

SENATE BILL No. 147

AN ACT concerning crimes, punishment and criminal procedure; relating to offenses against children; relating to increasing general time limitation; amending K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3106 and 21-3516 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 21-3106 is hereby amended to read as follows: 21-3106. (1) A prosecution for murder may be commenced at any time.

~~(2) Except as provided by subsections (7) and (9), a prosecution for any of the following crimes must be commenced within five years after its commission if the victim is less than 16 years of age: (a) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (b) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (g) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto.~~

~~(3) Except as provided in subsection (9) (5), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.~~

~~(4) Except as provided by subsections (7) and (9), a prosecution for rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must be commenced within five years after its commission.~~

~~(5) Except as provided in subsection (9), a prosecution for any crime found in the Kansas medicaid fraud control act must be commenced within five years after its commission.~~

~~(6) Except as provided by subsection (9), a prosecution for the crime of arson, as defined in K.S.A. 21-3718 and amendments thereto, or aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto, must be commenced within five years after its commission.~~

~~(7) (3) (a) Except as provided in subsection (9) (5), a prosecution for any offense provided in subsection (2) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.~~

~~(b) For purposes of this section, "DNA" means deoxyribonucleic acid.~~

~~(8) (4) Except as provided by subsection (9) (5), a prosecution for any crime, as defined in K.S.A. 21-3105, and amendments thereto, not governed by subsections (1), (2), or (3), (4), (5), (6) and (7) must be commenced within ~~two~~ five years after it is committed.~~

~~(9) (5) The period within which a prosecution must be commenced shall not include any period in which:~~

~~(a) The accused is absent from the state;~~

~~(b) the accused is concealed within the state so that process cannot be served upon the accused;~~

~~(c) the fact of the crime is concealed;~~

~~(d) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;~~

~~(e) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or~~

~~(f) whether or not the fact of the crime is concealed by the active fact or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement author-~~

ities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. "Parent or other legal authority" shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

~~(10)~~ (6) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

~~(11)~~ (7) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

Sec. 2. K.S.A. 21-3510 is hereby amended to read as follows: 21-3510. (a) Indecent solicitation of a child is:

(1) Enticing or soliciting a child 14 or more years of age but less than 16 years of age to commit or to submit to an unlawful sexual act; or

(2) inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Indecent solicitation of a child is a severity level ~~7~~ 6, person felony.

Sec. 3. K.S.A. 21-3511 is hereby amended to read as follows: 21-3511. Aggravated indecent solicitation of a child is:

(a) Enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act; or

(b) inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

Aggravated indecent solicitation of a child is a severity level ~~6~~ 5, person felony.

Sec. 4. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as follows: 21-3516. (a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of promoting any performance;

(2) possessing any ~~film, photograph, negative, slide, book, magazine or other printed or visual medium or any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk in which a visual depiction~~ *visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction* of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

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

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) “Promoting” means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) “Performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) “Nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Sexual exploitation of a child is a severity level 5, person felony.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 5. K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3106 and 21-3516 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.