

HOUSE BILL No. 2785

By Representatives Yonally, Barbieri-Lightner, Davis, Neighbor, Reitz
and Storm

2-10

AN ACT concerning crimes and punishment; relating to domestic bat-
tery; amending K.S.A. 2003 Supp. 21-3412a and repealing the existing
section.

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

Section 1. K.S.A. 2003 Supp. 21-3412a is hereby amended to read
as follows: 21-3412a. (a) Domestic battery is:

(1) Intentionally or recklessly causing bodily harm by a family or
household member against a family or household member; or

(2) intentionally causing physical contact with a family or household
member by a family or household member when done in a rude, insulting
or angry manner.

(b) (1) *Except as provided in subsection (4)*, upon a first conviction
of a violation of domestic battery, a person shall be guilty of a class B
person misdemeanor and sentenced to not less than 48 consecutive hours
nor more than six months' imprisonment and fined not less than \$200,
nor more than \$500 or in the court's discretion the court may enter an
order which requires the person enroll in and successfully complete a
domestic violence prevention program.

(2) If, within five years immediately preceding commission of the
crime, a person is convicted of a violation of domestic battery a second
time, such person shall be guilty of a class A person misdemeanor and
sentenced to not less than 90 days nor more than one year's imprisonment
and fined not less than \$500 nor more than \$1,000. The five days' im-
prisonment mandated by this subsection may be served in a work release
program only after such person has served 48 consecutive hours' impris-
onment, provided such work release program requires such person to
return to confinement at the end of each day in the work release program.
The person convicted must serve at least five consecutive days' impris-
onment before the person is granted probation, suspension or reduction
of sentence or parole or is otherwise released. As a condition of any grant
of probation, suspension of sentence or parole or of any other release,
the person shall be required to enter into and complete a treatment pro-
gram for domestic violence prevention.

1 (3) If, within five years immediately preceding commission of the
2 crime, a person is convicted of a violation of domestic battery a third or
3 subsequent time, such person shall be guilty of a person felony and sen-
4 tenced to not less than 90 days nor more than one year's imprisonment
5 and fined not less than \$1,000 nor more than \$2,500. The person con-
6 victed shall not be eligible for release on probation, suspension or reduc-
7 tion of sentence or parole until the person has served at least 90 days'
8 imprisonment. The court may also require as a condition of parole that
9 such person enter into and complete a treatment program for domestic
10 violence. The 90 days' imprisonment mandated by this subsection may
11 be served in a work release program only after such person has served
12 48 consecutive hours' imprisonment, provided such work release program
13 requires such person to return to confinement at the end of each day in
14 the work release program.

15 (4) *If a person is convicted of a violation of domestic battery and such*
16 *battery is committed in the immediate presence of, or is witnessed by, the*
17 *person's or the victim's minor child or stepchild or a minor child residing*
18 *within the household of the person or victim, such person shall be guilty*
19 *of a class A person misdemeanor and sentenced to not less than 90 days*
20 *nor more than one year's imprisonment and fined not less than \$500 nor*
21 *more than \$1,000. The five days' imprisonment mandated by this subsec-*
22 *tion may be served in a work release program only after such person has*
23 *served 48 consecutive hours' imprisonment, provided such work release*
24 *program requires such person to return to confinement at the end of each*
25 *day in the work release program. The person convicted must serve at least*
26 *five consecutive days' imprisonment before the person is granted proba-*
27 *tion, suspension or reduction of sentence or parole or is otherwise re-*
28 *leased. As a condition of any grant of probation, suspension of sentence*
29 *or parole or of any other release, the person shall be required to enter*
30 *into and complete a treatment program for domestic violence prevention.*

31 (c) As used in this section:

32 (1) Family or household member means persons 18 years of age or
33 older who are spouses, former spouses, parents or stepparents and chil-
34 dren or stepchildren, and persons who are presently residing together or
35 who have resided together in the past, and persons who have a child in
36 common regardless of whether they have been married or who have lived
37 together at any time. Family or household member also includes a man
38 and woman if the woman is pregnant and the man is alleged to be the
39 father, regardless of whether they have been married or have lived to-
40 gether at any time; and

41 (2) for the purpose of determining whether a conviction is a first,
42 second, third or subsequent conviction in sentencing under this section:

43 (A) "Conviction" includes being convicted of a violation of this sec-

1 tion or entering into a diversion or deferred judgment agreement in lieu
2 of further criminal proceedings on a complaint alleging a violation of this
3 section;

4 (B) “conviction” includes being convicted of a violation of a law of
5 another state, or an ordinance of any city, or resolution of any county,
6 which prohibits the acts that this section prohibits or entering into a di-
7 version or deferred judgment agreement in lieu of further criminal pro-
8 ceedings in a case alleging a violation of such law, ordinance or resolution;

9 (C) only convictions occurring in the immediately preceding five
10 years including prior to the effective date of this act shall be taken into
11 account, but the court may consider other prior convictions in determin-
12 ing the sentence to be imposed within the limits provided for a first,
13 second, third or subsequent offender, whichever is applicable; and

14 (D) it is irrelevant whether an offense occurred before or after con-
15 viction for a previous offense.

16 Sec. 2. K.S.A. 2003 Supp. 21-3412a is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its
18 publication in the statute book.

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