



UNITED AGAINST VIOLENCE

# Kansas Coalition Against Sexual and Domestic Violence

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## PFAA & PFSA

This year the Legislature passed some much needed amendments to the Protection from Abuse Act (PFAA), K.S.A. 60-3101 et seq., that will impact the following areas:

- (1) Mutual orders will be limited and language that appeared to support the issuance of mutual protection orders has been eliminated;
- (2) Victims abused in dating relationships who have never lived with their abusers will now be eligible for a PFAA order;
- (3) With the new "catch-all" provision, courts may customize a remedy based on the facts of the case; and
- (4) With the exception of emergency orders, all protection orders issued under the PFAA and those issued in another jurisdiction and consistent with VAWA's full faith and credit clause shall be entered into the national protection order database.

Recognizing the need for protection for victims of stalking, the Kansas Legislature also passed the new Protection from Stalking Act. The PFSA is procedurally similar to the PFAA but its purpose, definitions, and available relief are very different. Stalking, harassment, and course of conduct are defined and the necessary factual allegations are detailed in the act. The act clearly reaches those victims of stalking who do not and have not lived with their abuser. In addition, the stalking behavior need not rise to the level of direct contact in order for a victim to qualify for a protection order.

Both of these new laws go into effect on July 1, 2002. Forms are being updated and generated by the Kansas Judicial Council and should be available by July 1.

For additional information or technical assistance on any of the legislation above, contact Joyce Grover, KCSDV Attorney, at 785-232-9784.

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Special Edition

# PROTECTION FROM ABUSE ACT 2002 (SB475)

## Amendments in 2002

The 2002 Kansas Legislature amended the Protection from Abuse Act (PFAA), K.S.A. 60-3101 *et seq.*, in the following ways, effective July 1, 2002:

1. Mutual orders of protection should not be issued in cases where the petitioner is the only party to have alleged abuse.
2. The protection order remedy is now available to a victim abused in a dating relationship.
3. Judges may now customize a remedy based on the facts of the case under the new "catch-all" provision.
4. Some protection orders shall be entered into the national criminal information center protection order database; others may be entered.

## Mutual Orders

Several changes were intended to clean up the "mutual" language sprinkled throughout the PFAA. The court may now grant the following orders [~~strike out indicates old language~~, *italics indicates new language*]:

- "Restraining the ~~parties~~ *defendant* from abusing, molesting or interfering with the privacy or rights of ~~each other~~ *the plaintiff*. . . ." K.S.A. 2001 Supp. 60-3107(a)(1).
- "Granting possession of the residence or household to ~~a party~~ *the plaintiff* to the exclusion of the ~~other party~~ *defendant* and further restraining ~~the party not granted possession~~ *defendant* from entering or remaining upon or in such residence or household . . ." and "restraining the ~~party not granted possession~~ *defendant* from canceling utility service to the residence or household for 60 days." K.S.A. 2001 Supp. 60-3107(a)(2).
- "Requiring ~~a party~~ *defendant* to providing suitable, alternate housing for ~~such party's spouse~~ *the plaintiff* and any minor children of the parties." K.S.A. 2001 Supp. 60-3107(a)(3).
- "Ordering a law enforcement officer to evict ~~a party~~ *the defendant* from the residence or household." K.S.A. 2001 Supp. 60-3107(a)(5).
- "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 ~~a party's spouse~~ *the plaintiff*, *if the plaintiff is married to the defendant*. . . ." K.S.A. 2001 Supp. 60-3107(a)(6).
- "Requiring ~~the person against whom the order is issued~~ *any person against whom an order is issued* to seek counseling to aid in the cessation of abuse. K.S.A. 2001 Supp. 60-3107(a)(9).

In addition, the following section has been added to K.S.A. 2001 Supp. 60-3107:

*"(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, 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."*

Kansas' mutual orders will now be effective in other states or jurisdictions under the Violence Against Women Act's full faith and credit provision.

## Dating Relationships Added

Parties who are intimate partners or household members, meaning they must live together, formerly have lived together, had a child in common, or are or have been in a dating relationship, now qualify for a protection order if the abuse otherwise meets the statutory definition. "Dating relationship" is then further defined with the court being given factors it may consider when determining whether a dating relationship exists. The court may also consider any other factor it deems relevant.

K.S.A. 2001 Supp. 60-3102 was amended to read as follows [~~strike out indicates old language~~, *italics indicates new language*]:

*"As used in this act, 'abuse' the protection from abuse act:*

(a) *'Abuse'* means the occurrence of one or more of the following acts between persons who reside together, who formerly resided together or who have or has had a child in common *intimate partners or household members*:

[The remaining definition of abuse is unchanged and includes intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury, intentionally placing, by physical threat, another in fear of imminent bodily injury, engaging in any of several sexual acts with a minor under 16 who is not the spouse of the offender.]

(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 []:

- (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."*

K.S.A. 2001 Supp. 60-3104, which discusses who may seek relief under the PFAA, has been amended in order to be consistent with K.S.A. 2001 Supp. 60-3102. "A person" is changed to "an intimate partner or household member" and "with whom the person resides, formerly resided or has or has had a child in common" is changed to "intimate partner or household member." In addition, a parent of or an adult residing with a minor child may seek relief on behalf of the minor child by alleging abuse by another "intimate partner or household member" rather than "another with whom the child resides, formerly resided or has or has had a child in common."

### Catch-All Remedy

The following section has been added to K.S.A. 2001 Supp. 60-3107, which sets out the remedies the court may order to bring about cessation of the 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.*"

Specific remedies might be needed or crafted depending on the facts of the case. The petitioner or the judge would likely need to make a connection between the abuse and the specific remedy being requested or ordered.

### NCIC Database

Amendments to K.S.A. 2001 Supp. 60-3112 now require that all "temporary, amended, final and other protection from abuse orders" issued under the PFAA or "protection orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265" be entered into the NCIC database. "All emergency protection from abuse orders" whether issued pursuant to the PFAA or pursuant to the laws of another jurisdiction may be entered into the NCIC database.

In addition, "all emergency and temporary orders" that have been entered into the NCIC database "shall be canceled upon the expiration of the time period set out in the court order, or, if no time period is set, no later than one year from the entry date."

### Summary

Mutual orders of protection should only be issued if certain conditions are met. Victims in dating relationships who have not lived with the perpetrator will now be eligible for a protection order. Courts will be able to craft remedies specific to the facts of the case. A broader range of protection orders must be entered into the national database. Emergency and temporary protection orders will be canceled upon expiration or after one year. All amendments are effective July 1, 2002.

# THE PROTECTION FROM STALKING ACT (SB 474)

## Introduction

During its 2002 session, the Kansas legislature created the Protection from Stalking Act (PFSA), which is intended to "protect victims of stalking and to facilitate access to judicial protection for stalking victims." SB474, Sec. 1. The PFSA is procedurally similar to the Protection from Abuse Act (PFAA). Nonetheless, the PFSA's focus is on stalking; there is no relationship or residential requirement in order to qualify; the relief is limited because the parties do not live together and may not even know each other. While there may be some crossover between the types of incidents that qualify under the PFAA and those that qualify under PFSA, it will be critical to remember the distinctions between the two acts.

## Definitions

There are several important definitions:

"'Stalking' means an intentional harassment of another person that places the other person in reasonable fear for that person's safety." New Sec. 2 (a).

"'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." New Sec. 2 (b).

"'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.'" New Sec. 2 (c).

Reading the definitions of New Sec. 2 together, "stalking," for purposes of obtaining a protection order, is

- a knowing and intentional course of conduct
- directed at a specific person
- consisting of two or more separate acts over a period of time, however short
  - that show a continuity of purpose
  - which would cause a reasonable person to suffer substantial emotional distress
- that seriously alarms, annoys, torments or terrorizes the person, and
- that serves no legitimate purpose.

Note that this definition of stalking is not the same as the criminal definition of stalking (an intentional, malicious and repeated following or harassment of another person and making a credible threat with the intent to place such person in reasonable fear for such person's safety [K.S.A. 21-3438]).

## The Petition and Allegations

In filing for a PFSA protection order, the victim of stalking must allege facts sufficient to show the following:

- "(1) The name of the stalking victim;
- "(2) the name of the defendant;
- "(3) the dates on which the alleged stalking behavior occurred; and
- "(4) the acts committed by the defendant that are alleged to constitute stalking."

New Sec. 4 (a).

Dates of stalking behavior: The statute does not require the victim to include all the dates on which the stalking occurred. Rather, a victim must show a "course of conduct" and by doing so give the dates on which the stalking behavior occurred. The incidents may have occurred on the same date or on different dates, but a "course of conduct" requires that there be two or more separate acts over a period of time.

Name of defendant: The victim will have to know the name of the defendant. This may pose a problem when the stalker is a stranger.

Acts sufficient to constitute stalking: The victim will have to allege facts sufficient to show she has been or is

being stalked. Again, one must return to the definition of stalking above. For example, a stalking victim might allege the following:

John Doe came to my house on July 21 and July 23. On both of those days, he parked across the street and waited for 3 hours. During that time, I received a phone call from John Doe. When I looked out the window of my living room during the time I took the call, I could see that he was using his mobile phone. During these phone calls, John Doe told me that he loved me, would always love me, and would follow me wherever I went. He also said that he knew where my children went to school and where they went to daycare. John Doe has continued to make the phone calls to me even though I have indicated that I am not interested in him, do not want to date or talk to him, and do not want him contacting me or my children. This course of conduct has been ongoing for several months. I have difficulty sleeping for fear that he will come to my home in the night. I am afraid of what he will do to my children. My children are no longer allowed to walk home from school alone. My older child has told me that he has on occasion seen John Doe sitting outside his school when classes are dismissed. I feel trapped in my own home. I feel terrorized by this continuing course of conduct. I have never dated John Doe nor do I know him socially. His continued contact with my children and me serves no legitimate purpose.

This scenario of events would meet each of the elements of stalking set out above, specifically, (1) a knowing and intentional course of conduct consisting of two or more incidents showing a continuity of purpose and causing substantial emotional distress; (2) directed at a specific individual; (3) seriously alarming, annoying, tormenting, or terrorizing, and (4) serving no legitimate purpose.

### Victim's address and telephone number

The PFSA specifically states that "[t]he 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." New Sec. 4 (e). This confidentiality provision is stronger than the confidentiality provision in the PFAA, which states, "if the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection" of the victims, "such information shall not be disclosed to the public, but only to authorized court or law enforcement personnel." The PFSA mandates confidentiality of address and telephone number without any particular finding by the court.

### Jurisdiction/Venue or where the petition must be filed

The petition is filed with the district judge or with the clerk of the court in the county where the stalking occurred. New Sec. 4 (a) and (b). This differs from the PFAA, which provides, "[a]ny district court shall have jurisdiction over all proceedings under the protection from abuse act. The right of a person to obtain relief under the protection from abuse act shall not be affected by the person's leaving the residence or household to avoid further abuse." K.S.A. 60-3103.

### Relief available

Under the PFSA, the court may order the following relief:

"(1) Restraining the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim . . .

"(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim . . .

"(3) Restraining the defendant from entering upon or in the victim's residence or the immediate vicinity thereof . . .

"(4) Any other order deemed necessary by the court to carry out the provisions of this act." New Sec. 6 (a).

### Extension of order

Unlike the PFAA protection order, which can be extended for another 12 months upon motion of the petitioner, the petitioner in a PFSA case must show the need for an extension before the order expires. The statute states:

"Before the expiration of an order for protection from stalking, a victim, or a parent on behalf of the victim, may request an extension of the protection from stalking order for up to one additional year on showing of continuing threat of stalking." New Sec. 6 (b).

### Assessing costs to the parties

The PFSA includes a provision for assessing costs and awarding attorney fees in certain circumstances. New Sec. 6 (d). The court shall assess costs against the defendant in any case where a protection from stalking order is issued. The court may award attorney fees to the victim when an order of protection from stalking has been issued.

On the other hand, if the court finds that the petition is "without merit," the court may award attorney fees to the defendant. It may be the case that a petitioner was unable to provide sufficient proof to support her allegations; this does not mean that her petition was "without merit." However, if the petition is frivolous, the court may award attorney fees to the defendant. By omission in the statute, the court is not authorized to assess court costs against the petitioner whether the petition is with or without merit.

### Penalties for violation of protection from stalking order

Depending on the nature of the violation and the relief included in the order, violation of a protection from stalking order may result in any of the following sanctions:

Stalking (K.S.A. 2001 Supp. 21-3438)

Violation of a Protective Order (K.S.A. 2001 Supp. 21-3843)

Assault (K.S.A. 21-3408)

Battery (K.S.A. 2001 Supp. 21-3412)

Criminal Trespass (K.S.A. 2001 Supp. 21-3721[a][1][C])

Contempt (K.S.A. 2001 Supp. 20-1204a)

If a defendant is convicted of the crime of stalking while a protection from stalking order is in place, the severity level of the crime is enhanced from a level 10 to a level 9, person felony. The crimes of stalking (K.S.A. 2001 Supp. 21-3438), criminal trespass (K.S.A. 2001 Supp. 21-3721), and violation of a protective order (K.S.A. 2001 Supp. 21-3843) have all been amended to include protection from stalking orders.

### Procedure

The procedure for obtaining a protection from stalking order will be similar to the PFAA procedure, with one major exception. There are no emergency orders in the PFSA.

A petitioner may proceed with or without the assistance of an attorney and may request a temporary, *ex parte* order by filing a verified petition supporting a *prima facie* case of stalking. Again, this means that the victim of stalking must review the definitions of stalking and make sure her allegations reflect those requirements. New Sec. 1 (b) and 5 (b).

The defendant is personally served and a hearing is held within 20 days. The defendant is allowed to present evidence on his behalf. New Sec. 4 (d) and 5 (a).

A parent or an adult living with a minor child may seek relief on behalf of the child. New Sec. 4 (b).

The allegations must be proven by a preponderance of the evidence (more likely true than not true). New Sec. 5 (a).

The protection from stalking order shall remain in effect until modified or dismissed by the court. It shall be in effect for a fixed period of time not to exceed one year, but may be extended for one additional year with the proper showing. New Sec. 6 (b).

The court may amend its order at any time at the request of either party. New Sec. 6 (c).

### Summary

For those familiar with the Protection from Abuse Act, the procedures of the Protection from Stalking Act, with a few exceptions, should be similar. Petitioners should pay close attention to the definitions and the factual allegations needed in the petition. Petitions are filed in the county in which the stalking occurred. Prior to an order's expiration, the petitioner would need to file a motion to extend the order, showing a continuing threat of stalking. When an order is issued, costs shall be assessed to the defendant and a victim may be awarded attorney fees. Petitions without merit may result in attorney fees awarded to the defendant. Relief under the PFSA is generally limited to restraining the defendant from various kinds of contact with the victim.



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