

## HOUSE BILL No. 2748

By Committee on Judiciary

Requested by Representatives Featherson and Neelly

2-6

1 AN ACT concerning civil actions; relating to the protection from abuse act  
2 and the protection from stalking, sexual assault or human trafficking  
3 act; increasing the time of initial orders and possible extensions;  
4 amending K.S.A. 60-3107 and 60-31a06 and repealing the existing  
5 sections.

6

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

8 Section 1. K.S.A. 60-3107 is hereby amended to read as follows: 60-  
9 3107. (a) The court may approve any consent agreement to bring about a  
10 cessation of abuse of the plaintiff or minor children or grant any of the  
11 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 K.S.A. 21-5412(a), and amendments thereto, battery as defined  
19 in K.S.A. 21-5413(a), and amendments thereto, domestic battery as  
20 defined in K.S.A. 21-5414, and amendments thereto, and violation of a  
21 protective order as defined in K.S.A. 21-5924, and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

28     (c) (1) Any order entered under the protection from abuse act shall  
29 not be modified by a subsequent ex parte or temporary order issued in any  
30 action, except as provided in paragraph (4).

31     (2) (A) Any order entered under the protection from abuse act may be  
32 modified by a subsequent final order pursuant to a hearing or an agreement  
33 of the parties issued in any action, except as provided in paragraph (4).

34     (B) Any inconsistent order entered pursuant to this subsection shall  
35 be specific in its terms and reference the protection from abuse order and  
36 parts of the order being modified. A copy of the order shall be filed in both  
37 actions.

38     (C) The court shall consider whether the actions should be  
39 consolidated in accordance with K.S.A. 60-242, and amendments thereto.

40     (3) (A) On sworn testimony to support a showing of good cause and  
41 as authorized by K.S.A. 23-3201 through 23-3207 and 23-3218, and  
42 amendments thereto, orders issued under the protection from abuse act  
43 may modify orders regarding legal custody, residency and parenting time

1 previously issued in an action for:

2 (i) The determination of parentage filed pursuant to article 22 of  
3 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or  
4 K.S.A. 38-1101 et seq. prior to their transfer or repeal; or

5 (ii) divorce, separate maintenance or annulment filed pursuant to  
6 article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments  
7 thereto, or K.S.A. 60-1601 et seq., prior to their transfer or repeal.

8 (B) On sworn testimony to support a showing of good cause, orders  
9 issued under the protection from abuse act may modify interlocutory  
10 orders issued pursuant to K.S.A. 23-2707, and amendments thereto.

11 (C) For purposes of this paragraph, immediate and present danger of  
12 abuse to the plaintiff or minor children shall constitute good cause.

13 (4) (A) Any legal custody or parenting time order, or order relating to  
14 the best interests of a child, issued pursuant to the revised Kansas code for  
15 care of children or the revised Kansas juvenile justice code, shall be  
16 binding and shall take precedence over any such custody or parenting  
17 order involving the same child issued under the protection from abuse act,  
18 until jurisdiction under the revised Kansas code for care of children or the  
19 revised Kansas juvenile justice code is terminated.

20 (B) Any inconsistent legal custody or parenting order issued in the  
21 revised Kansas code for care of children case or the revised Kansas  
22 juvenile justice code case shall be specific in its terms, reference any  
23 preexisting protection from abuse order and the custody being modified,  
24 and a copy of such order shall be filed in the preexisting protection from  
25 abuse case.

26 (d) If the parties to an action under the protection from abuse act are  
27 not married to each other and one party owns the residence or household,  
28 the court shall not have the authority to grant possession of the residence  
29 or household under subsection (a)(2) to the exclusion of the party who  
30 owns ~~it~~ *such residence or household*.

31 (e) (1) Subject to the provisions of subsections (b), (c) and (d), a  
32 protective order or approved consent agreement shall remain in effect until  
33 modified or dismissed by the court and shall be for a fixed period of time  
34 not less than one year and not more than ~~two~~ *five* years, except as provided  
35 in paragraphs (1) and (2) and (3).

36 (1)(2) Upon motion of the plaintiff, such period may be extended for  
37 an additional period of not less than one year and not more than ~~three~~ *five*  
38 years.

39 (2)(3) Upon verified motion of the plaintiff and after the defendant  
40 has been personally served with a copy of the motion and has had an  
41 opportunity to present evidence and cross-examine witnesses at a hearing  
42 on the motion, the court shall extend a protective order for not less than  
43 one additional year and may extend the protective order up to the lifetime

1 of the defendant if the court determines by a preponderance of the  
2 evidence that the defendant has:

3 (A) Violated a valid protection order;

4 (B) previously violated a valid protection order; or

5 (C) been convicted of a person felony or any conspiracy, criminal  
6 solicitation or attempt thereof, under the laws of Kansas or the laws of any  
7 other jurisdiction which are substantially similar to such person felony,  
8 committed against the plaintiff or any member of the plaintiff's household.

9 (4) No service fee shall be required for a motion filed pursuant to this  
10 subsection.

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

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

15 (h) If a person enters or remains on premises or property violating an  
16 order issued pursuant to subsection (a)(2), such violation shall constitute  
17 criminal trespass as defined in K.S.A. 21-5808(a)(1)(C), and amendments  
18 thereto, and violation of a protective order as defined in K.S.A. 21-5924,  
19 and amendments thereto. If a person abuses, molests or interferes with the  
20 privacy or rights of another violating an order issued pursuant to  
21 subsection (a)(1), such violation may constitute assault as defined in  
22 K.S.A. 21-5412(a), and amendments thereto, battery as defined in K.S.A.  
23 21-5413(a), and amendments thereto, domestic battery as defined in  
24 K.S.A. 21-5414, and amendments thereto, and violation of a protective  
25 order as defined in K.S.A. 21-5924, and amendments thereto.

26 Sec. 2. K.S.A. 60-31a06 is hereby amended to read as follows: 60-  
27 31a06. (a) The court may issue a protection from stalking, sexual assault or  
28 human trafficking order granting any one or more of the following orders:

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

35 (2) Restraining the defendant from abusing, molesting or interfering  
36 with the privacy rights of the victim. The order shall contain a statement  
37 that, if the order is violated, the violation may constitute stalking as  
38 defined in K.S.A. 21-5427, and amendments thereto, assault as defined in  
39 K.S.A. 21-5412(a), and amendments thereto, battery as defined in K.S.A.  
40 21-5413(a), and amendments thereto, and violation of a protective order as  
41 defined in K.S.A. 21-5924, and amendments thereto.

42 (3) Restraining the defendant from entering upon or in the victim's  
43 residence or the immediate vicinity thereof. The order shall contain a

1 statement that, if the order is violated, the violation shall constitute  
2 criminal trespass as defined in K.S.A. 21-5808(a)(1)(C), and amendments  
3 thereto, and violation of a protective order as defined in K.S.A. 21-5924,  
4 and amendments thereto.

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

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

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

26 (b) A protection from stalking, sexual assault or human trafficking  
27 order shall remain in effect until modified or dismissed by the court and  
28 shall be for a fixed period of time not less than one year and not more than  
29 ~~two~~ five years, except as provided in subsections (c) and (d).

30 (c) Upon motion of the plaintiff the court may extend the order for an  
31 additional period of not less than one year and not more than ~~three~~ five  
32 years.

33 (d) (1) Upon verified motion of the plaintiff and after the defendant  
34 has been personally served with a copy of the motion and has had an  
35 opportunity to present evidence and cross-examine witnesses at a hearing  
36 on the motion, the court shall extend a protective order for not less than  
37 two additional years and up to a period of time not to exceed the lifetime  
38 of the defendant; if the court determines by a preponderance of the  
39 evidence that the defendant has:

40 (1)(A) Violated a valid protection order;  
41 (2)(B) previously violated a valid protection order; or  
42 (3)(C) been convicted of a person felony or any conspiracy, criminal  
43 solicitation or attempt thereof, under the laws of Kansas or the laws of any

1 other jurisdiction which are substantially similar to such person felony,  
2 committed against the plaintiff or any member of the plaintiff's household.

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

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

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

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

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

16 (2) a party from appearing at a scheduled court or administrative  
17 hearing; or

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

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

25 Sec. 3. K.S.A. 60-3107 and 60-31a06 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its  
27 publication in the statute book.