

HOUSE BILL No. 2493

By Committee on Corrections and Juvenile Justice

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sureties; unlawful sexual relations; appearance bonds; surety
3 regulation; amending K.S.A. 22-2809a and K.S.A. 2013 Supp. 21-
4 5512, 21-5703, 21-5709, 21-5710 and 21-6316 and repealing the
5 existing sections.
6

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

8 Section 1. K.S.A. 2013 Supp. 21-5512 is hereby amended to read as
9 follows: 21-5512.(a) Unlawful sexual relations is engaging in consensual
10 sexual intercourse, lewd fondling or touching, or sodomy with a person
11 who is not married to the offender if:

12 (1) The offender is an employee or volunteer of the department of
13 corrections, or the employee or volunteer of a contractor who is under
14 contract to provide services for a correctional institution, and the person
15 with whom the offender is engaging in consensual sexual intercourse, lewd
16 fondling or touching, or sodomy is a person 16 years of age or older who
17 is an inmate;

18 (2) the offender is a parole officer, volunteer for the department of
19 corrections or the employee or volunteer of a contractor who is under
20 contract to provide supervision services for persons on parole, conditional
21 release or postrelease supervision and the person with whom the offender
22 is engaging in consensual sexual intercourse, lewd fondling or touching, or
23 sodomy is a person 16 years of age or older who is an inmate who has
24 been released on parole, conditional release or postrelease supervision and
25 the offender has knowledge that the person with whom the offender is
26 engaging in consensual sexual intercourse, lewd fondling or touching, or
27 sodomy is an inmate who has been released and is currently on parole,
28 conditional release or postrelease supervision;

29 (3) the offender is a law enforcement officer, an employee of a jail, or
30 the employee of a contractor who is under contract to provide services in a
31 jail and the person with whom the offender is engaging in consensual
32 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
33 years of age or older who is confined to such jail;

34 (4) the offender is a law enforcement officer, an employee of a
35 juvenile detention facility or sanctions house, or the employee of a
36 contractor who is under contract to provide services in such facility or

1 sanctions house and the person with whom the offender is engaging in
2 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
3 person 16 years of age or older who is confined to such facility or
4 sanctions house;

5 (5) the offender is an employee of the juvenile justice authority or the
6 employee of a contractor who is under contract to provide services in a
7 juvenile correctional facility and the person with whom the offender is
8 engaging in consensual sexual intercourse, lewd fondling or touching, or
9 sodomy is a person 16 years of age or older who is confined to such
10 facility;

11 (6) the offender is an employee of the juvenile justice authority or the
12 employee of a contractor who is under contract to provide direct
13 supervision and offender control services to the juvenile justice authority
14 and:

15 (A) The person with whom the offender is engaging in consensual
16 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
17 years of age or older who has been:

18 (i) Released on conditional release from a juvenile correctional
19 facility under the supervision and control of the juvenile justice authority
20 or juvenile community supervision agency; or

21 (ii) placed in the custody of the juvenile justice authority under the
22 supervision and control of the juvenile justice authority or juvenile
23 community supervision agency; and

24 (B) the offender has knowledge that the person with whom the
25 offender is engaging in consensual sexual intercourse, lewd fondling or
26 touching, or sodomy is currently under supervision;

27 (7) the offender is an employee of the ~~department of social and~~
28 ~~rehabilitation services~~ *Kansas department for aging and disability services*
29 *or the Kansas department for children and families* or the employee of a
30 contractor who is under contract to provide services in a ~~social and~~
31 ~~rehabilitation services~~ *an aging and disability or children and families*
32 institution or to the ~~department of social and rehabilitation services~~ *Kansas*
33 *department for aging and disability services or the Kansas department for*
34 *children and families* and the person with whom the offender is engaging
35 in consensual sexual intercourse, lewd fondling or touching, or sodomy is
36 a person 16 years of age or older who is a patient in such institution or in
37 the custody of the ~~secretary of social and rehabilitation services~~ *for aging*
38 *and disability services or the secretary for children and families*;

39 (8) the offender is a worker, volunteer or other person in a position of
40 authority in a family foster home licensed by the department of health and
41 environment and the person with whom the offender is engaging in
42 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
43 person 16 years of age or older who is a foster child placed in the care of

1 such family foster home;

2 (9) the offender is a teacher or other person in a position of authority
3 and the person with whom the offender is engaging in consensual sexual
4 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
5 age or older who is a student enrolled at the school where the offender is
6 employed. If the offender is the parent of the student, the provisions of
7 subsection (b) of K.S.A. 2013 Supp. 21-5604, and amendments thereto,
8 shall apply, not this subsection;

9 (10) the offender is a court services officer or the employee of a
10 contractor who is under contract to provide supervision services for
11 persons under court services supervision and the person with whom the
12 offender is engaging in consensual sexual intercourse, lewd fondling or
13 touching, or sodomy is a person 16 years of age or older who has been
14 placed on probation under the supervision and control of court services
15 and the offender has knowledge that the person with whom the offender is
16 engaging in consensual sexual intercourse, lewd fondling or touching, or
17 sodomy is currently under the supervision of court services;~~or~~

18 (11) the offender is a community correctional services officer or the
19 employee of a contractor who is under contract to provide supervision
20 services for persons under community corrections supervision and the
21 person with whom the offender is engaging in consensual sexual
22 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
23 age or older who has been assigned to a community correctional services
24 program under the supervision and control of community corrections and
25 the offender has knowledge that the person with whom the offender is
26 engaging in consensual sexual intercourse, lewd fondling or touching, or
27 sodomy is currently under the supervision of community corrections; *or*

28 (12) *the offender is a surety or an employee of a surety and the*
29 *person with whom the offender is engaging in consensual sexual*
30 *intercourse, lewd fondling or touching, or sodomy is a person 16 years of*
31 *age or older who is the subject or cosigner of a surety or bail bond*
32 *agreement with such surety and the offender has knowledge that the*
33 *person with whom the offender is engaging in consensual sexual*
34 *intercourse, lewd fondling or touching, or sodomy is the subject of a surety*
35 *or bail bond agreement with such surety.*

36 (b) Unlawful sexual relations as defined in:

37 (1) Subsection (a)(5) is a severity level 4, person felony; and

38 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),
39 (a)(10)~~or~~, (a)(11) *or* (a)(12) is a severity level 5, person felony.

40 (c) (1) If an offender violates the provisions of this section by
41 engaging in consensual sexual intercourse which would constitute a
42 violation of K.S.A. 2013 Supp. 21-5503, and amendments thereto, the
43 provisions of K.S.A. 2013 Supp. 21-5503, and amendments thereto, shall

1 apply, not this section.

2 (2) If an offender violates the provisions of this section by engaging
3 in consensual sexual intercourse which would constitute a violation of
4 subsection (b)(1) of K.S.A. 2013 Supp. 21-5506, and amendments thereto,
5 the provisions of subsection (b)(1) of K.S.A. 2013 Supp. 21-5506, and
6 amendments thereto, shall apply, not this section.

7 (3) If an offender violates the provisions of this section by engaging
8 in sodomy which would constitute a violation of subsection (a)(3), (a)(4)
9 or (b) of K.S.A. 2013 Supp. 21-5504, and amendments thereto, the
10 provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2013 Supp. 21-
11 5504, and amendments thereto, shall apply, not this section.

12 (4) If an offender violates the provisions of this section by engaging
13 in lewd fondling or touching which would constitute a violation of
14 subsection (b)(2) of K.S.A. 2013 Supp. 21-5506, and amendments thereto,
15 the provisions of subsection (b)(2) of K.S.A. 2013 Supp. 21-5506, and
16 amendments thereto, shall apply, not this section.

17 (d) As used in this section:

18 (1) "Correctional institution" means the same as in K.S.A. 75-5202,
19 and amendments thereto;

20 (2) "inmate" means the same as in K.S.A. 75-5202, and amendments
21 thereto;

22 (3) "parole officer" means the same as in K.S.A. 75-5202, and
23 amendments thereto;

24 (4) "postrelease supervision" means the same as in K.S.A. 2013 Supp.
25 21-6803, and amendments thereto;

26 (5) "juvenile detention facility" means the same as in K.S.A. 2013
27 Supp. 38-2302, and amendments thereto;

28 (6) "juvenile correctional facility" means the same as in K.S.A. 2013
29 Supp. 38-2302, and amendments thereto;

30 (7) "sanctions house" means the same as in K.S.A. 2013 Supp. 38-
31 2302, and amendments thereto;

32 (8) "institution" means the same as in K.S.A. 76-12a01, and
33 amendments thereto;

34 (9) "teacher" means and includes teachers, coaches, supervisors,
35 principals, superintendents and any other professional employee in any
36 public or private school offering any of grades kindergarten through 12;

37 (10) "community corrections" means the entity responsible for
38 supervising adults and juvenile offenders for confinement, detention, care
39 or treatment, subject to conditions imposed by the court pursuant to the
40 community corrections act, K.S.A. 75-5290, and amendments thereto, and
41 the revised Kansas juvenile justice code, K.S.A. 2013 Supp. 38-2301 et
42 seq., and amendments thereto;

43 (11) "court services" means the entity appointed by the district court

1 that is responsible for supervising adults and juveniles placed on probation
2 and misdemeanants placed on parole by district courts of this state; ~~and~~

3 (12) "juvenile community supervision agency" means an entity that
4 receives grants for the purpose of providing direct supervision to juveniles
5 in the custody of the juvenile justice authority; *and*

6 (13) "surety" means the same as in K.S.A. 22-2809a, and
7 amendments thereto.

8 Sec. 2. K.S.A. 2013 Supp. 21-5703 is hereby amended to read as
9 follows: 21-5703. (a) It shall be unlawful for any person to manufacture
10 any controlled substance or controlled substance analog.

11 (b) Violation or attempted violation of subsection (a) is a:

12 (1) Drug severity level 2 felony, except as provided in subsections (b)
13 (2) and (b)(3);

14 (2) drug severity level 1 felony if:

15 (A) The controlled substance is not methamphetamine, as defined by
16 subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or
17 an analog thereof; and

18 (B) the offender has a prior conviction for unlawful manufacturing of
19 a controlled substance under this section, K.S.A. 65-4159, prior to its
20 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially
21 similar offense from another jurisdiction and the substance was not
22 methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-
23 4107, and amendments thereto, or an analog thereof, in any such prior
24 conviction; and

25 (3) drug severity level 1 felony if the controlled substance is
26 methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-
27 4107, and amendments thereto, or an analog thereof.

28 (c) The provisions of subsection (d) of K.S.A. 2013 Supp. 21-5301,
29 and amendments thereto, shall not apply to a violation of attempting to
30 unlawfully manufacture any controlled substance or controlled substance
31 analog pursuant to this section.

32 (d) For persons arrested and charged under this section, bail shall be
33 at least \$50,000 cash or surety, unless the court determines, on the record,
34 that the defendant is not likely to re-offend, the court imposes pretrial
35 supervision, or the defendant agrees to participate in a licensed or certified
36 drug treatment program. *Notwithstanding any other provision of law, any*
37 *person arrested and charged under this section shall not be released upon*
38 *the person's own recognizance pursuant to K.S.A. 22-2802, and*
39 *amendments thereto.*

40 (e) The sentence of a person who violates this section shall not be
41 subject to statutory provisions for suspended sentence, community service
42 work or probation.

43 (f) The sentence of a person who violates this section, K.S.A. 65-

1 4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its
2 transfer, shall not be reduced because these sections prohibit conduct
3 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their
4 repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 2013
5 Supp. 21-5705, and amendments thereto.

6 Sec. 3. K.S.A. 2013 Supp. 21-5709 is hereby amended to read as
7 follows: 21-5709. (a) It shall be unlawful for any person to possess
8 ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal,
9 iodine, anhydrous ammonia, pressurized ammonia or
10 phenylpropanolamine, or their salts, isomers or salts of isomers with an
11 intent to use the product to manufacture a controlled substance.

12 (b) It shall be unlawful for any person to use or possess with intent to
13 use any drug paraphernalia to:

14 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
15 distribute a controlled substance; or

16 (2) store, contain, conceal, inject, ingest, inhale or otherwise
17 introduce a controlled substance into the human body.

18 (c) It shall be unlawful for any person to use or possess with intent to
19 use anhydrous ammonia or pressurized ammonia in a container not
20 approved for that chemical by the Kansas department of agriculture.

21 (d) It shall be unlawful for any person to purchase, receive or
22 otherwise acquire at retail any compound, mixture or preparation
23 containing more than 3.6 grams of pseudoephedrine base or ephedrine
24 base in any single transaction or any compound, mixture or preparation
25 containing more than nine grams of pseudoephedrine base or ephedrine
26 base within any 30-day period.

27 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;

28 (2) violation of subsection (b)(1) is a:

29 (A) Drug severity level 5 felony, except as provided in subsection (e)
30 (2)(B); and

31 (B) class A nonperson misdemeanor if the drug paraphernalia was
32 used to cultivate fewer than five marijuana plants;

33 (3) violation of subsection (b)(2) is a class A nonperson
34 misdemeanor;

35 (4) violation of subsection (c) is a drug severity level 5 felony; and

36 (5) violation of subsection (d) is a class A nonperson misdemeanor.

37 (f) For persons arrested and charged under subsection (a) or (c), bail
38 shall be at least \$50,000 cash or surety, unless the court determines, on the
39 record, that the defendant is not likely to reoffend, the court imposes
40 pretrial supervision or the defendant agrees to participate in a licensed or
41 certified drug treatment program. *Notwithstanding any other provision of*
42 *law, any person arrested and charged under subsection (a) or (c) shall not*
43 *be released upon the person's own recognizance pursuant to K.S.A. 22-*

1 2802, and amendments thereto.

2 Sec. 4. K.S.A. 2013 Supp. 21-5710 is hereby amended to read as
3 follows: 21-5710. (a) It shall be unlawful for any person to advertise,
4 market, label, distribute or possess with the intent to distribute:

5 (1) Any product containing ephedrine, pseudoephedrine, red
6 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
7 pressurized ammonia or phenylpropanolamine or their salts, isomers or
8 salts of isomers if the person knows or reasonably should know that the
9 purchaser will use the product to manufacture a controlled substance or
10 controlled substance analog; or

11 (2) any product containing ephedrine, pseudoephedrine or
12 phenylpropanolamine, or their salts, isomers or salts of isomers for
13 indication of stimulation, mental alertness, weight loss, appetite control,
14 energy or other indications not approved pursuant to the pertinent federal
15 over-the-counter drug final monograph or tentative final monograph or
16 approved new drug application.

17 (b) It shall be unlawful for any person to distribute, possess with the
18 intent to distribute or manufacture with intent to distribute any drug
19 paraphernalia, knowing or under circumstances where one reasonably
20 should know that it will be used to manufacture or distribute a controlled
21 substance or controlled substance analog in violation of K.S.A. 2013 Supp.
22 21-5701 through 21-5717, and amendments thereto.

23 (c) It shall be unlawful for any person to distribute, possess with
24 intent to distribute or manufacture with intent to distribute any drug
25 paraphernalia, knowing or under circumstances where one reasonably
26 should know, that it will be used as such in violation of K.S.A. 2013 Supp.
27 21-5701 through 21-5717, and amendments thereto, except subsection (b)
28 of K.S.A. 2013 Supp. 21-5706, and amendments thereto.

29 (d) It shall be unlawful for any person to distribute, possess with
30 intent to distribute or manufacture with intent to distribute any drug
31 paraphernalia, knowing, or under circumstances where one reasonably
32 should know, that it will be used as such in violation of subsection (b) of
33 K.S.A. 2013 Supp. 21-5706, and amendments thereto.

34 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;

35 (2) violation of subsection (b) is a:

36 (A) Drug severity level 5 felony, except as provided in subsection (e)
37 (2)(B); and

38 (B) drug severity level 4 felony if the trier of fact makes a finding that
39 the offender distributed or caused drug paraphernalia to be distributed to a
40 minor or on or within 1,000 feet of any school property;

41 (3) violation of subsection (c) is a:

42 (A) Nondrug severity level 9, nonperson felony, except as provided in
43 subsection (e)(3)(B); and

1 (B) drug severity level 5 felony if the trier of fact makes a finding that
2 the offender distributed or caused drug paraphernalia to be distributed to a
3 minor or on or within 1,000 feet of any school property; and

4 (4) violation of subsection (d) is a:

5 (A) Class A nonperson misdemeanor, except as provided in
6 subsection (e)(4)(B); and

7 (B) nondrug severity level 9, nonperson felony if the trier of fact
8 makes a finding that the offender distributed or caused drug paraphernalia
9 to be distributed to a minor or on or within 1,000 feet of any school
10 property.

11 (f) For persons arrested and charged under subsection (a), bail shall
12 be at least \$50,000 cash or surety, unless the court determines, on the
13 record, that the defendant is not likely to re-offend, the court imposes
14 pretrial supervision or the defendant agrees to participate in a licensed or
15 certified drug treatment program. *Notwithstanding any other provision of*
16 *law, any person arrested and charged under subsection (a) shall not be*
17 *released upon the person's own recognizance pursuant to K.S.A. 22-2802,*
18 *and amendments thereto.*

19 (g) As used in this section, "or under circumstances where one
20 reasonably should know" that an item will be used in violation of this
21 section, shall include, but not be limited to, the following:

22 (1) Actual knowledge from prior experience or statements by
23 customers;

24 (2) inappropriate or impractical design for alleged legitimate use;

25 (3) receipt of packaging material, advertising information or other
26 manufacturer supplied information regarding the item's use as drug
27 paraphernalia; or

28 (4) receipt of a written warning from a law enforcement or
29 prosecutorial agency having jurisdiction that the item has been previously
30 determined to have been designed specifically for use as drug
31 paraphernalia.

32 Sec. 5. K.S.A. 2013 Supp. 21-6316 is hereby amended to read as
33 follows: 21-6316. When a criminal street gang member is arrested for a
34 person felony, bail shall be at least \$50,000 cash or surety, unless the court
35 determines on the record that the defendant is not likely to reoffend, an
36 appropriate intensive pre-trial supervision program is available and the
37 defendant agrees to comply with the mandate of such pre-trial supervision.
38 *Notwithstanding any other provision of law, a criminal street gang*
39 *member arrested for a person felony shall not be released upon the*
40 *person's own recognizance pursuant to K.S.A. 22-2802, and amendments*
41 *thereto.*

42 Sec. 6. K.S.A. 22-2809a is hereby amended to read as follows: 22-
43 2809a. (a) As used in this section: (1) "Surety" means a person or

1 commercial surety, other than a defendant in a criminal proceeding, that
2 guarantees the appearance of a defendant in a criminal proceeding, by
3 executing an appearance bond;

4 (2) "agent of a surety" means a person not performing the duties of a
5 law enforcement officer who tracks down, captures and surrenders to the
6 custody of a court a fugitive who has violated a surety or bail bond
7 agreement.

8 (b) Any surety or agent of a surety, commonly referred to as a bounty
9 hunter, who intends to apprehend any person in this state pursuant to
10 K.S.A. 22-2809, and amendments thereto, or under similar authority from
11 any other state, shall inform law enforcement authorities in the city or
12 county in which such surety or agent of a surety intends such
13 apprehension, before attempting such apprehension. The surety or agent of
14 a surety shall present to the local law enforcement authorities a certified
15 copy of the bond, a valid government-issued photo identification, written
16 appointment of agency, if not the actual surety, and all other appropriate
17 paperwork identifying the principal and the person to be apprehended.
18 Local law enforcement may accompany the surety or agent.

19 (c) No person who, ~~within the past 10 years,~~ has been convicted, in
20 this or any other jurisdiction, of a ~~person~~ felony, ~~may~~ shall act as a surety
21 or as an agent of a surety.

22 (d) *An out-of-state surety or agent of a surety who intends to*
23 *apprehend any person in this state pursuant to K.S.A. 22-2809, and*
24 *amendments thereto, or under similar authority from any other state, shall*
25 *contract with an individual that has been authorized by any court in this*
26 *state to act as a surety or agent of a surety, before attempting such*
27 *apprehension, and be accompanied by such individual during such*
28 *apprehension.*

29 (e) Violation of this section is a class A nonperson misdemeanor for
30 the first conviction of a violation and a severity level 9, nonperson felony
31 upon a second or subsequent conviction of a violation.

32 Sec. 7. K.S.A. 22-2809a and K.S.A. 2013 Supp. 21-5512, 21-5703,
33 21-5709, 21-5710 and 21-6316 are hereby repealed.

34 Sec. 8. This act shall take effect and be in force from and after its
35 publication in the statute book.