

## HOUSE BILL No. 2192

By Committee on Corrections and Juvenile Justice

Requested by Representative Thompson

1-31

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to crimes against persons; limiting or prohibiting work release for  
3 ~~people an offender~~ convicted of a second or third offense of domestic  
4 battery; **requiring an offender convicted of a first offense to undergo**  
5 **a domestic violence offender assessment**; amending K.S.A. 21-5414  
6 and repealing the existing section.  
7

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

9 Section 1. K.S.A. 21-5414 is hereby amended to read as follows: 21-  
10 5414. (a) Domestic battery is:

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

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

18 (b) Aggravated domestic battery is:

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

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

28 (c) (1) Domestic battery is:

29 (A) Except as provided in subsection (c)(1)(B) or (c)(1)(C), a class B  
30 person misdemeanor and the offender shall be sentenced to not less than  
31 48 consecutive hours nor more than six months' imprisonment and fined  
32 not less than \$200, nor more than \$500 ~~or in the court's discretion the court~~  
33 ~~may enter an order which requires the offender to undergo a domestic~~

1 violence offender assessment conducted by a certified batterer intervention  
2 program and follow all recommendations made by such program. As a  
3 condition of any grant of probation, suspension of sentence or parole  
4 or of any other release, the offender shall be required to undergo a  
5 domestic violence offender assessment conducted by a certified  
6 batterer intervention program and follow all recommendations made  
7 by such program, unless otherwise ordered by the court;

8 (B) except as provided in subsection (c)(1)(C), a class A person  
9 misdemeanor, if, within five years immediately preceding commission of  
10 the crime, an offender is convicted of domestic battery a second time and  
11 the offender shall be sentenced to not less than 90 days nor more than one  
12 year's imprisonment and fined not less than \$500 nor more than \$1,000.  
13 The ~~five~~ 90 days' imprisonment mandated by this paragraph may be served  
14 in a work release program only after such offender has served ~~48-45~~  
15 ~~consecutive hours' {20} days'~~ imprisonment, ~~provided if~~ such work release  
16 program requires such offender to return to confinement at the end of each  
17 day in the work release program. The offender shall serve at least ~~five-45~~  
18 ~~consecutive {20} days'~~ imprisonment before the offender is granted  
19 probation, suspension or reduction of sentence or parole or is otherwise  
20 released. As a condition of any grant of probation, suspension of sentence  
21 or parole or of any other release, the offender shall be required to undergo  
22 a domestic violence offender assessment conducted by a certified batterer  
23 intervention program and follow all recommendations made by such  
24 program, unless otherwise ordered by the court; and

25 (C) a person felony, if, within five years immediately preceding  
26 commission of the crime, an offender is convicted of domestic battery a  
27 third or subsequent time, and the offender shall be sentenced to not less  
28 than 90 days nor more than one year's imprisonment and fined not less  
29 than \$1,000 nor more than \$7,500. The offender ~~convicted shall not be~~  
30 ~~eligible for release on probation, suspension or reduction of sentence or~~  
31 ~~parole until the offender has served at least 90 days' imprisonment shall~~  
32 ~~serve at least 90-consecutive days' imprisonment before the offender is~~  
33 ~~granted probation, suspension or reduction of sentence or parole or is~~  
34 ~~otherwise released.~~ As a condition of any grant of probation, suspension of  
35 sentence or parole or of any other release, the offender shall be required to  
36 undergo a domestic violence offender assessment conducted by a certified  
37 batterer intervention program and follow all recommendations made by  
38 such program, unless otherwise ordered by the court. If the offender does  
39 not undergo a domestic violence offender assessment conducted by a  
40 certified batterer intervention program and follow all recommendations  
41 made by such program, the offender shall serve not less than 180 days nor  
42 more than one year's imprisonment. ~~The 90 days' imprisonment mandated~~  
43 ~~by this paragraph may be served in a work release program only after such~~

~~1 offender has served 48 consecutive hours imprisonment, provided such~~  
~~2 work release program requires such offender to return to confinement at~~  
~~3 the end of each day in the work release program.~~

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

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

9 (e) As used in this section:

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

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

25 (3) "protective order" means:

26 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,  
27 60-3106 or 60-3107, and amendments thereto;

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

30 (C) a restraining order issued pursuant to K.S.A. 2024 Supp. 23-2707,  
31 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-  
32 1607, prior to its transfer;

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

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

42 (F) a protection from stalking order issued pursuant to K.S.A. 60-  
43 31a05 or 60-31a06, and amendments thereto.

1 (f) For the purpose of determining whether a conviction is a first,  
2 second, third or subsequent conviction in sentencing under subsection (c)  
3 (1):

4 (1) "Conviction" includes being convicted of a violation of K.S.A.  
5 21-3412a, prior to its repeal, this section or entering into a diversion or  
6 deferred judgment agreement in lieu of further criminal proceedings on a  
7 complaint alleging a violation of this section;

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

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

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

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

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

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