

HOUSE Substitute for SENATE BILL No. 414

AN ACT concerning stalking; relating to protective orders; requiring certain law enforcement agencies and prosecuting attorneys to adopt certain written policies; amending K.S.A. 21-3438, 21-3843 and 60-31a06 and K.S.A. 2007 Supp. 74-5604a and 74-5607a and repealing the existing sections.

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

New Section 1. (a) All law enforcement agencies in this state shall adopt written policies regarding allegations of stalking as provided in subsection (b). These policies shall be made available to all officers of such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed;

(2) a statement defining stalking pursuant to K.S.A. 21-3438, and amendments thereto;

(3) a statement describing the dispatchers' responsibilities;

(4) a statement describing the responding officers' responsibilities and procedures to follow when responding to an allegation of stalking and the suspect is at the scene;

(5) a statement describing the responding officers' responsibilities and procedures to follow when responding to an allegation of stalking and the suspect has left the scene;

(6) procedures for both misdemeanor and felony cases;

(7) procedures for law enforcement officers to follow when handling an allegation of stalking involving court orders, including any protective order as defined by K.S.A. 21-3843, and amendments thereto;

(8) a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

(C) the address and telephone number of the prosecutor's office the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and 74-7335, and amendments thereto;

(D) the name and address of the crime victims' compensation board and information about possible compensation benefits;

(E) advise the victim that the details of the crime may be made public;

(F) advise the victim of such victims' rights under K.S.A. 74-7333 and 74-7335, and amendments thereto; and

(G) advise the victim of known available resources which may assist the victim; and

(9) whether an arrest is made or not, a standard offense report shall be completed on all such incidents and sent to the Kansas bureau of investigation.

(c) No law enforcement agency or employee of such agency acting within the scope of employment shall be liable for damages resulting from the adoption or enforcement of any policy adopted under this section.

New Sec. 2. On and after January 1, 2009, all prosecuting attorneys, as defined in K.S.A. 22-2202, and amendments thereto, if such prosecuting attorney prosecutes crimes relating to stalking, shall adopt and put into effect written policies regarding the prosecution of crimes related to stalking. Such written policies shall include, but not be limited to, the effective prosecution of such crimes and the protection and safety of victims and such victim's children from stalking.

Sec. 3. K.S.A. 21-3438 is hereby amended to read as follows: 21-3438. (a) Stalking is ~~an intentional, malicious and repeated following or harassment of another person and making a credible threat with the intent to place such person in reasonable fear for such person's safety.~~

~~— Stalking is a severity level 10, person felony.~~

~~— (b) Any person who violates subsection (a) when there is an order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 through 60-31a09, and amendments thereto, a temporary restraining order or an injunction in effect prohibiting the behavior described in subsection (a) against the same person, is guilty of a severity level 9, person felony.~~

~~— (c) Any person who has a second or subsequent conviction occurring~~

against such person, within seven years of a prior conviction under subsection (a) involving the same victim, is guilty of a severity level 8, person felony.

~~—(d) For the purposes of this section: (1) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose and which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. Constitutionally protected activity is not included within the meaning of “course of conduct.”~~

~~—(2) “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.~~

~~—(3) “Credible threat” means a verbal or written threat, including that which is communicated via electronic means, or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for such person’s safety. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.~~

~~—(4) “Electronic means” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, pagers and computer networks.~~

(1) Intentionally or 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) intentionally engaging in a course of conduct targeted at a specific person which the individual knows 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, and amendments thereto, that prohibits contact with a targeted person, intentionally or 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) (1) Upon a first conviction, stalking as described in subsection (a)(1) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(1) is a severity level 7, person felony.

(2) Upon a first conviction, stalking as described in subsection (a)(2) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(2) is a severity level 5, person felony.

(3) Upon a first conviction, stalking as described in subsection (a)(3) is a severity level 9, person felony. Upon a second or subsequent conviction, stalking as described in subsection (a)(3) is a severity level 5, person felony.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a uniformed law enforcement officer, that such person’s actions were in violation of this section, shall be presumed to have acted intentionally 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 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 this section or being convicted of a law of another state which prohibits the acts that this section prohibits.*

(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.*

(g) *If any provision or application of this section is held invalid for any reason, the invalidity of such provision or application is severable and does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications.*

Sec. 4. K.S.A. 21-3843 is hereby amended to read as follows: 21-3843. (a) Violation of a protective order is knowingly or intentionally 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. 2007 Supp. 38-2243, 38-2244 and 38-2255 and K.S.A. 60-1607, and amendments thereto;

(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 order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

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

(c) *No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the 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 the attorney's behalf, shall be identified in any such contact.*

~~(e)~~ (d) Violation of a protective order is a class A person misdemeanor.

~~(d)~~ (e) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 5. K.S.A. 60-31a06 is hereby amended to read as follows: 60-31a06. (a) The court may issue a protection from stalking 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 provided in K.S.A. 21-3438, and amendments thereto, and violation of a protective order as provided in K.S.A. 21-3843, 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 provided in K.S.A. 21-3438, and amendments thereto, assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, and violation of a protective order as provided in K.S.A. 21-3843, 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 provided in subsection (a)(1)(C) of K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A. 21-3843, and amendments thereto.

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

(b) A protection from stalking 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 that, on motion of the plaintiff, such period may be extended for one additional year. Before the expiration of an order for protection from stalking, a victim, or a parent on behalf of the victim, may request an extension of the protection from stalking order for up to one additional year on showing of continuing threat of stalking.

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

(d) 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 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.

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

(1) *Contact between the attorneys representing the parties;*

(2) *a party from appearing at a scheduled court or administrative hearing; or*

(3) *a defendant or defendant's attorney from sending the plaintiff copies of any legal pleadings filed in court relating to civil or criminal matters presently relevant to the plaintiff.*

Sec. 6. K.S.A. 2007 Supp. 74-5604a is hereby amended to read as follows: 74-5604a. (a) The director of police training may establish a program for extending the law enforcement training and instruction throughout the state on a regional basis. The director of police training also may certify annually the training schools of state and local law enforcement agencies providing a course of law enforcement training for full-time police officers or law enforcement officers when such training programs satisfy the qualifications and standards promulgated by the director of police training after approval of the commission and when such programs satisfy a demonstrated training need not met by existing programs. The director of police training shall establish a course in basic law enforcement training for part-time police officers or law enforcement officers, approved by the commission, to be provided at the training center and certified state and local law enforcement training schools. In addition, after the general election of each election year and prior to January 1 of the next succeeding year, and at such other times as the director of police training deems necessary, the director of police training shall commence a training course for persons elected to the office of sheriff at the preceding general election.

(b) The director of police training shall conduct a pretraining evaluation of applicants for admission to the course for law enforcement officers conducted by the training center or to any certified state or local law enforcement training school to assure that each applicant is qualified to serve as a law enforcement officer. The director of police training shall adopt minimum standards, which shall receive prior approval by the commission, to be considered in the pretraining evaluation. The director of police training shall advise the city, county or state agency, railroad, school district or community college authorizing the applicant to attend the training center or certified state or local law enforcement training school of the results of the pretraining evaluation. The director of police training, with approval of the commission, may reject an applicant to the training center who does not meet the minimum pretraining standards.

(c) *Training courses conducted pursuant to this section may include procedures for law enforcement to follow when responding to an allegation of stalking.*

Sec. 7. K.S.A. 2007 Supp. 74-5607a is hereby amended to read as follows: 74-5607a. (a) The commission shall not issue a certification as a full-time police officer or law enforcement officer unless such officer has been awarded a certificate attesting to satisfactory completion of a full-time officer basic course of accredited instruction at the training center or at a certified state or local law enforcement training school or has been awarded such a certificate for not less than the number of hours of instruction required by the Kansas law enforcement training act at the time such certificate was issued or received a permanent appointment as a full-time police officer or law enforcement officer prior to July 1, 1969, or was appointed a railroad policeman pursuant to K.S.A. '66-524, and amendments thereto, on or before January 1, 1982. No person shall receive certification as a part-time police officer or law enforcement officer unless such officer has been awarded a certificate attesting to the satisfactory completion of a part-time officer basic course of instruction in law enforcement at the training center or at a certified state or local law enforcement training school.

(b) Beginning the second year after certification, every full-time police officer or law enforcement officer shall complete annually 40 hours of law enforcement education or training in subjects relating directly to law enforcement. Failure to complete such training shall be grounds for suspension from work without pay until such training is completed. The director with the approval of the commission shall adopt rules and regulations regarding such education or training. *Such education or training may include procedures for law enforcement to follow when responding to an allegation of stalking.* Every city, county and state agency shall send to the director certified reports of the completion of such education or training. The director shall maintain a record of the reports in the central registry.

(c) Subject to the provisions of subsection (d):

(1) Any person who is appointed or elected as a police officer or law enforcement officer and who does not hold a certificate as required by subsection (a) may be issued a provisional certificate for a period of one year. The director may extend the one-year period for the provisional certificate if in the director's determination the extension would not constitute an intentional avoidance of the requirements of subsection (a). If a person's provisional certificate expires or is revoked, the person shall not be issued another provisional certificate within one year of the expiration or revocation. A provisional certificate shall be revoked upon dismissal from any basic training program authorized by K.S.A. 74-5604a, and amendments thereto. A provisional certificate may be revoked upon voluntary withdrawal from any basic training program authorized by K.S.A. 74-5604a, and amendments thereto.

(2) Any police officer or law enforcement officer who does not complete the education or training required by subsection (b) by the date such education or training is required to have been completed shall be subject to revocation or suspension of certification and loss of the officer's office or position.

(d) The director may extend, waive or modify the annual continuing education requirement, when it is shown that the failure to comply with

the requirements of subsection (a) or (b) was not due to the intentional avoidance of the law.

Sec. 8. K.S.A. 21-3438, 21-3843 and 60-31a06 and K.S.A. 2007 Supp. 74-5604a and 74-5607a are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.