

CHAPTER 114
SENATE BILL No. 82

AN ACT concerning sex offense prosecutions; relating to the complaining witness; admissibility of prior sexual conduct; amending K.S.A. 21-3525 and repealing the existing section.

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

Section 1. K.S.A. 21-3525 is hereby amended to read as follows: 21-3525. (a) The provisions of this section shall apply only in a prosecution for: (1) Rape, as defined by K.S.A. 21-3502, and amendments thereto; (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy, as defined in subsections (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined by K.S.A. 21-3506, and amendments thereto; (6) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (8) aggravated sexual battery, as defined in K.S.A. 21-3518, and amendments thereto; (9) incest, as defined in K.S.A. 21-3602, and amendments thereto; (10) aggravated incest, as defined in K.S.A. 21-3603, and amendments thereto; (11) indecent solicitation of a child, as defined in K.S.A. 21-3510 and amendments thereto; (12) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto, with intent to commit any crime specified above; (13) sexual battery, as defined in K.S.A. 21-3517, and amendments thereto; (14) *unlawful voluntary sexual relations, as defined in K.S.A. 21-3522, and amendments thereto*; or ~~(14)~~ (15) attempt, as defined in K.S.A. 21-3301, and amendments thereto, or conspiracy, as defined in K.S.A. 21-3302, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto ~~in the presence of the jury in any proceeding before the court~~, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion must be made at least seven days before the commencement of the ~~trial~~ *proceeding* unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecuting attorney may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime designated in subsection (a), the prosecution of which

is subject to this section.

Sec. 2. K.S.A. 21-3525 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2005.
