

HOUSE BILL No. 2467

By Committee on Corrections and Juvenile Justice

1-17

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to transmission of sexually explicit or nude images of minors;
3 amending K.S.A. 2011 Supp. 21-5510 and repealing the existing
4 section.
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Unlawful transmission of a visual depiction of a
8 minor is knowingly transmitting a visual depiction of a minor in a state of
9 nudity, if committed by a minor and the minor who is the subject of the
10 visual depiction is 14 years of age or older.

11 (b) Aggravated unlawful transmission of a visual depiction of a minor
12 is knowingly transmitting a visual depiction of a minor in a state of nudity,
13 if committed by a minor and the minor who is the subject of the visual
14 depiction is 14 years of age or older:

15 (1) With the intent to harass, embarrass, intimidate, defame or
16 otherwise inflict emotional, psychological or physical harm;

17 (2) for pecuniary or tangible gain; or

18 (3) with the intent to exhibit or transmit such visual depiction to more
19 than one person.

20 (c) (1) Unlawful transmission of a visual depiction of a minor is a
21 class A person misdemeanor, and upon a second or subsequent conviction,
22 a severity level 9 nonperson felony.

23 (2) Aggravated unlawful transmission of a visual depiction of a minor
24 is a severity level 9, person felony, and upon a second or subsequent
25 conviction, a severity level 7, person felony.

26 (d) As used in this section and section 2, and amendments thereto:

27 (1) "Minor" means a person under 18 years of age;

28 (2) "sexually explicit conduct" means actual or simulated: Sexual
29 intercourse or sodomy, including genital-genital, oral-genital, anal-genital
30 or oral-anal contact, whether between persons of the same or opposite sex;
31 masturbation and sado-masochistic abuse for the purpose of sexual
32 stimulation;

33 (3) "state of nudity" means any state of undress in which the human
34 genitals, pubic region, buttock or female breast, at a point below the top of
35 the areola, is less than completely and opaquely covered; and

36 (4) "visual depiction" means any photograph, film, video picture,

1 digital or computer generated image or picture made or produced by
2 electronic, mechanical or other means.

3 (e) It shall be a rebuttable presumption that a minor had the intent to
4 harass, embarrass, intimidate, defame or otherwise inflict emotional,
5 psychological or physical harm if the minor transmitted a visual depiction
6 of a person other than such minor.

7 (f) The provisions of this section shall not apply to a visual depiction
8 of a minor engaged in sexually explicit conduct or a visual depiction that
9 constitutes obscenity as defined in subsection (f)(1) of K.S.A. 2011 Supp.
10 21-6401, and amendments thereto.

11 New Sec. 2. (a) Unlawful possession of a visual depiction of a minor
12 is knowingly possessing a visual depiction of a minor 14 years of age or
13 older in a state of nudity, if committed by:

14 (1) The minor who is the subject of the visual depiction; or

15 (2) a person less than four years of age older than the subject of the
16 visual depiction, and the possessor of such visual depiction received such
17 visual depiction directly and exclusively from the minor who is the subject
18 of such visual depiction.

19 (b) Unlawful possession of a visual depiction of a minor:

20 (1) As described in subsection (a)(1), is a class A person
21 misdemeanor; and

22 (2) as described in subsection (a)(2), is a severity level 10, person
23 felony.

24 (c) It shall be an affirmative defense to any prosecution under this
25 section that the recipient of a visual depiction of a minor in a state of
26 nudity:

27 (1) Received such visual depiction without requesting, coercing, or
28 otherwise attempting to obtain such visual depiction;

29 (2) did not transmit, exhibit or disseminate such visual depiction; and

30 (3) made a good faith effort to erase, delete, or otherwise destroy such
31 visual depiction.

32 (d) This section shall not apply to a visual depiction of a minor
33 engaged in sexually explicit conduct or a visual depiction that constitutes
34 obscenity as defined in subsection (f)(1) of K.S.A. 2011 Supp. 21-6401,
35 and amendments thereto.

36 Sec. 3. K.S.A. 2011 Supp. 21-5510 is hereby amended to read as
37 follows: 21-5510. (a) *Except as provided in section 1 and section 2*, sexual
38 exploitation of a child is:

39 (1) Employing, using, persuading, inducing, enticing or coercing a
40 child under 18 years of age, or a person whom the offender believes to be a
41 child under 18 years of age, to engage in sexually explicit conduct with the
42 intent to promote any performance;

43 (2) possessing any visual depiction of a child under 18 years of age

1 shown or heard engaging in sexually explicit conduct with intent to arouse
2 or satisfy the sexual desires or appeal to the prurient interest of the
3 offender or any other person;

4 (3) being a parent, guardian or other person having custody or control
5 of a child under 18 years of age and knowingly permitting such child to
6 engage in, or assist another to engage in, sexually explicit conduct for any
7 purpose described in subsection (a)(1) or (2); or

8 (4) promoting any performance that includes sexually explicit
9 conduct by a child under 18 years of age, or a person whom the offender
10 believes to be a child under 18 years of age, knowing the character and
11 content of the performance.

12 (b) (1) Sexual exploitation of a child as defined in:

13 (A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony;
14 and

15 (B) subsection (a)(1) or (a)(4) is a severity level 5, person felony,
16 except as provided in subsection (b)(2).

17 (2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)
18 (4) or attempt, conspiracy or criminal solicitation to commit sexual
19 exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-
20 grid person felony, when the offender is 18 years of age or older and the
21 child is under 14 years of age.

22 (c) If the offender is 18 years of age or older and the child is under 14
23 years of age, the provisions of:

24 (1) Subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments
25 thereto, shall not apply to a violation of attempting to commit the crime of
26 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

27 (2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments
28 thereto, shall not apply to a violation of conspiracy to commit the crime of
29 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

30 (3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments
31 thereto, shall not apply to a violation of criminal solicitation to commit the
32 crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)
33 (4).

34 (d) As used in this section:

35 (1) "Sexually explicit conduct" means actual or simulated: Exhibition
36 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
37 genital, anal-genital or oral-anal contact, whether between persons of the
38 same or opposite sex; masturbation; sado-masochistic abuse with the intent
39 of sexual stimulation; or lewd exhibition of the genitals, female breasts or
40 pubic area of any person;

41 (2) "promoting" means procuring, transmitting, distributing,
42 circulating, presenting, producing, directing, manufacturing, issuing,
43 publishing, displaying, exhibiting or advertising:

1 (A) For pecuniary profit; or

2 (B) with intent to arouse or gratify the sexual desire or appeal to the
3 prurient interest of the offender or any other person;

4 (3) "performance" means any film, photograph, negative, slide, book,
5 magazine or other printed or visual medium, any audio tape recording or
6 any photocopy, video tape, video laser disk, computer hardware, software,
7 floppy disk or any other computer related equipment or computer
8 generated image that contains or incorporates in any manner any film,
9 photograph, negative, photocopy, video tape or video laser disk or any
10 play or other live presentation;

11 (4) "nude" means any state of undress in which the human genitals,
12 pubic region, buttock or female breast, at a point below the top of the
13 areola, is less than completely and opaquely covered; and

14 (5) "visual depiction" means any photograph, film, video picture,
15 digital or computer-generated image or picture, whether made or produced
16 by electronic, mechanical or other means.

17 Sec. 4. K.S.A. 2011 Supp. 21-5510 is hereby repealed.

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

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