

# **KANSAS ANIMAL CRUELTY LAWS**

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### **Introduction**

The primary provisions pertaining to animal cruelty are consolidated within a single statute, § 21-6412. Most additional animal cruelty codes in Kansas are contained in § 21, Crimes Against Public Morals. Statutes related specifically to the humane slaughter of livestock animals are contained in their own chapter, under § 47. A bestiality provision relating specifically to sodomy is also contained within § 21.

The summary below provides a comprehensive list of all Kansas statutes relating to animal cruelty, as well as the language contained within the statutes. Case law is provided for specific crimes where relevant and available.

### **Overview of Statutory Provisions**

- 1. Cruelty and Neglect: K.S.A. § 21-6412 (2010)**
- 2. Sale of Animals: K.S.A. § 21-6413 (2010)**
- 3. Animal Fighting: K.S.A. §§ 21-6414; 21-6415; 21-6417 (2010)**
- 4. Service Dogs: K.S.A. § 21-6416 (2010)**
- 5. Livestock Animals: K.S.A. §§ 47-1401; 47-1403; 47-1404; 47-1405 (2006)**
- 6. Bestiality: K.S.A. § 21-5504 (2010)**

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<sup>1</sup> Josh Loigman produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Josh will graduate from GWU Law School in 2015.

## 1. CRUELTY AND NEGLECT PROVISIONS

### **K.S.A. § 21-6412. Cruelty to animals.**

a) Cruelty to animals is:

- (1) Knowingly and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;
- (2) knowingly abandoning any animal in any place without making provisions for its proper care;
- (3) having physical custody of any animal and knowingly 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;
- (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;
- (5) knowingly but not maliciously killing or injuring any animal; or
- (6) knowingly and maliciously administering any poison to any domestic animal.

(b) Cruelty to animals as defined in:

(1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction of subsection (a)(1) or (a)(6), 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. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. 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; and

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

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

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

(c) 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, and amendments thereto;
- (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;

(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.

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

(e) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of this section, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after 21 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 21 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.

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

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

(h) If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.<sup>2</sup>

### **Applicable Case Law:**

#### **State v. Jones, 229 Kan. 528 (Kan. 1981).**

**Facts:** Appellee lived in rural Kansas and was having issues with dogs coming onto his property, resulting in destruction to his livestock and property. After seeing three dogs that had destroyed Easter baskets he bought with his children, respondent shot one of the dogs. Respondent was not in fear of personal injury to either himself or others. No other risks existed at the time of the shooting and the owner of the dog did not consent to the killing of his dog. Respondent was acquitted at the trial level and State appealed.

**Holding:** Appeal sustained. Defendant's killing of the dog was malicious killing and was not exempted by the statute.

#### **State v. Fisher, 142 Kan. 627 (Kan. 1935)**

**Facts:** Defendant was convicted of killing another person's dog and appealed, on the basis that he was covered under the exemption for a domesticated animal bothering farm animals.

**Holding:** Killing a dog is not free from malice if deemed necessary to protect farm animals in instances where dog is not found "worrying or injuring sheep."

#### **State ex rel. Miller v. Claiborne, 211 Kan. 264 (Kan. 1973)**

**Facts:** Attorney General declared that cockfighting was illegal and appellant disagreed.

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<sup>2</sup> (i) As used in this section:

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

(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.

**Holding:** Legislative intent did not indicate gamecocks were “animals” within the statute; statute does not apply to or prohibit the conducting of cockfights.<sup>3</sup>

## 2. SALE OF ANIMALS

### **K.S.A. § 21-6413. Unlawful Disposition of Animals.**

- (a) Unlawful disposition of animals is knowingly raffling or giving as a prize or premium living rabbits or chickens, ducklings or goslings.
- (b) Unlawful disposition of animals is a class C misdemeanor.
- (c) The provisions of this section shall not apply to a person giving such animals to minors for use in agricultural projects under the supervision of commonly recognized youth farm organizations.

### **No applicable case law.**

## 3. ANIMAL FIGHTING

### **K.S.A. § 21-6414. Unlawful Conduct of Dog Fighting; Unlawful Attendance of Dog Fighting; Unlawful Possession of Dog Fighting Paraphernalia.**

- (a) Unlawful conduct of dog fighting is:
  - (1) Causing, for amusement or gain, any dog to fight with or injure another dog, with no requirement of culpable mental state;
  - (2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or
  - (3) training, owning, keeping, transporting or selling any dog with the intent of having it fight with or injure another dog.
- (b) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia.
- (c) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.
- (d)
  - (1) Unlawful conduct of dog fighting is a severity level 10, nonperson felony.
  - (2) Unlawful possession of dog fighting paraphernalia is a class A nonperson misdemeanor.
  - (3) Unlawful attendance of dog fighting is a class B nonperson misdemeanor.

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<sup>3</sup> Note: see K.S.A. § 21-6417, discussed *infra*, ANIMAL FIGHTING.

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

(f) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after 21 days after the dog is taken into custody, unless the owner or custodian of the dog files a renewable cash or performance bond with the county clerk of the county where the dog is being held, in an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon receiving such petition, the court shall determine whether the dog may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal. Except as provided in subsection (g), if it appears to the licensed veterinarian by physical examination that the dog has not been trained for aggressive conduct or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or county attorney shall order that the dog be returned to its owner when the dog is not needed as evidence in a case filed under this section or K.S.A. 21-6412, and amendments thereto. The owner or keeper of a dog placed for adoption or humanely killed under this subsection shall not be entitled to damages unless the owner or keeper proves that such placement or killing was unwarranted.

(g) If a person is convicted of unlawful conduct of dog fighting, unlawful attendance of dog fighting or unlawful possession of dog fighting paraphernalia, a dog taken into custody pursuant to subsection (e) shall not be returned to such person and the court shall order the owner or keeper to pay to the animal shelter all expenses incurred for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such dog shall be in accordance with K.S.A. 21-6412, and amendments thereto. If no such conviction results, the dog shall be returned to the owner or keeper and the court shall order the county where the dog was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment and boarding of such dog, including any damages caused by such dog, prior to its return.

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

**No applicable case law.**

**K.S.A. §21-6415. Illegal Ownership or Keeping of an Animal.**

- (a) Illegal ownership or keeping of an animal is, with no requirement of a culpable mental state, owning, or keeping on one's premises, an animal by a person convicted of unlawful conduct of dog fighting as defined in K.S.A. 21-6414, and amendments thereto, or cruelty to animals as defined in subsection (a)(1) of K.S.A. 21-6412, and amendments thereto, within five years of the date of such conviction.
- (b) Illegal ownership or keeping of an animal is a class B nonperson misdemeanor.

**No applicable case law.**

**K.S.A. § 21-6417. Unlawful Conduct of Cockfighting; Unlawful Attendance of Cockfighting; Unlawful Possession of Cockfighting Paraphernalia**

- (a) Unlawful conduct of cockfighting is:
  - (1) Causing, for amusement or gain, any gamecock to fight with or injure or kill another gamecock, with no requirement of culpable mental state;
  - (2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or
  - (3) training, grooming, preparing or medicating any gamecock with the intent of having it fight with or injure or kill another gamecock.
- (b) Unlawful possession of cockfighting paraphernalia is possession of, with the intent to use in the unlawful conduct of cockfighting, spurs, gaffs, swords, leather training spur covers or anything worn by a gamecock during a fight to further the killing power of such gamecock.
- (c) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring, whether or not the person knows or has reason to know that cockfighting is occurring on the premises.
- (d)(1) Unlawful conduct of cockfighting is a level 10, nonperson felony.
- (2) Unlawful possession of cockfighting paraphernalia is a class A nonperson misdemeanor.
- (3) Unlawful attendance of cockfighting is a class B nonperson misdemeanor.
- (e) As used in this section, “gamecock” means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.
- (f) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

**4. SERVICE DOGS**

**K.S.A. § 21-6416. Harming or Killing of Certain Dogs.**

- (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 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) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a 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. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. 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.<sup>4</sup>

**No applicable case law.**

## 5. LIVESTOCK ANIMALS

### **K.S.A. § 47-1401. Humane Methods; State Policy.**

It is declared to be the policy of this state to require that the slaughter of all livestock and the handling of livestock, in connection with slaughter, shall be carried out only by humane methods.<sup>5</sup>

**No applicable case law.**

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<sup>4</sup> (c) 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. 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 Kansas department of wildlife, parks and tourism 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; and
- (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.

<sup>5</sup> Per K.S.A. § 47-1402, (f) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) a method in accordance with ritual requirements of the Jewish faith or any other religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.



**K.S.A. § 47-1403. Same; Unlawful Acts.**

No slaughterer, packer, or stockyard operator shall: (a) Shackle, hoist, or otherwise bring livestock into position for slaughter, by any method which shall cause injury or pain; or (b) bleed or slaughter any livestock except by a humane method. The handling or other preparation of livestock for ritual slaughter shall be exempt from the provisions of this act.

**No applicable case law.**

**K.S.A. § 47-1404. Same; Certain Method of Slaughter Declared Inhumane.**

The use of a manually operated hammer, sledge, or poleax is declared to be an inhumane method of slaughter within the meaning of this act.

**No applicable case law.**

**K.S.A. § 47-1405. Same; Penalties for Violations of Act.**

Any person who violates any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law.

**No applicable case law.**

**6. BESTIALITY**

**K.S.A. § Criminal Sodomy; Aggravated Criminal Sodomy.**

(a) Criminal sodomy is:

(4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) Aggravated criminal sodomy is:

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or

(3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.<sup>6</sup>

**Applicable Case Law:**

**State v. Coman, 294 Kan. 84 (Kan. 2012)**

**Facts:** Defendant pled guilty to criminal sodomy and was required to register as a sex offender. Defendant appealed on the grounds that his crime was a misdemeanor.

**Holding:** Defendant did not have to register as a sex offender because the legislature did not intend his sex crime to be covered under the catch-all provisions requiring registering as a sex offender.

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<sup>6</sup> Irrelevant sections redacted.