

SENATE BILL No. 281

AN ACT concerning protection orders; relating to the protection from abuse act; the protection from stalking, sexual assault or human trafficking act; amending K.S.A. 60-3105 and K.S.A. 2017 Supp. 21-5924, 60-3104, 60-31a01, 60-31a02, 60-31a03, 60-31a04, 60-31a05, 60-31a06, 60-31a07, 60-31a08 and 60-31a09 and repealing the existing sections.

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

Section 1. K.S.A. 2017 Supp. 21-5924 is hereby amended to read as follows: 21-5924. (a) Violation of a protective order is knowingly violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 2017 Supp. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;

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

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

(6) a protection from stalking ~~or~~, sexual assault *or human trafficking* order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(b) (1) Violation of a protective order is a class A person misdemeanor, except as provided in subsection (b)(2).

(2) Violation of an extended protective order as described in K.S.A. 60-3107(e)(2), and amendments thereto, and K.S.A. 60-31a06(d), and amendments thereto, is a severity level 6, person felony.

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

(d) As used in this section, "order" includes any order issued by a municipal or district court.

Sec. 2. K.S.A. 2017 Supp. 60-3104 is hereby amended to read as follows: 60-3104. (a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any ~~district~~ judge *of the district court* or with the clerk of the court alleging abuse by another intimate partner or household member.

(b) ~~A parent of or an adult residing with a minor child~~ *The following persons* may seek relief under the protection from abuse act on behalf of ~~the~~ a minor child by filing a verified petition with any ~~district~~ judge *of the district court* or with the clerk of the court alleging abuse by another intimate partner or household member: *(1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.*

(c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

(d) Service of process served under this section shall be by personal service and not by certified mail return receipt requested. No docket fee shall be required for proceedings under the protection from abuse act.

(e) If the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 60-3105 is hereby amended to read as follows: 60-3105.

(a) When the court is unavailable, a verified petition, accompanied by a proposed order, may be presented to any ~~district~~ judge *of the district court*. The judge may grant relief in accordance with ~~subsection (a)(1);~~

~~(2), (4) or (5)~~ of K.S.A. 60-3107(a)(1), (2), (4) or (5), and amendments thereto, or any combination thereof, if the judge deems it necessary to protect the plaintiff or minor child or children from abuse. An emergency order pursuant to this subsection may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor child or children shall constitute good cause for the entry of the emergency order.

(b) An emergency order issued under subsection (a) shall expire on 5:00 p.m. on the first day when the court resumes court business. At that time, the plaintiff may seek a temporary order from the court.

(c) The judge shall note on the petition and any order granted, including any documentation in support thereof, the filing date, together with the judge's signature, and shall deliver them to the clerk of the court on the next day of the resumption of business of the court.

Sec. 4. K.S.A. 2017 Supp. 60-31a01 is hereby amended to read as follows: 60-31a01. (a) K.S.A. 60-31a01 through 60-31a09, and amendments thereto, shall be known and may be cited as the protection from stalking ~~or~~, sexual assault ~~or~~ human trafficking act.

(b) This act shall be liberally construed to protect victims of stalking ~~and~~, sexual assault ~~and~~ human trafficking and to facilitate access to judicial protection for *victims of stalking* ~~and~~, sexual assault ~~victims and~~ human trafficking, whether represented by counsel or ~~proceedings~~ proceeding pro se.

Sec. 5. K.S.A. 2017 Supp. 60-31a02 is hereby amended to read as follows: 60-31a02. As used in the protection from stalking ~~or~~, sexual assault ~~or~~ human trafficking act:

(a) "*Human trafficking*" means any act that would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or an act that, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 2017 Supp. 21-6419, and amendments thereto.

(b) "*Human trafficking victim*" means a person who has been subjected to an act that would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 21-6422, and amendments thereto, or has committed an act that, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 21-6419, and amendments thereto.

(c) "Sexual assault" means:

(1) A nonconsensual sexual act; or

(2) an attempted sexual act against another by force, threat of force, duress or when the person is incapable of giving consent.

~~(b)~~(d) "Stalking" means an intentional harassment of another person that places the other person in reasonable fear for that person's safety.

~~(c)~~(1) "Harassment" means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. "Harassment" shall include any course of conduct carried out through the use of an unmanned aerial system over or near any dwelling, occupied vehicle or other place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

~~(d)~~(2) "Course of conduct" means conduct consisting of two or more separate acts over a period of time, however short, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress. Constitutionally protected activity is not included within the meaning of "course of conduct."

(e) "Unmanned aerial system" means a powered, aerial vehicle that:

(1) Does not carry a human operator;

(2) uses aerodynamic forces to provide vehicle lift;

(3) may fly autonomously or be piloted remotely;

(4) may be expendable or recoverable; and

(5) may carry a lethal or nonlethal payload.

Sec. 6. K.S.A. 2017 Supp. 60-31a03 is hereby amended to read as follows: 60-31a03. The district courts shall have jurisdiction over all proceedings under the protection from stalking ~~or~~, sexual assault ~~or~~ human trafficking act.

Sec. 7. K.S.A. 2017 Supp. 60-31a04 is hereby amended to read as follows: 60-31a04. (a) A person may seek relief under the protection from stalking ~~or~~, sexual assault *or human trafficking* act by filing a verified petition with any ~~district~~ judge *of the district court* or clerk of the court. A verified petition must allege facts sufficient to show the following:

- (1) The name of the stalking ~~or victim~~, sexual assault victim *or human trafficking victim*;
- (2) the name of the defendant;
- (3) the dates on which the alleged stalking ~~or~~, sexual assault *or human trafficking* behavior occurred; and
- (4) the acts committed by the defendant that are alleged to constitute stalking ~~or~~, sexual assault *or human trafficking*.

(b) ~~A parent or an adult residing with a minor child~~ *The following persons* may seek relief under the protection from stalking ~~or~~, sexual assault *or human trafficking* act on behalf of ~~the~~ a minor child by filing a verified petition with the ~~district~~ judge *of the district court* or with the clerk of the court in the county where the stalking ~~or~~, sexual assault *or human trafficking* occurred: (1) *A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.*

(c) *The following persons may seek relief for a minor child who is alleged to be a human trafficking victim under the protection from stalking, sexual assault or human trafficking act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging acts committed by an individual that are alleged to constitute human trafficking: (1) A parent of the minor child; (2) an adult residing with the minor child; (3) the child's court-appointed legal custodian or court-appointed legal guardian; (4) a county or district attorney; or (5) the attorney general.*

(d) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.

~~(d)~~(e) Service of process served under this section shall be by personal service. No docket fee shall be required for proceedings under the protection from stalking ~~or~~, sexual assault *or human trafficking* act.

~~(e)~~(f) The victim's address and telephone number shall not be disclosed to the defendant or to the public, but only to authorized court or law enforcement personnel and to the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 8. K.S.A. 2017 Supp. 60-31a05 is hereby amended to read as follows: 60-31a05. (a) Within 21 days of the filing of a petition under the protection from stalking ~~or~~, sexual assault *or human trafficking* act a hearing shall be held at which the plaintiff must prove the allegation of stalking ~~or~~, sexual assault *or human trafficking* by a preponderance of the evidence and the defendant shall have an opportunity to present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing. At the hearing, the court shall advise the parties of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with K.S.A. 60-31a06, and amendments thereto, or any combination thereof, as it deems necessary to protect the victim from being stalked, *sexually assaulted or trafficked*. Temporary orders may be granted ex parte on presentation of a verified petition by the victim supporting a prima facie case of stalking ~~or~~, sexual assault *or human trafficking*.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

Sec. 9. K.S.A. 2017 Supp. 60-31a06 is hereby amended to read as follows: 60-31a06. (a) The court may issue a protection from stalking ~~or~~, sexual assault *or human trafficking* order granting any one or more of the following orders:

- (1) Restraining the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim. ~~Such~~ *The* order shall contain a statement that, if ~~such~~ *the* order is violated ~~such~~, *the* violation may constitute stalking as defined in K.S.A. 2017 Supp. 21-5427,

and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.

(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. ~~Such~~ The order shall contain a statement that, if ~~such~~ the order is violated, ~~such~~ the violation may constitute stalking as defined in K.S.A. 2017 Supp. 21-5427, and amendments thereto, assault as defined in K.S.A. 2017 Supp. 21-5412(a), and amendments thereto, battery as defined in K.S.A. 2017 Supp. 21-5413(a), and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.

(3) Restraining the defendant from entering upon or in the victim's residence or the immediate vicinity thereof. ~~Such~~ The order shall contain a statement that, if ~~such~~ the order is violated, ~~such~~ the violation shall constitute criminal trespass as defined in K.S.A. 2017 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.

(4) Restraining the defendant from committing or attempting to commit a sexual assault upon the victim. ~~Such~~ The order shall contain a statement that, if ~~such~~ the order is violated, ~~such~~ the violation shall constitute violation of a protective order, as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. ~~Such~~ The order shall also contain a statement that, if ~~such~~ the order is violated, ~~such~~ the violation may constitute a sex offense under article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such sex offense.

(5) *Restraining the defendant from following, harassing, telephoning, contacting, recruiting, harboring, transporting, or committing or attempting to commit human trafficking upon the human trafficking victim, or otherwise communicating with the human trafficking victim. The order shall contain a statement that, if the order is violated, the violation shall constitute violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. The order shall also contain a statement that, if the order is violated, the violation may constitute an offense under chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such offense.*

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

(b) A protection from stalking ~~or~~, sexual abuse *or human trafficking* order shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year except as provided in subsections (c) and (d).

(c) Upon motion of the plaintiff the court may extend the order for an additional year.

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

- (1) Violated a valid protection order;
- (2) previously violated a valid protection order; or
- (3) been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household.

No service fee shall be required for a motion filed pursuant to this subsection.

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

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

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

- (1) Contact between the attorneys representing the parties;
- (2) a party from appearing at a scheduled court or administrative hearing; or
- (3) a defendant or defendant’s attorney from sending the plaintiff copies of any legal pleadings filed in court relating to civil or criminal matters presently relevant to the plaintiff.

Sec. 10. K.S.A. 2017 Supp. 60-31a07 is hereby amended to read as follows: 60-31a07. A copy of any order under the protection from stalking ~~or~~, sexual assault *or human trafficking* act shall be issued to the victim, the defendant and the police department of the city where the victim resides. If the victim does not reside in a city or resides in a city with no police department, a copy of the order shall be issued to the sheriff of the county where the order is issued.

Sec. 11. K.S.A. 2017 Supp. 60-31a08 is hereby amended to read as follows: 60-31a08. Except as otherwise provided in the protection from stalking ~~or~~, sexual assault *or human trafficking* act, any proceedings under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and shall be in addition to any other available civil or criminal remedies.

Sec. 12. K.S.A. 2017 Supp. 60-31a09 is hereby amended to read as follows: 60-31a09. If, upon hearing, the court finds a violation of any order under the protection from stalking ~~or~~, sexual assault *or human trafficking* act, the court may find the defendant in contempt pursuant to K.S.A. 20-1204a, and amendments thereto.

Sec. 13. K.S.A. 60-3105 and K.S.A. 2017 Supp. 21-5924, 60-3104, 60-31a01, 60-31a02, 60-31a03, 60-31a04, 60-31a05, 60-31a06, 60-31a07, 60-31a08 and 60-31a09 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.