



**Interpersonal Protective Order Legislation**  
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### **PURPOSE OF 2015 HB 8 SCS1**

The 2015 General Assembly created a new chapter of Kentucky law (KRS Chapter 456) to establish civil orders of protection for victims of dating violence, sexual assault, and stalking. The bill also updated a limited amount of language in the existing language on protective orders for victims of domestic violence (KRS 403.785). The new law went into effect January 1, 2016.

HB 8 has three general parts:

- Part one (sections 1 - 18) amends existing KRS 403 as it relates to domestic violence and abuse;
- Part two (sections 19 - 36) creates new civil orders of protection for cases of dating violence, sexual assault, and stalking;
- Part three (sections 37 – 52) includes additional substantive changes related to protective orders; conforming amendments; and the bill’s enactment date.

### **AMENDMENTS TO DOMESTIC VIOLENCE AND ABUSE ACT**

- History of the 1984 Domestic Violence and Abuse Act:
  - When originally passed, it provided protective orders for persons harmed by spouses
  - Eligibility for orders of protection has changed over the years:
    - 1988 – statute was expanded to include former spouses
    - 1992 – statute was expanded to include members of an unmarried couple who are living together, have formerly lived together, or have a child in common
    - 2010 – statute was narrowed to remove “persons related by consanguinity or affinity in the 2<sup>nd</sup> degree and was expanded to include grandparents and others in the household if a child is the alleged victim).
- Section 2 - Definitions:
  - HB 8 expands eligibility by adding grandchildren to definition of family member;
  - Expands definitional section for clarity (foreign protective order; orders of protection; GPS; and substantial violation);
  - Expands the definition of domestic violence and abuse to include stalking (24 states already have)
- Section 4 – Ex Parte Hearing: Process for review and issuance of emergency orders is substantively the same (KRS 403.735, KRS 403.745); this version simply clarifies what steps

should be taken upon no finding of abuse; a finding of abuse; and a finding of abuse and immediate and present danger.

- Section 5 – Criminal Histories: Adds new language to require the courts, in the case of a minor petitioner or respondent, to inquire about where they attend school and to impose conditions that have the least disruption in the administration of education to the parties.
- Section 6 – Hearing & Issuance of Orders: Simply lists conditions for emergency (403.740) and permanent (403.750) orders in one section instead of separately. Additionally, clarifies that when directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, a judge shall not order the petitioner to take any affirmative action.

## **CREATION OF INTERPERSONAL PROTECTIVE ORDERS**

Four categories of eligibility for civil IPOs

- Victims of dating violence and abuse (46 states have already done this)
  - The bill gives the court 6 additional factors to consider when deciding whether the relationship is a dating violence relationship. This is more than any other states have put in their statutes.
- Victims of stalking not already covered under domestic or dating violence (35 states have done this)
- Victims of sexual assault not already covered under domestic or dating violence (27 states have done this)

### **Key Definitions Related to Interpersonal Protective Orders**

*Dating violence and abuse* means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse or assault occurring between persons who are or have been in a dating relationship [KRS 456.010(2)]. (Note: this definition mirrors that for domestic violence and abuse found in KRS Chapter 403.)

*Dating relationship* means a relationship between individuals who have or have had a relationship who have or have had a relationship of a romantic or intimate nature. It does not include casual acquaintanceships or ordinary fraternization in business or social contexts [KRS 456.010(1)].

In order to assist judges in determining whether the relationship between a petitioner and respondent is a dating relationship, the statute lists six factors the court may consider [KRS 456.01]:

1. Declarations of romantic interest;
2. The relationship was characterized by the expectation of affection;
3. Attendance at social outings together as a couple;

4. The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
5. The length and recency of the relationship; and
6. Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed.

The jurisdiction for IPOs is concurrent between District and Circuit Courts and will be decided by the local jurisdiction and approved by the Supreme Court.

The bill stipulates that nothing in the bill's language expands the federal gun ban. In fact, the bill states that the federal law (18 U.S.C sec. 922(g)) will not apply in dating violence cases. This is because those in dating relationships are not included in the definition of "intimate partner" found in the federal law.

The bill adds a provision to allow a court to expunge the record of non-temporary IPOs for good cause shown. The bill requires the 5 years will have elapsed since the petition was originally filed; and during the 5 years, no other non-temporary IPOs have been issued against that same respondent.

On the criminal side, the bill provides that a protective order may be entered upon a conviction for a sexual offense under KRS 510. This order is similar to the one currently provided upon a conviction for stalking (KRS 508.150).

To provide the judges, clerks, prosecutors, law enforcement, civil attorney's, and advocates time to adapt to the new system, the bill provides for a delayed implementation of January 1, 2016.