

CHAPTER 172
SENATE BILL No. 324

AN ACT concerning crimes and punishments; amending K.S.A. 2006 Supp. 21-3437 and 21-3520 and repealing the existing sections.

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

Section 1. K.S.A. 2006 Supp. 21-3437 is hereby amended to read as follows: 21-3437. (a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(c) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

(2) any adult cared for in a private residence;

(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

(5) any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(d) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony.

(2) *Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 6, person felony if the aggregate amount of the value of the resources is \$100,000 or more.*

~~(2)~~ (3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is *at least \$25,000 or more but less than \$100,000.*

~~(3)~~ (4) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000.

~~(4)~~ (5) Mistreatment of a dependent adult as defined in subsection (a)(2) is a class A person misdemeanor if the aggregate amount of the value of the resources is less than \$1,000.

~~(5)~~ (6) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

~~(6)~~ (7) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.

Sec. 2. K.S.A. 2006 Supp. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

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

(2) the offender is a parole officer, *volunteer for the department of corrections* or the employee *or volunteer* of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or

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

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or

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

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, *not otherwise subject to subsection (a)(2) of K.S.A. 21-3502 or subsection (a)(1) of K.S.A. 21-3504, and amendments thereto*, lewd fondling or touching, *not otherwise subject to K.S.A. 21-3503 or subsection (a)(2) or (a)(3) of K.S.A. 21-3504, and amendments thereto*, or sodomy, *not otherwise subject to K.S.A. 21-3505 or subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto*, is ~~16 or 17 years of age~~ and a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of K.S.A. 21-3603, and amendments thereto, shall apply, not this subsection;

(9) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching,

or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; or

(10) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision of community corrections.

(b) For purposes of this act:

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

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

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

(4) "postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments thereto;

(5) "juvenile detention facility" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

(6) "juvenile correctional facility" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

(7) "sanctions house" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

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

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

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amendments thereto;

(11) "court services" means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state;

(12) "law enforcement officer" means the same as prescribed by K.S.A. 21-3110, and amendments thereto; and

(13) "juvenile community supervision agency" means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.

(c) Unlawful sexual relations is a severity level 10, person felony.

Sec. 3. K.S.A. 2006 Supp. 21-3437 and 21-3520 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.