

As Amended by House Committee

HOUSE BILL No. 2613

By Committee on Corrections and Juvenile Justice

2-2

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to protective orders; relating to permanent orders; amending K.S.A.
3 2011 Supp. 21-5924, 60-3104, 60-3107, 60-31a04 and 60-31a06 and
4 repealing the existing sections; also repealing K.S.A. 60-3111.

60-3106,

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 21-5924 is hereby amended to read as
7 follows: 21-5924. (a) Violation of a protective order is knowingly
8 violating;

9 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
10 60-3106 and 60-3107, and amendments thereto;

11 (2) a protective order issued by a court or tribunal of any state or
12 Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265, and
13 amendments thereto;

14 (3) a restraining order issued pursuant to K.S.A. 2011 Supp. 23-2707,
15 38-2243, 38-2244 and 38-2255, and amendments thereto, and K.S.A. 60-
16 1607, ~~and amendments thereto~~ prior to its transfer;

17 (4) an order issued in this or any other state as a condition of pretrial
18 release, diversion, probation, suspended sentence, postrelease supervision
19 or at any other time during the criminal case that orders the person to
20 refrain from having any direct or indirect contact with another person;

21 (5) an order issued in this or any other state as a condition of release
22 after conviction or as a condition of a supersedeas bond pending
23 disposition of an appeal, that orders the person to refrain from having any
24 direct or indirect contact with another person; or

25 (6) a protection from stalking order issued pursuant to K.S.A. 60-
26 31a05 or 60-31a06, and amendments thereto.

27 (b) (1) Violation of a protective order is a class A person
28 misdemeanor, except as provided in subsection (b)(2).

29 (2) Violation of an extended protective order as described in
30 subsection (e)(2) of K.S.A. 60-3107, and amendments thereto, and
31 subsection (d) of K.S.A. 60-31a06, and amendments thereto, is a severity
32 level 5, person felony.

33 (c) No protective order, as set forth in this section, shall be construed
34 to prohibit an attorney, or any person acting on such attorney's behalf, who
35 is representing the defendant in any civil or criminal proceeding, from
36

Amendments for HB 2613
Senate Judiciary
March 15, 2012
Prepared by Jason Thompson
Office of Revisor of Statutes

1 contacting the protected party for a legitimate purpose within the scope of
2 the civil or criminal proceeding. The attorney, or person acting on such
3 attorney's behalf, shall be identified in any such contact.

4 (d) As used in this section, "order" includes any order issued by a
5 municipal or district court.

6 Sec. 2. K.S.A. 2011 Supp. 60-3104 is hereby amended to read as
7 follows: 60-3104. (a) An intimate partner or household member may seek
8 relief under the protection from abuse act by filing a verified petition with
9 any district judge or with the clerk of the court alleging abuse by another
10 intimate partner or household member.

11 (b) A parent of or an adult residing with a minor child may seek relief
12 under the protection from abuse act on behalf of the minor child by filing a
13 verified petition with any district judge or with the clerk of the court
14 alleging abuse by another intimate partner or household member.

15 (c) The clerk of the court shall supply the forms for the petition and
16 orders, which shall be prescribed by the judicial council.

17 (d) Service of process served under ~~this section~~ *the protection from*
18 ~~abuse act~~ *this section* shall be by personal service and not by certified
19 mail return receipt requested. No docket fee shall be required for
20 proceedings under the protection from abuse act.

21 (e) If the court finds that the plaintiff's address or telephone number,
22 or both, needs to remain confidential for the protection of the plaintiff,
23 plaintiff's minor children or minor children residing with the plaintiff, such
24 information shall not be disclosed to the public, but only to authorized
25 court or law enforcement personnel and to the commission on judicial
26 performance in the discharge of the commission's duties pursuant to article
27 32 of chapter 20 of the Kansas Statutes Annotated, and amendments
28 thereto.

29 [Sec. 3. K.S.A. 2011 Supp. 60-3107 is hereby amended to read as
30 follows: 60-3107. (a) The court may approve any consent agreement to
31 bring about a cessation of abuse of the plaintiff or minor children or grant
32 any of the following orders:

33 (1) Restraining the defendant from abusing, molesting or interfering
34 with the privacy or rights of the plaintiff or of any minor children of the
35 parties. Such order shall contain a statement that if such order is violated,
36 such violation may constitute assault as defined in subsection (a) of K.S.A.
37 2011 Supp. 21-5412, and amendments thereto, battery as defined in
38 subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto,
39 domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and
40 amendments thereto, and violation of a protective order as defined in
41 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

42 (2) Granting possession of the residence or household to the plaintiff
43 to the exclusion of the defendant, and further restraining the defendant

Insert 60-3106 (attached)

And by redesignate sections accordingly

1 from entering or remaining upon or in such residence or household,
2 subject to the limitation of subsection (d). Such order shall contain a
3 statement that if such order is violated, such violation shall constitute
4 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp.
5 21-5808, and amendments thereto, and violation of a protective order as
6 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. The court
7 may grant an order, which shall expire 60 days following the date of
8 issuance, restraining the defendant from cancelling utility service to the
9 residence or household.

10 (3) Requiring defendant to provide suitable, alternate housing for the
11 plaintiff and any minor children of the parties.

12 (4) Awarding temporary custody and residency and establishing
13 temporary parenting time with regard to minor children.

14 (5) Ordering a law enforcement officer to evict the defendant from
15 the residence or household.

16 (6) Ordering support payments by a party for the support of a party's
17 minor child, if the party is the father or mother of the child, or the plaintiff,
18 if the plaintiff is married to the defendant. Such support orders shall
19 remain in effect until modified or dismissed by the court or until expiration
20 and shall be for a fixed period of time not to exceed one year. On the
21 motion of the plaintiff, the court may extend the effect of such order for 12
22 months.

23 (7) Awarding costs and attorney fees to either party.

24 (8) Making provision for the possession of personal property of the
25 parties and ordering a law enforcement officer to assist in securing
26 possession of that property, if necessary.

27 (9) Requiring any person against whom an order is issued to seek
28 counseling to aid in the cessation of abuse.

29 (10) Ordering or restraining any other acts deemed necessary to
30 promote the safety of the plaintiff or of any minor children of the parties.

31 (b) No protection from abuse order shall be entered against the
32 plaintiff unless:

33 (1) The defendant properly files a written cross or counter petition
34 seeking such a protection order;

35 (2) the plaintiff had reasonable notice of the written cross or counter
36 petition by personal service as provided in subsection (d) of K.S.A. 60-
37 3104, and amendments thereto; and

38 (3) the issuing court made specific findings of abuse against both the
39 plaintiff and the defendant and determined that both parties acted primarily
40 as aggressors and neither party acted primarily in self-defense.

41 (c) Any order entered under the protection from abuse act shall not be
42 subject to modification on ex parte application or on motion for temporary
43 orders in any action filed pursuant to K.S.A. 60-1601 et seq., *prior to their*

1 *transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes*
2 *Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and*
3 *amendments thereto. Orders previously issued in an action filed pursuant*
4 *to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or*
5 *27 of chapter 23 of the Kansas Statutes Annotated, and amendments*
6 *thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be*
7 *subject to modification under the protection from abuse act only as to*
8 *those matters subject to modification by the terms of K.S.A. 2011 Supp.*
9 *23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2605, 23-3001*
10 *through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and*
11 *amendments thereto, and on sworn testimony to support a showing of*
12 *good cause. Immediate and present danger of abuse to the plaintiff or*
13 *minor children shall constitute good cause. If an action is filed pursuant to*
14 *K.S.A. 2011 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through*
15 *23-2605, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216*
16 *and 23-3218, and amendments thereto, during the pendency of a*
17 *proceeding filed under the protection from abuse act or while an order*
18 *issued under the protection from abuse act is in effect, the court, on final*
19 *hearing or on agreement of the parties, may issue final orders authorized*
20 *by K.S.A. 2011 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902*
21 *through 23-2605, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-*
22 *3216 and 23-3218, and amendments thereto, that are inconsistent with*
23 *orders entered under the protection from abuse act. Any inconsistent order*
24 *entered pursuant to this subsection shall be specific in its terms, reference*
25 *the protection from abuse order and parts thereof being modified and a*
26 *copy thereof shall be filed in both actions. The court shall consider*
27 *whether the actions should be consolidated in accordance with K.S.A. 60-*
28 *242, and amendments thereto. Any custody or parenting time order, or*
29 *order relating to the best interests of a child, issued pursuant to the revised*
30 *Kansas code for care of children or the revised Kansas juvenile justice*
31 *code, shall be binding and shall take precedence over any such custody or*
32 *parenting order involving the same child issued under the protection from*
33 *abuse act, until jurisdiction under the revised Kansas code for care of*
34 *children or the revised Kansas juvenile justice code is terminated. Any*
35 *inconsistent custody or parenting order issued in the revised Kansas code*
36 *for care of children case or the revised Kansas juvenile justice code case*
37 *shall be specific in its terms, reference any preexisting protection from*
38 *abuse order and the custody being modified, and a copy of such order shall*
39 *be filed in the preexisting protection from abuse case.*

40 (d) If the parties to an action under the protection from abuse act are
41 not married to each other and one party owns the residence or household,
42 the court shall not have the authority to grant possession of the residence
43 or household under subsection (a)(2) to the exclusion of the party who

owns it.

(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except that ~~en~~ as provided in subsection (e)(1) and (e)(2).

(1) Upon motion of the plaintiff, such period may be extended for one additional year; ~~and~~.

(2) Upon verified motion of the plaintiff and after the defendant has had an opportunity to present evidence at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant ~~has violated a valid protection order or attempted or committed a person felony~~ has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, the court shall extend a protective order for ~~no less than two additional years and may extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.~~

(f) The court may amend its order or agreement at any time upon motion filed by either party.

(g) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(h) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 60-31a04 is hereby amended to read as follows: 60-31a04. (a) A person may seek relief under the protection from stalking act by filing a verified petition with the any district judge or clerk of the court in the county where the stalking occurred. A verified petition must allege facts sufficient to show the following:

(1) The name of the stalking victim;

has been personally served with a copy of the motion and and cross-examine witnesses

(A) has previously violated a valid protection order, or (b)

not

5

1 (2) the name of the defendant;

2 (3) the dates on which the alleged stalking behavior occurred; and

3 (4) the acts committed by the defendant that are alleged to constitute
4 stalking.

5 (b) A parent or an adult residing with a minor child may seek relief
6 under the protection from stalking act on behalf of the minor child by
7 filing a verified petition with the district judge or with the clerk of the
8 court in the county where the stalking occurred.

9 (c) The clerk of the court shall supply the forms for the petition and
10 orders, which shall be prescribed by the judicial council.

11 (d) Service of process served under ~~this section~~ ~~the protection from~~
12 ~~stalking act~~ this section shall be by personal service. No docket fee shall
13 be required for proceedings under the protection from stalking act.

14 (e) The victim's address and telephone number shall not be disclosed
15 to the defendant or to the public, but only to authorized court or law
16 enforcement personnel and to the commission on judicial performance in
17 the discharge of the commission's duties pursuant to article 32 of chapter
18 20 of the Kansas Statutes Annotated, and amendments thereto.

19 Sec. 5. K.S.A. 2011 Supp. 60-31a06 is hereby amended to read as
20 follows: 60-31a06. (a) The court may issue a protection from stalking
21 order granting any of the following orders:

22 (1) Restraining the defendant from following, harassing, telephoning,
23 contacting or otherwise communicating with the victim. Such order shall
24 contain a statement that if such order is violated such violation may
25 constitute stalking as defined in K.S.A. 2011 Supp. 21-5427, and
26 amendments thereto, and violation of a protective order as defined in
27 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

28 (2) Restraining the defendant from abusing, molesting or interfering
29 with the privacy rights of the victim. Such order shall contain a statement
30 that if such order is violated, such violation may constitute stalking as
31 defined in K.S.A. 2011 Supp. 21-5427, and amendments thereto, assault as
32 defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments
33 thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413,
34 and amendments thereto, and violation of a protective order as defined in
35 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

36 (3) Restraining the defendant from entering upon or in the victim's
37 residence or the immediate vicinity thereof. Such order shall contain a
38 statement that if such order is violated, such violation shall constitute
39 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp.
40 21-5808, and amendments thereto, and violation of a protective order as
41 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

42 (4) Any other order deemed necessary by the court to carry out the
43 provisions of this act.

1 (b) A protection from stalking order shall remain in effect until
 2 modified or dismissed by the court and shall be for a fixed period of time
 3 not to exceed one year, except that, ~~on motion of the plaintiff, such period~~
 4 ~~may be extended for one additional year. Before the expiration of an order~~
 5 ~~for protection from stalking, a victim, or a parent on behalf of the victim,~~
 6 ~~may request an extension of the protection from stalking order for up to~~
 7 ~~one additional year on showing of continuing threat of stalking except as~~
 8 ~~provided in subsection (c) and (d).~~

9 (c) Upon motion of the plaintiff the court may extend the order for an
 10 additional year.

11 (d) Upon verified motion of the plaintiff and after the defendant has
 12 had an opportunity to present evidence at a hearing on the motion, if the
 13 court determines by a preponderance of the evidence ~~that the defendant~~
 14 ~~has violated a valid protection order or attempted or committed a person~~
 15 ~~felony has been convicted of a person felony or any conspiracy,~~
 16 ~~criminal solicitation or attempt thereof, under the laws of Kansas or the~~
 17 ~~laws of any other jurisdiction which are substantially similar to such~~
 18 ~~person felony, committed against the plaintiff or any member of the~~
 19 ~~plaintiff's household, the court shall extend a protective order for ~~not less~~~~
 20 ~~than two additional years and up to a period of time not to exceed the~~
 21 ~~lifetime of the defendant. No service fee shall be required for a motion~~
 22 ~~filed pursuant to this subsection.~~

23 (e) The court may amend its order at any time upon motion filed
 24 by either party.

25 (f) The court shall assess costs against the defendant and may
 26 award attorney fees to the victim in any case in which the court issues a
 27 protection from stalking order pursuant to this act. The court may award
 28 attorney fees to the defendant in any case where the court finds that the
 29 petition to seek relief pursuant to this act is without merit.

30 (g) A no contact or restraining provision in a protective order
 31 issued pursuant to this section shall not be construed to prevent:

- 32 (1) Contact between the attorneys representing the parties;
- 33 (2) a party from appearing at a scheduled court or administrative
 34 hearing; or

35 (3) a defendant or defendant's attorney from sending the plaintiff
 36 copies of any legal pleadings filed in court relating to civil or criminal
 37 matters presently relevant to the plaintiff.

38 Sec. 6. K.S.A. 60-3111 and K.S.A. 2011 Supp. 21-5924, 60-3104, 60-
 39 3107, 60-31a04 and 60-31a06 are hereby repealed.

40 Sec. 7. This act shall take effect and be in force from and after its
 41 publication in the statute book.

42

has been personally served with a copy of the motion and

and cross-examine witnesses

(A) has previously violated a valid protection order, or (b)

not

60-3106,

60-3106. (a) Within 21 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant shall have an opportunity to cross-examine the petitioner's witnesses and present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. ~~At the hearing, the court shall~~ and advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107, and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing order granting legal custody, residency, visitation or parenting time unless there is sworn testimony at a hearing to support a showing of good cause.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.