

SENATE BILL No. 406

By Committee on Federal and State Affairs

2-2

9 AN ACT concerning crimes, punishments and penalties; relating to do-
10 mestic battery; amending K.S.A. 2003 Supp. 21-3412a and repealing
11 the existing section.

12

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

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

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

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

21 (b) (1) Upon a first conviction of a violation of domestic battery, a
22 person shall be guilty of a class B person misdemeanor and sentenced to
23 not less than 48 consecutive hours nor more than six months' imprison-
24 ment and fined not less than \$200, nor more than \$500 or in the court's
25 discretion the court may enter an order which requires the person enroll
26 in and successfully complete a domestic violence prevention program.

27 (2) If, within five years immediately preceding commission of the
28 crime, a person is convicted of a violation of domestic battery a second
29 time, such person shall be guilty of a class A person misdemeanor and
30 sentenced to not less than 90 days nor more than one ~~year's~~ *year of*
31 imprisonment and fined not less than \$500 nor more than \$1,000. *The*
32 *person convicted must serve at lease five consecutive days of imprison-*
33 *ment before the person is granted probation, suspension or reduction of*
34 *sentence or parole or is otherwise released. The ~~five days'~~ five-day im-*
35 *prisonment mandated by this subsection may be served in a work release*
36 *program only after such person has served 48 consecutive ~~hours'~~ hours*
37 *of imprisonment, provided such work release program requires such per-*
38 *son to return to confinement at the end of each day in the work release*
39 *program. ~~The person convicted must serve at least five consecutive days'~~*
40 *imprisonment before the person is granted probation, suspension or re-*
41 *duction of sentence or parole or is otherwise released.* As a condition of
42 any grant of probation, suspension of sentence or parole or of any other
43 release, the person shall be required to enter into and complete a treat-

1 ment program for domestic violence prevention.

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

17 (c) As used in this section:

18 (1) Family or household member means persons 18 years of age or
19 older who are spouses, former spouses, parents or stepparents and chil-
20 dren or stepchildren, ~~and persons who are presently residing together or~~
21 ~~who have resided together in the past,~~ *grandparents, stepgrandparents,*
22 *persons who are or previously had been involved in an intimate relation-*
23 *ship and persons who have a child in common regardless of whether they*
24 *have been married or who have lived together at any time. Family or*
25 *household member also includes a man and woman if the woman is preg-*
26 *nant and the man is alleged to be the father, regardless of whether they*
27 *have been married or have lived together at any time; and*

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

30 (A) "Conviction" includes being convicted of a violation of this sec-
31 tion or entering into a diversion or deferred judgment agreement in lieu
32 of further criminal proceedings on a complaint alleging a violation of this
33 section;

34 (B) "conviction" includes being convicted of a violation of a law of
35 another state, or an ordinance of any city, or resolution of any county,
36 which prohibits the acts that this section prohibits or entering into a di-
37 version or deferred judgment agreement in lieu of further criminal pro-
38 ceedings in a case alleging a violation of such law, ordinance or resolution;
39 *and*

40 (C) ~~only convictions occurring in the immediately preceding five~~
41 ~~years including prior to the effective date of this act shall be taken into~~
42 ~~account, but the court may consider other prior convictions in determin-~~
43 ~~ing the sentence to be imposed within the limits provided for a first,~~

- 1 ~~second, third or subsequent offender, whichever is applicable, and~~
- 2 ~~—(D)~~ it is irrelevant whether an offense occurred before or after con-
- 3 viction for a previous offense.
- 4 Sec. 2. K.S.A. 2003 Supp. 21-3412a is hereby repealed.
- 5 Sec. 3. This act shall take effect and be in force from and after its
- 6 publication in the statute book.