

HOUSE BILL No. 2613

By Committee on Corrections and Juvenile Justice

2-2

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to protective orders; relating to permanent orders; amending K.S.A.
3 2011 Supp. 21-5924, 60-3104, 60-3107, 60-31a04 and 60-31a06 and
4 repealing the existing sections; also repealing K.S.A. 60-3111.
5

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

7 Section 1. K.S.A. 2011 Supp. 21-5924 is hereby amended to read as
8 follows: 21-5924. (a) Violation of a protective order is knowingly
9 violating:

10 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
11 60-3106 and 60-3107, and amendments thereto;

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

15 (3) a restraining order issued pursuant to K.S.A. 2011 Supp. 23-2707,
16 38-2243, 38-2244 and 38-2255, and amendments thereto, and K.S.A. 60-
17 1607, ~~and amendments thereto prior to its transfer;~~

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

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

26 (6) a protection from stalking order issued pursuant to K.S.A. 60-
27 31a05 or 60-31a06, and amendments thereto.

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

30 (2) Violation of an extended protective order as described in
31 subsection (e)(2) of K.S.A. 60-3107, and amendments thereto, and
32 subsection (d) of K.S.A. 60-31a06, and amendments thereto, is a severity
33 level 5, person felony.

34 (c) No protective order, as set forth in this section, shall be construed
35 to prohibit an attorney, or any person acting on such attorney's behalf, who
36 is representing the defendant in any civil or criminal proceeding, from

1 contracting the protected party for a legitimate purpose within the scope of
2 the civil or criminal proceeding. The attorney, or person acting on such
3 attorney's behalf, shall be identified in any such contact.

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

6 Sec. 2. K.S.A. 2011 Supp. 60-3104 is hereby amended to read as
7 follows: 60-3104. (a) An intimate partner or household member may seek
8 relief under the protection from abuse act by filing a verified petition with
9 any district judge or with the clerk of the court alleging abuse by another
10 intimate partner or household member.

11 (b) A parent of or an adult residing with a minor child may seek relief
12 under the protection from abuse act on behalf of the minor child by filing a
13 verified petition with any district judge or with the clerk of the court
14 alleging abuse by another intimate partner or household member.

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

17 (d) Service of process served under ~~this section~~ *the protection from*
18 ~~abuse act~~ shall be by personal service and not by certified mail return
19 receipt requested. No docket fee shall be required for proceedings under
20 the protection from abuse act.

21 (e) If the court finds that the plaintiff's address or telephone number,
22 or both, needs to remain confidential for the protection of the plaintiff,
23 plaintiff's minor children or minor children residing with the plaintiff, such
24 information shall not be disclosed to the public, but only to authorized
25 court or law enforcement personnel and to the commission on judicial
26 performance in the discharge of the commission's duties pursuant to article
27 32 of chapter 20 of the Kansas Statutes Annotated, and amendments
28 thereto.

29 Sec. 3. K.S.A. 2011 Supp. 60-3107 is hereby amended to read as
30 follows: 60-3107. (a) The court may approve any consent agreement to
31 bring about a cessation of abuse of the plaintiff or minor children or grant
32 any of the following orders:

33 (1) Restraining the defendant from abusing, molesting or interfering
34 with the privacy or rights of the plaintiff or of any minor children of the
35 parties. Such order shall contain a statement that if such order is violated,
36 such violation may constitute assault as defined in subsection (a) of K.S.A.
37 2011 Supp. 21-5412, and amendments thereto, battery as defined in
38 subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto,
39 domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and
40 amendments thereto, and violation of a protective order as defined in
41 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

42 (2) Granting possession of the residence or household to the plaintiff
43 to the exclusion of the defendant, and further restraining the defendant

reinsert "this
section"

owns it.

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

(1) Upon motion of the plaintiff, such period may be extended for one additional year; ~~and~~

(2) Upon verified motion of the plaintiff and after the defendant has had an opportunity to present evidence at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or ~~attempted or committed a person-felony under the laws of Kansas or the laws of any other jurisdiction~~ felony under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, ~~the court shall extend a protective order for no less than two additional years and may~~ extend a protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.

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

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

(h) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

Sec. 4. K.S.A. 2011 Supp. 60-31a04 is hereby amended to read as follows: 60-31a04. (a) A person may seek relief under the protection from stalking act by filing a verified petition with the any district judge or clerk of the court ~~in the county where the stalking occurred.~~ A verified petition must allege facts sufficient to show the following:

- (1) The name of the stalking victim;
- (2) the name of the defendant;
- (3) the dates on which the alleged stalking behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute stalking.

as provided in subsection (e)(1) and (e)(2).

has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof,

committed against the plaintiff or any member of the plaintiff's household,

1 (b) A parent or an adult residing with a minor child may seek relief
2 under the protection from stalking act on behalf of the minor child by
3 filing a verified petition with the district judge or with the clerk of the
4 court in the county where the stalking occurred.

5 (c) The clerk of the court shall supply the forms for the petition and
6 orders, which shall be prescribed by the judicial council
7 (d) Service of process served under ~~this section~~ *the protection from*
8 ~~stalking act~~ shall be by personal service. No docket fee shall be required
9 for proceedings under the protection from stalking act.

10 (e) The victim's address and telephone number shall not be disclosed
11 to the defendant or to the public, but only to authorized court or law
12 enforcement personnel and to the commission on judicial performance in
13 the discharge of the commission's duties pursuant to article 32 of chapter
14 20 of the Kansas Statutes Annotated, and amendments thereto.

15 Sec. 5. K.S.A. 2011 Supp. 60-31a06 is hereby amended to read as
16 follows: 60-31a06. (a) The court may issue a protection from stalking
17 order granting any of the following orders:

18 (1) Restraining the defendant from following, harassing, telephoning,
19 contacting or otherwise communicating with the victim. Such order shall
20 contain a statement that if such order is violated such violation may
21 constitute stalking as defined in K.S.A. 2011 Supp. 21-5427, and
22 amendments thereto, and violation of a protective order as defined in
23 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

24 (2) Restraining the defendant from abusing, molesting or interfering
25 with the privacy rights of the victim. Such order shall contain a statement
26 that if such order is violated, such violation may constitute stalking as
27 defined in K.S.A. 2011 Supp. 21-5427, and amendments thereto, assault as
28 defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments
29 thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413,
30 and amendments thereto, and violation of a protective order as defined in
31 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

32 (3) Restraining the defendant from entering upon or in the victim's
33 residence or the immediate vicinity thereof. Such order shall contain a
34 statement that if such order is violated, such violation shall constitute
35 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp.
36 21-5808, and amendments thereto, and violation of a protective order as
37 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

38 (4) Any other order deemed necessary by the court to carry out the
39 provisions of this act.

40 (b) A protection from stalking order shall remain in effect until
41 modified or dismissed by the court and shall be for a fixed period of time
42 not to exceed one year, ~~except that, on motion of the plaintiff, such period~~
43 ~~may be extended for one additional year. Before the expiration of an order~~

reinsert "this section"

reinsert "except"

1 for protection from stalking, a victim, or a parent on behalf of the victim,
 2 may request an extension of the protection from stalking order for up to
 3 one additional year on showing of continuing threat of stalking as
 4 provided in subsection (c) and (d).

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

7 (d) Upon verified motion of the plaintiff and after the defendant has
 8 had an opportunity to present evidence at a hearing on the motion, if the
 9 court determines by a preponderance of the evidence that the defendant
 10 has violated a valid protection order or ~~attempted or committed a person~~
 11 ~~felony~~ under the laws of Kansas or the laws of any other jurisdiction
 12 which are substantially similar to such person felony, the court shall
 13 extend a protective order for no less than two additional years and up to a
 14 period of time not to exceed the lifetime of the defendant. No service fee
 15 shall be required for a motion filed pursuant to this subsection.

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

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

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

- 25 (1) Contact between the attorneys representing the parties;
- 26 (2) a party from appearing at a scheduled court or administrative
 27 hearing; or

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

31 Sec. 6. K.S.A. 60-3111 and K.S.A. 2011 Supp. 21-5924, 60-3104, 60-
 32 3107, 60-31a04 and 60-31a06 are hereby repealed.

33 Sec. 7. This act shall take effect and be in force from and after its
 34 publication in the statute book.
 35

has been convicted
 of a person felony
 or any conspiracy,
 criminal solicitation
 or attempt thereof,

committed against
 the plaintiff or any
 member of the
 plaintiff's
 household,