

SENATE BILL No. 161

By Committee on Judiciary

2-13

1 AN ACT concerning domestic violence; relating to the definition of
2 primary aggressor; Kansas criminal code; Kansas code of criminal
3 procedure; protection from abuse act; amending K.S.A. 2018 Supp. 21-
4 5111, 22-2307 and 60-3107 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 21-5111 is hereby amended to read as
8 follows: 21-5111. The following definitions shall apply when the words
9 and phrases defined are used in this code, except when a particular context
10 clearly requires a different meaning.

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

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

14 (c) "Conduct" means an act or a series of acts, and the accompanying
15 mental state.

16 (d) "Conviction" includes a judgment of guilt entered upon a plea of
17 guilty.

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

25 (f) "Deprive permanently" means to:

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

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

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

33 (g) "Distribute" means the actual or constructive transfer from one
34 person to another of some item whether or not there is an agency
35 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
36 furnishing, buying for, delivering, giving, or any act that causes or is

1 intended to cause some item to be transferred from one person to another.
2 "Distribute" does not include acts of administering, dispensing or
3 prescribing a controlled substance as authorized by the pharmacy act of the
4 state of Kansas, the uniform controlled substances act, or otherwise
5 authorized by law.

6 (h) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

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

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

42 (n) "Forcible felony" includes any treason, murder, voluntary
43 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated

1 battery, aggravated sodomy and any other felony which involves the use or
2 threat of physical force or violence against any person.

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

7 (p) "Law enforcement officer" means:

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

12 (2) any officer of the Kansas department of corrections or, for the
13 purposes of K.S.A. 2018 Supp. 21-5412 and ~~subsection (d) of K.S.A. 2018~~
14 ~~Supp. 21-5413(d)~~, and amendments thereto, any employee of the Kansas
15 department of corrections; or

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

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

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

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

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

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

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

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

42 (x) "Property" means anything of value, tangible or intangible, real or
43 personal.

1 ~~(x)~~ (y) "Prosecution" means all legal proceedings by which a person's
2 liability for a crime is determined.

3 ~~(y)~~ (z) "Prosecutor" means the same as prosecuting attorney in K.S.A.
4 22-2202, and amendments thereto.

5 ~~(z)~~ (aa) "Public employee" is a person employed by or acting for the
6 state or by or for a county, municipality or other subdivision or
7 governmental instrumentality of the state for the purpose of exercising
8 their respective powers and performing their respective duties, and who is
9 not a "public officer."

10 ~~(aa)~~ (bb) "Public officer" includes the following, whether elected or
11 appointed:

12 (1) An executive or administrative officer of the state, or a county,
13 municipality or other subdivision or governmental instrumentality of or
14 within the state;

15 (2) a member of the legislature or of a governing board of a county,
16 municipality, or other subdivision of or within the state;

17 (3) a judicial officer, which shall include a judge of the district court,
18 juror, master or any other person appointed by a judge or court to hear or
19 determine a cause or controversy;

20 (4) a hearing officer, which shall include any person authorized by
21 law or private agreement, to hear or determine a cause or controversy and
22 who is not a judicial officer;

23 (5) a law enforcement officer; and

24 (6) any other person exercising the functions of a public officer under
25 color of right.

26 ~~(bb)~~ (cc) "Real property" or "real estate" means every estate, interest,
27 and right in lands, tenements and hereditaments.

28 ~~(ee)~~ (dd) "Solicit" or "solicitation" means to command, authorize,
29 urge, incite, request or advise another to commit a crime.

30 ~~(dd)~~ (ee) "State" or "this state" means the state of Kansas and all land
31 and water in respect to which the state of Kansas has either exclusive or
32 concurrent jurisdiction, and the air space above such land and water.
33 "Other state" means any state or territory of the United States, the District
34 of Columbia and the Commonwealth of Puerto Rico.

35 ~~(ee)~~ (ff) "Stolen property" means property over which control has
36 been obtained by theft.

37 ~~(ff)~~ (gg) "Threat" means a communicated intent to inflict physical or
38 other harm on any person or on property.

39 ~~(gg)~~ (hh) "Written instrument" means any paper, document or other
40 instrument containing written or printed matter or the equivalent thereof,
41 used for purposes of reciting, embodying, conveying or recording
42 information, and any money, token, stamp, seal, badge, trademark, or other
43 evidence or symbol of value, right, privilege or identification, ~~which that~~

1 is capable of being used to the advantage or disadvantage of some person.

2 Sec. 2. K.S.A. 2018 Supp. 22-2307 is hereby amended to read as
3 follows: 22-2307. (a) All law enforcement agencies in this state shall adopt
4 written policies regarding domestic violence calls as provided in
5 subsection (b). These policies shall be made available to all officers of
6 such agency.

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

9 (1) A statement directing that when a law enforcement officer
10 determines that there is probable cause to believe that a crime or offense
11 involving domestic violence, as defined in K.S.A. 2018 Supp. 21-5111,
12 and amendments thereto, has been committed, the officer shall, without
13 undue delay, arrest the person for which the officer has probable cause to
14 believe committed the crime or offense if such person's actions were not
15 an act of defense of a person or property as provided in K.S.A. 2018 Supp.
16 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and amendments thereto;

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

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

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

24 (3) a statement directing that if a law enforcement officer receives
25 complaints of domestic violence from two or more opposing persons, the
26 officer shall evaluate each complaint separately to determine if there is
27 probable cause that each accused person committed a crime or offense and
28 their actions were not an act of defense of a person or property as provided
29 in K.S.A. 2018 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231,
30 and amendments thereto, *and to determine who was the primary*
31 *aggressor. The statement shall direct that arrest is the preferred response*
32 *only with respect to the primary aggressor and not the preferred response*
33 *with respect to a person who acts in a reasonable manner in defense of a*
34 *person;*

35 (4) a statement defining "domestic violence" and "primary
36 aggressor" in accordance with K.S.A. 2018 Supp. 21-5111, and
37 amendments thereto;

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

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

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

- 1 (8) procedures for both misdemeanor and felony cases;
- 2 (9) procedures for law enforcement officers to follow when handling
3 domestic violence calls involving court orders, including protection from
4 abuse orders, restraining orders and a protective order issued by a court of
5 any state or Indian tribe;
- 6 (10) a statement that the law enforcement agency shall provide the
7 following information to victims, in writing:
 - 8 (A) Availability of emergency and medical telephone numbers, if
9 needed;
 - 10 (B) the law enforcement agency's report number;
 - 11 (C) the address and telephone number of the prosecutor's office the
12 victim should contact to obtain information about victims' rights pursuant
13 to K.S.A. 74-7333 and 74-7335, and amendments thereto;
 - 14 (D) the name and address of the crime victims' compensation board
15 and information about possible compensation benefits;
 - 16 (E) advise the victim that the details of the crime may be made
17 public;
 - 18 (F) advise the victim of such victims' rights under K.S.A. 74-7333
19 and 74-7335, and amendments thereto; and
 - 20 (G) advise the victim of known available resources which may assist
21 the victim; and
- 22 (11) whether an arrest is made or not, a standard offense report shall
23 be completed on all such incidents and sent to the Kansas bureau of
24 investigation.

25 Sec. 3. K.S.A. 2018 Supp. 60-3107 is hereby amended to read as
26 follows: 60-3107. (a) The court may approve any consent agreement to
27 bring about a cessation of abuse of the plaintiff or minor children or grant
28 any of the following orders:

29 (1) Restraining the defendant from abusing, molesting or interfering
30 with the privacy or rights of the plaintiff or of any minor children of the
31 parties. Such order shall contain a statement that if such order is violated,
32 such violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A.
33 2018 Supp. 21-5412(a), and amendments thereto, battery as defined in
34 ~~subsection (a) of~~ K.S.A. 2018 Supp. 21-5413(a), and amendments thereto,
35 domestic battery as defined in K.S.A. 2018 Supp. 21-5414, and
36 amendments thereto, and violation of a protective order as defined in
37 K.S.A. 2018 Supp. 21-5924, and amendments thereto.

38 (2) Granting possession of the residence or household to the plaintiff
39 to the exclusion of the defendant, and further restraining the defendant
40 from entering or remaining upon or in such residence or household,
41 subject to the limitation of subsection (d). Such order shall contain a
42 statement that if such order is violated, such violation shall constitute
43 criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2018 Supp.

1 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
2 order as defined in K.S.A. 2018 Supp. 21-5924, and amendments thereto.
3 The court may grant an order, which shall expire 60 days following the
4 date of issuance, restraining the defendant from cancelling utility service
5 to the residence or household.

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

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

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

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

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

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

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

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

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

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

31 (2) the plaintiff had reasonable notice of the written cross or counter
32 petition by personal service as provided in ~~subsection (d) of~~ K.S.A. 60-
33 3104(d), and amendments thereto; and

34 (3) the issuing court made specific findings of abuse against both the
35 plaintiff and the defendant and determined that ~~both parties acted primarily~~
36 ~~as aggressors and~~ neither party acted primarily in self-defense *and the*
37 *plaintiff acted as the primary aggressor. As used in this paragraph,*
38 *"primary aggressor" means the same as in K.S.A. 2018 Supp. 21-5111, and*
39 *amendments thereto.*

40 (c) Any order entered under the protection from abuse act shall not be
41 subject to modification on ex parte application or on motion for temporary
42 orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their
43 transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes

1 Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and
2 amendments thereto. Orders previously issued in an action filed pursuant
3 to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or
4 27 of chapter 23 of the Kansas Statutes Annotated, and amendments
5 thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be
6 subject to modification under the protection from abuse act only as to
7 those matters subject to modification by the terms of K.S.A. 2018 Supp.
8 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the
9 Kansas Statutes Annotated, and amendments thereto, and on sworn
10 testimony to support a showing of good cause. Immediate and present
11 danger of abuse to the plaintiff or minor children shall constitute good
12 cause. If an action is filed pursuant to K.S.A. 2018 Supp. 23-3201 through
13 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes
14 Annotated, and amendments thereto, during the pendency of a proceeding
15 filed under the protection from abuse act or while an order issued under
16 the protection from abuse act is in effect, the court, on final hearing or on
17 agreement of the parties, may issue final orders authorized by K.S.A. 2018
18 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of
19 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that
20 are inconsistent with orders entered under the protection from abuse act.
21 Any inconsistent order entered pursuant to this subsection shall be specific
22 in its terms, reference the protection from abuse order and parts thereof
23 being modified and a copy thereof shall be filed in both actions. The court
24 shall consider whether the actions should be consolidated in accordance
25 with K.S.A. 60-242, and amendments thereto. Any custody or parenting
26 time order, or order relating to the best interests of a child, issued pursuant
27 to the revised Kansas code for care of children or the revised Kansas
28 juvenile justice code, shall be binding and shall take precedence over any
29 such custody or parenting order involving the same child issued under the
30 protection from abuse act, until jurisdiction under the revised Kansas code
31 for care of children or the revised Kansas juvenile justice code is
32 terminated. Any inconsistent custody or parenting order issued in the
33 revised Kansas code for care of children case or the revised Kansas
34 juvenile justice code case shall be specific in its terms, reference any
35 preexisting protection from abuse order and the custody being modified,
36 and a copy of such order shall be filed in the preexisting protection from
37 abuse case.

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

43 (e) Subject to the provisions of subsections (b), (c) and (d), a

1 protective order or approved consent agreement shall remain in effect until
2 modified or dismissed by the court and shall be for a fixed period of time
3 not to exceed one year, except as provided in subsection (e)(1) and (e)(2).

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

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

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

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

23 (h) If a person enters or remains on premises or property violating an
24 order issued pursuant to subsection (a)(2), such violation shall constitute
25 criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2018 Supp.
26 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
27 order as defined in K.S.A. 2018 Supp. 21-5924, and amendments thereto.
28 If a person abuses, molests or interferes with the privacy or rights of
29 another violating an order issued pursuant to subsection (a)(1), such
30 violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A.
31 2018 Supp. 21-5412(a), and amendments thereto, battery as defined in
32 ~~subsection (a) of~~ K.S.A. 2018 Supp. 21-5413(a), and amendments thereto,
33 domestic battery as defined in K.S.A. 2018 Supp. 21-5414, and
34 amendments thereto, and violation of a protective order as defined in
35 K.S.A. 2018 Supp. 21-5924, and amendments thereto.

36 Sec. 4. K.S.A. 2018 Supp. 21-5111, 22-2307 and 60-3107 are hereby
37 repealed.

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