

As Amended by House Committee

As Amended by Senate Committee

Session of 2017

SENATE BILL No. 112

By Committee on Judiciary

1-31

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to evidence; videotaping of certain felony, custodial interrogations;
3 domestic battery; creating the crime of aggravated domestic
4 battery; controlled substances; unlawful possession of drug
5 paraphernalia; penalty *burglary*; expungement; arrest records;
6 amending K.S.A. 2016 Supp. 21-5414, 21-5709~~and~~, 21-5807 and 22-
7 2410 and repealing the existing section sections.
8

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

10 New Section 1. (a) All law enforcement agencies in this state shall
11 adopt a detailed, written policy requiring electronic recording of any
12 custodial interrogation conducted at a place of detention.

13 (b) All local law enforcement agencies in this state shall
14 collaborate with the county or district attorney in the appropriate
15 jurisdiction regarding the contents of written policies required by this
16 section.

17 (c) Policies adopted pursuant to this section shall be made
18 available to all officers of such agency and shall be available for public
19 inspection during normal business hours.

20 (d) Policies adopted pursuant to this section shall be implemented
21 by all Kansas law enforcement agencies on or before July 1, 2018.

22 (e) Policies adopted pursuant to this section shall include the
23 following:

24 (1) A requirement that an electronic recording shall be made of
25 an entire custodial interrogation at a place of detention when the
26 interrogation concerns a homicide or a felony sex offense;

27 (2) a requirement that if the defendant elects to make or sign a
28 written statement during the course of a custodial interrogation
29 concerning a homicide or a felony sex offense, the making and signing
30 of the statement shall be electronically recorded;

31 (3) a statement of exceptions to the requirement to electronically
32 record custodial interrogations, including, but not limited to:

33 (A) An equipment malfunction preventing electronic recording of
34 the interrogation in its entirety, and replacement equipment is not

- 1 immediately available;
- 2 (B) the officer, in good faith, fails to record the interrogation
3 because the officer inadvertently fails to operate the recording
4 equipment properly, or without the officer's knowledge the recording
5 equipment malfunctions or stops recording;
- 6 (C) the suspect affirmatively asserts the desire to speak with
7 officers without being recorded;
- 8 (D) multiple interrogations are taking place, exceeding the
9 available electronic recording capacity;
- 10 (E) the statement is made spontaneously and not in response to
11 an interrogation question;
- 12 (F) the statement is made during questioning that is routinely
13 asked during the processing of an arrest of a suspect;
- 14 (G) the statement is made at a time when the officer is unaware of
15 the suspect's involvement in an offense covered by the policy;
- 16 (H) exigent circumstances make recording impractical;
- 17 (I) at the time of the interrogation, the officer, in good faith, is
18 unaware of the type of offense involved; and
- 19 (J) the recording is damaged or destroyed, without bad faith on
20 the part of any person or entity in control of the recording; and
- 21 (4) requirements pertaining to the retention and storage
22 requirements of the electronic recording.
- 23 (f) (1) During trial, the officer may be questioned pursuant to the
24 rules of evidence regarding any violation of the policies adopted
25 pursuant to this section.
- 26 (2) Lack of an electronic recording shall not be the sole basis for
27 suppression of the interrogation or confession.
- 28 (g) Every electronic recording of any statement as required by
29 this section shall be confidential and exempt from the Kansas open
30 records act in accordance with K.S.A. 45-229, and amendments
31 thereto. The provisions of this subsection shall expire on July 1, 2022,
32 unless the legislature reviews and reenacts this provision pursuant to
33 K.S.A. 45-229, and amendments thereto, prior to July 1, 2022.
- 34 (h) The following words and phrases, as used in this section, are
35 defined as follows:
- 36 (1) "Custodial interrogation" means questioning of a person to
37 whom warnings given pursuant to *Miranda v. Arizona*, 384 U.S. 436
38 (1966), are required to be given;
- 39 (2) "place of detention" means a fixed location under the control
40 of a Kansas law enforcement agency where individuals are questioned
41 about alleged crimes; and
- 42 (3) "electronic recording" means audio or audiovisual recording.
43 An audiovisual recording is preferred.

1 (i) This section shall take effect on and after July 1, 2017.

2 Sec. 2. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414 is
3 hereby amended to read as follows: 21-5414. (a) Domestic battery is:

4 (1) *Knowingly or recklessly causing bodily harm*—~~by to a person~~ with whom the offender is involved or has been involved in a dating relationship or a family or household member—against a family or household member; or

5 (2) *knowingly causing physical contact with a person with whom* the offender is involved or has been involved in a dating relationship or a family or household member—~~by a family or household member, when done in a rude, insulting or angry manner.~~

6 (b) *Aggravated domestic battery is:*

7 (1) *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*

8 (2) *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.*

9 (+) (c) (1) **Domestic battery is:**

10 (+) (A) Except as provided in subsection (b)(2) (c)(1)(B) or (b)(3) (c)(1)(C), a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

11 (2)(B) except as provided in subsection (b)(3)(c)(1)(C), a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant

1 of probation, suspension of sentence or parole or of any other release,
2 the offender shall be required to undergo a domestic violence offender
3 assessment conducted by a certified batterer intervention program
4 and follow all recommendations made by such program, unless
5 otherwise ordered by the court or department of corrections; and

6 ~~(3)~~(C) a person felony, if, within five years immediately preceding
7 commission of the crime, an offender is convicted of domestic battery
8 a third or subsequent time, and the offender shall be sentenced to not
9 less than 90 days nor more than one year's imprisonment and fined
10 not less than \$1,000 nor more than \$7,500. The offender convicted
11 shall not be eligible for release on probation, suspension or reduction
12 of sentence or parole until the offender has served at least 90 days
13 imprisonment. As a condition of any grant of probation, suspension of
14 sentence or parole or of any other release, the offender shall be
15 required to undergo a domestic violence offender assessment
16 conducted by a certified batterer intervention program and follow all
17 recommendations made by such program, unless otherwise ordered by
18 the court or department of corrections. If the offender does not
19 undergo a domestic violence offender assessment conducted by a
20 certified batterer intervention program and follow all
21 recommendations made by such program, the offender shall serve not
22 less than 180 days nor more than one year's imprisonment. The 90
23 days imprisonment mandated by this paragraph may be served in a
24 work release program only after such offender has served 48
25 consecutive hours imprisonment, provided such work release program
26 requires such offender to return to confinement at the end of each day
27 in the work release program.

28 (2) *Aggravated domestic battery is a severity level 7, person felony.*
29 ~~(e)~~(d) **As used in this section:**

30 (1) *"Dating relationship" means a social relationship of a romantic
31 nature. In addition to any other factors the court deems relevant, the trier
32 of fact may consider the following when making a determination of
33 whether a relationship exists or existed: Nature of the relationship, length
34 of time the relationship existed, frequency of interaction between the
35 parties and time since the termination of the relationship, if applicable;
36 and*

37 (2) *"family or household member" means persons 18 years of age
38 or older who are spouses, former spouses, parents or stepparents and
39 children or stepchildren, and persons who are presently residing
40 together or who have resided together in the past, and persons who
41 have a child in common regardless of whether they have been married
42 or who have lived together at any time. "Family or household
43 member" also includes a man and woman if the woman is pregnant*

1 and the man is alleged to be the father, regardless of whether they
2 have been married or have lived together at any time; and.

3 (2)(e) For the purpose of determining whether a conviction is a
4 first, second, third or subsequent conviction in sentencing under this
5 section subsection (c)(1):

6 (A)(1) "Conviction" includes being convicted of a violation of
7 K.S.A. 21-3412a, prior to its repeal, this section or entering into a
8 diversion or deferred judgment agreement in lieu of further criminal
9 proceedings on a complaint alleging a violation of this section;

10 (B)(2) "conviction" includes being convicted of a violation of a
11 law of another state, or an ordinance of any city, or resolution of any
12 county, which prohibits the acts that this section prohibits or entering
13 into a diversion or deferred judgment agreement in lieu of further
14 criminal proceedings in a case alleging a violation of such law,
15 ordinance or resolution;

16 (C)(3) only convictions occurring in the immediately preceding
17 five years including prior to July 1, 2001, shall be taken into account,
18 but the court may consider other prior convictions in determining the
19 sentence to be imposed within the limits provided for a first, second,
20 third or subsequent offender, whichever is applicable; and

21 (D)(4) it is irrelevant whether an offense occurred before or after
22 conviction for a previous offense.

23 (E)(f) A person may enter into a diversion agreement in lieu of
24 further criminal proceedings for a violation of this section subsection
25 (a) or (b) or an ordinance of any city or resolution of any county which
26 prohibits the acts that this section subsection (a) or (b) prohibits only
27 twice during any five-year period.

28 Section 1. Sec. 3. On and after July 1, 2017, K.S.A. 2016 Supp. 21-
29 5709 is hereby amended to read as follows: 21-5709. (a) It shall be
30 unlawful for any person to possess ephedrine, pseudoephedrine, red
31 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
32 pressurized ammonia or phenylpropanolamine, or their salts, isomers or
33 salts of isomers with an intent to use the product to manufacture a
34 controlled substance.

35 (b) It shall be unlawful for any person to use or possess with intent to
36 use any drug paraphernalia to:

37 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
38 distribute a controlled substance; or

39 (2) store, contain, conceal, inject, ingest, inhale or otherwise
40 introduce a controlled substance into the human body.

41 (c) It shall be unlawful for any person to use or possess with intent to
42 use anhydrous ammonia or pressurized ammonia in a container not
43 approved for that chemical by the Kansas department of agriculture.

1 (d) It shall be unlawful for any person to purchase, receive or
2 otherwise acquire at retail any compound, mixture or preparation
3 containing more than 3.6 grams of pseudoephedrine base or ephedrine
4 base in any single transaction or any compound, mixture or preparation
5 containing more than nine grams of pseudoephedrine base or ephedrine
6 base within any 30-day period.
7 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;
8 (2) violation of subsection (b)(1) is a:
9 (A) Drug severity level 5 felony, except as provided in subsection (e)
10 (2)(B); and
11 (B) class-A B nonperson misdemeanor if the drug paraphernalia was
12 used to cultivate fewer than five marijuana plants;
13 (3) violation of subsection (b)(2) is a class-A B nonperson
14 misdemeanor;
15 (4) violation of subsection (c) is a drug severity level 5 felony; and
16 (5) violation of subsection (d) is a class A nonperson misdemeanor.
17 (f) For persons arrested and charged under subsection (a) or (c), bail
18 shall be at least \$50,000 cash or surety, and such person shall not be
19 released upon the person's own recognizance pursuant to K.S.A. 22-2802,
20 and amendments thereto, unless the court determines, on the record, that
21 the defendant is not likely to reoffend, the court imposes pretrial
22 supervision or the defendant agrees to participate in a licensed or certified
23 drug treatment program.

24 *Sec. 2. 4. K.S.A. 2016 Supp. 21-5807 is hereby amended to read as
25 follows: 21-5807. (a) Burglary is, without authority, entering into or
26 remaining within any:*

27 *(1) Dwelling, with intent to commit a felony, theft or sexually
28 motivated crime therein;*
29 *(2) building, manufactured home, mobile home, tent or other
30 structure which is not a dwelling, with intent to commit a felony, theft or
31 sexually motivated crime therein; or*
32 *(3) vehicle, aircraft, watercraft, railroad car or other means of
33 conveyance of persons or property, with intent to commit a felony, theft
34 or sexually motivated crime therein.*

35 *(b) Aggravated burglary is, without authority, entering into or
36 remaining within any:*

37 *(1) Dwelling in which there is a human being, with intent to
38 commit a felony, theft or sexually motivated crime therein;*
39 *(2) building, manufactured home, mobile home, tent or other
40 structure which is not a dwelling in which there is a human being, with
41 intent to commit a felony, theft or sexually motivated crime therein; or*
42 *(3) vehicle, aircraft, watercraft, railroad car or other means of
43 conveyance of persons or property in which there is a human being, with*

1 *intent to commit a felony, theft or sexually motivated crime therein.*

2 (c) (1) *Burglary as defined in:*

3 (A) (i) *Subsection (a)(1)-or is a severity level 7, person felony, except*
4 *as provided in subsection (c)(1)(B);*

5 (ii) *subsection (a)(2) is a severity level 7, nonperson felony, except*
6 *as provided in subsection (c)(1)(B); and*

7 (iii) *subsection (a)(3) is a severity level 9, nonperson felony,*
8 *except as provided in subsection (c)(1)(B); and*

9 (B) (i) *subsection (a)(1), with intent to commit the theft of a*
10 *firearm, is a severity level 5, person felony; and*

11 (ii) *subsection (a)(2) or (a)(3), with intent to commit the theft of a*
12 *firearm, is a severity level 5, nonperson felony.*

13 (2) *Aggravated burglary as defined in:*

14 (A) *Subsection (b)(1) is a severity level 4, person felony; and*

15 (B) *subsection (b)(2) or (b)(3) is a severity level 5, person felony.*

16 (d) *As used in this section, "sexually motivated" means that one of*
17 *the purposes for which the defendant committed the crime was for the*
18 *purpose of the defendant's sexual gratification.*

19 (e) *This section shall not apply to any person entering into or*
20 *remaining in a retail or commercial premises at any time that it is open*
21 *to the public after having received a personal communication from the*
22 *owner or manager of such premises not to enter such premises pursuant*
23 *to K.S.A. 2016 Supp. 21-5808, and amendments thereto, except when*
24 *such person is entering into or remaining in such premises with the*
25 *intent to commit a person felony or sexually motivated crime therein.*

26 Sec. 5. On and after July 1, 2017, K.S.A. 2016 Supp. 22-2410 is
27 hereby amended to read as follows: 22-2410. (a) (1) Any person who
28 has been arrested in this state may petition the district court for the
29 expungement of such arrest record.

30 (2) (A) *If a person has been arrested in this state as a result of*
31 *mistaken identity or as a result of another person using the identifying*
32 *information of the named person, and the charge against the named*
33 *person is dismissed or not prosecuted, the prosecuting attorney or other*
34 *judicial officer who ordered the dismissal or declined to prosecute shall*
35 *provide notice to the court of such action and petition the district court for*
36 *the expungement of such arrest record, and the court shall order the arrest*
37 *record and subsequent court proceedings, if any, expunged and purged*
38 *from all applicable state and federal systems pursuant to subsection (d).*

39 (B) *For purposes of this section, the term "mistaken identity" means*
40 *the erroneous arrest of a person for a crime as a result of misidentification*
41 *by a witness or law enforcement, confusion on the part of a witness or law*
42 *enforcement as to the identity of the person who committed the crime,*
43 *misinformation provided to law enforcement as to the identity of the*

1 person who committed the crime or some other mistake on the part of a
2 witness or law enforcement as to the identity of the person who committed
3 the crime. "Mistaken identity" shall not include any situation in which an
4 arrestee intentionally provides false information to law enforcement
5 officials in an attempt to conceal such person's identity.

6 **(b) (1)** When a petition for expungement is filed pursuant to
7 subsection (a)(1), the court shall set a date for hearing on such petition
8 and shall cause notice of such hearing to be given to the prosecuting
9 attorney and the arresting law enforcement agency. Any person who
10 may have relevant information about the petitioner may testify at the
11 hearing. The court may inquire into the background of the petitioner.

12 **(2)** When a petition for expungement is filed pursuant to
13 subsection (a)(1) or (a)(2), the official court file shall be separated from
14 the other records of the court, and shall be disclosed only to a judge of
15 the court and members of the staff of the court designated by a judge
16 of the district court, the prosecuting attorney, the arresting law
17 enforcement agency, or any other person when authorized by a court
18 order, subject to any conditions imposed by the order.

19 **(3) (A)** Except as otherwise provided by law, a petition for
20 expungement pursuant to subsection (a)(1) shall be accompanied by a
21 docket fee in the amount of \$176. Except as provided further, the
22 docket fee established in this section shall be the only fee collected or
23 moneys in the nature of a fee collected for the docket fee. Such fee
24 shall only be established by an act of the legislature and no other
25 authority is established by law or otherwise to collect a fee. On and
26 after July 1, 2015, through June 30, 2017, the supreme court may
27 impose an additional charge, not to exceed \$19 per docket fee, to fund
28 the costs of non-judicial personnel. The petition shall state:

29 (1) The petitioner's full name;
30 (2) the full name of the petitioner at the time of arrest, if different
31 than the petitioner's current name;
32 (3) the petitioner's sex, race and date of birth;
33 (4) the crime for which the petitioner was arrested;
34 (5) the date of the petitioner's arrest; and
35 (6) the identity of the arresting law enforcement agency.

36 **(B)** No surcharge or fee shall be imposed to any person filing a
37 petition pursuant to this section subsection (a)(1), who was arrested as
38 a result of being a victim of identity theft under K.S.A. 21-4018, prior
39 to its repeal, or K.S.A. 2016 Supp. 21-6107(a), and amendments
40 thereto, or who has had criminal charges dismissed because a court
41 has found that there was no probable cause for the arrest, the
42 petitioner was found not guilty in court proceedings or the charges
43 have been dismissed. Any person who may have relevant information

1 about the petitioner may testify at the hearing. The court may inquire into
2 the background of the petitioner.

3 (4) *The petition filed pursuant to subsection (a)(1) or (a)(2) shall
4 state:*

- 5 (A) *The petitioner's full name;*
- 6 (B) *the full name of the petitioner at the time of arrest, if different
7 than the petitioner's current name;*
- 8 (C) *the petitioner's sex, race and date of birth;*
- 9 (D) *the crime for which the petitioner was arrested;*
- 10 (E) *the date of the petitioner's arrest; and*
- 11 (F) *the identity of the arresting law enforcement agency.*

12 (c) **At the hearing on a petition for expungement pursuant to
13 subsection (a)(1), the court shall order the arrest record and
14 subsequent court proceedings, if any, expunged upon finding:** (1) The
15 arrest occurred because of mistaken identity;

16 (2) a court has found that there was no probable cause for the
17 arrest;

18 (3) the petitioner was found not guilty in court proceedings; or

19 (4) the expungement would be in the best interests of justice and:

20 (A) Charges have been dismissed; or (B) no charges have been or are
21 likely to be filed.

22 (d) (1) **When the court has ordered expungement of an arrest
23 record and subsequent court proceedings, if any, on a petition for
24 expungement pursuant to subsection (a)(1), the order shall state the
25 information required to be stated in the petition and shall state the
26 grounds for expungement under subsection (c). The clerk of the court
27 shall send a certified copy of the order to the Kansas bureau of
28 investigation which shall notify the federal bureau of investigation, the
29 secretary of corrections and any other criminal justice agency which
30 may have a record of the arrest. If the case was appealed from
31 municipal court, the clerk of the district court shall send a certified
32 copy of the order of expungement to the municipal court. The
33 municipal court shall order the case expunged once the certified copy
34 of the order of expungement is received. If an order of expungement is
35 entered, the petitioner pursuant to subsection (a)(1) shall be treated as
36 not having been arrested.**

37 (2) *When the court has ordered expungement of arrest records on a
38 petition for expungement pursuant to subsection (a)(2), the order shall
39 state the information required to be stated in the petition and shall state
40 the grounds for expungement under subsection (a)(2). The order shall also
41 direct the Kansas bureau of investigation to purge the arrest information
42 from the criminal justice information system central repository and all
43 applicable state and federal databases. The clerk of the court shall send a*

1 certified copy of the order to the Kansas bureau of investigation, which
2 shall carry out the order and shall notify the federal bureau of
3 investigation, the secretary of corrections and any other criminal justice
4 agency that may have a record of the arrest. If an order of expungement is
5 entered, the person eligible for mandatory expungement pursuant to
6 subsection (a)(2) shall be treated as not having been arrested.

7 (e) If the ground for expungement is as provided in subsection (c)
8 (4), the court shall determine whether, in the interests of public
9 welfare, the records should be available for any of the following
10 purposes:

11 (1) In any application for employment as a detective with a
12 private detective agency, as defined in K.S.A. 75-7b01, and
13 amendments thereto; as security personnel with a private patrol
14 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or
15 with an institution, as defined in K.S.A. 76-12a01, and amendments
16 thereto, of the Kansas department for aging and disability services;

17 (2) in any application for admission, or for an order of
18 reinstatement, to the practice of law in this state;

19 (3) to aid in determining the petitioner's qualifications for
20 employment with the Kansas lottery or for work in sensitive areas
21 within the Kansas lottery as deemed appropriate by the executive
22 director of the Kansas lottery;

23 (4) to aid in determining the petitioner's qualifications for
24 executive director of the Kansas racing commission, for employment
25 with the commission or for work in sensitive areas in parimutuel
26 racing as deemed appropriate by the executive director of the
27 commission, or to aid in determining qualifications for licensure or
28 renewal of licensure by the commission;

29 (5) in any application for a commercial driver's license under
30 K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

31 (6) to aid in determining the petitioner's qualifications to be an
32 employee of the state gaming agency;

33 (7) to aid in determining the petitioner's qualifications to be an
34 employee of a tribal gaming commission or to hold a license issued
35 pursuant to a tribal-state gaming compact; or

36 (8) in any other circumstances which the court deems
37 appropriate.

38 (f) The court shall make all expunged records and related
39 information in such court's possession, created prior to, on and after
40 July 1, 2011, available to the Kansas bureau of investigation for the
41 purposes of:

42 (1) Completing a person's criminal history record information
43 within the central repository in accordance with K.S.A. 22-4701 et

1 seq., and amendments thereto; or

2 (2) providing information or documentation to the federal bureau
3 of investigation, in connection with the national instant criminal
4 background check system, to determine a person's qualification to
5 possess a firearm.

6 (g) Subject to any disclosures required under subsection (e), in
7 any application for employment, license or other civil right or
8 privilege, or any appearance as a witness, a person whose arrest
9 records have been expunged as provided in this section may state that
10 such person has never been arrested.

11 (h) Whenever a petitioner's person's arrest records have been
12 expunged as provided in this section, the custodian of the records of
13 arrest, incarceration due to arrest or court proceedings related to the
14 arrest, shall not disclose the arrest or any information related to the
15 arrest, except as directed by the order of expungement or when
16 requested by the person whose arrest record was expunged.

17 (i) The docket fee collected at the time the petition for
18 expungement is filed pursuant to subsection (a)(1) shall be disbursed in
19 accordance with K.S.A. 20-362, and amendments thereto.

20 Sec. ~~2-3-~~ 6. K.S.A. 2016 Supp.~~21-5709 is and 21-5807 are~~ is hereby
21 repealed.

22 Sec. 7. On and after July 1, 2017, K.S.A. 2016 Supp. 21-5414, 21-
23 ~~5709 and 22-2410 are hereby repealed.~~

24 Sec. ~~3-4-~~ 8. This act shall take effect and be in force from and after
25 its publication in the ~~statute book~~ Kansas register.