

Protection From Abuse  
and Protection from Stalking  
Cases Filed in Conjunction  
with  
Domestic Criminal Cases  
and  
Civil Divorce Cases

# OUTLINE of PRESENTATION

- Scenario
- PROTECTION PETITIONS & STATUTES
  - \*Protection from Abuse
  - \*Protection from Stalking
- CRIMINAL IMPLICATIONS & BEST PRACTICES
- CIVIL IMPLICATIONS & BEST PRACTICES

# **PROTECTION PETITIONS & STATUTES**

## **1. Protection from Abuse**

- \*Verified Petition – Ex Parte
- \*Temporary Order – Hearing in 21 days
- \*Impact on KIDS & HOUSE
- \*Evidentiary hearing – child hearsay
- \*Final Orders – Future renewal of final orders
  - \*Another year -no new violence
  - \*Up to lifetime

## **2. Protection from Stalking**

# SCENARIO

- Dick and Jane have been divorced for two years. They have two children, ages 17 and 12.
- A **parenting plan** is in place that gives joint legal custody of both children to Dick and Jane. Dick has parenting time on three days each week and on alternating birthdays and holidays, and Jane has parenting time any time Dick does not.

# SCENARIO

- Under the parenting plan, Dick and Jane “will communicate directly with each other and not use a child as the messenger,” and the parents and children “will have telephone access with each other at reasonable times and with reasonable frequency.”
- Further, the plan states “the parents shall consult with each other with respect to major decisions affecting the child and attempt to come to agreement on matters affecting the child.”

# SCENARIO

- On the night in question, the Overland Park police receive a 911 hang-up call from Jane's home telephone number.
- Under their protocol, the police arrive at the home. They find Jane crying in the living room with a broken cordless phone, and the 12-year-old upstairs in the bedroom.
- Dick and the 17-year-old are not there. Jane says that nothing happened, but the 12-year-old says, "Dad shoved mom and broke the phone."

## **SCENARIO**

- The police believe they have probable cause to arrest Dick for battery and criminal damage to property, and, under the domestic violence protocol, they decide to arrest him.

# SCENARIO

- The police find Dick and the 17-year-old at Dick's home a few minutes later. Neither Dick nor the child makes a statement.
- Dick is arrested, taken into custody, and transported to the adult detention center in Olathe to await charges.
- The 17-year-old is returned to Jane. When they return the child, the police serve Jane with a document that purports to be a court order commanding her appearance at the district attorney's office the next afternoon at 1:30 p.m. as well as her appearance in court at 2:30 p.m. the same day.



# SCENARIO

- The next morning, the district attorney charges Dick with domestic battery for shoving Jane, and with criminal damage to property for breaking the phone.
- Under the domestic violence protocol, no bond is set until the first appearance. Dick is scheduled to appear in court at 2:30 p.m. for his first appearance.

# **SCENARIO**

- At 12:30 p.m., Jane and the 17-year-old arrive at the district attorney’s office and are met by a victim advocate from that office. The advocate asks Jane a series of questions about her relationship with Dick, and recommends that Jane file a petition for protection from abuse (“PFA”), K.S.A. § 60-3101.
- Jane files a PFA petition for herself and the two children. The 17-year-old did not see what happened at the house, is not fearful of Dick, and does not want to be a party to the PFA.

## **SCENARIO – Issues for the lawyers**

- A) From the jail and before his first appearance, Dick calls you, his criminal defense attorney, for advice.
- B) After filing the PFA petition but before the first appearance, Jane calls you, her divorce attorney, for advice.



# **PROTECTION PETITIONS & STATUTES**

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## **2. Protection from Stalking**

## **Protection from Abuse K.S.A. 60-3101**

- **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*

## **3 Requirements to File Petition**

### **1. You may seek a protection from abuse order:**

- For yourself; or
- yourself and your minor child(ren); or
- For only your child(ren) or other minor child(ren) who reside with you.

# 3 Requirements to File Petition

2. Each person for whom protection is sought must be in (or have been in) an “intimate partner or household member” relationship with the defendant.

- “Intimate partner or household member” relationship means:
- Persons who are in a dating relationship (a social relationship of a romantic nature); or,
- Persons who have been in a dating relationship; or,
- Persons who live together; or,
- Persons who have lived together; or,
- Persons who have had a child in common.



# 3 Requirements to File Petition

**3. Each person needing protection must have been abused.**

**This means that one of the following must have occurred:**

- The defendant physically hurt you or a minor child on purpose;  
or,
- The defendant tried to physically hurt you or a minor child; or,
- The defendant threatened to physically hurt you or a minor child; or,
- The defendant engaged in sexual conduct (touching or sexual intercourse) with a minor child under 16 years of age.

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

## **Must Personally Serve Defendant**

- You must notify the defendant by personal service that you have filed a Petition for a Protection from Abuse Order. To obtain personal service, you must fill out a Request for Service form, requesting that the sheriff deliver the Petition for Protection from Abuse to the defendant.

## **Must Appear at Future Hearing**

- You should be available to testify at future hearings as set by the judge.
- If you fail to appear, the case may be dismissed.

## **Hearing within 21 days**

- **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.**

# **Temporary Orders Pending Hearing**

- 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 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.

# COURT ORDERS INCLUDE

- The **defendant shall not** abuse, molest, or interfere with the privacy or rights of the protected person(s) wherever they may be.
- The **defendant shall not** use, attempt to use, or threaten to use physical force, that would reasonably be expected to cause bodily injury, against the protected person(s).
- The **defendant shall not** contact the protected person(s), either directly or indirectly
- The **defendant shall not** enter or come on or around the premises, the residence or workplace where the protected person(s) resides, stays or works.
- **Law enforcement officers are directed** to grant any assistance necessary to protect the protected person(s) from abuse by the defendant, and to provide any other assistance necessary to enforce these orders.

# **Parentage, Support and Custody in Orders**

1. Defendant shall pay spousal support to the plaintiff in the amount of \$ \_\_\_\_\_ each month for the duration of this order,
2. Defendant's parentage of the child(ren) has not been established through a marriage of the parties or pursuant to Kansas Parentage Act, K.S.A. 23-2201 *et seq.*, and Defendant has no right to custody or parenting time with the following named child(ren): ALTERNATIVELY
3. Defendant's parentage of the child(ren) has been established through the marriage of the parties or pursuant to the Kansas Parentage Act, K.S.A. 23-2201 *et seq.*, and the following custody and parenting time orders are entered:
  - i. **Temporary legal custody and residency of the following named minor children shall be:**
    - \*Joint legal custody between the plaintiff and defendant until this order expires
    - or
    - \*Sole legal custody granted to Plaintiff Defendant until this order expires.
  - ii. **Rights of temporary parenting time shall be as follows:**
    - \*Plaintiff and Defendant shall have parenting time as described in the attached parenting plan ;
    - \*Defendant shall have no parenting time ;
    - \*Defendant shall have supervised parenting time as follows:
    - \*Where parties shall exchange the minor child(ren) for parenting time



# **CHILD SUPPORT REQUEST IN PFOA**

- **In order to obtain child support, you must complete a Domestic Relations Affidavit and a Child Support Worksheet and attach them to the Petition for Protection from Abuse.**
- If the court grants child support, the court will complete the Child Support Addendum and attach it to the Final Protection from Abuse Order. You will then need to complete a Kansas Payment Center Form, attach it to a copy of the Final Protection from Abuse Order including the Child Support Addendum and provide it to the Clerk of the District Court.

# **Housing and Property in Orders**

1. The plaintiff can be granted exclusive possession of the residence
2. If the plaintiff is granted exclusive possession of the residence, the defendant shall immediately move from the residence and may take only personal clothing and effects until further order of the court.
3. Law enforcement officials are directed to remove the defendant from the residence, and to ensure that Defendant does not enter or re-enter the premises or any other residence the plaintiff may occupy.
4. Defendant shall not cancel utilities to the residence.

# **LENGTH of FINAL ORDER**

- A Final Protection from Abuse Order will **expire after one year** or on the date stated in the order
- **unless you request an extension or modification** from the court before the order expires.
- You may request that the court extend an order for one additional year, or longer under certain circumstances.
- **If the defendant has violated a valid protection order or been convicted of a person felony against you or a member of your household, you may request the court extend the order for at least two years or up to the lifetime of the defendant.**
- A request to extend an order for more than one year must be personally served on the defendant and the court must hold a hearing where the defendant may appear, present evidence, and question witnesses.

## K.S.A. 60-3107(e)(2)

### **Motion to Extend for 2 years or Life**

- To extend Final Orders under this provision, Plaintiff must allege and prove:
  1. Defendant has violated a valid protection order OR
  2. Defendant has been convicted of a person felony or a conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of another jurisdiction which are substantially similar to such person felony, committed against the plaintiff or a member of the plaintiff's household.

# **K.S.A. 60-31a01**

## **Protection from Stalking**

**This act shall be liberally construed to protect victims of stalking and to facilitate access to judicial protection for stalking victims, whether represented by counsel or proceedings *pro se***

## **May Seek Stalking Protection**

**Stalking must have occurred against each person for whom protection is sought AND protection may be sought**

- 1. For yourself; or,**
- 2. For your minor child; or,**
- 3. For a minor child who resides with you.**

**“Stalking” =**

**Intentional harassment of  
another person that places  
the other person in  
reasonable fear for that  
person’s safety.**

## **“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.



## **“Course of conduct” =**

Conduct consisting of two or more separate acts over a period of time, however short, that show a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress.

# Validity determination

## Smith vs. Martens, 279 Kan. 242

- **Background:** Former wife brought action under the Protection from Stalking Act, seeking a protective order against her former husband. The Johnson District Court, Larry McClain, J., issued one-year protection from stalking order (PSO). Husband appealed.

**Holdings:** The Supreme Court, Davis, J., held that:

- **(1) statute defining “stalking,” “harassment,” and “course of conduct,” as used in the Act, was not unconstitutionally vague on its face, and**
- **(2) statute did not substantially infringe upon speech protected by First Amendment.**

## **Hearing within 21 days**

- **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.

# Protection from Stalking Orders.

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- (1) Restrain the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim.
- (2) Restrain 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. 21-5427, and amendments thereto, assault as defined in subsection (a) of K.S.A. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 21-5413, and amendments thereto, and violation of a protective order as defined in K.S.A. 21-5924, and amendments thereto.
- (3) Restrain 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. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 21-5924, and amendments thereto.

# **LENGTH of FINAL ORDER**

- A Final Protection from Stalking Order will **expire after one year** or on the date stated in the order
- **unless you request an extension or modification** from the court before the order expires.
- You may request that the court extend an order for one additional year, or longer under certain circumstances.
- **If the defendant has violated a valid protection order or been convicted of a person felony against you or a member of your household, you may request the court extend the order for at least two years or up to the lifetime of the defendant.**
- A request to extend an order for more than one year must be personally served on the defendant and the court must hold a hearing where the defendant may appear, present evidence, and question witnesses.



# **CRIMINAL ASPECT: BEST PRACTICES**

1. Criminal DV charges – Battery, Violation of PFA, Stalking
2. Arrested – Served at Jail and 72 Hours No Contact
3. Victim - Ordered to Appear and Safe Home Advocate
4. Use civil PFA case for Discovery – Depositions
5. Parental Discipline – Wade case and Affirmative Defense
6. DV case impact on Gun possession and NCIC
7. Federal Prosecution – Interstate travel to commit
8. Coordinating efforts with Civil Attorney
  - Discovery and Depositions (not available in criminal cases)
  - Impact of Client testifying in civil hearing on criminal case

# **CRIMINAL WARNINGS TO DEFENDANT**

1. This order is effective when signed by the judge. Law enforcement officials shall immediately enforce this order.
2. Violation of this order may constitute: violation of a protective order; assault ; battery and domestic battery and may result in prosecution and conviction under Kansas criminal statutes.
3. If possession of the residence is granted to the plaintiff, violation of this order by the defendant constitutes criminal trespass and may result in prosecution and conviction under Kansas criminal statutes.
4. Violation of this order could result in the order being extended for up to the lifetime of the defendant.
5. Violation of this order may also be punishable as contempt of this court.
6. If the defendant has a concealed carry license, that license is subject to revocation pursuant to K.S.A. 75-7c07, and amendments thereto. After a defendant's concealed carry license has been revoked, continuing to carry a concealed weapon may constitute a violation of K.S.A. 21-6302.
7. Violation of this order may subject defendant to federal firearms restrictions under 18 U.S.C. § 922(g)(8), and violation of this order may subject the defendant to prosecution for such federal crimes, including but not limited to: Firearms possession; Interstate travel to commit domestic violence; Interstate stalking; and Interstate violation of a protection order.



# **KSA 21-5414 Domestic battery**

- (1) Knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or
- (2) knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

# **KSA 21-5427: Criminal Stalking**

- (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. 2011 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.

State v. Wade, 45 Kan. App. 2d 128  
(2010)

- **Background:** Defendant was convicted by a jury in the District Court, Johnson County, Stephen R. Tatum, J., of misdemeanor battery. Defendant appealed.
- **Holding:** The Supreme Court, Buser, J., held that the trial court violated defendant's due process rights when it failed to instruct the jury on the affirmative defense of parental discipline.

## Jury Instruction

- **AFFIRMATIVE DEFENSE – PARENTAL DISCIPLINE**
- It is a defense to the charge of battery if a parent's use of physical force upon a child was reasonable and appropriate and with the purpose of safeguarding the child's welfare or maintaining discipline.
- State v Wade, 45 Kan. App 2d 128, 245 P. 3d 1083 (2010).



# **CIVIL ASPECT: BEST PRACTICES**

1. **Strategies** for handling in Divorce cases
2. Impact on child custody and access to children
3. Impact on possession of and access to the house
4. Trigger CINC case filing
5. **Coordinating efforts with Criminal Attorney**
  - Discovery and Depositions (not available in criminal cases)
  - Impact of Client testifying in civil hearing on criminal case
6. Impact on SRS/DCF response
7. Impact on Employment