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Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ks.gov
www.kansasjudicialcouncil.org

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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Prof. Gillian Chadwick, Washburn University School of Law, and member of the Family Law Advisory Committee

DATE: February 7, 2023

Re: Proponent Testimony on 2023 H.B. 2185 – Regarding the use of short form notification service and alternative methods of service in the protection from abuse and protection from stalking, sexual assault, and human trafficking acts; and clarifying the precedence of child-related orders issued under the protection from abuse act

The Kansas Judicial Council (Council) and its Family Law Advisory Committee (Committee) recommend the passage of 2023 HB 2185. This bill (1) expands how a petition and temporary order in protection from abuse (PFA) or protection from stalking, sexual assault, or human trafficking (PFSSAHT) cases can be served on the defendant; and (2) clarifies which types of child-related orders control across different types of cases.

These statutory recommendations were part of a larger protection order study completed by the Judicial Council in 2022. The complete [report](#) containing all the Committee's recommendations is available online from the Judicial Council's website under the 2022 heading on the [Studies and Reports page](#).

(1) EXPANDING METHODS OF SERVICE OF PROCESS FOR PROTECTION ORDERS

Short Form Notification Service

Sections 1 and 2 authorize the use of a short form notification service process as a method of personally serving a defendant in a protection order case. The goal of short form notification service is to increase the number of opportunities for a defendant to receive actual knowledge of the petition for a protection order and any related temporary order. Increasing the number of defendants who receive actual knowledge of the protection order petition and temporary order increases the likelihood of the defendant's participation in and compliance with the protection order. This bill only authorizes the use of short form notification service in PFA and PFSSAHT cases.

Currently, when a plaintiff files a PFA or PFSSAHT petition, that petition and any associated temporary order of protection must be personally served on the defendant. Under this bill, personal service could be accomplished through short form notification by a law enforcement officer. Here is an example short form notification situation.

If a defendant is the subject of a traffic stop in Riley county by a city of Manhattan police officer and the officer sees in the National Crime Information Center (NCIC) database that there is unserved paperwork in a protection from abuse case in Franklin county, new Section 1 of the bill authorizes the police officer to extend the traffic stop for a reasonable amount of time so that the officer can complete the short form notification form and serve it on the defendant. The police officer would obtain the information necessary to fill out the form from the NCIC database. The short form notification form would include the case identifying information for the protection order, state that the defendant shall not have contact with the protected persons, give the hearing date and time, if known, and inform the defendant to contact the appropriate sheriff or clerk of the district court to obtain a copy of the protection order paperwork – petition, summons, temporary order, etc.

The law enforcement officer would then complete an affidavit of service and file the affidavit of service and a copy of the short form notification in the protection order case. To ensure the defendant understands that he or she is subject to any order issued in the case and that it is the defendant's responsibility to obtain a copy of the order, new Sections 1 and 2 mandate the law enforcement officer serving the notice to read a required paragraph to the defendant.

Typically, each county's sheriff department handles service of process for protection orders; however, this bill intentionally expands who can serve a short form notification to include any law enforcement officer, as defined in K.S.A. 21-5111.¹ By increasing the type and number of

¹ K.S.A. 2021 Supp. 21-5111(p): "Law enforcement officer" means: (1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes,

potential law enforcement officers who are authorized to serve the defendant, the defendant is more likely to receive actual notice of the protection order case.

Three other states - Illinois,² Iowa,³ and Minnesota⁴ - use short form notification for the service of protection orders. Short form notification is used widely in Minnesota and Illinois. When the short form notification process was first implemented, both Minnesota and Illinois had statewide trainings to educate law enforcement and other protection order stakeholders about the process. Another reason the process is widely used in Illinois is because the state attorney general's office creates and distributes the forms to law enforcement agencies so the cost of printing the forms has not fallen on individual law enforcement agencies. In Iowa, at the time the short form notification process was implemented, there was not statewide education and training, and the production and distribution of the short form notification form was left to the individual law enforcement agencies. The result is that while some Iowa law enforcement agencies are aware of, have procedures in place for, and use the short form notification system, others are completely unaware short form notification is an option.

To successfully implement the short form notification process, the Judicial Council's Committee recommended that a single Kansas agency be responsible for creating the form and distributing it to law enforcement. This bill assigns the responsibility to the Kansas attorney general's office.

Alternative Service - Sections 3 & 5

To further the goals of increasing safety for plaintiffs, reducing barriers to the defendant obtaining actual knowledge of the protection order case, and increasing the defendant's participation in and compliance with protection order cases, this bill modifies the PFA and PFSSAHT acts to allow the use of alternative methods of service beyond personal service.

Ideally, the defendant can be personally served. However, if that is not possible, then this bill allows the documents to be left at the defendant's dwelling or usual place of abode and mailed to the same address (i.e. residential service). If service cannot be obtained by personal or residential service and the court determines the plaintiff has made diligent efforts to obtain service, the bill allows the court to order service "be given in a manner reasonably calculated to give actual notice, including electronic means, and may be by publication if other means are not

whether that duty extends to all crimes or is limited to specific crimes; (2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 2021 Supp. 21-5412 and subsection (d) of K.S.A. 2021 Supp. 21-5413, and amendments thereto, any employee of the Kansas department of corrections; or (3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

² 725 I.L.C.S. 5/112A-22.1.

³ I.C.A. 664A.4A.

⁴ M.S.A. 518B.01.

effective.” This approach to alternative methods of service protects the defendant’s due process rights while also permitting the flexibility for a judge to look at the facts in an individual case and authorize service in whichever way could best lead to actual notice of the proceeding. This “reasonably calculated” standard is already in use in the Kansas uniform child custody and jurisdiction act (UCCJEA) and is the long-used standard under due process case law.⁵

The new language in Section 3, K.S.A 60-3104(d)(3), and Section 5, K.S.A. 60-31a04(e)(3), does not change the rules for serving a minor or disabled persons; rather it is inserted into the PFA and PFSSAHT acts to remind petitioners that the process for serving a minor or disabled person pursuant to article 3 of chapter 60, is different than serving an adult defendant.

(2) PRECEDENCE OF CHILD-RELATED ORDERS

Clarification of K.S.A. 60-3107(c) – Section 4

During the Committee’s study, protection order stakeholders identified K.S.A. 60-3107(c) as one of the most confusing subsections in the PFA act. Orders regarding child custody, residency, and parenting time, may be issued in a variety of actions, such as, protection from abuse, divorce, parentage, guardianship, child in need of care, or juvenile offender actions. When there are child related orders issued in a PFA action as well as another type of action, K.S.A. 60-3107(c) governs which order controls.

To increase clarity and readability, the bill divides K.S.A. 60-3107(c) into subsections and, where possible, removes unnecessary language and statutory references. The rewrite of the subsection is not intended to create any substantive change to the statute, except in the following instance. The current statute establishes rules for child related orders issued in protection from abuse, divorce, parentage, child in need of care, and juvenile offender actions, but not guardianship actions. In K.S.A 60-3107(c)(1) and (c)(2)(A) the phrase “issued in any action” is used to remove confusing statutory cross-references. Using the broader phrase “issued in any action” substantively changes the statute by incorporating child related orders made in a guardianship case, which previously were not covered by K.S.A. 60-3107(c). The Committee reviewed the guardianship statutes and concluded that incorporating guardianship cases into these subsections would be beneficial.

The Judicial Council supports the passage of 2023 H.B. 2185.

⁵ See *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 70 S. Ct. 952 (1950).