

HOUSE BILL No. 2018

By Committee on Corrections and Juvenile Justice

1-14

1 AN ACT concerning visual depictions of children; creating the crimes of
2 unlawful transmission of a visual depiction of a child and unlawful
3 possession of a visual depiction of a child; relating to sexual
4 exploitation of a child; amending K.S.A. 2014 Supp. 21-5510 and
5 repealing the existing section.

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

8 New Section 1. (a) Unlawful transmission of a visual depiction of a
9 child is knowingly transmitting a visual depiction of a child 12 or more
10 years of age in a state of nudity:

11 (1) When the offender is less than 19 years of age; and
12 (2) when the offender is less than six years of age older than the child.

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

15 (1) Knowingly transmitting a visual depiction of a child 12 or more
16 years of age in a state of nudity:

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

19 (B) for pecuniary or tangible gain; or

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

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

23 (3) when the offender is less than six years of age older than the child.

24 (c) (1) Unlawful transmission of a visual depiction of a child is a
25 severity level 10, person felony.

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

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

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

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

36 (e) The provisions of this section shall not apply to transmission of a

1 visual depiction of a child in a state of nudity by the child who is the
2 subject of such visual depiction.

3 (f) The provisions of this section shall not apply to a visual depiction
4 of a child engaged in sexually explicit conduct or a visual depiction that
5 constitutes obscenity as defined in K.S.A. 2014 Supp. 21-6401(f)(1), and
6 amendments thereto.

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

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

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

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

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

25 (b) Unlawful possession of a visual depiction of a child is a class A
26 person misdemeanor.

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

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

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

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

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

38 (e) The provisions of this section shall not apply to a visual depiction
39 of a child engaged in sexually explicit conduct or a visual depiction that
40 constitutes obscenity as defined in of K.S.A. 2014 Supp. 21-6401(f)(1),
41 and amendments thereto.

42 Sec. 3. K.S.A. 2014 Supp. 21-5510 is hereby amended to read as
43 follows: 21-5510. (a) *Except as provided in sections 1 and 2, and*

1 *amendments thereto*, sexual exploitation of a child is:

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

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

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

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

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

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

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

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

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

29 (1) ~~Subsection (e) of K.S.A. 2014 Supp. 21-5301(c), and amendments~~
30 ~~thereto~~, shall not apply to a violation of attempting to commit the crime of
31 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

32 (2) ~~subsection (e) of K.S.A. 2014 Supp. 21-5302(c), and amendments~~
33 ~~thereto~~, shall not apply to a violation of conspiracy to commit the crime of
34 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

35 (3) ~~subsection (d) of K.S.A. 2014 Supp. 21-5303(d), and amendments~~
36 ~~thereto~~, shall not apply to a violation of criminal solicitation to commit the
37 crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)
38 (4).

39 (d) As used in this section:

40 (1) "Sexually explicit conduct" means actual or simulated: Exhibition
41 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
42 genital, anal-genital or oral-anal contact, whether between persons of the
43 same or opposite sex; masturbation; sado-masochistic abuse with the intent

1 of sexual stimulation; or lewd exhibition of the genitals, female breasts or
2 pubic area of any person;

3 (2) "promoting" means procuring, transmitting, distributing,
4 circulating, presenting, producing, directing, manufacturing, issuing,
5 publishing, displaying, exhibiting or advertising:

6 (A) For pecuniary profit; or

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

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

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

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

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

25 Sec. 4. K.S.A. 2014 Supp. 21-5510 is hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its
27 publication in the statute book.