

House Substitute for SENATE BILL No. 101

By Committee on Judiciary

3-24

1 AN ACT concerning crime victims; relating to protection orders;
2 protection from abuse act; protection from stalking act; sexual assault
3 evidence collection examinations and parental notification; the crime
4 victims compensation board and claims for compensation; amending
5 K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08 and 60-
6 31a09 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-31a05,
7 60-31a06, 65-448 and 74-7305 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 2016 Supp. 21-5924 is hereby amended to read as
11 follows: 21-5924. (a) Violation of a protective order is knowingly
12 violating:

13 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
14 60-3106 or 60-3107, and amendments thereto;

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

18 (3) a restraining order issued pursuant to K.S.A. 2016 Supp. 23-2707,
19 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
20 1607, prior to its transfer;

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

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

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

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

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

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

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

9 Sec. 2. K.S.A. 60-3102 is hereby amended to read as follows: 60-
10 3102. As used in the protection from abuse act:

11 (a) "Abuse" means the occurrence of one or more of the following
12 acts between intimate partners or household members:

13 (1) Intentionally attempting to cause bodily injury, or intentionally or
14 recklessly causing bodily injury.

15 (2) Intentionally placing, by physical threat, another in fear of
16 imminent bodily injury.

17 (3) *Engaging in any sexual contact or attempted sexual contact with*
18 *another person without consent or when such person is incapable of*
19 *giving consent.*

20 (4) Engaging in any of the following acts with a minor under 16 years
21 of age who is not the spouse of the offender:

22 (A) The act of sexual intercourse; or

23 (B) any lewd fondling or touching of the person of either the minor or
24 the offender, done or submitted to with the intent to arouse or to satisfy the
25 sexual desires of either the minor or the offender, or both.

26 (b) "Intimate partners or household members" means persons who are
27 or have been in a dating relationship, persons who reside together or who
28 have formerly resided together or persons who have had a child in
29 common.

30 (c) "Dating relationship" means a social relationship of a romantic
31 nature. A dating relationship shall be presumed if a plaintiff verifies,
32 pursuant to K.S.A. 53-601, and amendments thereto, that such relationship
33 exists. In addition to any other factors the court deems relevant, the court
34 shall consider the following factors in making a determination of whether
35 a relationship exists or existed include:

36 (1) Nature of the relationship;

37 (2) length of time the relationship existed;

38 (3) frequency of interaction between the parties; and

39 (4) time since termination of the relationship, if applicable.

40 Sec. 3. K.S.A. 60-31a01 is hereby amended to read as follows: 60-
41 31a01. (a) K.S.A. 60-31a01 through 60-31a09, and amendments thereto,
42 shall be known and may be cited as the protection from stalking *or sexual*
43 *assault* act.

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

5 Sec. 4. K.S.A. 2016 Supp. 60-31a02 is hereby amended to read as
6 follows: 60-31a02. As used in the protection from stalking *or sexual*
7 *assault* act:

8 (a) "*Sexual assault*" means:

9 (1) *A nonconsensual sexual act; or*

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

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

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

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

26 ~~(d)~~(e) "Unmanned aerial system" means a powered, aerial vehicle
27 that:

28 (1) Does not carry a human operator;

29 (2) uses aerodynamic forces to provide vehicle lift;

30 (3) may fly autonomously or be piloted remotely;

31 (4) may be expendable or recoverable; and

32 (5) may carry a lethal or nonlethal payload.

33 Sec. 5. K.S.A. 60-31a03 is hereby amended to read as follows: 60-
34 31a03. The district courts shall have jurisdiction over all proceedings
35 under the protection from stalking *or sexual assault* act.

36 Sec. 6. K.S.A. 2016 Supp. 60-31a04 is hereby amended to read as
37 follows: 60-31a04. (a) A person may seek relief under the protection from
38 stalking *or sexual assault* act by filing a verified petition with any district
39 judge or clerk of the court. A verified petition must allege facts sufficient
40 to show the following:

41 (1) The name of the stalking *or sexual assault* victim;

42 (2) the name of the defendant;

43 (3) the dates on which the alleged stalking *or sexual assault* behavior

1 occurred; and

2 (4) the acts committed by the defendant that are alleged to constitute
3 stalking *or sexual assault*.

4 (b) A parent or an adult residing with a minor child may seek relief
5 under the protection from stalking *or sexual assault* act on behalf of the
6 minor child by filing a verified petition with the district judge or with the
7 clerk of the court in the county where the stalking *or sexual assault*
8 occurred.

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

11 (d) Service of process served under this section shall be by personal
12 service. No docket fee shall be required for proceedings under the
13 protection from stalking *or sexual assault* act.

14 (e) The victim's address and telephone number shall not be disclosed
15 to the defendant or to the public, but only to authorized court or law
16 enforcement personnel and to the commission on judicial performance in
17 the discharge of the commission's duties pursuant to article 32 of chapter
18 20 of the Kansas Statutes Annotated, and amendments thereto.

19 Sec. 7. K.S.A. 2016 Supp. 60-31a05 is hereby amended to read as
20 follows: 60-31a05. (a) Within 21 days of the filing of a petition under the
21 protection from stalking *or sexual assault* act a hearing shall be held at
22 which the plaintiff must prove the allegation of stalking *or sexual assault*
23 by a preponderance of the evidence and the defendant shall have an
24 opportunity to present evidence on the defendant's behalf. Upon the filing
25 of the petition, the court shall set the case for hearing. At the hearing, the
26 court shall advise the parties of the right to be represented by counsel.

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

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

37 Sec. 8. K.S.A. 2016 Supp. 60-31a06 is hereby amended to read as
38 follows: 60-31a06. (a) The court may issue a protection from stalking *or*
39 *sexual assault* order granting any *one or more* of the following orders:

40 (1) Restraining the defendant from following, harassing, telephoning,
41 contacting or otherwise communicating with the victim. Such order shall
42 contain a statement that if such order is violated such violation may
43 constitute stalking as defined in K.S.A. 2016 Supp. 21-5427, and

1 amendments thereto, and violation of a protective order as defined in
2 K.S.A. 2016 Supp. 21-5924, and amendments thereto.

3 (2) Restraining the defendant from abusing, molesting or interfering
4 with the privacy rights of the victim. Such order shall contain a statement
5 that if such order is violated, such violation may constitute stalking as
6 defined in K.S.A. 2016 Supp. 21-5427, and amendments thereto, assault as
7 defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5412(a), and
8 amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2016
9 Supp. 21-5413(a), and amendments thereto, and violation of a protective
10 order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

11 (3) Restraining the defendant from entering upon or in the victim's
12 residence or the immediate vicinity thereof. Such order shall contain a
13 statement that if such order is violated, such violation shall constitute
14 criminal trespass as defined in ~~subsection (a)(1)(C)~~ of K.S.A. 2016 Supp.
15 21-5808(a)(1)(C), and amendments thereto, and violation of a protective
16 order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

17 (4) *Restraining the defendant from committing or attempting to*
18 *commit a sexual assault upon the victim. Such order shall contain a*
19 *statement that if such order is violated, such violation shall constitute*
20 *violation of a protective order, as defined in K.S.A. 2016 Supp. 21-5924,*
21 *and amendments thereto. Such order shall also contain a statement that if*
22 *such order is violated, such violation may constitute a sex offense under*
23 *article 55 of chapter 21 of the Kansas Statutes Annotated, and*
24 *amendments thereto, and the accused may be prosecuted, convicted of and*
25 *punished for such sex offense.*

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

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

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

34 (d) Upon verified motion of the plaintiff and after the defendant has
35 been personally served with a copy of the motion and has had an
36 opportunity to present evidence and cross-examine witnesses at a hearing
37 on the motion, *the court shall extend a protective order for not less than*
38 *two additional years and up to a period of time not to exceed the lifetime*
39 *of the defendant, if the court determines by a preponderance of the*
40 *evidence that the defendant has: (1) Violated a valid protection order—*
41 ~~(A) Has;~~ *(2) previously violated a valid protection order; or—(B) has* (3)
42 *been convicted of a person felony or any conspiracy, criminal solicitation*
43 *or attempt thereof, under the laws of Kansas or the laws of any other*

1 jurisdiction which are substantially similar to such person felony,
2 committed against the plaintiff or any member of the plaintiff's household;
3 ~~the court shall extend a protective order for not less than two additional~~
4 ~~years and up to a period of time not to exceed the lifetime of the~~
5 ~~defendant.~~ No service fee shall be required for a motion filed pursuant to
6 this subsection.

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

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

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

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

22 Sec. 9. K.S.A. 60-31a07 is hereby amended to read as follows: 60-
23 31a07. A copy of any order under the protection from stalking *or sexual*
24 *assault* act shall be issued to the victim, the defendant and the police
25 department of the city where the victim resides. If the victim does not
26 reside in a city or resides in a city with no police department, a copy of the
27 order shall be issued to the sheriff of the county where the order is issued.

28 Sec. 10. K.S.A. 60-31a08 is hereby amended to read as follows: 60-
29 31a08. Except ~~of~~ *as* otherwise provided in the protection from stalking *or*
30 *sexual assault* act, any proceedings under this act shall be in accordance
31 with chapter 60 of the Kansas Statutes Annotated, *and amendments*
32 *thereto*, and shall be in addition to any other available civil or criminal
33 remedies.

34 Sec. 11. K.S.A. 60-31a09 is hereby amended to read as follows: 60-
35 31a09. If upon hearing, the court finds a violation of any order under the
36 protection from stalking *or sexual assault* act, the court may find the
37 defendant in contempt pursuant to K.S.A. 20-1204a, and amendments
38 thereto.

39 Sec. 12. K.S.A. 2016 Supp. 65-448 is hereby amended to read as
40 follows: 65-448. (a) Upon the request of any law enforcement officer and
41 with the written consent of the reported victim, or upon the request of the
42 victim, any physician, a licensed physician assistant, who has been
43 specially trained in performing sexual assault evidence collection, or a

1 registered professional nurse, who has been specially trained in performing
2 sexual assault evidence collection, on call or on duty at a medical care
3 facility of this state, as defined by ~~subsection (h)~~ of K.S.A. 65-425(h), and
4 amendments thereto, shall examine persons who may be victims of sexual
5 offenses cognizable as violations of K.S.A. 2016 Supp. 21-5503, 21-5504,
6 21-5506 or 21-5604, and amendments thereto, using Kansas bureau of
7 investigation sexual assault evidence collection kits or similar kits
8 approved by the Kansas bureau of investigation, for the purposes of
9 gathering evidence of any such crime. If an examination has taken place
10 solely upon the request of the victim, the medical care facility shall not
11 notify any law enforcement agency without the written consent of the
12 victim, unless otherwise required by law. If the physician, licensed
13 physician assistant or registered professional nurse refuses to perform such
14 physical examination the prosecuting attorney is hereby empowered to
15 seek a mandatory injunction against such physician, licensed physician
16 assistant or registered professional nurse to enforce the provisions of this
17 act. Any refusal by a physician, licensed physician assistant or registered
18 professional nurse to perform an examination which has been requested
19 pursuant to this section shall be reported by the county or district attorney
20 to the state board of healing arts or the board of nursing, whichever is
21 applicable, for appropriate disciplinary action. The department of health
22 and environment, in cooperation with the Kansas bureau of investigation,
23 shall establish procedures for gathering evidence pursuant to this section.
24 A minor may consent to examination under this section. Such consent is
25 not subject to disaffirmance because of minority, and consent of parent or
26 guardian of the minor is not required for such examination. The hospital or
27 medical facility shall give written notice to the parent or guardian of a
28 minor that such an examination has taken place, *except when*: **(1)** *The*
29 *hospital or medical facility has information that a parent, guardian or*
30 *family or household member is the subject of a related criminal*
31 *investigation*; **or (2) the physician, licensed physician assistant or**
32 **registered professional nurse believes that it is in the best interests of**
33 **the minor not to do so**.

34 (b) All sexual assault kits collected that are not released to law
35 enforcement shall be sealed by either the sexual assault nurse examiner
36 program or the facility that provided the examination and kept for five
37 years in the evidence storage facilities of the Kansas bureau of
38 investigation. After five years, such kits shall be destroyed by the Kansas
39 bureau of investigation.

40 (c) The fee chargeable for conducting an examination of a victim as
41 herein provided shall be established by the department of health and
42 environment. Such fee, including the cost of the sexual assault evidence
43 collection kit shall be charged to and paid by the county where the alleged

1 offense was committed, and refusal of the victim to report the alleged
2 offense to law enforcement shall not excuse or exempt the county from
3 paying such fee. The fee for conducting an examination of a victim as
4 herein provided shall not be charged or billed to the victim or to the
5 victim's insurance carrier. Such county shall be reimbursed such fee upon
6 the costs being paid by the defendant as court costs assessed pursuant to
7 K.S.A. 28-172a, and amendments thereto.

8 (d) No medical care facility shall incur any civil, administrative or
9 criminal liability as a result of notifying or failing to notify any law
10 enforcement agency if an examination has taken place solely upon the
11 request of the victim and such notification is not otherwise required by
12 law.

13 (e) The Kansas bureau of investigation may adopt rules and
14 regulations as deemed necessary to implement the provisions of this
15 section.

16 Sec. 13. K.S.A. 2016 Supp. 74-7305 is hereby amended to read as
17 follows: 74-7305. (a) An application for compensation shall be made in the
18 manner and form prescribed by the board.

19 (b) Compensation may not be awarded unless an application has been
20 filed with the board within two years of the reporting of the incident to law
21 enforcement officials if the victim was less than 16 years of age and the
22 injury or death is the result of any of the following crimes: (1) Indecent
23 liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or
24 K.S.A. 2016 Supp. 21-5506(a), and amendments thereto; (2) aggravated
25 indecent liberties with a child as defined in K.S.A. 21-3504, prior to its
26 repeal, or K.S.A. 2016 Supp. 21-5506(b), and amendments thereto; (3)
27 aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its
28 repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto; (4)
29 enticement of a child as defined in K.S.A. 21-3509, prior to its repeal; (5)
30 indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its
31 repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto; (6)
32 aggravated indecent solicitation of a child as defined in K.S.A. 21-3511,
33 prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments
34 thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516,
35 prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments
36 thereto; (8) aggravated incest as defined in K.S.A. 21-3603, prior to its
37 repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto; (9)
38 human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or
39 K.S.A. 2016 Supp. 21-5426(a), and amendments thereto; (10) aggravated
40 human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or
41 K.S.A. 2016 Supp. 21-5426(b), and amendments thereto; or (11)
42 commercial sexual exploitation of a child as defined in K.S.A. 2016 Supp.
43 21-6422, and amendments thereto. Compensation for mental health

1 counseling may be awarded; if a claim is filed within two years of: (1)
2 Testimony, to a claimant who is, or will be, required to testify in a sexually
3 violent predator commitment, pursuant to article 29a of chapter 59 of the
4 Kansas Statutes Annotated, and amendments thereto, of an offender who
5 victimized the claimant or the victim on whose behalf the claim is made;
6 or (2) notification, to a claimant who is notified that DNA testing of a
7 sexual assault kit or other evidence has revealed a DNA profile of a
8 suspected offender who victimized the claimant or the victim on whose
9 behalf the claim is made, or is notified of the identification of a suspected
10 offender who victimized the claimant or the victim on whose behalf the
11 claim is made, whichever occurs later. For all other incidents of criminally
12 injurious conduct, compensation may not be awarded unless the claim has
13 been filed with the board within two years after the injury or death upon
14 which the claim is based. Compensation may not be awarded to a claimant
15 who was the offender or an accomplice of the offender and may not be
16 awarded to another person if the award would unjustly benefit the offender
17 or accomplice.

18 (c) Compensation otherwise payable to a claimant shall be reduced or
19 denied, to the extent, if any that the:

20 (1) Economic loss upon which the claimant's claim is based is
21 recouped from other persons, including collateral sources;

22 (2) board deems reasonable because of the contributory misconduct
23 of the claimant or of a victim through whom the claimant claims; or

24 (3) board deems reasonable, because the victim was likely engaging
25 in, or attempting to engage in, unlawful activity at the time of the crime
26 upon which the claim for compensation is based. This subsection shall not
27 be construed to reduce or deny compensation to a victim of domestic
28 abuse or sexual assault.

29 (d) Compensation may be awarded only if the board finds that unless
30 the claimant is awarded compensation the claimant will suffer financial
31 stress as the result of economic loss otherwise reparable. A claimant
32 suffers financial stress only if the claimant cannot maintain the claimant's
33 customary level of health, safety and education for self and dependents
34 without undue financial hardship. In making its determination of financial
35 stress, the board shall consider all relevant factors, including:

36 (1) The number of claimant's dependents;

37 (2) the usual living expenses of the claimant and the claimant's
38 family;

39 (3) the special needs of the claimant and the claimant's dependents;

40 (4) the claimant's income and potential earning capacity; and

41 (5) the claimant's resources.

42 (e) Compensation may not be awarded unless the criminally injurious
43 conduct resulting in injury or death was reported to a law enforcement

1 officer within 72 hours after its occurrence or the board finds there was
2 good cause for the failure to report within that time.

3 (f) The board, upon finding that the claimant or victim has not fully
4 cooperated with appropriate law enforcement agencies, may deny,
5 withdraw or reduce an award of compensation.

6 (g) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or
7 K.S.A. 2016 Supp. 21-5604, and amendments thereto, or cases of sex
8 offenses established in article 35 of chapter 21, of the Kansas Statutes
9 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
10 Statutes Annotated, and amendments thereto, K.S.A. 2016 Supp. 21-6419
11 through 21-6422, and amendments thereto, or human trafficking or
12 aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,
13 prior to their repeal, or K.S.A. 2016 Supp. 21-5426, and amendments
14 thereto, compensation may not be awarded if the economic loss is less than
15 \$100.

16 (h) Compensation for work loss, replacement services loss,
17 dependent's economic loss and dependent's replacement service loss may
18 not exceed \$400 per week or actual loss, whichever is less.

19 (i) Compensation payable to a victim and to all other claimants
20 sustaining economic loss because of injury to or death of that victim may
21 not exceed \$25,000 in the aggregate.

22 Sec. 14. K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08
23 and 60-31a09 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-
24 31a05, 60-31a06, 65-448 and 74-7305 are hereby repealed.

25 Sec. 15. This act shall take effect and be in force from and after its
26 publication in the statute book.