

# KANSAS

## PROTECTION ORDER MANUAL

December 2013  
*updated October 2017*



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## **INTRODUCTION**

The purpose of this manual is to assist anyone who may be involved in the protection order system in Kansas. This manual addresses protection orders issued through the Protection from Abuse Act (K.S.A. 60-3101 *et. seq.*) and the Protection from Stalking or Sexual Assault Act (K.S.A. 60-31a01 *et. seq.*). Since this manual is available statewide, the main focus is on statutory law as well as best practices that have been gained by those involved in this field. Kansas case law is also provided to clarify various aspects of the law and can be located in the Kansas Law section of this manual.

It is important to understand the local practices in your area. The protection order process looks different in nearly every court in the state. Local programs and courts do things differently, and the process will be easier and possibly more successful for the victim accessing it if those assisting her understand local practices.

### **A NOTE ON LANGUAGE**

#### **“Survivor” vs. “Victim”**

- Throughout this manual, the term “survivor” will be used in addition to the term “victim.” The use of the term “survivor” is a way of promoting the strength, courage and survival strategies of those who have experienced domestic and sexual violence.
- It is important to recognize that not all women who have experienced these kinds of assaults see themselves as “survivors.” When working with someone interested in filing for a protection order, use language that is comfortable for that individual.

#### **Gendered language**

- Throughout this manual, the terms “she” or “her” will be used to refer to the survivor or plaintiff in recognition of the fact that the majority of survivors of domestic and sexual violence are women.<sup>1</sup> This is not to insinuate that all females are victims or that all males are batterers. Although it occurs at much lower rates, males can also be victims of domestic violence.<sup>2</sup>

## DYNAMICS OF DOMESTIC VIOLENCE

### What is Domestic Violence?

**Domestic violence** is a pattern of abusive and coercive behavior used to gain and maintain power and control over an intimate partner or former intimate partner. Abusive and coercive behavior can include physical violence, sexual violence, emotional and psychological abuse, verbal abuse, and economic abuse. These behaviors result in fear for the safety of the victim. Domestic violence victims often feel threatened physically, spiritually and/or emotionally by the abuser. Batterers utilize physical and sexual violence and threats of violence to “enforce” the control they establish. Battering is a chosen behavior, often committed out of sight of others to avoid detection. It is not a mental illness, behavior disorder or anger management problem.

### Types of abuse include:

- Physical Violence
- Sexual Violence
- Emotional/Verbal Abuse
- Intimidation and Threats
- Exploitation of Privilege
- Isolation
- Economic Control
- Threatening Children and Loved Ones
- Minimization, Denial and Blame

For a diagram depicting the overall pattern of abusive and violent behaviors used by batterers to establish and maintain control over their partners, see the Power and Control Wheel in the Appendix.

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<sup>1</sup> BLACK, M.C., ET AL., NAT’L CENT. FOR INJURY PREVENTION AND CONTROL, CENT. FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010 SUMMARY REPORT (2011).

<sup>2</sup> *Id.*

## **PROTECTION ORDER BASICS**

A protective order is a court order that prohibits a party from engaging in certain conduct in order to protect another.<sup>1</sup> Protection From Abuse (PFA) and Protection From Stalking or Sexual Assault (PFSSA) orders are specific types of protective orders intended to increase the safety of victims of sexual and domestic violence and stalking. These orders, however, are not right for everyone. Many people within the community may encourage victims of sexual and domestic violence to obtain a protection order, such as family members, social workers, neighbors, friends, or law enforcement. Unfortunately, not everyone who is in need of a protection order will qualify and not everyone who qualifies should file for one. Before a victim petitions for a protection order, a sexual or domestic violence advocate or an attorney should assist her in deciding whether the benefits of a protection order outweigh the risks. A protection order should always be used in conjunction with a broader safety plan to decrease the likelihood that the abuser will further harm the victim and/or her children.

### **SAFETY PLANNING**

The first step in the protection order process is deciding whether to seek an order. Applying for a protection order is a step towards independence, which can threaten an abuser/stalker's sense of power and control, therefore possibly increasing the danger of violence or risk of death for the victim.

If the victim decides to file a petition for a protection order, it is imperative that she understand that the protection order is only one piece of a comprehensive safety plan. Safety planning helps develop tools in advance of potentially dangerous situations. Sexual and domestic violence advocates can help victims with their safety planning. The Kansas Coalition Against Sexual and Domestic Violence has published a safety planning brochure which can be found online at [www.kcsdv.org](http://www.kcsdv.org). Every safety plan should be unique to the situation of the victim and include only the suggestions that make sense for a person's given situation. For safety reasons, these plans are not usually written down.

There are three important questions to ask a victim as she considers filing a petition for a protection order:

- (1) Is she eligible?
- (2) Does she think it will make her safer?
- (3) How might a protection order negatively affect her?

## **(1) Is she eligible?**

While the Protection from Abuse Act (PFAA) was created “to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for victims,”<sup>2</sup> and the Protection from Stalking or Sexual Assault Act (PFSSAA) was created “to protect victims of stalking and sexual assault and to facilitate access to judicial protection for stalking and sexual assault victims,”<sup>3</sup> not all those who would be considered victims in the greater sense of the terms “domestic violence,” “sexual assault,” or “stalking” will qualify for a protection order. According to the PFAA, there must be a specific type of relationship between the plaintiff and the defendant and type of abuse in order for the plaintiff to qualify for a protection from abuse order. Some power and control tactics commonly associated with domestic and sexual violence are not included in the definition of abuse under the Act. While they might help prove the statutorily required abuse, emotional or mental abuse by itself, for example, will not satisfy the statutory requirement for protection order. The PFSSAA does not set out any specific type of relationship between the plaintiff and the defendant, but does require specific stalking behaviors. As of July 2017, the law states that victims of a one-time sexual assault can seek a PFSSAA order.

## **(2) Does she think it will make her safer?**

It is extremely important for the victim to decide whether the protection order might make her safer. Often people assume that a legal remedy is the best route to take. Sometimes, however, not only does the protection order not enhance the woman’s safety, it can increase the likelihood of her being harmed or even killed by the abuser. The time during which a victim tries to separate from the abuser and assert her independence can often be the period where there is an increased risk of violence. The victim should carefully consider whether the order might make her safer and consider additional safety planning no matter what choice she ultimately makes. The victim knows the defendant best, and is the expert on what she thinks he may do. Some questions to ask the victim are the following:

- Has she had a protection order against the defendant before?
- Was it helpful?
- How did he respond to the prior order?
- Has he had prior orders issued against him by a different individual? If so, how did he respond?
- How are protection orders enforced in her area?
- What is the response time by law enforcement to a call about a violation?



- Is she in a very rural area that might delay law enforcement response time?
- Has he threatened violence if she files for a protection order or a divorce?
- Does she think an order will make her safer?

### **(3) How might a protection order negatively affect her?**

There are often significant economic and emotional impacts on the victim if she files for a protection order and/or when the order is issued. Some questions to ask the plaintiff are the following:

- Is she willing to go to court and tell her story to a judge in front of the defendant?
- Will she need an attorney, and if so, how much will an attorney cost? Will this protection order lead to divorce or custody proceedings in which she will have to hire an attorney?
- Does she have a job? If not, can she get a job?
- Does she have somewhere to live if she cannot stay in her residence? Can she afford to live on her own?
- Can she afford to raise her children without financial support?
- Can she find affordable childcare?
- Will this order affect her job or the abuser/stalker's job in such a way that it will have an economic impact on the survivor or her children?
- Will she have transportation once she is separated from the abuser/stalker?
- Does she have a plan for handling these economic implications?

It is important that anyone who is working with the victim discuss any and all implications that the protection order may have for her and/or her children before she makes the decision to file the petition.

**REMEMBER, the victim is the best person to decide what will keep her safe but having a conversation with her about safety is critical before moving forward with the protection order.**

## **TYPES OF PROTECTIVE ORDERS**

As mentioned above, there is more than one type of protective order that may be issued by the court. This manual focuses on PFA and PFSSA orders, but it is important to understand that other protective orders may also arise. The protections provided by

these different orders vary and therefore an understanding of these orders can be important to evaluating a victim's case. These other orders include:

- Interlocutory Order in a Divorce: A civil order issued as part of a divorce, annulment, or separate maintenance action.<sup>4</sup> This order restrains “the parties from molesting or interfering with the privacy rights of each other” and may also be called a “restraining order,” “temporary restraining order,” or a “TRO.”
- Order Issued in a Child in Need of Care (CINC) Case: a restraining order issued by a judge in a CINC case for the protection of a child or a parent.<sup>5</sup>
- Order Issued in a Criminal Case: an order issued as a condition of pretrial release, diversion, probation, suspended sentence, post release supervision, or at any time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person, generally the victim of the underlying crime.<sup>6</sup> These orders are often called “no contact orders.”

## **PFA AND PFSSA ORDERS: WHO IS ELIGIBLE**

### **Protection from Abuse:**

To qualify for a protection from abuse order, the parties must be intimate partners or household members.

- This means people who are or have been in a dating relationship, reside or have formerly resided together, or have a child in common.<sup>7</sup>
- “Dating Relationship” means a social relationship of a romantic nature. This relationship shall be presumed if the plaintiff verifies that it exists, such as by alleging it in the signed petition. It is then up to the defendant to allege that the relationship does not exist. If the defendant does deny the relationship, the court shall consider the following factors: the nature of the relationship, the length of time the relationship existed, the frequency of interaction between the parties, and the time since the termination of the relationship as well as any other factors the court deems relevant. <sup>8</sup>
- A parent or an adult living with the child may seek an order on behalf of that child.<sup>9</sup>
  - If seeking an order on behalf of a minor child based on certain sexual acts with the defendant, the minor must be under 16 years of age and not the spouse of the defendant.<sup>10</sup>

## **Protection from Stalking or Sexual Assault:**

Unlike the PFAA, the PFSSAA does not require that the parties have any specific relationship. Any victim of stalking or sexual assault may be eligible for a PFSSA.<sup>11</sup>

### **WHAT QUALIFIES**

#### **Protection from Abuse:**

The defendant must have abused the plaintiff.<sup>12</sup> The PFAA defines “abuse” as follows<sup>13</sup>:

- Intentionally attempting to cause bodily injury;
- Intentionally or recklessly causing bodily injury;
- Intentionally placing, by physical threat, another in fear of imminent bodily injury;
- Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent; or
- Engaging in any of the following acts with a minor under the age of 16 who is not the spouse of the offender:
  - Sexual intercourse; or
  - 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.

It is important to recognize that there is a required intent involved in the act to be considered abuse. Often defense attorneys will argue that their client did not intend to cause bodily injury or fear. Therefore, it is important that the plaintiff be prepared to explain why she believes the abuser acted intentionally or recklessly.

#### ***Protection from Abuse on Behalf of Children:***

Kansas courts have interpreted the language of the PFAA to apply differently to adults than to children. Courts have limited the judicial discretion in determining what constitutes bodily injury between parent and child. The reasoning behind this discretion is the court’s recognition of the important rights parents have to raise their children as they reasonably see fit.<sup>14</sup> Parents have a fundamental right to control the care and upbringing of their children. Children also have the right not to be abused or neglected.<sup>15</sup> While parents may not cause intentional harm to their children, a judge

may not impose “his or her own morality, own concept of what is acceptable, own notions of child rearing” in determining what is unacceptable bodily injury.<sup>16</sup> Without a clear need to protect a child, the court will likely not intervene into parental discipline.<sup>17</sup>

Kansas courts have determined that there must be physical pain or physical impairment to the child for there to be a finding of abuse in a PFA case.<sup>18</sup> This pain does not have to be substantial, but must be more than “minor or inconsequential injury to the child.”<sup>19</sup> In determining what is physical pain or impairment, courts look at the facts of the incident, the age of the minor, and the relationship between the minor and the parental figure.<sup>20</sup>

### **Protection from Stalking or Sexual Assault:**

As of July 2017, the law specifically protects victims of sexual assault. Up to this point, there has been a gap in protection for victims of sexual assault in Kansas. The Protection from Abuse order requires that the parties be intimate partners or household members. Many sexual assault survivors are victims of non-intimate partner sexual assault. This could include sexual assault committed by strangers, acquaintances, neighbors, co-workers or relatives. The Protection from Stalking order requires that intentional harassment took place over a period of time, described by statute as a course of conduct consisting of two or more separate acts. A victim of sexual assault would not qualify for a PFA if their perpetrator is not an intimate partner or household member. They would also not qualify if they could not prove two or more separate acts. Until July of 2017, there had not been an available remedy for victims in this circumstance. Updated forms are available online at [www.kscourts.org](http://www.kscourts.org) or from the court clerk.

The plaintiff must prove by a preponderance of the evidence, or more likely than not, that the alleged acts of stalking or sexual assault occurred.<sup>21</sup> The PFSSAA defines “sexual assault,” “stalking” and its elements as follows<sup>22</sup>:

- Sexual assault: a nonconsensual sexual act; or an attempted sexual act against another by force, threat of force, duress or when the person is incapable of giving consent.
- Stalking: an intentional harassment of another person that places the other person in reasonable fear for that person’s safety.
  - The plaintiff must be prepared to explain to the court that she was in fear for her safety and why that fear was reasonable. Kansas courts have held that the reasonableness of the plaintiff’s fear is based on a totality of the circumstances, including what a reasonable person having experienced what the plaintiff had experienced with the defendant would find fearful.

- **Harassment:** 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.
  - The plaintiff should be prepared to argue that the conduct was knowing and intentional and that it served no legitimate purpose. It is important to remember that the Kansas Legislature included very strong words like torment and terrorize to express the feelings that the stalking creates in the victim; therefore the victim should be prepared to explain why it is that she felt this way.
  
- **Course of Conduct:** 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.”
  - Remember, one act, no matter how bad, is not enough to qualify as stalking. Therefore, it is important for the plaintiff to keep track of every incident that could be considered an act of stalking.
  
- **Unmanned aerial system:** a powered, aerial vehicle that:
  - Does not carry a human operator; uses aerodynamic forces to provide vehicle lift; may fly autonomously or be piloted remotely; may be expendable or recoverable; and may carry a lethal or nonlethal payload.

## **INTERACTION WITH OTHER LEGAL PROCEEDINGS**

Victims involved in the protection order process often find themselves involved in other aspects of the legal system as well. For example, there may be a divorce or child custody case pending, a criminal case for the domestic violence, stalking, sexual assault or violation of a protective order, or there may be a Child in Need of Care case pending. All of these cases might have their own types of protective orders issued. It is important for the plaintiff to realize that it is possible for multiple orders to be issued by different courts: criminal, civil or domestic, and district or municipal courts. The victim may need different attorneys for different cases, and there will often be multiple judges and courts involved. The plaintiff should keep track of the case number of each case, the name and location of the issuing court, and the specific orders issued.

## **Interaction between Divorce/Paternity and PFA Orders**

K.S.A. 60-3107(c) describes when orders issued in protection from abuse, divorce, and paternity cases may modify or be inconsistent with each other.

Ex parte application in a divorce or paternity action

- ➔ May NOT modify an existing PFA order

Motion for temporary orders in a divorce or paternity action

- ➔ May NOT modify an existing PFA order

PFA order

- ➔ May modify existing divorce or paternity orders
  - For matters subject to modification in divorce and parentage proceedings. (child support, child custody, and residency), AND
  - On sworn testimony to support a showing of good cause.
    - Good cause includes the immediate and present danger of abuse to the plaintiff or minor children.

Final divorce orders

- ➔ May be inconsistent with an existing PFAA order or a current proceeding under the PFAA, but it must
  - Be specific in its terms,
  - Reference the PFA order and the parts to be modified, and
  - A copy should be filed in both actions.

Kansas code for care of children or Kansas juvenile justice code custody or parenting time orders

- ➔ Shall be binding and take precedent over PFAA until orders are terminated.
  - Any inconsistent custody or parenting order issued shall
    - Be specific in its terms,
    - Reference any preexisting protection from abuse order and the custody being modified, and
    - A copy of order shall be filed in the PFA case. <sup>23</sup>

## **Consolidation of Cases**

The PFAA permits a protection order case to be consolidated with a divorce or custody case. If the above actions involve the same issues or circumstances (a common

question of law or fact) or are pending in the same or different counties in the same judicial district, the judge may order a joint hearing or trial of any or all of the matters at issue in the action, may order all actions consolidated, and may make such orders on those proceedings to avoid unnecessary costs or delay. Even if the cases are consolidated, the PFA order should be a separate order on the Judicial Council approved order forms within the divorce or custody case and not just included in the journal entry for divorce. A PFA order is different than a restraining order in a divorce, extending past the divorce proceedings, and provides for greater protections and easier enforcement.<sup>24</sup>

### ***PRO SE* LITIGANTS: WHERE TO GET A BLANK PETITON**

The petition for both a PFA order and a PFSSA order can be obtained from the court clerk or online.<sup>25</sup> Though it is preferable that victims be represented by legal counsel, it is not required. Additionally, most local sexual and domestic violence advocacy programs have copies of the forms and are able to assist *pro se* victims with the process of getting a protection order.

### **WHERE TO FILE (VENUE)**

#### **Protection from Abuse**

“Venue” generally means the county where a petition can be filed. The PFAA says that the verified petition may be filed with any district judge or clerk of the court.<sup>26</sup> The Kansas Court of Appeals in *Kreger v. Kreger*, held that the PFAA’s specific conferring of jurisdiction to “any district court” also necessarily conferred venue to any district court as well.<sup>27</sup> The court found this interpretation to be in line with the legislative declaration that the PFAA must be “liberally construed to promote the protection of victims . . . from threats of bodily injury and to facilitate access to judicial protection for victims.”<sup>28</sup>

#### **Protection from Stalking or Sexual Assault**

The PFSSAA, previously known as the PFSA stated that a plaintiff must file a verified petition with the district judge or clerk of the court in the county where the stalking occurred.<sup>29</sup> A petition can be filed in any district court; however, a petition filed on behalf of a minor must still be brought in the county where the stalking occurred.<sup>30</sup>

***THE COURT AND SHERIFF’S DEPARTMENT CANNOT CHARGE A FEE FOR FILING OR SERVING A PETITION FOR A PFA OR PFSSA ORDER. 42 U.S.C. § 3796hh(c)(1)(D).***

## LIMITATIONS ON THE USAGE OF THE PFAA

The PFAA previously stated that, “[n]o person may use the procedure provided for in this act more than twice in any twelve month period, except in the case of abuse of a minor.”<sup>31</sup> This section of the statute has been repealed and there is no longer a restriction on the number of times a victim may use the procedure.<sup>32</sup>

## CONFIDENTIALITY

### Protection from Abuse

The plaintiff may request that certain information be kept confidential. In order for the plaintiff’s address or telephone number or both to remain confidential, the court must make a finding that confidentiality is necessary for the protection of the plaintiff, plaintiff’s minor children, or minor children residing with the plaintiff. If such a finding is made, this information should not be disclosed to the public; however, it will still be available to authorized court or law enforcement personnel.<sup>33</sup>

### Protection from Stalking or Sexual Assault

According to the Protection from Stalking or Sexual Assault Act, the victim’s address and telephone number are not to be disclosed to either the defendant or the public. Only authorized court and law enforcement personnel are permitted access to this information.<sup>34</sup>

## EMERGENCY RELIEF

### Protection from Abuse

If the court is unavailable, such as on evenings, weekends, and holidays, an emergency protection from abuse order may be an option. In order for an emergency protection order to be issued, a verified petition along with a proposed order must be presented to a district court judge.<sup>35</sup> An emergency order may be granted *ex parte* and may include the same relief as an *ex parte* temporary order (see below). An emergency order requires there to be an immediate and present danger of abuse to the plaintiff or minor child or children. The order is only good until 5:00 p.m. on the first day that the court resumes business, before which time the plaintiff must return to the court in order to obtain a temporary *ex parte* order and hearing date.<sup>36</sup> Keep in mind that the actual process for filing and issuing emergency orders varies among districts, and many courts



have no procedures in place allowing for emergency orders to be issued. The victim should contact her local sexual and domestic violence advocacy program to discuss options and other ways to enhance her safety during this critical time.

## **Protection from Stalking or Sexual Assault**

The Protection from Stalking or Sexual Assault Act does not provide for an emergency order. Again, the victim should contact her local sexual and domestic violence advocacy program to discuss options and other ways to enhance her safety during this critical time.

### **TEMPORARY ORDER ISSUED *EX PARTE***

## **Protection from Abuse**

If good cause is shown in the petition, the court may issue a temporary order before the other side receives notice.<sup>37</sup> Good cause means “immediate and present danger of abuse to the plaintiff or minor children.”<sup>38</sup> This order is only temporary and a hearing on the petition will still be required. If the hearing is continued, the judge may extend the temporary orders.<sup>39</sup> If the judge denies the request for a temporary order, the court should still set an evidentiary hearing on the petition.<sup>40</sup>

Temporary orders may only include the following:<sup>41</sup>

- Restrain the defendant from abusing, molesting, or interfering with the privacy or rights of the plaintiff or of any minor children of the parties.<sup>42</sup>
- Grant possession of the residence or household to the plaintiff to the exclusion of the defendant, unless the parties are not married and the defendant solely owns the residence or household.<sup>43</sup>
- Restrain the defendant from entering or remaining upon the plaintiff’s residence or household.<sup>44</sup>
- Restrain the defendant from canceling utility services to the residence or household for 60 days following the date of issuing order.<sup>45</sup>
- Award temporary custody and residence and establish temporary parenting time with regard to minor children.<sup>46</sup>
  - Note: No temporary order may modify an existing order granting legal custody, residency, visitation, or parenting time unless there is sworn testimony at a hearing to support a showing of good cause.

- Order a law enforcement officer to evict the defendant from the residence or household.<sup>47</sup>

### **Protection from Stalking or Sexual Assault**

If good cause is shown in the petition, the court may issue a temporary order before the other side receives notice.<sup>48</sup> In order to show good cause, the victim must file a verified petition that supports a prima facie case of stalking or sexual assault. This means that the plaintiff must set forth facts that, if they were not refuted, would be enough for a judge to issue a protection from stalking or sexual assault order. A hearing on the petition is still required. If the hearing is continued, the court may extend the temporary orders.<sup>49</sup> If the judge denies the request for a temporary order, the court should still set an evidentiary hearing on the petition.<sup>50</sup>

Temporary orders may only include the following:<sup>51</sup>

- Restrain the defendant from following, harassing, and telephoning, contacting or otherwise communicating with the plaintiff.<sup>52</sup>
- Restrain the defendant from abusing, molesting or interfering with the privacy rights of the plaintiff.<sup>53</sup>
- Restrain the defendant from entering upon or in the plaintiff's residence or the immediate vicinity thereof.<sup>54</sup>
- Any other orders deemed necessary by the court to carry out the provisions of the Protection from Stalking or Sexual Assault Act.<sup>55</sup>

### **Service on Defendant**

Due process requires that the defendant have notice of and opportunity to be heard on the petition. For protection order proceedings, the Notice of Hearing and Petition must be personally served on the defendant.<sup>56</sup>

- Personal Service is made by delivering a copy of the documents directly to the defendant.
- Process may be served by the sheriff of the county where the document is to be served, by the plaintiff's attorney, or by a person appointed to serve process such as a law enforcement officer or private process server.
- The defendant receives a copy of any temporary orders at the time he is served as well as a copy of the petition filed by the plaintiff.

## PREPARATION FOR FINAL HEARING

### Talk to an Advocate<sup>57</sup>

- If possible, and if the plaintiff feels comfortable doing so, the plaintiff should speak with a sexual or domestic violence advocacy program advocate, even if she spoke with one before she decided to petition for a protection order.
- An advocate can help the plaintiff understand the court process, prepare herself for the hearing, prepare for what might happen after the hearing, and develop a safety plan.
- An advocate cannot provide legal advice for a plaintiff. If the plaintiff wants or needs legal advice, she should contact an attorney.

### Hire an Attorney<sup>58</sup>

- The plaintiff might want to speak with or hire an attorney if she thinks she needs one. This should be done as soon as possible.
- An attorney can help the plaintiff understand the court process, prepare for trial, and prepare for what might happen after trial.
- The plaintiff should seriously consider speaking with or hiring an attorney if the defendant has filed a counter-petition or a new petition against her, or if there is a chance that a mutual order might be issued.
  - There are negative consequences that can arise from having a protection order issued against her.
- The plaintiff might also consider speaking with or hiring an attorney if she is married to and/or has children with the defendant and will likely be filing for a divorce or child support/custody.
  - The proceedings intersect in ways that may be confusing for someone who is not an attorney.
  - The plaintiff should also seriously consider speaking with or hiring an attorney if the court is consolidating the protection order with the divorce or custody case.
  - Even though the Protection from Stalking or Sexual Assault Act does not provide for child custody orders to be issued, a PFSSA order could affect the ability of the parties to co-parent, and facts set forth in the PFSSA hearing may be used in a custody hearing.
  - Additionally, if there are any issues involving interstate custody, the plaintiff should consider speaking with an attorney.

## Interpreters

- If the plaintiff does not speak English or is deaf, she should contact the court and request, in writing if possible, that an interpreter be present at the hearing. This should be done as soon as possible.
  - If an interpreter is not available, the plaintiff may bring one to court with her. This person should never be a child or a witness.
  - There is more information on interpreters in the Immigration section of this manual.

## FINAL HEARING

At the final hearing, the plaintiff must prove the allegation of abuse, stalking or sexual assault by a preponderance of the evidence (meaning that it was more likely than not that the abuse, stalking or sexual assault occurred). The defendant shall have an opportunity to present evidence on the defendant's behalf.<sup>59</sup>

## Service on Defendant

- If there is service on the defendant, the defendant must show up or else the defendant gives up his opportunity to be heard and a default order may be issued.
- If there is no service on the defendant, the case may be continued until there is service on the defendant. The judge may continue the temporary order until the next court date.<sup>60</sup>

## Appearance

**THE PLAINTIFF MUST BE PRESENT AT THE FINAL HEARING. IF THE PLAINTIFF DOES NOT APPEAR, THE CASE MAY BE DISMISSED.**

If the plaintiff appears but the defendant does not appear, the plaintiff may be awarded a final protection order. The judge may ask the plaintiff questions to prove the allegations of abuse, stalking, or sexual assault by a preponderance of the evidence. If both the plaintiff and the defendant appear, the defendant can decide whether to agree to the order or contest it.

- If the defendant agrees, the plaintiff may be awarded a consent order or have her order for protection granted.

- If the defendant contests, there will be a hearing to determine whether the plaintiff should be awarded the protection order. This hearing could be the same day or scheduled for another day.
  - If the hearing is scheduled for the same day and the defendant has an attorney and the plaintiff does not, the plaintiff should consider asking the judge for a continuance so she can obtain an attorney. If she does not, she may be at a disadvantage.
  - The hearing must generally occur within 21 days of the filing of the petition.<sup>61</sup>

### **FINAL ORDER**

After hearing all of the evidence, the judge will determine if the plaintiff has met the burden of proof. If the judge decides that it is more likely than not that the abuse, stalking or sexual assault occurred, the judge should issue a final order of protection.

- This order can include the relief requested and any other relief that the court believes is appropriate.

**WHILE NOT REQUIRED FOR ENFORCEMENT, IT IS RECOMMENDED THAT THE PLAINTIFF KEEP A COPY OF THE ORDER WITH HER AT ALL TIMES. THIS ORDER IS VALID IN KANSAS AND ALL OTHER STATES, TRIBAL LANDS, AND U.S. TERRITORIES.**

### **Protection from Abuse**

In the PFA, final orders many include more and/or different relief than is included in the temporary order, including the following:<sup>62</sup>

- Restrain the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children.
  - The order must also include a statement that a violation of the order may constitute an assault under K.S.A. 21-5412(a), battery under K.S.A. 21-5413(a), domestic battery under K.S.A. 21-5414, and a violation of a protective order under K.S.A. 21-5924.<sup>63</sup>
- Grant 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.

- The order must contain a statement that if the order is violated, such violation will constitute criminal trespass under K.S.A. 21-5808(a)(1)(C) and a violation of a protective order under K.S.A. 21-5924.<sup>64</sup>
- Restrain the defendant from canceling utility service to the residence or household for 60 days from the date the order is issued.<sup>65</sup>
- Require the defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.<sup>66</sup>
- Award temporary custody and residency and establishing temporary parenting time with regard to the minor children.<sup>67</sup>
- Order a law enforcement officer to evict the defendant from the residence or household.<sup>68</sup>
- Order support payments for the support of the party’s minor child, if the defendant is the mother or the father of the child, or for the plaintiff, if the plaintiff is married to the defendant.
  - Such orders shall remain in effect until modified or dismissed by the court or until they expire. They should be fixed for a period of time not to exceed one year. On the motion of the plaintiff, the court may extend the order for 12 months.<sup>69</sup>
- Award costs and attorney fees to either party.<sup>70</sup>
- Make a provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property.<sup>71</sup>
- Require any person against whom an order is issued to seek counseling to aid with the cessation of abuse.<sup>72</sup>
- Order or restrain any other acts deemed necessary to promote the safety of the plaintiff or of any other minor children of the parties.<sup>73</sup>
  - This is the “catch-all” provision. This allows the plaintiff and the judge to address additional safety concerns. Here the plaintiff can ask for anything that will help make her or the children safe. Some things the judge could order are: order the defendant not to possess any guns or other weapons, order the defendant to pay moving expenses, order that the plaintiff will

have custody and control of any of the animals of the household or on the farm, order the defendant to turn over any important documents, and order that the plaintiff have possession of the household car or other mode of transportation.

## **Protection from Stalking or Sexual Assault<sup>74</sup>**

The PFSSA Act does not make a distinction between what can be included in the temporary order and the final order. The final order may include the following relief:

- Restrain the defendant from following, harassing, telephoning, contacting, or otherwise communicating with the victim.
  - The order must also include a statement that a violation of the order may constitute stalking under K.S.A. 21-5427 and a violation of a protective order under K.S.A. 21-5924.<sup>75</sup>
- Restrain the defendant from abusing, molesting, or interfering with the privacy rights of the victim.
  - The order must contain a statement that a violation of the order may constitute stalking as provided in K.S.A. 21-5427, assault as provided in K.S.A. 21-5412(a), battery as provided in K.S.A. 21-5413(a), and a violation of a protective order as provided in K.S.A. 21-5924.<sup>76</sup>
- Restrain the defendant from entering upon or in the victim's residence or the immediate vicinity thereof.
  - The order must contain a statement that a violation of the order shall constitute criminal trespass as provided in K.S.A. 21-5808(a)(1)(C) and a violation of a protective order as provided in K.S.A. 21-5924.<sup>77</sup>
- Any other order deemed necessary by the court to protect victims of stalking or sexual assault.<sup>78</sup>
  - This is the “catch-all” provision. This allows the plaintiff and the judge to address additional safety concerns. Here the plaintiff can ask for anything that will help make the victim safe. This could include removal of firearms or other weapons from the defendant's possession.

## **Length of Order**

The protection order may be issued for a fixed period of time up to one year.<sup>79</sup>

## **Extension of Order**

Previously a protection order could only be extended for up to one additional year.<sup>80</sup> As of July 2012, there are two different options for extending an order.

### ***Up to One Year Extension***

A protected party may seek a one-year extension of a final order. To seek this extension, a plaintiff will need to fill out a “Motion to Extend Final Protection from Abuse [or Stalking or Sexual Assault] Order for One Additional Year” (form available online at [www.kscourts.org](http://www.kscourts.org) or from the court clerk). This motion to extend (i.e., the paperwork) should be filed in the same court where the plaintiff took the original protection order petition.<sup>81</sup> This extension is at the sole discretion of the court.<sup>82</sup> No violations or new incidents are required. Prior to being amended to include victims of sexual assault, the PFSSAA required a plaintiff to show a continued threat of stalking to receive an extension of the order; however that is no longer the case.<sup>83</sup>

### ***Two Years up to the Lifetime of the Defendant Extension***

A longer extension lasting from two years up to the lifetime of the defendant is available if the defendant has violated a valid protection order or has been convicted of committing a person felony against the protected party or a member of their household. In order to seek this longer extension, the plaintiff will need to fill out a “Motion to Extend Final Protection from Abuse [Stalking or Sexual Assault] Order for Two Additional Years or up to Life.” This form is available online at [www.kscourts.org](http://www.kscourts.org) or from the court clerk. This form requires the plaintiff to include information about the violation or the conviction, swear to it by signing the motion, and ask the court to personally serve the defendant with a copy of the motion. This extension requires that there be a hearing on the motion where the plaintiff is given the opportunity to present evidence or testimony to the violation or conviction and the defendant also has the opportunity to present evidence in his defense. The defendant can present witnesses as well as ask questions of the plaintiff or the plaintiff’s witnesses. If the court finds that it is more likely than not the defendant violated a valid protection



order or was convicted of a person felony, the court will extend the order for a period from not less than two years up to the lifetime of the defendant.<sup>84</sup>

### **Mutual Order/PFA Order against the Plaintiff**

A “mutual” order is an order issued by a court when both parties (the plaintiff and the defendant) have been found to have abused, attempted to abuse, or threatened to abuse each other. Unlike a regular order, a mutual order restrains the actions of both parties.

In order for a mutual protection from abuse order to be entered against the plaintiff, the following must occur:

- The defendant must properly file a written cross or counter petition seeking a protection order.
- The plaintiff must have reasonable notice of the written cross or counter petition by personal service.
  - It is unclear what “reasonable notice” is, but the day of the final hearing, or at the final hearing, is arguably not “reasonable.”
- The issuing court must make specific findings of abuse against both the plaintiff and the defendant and determine that both parties acted primarily as aggressors and neither party acted primarily in self-defense.<sup>85</sup>

A mutual order can be very harmful to the victim in a number of ways. If the victim violates the order, she may be criminally prosecuted for violation of a protection order. A mutual order can make the order harder to enforce when the defendant violates it because the party violating the order may not be clear. Also, the order must include a finding that both parties abused each other, which can be used against the victim in a custody or divorce case. There are additional concerns for immigrant and non-citizen victims. These can be found in the Immigration section of this manual. A victim may be safer without a protection order than with a mutual order. A victim should be strongly advised to speak with an attorney if she is faced with a mutual protection order.

### **Consent Agreements**

The Protection from Abuse Act allows for consent agreements between the parties so long as it brings about a cessation of abuse of the plaintiff.<sup>86</sup> Consent agreements are not mutual orders. A mutual order does not bring about the

cessation of abuse of the plaintiff. A consent agreement comes about when the defendant consents without a hearing to a protection order being entered and the parties agree on issues of property, custody, and parenting time.

Consent agreements that attempt to limit or restrict the plaintiff from contacting the defendant are likely void. Plaintiff's attorneys should not counsel their clients to agree to any order that purports to restrict the plaintiff. The plaintiff should not sign a consent order without speaking with an attorney first.

### **Dismissal or Modification of the Protection Order**

Once a protection order is issued, it remains in effect until it expires unless it is modified by the court.<sup>87</sup> The parties cannot modify or dismiss the order on their own. This means that the parties should not ignore the order or pretend it does not exist if they decide to reconcile. If the plaintiff no longer wants the order, the plaintiff should file a motion to modify the expiration date of the temporary or final protection order or ask that the order be dismissed.

### **Entry into National Crime Information Center (NCIC)**

When a PFA order is issued, law enforcement enters the order into a national database (NCIC) accessible to most law enforcement agencies. This does not mean that a protection order is permanently in the NCIC or on an individual's "record." This includes all temporary, amended, and final PFA orders.<sup>88</sup> There is no statute requiring PFSSA orders be entered into the NCIC and departments may have varying policies. Therefore, law enforcement should only be using the NCIC database to assist them in determining the validity of a protection order; the database should not be relied upon as the only means of making this determination. Officers should look at the face of the order for validity.

## **ENFORCEMENT**

### **Service on the Defendant**

Generally, an order must be served on the defendant before it can be enforced. Law enforcement may, however, arrest a defendant for a violation if the defendant had prior knowledge of the order despite having not been formally served. Law enforcement should follow departmental policy. The plaintiff can also still call law enforcement if the order has not been served. Keep in mind that in many jurisdictions, police officers, in addition to the sheriff, have the authority to serve the order on the defendant. Therefore, if the defendant has not yet been

served, it is wise for the plaintiff to keep an extra copy of the order and proof of service form (available from the court clerk) with her to give to any law enforcement officers who might be able to serve the defendant. Additionally, even though the abuser or stalker cannot be charged with violation of a protection order prior to service, there may still be other charges that law enforcement can use to arrest the defendant and protect the victim.

### **Criminal Violation of a Protective Order**

A criminal charge of violating a protective order may be brought against someone who is subject to a protection from abuse, stalking or sexual assault order and knowingly or intentionally violates that order.<sup>89</sup> Other types of protection orders are also included in the criminal statute. Violating an order is a class A misdemeanor.<sup>90</sup> Violating an extended order for two years and up to the lifetime of the defendant is a severity level 6 person felony.<sup>91</sup>

A violation of a protection order may also constitute felony stalking under K.S.A. 21-5427.<sup>92</sup> For a violation to constitute felony stalking, the defendant must recklessly engage in one act listed under the statute that violates a provision of the protection order that would cause the protected person to fear for his or her safety, or the safety of a member of his or her immediate family and is actually placed in fear.<sup>93</sup> Included in that list is any act of communication.<sup>94</sup> Felony stalking in violation of a protection order is a Severity level 9 person felony on the first conviction and severity level 5, person felony upon a second or subsequent conviction.<sup>95</sup>

### **Contempt**

Both the PFAA and the PFSSAA allow a court, after a hearing and finding that there has been a violation of its order,<sup>96</sup> to hold the defendant in contempt and punish him as the court directs.<sup>97</sup> The plaintiff should consult an attorney if seeking a finding of contempt.

### **Full Faith and Credit**

A valid protection order is enforceable where it is issued and in all other United States jurisdictions, including all 50 states, Washington D.C., the U.S. Virgin Islands, Puerto Rico, American Samoa, and Tribal Lands.<sup>98</sup> A civilian protection order is also valid on all United States military bases. There are different procedures for the military enforcement of civilian protection orders; therefore, it is a good idea for the victim to work with an advocate or attorney who can contact military base personnel to see how they will handle the protection order and any violations.

In order to be enforceable, the defendant in the protection order hearing must have had notice and an opportunity to be heard.<sup>99</sup> Not all states have the

same type of protection orders or the same criteria to qualify for one. The laws of the state where the order originally was issued control the terms of the order. The court that issued the order determines who is protected, the terms and conditions of the order, and how long the order is in effect. The violation is a crime in the state where the violation occurred. That state's law determines how the order is enforced, the arresting authority of law enforcement officers, and the penalties and sanctions for a violation of the protection order.

If a victim comes to Kansas from another state bringing her protection order with her, she does not have to file or register her protection order in Kansas for it to be valid.<sup>100</sup> She can file or register her order if she wishes; however, filing or registering the order may allow the abuser to track her down. This possibility should be carefully considered before filing or registering any order. If she feels safe doing so, she can register her order with the sheriff in the county where it will be enforced to make the sheriff's office aware of the fact that she has a protection order and the circumstances surrounding the order.<sup>101</sup> The sheriff's department **should not** notify the defendant. The victim may also want to find out if her order was entered into NCIC, which should have been done in the issuing state. While NCIC should not be used as the sole means to determine the validity of a protection order, its entry into the system will help officers in an enforcing state make the determination about its validity. A law enforcement officer in Kansas only needs to determine that there is probable cause to believe that a protection order issued in another state exists and that the order has been violated in order to enforce the order as if it were a Kansas order.<sup>102</sup> As long as a protection order that identifies both the protected individual and the respondent is presented, and on its face is currently in effect, there is probable cause to believe that the protection order from the other state exists.<sup>103</sup> Even if an out-of-state protection order is not presented, a law enforcement officer may consider other information to determine whether there is probable cause to believe that a protection order exists.<sup>104</sup>

If a victim is leaving Kansas and taking her protection order with her to another state, an advocate or her attorney should help her find out what the requirements are for enforcement of her protection order in the state where she is going. The state's sexual or domestic violence coalition or a local sexual and domestic violence advocacy program should have this information. She should also check if her order has been entered into NCIC in Kansas. This will help law enforcement officers in her new state recognize the order's validity more easily. Some important information for the victim to take with her might include the contact information for the clerk's office where the order was issued, the contact information for the sheriff's office where the order was originally entered, the court case number, the name of the judge who signed the order, and local sexual and domestic violence advocacy program or state coalition information for the new state.

Once the victim arrives in the new state she may want to file or register her order; however, filing or registering the order in the new state may allow the abuser to track her down. This should be carefully considered before filing or registering any order. The victim may also want to meet with local law enforcement face to face, especially if she is moving to a small town or there is a special domestic violence unit. This way, if the defendant finds her, there may be less confusion as to the validity of the protection order and the serious nature of the violation of the order.

## **FIREARMS**

### **Federal Firearms Laws**

Federal laws prohibit certain court-restrained abusers from possessing firearms and ammunition.<sup>105</sup> For a person to be prohibited from possessing a firearm he or she must meet the following conditions:

- The protection order must have been issued after a hearing of which the defendant had actual notice and opportunity to participate. Since most emergency and temporary *ex parte* orders are issued before notice is provided to the defendant, most do not qualify under this federal law.
- The order must restrain the defendant from harassing, stalking, or threatening an intimate partner of the abuser or child of the abuser or intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- The order must include a finding that the defendant represents a credible threat to the physical safety of the intimate partner or child, or the order must explicitly prohibit the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.
- The plaintiff must be an intimate partner of the defendant. The statute defines an intimate partner as a spouse or former spouse, a person who is the parent of the child of the abuser, or a person who cohabitates or who has cohabitated with the respondent.<sup>106</sup> This definition does not include orders against a person who was in a dating relationship but did not live with the plaintiff or share a child with the plaintiff. Therefore, not all orders issued under the Protection from Abuse or Protection from Stalking or Sexual Assault Acts would qualify under the federal statute.

If an order meets these requirements and the court-restrained abuser possesses a firearm or ammunition, he can be subject to federal prosecution. There does not need to be a statement in the protection order requiring the respondent to turn over his firearms for this law to be in effect, although it is always a good idea to include such language if the plaintiff is aware that the respondent possesses firearms or ammunition. A court cannot circumvent this

federal law by including language in the protection order allowing the defendant to possess firearms.

There is a limited exemption for law enforcement officers, armed forces personnel, and other local, state, and federal employees who are required to use weapons as part of their official duties.<sup>107</sup> The law allows them to use and possess their firearms while performing their duties at work. Weapons possessed in a personal capacity by the officials, however, are always prohibited for the duration of the final protection order.

Often the abuser will try to give his weapons or ammunition to friends or family members to hold during the time the protection order is in effect. The court issuing the order should make sure that the people holding the firearms or ammunition are aware that they too are subject to federal prosecution if they return a firearm or ammunition to a person while knowing or having reasonable cause to believe that that person is subject to a federally qualifying protection order.<sup>108</sup>

In July of 2016 the Supreme Court issued their judgment holding that a reckless domestic assault qualifies as a “misdemeanor crime of domestic violence” that prohibits convicted felons from possessing firearms according to 18 U.S.C. § 922(g)(9).

*Domestic assault committed under a reckless state of mind sufficient to restrict gun ownership*

**Voisine v. United States**, 136 S. Ct. 386 (2015).

Voisine pleaded guilty to assaulting his girlfriend, which was a misdemeanor defined in Maine as, “intentionally, knowingly or recklessly causing bodily injury” to another. During an unrelated investigation, law enforcement discovered a rifle in his possession. Upon learning of his conviction for assault, the government charged Voisine with violating §922(g)(9), which makes it a crime for a person convicted of misdemeanor domestic violence to possess a firearm. Armstrong pleaded guilty to assaulting his wife, in violation of the same Maine law. Similar to Voisine, during a later investigation of Armstrong, law enforcement discovered six guns and a large amount of ammunition. Armstrong was subsequently charged under §922(g)(9). Voisine and Armstrong argue that they were not subject to §922(g)(9), the federal firearm possession prohibition, because their prior convictions could have been based on a reckless state of mind as opposed to knowing or intentional, thereby not qualifying as misdemeanor crimes of domestic violence.

- The court held that reckless domestic assault qualifies as a “misdemeanor crime of domestic violence” under §922(g)(9). This extends the federal prohibition on firearms possession by convicted felons to persons convicted of misdemeanor domestic violence.

**United States v. Pauler** United States v. Pauler, No. 16-3070, 2017 U.S. App. LEXIS 8943 (10th Cir. May 23, 2017).

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Pauler appealed his conviction for violating 18 U.S.C. § 922(g)(9), arguing that a misdemeanor violation of a municipal ordinance does not qualify as a “misdemeanor under Federal, State, or Tribal law.”

Pauler was convicted in 2009 of violating a municipal domestic battery ordinance for punching his girlfriend. In 2014, he was found to be in possession of a firearm and was convicted of violating 18 U.S.C. § 922(g)(9), which states, “ it shall be unlawful for any person... who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearms or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

The district court denied Pauler’s motion to dismiss the indictment for failure to state an offense. While this denial would typically be reviewed for an abuse of discretion, Pauler’s argument presents a question of law and is reviewed de novo. On appeal, the government contends that the term “State” in § 921(a)(33)’s definition section should be interpreted to mean “State and local.” If this were the case, a municipal misdemeanor conviction would constitute a misdemeanor under state law. Throughout §§ 921 and 922, “State and local” and “State or local” are used when referring to both states and municipalities.

Further, the government argued that “State” should be interpreted to mean “State and local” in this one subsection of the statute, “when it means to include local government or laws within the scope of a particular subsection- because Congress surely intended for municipal domestic violence offenders to be covered under the scope of § 922(g)(9), since the dangers of firearms in the hands of domestic violence offenders are the same regardless of the jurisdictional source of an individual’s prior domestic violence conviction. The court found that it would be inappropriate to depart from well-established rules of statutory interpretation, and held that Pauler’s prior violation of a municipal ordinance was not a “misdemeanor crime of domestic violence” and was therefore not prohibited from possessing a firearm under § 922(g)(9).

**It is important to keep in mind that Kansas law does not provide for the immediate removal of firearms from a person against whom a restraining order has been issued. The plaintiff should be aware of this when the protection order is issued. A plaintiff may ask for the weapons to be confiscated by local law enforcement through the “catch-all” provision in the protection order.**

Kansas law prohibits anyone who is subject to a restraining order which would qualify under the federal firearms prohibition from obtaining a license to carry concealed weapons.<sup>109</sup> If the defendant already has a concealed carry

license when the protection order is issued, the sheriff notifies the director of the concealed carry unit of the attorney general's office.<sup>110</sup> If the director verifies that a qualified restraining order has been issued against a person who holds a concealed carry license, the director issues a written order revoking the license of the person named as the subject of the restraining order and notice is sent to the restrained person by United States mail.<sup>111</sup> As of July 1, 2015, a concealed carry license is not required for individuals to carry concealed firearms in Kansas.<sup>112</sup> Individuals may still wish to seek a license in order to carry in states that allow concealed carry permit reciprocity.

## Safety Issues

It is important for the victim to remember that whether known weapons have been removed or licenses have been revoked, there is no guarantee that her abuser or stalker will not still possess a firearm and try to harm her. Safety planning should always account for the fact the defendant may have a firearm.

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<sup>1</sup> BLACK'S LAW DICTIONARY 1260 (8<sup>TH</sup> ed. 2004).

<sup>2</sup> K.S.A. 60-3101(b)(2005).

<sup>3</sup> K.S.A. 60-31a01(b)(2005).

<sup>4</sup> K.S.A.2016 Supp. 23-2707

K.S.A. 2016 Supp. 38-2242(c)(1)(A), (e), 38-2243(g)(1)(A), (h), K.S.A. 2016 Supp.38-2244(e), K.S.A. 2016 Supp. 38-2255(d)(4).

<sup>6</sup> K.S.A. 12-40301, 22-2802, K.S.A. 2016 Supp. 21-5924(a)(4), (a)(5).

<sup>7</sup> K.S.A. 60-3102(b) (2005).

<sup>8</sup> K.S.A. 60-3102(c) (2005).

<sup>9</sup>

<sup>10</sup> K.S.A. 60-3102(a)(4) (2005).

<sup>11</sup> K.S.A. 60-31a02 (2005).

<sup>12</sup> K.S.A. 60-3102 (2005).

<sup>13</sup> *Id.*

<sup>14</sup> *Paida v. Leach*, 260 Kan. 292, 300-301, 917 P.2d 1342, 1349 (1996).

<sup>15</sup> K.S.A. 38-141(b) (2000).

<sup>16</sup> *Paida*, 260 Kan. at 301, 917 P.2d at 1349.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Trolinger v. Trolinger*, 30 Kan. App. 2d 192, 197, 42 P.3d 157, 160 (2001).

<sup>21</sup> K.S.A. 2016 Supp. 60-31a02.

<sup>22</sup> *Id.*

<sup>23</sup> K.S.A. 2016 Supp.60-3107(c).

<sup>24</sup> *Myers v. Myers*, No. 92,628, 2005 WL 1500923 (Kan. Ct. App. June 24, 2005).

<sup>25</sup> [http://www.kansasjudicialcouncil.org/legal\\_forms.shtml](http://www.kansasjudicialcouncil.org/legal_forms.shtml).

<sup>26</sup> K.S.A. 2016 Supp. 60-3104(a).

<sup>27</sup> *Kreger v. Kreger*, No. 107,425, 2012 WL 5869634, \*2 (Kan. Ct. App. Nov. 16, 2012).

<sup>28</sup> K.S.A. 60-3101(b) (2005).

<sup>29</sup> K.S.A. 2016 Supp. 60-31a04(a).

<sup>30</sup> *Id.*

<sup>31</sup> K.S.A. 60-3111 (2005).

<sup>32</sup> Protection From Abuse Act, Ch. 138, Sec. 8, § 60-3111, 2012 KAN. SESS. LAWS 1093.

<sup>33</sup> K.S.A. 2016 Supp. 60-3104(3).

<sup>34</sup> K.S.A. 2016 Supp. 60-31a04(e).



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- 35 K.S.A. 60-3105(a) (2005).
- 36 K.S.A. 60-3105(a)-(b).
- 37 K.S.A. 2016 Supp. 60-3106(b).
- 38 *Id.*
- 39 K.S.A. 2016 Supp. 60-3106(c)
- 40 K.S.A. 2016 Supp. 60-3106(a).
- 41 K.S.A. 2016 Supp. 60-3106(b).
- 42 K.S.A. 2016 Supp. 60-3107(a)(1).
- 43 K.S.A. 2016 Supp. 60-3107(a)(2).
- 44 *Id.*
- 45 *Id.*
- 46 K.S.A. 2016 Supp. 60-3107(a)(4).
- 47 K.S.A. 2016 Supp. 60-3107(a)(5).
- 48 K.S.A. 2016 Supp. 60-31a05.
- 49 K.S.A. 2016 Supp. 60-31a05(c).
- 50 K.S.A. 2016 Supp. 60-31a05(a).
- 51 K.S.A. 2016 Supp. 60-31a05(b).
- 52 K.S.A. 2016 Supp. 60-31a06(a)(1).
- 53 K.S.A. 2016 Supp. 30-31a06(a)(2).
- 54 K.S.A. 2016 Supp. 30-31a06(a)(3).
- 55 K.S.A. 2016 Supp. 30-31a06(a)(4).
- 56 K.S.A. 2016 Supp. 60-3104(d), 60-31a04(d)
- 57 Information regarding the Kansas Crisis Hotline (1-888-363-2287) and KSCDV Member Programs can be found at <http://www.kcsdv.org/find-help/in-kansas/dv-sa-services.html>.
- 58 Kansas Legal Services may be able to provide assistance to victims of domestic violence at no fee or a reduced fee. Individuals seeking legal assistance should call KLS Statewide Intake at 1-800-723-6953. More information can be found at <http://kansaslegalservices.org>.
- 59 K.S.A. 2016 Supp. 60-3106(a), 60-31a05(a).
- 60 K.S.A. 2016 Supp. 60-3106(c), 60-31a05(c)
- 61 KAN. STAT. ANN. §§ 60-3106(a) (Supp. 2012), 60-31a05(a) (Supp. 2017). K.S.A. 2016 Supp. 60-3106(a), 60-31a05(a).
- 62 K.S.A. 2016 Supp. 60-3107(a).
- 63 K.S.A. 2016 Supp. 60-3107(a)(1).
- 64 K.S.A. 2016 Supp. 60-3107(a)(2).
- 65 K.S.A. 2016 Supp. 60-3107(a)(2).
- 66 K.S.A. 2016 Supp. 60-3107(a)(3).
- 67 K.S.A. 2016 Supp. 60-3107(a)(4).
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<sup>87</sup> K.S.A. 2016 Supp. 60-3107(e), 60-31a06.  
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<sup>89</sup> K.S.A. 2016 Supp. 21-5924.  
<sup>90</sup> K.S.A. 2016 Supp. 21-5924(b).  
<sup>91</sup> K.S.A. 2016 Supp. 21-5924(6)(b)(2).  
<sup>92</sup> K.S.A. 2016 Supp. 21-5427(a)(3).  
<sup>93</sup> K.S.A. 2016 Supp. 21-5427(a)(3).  
<sup>94</sup> K.S.A. 2016 Supp. 21-5427(f)(1)(G).  
<sup>95</sup> K.S.A. 2016 Supp. 21-5427(b)(3).  
<sup>96</sup> K.S.A. 60-3110, 60-31a08 (2005).  
<sup>97</sup> K.S.A. 2012 Supp. 20-1204a.  
<sup>98</sup> 18 U.S.C. § 2265(a) (Supp. 2013).  
<sup>99</sup> K.S.A. 60-31b03 (2005).  
<sup>100</sup> K.S.A. 60-31b04 (2005).  
<sup>101</sup> K.S.A. 60-31b05 (2005).  
<sup>102</sup> K.S.A. 60-31b04(a) (2005).  
<sup>103</sup> K.S.A. 60-31b04(a) (2005).  
<sup>104</sup> K.S.A. 60-31b04(b) (2005).  
<sup>105</sup> 18 U.S.C. § 922(g)(8) (2005).  
<sup>106</sup> 18 U.S.C. § 921(a)(32) (2006).  
<sup>107</sup> 18 U.S.C. § 925(a)(1) (2002).  
<sup>108</sup> 18 U.S.C. § 922(d)(8) (2005).  
<sup>109</sup> K.S.A. 2016 Supp. 75-7c04.  
<sup>110</sup> KAN. STAT. ANN. § 75-7c07(c) (Supp. 2013).K.S.A. 2016 Supp. 75-7c07(c).  
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# IMMIGRATION

## **Working with Immigrant and Non-Citizen Survivors**

Immigrants and non-citizens, regardless of their immigration status, have the right to access our legal system. In addition, everyone, regardless of their immigration status, is entitled to access services related to health and safety. Examples include emergency medical services, prenatal care, law enforcement assistance, emergency shelter, and protection orders. Denying an immigrant any of these remedies based on her immigration status is a violation of her due process and equal protection rights.

## **Immigration Terminology**

<b>United States citizen (USC)</b>	Either born within the United States or naturalized
<b>Lawful Permanent Resident (LPR)</b>	(i.e. holds a “green card”) Can live and work in the U.S., travel freely, serve in the military, and has many of the same rights as a citizen, but cannot vote and can be deported in certain circumstances, such as being convicted of certain crimes
<b>Immigrant</b>	Holds an immigrant visa (intent to remain in the U.S.)
<b>Non-immigrant</b>	Holds a non-immigrant visa (no intent to remain in the U.S., such as students, U visa holders, and some workers)
<b>Documented</b>	Present on a current visa
<b>Undocumented</b>	Either arrived in the U.S. without a proper visa or overstayed a visa (e.g., a student after graduation). May have immigration options to attain status.
<b>USCIS (formerly INS)</b>	On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) as the U.S. Citizenship and Immigration Services (USCIS).

**Immigration and Customs Enforcement (ICE)**

The branch of of Homeland Security that is responsible for detention and removal within the U.S. It is separate from USCIS.

**Customs and Border Protection (CBP)**

the branch of Homeland Security that is present at U.S. borders and other points of entry into the U.S. It is separate from USCIS.

**Vermont Service Center**

Location of center that processes VAWA self-petitions, U visas and T visas

**Barriers for Immigrant Survivors**

Immigrant victims face unique barriers to accessing the legal system for a protection order. Because of these barriers, immigrant victims are less likely to seek a protection order. These barriers include:

- Language restraints;
- Isolation from family and support systems;
- Negative societal stigmas and stereotypes;
- Cultural misunderstandings;
- Concerns regarding detention and removal; and
- Fear of losing children.

Furthermore, because of a lack of status, immigrant victims are less likely to call law enforcement, making enforcement of a protection order problematic. Those who work with immigrant victims of abuse need to know these additional barriers. Advocates and attorneys should plan for these barriers, as well as victim fears and concerns, prior to seeking a protection order.

**Accounting for Immigrant Concerns in a Protection Order**

In addition to the domestic violence dynamics already discussed in the Basics section of this manual, an immigrant victim is likely to experience other power and control dynamics such as the abuser doing any of the following:

- The abuser withholding or destroying important documents from the victim;
- The abuser withholding important children’s documents from the victim;
- The abuser withdrawing or threatening to withdraw immigration applications;

- The abuser threatening to have the victim deported; and
- The abuser threatening to take the children because of her immigrant status.

It is possible to craft protection orders to account for some of these abuse tactics and unique concerns. K.S.A. 60-3107(a)(10) states that the court may order “any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.”<sup>1</sup> This provision, often referred to as the “catch-all” provision, may be used to specifically address the needs of an immigrant victim and her children. The following are examples of requests that would promote the safety of an immigrant victim and/or her children and could be included by a judge in the final order of protection based upon the catch all provision:

- Ordering the defendant to give the plaintiff important documents. Examples might be her birth certificate, the children’s birth certificates, family photos, joint bank account information, marriage license, immigration paperwork, affidavits of support (a document requiring financial support of immigrating party), or proof of residence in the United States.
- Ordering that the defendant be prohibited from withdrawing immigration applications which have already been filed with immigration authorities, or prohibiting the defendant from taking actions which might jeopardize a pending immigration case.
- Ordering that the defendant be prohibited from removing the children from the court’s jurisdiction. This is particularly important when the perpetrator has threatened to take children outside the U.S.

It is also possible to include in a protection order other undisputed information which may be relevant and helpful to the victim who is seeking immigration relief. For example:

- Information that the defendant is a United States citizen or lawful permanent resident;
- Information that the parties are married and are husband and wife;
- Information about the harm the abuse caused the immigrant victim; or
- Information about a criminal case resulting from the abuse.

### **Preparing the Plaintiff for the Hearing**

Entering a courtroom can be intimidating for anyone, but especially for someone facing cultural and linguistic barriers. Here are a few ways to help an immigrant or non-citizen victim prepare for trial:

- Be sure that a qualified interpreter is available for all proceedings;

- Discuss the plaintiff's views and expectations of the legal system;
- Explain the U.S. legal system;
- Explain how the trial will proceed;
- Physically show the immigrant victim the court room and explain where everyone will be seated;
- Review testimony and practice testimony;
- Review questions that may be asked; and
- Arrange to meet the interpreter in advance of the trial and introduce the victim to the interpreter. Allow enough time for the two to become acquainted.

### **Limited English Proficiency and Interpreters**

Pursuant to Title VI of the federal Civil Rights Act and federal agency regulations implementing Title VI, recipients of federal financial assistance have a responsibility to take reasonable steps to provide Limited English Proficient (LEP) individuals with meaningful access to their services, programs and activities.<sup>2</sup>

Kansas also has statutes governing the right to an interpreter. K.S.A. 75-4351 mandates that a "qualified" interpreter be appointed for the plaintiff, defendant, and witness in any civil proceeding. Fees for services are not to be assessed to the person needing the interpreter but are to be paid out of court operations' funds.<sup>3</sup>

By statute, an interpreter shall not be married to, related within first and second degree to, living with, or otherwise interested in the outcome of the proceeding involving the person needing the interpreter, unless the appointing authority determines that no other qualified interpreter is available to serve.<sup>4</sup> Kansas statutes define a "qualified interpreter" as someone possessing the following:

- (1) a general understanding of cultural concepts, usage and expressions of the foreign language being interpreted, including the foreign language's varieties, dialects and accents;
- (2) the ability to interpret and translate in a manner which reflects the educational level and understanding of the person whose primary language is other than English;
- (3) basic knowledge of legal rights of persons involved in law enforcement investigations, administrative matters and court proceedings and procedures, as the case may be; and
- (4) sound skills in written and oral communication between English and the foreign language being

translated, including the qualified interpreter's ability to translate complex questions, answers and concepts in a timely, coherent, and accurate manner. <sup>5</sup>

In addition, interpreters are to take an oath that they will make a true interpretation and will repeat the statements of such person in English to the best of such interpreter's skill and judgment.<sup>6</sup>

In order to ensure accurate interpreting, choose an interpreter with demonstrated proficiency and ability to communicate information accurately in both English and the intended language. In selecting an interpreter, one should be mindful that conversational Spanish can differ greatly from the language that will be used during court proceedings. An interpreter should have sufficient legal vocabulary to accurately interpret. In cases of domestic violence, sexual assault, and stalking, interpreters should be well acquainted with the terms used to discuss these issues.

Also, make sure that the interpreter understands his/her role as well as confidentiality requirements. Explain the interpreting process to all parties involved. You can also ensure accuracy by speaking in short phrases, pausing to allow the interpreter to catch up, and periodically checking in with parties to ensure that they understand. When possible, independent interpreters should be utilized. However, if family members are used, the same competency and confidentiality criteria should apply. If there is any possibility that the family member is a perpetrator or supports the perpetrator, that person should not be used as an interpreter. Finally, minor children should **NEVER** be used to interpret. They do not have the vocabulary necessary to accurately convey the proceedings, and more importantly, children could be traumatized by being placed in a position to interpret difficult, often violent testimony.

### **Perpetrator Abuse of the Court System**

Perpetrators often attempt to use the legal system as another way to manipulate and control victims. They do this by filing frivolous motions, making false allegations of drug usage or child abuse, and threatening to retaliate against the victim for accessing the legal system. For immigrant victims, the perpetrator may also threaten to use the court system to have her removed from the United States. A victim's immigration status is irrelevant to the case. An immigrant or non-citizen has the same right to access our legal system in the same way as a United States citizen.

The perpetrator should be prevented from using the court process to obtain information about the victim's immigration status or pending immigration applications. In 1996, Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which created special confidentiality

protections for victims.<sup>7</sup> Section 384 of IIRIRA prohibits immigration officers and their employees from sharing information about a victim's case with the perpetrator. It also prevents immigration authorities from taking adverse action against a victim based upon information derived from her abuser. These federal confidentiality requirements were created to protect victims from these tactics. Perpetrators should not be allowed to circumvent federal law through the state court process.

### **Danger of Mutual Orders for Immigrants or Non-Citizen Victims**

Mutual orders are bad for survivors but this is particularly true for immigrant victims. Not only do they undermine the victim's ability to gain custody of children, immigration protection, and public benefits, but they also place her at risk for being removed. Violation of a protection order is a deportable offense, pursuant to § 237 of the Immigration and Nationality Act.<sup>8</sup> Plaintiffs should never agree to a mutual order.

### **Child Abduction Considerations**

Child abduction is a fear of many victims. Threatening to take the children is a common tactic employed by perpetrators to maintain power and control over victims. This threat is bolstered when the perpetrator is from another country or the victim lacks status in the United States and cannot easily travel. If a victim fears the perpetrator may flee the country with their children, consider contacting the Office of Passport Services within the U.S. Department of State. The State Department Children's Passport Issuance Alert Program can place a flag on the child's passport that will prevent either party from leaving the country with the child. The victim should know, however, this will also prevent her from removing the children from the United States. The Office of Passport Services can be found at <http://travel.state.gov/passport>. For more information, contact 1-888-407-4747.

The Uniform Child Abduction Prevention Act (UCAPA) allows a court to order "abduction prevention measures" when it deems that there is a "credible risk of abduction of the child."<sup>9</sup> These measures may include the imposition of travel restrictions, a prohibition on removing the child from the United States or another geographic area without the court's permission or consent of the other parent, or the imposition of conditions on the exercise of custody or parenting time. To determine whether a credible risk of abduction exists, the court may consider many factors, including previous abduction attempts, threats of abduction, activities which indicate a planned abduction (including abandoning employment, selling a residence, closing bank accounts, etc.), engaging in domestic violence, stalking, child abuse or neglect, refusal to follow a child-custody determination, or other conduct which the court considers to be relevant.<sup>10</sup>



## Safety Planning with Immigrant Victims and Protection Orders

When working with an immigrant victim or a victim whose perpetrator is an immigrant, it is important to discuss what might be the consequences if the perpetrator/defendant violates the order and is arrested. It is possible that the defendant could be removed from the United States. It is possible that the economic or emotional impacts of having the perpetrator removed would be more detrimental to the victim's safety or the safety of her children than not having a protection order. When perpetrators are removed from the United States, often times they will return. This can quickly escalate the violence.

### IMMIGRATION REMEDIES FOR IMMIGRANT AND FOREIGN-BORN SURVIVORS

Federal laws, such as the Violence Against Women Act (VAWA), provide immigrant and foreign-born survivors with remedies to increase their safety, as well as the safety of their communities.

#### VAWA Self-Petition<sup>11</sup>

One remedy created by VAWA is the VAWA self-petition, which allows abused immigrants who are married to a U.S. citizen or lawful permanent resident to petition for permanent residency on their own, without relying on their abuser. In a typical family-based immigration case, a U.S. citizen or lawful permanent resident spouse can petition for his/her spouse to get a "green card" (lawful permanent residency). However, in cases involving sexual and domestic violence, the abuser will often use his immigration status as another tool to maintain power and control over the victim. Spouses of U.S. citizens or lawful permanent residents could, if not for the violence, already have status and the accompanying stability it brings. The VAWA self-petition allows immigrant victims to receive the status they would have had, but for the abuse. When the Supreme Court struck down the Defense of Marriage Act (DOMA), USCIS began recognizing same-sex marriages within the context of the VAWA self-petition and now also issues approvals to same-sex spouses that were abused.<sup>12</sup>

#### U Visa<sup>13</sup>

Another remedy created by the Violence Against Women Act is the U visa. The U visa is a tool intended to strengthen the ability of criminal justice agencies to investigate and prosecute cases of domestic violence, sexual assault, stalking, human trafficking, and other serious crimes, while also offering protection to victims. **Although the VAWA self-petition is available only to those married to the abuser, the U visa is applicable to all victims, even if they are unmarried and undocumented.** To qualify for a U visa, the victim must demonstrate that she or he:

- has been a victim of certain qualifying criminal activity that violated the laws of the United States or occurred in the United States;
- has suffered substantial mental or physical abuse as a result of the criminal activity;
- possesses information concerning the criminal activity; and
- has been helpful, is currently being helpful, or will likely be helpful in the investigation or prosecution of the criminal activity.

An essential element of the U visa petition is a certification by a law enforcement official, prosecutor, judge, or other entity that has the ability to investigate and/or prosecute criminal activity. This certification must state that the victim has been or is likely to be helpful with the investigation or prosecution.

The victim may also petition for his or her children, spouse, and, if he or she is under 21, parents and siblings. The U nonimmigrant status is valid for four years, and will enable the victim to petition for permanent resident status after three years if the person has remained continuously in the U.S. during those previous three years.

There are a limited number of U visas per year available for primary applicants. There is no limit for qualifying derivative family members of primary applicants. Due to the statutory cap, USCIS has implemented the use of a waitlist on which U visa petitioners may be placed if their case meets all the requirements. Waitlisted individuals are given deferred action, a form of prosecutorial discretion, and may apply for work authorization until a visa becomes available for them.

## **T Visa<sup>14</sup>**

The T visa enables certain victims of human trafficking to live and work in the United States for four years and possibly apply for adjustment of status to lawful permanent resident. In order to qualify, the petitioner must:

- be or have been the victim of a severe form of trafficking in persons;
- be present in the U.S., American Samoa, or the Northern Mariana Islands on account of trafficking;
- have complied with reasonable requests for assistance in the investigation or prosecution of acts of trafficking as determined by a federal law enforcement agency (*Note: Children under age 18 do not need to meet this criterion.*); and

- would suffer extreme hardship involving unusual and severe harm if removed from the United States.

The determination of whether an individual is a trafficking victim must be made by a police officer or other law enforcement official, prosecutor, judge, ICE official, or other government official, such as Equal Opportunity Employment Commission (EEOC) officers, state child abuse workers, or FBI agents.

The trafficking victim may also petition for her spouse and child(ren). Victims under the age of 21 may also petition for their parents and minor siblings. Prior law required family members to show that they would suffer extreme hardship if returned to their country of origin. VAWA 2005 eliminated this requirement.

There are a limited number of T visas available per year for primary applicants. There is no annual limit for qualifying family members of primary applicants. The T visa lasts for four years or longer if an official certifies that the visa holder's assistance is required for an ongoing investigation or prosecution. **T visa holders are also eligible for work authorization and may also petition for lawful permanent resident status.**

## Chart of Immigration Remedies for Foreign-Born Survivors

The following chart describes remedies, including the VAWA self-petition, the U visa, Waivers to Remove Conditions of Permanent Residence, and T visas, which may be available to immigrant victims. Please keep in mind that this is not an exhaustive list of remedies for immigrant victims.

<b>Remedy</b>	<b>Who May Qualify</b>	<b>Requirements</b>
<b>VAWA self-petition</b>	<ol style="list-style-type: none"> <li>1. Abused spouse or former spouse of USC or LPR. Applicant may also include her children, even if the children were not abused and/or are not related to the USC/LPR.</li> <li>2. Abused children of a USC/LPR.</li> <li>3. Spouse or former spouse (whether abused or not) whose children are abused by their USC/LPR spouse.</li> </ol>	<ol style="list-style-type: none"> <li>1. Relationship to the abuser. (Married or child).</li> <li>2. Abusive spouse or parent is a USC/LPR.</li> <li>3. Residence within the U.S.</li> <li>4. Battery or extreme cruelty.</li> <li>5. Residence with the abuser.</li> <li>6. Good moral character.</li> <li>7. Good faith marriage (if based on marriage to USC/LPR).</li> </ol>

<b>Remedy</b>	<b>Who May Qualify</b>	<b>Requirements</b>
<b>Waivers of Joint Petition to Remove Conditions of Permanent Residence</b>	Immigrant whose spouse has filed initial petition. There are four grounds to seek a waiver that eliminates the joint petition requirement to remove the conditional residence. They are four distinct bases for a waiver, but are not mutually exclusive, so an immigrant survivor can request a waiver of joint filing based on any and all that apply.	<ol style="list-style-type: none"> <li>1. The marriage was entered in good faith, but the spouse died; or</li> <li>2. The marriage was entered in good faith, but the marriage has been terminated by divorce or annulment; or</li> <li>3. The marriage was entered in good faith, but the conditional resident has been battered or subjected to extreme cruelty by the USC/LPR spouse; or</li> <li>4. Termination of permanent residence and removal would result in extreme hardship.</li> </ol>
<b>U visa</b>	Immigrant victims of particular crimes (including domestic violence and sexual assault).	<ol style="list-style-type: none"> <li>1. Substantial physical or mental abuse due to qualifying criminal activity.</li> <li>2. Possess information concerning the criminal activity.</li> <li>3. Certification from a law enforcement officer, prosecutor, judge, immigration official, or other authority that she is being, has been, or is likely to be helpful to the investigation and/or prosecution of the criminal activity.</li> </ol>

Remedy	Who May Qualify	Requirements
<b>T visa</b>	Victim of trafficking	<ol style="list-style-type: none"> <li>1. Victim of a severe form of trafficking.</li> <li>2. Present in the U.S. or certain other territories on account of trafficking.</li> <li>3. Has either complied with any reasonable request for assistance in the investigation or prosecution or is under 18 years old.</li> <li>4. Would suffer extreme hardship if removed from the U.S.</li> </ol>

**Victims should never contact immigration authorities on their own. If you believe someone may qualify for any of these remedies, please refer them to a qualified immigration attorney or advocate.**

<sup>1</sup> K.S.A. 2016 Supp. 60-3107(a)(10).

<sup>2</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (1964) (amended 1973); 45 CFR pt. 80.

<sup>3</sup> K.S.A. 75-4351 (1997).

<sup>4</sup> K.S.A. 75-4353(a) (1997).

<sup>5</sup> K.S.A. 75-4353(c) (1997).

<sup>6</sup> K.S.A. 75-4354 (1997).

<sup>7</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, Div. C, 110 Stat. 3009-546 (1996).

<sup>8</sup> INA § 237(a)(2)(E)(ii).

<sup>9</sup> K.S.A. 23-3804 (2007).

<sup>10</sup> K.S.A. 23-3807(a) (2007).

<sup>11</sup> Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 1902 (codified as amended in scattered sections of 8, 18, 28, and 42 U.S.C.); 8 C.F.R. § 204.2(c)(2) (2011).

<sup>12</sup> Statement from Secretary of Homeland Security Janet Napolitano on the United States Citizenship and Immigration Service’s Review of Same Sex Immigrant Visa Petitions (July 1, 2013), <http://www.uscis.gov/family/same-sex-marriages>.

<sup>13</sup> 8 U.S.C. § 1101(a)(15)(U) (2006); 8 C.F.R. §214 (2011).

<sup>14</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); 8 U.S.C. § 1101(a)(15)(T) (2006); 8 C.F.R. § 214.11(f)(2) (2011).

## **ADVOCATES AND PROTECTION ORDERS**

Protection orders may be a powerful safety tool for victims of domestic and sexual violence and stalking. Sometimes, however, protection orders can make a victim less safe. Community members, family, or even law enforcement may encourage victims to file for a protection order, and this may be how the victim comes to seek a sexual or domestic violence advocacy program's services. Understanding both the process of filing for and receiving a protection order, as well as the local jurisdiction's practices for enforcement of protection orders, allows advocates to aide survivors in making informed decisions about how to best plan for their safety and determine if that plan includes seeking a protection order.

The protection order process was created with the intent to provide victims of domestic and sexual violence and stalking legal protections from further abuse or stalking.<sup>1</sup> Advocates also help victims by working with law enforcement, attorneys, and prosecutors towards making sure the system is effectively promoting the safety of victims. "Advocates fulfill the dual role of helping the [victim] navigate the complexities of the protection order system and of identifying the need for and working to make systemic changes that will improve the system's response to battered women and their children when they seek protection."<sup>2</sup> In order to do this, it is important for advocates to understand how the process works.

This section provides information geared specifically toward domestic and sexual violence and stalking program advocates working with victims to navigate the protection order system.

### **Unauthorized Practice of Law**

Advocates are not attorneys nor should they be asked to act like one. It is illegal for non-lawyers to provide legal advice. Advocates can, however, provide survivors with information on the legal system to better help victims understand what the laws are and how the protection order process works. The protection order process is designed to be accessible to victims, many of whom may not be able to afford legal representation. Many of the victims that advocates work with will represent themselves in a court system that is unfamiliar. Advocates provide immense support and are a valuable resource to the victims they assist. The line between court advocacy and legal advice can sometimes seem blurry. It is important for advocates to remember they can provide information but they cannot apply the facts of a victim's situation to the law or advise them on what legal actions to take.

## **Safety Planning**

As discussed in the Basics section of this manual, protection orders are not right for everyone. Advocates should make sure that they first discuss the three important safety planning questions:

- (1) Is she eligible?
- (2) Does she think it will make her safer?
- (3) How might a protection order negatively affect her?

If, through discussing these questions, the victim determines she does not want to seek a protection order, an advocate can offer other advocacy services to the victim including safety planning.

## **PREPARING FOR THE HEARING**

### **Gathering Evidence/Witnesses**

- Evidence: The plaintiff/victim should gather all evidence from before and after she filed that can help prove the need for a protection order. Advocates can discuss with the victim the types of evidence they may look for, but advocates should not collect evidence for the victim. If, for instance, an advocate takes a picture of a text message, that advocate may be required to testify in order for the judge to allow the picture to be admitted into evidence.<sup>3</sup>
  - Possible evidence in PFA cases - This evidence could help prove that “abuse” as defined in the statute occurred, including, but not limited to:
    - Dated photographs of bruises, marks, and injuries;
    - Medical records that describe injuries;
    - Household objects torn or broken by the abuser;
    - Police reports;
    - Pictures of the household in disarray after an episode of domestic violence;
    - Pictures of weapons used by the abuser (plaintiff should NOT bring the weapon to court);
    - Bills of medical expenses and/or property damage;
    - Letters, emails, voicemails, or text messages containing threats;
    - Letters, emails, voicemails, or text messages describing past abuse (these often come as an apology and/or a request for forgiveness by the abuser); or
    - Any other evidence with will help the judge to determine the extent of the abuse or threats of abuse and the support needed by the plaintiff.



- Possible evidence in PFSSA cases - This evidence could help prove that the plaintiff is being stalked by the defendant, including, but not limited to:
  - Letters, emails, voicemails, or text messages showing intentional harassment by the defendant;
  - Anything that will help the victim show two or more acts of stalking; or
  - Anything that might explain the emotions that the victim felt while being stalked (such as fear).
- Witnesses: Witnesses should be prepared to answer questions from both sides. These questions may be asked by the victim or victim's attorney or the defendant or defendant's attorney.
  - Due to certain legal rules of evidence the witness may not be able to give testimony about things which were not seen or heard by the witness firsthand.<sup>4</sup>
  - Protection from Abuse: The victim should try to bring witnesses with her who can describe abuse or injuries that they witnessed firsthand, who saw the reaction of the victim after the abuse, who heard the defendant admit to/describe the abuse, or in any other way can corroborate the victim's description of the abuse.
  - Protection from Stalking or Sexual Assault: The victim should try to bring witnesses to court with her who can corroborate the victim's description of the stalking or sexual assault, her reaction to the stalking or sexual assault, or help to explain how the defendant has placed the victim in fear for her safety.

### **Prepare Testimony**

- Testifying in court can be very intimidating. For victims, they may also be anxious about testifying in front of the defendant. When the victim is *pro se*, or without an attorney, an advocate may suggest the victim write down the description of the abuse, stalking or sexual assault incidents and why she is seeking a protection order and practice saying these before the hearing. This can help the victim to more clearly tell her story to the court.
  - For a PFA, every effort should be made to include the dates and severity of the abuse; specifically, the most recent and the worst incidents.
  - This list should include the same incidents described in the petition.
  - The victim should be sure to mention whether the defendant has a gun or other weapons.
- The victim should make a list of the orders she wants and she should practice asking for them.
- The victim should think about what questions the defendant or the defendant's attorney might ask and be prepared to answer those questions.
- It is very important that the victim try not to lose her temper in the courtroom and always tell the truth.

## THE HEARING

Protection order hearings may look different from one county to another. Below is a basic outline of what a hearing might look like.

First, the plaintiff will have the opportunity to testify.

- If the plaintiff is represented by an attorney, the attorney will ask the plaintiff questions. If the plaintiff is not represented, she will testify on her own.
- The plaintiff should review the petition before the hearing.
- The plaintiff should be specific in the testimony about the abuse, stalking or sexual assault incidents. Additionally, the testimony should include the incidents described in the petition.
- The plaintiff should clearly explain why a protection order is needed.
- The plaintiff should tell the truth, speak slowly, and stay calm. Having an advocate in the courtroom during the hearing can help victims feel more comfortable and less intimidated by the defendant when testifying.
- The plaintiff should speak only to the judge or the plaintiff's attorney while testifying, not to the defendant.
- If the plaintiff does not understand a question, she should say that she doesn't understand instead of trying to answer the question.
- If the judge is speaking, the plaintiff should be careful not to interrupt the judge.

After the plaintiff testifies, the defendant may cross-examine the plaintiff.

- If the defendant has an attorney, the attorney will ask the plaintiff questions.
- The plaintiff should be prepared for ANY questions the defendant may ask, even if they involve issues or incidents that are difficult to discuss.
- The plaintiff should remain calm, even when being asked upsetting questions.
- The plaintiff or her attorney may object to any questions that are not relevant to the case.
- If the defendant or the defendant's attorney asks a question that the plaintiff doesn't understand, the plaintiff should say that she doesn't understand the question.

The plaintiff may call any witnesses to testify.

- The plaintiff can ask the witness questions related to the abuse, staking or sexual assault.
- The defendant will also be given an opportunity to cross-examine the witness.

The defendant may testify.

- The plaintiff should remain calm. She may hear statements that are inflammatory or untrue.

After the defendant testifies, the plaintiff may cross-examine the defendant.

- If the plaintiff is represented by an attorney, then the attorney will ask the defendant questions.
- The plaintiff may ask the defendant questions about the defendant's testimony. This is when the plaintiff can confront the defendant with any lies or inconsistencies in the defendant's testimony.

The defendant may call any witnesses to testify.

- The plaintiff may ask questions about the witness's testimony.

### **AFTER THE HEARING**

Once a victim receives an order, an advocate should discuss with her what she will need to do in case the order is violated. This includes explaining to the victim that she will want to keep a copy of the order on her at all times. It is not required that the victim have a copy of the order on her, but it can be very helpful for law enforcement to quickly enforce the order. She may also choose to provide copies to her workplace. If there are minor children involved, she may provide a copy to the children's schools or daycares. An advocate can also talk with the victim about a safety plan if the defendant violates the order. To seek enforcement of the order, the victim will need to report the violation to law enforcement where the incident occurred. If the victim wishes to discontinue the order or if a provision of the order is not working, such as child visitations or exchanges, the survivor will need to file a motion with the court asking the judge to change the order. Finally, the advocate can provide information to the victim about extending the order before it expires if the victim chooses to seek an extension.

If the victim does not qualify for an order or is not granted one for other reasons, an advocate can offer additional advocacy services to her including safety planning.

### **MINORS AND PROTECTION ORDERS**

#### **Protection Orders for Minors**

Protection orders are not limited to the protection of adults. Minor victims may also receive protection orders, however, a parent or adult residing with the minor must file the petition on the minor's behalf.<sup>5</sup> If filing for a PFSSA order on behalf of a minor, the petition must be filed in the county where the stalking or sexual assault occurred.<sup>6</sup> When the defendant in a PFA or PFSSA proceeding is also a minor, the petition must be served on an adult as well as the minor defendant.<sup>7</sup> The adult must be the minor's mother, father, guardian, any person who is providing for the child's care, or a person

with whom the minor is residing.<sup>8</sup> Advocates should be aware that a “Minor Defendant Addendum to Final Protection Order”<sup>9</sup> form must be completed and attached to any petition, motion or temporary protection order involving a minor defendant. The form asks for the age of the defendant, any available addresses for the defendant as well as names and any available addresses of the defendant’s parents or legal guardians.

### **Child Custody, Support and Parenting Time**

Sharing minor children with an abuser can further complicate an already complicated situation for victims of domestic violence. Two popular ways perpetrators continue to exert control over victims after separation are through their children and their finances. Under the Protection From Abuse Act (PFAA), victims may be able to receive custody, visitation, and child support determinations within their protection from abuse (PFA) order.<sup>10</sup> Custody established in a PFA case, however, will only last the length of the PFA, or if the order is extended, up to an additional twelve months. These orders should not be considered a permanent alternative to divorce or paternity proceedings. Obtaining specific orders regarding children and child support within a PFA, however, can make the order a much more useful and successful strategy for victims seeking safety and independence.

#### ***Paternity***

A PFA order may establish temporary custody and parenting time for victims and their children, but only if paternity has been established.<sup>11</sup> Victims must consider a few possible legal consequences which may arise from the establishment of paternity. Once established, the court retains jurisdiction over the child if the child, the mother or the father remains in that state.<sup>12</sup> A victim fleeing violence may want to avoid establishing the parental rights of an abusive father. When a victim seeks a PFA and paternity has not been established, she may be starting the legal process that leads to the establishment of parentage. Victims should consider the risks and benefits to having the presumption of paternity become part of the court record in a PFA case thus establishing evidence for a future parentage action that could result in continued contact with the abuser until the child turns eighteen.

#### ***Child Custody and the UCCJEA***

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is used to determine which state’s courts have the legal ability to decide issues of custody.<sup>13</sup> The court’s power to decide a case is called jurisdiction.<sup>14</sup> In order to seek custody under the PFAA, a petition must include information establishing that the court has jurisdiction over the custody of the child.<sup>15</sup> A Kansas court will have jurisdiction to determine child custody if the child’s “home state” is Kansas.<sup>16</sup> A child’s “home state” is the state in which a child lived for six consecutive months immediately before the custody

proceedings.<sup>17</sup> If the child does not have a “home state,” then the court will require that the child and at least one parent have significant connections with the state and that substantial evidence is available within the state concerning the child’s care, protection, and personal relationships.<sup>18</sup> Once a Kansas court has jurisdiction over child custody, that court keeps it until another court accepts jurisdiction.

When requesting custody within a PFA order, the petition must include information establishing the court’s jurisdiction pursuant to the UCCJEA.<sup>19</sup> The Petition For Protection From Abuse Order form<sup>20</sup> addresses child custody and references the UCCJEA affidavit form.<sup>21</sup> This form<sup>22</sup> must be attached if the petitioner wishes the PFA to determine custody and parenting rights.<sup>23</sup> The affidavit form asks for the child or children’s names, addresses and if the petitioner has been involved in any cases concerning custody or visitation.<sup>24</sup> The form also asks if the petitioner has knowledge of any other proceeding past or present that could affect custody of the children.<sup>25</sup> Examples of such proceedings are: divorce, paternity, and child in need of care cases. Court locations, case type and case numbers are requested on the affidavit.<sup>26</sup> If the victim cannot acquire the exact information, it may be acceptable to give approximations as long as the city and state are accurate.

### ***Moving with Children***

Once a court determines it has jurisdiction over children, it retains that jurisdiction. Thus, if a victim obtains a PFA order which also makes orders regarding children, the victim would not be able to relocate with those children without the court’s permission.

Kansas law requires notice to be given to the other parent when the child is moved to a new home or if the child leaves the state for more than 90 days.<sup>27</sup> Notice is required not less than thirty days before the move by registered mail to the last known address of the other parent.<sup>28</sup> Failure to give notice may be considered a material change of circumstance justifying a change in custody, residency or parenting time.<sup>29</sup> If the move is contested in court by the other parent, the court will consider the effect the move will have on the child, the parents, and any increase in financial burden on a parent wishing to continue visitation with the child.<sup>30</sup> Therefore, if a victim is considering relocating to another area of the state or to another state, then obtaining PFA order prior to moving may make it more difficult to relocate. For victims sharing parenting time with perpetrators, notification of a residential change can pose a big safety concern.

Another consideration for victims when it comes to moving is “interference with parental custody.”<sup>31</sup> It is a felony crime to take a child from Kansas to another state with the intent to conceal that child from a parent.<sup>32</sup> This is true even if there is no court order regarding parentage or custody. Before planning a move a victim should consult

with an attorney in Kansas, as well as, an attorney in the state or county to where the victim wants to relocate.

### ***Parenting Plan or Parenting Time***

A parenting plan is an agreement or order setting out the details of the legal custody, residency, and parenting time.<sup>33</sup> Parenting plans may include residential, holiday, and birthday schedules and allocation of responsibilities as to the health, education, and welfare of the child.<sup>34</sup> Creating a parenting plan simply entails writing down these proposed schedules and attaching them to the PFA petition. Parenting time is also known as visitation. Parenting time is a schedule of time that a child is with each parent. When a victim seeks custody, residency and parenting orders within a PFA a proposed parenting plan should be as detailed as possible. The victim should consider designating specific times and places for exchange of the children in order to minimize the perpetrator's ability to use the children as a way to further the abuse.

### ***Denying Visitation***

Kansas law specifically acknowledges that repeated unreasonable denial or interference with another parent's time may be grounds to modify the order.<sup>35</sup> Unfortunately for victims, there is no clear standard set by the court to determine what constitutes an unreasonable denial or interference. Just because the victim feels that it is reasonable to not want her children to spend time with the abusive parent, there is no guarantee that the court will agree with her. If an unreasonable interference or denial of visitation is found, the following remedies may be utilized:

1. A specific schedule for parenting time or visitation may be created;
2. The parent whose time was interfered with may receive extra time to compensate time lost;
3. Money or other assets may be put up as bond to insure compliance with order;
4. Costs associated with the enforcement may be assessed on the other parent;
5. Counseling or parenting education may be ordered;
6. Supervised visitation may be ordered;
7. Or whatever else the court feels is appropriate.<sup>36</sup>

In order to address the concerns of the victim, advocates should plan for the safety of the child and the victim during visitation and exchanges. When a protective parent has reason to believe her child is in danger, seeking supervised visitation or exchanges at a designated visitation and exchange center, within the PFA, may be an option.<sup>37</sup>

### ***Visitation Exchange Centers When Developing Parenting Plans***

Some areas of the state have visitation centers available to provide supervised child exchanges or supervised child visitation for children and families at risk of domestic and sexual violence.<sup>38</sup> Advocates should be aware of whether such services exist and how costs for these services are usually handled. Either party may ask the court to require visitations or exchanges to take place at one of these centers.<sup>39</sup> When a center is not available, other arrangements will need to be made if visits require supervision. When selecting someone to supervise exchanges or visitation it is helpful if both sides can agree to the person doing the supervision. Problems can arise when the supervisor is overly biased toward one party or the other. Further, undedicated supervisors may not take the supervision seriously and not fulfill their duties.

### ***Modification of the Custody and Parenting Order in a PFA***

If the custody and parenting time order entered by the court in a PFA is not working for a victim and her children, a victim can seek a modification of that order. The PFAA allows the court to amend or modify its order at any time upon motion filed by either party.<sup>40</sup> An approved “Motion to Modify Protection from Abuse Order” form can generally be found in the packet of papers the victim received from the Court Clerk. If not, all PFA forms can be accessed at [www.kscourts.org](http://www.kscourts.org). The victim would need to describe on the form the change being suggested and why. The motion should then be filed with the court and a copy mailed to the defendant or the defendant’s attorney. The defendant would be given an opportunity to respond to the motion, and the court would decide to make any changes to the order.

### ***Child Support***

The PFA process also allows for an award of child support for the length of the final order. If the order is extended, child support can be included for up to an additional twelve months.<sup>41</sup> Child Support provides for both the direct and indirect needs of a child including food, clothing, school, medical, entertainment, housing, utilities, transportation and other expenses related to the care and well-being of the child.<sup>42</sup> The minimum support obligation is determined by the Child Support Schedule adopted by the Kansas Supreme Court as recommended by the Child Support Guidelines Advisory Committee.<sup>43</sup> The Committee looks at national data on the expenditures of the average family depending on the parents’ combined income, the number and the age of the children.<sup>44</sup> The parent seeking support must complete and submit to the court a child support worksheet<sup>45</sup> and a domestic relations affidavit<sup>46</sup> with an application for support or a motion to modify support.<sup>47</sup> These forms can be found at [www.kscourts.org](http://www.kscourts.org).

## WORKING WITH ATTORNEYS

When a victim is represented by an attorney, an advocate can be a valuable resource for both the victim and the attorney. Advocates can help a victim to understand and participate in the legal process, which also helps the attorney make efficient use of their time on the victim's case. There is, however, no privileged communication recognized between advocates and their clients as there is between attorneys and their clients.<sup>48</sup> There will be times where it is not in the best interest of the victim for the advocate to be included in their conversations. The level of involvement an advocate may have with the victim and her attorney must ultimately be the informed choice of the victim. The victim should sign an informed time-limited written release before an advocate shares information with a third party, including the victim's attorney. A survivor must also be clearly advised of the possible consequences of any release of information and that she may revoke this permission at any time, for any reason.

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<sup>1</sup> K.S.A. 60-3101(b), 60-31a01(b) (2005).

<sup>2</sup> EMILIE MEYER, NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CIVIL PROTECTION ORDERS: A GUIDE FOR IMPROVING PRACTICE 15 (2010).

<sup>3</sup> MEYER, *supra* note 2, at 19.

<sup>4</sup> K.S.A. 2016 Supp. 60-460.

<sup>5</sup> K.S.A. 2016 Supp. 60-3104(b).

<sup>6</sup> K.S.A. 2016 Supp. 60-31a04(b).

<sup>7</sup> K.S.A. 2016 Supp. 60-304(b).

<sup>8</sup> *Id.*

<sup>9</sup> [http://www.kansasjudicialcouncil.org/legal\\_forms.shtml](http://www.kansasjudicialcouncil.org/legal_forms.shtml).

<sup>10</sup> K.S.A. 2012 Supp. 60-3101-3111.

<sup>11</sup> K.S.A. 2016 Supp. 60-3107(a).

<sup>12</sup> K.S.A. 23-37,202 (2007).

<sup>13</sup> K.S.A. 23-37,101-37,405 (2007).

<sup>14</sup> BLACK'S LAW DICTIONARY 867 (8<sup>th</sup> ed. 2004).

<sup>15</sup> K.S.A. 2016 Supp. 60-3103.

<sup>16</sup> K.S.A. 2016 Supp. 23-37,201.

<sup>17</sup> K.S.A. 2016 Supp. 23-37,102 (8).

<sup>18</sup> K.S.A. 2016 Supp. 23-37,201 (2).

<sup>19</sup> K.S.A. 2016 Supp. 60-3103.

<sup>20</sup> [http://www.kansasjudicialcouncil.org/legal\\_forms.shtml](http://www.kansasjudicialcouncil.org/legal_forms.shtml).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> K.S.A. 2016 Supp. 23-3222 (a).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* § (c).

<sup>30</sup> *Id.*



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- <sup>31</sup> K.S.A. 2016 Supp. 21-5409.  
<sup>32</sup> K.S.A. 2016 Supp. 21-5409(c)(2).  
<sup>33</sup> K.S.A. 2016 Supp. 23-3213(a).  
<sup>34</sup> *Id.* § (c).  
<sup>35</sup> K.S.A. 2016 Supp. 23-3221(b).  
<sup>36</sup> K.S.A. 2016 Supp. 23-3401(g).  
<sup>37</sup> K.S.A. 2016 Supp. 23-3208(c).  
<sup>38</sup> *Id.*  
<sup>39</sup> K.S.A. 2016 Supp. 23-3221(c).  
<sup>40</sup> K.S.A. 2016 Supp. 60-3107(f).  
<sup>41</sup> K.S.A. 2016 Supp. 60-3107(a)(6).  
<sup>42</sup> Kansas Supreme Court, *Kansas Child Support Guidelines 2* (2008).  
<sup>43</sup> *Id.*  
<sup>44</sup> *Id.*  
<sup>45</sup> [http://www.kansasjudicialcouncil.org/legal\\_forms.shtml](http://www.kansasjudicialcouncil.org/legal_forms.shtml)  
<sup>46</sup> *Id.*  
<sup>47</sup> *Id.*  
<sup>48</sup> K.S.A. 2016 Supp. 60-426.

# **CIVIL ATTORNEYS AND PROTECTION ORDERS**

Even though the protection order process was designed to be accessible to pro se litigants, many victims of domestic and sexual violence and stalking can benefit greatly from the assistance of an attorney. This is especially true if the defendant has an attorney; if complex custody or jurisdictional issues exist; if the defendant has filed for his own protection order; or if there is likely to be a divorce filed. It can be very detrimental to send a client in to seek a protection order alone.

## **Legal Safety Planning**

As mentioned in the Protection Order Basics section of this manual, safety is always a critical issue for victims of domestic and sexual violence, however entering into the justice system presents additional and unique safety concerns for victims. Often when a survivor seeks legal assistance, this action can be viewed by the abuser as an attempt towards independence. The mere act of a survivor seeking help may increase the risk for further abuse. Attorneys should discuss safety considerations around the legal process.

### **Safety for Court Appearances**

- Can the victim sit apart from the abuser and his family or friends who are there?
- Is there a friend or relative who will wait with the victim until her case is heard?
- Should the court security personnel be alerted to potential problems?
- Will the judge keep the abuser in the courthouse for a period of time when the hearing is over so the victim can leave safely?
- Can the victim get a copy of the order before leaving?

### **Safety for Attorney Offices**

- At every contact with the victim, ask what the best time to call would be. It may be necessary for the victim to call back to the office when she is safe.
- Ask if this is a safe number. Whose number is it? Never leave voice mail or say who is calling unless you know it is safe.
- Ask if this is a safe mailing address. How long will it be a good address? Do not mail something if you are not sure the address is still current and safe.
- Is there a code word you can use so you will know whether the abuser is present or that it isn't a good time for her to talk?
- Does the attorney's office block office and cell phone numbers?
- Does the attorney's office have a safety plan?

## Safety for Parenting Time

Specific, enforceable, well-planned and detailed parenting plans work best for both victim and child safety. Ask for a parenting plan that works for the victim and that is best for the children. Consider the child/children's school or daycare schedule, both parents' work schedules, and the realities of each parent's living situation. The children need to get to school on time and hopefully keep doing special activities. Be realistic and ask for what can be reasonably managed.

- Is there an existing parenting plan or informal agreement in place?

Does the plan include specifics as to:

- dates and times the children will be with each parent?
- who will drive the children to the visitation?
- the place where the children will be picked up by each parent?
- restrictions on the visitation because of safety concerns? (e.g. Is the victim concerned about drug/alcohol use by the other parent? Can the plan include certain restrictions?)
- how and when the parents will talk/communicate with each other about the children and the parenting plan?
- whether the non-custodial parent can have contact with the children outside of the scheduled visitation?
- special needs of the children? (e.g. Do the children participate in sports? Do they have special food needs?)

Is third party help needed to:

- relay messages about the children and/or help set up the visitation schedule?
- transport the children?
- supervise visits for safety?

Is supervised visitation necessary? Who will do this and where should it be done? Have they agreed on time limits? Are specifics needed as to:

- whether a child exchange and visitation center (CEVC) is available?
- what level of supervision is provided by CEVC staff?
- what role, if any, will the CEVC play in the custody/visitation court case?
- how the CEVC collects, records, and handles information about families and what information might be shared with the court?
- whether special circumstances should be included if the parties agree for a friend or family member to provide the supervised visitation (i.e. other family that should not be there, restrictions on places they can visit)?

Attorneys can make referrals to local advocacy organizations for additional and more in depth assistance in the area of safety planning. Making such a referral not only enhances a client's ability to stay safe but potentially can free up time and resources for the attorney.

## **WORKING WITH ADVOCATES**

“Good advocacy and good civil legal representation, working in combination, constitute a powerful team on behalf of the [victim] and her children.”<sup>1</sup> Advocates are able to provide immense, holistic support to clients that an attorney may not have the time to provide. Advocates are also often better able to do intense and ongoing safety planning with clients. Communication between the advocate and client, the attorney and client, and the attorney and advocate can help clients understand their options, navigate the legal system, and participate knowledgeably in the case with better outcomes. All communication, however, has to be considered together with rules concerning safety, confidentiality and privilege. If a client isn’t already in contact with a local domestic or sexual violence advocacy program, an attorney can provide a referral.

Many attorneys do not do extensive protection order cases or may find themselves in an unfamiliar court. Talking to an advocate can provide valuable information about the protection order court in a particular or unfamiliar jurisdiction.

### **Confidentiality and Privacy**

Confidentiality and privacy play an important role for survivors of sexual and domestic violence and stalking not only in terms of safety but also in their ability and willingness to access the justice system. While professionals engaged in helping a survivor must abide by their own standards and requirements regarding confidentiality, many times the requirements around information sharing vary among professionals. Thus, it is important to understand the confidentiality and privilege obligations of all professionals involved.

### **Confidentiality and Privilege for Lawyers**

The Kansas Rules of Professional Conduct (KRPC) are the rules that govern legal professionals’ ethical behavior in the practice of law. According to KRPC Rule 1.6, the lawyer may not reveal without the consent of the client, any information related to the representation of the client except as reasonably expected in the pursuit of the objectives of the client.<sup>2</sup> A violation of the KRPC could generate a disciplinary action for the lawyer.

### **Times When an Advocate Might Be Present in the Attorney/Client Meeting**

When working with survivors of sexual and domestic violence, the context of their experience can have a significant impact on their civil and criminal legal options. In order to effectively pursue a case, attorneys must gather information regarding the history and context of their clients’ experiences. The wide range of emotions and responses experienced as a result of sexual and domestic violence can hinder communication and limit understanding and access to information essential to your client’s legal needs and possible remedies. Victim blaming attitudes and negative past experiences with the helping systems may act as an additional communication barrier.

It is essential that a client be able and willing to fully disclose the details and context of their situation. In order to address these communication barriers it can be helpful to involve and/or facilitate the involvement of an advocate. There are a variety of ways an advocate can provide assistance to a client without threatening privilege. An advocate can attend the meeting and wait outside the office in case a client needs a break or support. An advocate can meet with a client before or after a meeting to help survivors cope with the emotions brought out with disclosure. An advocate can help a survivor formulate timelines and prioritize details important to share with their attorney. Utilizing a support person to address communication barriers is effective only if your client desires this support. Attorneys should discuss this as an option prior to involving any support person.

### **Advocacy and Privilege**

In many states, communication between domestic and sexual violence survivors and program advocates is privileged. However, in Kansas, it is not. Therefore, advocate and program records may be subject to subpoena. As a result, programs may have policies that limit what information is written in a client's file and they usually attempt to quash any subpoenas for an advocate's testimony and agency records. Asking an advocate to testify on behalf of or against a client is a discouraged practice. It is important for a survivor to be able to rely on the advocate without worrying whether the advocate will be asked to testify. Attorneys should thoroughly explore how they might get evidence from sources other than the advocate or program.

## **REPRESENTING SURVIVORS**

### **Protection Order Filings**

Often, attorneys become involved in a protection order proceeding after a victim has already filed the petition and sought a temporary protection order. If there are problems in a client's petition, the attorney can still amend the petition for the client's benefit.

It is important for the client's safety for the client to be informed before paperwork is served on the defendant. In domestic and sexual violence and stalking cases, service can increase the danger of further abuse. Victims need to be prepared to do extra safety planning when a defendant is being served.

### **Working with Survivors**

In a protection order proceeding, the bulk of the case often depends on the victim's testimony. The victim's credibility can therefore be imperative. Victims of domestic and sexual violence and stalking often suffer significant trauma that can affect their ability to clearly and effectively tell their story. Some signs of trauma may include:

- Victim does not talk about experiences in a linear manner and may sometimes not seem to make sense;

- Victim shows little emotion when discussing what would have been a highly emotional experience;
- Victim seems detached or absent during meetings;
- Victim is unable to remember key details of the abuse.<sup>3</sup>

When a victim is experiencing trauma, working with a victim advocate can be beneficial for both the victim and the attorney.

## **Protection Orders, Divorce Restraining Orders, and Consolidation**

Sometimes it may be appropriate to consolidate a protection order and a divorce proceeding. It is important, however, that the protection order not be ignored or dismissed. A restraining order in the divorce should not be represented as the same as a protection order issued pursuant to K.S.A. 60-3101 *et. seq.* or K.S.A. 60-31A01 *et. seq.* A victim needs to know that they are very different orders. When a petition is filed pursuant to the PFAA or PFSSAA, the trial court is required to conduct an evidentiary hearing.<sup>4</sup> The purpose of these Acts is to protect victims of domestic violence, stalking or sexual assault<sup>5</sup>, and orders issued under the PFAA and PFSSAA can differ in “their purpose, scope, and period of time that they are effective.”<sup>6</sup> These Acts give the court broader authority to meet the safety needs of the victim.<sup>7</sup> Furthermore, an order under the PFAA or PFSSAA can be issued for up to one year with the possibility of extension.<sup>8</sup> In a divorce proceeding, “the trial court’s jurisdiction to enter a restraining order ends when the divorce is finalized.”<sup>9</sup>

Protection orders should also be issued in the form approved by the Kansas Judicial Council. These forms are created to include the proper statutory language set out in the PFAA and PFSSAA. These forms were also created to be recognizable on their face and across state lines as protective orders. Using these uniform orders further aids court staff and sheriff’s departments in recognizing the need to enter the order into the NCIC, aids law enforcement both in and out of Kansas in determining the validity of an order and provisions it contains, and aids prosecutors in entering these elements into a criminal case on a violation of the order.

## **Modifying Orders**

If the terms of the order are not working for a victim, an attorney can seek modification of an order by filing a motion to modify the order.<sup>10</sup> Often, an initial parenting or exchange plan may end up not meeting the needs of the parties. Parenting and child exchange are often used by abusers to continue tactics of abuse after a victim has a protection order. An order that states, “Visitation as parties agree” or “Contact only as to the children” can give the defendant means to harass the victim. For instance, the defendant may call 20 times a day, but if he mentions the kids in each call it may be harder to determine there is a violation. If the terms of the order allow the defendant to continue the abuse, modification of the order to reflect more specifically what exchanges and contact regarding the children will look like is a helpful way to increase the victim’s safety.

If a victim no longer wants the protection order, it is important she know that she must go back to the court to have the expiration date of the order modified or otherwise dismissed. Orders do not cease to exist because a victim decides it is no longer needed. Furthermore, consent to contact is not a defense to the violation of a protective order. A defendant who contacts a victim with a valid order still in place can still be prosecuted for violating the order even though the victim may no longer want the order.

## **Extension of Orders**

Attorneys should advise their clients of the protection order extension process. Extensions should be filed before the expiration of the final protection order in the district where the original order was sought.<sup>11</sup> There are currently two types of extensions on protection orders.<sup>12</sup> The first is available to anyone who has a PFA or PFSSA final order. This order is issued solely at the discretion of the court.<sup>13</sup> There is no need to prove that the defendant has continued to abuse, stalk or sexually assault the protected party in violation of the order.<sup>14</sup> This extension can be issued for up to an additional twelve months.<sup>15</sup>

The second type of extension is available to plaintiffs who can prove by a preponderance of the evidence that the defendant violated a valid protection order or was convicted of a person felony where the protected party or a member of the protected party's family or household was the victim<sup>16</sup>. To seek this order, the plaintiff needs to file a verified motion alleging the violation or conviction and have the defendant personally served with that motion.<sup>17</sup> Then there must be an evidentiary hearing much like an evidentiary hearing for a final order. If the court finds this burden met, the court shall issue an order for no less than two years and up to the lifetime of the defendant. <sup>18</sup>A violation of this extended order is a felony crime.<sup>19</sup>

## **CHILDREN AND LEAVING KANSAS**

### **Criminal Sanctions for Fleeing with Children**

Kansas criminal law includes two crimes that may impact survivors who need to flee with their children. "Interference with parental custody"<sup>20</sup> and "aggravated interference with parental custody"<sup>21</sup> may both be implicated even if the abused parent believes fleeing with the children is necessary to protect them or to protect herself from physical or sexual abuse. Fleeing across state lines, taking the child out of state without the consent of the other parent having custody or refusing to return the child from an out-of-state visit may all result in felony charges. These laws create a very serious Catch-22 for the protective parent who believes that she will only be safe if she flees or hides with the children. Unfortunately, Kansas law does not specifically provide a defense for victims of domestic or sexual violence. Attorneys should discuss these crimes with the protective parent as they are making the decision about whether to flee or hide with the children in order to avoid further abuse, stalking or sexual assault. Knowing how these crimes are enforced by the county or district attorney in the home state jurisdiction could be critical when providing legal advice to an adult victim.

## **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**

The UCCJEA was developed and passed in an effort to create consistent custody and enforcement decisions across the country. Generally, the UCCJEA states that a Kansas court has jurisdiction to make an initial child-custody determination if Kansas is the “home state” of a child. “Home state” means “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of the child-custody proceedings.”<sup>22</sup> Absent a “home state,” the law provides that the courts may examine whether there are other justifications for taking jurisdiction such as “substantial connections.”<sup>23</sup> Once a Kansas court takes initial jurisdiction over the child custody proceeding, it will have exclusive and continuing jurisdiction over the custody matters. This jurisdiction may continue until none of the parties or the children remain in the state.<sup>24</sup>

The UCCJEA contains several provisions that may be particularly important considerations for the attorney representing an abused parent or child. A Kansas court can take “temporary emergency jurisdiction (TEJ) if the child is present in this state and . . . it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.”<sup>25</sup> As is obvious, the jurisdiction of the court in these circumstances is “temporary.” However, if there is not a prior custody order in the home state and no order is issued while the child is residing in the state under the temporary emergency orders, the TEJ state could become the home state if that possibility is provided for in the TEJ order.<sup>26</sup> If a child custody order is commenced in the child’s home state while the TEJ orders are pending, the courts “shall immediately communicate” with each other “to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.”<sup>27</sup> The courts may determine that jurisdiction can be moved to the TEJ state based on other considerations set forth in the UCCJEA.<sup>28</sup> Testimony or documentation of injuries to the parent or the child may be helpful in convincing the court of the risk of returning. Nonetheless, if the home state court refuses to decline jurisdiction in favor of the TEJ state, jurisdiction over the custody proceeding will remain with the home state and the abused parent and child may have to return to the home state to either litigate the proceeding or under any orders issued. If the parent and child are required to return to the home state to further litigate the proceedings, the court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear.<sup>29</sup>

## **Uniform Child Abduction Prevention Act (UCAPA)<sup>30</sup>**

Kansas enacted the UCAPA effective July 1, 2007. UCAPA is, in effect, a part of the UCCJEA and it is intended to address “wrongfully interfering” with the other parents rights to access to the child(ren). UCAPA allows a court on its own motion or on motion of a party to order “any abduction prevention measures . . . if the court finds that the evidence establishes a credible risk of abduction of the child.”<sup>31</sup> A petition filed under UCAPA must contain specific information about the child and the perceived risk



of abduction, including whether a prior action to prevent “abduction or domestic violence” has been filed by a party.<sup>32</sup>

The factors to determine the risk of abduction include but are not limited to any previous abductions or attempted abduction or any prior threats to abduct. Of particular concern to victims of domestic or sexual violence are the factors that show any activities that may indicate a “planned abduction,” including any of the following:

- quitting a job
- selling a home
- terminating a lease
- closing bank accounts or liquidating assets
- applying for travel documents or passports
- obtaining the child’s birth certificate, school or medical records
- engaging in domestic violence, stalking or child abuse
- refusing to follow a child-custody order
- lacking strong ties to the United States
- likely to take a child to a country that is not a party to the Hague Convention
- is undergoing immigration or citizenship status change that would adversely impact the ability to remain in the United States
- has had an application for U.S. Citizenship denied
- has forged documents to obtain or attempt to obtain identifying documents or travel documents such as passport, social security number, or driver’s license
- has used multiple names to attempt to mislead or defraud
- had engaged in any other conduct that the court considers relevant to the risk of abduction.<sup>33</sup>

All of the above factors may also appear to implicate an abused parent who is attempting to flee the violence with her children. Nonetheless, the court is also required to consider “any evidence that the respondent believed in good faith that the respondent’s conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.”<sup>34</sup>

Attorneys will need to actively consider the intent behind UCAPA and its protections for victims of domestic violence. Petitions filed by the abuser seeking to keep the adult victim from fleeing to safety should be strongly challenged and litigated so that the purpose of UCAPA can be fully realized. UCAPA can be a helpful tool for abused parents who are seeking to keep the abuser from abducting the children; however, unless these petitions are actively litigated, UCAPA could also become an unintended tool for abusers.

UCAPA also includes a section on “provisions and measures to prevent abduction” that outlines the types of provisions a court must or may include.<sup>35</sup> It also allows for the court to issue an ex parte warrant to take physical custody of the child if there is a “credible risk” that the child is “imminently likely to be wrongfully removed.”<sup>36</sup>

Finally, the court’s “abduction prevention order” may remain in effect until the child reaches the age of majority, is emancipated, or until the court otherwise determines.<sup>37</sup>

**Note to attorneys, if you are representing a victim of domestic violence in a protection order proceeding and you believe a decision in your case could have state-wide significance, please remember that attorneys at the Kansas Coalition Against Sexual and Domestic Violence may be available to provide litigation and appeal assistance when representing victims of domestic violence, sexual assault and stalking.**

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<sup>1</sup> EMILIE MEYER, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CIVIL PROTECTION ORDERS: A GUIDE FOR IMPROVING PRACTICE 15 (2010).

<sup>2</sup> KAN. RULES OF PROF’L CONDUCT R. 1.6 (2007).

<sup>3</sup> MARY SEIGHMAN ET AL., REPRESENTING DOMESTIC VIOLENCE SURVIVORS WHO ARE EXPERIENCING TRAUMA AND OTHER MENTAL HEALTH CHALLENGES: A HANDBOOK FOR ATTORNEYS, NATIONAL CENTER ON DOMESTIC VIOLENCE, TRAUMA AND MENTAL HEALTH 5 (2001).

<sup>4</sup> Myers v. Myers, No. 92,628, 2005 WL 1500923, \*14 (Kan. Ct. App. June 24, 2005).

<sup>5</sup> K.S.A. 60-3101(b), 60-31a01(b) (2005).

<sup>6</sup> Myers, 2005 WL 1500923, at \*16.

<sup>7</sup> *Id.* at 17.

<sup>8</sup> K.S.A.2016 Supp. 60-3107(e); K.S.A. 2916 Supp. 60-31a06(c),(d).

<sup>9</sup> Myers, 2005 WL 1500923, at \*16.

<sup>10</sup> K.S.A. 2016 Supp. 60-3107(f); K.S.A. 2016 Supp. 60-31a06(e).

<sup>11</sup> K.S.A. 2012 Supp. 60-3107(e); K.S.A. 2016 Supp. 60-31a06(c),(d).

<sup>12</sup> *Id.*

<sup>13</sup> Jordan v. Jordan, 47 Kan. App.2d 300, 306, 274 P.3d 657, 661 (2012).

<sup>14</sup> *Id.*

<sup>15</sup> K.S.A. 2016 Supp. 60-3107(e)(1); K.S.A. 2016 Supp.60-31a06(c).

<sup>16</sup> K.S.A. 2016 Supp. 60-3107(e)(2); K.S.A. 2016 Supp. 60-31a06(d).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> K.S.A. 2016 Supp. 21-5924(a)(2).

<sup>20</sup> K.S.A. 2016 Supp. 21-5409(a).

<sup>21</sup> K.S.A. 2016 Supp. 21-5409(b).

<sup>22</sup> K.S.A. 2016 Supp. 23-37,102 (8).

<sup>23</sup> K.S.A. 2016 Supp. 23-37, 201(a).

<sup>24</sup> K.S.A. 2016 Supp. 23-37,202-37,203.

<sup>25</sup> K.S.A. 2016 Supp. 23-37,204 (a).

<sup>26</sup> K.S.A. 2016 Supp. 23-37,204 (b).

<sup>27</sup> K.S.A. 2016 Supp. 23-37,204 (d).

<sup>28</sup> K.S.A. 2016 Supp. 23-37,206, 37,2707(b)(1)(inconvenient forum, domestic violence and protection of the parties can be considered), K.S.A. 2016 Supp. 37,208.

<sup>29</sup> K.S.A. 2012 Supp. 23-37,10(c).

<sup>30</sup> K.S.A. 2016 Supp. 23-3801 to -3812.

<sup>31</sup> K.S.A. 2016 Supp. 23-3804.

<sup>32</sup> K.S.A. 2016 Supp. 23-3806.

<sup>33</sup> K.S.A. 2016 Supp. 23-3807.

<sup>34</sup> *Id.* at (b).

<sup>35</sup> K.S.A. 2016 Supp. 23-3808.

<sup>36</sup> K.S.A. 2016 Supp. 23-3809.

<sup>37</sup> K.S.A. 2016 Supp. 23-3810.

## **LAW ENFORCEMENT AND PROTECTION ORDERS**

For a protection order to be more than a piece of paper, it must be enforced. Therefore, law enforcement plays one of the most important roles in the protection order process. How law enforcement responds to reports of violations is key to how both the victim and the defendant view the order and its seriousness. The following section takes a look at the common places law enforcement intersects with the protection order process.

### **Responding to a Call**

Law enforcement may be called to respond to incidents of domestic and sexual violence and stalking. Often, law enforcement provides victims with information about local victim advocacy programs, may do a lethality assessment, and may even suggest to the victim that she should consider seeking a protection order. These are important parts of law enforcement's response to victims, however, law enforcement must be careful not to use the suggestion of a protection order as a quick response to any dispute, such as disagreements between neighbors, and should recognize that protection orders are not right for everyone.

### **Service**

Protection orders restrict the defendant from certain actions that may otherwise be lawful. The PFAA and PFSSAA take such restrictions very seriously and therefore requires that copies of the petition, summons, and temporary protection orders be personally served on the defendant by an authorized agent of the court.<sup>1</sup> This insures that the defendant is awarded the proper notice of the allegations against him or her and of the time and location of his or her opportunity to present a defense to the allegations before a final order is issued by the court. Personal service is required in order to protect the constitutional due process rights of the defendant.

Generally, this service is done by designated members of the local sheriff's department; however, other law enforcement officers may find themselves responding to a call where a temporary order has been issued but service has not been completed. In these incidences, it may be possible for the law enforcement officer to serve a copy of the paperwork on the defendant. The officer would not be able to arrest the defendant for violation of that order before service has been completed, but that does not prohibit making an arrest on any other possible crimes established during the call. When an officer serves a defendant, it is important to read through the paperwork and provide a return of service to the proper department.

## **National Crime Information Center (NCIC)**

The sheriff's office in the county where a PFA order is issued is required by statute to enter the order into the NCIC. There is no specific statute ordering the entrance of PFSSA orders, but many departments choose to enter these orders as well. Though the NCIC can be a helpful tool for law enforcement, just because an order is not in the NCIC does not mean it doesn't exist or cannot be enforced. *Law enforcement can enforce an order that they have a probable cause to believe that it exists and is valid.*<sup>2</sup> If presented with a copy of a protection order, a law enforcement officer should enforce a protection order if it is valid on its face. This means that the order includes the names the parties, the date the order was issued, an expiration date that has not yet occurred, the name of the issuing court, and the signature of the judge.<sup>3</sup>

## **Violations of a Protection Order**

Violations of protection orders can seem to be minor or inconsequential actions to those unfamiliar with the protection order process. To understand and appreciate that these acts are crimes, it is important to remember the purpose of protection orders.

### ***Protection Order Purpose***

The Protection from Abuse Act (PFAA) was created “to promote the protection of victims of domestic violence,”<sup>4</sup> and the Protection from Stalking or Sexual Assault Act (PFSSAA) was created “to protect victims of stalking or sexual assault.”<sup>5</sup> For a judge to issue a temporary protection order, he or she must make a finding that good cause has been shown to issue that order. For a final protection order, the petitioner must prove to the judge the allegations of abuse, stalking or sexual assault more likely than not happened and the defendant has had an opportunity to present evidence and question witnesses in his or her defense. It is within this context and the history between the parties that the judge issues a protection order. The defendant is prohibited from certain future acts by the judge because of the defendant's past behavior towards the protected party. A defendant's violation of a protective order is not only the continuation of already established abuse or stalking behavior, but is also the disobeying of the judge's order and the dignity of the court.

### ***Who can violate a Protective Order?***

Only the defendant can violate a protection order. As mentioned above, a defendant is afforded due process by being personally served with the paperwork and being given the opportunity to confront the plaintiff at a hearing and present evidence in his or her defense. It is after the defendant has waived those rights or the plaintiff has proven her allegations of abuse, stalking or sexual assault by a preponderance of the

evidence that an order is issued. For the plaintiff to be subject to the same order, Kansas statute requires that a written cross or counterclaim be filed and served on the plaintiff, that the plaintiff be afforded that same notice and opportunity to be heard as given the defendant, and that the judge makes a finding that both parties acted as primary aggressors in the abuse and that neither acted in self-defense.<sup>6</sup>

Furthermore, a United States Tenth Circuit case has addressed whether a protected party can violate her own order.<sup>7</sup> In *Shroff v. Spellman*, Officer Spellman arrested Ms. Shroff for violating her own protection order. The court denied the officer qualified immunity in a 42 USC § 1983 claim finding he had violated Ms. Shroff's constitutional rights by arresting her for violating her own order.<sup>8</sup>

### ***What is a violation of a Protective Order?***

According to K.S.A. 21-5924, a violation of a protective order is knowingly violating a PFA; PFSSA; or a restraining order out of a criminal case, a divorce proceeding, or a child in need of care case. A violation is a class A person misdemeanor unless it is a 2 year to lifetime PFA order or PFSSA order, in which case a violation is a level 6 person felony.<sup>9</sup> What violates any specific order depends on the language of that order. Generally, PFA and PFSSA orders are issued on a standard form approved by the Kansas Judicial Council. Much of the language will be the same, but specific provisions can vary. Most are going to order that the defendant have no contact, either directly or indirectly, with the protected party. There is no need for the contact to be threatening. According to the Kansas Court of Appeals, even a "hello" at a public store is contact in violation of a protective order.<sup>10</sup> Furthermore, a protected party's consent to contact with the defendant is not a defense to a protective order violation.<sup>11</sup> Only the court can modify the conditions of the order.<sup>12</sup> If circumstances have changed, a motion to the court by a party asking for modification of the order is the appropriate means to alter the order.

Victims should be encouraged to report violations of protection orders to law enforcement. For victims to feel safe reporting violations, law enforcement should consider their own demeanor when working with victims. Victims may wonder what an officer will think if they call for "just a hello." Reassuring the victim that reporting the violation was the right thing to do encourages victims to continue to report violations.

More and more, violations are being made by electronic communication, such as text messages, voicemails, emails, and posts on social media sites. When a victim reports such a violation, it is important for law enforcement to listen to, look at, and document these communications. Also, the officer should note any phone numbers or email addresses that the messages come from.

## **Felony Stalking**

Under K.S.A. 21-5427(a)(3), when a defendant knowingly violates a protective order in a manner that would reasonably cause persons to fear for their safety or the safety of a member of their immediate family or household member, and that conduct actually places the targeted person in fear, that violation is considered felony stalking. A protective order includes a PFA; PFSSA; or a restraining order out of a criminal case, a divorce proceeding, or a child in need of care case. If the defendant had been previously served with the protective order, he is presumed to have acted knowingly.<sup>13</sup> The difference between a protective order violation and felony stalking is the element of fear; therefore, a protective order violation is a lesser included offense to felony stalking. A first violation is a level 9 person felony, while subsequent violations are a level 5 person felony.

### ***Immediate family***

According to the statute, immediate family or household member includes any of the following:

- Parent
- Stepparent
- Child
- Stepchild
- Sibling
- Spouse
- Grandparent
- Any person residing in the household of the victim or
- Any person involved in an intimate relationship with the targeted person<sup>14</sup>

### ***Fear***

Whether it was reasonable to expect that the victim would be placed in fear by the act is dependent on the history between the defendant and the victim.<sup>15</sup> Acts that may not immediately seem like they would cause a person to be fearful become so when placed in the context of the relationship between the victim and the defendant.

Law enforcement can play a significant role in helping establish that the victim was placed in actual fear. Noting the demeanor of the victim or any behaviors noticed that would tend to show the victim was in fear at the time of the incident can help the prosecutor show that the victim was placed in fear for her safety or the safety of a member of her immediate family or household member.

## Resources

KCSDV has developed a protection order card for law enforcement. These cards are a folded laminated tool intended to be a compact and easy references for officers of Kansas protection order law. The following page includes an example of the four sided card. For more information on these cards, please contact KCSDV at (785) 232-9784 or go to our website [www.kcsdv.org](http://www.kcsdv.org).

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<sup>1</sup> K.S.A. 2016 Supp. 60-303(d)(3).

<sup>2</sup> K.S.A. 60-31b04 (2005).

<sup>3</sup> EMILIE MEYER, NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CIVIL PROTECTION ORDERS: A GUIDE FOR IMPROVING PRACTICE 79 (2010).

<sup>4</sup> K.S.A. 60-3101(b) (2005).

<sup>5</sup> K.S.A. 60-31a01(b) (2005).

<sup>6</sup> K.S.A. 2016 Supp. 60-3107(b).

<sup>7</sup> Shroff v. Spellman, 604 F.3d 1179 (10<sup>th</sup> Cir. 2010).

<sup>8</sup> *Id.*

<sup>9</sup> K.S.A. 2016 Supp. 21-5924(b)(2).

<sup>10</sup> State v. Gregg, 42 Kan. App. 719, 221 P.3d 596 (2009).

<sup>11</sup> State v. Branson, 38 Kan. App. 2d 484, 167 P. 3d 370 (2007).

<sup>12</sup> K.S.A. 2012 Supp. 60-3107(f); K.S.A. 2016 Supp. 60-31a06(e).

<sup>13</sup> K.S.A. 2016 Supp. 21-5427(c).

<sup>14</sup> K.S.A. 2016 Supp. 21-5427(f)(5).

<sup>15</sup> See State v. Wilson, No. 104,060, 2012 WL 401602 (Kan. Ct. App. Feb. 3, 2012); State v. Killingsworth, No. 104,690 2012 WL 1759398 (Kan. Ct. App. May 11, 2012); State v. Dunn, Nos. 106,586, 106,587, 2012 WL 3290004 (Kan. Ct. App. Aug. 10, 2012); State v. Alcorn, Nos. 106,569, 106,570, 106,571, 2012 WL 4121117 (Kan. Ct. App. Sept. 14, 2012).

# **PROSECUTION AND PROTECTION ORDERS**

For protection orders to be taken seriously, violations of orders need to be prosecuted. Prosecutors play a critical role in a community's response to this violence. A prosecutor can set the tone for how the community responds to domestic violence, stalking and sexual assault and the seriousness with which protection orders are viewed. The following section is a basic look at the prosecution of protective orders in Kansas. For more in-depth information, please refer to KCSDV's *A Prosecutor's Guide for Protective Order Violations and Felony Stalking in Kansas*.<sup>1</sup>

## **Communication**

When working with victims, it is important to explain everyone's role and the process involved in prosecuting the crime. Victims need to understand that the prosecutor's office is interested in keeping them safe and holding the perpetrator/defendant accountable. Victims should be told that the prosecutor is not representing them as their attorney. Letting them know what the procedure looks like and what to expect can alleviate a lot of victims' concerns and frustrations.

Furthermore, keeping victims regularly informed of the case's timeline can help alleviate some of the frustration and confusion victims may feel. Without an understanding of criminal law and procedure, victims may not be familiar with the length of the criminal process. Keeping victims informed throughout the process can help victims from feeling ignored or feeling that their case doesn't matter.

Even if the prosecutor determines the prosecutor's office is unable to pursue charges, talking with and listening to the victim is an important part of the protection order process. Taking the time to help the victim understand why the prosecutor's office has chosen not to pursue the case can encourage victims to continue to report any future violations. A prosecutor or victim-witness coordinator can safety plan with victims and/or refer them to a local domestic and or sexual violence advocacy program.

## **Violation of a Protective Order**

The elements of a protective order violation are:

- The existence of a protective order (including a PFA, PFSSA, a criminal no contact order, a CINC order, or a divorce restraining order);
- The defendant violated the order; and
- The act in violation of the order was done knowingly.<sup>2</sup>

A defendant violates a protective order when he or she knowingly fails to comply with the provisions included in the order.<sup>3</sup> Those provisions can vary from order to order. A protective order often makes actions that would otherwise be legal illegal, such as talking to someone, when that person is the protected party. The reason these acts are illegal is because a judge has determined the defendant has more likely than not abused, threatened to abuse, stalked, sexually assaulted, or committed some crime against the protected party. The purpose of these orders is to increase the safety of the victim.<sup>4</sup>



Therefore, the history between the parties is crucial to understanding the context of what otherwise may seem to be innocent acts undeserving of arrest or prosecution. The defendant is being punished not for calling or texting the protected party, but for doing so in spite of a judge ordering him or her not to contact that person.

### ***Fear***

Violation of a protective order does not require a victim to be in fear for her or his safety. If she or he were placed in fear, the act may constitute stalking. In a string of unpublished decisions<sup>5</sup>, the Kansas Court of Appeals has consistently held that the difference between criminal stalking and violating a protective order is that stalking requires a showing of the impact of the contact on the victim.<sup>6</sup> This is not the case for protection order violations. Even a mere “hello” at a store when a protection order was in place has been upheld by the Kansas Court of Appeals as sufficient to affirm a conviction for violation of a protective order.<sup>7</sup>

### ***Consent***

There are many legitimate reasons for a victim to consent to contact from the abuser. The dynamics of domestic and sexual violence and stalking do not disappear with the issuance of a protective order. Abusers often continue to use children or shared finances to exert power and control over victims.

Abusers manipulate and misrepresent information to victims. For example, an abuser may tell the victim that if she or he consented or acquiesced to the contact, the victim could be charged with a criminal violation. However, the consent of the protected party is not a defense to violating a protective order.<sup>8</sup> A protection order is owned by the court that issues the order, not the protected party, and therefore the protected party’s consent is not sufficient to modify the provisions of the order.

### ***Who can violate a protective order?***

A commonly held belief related to protection orders is that protected parties in PFA or PFSSA orders can be held criminally liable for violating their own protection orders, for aiding and abetting the violation of their own protection orders, or for conspiring to violate their own protection orders.

First, such interpretations would seem to contradict the legislative intent of the Protection from Abuse Act (PFAA), which says that the “act shall be liberally construed to promote the protection of victims of domestic violence. . .”<sup>9</sup> Though there is no Kansas case law directly on point, in *State v. Lucas*, the Supreme Court of Ohio persuasively applied the United States Supreme Court holding in *Gebardi v. United States* to the application of protection orders, ultimately finding that protected parties cannot violate their own orders and therefore cannot be punished based on violations of their orders.<sup>10</sup>

Second, the Kansas PFAA does not criminalize any behaviors of the protected party. Specifically, the Act authorizes the court to grant orders “restraining the defendant from abusing, molesting, or interfering”<sup>11</sup> and “restraining the defendant

from entering or remaining upon or in such residence.”<sup>12</sup> Furthermore, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act defines “respondent” as “the individual against whom enforcement of a protection order is sought.”<sup>13</sup> The failure of the legislature to include punishments for the protected party as well as its definition of “respondent” suggests that it was the intent of the legislature that protected parties not be held criminally liable under protection orders issued on their behalf.

Third, if a protection order is enforceable against a protected party, there would be no need for the legislature to have created a procedure for issuing a mutual protection order. The Kansas legislature specifically created a process that must be followed for the court to have the authority to issue a mutual protection order enforceable against either party:

“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.”<sup>14</sup>

Therefore, all orders do not restrict both parties. Only mutual orders restrict both parties.

Furthermore, under 18 U.S.C. 2265(c), these requirements must be met for a mutual order to receive full faith and credit across jurisdictions.<sup>15</sup> When determining whether to prosecute a party based on a mutual protection order, the prosecutor should determine if these criteria were met.<sup>16</sup>

Finally, a Tenth Circuit case has also addressed the culpability of a protected party.<sup>17</sup> In *Shroff v. Spellman*, Officer Spellman arrested Ms. Shroff for violating her own protection order. The court denied the officer qualified immunity in a 42 U.S.C. § 1983 claim because he had violated Ms. Shroff’s constitutional rights by arresting her for violating her own order.<sup>18</sup>

## **Felony Stalking**

When a protection order is violated and the violation places the victim in fear for her or his safety or the safety of a member of the victim’s immediate family or a household member, the defendant may be charged with felony stalking under K.S.A. 21-5427(a)(3).<sup>19</sup> Felony stalking, in addition to reckless conduct and violation of a protection order, requires that the victim be placed in reasonable fear for his or her safety.<sup>20</sup>

The elements of felony stalking in violation of a protective order include:

- The existence of a protective order that prohibits the defendant from having contact with the targeted person (including a PFA, PFSSA, a criminal no contact order, a CINC order, or a divorce restraining order);
- The defendant recklessly engaged in at least one act listed in K.S.A. 21-5924(f)(1);
- That act was in violation of the judge's order;
- The act would cause a reasonable person to fear for her/his safety or the safety of a member of their immediate family or a household member; and
- The targeted person was placed in actual fear.<sup>21</sup>

A protective order can include:

- A PFA or PFSSA, whether issued by a Kansas court or by a court or tribunal of any state or Indian tribe which meets the full faith and credit requirements set out in 18 USC 2265;
- A no-contact order related to a criminal case;
- A restraining order out of a divorce; or
- A no-contact order related to a CINC case.<sup>22</sup>

The existence of a protective order must be established in a protective order violation or a felony stalking case under K.S.A. 21-5427(a)(3).<sup>23</sup> This element can be proven by submitting the order into evidence. This also allows the prosecution to highlight the judge's order and the warnings provided to the defendant within that order.

The defendant must have recklessly engaged in at least one act included in K.S.A. 21-5427(f)(1) that violates the order, which include:

- “(A) Threatening the safety of the targeted person or a member of such person's immediate family.
- (B) Following, approaching or confronting the targeted person or a member of such person's immediate family.
- (C) Appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family.
- (D) Causing damage to the targeted person's residence or property or that of a member of such person's immediate family.
- (E) Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person.
- (F) Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family.
- (G) Any act of communication.”<sup>24</sup>

The final element in a felony stalking case is that the act “would cause a reasonable person to fear for such person’s safety, or the safety of a member of such person’s immediate family and the targeted person is actually placed in such fear.”<sup>25</sup> This element has two parts: 1) that the fear is reasonable; and 2) that the person actually is placed in fear.

### ***Reasonable Fear***

When determining if the act would cause a reasonable person to fear for such person’s safety, the Kansas Court of Appeals has consistently held in unpublished decisions that the reasonableness of the fear should be considered in light of the prior acts the defendant committed against the protected party.<sup>26</sup> Whether it was reasonable to expect that the victim would be placed in fear by the act is dependent on the history between the defendant and the victim.

### ***Actual Fear***

Besides using the testimony of the victim to establish that she/he was placed in actual fear by the violation, these cases also show a consistency in allowing the use of testimony from witnesses or law enforcement about the demeanor of the victim as they perceived it at the time of the violation.

### **Full Faith and Credit**

As mentioned in the Basics section of this manual, out-of-state protection orders issued in conformity with 18 U.S.C. § 2265(a) and K.S.A. 60-31b03 receive full faith and credit. Therefore, violations of these foreign orders are a crime under Kansas law, and should be prosecuted the same as orders issued in Kansas.<sup>27</sup> This is true even if the protected party would not qualify for a protection order under Kansas law. The prosecution will need to offer the existence of a valid protection order as an element of the crime; therefore, it may be necessary to obtain relevant records from the court that issued the protection order.<sup>28</sup>

### **Convictions and Extensions**

Protection from abuse and protection from stalking or sexual assault orders can be extended for two years up to the lifetime of the defendant if the victim can prove to the district court that their order was more likely than not violated or that a person felony was committed by the defendant against them or a member of the victim’s household. When a prosecutor decides to plead down a felony stalking charge, that decision could have an impact on the victim’s ability to seek an extension. For example, pleading down to a protection order violation would make seeking the extension much easier for the victim than some other misdemeanor charges that might be considered. Asking the victim what she wants and explaining this option can help victims with their longer term safety considerations.

## Victim Refusal to Testify

The nature of domestic violence, sexual violence, and stalking involves the abuser’s use of coercion to gain and maintain power and control over the victim. Victims may be too scared for their safety or the safety of their loved ones to testify if they believe the defendant will likely end up back in their community or even their home.<sup>29</sup> They may even determine that it is safer for them and their children if they “go into hiding to escape” the defendant instead of testifying against him.<sup>30</sup> Prosecutors must “recognize that victims may be unable or unwilling to assist in the prosecution of protection order violations for myriad reasons, including fear of retaliation, economic dependence, or concern about the effect of a conviction on the perpetrator.”<sup>31</sup> Protection orders and their enforcement are about keeping victims safe. There are legitimate reasons victims may choose not to testify and prosecutors should refrain from using the legal system to coerce victims to do otherwise.

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<sup>1</sup> Available upon request at [www.kcsdv.org](http://www.kcsdv.org).

<sup>2</sup> K.S.A. 2016 Supp. 21-5924.

<sup>3</sup> *Id.*

<sup>4</sup> K.S.A. 60-3101 (2005).

<sup>5</sup> See *State v. Wilson*, No. 104,060, 2012 WL 401602 (Kan. Ct. App. Feb. 3, 2012); *State v. Killingsworth*, No. 104,690 2012 WL 1759398 (Kan. Ct. App. May 11, 2012); *State v. Dunn*, Nos. 106,586, 106,587, 2012 WL 3290004 (Kan. Ct. App. Aug. 10, 2012); *State v. Alcorn*, Nos. 106,569, 106,570, 106,571, 2012 WL 4121117 (Kan. Ct. App. Sept. 14, 2012).

<sup>6</sup> *State v. Wilson*, No. 104,060, 2012 WL 401602, at \*3.

<sup>7</sup> *State v. Gregg*, 42 Kan.App.2d 719, 221 P.3d 596 (2009).

<sup>8</sup> *State v. Branson*, 38 Kan. App. 2d 484, 167 P. 3d 370 (2007).

<sup>9</sup> K.S.A. 60-3101(b) (2005).

<sup>10</sup> *State v. Lucas*, 795 N.E.2d 642 (Ohio 2003).

<sup>11</sup> K.S.A. 2016 Supp. 60-3107(a)(1).

<sup>12</sup> K.S.A. 2016 Supp. 60-3107(a)(2).

<sup>13</sup> K.S.A. 60-31b02(f) (2005).

<sup>14</sup> K.S.A. 2016 Supp. 60-3107(b).

<sup>15</sup> EMILIE MEYER, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, CIVIL PROTECTION ORDERS: A GUIDE FOR IMPROVING PRACTICE 110 (2010).

<sup>16</sup> *Id.*

<sup>17</sup> *Shroff v. Spellman*, 604 F.3d 1179 (10<sup>th</sup> Cir. 2010).

<sup>18</sup> *Id.*

<sup>19</sup> K.S.A. 2016 Supp. 21-5427(a)(3).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> K.S.A. 2016 Supp. 21-5924.

<sup>23</sup> *State v. Hardy*, No. 105,270, 2012 WL 2620547 \*3 (Kan. Ct. App. June 29, 2012).

<sup>24</sup> K.S.A. 2016 Supp. 21-5427.

<sup>25</sup> K.S.A. 2016 Supp. 21-5427(a)(3).

<sup>26</sup> See *State v. Wilson*, No. 104,060, 2012 WL 401602 (Kan. Ct. App. Feb. 3, 2012); *State v. Killingsworth*, No. 104,690 2012 WL 1759398 (Kan. Ct. App. May 11, 2012); *State v. Dunn*, Nos. 106,586, 106,587, 2012 WL 3290004 (Kan. Ct. App. Aug. 10, 2012); *State v. Alcorn*, Nos. 106,569, 106,570, 106,571, 2012 WL 4121117 (Kan. Ct. App. Sept. 14, 2012).

<sup>27</sup> MEYER, *supra* note 15, at 102.

<sup>28</sup> *Id.* at 103.

<sup>29</sup> AEQUITAS, THE PROSECUTORS’ RESOURCE: FORFEITURE BY WRONGDOING 2 (2012).

<sup>30</sup> *Id.*

<sup>31</sup> MEYER, *supra* note 15, at 106.

## KANSAS CASE LAW SUMMARY

This is a summary of Kansas case law related to protection from abuse and protection from stalking or sexual assault orders. As with all case law, before citing any of these cases to the court, the entire case should be read and verified as good law.

Published cases can be found at: <http://www.kscourts.org/kscases/>

Unpublished cases require access to Westlaw or another electronic database that contains unpublished opinions.

The cases below are listed by year.

### *PFA, children, definition of bodily injury*

#### **Paida v. Leach, 260 Kan. 292, 917 P.2d 1342 (1996).**

Paida appealed from a denial of a PFA petition that she filed on behalf of her children, who were in her ex-husband's custody.

- The court distinguished between domestic violence against children and domestic violence against spouses. The court said that the trial court should determine whether the plaintiff has shown abuse by looking at the evidence in light of all of the circumstances in each individual case. Included in these circumstances are the age of the alleged victim and his or her relationship to the alleged abuser.
- The court held that the Protection from Abuse Act was not intended to unnecessarily interfere in the parent/child relationship unless there is a clear need to protect the child. Therefore, the Act should only be used when parental discipline causes more than minor or inconsequential injury to the child.
- The court defined bodily injury to require a finding of substantial physical pain or an impairment of physical condition.

### *PFA, children, definition of bodily injury, attorney fees*

#### **Barnett v. Barnett, 24 Kan. App. 2d 342, 945 P.2d 870 (1997).**

Father appealed PFA order entered against him. His ex-wife had petitioned for a PFA protecting their 13-year-old son based on an incident in which the father pushed the son and hit him with a switch from a tree.

- Court held that the son did not suffer substantial physical pain or physical impairment as required by *Paida*, reversing the district court's decision.
  - Father testified that he intended to inflict some pain on his son but that he did not intend to injure him.
  - Son indicated that he was not in fear of imminent bodily injury, he was just afraid the day of the incident.
  - The mother did not take the son to the hospital or physician and refused a police officer's offer to call an ambulance because the mother and son thought it was unnecessary.

- The father did not break his son’s skin.
- The son did not testify about any enduring effects from the incident.
- There was also an argument as to whether the district court should have awarded attorney fees to his ex-wife since the underlying order was erroneous.
  - The court referred to the legislature’s “intent that the Act ‘be liberally construed... to facilitate access to judicial protection for the victims of domestic violence.’” at p.354.
  - The court held that using this logic “would place a chilling effect upon the bringing of borderline cases to the attention of the court system.” at p.354.

*PFA, definition of abuse, standard within family, timing of abuse*

**Trolinger v. Trolinger**, 30 Kan. App. 2d 192, 42 P.3d 157 (2001) (petition for review denied).

Arby Trolinger appeals PFA order issued against him protecting his wife Valerie and her minor child.

- The court referred to the wording that “the Act shall be liberally construed ‘to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims.’” at p.198.
- The court described its reluctance to involve itself in PFA cases because the cases often develop in emergency situations and the judgment of the trial court may involve risk to the lives of the parties involved. The court said that the district court is in a better position to view the parties and make a real-life judgment on the situation.
- The court held that the trial court was not required to find substantial pain and impairment prior to concluding that there was abuse as a matter of law. Rather, the trial court must look at all the circumstances and find abuse if it is shown by a preponderance of the evidence.
- Making reference to *Paida*, the court said that there should be the same standard of abuse within a family because they live together and to apply different standards would undermine the order issued to one member or another of a family group.
- Regarding Arby’s argument that the alleged actions of abuse were not recent in time and did not present an ongoing risk, the court held that these are factors to be considered, but they should not be controlling. The court said that it would be contrary to the intent of the law if an order could only be issued if the acts of violence were recent and presented an immediate threat to the victims seeking protection.
- The court held that the Protection from Abuse Act does not require focusing on the timing of either recent abuse or future abuse prior to issuing a PFA order.

*PFA denial, attorney fees*

**Lisk-Boydston v. Boydston**, No. 90,058, 80P.3d 1201, 2003 WL 22990200 (Kan. App. Dec. 19, 2003) (unpublished opinion).

Lisk-Boydston appealed the district court's decision denying her petition for a PFA and appealed the court's awarding Boydston with attorney fees and costs.

- Regarding the denial of the petition for a PFA, the court said that the facts surrounding the incidents alleged by the plaintiff in the petition were highly controverted and that the district court considered the surrounding circumstances and the credibility of Lisk-Boydston's witnesses in determining that the plaintiff and her witnesses were not credible.
- Regarding the awarding of attorney fees and costs to the defendant, the court referred to the statutory scheme of the PFA Act, referred to the wording that the "act shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims whether represented by counsel or proceeding *pro se*." at p.4. The court held that, in this case, the court did not abuse its discretion in making specific findings that the plaintiff brought about "such a frivolous action" and awarded fees. at p.4. The court did, however, add that courts should be careful when they award attorney fees against plaintiffs in PFA orders because it could result in legitimate victims of abuse not seeking protection under the Act.

*PFA, evidence, lapse of time between abuse and filing*

**Brock v. Brandewyne**, No. 91,211, 94 P.3d 738, WL 1716416 (Kan. Ct. App. July 30, 2004) (unpublished opinion).

Brandewyne appealed the issuance of a protection order and a finding that she was in contempt of the protection order issued on behalf of her ex-husband, Brock.

- Brandewyne argued that evidence of letters sent to third parties who were not an intimate partner or household member should not be admitted. The court held that to whom the letters were sent was of little relevance, that as long as the threatening language in them was in reference to the plaintiff, who did meet the definition of intimate partner or household member, the letters were admissible.
- Brandewyne also argued that there was too great a lapse in time between when the letters were written and when Brock filed the PFA petition for the letters to contain threats of imminent bodily harm. The court cited *Trolinger* and said that the trial court was aware of the timing of the events and presumably considered this when it noted the long-term history and ongoing animosity of the parties.



*PFS, constitutionality*

**Smith v. Martins**, 279 Kan. 242, 106 P.3d 28 (2005).

Martens appealed a PFS order issued against him protecting his ex-wife arguing that the Protection from Stalking Act is unconstitutionally vague on its face and overbroad.

- The court held that the statute was not unconstitutionally vague on its face and did not substantially infringe upon First Amendment protected speech.

*PFA, right to evidentiary hearing, PFA/divorce orders*

**Myers v. Myers**, No. 92,628, 2005 WL 1500923 (Kan. Ct. App. June 24, 2005) (unpublished decision).

Cheryl Myers appeals from the trial court's denial of her petition for a PFA order against her husband Michael. Among other arguments, Cheryl argued that the court erred in dismissing her petition without setting it for an evidentiary hearing. Michael argues that the Protection from Abuse Act does not contemplate that there would be a divorce proceeding at the same time as a PFA proceeding.

- The court refers to the intent of the PFA Act stating that the Act "shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding *pro se*." at p.6. The court said that this language indicates that the Act was enacted specifically to protect victims of domestic violence.
- The court held that once Cheryl submitted and filed her petition following all statutory requirements, the trial court was required to conduct an evidentiary hearing. The district court erred in not holding such a hearing.
- The court also held that although there are some overlapping protections in the PFAA and the divorce statutes, the PFAA clearly provides greater protection for abuse victims. Mainly these differences are in the amount of time an order can be in effect and the matters that the orders can address.

*Violation of a PFA order, evidence*

**State v. Curls**, 36 Kan. App. 2d 547, 145 P.3d 73 (2006).

Curls appealed his conviction for violating a PFA order, arguing an insufficiency of evidence. The violation was based on multiple phone calls made by Curls to Murdock, the woman offered protection by the order. The police officers on the scene refused to listen to messages left on Murdock's phone.

- The court said that the officers declining to listen to the messages after Murdock offered for them to do so, was curious police work. The court said that a better practice would be for investigating officers to confirm the reported messages when they are given the opportunity to do so.

*PFS, factors considered, evidence, Internet searches*

**Wentland v. Uhlarik**, 37 Kan. App. 2d 734, 159 P. 3d 1035 (2007).

Uhlarik appealed the district court's final PFS order, arguing that the order was not based on substantial competent evidence.

- The court noted K.S.A. 60-31a01(b), which says the Protection from Stalking Act “shall be liberally construed to protect victims of stalking and to facilitate access to judicial protection for stalking victims.” at p.1.
- The court said a reasonable person must look at the totality of circumstances and the relationship and history between the parties in determining whether a reasonable person would be in fear of their safety.
- The court looked at the context of all the surrounding facts as well as the history of the defendant's repeated harassment of the plaintiff when determining course of conduct.
- The court reaffirmed that a district court may take judicial notice of its own records, including prior PFA and PFS petitions and orders.
- The court held that there is no authority limiting testimony at trial to the facts as they existed at the time the petition was filed; therefore, the plaintiff was able to introduce evidence of behavior that occurred prior to her filing the petition for a PFS that she was unaware of when she filed the petition.
- The court said the introduction of evidence of a great number of Internet searches done on the plaintiff by the defendant were admissible to show an ongoing course of conduct as well as to show his intent and to show that these encounters were not mere coincidences.
- The court held that the defendant's past harassment and ongoing infatuation with the plaintiff coupled with recent encounters with the plaintiff were enough evidence for the district court to enter a final PFS order against the defendant.

*Consent not a defense to Violation of a Protection Order.*

**State v. Branson**, 38 Kan. App. 2d 484, 167 P. 3d 370 (2007). (Petition for review denied April 23, 2008).

Defendant was convicted at a bench trial of Violation of a Protective Order. The defendant argued that the trial court erred for failing to consider the consent of the victim to the contact as an affirmative defense.

- The Court of Appeals noted that, “Nothing in the language of [Violation of a Protective Order] suggests a legislative intent to excuse an abuser just because the victim later consents to contact in violation of the PFA order.” at p. 488.
- The Court of Appeals went on to say, “Branson cites no authority that renders consent an affirmative defense to a charge of violation of a protective order in Kansas, and our research reveals none.” at pp. 488-489. Therefore, the Court of Appeals concluded, “The trial court did not err in refusing to consider a consent defense in this case.” at p. 489. The Court reasoned that only the court can modify or nullify its own order.
- The Court of Appeals further reasoned that the legislative “decision to criminalize a violation of a PFA order reflects a concern for the public

peace.” at p. 488. The Court noted that the crime of violating a protective order is placed in Article 38 of Crimes and Punishments, which is entitled, “Crimes Affecting Governmental Functions.”

*District Court abused its discretion by failing to set Plaintiff's PFA Petition for hearing.*

**Crim v. Crim**, 40 Kan. App. 2d 367, 196 P. 3d 375 (2008).

Plaintiff filed a pro se petition seeking a protection from abuse order against the defendant. On the same day the petition was filed the District Court dismissed the plaintiff's petition, citing, “insufficient allegations for jurisdiction” and directing that the “petitioner should seek to modify the custody/visitation temporary orders in the divorce case . . .” at p. 369. The Plaintiff, with counsel, filed a motion to set aside the dismissal of her petition. At the hearing on her motion the court stated that it thought there were certain things that had to be alleged in a petition for a protection order before the plaintiff was entitled to an evidentiary hearing on the petition. The court concluded that the allegations in plaintiff's petition, taken as true, did not meet the requirements of the Protection from Abuse Act.

- The Court of Appeals noted that, “The PFAA shall be liberally construed to promote the protection of victims of domestic violence. . .” at p. 371. The Court of Appeals found sufficient facts alleged to confer jurisdiction, and noted: “As our court has previously stated in a related context, there is no bright-line rule that the victim must actually show that she or he has shed blood or suffered real physical pain in order to obtain an order which may avoid that outcome. Trolinger v. Trolinger, 30 Kan. App. 2d 192, 42 P. 3d 157 (2001) rev. denied 273 Kan. 1040 (2002).” at p. 372.
- Thus, the Court of Appeals found that the District Court abused its discretion by its erroneous legal interpretation of the PFAA.
- The facts in Plaintiff's petition were that the defendant had repeatedly called the plaintiff. The defendant left messages stating he would kick in the plaintiff's door if plaintiff did not call him back; he would let the children starve and freeze; and, he would make the plaintiff's parents pay. He followed plaintiff in his car and blocked her path with his vehicle.

*Violation of a protection order in a public place.*

**State of Kansas v. Gregg**, 42 Kan. App. 2d 719, 203 P. 3d 89 (2009).

The defendant was convicted of violating a protection from abuse order. On appeal the defendant challenges the sufficiency of the evidence supporting the conviction. The defendant claims that the district court misunderstood evidence presented at trial. The defendant does not deny, however, saying hello to the plaintiff while at Wal-Mart.

- The Court of Appeals concluded, “. . . Greg admitted that he said ‘hello’ to his mother. This evidence-without consideration of the disputed testimony on cross-examination- was sufficient to prove beyond a

reasonable doubt that Gregg had contacted his mother in contravention of the PFA and in violation of K.S.A.[ 21-5924].” at p. 720.

- The Court of Appeals affirmed the decision of the district court.

*Violation of protection order while jailed.*

**State of Kansas v. Fielden**, 42 Kan. App. 2d 710, 217 P. 3d 986 (2007).

The defendant was convicted of violating a protection from abuse order, which was issued and violated while the defendant was jailed. Three cases were joined for trial at the district court. The opinion of the Court of Appeals in this case centered on the issues of joinder and prosecutorial misconduct. Often victims are told by different systems that they do not need a protection order because the defendant is incarcerated, bond conditions will protect them, or because the criminal case makes a protection order unnecessary. This case demonstrates how a protection order can be useful and important for victims even when the defendant is incarcerated or a criminal case is pending.

- The facts of one of the three cases joined for trial was that the defendant violated a protection order by driving by the victim’s residence slowly honking the horn. At trial the defendant “alleged that Copeland had overreacted to his actions on September 11, 2004, and driving on the public street was not a prohibited contact.” at p. 713. These facts resulted in a conviction in the district court. The sufficiency of these facts were not challenged on appeal. Fielden’s conviction for violation the protection order was affirmed.
- Most protection orders restrain the defendant from “entering in or coming around the premises of the victim/plaintiff.” Victims are often told that nothing can be done when the defendant drives by their home, or regularly circles around the victim’s premises. This case would demonstrate differently.

*No qualified immunity for police officer who wrongly arrested protected party for violation of her own order.*

**Shroff v. Spellman**, 604 F.3d 1179 (10<sup>th</sup> Cir. 2010).

Officer Spellman appealed a denial of summary judgment, based on his defense of qualified immunity as a police officer. Spellman arrested Ms. Shroff for violating her own PFA order and she was subsequently strip searched. The order in question restrained Mr. Kruse from being within 100 feet of Ms. Shroff. It was presented to Officer Spellman. Ms. Shroff informed him it was not a reciprocal order.

- Court of Appeals affirmed the district court’s conclusion that Officer Spellman arrested Ms. Shroff without probable cause and subsequent to the arrest subjected her to a strip search in violation of her Fourth Amendment rights.
- Qualified immunity does not apply when the plaintiff demonstrates on the facts alleged that the defendant violated her constitutional or statutory rights AND that the constitutional right was clearly established at the time of the incident.

- The record contained no support that Officer Spellman had probable cause to arrest Ms. Shroff for being in contempt of the order restraining Mr. Kruse nor did the order authorize him to arrest a protected party.
  - Officer Spellman alleged he arrested Ms. Shroff for violating the provision of the restraining order that said the protected person “can not give the Restrained Person permission to change or ignore this Order.” at p. 1188.
  - None of the parties interviewed ever alleged Ms. Shroff gave permission to Mr. Kruse to violate the protection order.
  - Further, the order does not authorize the arrest of the protected party for giving the restrained person permission to change or ignore the order.
- What is a “clearly established” constitutional right should be determined by whether it would be clear to a reasonable officer that his conduct was unlawful in that situation.
  - The court found that no reasonable officer would have determined that he had probable cause to arrest Ms. Shroff after reading the restraining order and being informed that Ms. Shroff was not a restrained party.

*Violation of a protective order, felony stalking*

**State v. Wilson**, No. 104,060, 2012 WL 401602 (Kan. Ct. App. Feb. 3, 2012) *petition for review filed (Mar. 2, 2012) (unpublished decision)*.

Wilson appealed a conviction of felony stalking for communicating with his former girlfriend, Obeidat, in violation of a criminal no contact order. Wilson called the home of Obeidat’s father. Obeidat, who had been staying with her father, answered the phone. Wilson called her a bitch and told her he was coming to kill her. She then received 20 calls from the same telephone number. At trial, Wilson admitted to calling her and acknowledged that he was aware of the no-contact order.

- Wilson’s first argument was that stalking was an alternative means crime. Specifically, the “intentionally or recklessly” language of the statute presented alternative means of stalking. The court, however, held that intentionally and recklessly are different mental states, not different physical actions. Despite which mental state was employed, the effect on the victim would be the same and “therefore do[es] not define different ways of stalking someone. The offense entails communicating with a person in violation of an order in a manner that causes that person to fear for his or her personal safety.” at p. \*2.
- Wilson then attacked the conviction on the grounds that the prosecution failed to include the lesser included offense of violation of a protective order in the jury instruction. The Court specifically held that “[f]or the purpose of this appeal, the key difference between stalking and violating a protective order is the impact of the communication or contact on the victim. For stalking, the victim reasonably must fear for his or her safety. Violating a protective order requires no similar reaction from the victim.” at p. \*3. As the instructions included the element of fear and the jury convicted on that instruction, they would not likely have acquitted based on the lesser included offense.
- The court further held, despite Wilson arguing otherwise, that the previous incident of aggravated battery “was relevant and admissible in this case to show

that Obeidat was placed in fear by Wilson’s telephone calls and that a reasonable person in her position would be fearful.” at p. \*4.

*One year extension of a PFA, judicial discretion*

**Jordan v. Jordan**, 47 Kan. App.2d 300, 274 P.3d 657 (2012).

Roy Jordan appealed the extension of his estranged wife’s PFA order. His wife acknowledged at a hearing on the motion that Roy had not physically harmed her or had any direct contact with her since the original order was issued but that she was still in fear of him. The trial court granted her motion for extension based on her continued fear of Roy. On appeal, Roy argued that there was not substantial and competent evidence to support the extension.

- The PFAA says a PFA “may” be extended for an additional year upon motion of the plaintiff. Based on the plain language of the statute, the Court of Appeals found that trial courts have the discretion to extend PFA orders when they are “within the bounds of judicial discretion.” at p. 306. The district court did not abuse its discretion when it extended the order based on the subjective fear of the protected party. The district judge who also issued the original order was in the best position to know if an extension was necessary.

*Violation of a protective order, felony stalking*

**State v. Killingsworth**, No. 104,690, 2012 WL 1759398 (Kan. Ct. App. May 11, 2012) (unpublished decision).

Defendant appealed his convictions of protection order violation and felony stalking. Cooper sought and received a PFS against his girlfriend’s ex-boyfriend, Killingsworth. After being served with the order, Killingsworth appeared across the street from his ex-girlfriend’s house and yelled at Cooper. A few days later, Killingsworth left a note on his ex-girlfriend’s porch telling him to stay away from his children and included a drawing of a dagger.

- Killingsworth, argued that stalking was an alternative means crime and that the state had failed to support each alternative means with substantial evidence. The Court held that “intentionally or recklessly” were not alternative means by which an individual can commit a crime but are different criminal intents. Further, the Court found that “because the stalking statute lists separate and distinct acts, any one of which could have been the basis for Killingsworth’s stalking conviction, the crime presents a multiple acts issue rather than an alternative means issue . . . In multiple acts cases, either the prosecutor must elect which act is the basis for the stalking charge, or the district court must direct the jury to be unanimous in deciding which act constitutes the crime.” at p. \*6.
- Killingsworth also argued that he could not be convicted of both felony stalking and violation of a protective order because violation of a protective order is a lesser included offense of felony stalking. The court found that intentional conduct and violating a protective order are elements in both crimes but felony stalking also requires more, that the victim is caused fear. Therefore, violation of a protective order is a lesser included offense of felony stalking. The court reversed the protective order violation conviction for as lesser included offense

- and remanded the stalking conviction based on the format of the jury instructions.

*Violation of a protective order, evidence*

**State v. Hardy**, No. 105,270, 2012 WL 2620547 (Kan. Ct. App. June 29, 2012) (unpublished decision).

Hardy was convicted by a jury of stalking in violation of a protective order. Hardy appealed based on insufficient evidence to sustain the conviction.

- The complaint and the jury instruction referred to a protection order prohibiting contact with Maxfield. However, the actual order was not admitted as evidence. The court found, “based strictly on the language of the complaint and the stalking instruction, the state failed to prove the existence of a protective order prohibiting Hardy from having contact with Maxfield.” at p. \*3. The existence of an order was an element that must have been proven beyond a reasonable doubt.

*Violation of a protective order, felony stalking, prior bad acts*

**State v. Dunn**, Nos. 106,586, 106,587, 2012 WL 3290004 (Kan. Ct. App. Aug. 10, 2012) (unpublished decision).

Dunn appealed his conviction of stalking in violation of a protective order. Shaw had a protective order against her ex-boyfriend, Dunn. Shaw was a courier. Dunn appeared at a bank on her route. An employee testified that Shaw appeared nervous and scared. Shaw and Dunn later reconciled.

- Dunn challenged his stalking conviction, arguing insufficient evidence to support the conclusion that Shaw was placed in reasonable fear for her safety by the contact and not just in general fear of him. The Court found Dunn’s prior actions, including punching Shaw, pulling her hair, injuring her hands and feet, knocking down her door, and slashing her tires, were relevant in determining whether his actions were sufficient to place her in reasonable fear for her safety.
- The Court noted that “simply because Shaw subsequently reconciled with Dunn does not change the fact that she was in reasonable fear for her safety” at the bank incident at p. \*3. The conviction was upheld. NOTE: The couple’s subsequent reconciliation does not affect the conviction. *State v. Dunn*, \_\_\_ Kan. \_\_\_, 375 P.3d 332 (Kan. 2016).

*Violation of a protective order, necessity not a defense*

**State v. Hunt**, No. 106,296, 2012 WL 3966535 (Kan. Ct. App. Sept. 7, 2012) *petition for review filed* (Oct. 5, 2012) (unpublished decision).

Hunt admitted to violating a protection from abuse order prohibiting him from having contact with his wife. Hunt, however, appealed his conviction of violation of a protective order, claiming the common-law defense of necessity. Hunt’s wife, who had a protection order against him, became ill. Hunt drove his wife to the hospital. On the way home, he drove his wife to the district court to have her ask for the order to be dismissed. An administrative assistant testified that she asked Hunt to leave so she could speak with Hunt’s wife privately. According to the assistant, the wife said that she wasn’t

dismissing the order of her own free will. As Hunt and his wife were in the court house hallway, a sheriff's deputy arrested Hunt for violating an existing protection order. His attorney asked the district court to instruct the jury that his actions could be found to be justified if they were found to be necessary. The district court denied his request and Hunt appealed.

- The court noted that whether the common-law defense of necessity was recognized in Kansas was still undecided. The court determined that even if the defense was recognized in Kansas, it would not apply here. Hunt had legal alternatives to violating the law. The court held that his wife "had obtained the protection order without [Hunt's] help, and she could have sought its modification or removal without his help." at p. \*4. The court also held that his wife could have driven herself, taken a taxi or bus, or taken an ambulance.

*Violation of a protective order, felony stalking, prior bad acts*

**State v. Alcorn**, No. 106,569, 2012 WL 4121117 (Kan. Ct. App. Sept. 14, 2012) *petition for review filed* (Oct. 15, 2012) (unpublished decision).

May received a protection from abuse order against his ex-girlfriend, Alcorn. May's mother also received a protection from stalking order against Alcorn. Alcorn was charged with several counts of stalking, violating a protective order, domestic battery, criminal damage to property and criminal trespass on multiple occasions. The court consolidated the charges into one case. Alcorn appealed based on the testimony at trial of her prior bad acts.

- The Court of Appeals noted that evidence of a person's prior bad acts could not be used to make the inference that he or she has a disposition to committing a crime to prove that he or she committed another crime. Such evidence can, however, be used to prove some other material fact. The court noted, though Kansas courts had not addressed whether prior acts could be used to establish reasonableness of fear in a stalking case, other jurisdictions with substantially similar stalking laws addressed it. The court declined to determine whether the district court erred in admitting this evidence as Alcorn was not convicted on the stalking charges but affirmed the protective order violation and criminal trespass convictions.

*PFA, venue, threats through third party*

**Kreger v. Kreger**, No. 107,425, 2012 WL 5869634 (Kan. Ct. App. Nov. 16, 2012) (unpublished decision).

Kristie and Leon Kreger were married and had two children together. Leon was in an accident leaving him with a severe head injury which caused him to experience mood swings and fits of rage. The court noted that Leon had never acted violently toward Kristie or the children, but he had broken furniture and damaged other property during outbursts. Leon accused Kristie of having an affair, a claim Johnson denied on the stand. While Leon was out of town, Kristie moved from Ford County to Johnson County. Upon his return, Leon filed for divorce in Ford, receiving temporary custody of the couple's two children. He then repeatedly called Johnson, threatening to kill



him as well as Kristie and the children. Kristie filed for a PFA in Johnson County, citing the threats made to Johnson in the petition. Kristie offered no evidence that Leon directly communicated any threats to her personally. Leon’s attorney argued the PFA was being used merely as a way to get around the temporary custody orders out of the divorce. The court ultimately granted Kristie’s PFA petition, ordering Leon to have no contact with her and limited supervised parenting with the children in Johnson County. Leon appealed.

- Leon first argued that Johnson County District court lacked venue to hear the PFA petition and that the action should have been brought in Ford County. The Court of Appeals, however, determined this argument “legally unfounded. The Act contains a specific provision, conferring jurisdiction, and hence venue, on ‘any district court.’ K.S.A. 60-3103. The provision also states that a person’s right to relief under the Act ‘shall not be affected by the person’s leaving the residence or household to avoid further abuse.’ K.S.A. 60-3103.” at pp. \*5-6. Finally, the court noted that the legislature specifically stated within the act that it “must be ‘liberally construed to promote the protection of victims . . . from threats of bodily injury and to facilitate access to judicial protections for victims.’ K.S.A. 60-3101(b).” at p. \*6. Therefore, the court determined Johnson County had jurisdiction to enter the PFA.
- Next, Leon challenged the sufficiency of evidence. The court found that, though Leon communicated the direct threat of bodily harm to Johnson, not Kristie, Leon had every reason to believe Johnson would have conveyed that threat to Kristie. The Court of Appeals found this threat sufficient to issue the PFA.
- Leon then challenged the imminence of the fear the threat of harm caused as he lived in Ford County and Kristie and the children lived in Johnson County. The Appellate court determined that imminent is broader than immediate, holding “we doubt the legislature intended to immunize threats of bodily harm a husband might make to his estranged wife simply because they live in different locals or because some other circumstances might delay execution of the threat for several hours. A midnight telephone call from one separated spouse threatening to kill the other when the sun comes up ought to fit within the Act.” at pp. \*11-12. The Court of Appeals upheld the issuance of the PFA.

**NOTE: *State v. Kendall*, 300 Kan. 515, 331 P.3d 763 (2014) is a review of the judgment of the Court of Appeals unpublished opinion, *State v. Kendall*, No. 106,960, 2013 Kan. App. LEXIS 763 (Aug. 16, 2013), which appeared in the previous Kansas Protection Order Manual Kansas Law section. The Judgment was affirmed in part and reversed in part.**

*Felony stalking and protective order violations, communication, venue*

***State v. Kendall*, 300 Kan. 515, 331 P.3d 763 (2014).**

Kendall was convicted of both stalking and violating a protective order based on phone calls he placed while incarcerated to his former wife who had a protection order against him. The order prohibited Kendall from telephoning, contacting or otherwise communicating with his former wife. Kendall’s calls were never answered and the

victim never spoke with him. Through the caller ID number on her phone, she believed that Kendall was making the phone calls from prison.

- ***Issue: An act of communication***

Kendall appealed the stalking conviction on the basis that because the calls were never completed, the state presented insufficient evidence to support that he engaged in an “act of communication,” as required by statute.

**Kansas Court of Appeals**

The Court of Appeals held that the defendant had not communicated with the victim because there was not a shared understanding of the message between the sender and the recipient and therefore reversed the conviction of stalking, but found there was sufficient evidence to support that he attempted to communicate.

**Kansas Supreme Court**

The Kansas Supreme Court reversed, finding that an “act of communication” requires a showing that the sender transmitted a communication to the victim, not merely an attempt at communicating. Further, stalking requires the victim to be placed in fear and that fear to be reasonable. These elements are not met if the victim is not aware that the perpetrator is trying to contact them. Therefore, the court concluded, “the phrase ‘act of communication’ as used in the stalking statute requires evidence that a perpetrator transmitted a communication to a victim.” at p. 769. In this case, the Kansas Supreme Court found that “Kendall’s acts of placing calls to [the victim]’s cell phone . . . and, in turn, [victim] realizing that Kendall was calling her from prison were sufficient to show Kendall engaged in an act of communication. Based on [victim]’s testimony, a reasonable fact finder could infer that by calling [victim]’s cell phone, Kendall was communicating to [victim]—just as he promised at sentencing—that he would contact her no matter what, regardless of the protective order put in place or the fact that he was in prison, and that this message was received by [the victim].” at pp. 771-772.

- ***Issue: Proper venue when a crime includes two or more acts***

Kendall also appealed the conviction of a protective order violation because he was incarcerated in Butler County at the time of the violation but was prosecuted in Reno County.

**Kansas Court of Appeals**

The Kansas Court of Appeals found that the proper venue for prosecuting him for the crime could be where the call originated or where it was received.

**Kansas Supreme Court**

The Kansas Supreme Court affirmed the conviction, noting that “K.S.A. 22-2602 authorizes the State to prosecute a crime in the county where the crime was committed. But, when two or more acts are requisite to the commission of the crime charged and such acts occurred in different counties, K.S.A. 22-2603

authorizes the State to prosecute the crime ‘in any county in which any of such acts occur.’” at p. 774. The victim testifies that she was in Reno County when she received the calls on her cell phone. The Court concluded that the violation could be prosecuted in either the county where Kendall made the contact or the county where the victim received the contact.

*Protection from stalking order one year extension, statutory amendment retroactive application*

***Dester v. Dester***, 50 Kan. App. 2d 914, 335 P.3d 119 (2014).

Plaintiff was granted a second one year extension of her final protection from stalking order (PFS) in 2013 based on statutory changes to the Protection From Stalking Act in July 2012. The legislature revised the extension language from, “for up to one additional year” to “for an additional year.” at p. 121. The defendant appealed the second extension of a final order, claiming the district court lacked jurisdiction and that if applied retroactively, his substantive rights of freedom of speech and freedom of movement would be affected. Specifically, the Court of Appeals of Kansas considered whether the 2012 amendments to the Protection from Stalking Act apply retroactively to orders already in place at the time of the amendment.

- Generally, a statute applies prospectively “unless (1) the statutory language clearly indicates the legislature intended the statute to operate retrospectively or (2) the change is procedural or remedial in nature, not substantive.” at p. 122.
- The Court found that the revisions did not create a new or eliminate an existing right, but “proscribed a method of enforcing a previously existing right, i.e., the right not to be stalked.” at p. 123. The Court therefore found that the amendment was procedural or remedial in nature.
- An amendment that is procedural or remedial may not be applied retroactively if that amendment would affect a party’s substantive rights. The defendant did not argue that the restrictions on freedom of speech or freedom of movement in the original PFS violated his substantive rights, only that they were violated by the addition of another year. The Court found that the defendant does “not have a vested right in stalking or harassing anyone, nor does he have a vested right in not having a PFS order entered against him for an additional year. The limited restrictions on the defendant’s freedom of speech and freedom of movement are narrowly tailored under the Act and . . . the amendments, which simply allow a protective order to be continued beyond the original 2-year limitation, are minimally restrictive when compared to the public interest at stake—the need to protect victims of stalking.” at pp. 123-124.

**State v. Hendricks** 52 Kan. App. 2d 737, 372 P.3d 437 (2016).

Hendricks appealed his criminal conviction for violation of a no-contact order entered in his divorce case. The order in question was entered years after the final divorce decree was entered. Hendricks argues that the statute that makes it a crime to violate certain protection orders did not apply to him because the order was neither a protection from abuse, protection from stalking, nor a temporary order issued in the divorce case. The criminal statute that he was charged with violating was not applicable to him due to the protection order being entered years after the final divorce decree, and the conviction was set aside.

**Kerry G. v. Stacy C.** 53 Kan. App. 2d 218, 386 P.3d 921 (2016).

The Protection from Abuse Act requires that one or more acts defined as abusive occurs between intimate partners or household members. The respondent conceded that the evidence showed that the parties had been intimate partners. The petitioner argued that the evidence was insufficient to show that he had committed unwanted sexual acts. Secondly, he argued that even if the court found sufficient evidence of unwanted sexual acts, those acts did not constitute “bodily injury” as required to satisfy the abuse element under the Protection from Abuse Act. Three involuntary sexual encounters took place between the petitioner and respondent. The court concluded that the unwanted sexual contact caused bodily injury, satisfying the abuse element under the Protection from Abuse Act.

**State v. Sinzogan** 53 Kan. App. 2d 324, 388 P.3d 176 (2017) *petition for review filed* (Feb. 6, 2017).

The respondent appealed his jury conviction, claiming in relevant part, that the charge of violating a protective order and stalking are multiplicitous. A lesser included crime is defined as, “a crime where all elements of the lesser crime are identical to some of the elements of the crime charged.” K.S.A. 2015 Supp. 21-5109(b)(2). The key distinction is the different culpable mental states. Violation of a protective order requires a knowing state of mind. K.S.A. 2015 Supp. 21-5924(a)(6). Stalking requires the lesser, reckless state of mind. K.S.A. 2015 Supp. 21-5427(a)(3). The Court of Appeals found the violation of a protective order requires a higher culpable state of mind, knowingly, than a violation of a protective order, recklessly, and therefore cannot be a lesser included charge of stalking by violating a protective order.

**State v. Hunter** 387 Kan. App. P.3d 863 (2017) *petition for review denied* (Aug. 31, 2017) (unpublished opinion).

The respondent was convicted by a jury of two counts of violating a protection from abuse order. In relevant part, respondent appeals, claiming that the district court erred by failing to include all of the elements of the crime in the jury instruction and by designating his convictions as domestic violence offenses. The domestic violence designation is applied by applying the following process: “(1) If there is evidence in a criminal case that the offense in question is a domestic violence offense, the trier of fact shall determine whether the offense is indeed one of domestic violence; (2) If that determination is made, the district court shall place a domestic violence designation on the case; (3) If that designation is applied, the defendant shall be subject to a domestic violence assessment and shall follow its recommendations as part of his or her

sentence.” *State v. Gordon*, 50 Kan. App. 2d 1177, Syl. 2, 337 P.3d 720 (2014), *rev denied* 302 Kan. 1015 (2015). A domestic violence jury instruction was not given, therefore the trier of fact did not determine that the respondent had committed an act of domestic violence. The district court erred when making the domestic violence determination at sentencing, as it was not the trier of fact. This portion of the district court’s order was vacated.

**Dreiling v. Dreiling** 394 Kan. App. P.3d 150 (2017).

The respondent appealed the trial court’s judgment extending a protection from abuse (PFA) order for an additional 2 years, contending that the trial court improperly failed to exercise its discretionary authority to consider his motion to exclude his minor children from the PFA order. The July 2014 petition did not allege that the respondent injured, attempted to injure, physically threatened, or sexually abused their children. The extension was sought and granted based on allegations that the respondent had committed an aggravated burglary against the petitioner in 2014, citing “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 if the plaintiff establishes that the defendant had been convicted of a person felony against the plaintiff or someone in the plaintiff’s household.” The respondent further argued that the trial court had discretion to modify the order regardless of the extension. The trial judge improperly believed that he was barred from considering the motion to amend based on the “shall” language of K.S.A. 2015 Supp. 60-3107(e)(2). The Kansas Court of Appeals reversed and remanded with directions to consider the motion to amend the order to exclude the minor children.

**NOTE: There are significant case law decisions from other jurisdictions which have decided many issues still being litigated in Kansas protection order cases. Please contact the Kansas Coalition Against Sexual and Domestic Violence for information regarding these cases.**

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## **PROTECTION FROM ABUSE ACT (60-3101 *et seq.*)**

**60-3101. Citation and construction of act.** (a) K.S.A. 60-3101 through 60-3111, and amendments thereto, shall be known and may be cited as the protection from abuse act.  
(b) This act shall be liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding pro se.

**History:** L. 1979, ch. 92, § 1; L. 1987, ch. 228, § 1; July 1.

**60-3102. Definitions.** 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.

**History:** L. 1979, ch. 92, § 2; L. 1980, ch. 177, § 1; L. 1983, ch. 201, § 1; L. 1987, ch. 228, § 2; L. 1994, ch. 335, § 8; L. 1998, ch. 94, § 1; L. 2002, ch. 142, § 1; July 1.

**60-3103. Jurisdiction.** Any 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. Any petition under this act seeking orders regarding a

custody determination, as defined in K.S.A. 2012 Supp. 23-37,102, and amendments thereto, shall state that information required by K.S.A. 2012 Supp. 23-37,209, and amendments thereto, and the basis under which child-custody jurisdiction is sought to be invoked.

**History:** L. 1979, ch. 92, § 3; L. 1980, ch. 177, § 2; L. 1983, ch. 201, § 2; L. 1996, ch. 208, § 5; L. 2000, ch. 171, § 81; L. 2012, ch. 162, § 82; May 31.

**60-3104. Commencement of proceedings; persons seeking relief on behalf of minor child; forms; no docket fee; confidentiality of certain matters, exceptions.**

(a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(b) A parent of or an adult residing with a minor child may seek relief under the protection from abuse act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.

(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 and not by certified mail return receipt requested. No docket fee shall be required for proceedings under the protection from abuse act.

(e) If the court finds that the plaintiff's address or telephone number, or both, needs to remain confidential for the protection of the plaintiff, plaintiff's minor children or minor children residing with the plaintiff, such information shall not be disclosed 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.

**History:** L. 1979, ch. 92, § 4; L. 1980, ch. 177, § 3; L. 1983, ch. 201, § 3; L. 1986, ch. 115, § 96; L. 1987, ch. 228, § 3; L. 1990, ch. 202, § 25; L. 1996, ch. 208, § 6; L. 1998, ch. 94, § 2; L. 2002, ch. 142, § 2; L. 2008, ch. 145, § 11; L. 2012, ch. 138, § 3; July 1.

**60-3105. Emergency relief.** (a) When the court is unavailable, a verified petition, accompanied by a proposed order, may be presented to any district judge. The judge may grant relief in accordance with subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107 and amendments thereto, or any combination thereof, if the judge deems it necessary to protect the plaintiff or minor child or children from abuse. An emergency order pursuant to this subsection may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor child or children shall constitute good cause for the entry of the emergency order.

(b) An emergency order issued under subsection (a) shall expire on 5:00 p.m. on the first day when the court resumes court business. At that time, the plaintiff may seek a temporary order from the court.

(c) The judge shall note on the petition and any order granted, including any documentation in support thereof, the filing date, together with the judge's signature, and shall deliver them to the clerk of the court on the next day of the resumption of business of the court.

**History:** L. 1979, ch. 92, § 5; L. 1980, ch. 177, § 4; L. 1986, ch. 115, § 97; L. 1987, ch. 228, § 4; L. 1996, ch. 208, § 7; L. 1998, ch. 94, § 3; July 1.

**60-3106. Hearings; temporary orders pending hearing, modification.** (a) Within 21 days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence and the defendant

shall have an opportunity to cross-examine the petitioner's witnesses and present evidence on the defendant's behalf. Upon the filing of the petition, the court shall set the case for hearing and 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 subsection (a)(1), (2), (4) or (5) of K.S.A. 60-3107, and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted ex parte. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section. No temporary order shall have the effect of modifying an existing order granting legal custody, residency, visitation or parenting time unless there is sworn testimony at a hearing to support a showing of good cause.

(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.

**History:** L. 1979, ch. 92, § 6; L. 1980, ch. 177, § 5; L. 1987, ch. 228, § 5; L. 1998, ch. 94, § 4; L. 2000, ch. 171, § 23; L. 2010, ch. 135, § 188; L. 2012, ch. 138, § 4; July 1.

### **60-3107. Protection from abuse orders procedure; modifications; inconsistent orders; extension of orders; violation of orders, criminal violations and penalties.**

(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. 2012 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2012 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2012 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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. 2012 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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, 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. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, 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. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, 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. 2012 Supp. 23-2712, 23-2715, 23-2716, 23-2802, 23-2902 through 23-2905, 23-3001 through 23-3006, 23-3201 through 23-3207, 23-3216 and 23-3218, 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) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(h) 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. 2012 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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. 2012 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2012 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2012 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 Supp. 21-5924, and amendments thereto.

**History:** L. 1979, ch. 92, § 7; L. 1980, ch. 177, § 6; L. 1983, ch. 201, § 4; L. 1987, ch. 228, § 6; L. 1988, ch. 220, § 1; L. 1990, ch. 210, § 1; L. 1992, ch. 76, § 1; L. 1996, ch. 208, § 8; L. 1998, ch. 94, § 5; L. 2000, ch. 171, § 24; L. 2001, ch. 177, § 10; L. 2002, ch. 142, § 3; L. 2010, ch. 75, § 22; L. 2011, ch. 26, § 46; L. 2011, ch. 91, § 26; L. 2012, ch. 138, § 5; July 1.

**60-3108. Notice of protection orders.** A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department of the city where the plaintiff resides. If the plaintiff 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 or registered.

**History:** L. 1979, ch. 92, § 8; L. 1980, ch. 177, § 7; L. 2001, ch. 177, § 4; July 1.

**60-3109. Procedure.** Except as otherwise provided in this act, any proceeding under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated and shall be in addition to any other available civil or criminal remedies.

**History:** L. 1979, ch. 92, § 9; July 1.

**60-3110. Contempt.** If, upon hearing, the court finds a violation of any order or consent agreement, the court may find the defendant in contempt pursuant to K.S.A. 20-1204a.

**History:** L. 1979, ch. 92, § 10; L. 1980, ch. 177, § 8; July 1.

**60-3111.** Repealed.

**History:** L. 1979, ch. 92, § 11; July 1; Repealed, L. 2012, ch. 138, § 8; July 1.

**60-3112. Entering protection orders into the national criminal information center protection order file.** (a) All temporary, amended, final and other protection from abuse orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, 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, and amendments thereto, shall be entered into the national criminal information center protection order file. All emergency protection from abuse orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and such emergency 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, and amendments thereto, may be entered into the national criminal information center protection order file. A copy of these orders shall be delivered by the clerk of the court to the sheriff of the county where the order is issued or registered. The sheriff's office shall immediately enter the order into the national criminal information center and other appropriate databases after all mandatory identifiers are available. If the order is a foreign protective order, the sheriff's office shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order into the national criminal information center and other appropriate databases. Any modification of an order shall be forwarded immediately by the clerk of the court to the sheriff's office with jurisdiction to enforce the modified order. The sheriff's office shall ensure the accuracy of the entries and the court shall ensure the validity of the orders.

(b) All emergency and temporary orders which have been entered into the national criminal information center file 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. All other orders which have been entered into the national criminal information center protection order file shall be cleared as an active record from the computer system when:

- (1) The order expires according to the terms of such order;
  - (2) a Kansas court notifies the law enforcement agency which has jurisdiction over the entry of the order that such order has been dismissed; or
  - (3) a foreign protective order has been invalidated by either a Kansas court or a foreign court with jurisdiction over such order.
- (c) This section shall be part of and supplemental to the protection from abuse act.

**History:** L. 2001, ch. 177, § 3; L. 2002, ch. 142, § 4; July 1.

## **PROTECTION FROM STALKING OR SEXUAL ASSAULT ACT (60-31a01 et seq.)**

**60-31a01. Citation and construction of act.** (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 proceeding pro se.

**History:** L. 2002, ch. 141, § 1; July 1.

**60-31a02. Definitions.** 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.

(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.

(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."

(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.

**History:** L. 2002, ch. 141, § 2; July 1; L. 2016, ch. 58, § 3; July 1, 2016.

**60-31a03. Jurisdiction.** The district courts shall have jurisdiction over all proceedings under the protection from stalking or sexual assault act.

**History:** L. 2002, ch. 141, § 3; July 1.

**60-31a04. Commencement of proceedings; persons seeking relief on behalf of minor; forms; no docket fee; confidentiality exceptions.** (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.

**History:** L. 2002, ch. 141, § 4; L. 2008, ch. 145, § 12; L. 2012, ch. 138, § 6; July 1.

**60-31a05. Hearing; temporary orders pending hearing.** (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.

**History:** L. 2002, ch. 141, § 5; L. 2010, ch. 135, § 189; July 1.

**60-31a06. Orders; time periods; extension of orders; amendments; costs.** (a) The court may issue a protection from stalking or sexual assault order granting any 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. 2012 Supp. 21-5427, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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. 2012 Supp. 21-5427, and amendments thereto, assault as defined in subsection (a) of K.S.A. 2012 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A.

2012 Supp. 21-5413, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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. 2012 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2012 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 a 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 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 extent 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; (2) previously violated a valid protection order, (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. 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.

**History:** L. 2002, ch. 141, § 6; L. 2008, ch. 137, § 5; L. 2011, ch. 30, § 222; L. 2012, ch. 138, § 7; July 1.

**60-31a07. Notice of protection orders.** 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.

**History:** L. 2002, ch. 141, § 7; July 1.

**60-31a08. Procedure.** Except 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.

**History:** L. 2002, ch. 141, § 8; July 1.

**60-31a09. Contempt.** If upon hearing, the court finds a violation of any order under the protection from stalking act, the court may find the defendant in contempt pursuant to K.S.A. 20-1204a, and amendments thereto.

**History:** L. 2002, ch. 141, § 9; July 1.

## UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT (60-31b01 et seq.)

**60-31b01. Short title.** This act may be cited as the uniform interstate enforcement of domestic violence protection orders act.

**History:** L. 2005, ch. 146, § 1; July 1.

**60-31b02. Definitions.** In this act, these terms mean the following:

- (a) "Foreign protection order" means a protection order issued by a tribunal of another state.
- (b) "Issuing state" means the state whose tribunal issues a protection order.
- (c) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.
- (d) "Protected individual" means an individual protected by a protection order.
- (e) "Protection order" means an injunction or other temporary or final order issued, by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing state, broadly construed, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.
- (f) "Respondent" means the individual against whom enforcement of a protection order is sought.
- (g) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.
- (h) "Tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.

**History:** L. 2005, ch. 146, § 2; July 1.

**60-31b03. Judicial enforcement of order.** (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid protection order in a court of this state. The court shall enforce the terms of the protection order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

- (b) A court of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of that order.
- (c) A court of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.
- (d) A foreign protection order is valid if it:
  - (1) Identifies the protected individual and the respondent;



- (2) is currently in effect;
- (3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and
- (4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the rights of the respondent to due process.
- (e) A foreign protection order valid on its face is prima facie evidence of its validity.
- (f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.
- (g) A court of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:
  - (1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and
  - (2) the tribunal of the issuing state made specific findings in favor of the respondent.

**History:** L. 2005, ch. 146, § 3; July 1.

**60-31b04. Nonjudicial enforcement of order.** (a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a court of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this act.

**History:** L. 2005, ch. 146, § 4; July 1.

**60-31b05. Registration of order.** (a) Any individual may, but is not required, to register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to the sheriff in the county where the protection order will be enforced. Pursuant to K.S.A. 60-3112, and amendments thereto, the sheriff shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order, if it has not already been entered, into the national criminal information center and other appropriate databases.

- (b) A fee shall not be charged for the registration of a foreign protection order.
- (c) No sheriff's department accepting or registering a foreign protection order under this section may notify or require notification of the party against whom the protection order was filed of its filing or registration unless the individual protected by the protection order requests that the sheriff's department do so and the respondent has not already been notified of such filing or registration.

**History:** L. 2005, ch. 146, § 5; July 1.

**60-31b06. Immunity.** This state, a local governmental agency, a law enforcement officer, a prosecuting attorney, or any state or local governmental official acting in an official capacity is immune from civil and criminal liability for conduct arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the conduct was done in good faith in an effort to comply with this act.

**History:** L. 2005, ch. 146, § 6; July 1.

**60-31b07. Other remedies.** A protected individual who pursues remedies under this act is not precluded from pursuing other legal or equitable remedies against the respondent.

**History:** L. 2005, ch. 146, § 7; July 1.

**60-31b08. Uniformity of application and construction.** In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History:** L. 2005, ch. 146, § 8; July 1.

**60-31b09. Severability clause.** If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

**History:** L. 2005, ch. 146, § 9; July 1.

**60-31b10. Application of orders.** This act applies to all protection orders issued and to continuing actions for enforcement of foreign protection orders commenced before and after July 1, 2005.

**History:** L. 2005, ch. 146, § 10; July 1.

## VIOLATION OF A PROTECTIVE ORDER (21-5924)

**21-5924. Violation of a protective order.** (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 and 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. 2012 Supp. 23-2707, 38-2243, 38-2244 and 38-2255, and amendments thereto, and 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 (e)(2) of K.S.A. 60-3107, and amendments thereto, and subsection (d) of K.S.A. 60-31a06, 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.

**History:** L. 2010, ch. 136, § 149; L. 2012, ch. 138, § 2; July 1.

## STALKING (21-5427)

### **21-5427. Stalking.** (a) Stalking is:

- (1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;
  - (2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or
  - (3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 2012 Supp. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.
- (b) Stalking as defined in:
- (1) Subsection (a)(1) is a:
    - (A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and
    - (B) severity level 7, person felony upon a second or subsequent conviction;
  - (2) subsection (a)(2) is a:
    - (A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and
    - (B) severity level 5, person felony upon a second or subsequent conviction; and
  - (3) subsection (a)(3) is a:
    - (A) Severity level 9, person felony, except as provided in subsection (b)(3)(B); and
    - (B) severity level 5, person felony, upon a second or subsequent conviction.
- (c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. 2012 Supp. 21-5924, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.
- (d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.
- (e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.
- (f) As used in this section:
- (1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:
    - (A) Threatening the safety of the targeted person or a member of such person's immediate family;
    - (B) following, approaching or confronting the targeted person or a member of such person's immediate family;

- (C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;
- (D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;
- (E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;
- (F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;
- (G) any act of communication;
- (2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;
- (3) "computer" means a programmable, electronic device capable of accepting and processing data;
- (4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and
- (5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

**History:** L. 2010, ch. 136, § 62; L. 2011, ch. 30, § 27; July 1.

## **DOMESTIC BATTERY(21-5414)**

**21-5414. Domestic battery.** (a) Domestic battery is:

- (1) Knowingly or recklessly causing bodily harm to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member; or
  - (2) knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.
- (b) Aggravated domestic battery is:
- (1) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner; or
  - (2) Knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

(c)(1) Domestic battery is:

(A) except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

(B) except as provided in subsection (c)(1)(C), a class A person misdemeanor, if, within five years immediately preceding commission and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conduction by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court; and

(C) a person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by

such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(2) Aggravated domestic battery is a severity level 7, person felony.

(d) In determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.

(e) As used in this section:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and the time since the termination of the relationship, if applicable;

(2) "family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(3) "protective order" means:

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

(B) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provision of 18 U.S.C. § 2265;

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

(D) 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 or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;

(E) 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

(F) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(f) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under subsection (c)(1):

(1) "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entered into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this

section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(g) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of subsection (a) or (b) or an ordinance of any city or resolution of any county which prohibits the acts that subsection (a) or (b) prohibits only twice during any five-year period.

As of July 2017, K.S.A. 21-5414 specifically includes aggravated domestic battery. Strangulation in a domestic relationship is a severity level 7, person felony crime. If charged as simple battery, the strangulation must meet the definition of great bodily harm.



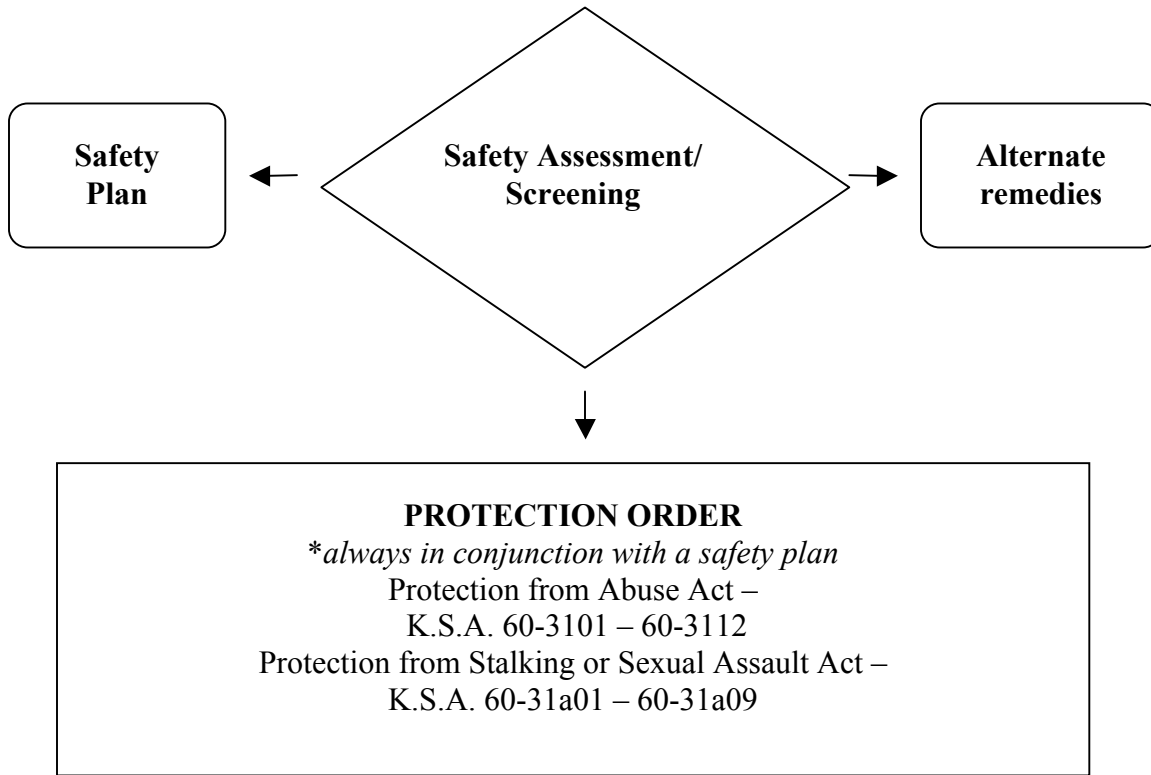
## **COURT PULLOUT**

The following flowchart and table are designed as pullout sections for court advocacy or appearances.

# **PROTECTION ORDER PROCESS**

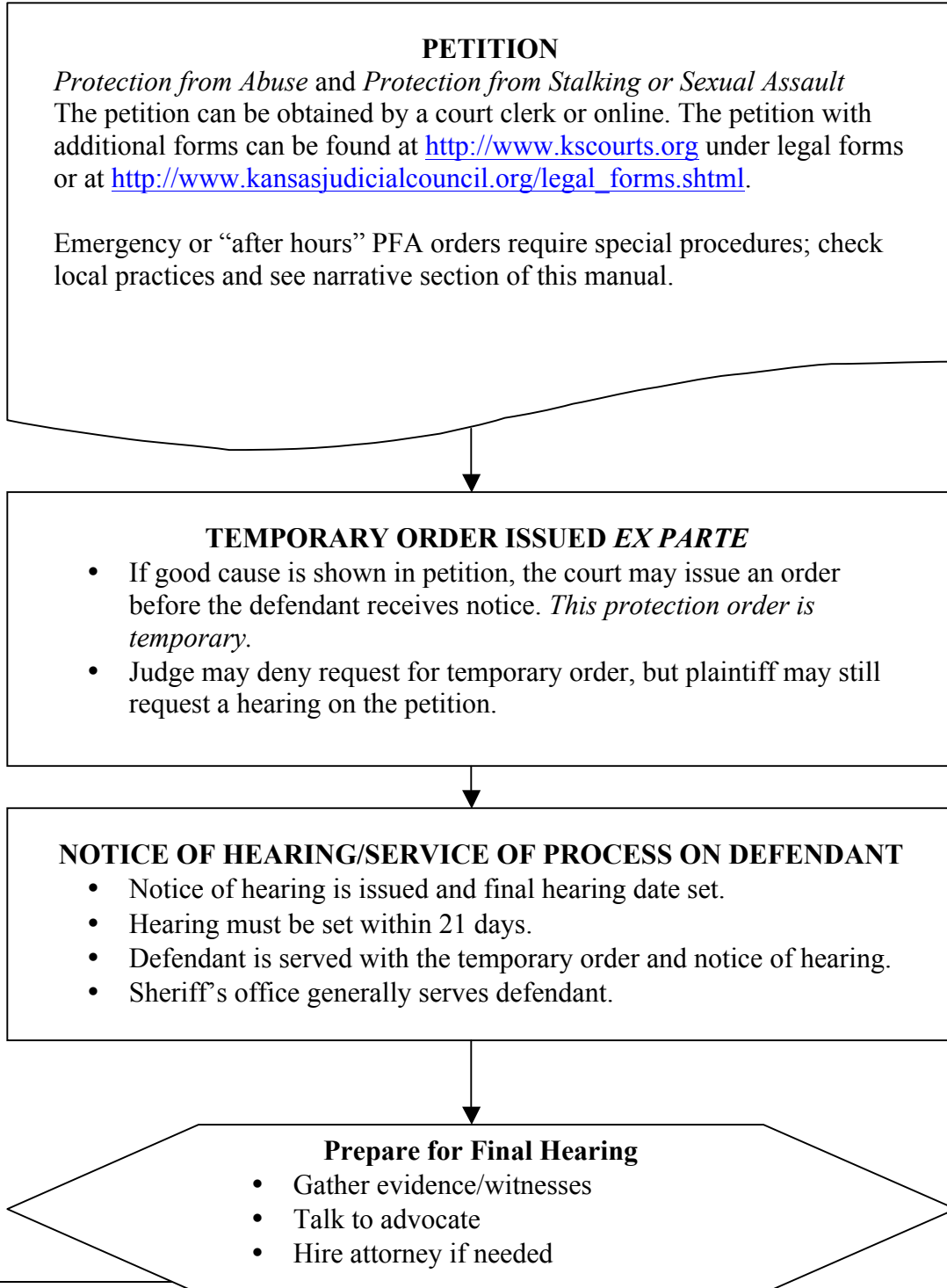
## **Getting Started**

Before making a decision to petition for a protection order, the survivor should be assisted in making a decision as to whether a protection order is a good option. If she decides that this is her best option, she should decide which type of protection order would work best for her situation. *A safety plan should always be made in conjunction with petitioning for a protection order.*

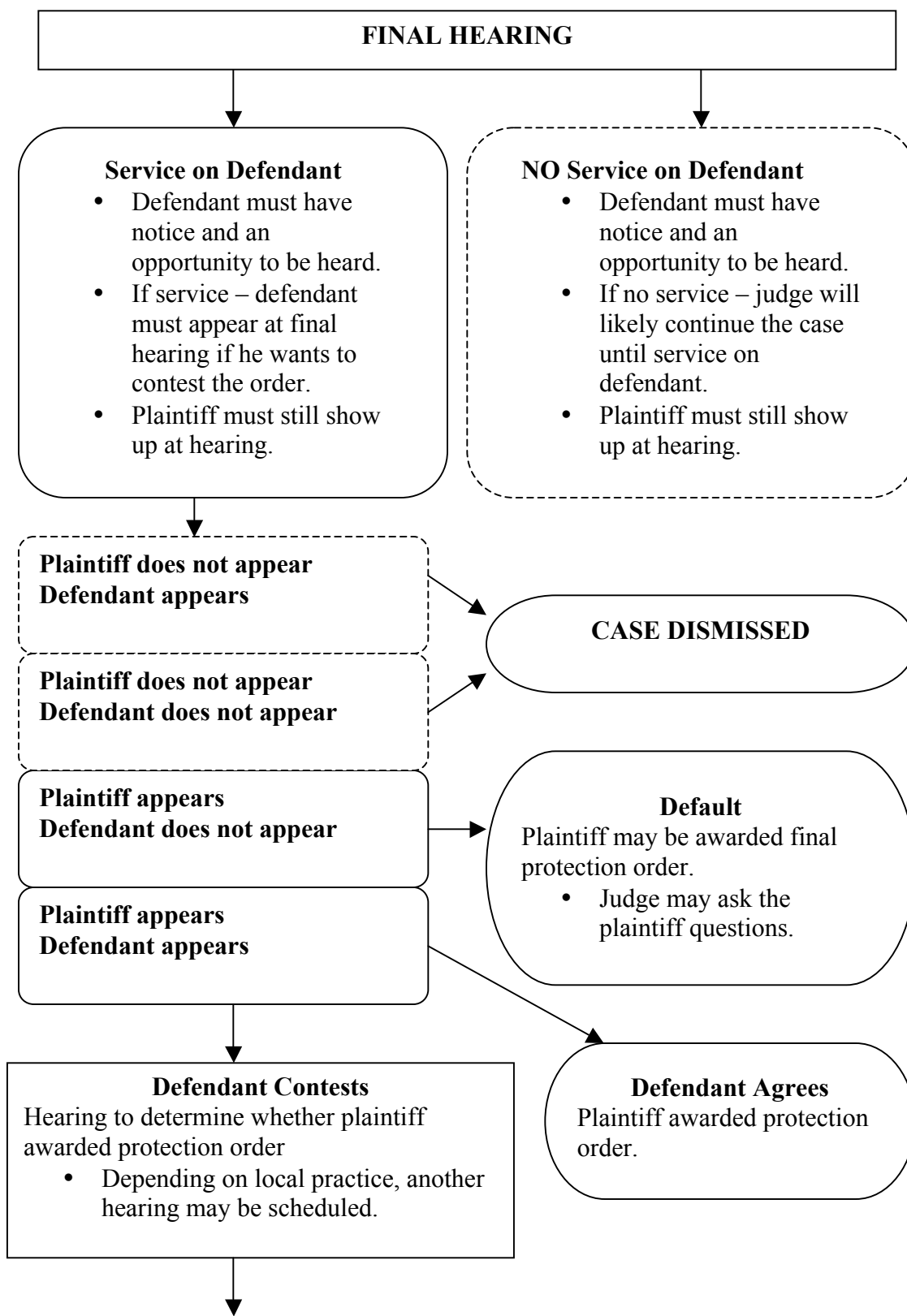


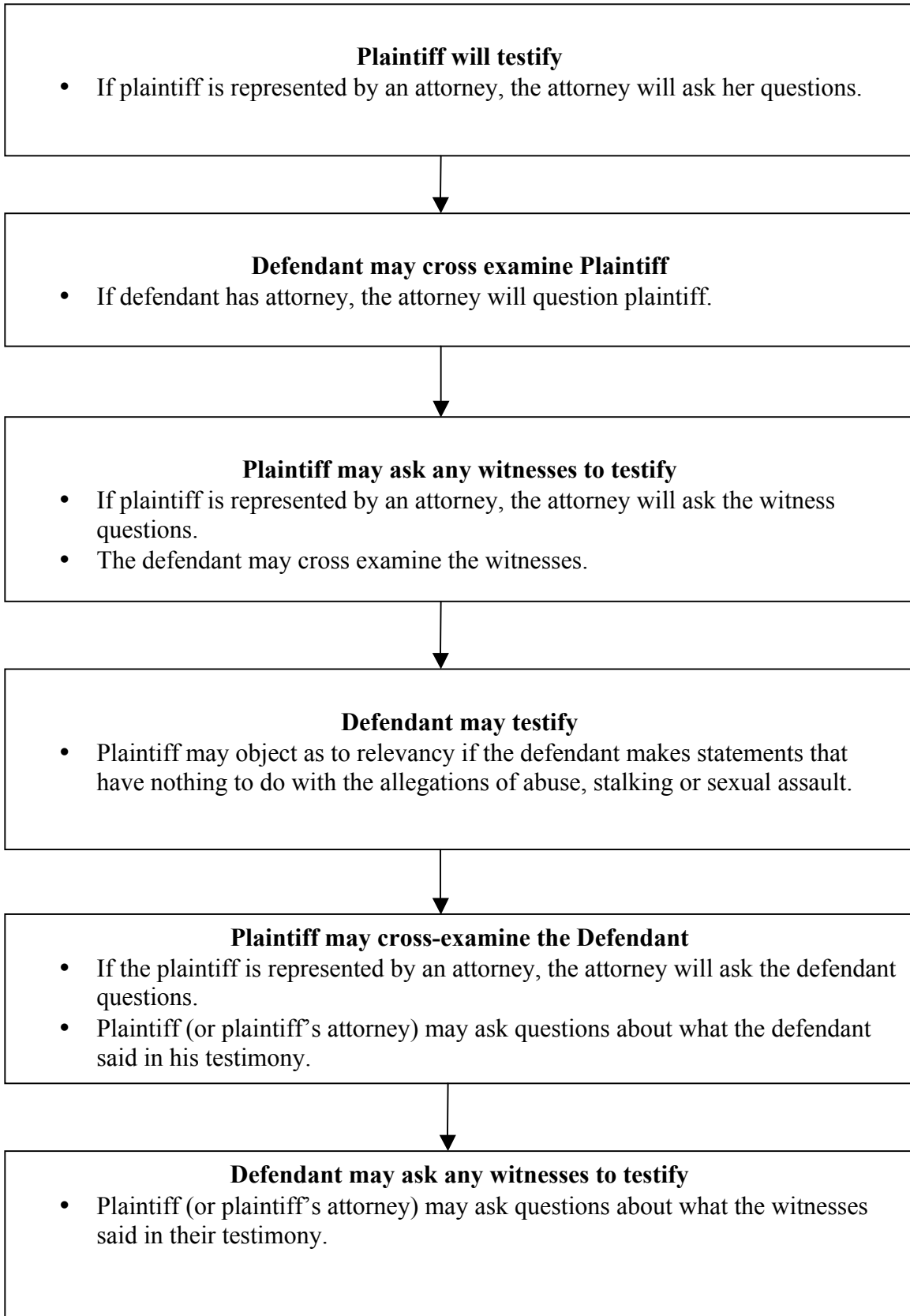
# PROCEDURAL FLOWCHART<sup>1</sup>

## Completing the Petition/Temporary Orders/ Preparing for Final Hearing



<sup>1</sup> See narrative in the PFA/PFSSA Information section for more information.





### **FINAL ORDER**

- If plaintiff meets burden of proof, judge issues final order.
- Order will include relief requested that the court believes is appropriate.
- Plaintiff should keep order with her at ALL TIMES. Valid in KS & other states, territories, and tribal lands.

#### **Entry into NCIC (National Crime Information Center)**

- Law enforcement adds order into national database.
  - All temporary, amended, final & other PFA orders SHALL be entered.
  - The law is silent as to entry of PFSSA orders in NCIC, but they are still sometimes entered.

#### **Service on Defendant**

- A protection order should be served on the defendant before it can be enforced, but if the defendant had prior knowledge of the order, a law enforcement officer may arrest a defendant for violating it.
- Plaintiff can still call law enforcement if it has not been served.

