

HOUSE BILL No. 2284

By Committee on Corrections and Juvenile Justice

2-6

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to unlawful possession and transmission of a visual depiction of a
3 child; amending K.S.A. 2016 Supp. 21-5610 and 21-5611 and repealing
4 the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 21-5610 is hereby amended to read as
8 follows: 21-5610. (a) Unlawful possession of a visual depiction of a child
9 is knowingly possessing a visual depiction of a child 12 years of age or
10 older but less than 16 years of age in a state of nudity, if committed by a
11 person less than ~~19~~ 18 years of age, and the possessor of such visual
12 depiction received such visual depiction directly and exclusively from the
13 child who is the subject of such visual depiction.

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

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

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

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

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

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

27 (e) The provisions of this section shall not apply to a visual depiction
28 of a child engaged in sexually explicit conduct or a visual depiction that
29 constitutes obscenity as defined in K.S.A. 2016 Supp. 21-6401(f)(1), and
30 amendments thereto.

31 (f) It shall not be unlawful for a person who is less than ~~19~~ 18 years
32 of age to possess a visual depiction of a child in a state of nudity who is 16
33 years of age or older.

34 Sec. 2. K.S.A. 2016 Supp. 21-5611 is hereby amended to read as
35 follows: 21-5611. (a) Unlawful transmission of a visual depiction of a
36 child is knowingly transmitting a visual depiction of a child 12 or more

1 years of age but less than 18 years of age in a state of nudity when the
2 offender is less than ~~19~~ 18 years of age.

3 (b) Aggravated unlawful transmission of a visual depiction of a child
4 is:

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

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

9 (B) for pecuniary or tangible gain; or

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

12 (2) when the offender is less than ~~19~~ 18 years of age.

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

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

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

18 (2) Aggravated unlawful transmission of a visual depiction of a child
19 is a:

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

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

24 (d) It shall be a rebuttable presumption that an offender had the intent
25 to harass, embarrass, intimidate, defame or otherwise inflict emotional,
26 psychological or physical harm if the offender transmitted a visual
27 depiction of a person other than such child in a state of nudity to more than
28 one person.

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

32 (f) The provisions of this section shall not apply to a visual depiction
33 of a child engaged in sexually explicit conduct or a visual depiction that
34 constitutes obscenity as defined in K.S.A. 2016 Supp. 21-6401(f)(1), and
35 amendments thereto.

36 (g) As used in this section and K.S.A. 2016 Supp. 21-5610, and
37 amendments thereto:

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

43 (2) "state of nudity" means any state of undress in which the human

1 genitals, pubic region, buttock or female breast, at a point below the top of
2 the areola, is less than completely and opaquely covered;

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

9 (4) "visual depiction" means any photograph, film, video picture,
10 digital or computer-generated image or picture made or produced by
11 electronic, mechanical or other means.

12 Sec. 3. K.S.A. 2016 Supp. 21-5610 and 21-5611 are hereby repealed.

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