

SENATE BILL No. 413

By Committee on Judiciary

1-27

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to domestic battery; authorizing staggered sentencing therefor;
3 amending K.S.A. 2021 Supp. 21-5414 and repealing the existing
4 section.

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

7 Section 1. K.S.A. 2021 Supp. 21-5414 is hereby amended to read as
8 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 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
36 the crime, an offender is convicted of domestic battery a second time and

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

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

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

38 (B) *The 90 days of imprisonment mandated by subsection (c)(1)(B) or*
39 *(c)(1)(C) may be divided into three 30-day segments.*

40 (i) *The first 30-day segment may be served in a work release program*
41 *only after such person has served 48 consecutive hours of imprisonment, if*
42 *such work release program requires such person to return to confinement*
43 *at the end of each day in the work release program. The person convicted,*

1 *if placed into a work release program, shall serve a minimum of 672 hours*
2 *of confinement. Such 672 hours of confinement shall be a period of at least*
3 *48 consecutive hours of imprisonment followed by confinement hours at*
4 *the end of and continuing to the beginning of the offender's work day.*

5 *(ii) The court may place the person convicted under a house arrest*
6 *program pursuant to K.S.A. 2021 Supp. 21-6609, and amendments thereto,*
7 *to serve the first 30-day segment only after such person has served 48*
8 *consecutive hours of imprisonment. If placed under house arrest, the*
9 *person convicted shall be monitored by an electronic monitoring device*
10 *that verifies the offender's location. The offender shall serve a minimum of*
11 *672 hours of confinement within the boundaries of the offender's*
12 *residence. Any exceptions to remaining within the boundaries of the*
13 *offender's residence provided for in the house arrest agreement shall not*
14 *be counted as part of the 672 hours.*

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

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

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

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

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

36 *(e) As used in this section:*

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

43 *(2) "family or household member" means persons 18 years of age or*

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

9 (3) "protective order" means:

10 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,
11 60-3106 or 60-3107, and amendments thereto;

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

14 (C) a restraining order issued pursuant to K.S.A. 2021 Supp. 23-2707,
15 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
16 1607, prior to its transfer;

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

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

26 (F) a protection from stalking order issued pursuant to K.S.A. 60-
27 31a05 or 60-31a06, and amendments thereto.

28 (f) For the purpose of determining whether a conviction is a first,
29 second, third or subsequent conviction in sentencing under subsection (c)
30 (1):

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

35 (2) "conviction" includes being convicted of a violation of a law of
36 another state, or an ordinance of any city, or resolution of any county,
37 which prohibits the acts that this section prohibits or entering into a
38 diversion or deferred judgment agreement in lieu of further criminal
39 proceedings in a case alleging a violation of such law, ordinance or
40 resolution;

41 (3) only convictions occurring in the immediately preceding five
42 years including prior to July 1, 2001, shall be taken into account, but the
43 court may consider other prior convictions in determining the sentence to

1 be imposed within the limits provided for a first, second, third or
2 subsequent offender, whichever is applicable; and

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

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

9 Sec. 2. K.S.A. 2021 Supp. 21-5414 is hereby repealed.

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