

HOUSE BILL No. 2275

By Representative Sloan

2-11

AN ACT concerning civil procedure; relating to protection from abuse; amending K.S.A. 2002 Supp. 60-3107 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court 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 defendant from abusing, molesting or interfering with the privacy or rights of 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. 2002 Supp. 21-3412a, and amendments thereto and violation of a protective order as provided in K.S.A. 2002 Supp. 21-3843, and amendments thereto.

(2) Granting possession of the residence or household to the plaintiff to the exclusion of the defendant, and further restraining the defendant from entering or remaining upon or in such residence or household, subject to the limitation of subsection (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. 2002 Supp. 21-3843, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the defendant from cancelling utility service to the residence or household.

(3) Requiring defendant to provide suitable, alternate housing for 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 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 the plain-

1 tiff, if the plaintiff is married to the defendant. Such support orders shall
2 remain in effect until modified or dismissed by the court or until expi-
3 ration and shall be for a fixed period of time not to exceed one year. On
4 the motion of the plaintiff, the court may extend the effect of such order
5 for 12 months.

6 ~~(7) Awarding costs and attorney fees to either party. The court shall~~
7 ~~assess costs against the defendant and may award attorney fees to the~~
8 ~~plaintiff in any case in which the court issues a protection from abuse~~
9 ~~order pursuant to this act. In any case where the court finds that the~~
10 ~~petition to seek relief pursuant to this act is without merit, the court shall~~
11 ~~assess costs against the plaintiff and the court may award attorney fees~~
12 ~~to the defendant.~~

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

16 (9) Requiring any person against whom an order is issued to seek
17 counseling to aid in the cessation of abuse.

18 (10) Ordering or restraining any other acts deemed necessary to pro-
19 mote the safety of the plaintiff or of any minor children of the parties.

20 (b) No protection from abuse order shall be entered against the plain-
21 tiff unless:

22 (1) The defendant properly files a written cross or counter petition
23 seeking such a protection order;

24 (2) the plaintiff had reasonable notice of the written cross or counter
25 petition by personal service as provided in subsection (d) of K.S.A. 60-
26 3104, and amendments thereto; and

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

30 (c) Any order entered under the protection from abuse act shall not
31 be subject to modification on ex parte application or on motion for tem-
32 porary orders in any action filed pursuant to K.S.A. 60-1601 *et seq.*, or
33 K.S.A. 38-1101 *et seq.*, and amendments thereto. Orders previously issued
34 in an action filed pursuant to K.S.A. 60-1601 *et seq.*, or K.S.A. 38-1101
35 *et seq.*, and amendments thereto, shall be subject to modification under
36 the protection from abuse act only as to those matters subject to modi-
37 fication by the terms of K.S.A. 60-1610 *et seq.*, and amendments thereto,
38 and on sworn testimony to support a showing of good cause. Immediate
39 and present danger of abuse to the plaintiff or minor children shall con-
40 stitute good cause. If an action is filed pursuant to K.S.A. 60-1610 *et seq.*,
41 or K.S.A. 38-1101 *et seq.*, and amendments thereto, during the pendency
42 of a proceeding filed under the protection from abuse act or while an
43 order issued under the protection from abuse act is in effect, the court,

1 on final hearing or on agreement of the parties, may issue final orders
2 authorized by K.S.A. 60-1610 and amendments thereto, that are incon-
3 sistent with orders entered under the protection from abuse act. Any
4 inconsistent order entered pursuant to this subsection shall be specific in
5 its terms, reference the protection from abuse order and parts thereof
6 being modified and a copy thereof shall be filed in both actions. The court
7 shall consider whether the actions should be consolidated in accordance
8 with K.S.A. 60-242 and amendments thereto.

9 (d) If the parties to an action under the protection from abuse act
10 are not married to each other and one party owns the residence or house-
11 hold, the court shall not have the authority to grant possession of the
12 residence or household under subsection (a)(2) to the exclusion of the
13 party who owns it.

14 (e) Subject to the provisions of subsections (b) , (c) and (d), a pro-
15 tective order or approved consent agreement shall remain in effect until
16 modified or dismissed by the court and shall be for a fixed period of time
17 not to exceed one year, except that, on motion of the plaintiff, such period
18 may be extended for one additional year.

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

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

23 (h) If a person enters or remains on premises or property violating
24 an order issued pursuant to subsection (a)(2), such violation shall consti-
25 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
26 amendments thereto, and violation of a protective order as provided in
27 K.S.A. 2002 Supp. 21-3843, and amendments thereto. If a person abuses,
28 molests or interferes with the privacy or rights of another violating an
29 order issued pursuant to subsection (a)(1), such violation may constitute
30 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
31 as provided in K.S.A. 21-3412, and amendments thereto, domestic battery
32 as provided in K.S.A. 2002 Supp. 21-3412a, and amendments thereto,
33 and violation of a protective order as provided in K.S.A. 2002 Supp. 21-
34 3843, and amendments thereto.

35 Sec. 2. K.S.A. 2002 Supp. 60-3107 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.

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