

HOUSE BILL No. 2881

By Committee on Judiciary

2-10

9 AN ACT concerning crimes and punishment; relating to domestic bat-
10 tery; amending K.S.A. 2005 Supp. 21-3412a, 21-4704 and 74-5602 and
11 repealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 21-3412a is hereby amended to read
15 as follows: 21-3412a. (a) Domestic battery is:

16 (1) Intentionally or recklessly causing bodily harm by a family or
17 household member against a family or household member; or

18 (2) intentionally causing physical contact with a family or household
19 member by a family or household member when done in a rude, insulting
20 or angry manner.

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

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

42 (3) If, within five years immediately preceding commission of the

1 crime, a person is convicted of a violation of domestic battery a third or
2 subsequent time, such person shall be guilty of a *severity level 10*, person
3 felony and sentenced to not less than 90 days nor more than one year's
4 imprisonment and fined not less than \$1,000 nor more than \$2,500. The
5 person convicted shall not be eligible for release on probation, suspension
6 or reduction of sentence or parole until the person has served at least 90
7 days' imprisonment. The court may also require as a condition of parole
8 that such person enter into and complete a treatment program for do-
9 mestic violence. The 90 days' imprisonment mandated by this subsection
10 may be served in a work release program only after such person has served
11 48 consecutive hours' imprisonment, provided such work release program
12 requires such person to return to confinement at the end of each day in
13 the work release program.

14 (c) As used in this section:

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

24 (2) for the purpose of determining whether a conviction is a first,
25 second, third or subsequent conviction in sentencing under this section:

26 (A) "Conviction" includes being convicted of a violation of this sec-
27 tion or entering into a diversion or deferred judgment agreement in lieu
28 of further criminal proceedings on a complaint alleging a violation of this
29 section;

30 (B) "conviction" includes being convicted of a violation of a law of
31 another state, or an ordinance of any city, or resolution of any county,
32 which prohibits the acts that this section prohibits or entering into a di-
33 version or deferred judgment agreement in lieu of further criminal pro-
34 ceedings in a case alleging a violation of such law, ordinance or resolution;

35 (C) only convictions occurring in the immediately preceding five
36 years including prior to the effective date of this act shall be taken into
37 account, but the court may consider other prior convictions in determin-
38 ing the sentence to be imposed within the limits provided for a first,
39 second, third or subsequent offender, whichever is applicable; and

40 (D) it is irrelevant whether an offense occurred before or after con-
41 viction for a previous offense.

42 Sec. 2. K.S.A. 2005 Supp. 21-4704 is hereby amended to read as
43 follows: 21-4704. (a) For purposes of sentencing, the following sentencing

- 1 guidelines grid for nondrug crimes shall be applied in felony cases for
- 2 crimes committed on or after July 1, 1993:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

SENTENCING RANGE - NONDRUG OFFENSES

Category ↓	A 3+ Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felony	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2+ Misdemeanors	I 1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 206 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	25 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 4

LEGEND
Presumptive Probation
30-60 Days
Presumptive Imprisonment

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:
- 37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and
- 40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or
- 43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 ~~and subsection (b)(3) of K.S.A. 21-3412a~~, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of the
36 felony provision of K.S.A. 8-1567, ~~subsection (b)(3) of K.S.A. 21-3412a~~
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

40 (j) (1) The sentence for any persistent sex offender whose current
41 convicted crime carries a presumptive term of imprisonment shall be
42 double the maximum duration of the presumptive imprisonment term.
43 The sentence for any persistent sex offender whose current conviction

1 carries a presumptive nonprison term shall be presumed imprisonment
2 and shall be double the maximum duration of the presumptive impris-
3 onment term.

4 (2) Except as otherwise provided in this subsection, as used in this
5 subsection, “persistent sex offender” means a person who: (A) (i) Has
6 been convicted in this state of a sexually violent crime, as defined in K.S.A.
7 22-3717 and amendments thereto; and (ii) at the time of the conviction
8 under paragraph (A) (i) has at least one conviction for a sexually violent
9 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
10 or comparable felony under the laws of another state, the federal gov-
11 ernment or a foreign government; or (B) (i) has been convicted of rape,
12 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
13 conviction under paragraph (B) (i) has at least one conviction for rape in
14 this state or comparable felony under the laws of another state, the federal
15 government or a foreign government.

16 (3) Except as provided in paragraph (2) (B), the provisions of this
17 subsection shall not apply to any person whose current convicted crime
18 is a severity level 1 or 2 felony.

19 (k) If it is shown at sentencing that the offender committed any felony
20 violation for the benefit of, at the direction of, or in association with any
21 criminal street gang, with the specific intent to promote, further or assist
22 in any criminal conduct by gang members, the offender’s sentence shall
23 be presumed imprisonment. Any decision made by the court regarding
24 the imposition of the optional nonprison sentence shall not be considered
25 a departure and shall not be subject to appeal. As used in this subsection,
26 “criminal street gang” means any organization, association or group of
27 three or more persons, whether formal or informal, having as one of its
28 primary activities the commission of one or more person felonies or felony
29 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
30 and amendments thereto, which has a common name or common iden-
31 tifying sign or symbol, whose members, individually or collectively engage
32 in or have engaged in the commission, attempted commission, conspiracy
33 to commit or solicitation of two or more person felonies or felony viola-
34 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
35 amendments thereto, or any substantially similar offense from another
36 jurisdiction.

37 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
38 and amendments thereto when such person being sentenced has a prior
39 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
40 3716 and amendments thereto shall be presumed imprisonment.

41 Sec. 3. K.S.A. 2005 Supp. 74-5602 is hereby amended to read as
42 follows: 74-5602. As used in the Kansas law enforcement training act:

43 (a) “Training center” means the law enforcement training center

1 within the division of continuing education of the university of Kansas,
2 created by K.S.A. 74-5603 and amendments thereto.

3 (b) "Commission" means the Kansas law enforcement training com-
4 mission, created by K.S.A. 74-5606 and amendments thereto.

5 (c) "Dean" means the dean of the division of continuing education
6 of the university of Kansas.

7 (d) "Director," as created in K.S.A. 74-5603 and amendments
8 thereto, means the director of police training at the law enforcement
9 training center.

10 (e) "Law enforcement" means the prevention or detection of crime
11 and the enforcement of the criminal or traffic laws of this state or of any
12 municipality thereof.

13 (f) "Police officer" or "law enforcement officer" means a full-time or
14 part-time salaried officer or employee of the state, a county or a city,
15 whose duties include the prevention or detection of crime and the en-
16 forcement of the criminal or traffic laws of this state or of any municipality
17 thereof. Such terms shall include, but not be limited to, the sheriff, un-
18 dersheriff and full-time or part-time salaried deputies in the sheriff's of-
19 fice in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858
20 and amendments thereto; conservation officers of the Kansas department
21 of wildlife and parks; university police officers, as defined in K.S.A. 22-
22 2401a, and amendments thereto; campus police officers, as defined in
23 K.S.A. 22-2401a, and amendments thereto; law enforcement agents of
24 the director of alcoholic beverage control; law enforcement agents of the
25 Kansas lottery; law enforcement agents of the Kansas racing commission;
26 deputies and assistants of the state fire marshal having law enforcement
27 authority; capitol area security guards, existing under the authority of
28 K.S.A. 75-4503 and amendments thereto. Such terms shall also include
29 railroad policemen appointed pursuant to K.S.A. 66-524 and amendments
30 thereto; and school security officers designated as school law enforcement
31 officers pursuant to K.S.A. 72-8222 and amendments thereto. Such terms
32 shall not include any elected official, other than a sheriff, serving in the
33 capacity of a law enforcement or police officer solely by virtue of such
34 official's elected position; any attorney-at-law having responsibility for law
35 enforcement and discharging such responsibility solely in the capacity of
36 an attorney; any employee of the commissioner of juvenile justice, the
37 secretary of corrections or the secretary of social and rehabilitation serv-
38 ices; any deputy conservation officer of the Kansas department of wildlife
39 and parks; or any employee of a city or county who is employed solely to
40 perform correctional duties related to jail inmates and the administration
41 and operation of a jail; or any full-time or part-time salaried officer or
42 employee whose duties include the issuance of a citation or notice to
43 appear provided such officer or employee is not vested by law with the

- 1 authority to make an arrest for violation of the laws of this state or any
2 municipality thereof, and is not authorized to carry firearms when dis-
3 charging the duties of such person's office or employment. Such term
4 shall include any officer appointed or elected on a provisional basis.
- 5 (g) "Full-time" means employment requiring at least 1,000 hours of
6 law enforcement related work per year.
- 7 (h) "Part-time" means employment on a regular schedule or em-
8 ployment which requires a minimum number of hours each payroll pe-
9 riod, but in any case requiring less than 1,000 hours of law enforcement
10 related work per year.
- 11 (i) "Misdemeanor crime of domestic violence" means a violation of
12 domestic battery as provided by *subsection (b)(1) or (b)(2) of K.S.A. 2005*
13 *Supp. 21-3412a* and amendments thereto, or any other misdemeanor un-
14 der federal, municipal or state law that has as an element the use or
15 attempted use of physical force, or the threatened use of a deadly weapon,
16 committed by a current or former spouse, parent, or guardian of the
17 victim, by a person with whom the victim shares a child in common, by
18 a person who is cohabiting with or has cohabited with the victim as a
19 spouse, parent or guardian, or by a person similarly situated to a spouse,
20 parent or guardian of the victim.
- 21 (j) "Auxiliary personnel" means members of organized nonsalaried
22 groups which operate as an adjunct to a police or sheriff's department,
23 including reserve officers, posses and search and rescue groups.
- 24 Sec. 4. K.S.A. 2005 Supp. 21-3412a, 21-4704 and 74-5602 are hereby
25 repealed.
- 26 Sec. 5. This act shall take effect and be in force from and after its
27 publication in the statute book.