

HOUSE BILL No. 2379

By Committee on Judiciary

2-9

1 AN ACT concerning protection orders; relating to the protection from
2 abuse act and the protection from stalking, sexual assault and human
3 trafficking act; requiring orders issued pursuant to such acts to restrain
4 the plaintiff from contacting the defendant; amending K.S.A. 2022
5 Supp. 60-3107 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. 2022 Supp. 60-3107 is hereby amended to read as
9 follows: 60-3107. (a) The court may approve any consent agreement to
10 bring about a cessation of abuse of the plaintiff or minor children or grant
11 any of the following orders:

12 (1) Restraining the defendant from abusing, molesting or interfering
13 with the privacy or rights of the plaintiff or of any minor children of the
14 parties. ~~Such~~ The order shall contain a statement that, if ~~such~~ the order is
15 violated, ~~such~~ the violation may constitute assault as defined in ~~subsection~~
16 ~~(a)~~ of K.S.A. 2022 Supp. 21-5412(a), and amendments thereto, battery as
17 defined in ~~subsection (a)~~ of K.S.A. 2022 Supp. 21-5413(a), and
18 amendments thereto, domestic battery as defined in K.S.A. 2022 Supp. 21-
19 5414, and amendments thereto, and violation of a protective order as
20 defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto.

21 (2) Granting possession of the residence or household to the plaintiff
22 to the exclusion of the defendant, and further restraining the defendant
23 from entering or remaining upon or in such residence or household,
24 subject to the limitation of subsection (d). ~~Such~~ The order shall contain a
25 statement that, if ~~such~~ the order is violated, ~~such~~ the violation shall
26 constitute criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A.
27 2022 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a
28 protective order as defined in K.S.A. 2022 Supp. 21-5924, and
29 amendments thereto. The court may grant an order, which shall expire 60
30 days following the date of issuance, restraining the defendant from
31 cancelling utility service to the residence or household.

32 (3) Requiring defendant to provide suitable, alternate housing for the
33 plaintiff and any minor children of the parties.

34 (4) Awarding temporary custody and residency and establishing
35 temporary parenting time with regard to minor children.

36 (5) Ordering a law enforcement officer to evict the defendant from

1 the residence or household.

2 (6) Ordering support payments by a party for the support of a party's
3 minor child, if the party is the father or mother of the child, or the plaintiff,
4 if the plaintiff is married to the defendant. Such support orders shall
5 remain in effect until modified or dismissed by the court or until expiration
6 and shall be for a fixed period of time not to exceed one year. On the
7 motion of the plaintiff, the court may extend the effect of such order for 12
8 months.

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

10 (8) Making provision for the possession of personal property of the
11 parties and ordering a law enforcement officer to assist in securing
12 possession of that property, if necessary.

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

15 (10) Ordering or restraining any other acts deemed necessary to
16 promote the safety of the plaintiff or of any minor children of the parties.

17 ~~(b) No protection from abuse order shall be entered against the~~
18 ~~plaintiff unless:~~

19 ~~(1) The defendant properly files a written cross or counter petition~~
20 ~~seeking such a protection order;~~

21 ~~(2) the plaintiff had reasonable notice of the written cross or counter~~
22 ~~petition by personal service as provided in subsection (d) of K.S.A. 60-~~
23 ~~3104, and amendments thereto; and~~

24 ~~(3) the issuing court made specific findings of abuse against both the~~
25 ~~plaintiff and the defendant and determined that both parties acted primarily~~
26 ~~as aggressors and neither party acted primarily in self-defense~~
27 ~~if the court issues an order pursuant to subsection (a), the court shall issue an order~~
28 ~~restraining the plaintiff from abusing, molesting or interfering with the~~
29 ~~privacy or rights of the defendant. The order shall contain a statement~~
30 ~~that, if the order is violated, the violation may constitute violation of a~~
31 ~~protective order as defined in K.S.A. 2022 Supp. 21-5924, and~~
32 ~~amendments thereto.~~

33 (c) Any order entered under the protection from abuse act shall not be
34 subject to modification on ex parte application or on motion for temporary
35 orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their
36 transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes
37 Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and
38 amendments thereto. Orders previously issued in an action filed pursuant
39 to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or
40 27 of chapter 23 of the Kansas Statutes Annotated, and amendments
41 thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be
42 subject to modification under the protection from abuse act only as to
43 those matters subject to modification by the terms of K.S.A. 2022 Supp.

1 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the
2 Kansas Statutes Annotated, and amendments thereto, and on sworn
3 testimony to support a showing of good cause. Immediate and present
4 danger of abuse to the plaintiff or minor children shall constitute good
5 cause. If an action is filed pursuant to K.S.A. 2022 Supp. 23-3201 through
6 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes
7 Annotated, and amendments thereto, during the pendency of a proceeding
8 filed under the protection from abuse act or while an order issued under
9 the protection from abuse act is in effect, the court, on final hearing or on
10 agreement of the parties, may issue final orders authorized by K.S.A. 2022
11 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of
12 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that
13 are inconsistent with orders entered under the protection from abuse act.
14 Any inconsistent order entered pursuant to this subsection shall be specific
15 in its terms, reference the protection from abuse order and parts thereof
16 being modified and a copy thereof shall be filed in both actions. The court
17 shall consider whether the actions should be consolidated in accordance
18 with K.S.A. 60-242, and amendments thereto. Any custody or parenting
19 time order, or order relating to the best interests of a child, issued pursuant
20 to the revised Kansas code for care of children or the revised Kansas
21 juvenile justice code, shall be binding and shall take precedence over any
22 such custody or parenting order involving the same child issued under the
23 protection from abuse act, until jurisdiction under the revised Kansas code
24 for care of children or the revised Kansas juvenile justice code is
25 terminated. Any inconsistent custody or parenting order issued in the
26 revised Kansas code for care of children case or the revised Kansas
27 juvenile justice code case shall be specific in its terms, reference any
28 preexisting protection from abuse order and the custody being modified,
29 and a copy of such order shall be filed in the preexisting protection from
30 abuse case.

31 (d) If the parties to an action under the protection from abuse act are
32 not married to each other and one party owns the residence or household,
33 the court shall not have the authority to grant possession of the residence
34 or household under subsection (a)(2) to the exclusion of the party who
35 owns it.

36 (e) Subject to the provisions of subsections (b), (c) and (d), a
37 protective order or approved consent agreement shall remain in effect until
38 modified or dismissed by the court and shall be for a fixed period of time
39 not to exceed one year, except as provided in subsection (e)(1) and (e)(2).

40 (1) Upon motion of the plaintiff, such period may be extended for one
41 additional year.

42 (2) Upon verified motion of the plaintiff and after the defendant has
43 been personally served with a copy of the motion and has had an

1 opportunity to present evidence and cross-examine witnesses at a hearing
2 on the motion, if the court determines by a preponderance of the evidence
3 that the defendant has violated a valid protection order or (A) has
4 previously violated a valid protection order, or (B) has been convicted of a
5 person felony or any conspiracy, criminal solicitation or attempt thereof,
6 under the laws of Kansas or the laws of any other jurisdiction which are
7 substantially similar to such person felony, committed against the plaintiff
8 or any member of the plaintiff's household, the court shall extend a
9 protective order for not less than two additional years and may extend the
10 protective order up to the lifetime of the defendant. No service fee shall be
11 required for a motion filed pursuant to this subsection.

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

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

16 (h) If a person enters or remains on premises or property violating an
17 order issued pursuant to subsection (a)(2), such violation shall constitute
18 criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A. 2022 Supp.
19 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
20 order as defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto.
21 If a person abuses, molests or interferes with the privacy or rights of
22 another violating an order issued pursuant to subsection (a)(1), such
23 violation may constitute assault as defined in ~~subsection (a)~~ of K.S.A.
24 2022 Supp. 21-5412(a), and amendments thereto, battery as defined in
25 ~~subsection (a)~~ of K.S.A. 2022 Supp. 21-5413(a), and amendments thereto,
26 domestic battery as defined in K.S.A. 2022 Supp. 21-5414, and
27 amendments thereto, and violation of a protective order as defined in
28 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

29 Sec. 2. K.S.A. 2022 Supp. 60-31a06 is hereby amended to read as
30 follows: 60-31a06. (a) The court may issue a protection from stalking,
31 sexual assault or human trafficking order granting any one or more of the
32 following orders:

33 (1) Restraining the defendant from following, harassing, telephoning,
34 contacting or otherwise communicating with the victim. The order shall
35 contain a statement that, if the order is violated, the violation may
36 constitute stalking as defined in K.S.A. 2022 Supp. 21-5427, and
37 amendments thereto, and violation of a protective order as defined in
38 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

39 (2) Restraining the defendant from abusing, molesting or interfering
40 with the privacy rights of the victim. The order shall contain a statement
41 that, if the order is violated, the violation may constitute stalking as
42 defined in K.S.A. 2022 Supp. 21-5427, and amendments thereto, assault as
43 defined in K.S.A. 2022 Supp. 21-5412(a), and amendments thereto, battery

1 as defined in K.S.A. 2022 Supp. 21-5413(a), and amendments thereto, and
2 violation of a protective order as defined in K.S.A. 2022 Supp. 21-5924,
3 and amendments thereto.

4 (3) Restraining the defendant from entering upon or in the victim's
5 residence or the immediate vicinity thereof. The order shall contain a
6 statement that, if the order is violated, the violation shall constitute
7 criminal trespass as defined in K.S.A. 2022 Supp. 21-5808(a)(1)(C), and
8 amendments thereto, and violation of a protective order as defined in
9 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

10 (4) Restraining the defendant from committing or attempting to
11 commit a sexual assault upon the victim. The order shall contain a
12 statement that, if the order is violated, the violation shall constitute
13 violation of a protective order as defined in K.S.A. 2022 Supp. 21-5924,
14 and amendments thereto. The order shall also contain a statement that, if
15 the order is violated, the violation may constitute a sex offense under
16 article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments
17 thereto, and the accused may be prosecuted, convicted of and punished for
18 such sex offense.

19 (5) Restraining the defendant from following, harassing, telephoning,
20 contacting, recruiting, harboring, transporting, or committing or attempting
21 to commit human trafficking upon the human trafficking victim, or
22 otherwise communicating with the human trafficking victim. The order
23 shall contain a statement that, if the order is violated, the violation shall
24 constitute violation of a protective order as defined in K.S.A. 2022 Supp.
25 21-5924, and amendments thereto. The order shall also contain a statement
26 that, if the order is violated, the violation may constitute an offense under
27 chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and
28 the accused may be prosecuted, convicted of and punished for such
29 offense.

30 (6) Any other order deemed necessary by the court to carry out the
31 provisions of this act.

32 (b) (1) *If the court issues an order pursuant to subsection (a), the*
33 *court shall issue an order restraining the plaintiff from harassing,*
34 *telephoning, contacting or otherwise communicating with the defendant.*
35 *The order shall contain a statement that, if the order is violated, the*
36 *violation may constitute violation of a protective order as defined in K.S.A.*
37 *2022 Supp. 21-5924, and amendments thereto.*

38 (2) A protection from stalking, sexual abuse or human trafficking
39 order shall remain in effect until modified or dismissed by the court and
40 shall be for a fixed period of time not to exceed one year except as
41 provided in subsections (c) and (d).

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

1 (d) (1) Upon verified motion of the plaintiff and after the defendant
2 has been personally served with a copy of the motion and has had an
3 opportunity to present evidence and cross-examine witnesses at a hearing
4 on the motion, the court shall extend a protective order for not less than
5 two additional years and up to a period of time not to exceed the lifetime
6 of the defendant, if the court determines by a preponderance of the
7 evidence that the defendant has:

- 8 ~~(1)~~(A) Violated a valid protection order;
- 9 ~~(2)~~(B) previously violated a valid protection order; or
- 10 ~~(3)~~(C) been convicted of a person felony or any conspiracy, criminal
11 solicitation or attempt thereof, under the laws of Kansas or the laws of any
12 other jurisdiction which are substantially similar to such person felony,
13 committed against the plaintiff or any member of the plaintiff's household.

14 (2) No service fee shall be required for a motion filed pursuant to this
15 subsection.

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

18 (f) The court shall assess costs against the defendant and may award
19 attorney fees to the victim in any case in which the court issues a
20 protection from stalking, sexual assault or human trafficking order
21 pursuant to this act. The court may award attorney fees to the defendant in
22 any case where the court finds that the petition to seek relief pursuant to
23 this act is without merit.

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

- 26 (1) Contact between the attorneys representing the parties;
- 27 (2) a party from appearing at a scheduled court or administrative
28 hearing; or
- 29 (3) a defendant or defendant's attorney from sending the plaintiff
30 copies of any legal pleadings filed in court relating to civil or criminal
31 matters presently relevant to the plaintiff.

32 Sec. 3. K.S.A. 2022 Supp. 60-3107 and 60-31a06 are hereby
33 repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the statute book.