

21-5504. Criminal sodomy; aggravated criminal sodomy. (a) Criminal sodomy is:

- (1) Sodomy between persons who are 16 or more years of age and members of the same sex;
- (2) sodomy between a person and an animal;
- (3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or
- (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:

- (1) Sodomy with a child who is under 14 years of age;
- (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.

(c) (1) Criminal sodomy as defined in:

- (A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and
- (B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.

(2) Aggravated criminal sodomy as defined in:

- (A) Subsection (b)(3) is a severity level 1, person felony; and
- (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony, except as provided in subsection (c) (3).
- (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) or attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:

- (1) Subsection (c) of K.S.A. 2014 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);
- (2) subsection (c) of K.S.A. 2014 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and
- (3) subsection (d) of K.S.A. 2014 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2).

(e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

History: L. 2010, ch. 136, § 68; L. 2011, ch. 30, § 30; July 1.