

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **SB 45**, as amended by House Committee, on page 27, following line 11, by inserting:

"New Sec. 15. (a) Sections 15 through 20 shall be known and may be cited as the gun violence restraining order act.

(b) As used in the gun violence restraining order act:

(1) "Gun seizure warrant" means a court order regarding a person who is subject to a gun violence restraining order and who is known to own or possess one or more firearms, rifles or shotguns that directs a law enforcement officer to seize any firearms, rifles or shotguns in the possession of the person and to bring the unloaded firearms, rifles or shotguns before the judge issuing the order; and

(2) "gun violence restraining order" means a court order prohibiting a person from purchasing, owning, possessing or controlling a firearm, rifle or shotgun for a period of up to one year.

New Sec. 16. (a) Any person may file a petition with the court setting forth the facts and circumstances necessitating the issuance of a gun violence restraining order. The court may prescribe the manner and form of the petition. A gun violence restraining order shall be issued to prohibit a person from possessing a firearm, rifle or shotgun if an affidavit, signed by the petitioner under oath, and any additional information provided to the court demonstrates to the satisfaction of the court that the person poses a significant risk of personal injury to themselves or others by possessing a firearm, rifle or shotgun.

(b) In determining whether to issue a gun violence restraining order, the court may examine under oath the petitioner and any witnesses the petitioner produces. In determining whether grounds for

a gun violence restraining order exists, the court shall consider all of the following:

- (1) Any recent threat or act of violence by the person directed toward others;
- (2) any recent threat or act of violence by the person directed toward themselves;
- (3) any recent violation of a restraining order; and
- (4) any conviction for a crime involving a weapon under the Kansas criminal code.

(c) In determining whether grounds for a gun violence restraining order exists, the court may consider any of the following:

- (1) The reckless use, display or brandishing of a firearm, rifle or shotgun by the person;
- (2) the history of use, attempted use or threatened use of physical force by the person against another person;

- (3) any prior arrest of the person for a felony offense;
- (4) any history of a violation by the person of a protection order issued under the protection from abuse act, K.S.A. 60-3101 et seq., and amendments thereto;

- (5) evidence of recent or ongoing abuse of alcohol or a controlled substance or controlled substance analog, as such terms are defined in K.S.A. 2014 Supp. 21-5701, and amendments thereto; or

- (6) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon.

(d) The affidavit shall set forth the facts establishing the grounds of the petition or probable cause for believing that such grounds exist. In lieu of a written affidavit, the court may take an oral statement under oath. If the court finds that the grounds of the petition exist or that there is probable cause to believe in its existence, the court shall issue a gun violence restraining order.

(e) A gun violence restraining order shall include:

- (1) A statement of the grounds asserted for the order;
- (2) the date and time the order expires;
- (3) the address of the court for the county in which the restrained party resides; and

(4) a statement to the restrained person stating:

(A) The time and date that the order expires;

(B) that the person shall not own, possess, purchase or receive or attempt to purchase or receive a firearm, rifle or shotgun while such order is in effect;

(C) that the person is entitled to submit one written request for a hearing at any time during the effective period of the order for an order permitting the person to own, possess, purchase, or receive a firearm, rifle or shotgun;

(D) that the person may seek legal advice from an attorney as to any matter connected with the order; and

(E) that if legal advice is sought, the attorney should be consulted promptly so that the attorney may assist the person in any matter connected with the order.

(f) When serving a gun violence restraining order, the law enforcement officer shall inform the person that such person may submit one written request for a hearing pursuant to section 18, and amendments thereto, at any time during the effective period of the order and provide such person with a form to request the hearing.

New Sec. 17. (a) If there is probable cause to believe that a person who has been issued a gun violence restraining order possesses or owns a firearm, rifle or shotgun, the court shall issue a gun seizure warrant to the appropriate law enforcement officer directing the officer to seize any specified firearm, rifle or shotgun and to retain such firearm, rifle or shotgun subject to the order of the court. A gun seizure warrant shall be issued upon probable cause, supported by an affidavit, naming or describing with reasonable specificity the facts and circumstances justifying the court order and listing any firearm, rifle or shotgun to be seized under the court order. A firearm, rifle or shotgun described in the gun seizure warrant may be taken from any place or from any person in whose possession the firearm, rifle or shotgun may be.

(b) When a law enforcement officer takes property under a gun seizure warrant, the officer shall give a receipt for the property taken, specifying such property in detail, to the person from whom the property was taken. In the absence of such person, the officer shall leave the receipt in the place where the property was found. If the location to be searched during the execution of a gun seizure warrant is jointly occupied by multiple parties, and a firearm, rifle or shotgun located during the execution of a gun seizure warrant is owned by a person other than the person in the gun seizure warrant, the firearm, rifle or shotgun shall not be seized if such firearm, rifle or shotgun is stored in a manner such that the person named in the gun seizure warrant does not have access to or control of the firearm, rifle or shotgun, and there is no evidence of unlawful possession of the firearm, rifle or shotgun by the owner.

(c) If the location to be searched during the execution of a gun seizure warrant is jointly occupied by multiple parties, and a gun safe owned by a person other than the person named in the gun seizure warrant is located therein, the contents of the gun safe shall not be searched, except in the owner's presence or with the owner's consent, or unless a valid search warrant has been obtained.

New Sec. 18. (a) Except as provided in subsection (c), no later than 14 days after the execution of a gun violence restraining order and a gun seizure warrant, if applicable, the court that issued the gun violence restraining order and gun seizure warrant shall hold a hearing to determine whether the person who is the subject of the order may possess, own, purchase or receive a firearm, rifle or shotgun and, when applicable, whether a seized firearm, rifle or shotgun shall be returned to the person named in the warrant.

(b) At the hearing, the state shall have the burden of proving by clear and convincing evidence that the person poses a significant risk of personal injury to themselves or others by owning or possessing a firearm, rifle or shotgun. If, at the hearing, the person is found to pose a significant risk of personal injury to themselves or others by purchasing, owning, possessing or controlling a firearm, rifle or

shotgun, such firearm, rifle or shotgun seized under the gun seizure warrant shall be retained by the law enforcement agency for a period not to exceed one year. The person shall be prohibited from purchasing, owning, possessing or controlling a firearm, rifle or shotgun for a period not to exceed one year. If the court finds that the state has not met the required standard of proof, the firearm, rifle or shotgun seized under the gun seizure warrant shall be returned to the person. If the person is prohibited by law from purchasing, owning, possessing or controlling a firearm, rifle or shotgun for a period of one year or more by any other provision of state or federal law, a hearing under this section shall not be required and the court shall issue an order to hold the firearm, rifle or shotgun until either the person is no longer prohibited from owning a firearm, rifle or shotgun or the law enforcement agency disposes of the firearm, rifle or shotgun to a properly licensed federal firearms dealer. If any other person claims title to a firearm, rifle or shotgun seized under the gun seizure warrant, the firearm, rifle or shotgun shall be returned to the lawful owner.

(c) A person who is the subject of a court order under this section may submit one written request at any time during the effective period of the order for a hearing for an order permitting the person to possess, own, purchase or receive a firearm, rifle or shotgun. The request shall be submitted in a form and manner as prescribed by the court.

New Sec. 19. (a) If a law enforcement agency has probable cause to believe that a person subject to a gun violence restraining order continues to pose a significant risk of personal injury to themselves or others by purchasing, owning, possessing or controlling a firearm, rifle or shotgun, the law enforcement agency may initiate a request for a renewal of the order, setting forth the facts and circumstances necessitating the request. The request shall be submitted in a form and manner as prescribed by the court.

(b) A hearing held under this section shall be held in the same court that issued the initial order to determine if a request for renewal of the order shall be issued. The person named in the gun

violence restraining order shall be given written notice and an opportunity to be heard.

(c) The court may, upon its own motion or upon request of another person, issue a renewal of a gun violence restraining order when there is probable cause to believe that a person subject to the order continues to pose a significant risk of personal injury to themselves or others by purchasing, owning, possessing or controlling a firearm, rifle or shotgun after written notice to the person named in the restraining order and after the person was given an opportunity for a hearing.

New Sec. 20. (a) When a law enforcement officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault, is serving a protection from abuse order issued under the protection from abuse act, K.S.A. 60-3101 et seq., and amendments thereto, or is serving a gun violence restraining order under the gun violence restraining order act, section 15 et seq., and amendments thereto, such officer shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered under a consensual or other lawful search as necessary for the protection of the law enforcement officer or other persons present if the law enforcement officer has probable cause to believe that an act of domestic violence has occurred.

(b) If a firearm or other deadly weapon is removed from the scene under subsection (a), the law enforcement officer shall:

(1) Provide to the owner of the firearm or other deadly weapon information on the process for retaking possession of the firearm or other deadly weapon; and

(2) provide for the safe storage of the firearm or other deadly weapon during the pendency of any proceeding related to the alleged act of domestic violence.

(c) Within 14 days of the conclusion of a proceeding on the alleged act of domestic violence, the owner of the firearm or other deadly weapon may retake possession of the firearm or other deadly weapon unless otherwise ordered under law to surrender the firearm or other deadly weapon.

Sec. 21. K.S.A. 2014 Supp. 21-6303 is hereby amended to read as follows: 21-6303. (a)

Criminal distribution of firearms to a felon is knowingly:

(1) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (c), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;

(2) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or

(3) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the felony.

(b) Criminal distribution of firearms to a domestic batterer is knowingly:

(1) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of domestic battery pursuant to K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2014 Supp. 21-5414, and amendments thereto, or a similar law in any other jurisdiction, or any crime with a domestic violence designation on the criminal case and the defendant was subject to the provisions of K.S.A. 2014 Supp. 21-6604(p), and amendments thereto, or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or

(2) selling, giving or otherwise transferring any firearm to any person who is subject to an unexpired protection from abuse order issued pursuant to the protection from abuse act, K.S.A. 60-3101 et seq., and amendments thereto, or a similar law in any other jurisdiction, if such order was

issued after a hearing of which the person received proper notice and an opportunity to be heard.

(c) (1) Criminal distribution of firearms to a felon is a class A nonperson misdemeanor.

(2) Criminal distribution of firearms to a domestic batterer is a class A nonperson misdemeanor.

~~(e) (d)~~ Subsection (a)(2) shall apply to a felony under K.S.A. 2014 Supp. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, ~~subsection (b) or (d) of 21-5412(b) or (d), subsection (b) or (d) of 21-5413(b) or (d), subsection (a) or (b) of 21-5415(a) or (b), subsection (b) of 21-5420(b), 21-5503, subsection (b) of 21-5504(b), subsection (b) of 21-5505(b), and subsection (b) of 21-5807(b), and amendments thereto, K.S.A. 2014 Supp. 21-5705 or 21-5706, and amendments thereto, or K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b or 65-4160 through 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.~~

~~(d) (e)~~ It is not a defense that the distributor did not know or have reason to know:

- (1) The precise felony the recipient committed;
- (2) that the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; ~~or~~
- (3) that the convictions for such felony have not been expunged or pardoned; or
- (4) that the protection from abuse order had not yet expired or been dismissed by the court.

New Sec. 22. (a) Criminal possession of a firearm by a domestic batterer is possession of any firearm by a person who:

- (1) Within the preceding five years, has been convicted of domestic battery pursuant to K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2014 Supp. 21-5414, and amendments thereto, or a similar law in any other jurisdiction, or any crime with a domestic violence designation on the criminal case and

the defendant was subject to the provisions of K.S.A. 2014 Supp. 21-6604(p), and amendments thereto, or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or

(2) is subject to an unexpired protection from abuse order issued pursuant to the protection from abuse act, K.S.A. 60-3101 et seq., and amendments thereto, or a similar law in any other jurisdiction, if such order was issued after a hearing of which the person received proper notice and an opportunity to be heard.

(b) Criminal possession of a firearm by a domestic batterer is a severity level 8, nonperson felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 23. K.S.A. 2014 Supp. 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. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5412(a), and amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5413(a), and amendments thereto, domestic battery as defined in K.S.A. 2014 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2014 Supp. 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 ~~subsection (a)(1)~~

~~(C)~~ of K.S.A. 2014 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2014 Supp. 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.

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

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

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

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

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

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

(b) No protection from abuse order shall be entered against the plaintiff unless:

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

order;

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

(3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(c) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 2014 Supp. 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 2014 Supp. 23-3201 through 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 2014 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in

its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto. Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children case or the revised Kansas juvenile justice code case shall be specific in its terms, reference any preexisting protection from abuse order and the custody being modified, and a copy of such order shall be filed in the preexisting protection from abuse case.

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

(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement 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 subsection (e)(1) and (e)(2).

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

(2) 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, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or (A) has previously violated a valid protection order, or (B) has 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, the court shall extend a protective order for not less than two additional years and may extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.

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

(g) Any order entered under the protection from abuse act shall include notice to the defendant that section 16, and amendments thereto, prohibits the defendant from possession of a firearm for the duration of the protective order.

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

~~(h)~~ (i) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in ~~subsection (a)(1)(C) of K.S.A. 2014 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2014 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in subsection (a) of K.S.A. 2014 Supp. 21-5412(a), and amendments thereto, battery as defined in subsection (a) of K.S.A. 2014 Supp. 21-5413(a), and amendments thereto, domestic battery as defined in K.S.A. 2014 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2014 Supp. 21-5924, and amendments thereto.~~";

Also on page 27, in line 12, after the third comma by inserting "21-6303,"; in line 13, after the second comma by inserting "60-3107,";

And by renumbering sections accordingly:

On page 1, in the title, in line 1, by striking "carrying of concealed" and inserting "possession of"; in line 2, by striking "; relating to the personal and family protection act"; in line 3, after the third comma, by inserting "21-6303," in line 4, after the first comma, by inserting "60-3107,"

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