

HOUSE BILL No. 2216

By Committee on Judiciary

1-31

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to criminal sodomy; members of the same sex; amending K.S.A. 2016
3 Supp. 21-5504 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 21-5504 is hereby amended to read as
7 follows: 21-5504. (a) Criminal sodomy is:

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

10 ~~(2) Sodomy between a person and an animal;~~

11 ~~(3)(2) sodomy with a child who is 14 or more years of age but less~~
12 ~~than 16 years of age; or~~

13 ~~(4)(3) causing a child 14 or more years of age but less than 16 years~~
14 ~~of age to engage in sodomy with any person or animal.~~

15 (b) Aggravated criminal sodomy is:

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

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

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

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

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

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

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

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

32 (B) subsection (a)~~(3)~~(2) or (a)~~(4)~~(3) is a severity level 3, person
33 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. 2016 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. 2016 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. 2016 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. 2016 Supp. 21-5504 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the statute book.