

ORDINANCE NO. 509

AN ORDINANCE DEFINING THE OFFENSE OF BATTERY AND PRESCRIBING PENALTIES THEREFORE AND REPEALING SECTION 5 OF ORDINANCE NO. 394 NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HAVEN, KANSAS:

SECTION ONE. BATTERY--GENERALLY

- a. Battery is intentionally or recklessly causing bodily harm to another person; or
- b. Intentionally causing physical contact with another person when done in a rude, insulting or angry manner.
- c. Except as provided in subsection (d), battery is a Class B misdemeanor.

d. 1. Upon a first conviction of a violation of this section under circumstances which constitute a domestic battery, a person shall be guilty of a class B misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

2. If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a second time under circumstances which constitute a domestic battery, having at least one time before within such period been convicted for such crime or a violation of a comparable crime under the laws of any municipality, state, federal government or foreign government, such person shall be guilty of a class A misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

3. If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this crime a third or subsequent time under circumstances which constitute a domestic battery, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for domestic violence. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hour's imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

4. As used in this section:

- a. Domestic battery means a battery against a family or household member by a family or household member; and
- b. Family or household member means person 18 years of age or older who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

SECTION TWO. Original Section 5 of the Ordinance #394 passed the 6th day of March, 1978, is hereby repealed.

SECTION THREE. This ordinance shall be in effect from and after its publication once in the official City newspaper.

PASSED AND APPROVED this 7th day of October, 1996 for the City of Haven, Kansas.

/s/Lloyd H. Schmidt
Mayor

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ATTEST:

/s/Cheryl Savaiano
City Clerk