

CHAPTER 126

SENATE BILL No. 408
(Amended by Chapter 212)

AN ACT concerning animals; relating to cruelty to animals and harming or killing certain dogs; relating to licenses and permits under the Kansas pet animal act; amending K.S.A. 21-4317 and 47-1706 and K.S.A. 2005 Supp. 21-4310, 21-4318 and 21-4704 and repealing the existing sections.

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

Sec. 1. K.S.A. 2005 Supp. 21-4310 is hereby amended to read as follows: 21-4310. (a) Cruelty to animals is:

(1) Intentionally *and maliciously* killing, injuring, maiming, torturing, *burning* or mutilating any animal;

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

(3) having physical custody of any animal and *intentionally* 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) *intentionally causing any physical injury other than the acts described in subsection (a)(1).*

(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 pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) with respect to farm animals, normal or accepted practices of animal husbandry, *including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;*

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

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

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

(10) *normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or*

(11) *accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.*

(c) As used in this section:

(1) "Equine" means a horse, pony, mule, jenny, donkey or hinny.

(2) “Maliciously” means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

(d) (1) Cruelty to animals as described in subsection (a)(1) is a non-person felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year’s imprisonment and be fined not less than \$500 nor more than \$5,000. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(2) The first conviction of cruelty to animals as described in subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a class A nonperson misdemeanor. The second or subsequent conviction of cruelty to animals as described in subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a non-person felony. Upon such conviction, a person shall be sentenced to not less than five days or more than one year’s imprisonment.

(e) For purposes of this section, “animal” shall have the meaning ascribed to it in K.S.A. 21-4313, and amendments thereto.

Sec. 2. K.S.A. 21-4317 is hereby amended to read as follows: 21-4317. (a) Illegal ownership or keeping of ~~a dog~~ an animal is owning or keeping on one’s premises ~~a dog~~ an animal by a person convicted of unlawful conduct of dog fighting under K.S.A. 21-4315, and amendments thereto, or cruelty to animals as defined in subsection (a)(1) of K.S.A. 21-4310, and amendments thereto, within five years of the date of such conviction.

(b) Illegal ownership or keeping of ~~a dog~~ an animal is a class B non-person misdemeanor.

Sec. 3. K.S.A. 2005 Supp. 21-4318 is hereby amended to read as follows: 21-4318. (a) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is knowingly and intentionally, and without lawful cause or justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police dog, arson dog, assistance dog, game warden dog or search and rescue dog.

(b) As used in this section:

(1) “Arson dog” means any dog which is owned, or the service of which is employed, by the state fire marshal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires.

(2) “Assistance dog” has the meaning provided by K.S.A. 2005 Supp. 39-1113, and amendments thereto.

(3) “Fire department” means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

(4) “Game warden dog” means any dog which is owned, or the service of which is employed, by the department of wildlife and parks for the purpose of aiding in detection of criminal activity, enforcement of laws, apprehension of offenders or location of persons or wildlife.

(5) “Police dog” means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

(6) “Search and rescue dog” means any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

(c) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a ~~class A nonperson misdemeanor~~ nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year’s imprisonment and be fined not less than \$500 nor more than \$5,000. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 4. K.S.A. 2005 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

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

(g) The sentence for the violation of K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer or K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding

the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 ~~and~~, subsection (b)(3) of K.S.A. 21-3412a, ~~and~~ subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 *and* K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a ~~and~~, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 *and* K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections.

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

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

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

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

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

Sec. 5. K.S.A. 47-1706 is hereby amended to read as follows: 47-1706. (a) The commissioner may refuse to issue or renew or may suspend or revoke any license or permit required under K.S.A. 47-1701 *et seq.*, and amendments thereto, for any one or more of the following reasons:

(1) Material misstatement in the application for the original license

or permit, or in the application for any renewal of a license or permit;

(2) willful disregard of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, or any willful aiding or abetting of another in the violation of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder;

(3) permitting any license or permit issued hereunder to be used by an unlicensed or unpermitted person or transferred to unlicensed or unpermitted premises;

(4) the conviction of any crime relating to the theft of *animals* or a *first conviction of cruelty* to animals;

(5) substantial misrepresentation;

(6) misrepresentation or false promise, made through advertising, salespersons, agents or otherwise, in connection with the operation of business of the licensee or permittee;

(7) fraudulent bill of sale;

(8) the housing facility or the primary enclosure is inadequate; or

(9) the feeding, watering, sanitizing and housing practices at the licensee's or permittee's premises are not consistent with the Kansas pet animal act or the rules and regulations adopted hereunder.

(b) *The commissioner shall refuse to issue or renew and shall suspend or revoke any license or permit required under K.S.A. 47-1701 et seq., and amendments thereto, for the second or subsequent conviction of cruelty to animals, K.S.A. 21-4310, and amendments thereto.*

~~(b)~~ (c) Any refusal to issue or renew a license or permit, and any suspension or revocation of a license or permit, under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

~~(c)~~ (d) Whenever the commissioner denies, suspends or revokes a license or permit under this section, the commissioner or the commissioner's authorized, trained representatives shall seize and impound any animals in the possession, custody or care of the person whose license or permit is denied, suspended or revoked if there are reasonable grounds to believe that the animals' health, safety or welfare is endangered. Except as provided by K.S.A. 21-4311, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person's license or permit is denied, suspended or revoked. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person's license or permit is not denied, suspended or revoked, the commissioner shall pay the costs of care and services provided during seizure and impoundment.

Sec. 6. K.S.A. 21-4317 and 47-1706 and K.S.A. 2005 Supp. 21-4310, 21-4318 and 21-4704 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 2006.
