

House Substitute for SENATE BILL No. 101

AN ACT concerning crime victims; relating to protection orders; protection from abuse act; protection from stalking act; sexual assault evidence collection examinations and parental notification; infectious disease testing; the crime victims compensation board and claims for compensation; amending K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08, 60-31a09 and 65-6009 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-31a05, 60-31a06, 65-448 and 74-7305 and repealing the existing sections.

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

Section 1. K.S.A. 2016 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. 2016 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* 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 ~~subsection (c)(2) of K.S.A. 60-3107(e)(2)~~, and amendments thereto, and ~~subsection (d) of 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. 60-3102 is hereby amended to read as follows: 60-3102. As used in the protection from abuse act:

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

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

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

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

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

(A) The act of sexual intercourse; or

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

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

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

- (1) Nature of the relationship;
- (2) length of time the relationship existed;
- (3) frequency of interaction between the parties; and
- (4) time since termination of the relationship, if applicable.

Sec. 3. K.S.A. 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* act.

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

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

- (a) “*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) “Stalking” means an intentional harassment of another person that places the other person in reasonable fear for that person’s safety.
- ~~(b)~~(c) “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.
- ~~(c)~~(d) “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.”
- ~~(d)~~(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. 5. K.S.A. 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* act.

Sec. 6. K.S.A. 2016 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* act by filing a verified petition with any district judge or clerk of the court. A verified petition must allege facts sufficient to show the following:

- (1) The name of the stalking *or sexual assault* victim;
 - (2) the name of the defendant;
 - (3) the dates on which the alleged stalking *or sexual assault* behavior occurred; and
 - (4) the acts committed by the defendant that are alleged to constitute stalking *or sexual assault*.
- (b) A parent or an adult residing with a minor child may seek relief under the protection from stalking *or sexual assault* act on behalf of the minor child by filing a verified petition with the district judge or with the clerk of the court in the county where the stalking *or sexual assault* occurred.
- (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. No docket fee shall be required for proceedings under the protection from stalking *or sexual assault* act.
- (e) 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. 7. K.S.A. 2016 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* act a hearing shall be held at which the plaintiff must prove the allegation of stalking *or sexual assault* 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. 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*.

(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. 8. K.S.A. 2016 Supp. 60-31a06 is hereby amended to read as follows: 60-31a06. (a) The court may issue a protection from stalking *or sexual assault* 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 order shall contain a statement that if such order is violated such violation may constitute stalking as defined in K.S.A. 2016 Supp. 21-5427, and amendments thereto, and violation of a protective order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. Such order shall contain a statement that if such order is violated, such violation may constitute stalking as defined in K.S.A. 2016 Supp. 21-5427, and amendments thereto, assault as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5412(a), and amendments thereto, battery as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5413(a), and amendments thereto, and violation of a protective order as defined in K.S.A. 2016 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 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. 2016 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto.

(4) *Restraining the defendant from committing or attempting to commit a sexual assault upon the victim. Such order shall contain a statement that if such order is violated, such violation shall constitute violation of a protective order, as defined in K.S.A. 2016 Supp. 21-5924, and amendments thereto. Such order shall also contain a statement that if such order is violated, such 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) Any other order deemed necessary by the court to carry out the provisions of this act.

(b) A protection from stalking *or sexual abuse* 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 ~~subsection~~ 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 ~~or (A) Has~~; (2) previously violated a valid protection order; ~~or (B) has~~ (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; ~~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.~~ 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* 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. 9. K.S.A. 60-31a07 is hereby amended to read as follows: 60-31a07. A copy of any order under the protection from stalking *or sexual assault* 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. 10. K.S.A. 60-31a08 is hereby amended to read as follows: 60-31a08. Except ~~of~~ *as* otherwise provided in the protection from stalking *or sexual assault* 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. 11. K.S.A. 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* act, the court may find the defendant in contempt pursuant to K.S.A. 20-1204a, and amendments thereto.

Sec. 12. K.S.A. 2016 Supp. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, or upon the request of the victim, any physician, a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection, on call or on duty at a medical care facility of this state, as defined by ~~subsection (h) of~~ K.S.A. 65-425(h), and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 2016 Supp. 21-5503, 21-5504, 21-5506 or 21-5604, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If an examination has taken place solely upon the request of the victim, the medical care facility shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law. If the physician, licensed physician assistant or registered professional nurse refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of this act. Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is

applicable, for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place, *except when: (1) The hospital or medical facility has information that a parent, guardian or family or household member is the subject of a related criminal investigation; or (2) the physician, licensed physician assistant or registered professional nurse, after consultation with law enforcement, reasonably believes that the child will be harmed if such notice is given.*

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

(c) The fee chargeable for conducting an examination of a victim as herein provided shall be established by the department of health and environment. Such fee, including the cost of the sexual assault evidence collection kit shall be charged to and paid by the county where the alleged offense was committed, and refusal of the victim to report the alleged offense to law enforcement shall not excuse or exempt the county from paying such fee. The fee for conducting an examination of a victim as herein provided shall not be charged or billed to the victim or to the victim's insurance carrier. Such county shall be reimbursed such fee upon the costs being paid by the defendant as court costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.

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

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

Sec. 13. K.S.A. 65-6009 is hereby amended to read as follows: 65-6009. (a) At the time of an appearance before a magistrate under K.S.A. 22-2901, and amendments thereto, the magistrate shall inform any person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved of the availability of infectious disease tests and shall cause the alleged victim of such a crime, if any, to be notified that infectious disease tests and counseling are available. If the victim of the crime or the county or district attorney requests the court to order infectious disease tests of the alleged offender or if the person arrested and charged with a crime stated to the law enforcement officer making such arrest that the person arrested and charged with the crime has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests. *Testing for infectious disease shall occur not later than 48 hours after the alleged offender appears before a magistrate under K.S.A. 22-2901, and amendments thereto.* The results of any test obtained under this section shall be inadmissible in any criminal or civil proceeding. *The court shall also order the arrested person to submit to follow-up tests for infectious diseases as may be medically appropriate.*

(b) Upon conviction of a person for any crime which the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, the court: (1) May order the convicted person to submit to infectious disease tests; or (2) shall order the convicted person to submit to infectious disease tests if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to issue such order. If infectious disease tests are ordered under this subsection, the victim of the crime, if any, who is not a minor, shall designate a health care provider or counselor to receive such information on behalf of the victim. If the victim is

a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive such information.

(c) The results of any infectious disease test ordered under subsection (a) shall be disclosed to the law enforcement officer making such arrest, the person arrested, *the victim, the parent or legal guardian of the victim* and such other persons as the court determines have a legitimate need to know the test result in order to provide for their protection. The results of any infectious disease test ordered under subsection (b) shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (b) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an infectious disease test ordered under this section results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections.

(d) As used in this section, infectious disease includes HIV and hepatitis B.

(e) The costs of any counseling and testing provided under this section shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

Sec. 14. K.S.A. 2016 Supp. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the board.

(b) Compensation may not be awarded unless an application has been filed with the board within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto; (4) enticement of a child as defined in K.S.A. 21-3509, prior to its repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto; (9) human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(a), and amendments thereto; (10) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto; or (11) commercial sexual exploitation of a child as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto. Compensation for mental health counseling may be awarded; if a claim is filed within two years of: (1) Testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made; or (2) notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later. For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the board within two years after the injury or death upon which the claim is based. Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.

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

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

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

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

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

(1) The number of claimant's dependents;

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

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

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

(5) the claimant's resources.

(e) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

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

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

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

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

Sec. 15. K.S.A. 60-3102, 60-31a01, 60-31a03, 60-31a07, 60-31a08, 60-31a09 and 65-6009 and K.S.A. 2016 Supp. 21-5924, 60-31a02, 60-31a04, 60-31a05, 60-31a06, 65-448 and 74-7305 are hereby repealed.

Sec. 16. 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 adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.