

HOUSE BILL No. 2339

By Committee on Corrections and Juvenile Justice

2-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sex offenses; amending K.S.A. 2014 Supp. 21-5504, 21-5505, 21-
3 5506, 21-5507, 21-5508, 21-5512 and 21-5513 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2014 Supp. 21-5504 is hereby amended to read as
8 follows: 21-5504. (a) Criminal sodomy is:

9 (1) Sodomy between persons who are ~~16~~ 18 or more years of age and
10 members of the same sex;

11 (2) sodomy between a person and an animal;

12 (3) sodomy with a child who is 14 or more years of age but less than
13 ~~16~~ 18 years of age; or

14 (4) causing a child 14 or more years of age but less than ~~16~~ 18 years
15 of age to engage in sodomy with any person or animal.

16 (b) Aggravated criminal sodomy is:

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

18 (2) causing a child under 14 years of age to engage in sodomy with
19 any person or an animal; or

20 (3) sodomy with a victim who does not consent to the sodomy or
21 causing a victim, without the victim's consent, to engage in sodomy with
22 any person or an animal under any of the following circumstances:

23 (A) When the victim is overcome by force or fear;

24 (B) when the victim is unconscious or physically powerless; or

25 (C) when the victim is incapable of giving consent because of mental
26 deficiency or disease, or when the victim is incapable of giving consent
27 because of the effect of any alcoholic liquor, narcotic, drug or other
28 substance, which condition was known by, or was reasonably apparent to,
29 the offender.

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

31 (A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor;
32 and

33 (B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.

34 (2) Aggravated criminal sodomy as defined in:

35 (A) Subsection (b)(3) is a severity level 1, person felony; and

36 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,

1 except as provided in subsection (c)(3).

2 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)
3 (2) or attempt, conspiracy or criminal solicitation to commit aggravated
4 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid
5 person felony, when the offender is 18 years of age or older.

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

7 (1) ~~Subsection (e) of K.S.A. 2014 Supp. 21-5301(c)~~, and amendments
8 thereto, shall not apply to a violation of attempting to commit the crime of
9 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

10 (2) ~~subsection (e) of K.S.A. 2014 Supp. 21-5302(c)~~, and amendments
11 thereto, shall not apply to a violation of conspiracy to commit the crime of
12 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

13 (3) ~~subsection (d) of K.S.A. 2014 Supp. 21-5303(d)~~, and amendments
14 thereto, shall not apply to a violation of criminal solicitation to commit the
15 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
16 (2).

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

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

25 Sec. 2. K.S.A. 2014 Supp. 21-5505 is hereby amended to read as
26 follows: 21-5505. (a) Sexual battery is the touching of a victim who is
27 not the spouse of the offender, who is ~~16~~ 18 or more years of age and who
28 does not consent thereto, with the intent to arouse or satisfy the sexual
29 desires of the offender or another.

30 (b) Aggravated sexual battery is the touching of a victim who is ~~16~~
31 18 or more years of age and who does not consent thereto with the intent
32 to arouse or satisfy the sexual desires of the offender or another and under
33 any of the following circumstances:

34 (1) When the victim is overcome by force or fear;

35 (2) when the victim is unconscious or physically powerless; or

36 (3) when the victim is incapable of giving consent because of mental
37 deficiency or disease, or when the victim is incapable of giving consent
38 because of the effect of any alcoholic liquor, narcotic, drug or other
39 substance, which condition was known by, or was reasonably apparent to,
40 the offender.

41 (c) (1) Sexual battery is a class A person misdemeanor.

42 (2) Aggravated sexual battery is a severity level 5, person felony.

43 (d) Except as provided in subsection (b)(3), it shall not be a defense

1 that the offender did not know or have reason to know that the victim did
2 not consent to the battery, that the victim was overcome by force or fear, or
3 that the victim was unconscious or physically powerless.

4 Sec. 3. K.S.A. 2014 Supp. 21-5506 is hereby amended to read as
5 follows: 21-5506. (a) Indecent liberties with a child is engaging in any of
6 the following acts with a child who is 14 or more years of age but less than
7 ~~16~~ 18 years of age:

8 (1) Any lewd fondling or touching of the person of either the child or
9 the offender, done or submitted to with the intent to arouse or to satisfy the
10 sexual desires of either the child or the offender, or both; or

11 (2) soliciting the child to engage in any lewd fondling or touching of
12 the person of another with the intent to arouse or satisfy the sexual desires
13 of the child, the offender or another.

14 (b) Aggravated indecent liberties with a child is:

15 (1) Sexual intercourse with a child who is 14 or more years of age but
16 less than ~~16~~ 18 years of age;

17 (2) engaging in any of the following acts with a child who is 14 or
18 more years of age but less than ~~16~~ 18 years of age and who does not
19 consent thereto:

20 (A) Any lewd fondling or touching of the person of either the child or
21 the offender, done or submitted to with the intent to arouse or to satisfy the
22 sexual desires of either the child or the offender, or both; or

23 (B) causing the child to engage in any lewd fondling or touching of
24 the person of another with the intent to arouse or satisfy the sexual desires
25 of the child, the offender or another; or

26 (3) engaging in any of the following acts with a child who is under 14
27 years of age:

28 (A) Any lewd fondling or touching of the person of either the child or
29 the offender, done or submitted to with the intent to arouse or to satisfy the
30 sexual desires of either the child or the offender, or both; or

31 (B) soliciting the child to engage in any lewd fondling or touching of
32 the person of another with the intent to arouse or satisfy the sexual desires
33 of the child, the offender or another.

34 (c) (1) Indecent liberties with a child is a severity level 5, person
35 felony.

36 (2) Aggravated indecent liberties with a child as defined in:

37 (A) Subsection (b)(1) is a severity level 3, person felony;

38 (B) subsection (b)(2) is a severity level 4, person felony; and

39 (C) subsection (b)(3) is a severity level 3, person felony, except as
40 provided in subsection (c)(3).

41 (3) Aggravated indecent liberties with a child as defined in subsection
42 (b)(3) or attempt, conspiracy or criminal solicitation to commit aggravated
43 indecent liberties with a child as defined in subsection (b)(3) is an off-grid

1 person felony, when the offender is 18 years of age or older.

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

3 (1) ~~Subsection (e) of~~ K.S.A. 2014 Supp. 21-5301(c), and amendments
4 thereto, shall not apply to a violation of attempting to commit the crime of
5 aggravated indecent liberties with a child as defined in subsection (b)(3);

6 (2) ~~subsection (e) of~~ K.S.A. 2014 Supp. 21-5302(c), and amendments
7 thereto, shall not apply to a violation of conspiracy to commit the crime of
8 aggravated indecent liberties with a child as defined in subsection (b)(3);

9 (3) ~~subsection (d) of~~ K.S.A. 2014 Supp. 21-5303(d), and amendments
10 thereto, shall not apply to a violation of criminal solicitation to commit the
11 crime of aggravated indecent liberties with a child as defined in subsection
12 (b)(3).

13 (e) It shall be a defense to a prosecution of indecent liberties with a
14 child, as defined in subsection (a)(1), and aggravated indecent liberties
15 with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that
16 the child was married to the accused at the time of the offense.

17 Sec. 4. K.S.A. 2014 Supp. 21-5507 is hereby amended to read as
18 follows: 21-5507. (a) Unlawful voluntary sexual relations is:

19 (1) Engaging in any of the following acts with a child who is 14 or
20 more years of age but less than ~~16~~ 18 years of age:

21 (A) Voluntary sexual intercourse;

22 (B) voluntary sodomy; or

23 (C) voluntary lewd fondling or touching;

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

25 (3) when the offender is less than four years of age older than the
26 child;

27 (4) when the child and the offender are the only parties involved; and

28 (5) when the child and the offender are members of the opposite sex.

29 (b) Unlawful voluntary sexual relations as defined in:

30 (1) Subsection (a)(1)(A) is a severity level 8, person felony;

31 (2) subsection (a)(1)(B) is a severity level 9, person felony; and

32 (3) subsection (a)(1)(C) is a severity level 10, person felony.

33 Sec. 5. K.S.A. 2014 Supp. 21-5508 is hereby amended to read as
34 follows: 21-5508. (a) Indecent solicitation of a child is enticing,
35 commanding, inviting, persuading or attempting to persuade a child 14 or
36 more years of age but less than ~~16~~ 18 years of age to:

37 (1) Commit or to submit to an unlawful sexual act; or

38 (2) enter any vehicle, building, room or secluded place with intent to
39 commit an unlawful sexual act upon or with the child.

40 (b) Aggravated indecent solicitation of a child is enticing,
41 commanding, inviting, persuading or attempting to persuade a child under
42 the age of 14 years to:

43 (1) Commit or submit to an unlawful sexual act; or

1 (2) enter any vehicle, building, room or secluded place with the intent
2 to commit an unlawful sexual act upon or with the child.

3 (c) (1) Indecent solicitation of a child is a severity level 6, person
4 felony.

5 (2) Aggravated indecent solicitation of a child is a severity level 5,
6 person felony.

7 (d) It shall not be a defense that the offender did not know or have
8 reason to know that the sexual act was unlawful.

9 Sec. 6. K.S.A. 2014 Supp. 21-5512 is hereby amended to read as
10 follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual
11 sexual intercourse, lewd fondling or touching, or sodomy with a person
12 who is not married to the offender if:

13 (1) The offender is an employee or volunteer of the department of
14 corrections, or the employee or volunteer of a contractor who is under
15 contract to provide services for a correctional institution, and the person
16 with whom the offender is engaging in consensual sexual intercourse, lewd
17 fondling or touching, or sodomy is a person ~~16~~ 18 years of age or older
18 who is an inmate;

19 (2) the offender is a parole officer, volunteer for the department of
20 corrections or the employee or volunteer of a contractor who is under
21 contract to provide supervision services for persons on parole, conditional
22 release or postrelease supervision and the person with whom the offender
23 is engaging in consensual sexual intercourse, lewd fondling or touching, or
24 sodomy is a person 16 years of age or older who is an inmate who has
25 been released on parole, conditional release or postrelease supervision and
26 the offender has knowledge that the person with whom the offender is
27 engaging in consensual sexual intercourse, lewd fondling or touching, or
28 sodomy is an inmate who has been released and is currently on parole,
29 conditional release or postrelease supervision;

30 (3) the offender is a law enforcement officer, an employee of a jail, or
31 the employee of a contractor who is under contract to provide services in a
32 jail and the person with whom the offender is engaging in consensual
33 sexual intercourse, lewd fondling or touching, or sodomy is a person ~~16~~ 18
34 years of age or older who is confined to such jail;

35 (4) the offender is a law enforcement officer, an employee of a
36 juvenile detention facility or sanctions house, or the employee of a
37 contractor who is under contract to provide services in such facility or
38 sanctions house and the person with whom the offender is engaging in
39 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
40 person ~~16~~ 18 years of age or older who is confined to such facility or
41 sanctions house;

42 (5) the offender is an employee of the department of corrections or
43 the employee of a contractor who is under contract to provide services in a

1 juvenile correctional facility and the person with whom the offender is
2 engaging in consensual sexual intercourse, lewd fondling or touching, or
3 sodomy is a person ~~16~~ 18 years of age or older who is confined to such
4 facility;

5 (6) the offender is an employee of the department of corrections or
6 the employee of a contractor who is under contract to provide direct
7 supervision and offender control services to the department of corrections
8 and:

9 (A) The person with whom the offender is engaging in consensual
10 sexual intercourse, lewd fondling or touching, or sodomy is a person ~~16~~ 18
11 years of age or older who has been:

12 (i) Released on conditional release from a juvenile correctional
13 facility under the supervision and control of the department of corrections
14 or juvenile community supervision agency; or

15 (ii) placed in the custody of the department of corrections under the
16 supervision and control of the department of corrections or juvenile
17 community supervision agency; and

18 (B) the offender has knowledge that the person with whom the
19 offender is engaging in consensual sexual intercourse, lewd fondling or
20 touching, or sodomy is currently under supervision;

21 (7) the offender is an employee of the Kansas department for aging
22 and disability services or the Kansas department for children and families
23 or the employee of a contractor who is under contract to provide services
24 in an aging and disability or children and families institution or to the
25 Kansas department for aging and disability services or the Kansas
26 department for children and families and the person with whom the
27 offender is engaging in consensual sexual intercourse, lewd fondling or
28 touching, or sodomy is a person 16 years of age or older who is a patient in
29 such institution or in the custody of the secretary for aging and disability
30 services or the secretary for children and families;

31 (8) the offender is a worker, volunteer or other person in a position of
32 authority in a family foster home licensed by the department of health and
33 environment and the person with whom the offender is engaging in
34 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
35 person ~~16~~ 18 years of age or older who is a foster child placed in the care
36 of such family foster home;

37 (9) the offender is a teacher or other person in a position of authority
38 and the person with whom the offender is engaging in consensual sexual
39 intercourse, lewd fondling or touching, or sodomy is a person ~~16~~ 18 years
40 of age or older who is a student enrolled at the school where the offender
41 is employed. If the offender is the parent of the student, the provisions of
42 ~~subsection (b) of K.S.A. 2014 Supp. 21-5604(b)~~, and amendments thereto,
43 shall apply, not this subsection;

1 (10) the offender is a court services officer or the employee of a
2 contractor who is under contract to provide supervision services for
3 persons under court services supervision and the person with whom the
4 offender is engaging in consensual sexual intercourse, lewd fondling or
5 touching, or sodomy is a person ~~16~~ 18 years of age or older who has been
6 placed on probation under the supervision and control of court services
7 and the offender has knowledge that the person with whom the offender is
8 engaging in consensual sexual intercourse, lewd fondling or touching, or
9 sodomy is currently under the supervision of court services;

10 (11) the offender is a community correctional services officer or the
11 employee of a contractor who is under contract to provide supervision
12 services for persons under community corrections supervision and the
13 person with whom the offender is engaging in consensual sexual
14 intercourse, lewd fondling or touching, or sodomy is a person ~~16~~ 18 years
15 of age or older who has been assigned to a community correctional
16 services program under the supervision and control of community
17 corrections and the offender has knowledge that the person with whom the
18 offender is engaging in consensual sexual intercourse, lewd fondling or
19 touching, or sodomy is currently under the supervision of community
20 corrections; or

21 (12) the offender is a surety or an employee of a surety and the person
22 with whom the offender is engaging in consensual sexual intercourse, lewd
23 fondling or touching, or sodomy is a person ~~16~~ 18 years of age or older
24 who is the subject of a surety or bail bond agreement with such surety and
25 the offender has knowledge that the person with whom the offender is
26 engaging in consensual sexual intercourse, lewd fondling or touching, or
27 sodomy is the subject of a surety or bail bond agreement with such surety.

28 (b) Unlawful sexual relations as defined in:

29 (1) Subsection (a)(5) is a severity level 4, person felony; and

30 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),
31 (a)(10), (a)(11) or (a)(12) is a severity level 5, person felony.

32 (c) (1) If an offender violates the provisions of this section by
33 engaging in consensual sexual intercourse which would constitute a
34 violation of K.S.A. 2014 Supp. 21-5503, and amendments thereto, the
35 provisions of K.S.A. 2014 Supp. 21-5503, and amendments thereto, shall
36 apply, not this section.

37 (2) If an offender violates the provisions of this section by engaging
38 in consensual sexual intercourse which would constitute a violation of
39 ~~subsection (b)(1) of K.S.A. 2014 Supp. 21-5506(b)(1)~~, and amendments
40 thereto, the provisions of ~~subsection (b)(1) of K.S.A. 2014 Supp. 21-~~
41 ~~5506(b)(1)~~, and amendments thereto, shall apply, not this section.

42 (3) If an offender violates the provisions of this section by engaging
43 in sodomy which would constitute a violation of ~~subsection (a)(3), (a)(4)~~

1 ~~or (b) of K.S.A. 2014 Supp. 21-5504(a)(3), (a)(4) or (b), and amendments~~
2 ~~thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2014~~
3 ~~Supp. 21-5504(a)(3), (a)(4) or (b), and amendments thereto, shall apply,~~
4 ~~not this section.~~

5 (4) If an offender violates the provisions of this section by engaging
6 in lewd fondling or touching which would constitute a violation of
7 ~~subsection (b)(2) of K.S.A. 2014 Supp. 21-5506(b)(2), and amendments~~
8 ~~thereto, the provisions of subsection (b)(2) of K.S.A. 2014 Supp. 21-~~
9 ~~5506(b)(2), and amendments thereto, shall apply, not this section.~~

10 (d) As used in this section:

11 (1) "Correctional institution" means the same as in K.S.A. 75-5202,
12 and amendments thereto;

13 (2) "inmate" means the same as in K.S.A. 75-5202, and amendments
14 thereto;

15 (3) "parole officer" means the same as in K.S.A. 75-5202, and
16 amendments thereto;

17 (4) "postrelease supervision" means the same as in K.S.A. 2014 Supp.
18 21-6803, and amendments thereto;

19 (5) "juvenile detention facility" means the same as in K.S.A. 2014
20 Supp. 38-2302, and amendments thereto;

21 (6) "juvenile correctional facility" means the same as in K.S.A. 2014
22 Supp. 38-2302, and amendments thereto;

23 (7) "sanctions house" means the same as in K.S.A. 2014 Supp. 38-
24 2302, and amendments thereto;

25 (8) "institution" means the same as in K.S.A. 76-12a01, and
26 amendments thereto;

27 (9) "teacher" means and includes teachers, coaches, supervisors,
28 principals, superintendents and any other professional employee in any
29 public or private school offering any of grades kindergarten through 12;

30 (10) "community corrections" means the entity responsible for
31 supervising adults and juvenile offenders for confinement, detention, care
32 or treatment, subject to conditions imposed by the court pursuant to the
33 community corrections act, K.S.A. 75-5290, and amendments thereto, and
34 the revised Kansas juvenile justice code, K.S.A. 2014 Supp. 38-2301 et
35 seq., and amendments thereto;

36 (11) "court services" means the entity appointed by the district court
37 that is responsible for supervising adults and juveniles placed on probation
38 and misdemeanants placed on parole by district courts of this state;

39 (12) "juvenile community supervision agency" means an entity that
40 receives grants for the purpose of providing direct supervision to juveniles
41 in the custody of the department of corrections; and

42 (13) "surety" means the same as in K.S.A. 22-2809a, and
43 amendments thereto.

1 Sec. 7. K.S.A. 2014 Supp. 21-5513 is hereby amended to read as
2 follows: 21-5513. (a) Lewd and lascivious behavior is:

3 (1) Publicly engaging in otherwise lawful sexual intercourse or
4 sodomy with knowledge or reasonable anticipation that the participants are
5 being viewed by others; or

6 (2) publicly exposing a sex organ or exposing a sex organ in the
7 presence of a person who is not the spouse of the offender and who has not
8 consented thereto, with intent to arouse or gratify the sexual desires of the
9 offender or another.

10 (b) Lewd and lascivious behavior is a:

11 (1) Class B nonperson misdemeanor, if committed in the presence of
12 a person ~~16~~ 18 or more years of age; and

13 (2) severity level 9, person felony, if committed in the presence of a
14 person under ~~16~~ 18 years of age.

15 Sec. 8. K.S.A. 2014 Supp. 21-5504, 21-5505, 21-5506, 21-5507, 21-
16 5508, 21-5512 and 21-5513 are hereby repealed.

17 Sec. 9. This act shall take effect and be in force from and after its
18 publication in the statute book.