

## HOUSE BILL No. 2732

By Representatives Lloyd and Nichols

1-29

---

AN ACT concerning protection from abuse; relating to intimate partners or household members; amending K.S.A. 2001 Supp. 60-3102, 60-3104, 60-3107 and 60-3112 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 60-3102 is hereby amended to read as follows: 60-3102. As used in ~~this act~~, “~~abuse~~” *the protection from abuse act*:

(a) “*Abuse*” means the occurrence of one or more of the following acts between ~~persons who reside together, who formerly resided together or who have or has had a child in common~~ *intimate partners or household members*:

~~(a)~~ (1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.

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

~~(c)~~ (3) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender:

~~(1)~~ (A) The act of sexual intercourse; or

~~(2)~~ (B) any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender, or both.

(b) “*Intimate partners or household members*” means *persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have had a child in common*.

(c) “*Dating relationship*” means *a social relationship of a romantic nature consisting of one or more dates. A dating relationship shall be presumed if a plaintiff verifies, pursuant to K.S.A. 53-601, and amendments thereto, that such relationship exists. Factors that a court may consider in making a determination of whether a relationship exists or existed include*:

(1) *Nature of the relationship;*

(2) *length of time the relationship existed;*

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

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

2 Sec. 2. K.S.A. 2001 Supp. 60-3104 is hereby amended to read as  
3 follows: 60-3104. (a) ~~A person~~ *An intimate partner or household member*  
4 may seek relief under the protection from abuse act by filing a verified  
5 petition with any district judge or with the clerk of the court alleging  
6 abuse by another ~~with whom the person resides, formerly resided or has~~  
7 ~~or has had a child in common~~ *intimate partner or household member.*

8 (b) A parent of or an adult residing with a minor child may seek relief  
9 under the protection from abuse act on behalf of the minor child by filing  
10 a verified petition with any district judge or with the clerk of the court  
11 alleging abuse by another ~~with whom the child resides, formerly resided~~  
12 ~~or has or has had a child in common~~ *intimate partner or household*  
13 *member.*

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

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

19 (e) If the court finds that the plaintiff's address or telephone number,  
20 or both, needs to remain confidential for the protection of the plaintiff,  
21 plaintiff's minor children or minor children residing with the plaintiff,  
22 such information shall not be disclosed to the public, but only to author-  
23 ized court or law enforcement personnel.

24 Sec. 3. K.S.A. 2001 Supp. 60-3107 is hereby amended to read as  
25 follows: 60-3107. (a) The court shall be empowered to approve any con-  
26 sent agreement to bring about a cessation of abuse of the plaintiff or  
27 minor children or grant any of the following orders:

28 (1) Restraining the ~~parties~~ *defendant* from abusing, molesting or in-  
29 terfering with the privacy or rights of ~~each other~~ *the plaintiff* or of any  
30 minor children of the parties. Such order shall contain a statement that  
31 if such order is violated, such violation may constitute assault as provided  
32 in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A.  
33 21-3412, and amendments thereto, domestic battery as provided in K.S.A.  
34 2001 Supp. 21-3412a, and amendments thereto and violation of a pro-  
35 tective order as provided in K.S.A. 2001 Supp. 21-3843, and amendments  
36 thereto.

37 (2) Granting possession of the residence or household to ~~a party~~ *the*  
38 *plaintiff* to the exclusion of the ~~other party~~ *the defendant*, and further  
39 restraining the ~~party not granted possession~~ *defendant* from entering or  
40 remaining upon or in such residence or household, subject to the limita-  
41 tion of subsection ~~(e)~~ *(d)*. Such order shall contain a statement that if  
42 such order is violated, such violation shall constitute criminal trespass as  
43 provided in subsection (c) of K.S.A. 21-3721, and amendments thereto,

1 and violation of a protective order as provided in K.S.A. 2001 Supp. 21-  
2 3843, and amendments thereto. The court may grant an order, which  
3 shall expire 60 days following the date of issuance, restraining the ~~party~~  
4 ~~not granted possession~~ *defendant* from cancelling utility service to the  
5 residence or household.

6 (3) Requiring ~~a party~~ *defendant* to provide suitable, alternate housing  
7 for ~~such party's spouse~~ *the plaintiff* and any minor children of the parties.

8 (4) Awarding temporary custody and residency and establishing tem-  
9 porary parenting time with regard to minor children.

10 (5) Ordering a law enforcement officer to evict ~~a party~~ *the defendant*  
11 from the residence or household.

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

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

19 (8) Making provision for the possession of personal property of the  
20 parties and ordering a law enforcement officer to assist in securing pos-  
21 session of that property, if necessary.

22 (9) Requiring the ~~person against whom the order is issued~~ *defendant*  
23 to seek counseling to aid in the cessation of abuse.

24 (10) *Ordering or restraining any other acts deemed necessary to pro-*  
25 *motte the safety of the plaintiff or of any minor children of the parties.*

26 (b) *A protection from abuse order entered against both the plaintiff*  
27 *and the defendant by a court in this state shall not be enforceable against*  
28 *the plaintiff unless;*

29 (1) *the defendant properly files a written cross or counter petition*  
30 *seeking such a protection order;*

31 (2) *the plaintiff had reasonable notice of the written cross or counter*  
32 *petition by personal service as provided in subsection (d) of K.S.A. 60-*  
33 *3104, and amendments thereto; and*

34 (3) *the issuing court made specific findings of abuse against both the*  
35 *plaintiff and the defendant and determined that both parties acted pri-*  
36 *marily as aggressors and neither party acted primarily in self defense.*

37 ~~(b)~~ (c) Any order entered under the protection from abuse act shall  
38 not be subject to modification on ex parte application or on motion for  
39 temporary orders in any action filed pursuant to K.S.A. 60-1601 *et seq.*,  
40 or K.S.A. 38-1101 *et seq.*, and amendments thereto. Orders previously  
41 issued in an action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-  
42 1101 *et seq.*, and amendments thereto, shall be subject to modification  
43 under the protection from abuse act only as to those matters subject to

1 modification by the terms of K.S.A. 60-1610 *et seq.*, and amendments  
2 thereto, and on sworn testimony to support a showing of good cause.  
3 Immediate and present danger of abuse to the plaintiff or minor children  
4 shall constitute good cause. If an action is filed pursuant to K.S.A. 60-  
5 1610 *et seq.*, or K.S.A. 38-1101 *et seq.*, and amendments thereto, during  
6 the pendency of a proceeding filed under the protection from abuse act  
7 or while an order issued under the protection from abuse act is in effect,  
8 the court, on final hearing or on agreement of the parties, may issue final  
9 orders authorized by K.S.A. 60-1610 and amendments thereto, that are  
10 inconsistent with orders entered under the protection from abuse act.  
11 Any inconsistent order entered pursuant to this subsection shall be spe-  
12 cific in its terms, reference the protection from abuse order and parts  
13 thereof being modified and a copy thereof shall be filed in both actions.  
14 The court shall consider whether the actions should be consolidated in  
15 accordance with K.S.A. 60-242 and amendments thereto.

16 ~~(e)~~ (d) If the parties to an action under the protection from abuse act  
17 are not married to each other and one party owns the residence or house-  
18 hold, the court shall not have the authority to grant possession of the  
19 residence or household under subsection (a)(2) to the exclusion of the  
20 party who owns it.

21 ~~(d)~~ (e) Subject to the provisions of subsections (b) ~~and~~, (c) *and* (d), a  
22 protective order or approved consent agreement shall remain in effect  
23 until modified or dismissed by the court and shall be for a fixed period  
24 of time not to exceed one year, except that, on motion of the plaintiff,  
25 such period may be extended for one additional year.

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

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

30 ~~(h)~~ (h) If a person enters or remains on premises or property violating  
31 an order issued pursuant to subsection (a)(2), such violation shall consti-  
32 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and  
33 amendments thereto, and violation of a protective order as provided in  
34 K.S.A. 2001 Supp. 21-3843, and amendments thereto. If a person abuses,  
35 molests or interferes with the privacy or rights of another violating an  
36 order issued pursuant to subsection (a)(1), such violation may constitute  
37 assault as provided in K.S.A. 21-3408, and amendments thereto, battery  
38 as provided in K.S.A. 21-3412, and amendments thereto, domestic battery  
39 as provided in K.S.A. 2001 Supp. 21-3412a, and amendments thereto,  
40 and violation of a protective order as provided in K.S.A. 2001 Supp. 21-  
41 3843, and amendments thereto.

42 Sec. 4. K.S.A. 2001 Supp. 60-3112 is hereby amended to read as  
43 follows: 60-3112. (a) All *emergency, temporary, amended, final and other*

1 protection from abuse orders, ~~orders amending an existing protective or-~~  
2 ~~der, and such related~~ *issued pursuant to article 31 of chapter 60 of the*  
3 *Kansas Statutes Annotated, and amendments thereto, or protection* orders  
4 issued based on the laws of another jurisdiction which are entitled to full  
5 faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265,  
6 and amendments thereto, shall be entered into the national criminal in-  
7 formation center protection order file. ~~All emergency protection from~~  
8 ~~abuse orders, temporary protection from abuse orders, other orders is-~~  
9 ~~sued pursuant to article 31 of chapter 60 of the Kansas Statutes Anno-~~  
10 ~~tated, and amendments thereto, and such emergency, temporary and~~  
11 ~~other related orders issued based on the laws of another jurisdiction which~~  
12 ~~are entitled to full faith and credit in Kansas pursuant to the provisions~~  
13 ~~of 18 U.S.C. 2265, and amendments thereto, may be entered into the~~  
14 ~~national criminal information center protection order file.~~ A copy of these  
15 orders shall be delivered by the clerk of the court to the sheriff of the  
16 county where the order is issued or registered. The sheriff's office shall  
17 immediately enter the order into the national criminal information center  
18 and other appropriate databases after all mandatory identifiers are avail-  
19 able. If the order is a foreign protective order, the sheriff's office shall  
20 contact the issuing jurisdiction to verify the order and request that such  
21 jurisdiction enter the order into the national criminal information center  
22 and other appropriate databases. Any modification of an order shall be  
23 forwarded immediately by the clerk of the court to the sheriff's office  
24 with jurisdiction to enforce the modified order. The sheriff's office shall  
25 ensure the accuracy of the entries and the court shall ensure the validity  
26 of the orders.

27 (b) All orders which have been entered into the national criminal  
28 information center protection order file shall be cleared as an active rec-  
29 ord from the computer system when:

30 (1) The order expires according to the terms of such order;

31 (2) a Kansas court notifies the law enforcement agency which has  
32 jurisdiction over the entry of the order that such order has been dis-  
33 missed; or

34 (3) a foreign protective order has been invalidated by either a Kansas  
35 court or a foreign court with jurisdiction over such order.

36 (c) This section shall be part of and supplemental to the protection  
37 from abuse act.

38 Sec. 5. K.S.A. 2001 Supp. 60-3102, 60-3104, 60-3107 and 60-3112  
39 are hereby repealed.

40 Sec. 6. This act shall take effect and be in force from and after its  
41 publication in the statute book.