

HOUSE BILL No. 2045

By Committee on Corrections and Juvenile Justice

1-19

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to breach of privacy and blackmail; amending K.S.A. 2010 Supp. 22-
3 4902 and section 64 and 171 of chapter 136 of the 2010 Session Laws
4 of Kansas and repealing the existing sections.

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

7 Section 1. Section 171 of chapter 136 of the 2010 Session Laws of
8 Kansas is hereby amended to read as follows: Sec. 171. (a) Breach of
9 privacy is knowingly and without lawful authority:

10 (1) Intercepting, without the consent of the sender or receiver, a
11 message by telephone, telegraph, letter or other means of private
12 communication;

13 (2) divulging, without the consent of the sender or receiver, the
14 existence or contents of such message if such person knows that the
15 message was illegally intercepted, or if such person illegally learned of
16 the message in the course of employment with an agency in transmitting
17 it;

18 (3) entering into a private place with intent to listen surreptitiously
19 to private conversations or to observe the personal conduct of any other
20 person or persons therein;

21 (4) installing or using outside *or inside* a private place any device for
22 hearing, recording, amplifying or broadcasting sounds originating in such
23 place, which sounds would not ordinarily be audible or comprehensible
24 outside, without the consent of the person or persons entitled to privacy
25 therein;

26 (5) installing or using any device or equipment for the interception
27 of any telephone, telegraph or other wire *or wireless* communication
28 without the consent of the person in possession or control of the facilities
29 for such ~~wire~~ communication; ~~or~~

30 (6) installing or using a concealed camcorder, motion picture camera
31 or photographic camera of any type, to secretly videotape, film,
32 photograph or record by electronic *or other* means, another, identifiable
33 person under or through the clothing being worn by that other person or
34 another, identifiable person who is nude or in a state of undress, for the
35 purpose of viewing the body of, or the undergarments worn by, that other
36 person, without the consent or knowledge of that other person, with the

1 intent to invade the privacy of that other person, under circumstances in
2 which the other person has a reasonable expectation of privacy;

3 (7) *looking into any hole or opening, or otherwise viewing by means*
4 *of instrumentality, any person with the intent to invade the privacy of the*
5 *person being viewed; or*

6 (8) *disseminating or permitting the dissemination of any videotape,*
7 *photograph, film or image obtained in violation of subsection (a)(6).*

8 (b) ~~Breach of privacy is a class A nonperson misdemeanor.~~ *as*
9 *defined in:*

10 (1) *Subsection (a)(1) and (a)(2) is a class A nonperson*
11 *misdemeanor;*

12 (2) *subsection (a)(3) is a severity level 9, person felony;*

13 (3) *subsections (a)(4) and (a)(5) is a severity level 8, person felony;*

14 (4) *subsections (a)(6) and (a)(7) is a severity level 7, person felony,*
15 *except as provided in subsection (b)(6);*

16 (5) *subsection (a)(8) is a severity level 5, person felony; and*

17 (6) *subsections (a)(6) and (a)(7) is a severity level 6, person felony*
18 *if:*

19 (A) *The person viewed is less than 18 years of age at the time the*
20 *image was captured or the viewing occurred;*

21 (B) *the offender is in a position of authority, trust or control over the*
22 *person being viewed, including, but not limited to, a biological parent,*
23 *stepparent, adoptive parent, teacher, coach, school administrator, or*
24 *clergy member; or*

25 (C) *the offender has been previously convicted under subsections (a)*
26 *(3) through (a)(7).*

27 (c) *It shall not be a defense to subsections (a)(6), (a)(7) or (a)(8)*
28 *that:*

29 (1) *The person being viewed or recorded was not in a state of*
30 *partial or complete undress or that the person being viewed was a*
31 *landlord, tenant, cohabitant, employer, employee, business partner,*
32 *associate or agent of any such person; or*

33 (2) *no image was captured or recorded.*

34 ~~(e)~~(d) *Subsection (a)(1) shall not apply to messages overheard*
35 *through a regularly installed instrument on a telephone party line or on an*
36 *extension.*

37 ~~(d)~~(e) *The provisions of this section shall not apply to an operator of*
38 *a switchboard, or any officer, employee or agent of any public utility*
39 *providing telephone communications service, whose facilities are used in*
40 *the transmission of a communication, to intercept, disclose or use that*
41 *communication in the normal course of employment while engaged in*
42 *any activity which is incident to the rendition of public utility service or*
43 *to the protection of the rights of property of such public utility.*

1 ~~(e)~~(f) As used in this section:

2 (1) "Instrumentality" includes, but is not limited to, a
3 telescope, periscope, binoculars, telephoto lens or any other
4 instrument which is used to magnify or aid in viewing such
5 person; and

6 (2) "private place" means a place where one may
7 reasonably expect to be safe from uninvited intrusion or
8 surveillance, but does not include a place to which the public
9 has lawful access.

10 Sec. 2. Section 64 of chapter 136 of the 2010 Session Laws of
11 Kansas is hereby amended to read as follows: Sec. 64. (a) Blackmail is
12 gaining or attempting to gain anything of value or compelling or
13 attempting to compel another to act against such person's will, by
14 threatening to:

15 (1) Communicate accusations or statements about any person that
16 would subject such person or any other person to public ridicule,
17 contempt or degradation; or

18 (2) disseminate any videotape, photograph, film, or image obtained in
19 violation of section 171 of chapter 136 of the 2010 Session Laws of
20 Kansas, and amendments thereto.

21 ~~(b) — Blackmail is a severity level 7, nonperson felony.~~

22 (b) Blackmail as defined in:

23 (1) Subsection (a)(1) is a severity level 7, nonperson felony; and

24 (2) subsection (a)(2) is a severity level 4, person felony.

25 Sec. 3. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as
26 follows: 22-4902. As used in the Kansas offender registration act, unless
27 the context otherwise requires:

28 (a) "Offender" means: (1) A sex offender as defined in subsection
29 (b);

30 (2) a violent offender as defined in subsection (d);

31 (3) a sexually violent predator as defined in subsection (f);

32 (4) any person who, on and after May 29, 1997, is convicted of any
33 of the following crimes when the victim is less than 18 years of age:

34 (A) Kidnapping as defined in K.S.A. 21-3420, prior to its repeal, or
35 subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of
36 Kansas, and amendments thereto, except by a parent;

37 (B) aggravated kidnapping as defined in K.S.A. 21-3421, prior to its
38 repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session
39 Laws of Kansas, and amendments thereto; or

40 (C) criminal restraint as defined in K.S.A. 21-3424, prior to its
41 repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas,

- 1 and amendments thereto, except by a parent;
- 2 (5) any person convicted of any of the following criminal sexual
3 conduct if one of the parties involved is less than 18 years of age:
- 4 (A) Adultery as defined by K.S.A. 21-3507, *prior to its repeal, or*
5 *section 75 of chapter 136 of the 2010 Session Laws of Kansas*, and
6 amendments thereto;
- 7 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
8 3505, *prior to its repeal, or subsection (a)(1) or (a)(2) of section 68 of*
9 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
10 thereto;
- 11 (C) promoting prostitution as defined by K.S.A. 21-3513, *prior to*
12 *its repeal, or section 230 of chapter 136 of the 2010 Session Laws of*
13 *Kansas*, and amendments thereto;
- 14 (D) patronizing a prostitute as defined by K.S.A. 21-3515, *prior to*
15 *its repeal, or section 231 of chapter 136 of the 2010 Session Laws of*
16 *Kansas*, and amendments thereto; or
- 17 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508,
18 *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws*
19 *of Kansas*, and amendments thereto;
- 20 (6) any person who has been required to register under any federal,
21 military or other state's law or is otherwise required to be registered;
- 22 (7) any person who, on or after July 1, 2006, is convicted of any
23 person felony and the court makes a finding on the record that a deadly
24 weapon was used in the commission of such person felony;
- 25 (8) any person who has been convicted of an offense in effect at any
26 time prior to May 29, 1997, that is comparable to any crime defined in
27 subsection (4), (5), (7) or (11), or any federal, military or other state
28 conviction for an offense that under the laws of this state would be an
29 offense defined in subsection (4), (5), (7) or (11);
- 30 (9) any person who has been convicted of an attempt, conspiracy or
31 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, or 21-3303,
32 *prior to its repeal, or section 33, 34 or 35 of chapter 136 of the 2010*
33 *Session Laws of Kansas*, and amendments thereto, of an offense defined
34 in subsection (4), (5), (7) or (10);
- 35 (10) any person who has been convicted of aggravated human
36 trafficking as defined in K.S.A. 21-3447, *prior to its repeal, or subsection*
37 *(b) of section 61 of chapter 136 of the 2010 Session Laws of Kansas*, and
38 amendments thereto; ~~or~~
- 39 (11) any person who has been convicted of: (A) Unlawful
40 manufacture or attempting such of any controlled substance or controlled
41 substance analog as defined by K.S.A. 65-4159, prior to its repeal or
42 K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court
43 makes a finding on the record that the manufacturing or attempting to

1 manufacture such controlled substance was for such person's personal
2 use;

3 (B) possession of ephedrine, pseudoephedrine, red phosphorus,
4 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
5 ammonia or phenylpropanolamine, or their salts, isomers or salts of
6 isomers with intent to use the product to manufacture a controlled
7 substance as defined by subsection (a) of K.S.A. 65-7006, prior to its
8 repeal or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and amendments
9 thereto, unless the court makes a finding on the record that the possession
10 of such product was intended to be used to manufacture a controlled
11 substance for such person's personal use; or

12 (C) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of
13 K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of
14 this paragraph shall not apply to violations of subsections (a)(2) through
15 (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto,
16 which occurred on and after July 1, 2009, through the effective date of
17 this act.; or

18 (12) *any person who, on or after July 1, 2011 is convicted of breach*
19 *of privacy as defined in subsections (a)(3) through (a)(7) of section 171*
20 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
21 *thereto.*

22 Convictions which result from or are connected with the same act, or
23 result from crimes committed at the same time, shall be counted for the
24 purpose of this section as one conviction. Any conviction set aside
25 pursuant to law is not a conviction for purposes of this section. A
26 conviction from another state shall constitute a conviction for purposes of
27 this section.

28 (b) "Sex offender" includes any person who, on or after April 14,
29 1994, is convicted of any sexually violent crime set forth in subsection (c)
30 or is adjudicated as a juvenile offender for an act which if committed by
31 an adult would constitute the commission of a sexually violent crime set
32 forth in subsection (c).

33 (c) "Sexually violent crime" means:

34 (1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*
35 *67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
36 *thereto;*

37 (2) indecent liberties with a child as defined in K.S.A. 21-3503,
38 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*
39 *2010 Session Laws of Kansas, and amendments thereto;*

40 (3) aggravated indecent liberties with a child as defined in K.S.A.
41 21-3504, *prior to its repeal, or subsection (b) of section 70 of chapter*
42 *136 of the 2010 Session Laws of Kansas, and amendments thereto;*

43 (4) criminal sodomy as defined in subsection (a)(2) ~~and~~ or (a)(3) of

1 K.S.A. 21-3505, *prior to its repeal, or subsection (a)(3) or (a)(4) of*
2 *section 68 of chapter 136 of the 2010 Session Laws of Kansas,* and
3 amendments thereto;

4 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior*
5 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*
6 *Session Laws of Kansas,* and amendments thereto;

7 (6) indecent solicitation of a child as defined by K.S.A. 21-3510,
8 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*
9 *2010 Session Laws of Kansas,* and amendments thereto;

10 (7) aggravated indecent solicitation of a child as defined by K.S.A.
11 21-3511, *prior to its repeal, or subsection (b) of section 72 of chapter 136*
12 *of the 2010 Session Laws of Kansas,* and amendments thereto;

13 (8) sexual exploitation of a child as defined by K.S.A. 21-3516,
14 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws*
15 *of Kansas,* and amendments thereto;

16 (9) sexual battery as defined by K.S.A. 21-3517, *prior to its repeal,*
17 *or subsection (a) of section 69 of chapter 136 of the 2010 Session Laws*
18 *of Kansas,* and amendments thereto;

19 (10) aggravated sexual battery as defined by K.S.A. 21-3518, *prior*
20 *to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010*
21 *Session Laws of Kansas,* and amendments thereto;

22 (11) aggravated incest as defined by K.S.A. 21-3603, *prior to its*
23 *repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session*
24 *Laws of Kansas,* and amendments thereto;

25 (12) electronic solicitation as defined by K.S.A. 21-3523, *prior to its*
26 *repeal, or section 73 of chapter 136 of the 2010 Session Laws of Kansas,*
27 and amendments thereto, committed on or after April 17, 2008;

28 (13) unlawful sexual relations as defined by K.S.A. 21-3520, *prior*
29 *to its repeal, or section 76 of chapter 136 of the 2010 Session Laws of*
30 *Kansas,* and amendments thereto, committed on or after July 1, 2010;

31 (14) any conviction for an offense in effect at any time prior to April
32 29, 1993, that is comparable to a sexually violent crime as defined in
33 subparagraphs (1) through (11), or any federal, military or other state
34 conviction for an offense that under the laws of this state would be a
35 sexually violent crime as defined in this section;

36 (15) an attempt, conspiracy or criminal solicitation, as defined in
37 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to its repeal, or section 33,*
38 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and
39 amendments thereto, of a sexually violent crime, as defined in this
40 section; or

41 (16) any act which at the time of sentencing for the offense has been
42 determined beyond a reasonable doubt to have been sexually motivated.
43 As used in this subparagraph, "sexually motivated" means that one of the

1 purposes for which the defendant committed the crime was for the
2 purpose of the defendant's sexual gratification.

3 (d) "Violent offender" includes any person who, on or after May 29,
4 1997, is convicted of any of the following crimes:

5 (1) Capital murder as defined by K.S.A. 21-3439, *prior to its repeal,*
6 *or section 36 of chapter 136 of the 2010 Session Laws of Kansas,* and
7 amendments thereto;

8 (2) murder in the first degree as defined by K.S.A. 21-3401, *prior to*
9 *its repeal, or section 37 of chapter 136 of the 2010 Session Laws of*
10 *Kansas,* and amendments thereto;

11 (3) murder in the second degree as defined by K.S.A. 21-3402, *prior*
12 *to its repeal, or section 38 of chapter 136 of the 2010 Session Laws of*
13 *Kansas,* and amendments thereto;

14 (4) voluntary manslaughter as defined by K.S.A. 21-3403, *prior to*
15 *its repeal, or section 39 of chapter 136 of the 2010 Session Laws of*
16 *Kansas,* and amendments thereto;

17 (5) involuntary manslaughter as defined by K.S.A. 21-3404, *prior to*
18 *its repeal, or section 40 of chapter 136 of the 2010 Session Laws of*
19 *Kansas,* and amendments thereto;

20 (6) any conviction for an offense in effect at any time prior to May
21 29, 1997, that is comparable to any crime defined in this subsection, or
22 any federal, military or other state conviction for an offense that under the
23 laws of this state would be an offense defined in this subsection; or

24 (7) an attempt, conspiracy or criminal solicitation, as defined in
25 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to its repeal, or section 33,*
26 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and
27 amendments thereto, of an offense defined in this subsection.

28 (e) "Law enforcement agency having jurisdiction" means the sheriff
29 of the county in which the offender expects to reside upon the offender's
30 discharge, parole or release.

31 (f) "Sexually violent predator" means any person who, on or after
32 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.
33 59-29a01 et seq., and amendments thereto.

34 (g) "Nonresident student or worker" includes any offender who
35 crosses into the state or county for more than 14 days, or for an aggregate
36 period exceeding 30 days in a calendar year, for the purposes of
37 employment, with or without compensation, or to attend school as a
38 student.

39 (h) "Aggravated offenses" means engaging in sexual acts involving
40 penetration with victims of any age through the use of force or the threat
41 of serious violence, or engaging in sexual acts involving penetration with
42 victims less than 14 years of age, and includes the following offenses:

43 (1) Rape as defined in subsection (a)(1)(A) ~~and~~ or subsection (a)(2)

1 of K.S.A. 21-3502, *prior to its repeal, or subsection (a)(1)(A) or (a)(3) of*
2 *section 67 of chapter 136 of the 2010 Session Laws of Kansas,* and
3 amendments thereto;

4 (2) aggravated criminal sodomy as defined in subsection (a)(1) ~~and~~
5 *or subsection (a)(3)(A) of K.S.A. 21-3506, prior to its repeal, or*
6 *subsection (b)(1) or (b)(3)(A) of section 68 of chapter 136 of the 2010*
7 *Session Laws of Kansas,* and amendments thereto; and

8 (3) any attempt, conspiracy or criminal solicitation, as defined in
9 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to its repeal, or section 33,*
10 *34, or 35 of chapter 136 of the 2010 Session Laws of Kansas,* and
11 amendments thereto, of an offense defined in this subsection.

12 (i) "Institution of higher education" means ~~any postsecondary school~~
13 under the supervision of the Kansas board of regents.

14 Sec. 4. K.S.A. 2010 Supp. 22-4902 and section 64 and 171 of
15 chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

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