

SENATE BILL No. 415

By Committee on Judiciary

1-27

1 AN ACT concerning domestic violence; defining primary aggressor in the
2 Kansas criminal code, the Kansas code of criminal procedure and the
3 protection from abuse act; law enforcement policies regarding domestic
4 violence calls; directing that arrest is the preferred response only with
5 respect to the primary aggressor; amending K.S.A. 2021 Supp. 21-
6 5111, 22-2307 and 60-3107 and repealing the existing sections.

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

9 Section 1. K.S.A. 2021 Supp. 21-5111 is hereby amended to read as
10 follows: 21-5111. The following definitions shall apply when the words
11 and phrases defined are used in this code, except when a particular context
12 clearly requires a different meaning.

13 (a) "Act" includes a failure or omission to take action.

14 (b) "Another" means a person or persons as defined in this code other
15 than the person whose act is claimed to be criminal.

16 (c) "Conduct" means an act or a series of acts; and the accompanying
17 mental state.

18 (d) "Conviction" includes a judgment of guilt entered upon a plea of
19 guilty.

20 (e) "Deception" means knowingly creating or reinforcing a false
21 impression, including false impressions as to law, value, intention or other
22 state of mind. "Deception" as to a person's intention to perform a promise
23 shall not be inferred from the fact alone that such person did not
24 subsequently perform the promise. Falsity as to matters having no
25 pecuniary significance, or puffing by statements unlikely to deceive
26 reasonable persons, is not "deception."

27 (f) "Deprive permanently" means to:

28 (1) Take from the owner the possession, use or benefit of property,
29 without an intent to restore the same;

30 (2) retain property without intent to restore the same or with intent to
31 restore it to the owner only if the owner purchases or leases it back, or
32 pays a reward or other compensation for its return; or

33 (3) sell, give, pledge or otherwise dispose of any interest in property
34 or subject it to the claim of a person other than the owner.

35 (g) "Distribute" means the actual or constructive transfer from one
36 person to another of some item whether or not there is an agency

1 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
2 furnishing, buying for, delivering, giving, or any act that causes or is
3 intended to cause some item to be transferred from one person to another.
4 "Distribute" does not include acts of administering, dispensing or
5 prescribing a controlled substance as authorized by the pharmacy act of the
6 state of Kansas, the uniform controlled substances act, or otherwise
7 authorized by law.

8 (h) "DNA" means deoxyribonucleic acid.

9 (i) "Domestic violence" means an act or threatened act of violence
10 against a person with whom the offender is involved or has been involved
11 in a dating relationship, or an act or threatened act of violence against a
12 family or household member by a family or household member. "Domestic
13 violence" also includes any other crime committed against a person or
14 against property, or any municipal ordinance violation against a person or
15 against property, when directed against a person with whom the offender is
16 involved or has been involved in a dating relationship or when directed
17 against a family or household member by a family or household member.
18 For the purposes of this definition:

19 (1) "Dating relationship" means a social relationship of a romantic
20 nature. In addition to any other factors the court deems relevant, the trier
21 of fact may consider the following when making a determination of
22 whether a relationship exists or existed: Nature of the relationship, length
23 of time the relationship existed, frequency of interaction between the
24 parties and time since termination of the relationship, if applicable.

25 (2) "Family or household member" means persons 18 years of age or
26 older who are spouses, former spouses, parents or stepparents and children
27 or stepchildren, and persons who are presently residing together or have
28 resided together in the past, and persons who have a child in common
29 regardless of whether they have been married or have lived together at any
30 time. "Family or household member" also includes a man and woman if
31 the woman is pregnant and the man is alleged to be the father, regardless
32 of whether they have been married or have lived together at any time.

33 (j) "Domestic violence offense" means any crime committed whereby
34 the underlying factual basis includes an act of domestic violence.

35 (k) "Dwelling" means a building or portion thereof, a tent, a vehicle
36 or other enclosed space ~~which~~ *that* is used or intended for use as a human
37 habitation, home or residence.

38 (l) "Expungement" means the sealing of records such that the records
39 are unavailable except to the petitioner and criminal justice agencies as
40 provided by K.S.A. 22-4701 et seq., and amendments thereto, and except
41 as provided in this act.

42 (m) "Firearm" means any weapon designed or having the capacity to
43 propel a projectile by force of an explosion or combustion.

1 (n) "Forcible felony" includes any treason, murder, voluntary
2 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated
3 battery, aggravated sodomy and any other felony ~~which~~ that involves the
4 use or threat of physical force or violence against any person.

5 (o) "Intent to defraud" means an intention to deceive another person,
6 and to induce such other person, in reliance upon such deception, to
7 assume, create, transfer, alter or terminate a right, obligation or power with
8 reference to property.

9 (p) "Law enforcement officer" means:

10 (1) Any person who by virtue of such person's office or public
11 employment is vested by law with a duty to maintain public order or to
12 make arrests for crimes, whether that duty extends to all crimes or is
13 limited to specific crimes;

14 (2) any officer of the Kansas department of corrections or, for the
15 purposes of K.S.A. 2021 Supp. 21-5412 and ~~subsection (d) of K.S.A. 2021~~
16 ~~Supp. 21-5413(d)~~, and amendments thereto, any employee of the Kansas
17 department of corrections; or

18 (3) any university police officer or campus police officer, as defined
19 in K.S.A. 22-2401a, and amendments thereto.

20 (q) "Obtain" means to bring about a transfer of interest in or
21 possession of property, whether to the offender or to another.

22 (r) "Obtains or exerts control" over property includes, but is not
23 limited to, the taking, carrying away, sale, conveyance, transfer of title to,
24 interest in, or possession of property.

25 (s) "Owner" means a person who has any interest in property.

26 (t) "Person" means an individual, public or private corporation,
27 government, partnership, or unincorporated association.

28 (u) "Personal property" means goods, chattels, effects, evidences of
29 rights in action and all written instruments by which any pecuniary
30 obligation, or any right or title to property real or personal, shall be
31 created, acknowledged, assigned, transferred, increased, defeated,
32 discharged, or dismissed.

33 (v) "Possession" means having joint or exclusive control over an item
34 with knowledge of or intent to have such control or knowingly keeping
35 some item in a place where the person has some measure of access and
36 right of control.

37 (w) *"Primary aggressor" means the person determined to be the most*
38 *significant aggressor; rather than the first aggressor. In determining the*
39 *"primary aggressor," the court or an officer shall consider the intent of the*
40 *law to protect victims of domestic violence from continuing abuse, the*
41 *threats creating fear of physical injury, the history of domestic violence*
42 *between the persons involved, the nature of the injuries suffered or*
43 *inflicted on another and whether either person acted in self-defense.*

- 1 (x) "Property" means anything of value, tangible or intangible, real or
2 personal.
- 3 ~~(y)~~ "Prosecution" means all legal proceedings by which a person's
4 liability for a crime is determined.
- 5 ~~(z)~~ "Prosecutor" means the same as prosecuting attorney in K.S.A.
6 22-2202, and amendments thereto.
- 7 ~~(aa)~~ "Public employee" is a person employed by or acting for the
8 state or by or for a county, municipality or other subdivision or
9 governmental instrumentality of the state for the purpose of exercising
10 their respective powers and performing their respective duties; and who is
11 not a "public officer."
- 12 ~~(aa)~~(bb) "Public officer" includes the following, whether elected or
13 appointed:
- 14 (1) An executive or administrative officer of the state; or a county,
15 municipality or other subdivision or governmental instrumentality of or
16 within the state;
- 17 (2) a member of the legislature or of a governing board of a county,
18 municipality; or other subdivision of or within the state;
- 19 (3) a judicial officer, ~~which shall include~~ including a judge of the
20 district court, juror, master or any other person appointed by a judge or
21 court to hear or determine a cause or controversy;
- 22 (4) a hearing officer, ~~which shall include~~ including any person
23 authorized by law or private agreement; to hear or determine a cause or
24 controversy and who is not a judicial officer;
- 25 (5) a law enforcement officer; and
- 26 (6) any other person exercising the functions of a public officer under
27 color of right.
- 28 ~~(bb)~~(cc) "Real property" or "real estate" means every estate, interest,
29 and right in lands, tenements and hereditaments.
- 30 ~~(ee)~~(dd) "Solicit" or "solicitation" means to command, authorize,
31 urge, incite, request or advise another to commit a crime.
- 32 ~~(dd)~~(ee) "State" or "this state" means the state of Kansas and all land
33 and water in respect to which the state of Kansas has either exclusive or
34 concurrent jurisdiction, and the air space above such land and water.
35 "Other state" means any state or territory of the United States, the District
36 of Columbia and the Commonwealth of Puerto Rico.
- 37 ~~(ee)~~(ff) "Stolen property" means property over which control has been
38 obtained by theft.
- 39 ~~(ff)~~(gg) "Threat" means a communicated intent to inflict physical or
40 other harm on any person or on property.
- 41 ~~(gg)~~(hh) "Written instrument" means any paper, document or other
42 instrument containing written or printed matter or the equivalent thereof,
43 used for purposes of reciting, embodying, conveying or recording

1 information, and any money, token, stamp, seal, badge, trademark; or other
2 evidence or symbol of value, right, privilege or identification, ~~which that~~
3 is capable of being used to the advantage or disadvantage of some person.

4 Sec. 2. K.S.A. 2021 Supp. 22-2307 is hereby amended to read as
5 follows: 22-2307. (a) All law enforcement agencies in this state shall adopt
6 written policies regarding domestic violence calls as provided in
7 subsections (b) and (c). These policies shall be made available to all
8 officers of such agency.

9 (b) Such written policies shall include, but not be limited to, the
10 following:

11 (1) A statement directing that when a law enforcement officer
12 determines that there is probable cause to believe that a crime or offense
13 involving domestic violence, as defined in K.S.A. 2021 Supp. 21-5111,
14 and amendments thereto, has been committed, the officer shall, without
15 undue delay, arrest the person for which the officer has probable cause to
16 believe committed the crime or offense if such person's actions were not
17 an act of defense of a person or property as provided in K.S.A. 2021 Supp.
18 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and amendments thereto;

19 (2) a statement that nothing shall be construed to require a law
20 enforcement officer to:

21 (A) Arrest either party involved in an alleged act of domestic
22 violence when the law enforcement officer determines there is no probable
23 cause to believe that a crime or offense has been committed; or

24 (B) arrest both parties involved in an alleged act of domestic violence
25 when both claim to have been victims of such domestic violence;

26 (3) a statement directing that, if a law enforcement officer receives
27 complaints of domestic violence from two or more opposing persons, the
28 officer shall evaluate each complaint separately to determine if there is
29 probable cause that each accused person committed a crime or offense and
30 their actions were not an act of defense of a person or property as provided
31 in K.S.A. 2021 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231,
32 and amendments thereto, *and to determine who was the primary*
33 *aggressor. The statement shall direct that arrest is the preferred response*
34 *only with respect to the primary aggressor and not the preferred response*
35 *with respect to a person who acts in a reasonable manner in defense of a*
36 *person;*

37 (4) a statement defining "domestic violence" and "primary
38 aggressor" in accordance with K.S.A. 2021 Supp. 21-5111, and
39 amendments thereto;

40 (5) a statement describing the dispatchers' responsibilities;

41 (6) a statement describing the responding officers' responsibilities and
42 procedures to follow when responding to a domestic violence call and the
43 suspect is at the scene;

1 (7) a statement regarding procedures when the suspect has left the
2 scene of the crime;

3 (8) procedures for both misdemeanor and felony cases;

4 (9) procedures for law enforcement officers to follow when handling
5 domestic violence calls involving court orders, including protection from
6 abuse orders, restraining orders and a protective order issued by a court of
7 any state or Indian tribe;

8 (10) a statement that the law enforcement agency shall provide the
9 following information to victims, in writing:

10 (A) Availability of emergency and medical telephone numbers, if
11 needed;

12 (B) the law enforcement agency's report number;

13 (C) the address and telephone number of the prosecutor's office the
14 victim should contact to obtain information about victims' rights pursuant
15 to K.S.A. 74-7333 and 74-7335, and amendments thereto;

16 (D) the name and address of the crime victims' compensation board
17 and information about possible compensation benefits;

18 (E) advise the victim that the details of the crime may be made
19 public;

20 (F) advise the victim of such victims' rights under K.S.A. 74-7333
21 and 74-7335, and amendments thereto; and

22 (G) advise the victim of known available resources which may assist
23 the victim; and

24 (11) whether an arrest is made or not, a standard offense report shall
25 be completed on all such incidents and sent to the Kansas bureau of
26 investigation.

27 (c) Such written policies shall provide that when an arrest is made for
28 a domestic violence offense as defined in K.S.A. 2021 Supp. 21-5111, and
29 amendments thereto, including an arrest for violation of a protection order
30 as defined in K.S.A. 2021 Supp. 21-5924, and amendments thereto, the
31 officer shall provide the victim information related to:

32 (A) The fact that in some cases the person arrested can be released
33 from custody in a short amount of time;

34 (B) the fact that in some cases a bond condition may be imposed on
35 the person arrested that prohibits contact with the victim for 72 hours, and
36 that if the person arrested contacts the victim during that time, the victim
37 should notify law enforcement immediately; and

38 (C) any available services within the jurisdiction to monitor custody
39 changes of the person being arrested, including, but not limited to, the
40 Kansas victim information and notification everyday service if available in
41 such jurisdiction.

42 (d) All law enforcement agencies shall provide training to law
43 enforcement officers about the policies adopted pursuant to this section.

1 Sec. 3. K.S.A. 2021 Supp. 60-3107 is hereby amended to read as
2 follows: 60-3107. (a) The court may approve any consent agreement to
3 bring about a cessation of abuse of the plaintiff or minor children or grant
4 any of the following orders:

5 (1) Restraining the defendant from abusing, molesting or interfering
6 with the privacy or rights of the plaintiff or of any minor children of the
7 parties. Such order shall contain a statement that if such order is violated,
8 such violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A.
9 2021 Supp. 21-5412(a), and amendments thereto, battery as defined in
10 ~~subsection (a) of~~ K.S.A. 2021 Supp. 21-5413(a), and amendments thereto,
11 domestic battery as defined in K.S.A. 2021 Supp. 21-5414, and
12 amendments thereto, and violation of a protective order as defined in
13 K.S.A. 2021 Supp. 21-5924, and amendments thereto.

14 (2) Granting possession of the residence or household to the plaintiff
15 to the exclusion of the defendant, and further restraining the defendant
16 from entering or remaining upon or in such residence or household,
17 subject to the limitation of subsection (d). Such order shall contain a
18 statement that if such order is violated, such violation shall constitute
19 criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2021 Supp.
20 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
21 order as defined in K.S.A. 2021 Supp. 21-5924, and amendments thereto.
22 The court may grant an order, ~~which~~ that shall expire 60 days following
23 the date of issuance; restraining the defendant from cancelling utility
24 service to the residence or household.

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

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

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

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

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

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

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

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

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

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

7 (2) the plaintiff had reasonable notice of the written cross or counter
8 petition by personal service as provided in ~~subsection (d)~~ of K.S.A. 60-
9 3104(d), and amendments thereto; and

10 (3) the issuing court made specific findings of abuse against both the
11 plaintiff and the defendant and determined that ~~both parties acted primarily~~
12 ~~as aggressors and~~ neither party acted primarily in self-defense *and the*
13 *plaintiff acted as the primary aggressor. As used in this paragraph,*
14 *"primary aggressor" means the same as defined in K.S.A. 2021 Supp. 21-*
15 *5111, and amendments thereto.*

16 (c) Any order entered under the protection from abuse act shall not be
17 subject to modification on ex parte application or on motion for temporary
18 orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their
19 transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes
20 Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and
21 amendments thereto. Orders previously issued in an action filed pursuant
22 to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or
23 27 of chapter 23 of the Kansas Statutes Annotated, and amendments
24 thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be
25 subject to modification under the protection from abuse act only as to
26 those matters subject to modification by the terms of K.S.A. 2021 Supp.
27 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the
28 Kansas Statutes Annotated, and amendments thereto, and on sworn
29 testimony to support a showing of good cause. Immediate and present
30 danger of abuse to the plaintiff or minor children shall constitute good
31 cause. If an action is filed pursuant to K.S.A. 2021 Supp. 23-3201 through
32 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes
33 Annotated, and amendments thereto, during the pendency of a proceeding
34 filed under the protection from abuse act or while an order issued under
35 the protection from abuse act is in effect, the court, on final hearing or on
36 agreement of the parties, may issue final orders authorized by K.S.A. 2021
37 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of
38 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that
39 are inconsistent with orders entered under the protection from abuse act.
40 Any inconsistent order entered pursuant to this subsection shall be specific
41 in its terms, reference the protection from abuse order and parts thereof
42 being modified and a copy thereof shall be filed in both actions. The court
43 shall consider whether the actions should be consolidated in accordance

1 with K.S.A. 60-242, and amendments thereto. Any custody or parenting
2 time order, or order relating to the best interests of a child, issued pursuant
3 to the revised Kansas code for care of children or the revised Kansas
4 juvenile justice code, shall be binding and shall take precedence over any
5 such custody or parenting order involving the same child issued under the
6 protection from abuse act, until jurisdiction under the revised Kansas code
7 for care of children or the revised Kansas juvenile justice code is
8 terminated. Any inconsistent custody or parenting order issued in the
9 revised Kansas code for care of children case or the revised Kansas
10 juvenile justice code case shall be specific in its terms, reference any
11 preexisting protection from abuse order and the custody being modified,
12 and a copy of such order shall be filed in the preexisting protection from
13 abuse case.

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

19 (e) Subject to the provisions of subsections (b), (c) and (d), a
20 protective order or approved consent agreement shall remain in effect until
21 modified or dismissed by the court and shall be for a fixed period of time
22 not to exceed one year, except as provided in *this* subsection-~~(e)(1) and (e)~~
23 ~~(2)~~.

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

26 (2) Upon verified motion of the plaintiff and after the defendant has
27 been personally served with a copy of the motion and has had an
28 opportunity to present evidence and cross-examine witnesses at a hearing
29 on the motion, *the court shall extend a protective order for not less than*
30 *two additional years and may extend the protective order up to the lifetime*
31 *of the defendant* if the court determines by a preponderance of the
32 evidence that the defendant has:

33 (A) Violated a valid protection order ~~or (A) has;~~

34 (B) previously violated a valid protection order, ~~or (B) has;~~ or

35 (C) been convicted of a person felony or any conspiracy, criminal
36 solicitation or attempt thereof, under the laws of Kansas or the laws of any
37 other jurisdiction ~~which that~~ are substantially similar to such person
38 felony, committed against the plaintiff or any member of the plaintiff's
39 household, ~~the court shall extend a protective order for not less than two~~
40 ~~additional years and may extend the protective order up to the lifetime of~~
41 ~~the defendant.~~

42 (3) No service fee shall be required for a motion filed pursuant to this
43 subsection.

1 (f) The court may amend ~~its~~ *an* order or agreement at any time upon
2 motion filed by either party.

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

5 (h) If a person enters or remains on premises or property violating an
6 order issued pursuant to subsection (a)(2), such violation shall constitute
7 criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2021 Supp.
8 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
9 order as defined in K.S.A. 2021 Supp. 21-5924, and amendments thereto.

10 If a person abuses, molests or interferes with the privacy or rights of
11 another violating an order issued pursuant to subsection (a)(1), such
12 violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A.
13 2021 Supp. 21-5412(a), and amendments thereto, battery as defined in
14 ~~subsection (a) of~~ K.S.A. 2021 Supp. 21-5413(a), and amendments thereto,
15 domestic battery as defined in K.S.A. 2021 Supp. 21-5414, and
16 amendments thereto, and violation of a protective order as defined in
17 K.S.A. 2021 Supp. 21-5924, and amendments thereto.

18 Sec. 4. K.S.A. 2021 Supp. 21-5111, 22-2307 and 60-3107 are hereby
19 repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.