

HOUSE BILL No. 2128

By Committee on Judiciary

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to intimate partners; creating definitions in the Kansas criminal code;
3 requiring law enforcement policies to apply to intimate partner
4 violence; certain considerations to be made when determining bond;
5 amending K.S.A. 22-2803 and K.S.A. 2022 Supp. 21-5111, 22-2307
6 and 22-2802 and repealing the existing sections.
7

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

9 Section 1. K.S.A. 2022 Supp. 21-5111 is hereby amended to read as
10 follows: 21-5111. The following definitions shall apply when the words
11 and phrases defined are used in this code, except when a particular context
12 clearly requires a different meaning.

13 (a) "Act" includes a failure or omission to take action.

14 (b) "Another" means a person or persons as defined in this code other
15 than the person whose act is claimed to be criminal.

16 (c) "Conduct" means an act or a series of acts and the accompanying
17 mental state.

18 (d) "Conviction" includes a judgment of guilt entered upon a plea of
19 guilty.

20 (e) "Deception" means knowingly creating or reinforcing a false
21 impression, including false impressions as to law, value, intention or other
22 state of mind. "Deception" as to a person's intention to perform a promise
23 shall not be inferred from the fact alone that such person did not
24 subsequently perform the promise. Falsity as to matters having no
25 pecuniary significance, or puffing by statements unlikely to deceive
26 reasonable persons, is not "deception".

27 (f) "Deprive permanently" means to:

28 (1) Take from the owner the possession, use or benefit of property,
29 without an intent to restore the same;

30 (2) retain property without intent to restore the same or with intent to
31 restore it to the owner only if the owner purchases or leases it back, or
32 pays a reward or other compensation for its return; or

33 (3) sell, give, pledge or otherwise dispose of any interest in property
34 or subject it to the claim of a person other than the owner.

35 (g) "Distribute" means the actual or constructive transfer from one
36 person to another of some item whether or not there is an agency

1 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
2 furnishing, buying for, delivering, giving, or any act that causes or is
3 intended to cause some item to be transferred from one person to another.
4 "Distribute" does not include acts of administering, dispensing or
5 prescribing a controlled substance as authorized by the pharmacy act of the
6 state of Kansas, the uniform controlled substances act, or otherwise
7 authorized by law.

8 (h) "DNA" means deoxyribonucleic acid.

9 (i) "Domestic violence" means an act or threatened act of violence
10 against a person with whom the offender is involved or has been involved
11 in a dating relationship, or an act or threatened act of violence against a
12 family or household member by a family or household member. "Domestic
13 violence"~~also~~ includes any other crime committed against a person or
14 against property, or any municipal ordinance violation against a person or
15 against property, when directed against a person with whom the offender is
16 involved or has been involved in a dating relationship or when directed
17 against a family or household member by a family or household member.
18 For the purposes of this ~~definition~~ subsection:

19 (1) "Dating relationship" means a social relationship of a romantic
20 nature. In addition to any other factors the court deems relevant, the trier
21 of fact may consider the following when making a determination of
22 whether a relationship exists or existed: Nature of the relationship, length
23 of time the relationship existed, frequency of interaction between the
24 parties and time since termination of the relationship, if applicable.

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

33 (j) "Domestic violence offense" means any crime committed whereby
34 the underlying factual basis includes an act of domestic violence.

35 (k) "Dwelling" means a building or portion thereof, a tent, a vehicle
36 or other enclosed space that is used or intended for use as a human
37 habitation, home or residence.

38 (l) "Expungement" means the sealing of records such that the records
39 are unavailable except to the petitioner and criminal justice agencies as
40 provided by K.S.A. 22-4701 et seq., and amendments thereto, and except
41 as provided in this act.

42 (m) "Firearm" means any weapon designed or having the capacity to
43 propel a projectile by force of an explosion or combustion.

1 (n) "Forcible felony" includes any treason, murder, voluntary
2 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated
3 battery, aggravated sodomy and any other felony that involves the use or
4 threat of physical force or violence against any person.

5 (o) "Intent to defraud" means an intention to deceive another person,
6 and to induce such other person, in reliance upon such deception, to
7 assume, create, transfer, alter or terminate a right, obligation or power with
8 reference to property.

9 (p) (1) *"Intimate partner" means:*

10 (A) *A spouse;*

11 (B) *a former spouse;*

12 (C) *persons who have a child in common, including during the*
13 *course of the pregnancy, regardless of whether they have been married or*
14 *have lived together at any time; or*

15 (D) *persons who are currently or have previously been involved in a*
16 *dating relationship.*

17 (2) *For the purposes of this subsection, "dating relationship" means*
18 *frequent, intimate associations primarily characterized by the expectation*
19 *of affectionate or sexual involvement. "Dating relationship" does not*
20 *include a casual relationship or an ordinary association between*
21 *individuals in a business or social context.*

22 (q) *"Intimate partner violence" means an act or threatened act of*
23 *violence against a person who is an intimate partner of the offender.*
24 *"Intimate partner violence" includes any other crime committed against a*
25 *person or against property, or any municipal ordinance violation against*
26 *a person or against property, when directed against a person who is an*
27 *intimate partner of the offender.*

28 (r) "Law enforcement officer" means:

29 (1) Any person who by virtue of such person's office or public
30 employment is vested by law with a duty to maintain public order or to
31 make arrests for crimes, whether that duty extends to all crimes or is
32 limited to specific crimes;

33 (2) any officer of the Kansas department of corrections or, for the
34 purposes of K.S.A. 2022 Supp. 21-5412 and 21-5413(d), and amendments
35 thereto, any employee of the Kansas department of corrections; or

36 (3) any university police officer or campus police officer, as defined
37 in K.S.A. 22-2401a, and amendments thereto.

38 (s) "Obtain" means to bring about a transfer of interest in or
39 possession of property, whether to the offender or to another.

40 (t) "Obtains or exerts control" over property includes, but is not
41 limited to, the taking, carrying away, sale, conveyance, transfer of title to,
42 interest in, or possession of property.

43 (u) "Owner" means a person who has any interest in property.

1 ~~(t)~~(v) "Person" means an individual, public or private corporation,
2 government, partnership; or unincorporated association.

3 ~~(u)~~(w) "Personal property" means goods, chattels, effects, evidences
4 of rights in action and all written instruments by which any pecuniary
5 obligation, or any right or title to property real or personal, shall be
6 created, acknowledged, assigned, transferred, increased, defeated,
7 discharged; or dismissed.

8 ~~(v)~~(x) "Possession" means knowingly having joint or exclusive
9 control over an item or knowingly keeping some item in a place where the
10 person has some measure of access and right of control.

11 ~~(w)~~(y) "Property" means anything of value, tangible or intangible,
12 real or personal.

13 ~~(x)~~(z) "Prosecution" means all legal proceedings by which a person's
14 liability for a crime is determined.

15 ~~(y)~~(aa) "Prosecutor" means the same as prosecuting attorney in
16 K.S.A. 22-2202, and amendments thereto.

17 ~~(z)~~(bb) "Public employee" is a person employed by or acting for the
18 state or by or for a county, municipality or other subdivision or
19 governmental instrumentality of the state for the purpose of exercising
20 their respective powers and performing their respective duties, and who is
21 not a public officer.

22 ~~(aa)~~(cc) "Public officer" includes the following, whether elected or
23 appointed:

24 (1) An executive or administrative officer of the state, or a county,
25 municipality or other subdivision or governmental instrumentality of or
26 within the state;

27 (2) a member of the legislature or of a governing board of a county,
28 municipality, or other subdivision of or within the state;

29 (3) a judicial officer, which shall include a judge of the district court,
30 juror, master or any other person appointed by a judge or court to hear or
31 determine a cause or controversy;

32 (4) a hearing officer, which shall include any person authorized by
33 law or private agreement, to hear or determine a cause or controversy and
34 who is not a judicial officer;

35 (5) a law enforcement officer; and

36 (6) any other person exercising the functions of a public officer under
37 color of right.

38 ~~(bb)~~(dd) "Real property" or "real estate" means every estate, interest,
39 and right in lands, tenements and hereditaments.

40 ~~(cc)~~(ee) "Solicit" or "solicitation" means to command, authorize,
41 urge, incite, request or advise another to commit a crime.

42 ~~(dd)~~(ff) "State" or "this state" means the state of Kansas and all land
43 and water in respect to which the state of Kansas has either exclusive or

1 concurrent jurisdiction, and the air space above such land and water.
2 "Other state" means any state or territory of the United States, the District
3 of Columbia and the Commonwealth of Puerto Rico.

4 ~~(ee)~~(gg) "Stolen property" means property over which control has
5 been obtained by theft.

6 ~~(ff)~~(hh) "Threat" means a communicated intent to inflict physical or
7 other harm on any person or on property.

8 ~~(gg)~~(ii) "Written instrument" means any paper, document or other
9 instrument containing written or printed matter or the equivalent thereof,
10 used for purposes of reciting, embodying, conveying or recording
11 information, and any money, token, stamp, seal, badge, trademark, or other
12 evidence or symbol of value, right, privilege or identification that is
13 capable of being used to the advantage or disadvantage of some person.

14 Sec. 2. K.S.A. 2022 Supp. 22-2307 is hereby amended to read as
15 follows: 22-2307. (a) All law enforcement agencies in this state shall adopt
16 written policies regarding ~~domestic~~ *intimate partner* violence calls as
17 provided in subsections (b) and (c). These policies shall be made available
18 to all officers of such agency.

19 (b) Such written policies shall include, but not be limited to, the
20 following:

21 (1) A statement directing that when a law enforcement officer
22 determines that there is probable cause to believe that a crime or offense
23 involving ~~domestic~~ *intimate partner* violence, as defined in K.S.A. 2022
24 Supp. 21-5111, and amendments thereto, has been committed, the officer
25 shall, without undue delay, arrest the person for which the officer has
26 probable cause to believe committed the crime or offense if such person's
27 actions were not an act of defense of a person or property as provided in
28 K.S.A. 2022 Supp. 21-5222, 21-5223, 21-5225, 21-5230 or 21-5231, and
29 amendments thereto;

30 (2) a statement that nothing shall be construed to require a law
31 enforcement officer to:

32 (A) Arrest either party involved in an alleged act of ~~domestic~~
33 *intimate partner* violence when the law enforcement officer determines
34 there is no probable cause to believe that a crime or offense has been
35 committed; or

36 (B) arrest both parties involved in an alleged act of ~~domestic~~ *intimate*
37 *partner* violence when both claim to have been victims of such ~~domestic~~
38 *intimate partner* violence;

39 (3) a statement directing that if a law enforcement officer receives
40 complaints of ~~domestic~~ *intimate partner* violence from two or more
41 opposing persons, the officer shall evaluate each complaint separately to
42 determine if there is probable cause that each accused person committed a
43 crime or offense and their actions were not an act of defense of a person or

- 1 property as provided in K.S.A. 2022 Supp. 21-5222, 21-5223, 21-5225,
2 21-5230 or 21-5231, and amendments thereto;
- 3 (4) a statement defining ~~domestic~~ *intimate partner* violence in
4 accordance with K.S.A. 2022 Supp. 21-5111, and amendments thereto;
- 5 (5) a statement describing the dispatchers' responsibilities;
- 6 (6) a statement describing the responding officers' responsibilities and
7 procedures to follow when responding to a ~~domestic~~ *an intimate partner*
8 violence call and the suspect is at the scene;
- 9 (7) a statement regarding procedures when the suspect has left the
10 scene of the crime;
- 11 (8) procedures for both misdemeanor and felony cases;
- 12 (9) procedures for law enforcement officers to follow when handling
13 ~~domestic~~ *intimate partner* violence calls involving court orders, including
14 protection from abuse orders, restraining orders and a protective order
15 issued by a court of any state or Indian tribe;
- 16 (10) a statement that the law enforcement agency shall provide the
17 following information to victims, in writing:
- 18 (A) Availability of emergency and medical telephone numbers, if
19 needed;
- 20 (B) the law enforcement agency's report number;
- 21 (C) the address and telephone number of the prosecutor's office the
22 victim should contact to obtain information about victims' rights pursuant
23 to K.S.A. 74-7333 and 74-7335, and amendments thereto;
- 24 (D) the name and address of the crime victims' compensation board
25 and information about possible compensation benefits;
- 26 (E) advise the victim that the details of the crime may be made
27 public;
- 28 (F) advise the victim of such victims' rights under K.S.A. 74-7333
29 and 74-7335, and amendments thereto; and
- 30 (G) advise the victim of known available resources which may assist
31 the victim; and
- 32 (11) whether an arrest is made or not, a standard offense report shall
33 be completed on all such incidents and sent to the Kansas bureau of
34 investigation.
- 35 (c) Such written policies shall provide that when an arrest is made for
36 a ~~domestic~~ *an intimate partner* violence offense as defined in K.S.A. 2022
37 Supp. 21-5111, and amendments thereto, including an arrest for violation
38 of a protection order as defined in K.S.A. 2022 Supp. 21-5924, and
39 amendments thereto, the officer shall provide the victim information
40 related to:
- 41 (A) The fact that in some cases the person arrested can be released
42 from custody in a short amount of time;
- 43 (B) the fact that in some cases a bond condition may be imposed on

1 the person arrested that prohibits contact with the victim for 72 hours, and
2 that if the person arrested contacts the victim during that time, the victim
3 should notify law enforcement immediately; and

4 (C) any available services within the jurisdiction to monitor custody
5 changes of the person being arrested, including, but not limited to, the
6 Kansas victim information and notification everyday service if available in
7 such jurisdiction.

8 (d) All law enforcement agencies shall provide training to law
9 enforcement officers about the policies adopted pursuant to this section.

10 Sec. 3. K.S.A. 2022 Supp. 22-2802 is hereby amended to read as
11 follows: 22-2802. ~~(a)~~(a) Any person charged with a crime shall, at the
12 person's first appearance before a magistrate, be ordered released pending
13 preliminary examination or trial upon the execution of an appearance bond
14 in an amount specified by the magistrate and sufficient to assure the
15 appearance of such person before the magistrate when ordered and to
16 assure the public safety. If the person is being bound over for a felony, the
17 bond shall also be conditioned on the person's appearance in the district
18 court or by way of a two-way electronic audio-video communication as
19 provided in subsection ~~(14)~~ (n) at the time required by the court to answer
20 the charge against such person and at any time thereafter that the court
21 requires. Unless the magistrate makes a specific finding otherwise, if the
22 person is being bonded out for a person felony or a person misdemeanor,
23 the bond shall be conditioned on the person being prohibited from having
24 any contact with the alleged victim of such offense for a period of at least
25 72 hours. The magistrate may impose such of the following additional
26 conditions of release as will reasonably assure the appearance of the
27 person for preliminary examination or trial:

28 ~~(a)~~(1) Place the person in the custody of a designated person or
29 organization agreeing to supervise such person;

30 ~~(b)~~(2) place restrictions on the travel, association or place of abode of
31 the person during the period of release;

32 ~~(c)~~(3) impose any other condition deemed reasonably necessary to
33 assure appearance as required, including a condition requiring that the
34 person return to custody during specified hours;

35 ~~(d)~~(4) place the person under a house arrest program pursuant to
36 K.S.A. 2022 Supp. 21-6609, and amendments thereto; or

37 ~~(e)~~(5) place the person under the supervision of a court services
38 officer responsible for monitoring the person's compliance with any
39 conditions of release ordered by the magistrate. The magistrate may order
40 the person to pay for any costs associated with the supervision provided by
41 the court services department in an amount not to exceed \$15 per week of
42 such supervision. The magistrate may also order the person to pay for all
43 other costs associated with the supervision and conditions for compliance

1 in addition to the \$15 per week.

2 ~~(2)(b)~~ In addition to any conditions of release provided in subsection
3 ~~(1)~~ ~~(a)~~, for any person charged with a felony, the magistrate may order
4 such person to submit to a drug and alcohol abuse examination and
5 evaluation in a public or private treatment facility or state institution and,
6 if determined by the head of such facility or institution that such person is
7 a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit
8 to treatment for such drug or alcohol abuse, as a condition of release.

9 ~~(3)(c)~~ The appearance bond shall be executed with sufficient solvent
10 sureties who are residents of the state of Kansas, unless the magistrate
11 determines, in the exercise of such magistrate's discretion, that requiring
12 sureties is not necessary to assure the appearance of the person at the time
13 ordered.

14 ~~(4)(d)~~ A deposit of cash in the amount of the bond may be made in
15 lieu of the execution of the bond pursuant to subsection ~~(3)~~ ~~(c)~~. Except as
16 provided in subsection ~~(5)~~ ~~(e)~~, such deposit shall be in the full amount of
17 the bond and in no event shall a deposit of cash in less than the full amount
18 of bond be permitted. Any person charged with a crime who is released on
19 a cash bond shall be entitled to a refund of all moneys paid for the cash
20 bond, after deduction of any outstanding restitution, costs, fines and fees,
21 after the final disposition of the criminal case if the person complies with
22 all requirements to appear in court. The court may not exclude the option
23 of posting bond pursuant to subsection ~~(3)~~ ~~(c)~~.

24 ~~(5)(e)~~ Except as provided further, the amount of the appearance bond
25 shall be the same whether executed as described in subsection ~~(3)~~ ~~(c)~~ or
26 posted with a deposit of cash as described in subsection ~~(4)~~ ~~(d)~~. When the
27 appearance bond has been set at \$2,500 or less and the most serious charge
28 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
29 felony, a drug severity level 4 felony committed prior to July 1, 2012, a
30 drug severity level 5 felony committed on or after July 1, 2012, or a
31 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
32 allow the person to deposit cash with the clerk in the amount of 10% of the
33 bond, provided the person meets at least the following qualifications:

34 ~~(A)~~ ~~(1)~~ Is a resident of the state of Kansas;

35 ~~(B)~~ ~~(2)~~ has a criminal history score category of G, H or I;

36 ~~(C)~~ ~~(3)~~ has no prior history of failure to appear for any court
37 appearances;

38 ~~(D)~~ ~~(4)~~ has no detainer or hold from any other jurisdiction;

39 ~~(E)~~ ~~(5)~~ has not been extradited from, and is not awaiting extradition
40 to, another state; and

41 ~~(F)~~ ~~(6)~~ has not been detained for an alleged violation of probation.

42 ~~(6)(f)~~ In the discretion of the court, a person charged with a crime
43 may be released upon the person's own recognizance by guaranteeing

1 payment of the amount of the bond for the person's failure to comply with
2 all requirements to appear in court. The release of a person charged with a
3 crime upon the person's own recognizance shall not require the deposit of
4 any cash by the person.

5 ~~(7)~~(g) The court shall not impose any administrative fee.

6 ~~(8)~~(h) In determining which conditions of release will reasonably
7 assure appearance and the public safety, the magistrate shall, on the basis
8 of available information, take into account the nature and circumstances of
9 the crime charged; the weight of the evidence against the defendant;
10 whether the defendant is lawfully present in the United States; the
11 defendant's family ties, employment, financial resources, character, mental
12 condition, length of residence in the community, record of convictions,
13 record of appearance or failure to appear at court proceedings or of flight
14 to avoid prosecution; the likelihood or propensity of the defendant to
15 commit crimes while on release, including whether the defendant will be
16 likely to threaten, harass or cause injury to the victim of the crime or any
17 witnesses thereto; and whether the defendant is on probation or parole
18 from a previous offense at the time of the alleged commission of the
19 subsequent offense.

20 ~~(9)~~(i) The appearance bond shall set forth all of the conditions of
21 release.

22 ~~(10)~~(j) A person for whom conditions of release are imposed and who
23 continues to be detained as a result of the person's inability to meet the
24 conditions of release shall be entitled, upon application, to have the
25 conditions reviewed without unnecessary delay by the magistrate who
26 imposed them. If the magistrate who imposed conditions of release is not
27 available, any other magistrate in the county may review such conditions.

28 ~~(11)~~(k) A magistrate ordering the release of a person on any
29 conditions specified in this section may at any time amend the order to
30 impose additional or different conditions of release. If the imposition of
31 additional or different conditions results in the detention of the person, the
32 provisions of subsection ~~(10)~~ (j) shall apply.

33 ~~(12)~~(l) Statements or information offered in determining the
34 conditions of release need not conform to the rules of evidence. No
35 statement or admission of the defendant made at such a proceeding shall
36 be received as evidence in any subsequent proceeding against the
37 defendant.

38 ~~(13)~~(m) The appearance bond and any security required as a condition
39 of the defendant's release shall be deposited in the office of the magistrate
40 or the clerk of the court where the release is ordered. If the defendant is
41 bound to appear before a magistrate or court other than the one ordering
42 the release, the order of release, together with the bond and security shall
43 be transmitted to the magistrate or clerk of the court before whom the

1 defendant is bound to appear.

2 ~~(14)~~(n) Proceedings before a magistrate as provided in this section to
3 determine the release conditions of a person charged with a crime
4 including release upon execution of an appearance bond may be conducted
5 by two-way electronic audio-video communication between the defendant
6 and the judge in lieu of personal presence of the defendant or defendant's
7 counsel in the courtroom in the discretion of the court. The defendant may
8 be accompanied by the defendant's counsel. The defendant shall be
9 informed of the defendant's right to be personally present in the courtroom
10 during such proceeding if the defendant so requests. Exercising the right to
11 be present shall in no way prejudice the defendant.

12 ~~(15)~~(o) The magistrate may order the person to pay for any costs
13 associated with the supervision of the conditions of release of the
14 appearance bond in an amount not to exceed \$15 per week of such
15 supervision. As a condition of sentencing under K.S.A. 2022 Supp. 21-
16 6604, and amendments thereto, the court may impose the full amount of
17 any such costs in addition to the \$15 per week, including, but not limited to
18 to, costs for treatment and evaluation under subsection~~(2)~~ (b).

19 (p) *If a defendant is charged with a crime and the alleged victim of*
20 *such crime is a person who is an intimate partner of the offender as*
21 *defined in K.S.A. 2022 Supp. 21-5111, and amendments thereto, when*
22 *setting the amount of an appearance bond and conditions of release, the*
23 *magistrate shall consider:*

24 (1) *The safety of the alleged victim, the alleged victim's children and*
25 *any other person who may be in danger if the defendant is released;*

26 (2) *information related to prior arrests for intimate partner violence*
27 *and other offenses, including arrests involving any victim; and*

28 (3) *any current or prior protective order as defined in K.S.A. 2022*
29 *Supp. 21-5414, and amendments thereto, that has been issued against the*
30 *defendant.*

31 Sec. 4. K.S.A. 22-2803 is hereby amended to read as follows: 22-
32 2803. A person who remains in custody after review of such person's
33 application pursuant to ~~subsection (9) or (10) of~~ K.S.A. 22-2802 (i) or (j),
34 and amendments thereto, by a district magistrate judge may apply to a
35 district judge of the judicial district in which the charge is pending to
36 modify the order fixing conditions of release. Such motion shall be
37 determined promptly.

38 Sec. 5. K.S.A. 22-2803 and K.S.A. 2022 Supp. 21-5111, 22-2307 and
39 22-2802 are hereby repealed.

40 Sec. 6. This act shall take effect and be in force from and after its
41 publication in the statute book.