

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2850

By Representative Kelley

2-12

10 AN ACT concerning stalking; relating to protective orders; amending
11 K.S.A. 21-3438, 21-3843 and 60-31a06 and repealing the existing
12 sections.
13

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

15 Section 1. K.S.A. 21-3438 is hereby amended to read as follows: 21-
16 3438. (a) Stalking is ~~an intentional, malicious and repeated following or~~
17 ~~harassment of another person and making a credible threat with the intent~~
18 ~~to place such person in reasonable fear for such person's safety.~~

19 ~~—Stalking is a severity level 10, person felony.~~

20 ~~—(b) Any person who violates subsection (a) when there is an order~~
21 ~~issued pursuant to the protection from stalking act, K.S.A. 60-31a01~~
22 ~~through 60-31a09, and amendments thereto, a temporary restraining or-~~
23 ~~der or an injunction in effect prohibiting the behavior described in sub-~~
24 ~~section (a) against the same person, is guilty of a severity level 9, person~~
25 ~~felony.~~

26 ~~—(c) Any person who has a second or subsequent conviction occurring~~
27 ~~against such person, within seven years of a prior conviction under sub-~~
28 ~~section (a) involving the same victim, is guilty of a severity level 8, person~~
29 ~~felony.~~

30 ~~—(d) For the purposes of this section: (1) "Course of conduct" means~~
31 ~~a pattern of conduct composed of a series of acts over a period of time,~~
32 ~~however short, evidencing a continuity of purpose and which would cause~~
33 ~~a reasonable person to suffer substantial emotional distress, and must~~
34 ~~actually cause substantial emotional distress to the person. Constitution-~~
35 ~~ally protected activity is not included within the meaning of "course of~~
36 ~~conduct."~~

37 ~~—(2) "Harassment" means a knowing and intentional course of conduct~~
38 ~~directed at a specific person that seriously alarms, annoys, torments or~~
39 ~~terrorizes the person, and that serves no legitimate purpose.~~

40 ~~—(3) "Credible threat" means a verbal or written threat, including that~~
41 ~~which is communicated via electronic means, or a threat implied by a~~
42 ~~pattern of conduct or a combination of verbal or written statements and~~
43 ~~conduct made with the intent and the apparent ability to carry out the~~

1 threat so as to cause the person who is the target of the threat to reason-
2 ably fear for such person's safety. The present incarceration of a person
3 making the threat shall not be a bar to prosecution under this section.
4 ~~(4) "Electronic means" includes, but is not limited to, telephones,~~
5 ~~cellular phones, computers, video recorders, fax machines, pagers and~~
6 ~~computer networks.;~~
7 (1) *Intentionally or recklessly engaging in a course of conduct tar-*
8 *geted at a specific person which would cause a reasonable person in the*
9 *circumstances of the targeted person to fear for such person's safety, or*
10 *the safety of a member of such person's immediate family and the targeted*
11 *person is actually placed in such fear;*
12 (2) *intentionally engaging in a course of conduct targeted at a specific*
13 *person which the individual knows will place the targeted person in fear*
14 *for such person's safety or the safety of a member of such person's im-*
15 *mediate family; or*
16 (3) *after being served with, or otherwise provided notice of, any pro-*
17 *tection order included in K.S.A. 21-3843, and amendments thereto, that*
18 *prohibits contact with a targeted person, intentionally or recklessly en-*
19 *gaging in at least one act listed in subsection ~~(d)(1)~~ (f)(1) that violates the*
20 *provisions of the order and would cause a reasonable person to fear for*
21 *such person's safety, or the safety of a member of such person's immediate*
22 *family and the targeted person is actually placed in such fear.*
23 (b) (1) *Upon a first conviction, stalking as described in subsection*
24 *(a)(1) is a class A person misdemeanor. Upon a second or subsequent*
25 *conviction, stalking as described in subsection (a)(1) is a severity level 7,*
26 *person felony.*
27 (2) *Upon a first conviction, stalking as described in subsection (a)(2)*
28 *is a class A person misdemeanor. Upon a second or subsequent conviction,*
29 *stalking as described in subsection (a)(2) is a severity level 5, person*
30 *felony.*
31 (3) *Upon a first conviction, stalking as described in subsection (a)(3)*
32 *is a severity level 9, person felony. Upon a second or subsequent convic-*
33 *tion, stalking as described in subsection (a)(3) is a severity level 5, person*
34 *felony.*
35 (c) *For the purposes of this section, a person served with a protective*
36 *order as defined by K.S.A. 21-3843, and amendments thereto, or a person*
37 *who engaged in acts which would constitute stalking, after having been*
38 *advised by a uniformed law enforcement officer, that such person's actions*
39 *were in violation of this section, shall be presumed to have acted inten-*
40 *tionally as to any like future act targeted at the specific person or persons*
41 *named in the order or as advised by the officer.*
42 (d) ~~*In any complaint, information or indictment brought for the en-*~~
43 ~~*forcement of any provision of this section, it shall not be necessary to*~~

1 ~~negate any exception, excuse or exemption contained herein and the bur-~~
2 ~~den of proof for any exception, excuse or exemption shall be upon the~~
3 ~~defendant. In a criminal proceeding under this section, a person~~
4 **claiming an exemption, exception or exclusion has the burden of**
5 **going forward with evidence of the claim.**

6 (e) **The present incarceration of a person alleged to be violat-**
7 **ing this section shall not be a bar to prosecution under this section.**

8 (f) *As used in this section:*

9 (1) *“Course of conduct” means two or more acts over a period of time,*
10 *however short, which evidence a continuity of purpose. A course of con-*
11 *duct shall not include constitutionally protected activity nor conduct that*
12 *was necessary to accomplish a legitimate purpose independent of making*
13 *contact with the targeted person. A course of conduct shall include, but*
14 *not be limited to, any of the following acts or a combination thereof:*

15 (A) *Threatening the safety of the targeted person or a member of such*
16 *person’s immediate family.*

17 (B) *Following, approaching or confronting the targeted person or a*
18 *member of such person’s immediate family.*

19 (C) *Appearing in close proximity to, or entering the targeted person’s*
20 *residence, place of employment, school or other place where such person*
21 *can be found, or the residence, place of employment or school of a member*
22 *of such person’s immediate family.*

23 (D) *Causing damage to the targeted person’s residence or property*
24 *or that of a member of such person’s immediate family.*

25 (E) *Placing an object on the targeted person’s property or the prop-*
26 *erty of a member of such person’s immediate family, either directly or*
27 *through a third person.*

28 (F) *Causing injury to the targeted person’s pet or a pet belonging to*
29 *a member of such person’s immediate family.*

30 (G) *Any act of communication.*

31 (2) *“Communication” means to impart a message by any method of*
32 *transmission, including, but not limited to: Telephoning, personally deliv-*
33 *ering, sending or having delivered, any information or material by written*
34 *or printed note or letter, package, mail, courier service or electronic trans-*
35 *mission, including electronic transmissions generated or communicated*
36 *via a computer.*

37 (3) *“Computer” means a programmable, electronic device capable of*
38 *accepting and processing data.*

39 (4) *“Conviction” includes being convicted of a violation of this section*
40 *or being convicted of a law of another state which prohibits the acts that*
41 *this section prohibits.*

42 (5) *“Immediate family” means father, mother, stepparent, child, step-*
43 *child, sibling, spouse or grandparent of the targeted person; any person*

1 *residing in the household of the targeted person; or any person involved*
2 *in an intimate relationship with the targeted person.*

3 ~~(f)~~ **(g)** *If any provision or application of this section is held invalid*
4 *for any reason, the invalidity of such provision or application is severable*
5 *and does not affect other provisions or applications of this section which*
6 *can be given effect without the invalid provisions or applications.*

7 Sec. 2. K.S.A. 21-3843 is hereby amended to read as follows: 21-
8 3843. (a) Violation of a protective order is knowingly or intentionally
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. 2007 Supp. 38-2243,
16 38-2244 and 38-2255 and K.S.A. 60-1607, and amendments thereto;

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

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

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

27 (b) As used in this section, “order” includes any order issued by a
28 municipal or district court.

29 (c) *No protective order, as set forth in this section, shall be construed*
30 *to prohibit an attorney, or any person acting on the attorney’s behalf,*
31 *who is representing the defendant in any civil or criminal proceeding,*
32 *from contacting the protected party for a legitimate purpose within the*
33 *scope of the civil or criminal proceeding. The attorney, or person acting*
34 *on the attorney’s behalf, shall be identified in any such contact.*

35 ~~(d)~~ (d) Violation of a protective order is a class A person
36 misdemeanor.

37 ~~(e)~~ (e) This section shall be part of and supplemental to the Kansas
38 criminal code.

39 Sec. 3. K.S.A. 60-31a06 is hereby amended to read as follows: 60-
40 31a06. (a) The court may issue a protection from stalking order granting
41 any of the following orders:

42 (1) Restraining the defendant from following, harassing, telephoning,
43 contacting or otherwise communicating with the victim. Such order shall

1 contain a statement that if such order is violated such violation may consti-
2 tute stalking as provided in K.S.A. 21-3438, and amendments thereto,
3 and violation of a protective order as provided in K.S.A. 21-3843, and
4 amendments thereto.

5 (2) Restraining the defendant from abusing, molesting or interfering
6 with the privacy rights of the victim. Such order shall contain a statement
7 that if such order is violated, such violation may constitute stalking as
8 provided in K.S.A. 21-3438, and amendments thereto, assault as provided
9 in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A.
10 21-3412, and amendments thereto, and violation of a protective order as
11 provided in K.S.A. 21-3843, and amendments thereto.

12 (3) Restraining the defendant from entering upon or in the victim's
13 residence or the immediate vicinity thereof. Such order shall contain a
14 statement that if such order is violated, such violation shall constitute
15 criminal trespass as provided in subsection (a)(1)(C) of K.S.A. 21-3721,
16 and amendments thereto, and violation of a protective order as provided
17 in K.S.A. 21-3843, and amendments thereto.

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

20 (b) A protection from stalking order shall remain in effect until mod-
21 ified or dismissed by the court and shall be for a fixed period of time not
22 to exceed one year, except that, on motion of the plaintiff, such period
23 may be extended for one additional year. Before the expiration of an order
24 for protection from stalking, a victim, or a parent on behalf of the victim,
25 may request an extension of the protection from stalking order for up to
26 one additional year on showing of continuing threat of stalking.

27 (c) The court may amend its order at any time upon motion filed by
28 either party.

29 (d) The court shall assess costs against the defendant and may award
30 attorney fees to the victim in any case in which the court issues a protec-
31 tion from stalking order pursuant to this act. The court may award attor-
32 ney fees to the defendant in any case where the court finds that the
33 petition to seek relief pursuant to this act is without merit.

34 (e) *A no contact or restraining provision in a protective order issued*
35 *pursuant to this section shall not be construed to prevent:*

36 (1) *Contact between the attorneys representing the parties;*

37 (2) *a party from appearing at a scheduled court or administrative*
38 *hearing; or*

39 (3) *a defendant or defendant's attorney from sending the plaintiff cop-*
40 *ies of any legal pleadings filed in court relating to civil or criminal matters*
41 *presently relevant to the plaintiff.*

42 Sec. 4. K.S.A. 21-3438, 21-3843 and 60-31a06 are hereby repealed.

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