

HOUSE BILL No. 2183

By Committee on Judiciary

Requested by Representative Barrett

1-30

1 AN ACT concerning crimes, punishment and criminal procedure;  
2 including any photograph, film, video picture, digital or computer-  
3 generated image or picture that has been created, altered or modified by  
4 artificial intelligence or any digital means in the definition of a visual  
5 depiction for certain criminal offenses; modifying elements in the  
6 crimes of sexual exploitation of a child, unlawful transmission of a  
7 visual depiction of a child and breach of privacy; **prohibiting certain**  
8 **acts related to visual depictions in which the person depicted is**  
9 **indistinguishable from a real child, morphed from a real child's**  
10 **image or generated without any actual child involvement;**  
11 **providing an exception for cable services in the crime of breach of**  
12 **privacy; prohibiting dissemination of certain items that appear to**  
13 **depict or purport to depict an identifiable person;** amending K.S.A.  
14 21-5510 and 21-5611 and K.S.A. 2024 Supp. 21-6101 and repealing the  
15 existing sections.

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 21-5510 is hereby amended to read as follows: 21-  
19 5510. (a) Except as provided in K.S.A. 21-5610 and 21-5611, and  
20 amendments thereto, sexual exploitation of a child is:

21 (1) Employing, using, persuading, inducing, enticing or coercing a  
22 child under 18 years of age, or a person whom the offender believes to be a  
23 child under 18 years of age, to engage in sexually explicit conduct with the  
24 intent to promote any performance;

25 (2) (A) possessing any visual depiction of a child under 18 years of  
26 age shown or heard engaging in sexually explicit conduct with intent to  
27 arouse or satisfy the sexual desires or appeal to the prurient interest of the  
28 offender or any other person, ~~regardless of whether an actual child under~~  
29 ~~18 years of age was involved in the creation of the original image; or~~

30 (B) possessing any artificially generated visual depiction with  
31 intent to arouse or satisfy the sexual desires or appeal to the prurient  
32 interest of the offender or any other person;

33 (3) being a parent, guardian or other person having custody or control

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

4 (4) promoting any performance that includes sexually explicit  
5 conduct by a child under 18 years of age, or a person whom the offender  
6 believes to be a child under 18 years of age, knowing the character and  
7 content of the performance.

8 (b) (1) Sexual exploitation of a child as defined in:

9 (A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony;  
10 and

11 (B) subsection (a)(1) or (a)(4) is a severity level 3, person felony,  
12 except as provided in subsection (b)(2).

13 (2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)  
14 (4) or attempt, conspiracy or criminal solicitation to commit sexual  
15 exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-  
16 grid person felony, when the offender is 18 years of age or older and the  
17 child is under 14 years of age.

18 (c) If the offender is 18 years of age or older and the child is under 14  
19 years of age, the provisions of:

20 (1) K.S.A. 21-5301(c), and amendments thereto, shall not apply to a  
21 violation of attempting to commit the crime of sexual exploitation of a  
22 child as defined in subsection (a)(1) or (a)(4);

23 (2) K.S.A. 21-5302(d), and amendments thereto, shall not apply to a  
24 violation of conspiracy to commit the crime of sexual exploitation of a  
25 child as defined in subsection (a)(1) or (a)(4); and

26 (3) K.S.A. 21-5303(d), and amendments thereto, shall not apply to a  
27 violation of criminal solicitation to commit the crime of sexual  
28 exploitation of a child as defined in subsection (a)(1) or (a)(4).

29 (d) As used in this section:

30 (1) "Sexually explicit conduct" means actual or simulated: Exhibition  
31 in the nude; sexual intercourse or sodomy, including genital-genital, oral-  
32 genital, anal-genital or oral-anal contact, whether between persons of the  
33 same or opposite sex; masturbation; sado-masochistic abuse with the intent  
34 of sexual stimulation; or lewd exhibition of the genitals, female breasts or  
35 pubic area of any person;

36 (2) "promoting" means procuring, transmitting, distributing,  
37 circulating, presenting, producing, directing, manufacturing, issuing,  
38 publishing, displaying, exhibiting or advertising:

39 (A) For pecuniary profit; or

40 (B) with intent to arouse or gratify the sexual desire or appeal to the  
41 prurient interest of the offender or any other person;

42 (3) "performance" means any film, photograph, negative, slide, book,  
43 magazine or other printed or visual medium, any audio tape recording or

1 any photocopy, video tape, video laser disk, computer hardware, software,  
2 floppy disk or any other computer related equipment or computer  
3 generated image that contains or incorporates in any manner any film,  
4 photograph, negative, photocopy, video tape or video laser disk or any  
5 play or other live presentation;

6 (4) "nude" means any state of undress in which the human genitals,  
7 pubic region, buttock or female breast, at a point below the top of the  
8 areola, is less than completely and opaquely covered;

9 (5) **"obscene" means a visual depiction or artificially generated**  
10 **visual depiction that, taken as a whole, appeals to the prurient interest**  
11 **of an average person, applying contemporary community standards,**  
12 **that is patently offensive and that, taken as a whole, lacks serious**  
13 **literary, artistic, political or scientific value;**

14 (6) **"artificially generated visual depiction" means a visual**  
15 **depiction that is obscene and produced through the use of computer**  
16 **software, digital manipulation or other means that creates an image or**  
17 **video that appears to depict a child under 18 years of age shown or**  
18 **heard engaging in sexually explicit conduct. "Artificially generated**  
19 **visual depiction" includes depictions that are obscene and**  
20 **indistinguishable from a real child, morphed from a real child's image**  
21 **or generated without any actual child involvement; and**

22 ~~(5)(7) "visual depiction" means any photograph, film, video picture,~~  
23 ~~digital or computer-generated image or picture, whether made or produced~~  
24 ~~by electronic, mechanical or other means. *"Visual depiction" includes any*~~  
25 ~~*photograph, film, video picture, digital or computer-generated image or*~~  
26 ~~*picture that has been created, in whole or in part, altered or modified by*~~  
27 ~~*artificial intelligence or any digital means to appear to depict or purport*~~  
28 ~~*to depict a child engaging in sexually explicit conduct.*~~

29 (e) The provisions of this section shall not apply to possession of a  
30 visual depiction of a child in a state of nudity if the person possessing such  
31 visual depiction is the child who is the subject of such visual depiction.

32 Sec. 2. K.S.A. 21-5611 is hereby amended to read as follows: 21-  
33 5611. (a) Unlawful transmission of a visual depiction of a child is  
34 knowingly transmitting a visual depiction of ~~a~~ **{an identifiable}** child 12  
35 or more years of age but less than 18 years of age in a state of nudity when  
36 the offender is less than 19 years of age.

37 (b) Aggravated unlawful transmission of a visual depiction of a child  
38 is:

39 (1) Knowingly transmitting a visual depiction of ~~a~~ **{an identifiable}**  
40 child 12 or more years of age but less than 18 years of age in a state of  
41 nudity:

42 (A) With the intent to harass, embarrass, intimidate, defame or  
43 otherwise inflict emotional, psychological or physical harm;

- 1 (B) for pecuniary or tangible gain; or  
2 (C) with the intent to exhibit or transmit such visual depiction to more  
3 than one person; and  
4 (2) when the offender is less than 19 years of age.
- 5 (c) (1) Unlawful transmission of a visual depiction of a child is a:  
6 (A) Class A person misdemeanor, except as provided in subsection (c)  
7 (1)(B); and  
8 (B) severity level 10, person felony upon a second or subsequent  
9 conviction.
- 10 (2) Aggravated unlawful transmission of a visual depiction of a child  
11 is a:  
12 (A) Severity level 9, person felony, except as provided in subsection  
13 (c)(2)(B); and  
14 (B) severity level 7, person felony upon a second or subsequent  
15 conviction.
- 16 (d) It shall be a rebuttable presumption that an offender had the intent  
17 to harass, embarrass, intimidate, defame or otherwise inflict emotional,  
18 psychological or physical harm if the offender transmitted a visual  
19 depiction of a person other than such child in a state of nudity to more than  
20 one person.
- 21 (e) The provisions of this section shall not apply to transmission of a  
22 visual depiction of a child in a state of nudity by the child who is the  
23 subject of such visual depiction.
- 24 (f) The provisions of this section shall not apply to a visual depiction  
25 of a child engaged in sexually explicit conduct or a visual depiction that  
26 constitutes obscenity as defined in K.S.A. 21-6401(f)(1), and amendments  
27 thereto.
- 28 (g) As used in this section and K.S.A. 21-5610, and amendments  
29 thereto:
- 30 (1) "Sexually explicit conduct" means actual or simulated: Sexual  
31 intercourse or sodomy, including genital-genital, oral-genital, anal-genital  
32 or oral-anal contact, whether between persons of the same or opposite sex;  
33 masturbation and sado-masochistic abuse for the purpose of sexual  
34 stimulation;
- 35 (2) "state of nudity" means any state of undress in which the human  
36 genitals, pubic region, buttock or female breast, at a point below the top of  
37 the areola, is less than completely and opaquely covered;
- 38 (3) "transmission" means any form of communication, including, but  
39 not limited to, physical transmission of paper and electronic transmission  
40 that creates a record that may be retained and reviewed by a recipient  
41 thereof, and that may be directly reproduced in paper form by such a  
42 recipient through an automated process. Transmission also includes a  
43 request to receive a transmission of a visual depiction; and

1 (4) "visual depiction" means any photograph, film, video picture,  
2 digital or computer-generated image or picture made or produced by  
3 electronic, mechanical or other means, **including, but not limited to, such**  
4 **items in which the person depicted is indistinguishable from a real**  
5 **child, morphed from a real child's image or generated without any**  
6 **actual child involvement** {any such item created, in whole or in part,  
7 **altered or modified by artificial intelligence or any digital means to**  
8 **appear to depict or purport to depict an identifiable child, regardless**  
9 **of whether such identifiable child was involved in the creation of the**  
10 **original image}**. ~~*"Visual depiction" includes any photograph, film, video*~~  
11 ~~*picture, digital or computer-generated image or picture that has been*~~  
12 ~~*created, in whole or in part, altered or modified by artificial intelligence*~~  
13 ~~*or any digital means to appear to depict or purport to depict a child*~~  
14 ~~*engaging in sexually explicit conduct.*~~

15 Sec. 3. K.S.A. 2024 Supp. 21-6101 is hereby amended to read as  
16 follows: 21-6101. (a) Breach of privacy is knowingly and without lawful  
17 authority:

18 (1) Intercepting, without the consent of the sender or receiver, a  
19 message by telephone, telegraph, letter or other means of private  
20 communication;

21 (2) divulging, without the consent of the sender or receiver, the  
22 existence or contents of such message if such person knows that the  
23 message was illegally intercepted, or if such person illegally learned of the  
24 message in the course of employment with an agency in transmitting such  
25 message;

26 (3) entering with intent to listen surreptitiously to private  
27 conversations in a private place or to observe the personal conduct of any  
28 other person or persons entitled to privacy therein;

29 (4) installing or using outside or inside a private place any device for  
30 hearing, recording, amplifying or broadcasting sounds originating in such  
31 place, which sounds would not ordinarily be audible or comprehensible  
32 without the use of such device, without the consent of the person or  
33 persons entitled to privacy therein;

34 (5) installing or using any device or equipment for the interception of  
35 any telephone, telegraph or other wire or wireless communication without  
36 the consent of the person in possession or control of the facilities for such  
37 communication;

38 (6) installing or using a camcorder, motion picture camera or  
39 photographic camera of any type to videotape, film, photograph or record,  
40 by electronic or other means, another identifiable person under or through  
41 the clothing being worn by that other person or another identifiable person  
42 who is nude or in a state of undress, for the purpose of viewing the body  
43 of, or the undergarments worn by, that other person, without the consent or

1 knowledge of that other person, with the intent to invade the privacy of  
2 that other person, under circumstances in which that other person has a  
3 reasonable expectation of privacy;

4 (7) disseminating or permitting the dissemination of any videotape,  
5 photograph, film or image obtained in violation of subsection (a)(6); or

6 (8) disseminating any videotape, photograph, film or image of  
7 another identifiable person 18 years of age or older who is nude or  
8 engaged in sexual activity and under circumstances in which such  
9 identifiable person had a reasonable expectation of privacy, with the intent  
10 to harass, threaten or intimidate such identifiable person, and such  
11 identifiable person did not consent to such dissemination. *This includes*  
12 *disseminating any videotape, photograph, film or image that has been*  
13 *created, in whole or in part, altered or modified by artificial intelligence*  
14 *or any digital means to appear to depict or purport to depict such*  
15 *identifiable person, regardless of whether such identifiable person was*  
16 *involved in the creation of the original image.*

17 (b) Breach of privacy as defined in:

18 (1) Subsection (a)(1) through (a)(5) is a class A nonperson  
19 misdemeanor;

20 (2) subsection (a)(6) or (a)(8) is a:

21 (A) Severity level 8, person felony, except as provided in subsection  
22 (b)(2)(B); and

23 (B) severity level 5, person felony upon a second or subsequent  
24 conviction within the previous five years; and

25 (3) subsection (a)(7) is a severity level 5, person felony.

26 (c) Subsection (a)(1) shall not apply to messages overheard through a  
27 regularly installed instrument on a telephone party line or on an extension.

28 (d) The provisions of this section shall not apply to:

29 (1) An operator of a switchboard, or any officer, employee or agent of  
30 any public utility providing telephone communications service, whose  
31 facilities are used in the transmission of a communication, to intercept,  
32 disclose or use that communication in the normal course of employment  
33 while engaged in any activity which is incident to the rendition of public  
34 utility service or to the protection of the rights of property of such public  
35 utility;

36 (2) a provider of an interactive computer service, as defined in 47  
37 U.S.C. § 230, for content provided by another person;

38 (3) a radio common carrier, as defined in K.S.A. 66-1,143, and  
39 amendments thereto; ~~and~~

40 (4) a local exchange carrier or telecommunications carrier as defined  
41 in K.S.A. 66-1,187, and amendments thereto; **and**

42 **(5) a cable service, as defined in 47 U.S.C. § 522.**

43 (e) The provisions of subsection (a)(8) shall not apply to a person

1 acting with a bona fide and lawful scientific, educational, governmental,  
2 news or other similar public purpose.

3 (f) As used in this section, "private place" means a place where one  
4 may reasonably expect to be safe from uninvited intrusion or surveillance.

5 Sec. 4. K.S.A. 21-5510 and 21-5611 and K.S.A. 2024 Supp. 21-6101  
6 are hereby repealed.

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