

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 26, 2002 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

SB 474 - Protection from stalking act

Staff provided the committee with a balloon which represents the subcommittee's recommendations (Attachment 1).

Representative Pauls made the motion to adopt the subcommittee's report (balloon). Representative Long seconded the motion. The motion carried. By consensus the committee changed the words "other person" to "victim" in line 23.

Representative Pauls made the motion to report SB 474 favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

SB 475 - Protection from abuse act

Staff provided the committee with a balloon which represents the subcommittee's recommendations (Attachment 2)

Committee discussion centered on the fact that once a Protection From Abuse Order is entered into the system how does it get "out" once it expires. It was determined that it would be treated the same as an emergency order which would have an expiration date.

By consensus, the committee reinserted the language "emergency and" on page 5, line 28(b). Representative Long made the motion to adopt the subcommittee's recommendations. Representative Pauls seconded the motion.

Many committee members were concerned with what constitutes "one date" and "dating" to form a dating relationship. By consensus the committee changed the wording "Supreme Court" to "Kansas Judicial Council" on page 2, line 16, so they would develop the petition which would verify the dating relationship.

Representative Dillmore made the motion to change the wording from "may" to "shall" on page 2, line 26 and wording to the affect that the courts must consider the four factors listed but they are not limited to that list and consider other factors that are presented. Representative Owens seconded the motion. The motion carried.

Representative DiVita made the motion to change on page 3 "party" to "parties" for the purpose of support payments. Representative Howell seconded the motion. The motion failed.

Representative Klein made the motion to amend on page 3, lines 27-31 striking subsection (b) and re-lettering. Representative Rehorn seconded the motion. The motion failed.

Representative Newton made the motion to reword & reinsert subsection (b)(3) to be plaintiff specific. Representative DiVita seconded the motion. The motion failed 6-9.

Representative Lloyd made the motion to report SB 475 favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

SENATE BILL No. 474

By Senators Adkins, Vratil and Goodwin

1-31

Proposed amendments
Subcommittee on Protective Orders
March 21, 2002

House Judiciary
Attachment 1
3-26-02

10 AN ACT enacting the protection ~~from stalking~~ act; amending K.S.A.
11 2001 Supp. ~~[21-3436]~~ 21-3721 and 21-3843 and repealing the existing
12 sections.

privacy

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

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

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

the privacy of

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

privacy

22 (a) "Stalking" means *an intentional harassment of another person*
23 *that places the other person in reasonable fear for that person's own*
24 *personal safety.*

course of conduct

25 (b) "Harassment" means a ~~knowing and intentional~~ course of conduct
26 directed at a specific person that seriously alarms, annoys, torments or
27 terrorizes the person, and that serves no legitimate purpose *which is*
28 *directed at a specific person that: (1) Causes that other person to*
29 *have a reasonable fear for personal safety; or (2) serves no legiti-*
30 *mate purpose, and is intended either to seriously alarm, threaten or*
31 *torment another person.*

32 (c) ~~"Course of conduct" means a~~ "pattern of conduct" ~~composed of a~~
33 ~~series of~~ ~~consisting of two or more separate~~ acts over a period of time,
34 however short, evidencing a continuity of purpose and which would cause
35 a reasonable person to suffer ~~substantial~~ emotional distress. ~~Constitution-~~
36 ~~ally protected activity is not included within the meaning of "course of~~
37 ~~conduct."~~

consists

38 New Sec. 3. The district courts shall have jurisdiction over all pro-
39 ceedings under the protection ~~from stalking~~ act.

(d) "Violation of privacy" means stalking,
harassment or pattern of conduct.

40 New Sec. 4. (a) A person may seek relief under the protection ~~from~~
41 ~~stalking~~ act by filing a verified petition with the district judge or clerk of
42 the court in the county where the ~~stalking~~ occurred. A verified petition
43 must allege facts sufficient to show the following:

privacy

violation of privacy

1 (1) The name of the ~~[stalking]~~ victim;
 2 (2) the name of the defendant; and
 3 (3) ~~that the defendant has engaged in stalking the dates on which~~
 4 ~~the alleged [stalking behavior] occurred; and~~ violation of privacy
 5 (4) ~~the acts committed by the defendant that are alleged to con-~~
 6 ~~stitute [stalking].~~ a violation of privacy
 7 (b) A parent or an adult residing with a minor child may seek relief
 8 under the protection ~~[from stalking]~~ act on behalf of the minor child by
 9 filing a verified petition with the district judge or with the clerk of the privacy
 10 court in the county where the ~~[stalking]~~ occurred. violation of privacy
 11 (c) The clerk of the court shall supply the forms for the petition and
 12 orders, which shall be prescribed by the ~~supreme court~~ **judicial council**.
 13 (d) Service of process served under this section shall be by personal
 14 service. No docket fee shall be required for proceedings under the pro-
 15 tection ~~[from stalking]~~ act. privacy
 16 (e) The ~~plaintiff's~~ **victim's** address and telephone number shall not
 17 be disclosed to the defendant or to the public, but only to authorized
 18 court or law enforcement personnel.
 19 New Sec. 5. (a) Within 20 days of the filing of a petition under the
 20 protection ~~[from stalking]~~ act a hearing shall be held at which the plaintiff
 21 must prove the allegation of ~~[stalking]~~ by a preponderance of the evidence a violation of privacy
 22 and the defendant shall have an opportunity to present evidence on the
 23 defendant's behalf. Upon the filing of the petition, the court shall set the
 24 case for hearing. At the hearing, the court shall advise the parties of the
 25 right to be represented by counsel.
 26 (b) Prior to the hearing on the petition and upon a finding of good
 27 cause shown, the court on motion of a party may enter such temporary
 28 relief orders in accordance with section 6 and amendments thereto, or
 29 any combination thereof, as it deems necessary to protect the ~~plaintiff or~~
 30 ~~minor children [victim from being stalked]~~ victim's privacy
 31 granted *ex parte* **on presentation of a verified petition by the victim**
 32 **supporting a prima facie case of [stalking]. Immediate and present dan-** a violation of the privacy protection act
 33 **ger of stalking shall constitute good cause for the purposes of this section.**
 34 (c) If a hearing under subsection (a) is continued, the court may make
 35 or extend such temporary orders under subsection (b) as it deems
 36 necessary.
 37 New Sec. 6. (a) The court shall ~~be empowered to~~ issue a protection privacy
 38 ~~[from stalking]~~ order to bring about the cessation of ~~[stalking]~~ of the plaintiff
 39 **victim** or grant any of the following orders: a violation of the privacy
 40 (1) Restraining the defendant from following, harassing, telephoning,
 41 contacting or otherwise communicating with the ~~plaintiff or any minor~~
 42 ~~children of the plaintiff victim~~. Such order shall contain a statement that may
 43 if such order is violated such violation may constitute ~~[stalking]~~ as provided
 criminal trespass

21-3721

1-3

1 in K.S.A. ~~21-3438~~ and amendments thereto, and violation of a protective
2 order as provided in K.S.A. 2001 Supp. 21-3843, and amendments
3 thereto.

4 (2) Restraining the defendant from abusing, molesting or interfering
5 with the privacy rights of the plaintiff ~~or of any minor children of the~~
6 ~~plaintiff~~ **victim**. Such order shall contain a statement that if such order
7 is violated, such violation may constitute ~~stalking as provided in K.S.A.~~
8 ~~21-3438, and amendments thereto,~~ assault as provided in K.S.A. 21-3408,
9 and amendments thereto, battery as provided in K.S.A. 21-3412, and
10 amendments thereto, and violation of a protective order as provided in
11 K.S.A. 2001 Supp. 21-3843, and amendments thereto.

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

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

the plaintiff

20 (5) Ordering or restraining any other acts deemed necessary to pro-
21 mote the safety of the ~~plaintiff or the plaintiff's minor children~~ **victim**.

22 (b) A ~~protection from stalking~~ order shall remain in effect until mod-
23 ified or dismissed by the court and shall be for a fixed period of time not
24 to exceed one year, ~~except that, on motion of the plaintiff, such period~~
25 ~~may be extended for one additional year. Before the expiration of an~~
26 ~~order for protection from stalking, a victim, or a parent on behalf~~
27 ~~of the victim, may request an extension of the protection from stalk-~~
28 ~~ing order for up to one additional year on showing of continuing~~
29 ~~threat of stalking.~~

privacy

a violation of privacy

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

32 (d) ~~If a person follows, harasses, telephones, contacts or otherwise~~
33 ~~communicates with another violating an order issued pursuant to subsec-~~
34 ~~tion (a)(1), such violation may constitute stalking as provided in K.S.A.~~
35 ~~21-3438, and amendments thereto, and violation of a protective order as~~
36 ~~provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto. If a~~
37 ~~person abuses, molests or interferes with the privacy or rights of another~~
38 ~~violating an order issued pursuant to subsection (a)(2), such violation may~~
39 ~~constitute stalking as provided in K.S.A. 21-3438, and amendments~~
40 ~~thereto, assault as provided in K.S.A. 21-3408, and amendments thereto,~~
41 ~~battery as provided in K.S.A. 21-3412, and amendments thereto, and vi-~~
42 ~~olation of a protective order as provided in K.S.A. 2001 Supp. 21-3843,~~
43 ~~and amendments thereto.] If a person enters on premises or property~~

1 violating an order issued pursuant to subsection (a)(3), such violation shall
2 constitute criminal trespass as provided in subsection (a)(1)(C) of K.S.A.
3 21-3721, and amendments thereto, and violation of a protective order as
4 provided in K.S.A. 2001 Supp. 21-3843, and amendments thereto.

5 New Sec. 7. A copy of any order under the ~~protection from stalking~~
6 act shall be issued to the plaintiff *victim*, the defendant and the police
7 department of the city where the plaintiff *victim* resides. If the plaintiff
8 *victim* does not reside in a city or resides in a city with no police de-
9 partment, a copy of the order shall be issued to the sheriff of the county
10 where the order is issued.

privacy

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

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

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

23 Stalking is a severity level 10, person felony.

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

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

33 (d) For the purposes of this section: (1) "Course of conduct" means
34 a pattern of conduct composed of a series of acts over a period of time,
35 however short, evidencing a continuity of purpose and which would cause
36 a reasonable person to suffer substantial emotional distress, and must
37 actually cause substantial emotional distress to the person. Constitution-
38 ally protected activity is not included within the meaning of "course of
39 conduct."

40 (2) "Harassment" means a knowing and intentional course of conduc'
41 directed at a specific person that seriously alarms, annoys, torments or
42 terrorizes the person, and that serves no legitimate purpose.

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

5-1

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

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

Renumber remaining sections accordingly.

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

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

17 (A) Such person enters or remains therein in defiance of an order
 18 not to enter or to leave such premises or property personally communi-
 19 cated to such person by the owner thereof or other authorized person;
 20 or

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

24 (C) such person enters or remains therein in defiance of a restraining
 25 order issued pursuant to ~~section 5, section 6, K.S.A. 60-1607, 60-3105,~~
 26 ~~60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amend-~~
 27 ~~ments thereto, and the restraining order has been personally served upon~~
 28 ~~the person so restrained; or~~

the protection from privacy act pursuant to

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

36 (b) As used in this section:
 37 (1) "Health care facility" means any licensed medical care facility,
 38 certificated health maintenance organization, licensed mental health cen-
 39 ter, or mental health clinic, licensed psychiatric hospital or other facility
 40 or office where services of a health care provider are provided directly to
 41 patients.

42 (2) "Health care provider" means any person: (A) Licensed to prac-
 43 tice a branch of the healing arts; (B) licensed to practice psychology; (C)

1 licensed to practice professional or practical nursing; (D) licensed to prac-
2 tice dentistry; (E) licensed to practice optometry; (F) licensed to practice
3 pharmacy; (G) registered to practice podiatry; (H) licensed as a social
4 worker; or (I) registered to practice physical therapy.

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

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

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

13 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
14 60-3106 and 60-3107, and amendments thereto;

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

18 (3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543,
19 38-1563 and 60-1607, and amendments thereto;

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

24 (5) an order issued as a condition of release after conviction or as a
25 condition of a supersedeas bond pending disposition of an appeal, that
26 orders the person to refrain from having any direct or indirect contact
27 with another person; ~~or~~

28 (6) ~~a protection from stalking order issued pursuant to section 5 or~~
29 ~~6, and amendments thereto.~~

privacy

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

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

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

35 Sec. 13. K.S.A. 2001 Supp. ~~[21-3436]~~ 21-3721 and 21-3843 are hereby
36 repealed.

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

SENATE BILL No. 475

By Senators Adkins, Vratil and Goodwin

1-31

Proposed amendments
Subcommittee on Protective Orders
March 21, 2002

House Judiciary
Attachment 2
3-26-02

10 AN ACT concerning protection from abuse; relating to intimate partners
11 or household members; amending K.S.A. 2001 Supp. 60-3102, 60-
12 3104, 60-3107 and 60-3112 and repealing the existing sections.

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

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

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

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

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

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

28 (A) The act of sexual intercourse; or

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

32 (b) "Intimate partners or household members" means persons who
33 are or have been in a dating relationship, persons who reside together or
34 who have formerly resided together or persons who have had a child in
35 common.

36 (c) "Dating relationship" means a social relationship of a romantic
37 nature consisting of one or more dates. A dating relationship shall be
38 presumed if a plaintiff verifies, pursuant to K.S.A. 53-601, and amend-
39 ments thereto, that such relationship exists. Factors that a court may con-
40 sider in making a determination of whether a relationship exists or existed
41 include:

42 (1) Nature of the relationship;

43 (2) length of time the relationship existed;

2-2

- 1 (3) *frequency of interaction between the parties; and*
- 2 (4) *time since termination of the relationship, if applicable.*

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

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

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

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

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

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

may

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

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

2-3

1 provided in subsection (c) of K.S.A. 21-3721, and amendments thereto,
2 and violation of a protective order as provided in K.S.A. 2001 Supp. 21-
3 3843, and amendments thereto. The court may grant an order, which
4 shall expire 60 days following the date of issuance, restraining the party
5 ~~not granted possession~~ defendant from cancelling utility service to the
6 residence or household.

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

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

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

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

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

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

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

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

27 (b) ~~[A] protection from abuse order entered against both the plaintiff~~
28 ~~[and the defendant by a court in this state shall not be enforceable against~~
29 ~~the plaintiff] unless:~~ 1

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

32 (2) the plaintiff had reasonable notice of the written cross or counter
33 petition by personal service as provided in subsection (d) of K.S.A. 60-
34 3104, and amendments thereto; and

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

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

No

shall be

and

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

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

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

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

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

31 ~~(g)~~ *(h)* If a person enters or remains on premises or property violating
32 an order issued pursuant to subsection (a)(2), such violation shall consti-
33 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
34 amendments thereto, and violation of a protective order as provided in
35 K.S.A. 2001 Supp. 21-3843, and amendments thereto. If a person abuses,
36 molests or interferes with the privacy or rights of another violating an
37 order issued pursuant to subsection (a)(1), such violation may constitute
38 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
39 as provided in K.S.A. 21-3412, and amendments thereto, domestic battery
40 as provided in K.S.A. 2001 Supp. 21-3412a, and amendments thereto,
41 and violation of a protective order as provided in K.S.A. 2001 Supp. 21-
42 3843, and amendments thereto.

3 Sec. 4. K.S.A. 2001 Supp. 60-3112 is hereby amended to read as

1 follows: 60-3112. (a) All ~~emergency,~~ *temporary, amended, final and other*
 2 ~~protection from abuse orders, orders amending an existing protective or~~
 3 ~~der, and such related issued pursuant to article 31 of chapter 60 of the~~
 4 *Kansas Statutes Annotated, and amendments thereto, or protection orders*
 5 *issued based on the laws of another jurisdiction which are entitled to full*
 6 *faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265,*
 7 *and amendments thereto, shall be entered into the national criminal in-*
 8 *formation center protection order file. All emergency protection from*
 9 ~~abuse orders, temporary protection from abuse orders, other orders is-~~
 10 ~~sued pursuant to article 31 of chapter 60 of the Kansas Statutes Anno-~~
 11 ~~tated, and amendments thereto, and such emergency, temporary and~~
 12 ~~other related orders issued based on the laws of another jurisdiction which~~
 13 ~~are entitled to full faith and credit in Kansas pursuant to the provisions~~
 14 ~~of 18 U.S.C. 2265, and amendments thereto, may be entered into the~~
 15 ~~national criminal information center protection order file. A copy of these~~
 16 *orders shall be delivered by the clerk of the court to the sheriff of the*
 17 *county where the order is issued or registered. The sheriff's office shall*
 18 *immediately enter the order into the national criminal information center*
 19 *and other appropriate databases after all mandatory identifiers are avail-*
 20 *able. If the order is a foreign protective order, the sheriff's office shall*
 21 *contact the issuing jurisdiction to verify the order and request that such*
 22 *jurisdiction enter the order into the national criminal information center*
 23 *and other appropriate databases. Any modification of an order shall be*
 24 *forwarded immediately by the clerk of the court to the sheriff's office*
 25 *with jurisdiction to enforce the modified order. The sheriff's office shall*
 26 *ensure the accuracy of the entries and the court shall ensure the validity*
 27 *of the orders.*

28 (b) ~~All emergency and~~ *temporary orders which have been en-*
 29 *tered into the national criminal information center file shall be can-*
 30 *celed upon the expiration of the time period set out in the court*
 31 *order, or, if no time period is set, no later than one year from the*
 32 *entry date. All other orders which have been entered into the national*
 33 *criminal information center protection order file shall be cleared as an*
 34 *active record from the computer system when:*

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

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

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

2-5

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.

- 1 are hereby repealed.
- 2 Sec. 6. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

2-6