



State of Kansas

Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

February 9, 2012

Representative Pat Colloton  
Chairperson  
House Committee on Corrections and Juvenile Justice  
Room 167-W  
300 SW 10<sup>th</sup> Ave  
Topeka, Kansas 66612

Re: 2012 HB 2613

Dear Representative Colloton:

On Monday, February 6, 2012, I offered verbal testimony regarding HB 2613 stating my concern regarding proposed amendments made in Sections 3 and 5 of the bill. Both sections attempt to set forth the obligations of a judge to extend a protection order when the judge determines by a preponderance of the evidence that the defendant has violated a valid protection order or has attempted or committed a person felony. The terms "attempted or committed" are problematic in that they do not necessarily constitute a conviction and will, therefore, be very difficult determinations for a judge to make.

The attached substitute language clarifies that the proscribed language is the attempt, conspiracy, or criminal solicitation of a person felony. The language is acceptable to the Office of the Attorney General and the Kansas Coalition Against Sexual and Domestic Violence. Please note the change from "and" to "or" preceding the new language would make clear that the two choices, extension for one year, or an extension for two years or a lifetime, are mutually exclusive. I appreciate your consideration of this substitute language.

Please let me know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gleeson".

Mark Gleeson  
Director of Trial Court Programs

MG:mr  
Attachment

House Corrections and Juvenile  
Justice Committee  
2012 Session  
Date 2-10-12  
Attachment #

7-1

1 owns it.

2 (e) Subject to the provisions of subsections (b), (c) and (d), a  
3 protective order or approved consent agreement shall remain in effect until  
4 modified or dismissed by the court and shall be for a fixed period of time  
5 not to exceed one year, except that, ~~on:~~

6 (1) Upon motion of the plaintiff, such period may be extended for one  
7 additional year; ~~and~~ ←

or

8 (2) upon verified motion of the plaintiff and after the defendant has  
9 had an opportunity to present evidence at a hearing on the motion, if the  
10 court determines by a preponderance of the evidence that the defendant  
has violated a valid protection order or ~~attempted or committed a person~~  
felony under the laws of Kansas or the laws of any other jurisdiction  
which are substantially similar to such person felony, the court shall  
extend a protective order for no 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.

has  
been  
con-  
victed  
of

or of the  
attempt,  
conspiracy,  
or criminal  
solicitation  
to commit a  
person  
felony

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

or the  
attempt,  
conspiracy  
or  
solicitation  
thereof,

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

21 (h) If a person enters or remains on premises or property violating,  
22 order issued pursuant to subsection (a)(2), such violation shall constitute  
23 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Stat.  
24 21-5808, and amendments thereto, and violation of a protective order  
25 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto. If a  
26 person abuses, molests or interferes with the privacy or rights of another  
27 violating an order issued pursuant to subsection (a)(1), such violation may  
28 constitute assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
29 5412, and amendments thereto, battery as defined in subsection (a) of  
30 K.S.A. 2011 Supp. 21-5413, and amendments thereto, domestic battery as  
31 defined in K.S.A. 2011 Supp. 21-5414, and amendments thereto, and  
32 violation of a protective order as defined in K.S.A. 2011 Supp. 21-5924,  
33 and amendments thereto.

34 Sec. 4. K.S.A. 2011 Supp. 60-31a04 is hereby amended to read as  
35 follows: 60-31a04. (a) A person may seek relief under the protection from  
36 stalking act by filing a verified petition with the any district judge or clerk  
37 of the court in the county where the stalking occurred. A verified petition  
38 must allege facts sufficient to show the following:

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

1 (b) A parent or an adult residing with a minor child may seek relief  
2 under the protection from stalking act on behalf of the minor child by  
3 filing a verified petition with the district judge or with the clerk of the  
4 court in the county where the stalking occurred.

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

7 (d) Service of process served under ~~this section~~ *the protection from*  
8 *stalking act* shall be by personal service. No docket fee shall be required  
9 for proceedings under the protection from stalking act.

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

15 Sec. 5. K.S.A. 2011 Supp. 60-31a06 is hereby amended to read as  
16 follows: 60-31a06. (a) The court may issue a protection from stalking  
17 order granting any of the following orders:

18 (1) Restraining the defendant from following, harassing, telephoning,  
19 contacting or otherwise communicating with the victim. Such order shall  
20 contain a statement that if such order is violated such violation may  
21 constitute stalking as defined in K.S.A. 2011 Supp. 21-5427, and  
22 amendments thereto, and violation of a protective order as defined in  
23 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

24 (2) Restraining the defendant from abusing, molesting or interfering  
25 with the privacy rights of the victim. Such order shall contain a statement  
26 that if such order is violated, such violation may constitute stalking as  
27 defined in K.S.A. 2011 Supp. 21-5427, and amendments thereto, assault as  
28 defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments  
29 thereto, battery as defined in subsection (a) of K.S.A. 2011 Supp. 21-5413,  
30 and amendments thereto, and violation of a protective order as defined in  
31 K.S.A. 2011 Supp. 21-5924, and amendments thereto.

32 (3) Restraining the defendant from entering upon or in the victim's  
33 residence or the immediate vicinity thereof. Such order shall contain a  
34 statement that if such order is violated, such violation shall constitute  
35 criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2011 Supp.  
36 21-5808, and amendments thereto, and violation of a protective order as  
37 defined in K.S.A. 2011 Supp. 21-5924, and amendments thereto.

38 (4) Any other order deemed necessary by the court to carry out the  
39 provisions of this act.

40 (b) A protection from stalking order shall remain in effect until  
41 modified or dismissed by the court and shall be for a fixed period of time  
42 not to exceed one year, ~~except that, on motion of the plaintiff, such period~~  
43 ~~may be extended for one additional year. Before the expiration of an order~~

1 for protection from stalking, a victim, or a parent on behalf of the victim,  
2 may request an extension of the protection from stalking order for up to  
3 one additional year on showing of continuing threat of stalking as  
4 provided in subsection (c) and ~~(d)~~. **or**

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

7 (d) Upon verified motion of the plaintiff and after the defendant has  
8 had an opportunity to present evidence at a hearing on the motion, if the  
9 court determines by a preponderance of the evidence that the defendant  
has violated a valid protection order or ~~attempted or committed~~ a person  
felony under the laws of Kansas or the laws of any other jurisdiction  
which are substantially similar to such person felony, the court shall  
extend a protective order for no 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.

**or of the  
attempt,  
conspiracy,  
or criminal  
solicitation  
to commit a  
person  
felony**

**has  
been  
con-  
victed  
of**

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

(f) (f) The court shall assess costs against the defendant and  
award attorney fees to the victim in any case in which the court issues  
protection from stalking 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.

**or the  
attempt,  
conspiracy  
, or  
solicitation  
thereof,**

(g) (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.

31 Sec. 6. K.S.A. 60-3111 and K.S.A. 2011 Supp. 21-5924, 60-3104, 60-  
32 3107, 60-31a04 and 60-31a06 are hereby repealed.

33 Sec. 7. This act shall take effect and be in force from and after its  
34 publication in the statute book.

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