

SENATE BILL No. 475

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. A dating relationship shall be presumed if a plaintiff verifies, pursuant to K.S.A. 53-601, and amendments thereto, that such relationship exists. In addition to any other factors the court deems relevant, the court shall consider the following factors 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

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

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

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

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

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

(e) If the court finds that the plaintiff’s address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff’s minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel.

Sec. 3. K.S.A. 2001 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court ~~shall be empowered to~~ 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 ~~parties~~ defendant from abusing, molesting or interfering with the privacy or rights of ~~each other~~ 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 provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, domestic battery as provided in K.S.A.

2001 Supp. 21-3412a, and amendments thereto and violation of a protective order as provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

(2) Granting possession of the residence or household to ~~a party the plaintiff~~ to the exclusion of the ~~other party the defendant~~, and further restraining the ~~party not granted possession defendant~~ from entering or remaining upon or in such residence or household, subject to the limitation of subsection ~~(e)~~ (d). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as provided in subsection (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. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the ~~party not granted possession defendant~~ from cancelling utility service to the residence or household.

(3) Requiring ~~a party defendant~~ to provide suitable, alternate housing for ~~such party's spouse 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 ~~a party 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 a party's spouse 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 ~~the person against whom the order is issued~~ *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.*

~~(b)~~ (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.*, 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.*, 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. 60-1610 *et seq.*, 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. 60-1610 *et seq.*, or K.S.A. 38-1101 *et seq.*, 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. 60-1610 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.

~~(c)~~ (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.

~~(d)~~ (e) Subject to the provisions of subsections (b) ~~and~~, (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 that, on motion of the plaintiff, such period may be extended for one additional year.

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

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

~~(g)~~ (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 provided in subsection (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. 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 provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, domestic battery as provided in K.S.A. 2001 Supp. 21-3412a, and amendments thereto, and violation of a protective order as provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

Sec. 4. K.S.A. 2001 Supp. 60-3112 is hereby amended to read as follows: 60-3112. (a) *All temporary, amended, final and other protection from abuse orders, orders amending an existing protective order, and such related issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, or protection orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, shall be entered into the national criminal information center protection order file. All emergency protection from abuse orders, temporary protection from abuse orders, other orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and such emergency, temporary and other related orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, may be entered into the national criminal information center protection order file. All emergency protection from abuse orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and such emergency orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, may be entered into the national criminal information center protection order file.* A copy of these orders shall be delivered by the clerk of the court to the sheriff of the county where the order is issued or registered. The sheriff's office shall immediately enter the order into the national criminal information center and other appropriate databases after all mandatory identifiers are available. If the order is a foreign protective order, the sheriff's office shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order into the national criminal information center and other appropriate databases. Any modification of an order shall be forwarded immediately by the clerk of the court to the sheriff's office with jurisdiction to enforce the modified order. The sheriff's office shall ensure the accuracy of the entries and the court shall ensure the validity of the orders.

(b) *All emergency and temporary orders which have been entered into the national criminal information center file shall be canceled upon the expiration of the time period set out in the court order, or, if no time period is set, no later than one year from the entry date. All other orders which have been entered into the national criminal information center*

protection order file shall be cleared as an active record from the computer system when:

- (1) The order expires according to the terms of such order;
- (2) a Kansas court notifies the law enforcement agency which has jurisdiction over the entry of the order that such order has been dismissed; or
- (3) a foreign protective order has been invalidated by either a Kansas court or a foreign court with jurisdiction over such order.

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

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

Sec. 6. 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.