

## **Domestic Battery; Drug Paraphernalia; Burglary; Cruelty to Animals; Dog Fighting; Law Enforcement Protection Act; Expungement; Illegal Sentences; Postrelease Supervision for Persons Convicted of Sexually Violent Crimes; Custodial Interrogations; SB 112**

**SB 112** amends law regarding crimes and criminal procedure. Specifically, it creates the crime of aggravated domestic battery and amends the crimes of domestic battery, possession of drug paraphernalia, burglary, cruelty to animals, and dog fighting. Further, it amends provisions concerning illegal sentences, postrelease supervision for persons convicted of sexually violent crimes, and expungement of arrest records. It also enacts the Law Enforcement Protection Act and provisions concerning the electronic recording of certain custodial interrogations.

### ***Domestic Battery***

Effective July 1, 2017, the bill creates the crime of aggravated domestic battery, a severity level 7 person felony, which is defined as:

- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner; or
- Knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner.

The bill also amends the existing crime of domestic battery by adding “a person with whom the offender is involved or has been involved in a dating relationship” as a possible victim of the offense. The bill adds a definition of “dating relationship” to this section based on a definition used in the Criminal Code and the Protection from Abuse Act.

The bill amends provisions related to sentencing for domestic battery, as follows. In determining the sentence to be imposed within the limits provided for a first, second, or subsequent offense, the bill requires a court to consider information presented to the court regarding a current or prior protective order issued against the offender. The bill defines “protective order” for these purposes. The bill also removes language allowing the Kansas Department of Corrections to order that certain offenders not be required to undergo domestic violence offender assessments.

### ***Sentencing for Possession of Drug Paraphernalia***

Effective July 1, 2017, the bill reduces the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

## ***Sentencing for Burglary***

The bill changes burglary of a dwelling with intent to commit a felony, theft, or sexually motivated crime therein to a severity level 7 person felony from a severity level 7 nonperson felony.

## ***Cruelty to Animals***

Effective July 1, 2017, the bill amends the humane killing exclusion from the crime of cruelty to animals to remove references to “pound,” “incorporated humane society,” and “the operator of” an animal shelter. In provisions allowing an animal to be taken into custody and cared for or treated, the bill either removes references to “incorporated humane society” or replaces such references with “animal shelter.” A requirement for notice to an owner or custodian is expanded from cases in which the animal is placed in the care of an animal shelter to all cases, and written notification is required.

The requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal is replaced with a provision allowing the law enforcement agency, district attorney’s office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill removes a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision prohibiting an animal from being returned to or allowed to remain with a person adjudicated guilty of this crime is amended to remove a requirement that the court first be satisfied an animal owned or possessed by the person will be subjected to such crime in the future. A reference to “duly incorporated humane society” in this provision is replaced with “animal shelter.” “Animal shelter” is defined to mean the same as in the Kansas Pet Animal Act.

## ***Dog Fighting***

Effective July 1, 2017, the bill amends a provision regarding the placement of a dog taken into custody to replace a reference to “duly incorporated humane society” with “animal shelter.” “Animal shelter” is defined to mean the same as in the Kansas Pet Animal Act.

The requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal is replaced with a provision allowing the law enforcement agency, district attorney’s office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill removes a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision requiring costs be paid by the county where the dog was taken into custody if no conviction results adds law enforcement agencies and veterinarians to the list of entities entitled to payment for expenses incurred for the care, treatment, and boarding of a dog.

### ***Expungement of Arrest Records***

Effective July 1, 2017, if a person has been arrested as a result of mistaken identity or as a result of another person using identifying information of the named person and the charge against the named person is dismissed or not prosecuted, the bill requires the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute to provide notice to the court of such action and petition the district court for the expungement of such arrest record. Further, the bill requires the court to order the arrest record and any subsequent court proceedings expunged and purged from all applicable state and federal systems.

The bill defines “mistaken identity” as the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of a person who committed the crime, misinformation provided to law enforcement as to the identity of a person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. The bill excludes from the definition of “mistaken identity” any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person’s identity.

The bill allows any person who may have relevant information about the petitioner to testify at the hearing on such petition and allows the court to inquire into the background of the petitioner. Such a petition must include the same information required in other petitions for expungement of arrest records.

When a court orders expungement of arrest records as described above, the bill requires the order to state the information required in the petition and the grounds for expungement. Additionally, the bill requires the order to direct the Kansas Bureau of Investigation (KBI) to purge the arrest information from the Criminal Justice Information System central repository and all applicable state and federal databases. The clerk of the court must send a certified copy of the order to the KBI, which will carry out the order and notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the bill provides the person eligible for mandatory expungement as described above is treated as not having been arrested.

### ***Illegal Sentences***

The right to a hearing regarding an illegal sentence is made inapplicable if the motion, files, and records of the case conclusively show the defendant is entitled to no relief. The bill also defines “illegal sentence” and specifies a sentence does not fall within that definition due to a change in the law occurring after the sentence is pronounced.

## ***Postrelease Supervision for Persons Convicted of Sexually Violent Crimes***

The bill clarifies that lifetime postrelease supervision is to be imposed on any offender sentenced to imprisonment for a sexually violent crime committed on or after July 1, 2006, if the offender was 18 years of age or older when the crime was committed. It further establishes a mandatory period of 60 months postrelease supervision, plus good time and program credit earned and retained, for any offender sentenced to imprisonment for a sexually violent crime committed on or after the bill's effective date if the offender was under 18 years of age when the crime was committed. Prior statute provided for lifetime postrelease supervision for any person convicted of a sexually violent crime committed on or after July 1, 2006, regardless of age.

The bill also clarifies that a separate provision regarding postrelease supervision for persons sentenced to a term of imprisonment for sexually violent crimes applies only to such crimes committed on or after July 1, 1993, but prior to July 1, 2006.

## ***Law Enforcement Protection Act***

Effective July 1, 2017, the bill enacts the Law Enforcement Protection Act, which enhances the sentencing of felony crimes committed against law enforcement officers in the performance of their duties, or due to their status as law enforcement officers. The bill creates a special sentencing rule with enhanced penalties if a trier of fact finds beyond a reasonable doubt that an offender committed a nondrug felony offense (or the offender committed an attempt or conspiracy to commit such offense) against a law enforcement officer while the officer was performing the officer's duty or solely due to the officer's status as a law enforcement officer. The special sentencing rule is applied, as follows:

- For felonies levels 2 through 10, sentencing is enhanced by 1 level;
- For level 1 felonies:
  - The minimum sentence is life in prison;
  - The offender is not eligible for a sentence modification or probation;
  - The offender cannot be released on parole before serving 25 years of the sentence;
  - The offender is not eligible for good time credit; and
  - No other sentence is permitted.

If an offender is subject to a minimum presumptive sentence due to criminal history, the minimum sentence of 25 years does not apply. Instead, the longer minimum sentence applies. The sentence imposed is not considered a departure from the sentencing grid and cannot be appealed. Further, the enhancements do not apply to crimes where the factual aspect concerning a law enforcement officer is a statutory element of the offense.

Finally, the bill defines "law enforcement officer" by reference to two of the three categories included in the definition provided for the term in the criminal code definitions section. This definition includes any person, who by virtue of such person's office or public employment,

is vested by law with the duty to maintain public order or to make arrests for crimes, and any university or campus police officer.

### ***Policies for the Electronic Recording of Custodial Interrogations***

Effective July 1, 2017, Kansas law enforcement agencies must adopt a detailed, written policy concerning the electronic recording of custodial interrogations conducted at a place of detention and to implement such policy on or before July 1, 2018. In developing such policy, local law enforcement agencies must collaborate with the county or district attorney in the appropriate jurisdiction regarding its contents. The policy must require electronic recording of the entirety of a custodial interrogation that concerns a homicide or felony sex offense, as well as the making and signing of a statement during the course of such interrogation. The policy also must include retention and storage requirements and a statement of exceptions in some circumstances, such as equipment malfunction or inadvertent failure to operate the recording equipment properly. The bill requires the policy to be available to all officers and for public inspection during normal business hours. During trial, the bill allows for officers to be questioned pursuant to the rules of evidence regarding any violation of such a policy. Every electronic recording of any statement is confidential and exempt from the Kansas Open Records Act.