

## HOUSE BILL No. 2518

By Committee on Corrections and Juvenile Justice

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to crimes against persons; domestic battery; prior convictions;  
3 amending K.S.A. 2019 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. 2019 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' imprisonment mandated by this paragraph may be served in  
4 a work release program only after such offender has served 48 consecutive  
5 hours' imprisonment, provided such work release program requires such  
6 offender to return to confinement at the end of each day in the work  
7 release program. The offender shall serve at least five consecutive days'  
8 imprisonment before the offender is granted probation, suspension or  
9 reduction of sentence or parole or is otherwise released. As a condition of  
10 any grant of probation, suspension of sentence or parole or of any other  
11 release, the offender shall be required to undergo a domestic violence  
12 offender assessment conducted by a certified batterer intervention program  
13 and follow all recommendations made by such program, unless otherwise  
14 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' imprisonment. As a  
22 condition of any grant of probation, suspension of sentence or parole or of  
23 any other release, the offender shall be required to undergo a domestic  
24 violence offender assessment conducted by a certified batterer intervention  
25 program and follow all recommendations made by such program, unless  
26 otherwise ordered by the court. If the offender does not undergo a  
27 domestic violence offender assessment conducted by a certified batterer  
28 intervention program and follow all recommendations made by such  
29 program, the offender shall serve not less than 180 days nor more than one  
30 year's imprisonment. The 90 days' imprisonment mandated by this  
31 paragraph may be served in a work release program only after such  
32 offender has served 48 consecutive hours imprisonment, provided such  
33 work release program requires such offender to return to confinement at  
34 the end of each day in the work release program.

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

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

40 (e) As used in this section:

41 (1) "Dating relationship" means a social relationship of a romantic  
42 nature. In addition to any other factors the court deems relevant, the trier  
43 of fact may consider the following when making a determination of

1 whether a relationship exists or existed: Nature of the relationship, length  
2 of time the relationship existed, frequency of interaction between the  
3 parties and time since the termination of the relationship, if applicable;

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

13 (3) "protective order" means:

14 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,  
15 60-3106 or 60-3107, and amendments thereto;

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

18 (C) a restraining order issued pursuant to K.S.A. 2019 Supp. 23-2707,  
19 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-  
20 1607, prior to its transfer;

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

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

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

32 (f) For the purpose of determining whether a conviction is a first,  
33 second, third or subsequent conviction in sentencing under subsection (c)  
34 (1):

35 (1) "Conviction" includes being convicted of a:

36 (A) Violation of K.S.A. 21-3412a, prior to its repeal, this section or  
37 entering into a diversion or deferred judgment agreement in lieu of further  
38 criminal proceedings on a complaint alleging a violation of this section;

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

1 resolution; and

2 (C) *criminal offense that includes the domestic violence designation*  
3 *pursuant to K.S.A. 2019 Supp. 22-4616, and amendments thereto.*

4 ~~(2)~~ only convictions occurring in the immediately preceding five  
5 years ~~including prior to July 1, 2001~~, shall be taken into account, but the  
6 court may consider other prior convictions in determining the sentence to  
7 be imposed within the limits provided for a first, second, third or  
8 subsequent offender, whichever is applicable; and

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

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

15 Sec. 2. K.S.A. 2019 Supp. 21-5414 is hereby repealed.

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