

## HOUSE BILL No. 2702

By Committee on Federal and State Affairs

2-17

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9 AN ACT concerning crimes, criminal procedure and punishment; relat-  
10 ing to transmission of sexually explicit or nude images of minors;  
11 amending K.S.A. 21-3516 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) Unlawful dissemination of a depiction of a minor  
15 is knowingly possessing or transmitting a visual depiction of a minor in a  
16 state of nudity, if committed by a minor and the minor who is the subject  
17 of the visual depiction is 14 years of age or older.

18 (b) Aggravated unlawful dissemination of a depiction of a minor is  
19 knowingly possessing or transmitting a visual depiction of a minor in a  
20 state of nudity, if committed by a minor and the minor who is the subject  
21 of the visual depiction is 14 years of age or older:

22 (1) With the intent to harass, embarrass, intimidate, defame or oth-  
23 erwise inflict emotional, psychological or physical harm;

24 (2) for pecuniary or tangible gain; or

25 (3) with the intent to exhibit or transmit such visual depiction to more  
26 than one person.

27 (c) This section shall not apply to a visual depiction of a minor en-  
28 gaged in sexually explicit conduct or a visual depiction that constitutes  
29 obscenity as defined in K.S.A. 21-4301, and amendments thereto.

30 (d) As used in this section and section 2, and amendments thereto:

31 (1) "Minor" means a person under 18 years of age;

32 (2) "sexually explicit conduct" means actual or simulated: Sexual in-  
33 tercourse or sodomy, including genital-genital, oral-genital, anal-genital  
34 or oral-anal contact, whether between persons of the same or opposite  
35 sex; masturbation and sado-masochistic abuse for the purpose of sexual  
36 stimulation; and

37 (3) "state of nudity" means any state of undress in which the human  
38 genitals, pubic region, buttock or female breast, at a point below the top  
39 of the areola, is less than completely and opaquely covered.

40 (e) It shall be an affirmative defense to any prosecution under this  
41 section that the recipient of a visual depiction of a minor in a state of  
42 nudity:

43 (1) Received such visual depiction without requesting, coercing, or

1 otherwise attempting to obtain such visual depiction;

2 (2) did not further transmit, exhibit or disseminate such visual depic-  
3 tion; and

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

6 (f) It shall be a rebuttable presumption that a minor had the requisite  
7 intent required in subsection (b)(1) if the minor transmitted a visual de-  
8 piction of a person other than such minor.

9 (g) This section shall not authorize any act prohibited by any other  
10 law.

11 (h) (1) Unlawful dissemination of a depiction of a minor is a class A  
12 person misdemeanor.

13 (2) Aggravated unlawful dissemination of a depiction of a minor is a  
14 severity level 9 person felony.

15 New Sec. 2. (a) Unlawful possession of a depiction of a minor is  
16 knowingly possessing a visual depiction of a minor 14 years of age or older  
17 in a state of nudity, if committed by a person at least 18 years of age but  
18 no more than four years of age older than the subject of the visual de-  
19 piction and the possessor of such image received such image directly and  
20 exclusively from the minor who is the subject of such visual depiction.

21 (b) This section shall not apply to a visual depiction of a minor en-  
22 gaged in sexually explicit conduct or a visual depiction that constitutes  
23 obscenity as defined in K.S.A. 21-4301, and amendments thereto.

24 (c) It shall be an affirmative defense to any prosecution under this  
25 section that the recipient of a visual depiction of a minor in a state of  
26 nudity:

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

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

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

32 (d) This section shall not authorize any act prohibited by any other  
33 law.

34 (e) Unlawful possession of a depiction of a minor is a severity level  
35 10 person felony.

36 Sec. 3. K.S.A. 21-3516 is hereby amended to read as follows: 21-  
37 3516. (a) Sexual exploitation of a child is:

38 (1) Except as provided in subsection (a)(5), employing, using, per-  
39 suading, inducing, enticing or coercing a child under 18 years of age to  
40 engage in sexually explicit conduct for the purpose of promoting any  
41 performance;

42 (2) *except as provided in section 1 and section 2, and amendments*  
43 *thereto*, possessing any visual depiction, including any photograph, film,

- 1 video picture, digital or computer generated image or picture, whether  
2 made or produced by electronic, mechanical or other means, where such  
3 visual depiction of a child under 18 years of age is shown or heard en-  
4 gaging in sexually explicit conduct with intent to arouse or satisfy the  
5 sexual desires or appeal to the prurient interest of the offender, the child  
6 or another;
- 7 (3) being a parent, guardian or other person having custody or control  
8 of a child under 18 years of age and knowingly permitting such child to  
9 engage in, or assist another to engage in, sexually explicit conduct for any  
10 purpose described in subsection (a)(1) or (2);
- 11 (4) except as provided in subsection (a)(6), promoting any perform-  
12 ance that includes sexually explicit conduct by a child under 18 years of  
13 age, knowing the character and content of the performance;
- 14 (5) employing, using, persuading, inducing, enticing or coercing a  
15 child under 14 years of age to engage in sexually explicit conduct for the  
16 purpose of promoting any performance; or
- 17 (6) promoting any performance that includes sexually explicit conduct  
18 by a child under 14 years of age, knowing the character and content of  
19 the performance.
- 20 (b) As used in this section:
- 21 (1) "Sexually explicit conduct" means actual or simulated: Exhibition  
22 in the nude; sexual intercourse or sodomy, including genital-genital, oral-  
23 genital, anal-genital or oral-anal contact, whether between persons of the  
24 same or opposite sex; masturbation; sado-masochistic abuse for the pur-  
25 pose of sexual stimulation; or lewd exhibition of the genitals, female  
26 breasts or pubic area of any person.
- 27 (2) "Promoting" means procuring, selling, providing, lending, mail-  
28 ing, delivering, transferring, transmitting, distributing, circulating, dis-  
29 seminating, presenting, producing, directing, manufacturing, issuing,  
30 publishing, displaying, exhibiting or advertising:
- 31 (A) For pecuniary profit; or
- 32 (B) with intent to arouse or gratify the sexual desire or appeal to the  
33 prurient interest of the offender, the child or another.
- 34 (3) "Performance" means any film, photograph, negative, slide, book,  
35 magazine or other printed or visual medium, any audio tape recording or  
36 any photocopy, video tape, video laser disk, computer hardware, software,  
37 floppy disk or any other computer related equipment or computer gen-  
38 erated image that contains or incorporates in any manner any film, pho-  
39 tograph, negative, photocopy, video tape or video laser disk or any play  
40 or other live presentation.
- 41 (4) "Nude" means any state of undress in which the human genitals,  
42 pubic region, buttock or female breast, at a point below the top of the  
43 areola, is less than completely and opaquely covered.

1     (c) Except as provided further, sexual exploitation of a child is a se-  
2     verity level 5, person felony. Sexual exploitation of a child as described in  
3     subsection (a)(5) or (a)(6) when the offender is 18 years of age or older  
4     is an off-grid person felony.

5     (d) This section shall be part of and supplemental to the Kansas crim-  
6     inal code.

7     Sec. 4. K.S.A. 21-3516 is hereby repealed.

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