

SENATE BILL No. 474

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 protect victims of stalking 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 an intentional harassment of another person that places the other person in reasonable fear for that person's safety.

(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 conduct consisting of two or more separate acts over a period of time, however short, evidencing a continuity of purpose 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;
- (3) the dates on which the alleged stalking behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute 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 orders, which shall be prescribed by the judicial council.

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

(e) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel.

New Sec. 5. (a) Within 20 days of the filing of a petition under the protection from stalking act a hearing shall be held at which the plaintiff must prove the allegation of stalking by a preponderance of the evidence and the defendant shall have an opportunity to 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 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 section 6 and amendments thereto, or any combination thereof, as it deems necessary to protect the victim from being stalked. Temporary orders may be granted *ex parte* on presentation of a verified petition by the victim supporting a *prima facie* case of stalking.

(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.

New Sec. 6. (a) The court may issue a protection from stalking order granting any of the following orders:

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

(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. Such order shall contain a statement that if such order is violated, such violation may constitute stalking as provided in K.S.A. 21-3438, and amendments thereto, assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, and violation of a protective order as provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

(3) Restraining the defendant from entering upon or in the victim's residence or the immediate vicinity thereof. Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as provided in subsection (a)(1)(C) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

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

(b) A protection from stalking order 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, on motion of the plaintiff, such period may be extended for one additional year. Before the expiration of an order for protection from stalking, a victim, or a parent on behalf of the victim, may request an extension of the protection from stalking order for up to one additional year on showing of continuing threat of stalking.

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

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

New Sec. 7. A copy of any order under the protection from stalking act shall be issued to the victim, the defendant and the police department of the city where the victim resides. If the victim does not reside in a city or resides in a city with no police department, a copy of the order shall be issued to the sheriff of the county where the order is issued.

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

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

Sec. 10. K.S.A. 2001 Supp. 21-3438 is hereby amended to read as follows: 21-3438. (a) Stalking is an intentional, malicious and repeated following or harassment of another person and making a credible threat with the intent to place such person in reasonable fear for such person's safety.

Stalking is a severity level 10, person felony.

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

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

(d) For the purposes of this section: (1) "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, and must actually cause substantial emotional distress to the person. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "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.

(3) "Credible threat" means a verbal or written threat, including that

which is communicated via electronic means, or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for such person's safety. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.

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

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

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

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

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

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

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

(b) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

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

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

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

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

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

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

(3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563 and 60-1607, and amendments thereto;

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

(5) an order issued as a condition of release after conviction or as a

condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

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

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

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

(d) This section shall be part of and supplemental to the Kansas criminal code.

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.