

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2018

By Committee on Corrections and Juvenile Justice

1-14

1 AN ACT concerning visual depictions of children; creating the crimes of
2 unlawful transmission of a visual depiction of a child and unlawful
3 possession of a visual depiction of a child; relating to sexual
4 exploitation of a child; amending K.S.A. ~~2014~~ **2015** Supp. 21-5510 and
5 repealing the existing section.
6

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

8 New Section 1. (a) Unlawful transmission of a visual depiction of a
9 child is knowingly transmitting a visual depiction of a child 12 or more
10 years of age **but less than 18 years of age** in a state of nudity:

11 ~~(1) when the offender is less than 19 years of age; and~~
12 ~~(2) when the offender is less than six years of age older than the~~
13 ~~child.~~

14 (b) Aggravated unlawful transmission of a visual depiction of a child
15 is:

16 (1) Knowingly transmitting a visual depiction of a child 12 or more
17 years of age **but less than 18 years of age** in a state of nudity:

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

20 (B) for pecuniary or tangible gain; or

21 (C) with the intent to exhibit or transmit such visual depiction to more
22 than one person; **and**

23 (2) when the offender is less than 19 years of age; ~~and~~

24 ~~(3) when the offender is less than six years of age older than the~~
25 ~~child.~~

26 (c) (1) Unlawful transmission of a visual depiction of a child is a:

27 **(A) Class A, person misdemeanor, except as provided in**
28 **subsection (c)(1)(B);**

29 **(B) severity level 10, person felony upon a second or subsequent**
30 **conviction.**

31 (2) Aggravated unlawful transmission of a visual depiction of a child
32 is a:

33 (A) Severity level 9, person felony, except as provided in subsection
34 (c)(2)(B); and

35 (B) severity level 7, person felony upon a second or subsequent
36 conviction.

1 (d) It shall be a rebuttable presumption that ~~a child~~ **an offender** had
2 the intent to harass, embarrass, intimidate, defame or otherwise inflict
3 emotional, psychological or physical harm if the ~~child~~ **offender**
4 transmitted a visual depiction of ~~a person other than~~ such child in a state of
5 nudity **to more than one person**.

6 (e) The provisions of this section shall not apply to transmission of a
7 visual depiction of a child in a state of nudity by the child who is the
8 subject of such visual depiction.

9 (f) The provisions of this section shall not apply to a visual depiction
10 of a child engaged in sexually explicit conduct or a visual depiction that
11 constitutes obscenity as defined in K.S.A. ~~2014~~ **2015** Supp. 21-6401(f)(1),
12 and amendments thereto.

13 (g) As used in this section and section 2, and amendments thereto:

14 (1) "Sexually explicit conduct" means actual or simulated: Sexual
15 intercourse or sodomy, including genital-genital, oral-genital, anal-genital
16 or oral-anal contact, whether between persons of the same or opposite sex;
17 masturbation and sado-masochistic abuse for the purpose of sexual
18 stimulation;

19 (2) "state of nudity" means any state of undress in which the human
20 genitals, pubic region, buttock or female breast, at a point below the top of
21 the areola, is less than completely and opaquely covered; ~~and~~

22 (3) **"transmission" means any form of communication, including,**
23 **but not limited to, physical transmission of paper and electronic**
24 **transmission that creates a record that may be retained and reviewed**
25 **by a recipient thereof, and that may be directly reproduced in paper**
26 **form by such a recipient through an automated process. Transmission**
27 **also includes a request to receive a transmission of a visual depiction if**
28 **such request results in a visual depiction being transmitted; and**

29 (4) "visual depiction" means any photograph, film, video picture,
30 digital or computer generated image or picture made or produced by
31 electronic, mechanical or other means.

32 New Sec. 2. (a) Unlawful possession of a visual depiction of a child
33 is knowingly possessing a visual depiction of a child 12 years of age or
34 older **but less than 16 years of age** in a state of nudity, if committed by a
35 person less than ~~six years of age~~ **older than the subject of the visual**
36 **depiction 19 years of age**, and the possessor of such visual depiction
37 received such visual depiction directly and exclusively from the child who
38 is the subject of such visual depiction.

39 (b) Unlawful possession of a visual depiction of a child is a class ~~A~~ **B**
40 person misdemeanor.

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

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

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

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

6 (d) The provisions of this section shall not apply to possession of a
7 visual depiction of a child in a state of nudity if the person possessing such
8 visual depiction is the child who is the subject of such visual depiction.

9 (e) The provisions of this section shall not apply to a visual depiction
10 of a child engaged in sexually explicit conduct or a visual depiction that
11 constitutes obscenity as defined in of K.S.A. ~~2014~~ 2015 Supp. 21-6401(f)
12 (1), and amendments thereto.

13 Sec. 3. K.S.A. ~~2014~~ 2015 Supp. 21-5510 is hereby amended to read
14 as follows: 21-5510. (a) *Except as provided in sections 1 and 2, and*
15 *amendments thereto*, sexual exploitation of a child is:

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

20 (2) possessing any visual depiction of a child under 18 years of age
21 shown or heard engaging in sexually explicit conduct with intent to arouse
22 or satisfy the sexual desires or appeal to the prurient interest of the
23 offender or any other person;

24 (3) being a parent, guardian or other person having custody or control
25 of a child under 18 years of age and knowingly permitting such child to
26 engage in, or assist another to engage in, sexually explicit conduct for any
27 purpose described in subsection (a)(1) or (2); or

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

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

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

35 (B) subsection (a)(1) or (a)(4) is a severity level 5, person felony,
36 except as provided in subsection (b)(2).

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

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

1 (1) ~~Subsection (c)~~ of K.S.A. ~~2014~~ **2015** Supp. 21-5301(c), and
2 amendments thereto, shall not apply to a violation of attempting to commit
3 the crime of sexual exploitation of a child as defined in subsection (a)(1)
4 or (a)(4);

5 (2) ~~subsection (c)~~ of K.S.A. ~~2014~~ **2015** Supp. 21-5302(c), and
6 amendments thereto, shall not apply to a violation of conspiracy to commit
7 the crime of sexual exploitation of a child as defined in subsection (a)(1)
8 or (a)(4); and

9 (3) ~~subsection (d)~~ of K.S.A. ~~2014~~ **2015** Supp. 21-5303(d), and
10 amendments thereto, shall not apply to a violation of criminal solicitation
11 to commit the crime of sexual exploitation of a child as defined in
12 subsection (a)(1) or (a)(4).

13 (d) As used in this section:

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

20 (2) "promoting" means procuring, transmitting, distributing,
21 circulating, presenting, producing, directing, manufacturing, issuing,
22 publishing, displaying, exhibiting or advertising:

23 (A) For pecuniary profit; or

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

26 (3) "performance" means any film, photograph, negative, slide, book,
27 magazine or other printed or visual medium, any audio tape recording or
28 any photocopy, video tape, video laser disk, computer hardware, software,
29 floppy disk or any other computer related equipment or computer
30 generated image that contains or incorporates in any manner any film,
31 photograph, negative, photocopy, video tape or video laser disk or any
32 play or other live presentation;

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

36 (5) "visual depiction" means any photograph, film, video picture,
37 digital or computer-generated image or picture, whether made or produced
38 by electronic, mechanical or other means.

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

42 Sec. 4. K.S.A. ~~2014~~ **2015** Supp. 21-5510 is hereby repealed.

43 Sec. 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.