

**HOUSE BILL No. 2740**

By Committee on Corrections and Juvenile Justice

Requested by Representative Thompson

2-7

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to crimes against persons; increasing the criminal penalty for a third or  
3 subsequent conviction of domestic battery; creating a mandatory  
4 minimum sentence for aggravated domestic battery; amending K.S.A.  
5 21-5414 and repealing the existing section.  
6

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

8 Section 1. K.S.A. 21-5414 is hereby amended to read as follows: 21-  
9 5414. (a) Domestic battery is:

10 (1) Knowingly or recklessly causing bodily harm to a person with  
11 whom the offender is involved or has been involved in a dating  
12 relationship or a family or household member; or

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

17 (b) Aggravated domestic battery is:

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

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

27 (c) (1) Domestic battery is:

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

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

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

17 (C) a *severity level 7, person felony*, if, within five years immediately  
18 preceding commission of the crime, an offender is convicted of domestic  
19 battery a third or subsequent time; ~~and~~.

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

21 (3) *The following conditions shall apply to a sentence for a violation*  
22 *of subsection (c)(1)(C) and (c)(2):*

23 (A) *As a condition of any probation granted under subsection (c)(1)*  
24 *(C) or (c)(2), the offender shall be sentenced to not less than serve at least*  
25 *90 days nor more than one year's of imprisonment and fined not less than*  
26 *\$1,000 nor more than \$7,500.;*

27 (B) the offender convicted shall not be eligible for release on  
28 probation, suspension or reduction of sentence or parole until the offender  
29 has served ~~at least the mandatory sentence of 90 days' imprisonment. As a~~  
30 ~~condition of any grant of probation, suspension of sentence or parole or of~~  
31 ~~any other release, days; and~~

32 (C) the offender shall be required to undergo a domestic violence  
33 offender assessment conducted by a certified batterer intervention program  
34 and follow all recommendations made by such program, unless otherwise  
35 ordered by the court. If the offender does not undergo a domestic violence  
36 offender assessment conducted by a certified batterer intervention program  
37 and follow all recommendations made by such program, the offender shall  
38 serve not less than 180 days nor more than one ~~year's~~ *year of*  
39 ~~imprisonment. The 90 days' imprisonment mandated by this paragraph~~  
40 ~~may be served in a work release program only after such offender has~~  
41 ~~served 48 consecutive hours imprisonment, provided such work release~~  
42 ~~program requires such offender to return to confinement at the end of each~~  
43 ~~day in the work release program.~~

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

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

6       (e) As used in this section:

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

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

22       (3) "protective order" means:

23       (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,  
24 60-3106 or 60-3107, and amendments thereto;

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

27       (C) a restraining order issued pursuant to K.S.A. 2023 Supp. 23-2707,  
28 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-  
29 1607, prior to its transfer;

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

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

39       (F) a protection from stalking order issued pursuant to K.S.A. 60-  
40 31a05 or 60-31a06, and amendments thereto.

41       (f) For the purpose of determining whether a conviction is a first,  
42 second, third or subsequent conviction in sentencing under subsection (c)  
43 (1):

1 (1) "Conviction" includes being convicted of a violation of K.S.A.  
2 21-3412a, prior to its repeal, this section or entering into a diversion or  
3 deferred judgment agreement in lieu of further criminal proceedings on a  
4 complaint alleging a violation of this section;

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

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

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

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

22 Sec. 2. K.S.A. 21-5414 is hereby repealed.

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