

As Amended by House Committee

As Amended by Senate Committee

Session of 2023

SENATE BILL No. 217

By Committee on Judiciary

2-8

1 AN ACT concerning the unlawful use of electronic tracking systems or
2 tracking information; relating to stalking; providing criminal penalties
3 for the conduct of utilizing any electronic tracking system or acquiring
4 tracking information to determine the targeted person's location,
5 movement or travel patterns when done as part of an unlawful course of
6 conduct; authorizing orders to prohibit such conduct under the Kansas
7 family law code, the revised Kansas code for care of children, the
8 protection from abuse act and the protection from stalking, sexual
9 assault or human trafficking act; amending K.S.A. 38-2243, 38-2244
10 and 38-2255 and K.S.A. 2022 Supp. 21-5427, **23-2224**, 23-2707, 60-
11 3107 and 60-31a06 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2022 Supp. 21-5427 is hereby amended to read as
15 follows: 21-5427. (a) Stalking is:

16 (1) Recklessly engaging in a course of conduct targeted at a specific
17 person which would cause a reasonable person in the circumstances of the
18 targeted person to fear for such person's safety, or the safety of a member
19 of such person's immediate family and the targeted person is actually
20 placed in such fear;

21 (2) engaging in a course of conduct targeted at a specific person with
22 knowledge that the course of conduct will place the targeted person in fear
23 for such person's safety or the safety of a member of such person's
24 immediate family;

25 (3) after being served with, or otherwise provided notice of, any
26 protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A.
27 2022 Supp. 21-5924, and amendments thereto, that prohibits contact with a
28 targeted person, recklessly engaging in at least one act listed in subsection
29 (f)(1) that violates the provisions of the order and would cause a
30 reasonable person to fear for such person's safety, or the safety of a
31 member of such person's immediate family and the targeted person is
32 actually placed in such fear; or

33 (4) intentionally engaging in a course of conduct targeted at a specific
34 child under the age of 14 that would cause a reasonable person in the

1 circumstances of the targeted child, or a reasonable person in the
2 circumstances of an immediate family member of such child, to fear for
3 such child's safety.

4 (b) Stalking as defined in:

5 (1) Subsection (a)(1) is a:

6 (A) Class A person misdemeanor, except as provided in subsection
7 (b)(1)(B); and

8 (B) severity level 7, person felony upon a second or subsequent
9 conviction;

10 (2) subsection (a)(2) is a:

11 (A) Class A person misdemeanor, except as provided in subsection
12 (b)(2)(B); and

13 (B) severity level 5, person felony upon a second or subsequent
14 conviction;

15 (3) subsection (a)(3) is a:

16 (A) Severity level 9, person felony, except as provided in subsection
17 (b)(3)(B); and

18 (B) severity level 5, person felony, upon a second or subsequent
19 conviction; and

20 (4) subsection (a)(4) is a:

21 (A) Severity level 7, person felony, except as provided in subsection
22 (b)(4)(B); and

23 (B) severity level 4, person felony, upon a second or subsequent
24 conviction.

25 (c) For the purposes of this section, a person served with a protective
26 order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. 2022
27 Supp. 21-5924, and amendments thereto, or a person who engaged in acts
28 which would constitute stalking, after having been advised by a law
29 enforcement officer, that such person's actions were in violation of this
30 section, shall be presumed to have acted knowingly as to any like future
31 act targeted at the specific person or persons named in the order or as
32 advised by the officer.

33 (d) In a criminal proceeding under this section, a person claiming an
34 exemption, exception or exclusion has the burden of going forward with
35 evidence of the claim.

36 (e) The present incarceration of a person alleged to be violating this
37 section shall not be a bar to prosecution under this section.

38 (f) As used in this section:

39 (1) "Course of conduct" means two or more acts over a period of
40 time, however short, which evidence a continuity of purpose. A course of
41 conduct shall not include constitutionally protected activity nor conduct
42 that was necessary to accomplish a legitimate purpose independent of
43 making contact with the targeted person. A course of conduct shall include,

1 but not be limited to, any of the following acts or a combination thereof:

2 (A) Threatening the safety of the targeted person or a member of such
3 person's immediate family;

4 (B) following, approaching or confronting the targeted person or a
5 member of such person's immediate family;

6 (C) appearing in close proximity to, or entering the targeted person's
7 residence, place of employment, school or other place where such person
8 can be found, or the residence, place of employment or school of a
9 member of such person's immediate family;

10 (D) causing damage to the targeted person's residence or property or
11 that of a member of such person's immediate family;

12 (E) placing an object on the targeted person's property or the property
13 of a member of such person's immediate family, either directly or through
14 a third person;

15 (F) causing injury to the targeted person's pet or a pet belonging to a
16 member of such person's immediate family;

17 (G) *utilizing any electronic tracking system or acquiring tracking*
18 *information to determine the targeted person's location, movement or*
19 *travel patterns; and*

20 (H) any act of communication;

21 (2) "communication" means to impart a message by any method of
22 transmission, including, but not limited to: Telephoning, personally
23 delivering, sending or having delivered, any information or material by
24 written or printed note or letter, package, mail, courier service or electronic
25 transmission, including electronic transmissions generated or
26 communicated via a computer;

27 (3) "computer" means a programmable, electronic device capable of
28 accepting and processing data;

29 (4) "conviction" includes being convicted of a violation of K.S.A. 21-
30 3438, prior to its repeal, this section or a law of another state which
31 prohibits the acts that this section prohibits; and

32 (5) "immediate family" means:

33 (A) Father, mother, stepparent, child, stepchild, sibling, spouse or
34 grandparent of the targeted person;

35 (B) any person residing in the household of the targeted person; or

36 (C) any person involved in an intimate relationship with the targeted
37 person.

38 ***Sec. 2. K.S.A. 2022 Supp. 23-2224 is hereby amended to read as***
39 ***follows: 23-2224. (a) The court, without requiring bond, may make and***
40 ***enforce orders***~~which that:~~

41 ***(1) Restrain the parties from molesting or interfering with the***
42 ***privacy or rights of each other, including, but not limited to, utilizing any***
43 ***electronic tracking system or acquiring tracking information to determine***

1 *the other person's location, movement or travel patterns;*

2 *(2) confirm the existing de facto custody of the child subject to*
3 *further order of the court, if the court has jurisdiction under K.S.A.*
4 *2022 Supp. 23-37,101 et seq., and amendments thereto;*

5 *(3) appoint an expert to conduct genetic tests for determination of*
6 *paternity as provided in K.S.A. 2022 Supp. 23-2212, and amendments*
7 *thereto;*

8 *(4) order the mother and child and alleged father to contact the*
9 *court appointed expert and provide tissue samples for testing within 30*
10 *days after service of the order;*

11 *(5) order the payment of temporary child support pursuant to*
12 *subsection (c); or*

13 *(6) the court deems appropriate under the provisions of article 22 of*
14 *chapter 23 of the Kansas Statutes Annotated, and amendments thereto.*

15 *(b) (1) Interlocutory orders authorized by this section that relate to*
16 *genetic testing may be issued ex parte, if:*

17 *(A) The appointed expert is a paternity laboratory accredited by the*
18 *American association of blood banks; and*

19 *(B) the order does not require an adverse party to make advance*
20 *payment toward the cost of the test.*

21 *(2) If such ex parte orders are issued, and if an adverse party*
22 *requests modification thereof, the court will conduct a hearing within 10*
23 *days of such request.*

24 *(c) After notice and hearing, the court shall enter an order for child*
25 *support during the pendency of the action as provided in this subsection.*
26 *The order shall be entered if the pleadings and the motion for temporary*
27 *support, if separate from the pleadings, indicate there is only one*
28 *presumed father and if probable paternity by the presumed father is*
29 *indicated by clear and convincing evidence. For purposes of this*
30 *subsection, "clear and convincing evidence" may be presented in any*
31 *form, including, but not limited to, an uncontested allegation in the*
32 *pleadings, an uncontested affidavit or an agreement between the parties.*
33 *For purposes of this subsection, "clear and convincing evidence"*
34 *means:*

35 *(1) The presumed father does not deny paternity;*

36 *(2) the mother and the presumed father were married to each other,*
37 *regardless of whether the marriage was void or voidable, at any time*
38 *between 300 days before the child's birth and the child's birth;*

39 *(3) a voluntary acknowledgment of paternity was completed by the*
40 *mother and the presumed father more than 60 days before the motion*
41 *was filed and no request to revoke the voluntary acknowledgment has*
42 *been filed; or*

43 *(4) results of genetic tests show the probability of paternity by the*

1 ***presumed father is equal to or greater than 97% and the report was***
2 ***received more than 20 days before the motion was filed, unless written***
3 ***notice of intent to challenge the validity of the report has been timely***
4 ***given.***

5 Sec. ~~2~~ 3. K.S.A. 2022 Supp. 23-2707 is hereby amended to read as
6 follows: 23-2707. (a) *Permissible orders*. After the filing of a petition for
7 divorce, annulment or separate maintenance, and during the pendency of
8 the action until the entry of final judgment the judge assigned to hear the
9 action may, without requiring bond, make, modify, vacate and enforce by
10 attachment, orders ~~which~~ *that*:

11 (1) Jointly restrain the parties with regard to disposition of the
12 property of the parties and provide for the use, occupancy, management
13 and control of that property, *including, but not limited to, utilizing any*
14 *electronic tracking system or acquiring tracking information to determine*
15 *the other person's location, movement or travel patterns;*

16 (2) restrain the parties from molesting or interfering with the privacy
17 or rights of each other, *including, but not limited to, utilizing any*
18 *electronic tracking system or acquiring tracking information to*
19 *determine the other person's location, movement or travel patterns;*

20 (3) provide for the legal custody and residency of and parenting time
21 with the minor children and the support, if necessary, of either party and of
22 the minor children during the pendency of the action;

23 (4) require mediation between the parties on issues, including, but not
24 limited to, child custody, residency, division of property, parenting time
25 and development of a parenting plan;

26 (5) make provisions, if necessary, for the expenses of the suit,
27 including reasonable attorney's fees, that will insure to either party
28 efficient preparation for the trial of the case;

29 (6) require an investigation by court service officers into any issue
30 arising in the action; or

31 (7) require that each parent execute any and all documents, including
32 any releases, necessary so that both parents may obtain information from
33 and to communicate with any health insurance provider regarding the
34 health insurance coverage provided by such health insurance provider to
35 the child. The provisions of this paragraph shall apply irrespective of
36 which parent owns, subscribes or pays for such health insurance coverage.

37 (b) *Ex parte orders*. Orders authorized by subsections (a)(1), (2), (3),
38 (4) and (7) may be entered after ex parte hearing upon compliance with
39 rules of the supreme court, except that no ex parte order shall have the
40 effect of changing the residency of a minor child from the parent who has
41 had the sole de facto residency of the child to the other parent unless there
42 is sworn testimony to support a showing of extraordinary circumstances. If
43 an interlocutory order is issued ex parte, the court shall hear a motion to

1 vacate or modify the order within 14 days of the date on which a party
2 requests a hearing whether to vacate or modify the order. In the absence,
3 disability, or disqualification of the judge assigned to hear the action, any
4 other judge of the district court may make any order authorized by this
5 section, including vacation or modification or any order issued by the
6 judge assigned to hear the action.

7 (c) *Support orders.* (1) An order of support obtained pursuant to this
8 section may be enforced by an order of garnishment as provided in this
9 section.

10 (2) No order of garnishment shall be issued under this section unless:
11 (A) Fourteen or more days have elapsed since the order of support was
12 served upon the party required to pay the support; and (B) the order of
13 support contained a notice that the order of support may be enforced by
14 garnishment and that the party has a right to request an opportunity for a
15 hearing to contest the issuance of an order of garnishment, if the hearing is
16 requested by motion filed within seven days after service of the order of
17 support upon the party. If a hearing is requested, the court shall hold the
18 hearing within seven days after the motion requesting the hearing is filed
19 with the court or at a later date agreed to by the parties.

20 (3) No bond shall be required for the issuance of an order of
21 garnishment pursuant to this section. Except as provided in this section,
22 garnishments authorized by this section shall be subject to the procedures
23 and limitations applicable to other orders of garnishment authorized by
24 law.

25 (4) A party desiring to have the order of garnishment issued shall file
26 an affidavit with the clerk of the district court stating that:

27 (A) The order of support contained the notice required by this
28 subsection;

29 (B) fourteen or more days have elapsed since the order of support
30 was served upon the party required to pay the support; and

31 (C) either no hearing was requested on the issuance of an order of
32 garnishment within the seven days after service of the order of support
33 upon the party required to pay the same or a hearing was requested and
34 held and the court did not prohibit the issuance of an order of garnishment.

35 (d) If an interlocutory order for legal custody, residency or parenting
36 time is sought, the party seeking such order shall file a proposed temporary
37 parenting plan as provided by K.S.A. 2022 Supp. 23-3211, and
38 amendments thereto, at the time such order is sought. If any motion is filed
39 to modify any such interlocutory orders, or in opposition to a request for
40 issuance of interlocutory orders, that party shall attach to such motion or
41 opposition a proposed alternative parenting plan.

42 (e) *Service of process.* Service of process served under subsection (a)
43 (1) and (2) shall be by personal service and not by certified mail return

1 receipt requested.

2 Sec. ~~3~~ 4. K.S.A. 38-2243 is hereby amended to read as follows: 38-
3 2243. (a) Upon notice and hearing, the court may issue an order directing
4 who shall have temporary custody and may modify the order during the
5 pendency of the proceedings as will best serve the child's welfare.

6 (b) A hearing pursuant to this section shall be held within 72 hours,
7 excluding Saturdays, Sundays, legal holidays, and days on which the
8 office of the clerk of the court is not accessible, following a child having
9 been taken into protective custody.

10 (c) Whenever it is determined that a temporary custody hearing is
11 required, the court shall immediately set the time and place for the hearing.
12 Notice of a temporary custody hearing shall be given to all parties and
13 interested parties.

14 (d) Notice of the temporary custody hearing shall be given at least 24
15 hours prior to the hearing. The court may continue the hearing to afford the
16 24 hours prior notice or, with the consent of the party or interested party,
17 proceed with the hearing at the designated time. If an order of temporary
18 custody is entered and the parent or other person having custody of the
19 child has not been notified of the hearing, did not appear or waive
20 appearance and requests a rehearing, the court shall rehear the matter
21 without unnecessary delay.

22 (e) Oral notice may be used for giving notice of a temporary custody
23 hearing where there is insufficient time to give written notice. Oral notice
24 is completed upon filing a certificate of oral notice.

25 (f) The court may enter an order of temporary custody after
26 determining there is probable cause to believe that the:

27 (1) Child is dangerous to self or to others;

28 (2) child is not likely to be available within the jurisdiction of the
29 court for future proceedings;

30 (3) health or welfare of the child may be endangered without further
31 care;

32 (4) child has been subjected to human trafficking or aggravated
33 human trafficking, as defined by K.S.A. 2022 Supp. 21-5426, and
34 amendments thereto, or commercial sexual exploitation of a child, as
35 defined by K.S.A. 2022 Supp. 21-6422, and amendments thereto;

36 (5) child is experiencing a mental health crisis and is in need of
37 treatment; or

38 (6) child committed an act which, if committed by an adult, would
39 constitute a violation of K.S.A. 2022 Supp. 21-6419, and amendments
40 thereto.

41 (g) (1) Whenever the court determines the necessity for an order of
42 temporary custody the court may place the child in the temporary custody
43 of:

1 (A) A parent or other person having custody of the child and may
2 enter a restraining order pursuant to subsection (h);

3 (B) a person, other than the parent or other person having custody,
4 who shall not be required to be licensed under article 5 of chapter 65 of the
5 Kansas Statutes Annotated, and amendments thereto;

6 (C) a youth residential facility;

7 (D) a shelter facility;

8 (E) a staff secure facility, notwithstanding any other provision of law,
9 if the child has been subjected to human trafficking or aggravated human
10 trafficking, as defined by K.S.A. 2022 Supp. 21-5426, and amendments
11 thereto, or commercial sexual exploitation of a child, as defined by K.S.A.
12 2022 Supp. 21-6422, and amendments thereto, or the child committed an
13 act which, if committed by an adult, would constitute a violation of K.S.A.
14 2022 Supp. 21-6419, and amendments thereto;

15 (F) after written authorization by a community mental health center, a
16 juvenile crisis intervention center, as described in K.S.A. 65-536, and
17 amendments thereto; or

18 (G) the secretary, if the child is 15 years of age or younger, or 16 or
19 17 years of age if the child has no identifiable parental or family resources
20 or shows signs of physical, mental, emotional or sexual abuse.

21 (2) If the secretary presents the court with a plan to provide services
22 to a child or family which the court finds will assure the safety of the
23 child, the court may only place the child in the temporary custody of the
24 secretary until the court finds the services are in place. The court shall
25 have the authority to require any person or entity agreeing to participate in
26 the plan to perform as set out in the plan. When the child is placed in the
27 temporary custody of the secretary, the secretary shall have the
28 discretionary authority to place the child with a parent or to make other
29 suitable placement for the child. When the child is placed in the temporary
30 custody of the secretary and the child has been subjected to human
31 trafficking or aggravated human trafficking, as defined by K.S.A. 2022
32 Supp. 21-5426, and amendments thereto, or commercial sexual
33 exploitation of a child, as defined by K.S.A. 2022 Supp. 21-6422, and
34 amendments thereto, or the child committed an act which, if committed by
35 an adult, would constitute a violation of K.S.A. 2022 Supp. 21-6419, and
36 amendments thereto, the secretary shall have the discretionary authority to
37 place the child in a staff secure facility, notwithstanding any other
38 provision of law. When the child is presently alleged, but not yet
39 adjudicated to be a child in need of care solely pursuant to K.S.A. 38-
40 2202(d)(9) or (d)(10), and amendments thereto, the child may be placed in
41 a secure facility, but the total amount of time that the child may be held in
42 such facility under this section and K.S.A. 38-2242, and amendments
43 thereto, shall not exceed 24 hours, excluding Saturdays, Sundays, legal

1 holidays, and days on which the office of the clerk of the court is not
2 accessible. The order of temporary custody shall remain in effect until
3 modified or rescinded by the court or an adjudication order is entered but
4 not exceeding 60 days, unless good cause is shown and stated on the
5 record.

6 (h) If the court issues an order of temporary custody, the court may
7 also enter an order restraining any alleged perpetrator of physical, sexual,
8 mental or emotional abuse of the child from residing in the child's home;
9 visiting, contacting, harassing or intimidating the child; or attempting to
10 visit, contact, harass or intimidate the child, other family members or
11 witnesses. Such restraining order shall be served by personal service
12 pursuant to K.S.A. 38-2237(a), and amendments thereto, on any alleged
13 perpetrator to whom the order is directed.

14 (i) (1) The court shall not enter the initial order removing a child from
15 the custody of a parent pursuant to this section unless the court first finds
16 probable cause that: (A) (i) The child is likely to sustain harm if not
17 immediately removed from the home;

18 (ii) allowing the child to remain in home is contrary to the welfare of
19 the child; or

20 (iii) immediate placement of the child is in the best interest of the
21 child; and

22 (B) reasonable efforts have been made to maintain the family unit and
23 prevent the unnecessary removal of the child from the child's home or that
24 an emergency exists which threatens the safety to the child.

25 (2) Such findings shall be included in any order entered by the court.
26 If the child is placed in the custody of the secretary, upon making the order
27 the court shall provide the secretary with a written copy.

28 (j) If the court enters an order of temporary custody that provides for
29 placement of the child with a person other than the parent, the court shall
30 make a child support determination pursuant to K.S.A. 38-2277, and
31 amendments thereto.

32 (k) *For the purposes of this section, "harassing or intimidating" and*
33 *"harass or intimidate" includes, but is not limited to, utilizing any*
34 *electronic tracking system or acquiring tracking information to determine*
35 *the targeted person's location, movement or travel patterns.*

36 ~~Sec.-4.~~ **5.** K.S.A. 38-2244 is hereby amended to read as follows: 38-
37 2244. (a) At any time after filing a petition, but prior to an adjudication,
38 the court may enter an order for continuance and informal supervision
39 without an adjudication if no party objects. Upon granting the continuance,
40 the court shall include in the order any conditions with which the parties
41 and interested parties are expected to comply and provide the parties and
42 interested parties with a copy of the order. The conditions may include
43 appropriate dispositional alternatives authorized by K.S.A. 38-2255, and

1 amendments thereto.

2 (b) An order for informal supervision may remain in force for a
3 period of up to six months and may be extended, upon hearing, for an
4 additional six-month period for a total of one year. For a child under an
5 order for informal supervision who remains in the custody of such child's
6 parent, such one-year period may be extended if no party objects, upon
7 hearing, for up to an additional one year, with reviews by the court
8 occurring at least every six months.

9 (c) The court after notice and hearing may revoke or modify the order
10 with respect to a party or interested party upon a showing that the party or
11 interested party, being subject to the order for informal supervision, has
12 substantially failed to comply with the terms of the order, or that
13 modification would be in the best interests of the child. Upon revocation,
14 proceedings shall resume pursuant to this code.

15 (d) Persons subject to the order for informal supervision who
16 successfully complete the terms and period of supervision shall not again
17 be proceeded against in any court based solely upon the allegations in the
18 original petition and the proceedings shall be dismissed.

19 (e) If the court issues an order for informal supervision pursuant to
20 this section, the court may also enter an order restraining any alleged
21 perpetrator of physical, mental or emotional abuse or sexual abuse of the
22 child from residing in the child's home, visiting, contacting, harassing or
23 intimidating the child, other family member or witness; or attempting to
24 visit, contact, harass or intimidate the child, other family member or
25 witness. The restraining order shall be served by personal service pursuant
26 to subsection (a) of K.S.A. 38-2237, and amendments thereto, on any
27 alleged perpetrator to whom the order is directed.

28 (f) Lack of service on a parent shall not preclude an informal
29 supervision under the provisions of this section. If an order of informal
30 supervision is entered which effects change in custody, any parent not
31 served pursuant to K.S.A. 38-2237, and amendments thereto, who has not
32 consented to the informal supervision, may request reconsideration of the
33 order of informal supervision. The court shall hear the request without
34 unnecessary delay. If the informal supervision order effects a change in
35 custody, efforts to accomplish service pursuant to K.S.A. 38-2237, and
36 amendments thereto, shall continue.

37 (g) *For the purposes of this section, "harassing or intimidating" and*
38 *"harass or intimidate" includes, but is not limited to, utilizing any*
39 *electronic tracking system or acquiring tracking information to determine*
40 *the targeted person's location, movement or travel patterns.*

41 Sec. ~~5~~. 6. K.S.A. 38-2255 is hereby amended to read as follows: 38-
42 2255. (a) *Considerations*. Prior to entering an order of disposition, the
43 court shall give consideration to:

- 1 (1) The child's physical, mental and emotional condition;
- 2 (2) the child's need for assistance;
- 3 (3) the manner in which the parent participated in the abuse, neglect
- 4 or abandonment of the child;
- 5 (4) any relevant information from the intake and assessment process;
- 6 and

7 (5) the evidence received at the dispositional hearing.

8 (b) *Custody with a parent.* The court may place the child in the

9 custody of either of the child's parents subject to terms and conditions

10 which the court prescribes to assure the proper care and protection of the

11 child, including, but not limited to:

- 12 (1) Supervision of the child and the parent by a court services officer;
- 13 (2) participation by the child and the parent in available programs
- 14 operated by an appropriate individual or agency; and
- 15 (3) any special treatment or care which the child needs for the child's
- 16 physical, mental or emotional health and safety.

17 (c) *Removal of a child from custody of a parent.* The court shall not

18 enter the initial order removing a child from the custody of a parent

19 pursuant to this section unless the court first finds probable cause that: (1)

20 (A) The child is likely to sustain harm if not immediately removed from

21 the home;

22 (B) allowing the child to remain in home is contrary to the welfare of

23 the child; or

24 (C) immediate placement of the child is in the best interest of the

25 child; and

26 (2) reasonable efforts have been made to maintain the family unit and

27 prevent the unnecessary removal of the child from the child's home or that

28 an emergency exists which threatens the safety to the child.

29 The court shall not enter an order removing a child from the custody of

30 a parent pursuant to this section based solely on the finding that the parent

31 is homeless.

32 (d) *Custody of a child removed from the custody of a parent.* If the

33 court has made the findings required by subsection (c), the court shall

34 enter an order awarding custody to: A relative of the child or to a person

35 with whom the child has close emotional ties who shall not be required to

36 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,

37 and amendments thereto; any other suitable person; a shelter facility; a

38 youth residential facility; a staff secure facility, notwithstanding any other

39 provision of law, if the child has been subjected to human trafficking or

40 aggravated human trafficking, as defined by K.S.A. 2022 Supp. 21-5426,

41 and amendments thereto, or commercial sexual exploitation of a child, as

42 defined by K.S.A. 2022 Supp. 21-6422, and amendments thereto, or the

43 child committed an act which, if committed by an adult, would constitute a

1 violation of K.S.A. 2022 Supp. 21-6419, and amendments thereto; or, if
2 the child is 15 years of age or younger, or 16 or 17 years of age if the child
3 has no identifiable parental or family resources or shows signs of physical,
4 mental, emotional or sexual abuse, to the secretary. Custody awarded
5 under this subsection shall continue until further order of the court.

6 (1) When custody is awarded to the secretary, the secretary shall
7 consider any placement recommendation by the court and notify the court
8 of the placement or proposed placement of the child within 10 days of the
9 order awarding custody. After providing the parties or interested parties
10 notice and opportunity to be heard, the court may determine whether the
11 secretary's placement or proposed placement is contrary to the welfare or
12 in the best interests of the child. In making that determination the court
13 shall consider the health and safety needs of the child and the resources
14 available to meet the needs of children in the custody of the secretary. If
15 the court determines that the placement or proposed placement is contrary
16 to the welfare or not in the best interests of the child, the court shall notify
17 the secretary, who shall then make an alternative placement.

18 (2) The custodian designated under this subsection shall notify the
19 court in writing at least 10 days prior to any planned placement with a
20 parent. The written notice shall state the basis for the custodian's belief that
21 placement with a parent is no longer contrary to the welfare or best interest
22 of the child. Upon reviewing the notice, the court may allow the custodian
23 to proceed with the planned placement or may set the date for a hearing to
24 determine if the child shall be allowed to return home. If the court sets a
25 hearing on the matter, the custodian shall not return the child home without
26 written consent of the court.

27 (3) The court may grant any person reasonable rights to visit the child
28 upon motion of the person and a finding that the visitation rights would be
29 in the best interests of the child.

30 (4) The court may enter an order restraining any alleged perpetrator
31 of physical, mental or emotional abuse or sexual abuse of the child from:
32 Residing in the child's home; visiting, contacting, harassing or intimidating
33 the child, other family member or witness; or attempting to visit, contact,
34 harass or intimidate the child, other family member or witness. Such
35 restraining order shall be served by personal service pursuant to K.S.A.
36 38-2237(a), and amendments thereto, on any alleged perpetrator to whom
37 the order is directed.

38 (5) The court shall provide a copy of any orders entered within 10
39 days of entering the order to the custodian designated under this
40 subsection.

41 (e) *Further determinations regarding a child removed from the home.*
42 If custody has been awarded under subsection (d) to a person other than a
43 parent, a permanency plan shall be provided or prepared pursuant to

1 K.S.A. 38-2264, and amendments thereto. If a permanency plan is
2 provided at the dispositional hearing, the court may determine whether
3 reintegration is a viable alternative or, if reintegration is not a viable
4 alternative, whether the child should be placed for adoption or a permanent
5 custodian appointed. In determining whether reintegration is a viable
6 alternative, the court shall consider:

7 (1) Whether a parent has been found by a court to have committed
8 one of the following crimes or to have violated the law of another state
9 prohibiting such crimes or to have aided and abetted, attempted, conspired
10 or solicited the commission of one of these crimes: (A) Murder in the first
11 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2022 Supp. 21-5402,
12 and amendments thereto; (B) murder in the second degree, K.S.A. 21-
13 3402, prior to its repeal, or K.S.A. 2022 Supp. 21-5403, and amendments
14 thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A.
15 2022 Supp. 21-5401, and amendments thereto; (D) voluntary
16 manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2022 Supp.
17 21-5404, and amendments thereto; or (E) a felony battery that resulted in
18 bodily injury;

19 (2) whether a parent has subjected the child or another child to
20 aggravated circumstances;

21 (3) whether a parent has previously been found to be an unfit parent
22 in proceedings under this code or in comparable proceedings under the
23 laws of another state or the federal government;

24 (4) whether the child has been in the custody of the secretary and
25 placed with neither parent for 15 of the most recent 22 months beginning
26 60 days after the date on which a child in the secretary's custody was
27 removed from the child's home;

28 (5) whether the parents have failed to work diligently toward
29 reintegration;

30 (6) whether the secretary has provided the family with services
31 necessary for the safe return of the child to the home; and

32 (7) whether it is reasonable to expect reintegration to occur within a
33 time frame consistent with the child's developmental needs.

34 (f) *Proceedings if reintegration is not a viable alternative.* If the court
35 determines that reintegration is not a viable alternative, proceedings to
36 terminate parental rights and permit placement of the child for adoption or
37 appointment of a permanent custodian shall be initiated unless the court
38 finds that compelling reasons have been documented in the case plan why
39 adoption or appointment of a permanent custodian would not be in the best
40 interests of the child. If compelling reasons have not been documented, the
41 county or district attorney shall file a motion within 30 days to terminate
42 parental rights or a motion to appoint a permanent custodian within 30
43 days and the court shall hold a hearing on the motion within 90 days of its

1 filing. No hearing is required when the parents voluntarily relinquish
2 parental rights or consent to the appointment of a permanent custodian.

3 (g) *Additional Orders.* In addition to or in lieu of any other order
4 authorized by this section:

5 (1) The court may order the child and the parents of any child who
6 has been adjudicated a child in need of care to attend counseling sessions
7 as the court directs. The expense of the counseling may be assessed as an
8 expense in the case. No mental health provider shall charge a greater fee
9 for court-ordered counseling than the provider would have charged to the
10 person receiving counseling if the person had requested counseling on the
11 person's own initiative.

12 (2) If the court has reason to believe that a child is before the court
13 due, in whole or in part, to the use or misuse of alcohol or a violation of
14 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto, by
15 the child, a parent of the child, or another person responsible for the care
16 of the child, the court may order the child, parent of the child or other
17 person responsible for the care of the child to submit to and complete an
18 alcohol and drug evaluation by a qualified person or agency and comply
19 with any recommendations. If the evaluation is performed by a
20 community-based alcohol and drug safety program certified pursuant to
21 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
22 other person responsible for the care of the child shall pay a fee not to
23 exceed the fee established by that statute. If the court finds that the child
24 and those legally liable for the child's support are indigent, the fee may be
25 waived. In no event shall the fee be assessed against the secretary.

26 (3) If child support has been requested and the parent or parents have
27 a duty to support the child, the court may order one or both parents to pay
28 child support and, when custody is awarded to the secretary, the court shall
29 order one or both parents to pay child support. The court shall determine,
30 for each parent separately, whether the parent is already subject to an order
31 to pay support for the child. If the parent is not presently ordered to pay
32 support for any child who is subject to the jurisdiction of the court and the
33 court has personal jurisdiction over the parent, the court shall order the
34 parent to pay child support in an amount determined under K.S.A. 38-
35 2277, and amendments thereto. Except for good cause shown, the court
36 shall issue an immediate income withholding order pursuant to K.S.A.
37 2022 Supp. 23-3101 et seq., and amendments thereto, for each parent
38 ordered to pay support under this subsection, regardless of whether a payor
39 has been identified for the parent. A parent ordered to pay child support
40 under this subsection shall be notified, at the hearing or otherwise, that the
41 child support order may be registered pursuant to K.S.A. 38-2279, and
42 amendments thereto. The parent shall also be informed that, after
43 registration, the income withholding order may be served on the parent's

1 employer without further notice to the parent and the child support order
2 may be enforced by any method allowed by law. Failure to provide this
3 notice shall not affect the validity of the child support order.

4 *(h) For the purposes of this section, "harassing or intimidating" and*
5 *"harass or intimidate" includes, but is not limited to, utilizing any*
6 *electronic tracking system or acquiring tracking information to determine*
7 *the targeted person's location, movement or travel patterns.*

8 Sec. ~~6~~ 7. 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, *including, but not limited to, utilizing any electronic tracking*
15 *system or acquiring tracking information to determine the other person's*
16 *location, movement or travel patterns.* Such order shall contain a statement
17 that if such order is violated, such violation may constitute assault as
18 defined in ~~subsection (a)~~ of K.S.A. 2022 Supp. 21-5412(a), and
19 amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2022
20 Supp. 21-5413(a), and amendments thereto, domestic battery as defined in
21 K.S.A. 2022 Supp. 21-5414, and amendments thereto, and violation of a
22 protective order as defined in K.S.A. 2022 Supp. 21-5924, and
23 amendments thereto.

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

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

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

39 (5) Ordering a law enforcement officer to evict the defendant from
40 the residence or household.

41 (6) Ordering support payments by a party for the support of a party's
42 minor child, if the party is the father or mother of the child, or the plaintiff,
43 if the plaintiff is married to the defendant. Such support orders shall

1 remain in effect until modified or dismissed by the court or until expiration
2 and shall be for a fixed period of time not to exceed one year. On the
3 motion of the plaintiff, the court may extend the effect of such order for 12
4 months.

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

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

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

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

13 (b) No protection from abuse order shall be entered against the
14 plaintiff unless:

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

17 (2) the plaintiff had reasonable notice of the written cross or counter
18 petition by personal service as provided in ~~subsection (d)~~ of K.S.A. 60-
19 3104(d), and amendments thereto; and

20 (3) the issuing court made specific findings of abuse against both the
21 plaintiff and the defendant and determined that both parties acted primarily
22 as aggressors and neither party acted primarily in self-defense.

23 (c) Any order entered under the protection from abuse act shall not be
24 subject to modification on ex parte application or on motion for temporary
25 orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their
26 transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes
27 Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and
28 amendments thereto. Orders previously issued in an action filed pursuant
29 to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or
30 27 of chapter 23 of the Kansas Statutes Annotated, and amendments
31 thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be
32 subject to modification under the protection from abuse act only as to
33 those matters subject to modification by the terms of K.S.A. 2022 Supp.
34 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the
35 Kansas Statutes Annotated, and amendments thereto, and on sworn
36 testimony to support a showing of good cause. Immediate and present
37 danger of abuse to the plaintiff or minor children shall constitute good
38 cause. If an action is filed pursuant to K.S.A. 2022 Supp. 23-3201 through
39 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes
40 Annotated, and amendments thereto, during the pendency of a proceeding
41 filed under the protection from abuse act or while an order issued under
42 the protection from abuse act is in effect, the court, on final hearing or on
43 agreement of the parties, may issue final orders authorized by K.S.A. 2022

1 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of
2 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that
3 are inconsistent with orders entered under the protection from abuse act.
4 Any inconsistent order entered pursuant to this subsection shall be specific
5 in its terms, reference the protection from abuse order and parts thereof
6 being modified and a copy thereof shall be filed in both actions. The court
7 shall consider whether the actions should be consolidated in accordance
8 with K.S.A. 60-242, and amendments thereto. Any custody or parenting
9 time order, or order relating to the best interests of a child, issued pursuant
10 to the revised Kansas code for care of children or the revised Kansas
11 juvenile justice code, shall be binding and shall take precedence over any
12 such custody or parenting order involving the same child issued under the
13 protection from abuse act, until jurisdiction under the revised Kansas code
14 for care of children or the revised Kansas juvenile justice code is
15 terminated. Any inconsistent custody or parenting order issued in the
16 revised Kansas code for care of children case or the revised Kansas
17 juvenile justice code case shall be specific in its terms, reference any
18 preexisting protection from abuse order and the custody being modified,
19 and a copy of such order shall be filed in the preexisting protection from
20 abuse case.

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

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

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

32 (2) Upon verified motion of the plaintiff and after the defendant has
33 been personally served with a copy of the motion and has had an
34 opportunity to present evidence and cross-examine witnesses at a hearing
35 on the motion, *the court shall extend a protective order for not less than*
36 *two additional years and may extend the protective order up to the lifetime*
37 *of the defendant* if the court determines by a preponderance of the
38 evidence that the defendant has: (A) Violated a valid protection order ~~or~~
39 ~~(A) has;~~ (B) previously violated a valid protection order; ~~or (B) has~~ (C)
40 been convicted of a person felony or any conspiracy, criminal solicitation
41 or attempt thereof, under the laws of Kansas or the laws of any other
42 jurisdiction which are substantially similar to such person felony,
43 committed against the plaintiff or any member of the plaintiff's household;

1 ~~the court shall extend a protective order for not less than two additional~~
2 ~~years and may extend the protective order up to the lifetime of the~~
3 ~~defendant.~~ No service fee shall be required for a motion filed pursuant to
4 this subsection.

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

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

9 (h) If a person enters or remains on premises or property violating an
10 order issued pursuant to subsection (a)(2), such violation shall constitute
11 criminal trespass as defined in ~~subsection (a)(1)(C) of K.S.A. 2022 Supp.~~
12 ~~21-5808(a)(1)(C)~~, and amendments thereto, and violation of a protective
13 order as defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto.
14 If a person abuses, molests or interferes with the privacy or rights of
15 another violating an order issued pursuant to subsection (a)(1), such
16 violation may constitute assault as defined in ~~subsection (a) of K.S.A.~~
17 ~~2022 Supp. 21-5412(a)~~, and amendments thereto, battery as defined in
18 ~~subsection (a) of K.S.A. 2022 Supp. 21-5413(a)~~, and amendments thereto,
19 domestic battery as defined in K.S.A. 2022 Supp. 21-5414, and
20 amendments thereto, and violation of a protective order as defined in
21 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

22 ~~Sec. 7.~~ **8.** K.S.A. 2022 Supp. 60-31a06 is hereby amended to read as
23 follows: 60-31a06. (a) The court may issue a protection from stalking,
24 sexual assault or human trafficking order granting any one or more of the
25 following orders:

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

32 (2) Restraining the defendant from abusing, molesting or interfering
33 with the privacy ~~or~~ rights of the victim. The order shall contain a statement
34 that, if the order is violated, the violation may constitute stalking as
35 defined in K.S.A. 2022 Supp. 21-5427, and amendments thereto, assault as
36 defined in K.S.A. 2022 Supp. 21-5412(a), and amendments thereto, battery
37 as defined in K.S.A. 2022 Supp. 21-5413(a), and amendments thereto, and
38 violation of a protective order as defined in K.S.A. 2022 Supp. 21-5924,
39 and amendments thereto.

40 (3) Restraining the defendant from entering upon or in the victim's
41 residence or the immediate vicinity thereof. The order shall contain a
42 statement that, if the order is violated, the violation shall constitute
43 criminal trespass as defined in K.S.A. 2022 Supp. 21-5808(a)(1)(C), and

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

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

12 (5) Restraining the defendant from following, harassing, telephoning,
13 contacting, recruiting, harboring, transporting, or committing or attempting
14 to commit human trafficking upon the human trafficking victim, or
15 otherwise communicating with the human trafficking victim. The order
16 shall contain a statement that, if the order is violated, the violation shall
17 constitute violation of a protective order as defined in K.S.A. 2022 Supp.
18 21-5924, and amendments thereto. The order shall also contain a statement
19 that, if the order is violated, the violation may constitute an offense under
20 chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and
21 the accused may be prosecuted, convicted of and punished for such
22 offense.

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

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

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

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

38 (1) Violated a valid protection order;

39 (2) previously violated a valid protection order; or

40 (3) been convicted of a person felony or any conspiracy, criminal
41 solicitation or attempt thereof, under the laws of Kansas or the laws of any
42 other jurisdiction which are substantially similar to such person felony,
43 committed against the plaintiff or any member of the plaintiff's household.

1 No service fee shall be required for a motion filed pursuant to this
2 subsection.

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

5 (f) The court shall assess costs against the defendant and may award
6 attorney fees to the victim in any case in which the court issues a
7 protection from stalking, sexual assault or human trafficking order
8 pursuant to this act. The court may award attorney fees to the defendant in
9 any case where the court finds that the petition to seek relief pursuant to
10 this act is without merit.

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

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

14 (2) a party from appearing at a scheduled court or administrative
15 hearing; or

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

19 (h) *For the purposes of this section, "harassing" or "interfering with
20 the privacy **rights**" includes, but is not limited to, utilizing any electronic
21 tracking system or acquiring tracking information to determine the
22 targeted person's location, movement or travel patterns.*

23 ~~Sec.-8: 9.~~ K.S.A. 38-2243, 38-2244 and 38-2255 and K.S.A. 2022
24 Supp. 21-5427, ~~23-2224~~, 23-2707, 60-3107 and 60-31a06 are hereby
25 repealed.

26 ~~Sec.-9: 10.~~ This act shall take effect and be in force from and after its
27 publication in the ~~statute book~~ **Kansas register**.