

SENATE BILL No. 85

By Committee on Judiciary

2-4

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to domestic battery; sentencing; amending K.S.A. 2018 Supp. 21-5414
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 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 to a person with
9 whom the offender is involved or has been involved in a dating
10 relationship or a family or household member; or

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

15 (b) Aggravated domestic battery is:

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

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

25 (c) (1) Domestic battery is:

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

33 (B) except as provided in subsection (c)(1)(C), a class A person
34 misdemeanor, if, within five years immediately preceding commission of
35 the crime, an offender is convicted of domestic battery a second time and
36 the offender shall be sentenced to not less than 90 days nor more than one

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

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

34 (2) *The court may order that the term of imprisonment imposed*
35 *pursuant to subsection (c)(1)(B) or (c)(1)(C) be served in a staggered*
36 *manner as provided in this paragraph.*

37 (A) *The 90 days' imprisonment mandated by subsection (c)(1)(B) or*
38 *(c)(1)(C) may be divided into three 30-day segments. The first 30-day*
39 *segment may be served in a work release program only after such person*
40 *has served 48 consecutive hours' imprisonment, provided such work*
41 *release program requires such person to return to confinement at the end*
42 *of each day in the work release program. The person convicted, if placed*
43 *into a work release program, shall serve a minimum of 672 hours of*

1 confinement. Such 672 hours of confinement shall be a period of at least
2 48 consecutive hours of imprisonment followed by confinement hours at
3 the end of and continuing to the beginning of the offender's work day. The
4 court may place the person convicted under a house arrest program
5 pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto, to serve
6 the first 30-day segment only after such person has served 48 consecutive
7 hours' imprisonment. The person convicted, if placed under house arrest,
8 shall be monitored by an electronic monitoring device that verifies the
9 offender's location. The offender shall serve a minimum of 672 hours of
10 confinement within the boundaries of the offender's residence. Any
11 exceptions to remaining within the boundaries of the offender's residence
12 provided for in the house arrest agreement shall not be counted as part of
13 the 672 hours.

14 (B) The court shall set a review hearing for such offender 90 to 120
15 days after the initial sentencing, and again at 180 to 240 days after the
16 initial sentencing. At each such hearing, the court shall consider the
17 offender's compliance with prior court orders, together with any other
18 factors deemed relevant by the court, in deciding whether to modify the
19 sentence by ordering a stay of the next following segment of incarceration
20 that the court had initially ordered to be executed.

21 (C) If the court stays a segment of incarceration that it has previously
22 ordered to be executed, that portion of the sentence shall be added to the
23 total number of days the offender is subject to serving in custody, if the
24 person subsequently violates any of the conditions of that stay of
25 execution.

26 (D) The provisions of this paragraph shall not affect any other
27 sanction otherwise authorized by law for any violation of probation,
28 assignment to a community correctional services program, suspension of
29 sentence or nonprison sanction.

30 (3) Aggravated domestic battery is a severity level 7, person felony.

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

35 (e) As used in this section:

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

42 (2) "family or household member" means persons 18 years of age or
43 older who are spouses, former spouses, parents or stepparents and children

1 or stepchildren, and persons who are presently residing together or who
2 have resided together in the past, and persons who have a child in common
3 regardless of whether they have been married or who have lived together
4 at any time. "Family or household member" also includes a man and
5 woman if the woman is pregnant and the man is alleged to be the father,
6 regardless of whether they have been married or have lived together at any
7 time; and

8 (3) "protective order" means:

9 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,
10 60-3106 or 60-3107, and amendments thereto;

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

13 (C) a restraining order issued pursuant to K.S.A. 2018 Supp. 23-2707,
14 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
15 1607, prior to its transfer;

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

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

25 (F) a protection from stalking order issued pursuant to K.S.A. 60-
26 31a05 or 60-31a06, and amendments thereto.

27 (f) For the purpose of determining whether a conviction is a first,
28 second, third or subsequent conviction in sentencing under subsection (c)
29 (1):

30 (1) "Conviction" includes being convicted of a violation of K.S.A.
31 21-3412a, prior to its repeal, this section or entering into a diversion or
32 deferred judgment agreement in lieu of further criminal proceedings on a
33 complaint alleging a violation of this section;

34 (2) "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
37 diversion or deferred judgment agreement in lieu of further criminal
38 proceedings in a case alleging a violation of such law, ordinance or
39 resolution;

40 (3) only convictions occurring in the immediately preceding five
41 years including prior to July 1, 2001, shall be taken into account, but the
42 court may consider other prior convictions in determining the sentence to
43 be imposed within the limits provided for a first, second, third or

1 subsequent offender, whichever is applicable; and

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

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

8 Sec. 2. K.S.A. 2018 Supp. 21-5414 is hereby repealed.

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