

HOUSE BILL No. 2362

By Committee on Judiciary

2-7

AN ACT concerning crimes and punishment; relating to cruelty to animals; increasing penalty; amending K.S.A. 2000 Supp. 21-4310 and 21-4704 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-4310 is hereby amended to read as follows: 21-4310. (a) Cruelty to animals is:

(1) Intentionally killing, ~~injuring~~, maiming, torturing, *burning* or mutilating *or causing serious physical injury to* any animal;

(2) abandoning or leaving any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal; ~~or~~

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; *or*

(5) *causing any physical injury other than serious physical injury to any animal.*

(b) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or

1 pound, a local or state health officer or a licensed veterinarian three busi-
2 ness days following the receipt of any such animal at such society, shelter
3 or pound;

4 (6) ~~with respect to farm animals~~, normal or accepted practices of
5 animal husbandry;

6 (7) the killing of any animal by any person at any time which may be
7 found outside of the owned or rented property of the owner or custodian
8 of such animal and which is found injuring or posing a threat to any
9 person, farm animal or property;

10 (8) an animal control officer trained by a licensed veterinarian in the
11 use of a tranquilizer gun, using such gun with the appropriate dosage for
12 the size of the animal, when such animal is vicious or could not be cap-
13 tured after reasonable attempts using other methods; or

14 (9) laying an equine down for medical or identification purposes.

15 (c) As used in this section, “equine” means a horse, pony, mule,
16 jenny, donkey or hinny.

17 (d) (1) (A) *Upon a first conviction of a violation of subsection (a)*
18 *(1), a person shall be guilty of a class B, nonperson misdemeanor, and*
19 *sentenced to not less than 48 consecutive hours nor more than six months’*
20 *imprisonment, and fined not less than \$100 nor more than \$500. The*
21 *person convicted must serve at least 48 consecutive hours’ imprisonment*
22 *either before or as a condition of any grant of probation or suspension,*
23 *reduction of sentence or parole.*

24 (B) *On a second conviction of a violation of subsection (a) (1), a per-*
25 *son shall be guilty of a class A, nonperson misdemeanor, and sentenced*
26 *to not less than 10 consecutive days nor more than one year’s imprison-*
27 *ment, and fined not less than \$500 nor more than \$1,000. The person*
28 *convicted must serve at least 10 consecutive days’ imprisonment either*
29 *before or as a condition of any grant of probation or suspension, reduction*
30 *of sentence or parole.*

31 (C) *On the third or a subsequent conviction of a violation of subsec-*
32 *tion (a) (1), a person shall be guilty of a nonperson felony, and sentenced*
33 *to not less than 90 days nor more than one year’s imprisonment, and fined*
34 *not less than \$1,000 nor more than \$2,500. The person convicted must*
35 *serve at least 90 days’ imprisonment either before or as a condition of any*
36 *grant of probation or suspension, reduction of sentence or parole.*

37 (D) *In addition to any sentence for a violation of subsection (a) (1),*
38 *the court shall enter an order which requires that the person enroll in*
39 *and successfully complete an anger management treatment program.*

40 (2) Cruelty to animals as described in subsections (a)(2), (a)(3), (a)(4)
41 and (a)(5) is a class A nonperson misdemeanor.

42 Sec. 2. K.S.A. 2000 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:
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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, aggravated as-
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated
7 battery against a law enforcement officer and amendments thereto which
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-
9 sumed imprisonment. The court may impose an optional nonprison sen-
10 tence upon making a finding on the record that the nonprison sanction
11 will serve community safety interests by promoting offender reformation.
12 Any decision made by the court regarding the imposition of the optional
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,
14 shall not be considered departure and shall not be subject to appeal.

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

22 (i) The sentence for the violation of the felony provision of K.S.A. 8-
23 1567, *subsection (d) (1) of K.S.A. 21-4310* and subsection (c)(3) of K.S.A.
24 21-3412 and amendments thereto shall be as provided by the specific
25 mandatory sentencing requirements of that section and shall not be sub-
26 ject to the provisions of this section or K.S.A. 21-4707 and amendments
27 thereto. Notwithstanding the provisions of any other section, the term of
28 imprisonment imposed for the violation of the felony provision of K.S.A.
29 8-1567, *subsection (d) (1) of K.S.A. 21-4310* and subsection (c)(3) of
30 K.S.A. 21-3412 and amendments thereto shall not be served in a state
31 facility in the custody of the secretary of corrections.

32 (j) The sentence for any persistent sex offender whose current con-
33 victed crime carries a presumptive term of imprisonment shall be double
34 the maximum duration of the presumptive imprisonment term. The sen-
35 tence for any persistent sex offender whose current conviction carries a
36 presumptive nonprison term shall be presumed imprisonment and shall
37 be double the maximum duration of the presumptive imprisonment term.
38 Except as otherwise provided in this subsection, as used in this subsection,
39 "persistent sex offender" means a person who: (1) Has been convicted in
40 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
41 amendments thereto; and (2) at the time of the conviction under subsec-
42 tion (1) has at least one conviction for a sexually violent crime, as defined
43 in K.S.A. 22-3717 and amendments thereto in this state or comparable

1 felony under the laws of another state, the federal government or a for-
2 eign government. The provisions of this subsection shall not apply to any
3 person whose current convicted crime is a severity level 1 or 2 felony.

4 (k) If it is shown at sentencing that the offender committed any felony
5 violation for the benefit of, at the direction of, or in association with any
6 criminal street gang, with the specific intent to promote, further or assist
7 in any criminal conduct by gang members, the offender's sentence shall
8 be presumed imprisonment. Any decision made by the court regarding
9 the imposition of the optional nonprison sentence shall not be considered
10 a departure and shall not be subject to appeal. As used in this subsection,
11 "criminal street gang" means any organization, association or group of
12 three or more persons, whether formal or informal, having as one of its
13 primary activities the commission of one or more person felonies or felony
14 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
15 and amendments thereto, which has a common name or common iden-
16 tifying sign or symbol, whose members, individually or collectively engage
17 in or have engaged in the commission, attempted commission, conspiracy
18 to commit or solicitation of two or more person felonies or felony viola-
19 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
20 amendments thereto, or any substantially similar offense from another
21 jurisdiction.

22 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
23 and amendments thereto when such person being sentenced has a prior
24 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
25 3716 and amendments thereto shall be presumed imprisonment.

26 Sec. 3. K.S.A. 2000 Supp. 21-4310 and 21-4704 are hereby repealed.

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

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