

SENATE BILL No. 391

By Committee on Corrections and Juvenile Justice

2-1

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. 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 when the
11 offender is less than 19 years of age.

12 (b) Aggravated unlawful transmission of a visual depiction of a child
13 is:

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

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

18 (B) for pecuniary or tangible gain; or

19 (C) with the intent to exhibit or transmit such visual depiction to more
20 than one person; and

21 (2) when the offender is less than 19 years of age.

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

23 (A) Class A person misdemeanor, except as provided in subsection (c)
24 (1)(B); and

25 (B) severity level 10, person felony upon a second or subsequent
26 conviction.

27 (2) Aggravated unlawful transmission of a visual depiction of a child
28 is a:

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

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

33 (d) It shall be a rebuttable presumption that an offender had the intent
34 to harass, embarrass, intimidate, defame or otherwise inflict emotional,
35 psychological or physical harm if the offender transmitted a visual
36 depiction of a person other than such child in a state of nudity to more than

1 one person.

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

5 (f) The provisions of this section shall not apply to a visual depiction
6 of a child engaged in sexually explicit conduct or a visual depiction that
7 constitutes obscenity as defined in K.S.A. 2015 Supp. 21-6401(f)(1), and
8 amendments thereto.

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

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

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

18 (3) "transmission" means any form of communication, including, but
19 not limited to, physical transmission of paper and electronic transmission
20 that creates a record that may be retained and reviewed by a recipient
21 thereof, and that may be directly reproduced in paper form by such a
22 recipient through an automated process. Transmission also includes a
23 request to receive a transmission of a visual depiction; and

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

27 New Sec. 2. (a) Unlawful possession of a visual depiction of a child
28 is knowingly possessing a visual depiction of a child 12 years of age or
29 older but less than 16 years of age in a state of nudity, if committed by a
30 person less than 19 years of age, and the possessor of such visual depiction
31 received such visual depiction directly and exclusively from the child who
32 is the subject of such visual depiction.

33 (b) Unlawful possession of a visual depiction of a child is a class B
34 person misdemeanor.

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

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

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

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

43 (d) The provisions of this section shall not apply to possession of a

1 visual depiction of a child in a state of nudity if the person possessing such
2 visual depiction is the child who is the subject of such visual depiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (d) As used in this section:

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

12 (2) "promoting" means procuring, transmitting, distributing,
13 circulating, presenting, producing, directing, manufacturing, issuing,
14 publishing, displaying, exhibiting or advertising:

15 (A) For pecuniary profit; or

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

18 (3) "performance" means any film, photograph, negative, slide, book,
19 magazine or other printed or visual medium, any audio tape recording or
20 any photocopy, video tape, video laser disk, computer hardware, software,
21 floppy disk or any other computer related equipment or computer
22 generated image that contains or incorporates in any manner any film,
23 photograph, negative, photocopy, video tape or video laser disk or any
24 play or other live presentation;

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

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

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

34 Sec. 4. K.S.A. 2015 Supp. 21-5510 is hereby repealed.

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