

HOUSE BILL No. 2071

By Committee on Judiciary

1-18

1 AN ACT concerning crimes and punishment; relating to domestic battery;
2 amending K.S.A. 2016 Supp. 21-5414 and repealing the existing
3 section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 21-5414 is hereby amended to read as
7 follows: 21-5414. (a) Domestic battery is:

8 (1) Knowingly or recklessly causing bodily harm by a family or
9 household member against a family or household member; or

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

13 (b) Domestic battery is:

14 (1) Except as provided in subsection (b)(2) or (b)(3), a class B person
15 misdemeanor and the offender shall be sentenced to not less than 48
16 consecutive hours nor more than six months' imprisonment and fined not
17 less than \$200, nor more than \$500 or in the court's discretion the court
18 may enter an order which requires the offender to undergo a domestic
19 violence offender assessment conducted by a certified batterer intervention
20 program and follow all recommendations made by such program;

21 (2) except as provided in subsection (b)(3), a class A person
22 misdemeanor, if, within five years immediately preceding commission of
23 the crime, an offender is convicted of domestic battery a second time and
24 the offender shall be sentenced to not less than 90 days nor more than one
25 year's imprisonment and fined not less than \$500 nor more than \$1,000.
26 The five days imprisonment mandated by this paragraph may be served in
27 a work release program only after such offender has served 48 consecutive
28 hours imprisonment, provided such work release program requires such
29 offender to return to confinement at the end of each day in the work
30 release program. The offender shall serve at least five consecutive days
31 imprisonment before the offender is granted probation, suspension or
32 reduction of sentence or parole or is otherwise released. As a condition of
33 any grant of probation, suspension of sentence or parole or of any other
34 release, the offender shall be required to undergo a domestic violence
35 offender assessment conducted by a certified batterer intervention program
36 and follow all recommendations made by such program, unless otherwise

1 ordered by the court or ~~department of corrections~~; and

2 (3) a person felony, if, within five years immediately preceding
3 commission of the crime, an offender is convicted of domestic battery a
4 third or subsequent time, and the offender shall be sentenced to not less
5 than 90 days nor more than one year's imprisonment and fined not less
6 than \$1,000 nor more than \$7,500. The offender convicted shall not be
7 eligible for release on probation, suspension or reduction of sentence or
8 parole until the offender has served at least 90 days imprisonment. As a
9 condition of any grant of probation, suspension of sentence or parole or of
10 any other release, the offender shall be required to undergo a domestic
11 violence offender assessment conducted by a certified batterer intervention
12 program and follow all recommendations made by such program, unless
13 otherwise ordered by the court or ~~department of corrections~~. If the offender
14 does not undergo a domestic violence offender assessment conducted by a
15 certified batterer intervention program and follow all recommendations
16 made by such program, the offender shall serve not less than 180 days nor
17 more than one year's imprisonment. The 90 days imprisonment mandated
18 by this paragraph may be served in a work release program only after such
19 offender has served 48 consecutive hours imprisonment, provided such
20 work release program requires such offender to return to confinement at
21 the end of each day in the work release program.

22 (c) *In determining the sentence to be imposed within the limits*
23 *provided for a first, second, third or subsequent offense under this section,*
24 *a court shall consider information presented to the court relating to any*
25 *current or prior protective order issued against such person.*

26 (d) As used in this section:

27 (1) "Family or household member" means persons 18 years of age or
28 older who are spouses, former spouses, parents or stepparents and children
29 or stepchildren, and persons who are presently residing together or who
30 have resided together in the past, and persons who have a child in common
31 regardless of whether they have been married or who have lived together
32 at any time. "Family or household member" also includes a man and
33 woman if the woman is pregnant and the man is alleged to be the father,
34 regardless of whether they have been married or have lived together at any
35 time; ~~and~~

36 (2) *"protective order" means:*

37 (A) *A protection from abuse order issued pursuant to K.S.A. 60-3105,*
38 *60-3106 or 60-3107, and amendments thereto;*

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

41 (C) *a restraining order issued pursuant to K.S.A. 23-2707, 38-2243,*
42 *38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to*
43 *its transfer;*

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

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

10 (F) *a protection from stalking order issued pursuant to K.S.A. 60-*
 11 *31a05 or 60-31a06, and amendments thereto;*

12 (3) for the purpose of determining whether a conviction is a first,
 13 second, third or subsequent conviction in sentencing under this section:

14 (A) "Conviction" includes being convicted of a violation of K.S.A.
 15 21-3412a, prior to its repeal, this section or entering into a diversion or
 16 deferred judgment agreement in lieu of further criminal proceedings on a
 17 complaint alleging a violation of this section;

18 (B) "conviction" includes being convicted of a violation of a law of
 19 another state, or an ordinance of any city, or resolution of any county,
 20 which prohibits the acts that this section prohibits or entering into a
 21 diversion or deferred judgment agreement in lieu of further criminal
 22 proceedings in a case alleging a violation of such law, ordinance or
 23 resolution;

24 (C) only convictions occurring in the immediately preceding five
 25 years including prior to July 1, 2001, shall be taken into account, but the
 26 court may consider other prior convictions in determining the sentence to
 27 be imposed within the limits provided for a first, second, third or
 28 subsequent offender, whichever is applicable; and

29 (D) it is irrelevant whether an offense occurred before or after
 30 conviction for a previous offense.

31 ~~(d)~~(e) A person may enter into a diversion agreement in lieu of further
 32 criminal proceedings for a violation of this section or an ordinance of any
 33 city or resolution of any county which prohibits the acts that this section
 34 prohibits only twice during any five-year period.

35 Sec. 2. K.S.A. 2016 Supp. 21-5414 is hereby repealed.

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