

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2501** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee amendments, as follows:

On page 1, following line 7, by inserting:

"New Section 1. (a) Unlawful transmission of a visual depiction of a child is knowingly transmitting a visual depiction of a child 12 or more years of age but less than 18 years of age in a state of nudity when the offender is less than 19 years of age.

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

(1) Knowingly transmitting a visual depiction of a child 12 or more years of age but less than 18 years of age in a state of nudity:

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

(B) for pecuniary or tangible gain; or

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

and

(2) when the offender is less than 19 years of age.

(c) (1) Unlawful transmission of a visual depiction of a child is a:

(A) Class A person misdemeanor, except as provided in subsection (c)(1)(B); and

(B) severity level 10, person felony upon a second or subsequent conviction.

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

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

(B) severity level 7, person felony upon a second or subsequent conviction.

(d) It shall be a rebuttable presumption that an offender had the intent to harass, embarrass, intimidate, defame or otherwise inflict emotional, psychological or physical harm if the offender transmitted a visual depiction of a person other than such child in a state of nudity to more than one person.

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

(f) The provisions of this section shall not apply to a visual depiction of a child engaged in sexually explicit conduct or a visual depiction that constitutes obscenity as defined in K.S.A. 2015 Supp. 21-6401(f)(1), and amendments thereto.

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

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

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

(3) "transmission" means any form of communication, including, but not limited to, physical transmission of paper and electronic transmission that creates a record that may be retained and reviewed by a recipient thereof, and that may be directly reproduced in paper form

by such a recipient through an automated process. Transmission also includes a request to receive a transmission of a visual depiction; and

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

New Sec. 2. (a) Unlawful possession of a visual depiction of a child is knowingly possessing a visual depiction of a child 12 years of age or older but less than 16 years of age in a state of nudity, if committed by a person less than 19 years of age, and the possessor of such visual depiction received such visual depiction directly and exclusively from the child who is the subject of such visual depiction.

(b) Unlawful possession of a visual depiction of a child is a class B person misdemeanor.

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

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

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

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

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

(e) The provisions of this section shall not apply to a visual depiction of a child engaged in sexually explicit conduct or a visual depiction that constitutes obscenity as defined in

K.S.A. 2015 Supp. 21-6401(f)(1), and amendments thereto.

(f) It shall not be unlawful for a person who is less than 19 years of age to possess a visual depiction of a child in a state of nudity who is 16 years of age or older.";

Also, on page 1, following line 20, by inserting:

"Sec. 4. K.S.A. 2015 Supp. 21-5510 is hereby amended to read as follows: 21-5510. (a) Except as provided in sections 1 and 2, and amendments thereto, sexual exploitation of a child is:

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

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

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

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

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

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

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

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

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

(1) ~~Subsection (e) of~~ K.S.A. 2015 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

(2) ~~subsection (e) of~~ K.S.A. 2015 Supp. 21-5302(c), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

(3) ~~subsection (d) of~~ K.S.A. 2015 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

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

(2) "promoting" means procuring, transmitting, distributing, circulating, presenting,

producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

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

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

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

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

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

On page 3, following line 38, by inserting:

"Sec. 7. K.S.A. 2015 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means:

(1) A sex offender;

(2) a violent offender;

(3) a drug offender;

(4) any person who has been required to register under out of state law or is otherwise required to be registered; and

(5) any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.

(b) "Sex offender" includes any person who:

(1) On or after April 14, 1994, is convicted of any sexually violent crime;

(2) on or after July 1, 2002, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

(3) has been determined to be a sexually violent predator;

(4) on or after July 1, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:

(A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2015 Supp. 21-5511, and amendments thereto;

(B) criminal sodomy, as defined in ~~subsection (a)(1) of~~ K.S.A. 21-3505(a)(1), prior to its repeal, or ~~subsection (a)(1) or (a)(2) of~~ K.S.A. 2015 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto;

(C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2015 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session

Laws of Kansas on July 1, 2013;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2015 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2015 Supp. 21-5513, and amendments thereto;

(5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2015 Supp. 21-5505, and amendments thereto;

(6) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or

(7) has been convicted of an offense that is comparable to any crime defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection.

(c) "Sexually violent crime" means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or ~~subsection (a) of~~ K.S.A. 2015 Supp. 21-5506(a), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2015 Supp. 21-5506(b), and amendments thereto;

(4) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~ K.S.A. 21-3505(a)(2)

or (a)(3), prior to its repeal, or ~~subsection (a)(3) or (a)(4)~~ of K.S.A. 2015 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2015 Supp. 21-5504(b), and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2015 Supp. 21-5508(a), and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2015 Supp. 21-5508(b), and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2015 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2015 Supp. 21-5505(b), and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2015 Supp. 21-5604(b), and amendments thereto;

(11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, and K.S.A. 2015 Supp. 21-5509, and amendments thereto;

(12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2015 Supp. 21-5512, and amendments thereto;

(13) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2015 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(14) commercial sexual exploitation of a child, as defined in K.S.A. 2015 Supp. 21-

6422, and amendments thereto;

(15) any conviction or adjudication for an offense that is comparable to a sexually violent crime as defined in this subsection, or any out of state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;

(16) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or

(17) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

(e) "Violent offender" includes any person who:

(1) On or after July 1, 1997, is convicted of any of the following crimes:

(A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2015 Supp. 21-5401, and amendments thereto;

(B) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or

K.S.A. 2015 Supp. 21-5402, and amendments thereto;

(C) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2015 Supp. 21-5403, and amendments thereto;

(D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2015 Supp. 21-5404, and amendments thereto;

(E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or ~~subsections (a)(1), (a)(2) or (a)(4) of K.S.A. 2015 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto. The provisions of this paragraph shall not apply to violations of subsection (a)(3) of K.S.A. 2015 Supp. 21-5405(a)(3), and amendments thereto, which occurred on or after July 1, 2011, through July 1, 2013;~~

(F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or ~~subsection (a) of K.S.A. 2015 Supp. 21-5408(a), and amendments thereto;~~

(G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or ~~subsection (b) of K.S.A. 2015 Supp. 21-5408(b), and amendments thereto;~~

(H) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2015 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age; or

(I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or ~~subsection (b) of K.S.A. 2015 Supp. 21-5426(b), and amendments thereto, if not committed in whole or in part for the purpose of the sexual gratification of the defendant or another;~~

(2) on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(3) has been convicted of an offense that is comparable to any crime defined in this subsection, any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(4) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(f) "Drug offender" includes any person who, on or after July 1, 2007:

(1) Is convicted of any of the following crimes:

(A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog, as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2015 Supp. 21-5703, and amendments thereto;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance, as defined in ~~subsection (a) of~~ K.S.A. 65-7006(a), prior to its repeal, ~~subsection (a) of~~ K.S.A. 2010 Supp. 21-36a09(a), prior to its transfer, or ~~subsection (a) of~~ K.S.A. 2015 Supp. 21-5709(a), and amendments thereto;

(C) K.S.A. 65-4161, prior to its repeal, ~~subsection (a)(1) of~~ K.S.A. 2010 Supp. 21-36a05(a)(1), prior to its transfer, or ~~subsection (a)(1) of~~ K.S.A. 2015 Supp. 21-5705(a)(1), and amendments thereto. The provisions of this paragraph shall not apply to violations of ~~subsections (a)(2) through (a)(6) or (b) of~~ K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b) which occurred on or after July 1, 2009, through April 15, 2010;

(2) has been convicted of an offense that is comparable to any crime defined in this subsection, any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(3) is or has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions or adjudications which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction or adjudication. Any conviction or adjudication set aside pursuant to law is not a conviction or adjudication for purposes of this section. A conviction or adjudication from any out of state court shall constitute a conviction or adjudication for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(i) "Employment" means any full-time, part-time, transient, day-labor employment or volunteer work, with or without compensation, for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(j) "Reside" means to stay, sleep or maintain with regularity or temporarily one's person and property in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or

maintains the offender's person for three or more consecutive days or parts of days, or for ten or more nonconsecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, correctional facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments and correctional facilities.

(p) "Treatment facility" means any public or private facility or institution providing inpatient mental health, drug or alcohol treatment or counseling, but does not include a hospital, as defined in K.S.A. 65-425, and amendments thereto.

(q) "Correctional facility" means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) "Out of state" means: the District of Columbia; any federal, military or tribal

jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

(t) (1) Notwithstanding any other provision of this section, "offender" shall not include any person who is:

(A) Convicted of unlawful transmission of a visual depiction of a child, as defined in section 1(a), and amendments thereto, aggravated unlawful transmission of a visual depiction of a child, as defined in section 1(b), and amendments thereto, or unlawful possession of a visual depiction of a child, as defined in section 2, and amendments thereto; or

(B) adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a crime defined in subsection (t)(1)(A).

(2) Notwithstanding any other provision of law, a court shall not order any person to register under the Kansas offender registration act for the offenses described in subsection (t) (1).";

Also on page 3, in line 39, after the comma by inserting "21-5510,"; also in line 39, by striking "and" and inserting a comma; also in line 39, following "22-2619" by inserting "and 22-4902";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after the semicolon by inserting "creating the crimes of unlawful transmission of a visual depiction of a child and unlawful possession of a visual depiction of a child;"; in line 3, after the semicolon by inserting "prohibiting offender registration

for certain crimes;"; in line 4, after the comma by inserting "21-5510,"; also in line 4, by striking the first "and" and inserting a comma; also in line 4, after "22-2619" by inserting "and 22-4902";

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House