

REPORT OF THE JUDICIAL COUNCIL FAMILY LAW ADVISORY COMMITTEE REGARDING KANSAS PROTECTION ORDER ACTS

December 2, 2022

The Judicial Council approved the Family Law Advisory Committee's request to review and update the Kansas protection order acts – the Protection from Abuse Act and the Protection from Stalking, Sexual Assault, and Human Trafficking Act. The Committee conducted a thorough study of the topic and recommends amendments to both acts.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Family Law Advisory Committee are:

Hon. Amy Harth, Chair, Chief District Court Judge; Paola

Sara S. Beezley, Practicing Attorney; Girard.

Prof. Gillian Chadwick, Professor, Washburn University School of Law; Topeka.

Prof. Melanie Daily, Clinic Associate Professor, University of Kansas School of Law; Lawrence.

Robert J. Frederick, Practicing Attorney and Retired District Court Judge, Garden City.

Joyce Grover, Executive Director for the Kansas Coalition Against Sexual and Domestic Violence; Topeka.

Rep. Susan Humphries, State Representative from the 99th District and practicing attorney; Wichita.

Marcilyn A. Martinez, Director of Child Support Services, Department for Children and Families; Topeka.

Ronald W. Nelson, Practicing Attorney; Shawnee Mission.

Bethany Roberts, Practicing Attorney; Lawrence.

Richard A. Samaniego, Practicing Attorney; Wichita.

Ardith R. Smith-Woertz, Practicing Attorney; Topeka.

METHOD OF STUDY

The Family Law Advisory Committee (the Committee) met 16 times in 2021 and 2022 to work on this study. Multiple subcommittees also met to work on statutory drafting projects and amendments to the protection order forms. Throughout the study, the Committee received valuable input and assistance from the Kansas Coalition Against Sexual and Domestic Violence's Protection Order Project Coordinator, Madeline Dickerson.

Based on feedback received from the Kansas Coalition Against Sexual and Domestic Violence, the Office of Judicial Administration, judges and practitioners who handle protection order cases, and the Committee member's knowledge and experience, the Committee compiled a list of about 50 protection order related issues and organized them into eight categories: Forms and Understanding the Process, Service of Process, Temporary Orders, Discovery, Continuances, Orders Made by the Court, Coordination of Protection Orders with Other Domestic Cases, and Other. The Committee worked through each category evaluating and addressing the topics and concerns identified.

The Committee's recommendations are divided into the five categories below:

- I. Maintaining separate protection from abuse and protection from stalking, sexual assault, and human trafficking acts;
- II. Statutory changes;
- III. Training topics;
- IV. Continuing education requirements; and
- V. Amendments to forms.

SUMMARY OF RECOMMENDATIONS

The Committee recommends:

- the Protection from Abuse (PFA) Act and the Protection from Stalking, Sexual Assault, and Human Trafficking (PFSSAHT) Act should remain separate acts.
- The PFA and PFSSAHT Acts should be amended to allow short form notification service and alternative methods of service.
- The PFA Act statute addressing conflicting orders should be rewritten to increase clarity and understanding.

- Attorneys, judges, advocates, and litigants could benefit from trainings on identified subjects pertaining to protection orders.
- Judges involved in protection order cases could be required to complete certain protection order related training or continuing education hours.

The Committee requests the Judicial Council introduce the Committee's statutory amendments in the 2023 legislative session.

DISCUSSION

I. MAINTAINING SEPARATE PFA AND PFSSAHT ACTS

The Kansas legislature enacted the Protection from Abuse Act in 1979 and the Protection from Stalking Act in 2002. Over the years the legislature has amended the acts. In 2017 and 2018, the legislature amended the Protection from Stalking Act to include sexual assault and human trafficking situations. Having two separate types of protection orders, one for protection from abuse and the other for protection from stalking, sexual assault, or human trafficking, with different standards for each type can be confusing for petitioners. The Committee considered whether the acts should be combined into one act with a single petition form and process.

Though the two acts are similar in some regards, ultimately the acts address different situations and authorize different types of orders. The Protection from Abuse Act (PFAA) exclusively addresses abuse between individuals with familial, intimate partner, or common residential relationships. The Protection from Stalking, Sexual Assault, or Human Trafficking Act (PFSSAHTA) does not require any specific category of relationship between the plaintiff and defendant. The PFAA authorizes the court to issue orders regarding property, child custody, residency, parenting time, and child support, whereas the court in a PFSSAHT case cannot.

The Committee recommends the acts remain separate. Combining the acts would create more confusion. The Committee hopes the Office of Judicial Administration's new Kansas Protection Order Portal, which assisting individuals filing for a protection order, will help reduce some of the confusion around which type of protection order petition a plaintiff should file.

II. STATUTORY CHANGES

The Committee recommends three groups of statutory amendments – two regarding service of process and one regarding the PFA conflicting orders statutory language. The Committee identified two ways to increase the service of protection order petitions and temporary orders. First, the Committee recommends creating a short form notification service process. Second, the Committee recommends authorizing the use of alternative methods of service, beyond personal service. The Committee’s third recommendation is to rework the PFA conflicting orders statutory language to increase readability.

1. *Short-Form Notification Service*

The short form notification service process is a method of accomplishing personal service and increases the number of opportunities for a defendant to receive actual knowledge of the protection order case and any order. For example, if a defendant is subjected to a traffic stop in Riley County by a city of Manhattan police officer and the officer sees in the National Crime Information Center (NCIC) database that there is unserved paperwork in a protection order case in Franklin County, the short form notification service statute would authorize the police officer to extend the traffic stop for a reasonable amount of time so that the officer could complete the short form notification form and serve it on the defendant.

The police officer would obtain the information necessary to fill out the form from the NCIC database. The short form notification form would include the case identifying information for the protection order, state that the defendant shall not have contact with the plaintiff, give the hearing date and time, if known, and inform the defendant to contact the appropriate sheriff or clerk of the district court to obtain a copy of the protection order paperwork – petition, summons, temporary order, etc. The law enforcement officer would complete the affidavit of service section and file the affidavit of service and a copy of the short form notification in the protection order case¹. To ensure the defendant understands he or she is subject to any order issued in the case and it is the defendant’s responsibility to obtain a copy of the order, the statute would require the law enforcement officer serving the notice to read a required paragraph to the defendant.

Typically, each county’s sheriff department handles service of process for protection orders. The Committee’s proposed statute intentionally authorizes a law enforcement officer, as defined in K.S.A. 21-5111,² to serve a short form notification, rather than limiting it to an officer

¹ See K.S.A. 2021 Supp. 60-31b04(c) (law enforcement officer is currently authorized to serve a foreign protection order).

² K.S.A. 2021 Supp. 21-5111(p): “Law enforcement officer” means: (1) Any person who by virtue of such person’s office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes,

in the sheriff's department. The goal is to increase safety for plaintiffs, reduce barriers to the defendant obtaining actual knowledge of the protection order case, and to increase defendant participation in and compliance with protection order cases³.

The Committee reviewed the short form notification service process for protection orders in Illinois,⁴ Iowa,⁵ and Minnesota.⁶ The Committee also gathered information and feedback on the use of short form notification service from law enforcement and relevant government agencies in those states. Short form notification is used widely in Minnesota and Illinois. When the short form notification process was first implemented, both Minnesota and Illinois had statewide trainings to explain the process. Another reason the process is used in Illinois is because the state attorney general's office creates and distributes the forms so the cost of printing the forms has not fallen on individual law enforcement agencies. In Iowa, at the time the new process was implemented, there was not statewide education and training, and the production and distribution of the short form notification form was left to the individual law enforcement agencies. The result is that while some Iowa law enforcement agencies are aware of, have procedures in place for, and use the short form notification system, others are completely unaware short form notification is an option.

The Committee researched whether there have been any constitutional due process issues raised due to the use of short form notification. At the time of this report, the Committee was not aware of any due process issues that were addressed in cases at the appellate level in Illinois, Iowa, or Minnesota.

The Committee recommends one Kansas state agency be responsible for creating the short form notification form and distributing it to law enforcement agencies. The Committee does not have a recommendation on which agency should be assigned this task. The Committee also recommends education and training about the use of short form notification service be provided statewide shortly following the enactment of the statute. The Committee's proposed statutory amendments begin on page 15 of this report.

whether that duty extends to all crimes or is limited to specific crimes; (2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 2021 Supp. 21-5412 and subsection (d) of K.S.A. 2021 Supp. 21-5413, and amendments thereto, any employee of the Kansas department of corrections; or (3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

³ See K.S.A. 2021 Supp. 60-3101(b) ("This act shall be liberally construed to promote the protection of victims of domestic violence"); K.S.A. 2021 Supp. 60-31a01(b) ("This act shall be liberally construed to protect victims of stalking, sexual assault and human trafficking and to facilitate access to judicial protection for victims of stalking, sexual assault and human trafficking").

⁴ 725 I.L.C.S. 5/112A-22.1.

⁵ I.C.A. 664A.4A.

⁶ M.S.A. 518B.01.

2. *Alternative Methods of Service*

To further the goals of increasing safety for plaintiffs, reducing barriers to the defendant obtaining actual knowledge of the protection order case, and increasing the defendant's participation in and compliance with protection order cases, the Committee recommends the protection order acts authorize the use of alternative methods of service beyond personal service. The Committee's proposed statutory amendments begin on page 15 of this report.

Ideally, the defendant is personally served. However, if that is not possible, then the Committee recommends the documents be left at the defendant's dwelling or usual place of abode and mailed to the same address. If service cannot be obtained by personal or residential service and the court determines the plaintiff has made diligent efforts, the court should order notice "be given in a manner reasonably calculated to give actual notice, including electronic means, and may be by publication if other means are not effective." The Committee based its proposed language on K.S.A 2021 Supp. 60-303(d)(1)(C) and K.S.A 2021 Supp. 23-37,108(a). The "reasonably calculated" standard is already in use in the Kansas uniform child custody and jurisdiction act (UCCJEA) and is the long-used standard under due process case law.⁷ This approach would protect the defendant's due process rights while also permitting the flexibility for a judge to look at the facts in an individual case and authorize service in whichever way could best lead to actual notice of the proceeding.

The Committee added subsection (d)(3) to make it clear that service of a minor or disabled persons is different than serving an adult defendant.

3. *Clarification of K.S.A. 2021 Supp. 60-3107(c)*

Protection order stakeholders identified K.S.A. 2021 Supp. 60-3107(c) as one of the most confusing subsections in the PFA Act. Orders regarding child custody, residency, and parenting time, may be issued in a variety of actions, such as, protection from abuse, divorce, parentage, guardianship, child in need of care, or juvenile offender actions. When there are child related orders issued in a PFA action as well as another type of action, K.S.A. 2021 Supp. 60-3107(c) governs which order controls. The Committee's proposed statutory amendments begin on page 15 of this report.

To increase clarity and readability, the Committee recommends K.S.A. 2021 Supp. 60-3107(c) be divided into subsections and unnecessary language and statutory references be removed where possible. The rewrite of the subsection is not intended to create any substantive change to the statute, except in the following instance. The current statute establishes rules for

⁷ See *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 70 S. Ct. 952 (1950).

child related orders issued in protection from abuse, divorce, parentage, child in need of care, and juvenile offender actions, but not guardianship actions. In the proposed subsections (c)(1) & (c)(2)(A), the Committee recommends using the phrase “issued in any action” to remove confusing statutory cross-references. Using the broader phrase “issued in any action” would substantively change the statute by incorporating child related orders made in a guardianship case, which previously were not covered by K.S.A. 2021 Supp. 60-3107(c). The Committee reviewed the guardianship statutes and concluded that incorporating guardianship cases into these subsections would be beneficial.

III. TRAINING TOPICS

As the Committee worked through its list of issues, it considered the statutes governing the issue and often concluded that training and education rather than a change to the statute would best address the issue. The following is a list of potential topics for trainings for professionals involved in protection order actions.

1. *Trauma-Informed Approach to Protection Order Cases*

Due to the nature of protection orders, most individuals needing protection orders have experienced some level of trauma. Trauma affects the brain and may alter how a litigant acts and conveys information. For example, a plaintiff may not testify about the plaintiff’s experiences in a linear manner, may express little emotion, may present with a flat affect, or may not be able to remember details of the abuse.⁸

“Recognizing the impact of past trauma on treatment court participants does not mean that [the judge] must be both judge and treatment provider. Rather, trauma awareness is an opportunity to make small adjustments that improve judicial outcomes while minimizing avoidable challenges and conflict during and after hearings.”⁹

⁸ 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 & Mental Health) (2011), <http://www.nationalcenterdvtraumamh.org/publications-products/attorneys-handbook/> (last visited Aug 2, 2022).

⁹ Susan Wells & Jenifer Urff, *Essential Components of Trauma-Informed Judicial Practice: What Every Judge Needs to Know About Trauma* (Substance Abuse and Mental Health Services Administration) (2011), https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf (last visited Aug 2, 2022).

A trauma-informed approach in protection order cases is essential to providing safe access to the protections available under the PFAA and PFSSAHTA.

2. Timeframe to Review and Issue Temporary Orders

K.S.A. 2021 Supp. 60-3106(b) and 60-31a05(b) authorize a court to enter temporary orders in PFA and PFSSAHT cases. There is no uniform procedure across the state for how requests for temporary orders are handled or how quickly the court issues a ruling granting or denying the request. In some jurisdictions it could take two days before the court issues the order, while in other jurisdictions, the court could issue the order *ex parte* within hours of the petition being filed.

The current protection order statutes do not set a timeframe in which the order granting or denying temporary orders must be issued. Due to the wide variety of judicial districts in Kansas, the Committee agreed each judicial district should craft a procedure that works best for that district. However, the Committee recommends each judicial district base its procedure on the need for a quick review and ruling on a request for temporary orders in order to enhance petitioner safety.

3. Continuances

The PFAA and the PFSSAHTA require the court to hold a hearing within 21 days of the filing of the petition at which the plaintiff must prove the allegation of abuse, stalking, sexual assault, or human trafficking.¹⁰ The Committee agreed the statutory language clearly conveys the policy that protection order cases are to be expedited. The court should make a determination about the merits of the petition within 21 days of the filing of the petition unless there is a pressing need to continue the case, such as obtaining service on the defendant. The flexibility for the court to grant continuances is important to allow courts to best meet the needs of individual cases; however, the need for an expedited resolution should always be an important factor when determining whether to grant a continuance.

Continuances to prolong the protection order proceeding can be a way abusers assert control over and harass the victim. Judges, lawyers, and advocates involved in protection order cases need a thorough understanding of the dynamics between an abuser and victim, and the type of tactics an abuser may utilize to exert the abuser's control over the victim. Training on the importance of an expedited resolution of protection order cases, the need to limit unnecessary continuances, and how continuances can be used by the abuser to further harass the victim would be helpful for all protection order case participants.

¹⁰ K.S.A. 2021 Supp 60-3106(a) and 60-31a05(a).

4. *Limitation of Discovery*

The chapter 60 rules regarding discovery apply to protection order cases.¹¹ However, the timeframe for discovery is limited by the requirement that the court hold a hearing within 21 days of the filing of the petition at which the plaintiff must prove the allegation of abuse, stalking, sexual assault, or human trafficking.¹² Though not all protection order cases involve discovery, those involving attorneys often do. Discovery can be used to further an abuser's control or harassment of a victim. Judges and lawyers should know that though the statutes allow the use of discovery in protection order cases, the judge may exercise discretion to limit discovery or discovery timeframes as needed to protect the victim and to comply with the policy goal of expediting a resolution.

5. *Viewing All Threats and Incidents in Light of the Totality of the Circumstances*

It is a common misconception that an instance of abuse, stalking, sexual assault, or human trafficking must have occurred relatively close in time to the filing of the protection order petition in order to be considered relevant to the judge's assessment of whether to issue the protection order. There is no timeframe in which a threat or incident must take place to support a protection order. The court can consider any and all relevant threats or incidents regardless of proximity in time to the filing of the petition. The court is to evaluate all threats or incidents in light of the totality of the circumstances. In *Trolinger v. Trolinger*, the Kansas Court of Appeals stated:

"The statutory scheme is designed to promote protection of the victims and make access to the court easy and prompt. For that reason, the trial court is simply charged to exercise its discretion in light of the circumstances presented.... We hold that the [Protection from Abuse] Act does not require focusing on the timing of either recent abuse or future risk as a condition precedent to the issuance of an order for protection from abuse."¹³

Some of the hardest protection order cases involve veiled threats or actions that are not threatening on their face but have an underlying meaning. For example, an abusive ex-husband drops tickets to the circus off on his ex-wife's porch for her and their children. While on its face, this is a "kind" gesture, it must be viewed in light of the history of control and abuse by the ex-husband. The appearance of the circus tickets meant that the ex-husband had been physically close to the ex-wife and the children by entering the porch of her house, and that he would know where she and the children would be if they use the tickets to attend the circus. Another example

¹¹ K.S.A. 2021 Supp. 60-3109 and 60-31a08.

¹² K.S.A. 2021 Supp 60-3106(a) and 60-31a05(a).

¹³ *Trolinger v. Trolinger*, 30 Kan. App. 2d 192, 198, 42 P.3d 157 (2001).

involves the abuser leaving flowers at the victim's house or sending them to her new job. The court must look at the totality of the circumstances to understand that sending flowers may be the abuser's way to tell the victim that the abuser knows where the victim lives or works.

Due to the unique and fact specific nature of protection order cases courts must have the flexibility to evaluate the facts of each individual case. Such a flexible standard means there is lack of uniformity across the state. While one judge may take into consideration a threat or incident that occurred more than a year before the filing of the petition, another judge may not. Training and education could increase judges and lawyers' understanding of the relevance of past threats and incidents.

6. Making Orders Specific to Each Case

Courts are required to use PFA and PFSSAHT order forms written by the Judicial Council.¹⁴ These form orders are written to comply with the PFAA and PFSSAHTA statutes as well as coordinate with law enforcement's National Criminal Information Center (NCIC) system, federal statutes such as the Violence Against Womens Act (VAWA), and Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.¹⁵ The forms contain a lot of generic language that is not drafted by the judge and tailored to the unique facts of each case; however, both the PFAA and the PFSSAHTA authorize the court to enter other orders deemed necessary by the court to promote the safety of the protected party.¹⁶

Each protection order should be tailored to fit the needs of the litigants. For example, the standard PFA and PFSSAHT orders prohibit the defendant from having contact with the protected person. The PFAA and PFSSAHTA do not contain specific provisions saying a defendant must stay a set number of feet away from the protected person, but if the court determines that the facts of an individual case warrant such an order, the court has the authority to, and should, issue such an order.

7. Identifying and Addressing Conflicting Orders

The Judicial Council's PFA and PFSSAHT petition forms ask the plaintiff to list any current or past protection order, restraining order, or no-contact order between the plaintiff and defendant, and any criminal charges filed based on the incidents listed in the petition. In addition, the PFA petition form asks the plaintiff to list any current or past divorce or legal separation court cases between the plaintiff and the defendant. The court needs to know whether these other

¹⁴ K.S.A. 2021 Supp. 60-3104(c) and 60-31a04(d).

¹⁵ K.S.A. 2021 Supp. 60-31b01 *et seq* (Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, adopted in Kansas in 2005).

¹⁶ K.S.A. 2021 Supp. 60-3107(a)(10) and 60-31a06(a)(6).

cases exist to determine whether there are any orders that may conflict with the protection order or otherwise impact the protection order case.

When litigants are self-represented, litigants may not give the court vital information about other cases. Even if the litigant leaves the section asking for other court cases blank on the form, the court may need to ask the parties whether they have other cases that the court should be aware of and if they agree or object to the court taking judicial notice of the cases. This is especially important if it is a PFA case involving children. The court can make certain orders regarding the child in the PFA case, but the orders may not be enforceable depending on the type of order and when it was issued.¹⁷ Judges are not allowed to conduct their own independent research or investigation to ascertain the existence of other cases and order; therefore, directly asking the litigants about other cases and taking the steps to take judicial notice of the identified cases is vital to issuing an enforceable protection order.

8. Coordinating Protection Order Cases with Other Domestic Case

Litigants should identify whether there is a pending parentage, divorce, or legal separation case involving the parties. Protection order cases could be consolidated with the divorce, or legal separation case, or worked in coordination. If a plaintiff and defendant have a pending divorce case, it may be more efficient for the court and the litigants to schedule hearings in the respective cases close in time or on the same day. It may also benefit the court and parties to have the same judge handle both cases.

Judges, attorneys, advocates, and litigants need to be aware of a potential drawback to consolidation of a protection order case into a divorce, annulment, or legal separation case. If the defendant violates the order, a restraining order issued in the divorce, annulment, or legal separation case does not offer the same level of consequences as a PFA or PFSSAHT order. Unlike a violation of a restraining order in a divorce or legal separation case, a violation of a PFA or PFSSAHT order is commonly prosecuted as a criminal offense.¹⁸ Also, the restraining order issued as part of the divorce, annulment, or legal separation is only valid for the duration of the legal proceedings, while the PFA and PFSSAHT can be issued for a year and extended for a lifetime, if necessary for safety.¹⁹

¹⁷ See K.S.A. 2021 Supp. 60-3107(c).

¹⁸ K.S.A. 2021 Supp. 21-5924.

¹⁹ Restraining orders in a divorce, annulment, or legal separation case are allowed as temporary orders, but not as a final order. K.S.A. 2021 Supp. 23-2707 & 23-2711. PFA and PFSSAHT orders can initially be issued for a fixed timeframe up to one year, and then extended up to a lifetime. K.S.A. 2021 Supp. 60-3107(a)(6) & (e), and 60-31a06(b), (c) & (d).

9. Firearm and Ammunition Prohibition

The interplay between protection orders and the state and federal rules regarding firearms is complicated. Pursuant to federal law, a defendant subject to a Kansas PFA order may be prohibited from possessing any firearm or ammunition.²⁰ The same prohibition applies in some, but not all, PFSSAHT cases depending on whether the plaintiff and defendant satisfy the federal definition of intimate partners.²¹ If a defendant is informed of the firearm and ammunition prohibition, there is no standard procedure for defendants to surrender firearms and ammunitions to federal, state, or local law enforcement. This is a nuanced area of the law that requires specific training to understand and implement correctly.

IV. CONTINUING EDUCATION REQUIREMENTS

The Committee recommends judges involved with protection order cases be required to complete protection order specific training or continuing education requirements. The situations that lead to the need for protection orders are varied and require expertise to work with protection order litigants and issue effective orders. This is similar to the expertise required for judges to hear juvenile offender cases or for attorneys to serve as a guardian *ad litem*. The Kansas statutes require specific training and continuing education for judges, prosecutors, and defense attorneys who work with juvenile offender cases.²² The Kansas Supreme Court requires specific training and continuing education for all attorneys serving as guardian *ad litem*s.²³ A similar training requirement could be required for judges involved in protection order cases.

V. AMENDMENTS TO FORMS

Courts are required to use PFA and PFSSAHT petition and order forms written by the Judicial Council.²⁴ The Judicial Council's Family Law Advisory Committee is responsible for creating and updating the forms. During this study, the Committee amended the PFA and PFSSAHT forms as set out below to address issues raised during the course of this study.

²⁰ See 18 U.S.C. 922(g)(8).

²¹ See 18 U.S.C. 921(a)(32).

²² K.S.A. 2021 Supp. 20-318a(a).

²³ Kansas Supreme Court Rule 110A, 2022 Kan. S. Ct. R. at 193.

²⁴ K.S.A. 2021 Supp. 60-3104(c) and 60-31a04(d).

1. Inclusion of Relevant Past Incidents

To help plaintiffs and defendants understand that past incidents can be included in the petition and could be relevant to why the plaintiff or defendant needs the protection order, the Committee amended the PFA petition and counter petition form's narrative section where the plaintiff or defendant describes why he or she is asking for a protection from abuse order. The Committee divided the narrative section into three subsections with the following prompts:

- "a. Describe why you are asking for a protection from abuse order and include specific facts or other instances.
- b. Describe the past incidents where you experienced violence, where you were afraid of injury or where Defendant threatened to harm or kill you.
- c. Have any criminal charges ever been filed based on the incidents described above (in 4a or 4b)? If yes, give name of county where case was filed and case number, if known."

The Committee hopes this amendment will help give judges a more complete understanding of why the plaintiff or defendant needs a protection order.

2. Identification of Other Court Cases

The Committee amended the PFA and PFSSAHT petition and the PFA counter petition forms to more clearly ask the litigant to identify any other court cases which may impact the orders made in the protection order case. Rather than having one question, the forms now include separate questions asking the litigant to identify: (1) criminal cases based on the incidents described in the narrative section, (2) any current or past protection orders, restraining orders, or no-contact orders between the plaintiff and defendant, and (3) in a PFA case, any current or past divorce or legal separation cases between the plaintiff and defendant.

3. Including Examples of Prohibited Contact

In conjunction with the need for litigants to request and judges to make orders tailored to the unique situation in each protection order case, the Committee added additional language to the standard order language contained in every PFA and PFSSAHT order form. Anywhere the orders specified that the restrained person was prohibited from having contact with the protected person or having another person contact the protected person, the Committee added examples of common types of contact that are prohibited. The orders now contain language similar to the underlined language added in this example:

“Defendant shall not contact the Protected Person(s), either directly or indirectly, including in person, by phone, text or email message, any social media, or in any other way or manner, except as authorized by the court in Paragraph 3(b) of this order.”

The amended versions of the protection order petition and order forms were published on the Judicial Council website and took effect in July 2022.

Proposed Statutory Amendments

SERVICE OF PROCESS RELATED AMENDMENTS

K.S.A. 60-3104

- (a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any judge of the district court or with the clerk of the court alleging abuse by another intimate partner or household member.
- (b) The following persons may seek relief under the protection from abuse act on behalf of a minor child by filing a verified petition with any judge of the district court or with the clerk of the court alleging abuse by another intimate partner or household member: (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.
- (c) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.
- (d) (1)(A) Service of process served under this section shall be by personal service pursuant to article 3 of chapter 60 of the Kansas Statutes Annotated, and not by certified mail return receipt requested. Personal service may be made through short form notification under [reference new subsection or statute].
- (B) If personal service cannot be made on an individual, service is effected by leaving a copy of the summons and petition or other document at the individual's dwelling or usual place of abode and mailing to the individual by first-class mail, postage prepaid, a notice that the copy has been left at the individual's dwelling or usual place of abode.
- (2) If the court determines that after diligent effort the plaintiff has been unable to serve the defendant under subsection (d)(1), the court may order that notice may be given in a manner reasonably calculated to give actual notice, including electronic means, and may be by publication if other means are not effective.
- (3) Service of minors and disabled persons as defined in K.S.A. 77-201 shall be in accordance with K.S.A. 60-304 or as ordered by the court.
- (4) 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.

K.S.A. 60-31a04

- (a) A person may seek relief under the protection from stalking, sexual assault or human trafficking act by filing a verified petition with any judge of the district court or clerk of the court. A verified petition must allege facts sufficient to show the following:
- (1) The name of the stalking victim, sexual assault victim or human trafficking victim;
 - (2) the name of the defendant;
 - (3) the dates on which the alleged stalking, sexual assault or human trafficking behavior occurred; and
 - (4) the acts committed by the defendant that are alleged to constitute stalking, sexual assault or human trafficking.
- (b) The following persons may seek relief under the protection from stalking, sexual assault or human trafficking act on behalf of a minor child by filing a verified petition with the judge of the district court or with the clerk of the court in the county where the stalking, sexual assault or human trafficking occurred: (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child's court-appointed legal custodian or court-appointed legal guardian.
- (c) The following persons may seek relief for a minor child who is alleged to be a human trafficking victim under the protection from stalking, sexual assault or human trafficking act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging acts committed by an individual that are alleged to constitute human trafficking: (1) A parent of the minor child; (2) an adult residing with the minor child; (3) the child's court-appointed legal custodian or court-appointed legal guardian; (4) a county or district attorney; or (5) the attorney general.
- (d) The clerk of the court shall supply the forms for the petition and orders, which shall be prescribed by the judicial council.
- (e) (1)(A) Service of process served under this section shall be by personal service- pursuant to article 3 of chapter 60 of the Kansas Statutes Annotated, and not by certified mail return

receipt requested. Personal service may be made through short form notification under [reference new subsection or statute].

(B) If personal service cannot be made on an individual, service is effected by leaving a copy of the summons and petition or other document at the individual's dwelling or usual place of abode and mailing to the individual by first-class mail, postage prepaid, a notice that the copy has been left at the individual's dwelling or usual place of abode.

(2) If the court determines that after diligent effort the plaintiff has been unable to serve the defendant under subsection (e)(1), the court may order that notice may be given in a manner reasonably calculated to give actual notice, including electronic means, and may be by publication if other means are not effective.

(3) Service of minors and disabled persons as defined in K.S.A. 77-201 shall be in accordance with K.S.A. 60-304 or as ordered by the court.

(4) No docket fee shall be required for proceedings under the protection from stalking, sexual assault or human trafficking act.

(f) 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.

New Statute - Short form notification

(a) A defendant may be personally served by short form notification. A law enforcement officer may serve a defendant with a short form notification.

(b) Upon verification of the identity of the defendant and knowledge of the existence of an unserved order against the defendant, a law enforcement officer may detain the defendant for a reasonable time necessary to complete and serve the short form notification.

(c)(1) The short form notification shall include the following:

(A) Defendant's name;

(B) Defendant's date of birth, if known;

(C) Plaintiff's name;

(D) Names of other protected persons;

(E) Date and county in which the protective order was filed;

(F) Court case number;

(G) Hearing date and time, if known;

(H) Notice that there are restrictions that apply to the defendant, including no contact with the protected persons; and

(I) Affidavit of service completed by the serving person.

(2) The short form notification shall be given to the defendant and shall contain the following notice in bold print:

“The order is now enforceable. You must contact the office of the sheriff or the office of the district court in (name of county) County to obtain a copy of the order. You are subject to arrest and may be charged with a misdemeanor or felony if you violate any of the terms of the order.”

(3) The law enforcement officer serving the notification shall read the paragraph in subsection (c)(2) out loud to the defendant.

(d) When the short form notification process is complete, the law enforcement officer serving the notification shall file a copy of the notification with the clerk of the district court. The return of service shall be filed promptly. The filing shall indicate the date and time the notification was served on the person, including a certification that subsection (c)(2) was read out loud to the defendant.

(e) [Insert who is in charge of the form] shall make the short form notification form available to law enforcement agencies in this State.

(f) For the purposes of this section, law enforcement officer has the meaning ascribed thereto in K.S.A. 21-5111, and amendments thereto.

PFA CONFLICT OF ORDERS RELATED AMENDMENT

K.S.A. 60-3107(c)

~~(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. 2021 Supp. 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the Kansas Statutes Annotated, 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. 2021 Supp. 23-3201 through 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, 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. 2021 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of chapter 23 of the Kansas Statutes Annotated, 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.~~

- (c)(1) Any order entered under the protection from abuse act may not be modified by a subsequent ex parte or temporary order issued in any action, except as provided in subsection (c)(4).
- (2)(A) Any order entered under the protection from abuse act may be modified by a subsequent final order pursuant to a hearing or on agreement of the parties issued in any action, except as provided in subsection (c)(4).
- (B) Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts of the order being modified. A copy of the order shall be filed in both actions.
- (C) The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto.
- (3)(A) On sworn testimony to support a showing of good cause, and as authorized by K.S.A. 23-3201 through 23-3207 and 23-3218, and amendments thereto, orders issued under the protection from abuse act may modify orders regarding legal custody, residency, and parenting time previously issued in an action for:
- (i) the determination of parentage filed pursuant to article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., prior to their transfer or repeal; or
- (ii) divorce, separate maintenance, or annulment filed pursuant to article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 60-1601 et seq., prior to their transfer or repeal.
- (B) On sworn testimony to support a showing of good cause, orders issued under the protection from abuse act may modify interlocutory orders issued pursuant K.S.A. 23-2707, and amendments thereto.
- (C) Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.
- (4)(A) Any legal 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.

(B) Any inconsistent legal 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.