

HOUSE BILL No. 2467

By Committee on Judiciary

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to **{domestic battery; batterer intervention programs;}** sex offenses;
3 sexual battery; spouses; amending K.S.A. 2019 Supp. **{21-5414 and}**
4 21-5505 and repealing the existing ~~section~~ **{sections}**.

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

7 **{Section 1. K.S.A. 2019 Supp. 21-5414 is hereby amended to read**
8 **as follows: 21-5414. (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**
13 **the offender is involved or has been involved in a dating relationship**
14 **or a family or household member, when done in a rude, insulting or**
15 **angry manner.**

16 **(b) Aggravated domestic battery is:**

17 **(1) Knowingly impeding the normal breathing or circulation of**
18 **the blood by applying pressure on the throat, neck or chest of a person**
19 **with 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**
23 **the blood by blocking the nose or mouth of a person with whom the**
24 **offender is involved or has been involved in a dating relationship or a**
25 **family or household member, when done in a rude, insulting or angry**
26 **manner.**

27 **(c) (1) Domestic battery is:**

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

36 **(B) except as provided in subsection (c)(1)(C), a class A person**

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

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

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

41 (d) In determining the sentence to be imposed within the limits
42 provided for a first, second, third or subsequent offense under this
43 section, a court shall consider information presented to the court

1 relating to any current or prior protective order issued against such
2 person.

3 (e) As used in this section:

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

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

20 (3) "protective order" means:

21 (A) A protection from abuse order issued pursuant to K.S.A. 60-
22 3105, 60-3106 or 60-3107, and amendments thereto;

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

25 (C) a restraining order issued pursuant to K.S.A. 2019 Supp. 23-
26 2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A.
27 60-1607, prior to its transfer;

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

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

37 (F) a protection from stalking order issued pursuant to K.S.A. 60-
38 31a05 or 60-31a06, and amendments thereto.

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

42 (1) "Conviction" includes being convicted of a violation of K.S.A.
43 21-3412a, prior to its repeal, this section or entering into a diversion or

1 deferred judgment agreement in lieu of further criminal proceedings
 2 on a complaint alleging a violation of this section;

3 (2) "conviction" includes being convicted of a violation of a law of
 4 another state, or an ordinance of any city, or resolution of any county,
 5 which prohibits the acts that this section prohibits or entering into a
 6 diversion or deferred judgment agreement in lieu of further criminal
 7 proceedings in a case alleging a violation of such law, ordinance or
 8 resolution;

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

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

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

21 ~~Section 1. {Sec. 2.}~~ K.S.A. 2019 Supp. 21-5505 is hereby amended to
 22 read as follows: 21-5505. (a) Sexual battery is the touching of a victim
 23 ~~who is not the spouse of the offender,~~ who is 16 or more years of age and
 24 who does not consent thereto, with the intent to arouse or satisfy the sexual
 25 desires of the offender or another.

26 (b) Aggravated sexual battery is the touching of a victim who is 16 or
 27 more years of age and who does not consent thereto with the intent to
 28 arouse or satisfy the sexual desires of the offender or another and under
 29 any of the following circumstances:

30 (1) When the victim is overcome by force or fear;

31 (2) when the victim is unconscious or physically powerless; or

32 (3) when the victim is incapable of giving consent because of mental
 33 deficiency or disease, or when the victim is incapable of giving consent
 34 because of the effect of any alcoholic liquor, narcotic, drug or other
 35 substance, which condition was known by, or was reasonably apparent to,
 36 the offender.

37 (c) (1) Sexual battery is a class A person misdemeanor.

38 (2) Aggravated sexual battery is a severity level 5, person felony.

39 (d) Except as provided in subsection (b)(3), it shall not be a defense
 40 that the offender did not know or have reason to know that the victim did
 41 not consent to the battery, that the victim was overcome by force or fear, or
 42 that the victim was unconscious or physically powerless.

43 ~~Sec.—2. {3.}~~ K.S.A. 2019 Supp. ~~{21-5414 and}~~ 21-5505—~~is~~ **{are}**

1 hereby repealed.

2 Sec. ~~3~~. {4.} This act shall take effect and be in force from and after its

3 publication in the statute book.