

CHAPTER 70
HOUSE BILL No. 2098

AN ACT concerning crimes, punishment and criminal procedure; relating to sexual offenses; electronic solicitation; evidence in certain prosecutions; aggravated habitual sex offenders; amending K.S.A. 21-3523, 21-3525 and 21-4642 and repealing the existing sections.

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

Section 1. K.S.A. 21-3523 is hereby amended to read as follows: 21-3523. (a) Electronic solicitation is, by means of communication conducted through the telephone, internet, or by other electronic means:

(1) Enticing or soliciting a person whom the offender believes to be a child ~~under the age of 16~~ *14 or more years of age but less than 16 years of age* to commit or submit to an unlawful sexual act; or

(2) enticing or soliciting a person whom the offender believes to be a child under the age of 14 to commit or submit to an unlawful sexual act.

(b) Electronic solicitation as described in subsection (a)(1) is a severity level 3 person felony. Electronic solicitation as described in subsection (a)(2) is a severity level 1 person felony.

(c) For the purposes of this section, “communication conducted through the internet or by other electronic means” includes but is not limited to e-mail, chatroom chats and text messaging.

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

Sec. 2. 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~~ (15) *aggravated trafficking, as defined in subsections (a)(1)(B) and (a)(2) of K.S.A. 21-3447, and amendments thereto; (16) electronic solicitation, as defined in K.S.A. 21-3523, and amendments thereto; or (17) 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 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 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, defend-

ant'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. 3. K.S.A. 21-4642 is hereby amended to read as follows: 21-4642. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in paragraphs (3)(A) through 3(J) or (3)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime.

(2) "Prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single ~~count~~ court. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county line and commits a felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.

(3) "Sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto;

(K) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(L) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(M) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

Sec. 4. K.S.A. 21-3523, 21-3525 and 21-4642 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 8, 2009.

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