

HOUSE BILL No. 2748

By Committee on Judiciary

Requested by Representatives Featherson and Neelly

2-6

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

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

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

(1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties, including, but not limited to, utilizing any electronic tracking system or acquiring tracking information to determine the other person's location, movement or travel patterns. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in K.S.A. 21-5412(a), and amendments thereto, battery as defined in K.S.A. 21-5413(a), and amendments thereto, domestic battery as defined in K.S.A. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 21-5924, and amendments thereto.

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

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

(4) Awarding temporary custody and residency and establishing 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.