

**SENATE BILL No. 267**

By Committee on Ways and Means

2-16

1 AN ACT concerning domestic violence; defining primary aggressor in the  
2 Kansas criminal code, the Kansas code of criminal procedure and the  
3 protection from abuse act; requiring law enforcement policies to direct  
4 that arrest is the preferred response only with respect to the primary  
5 aggressor; amending K.S.A. 2022 Supp. 21-5111, 22-2307 and 60-3107  
6 and repealing the existing sections.

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

9 Section 1. K.S.A. 2022 Supp. 21-5111 is hereby amended to read as  
10 follows: 21-5111. The following definitions shall apply when the words  
11 and phrases defined are used in this code, except when a particular context  
12 clearly requires a different meaning.

13 (a) "Act" includes a failure or omission to take action.

14 (b) "Another" means a person or persons as defined in this code other  
15 than the person whose act is claimed to be criminal.

16 (c) "Conduct" means an act or a series of acts and the accompanying  
17 mental state.

18 (d) "Conviction" includes a judgment of guilt entered upon a plea of  
19 guilty.

20 (e) "Deception" means knowingly creating or reinforcing a false  
21 impression, including false impressions as to law, value, intention or other  
22 state of mind. "Deception" as to a person's intention to perform a promise  
23 shall not be inferred from the fact alone that such person did not  
24 subsequently perform the promise. Falsity as to matters having no  
25 pecuniary significance, or puffing by statements unlikely to deceive  
26 reasonable persons, is not "deception".

27 (f) "Deprive permanently" means to:

28 (1) Take from the owner the possession, use or benefit of property,  
29 without an intent to restore the same;

30 (2) retain property without intent to restore the same or with intent to  
31 restore it to the owner only if the owner purchases or leases it back, or  
32 pays a reward or other compensation for its return; or

33 (3) sell, give, pledge or otherwise dispose of any interest in property  
34 or subject it to the claim of a person other than the owner.

35 (g) "Distribute" means the actual or constructive transfer from one  
36 person to another of some item whether or not there is an agency

1 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,  
2 furnishing, buying for, delivering, giving, or any act that causes or is  
3 intended to cause some item to be transferred from one person to another.  
4 "Distribute" does not include acts of administering, dispensing or  
5 prescribing a controlled substance as authorized by the pharmacy act of the  
6 state of Kansas, the uniform controlled substances act, or otherwise  
7 authorized by law.

8 (h) "DNA" means deoxyribonucleic acid.

9 (i) "Domestic violence" means an act or threatened act of violence  
10 against a person with whom the offender is involved or has been involved  
11 in a dating relationship, or an act or threatened act of violence against a  
12 family or household member by a family or household member. "Domestic  
13 violence"~~also~~ includes any other crime committed against a person or  
14 against property, or any municipal ordinance violation against a person or  
15 against property, when directed against a person with whom the offender is  
16 involved or has been involved in a dating relationship or when directed  
17 against a family or household member by a family or household member.  
18 For the purposes of this ~~definition~~ subsection:

19 (1) "Dating relationship" means a social relationship of a romantic  
20 nature. In addition to any other factors the court deems relevant, the trier  
21 of fact may consider the following when making a determination of  
22 whether a relationship exists or existed: Nature of the relationship, length  
23 of time the relationship existed, frequency of interaction between the  
24 parties and time since termination of the relationship, if applicable.

25 (2) "Family or household member" means persons 18 years of age or  
26 older who are spouses, former spouses, parents or stepparents and children  
27 or stepchildren, and persons who are presently residing together or have  
28 resided together in the past, and persons who have a child in common  
29 regardless of whether they have been married or have lived together at any  
30 time. "Family or household member"~~also~~ includes a man and woman if  
31 the woman is pregnant and the man is alleged to be the father; regardless  
32 of whether they have been married or have lived together at any time.

33 (j) "Domestic violence offense" means any crime committed whereby  
34 the underlying factual basis includes an act of domestic violence.

35 (k) "Dwelling" means a building or portion thereof, a tent, a vehicle  
36 or other enclosed space that is used or intended for use as a human  
37 habitation, home or residence.

38 (l) "Expungement" means the sealing of records such that the records  
39 are unavailable except to the petitioner and criminal justice agencies as  
40 provided by K.S.A. 22-4701 et seq., and amendments thereto, and except  
41 as provided in this act.

42 (m) "Firearm" means any weapon designed or having the capacity to  
43 propel a projectile by force of an explosion or combustion.

1 (n) "Forcible felony" includes any treason, murder, voluntary  
2 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated  
3 battery, aggravated sodomy and any other felony that involves the use or  
4 threat of physical force or violence against any person.

5 (o) "Intent to defraud" means an intention to deceive another person,  
6 and to induce such other person, in reliance upon such deception, to  
7 assume, create, transfer, alter or terminate a right, obligation or power with  
8 reference to property.

9 (p) "Law enforcement officer" means:

10 (1) Any person who by virtue of such person's office or public  
11 employment is vested by law with a duty to maintain public order or to  
12 make arrests for crimes, whether that duty extends to all crimes or is  
13 limited to specific crimes;

14 (2) any officer of the Kansas department of corrections or, for the  
15 purposes of K.S.A. 2022 Supp. 21-5412 and 21-5413(d), and amendments  
16 thereto, any employee of the Kansas department of corrections; or

17 (3) any university police officer or campus police officer, as defined  
18 in K.S.A. 22-2401a, and amendments thereto.

19 (q) "Obtain" means to bring about a transfer of interest in or  
20 possession of property, whether to the offender or to another.

21 (r) "Obtains or exerts control" over property includes, but is not  
22 limited to, the taking, carrying away, sale, conveyance, transfer of title to,  
23 interest in, or possession of property.

24 (s) "Owner" means a person who has any interest in property.

25 (t) "Person" means an individual, public or private corporation,  
26 government, partnership; or unincorporated association.

27 (u) "Personal property" means goods, chattels, effects, evidences of  
28 rights in action and all written instruments by which any pecuniary  
29 obligation, or any right or title to property real or personal, shall be  
30 created, acknowledged, assigned, transferred, increased, defeated,  
31 discharged; or dismissed.

32 (v) "Possession" means knowingly having joint or exclusive control  
33 over an item or knowingly keeping some item in a place where the person  
34 has some measure of access and right of control.

35 (w) *"Primary aggressor" means the person determined to be the most*  
36 *significant aggressor; rather than the first aggressor. In determining the*  
37 *primary aggressor, the court or an officer shall consider the intent of the*  
38 *law to protect victims of domestic violence from continuing abuse, the*  
39 *threats creating fear of physical injury, the history of domestic violence*  
40 *between the persons involved, the nature of the injuries suffered or*  
41 *inflicted on another and whether either person acted in self-defense.*

42 (x) "Property" means anything of value, tangible or intangible, real or  
43 personal.

1       ~~(x)~~(y) "Prosecution" means all legal proceedings by which a person's  
2 liability for a crime is determined.

3       ~~(y)~~(z) "Prosecutor" means the same as prosecuting attorney in K.S.A.  
4 22-2202, and amendments thereto.

5       ~~(z)~~(aa) "Public employee" is a person employed by or acting for the  
6 state or by or for a county, municipality or other subdivision or  
7 governmental instrumentality of the state for the purpose of exercising  
8 their respective powers and performing their respective duties, and who is  
9 not a public officer.

10       ~~(aa)~~(bb) "Public officer" includes the following, whether elected or  
11 appointed:

12       (1) An executive or administrative officer of the state, or a county,  
13 municipality or other subdivision or governmental instrumentality of or  
14 within the state;

15       (2) a member of the legislature or of a governing board of a county,  
16 municipality, or other subdivision of or within the state;

17       (3) a judicial officer, which shall include a judge of the district court,  
18 juror, master or any other person appointed by a judge or court to hear or  
19 determine a cause or controversy;

20       (4) a hearing officer, which shall include any person authorized by  
21 law or private agreement, to hear or determine a cause or controversy and  
22 who is not a judicial officer;

23       (5) a law enforcement officer; and

24       (6) any other person exercising the functions of a public officer under  
25 color of right.

26       ~~(bb)~~(cc) "Real property" or "real estate" means every estate, interest,  
27 and right in lands, tenements and hereditaments.

28       ~~(ee)~~(dd) "Solicit" or "solicitation" means to command, authorize,  
29 urge, incite, request or advise another to commit a crime.

30       ~~(dd)~~(ee) "State" or "this state" means the state of Kansas and all land  
31 and water in respect to which the state of Kansas has either exclusive or  
32 concurrent jurisdiction, and the air space above such land and water.  
33 "Other state" means any state or territory of the United States, the District  
34 of Columbia and the Commonwealth of Puerto Rico.

35       ~~(ee)~~(ff) "Stolen property" means property over which control has been  
36 obtained by theft.

37       ~~(ff)~~(gg) "Threat" means a communicated intent to inflict physical or  
38 other harm on any person or on property.

39       ~~(gg)~~(hh) "Written instrument" means any paper, document or other  
40 instrument containing written or printed matter or the equivalent thereof,  
41 used for purposes of reciting, embodying, conveying or recording  
42 information, and any money, token, stamp, seal, badge, trademark, or other  
43 evidence or symbol of value, right, privilege or identification that is

1 capable of being used to the advantage or disadvantage of some person.

2 Sec. 2. K.S.A. 2022 Supp. 22-2307 is hereby amended to read as  
3 follows: 22-2307. (a) All law enforcement agencies in this state shall adopt  
4 written policies regarding domestic violence calls as provided in  
5 subsections (b) and (c). These policies shall be made available to all  
6 officers of such agency.

7 (b) Such written policies shall include, but not be limited to, the  
8 following:

9 (1) A statement directing that when a law enforcement officer  
10 determines that there is probable cause to believe that a crime or offense  
11 involving domestic violence, as defined in K.S.A. 2022 Supp. 21-5111,  
12 and amendments thereto, has been committed, the officer shall, without  
13 undue delay, arrest the person for which the officer has probable cause to  
14 believe committed the crime or offense if such person's actions were not  
15 an act of defense of a person or property as provided in K.S.A. 2022 Supp.  
16 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and amendments thereto;

17 (2) a statement that nothing shall be construed to require a law  
18 enforcement officer to:

19 (A) Arrest either party involved in an alleged act of domestic  
20 violence when the law enforcement officer determines there is no probable  
21 cause to believe that a crime or offense has been committed; or

22 (B) arrest both parties involved in an alleged act of domestic violence  
23 when both claim to have been victims of such domestic violence;

24 (3) a statement directing that if a law enforcement officer receives  
25 complaints of domestic violence from two or more opposing persons, the  
26 officer shall evaluate each complaint separately to determine if there is  
27 probable cause that each accused person committed a crime or offense and  
28 their actions were not an act of defense of a person or property as provided  
29 in K.S.A. 2022 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231,  
30 and amendments thereto, *and to determine who was the primary*  
31 *aggressor. The statement shall direct that arrest is the preferred response*  
32 *only with respect to the primary aggressor and not the preferred response*  
33 *with respect to a person who acts in a reasonable manner in defense of*  
34 *self or others;*

35 (4) a statement defining domestic violence *and primary aggressor* in  
36 accordance with K.S.A. 2022 Supp. 21-5111, and amendments thereto;

37 (5) a statement describing the dispatchers' responsibilities;

38 (6) a statement describing the responding officers' responsibilities and  
39 procedures to follow when responding to a domestic violence call and the  
40 suspect is at the scene;

41 (7) a statement regarding procedures when the suspect has left the  
42 scene of the crime;

43 (8) procedures for both misdemeanor and felony cases;

1 (9) procedures for law enforcement officers to follow when handling  
2 domestic violence calls involving court orders, including protection from  
3 abuse orders, restraining orders and a protective order issued by a court of  
4 any state or Indian tribe;

5 (10) a statement that the law enforcement agency shall provide the  
6 following information to victims, in writing:

7 (A) Availability of emergency and medical telephone numbers, if  
8 needed;

9 (B) the law enforcement agency's report number;

10 (C) the address and telephone number of the prosecutor's office the  
11 victim should contact to obtain information about victims' rights pursuant  
12 to K.S.A. 74-7333 and 74-7335, and amendments thereto;

13 (D) the name and address of the crime victims' compensation board  
14 and information about possible compensation benefits;

15 (E) advise the victim that the details of the crime may be made  
16 public;

17 (F) advise the victim of such victims' rights under K.S.A. 74-7333  
18 and 74-7335, and amendments thereto; and

19 (G) advise the victim of known available resources which may assist  
20 the victim; and

21 (11) whether an arrest is made or not, a standard offense report shall  
22 be completed on all such incidents and sent to the Kansas bureau of  
23 investigation.

24 (c) Such written policies shall provide that when an arrest is made for  
25 a domestic violence offense as defined in K.S.A. 2022 Supp. 21-5111, and  
26 amendments thereto, including an arrest for violation of a protection order  
27 as defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto, the  
28 officer shall provide the victim information related to:

29 (A) The fact that in some cases the person arrested can be released  
30 from custody in a short amount of time;

31 (B) the fact that in some cases a bond condition may be imposed on  
32 the person arrested that prohibits contact with the victim for 72 hours, and  
33 that if the person arrested contacts the victim during that time, the victim  
34 should notify law enforcement immediately; and

35 (C) any available services within the jurisdiction to monitor custody  
36 changes of the person being arrested, including, but not limited to, the  
37 Kansas victim information and notification everyday service if available in  
38 such jurisdiction.

39 (d) All law enforcement agencies shall provide training to law  
40 enforcement officers about the policies adopted pursuant to this section.

41 Sec. 3. K.S.A. 2022 Supp. 60-3107 is hereby amended to read as  
42 follows: 60-3107. (a) The court may approve any consent agreement to  
43 bring about a cessation of abuse of the plaintiff or minor children or grant

1 any of the following orders:

2 (1) Restraining the defendant from abusing, molesting or interfering  
3 with the privacy or rights of the plaintiff or of any minor children of the  
4 parties. Such order shall contain a statement that if such order is violated,  
5 such violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A.  
6 2022 Supp. 21-5412(a), and amendments thereto, battery as defined in  
7 ~~subsection (a) of~~ K.S.A. 2022 Supp. 21-5413(a), and amendments thereto,  
8 domestic battery as defined in K.S.A. 2022 Supp. 21-5414, and  
9 amendments thereto, and violation of a protective order as defined in  
10 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

11 (2) Granting possession of the residence or household to the plaintiff  
12 to the exclusion of the defendant, and further restraining the defendant  
13 from entering or remaining upon or in such residence or household,  
14 subject to the limitation of subsection (d). Such order shall contain a  
15 statement that if such order is violated, such violation shall constitute  
16 criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2022 Supp.  
17 21-5808(a)(1)(C), and amendments thereto, and violation of a protective  
18 order as defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto.  
19 The court may grant an order, which shall expire 60 days following the  
20 date of issuance, restraining the defendant from cancelling utility service  
21 to the residence or household.

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

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

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

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

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

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

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

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

43 (b) No protection from abuse order shall be entered against the

1 plaintiff unless:

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

4 (2) the plaintiff had reasonable notice of the written cross or counter  
5 petition by personal service as provided in ~~subsection (d)~~ of K.S.A. 60-  
6 3104(d), and amendments thereto; and

7 (3) the issuing court made specific findings of abuse against both the  
8 plaintiff and the defendant and determined that ~~both parties acted primarily~~  
9 ~~as aggressors and~~ neither party acted primarily in self-defense *and the*  
10 *plaintiff acted as the primary aggressor. As used in this paragraph,*  
11 *"primary aggressor" means the same as defined in K.S.A. 2022 Supp. 21-*  
12 *5111, and amendments thereto.*

13 (c) Any order entered under the protection from abuse act shall not be  
14 subject to modification on ex parte application or on motion for temporary  
15 orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their  
16 transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes  
17 Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and  
18 amendments thereto. Orders previously issued in an action filed pursuant  
19 to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or  
20 27 of chapter 23 of the Kansas Statutes Annotated, and amendments  
21 thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be  
22 subject to modification under the protection from abuse act only as to  
23 those matters subject to modification by the terms of K.S.A. 2022 Supp.  
24 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the  
25 Kansas Statutes Annotated, and amendments thereto, and on sworn  
26 testimony to support a showing of good cause. Immediate and present  
27 danger of abuse to the plaintiff or minor children shall constitute good  
28 cause. If an action is filed pursuant to K.S.A. 2022 Supp. 23-3201 through  
29 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes  
30 Annotated, and amendments thereto, during the pendency of a proceeding  
31 filed under the protection from abuse act or while an order issued under  
32 the protection from abuse act is in effect, the court, on final hearing or on  
33 agreement of the parties, may issue final orders authorized by K.S.A. 2022  
34 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of  
35 chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that  
36 are inconsistent with orders entered under the protection from abuse act.  
37 Any inconsistent order entered pursuant to this subsection shall be specific  
38 in its terms, reference the protection from abuse order and parts thereof  
39 being modified and a copy thereof shall be filed in both actions. The court  
40 shall consider whether the actions should be consolidated in accordance  
41 with K.S.A. 60-242, and amendments thereto. Any custody or parenting  
42 time order, or order relating to the best interests of a child, issued pursuant  
43 to the revised Kansas code for care of children or the revised Kansas

1 juvenile justice code, shall be binding and shall take precedence over any  
 2 such custody or parenting order involving the same child issued under the  
 3 protection from abuse act, until jurisdiction under the revised Kansas code  
 4 for care of children or the revised Kansas juvenile justice code is  
 5 terminated. Any inconsistent custody or parenting order issued in the  
 6 revised Kansas code for care of children case or the revised Kansas  
 7 juvenile justice code case shall be specific in its terms, reference any  
 8 preexisting protection from abuse order and the custody being modified,  
 9 and a copy of such order shall be filed in the preexisting protection from  
 10 abuse case.

11 (d) If the parties to an action under the protection from abuse act are  
 12 not married to each other and one party owns the residence or household,  
 13 the court shall not have the authority to grant possession of the residence  
 14 or household under subsection (a)(2) to the exclusion of the party who  
 15 owns it.

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

20 (1) Upon motion of the plaintiff, such period may be extended for one  
 21 additional year.

22 (2) Upon verified motion of the plaintiff and after the defendant has  
 23 been personally served with a copy of the motion and has had an  
 24 opportunity to present evidence and cross-examine witnesses at a hearing  
 25 on the motion, *the court shall extend a protective order for not less than*  
 26 *two additional years and may extend the protective order up to the lifetime*  
 27 *of the defendant* if the court determines by a preponderance of the  
 28 evidence that the defendant has:

29 (A) Violated a valid protection order ~~or (A) has;~~

30 (B) previously violated a valid protection order, ~~or (B) has; or~~

31 (C) been convicted of a person felony or any conspiracy, criminal  
 32 solicitation or attempt thereof, under the laws of Kansas or the laws of any  
 33 other jurisdiction which are substantially similar to such person felony,  
 34 committed against the plaintiff or any member of the plaintiff's household;  
 35 ~~the court shall extend a protective order for not less than two additional~~  
 36 ~~years and may extend the protective order up to the lifetime of the~~  
 37 ~~defendant.~~

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

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

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

1 (h) If a person enters or remains on premises or property violating an  
2 order issued pursuant to subsection (a)(2), such violation shall constitute  
3 criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A. 2022 Supp.  
4 21-5808(a)(1)(C), and amendments thereto, and violation of a protective  
5 order as defined in K.S.A. 2022 Supp. 21-5924, and amendments thereto.  
6 If a person abuses, molests or interferes with the privacy or rights of  
7 another violating an order issued pursuant to subsection (a)(1), such  
8 violation may constitute assault as defined in ~~subsection (a)~~ of K.S.A.  
9 2022 Supp. 21-5412(a), and amendments thereto, battery as defined in  
10 ~~subsection (a)~~ of K.S.A. 2022 Supp. 21-5413(a), and amendments thereto,  
11 domestic battery as defined in K.S.A. 2022 Supp. 21-5414, and  
12 amendments thereto, and violation of a protective order as defined in  
13 K.S.A. 2022 Supp. 21-5924, and amendments thereto.

14 Sec. 4. K.S.A. 2022 Supp. 21-5111, 22-2307 and 60-3107 are hereby  
15 repealed.

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