

Substitute for HOUSE BILL No. 2706

By Committee on Corrections and Juvenile Justice

2-26

1 AN ACT concerning visual depictions of children; creating the crimes of
2 unlawful transmission of a visual depiction of a child and unlawful
3 possession of a visual depiction of a child; relating to sexual
4 exploitation of a child; amending K.S.A. 2013 Supp. 21-5510 and
5 repealing the existing section.

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

8 New Section 1. (a) Unlawful transmission of a visual depiction of a
9 child is knowingly transmitting a visual depiction of a child 12 or more
10 years of age in a state of nudity:

11 (1) When the offender is less than 19 years of age; and

12 (2) when the offender is less than six years of age older than the
13 child.

14 (b) Aggravated unlawful transmission of a visual depiction of a child
15 is:

16 (1) Knowingly transmitting a visual depiction of a child 12 or more
17 years of age in a state of nudity:

18 (A) With the intent to harass, embarrass, intimidate, defame or
19 otherwise inflict emotional, psychological or physical harm;

20 (B) for pecuniary or tangible gain; or

21 (C) with the intent to exhibit or transmit such visual depiction to more
22 than one person;

23 (2) when the offender is less than 19 years of age; and

24 (3) when the offender is less than six years of age older than the
25 child.

26 (c) (1) Unlawful transmission of a visual depiction of a child is a
27 severity level 10, person felony.

28 (2) Aggravated unlawful transmission of a visual depiction of a child
29 is a:

30 (A) Severity level 9, person felony, except as provided in subsection
31 (c)(2)(B); and

32 (B) Severity level 7, person felony upon a second or subsequent
33 conviction.

34 (d) It shall be a rebuttable presumption that a child had the intent to
35 harass, embarrass, intimidate, defame or otherwise inflict emotional,
36 psychological or physical harm if the child transmitted a visual depiction

1 of a person other than such child in a state of nudity.

2 (e) The provisions of this section shall not apply to transmission of a
3 visual depiction of a child in a state of nudity by the child who is the
4 subject of such visual depiction.

5 (f) The provisions of this section shall not apply to a visual depiction
6 of a child engaged in sexually explicit conduct or a visual depiction that
7 constitutes obscenity as defined in subsection (f)(1) of K.S.A. 2013 Supp.
8 21-6401, and amendments thereto.

9 (g) As used in this section and section 2, and amendments thereto:

10 (1) "Sexually explicit conduct" means actual or simulated: Sexual
11 intercourse or sodomy, including genital-genital, oral-genital, anal-genital
12 or oral-anal contact, whether between persons of the same or opposite sex;
13 masturbation and sado-masochistic abuse for the purpose of sexual
14 stimulation;

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

18 (3) "visual depiction" means any photograph, film, video picture,
19 digital or computer generated image or picture made or produced by
20 electronic, mechanical or other means.

21 New Sec. 2. (a) Unlawful possession of a visual depiction of a child
22 is knowingly possessing a visual depiction of a child 12 years of age or
23 older in a state of nudity, if committed by a person less than six years of
24 age older than the subject of the visual depiction, and the possessor of such
25 visual depiction received such visual depiction directly and exclusively
26 from the child who is the subject of such visual depiction.

27 (b) Unlawful possession of a visual depiction of a child is a class A
28 person misdemeanor.

29 (c) It shall be an affirmative defense to any prosecution under this
30 section that the recipient of a visual depiction of a child in a state of
31 nudity:

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

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

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

37 (d) The provisions of this section shall not apply to possession of a
38 visual depiction of a child in a state of nudity if the person possessing such
39 visual depiction is the child who is the subject of such visual depiction.

40 (e) The provisions of this section shall not apply to a visual depiction
41 of a child engaged in sexually explicit conduct or a visual depiction that
42 constitutes obscenity as defined in subsection (f)(1) of K.S.A. 2013 Supp.
43 21-6401, and amendments thereto.

1 Sec. 3. K.S.A. 2013 Supp. 21-5510 is hereby amended to read as
2 follows: 21-5510. (a) *Except as provided in sections 1 and 2, and*
3 *amendments thereto*, sexual exploitation of a child is:

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

8 (2) possessing any visual depiction of a child under 18 years of age
9 shown or heard engaging in sexually explicit conduct with intent to arouse
10 or satisfy the sexual desires or appeal to the prurient interest of the
11 offender or any other person;

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

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

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

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

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

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

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

32 (1) Subsection (c) of K.S.A. 2013 Supp. 21-5301, and amendments
33 thereto, shall not apply to a violation of attempting to commit the crime of
34 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

35 (2) subsection (c) of K.S.A. 2013 Supp. 21-5302, and amendments
36 thereto, shall not apply to a violation of conspiracy to commit the crime of
37 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

38 (3) subsection (d) of K.S.A. 2013 Supp. 21-5303, and amendments
39 thereto, shall not apply to a violation of criminal solicitation to commit the
40 crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)
41 (4).

42 (d) As used in this section:

43 (1) "Sexually explicit conduct" means actual or simulated: Exhibition

1 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
2 genital, anal-genital or oral-anal contact, whether between persons of the
3 same or opposite sex; masturbation; sado-masochistic abuse with the intent
4 of sexual stimulation; or lewd exhibition of the genitals, female breasts or
5 pubic area of any person;

6 (2) "promoting" means procuring, transmitting, distributing,
7 circulating, presenting, producing, directing, manufacturing, issuing,
8 publishing, displaying, exhibiting or advertising:

9 (A) For pecuniary profit; or

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

12 (3) "performance" means any film, photograph, negative, slide, book,
13 magazine or other printed or visual medium, any audio tape recording or
14 any photocopy, video tape, video laser disk, computer hardware, software,
15 floppy disk or any other computer related equipment or computer
16 generated image that contains or incorporates in any manner any film,
17 photograph, negative, photocopy, video tape or video laser disk or any
18 play or other live presentation;

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

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

25 *(e) The provisions of this section shall not apply to possession of a*
26 *visual depiction of a child in a state of nudity if the person possessing such*
27 *visual depiction is the child who is the subject of such visual depiction.*

28 Sec. 4. K.S.A. 2013 Supp. 21-5510 is hereby repealed.

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