

SENATE BILL No. 101

By Senators Pettey, Alley, Baumgardner, Berger, Bollier, Bowers, Doll, Faust-Goudeau, Francisco, Goddard, Haley, Hardy, Hawk, Hensley, Kelly, Kerschen, Lynn, McGinn, Petersen, Rogers, V. Schmidt, Skubal, Sykes, Taylor, Tyson, Wagle and Wilborn

1-30

1 AN ACT concerning civil procedure; relating to protection orders;
2 protection from abuse act; protection from stalking act; amending
3 K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08 and 60-
4 31a09 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-31a05
5 and 60-31a06 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 2016 Supp. 21-5924 is hereby amended to read as
9 follows: 21-5924. (a) Violation of a protective order is knowingly
10 violating:

11 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
12 60-3106 or 60-3107, and amendments thereto;

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

16 (3) a restraining order issued pursuant to K.S.A. 2016 Supp. 23-2707,
17 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
18 1607, prior to its transfer;

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

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

27 (6) a protection from stalking *or sexual assault* order issued pursuant
28 to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

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

31 (2) Violation of an extended protective order as described in
32 ~~subsection (c)(2)~~ of K.S.A. 60-3107(e)(2), and amendments thereto, and
33 ~~subsection (d)~~ of K.S.A. 60-31a06(d), and amendments thereto, is a
34 severity level 6, person felony.

1 (c) No protective order, as set forth in this section, shall be construed
2 to prohibit an attorney, or any person acting on such attorney's behalf, who
3 is representing the defendant in any civil or criminal proceeding, from
4 contacting the protected party for a legitimate purpose within the scope of
5 the civil or criminal proceeding. The attorney, or person acting on such
6 attorney's behalf, shall be identified in any such contact.

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

9 Sec. 2. K.S.A. 60-3102 is hereby amended to read as follows: 60-
10 3102. As used in the protection from abuse act:

11 (a) "Abuse" means the occurrence of one or more of the following
12 acts between intimate partners or household members:

13 (1) Intentionally attempting to cause bodily injury, or intentionally or
14 recklessly causing bodily injury.

15 (2) Intentionally placing, by physical threat, another in fear of
16 imminent bodily injury.

17 (3) *Engaging in any sexual contact or attempted sexual contact with*
18 *another person without consent or when such person is incapable of*
19 *giving consent.*

20 (4) Engaging in any of the following acts with a minor under 16 years
21 of age who is not the spouse of the offender:

22 (A) The act of sexual intercourse; or

23 (B) any lewd fondling or touching of the person of either the minor or
24 the offender, done or submitted to with the intent to arouse or to satisfy the
25 sexual desires of either the minor or the offender, or both.

26 (b) "Intimate partners or household members" means persons who are
27 or have been in a dating relationship, persons who reside together or who
28 have formerly resided together or persons who have had a child in
29 common.

30 (c) "Dating relationship" means a social relationship of a romantic
31 nature. A dating relationship shall be presumed if a plaintiff verifies,
32 pursuant to K.S.A. 53-601, and amendments thereto, that such relationship
33 exists. In addition to any other factors the court deems relevant, the court
34 shall consider the following factors in making a determination of whether
35 a relationship exists or existed include:

36 (1) Nature of the relationship;

37 (2) length of time the relationship existed;

38 (3) frequency of interaction between the parties; and

39 (4) time since termination of the relationship, if applicable.

40 Sec. 3. K.S.A. 60-31a01 is hereby amended to read as follows: 60-
41 31a01. (a) K.S.A. 60-31a01 through 60-31a09, and amendments thereto,
42 shall be known and may be cited as the protection from stalking *or sexual*
43 *assault* act.

1 (b) This act shall be liberally construed to protect victims of stalking
2 *and sexual assault* and to facilitate access to judicial protection for stalking
3 *and sexual assault* victims, whether represented by counsel or proceedings
4 pro se.

5 Sec. 4. K.S.A. 2016 Supp. 60-31a02 is hereby amended to read as
6 follows: 60-31a02. As used in the protection from stalking *or sexual*
7 *assault* act:

8 (a) "Stalking" means an intentional harassment of another person that
9 places the other person in reasonable fear for that person's safety.

10 (b) "Harassment" means a knowing and intentional course of conduct
11 directed at a specific person that seriously alarms, annoys, torments or
12 terrorizes the person, and that serves no legitimate purpose. "Harassment"
13 shall include any course of conduct carried out through the use of an
14 unmanned aerial system over or near any dwelling, occupied vehicle or
15 other place where one may reasonably expect to be safe from uninvited
16 intrusion or surveillance.

17 (c) "Course of conduct" means conduct consisting of two or more
18 separate acts over a period of time, however short, evidencing a continuity
19 of purpose which would cause a reasonable person to suffer substantial
20 emotional distress. Constitutionally protected activity is not included
21 within the meaning of "course of conduct."

22 (d) "Unmanned aerial system" means a powered, aerial vehicle that:

23 (1) Does not carry a human operator;

24 (2) uses aerodynamic forces to provide vehicle lift;

25 (3) may fly autonomously or be piloted remotely;

26 (4) may be expendable or recoverable; and

27 (5) may carry a lethal or nonlethal payload.

28 (e) "*Sexual assault*" means any sexual contact or attempted sexual
29 contact with another person without consent, or when such person is
30 incapable of giving consent.

31 Sec. 5. K.S.A. 60-31a03 is hereby amended to read as follows: 60-
32 31a03. The district courts shall have jurisdiction over all proceedings
33 under the protection from stalking *or sexual assault* act.

34 Sec. 6. K.S.A. 2016 Supp. 60-31a04 is hereby amended to read as
35 follows: 60-31a04. (a) A person may seek relief under the protection from
36 stalking *or sexual assault* act by filing a verified petition with any district
37 judge or clerk of the court. A verified petition must allege facts sufficient
38 to show the following:

39 (1) The name of the stalking *or sexual assault* victim;

40 (2) the name of the defendant;

41 (3) the dates on which the alleged stalking *or sexual assault* behavior
42 occurred; and

43 (4) the acts committed by the defendant that are alleged to constitute

1 stalking *or sexual assault*.

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

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

9 (d) Service of process served under this section shall be by personal
10 service. No docket fee shall be required for proceedings under the
11 protection from stalking *or sexual assault* act.

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

17 Sec. 7. K.S.A. 2016 Supp. 60-31a05 is hereby amended to read as
18 follows: 60-31a05. (a) Within 21 days of the filing of a petition under the
19 protection from stalking *or sexual assault* act a hearing shall be held at
20 which the plaintiff must prove the allegation of stalking *or sexual assault*
21 by a preponderance of the evidence and the defendant shall have an
22 opportunity to present evidence on the defendant's behalf. Upon the filing
23 of the petition, the court shall set the case for hearing. At the hearing, the
24 court shall advise the parties of the right to be represented by counsel.

25 (b) Prior to the hearing on the petition and upon a finding of good
26 cause shown, the court on motion of a party may enter such temporary
27 relief orders in accordance with K.S.A. 60-31a06, and amendments
28 thereto, or any combination thereof, as it deems necessary to protect the
29 victim from being stalked. Temporary orders may be granted *ex parte* on
30 presentation of a verified petition by the victim supporting a *prima facie*
31 case of stalking *or sexual assault*.

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

35 Sec. 8. K.S.A. 2016 Supp. 60-31a06 is hereby amended to read as
36 follows: 60-31a06. (a) The court may issue a protection from stalking *or*
37 *sexual assault* order granting any of the following orders:

38 (1) Restraining the defendant from following, harassing, telephoning,
39 contacting or otherwise communicating with the victim. Such order shall
40 contain a statement that if such order is violated such violation may
41 constitute stalking as defined in K.S.A. 2016 Supp. 21-5427, and
42 amendments thereto, and violation of a protective order as defined in
43 K.S.A. 2016 Supp. 21-5924, and amendments thereto.

1 (2) Restraining the defendant from abusing, molesting or interfering
2 with the privacy rights of the victim. Such order shall contain a statement
3 that if such order is violated, such violation may constitute stalking as
4 defined in K.S.A. 2016 Supp. 21-5427, and amendments thereto, assault as
5 defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5412(a), and
6 amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2016
7 Supp. 21-5413(a), and amendments thereto, and violation of a protective
8 order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

9 (3) Restraining the defendant from entering upon or in the victim's
10 residence or the immediate vicinity thereof. Such order shall contain a
11 statement that if such order is violated, such violation shall constitute
12 criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A. 2016 Supp.
13 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
14 order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

15 (4) *Restraining the defendant from committing or attempting to*
16 *commit a sexual assault upon the victim. Such order shall contain a*
17 *statement that if such order is violated, such violation shall constitute*
18 *violation of a protective order, as defined in K.S.A. 2016 Supp. 21-5924,*
19 *and amendments thereto. Such order shall also contain a statement that if*
20 *such order is violated, such violation may constitute a sex offense under*
21 *article 55 of chapter 21 of the Kansas Statutes Annotated, and*
22 *amendments thereto, and the accused may be prosecuted, convicted of and*
23 *punished for such sex offense.*

24 (5) Any other order deemed necessary by the court to carry out the
25 provisions of this act.

26 (b) A protection from stalking *or sexual abuse* order shall remain in
27 effect until modified or dismissed by the court and shall be for a fixed
28 period of time not to exceed one year except as provided in subsection (c)
29 and (d).

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

32 (d) Upon verified motion of the plaintiff and after the defendant has
33 been personally served with a copy of the motion and has had an
34 opportunity to present evidence and cross-examine witnesses at a hearing
35 on the motion, *the court shall extend a protective order for not less than*
36 *two additional years and up to a period of time not to exceed the lifetime*
37 *of the defendant, if the court determines by a preponderance of the*
38 *evidence that the defendant has: (1) Violated a valid protection order or*
39 ~~(A) Has~~; (2) previously violated a valid protection order; or ~~(B) has~~ (3)
40 been convicted of a person felony or any conspiracy, criminal solicitation
41 or attempt thereof, under the laws of Kansas or the laws of any other
42 jurisdiction which are substantially similar to such person felony,
43 committed against the plaintiff or any member of the plaintiff's household;

1 ~~the court shall extend a protective order for not less than two additional~~
2 ~~years and up to a period of time not to exceed the lifetime of the~~
3 ~~defendant.~~ No service fee shall be required for a motion filed pursuant to
4 this subsection.

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

7 (f) The court shall assess costs against the defendant and may award
8 attorney fees to the victim in any case in which the court issues a
9 protection from stalking *or sexual assault* order pursuant to this act. The
10 court may award attorney fees to the defendant in any case where the court
11 finds that the petition to seek relief pursuant to this act is without merit.

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

14 (1) Contact between the attorneys representing the parties;

15 (2) a party from appearing at a scheduled court or administrative
16 hearing; or

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

20 Sec. 9. K.S.A. 60-31a07 is hereby amended to read as follows: 60-
21 31a07. A copy of any order under the protection from stalking *or sexual*
22 *assault* act shall be issued to the victim, the defendant and the police
23 department of the city where the victim resides. If the victim does not
24 reside in a city or resides in a city with no police department, a copy of the
25 order shall be issued to the sheriff of the county where the order is issued.

26 Sec. 10. K.S.A. 60-31a08 is hereby amended to read as follows: 60-
27 31a08. Except ~~of~~ *as* otherwise provided in the protection from stalking *or*
28 *sexual assault* act, any proceedings under this act shall be in accordance
29 with chapter 60 of the Kansas Statutes Annotated, *and amendments*
30 *thereto*, and shall be in addition to any other available civil or criminal
31 remedies.

32 Sec. 11. K.S.A. 60-31a09 is hereby amended to read as follows: 60-
33 31a09. If upon hearing, the court finds a violation of any order under the
34 protection from stalking *or sexual assault* act, the court may find the
35 defendant in contempt pursuant to K.S.A. 20-1204a, and amendments
36 thereto.

37 Sec. 12. K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08
38 and 60-31a09 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-
39 31a05 and 60-31a06 are hereby repealed.

40 Sec. 13. This act shall take effect and be in force from and after its
41 publication in the statute book.