

SENATE BILL No. 215

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to acts of domestic battery; batterer intervention programs; endangering
3 a child; amending K.S.A. 2018 Supp. 21-5414 and 21-5601 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 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~~, and the
31 court ~~may~~ shall enter an order ~~which that~~ requires the offender to undergo
32 a domestic violence offender assessment conducted by a certified batterer
33 intervention program and follow all recommendations made by such
34 program;

35 (B) except as provided in subsection (c)(1)(C), a class A person
36 misdemeanor, if, within five years immediately preceding commission of

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

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

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

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

41 (e) As used in this section:

42 (1) "Dating relationship" means a social relationship of a romantic
43 nature. In addition to any other factors the court deems relevant, the trier

1 of fact may consider the following when making a determination of
2 whether a relationship exists or existed: Nature of the relationship, length
3 of time the relationship existed, frequency of interaction between the
4 parties and time since the termination of the relationship, if applicable;

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

14 (3) "protective order" means:

15 (A) A protection from abuse order issued pursuant to K.S.A. 60-3105,
16 60-3106 or 60-3107, and amendments thereto;

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

19 (C) a restraining order issued pursuant to K.S.A. 2018 Supp. 23-2707,
20 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-
21 1607, prior to its transfer;

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

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

31 (F) a protection from stalking order issued pursuant to K.S.A. 60-
32 31a05 or 60-31a06, and amendments thereto.

33 (f) For the purpose of determining whether a conviction is a first,
34 second, third or subsequent conviction in sentencing under subsection (c)
35 (1):

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

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

1 proceedings in a case alleging a violation of such law, ordinance or
2 resolution;

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

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

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

14 Sec. 2. K.S.A. 2018 Supp. 21-5601 is hereby amended to read as
15 follows: 21-5601. (a) (1) Endangering a child is knowingly and
16 unreasonably causing or permitting a child under the age of 18 years to be
17 placed in a situation in which the child's life, body or health may be
18 endangered; or

19 (2) *committing an act of domestic battery or aggravated domestic*
20 *battery, as defined in K.S.A. 2018 Supp. 21-5414, and amendments*
21 *thereto, where the person knows or reasonably should know that a child*
22 *under the age of 18 years of age is present.*

23 (b) Aggravated endangering a child is:

24 (1) Recklessly causing or permitting a child under the age of 18 years
25 to be placed in a situation in which the child's life, body or health is
26 endangered;

27 (2) causing or permitting such child to be in an environment where
28 the person knows or reasonably should know that any person is
29 distributing, possessing with intent to distribute, manufacturing or
30 attempting to manufacture any methamphetamine, or analog thereof, as
31 defined by ~~subsection (d)(3) or (f)(1) of~~ K.S.A. 65-4107(d)(3) or (f)(1),
32 and amendments thereto; or

33 (3) causing or permitting such child to be in an environment where
34 the person knows or reasonably should know that drug paraphernalia or
35 volatile, toxic or flammable chemicals are stored for the purpose of
36 manufacturing or attempting to manufacture any methamphetamine, or
37 analog thereof, as defined by ~~subsection (d)(3) or (f)(1) of~~ K.S.A. 65-
38 4107(d)(3) or (f)(1), and amendments thereto.

39 (c) (1) Endangering a child is a class A person misdemeanor.

40 (2) Aggravated endangering a child is a severity level 9, person
41 felony. The sentence for a violation of aggravated endangering a child
42 shall be served consecutively to any other term or terms of imprisonment
43 imposed. Such sentence shall not be considered a departure and shall not

1 be subject to appeal.

2 (d) Nothing in subsection (a) shall be construed to mean a child is
3 endangered for the sole reason the child's parent or guardian, in good faith,
4 selects and depends upon spiritual means alone through prayer, in
5 accordance with the tenets and practice of a recognized church or religious
6 denomination, for the treatment or cure of disease or remedial care of such
7 child.

8 (e) As used in this section:

9 (1) "Manufacture" means the same as in K.S.A. 2018 Supp. 21-5701,
10 and amendments thereto; and

11 (2) "drug paraphernalia" means the same as in K.S.A. 2018 Supp. 21-
12 5701, and amendments thereto.

13 Sec. 3. K.S.A. 2018 Supp. 21-5414 and 21-5601 are hereby repealed.

14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.