civil action imposes criminal penalties, based upon the "Preponderance of Evidence" standard of proof, while being liberally construed to protect victims. This is an end around the criminal prosecution processes and the fundamental protections guaranteed by the United States Constitution. It is a recipe for a witch hunt.

The preponderance of evidence standard is nothing more than "more likely than not". That means that a person can file a false claim against a person and if their story is more believable or their personality is more convincing than the accused, and of course they must be guilty of what is alleged because they are all guilty and isn't it better to be safe than sorry, then the order will become a permanent order lasting no less than one year. Not only does the accused now have to live under restrictions very similar to Probation but they lose their right to own or possess firearms, lose their conceal and carry license if they had one, newspapers will run stories listing the order and this order now shows up in any background check ran against them for many years to come. A person's entire life's

work can be ruined, losses of hundreds of thousands of dollars inflicted and their reputations irreparably damaged beyond repair, all based upon preponderance of evidence.

After a year, if the accuser files for an extension, then the order is extended for a minimum of 2 years and a maximum of a lifetime. The accused potentially lives under these restrictions for the rest of their lives based upon a "He said, She said" situation where they have not been convicted of any crime and did not benefit from the protections afforded to them under the normal criminal prosecution process. Protections such as the right to a jury trial, the right to confront the witnesses against you, hearsay rules of evidence or to be provided with legal representation.

It is our belief that SB101, if challenged, would be found to be void for vagueness because a reasonable person would be unable to ascertain what it restricts which violates the due process clauses of the Fifth and Fourteenth Amendments.

> A statute will be held unconstitutional for vagueness where the forbidden conduct is so poorly defined that persons of common intelligence must necessarily guess at its meaning and differ as to its application. State v. Blakey, 399 NW2d 317, 318 (citing Connally v. Gen. Constr. Co., 269 US 385, 391, 46 SCt 126, 127, 70 LEd 322, 328 (1926)) (citations omitted).
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> A crime must be statutorily defined with definiteness and certainty. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. A criminal statute must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. Big Head, 363 NW2d at 559. Additionally, a statute must not be so vague as to permit selective or discriminatory enforcement. Id.; Kolender v. Lawson, 461 US 352, 357, 103 SCt 1855, 1858, 75 LE2d 903 (1983); Smith v. Goguen, 415 US 566, 573, 94 SCt 1242, 1247, 39 LE2d 605 (1974); Coates v. City of Cincinnati, 402 US 611, 614, 91 SCt 1686, 1688, 29 LE2d 214 (1971).

The constitutionality of K.S.A 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08 and 60-31a09 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-31a05 and 60-31a06 is already currently under attack in the Kansas Court of Appeals on the basis of vagueness, specifically in regards to the lack of a proper definition of Direct and Indirect contact. Specifically, the underlying case of the challenge calls into question the States implied definition of Indirect contact and shows many examples of the average legal professional across the country disagreeing with the

State of Kansas' implied definition, raising a de facto case of men of common intelligence having to necessarily guess at its meaning and differ as to its application, violating the first essential of due process.

In the instance of a temporary order being granted ex parte, the accused would not have notice or opportunity to be heard. Issues concerning jurisdiction or are fatally dispositive of the temporary order, would have no opportunity to be heard at any other time than at a trial for violating the temporary order or at a hearing that will either end the temporary order or convert it to a permanent order. If there are fatal flaws in the granting of the temporary order then there is no possible remedy as the law is written, any violation would have occurred after the Court ordered it, unlawfully and without establishing jurisdiction.

SB101 as written would cause serious conflict with convictions being multiplicitous. K.S.A. 60-3102(a) (3) would be amended to read as follows:

> "Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent."

Violation of a protection order is a criminal charge. In a criminal charge the standard of finding required for conviction is "Beyond a Reasonable Doubt". If you actually have the proof required to prove that a person violated the protection order based upon the activities mention above, then you have the proof required to prove the much stronger charge of Sexual Assault.

Kansas Court of Appeals just recently restated the law regarding multiplicity:

> "Multiplicity in a criminal pleading is the charging of two or more counts where only a single criminal act is involved. The principles for determining whether charges are multiplicitous are: (1) A single offense may not be divided into separate parts; generally, a single wrongful act may not furnish the State with the basis for more than one criminal prosecution. (2) If each offense charged requires proof of a fact not required in proving the other offense, the offenses do not merge. (3) Where offenses are committed separately, at different times and at different places, they cannot be said to arise out of a single wrongful act." State v. Manzanares, 19 Kan.App.2d 214, 220, 866 P.2d 1083 (1994).

The law of multiplicity would force a prosecutor to pursue prosecution of either Sexual Assault or violation of a protection order, they cannot prosecute both charges since both violations occurred from the same act describe above. Do we really want to open that possibility up where a person is sexually assaulted and the perpetrator only

gets charged with a Class A Misdemeanor?

The addition of sexual assault language to the violation of protection order provides no protection against sexual assault, opens the door for a sexual predator to potentially only get charged with a Misdemeanor in a criminal case and only truly serves the purpose of punishing an accused person in a civil case by attaching to them a stigma based upon preponderance of evidence.

We respectfully urge the Committee to vote against SB101 as written.

Respectfully Submitted and Dated this 8th of February, 2017,

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