

HOUSE BILL No. 2147

By Committee on Corrections and Juvenile Justice

1-28

1 AN ACT concerning civil procedure; relating to protection orders;
2 protection from abuse act; protection from stalking act; amending
3 K.S.A. 60-3102, 60-31a01, 60-31a02, 60-31a03, 60-31a07, 60-31a08
4 and 60-31a09 and K.S.A. 2014 Supp. 21-5924, 60-31a04, 60-31a05
5 and 60-31a06 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 60-3102 is hereby amended to read as follows: 60-
9 3102. As used in the protection from abuse act:

10 (a) "Abuse" means the occurrence of one or more of the following
11 acts between intimate partners or household members:

12 (1) Intentionally attempting to cause bodily injury, or intentionally or
13 recklessly causing bodily injury.

14 (2) Intentionally placing, by physical threat, another in fear of
15 imminent bodily injury.

16 (3) *Engaging in any sexual contact or attempted sexual contact with*
17 *another person without consent or when such person is incapable of*
18 *giving consent.*

19 ~~(4)~~ (4) Engaging in any of the following acts with a minor under 16
20 years of age who is not the spouse of the offender:

21 (A) The act of sexual intercourse; or

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

25 (b) "Intimate partners or household members" means persons who are
26 or have been in a dating relationship, persons who reside together or who
27 have formerly resided together or persons who have had a child in
28 common.

29 (c) "Dating relationship" means a social relationship of a romantic
30 nature. A dating relationship shall be presumed if a plaintiff verifies,
31 pursuant to K.S.A. 53-601, and amendments thereto, that such relationship
32 exists. In addition to any other factors the court deems relevant, the court
33 shall consider the following factors in making a determination of whether
34 a relationship exists or existed include:

35 (1) Nature of the relationship;

36 (2) length of time the relationship existed;

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. 60-31a01 is hereby amended to read as follows: 60-
4 31a01. (a) K.S.A. 60-31a01 through 60-31a09, and amendments thereto,
5 shall be known and may be cited as the protection from stalking *or sexual*
6 *assault* act.

7 (b) This act shall be liberally construed to protect victims of stalking
8 *and sexual assault* and to facilitate access to judicial protection for stalking
9 *and sexual assault* victims, whether represented by counsel or proceedings
10 pro se.

11 Sec. 3. K.S.A. 60-31a02 is hereby amended to read as follows: 60-
12 31a02. As used in the protection from stalking *or sexual assault* act:

13 (a) "Stalking" means an intentional harassment of another person that
14 places the other person in reasonable fear for that person's safety.

15 (b) "Harassment" means a knowing and intentional course of conduct
16 directed at a specific person that seriously alarms, annoys, torments or
17 terrorizes the person, and that serves no legitimate purpose.

18 (c) "Course of conduct" means conduct consisting of two or more
19 separate acts over a period of time, however short, evidencing a continuity
20 of purpose which would cause a reasonable person to suffer substantial
21 emotional distress. Constitutionally protected activity is not included
22 within the meaning of "course of conduct."

23 (d) "*Sexual assault*" means any sexual contact or attempted sexual
24 contact with another person without consent, or when such person is
25 incapable of giving consent.

26 Sec. 4. K.S.A. 60-31a03 is hereby amended to read as follows: 60-
27 31a03. The district courts shall have jurisdiction over all proceedings
28 under the protection from stalking *or sexual assault* act.

29 Sec. 5. K.S.A. 2014 Supp. 60-31a04 is hereby amended to read as
30 follows: 60-31a04. (a) A person may seek relief under the protection from
31 stalking *or sexual assault* act by filing a verified petition with any district
32 judge or clerk of the court. A verified petition must allege facts sufficient
33 to show the following:

34 (1) The name of the stalking *or sexual assault* victim;

35 (2) the name of the defendant;

36 (3) the dates on which the alleged stalking behavior *or sexual assault*
37 occurred; and

38 (4) the acts committed by the defendant that are alleged to constitute
39 stalking *or sexual assault*.

40 (b) A parent or an adult residing with a minor child may seek relief
41 under the protection from stalking *or sexual assault* act on behalf of the
42 minor child by filing a verified petition with the district judge or with the
43 clerk of the court in the county where the stalking *or sexual assault*

1 occurred.

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

4 (d) Service of process served under this section shall be by personal
5 service. No docket fee shall be required for proceedings under the
6 protection from stalking *or sexual assault* act.

7 (e) The victim's address and telephone number shall not be disclosed
8 to the defendant or to the public, but only to authorized court or law
9 enforcement personnel and to the commission on judicial performance in
10 the discharge of the commission's duties pursuant to article 32 of chapter
11 20 of the Kansas Statutes Annotated, and amendments thereto.

12 Sec. 6. K.S.A. 2014 Supp. 60-31a05 is hereby amended to read as
13 follows: 60-31a05. (a) Within 21 days of the filing of a petition under the
14 protection from stalking *or sexual assault* act a hearing shall be held at
15 which the plaintiff must prove the allegation of stalking *or sexual assault*
16 by a preponderance of the evidence and the defendant shall have an
17 opportunity to present evidence on the defendant's behalf. Upon the filing
18 of the petition, the court shall set the case for hearing. At the hearing, the
19 court shall advise the parties of the right to be represented by counsel.

20 (b) Prior to the hearing on the petition and upon a finding of good
21 cause shown, the court on motion of a party may enter such temporary
22 relief orders in accordance with K.S.A. 60-31a06, and amendments
23 thereto, or any combination thereof, as it deems necessary to protect the
24 victim from being stalked. Temporary orders may be granted ex parte on
25 presentation of a verified petition by the victim supporting a prima facie
26 case of stalking *or sexual assault*.

27 (c) If a hearing under subsection (a) is continued, the court may make
28 or extend such temporary orders under subsection (b) as it deems
29 necessary.

30 Sec. 7. K.S.A. 2014 Supp. 60-31a06 is hereby amended to read as
31 follows: 60-31a06. (a) The court may issue a protection from stalking *or*
32 *sexual assault* order granting any of the following orders:

33 (1) Restraining the defendant from following, harassing, telephoning,
34 contacting or otherwise communicating with the victim. Such order shall
35 contain a statement that if such order is violated such violation may
36 constitute stalking as defined in K.S.A. 2014 Supp. 21-5427, and
37 amendments thereto, and violation of a protective order as defined in
38 K.S.A. 2014 Supp. 21-5924, and amendments thereto.

39 (2) Restraining the defendant from abusing, molesting or interfering
40 with the privacy rights of the victim. Such order shall contain a statement
41 that if such order is violated, such violation may constitute stalking as
42 defined in K.S.A. 2014 Supp. 21-5427, and amendments thereto, assault as
43 defined in ~~subsection (a) of~~ K.S.A. 2014 Supp. 21-5412(a), and

1 amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2014
2 Supp. 21-5413(a), and amendments thereto, and violation of a protective
3 order as defined in K.S.A. 2014 Supp. 21-5924, and amendments thereto.

4 (3) Restraining the defendant from entering upon or in the victim's
5 residence or the immediate vicinity thereof. Such order shall contain a
6 statement that if such order is violated, such violation shall constitute
7 criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A. 2014 Supp.
8 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
9 order as defined in K.S.A. 2014 Supp. 21-5924, and amendments thereto.

10 (4) *Restraining the defendant from committing or attempting to*
11 *commit a sexual assault upon the victim. Such order shall contain a*
12 *statement that if such order is violated, such violation shall constitute*
13 *violation of a protective order, as defined in K.S.A. 2014 Supp. 21-5924,*
14 *and amendments thereto. Such order shall also contain a statement that if*
15 *such order is violated, such violation may constitute a sex offense under*
16 *article 55 of chapter 21 of the Kansas Statutes Annotated, and*
17 *amendments thereto, and the accused may be prosecuted, convicted of and*
18 *punished for such sex offense.*

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

21 (b) A protection from stalking *or sexual assault* order shall remain in
22 effect until modified or dismissed by the court and shall be for a fixed
23 period of time not to exceed one year except as provided in subsection (c)
24 and (d).

25 (c) Upon motion of the plaintiff the court may extend the order for an
26 additional year.

27 (d) Upon verified motion of the plaintiff and after the defendant has
28 been personally served with a copy of the motion and has had an
29 opportunity to present evidence and cross-examine witnesses at a hearing
30 on the motion, if the court determines by a preponderance of the evidence
31 that the defendant has violated a valid protection order or (A) has
32 previously violated a valid protection order, or (B) has been convicted of a
33 person felony or any conspiracy, criminal solicitation or attempt thereof,
34 under the laws of Kansas or the laws of any other jurisdiction which are
35 substantially similar to such person felony, committed against the plaintiff
36 or any member of the plaintiff's household, the court shall extend a
37 protective order for not less than two additional years and up to a period of
38 time not to exceed the lifetime of the defendant. No service fee shall be
39 required for a motion filed pursuant to this subsection.

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

42 (f) The court shall assess costs against the defendant and may award
43 attorney fees to the victim in any case in which the court issues a

1 protection from stalking *or sexual assault* order pursuant to this act. The
2 court may award attorney fees to the defendant in any case where the court
3 finds that the petition to seek relief pursuant to this act is without merit.

4 (g) A no contact or restraining provision in a protective order issued
5 pursuant to this section shall not be construed to prevent:

6 (1) Contact between the attorneys representing the parties;

7 (2) a party from appearing at a scheduled court or administrative
8 hearing; or

9 (3) a defendant or defendant's attorney from sending the plaintiff
10 copies of any legal pleadings filed in court relating to civil or criminal
11 matters presently relevant to the plaintiff.

12 Sec. 8. K.S.A. 60-31a07 is hereby amended to read as follows: 60-
13 31a07. A copy of any order under the protection from stalking *or sexual*
14 *assault* act shall be issued to the victim, the defendant and the police
15 department of the city where the victim resides. If the victim does not
16 reside in a city or resides in a city with no police department, a copy of the
17 order shall be issued to the sheriff of the county where the order is issued.

18 Sec. 9. K.S.A. 60-31a08 is hereby amended to read as follows: 60-
19 31a08. Except ~~of~~ *as* otherwise provided in the protection from stalking *or*
20 *sexual assault* act, any proceedings under this act shall be in accordance
21 with chapter 60 of the Kansas Statutes Annotated, *and amendments*
22 *thereto*, and shall be in addition to any other available civil or criminal
23 remedies.

24 Sec. 10. K.S.A. 60-31a09 is hereby amended to read as follows: 60-
25 31a09. If upon hearing, the court finds a violation of any order under the
26 protection from stalking *or sexual assault* act, the court may find the
27 defendant in contempt pursuant to K.S.A. 20-1204a, and amendments
28 thereto.

29 Sec. 11. K.S.A. 2014 Supp. 21-5924 is hereby amended to read as
30 follows: 21-5924. (a) Violation of a protective order is knowingly
31 violating:

32 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
33 60-3106 or 60-3107, and amendments thereto;

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

37 (3) a restraining order issued pursuant to K.S.A. 2014 Supp. 23-2707,
38 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
39 1607, prior to its transfer;

40 (4) an order issued in this or any other state as a condition of pretrial
41 release, diversion, probation, suspended sentence, postrelease supervision
42 or at any other time during the criminal case that orders the person to
43 refrain from having any direct or indirect contact with another person;

1 (5) an order issued in this or any other state as a condition of release
2 after conviction or as a condition of a supersedeas bond pending
3 disposition of an appeal, that orders the person to refrain from having any
4 direct or indirect contact with another person; or

5 (6) a protection from stalking *or sexual assault* order issued pursuant
6 to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

7 (b) (1) Violation of a protective order is a class A person
8 misdemeanor, except as provided in subsection (b)(2).

9 (2) Violation of an extended protective order as described in
10 ~~subsection (c)(2) of K.S.A. 60-3107(e)(2), and amendments thereto, and~~
11 ~~subsection (d) of K.S.A. 60-31a06(d), and amendments thereto,~~ is a
12 severity level 6, person felony.

13 (c) No protective order, as set forth in this section, shall be construed
14 to prohibit an attorney, or any person acting on such attorney's behalf, who
15 is representing the defendant in any civil or criminal proceeding, from
16 contacting the protected party for a legitimate purpose within the scope of
17 the civil or criminal proceeding. The attorney, or person acting on such
18 attorney's behalf, shall be identified in any such contact.

19 (d) As used in this section, "order" includes any order issued by a
20 municipal or district court.

21 Sec. 12. K.S.A. 60-3102, 60-31a01, 60-31a02, 60-31a03, 60-31a07,
22 60-31a08 and 60-31a09 and K.S.A. 2014 Supp. 21-5924, 60-31a04, 60-
23 31a05 and 60-31a06 are hereby repealed.

24 Sec. 13. This act shall take effect and be in force from and after its
25 publication in the statute book.