

HOUSE BILL No. 2290

By Committee on Corrections and Juvenile Justice

2-7

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sex offenses, unlawful voluntary sexual relations; amending K.S.A.
3 2016 Supp. 21-5503, 21-5504, 21-5506 and 21-5507 and repealing the
4 existing sections.

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

7 Section 1. K.S.A. 2016 Supp. 21-5503 is hereby amended to read as
8 follows: 21-5503. (a) Rape is:

9 (1) Knowingly engaging in sexual intercourse with a victim who does
10 not consent to the sexual intercourse under any of the following
11 circumstances:

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

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

14 (2) Knowingly engaging in sexual intercourse with a victim when the
15 victim is incapable of giving consent because of mental deficiency or
16 disease, or when the victim is incapable of giving consent because of the
17 effect of any alcoholic liquor, narcotic, drug or other substance, which
18 condition was known by the offender or was reasonably apparent to the
19 offender;

20 (3) *except as provided in K.S.A. 2016 Supp. 21-5507, and*
21 *amendments thereto*, sexual intercourse with a child who is under 14 years
22 of age;

23 (4) sexual intercourse with a victim when the victim's consent was
24 obtained through a knowing misrepresentation made by the offender that
25 the sexual intercourse was a medically or therapeutically necessary
26 procedure; or

27 (5) sexual intercourse with a victim when the victim's consent was
28 obtained through a knowing misrepresentation made by the offender that
29 the sexual intercourse was a legally required procedure within the scope of
30 the offender's authority.

31 (b) (1) Rape as defined in:

32 (A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

33 (B) subsection (a)(3) is a severity level 1, person felony, except as
34 provided in subsection (b)(2); and

35 (C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

36 (2) Rape as defined in subsection (a)(3) or attempt, conspiracy or

1 criminal solicitation to commit rape as defined in subsection (a)(3) is an
 2 off-grid person felony, when the offender is 18 years of age or older.

3 (c) If the offender is 18 years of age or older, the provisions of:

4 (1) ~~Subsection (e) of K.S.A. 2016 Supp. 21-5301(c), and amendments~~
 5 thereto, shall not apply to a violation of attempting to commit the crime of
 6 rape as defined in subsection (a)(3);

7 (2) ~~subsection (e) of K.S.A. 2016 Supp. 21-5302(c), and amendments~~
 8 thereto, shall not apply to a violation of conspiracy to commit the crime of
 9 rape as defined in subsection (a)(3); and

10 (3) ~~subsection (d) of K.S.A. 2016 Supp. 21-5303(d), and amendments~~
 11 thereto, shall not apply to a violation of criminal solicitation to commit the
 12 crime of rape as defined in subsection (a)(3).

13 (d) It shall be a defense to a prosecution of rape under subsection (a)
 14 (3) that the child was married to the accused at the time of the offense.

15 (e) Except as provided in subsection (a)(2), it shall not be a defense
 16 that the offender did not know or have reason to know that the victim did
 17 not consent to the sexual intercourse, that the victim was overcome by
 18 force or fear, or that the victim was unconscious or physically powerless.

19 Sec. 2. K.S.A. 2016 Supp. 21-5504 is hereby amended to read as
 20 follows: 21-5504. (a) Criminal sodomy is:

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

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

24 ~~(3)(2) except as provided in K.S.A. 2016 Supp. 21-5507, and~~
 25 ~~amendments thereto, sodomy with a child who is 14 or more years of age~~
 26 ~~but less than 16 years of age; or~~

27 ~~(4)(3) causing a child 14 or more years of age but less than 16 years~~
 28 ~~of age to engage in sodomy with any person or animal.~~

29 (b) Aggravated criminal sodomy is:

30 (1) *Except as provided in K.S.A. 2016 Supp. 21-5507, and*
 31 *amendments thereto, sodomy with a child who is under 14 years of age;*

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

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

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

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

39 (C) when the victim is incapable of giving consent because of mental
 40 deficiency or disease, or when the victim is incapable of giving consent
 41 because of the effect of any alcoholic liquor, narcotic, drug or other
 42 substance, which condition was known by, or was reasonably apparent to,
 43 the offender.

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

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

4 (B) subsection (a)(~~3~~)(2) or (a)(~~4~~)(3) is a severity level 3, person
5 felony.

6 (2) Aggravated criminal sodomy as defined in:

7 (A) Subsection (b)(3) is a severity level 1, person felony; and

8 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,
9 except as provided in subsection (c)(3).

10 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)
11 (2) or attempt, conspiracy or criminal solicitation to commit aggravated
12 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid
13 person felony, when the offender is 18 years of age or older.

14 (d) If the offender is 18 years of age or older, the provisions of:

15 (1) ~~Subsection (e) of K.S.A. 2016 Supp. 21-5301(c)~~, and amendments
16 thereto, shall not apply to a violation of attempting to commit the crime of
17 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

18 (2) ~~subsection (e) of K.S.A. 2016 Supp. 21-5302(c)~~, and amendments
19 thereto, shall not apply to a violation of conspiracy to commit the crime of
20 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

21 (3) ~~subsection (d) of K.S.A. 2016 Supp. 21-5303(d)~~, and amendments
22 thereto, shall not apply to a violation of criminal solicitation to commit the
23 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
24 (2).

25 (e) It shall be a defense to a prosecution of criminal sodomy, as
26 defined in subsection (a)(~~3~~)(2), and aggravated criminal sodomy, as
27 defined in subsection (b)(1), that the child was married to the accused at
28 the time of the offense.

29 (f) Except as provided in subsection (b)(3)(C), it shall not be a
30 defense that the offender did not know or have reason to know that the
31 victim did not consent to the sodomy, that the victim was overcome by
32 force or fear, or that the victim was unconscious or physically powerless.

33 Sec. 3. K.S.A. 2016 Supp. 21-5506 is hereby amended to read as
34 follows: 21-5506. (a) Indecent liberties with a child is engaging in any of
35 the following acts with a child who is 14 or more years of age but less than
36 16 years of age:

37 (1) *Except as provided in K.S.A. 2016 Supp. 21-5507, and*
38 *amendments thereto*, any lewd fondling or touching of the person of either
39 the child or the offender, done or submitted to with the intent to arouse or
40 to satisfy the sexual desires of either the child or the offender, or both; or

41 (2) soliciting the child to engage in any lewd fondling or touching of
42 the person of another with the intent to arouse or satisfy the sexual desires
43 of the child, the offender or another.

1 (b) Aggravated indecent liberties with a child is:

2 (1) *Except as provided in K.S.A. 2016 Supp. 21-5507, and*
3 *amendments thereto*, sexual intercourse with a child who is 14 or more
4 years of age but less than 16 years of age;

5 (2) engaging in any of the following acts with a child who is 14 or
6 more years of age but less than 16 years of age and who does not consent
7 thereto:

8 (A) Any lewd fondling or touching of the person of either the child or
9 the offender, done or submitted to with the intent to arouse or to satisfy the
10 sexual desires of either the child or the offender, or both; or

11 (B) causing the child to engage in any lewd fondling or touching of
12 the person of another with the intent to arouse or satisfy the sexual desires
13 of the child, the offender or another; or

14 (3) engaging in any of the following acts with a child who is under 14
15 years of age:

16 (A) *Except as provided in K.S.A. 2016 Supp. 21-5507, and*
17 *amendments thereto*, any lewd fondling or touching of the person of either
18 the child or the offender, done or submitted to with the intent to arouse or
19 to satisfy the sexual desires of either the child or the offender, or both; or

20 (B) soliciting the child to engage in any lewd fondling or touching of
21 the person of another with the intent to arouse or satisfy the sexual desires
22 of the child, the offender or another.

23 (c) (1) Indecent liberties with a child is a severity level 5, person
24 felony.

25 (2) Aggravated indecent liberties with a child as defined in:

26 (A) Subsection (b)(1) is a severity level 3, person felony;

27 (B) subsection (b)(2) is a severity level 4, person felony; and

28 (C) subsection (b)(3) is a severity level 3, person felony, except as
29 provided in subsection (c)(3).

30 (3) Aggravated indecent liberties with a child as defined in subsection
31 (b)(3) or attempt, conspiracy or criminal solicitation to commit aggravated
32 indecent liberties with a child as defined in subsection (b)(3) is an off-grid
33 person felony, when the offender is 18 years of age or older.

34 (d) If the offender is 18 years of age or older, the provisions of:

35 (1) ~~Subsection (e) of K.S.A. 2016 Supp. 21-5301(c)~~, and amendments
36 thereto, shall not apply to a violation of attempting to commit the crime of
37 aggravated indecent liberties with a child as defined in subsection (b)(3);

38 (2) ~~subsection (e) of K.S.A. 2016 Supp. 21-5302(c)~~, and amendments
39 thereto, shall not apply to a violation of conspiracy to commit the crime of
40 aggravated indecent liberties with a child as defined in subsection (b)(3);

41 (3) ~~subsection (d) of K.S.A. 2016 Supp. 21-5303(d)~~, and amendments
42 thereto, shall not apply to a violation of criminal solicitation to commit the
43 crime of aggravated indecent liberties with a child as defined in subsection

1 (b)(3).

2 (e) It shall be a defense to a prosecution of indecent liberties with a
3 child, as defined in subsection (a)(1), and aggravated indecent liberties
4 with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that
5 the child was married to the accused at the time of the offense.

6 Sec. 4. K.S.A. 2016 Supp. 21-5507 is hereby amended to read as
7 follows: 21-5507. (a) Unlawful voluntary sexual relations is:

8 (1) Engaging in any of the following acts with a child who is ~~14~~ 13 or
9 more years of age but less than 16 years of age:

10 (A) Voluntary sexual intercourse;

11 (B) voluntary sodomy; or

12 (C) voluntary lewd fondling or touching;

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

14 (3) when the offender is less than four years of age older than the
15 child; *and*

16 (4) when the child and the offender are the only parties involved; ~~and~~

17 ~~(5) when the child and the offender are members of the opposite sex.~~

18 (b) Unlawful voluntary sexual relations as defined in:

19 (1) Subsection (a)(1)(A) is a severity level 8, person felony;

20 (2) subsection (a)(1)(B) is a severity level 9, person felony; and

21 (3) subsection (a)(1)(C) is a severity level 10, person felony.

22 Sec. 5. K.S.A. 2016 Supp. 21-5503, 21-5504, 21-5506 and 21-5507
23 are hereby repealed.

24 Sec. 6. This act shall take effect and be in force from and after its
25 publication in the statute book.