

21-5510. Sexual exploitation of a child. (a) Except as provided in K.S.A. 2016 Supp. 21-5610 and 21-5611, 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) K.S.A. 2016 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) K.S.A. 2016 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) K.S.A. 2016 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.

History: L. 2010, ch. 136, § 74; L. 2011, ch. 100, § 16; L. 2016, ch. 96, § 4; July 1.

Section was also amended by L. 2011, ch. 30, § 32, but that version was repealed by L. 2011, ch. 100, § 22.