

2012 Kansas Statutes

60-3107. Protection from abuse orders procedure; modifications; inconsistent orders; extension of orders; violation of orders, criminal violations and penalties. [See Revisor's Note] (a) The court may approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

- (1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in subsection (a) of K.S.A. 2012 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2012 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2012 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 Supp. 21-5924, and amendments thereto.
- (2) Granting possession of the residence or household to the plaintiff to the exclusion of the defendant, and further restraining the defendant from entering or remaining upon or in such residence or household, subject to the limitation of subsection (d). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2012 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 Supp. 21-5924, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the defendant from cancelling utility service to the residence or household.
- (3) Requiring defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.
- (4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.
- (5) Ordering a law enforcement officer to evict the defendant from the residence or household.
- (6) Ordering support payments by a party for the support of a party's minor child, if the party is the father or mother of the child, or the plaintiff, if the plaintiff is married to the defendant. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.
- (7) Awarding costs and attorney fees to either party.
- (8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.
- (9) Requiring any person against whom an order is issued to seek counseling to aid in the cessation of abuse.
- (10) Ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.

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

- (1) The defendant properly files a written cross or counter petition seeking such a protection order;
- (2) the plaintiff had reasonable notice of the written cross or counter petition by personal service as provided in subsection (d) of K.S.A. 60-3104, and amendments thereto; and
- (3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(c) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto. Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children case or the revised Kansas juvenile justice code case shall be specific in its terms, reference any preexisting protection from abuse order and the custody being modified, and a copy of such order shall be filed in the preexisting protection from abuse case.

(d) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence 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 as provided in subsection (e)(1) and (e)(2).

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

(2) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses 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

(A) has previously violated a valid protection order, or (B) 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 not 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. 2012 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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. 2012 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2012 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2012 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 Supp. 21-5924, and amendments thereto.

History: L. 1979, ch. 92, § 7; L. 1980, ch. 177, § 6; L. 1983, ch. 201, § 4; L. 1987, ch. 228, § 6; L. 1988, ch. 220, § 1; L. 1990, ch. 210, § 1; L. 1992, ch. 76, § 1; L. 1996, ch. 208, § 8; L. 1998, ch. 94, § 5; L. 2000, ch. 171, § 24; L. 2001, ch. 177, § 10; L. 2002, ch. 142, § 3; L. 2010, ch. 75, § 22; L. 2011, ch. 26, § 46; L. 2011, ch. 91, § 26; L. 2012, ch. 138, § 5; July 1.

Revisor's Note:

Section was amended twice in the 2012 session, see also 60-3107a.