

HOUSE BILL No. 2725

By Representatives O'Neal, Brunk, Gordon, Grange, Hill, Horst, Huebert, Huff, Hutchins, Huy, Kelsey, Landwehr, Loyd, Mast, F. Miller, Proehl, Roth and Vickrey

1-25

11 AN ACT concerning cruelty to animals; amending K.S.A. 2005 Supp. 21-
12 4310 and 21-4704 and repealing the existing sections.

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

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

17 (1) Intentionally killing, injuring, maiming, torturing, *burning* or mu-
18 tilating any animal;

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

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

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

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

29 (1) Normal or accepted veterinary practices;

30 (2) bona fide experiments carried on by commonly recognized re-
31 search facilities;

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

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

36 (5) the humane killing of an animal which is diseased or disabled
37 beyond recovery for any useful purpose, or the humane killing of animals
38 for population control, by the owner thereof or the agent of such owner
39 residing outside of a city or the owner thereof within a city if no animal
40 shelter, pound or licensed veterinarian is within the city, or by a licensed
41 veterinarian at the request of the owner thereof, or by any officer or agent
42 of an incorporated humane society, the operator of an animal shelter or
43 pound, a local or state health officer or a licensed veterinarian three busi-

1 ness days following the receipt of any such animal at such society, shelter
2 or pound;

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

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

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

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

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

16 (d) (1) *Cruelty to animals as described in subsection (a) (1) is a non-*
17 *person felony. Upon conviction of this paragraph, a person shall be sen-*
18 *tenced to not less than 30 days nor more than one year's imprisonment.*

19 (2) *Cruelty to animals as described in subsection (a) (2), (a) (3) or (a)*
20 *(4) is a class A nonperson misdemeanor.*

21 Sec. 2. K.S.A. 2005 Supp. 21-4704 is hereby amended to read as
22 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
23 guidelines grid for nondrug crimes shall be applied in felony cases for
24 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	655 620 592	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	216 205 194	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 23	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 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	7 6 5

LEGEND
Presumptive Probation
Boiler Box
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 deci-
13 sion 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 subsection (a) (1) of K.S.A. 21-4310*,
26 and amendments thereto, shall be as provided by the specific mandatory
27 sentencing requirements of that section and shall not be subject to the
28 provisions of this section or K.S.A. 21-4707 and amendments thereto. If
29 because of the offender's criminal history classification the offender is
30 subject to presumptive imprisonment or if the judge departs from a pre-
31 sumptive probation sentence and the offender is subject to imprisonment,
32 the provisions of this section and K.S.A. 21-4707, and amendments
33 thereto, shall apply and the offender shall not be subject to the mandatory
34 sentence as provided in K.S.A. 21-3710, and amendments thereto. Not-
35 withstanding the provisions of any other section, the term of impris-
36 onment imposed for the violation of the felony provision of K.S.A. 8-1567,
37 subsection (b)(3) of K.S.A. 21-3412a ~~and~~, subsections (b)(3) and (b)(4) of
38 K.S.A. 21-3710, *and subsection (a) (1) of K.S.A. 21-4310*, and amend-
39 ments thereto, shall not be served in a state facility in the custody of the
40 secretary of corrections.

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

1 The sentence for any persistent sex offender whose current conviction
2 carries a presumptive nonprison term shall be presumed imprisonment
3 and shall be double the maximum duration of the presumptive impris-
4 onment term.

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

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

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

38 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
39 and amendments thereto when such person being sentenced has a prior
40 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
41 3716 and amendments thereto shall be presumed imprisonment.

42 Sec. 3. K.S.A. 2005 Supp. 21-4310 and 21-4704 are hereby repealed.

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