

By Joint Committee on Administrative Rules and Regulations

AN ACT concerning domestic violence; enacting the batterer intervention program certification act; amending K.S.A. 2011 Supp. 12-4509 and 22-4616 and repealing the existing sections.

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

New Section 1. (a) There is hereby created in the office of the attorney general a batterer intervention program certification unit.

(b) Except as otherwise provided by law, the books, documents, papers, records or other sources of information obtained and the investigations conducted by the unit shall be confidential as required by state or federal law.

(c) The purpose of the batterer intervention program certification unit is to certify and inspect batterer intervention programs in Kansas. To accomplish this purpose, upon request of the unit, the unit shall have access to all records of reports, investigation documents and written reports of findings related to confirmed cases of domestic violence or exploitation of persons or cases in which there is reasonable suspicion to believe domestic violence has occurred which are received or generated by the department of social and rehabilitation services, department on aging of, department of health and environment, Kansas bureau of investigation or the behavioral sciences regulatory board. ✓

(d) The attorney general shall develop a set of tools, methodologies, requirements and forms for the domestic violence offender assessment required by subsection (p) of K.S.A. 2011 Supp. 21-6604, and amendments thereto. The batterer intervention program tools, methodologies, requirements and forms shall be developed in consultation with the agency certified by the centers for disease control and prevention and the department of health and

human services as the domestic violence coalition for the state and with local domestic violence victims' services organizations.

(e) The attorney general may appoint a panel to assist the attorney general by making recommendations regarding the:

- (1) Content and development of a batterer intervention certification program; and
- (2) rules and regulations.

(f) The attorney general may appoint such advisory committees as the attorney general deems necessary to carry out the purposes of this act. No member of any such advisory committee shall receive any compensation, subsistence, mileage or other allowance for serving on an advisory committee or attending any meeting thereof.

New Sec. 2. (a) No person shall operate or provide services as a batterer intervention program unless such program has been certified as required by this section.

(b) Any program desiring to be certified in Kansas as a batterer intervention program shall submit an application thereof to the attorney general. All completed applications for initial, renewal, or reinstatement certification shall be verified and on a form approved by the attorney general. The completed application shall include:

- (1) The full name and resident address of the applicant;
- (2) the name under which the applicant intends to do business and the business address;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement of the educational and work experience qualifications of each individual, including any employee or agent of applicant, who will be directly providing

intervention services to clients of a batterer intervention program;

(5) payment of the application fee; and

(6) such other information, evidence, statements or documents as may be required by the attorney general.

(c) Before an application for a certification may be approved and granted, the applicant shall:

(1) Have attained the age of 21;

(2) have satisfied the attorney general that the applicant is a person who merits the public trust;

(3) have paid the certification fee; and

(4) complied with such other qualifications as may be established by the attorney general by rules and regulations.

(d) If in evaluating an applicant's application the attorney general finds any deficiency in the applicant's qualifications, the attorney general may require such applicant to fulfill such remedial or other requirements as the attorney general may prescribe.

(e) Certification as a batterer intervention program shall expire on the second anniversary of the date of certification.

(f) Certification as a batterer intervention program may be renewed every two years upon submission of a completed renewal application to the attorney general on or before the expiration date of such certification, payment of the renewal fee and verification of continuing compliance with the requirements of this act and the rules and regulations adopted thereunder by the attorney general.

(g) Any batterer intervention program that fails to secure a renewal certification within the time specified in subsection (f) may request reinstatement of such lapsed certification by submitting to the attorney general a completed application on a form approved by the attorney general, furnishing proof that the applicant is qualified to act as a certified batterer intervention program and satisfying all of the requirements for reinstatement including payment of a reinstatement fee to the attorney general.

(h) The attorney general may issue a temporary permit to act as a certified batterer intervention program for a period not to exceed 180 days to an applicant requesting initial certification if the attorney general determines the applicant qualifies under subsections (b) and (c), except for program requirements regarding agency structure, personnel qualifications, education requirements or training requirements established in rules and regulations, and such deficiencies can be remedied within such time period. The temporary permit shall expire upon the applicant meeting all of the program requirements and the applicant's program being certified as required by this section, or upon the expiration date of the temporary permit, whichever occurs first.

(i) No certification as a batterer intervention program or temporary permit to act as a certified batterer intervention program shall be assignable or transferable.

New Sec. 3. Each applicant, certified batterer intervention program or holder of a temporary permit shall notify the attorney general in writing of:

(a) A change in name or address, both residential and business, within 30 days of the change; or

(b) a conviction of or entering into a diversion agreement in lieu of further criminal

2-4

proceedings alleging a violation of:

(1) A felony offense in the Kansas Statutes Annotated, and amendments thereto, or similar conviction in another jurisdiction:

(A) Involving dishonesty or false statement;

(B) involving alcohol or a controlled substance; or

(C) designated as a person offense in article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto; or

(2) a misdemeanor offense in the Kansas Statutes Annotated, and amendments thereto, or similar conviction in another jurisdiction or an ordinance of any city of this state, or resolution of any county of this state:

(A) Involving dishonesty or false statement;

(B) involving alcohol or a controlled substance; or

(C) designated as a person offense in article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 4. The fee for an initial application, renewal application or reinstatement application for a batterer intervention program certification shall be \$100. The fee for an initial application, renewal application or reinstatement fee for temporary permit shall be \$50. The attorney general may increase the amount of fee for an initial application, renewal application or reinstatement application for a batterer intervention program certification by rules and regulations, except that no such increased amount shall exceed \$250. The attorney general may increase the amount of fee for an initial application renewal, application or reinstatement application for temporary application by rules and regulations, except that no such increased

amount shall exceed \$250.

New Sec. 5. (a) The attorney general shall establish by rules and regulations the requirements for a batterer intervention certification program. These requirements may include, but not be limited to:

- (1) Standards;
- (2) program elements and goals;
- (3) the role of the certified batterer intervention program in the community;
- (4) technical considerations which may include, but not be limited to, consideration of

any combination of:

- (A) Expectations of batterers;
- (B) group composition;
- (C) facilitation;
- (D) curriculum;
- (E) prohibited and restricted practices;
- (F) batterer confidentiality, victim confidentiality and safety checks;
- (G) program length;
- (H) victim notification;
- (I) victim involvement;
- (J) public relations;
- (K) research;
- (L) agency structure; and
- (M) personnel qualifications;

(5) the assessment of batterer participants and the utilization of the Kansas domestic violence offender assessment;

(6) training and education requirements, continuing or otherwise, for program facilitators, program supervisors and program coordinators; and

(7) any other requirements or conditions as may be required by the attorney general.

(b) A batterer intervention program may be exempted from the initial application for certification as a certified batterer intervention program if such program had been previously certified or certified by the attorney general as a batterer intervention program on the day preceding the effective date of this act.

New Sec. 6. (a) The attorney general may suspend, limit, condition, deny, revoke or refuse renewal or reinstatement of any certification or permit issued under this act if the attorney general determines that an applicant, a person operating or providing services as a certified batterer intervention program or holder of a temporary permit has:

(1) Made any false statement or given any false information in connection with an application for an initial, renewal or reinstatement of a certification or temporary permit issued under this act;

(2) failed to meet or maintain compliance with program requirements;

(3) been found guilty or convicted of fraud or deceit in connection with services rendered;

(4) been found guilty of negligence or wrongful actions in the performance of services rendered;

(5) allowed the use of the attorney general's domestic violence offender assessment by

any person who is not an employee or agent of either a current certified batterer intervention program or a holder of a temporary permit issued under this act;

(6) committed an act of unprofessional conduct as defined by rules and regulations adopted by the attorney general;

(7) been convicted of any offense as defined in section 3, and amendment thereto; or

(8) failed or refused to allow inspection of records pursuant to section 8, and amendments thereto.

(b) (1) For purposes of this section, "conviction" means:

(A) The entry of a plea or verdict of guilty or a conviction following a plea of nolo contendere and without regard to whether the sentence was suspended or probation granted after such conviction;

(B) a forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated; or

(C) entering into a diversion agreement in lieu of further criminal proceedings alleging a violation of any offense specified in subsection (b) of section 3, and amendments thereto.

(2) The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction.

(c) Proceedings under this section shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under this act shall be in accordance with the Kansas judicial review act.

New Sec. 7. (a) Any applicant, person who operates or provides services as a batterer intervention program or holder of a temporary permit who violates any provision of this act or

any rules and regulations adopted thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the attorney general to the applicant, person who operates or provides services as a certified batterer intervention program or holder of a temporary permit who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the applicant, person who operates or provides services as a certified batterer intervention program or holder of a temporary permit to appeal to the attorney general. Any such applicant, person who operates or provides services as a certified batterer intervention program or holder of a temporary permit, within 20 days after notification, may make written request to the attorney general for a hearing in accordance with the provisions of the Kansas administrative procedure act. The attorney general shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any applicant, person who operates or provides services as a certified batterer intervention program or holder of a temporary permit aggrieved by a final order of the attorney general made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

(e) Any action taken pursuant to this section shall be in addition to and not in lieu of any other penalty prescribed by law.

New Sec. 8. (a) Each certified batterer intervention program and each holder of a temporary permit issued pursuant to this act shall keep and maintain for a period of two years, each book, document, paper, record or other information pertaining to services rendered as a certified batterer intervention program.

(b) Regardless of the form or media in which such books, documents, paper, record or other source of information is kept, each book, document, paper, record and other source of information concerning the compliance with the requirements established in this act and the rules and regulations adopted thereunder by each certified batterer intervention program or holder of a temporary permit shall be inspected at least once every certification period by the attorney general. The attorney general may order other or additional inspections as deemed necessary by the attorney general. The attorney general shall at all times be given free access to all such books, documents, papers, records or other sources of information concerning the compliance with the requirements established in this act and the rules and regulations adopted thereunder.

(c) (1) Any information or copy thereof obtained by the attorney general pursuant to this section or pursuant to an investigation pursuant to this act shall not be public and shall not be subject to disclosure pursuant to the Kansas open records act, and amendments thereto.

(2) The provisions of subsection (c)(1) shall expire on July 1, 2017, unless the legislature acts to reenact such provision. The provisions of subsection (c)(1) shall be reviewed by the legislature prior to July 1, 2017.

New Sec. 9. (a) The attorney general may bring an action to restrain or enjoin any

violation of this act or any rule and regulation promulgated thereunder. The district courts of this state shall have jurisdiction to restrain violations of this act or the rules and regulations promulgated thereunder. The court may issue such orders, including temporary restraining orders, as the facts may warrant without first requiring proof that an adequate remedy at law does not exist. Any orders issued pursuant to this section shall be issued without bond. Proceedings may be instituted under this section without any criminal proceedings, administrative proceedings or civil penalty proceedings being first initiated.

(b) In any civil action brought by the attorney general pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder, has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

New Sec. 10. Except for a certified batterer intervention program or a holder of a temporary permit authorized under this act, and amendments thereto, no person shall use any of the tools, methodologies, and forms for the domestic violence offender assessment required by subsection (p) of K.S.A. 2011 Supp. 21-6604, and amendments thereto, developed by the attorney general pursuant to section 1, and amendments thereto.

New Sec. 11. In accordance with the provisions of the rules and regulations filing act, K.S.A. 77-415 et seq., and amendments thereto, the attorney general may adopt, amend and revoke rules and regulations governing the administration and enforcement of this act, including

but not limited to:

(a) Criteria for the evaluation, certification and monitoring of any certified batterer intervention program;

(b) any form required to implement this act;

(c) any educational requirement for any certified batterer intervention program;

(d) any fee required under this act;

(e) any report, record or other information which may be required to be kept, and maintained pursuant to this act; and

(f) such other rules and regulations as the attorney general may deem necessary to carry out the provisions of this act.

New Sec. 12. (a) There is hereby created in the state treasury the Kansas attorney general batterer intervention program certification fund. The attorney general shall remit all amounts received under this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the attorney general shall remit the entire amount to the state treasurer pursuant to the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas attorney general batterer intervention program certification fund.

(b) Moneys in the Kansas attorney general batterer intervention program certification fund shall be expended only for the purposes of administering this act.

(c) All expenditures from the Kansas attorney general batterer intervention program certification fund shall be made in accordance with appropriation acts upon warrants of the

director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person designated by the attorney general.

New Sec. 13. (a) As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(1) "Agent or employee thereof," in the context of either a certified batterer intervention program or the holder of a temporary permit, means any individual who acts or aids in any manner in directly providing intervention related service to a client of a certified batterer intervention program. The term "agent or employee thereof" shall not include an individual working as an officer for a certified batterer intervention program, or in a clerical, administrative or service capacity for a certified batterer intervention program, provided that such individual does not provide intervention services to clients under such program.

(2) "Attorney general" means the attorney general of the state of Kansas and any authorized agent or designee thereof.

(3) "Certified batterer intervention program" includes any agent or employee thereof.

(4) "Holder of a temporary permit" includes any agent or employee thereof.

(5) "Person" means an individual, partnership, corporation, limited liability company, association, business entity, legal representative, trustee, trustee in bankruptcy or receiver, partnership, joint venture, company, firm, corporation, institution, governmental subdivision, state or federal department or agency or other legal entity.

(b) Sections 1 through 13, and amendments thereto, shall be cited as the batterer intervention program certification act.

Sec. 14. K.S.A. 2011 Supp. 12-4509 is hereby amended to read as follows: 12-4509. (a)

Whenever a person is found guilty of the violation of an ordinance, the municipal judge may:

- (1) Release the person without imposition of sentence;
- (2) release the person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court as provided in subsection (e);
- (3) impose such sentence of fine or imprisonment, or both, as authorized for the ordinance violation; or
- (4) impose a sentence of house arrest as provided in K.S.A. 2011 Supp. 21-6609, and amendments thereto.

(b) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the judge may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, an ordinance prohibiting an act prohibited by K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or K.S.A. 8-1599, 41-719 or 41-727, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by

that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

(d) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (c) are permissive and not mandatory.

(e) In addition to any other sentence authorized by law, whenever a person is convicted of any criminal offense, the municipal judge shall determine whether the defendant committed a domestic violence offense as defined in K.S.A. 2011 Supp. 21-3110 and 21-5111, and amendments thereto, and shall sentence the defendant pursuant to K.S.A. 2011 Supp. 22-4616, and amendments thereto.

(f) The court may impose any conditions of probation or suspension of sentence that the court deems proper, including, but not limited to, requiring that the defendant:

- (1) Avoid such injurious or vicious habits, as directed by the court or the probation officer;
- (2) avoid such persons or places of disreputable or harmful character, as directed by the court or the probation officer;
- (3) report to the probation officer as directed;
- (4) permit the probation officer to visit the defendant at home or elsewhere;
- (5) work faithfully at suitable employment insofar as possible;
- (6) remain within the state unless the court grants permission to leave;
- (7) pay a fine or costs, applicable to the ordinance violation, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court; or

(13) reimburse the city, in accordance with any order made under subsection ~~(f)~~ (g), for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant.

~~(f)~~ (g) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required

to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

Sec. 15. K.S.A. 22-4616 is hereby amended to read as follows: 22-4616. (a) On and after July 1, 2011, in all criminal cases filed in the district court or in the municipal court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense.

(1) Except as provided further, if the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 2011 Supp. 21-6604, and amendments thereto.

(2) The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 2011 Supp. 21-6604, and amendments thereto, only if the court finds on the record that:

(A) The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(B) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

(b) The term "domestic violence offense" shall have the meaning provided in K.S.A.

2011 Supp. 21-5111, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

Sec. 16. K.S.A. 2011 Supp. 12-4509 and 22-4616 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.