

HOUSE BILL No. 2730

By Representatives Lloyd, Nichols and Storm

1-29

AN ACT enacting the protection from stalking act; amending K.S.A. 2001 Supp. 21-3438, 21-3721 and 21-3843 and repealing the existing sections.

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

New Section 1. (a) Sections 1 through 9, and amendments thereto, shall be known and may be cited as the protection from stalking act.

(b) This act shall be liberally construed to promote the protection of victims of stalking from harassment and to facilitate access to judicial protection for stalking victims, whether represented by counsel or proceedings *pro se*.

New Sec. 2. As used in the protection from stalking act:

(a) "Stalking" means intentional harassment of another person.

(b) "Harassment" means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose.

(c) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose and which would cause a reasonable person to suffer substantial emotional distress. Constitutionally protected activity is not included within the meaning of "course of conduct."

New Sec. 3. The district courts shall have jurisdiction over all proceedings under the protection from stalking act.

New Sec. 4. (a) A person may seek relief under the protection from stalking act by filing a verified petition with the 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;
- (2) the name of the defendant; and
- (3) that the defendant has engaged in stalking.

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

(c) The clerk of the court shall supply the forms for the petition and

1 orders, which shall be prescribed by the supreme court.

2 (d) Service of process served under this section shall be by personal
3 service. No docket fee shall be required for proceedings under the pro-
4 tection from stalking act.

5 (e) The plaintiff's address and telephone number shall not be dis-
6 closed to the defendant or to the public, but only to authorized court or
7 law enforcement personnel.

8 New Sec. 5. (a) Within 20 days of the filing of a petition under the
9 protection from stalking act a hearing shall be held at which the plaintiff
10 must prove the allegation of stalking by a preponderance of the evidence
11 and the defendant shall have an opportunity to present evidence on the
12 defendant's behalf. Upon the filing of the petition, the court shall set the
13 case for hearing. At the hearing, the court shall advise the parties of the
14 right to be represented by counsel.

15 (b) Prior to the hearing on the petition and upon a finding of good
16 cause shown, the court on motion of a party may enter such temporary
17 relief orders in accordance with section 6 and amendments thereto, or
18 any combination thereof, as it deems necessary to protect the plaintiff or
19 minor children from being stalked. Temporary orders may be granted *ex*
20 *parte*. Immediate and present danger of stalking shall constitute good
21 cause for the purposes of this section.

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

25 New Sec. 6. (a) The court shall be empowered to issue a protection
26 from stalking order to bring about the cessation of stalking of the plaintiff
27 or grant any of the following orders:

28 (1) Restraining the defendant from following, harassing, telephoning,
29 contacting or otherwise communicating with the plaintiff or any minor
30 children of the plaintiff. Such order shall contain a statement that if such
31 order is violated such violation may constitute stalking as provided in
32 K.S.A. 21-3438, and amendments thereto, and violation of a protective
33 order as provided in K.S.A. 2001 Supp. 21-3843, and amendments
34 thereto.

35 (2) Restraining the defendant from abusing, molesting or interfering
36 with the privacy rights of the plaintiff or of any minor children of the
37 plaintiff. Such order shall contain a statement that if such order is violated,
38 such violation may constitute stalking as provided in K.S.A. 21-3438, and
39 amendments thereto, assault as provided in K.S.A. 21-3408, and amend-
40 ments thereto, battery as provided in K.S.A. 21-3412, and amendments
41 thereto, and violation of a protective order as provided in K.S.A. 2001
42 Supp. 21-3843, and amendments thereto.

43 (3) Restraining the defendant from entering upon or in the plaintiff's

1 residence or household. Such order shall contain a statement that if such
2 order is violated, such violation shall constitute criminal trespass as pro-
3 vided in subsection (a)(1)(C) of K.S.A. 21-3721, and amendments thereto,
4 and violation of a protective order as provided in K.S.A. 2001 Supp. 21-
5 3843, and amendments thereto.

6 (4) Awarding costs and attorney fees to either party.

7 (5) Ordering or restraining any other acts deemed necessary to pro-
8 mote the safety of the plaintiff or the plaintiff's minor children.

9 (b) A protection from stalking order shall remain in effect until mod-
10 ified or dismissed by the court and shall be for a fixed period of time not
11 to exceed one year, except that, on motion of the plaintiff, such period
12 may be extended for one additional year.

13 (c) The court may amend its order at any time upon motion filed by
14 either party.

15 (d) If a person follows, harasses, telephones, contacts or otherwise
16 communicates with another violating an order issued pursuant to subsec-
17 tion (a)(1), such violation may constitute stalking as provided in K.S.A.
18 21-3438, and amendments thereto, and violation of a protective order as
19 provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto. If a
20 person abuses, molests or interferes with the privacy or rights of another
21 violating an order issued pursuant to subsection (a)(2), such violation may
22 constitute stalking as provided in K.S.A. 21-3438, and amendments
23 thereto, assault as provided in K.S.A. 21-3408, and amendments thereto,
24 battery as provided in K.S.A. 21-3412, and amendments thereto, and vi-
25 olation of a protective order as provided in K.S.A. 2001 Supp. 21-3843,
26 and amendments thereto. If a person enters on premises or property
27 violating an order issued pursuant to subsection (a)(3), such violation shall
28 constitute criminal trespass as provided in subsection (a)(1)(C) of K.S.A.
29 21-3721, and amendments thereto, and violation of a protective order as
30 provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

31 New Sec. 7. A copy of any order under the protection from stalking
32 act shall be issued to the plaintiff, the defendant and the police depart-
33 ment of the city where the plaintiff resides. If the plaintiff does not reside
34 in a city or resides in a city with no police department, a copy of the order
35 shall be issued to the sheriff of the county where the order is issued.

36 New Sec. 8. Except of otherwise provided in the protection from
37 stalking act, any proceedings under this act shall be in accordance with
38 chapter 60 of the Kansas Statutes Annotated and shall be in addition to
39 any other available civil or criminal remedies.

40 New Sec. 9. If upon hearing, the court finds a violation of any order
41 under the protection from stalking act, the court may find the defendant
42 in contempt pursuant to K.S.A. 20-1204a, and amendments thereto.

43 Sec. 10. K.S.A. 2001 Supp. 21-3438 is hereby amended to read as

1 follows: 21-3438. (a) Stalking is an intentional, malicious and repeated
2 following or harassment of another person and making a credible threat
3 with the intent to place such person in reasonable fear for such person's
4 safety.

5 Stalking is a severity level 10, person felony.

6 (b) Any person who violates subsection (a) when there is *an order*
7 *issued pursuant to the protection from stalking act, sections 1 through 9,*
8 *and amendments thereto*, a temporary restraining order or an injunction;
9 ~~or both~~, in effect prohibiting the behavior described in subsection (a)
10 against the same person, is guilty of a severity level 9, person felony.

11 (c) Any person who has a second or subsequent conviction occurring
12 against such person, within seven years of a prior conviction under sub-
13 section (a) involving the same victim, is guilty of a severity level 8, person
14 felony.

15 (d) For the purposes of this section: (1) "Course of conduct" means
16 a pattern of conduct composed of a series of acts over a period of time,
17 however short, evidencing a continuity of purpose and which would cause
18 a reasonable person to suffer substantial emotional distress, and must
19 actually cause substantial emotional distress to the person. Constitution-
20 ally protected activity is not included within the meaning of "course of
21 conduct."

22 (2) "Harassment" means a knowing and intentional course of conduct
23 directed at a specific person that seriously alarms, annoys, torments or
24 terrorizes the person, and that serves no legitimate purpose.

25 (3) "Credible threat" means a verbal or written threat, including that
26 which is communicated via electronic means, or a threat implied by a
27 pattern of conduct or a combination of verbal or written statements and
28 conduct made with the intent and the apparent ability to carry out the
29 threat so as to cause the person who is the target of the threat to reason-
30 ably fear for such person's safety. The present incarceration of a person
31 making the threat shall not be a bar to prosecution under this section.

32 (4) "Electronic means" includes, but is not limited to, telephones,
33 cellular phones, computers, video recorders, fax machines, pagers and
34 computer networks.

35 Sec. 11. K.S.A. 2001 Supp. 21-3721 is hereby amended to read as
36 follows: 21-3721. (a) Criminal trespass is:

37 (1) Entering or remaining upon or in any land, nonnavigable body of
38 water, structure, vehicle, aircraft or watercraft other than railroad prop-
39 erty as defined in K.S.A. 2001 Supp. 21-3761 and amendments thereto
40 by a person who knows such person is not authorized or privileged to do
41 so, and:

42 (A) Such person enters or remains therein in defiance of an order
43 not to enter or to leave such premises or property personally communi-

1 cated to such person by the owner thereof or other authorized person;
2 or

3 (B) such premises or property are posted in a manner reasonably
4 likely to come to the attention of intruders, or are locked or fenced or
5 otherwise enclosed, or shut or secured against passage or entry; or

6 (C) such person enters or remains therein in defiance of a restraining
7 order issued pursuant to *section 5, section 6*, K.S.A. 60-1607, 60-3105,
8 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amend-
9 ments thereto, and the restraining order has been personally served upon
10 the person so restrained; or

11 (2) entering or remaining upon or in any public or private land or
12 structure in a manner that interferes with access to or from any health
13 care facility by a person who knows such person is not authorized or
14 privileged to do so and such person enters or remains thereon or therein
15 in defiance of an order not to enter or to leave such land or structure
16 personally communicated to such person by the owner of the health care
17 facility or other authorized person.

18 (b) As used in this section:

19 (1) "Health care facility" means any licensed medical care facility,
20 certificated health maintenance organization, licensed mental health cen-
21 ter, or mental health clinic, licensed psychiatric hospital or other facility
22 or office where services of a health care provider are provided directly to
23 patients.

24 (2) "Health care provider" means any person: (A) Licensed to prac-
25 tice a branch of the healing arts; (B) licensed to practice psychology; (C)
26 licensed to practice professional or practical nursing; (D) licensed to prac-
27 tice dentistry; (E) licensed to practice optometry; (F) licensed to practice
28 pharmacy; (G) registered to practice podiatry; (H) licensed as a social
29 worker; or (I) registered to practice physical therapy.

30 (c) (1) Criminal trespass is a class B nonperson misdemeanor.

31 (2) Upon a conviction of a violation of subsection (a)(1)(C), a person
32 shall be sentenced to not less than 48 consecutive hours of imprisonment
33 which must be served either before or as a condition of any grant of
34 probation or suspension, reduction of sentence or parole.

35 Sec. 12. K.S.A. 2001 Supp. 21-3843 is hereby amended to read as
36 follows: 21-3843. (a) Violation of a protective order is knowingly or in-
37 tentiously violating:

38 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
39 60-3106 and 60-3107, and amendments thereto;

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

43 (3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543,

1 38-1563 and 60-1607, and amendments thereto;

2 (4) an order issued as a condition of pretrial release, diversion, pro-
3 bation, suspended sentence or postrelease supervision that orders the
4 person to refrain from having any direct or indirect contact with another
5 person; ~~or~~

6 (5) an order issued as a condition of release after conviction or as a
7 condition of a supersedeas bond pending disposition of an appeal, that
8 orders the person to refrain from having any direct or indirect contact
9 with another person; *or*

10 (6) *a protection from stalking order issued pursuant to section 5 or*
11 *6, and amendments thereto.*

12 (b) As used in this section, “order” includes any order issued by a
13 municipal or district court.

14 (c) Violation of a protective order is a class A person misdemeanor.

15 (d) This section shall be part of and supplemental to the Kansas crim-
16 inal code.

17 Sec. 13. K.S.A. 2001 Supp. 21-3438, 21-3721 and 21-3843 are hereby
18 repealed.

19 Sec. 14. This act shall take effect and be in force from and after its
20 publication in the statute book.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43