

HOUSE BILL No. 2299

By Committee on Corrections and Juvenile Justice

2-12

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to assault; relating to battery; relating to law enforcement officers;
3 amending K.S.A. 2012 Supp. 21-5111, 21-5412 and 21-5413 and
4 repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 21-5111 is hereby amended to read as
8 follows: 21-5111. The following definitions shall apply when the words
9 and phrases defined are used in this code, except when a particular context
10 clearly requires a different meaning.

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

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

14 (c) *"Animal control officer" means any person employed by,*
15 *contracted with or appointed by the state, or any political subdivision*
16 *thereof, whose duties include assignments which involve seizing or taking*
17 *any animal into custody.*

18 (e) (d) "Conduct" means an act or a series of acts, and the
19 accompanying mental state.

20 (f) (e) "Conviction" includes a judgment of guilt entered upon a plea
21 of guilty.

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

29 (f) (g) "Deprive permanently" means to:

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

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

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

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

10 ~~(h)~~ (i) "DNA" means deoxyribonucleic acid.

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

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

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

35 ~~(j)~~ (k) "Domestic violence offense" means any crime committed
36 whereby the underlying factual basis includes an act of domestic violence.

37 ~~(k)~~ (l) "Dwelling" means a building or portion thereof, a tent, a
38 vehicle or other enclosed space which is used or intended for use as a
39 human habitation, home or residence.

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

- 1 ~~(m)~~ (n) "Firearm" means any weapon designed or having the capacity
2 to propel a projectile by force of an explosion or combustion.
- 3 (o) "Firefighter" means a regular or volunteer member of an
4 organized fire department of any city, county, township or other political
5 subdivision of the state whose duties include the fighting and
6 extinguishment of fires and the protection of life and property therefrom.
- 7 ~~(n)~~ (p) "Forcible felony" includes any treason, murder, voluntary
8 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated
9 battery, aggravated sodomy and any other felony which involves the use or
10 threat of physical force or violence against any person.
- 11 ~~(o)~~ (q) "Intent to defraud" means an intention to deceive another
12 person, and to induce such other person, in reliance upon such deception,
13 to assume, create, transfer, alter or terminate a right, obligation or power
14 with reference to property.
- 15 ~~(p)~~ (r) "Law enforcement officer" means:
- 16 (1) Any person who by virtue of such person's office or public
17 employment is vested by law with a duty to maintain public order or to
18 make arrests for crimes, whether that duty extends to all crimes or is
19 limited to specific crimes;
- 20 (2) any officer of the Kansas department of corrections or, for the
21 purposes of K.S.A. 2012 Supp. 21-5412 and subsection (d) of K.S.A. 2012
22 Supp. 21-5413, and amendments thereto, any employee of the Kansas
23 department of corrections; or
- 24 (3) any university police officer or campus police officer, as defined
25 in K.S.A. 22-2401a, and amendments thereto.
- 26 ~~(q)~~ (s) "Obtain" means to bring about a transfer of interest in or
27 possession of property, whether to the offender or to another.
- 28 ~~(r)~~ (t) "Obtains or exerts control" over property includes, but is not
29 limited to, the taking, carrying away, sale, conveyance, transfer of title to,
30 interest in, or possession of property.
- 31 ~~(s)~~ (u) "Owner" means a person who has any interest in property.
- 32 ~~(t)~~ (v) "Person" means an individual, public or private corporation,
33 government, partnership, or unincorporated association.
- 34 ~~(u)~~ (w) "Personal property" means goods, chattels, effects, evidences
35 of rights in action and all written instruments by which any pecuniary
36 obligation, or any right or title to property real or personal, shall be
37 created, acknowledged, assigned, transferred, increased, defeated,
38 discharged, or dismissed.
- 39 ~~(v)~~ (x) "Possession" means having joint or exclusive control over an
40 item with knowledge of or intent to have such control or knowingly
41 keeping some item in a place where the person has some measure of
42 access and right of control.
- 43 ~~(w)~~ (y) "Property" means anything of value, tangible or intangible,

1 real or personal.

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

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

6 ~~(z)~~ (bb) "Public employee" is a person employed by or acting for the
7 state or by or for a county, municipality or other subdivision or
8 governmental instrumentality of the state for the purpose of exercising
9 their respective powers and performing their respective duties, and who is
10 not a "public officer."

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

13 (1) An executive or administrative officer of the state, or a county,
14 municipality or other subdivision or governmental instrumentality of or
15 within the state;

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

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

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

24 (5) a law enforcement officer; and

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

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

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

31 ~~(dd)~~ (ff) "State" or "this state" means the state of Kansas and all land
32 and water in respect to which the state of Kansas has either exclusive or
33 concurrent jurisdiction, and the air space above such land and water.
34 "Other state" means any state or territory of the United States, the District
35 of Columbia and the Commonwealth of Puerto Rico.

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

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

40 ~~(gg)~~ (ii) "Written instrument" means any paper, document or other
41 instrument containing written or printed matter or the equivalent thereof,
42 used for purposes of reciting, embodying, conveying or recording
43 information, and any money, token, stamp, seal, badge, trademark, or other

1 evidence or symbol of value, right, privilege or identification, which is
2 capable of being used to the advantage or disadvantage of some person.

3 Sec. 2. K.S.A. 2012 Supp. 21-5412 is hereby amended to read as
4 follows: 21-5412. (a) Assault is knowingly placing another person in
5 reasonable apprehension of immediate bodily harm;

6 (b) Aggravated assault is assault, as defined in subsection (a),
7 committed:

8 (1) With a deadly weapon;

9 (2) while disguised in any manner designed to conceal identity; or

10 (3) with intent to commit any felony.

11 (c) Assault of a law enforcement officer is assault, as defined in
12 subsection (a), committed against:

13 (†) a uniformed or properly identified state, county or city law
14 enforcement officer, *university or campus police officer, animal control*
15 *officer or firefighter* while such *firefighter or* officer is engaged in the
16 performance of such *firefighter's or* officer's duty; ~~or~~

17 ~~(2) a uniformed or properly identified university or campus police~~
18 ~~officer while such officer is engaged in the performance of such officer's~~
19 ~~duty.~~

20 (d) Aggravated assault of a law enforcement officer is assault of a law
21 enforcement officer, as defined in subsection (c), committed:

22 (1) With a deadly weapon;

23 (2) while disguised in any manner designed to conceal identity; or

24 (3) with intent to commit any felony.

25 (e) (1) Assault is a class C person misdemeanor.

26 (2) Aggravated assault is a severity level 7, person felony.

27 (3) Assault of a law enforcement officer is a class A person
28 misdemeanor.

29 (4) Aggravated assault of a law enforcement officer is a severity level
30 6, person felony. ~~A person convicted of aggravated assault of a law~~
31 ~~enforcement officer shall be subject to the provisions of subsection (g) of~~
32 ~~K.S.A. 2012 Supp. 21-6804, and amendments thereto.~~

33 Sec. 3. K.S.A. 2012 Supp. 21-5413 is hereby amended to read as
34 follows: 21-5413. (a) Battery is:

35 (1) Knowingly or recklessly causing bodily harm to another person;

36 or

37 (2) knowingly causing physical contact with another person when
38 done in a rude, insulting or angry manner;

39 (b) Aggravated battery is:

40 (1) (A) Knowingly causing great bodily harm to another person or
41 disfigurement of another person;

42 (B) knowingly causing bodily harm to another person with a deadly
43 weapon, or in any manner whereby great bodily harm, disfigurement or

1 death can be inflicted; or

2 (C) knowingly causing physical contact with another person when
3 done in a rude, insulting or angry manner with a deadly weapon, or in any
4 manner whereby great bodily harm, disfigurement or death can be
5 inflicted;

6 (2) (A) recklessly causing great bodily harm to another person or
7 disfigurement of another person; or

8 (B) recklessly causing bodily harm to another person with a deadly
9 weapon, or in any manner whereby great bodily harm, disfigurement or
10 death can be inflicted.

11 (c) Battery against a law enforcement officer is:

12 (1) Battery, as defined in subsection (a)(2), committed against a:

13 ~~(A) Uniformed or properly identified university or campus police~~
14 ~~officer while such officer is engaged in the performance of such officer's~~
15 ~~duty; or~~

16 ~~(B) uniformed or properly identified *firefighter, university or campus*~~
17 ~~*police officer, animal control officer or state, county or city law*~~
18 ~~enforcement officer, other than a state correctional officer or employee, a~~
19 ~~city or county correctional officer or employee, a juvenile correctional~~
20 ~~facility officer or employee or a juvenile detention facility officer, or~~
21 ~~employee, while such *firefighter or* officer is engaged in the performance~~
22 ~~of such *firefighter's or* officer's duty; or~~

23 (2) battery, as defined in subsection (a)(1), committed against a:

24 ~~(A) Uniformed or properly identified university or campus police~~
25 ~~officer while such officer is engaged in the performance of such officer's~~
26 ~~duty; or~~

27 ~~(B) uniformed or properly identified *firefighter, university or campus*~~
28 ~~*police officer, animal control officer or state, county or city law*~~
29 ~~enforcement officer, other than a state correctional officer or employee, a~~
30 ~~city or county correctional officer or employee, a juvenile correctional~~
31 ~~facility officer or employee or a juvenile detention facility officer, or~~
32 ~~employee, while such *firefighter or* officer is engaged in the performance~~
33 ~~of such *firefighter's or* officer's duty; or~~

34 (3) battery, as defined in subsection (a) committed against a:

35 (A) State correctional officer or employee by a person in custody of
36 the secretary of corrections, while such officer or employee is engaged in
37 the performance of such officer's or employee's duty;

38 (B) juvenile correctional facility officer or employee by a person
39 confined in such juvenile correctional facility, while such officer or
40 employee is engaged in the performance of such officer's or employee's
41 duty;

42 (C) juvenile detention facility officer or employee by a person
43 confined in such juvenile detention facility, while such officer or employee

1 is engaged in the performance of such officer's or employee's duty; or

2 (D) city or county correctional officer or employee by a person
3 confined in a city holding facility or county jail facility, while such officer
4 or employee is engaged in the performance of such officer's or employee's
5 duty.

6 (d) Aggravated battery against a law enforcement officer is:

7 (1) An aggravated battery, as defined in subsection (b)(1)(A)
8 committed against a:

9 ~~(A) uniformed or properly identified state, county or city law~~
10 ~~enforcement officer, *university or campus police officer, animal control*~~
11 ~~*officer or firefighter* while ~~the such firefighter or~~ officer is engaged in the~~
12 ~~performance of ~~the such firefighter's or~~ officer's duty; or~~

13 ~~(B) uniformed or properly identified university or campus police~~
14 ~~officer while such officer is engaged in the performance of such officer's~~
15 ~~duty;~~

16 (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)
17 (C), committed against a:

18 ~~(A) uniformed or properly identified state, county or city law~~
19 ~~enforcement officer, *university or campus police officer, animal control*~~
20 ~~*officer or firefighter* while ~~the such firefighter or~~ officer is engaged in the~~
21 ~~performance of ~~the such firefighter's or~~ officer's duty; or~~

22 ~~(B) uniformed or properly identified university or campus police~~
23 ~~officer while such officer is engaged in the performance of such officer's~~
24 ~~duty; or~~

25 (3) knowingly causing, with a motor vehicle, bodily harm to a:

26 ~~(A) uniformed or properly identified state, county or city law~~
27 ~~enforcement officer, *university or campus police officer, animal control*~~
28 ~~*officer or firefighter* while ~~the such firefighter or~~ officer is engaged in the~~
29 ~~performance of ~~the such firefighter's or~~ officer's duty; or~~

30 ~~(B) uniformed or properly identified university or campus police~~
31 ~~officer while such officer is engaged in the performance of such officer's~~
32 ~~duty.~~

33 (e) Battery against a school employee is a battery, as defined in
34 subsection (a), committed against a school employee in or on any school
35 property or grounds upon which is located a building or structure used by a
36 unified school district or an accredited nonpublic school for student
37 instruction or attendance or extracurricular activities of pupils enrolled in
38 kindergarten or any of the grades one through 12 or at any regularly
39 scheduled school sponsored activity or event, while such employee is
40 engaged in the performance of such employee's duty.

41 (f) Battery against a mental health employee is a battery, as defined in
42 subsection (a), committed against a mental health employee by a person in
43 the custody of the secretary of social and rehabilitation services, while

- 1 such employee is engaged in the performance of such employee's duty.
- 2 (g) (1) Battery is a class B person misdemeanor.
- 3 (2) Aggravated battery as defined in:
- 4 (A) Subsection (b)(1)(A) is a severity level 4, person felony;
- 5 (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person
- 6 felony;
- 7 (C) subsection (b)(2)(A) is a severity level 5, person felony; and
- 8 (D) subsection (b)(2)(B) is a severity level 8, person felony.
- 9 (3) Battery against a law enforcement officer as defined in:
- 10 (A) Subsection (c)(1) is a class A person misdemeanor;
- 11 (B) subsection (c)(2) is a severity level 7, person felony; and
- 12 (C) subsection (c)(3) is a severity level 5, person felony.
- 13 (4) Aggravated battery against a law enforcement officer as defined
- 14 in:
- 15 (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony;
- 16 and
- 17 (B) subsection (d)(2) is a severity level 4, person felony.
- 18 (5) Battery against a school employee is a class A person
- 19 misdemeanor.
- 20 (6) Battery against a mental health employee is a severity level 7,
- 21 person felony.
- 22 (h) As used in this section:
- 23 (1) "Correctional institution" means any institution or facility under
- 24 the supervision and control of the secretary of corrections;
- 25 (2) "state correctional officer or employee" means any officer or
- 26 employee of the Kansas department of corrections or any independent
- 27 contractor, or any employee of such contractor, working at a correctional
- 28 institution;
- 29 (3) "juvenile correctional facility officer or employee" means any
- 30 officer or employee of the juvenile justice authority or any independent
- 31 contractor, or any employee of such contractor, working at a juvenile
- 32 correctional facility, as defined in K.S.A. 2012 Supp. 38-2302, and
- 33 amendments thereto;
- 34 (4) "juvenile detention facility officer or employee" means any officer
- 35 or employee of a juvenile detention facility as defined in K.S.A. 2012
- 36 Supp. 38-2302, and amendments thereto;
- 37 (5) "city or county correctional officer or employee" means any
- 38 correctional officer or employee of the city or county or any independent
- 39 contractor, or any employee of such contractor, working at a city holding
- 40 facility or county jail facility;
- 41 (6) "school employee" means any employee of a unified school
- 42 district or an accredited nonpublic school for student instruction or
- 43 attendance or extracurricular activities of pupils enrolled in kindergarten or

1 any of the grades one through 12; and

2 (7) "mental health employee" means an employee of the department
3 of social and rehabilitation services working at Larned state hospital,
4 Osawatomie state hospital and Rainbow mental health facility, Kansas
5 neurological institute and Parsons state hospital and training center and the
6 treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

7 Sec. 4. K.S.A. 2012 Supp. 21-5111, 21-5412 and 21-5413 are hereby
8 repealed.

9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.