

Substitute for HOUSE BILL No. 2739

By Committee on Corrections and Juvenile Justice

3-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sex offenses; unlawful sexual relations; law enforcement; lewd and
3 lascivious behavior penalties; amending K.S.A. 2017 Supp. 21-5512
4 and 21-5513 and repealing the existing sections.

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

7 Section 1. K.S.A. 2017 Supp. 21-5512 is hereby amended to read as
8 follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual
9 sexual intercourse, lewd fondling or touching, or sodomy with a person
10 who is not married to the offender if:

11 (1) The offender is an employee or volunteer of the department of
12 corrections, or the employee or volunteer of a contractor who is under
13 contract to provide services for a correctional institution, and the person
14 with whom the offender is engaging in consensual sexual intercourse, lewd
15 fondling or touching, or sodomy is a person 16 years of age or older who
16 is an inmate;

17 (2) the offender is a parole officer, volunteer for the department of
18 corrections or the employee or volunteer of a contractor who is under
19 contract to provide supervision services for persons on parole, conditional
20 release or postrelease supervision and the person with whom the offender
21 is engaging in consensual sexual intercourse, lewd fondling or touching, or
22 sodomy is a person 16 years of age or older who is an inmate who has
23 been released on parole, conditional release or postrelease supervision and
24 the offender has knowledge that the person with whom the offender is
25 engaging in consensual sexual intercourse, lewd fondling or touching, or
26 sodomy is an inmate who has been released and is currently on parole,
27 conditional release or postrelease supervision;

28 (3) the offender is a law enforcement officer, an employee of a jail, or
29 the employee of a contractor who is under contract to provide services in a
30 jail and the person with whom the offender is engaging in consensual
31 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
32 years of age or older who is confined to such jail;

33 (4) the offender is a law enforcement officer, an employee of a
34 juvenile detention facility or sanctions house, or the employee of a
35 contractor who is under contract to provide services in such facility or
36 sanctions house and the person with whom the offender is engaging in

1 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
2 person 16 years of age or older who is confined to such facility or
3 sanctions house;

4 (5) the offender is an employee of the department of corrections or
5 the employee of a contractor who is under contract to provide services in a
6 juvenile correctional facility and the person with whom the offender is
7 engaging in consensual sexual intercourse, lewd fondling or touching, or
8 sodomy is a person 16 years of age or older who is confined to such
9 facility;

10 (6) the offender is an employee of the department of corrections or
11 the employee of a contractor who is under contract to provide direct
12 supervision and offender control services to the department of corrections
13 and:

14 (A) The person with whom the offender is engaging in consensual
15 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
16 years of age or older who has been:

17 (i) Released on conditional release from a juvenile correctional
18 facility under the supervision and control of the department of corrections
19 or juvenile community supervision agency; or

20 (ii) placed in the custody of the department of corrections under the
21 supervision and control of the department of corrections or juvenile
22 community supervision agency; and

23 (B) the offender has knowledge that the person with whom the
24 offender is engaging in consensual sexual intercourse, lewd fondling or
25 touching, or sodomy is currently under supervision;

26 (7) the offender is an employee of the Kansas department for aging
27 and disability services or the Kansas department for children and families
28 or the employee of a contractor who is under contract to provide services
29 in an aging and disability or children and families institution or to the
30 Kansas department for aging and disability services or the Kansas
31 department for children and families and the person with whom the
32 offender is engaging in consensual sexual intercourse, lewd fondling or
33 touching, or sodomy is a person 16 years of age or older who is a patient in
34 such institution or in the custody of the secretary for aging and disability
35 services or the secretary for children and families;

36 (8) the offender is a worker, volunteer or other person in a position of
37 authority in a family foster home licensed by the department of health and
38 environment and the person with whom the offender is engaging in
39 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
40 person 16 years of age or older who is a foster child placed in the care of
41 such family foster home;

42 (9) the offender is a teacher or other person in a position of authority
43 and the person with whom the offender is engaging in consensual sexual

1 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
2 age or older who is a student enrolled at the school where the offender is
3 employed. If the offender is the parent of the student, the provisions of
4 ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5604(b), and amendments thereto,
5 shall apply, not this subsection;

6 (10) the offender is a court services officer or the employee of a
7 contractor who is under contract to provide supervision services for
8 persons under court services supervision and the person with whom the
9 offender is engaging in consensual sexual intercourse, lewd fondling or
10 touching, or sodomy is a person 16 years of age or older who has been
11 placed on probation under the supervision and control of court services
12 and the offender has knowledge that the person with whom the offender is
13 engaging in consensual sexual intercourse, lewd fondling or touching, or
14 sodomy is currently under the supervision of court services;

15 (11) the offender is a community correctional services officer or the
16 employee of a contractor who is under contract to provide supervision
17 services for persons under community corrections supervision and the
18 person with whom the offender is engaging in consensual sexual
19 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
20 age or older who has been assigned to a community correctional services
21 program under the supervision and control of community corrections and
22 the offender has knowledge that the person with whom the offender is
23 engaging in consensual sexual intercourse, lewd fondling or touching, or
24 sodomy is currently under the supervision of community corrections; ~~or~~

25 (12) the offender is a surety or an employee of a surety and the person
26 with whom the offender is engaging in consensual sexual intercourse, lewd
27 fondling or touching, or sodomy is a person 16 years of age or older who
28 is the subject of a surety or bail bond agreement with such surety and the
29 offender has knowledge that the person with whom the offender is
30 engaging in consensual sexual intercourse, lewd fondling or touching, or
31 sodomy is the subject of a surety or bail bond agreement with such surety;
32 *or*

33 (13) *the offender is a law enforcement officer and the person with*
34 *whom the offender is engaging in consensual sexual intercourse, lewd*
35 *fondling or touching, or sodomy is a person 16 years of age or older who*
36 *is interacting with such law enforcement officer during the course of a*
37 *traffic stop, a custodial interrogation, an interview in connection with an*
38 *investigation, or while the law enforcement officer has such person*
39 *detained.*

40 (b) Unlawful sexual relations as defined in:

41 (1) Subsection (a)(5) is a severity level 4, person felony; and

42 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),
43 (a)(10), (a)(11) ~~or~~, (a)(12) *or (a)(13)* is a severity level 5, person felony.

1 (c) (1) If an offender violates the provisions of this section by
2 engaging in consensual sexual intercourse which would constitute a
3 violation of K.S.A. 2017 Supp. 21-5503, and amendments thereto, the
4 provisions of K.S.A. 2017 Supp. 21-5503, and amendments thereto, shall
5 apply, not this section.

6 (2) If an offender violates the provisions of this section by engaging
7 in consensual sexual intercourse which would constitute a violation of
8 ~~subsection (b)(1) of K.S.A. 2017 Supp. 21-5506(b)(1), and amendments~~
9 ~~thereto, the provisions of subsection (b)(1) of K.S.A. 2017 Supp. 21-~~
10 ~~5506(b)(1), and amendments thereto, shall apply, not this section.~~

11 (3) If an offender violates the provisions of this section by engaging
12 in sodomy which would constitute a violation of ~~subsection (a)(3), (a)(4)~~
13 ~~or (b) of K.S.A. 2017 Supp. 21-5504(a)(3), (a)(4) or (b), and amendments~~
14 ~~thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2017~~
15 ~~Supp. 21-5504(a)(3), (a)(4) or (b), and amendments thereto, shall apply,~~
16 ~~not this section.~~

17 (4) If an offender violates the provisions of this section by engaging
18 in lewd fondling or touching which would constitute a violation of
19 ~~subsection (b)(2) of K.S.A. 2017 Supp. 21-5506(b)(2), and amendments~~
20 ~~thereto, the provisions of subsection (b)(2) of K.S.A. 2017 Supp. 21-~~
21 ~~5506(b)(2), and amendments thereto, shall apply, not this section.~~

22 (d) As used in this section:

23 (1) "Correctional institution" means the same as in K.S.A. 75-5202,
24 and amendments thereto;

25 (2) "inmate" means the same as in K.S.A. 75-5202, and amendments
26 thereto;

27 (3) "parole officer" means the same as in K.S.A. 75-5202, and
28 amendments thereto;

29 (4) "postrelease supervision" means the same as in K.S.A. 2017 Supp.
30 21-6803, and amendments thereto;

31 (5) "juvenile detention facility" means the same as in K.S.A. 2017
32 Supp. 38-2302, and amendments thereto;

33 (6) "juvenile correctional facility" means the same as in K.S.A. 2017
34 Supp. 38-2302, and amendments thereto;

35 (7) "sanctions house" means the same as in K.S.A. 2017 Supp. 38-
36 2302, and amendments thereto;

37 (8) "institution" means the same as in K.S.A. 76-12a01, and
38 amendments thereto;

39 (9) "teacher" means and includes teachers, coaches, supervisors,
40 principals, superintendents and any other professional employee in any
41 public or private school offering any of grades kindergarten through 12;

42 (10) "community corrections" means the entity responsible for
43 supervising adults and juvenile offenders for confinement, detention, care

1 or treatment, subject to conditions imposed by the court pursuant to the
2 community corrections act, K.S.A. 75-5290, and amendments thereto, and
3 the revised Kansas juvenile justice code, K.S.A. 2017 Supp. 38-2301 et
4 seq., and amendments thereto;

5 (11) "court services" means the entity appointed by the district court
6 that is responsible for supervising adults and juveniles placed on probation
7 and misdemeanants placed on parole by district courts of this state;

8 (12) "juvenile community supervision agency" means an entity that
9 receives grants for the purpose of providing direct supervision to juveniles
10 in the custody of the department of corrections; and

11 (13) "surety" means the same as in K.S.A. 22-2809a, and
12 amendments thereto.

13 Sec. 2. K.S.A. 2017 Supp. 21-5513 is hereby amended to read as
14 follows: 21-5513. (a) Lewd and lascivious behavior is:

15 (1) Publicly engaging in otherwise lawful sexual intercourse or
16 sodomy with knowledge or reasonable anticipation that the participants are
17 being viewed by others; or

18 (2) publicly exposing a sex organ or exposing a sex organ in the
19 presence of a person who is not the spouse of the offender and who has not
20 consented thereto, with intent to arouse or gratify the sexual desires of the
21 offender or another.

22 (b) Lewd and lascivious behavior ~~is a~~ *is defined in:*

23 (1) ~~Class B nonperson misdemeanor~~ *Subsection (a)(1), if committed*
24 *in the presence of a person 16 or more years of age, is a class B nonperson*
25 *misdemeanor; and*

26 (2) *subsection (a)(2), if committed in the presence of a person 16 or*
27 *more years of age, is a severity level 10, person felony; and*

28 (3) ~~severity level 9, person felony~~ *subsection (a)(1) or (a)(2), if*
29 *committed in the presence of a person under 16 years of age, is a severity*
30 *level 9, person felony.*

31 Sec. 3. K.S.A. 2017 Supp. 21-5512 and 21-5513 are hereby repealed.

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