

HOUSE BILL No. 2192

By Committee on Corrections and Juvenile Justice

Requested by Representative Thompson

1-31

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to crimes against persons; limiting or prohibiting work release for
3 people convicted of a second or third offense of domestic battery;
4 amending K.S.A. 21-5414 and repealing the existing section.
5

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

7 Section 1. K.S.A. 21-5414 is hereby amended to read as follows: 21-
8 5414. (a) Domestic battery is:

9 (1) Knowingly or recklessly causing bodily harm to a person with
10 whom the offender is involved or has been involved in a dating
11 relationship or a family or household member; or

12 (2) knowingly causing physical contact with a person with whom the
13 offender is involved or has been involved in a dating relationship or a
14 family or household member, when done in a rude, insulting or angry
15 manner.

16 (b) Aggravated domestic battery is:

17 (1) Knowingly impeding the normal breathing or circulation of the
18 blood by applying pressure on the throat, neck or chest of a person with
19 whom the offender is involved or has been involved in a dating
20 relationship or a family or household member, when done in a rude,
21 insulting or angry manner; or

22 (2) knowingly impeding the normal breathing or circulation of the
23 blood by blocking the nose or mouth of a person with whom the offender
24 is involved or has been involved in a dating relationship or a family or
25 household member, when done in a rude, insulting or angry manner.

26 (c) (1) Domestic battery is:

27 (A) Except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B
28 person misdemeanor and the offender shall be sentenced to not less than
29 48 consecutive hours nor more than six months' imprisonment and fined
30 not less than \$200, nor more than \$500 or in the court's discretion the court
31 may enter an order which requires the offender to undergo a domestic
32 violence offender assessment conducted by a certified batterer intervention
33 program and follow all recommendations made by such program;

34 (B) except as provided in subsection (c)(1)(C), a class A person
35 misdemeanor, if, within five years immediately preceding commission of

1 the crime, an offender is convicted of domestic battery a second time and
2 the offender shall be sentenced to not less than 90 days nor more than one
3 year's imprisonment and fined not less than \$500 nor more than \$1,000.
4 The ~~five~~ 90 days' imprisonment mandated by this paragraph may be served
5 in a work release program only after such offender has served ~~48~~ 45
6 consecutive ~~hours'~~ days' imprisonment, ~~provided if~~ such work release
7 program requires such offender to return to confinement at the end of each
8 day in the work release program. The offender shall serve at least ~~five~~ 45
9 consecutive days' imprisonment before the offender is granted probation,
10 suspension or reduction of sentence or parole or is otherwise released. As a
11 condition of any grant of probation, suspension of sentence or parole or of
12 any other release, the offender shall be required to undergo a domestic
13 violence offender assessment conducted by a certified batterer intervention
14 program and follow all recommendations made by such program, unless
15 otherwise ordered by the court; and

16 (C) a person felony, if, within five years immediately preceding
17 commission of the crime, an offender is convicted of domestic battery a
18 third or subsequent time, and the offender shall be sentenced to not less
19 than 90 days nor more than one year's imprisonment and fined not less
20 than \$1,000 nor more than \$7,500. The offender ~~convicted shall not be~~
21 ~~eligible for release on probation, suspension or reduction of sentence or~~
22 ~~parole until the offender has served at least 90 days' imprisonment shall~~
23 ~~serve at least 90 consecutive days' imprisonment before the offender is~~
24 ~~granted probation, suspension or reduction of sentence or parole or is~~
25 ~~otherwise released.~~ As a condition of any grant of probation, suspension of
26 sentence or parole or of any other release, the offender shall be required to
27 undergo a domestic violence offender assessment conducted by a certified
28 batterer intervention program and follow all recommendations made by
29 such program, unless otherwise ordered by the court. If the offender does
30 not undergo a domestic violence offender assessment conducted by a
31 certified batterer intervention program and follow all recommendations
32 made by such program, the offender shall serve not less than 180 days nor
33 more than one year's imprisonment. ~~The 90 days' imprisonment mandated~~
34 ~~by this paragraph may be served in a work release program only after such~~
35 ~~offender has served 48 consecutive hours' imprisonment, provided such~~
36 ~~work release program requires such offender to return to confinement at~~
37 ~~the end of each day in the work release program.~~

38 (2) Aggravated domestic battery is a severity level 7, person felony.

39 (d) In determining the sentence to be imposed within the limits
40 provided for a first, second, third or subsequent offense under this section,
41 a court shall consider information presented to the court relating to any
42 current or prior protective order issued against such person.

43 (e) As used in this section:

1 (1) "Dating relationship" means a social relationship of a romantic
2 nature. In addition to any other factors the court deems relevant, the trier
3 of fact may consider the following when making a determination of
4 whether a relationship exists or existed: Nature of the relationship, length
5 of time the relationship existed, frequency of interaction between the
6 parties and time since the termination of the relationship, if applicable;

7 (2) "family or household member" means persons 18 years of age or
8 older who are spouses, former spouses, parents or stepparents and children
9 or stepchildren, and persons who are presently residing together or who
10 have resided together in the past, and persons who have a child in common
11 regardless of whether they have been married or who have lived together
12 at any time. "Family or household member" also includes a man and
13 woman if the woman is pregnant and the man is alleged to be the father,
14 regardless of whether they have been married or have lived together at any
15 time; and

16 (3) "protective order" means:

17 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,
18 60-3106 or 60-3107, and amendments thereto;

19 (B) a protective order issued by a court or tribunal of any state or
20 Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;

21 (C) a restraining order issued pursuant to K.S.A. 2024 Supp. 23-2707,
22 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
23 1607, prior to its transfer;

24 (D) an order issued in this or any other state as a condition of pretrial
25 release, diversion, probation, suspended sentence, postrelease supervision
26 or at any other time during the criminal case or upon appeal that orders the
27 person to refrain from having any direct or indirect contact with a family
28 or household member;

29 (E) an order issued in this or any other state as a condition of release
30 after conviction or as a condition of a supersedeas bond pending
31 disposition of an appeal, that orders the person to refrain from having any
32 direct or indirect contact with another person; or

33 (F) a protection from stalking order issued pursuant to K.S.A. 60-
34 31a05 or 60-31a06, and amendments thereto.

35 (f) For the purpose of determining whether a conviction is a first,
36 second, third or subsequent conviction in sentencing under subsection (c)
37 (1):

38 (1) "Conviction" includes being convicted of a violation of K.S.A.
39 21-3412a, prior to its repeal, this section or entering into a diversion or
40 deferred judgment agreement in lieu of further criminal proceedings on a
41 complaint alleging a violation of this section;

42 (2) "conviction" includes being convicted of a violation of a law of
43 another state, or an ordinance of any city, or resolution of any county,

1 which prohibits the acts that this section prohibits or entering into a
2 diversion or deferred judgment agreement in lieu of further criminal
3 proceedings in a case alleging a violation of such law, ordinance or
4 resolution;

5 (3) only convictions occurring in the immediately preceding five
6 years including prior to July 1, 2001, shall be taken into account, but the
7 court may consider other prior convictions in determining the sentence to
8 be imposed within the limits provided for a first, second, third or
9 subsequent offender, whichever is applicable; and

10 (4) it is irrelevant whether an offense occurred before or after
11 conviction for a previous offense.

12 (g) A person may enter into a diversion agreement in lieu of further
13 criminal proceedings for a violation of subsection (a) or (b) or an
14 ordinance of any city or resolution of any county which prohibits the acts
15 that subsection (a) or (b) prohibits only twice during any five-year period.

16 Sec. 2. K.S.A. 21-5414 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.