

As Amended by Senate Committee

Session of 2017

HOUSE BILL No. 2071

By Committee on Judiciary

1-18

1 AN ACT concerning crimesand, punishment *and criminal procedure*;
2 relating to domestic battery; *cruelty to animals; unlawful conduct of*
3 *dog fighting*; amending K.S.A. 2016 Supp. 21-5414, **21-6412 and 21-**
4 **6414** and repealing the existingsection sections.
5

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

7 Section 1. K.S.A. 2016 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 by a family or
10 household member against a family or household member; or

11 (2) knowingly causing physical contact with a family or household
12 member by a family or household member when done in a rude, insulting
13 or angry manner.

14 (b) Domestic battery is:

15 (1) Except as provided in subsection (b)(2) or (b)(3), a class B person
16 misdemeanor and the offender shall be sentenced to not less than 48
17 consecutive hours nor more than six months' imprisonment and fined not
18 less than \$200, nor more than \$500 or in the court's discretion the court
19 may enter an order which requires the offender to undergo a domestic
20 violence offender assessment conducted by a certified batterer intervention
21 program and follow all recommendations made by such program;

22 (2) except as provided in subsection (b)(3), a class A person
23 misdemeanor, if, within five years immediately preceding commission of
24 the crime, an offender is convicted of domestic battery a second time and
25 the offender shall be sentenced to not less than 90 days nor more than one
26 year's imprisonment and fined not less than \$500 nor more than \$1,000.

27 The five days imprisonment mandated by this paragraph may be served in
28 a work release program only after such offender has served 48 consecutive
29 hours imprisonment, provided such work release program requires such
30 offender to return to confinement at the end of each day in the work
31 release program. The offender shall serve at least five consecutive days
32 imprisonment before the offender is granted probation, suspension or
33 reduction of sentence or parole or is otherwise released. As a condition of
34 any grant of probation, suspension of sentence or parole or of any other
35 release, the offender shall be required to undergo a domestic violence
36 offender assessment conducted by a certified batterer intervention program

1 and follow all recommendations made by such program, unless otherwise
2 ordered by the court or department of corrections; and

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

23 (c) *In determining the sentence to be imposed within the limits*
24 *provided for a first, second, third or subsequent offense under this section,*
25 *a court shall consider information presented to the court relating to any*
26 *current or prior protective order issued against such person.*

27 (d) As used in this section:

28 (1) "Family or household member" means persons 18 years of age or
29 older who are spouses, former spouses, parents or stepparents and children
30 or stepchildren, and persons who are presently residing together or who
31 have resided together in the past, and persons who have a child in common
32 regardless of whether they have been married or who have lived together
33 at any time. "Family or household member" also includes a man and
34 woman if the woman is pregnant and the man is alleged to be the father,
35 regardless of whether they have been married or have lived together at any
36 time; and

37 (2) "protective order" means:

38 (A) *A protection from abuse order issued pursuant to K.S.A. 60-3105,*
39 *60-3106 or 60-3107, and amendments thereto;*

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

42 (C) *a restraining order issued pursuant to K.S.A. 23-2707, 38-2243,*
43 *38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to*

1 *its transfer;*

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

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

11 *(F) a protection from stalking order issued pursuant to K.S.A. 60-*
12 *31a05 or 60-31a06, and amendments thereto;*

13 *(3) for the purpose of determining whether a conviction is a first,*
14 *second, third or subsequent conviction in sentencing under this section:*

15 *(A) "Conviction" includes being convicted of a violation of K.S.A.*
16 *21-3412a, prior to its repeal, this section or entering into a diversion or*
17 *deferred judgment agreement in lieu of further criminal proceedings on a*
18 *complaint alleging a violation of this section;*

19 *(B) "conviction" includes being convicted of a violation of a law of*
20 *another state, or an ordinance of any city, or resolution of any county,*
21 *which prohibits the acts that this section prohibits or entering into a*
22 *diversion or deferred judgment agreement in lieu of further criminal*
23 *proceedings in a case alleging a violation of such law, ordinance or*
24 *resolution;*

25 *(C) only convictions occurring in the immediately preceding five*
26 *years including prior to July 1, 2001, shall be taken into account, but the*
27 *court may consider other prior convictions in determining the sentence to*
28 *be imposed within the limits provided for a first, second, third or*
29 *subsequent offender, whichever is applicable; and*

30 *(D) it is irrelevant whether an offense occurred before or after*
31 *conviction for a previous offense.*

32 *(d)(e) A person may enter into a diversion agreement in lieu of further*
33 *criminal proceedings for a violation of this section or an ordinance of any*
34 *city or resolution of any county which prohibits the acts that this section*
35 *prohibits only twice during any five-year period.*

36 ***Sec. 2. K.S.A. 2016 Supp. 21-6412 is hereby amended to read as***
37 ***follows: 21-6412. (a) Cruelty to animals is:***

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

40 *(2) knowingly abandoning any animal in any place without making*
41 *provisions for its proper care;*

42 *(3) having physical custody of any animal and knowingly failing to*
43 *provide such food, potable water, protection from the elements,*

1 opportunity for exercise and other care as is needed for the health or
2 well-being of such kind of animal;

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

6 (5) knowingly but not maliciously killing or injuring any animal; or

7 (6) knowingly and maliciously administering any poison to any
8 domestic animal.

9 (b) Cruelty to animals as defined in:

10 (1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon
11 conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to
12 not less than 30 days or more than one year's imprisonment and be fined
13 not less than \$500 nor more than \$5,000. The person convicted shall not
14 be eligible for release on probation, suspension or reduction of sentence
15 or parole until the person has served the minimum mandatory sentence
16 as provided herein. During the mandatory 30 days imprisonment, such
17 offender shall have a psychological evaluation prepared for the court to
18 assist the court in determining conditions of probation. Such conditions
19 shall include, but not be limited to, the completion of an anger
20 management program; and

21 (2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a:

22 (A) Class A nonperson misdemeanor, except as provided in
23 subsection (b)(2)(B); and

24 (B) nonperson felony upon the second or subsequent conviction of
25 cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).
26 Upon such conviction, a person shall be sentenced to not less than five
27 days or more than one year's imprisonment and be fined not less than
28 \$500 nor more than \$2,500. The person convicted shall not be eligible
29 for release on probation, suspension or reduction of sentence or parole
30 until the person has served the minimum mandatory sentence as
31 provided herein.

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

33 (1) Normal or accepted veterinary practices;

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

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

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

40 (5) the humane killing of an animal—which that is diseased or
41 disabled beyond recovery for any useful purpose, or the humane killing
42 of animals for population control, by the owner thereof or the agent of
43 such owner residing outside of a city or the owner thereof within a city if

1 no animal shelter, pound or licensed veterinarian is within the city, or by
2 a licensed veterinarian at the request of the owner thereof, or by any
3 officer or agent of an incorporated humane society, the operator of an
4 animal shelter or pound, a local or state health officer or a licensed
5 veterinarian three business days following the receipt of any such
6 animal at such society, shelter or pound;

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

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

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

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

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

23 (11) accepted practices of animal husbandry pursuant to
24 regulations promulgated by the United States department of agriculture
25 for domestic pet animals under the animal welfare act, public law 89-
26 544, as amended and in effect on July 1, 2006.

27 (d) The provisions of subsection (a)(6) shall not apply to any person
28 exposing poison upon their premises for the purpose of destroying
29 wolves, coyotes or other predatory animals.

30 (e) Any public health officer, law enforcement officer, licensed
31 veterinarian or officer or agent of any incorporated humane society,
32 animal shelter or other appropriate facility may take into custody any
33 animal, upon either private or public property, which that clearly shows
34 evidence of cruelty to animals. Such officer, agent or veterinarian may
35 inspect, care for or treat such animal or place such animal in the care of
36 a duly incorporated humane society, an animal shelter or licensed
37 veterinarian for treatment, boarding or other care or, if an officer of
38 such humane society, animal shelter or such veterinarian determines that
39 the animal appears to be diseased or disabled beyond recovery for any
40 useful purpose, for humane killing. If the animal is placed in the care of
41 an animal shelter, the animal shelter shall notify The owner or custodian,
42 if known or reasonably ascertainable, shall be notified in writing. If the
43 owner or custodian is charged with a violation of this section, the board

1 of county commissioners in the county where the animal was taken into
2 custody shall establish and approve procedures whereby **the law**
3 enforcement agency, district attorney's office, county prosecutor,
4 veterinarian or **animal shelter** may petition **the district court** to be
5 allowed in the county in which the animal was taken into custody to place
6 the animal for adoption or euthanize transfer ownership of **the animal** at
7 any time after 21 days after the owner or custodian is notified or, if the
8 owner or custodian is not known or reasonably ascertainable after 21
9 days after the animal is taken into custody, unless the owner or
10 custodian of the animal files a renewable cash or performance bond
11 with the county clerk of the county where the animal is being held, in an
12 amount equal to not less than the cost of care and treatment of the
13 animal for 30 days. Upon receiving such petition, the court shall
14 determine whether the animal may be placed for adoption or euthanized.
15 The board of county commissioners in the county where the animal was
16 taken into custody shall review the cost of care and treatment being
17 charged by the animal shelter maintaining the animal transferred.

18 (f) *The owner or custodian of an animal* placed for adoption or
19 killed transferred pursuant to subsection (e) shall not be entitled to
20 recover damages for the placement or killing transfer of such animal
21 unless the owner proves that such placement or killing transfer was
22 unwarranted.

23 (g) *Expenses incurred for the care, treatment or boarding of any*
24 *animal, taken into custody pursuant to subsection (e), pending*
25 *prosecution of the owner or custodian of such animal for the crime of*
26 *cruelty to animals, shall be assessed to the owner or custodian as a cost*
27 *of the case if the owner or custodian is adjudicated guilty of such crime.*

28 (h) *If a person is adjudicated guilty of the crime of cruelty to*
29 *animals, and the court having jurisdiction is satisfied that an animal*
30 *owned or possessed by such person would be in the future subjected to*
31 *such crime, such animal shall not be returned to or remain with such*
32 *person. Such animal may be turned over to a duly incorporated humane*
33 *society, an animal shelter or licensed veterinarian for sale or other*
34 *disposition.*

35 (i) *As used in this section:*

36 (1) "Animal shelter" means the same as such term is defined in K.S.A.
37 47-1701, and amendments thereto;

38 (2) "equine" means a horse, pony, mule, jenny, donkey or hinny;
39 and

40 (2)(3) "maliciously" means a state of mind characterized by actual
41 evil-mindedness or specific intent to do a harmful act without a
42 reasonable justification or excuse.

43 Sec. 3. K.S.A. 2016 Supp. 21-6414 is hereby amended to read as

1 follows: 21-6414. (a) *Unlawful conduct of dog fighting is:*

2 (1) *Causing, for amusement or gain, any dog to fight with or injure*
3 *another dog, with no requirement of culpable mental state;*

4 (2) *knowingly permitting such fighting or injuring on premises*
5 *under one's ownership, charge or control; or*

6 (3) *training, owning, keeping, transporting or selling any dog with*
7 *the intent of having it fight with or injure another dog.*

8 (b) *Unlawful possession of dog fighting paraphernalia is*
9 *possession, with the intent to use in the unlawful conduct of dog*
10 *fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat*
11 *walker, jenni, or other paraphernalia.*

12 (c) *Unlawful attendance of dog fighting is, entering or remaining*
13 *on the premises where the unlawful conduct of dog fighting is*
14 *occurring, whether the person knows or has reason to know that dog*
15 *fighting is occurring on the premises.*

16 (d) (1) *Unlawful conduct of dog fighting is a severity level 10,*
17 *nonperson felony.*

18 (2) *Unlawful possession of dog fighting paraphernalia is a class A*
19 *nonperson misdemeanor.*

20 (3) *Unlawful attendance of dog fighting is a class B nonperson*
21 *misdemeanor.*

22 (e) *When a person is arrested under this section, a law enforcement*
23 *agency may take into custody any dog on the premises where the dog*
24 *fight is alleged to have occurred and any dog owned or kept on the*
25 *premises of any person arrested for unlawful conduct of dog fighting,*
26 *unlawful attendance of dog fighting, or unlawful possession of dog*
27 *fighting paraphernalia.*

28 (f) *When a law enforcement agency takes custody of a dog under*
29 *this section, such agency may place the dog in the care of a duly*
30 ~~incorporated humane society~~ *an animal shelter or licensed veterinarian*
31 *for boarding, treatment or other care. If it appears to a licensed*
32 *veterinarian that the dog is diseased or disabled beyond recovery for any*
33 *useful purpose, such dog may be humanely killed. The dog may be*
34 *sedated, isolated or restrained if such officer, agent or veterinarian*
35 *determines it to be in the best interest of the dog, other animals at the*
36 *animal shelter or personnel of the animal shelter.* ~~If the dog is placed in~~
37 ~~the care of an animal shelter, the board of county commissioners in the~~
38 ~~county where the animal was taken into custody shall establish and~~
39 ~~approve procedures whereby~~ *The law enforcement agency, district*
40 *attorney's office, county prosecutor, veterinarian or animal shelter may*
41 *petition the district court in the county in which the animal was taken into*
42 *custody to be allowed to place the dog for adoption or euthanize transfer*
43 *ownership of the dog at any time after 21 days after the dog is taken into*

1 *custody, unless the owner or custodian of the dog files a renewable cash*
2 *or performance bond with the county clerk of the county where the dog*
3 *is being held, in an amount equal to not less than the cost of care and*
4 *treatment of the dog for 30 days. Upon receiving such petition, the court*
5 *shall determine whether the dog may be placed for adoption or*
6 *euthanized. The board of county commissioners in the county where the*
7 *animal was taken into custody shall review the cost of care and treatment*
8 *being charged by the animal shelter maintaining the animal transferred.*
9 *Except as provided in subsection (g), if it appears to the licensed*
10 *veterinarian by physical examination that the dog has not been trained*
11 *for aggressive conduct or is a type of dog that is not commonly bred or*
12 *trained for aggressive conduct, the district or county attorney shall order*
13 *that the dog be returned to its owner when the dog is not needed as*
14 *evidence in a case filed under this section or K.S.A. 2016 Supp. 21-6412,*
15 *and amendments thereto. The owner or keeper of a dog placed for*
16 *adoption or humanely killed transferred under this subsection shall not*
17 *be entitled to damages unless the owner or keeper proves that such*
18 *placement or killing transfer was unwarranted.*

19 *(g) If a person is convicted of unlawful conduct of dog fighting,*
20 *unlawful attendance of dog fighting or unlawful possession of dog*
21 *fighting paraphernalia, a dog taken into custody pursuant to subsection*
22 *(e) shall not be returned to such person and the court shall order the*
23 *owner or keeper to pay to the animal shelter all expenses incurred for*
24 *the care, treatment and boarding of such dog, including any damages*
25 *caused by such dog, prior to conviction of the owner or keeper.*
26 *Disposition of such dog shall be in accordance with K.S.A. 2016 Supp.*
27 *21-6412, and amendments thereto. If no such conviction results, the dog*
28 *shall be returned to the owner or keeper and the court shall order the*
29 *county where the dog was taken into custody to pay to the law*
30 *enforcement agency, veterinarian or animal shelter all expenses incurred*
31 *by the shelter for the care, treatment and boarding of such dog,*
32 *including any damages caused by such dog, prior to its return.*

33 *(h) A person who violates the provisions of this section may also be*
34 *prosecuted for, convicted of, and punished for cruelty to animals.*

35 *(i) As used in this section, "animal shelter" means the same as such*
36 *term is defined in K.S.A. 47-1701, and amendments thereto.*

37 Sec.2. 4. K.S.A. 2016 Supp. 21-5414is, 21-6412 and 21-6414 are
38 hereby repealed.

39 Sec.3. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.