

HOUSE BILL No. 2712

By Committee on Judiciary

2-14

1 AN ACT concerning crimes and punishment; relating to domestic battery;
2 amending K.S.A. 2013 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. 2013 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.~~ *As a condition of any grant of*
19 *probation, suspension of sentence or parole or of any other release, the*
20 *offender shall be required to undergo a domestic violence offender*
21 *assessment conducted by a certified batterer intervention program and*
22 *follow all recommendations made by such program, unless otherwise*
23 *ordered by the court or the department of corrections;*

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

1 release, the offender shall be required to undergo a domestic violence
2 offender assessment conducted by a certified batterer intervention program
3 and follow all recommendations made by such program, unless otherwise
4 ordered by the court or *the* department of corrections; and

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

26 (c) *In determining the sentence to be imposed within the limits*
27 *provided for a first, second, third or subsequent offense under this section,*
28 *a court shall consider any current or prior protective order issued against*
29 *such person.*

30 (d) As used in this section:

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

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

41 (A) *A protection from abuse order issued pursuant to K.S.A. 60-3105,*
42 *60-3106 or 60-3107, and amendments thereto;*

43 (B) *a protective order issued by a court or tribunal of any state or*

1 *Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265, and*
2 *amendments thereto;*

3 *(C) a restraining order issued pursuant to K.S.A. 23-2707, 38-2243,*
4 *38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to*
5 *its transfer;*

6 *(D) an order issued in this or any other state as a condition of*
7 *pretrial release, diversion, probation, suspended sentence, postrelease*
8 *supervision or at any other time during the criminal case that orders the*
9 *person to refrain from having any direct or indirect contact with another*
10 *person;*

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

15 *(F) a protection from stalking order issued pursuant to K.S.A. 60-*
16 *31a05 or 60-31a06, and amendments thereto.*

17 ~~(2)~~ (3) for the purpose of determining whether a conviction is a first,
18 second, third or subsequent conviction in sentencing under this section:

19 (A) "Conviction" includes being convicted of a violation of K.S.A.
20 21-3412a, prior to its repeal, this section or entering into a diversion or
21 deferred judgment agreement in lieu of further criminal proceedings on a
22 complaint alleging a violation of this section;

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

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

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

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

40 Sec. 2. K.S.A. 2013 Supp. 21-5414 is hereby repealed.

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