

HB 2613  
House Corrections and Juvenile Justice Committee  
February 6, 2012

**PROPONENT**

Chairwoman Colloton and Members of the Committee;

I appear today on behalf of the Kansas Coalition Against Sexual and Domestic Violence in support of HB 2613. The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a statewide non-profit organization whose membership is the 29 sexual and domestic violence programs serving victims across Kansas.

Currently in Kansas, victims of domestic violence, dating violence, and stalking do have access under the law to civil protection orders. However, there are current limitations that exist with these orders. Specifically, current PFA or PFS orders in Kansas are only effective for a maximum period of two years, even with a victim-initiated request to extend the order. Domestic violence and stalking are not crimes of isolated incidents but, rather, of consistent, long-term patterns of physical violence, sexual violence, intimidation, monitoring, isolation, and other tactics. For this reason, victims oftentimes face long-term risks to their safety due to the perpetrator's abuse and therefore often require protection from the perpetrator throughout their lives. HB 2613 provides victims of abuse and stalking with long-term protections and provides the necessary supports to enhance the safety of victims in Kansas.

Additionally, it is not uncommon for perpetrators of abuse and stalking to violate the protective orders issued against them. HB 2613 provides a victim the opportunity to seek an extended order and increase the potential penalty for the abuser or stalker if future violations occur.

While we do support HB 2613, we have attached two balloons clarifying our concerns with the current language of the bill. First, the current language requires personal service for everything under the PFA and PFS acts, thereby creating a conflict with notice statutes included in the PFAA and PFSA that are not included in HB2613. Those statutes, 60-3108/60-31a07, provide that final orders shall be "issued" to the plaintiff and defendant, as well as to law enforcement. The rationale for the no personal service requirement in 60-3108 and 60-31a07, is that the defendant already received personal service of the temporary order and petition (60-3104/60-31a04). Once the defendant has received personal service of the protection order action, the defendant has either defaulted on the final hearing or the defendant is at the final hearing where the order is

issued and has received the order as a result of being there in person. Neither the petitioner nor the sheriff should have to hunt down a defendant who defaulted on a due process hearing to effect personal service a second time.

Our second balloon addresses language on page 5 and page 7. There is an inconsistency between the two amendments. The language in these two sections should be consistent.

Finally, we support the change addressed in the bill that a PFS could be filed where the victim lives, not just where the stalking occurs.

Thank you for your consideration of this bill and KCSDV's comments.

I will stand for questions.

Submitted by,  
Sara Rust-Martin  
Director of Legal and Policy  
KCSDV

1 contacting 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~~ this section  
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

1 owns it.

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

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

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

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

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

21 (h) If a person enters or remains on premises or property violating an  
 22 order issued pursuant to subsection (a)(2), such violation shall constitute  
 23 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp.  
 24 21-5808, and amendments thereto, and violation of a protective order as  
 25 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. If a  
 26 person abuses, molests or interferes with the privacy or rights of another  
 27 violating an order issued pursuant to subsection (a)(1), such violation may  
 28 constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
 29 5412, and amendments thereto, battery as defined in subsection (a) of  
 30 K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as  
 31 defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and  
 32 violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924,  
 33 and amendments thereto.

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

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

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.

this section
--------------

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~~

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

18 (d) (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 (e) (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