

House Corrections and Juvenile Justice Committee  
February 14, 2018  
House Bill 2738

Testimony of Jennifer Roth  
Legislative Committee co-chair,  
Kansas Association of Criminal Defense Lawyers  
Proponent

Dear Chairman Jennings and Members of the Committee:

Thank you for having this hearing. We believe laws need to change in order to address the penalties that youths suffer for consensual acts with other youths. Young people should not be branded and punished as sex offenders for consensual acts. HB 2738 has a unique look with the charts showing the penalties, which is necessary because of the ranges. At the informational hearing during interim in November, we learned that some other states use a “stair step” approach.

**What this bill would do**

HB 2738 amends the crime of unlawful voluntary sexual relations (K.S.A. 21-5507, commonly referred to as the Romeo and Juliet statute) to provide penalties for consensual acts between youth that vary according to what the act is and the age range of the parties. For some ages/ranges, there is no criminal penalty.

**What this bill does not do**

It does not change penalties/severity levels for nonconsensual acts between people of any ages. For example, a 14-year-old who forcibly has sex with a 13-year-old could still be prosecuted for rape.

It does not change the age of consent.

It does not address any crimes other than the ones mentioned. For example, it does not deal with juveniles and pornography or electronic solicitation. (An example of the latter being an 18-year-old sending a text to her 15-year-old boyfriend, enticing him to come over and make out, which would be unlawful since she is 18 and he is 15 - that would be a severity level 3 electronic solicitation, even though it would be Class A misdemeanor under HB 2738 for them to actually make out).

It does not change penalties/severity levels for sex offenses under K.S.A. 21-6627 (commonly referred to as Jessica’s Law). It would still be a presumptive life sentence under K.S.A. 21-6627 for someone 18+ and someone 13 years old or younger to have sexual contact of any kind. (The only exception is 13/18 which would be a severity level 3 or 5, depending on the contact. This is discussed further below.)

### **Putting this bill in context with another recent legislative addition**

It is relevant to note that the Legislature recently made clear that 12 and 13-year-olds can and will be held criminally responsible for certain conduct that may be sexual in nature. In 2016, the Legislature created the new crimes of unlawful transmission of a visual depiction, aggravated unlawful transmission of a visual depiction, and possession of a visual depiction. These crimes were created in response to the prevalent issue of “sexting” by middle school and high school students. See testimony regarding SB 391 to the Senate Corrections and Juvenile Justice Committee on February 9-10, 2016 from Sen. Molly Baumgardner and Captain Kirk Vernon.

Many proponents pointed out that juveniles distributing inappropriate images are seldom prosecuted because of the heavy penalties. See testimony from Sen. Baumgardner and Cpt. Vernon. In order for youth to be prosecuted, these crimes were created. They cover youth aged 12 to 18 who knowingly transmit or possess a visual depiction of someone aged 12-15 or 12-17 (depending on the crime). As explained in one proponent’s testimony, the ages were chosen on purpose: 12 is the average age of puberty for girls (13 for boys). The age range is 12-18 in order to include youth up to high school seniors. See testimony regarding HB 2018 to the Senate Corrections and Juvenile Justice Committee on March 9, 2016 from Ed Klumpp.

These new offenses show that the Legislature recognizes that youth aged 12-13 make decisions about sexually related conduct and will be held accountable if the facts warrant it. This is relevant to this discussion because while a 13-year-old could be prosecuted for encouraging his/her slightly older love interest to send a photo (or distributing a photo of said love interest to the basketball team, for example), under current law, the 14-year-old love interest could face much more severe consequences – up to a severity level one person felony (and all of the lifetime consequences that go with it) for sexually related contact with the same 13-year-old.

### **Changing K.S.A. 21-5507 to include contact between 13 and 18 year olds does not go against the intent of 2006 HB 2576**

Under current law, it is a presumptive life sentence for a 13-year-old and an 18-year-old to have sexual contact *of any kind*. For the 18-year-old to face a life sentence (or, even with a departure, a prison sentence of no less than 50% of the applicable grid box), lifetime registration, and lifetime parole is a draconian punishment.

K.S.A. 21-6627, commonly referred to as Jessica’s Law, was intended to address “sexual predators” and “violent, sexual crimes.” See testimony regarding SB 334 (and HB 2576) to the Senate Judiciary Committee on January 17, 2006 from Representative Patricia Kilpatrick. Jessica Lunsford, for whom the law is named, was 9 years old when she was abducted from her home by a 46-year-old man who was a convicted sex offender, who then sexually assaulted and murdered her. This horrific case spurred K.S.A. 21-6627 into being.

Yet K.S.A. 21-6627 treats one type of teen (i.e. 18 year olds) who have consensual contact with a 13-year-old teen the same way it treats people like Jessica's murderer. Interestingly, the first Jessica's Law was in Florida (where she lived) and covered children under 12 (not under 14, like Kansas). In fact, in 38 states, their versions of Jessica's Law do not cover 13-year-olds engaged in consensual activity with an 18-19 year old. It appears only seven states have a provision for "under 14" like Kansas.

### **What happens under current law**

K.S.A. 21-5507, the crime of unlawful voluntary sexual relations, is commonly referred to as the Romeo and Juliet Law. (In the Shakespeare play by the same name, Juliet is 13 and Romeo is "a young man" whose age is not stated.) K.S.A. 21-5507 criminalizes voluntary sexual relations between teens aged 14-18 when one of the teens is under 16. 16 is the "age of consent" in Kansas. For reference, generally speaking the following happens (of course, this assumes that the teens involved are in school. There is a procedure by which a teen aged 16-18 can "drop out" of high school):

- Turn 13 in 7th grade (or the summer after)
- Turn 14 in 8th grade (or the summer after)
- Turn 15 in 9th grade (or the summer after)
- Turn 16 in 10th grade (or the summer after)
- Turn 17 in 11th grade (or the summer after)
- Turn 18 in 12th grade (or the summer after)

For all of the crimes discussed below (even the most serious), it is not a defense if the two teens involved did not know the age of the other teen. It is not a defense if one teen lied about their age. See K.S.A. 21-5204 ("Proof of a culpable mental state does not require proof: (b) that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which the accused is charged.").

Also, whether they are juvenile adjudications or adult convictions, these consensual yet criminal offenses are all person felonies and will count accordingly in calculating a person's criminal history in the future, if necessary.

If a 14, 15, 16, or 17-year-old gets together with someone who is 14 or 15, then under K.S.A. 21-5507 (i.e. Romeo and Juliet law) either or both teen(s) could face:

- Severity level 8 person felony for voluntary sexual intercourse
- Severity level 9 person felony for voluntary sodomy
- Severity level 10 person felony for voluntary lewd fondling or touching

Convictions and adjudications for unlawful voluntary sexual relations are not registrable offenses. See K.S.A. 22-4902(b) [this crime is not included in the definition of "sex offender" in the Kansas Offender Registration Act, and there is a Romeo and Juliet-type provision in (b)(2) and (17)].

If a 14-year-old gets together with an 18-year-old, then K.S.A. 21-5507 does not apply because the age range is not “less than four years,” so the teen who is 18 could face:

- Severity level 3 person felony for consensual sexual intercourse (i.e. aggravated indecent liberties)
- Severity level 3 person felony for consensual sodomy (i.e. criminal sodomy)
- Severity level 5 person felony for consensual lewd fondling or touching (i.e. indecent liberties)

These convictions require sex offender registration for life for intercourse or sodomy, and 25 years for indecent liberties. See K.S.A. 22-4902(b)-(c); K.S.A. 22-4906(b)(1)(E), (d)(3)-(4).

If a 14, 15, 16, or 17-year-old gets together with someone who is 13, then the teen who is over 13 could face:

- Severity level 1 person felony for consensual sexual intercourse
- Severity level 1 person felony for consensual sodomy
- Severity level 3 person felony for consensual lewd fondling or touching

The severity level 1s are required registrable sex offenses, even though the teen over 13 is also a juvenile. In the event the teen is transferred to adult court, then the registration would be for life for all offenses. If the teen stays in juvenile court, for the severity level 1s, it is lifetime registration. See K.S.A. 22-4906(h). For the aggravated indecent liberties, the court has some discretion in making the registration until age 18, making it nonpublic, or not requiring it at all. See K.S.A. 22-4906(g).

If a 13-year-old gets together with someone who is 18, then the 18-year-old would face an off-grid offense with a presumptive life sentence for all acts (i.e. touching, fondling, sodomy, or sexual intercourse). Even with a departure (or if released on the life sentence - the minimum amount of time that must be served is 25 years), that teen-later-adult will spend the rest of their life on parole, electronic monitoring, and registration.

### **Conclusion**

We are thankful for the opportunity to discuss these issues with the Committee. We ask that you recommend HB 2738 favorably for passage.

Thank you for your consideration,

Jennifer Roth  
co-chair, Legislative Committee, Kansas Association of Criminal Defense Lawyers  
jrothlegislative@gmail.com  
785.550.5365