

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 220

By Committee on Judiciary

2-8

12 AN ACT concerning the criminal code; relating to domestic battery;
13 amending K.S.A. ~~2004~~ **2005** Supp. 21-3412a and repealing the existing
14 section.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. ~~2004~~ **2005** Supp. 21-3412a is hereby amended to
18 read as follows: 21-3412a. (a) Domestic battery is:

19 (1) intentionally or recklessly causing bodily harm by a family or
20 household member against a family or household member; or

21 (2) intentionally causing physical contact with a family or household
22 member by a family or household member when done in a rude, insulting
23 or angry manner.

24 (b) (1) Upon a first conviction of a violation of domestic battery, a
25 person shall be guilty of a class B person misdemeanor and sentenced to
26 not less than 48 consecutive hours nor more than six months' imprison-
27 ment and fined not less than \$200, nor more than \$500 or in the court's
28 discretion the court may enter an order which requires the person enroll
29 in and successfully complete a domestic violence prevention program.

30 (2) If, within five years immediately preceding commission of the
31 crime, a person is convicted of a violation of domestic battery a second
32 time, such person shall be guilty of a class A person misdemeanor and
33 sentenced to not less than 90 days nor more than one year's imprisonment
34 and fined not less than \$500 nor more than \$1,000. The five days' im-
35 prisonment mandated by this subsection may be served in a work release
36 program only after such person has served 48 consecutive hours' impris-
37 onment, provided such work release program requires such person to
38 return to confinement at the end of each day in the work release program.
39 The person convicted must serve at least five consecutive days' impris-
40 onment before the person is granted probation, suspension or reduction
41 of sentence or parole or is otherwise released. As a condition of any grant
42 of probation, suspension of sentence or parole or of any other release,
43 the person shall be required to enter into and complete a treatment pro-

- 1 gram for domestic violence prevention.
- 2 (3) If, within five years immediately preceding commission of the
3 crime, a person is convicted of a violation of domestic battery a third or
4 subsequent time, such person shall be guilty of a person felony and sen-
5 tenced to not less than 90 days nor more than one year's imprisonment
6 and fined not less than \$1,000 nor more than \$2,500. The person con-
7 victed shall not be eligible for release on probation, suspension or reduc-
8 tion of sentence or parole until the person has served at least 90 days'
9 imprisonment. The court may also require as a condition of parole that
10 such person enter into and complete a treatment program for domestic
11 violence. The 90 days' imprisonment mandated by this subsection may
12 be served in a work release program only after such person has served
13 48 consecutive hours' imprisonment, provided such work release program
14 requires such person to return to confinement at the end of each day in
15 the work release program.
- 16 (c) As used in this section:
- 17 (1) Family or household member means persons 18 years of age or
18 older who are spouses, former spouses, parents or stepparents and chil-
19 dren or stepchildren, and persons who are presently residing together or
20 who have resided together in the past, and persons who have a child in
21 common regardless of whether they have been married or who have lived
22 together at any time. Family or household member also includes a man
23 and woman if the woman is pregnant and the man is alleged to be the
24 father, regardless of whether they have been married or have lived to-
25 gether at any time; and
- 26 (2) for the purpose of determining whether a conviction is a first,
27 second, third or subsequent conviction in sentencing under this section:
- 28 (A) "Conviction" includes being convicted of a violation of this sec-
29 tion or entering into a diversion or deferred judgment agreement in lieu
30 of further criminal proceedings on a complaint alleging a violation of this
31 section;
- 32 (B) "conviction" includes being convicted of a violation of a law of
33 another state, or an ordinance of any city, or resolution of any county,
34 which prohibits the acts that this section prohibits or entering into a di-
35 version or deferred judgment agreement in lieu of further criminal pro-
36 ceedings in a case alleging a violation of such law, ordinance or resolution;
- 37 (C) only convictions occurring in the immediately preceding five
38 years including prior to the effective date of this act shall be taken into
39 account, but the court may consider other prior convictions in determin-
40 ing the sentence to be imposed within the limits provided for a first,
41 second, third or subsequent offender, whichever is applicable; and
- 42 (D) it is irrelevant whether an offense occurred before or after con-
43 viction for a previous offense.

1 ~~(E) A person may enter into a diversion agreement in lieu of further~~
2 ~~criminal proceedings for a violation of this section, and amendments~~
3 ~~thereto, or an ordinance which prohibits the acts of this section, and~~
4 ~~amendments thereto, or a resolution which prohibits the acts of this sec-~~
5 ~~tion, and amendments thereto, only once during the person's lifetime.~~

6 **(E) A person may enter into a diversion agreement in lieu of**
7 **further criminal proceedings for a violation of this section or an**
8 **ordinance of any city or resolution of any county which prohibits**
9 **the acts that this section prohibits only twice during any three-year**
10 **period [once during the person's lifetime].**

11 Sec. 2. K.S.A. ~~2004~~ **2005** Supp. 21-3412a is hereby repealed.

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