

As human trafficking legislation is passed, the definition for sexual abuse has expanded to include several Kansas Statutes Annotated. This appendix contains each of the statutes which are cited in the K.S.A. 38-2202 definition of sexual abuse.

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K.S.A. 21-5426. Human trafficking; aggravated human trafficking.

(a) Human trafficking is:

- (1) The intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;
- (2) intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);
- (3) knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
 - (A) Causing or threatening to cause physical injury to any person;
 - (B) physically restraining or threatening to physically restrain another person;
 - (C) abusing or threatening to abuse the law or legal process;
 - (D) threatening to withhold food, lodging or clothing; or
 - (E) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
- (4) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

(b) Aggravated human trafficking is human trafficking, as defined in subsection (a):

- (1) Involving the commission or attempted commission of kidnapping, as defined in subsection (a) of K.S.A. 2015 Supp. 21-5408, and amendments thereto;
- (2) committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- (3) resulting in a death; or
- (4) involving recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(c) (1) Human trafficking is a severity level 2, person felony.

(2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).

(3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

(d) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

- (1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;
- (2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and
- (3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.

(e) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.

History: L. 2010, ch. 136, § 61; L. 2011, ch. 30, § 26; L. 2012, ch. 150, § 5; July 1.

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K.S.A. 21-5501. Definitions.

The following definitions shall apply when the words and phrases defined are used in article 55 of chapter 21 of the Kansas Statutes Annotated, and K.S.A. 2015 Supp. 21-6419 through 21-6422, and amendments thereto, except when a particular context clearly requires a different meaning:

(a) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

- (1) Generally recognized health care practices; or
- (2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(b) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

- (1) Generally recognized health care practices; or
- (2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(c) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

(d) "Unlawful sexual act" means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.

History: L. 2010, ch. 136, § 65; L. 2015, ch. 94, § 2; July 1.

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K.S.A. 21-5502. Evidence of complaining witness' previous sexual conduct in prosecutions for certain offenses; motions; notice.

(a) The provisions of this section shall apply only in a prosecution for:

- (1) Rape, as defined in K.S.A. 2015 Supp. 21-5503, and amendments thereto;
 - (2) indecent liberties with a child, as defined in subsection (a) of K.S.A. 2015 Supp. 21-5506, and amendments thereto;
 - (3) aggravated indecent liberties with a child, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5506, and amendments thereto;
 - (4) criminal sodomy, as defined in subsections (a)(3) and (a)(4) of K.S.A. 2015 Supp. 21-5504, and amendments thereto;
 - (5) aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5504, and amendments thereto;
 - (6) aggravated indecent solicitation of a child, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5508, and amendments thereto;
 - (7) sexual exploitation of a child, as defined in K.S.A. 2015 Supp. 21-5510, and amendments thereto;
 - (8) aggravated sexual battery, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5505, and amendments thereto;
 - (9) incest, as defined in subsection (a) of K.S.A. 2015 Supp. 21-5604, and amendments thereto;
 - (10) aggravated incest, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5604, and amendments thereto;
 - (11) indecent solicitation of a child, as defined in subsection (a) of K.S.A. 2015 Supp. 21-5508, and amendments thereto;
 - (12) aggravated assault, as defined in subsection (b) of K.S.A. 2015 Supp. 21-5412, and amendments thereto, with intent to commit any crime specified above;
 - (13) sexual battery, as defined in subsection (a) of K.S.A. 2015 Supp. 21-5505, and amendments thereto;
 - (14) unlawful voluntary sexual relations, as defined in K.S.A. 2015 Supp. 21-5507, and amendments thereto;
 - (15) aggravated human trafficking, as defined in subsections (b)(2) and (b)(4) of K.S.A. 2015 Supp. 21-5426, and amendments thereto;
 - (16) commercial sexual exploitation of a child, as defined in K.S.A. 2015 Supp. 21-6422, and amendments thereto;
 - (17) electronic solicitation, as defined in K.S.A. 2015 Supp. 21-5509, and amendments thereto;
- or
- (18) attempt, as defined in K.S.A. 2015 Supp. 21-5301, and amendments thereto, or conspiracy, as defined in K.S.A. 2015 Supp. 21-5302, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in any proceeding before the court, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion shall be made at least seven days before the commencement of the proceeding unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination

without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecutor may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime designated in subsection (a), the prosecution of which is subject to this section.

History: L. 2010, ch. 136, § 66; L. 2013, ch. 120, § 15; July 1.

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K.S.A. 21-5503. Rape.

(a) Rape is:

(1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

(A) When the victim is overcome by force or fear; or

(B) when the victim is unconscious or physically powerless;

(2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) sexual intercourse with a child who is under 14 years of age;

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b)(1) Rape as defined in:

(A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

(B) subsection (a)(3) is a severity level 1, person felony, except as provided in subsection (b)(2); and

(C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(2) Rape as defined in subsection (a)(3) or attempt, conspiracy or criminal solicitation to commit rape as defined in subsection (a)(3) is an off-grid person felony, when the offender is 18 years of age or older.

(c) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as defined in subsection (a)(3);

(2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as defined in subsection (a)(3); and

(3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as defined in subsection (a)(3).

(d) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

History: L. 2010, ch. 136, § 67; L. 2011, ch. 30, § 29; July 1.

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K.S.A. 21-5504. Criminal sodomy; aggravated criminal sodomy.

(a) Criminal sodomy is:

- (1) Sodomy between persons who are 16 or more years of age and members of the same sex;
- (2) sodomy between a person and an animal;
- (3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or
- (4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) Aggravated criminal sodomy is:

- (1) Sodomy with a child who is under 14 years of age;
- (2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
- (3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:

- (A) When the victim is overcome by force or fear;
- (B) when the victim is unconscious or physically powerless; or
- (C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Criminal sodomy as defined in:

- (A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and
- (B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.

(2) Aggravated criminal sodomy as defined in:

- (A) Subsection (b)(3) is a severity level 1, person felony; and
- (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony, except as provided in subsection (c) (3).

(3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) or attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:

- (1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);
- (2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and
- (3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2).

(e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

History: L. 2010, ch. 136, § 68; L. 2011, ch. 30, § 30; July 1.

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K.S.A. 21-5505. Sexual battery; aggravated sexual battery.

(a) Sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Aggravated sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another and under any of the following circumstances:

- (1) When the victim is overcome by force or fear;
- (2) when the victim is unconscious or physically powerless; or
- (3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Sexual battery is a class A person misdemeanor.

(2) Aggravated sexual battery is a severity level 5, person felony.

(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

History: L. 2010, ch. 136, § 69; July 1, 2011.

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K.S.A. 21-5506. Indecent liberties with a child; aggravated indecent liberties with a child.

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(c) (1) Indecent liberties with a child is a severity level 5, person felony.

(2) Aggravated indecent liberties with a child as defined in:

(A) Subsection (b)(1) is a severity level 3, person felony;

(B) subsection (b)(2) is a severity level 4, person felony; and

(C) subsection (b)(3) is a severity level 3, person felony, except as provided in subsection (c)(3).

(3) Aggravated indecent liberties with a child as defined in subsection (b)(3) or attempt, conspiracy or criminal solicitation to commit aggravated indecent liberties with a child as defined in subsection (b)(3) is an off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);

(2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);

(3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3).

(e) It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.

History: L. 2010, ch. 136, § 70; L. 2011, ch. 30, § 31; July 1.

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21-5507. Unlawful voluntary sexual relations.

(a) Unlawful voluntary sexual relations is:

(1) Engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(A) Voluntary sexual intercourse;

(B) voluntary sodomy; or

(C) voluntary lewd fondling or touching;

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

(3) when the offender is less than four years of age older than the child;

(4) when the child and the offender are the only parties involved; and

(5) when the child and the offender are members of the opposite sex.

(b) Unlawful voluntary sexual relations as defined in:

(1) Subsection (a)(1)(A) is a severity level 8, person felony;

(2) subsection (a)(1)(B) is a severity level 9, person felony; and

(3) subsection (a)(1)(C) is a severity level 10, person felony.

History: L. 2010, ch. 136, § 71; July 1, 2011.

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K.S.A. 21-5508. Indecent solicitation of a child; aggravated indecent solicitation of a child.

(a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to:

- (1) Commit or to submit to an unlawful sexual act; or
- (2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age of 14 years to:

- (1) Commit or submit to an unlawful sexual act; or
- (2) enter any vehicle, building, room or secluded place with the intent to commit an unlawful sexual act upon or with the child.

(c) (1) Indecent solicitation of a child is a severity level 6, person felony.

(2) Aggravated indecent solicitation of a child is a severity level 5, person felony.

(d) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.

History: L. 2010, ch. 136, § 72; July 1, 2011.

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K.S.A. 21-5509. Electronic solicitation.

(a) Electronic solicitation is, by means of communication conducted through the telephone, internet or by other electronic means, enticing or soliciting a person, whom the offender believes to be a child, to commit or submit to an unlawful sexual act.

(b) Electronic solicitation is a:

(1) Severity level 3, person felony if the offender believes the person to be a child 14 or more years of age but less than 16 years of age; and

(2) severity level 1, person felony if the offender believes the person to be a child under 14 years of age.

(c) As used in this section, "communication conducted through the internet or by other electronic means" includes, but is not limited to, e-mail, chatroom chats and text messaging.

History: L. 2010, ch. 136, § 73; July 1, 2011.

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K.S.A. 21-5510. Sexual exploitation of a child.

(a) Sexual exploitation of a child is:

- (1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;
- (2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;
- (3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or
- (4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.

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

- (A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and
- (B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).

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

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

- (1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);
- (2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and
- (3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

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

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

(A) For pecuniary profit; or

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

(3) "performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer

generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

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

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

History: L. 2010, ch. 136, § 74; L. 2011, ch. 100, § 16; July 1.

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K.S.A. 21-5511. Adultery.

(a) Adultery is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:

- (1) The offender is married; or
 - (2) the offender is not married and knows that the other person involved in the act is married.
- (b) Adultery is a class C misdemeanor.

History: L. 2010, ch. 136, § 75; July 1, 2011.

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K.S.A. 21-5512. Unlawful sexual relations.

(a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

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

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

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

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

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

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

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

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

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

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

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

- (8) the offender is a worker, volunteer or other person in a position of authority in a family foster home licensed by the department of health and environment and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;
- (9) the offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of K.S.A. 2015 Supp. 21-5604, and amendments thereto, shall apply, not this subsection;
- (10) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services;
- (11) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections; or
- (12) the offender is a surety or an employee of a surety and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is the subject of a surety or bail bond agreement with such surety and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is the subject of a surety or bail bond agreement with such surety.
- (b) Unlawful sexual relations as defined in:
- (1) Subsection (a)(5) is a severity level 4, person felony; and
- (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11) or (a)(12) is a severity level 5, person felony.
- (c) (1) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of K.S.A. 2015 Supp. 21-5503, and amendments thereto, the provisions of K.S.A. 2015 Supp. 21-5503, and amendments thereto, shall apply, not this section.
- (2) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of subsection (b)(1) of K.S.A. 2015 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(1) of K.S.A. 2015 Supp. 21-5506, and amendments thereto, shall apply, not this section.
- (3) If an offender violates the provisions of this section by engaging in sodomy which would constitute a violation of subsection (a)(3), (a)(4) or (b) of K.S.A. 2015 Supp. 21-5504, and amendments thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2015 Supp. 21-5504, and amendments thereto, shall apply, not this section.
- (4) If an offender violates the provisions of this section by engaging in lewd fondling or touching which would constitute a violation of subsection (b)(2) of K.S.A. 2015 Supp. 21-5506, and

amendments thereto, the provisions of subsection (b)(2) of K.S.A. 2015 Supp. 21-5506, and amendments thereto, shall apply, not this section.

(d) As used in this section:

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

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

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

(4) "postrelease supervision" means the same as in K.S.A. 2015 Supp. 21-6803, and amendments thereto;

(5) "juvenile detention facility" means the same as in K.S.A. 2015 Supp. 38-2302, and amendments thereto;

(6) "juvenile correctional facility" means the same as in K.S.A. 2015 Supp. 38-2302, and amendments thereto;

(7) "sanctions house" means the same as in K.S.A. 2015 Supp. 38-2302, and amendments thereto;

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

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

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 2015 Supp. 38-2301 et seq., and amendments thereto;

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

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

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

History: L. 2010, ch. 136, § 76; L. 2011, ch. 30, § 33; L. 2012, ch. 138, § 1; L. 2014, ch. 90, § 2; July 1.

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K.S.A. 21-5513. Lewd and lascivious behavior.

(a) Lewd and lascivious behavior is:

- (1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or
- (2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) Lewd and lascivious behavior is a:

- (1) Class B nonperson misdemeanor, if committed in the presence of a person 16 or more years of age; and
- (2) severity level 9, person felony, if committed in the presence of a person under 16 years of age.

History: L. 2010, ch. 136, § 77; July 1, 2011.

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K.S.A. 21-6419. Selling sexual relations.

(a) Selling sexual relations is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

(1) Sexual intercourse;

(2) sodomy; or

(3) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(b) Selling sexual relations is a class B nonperson misdemeanor.

(c) It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2015 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2015 Supp. 21-6422, and amendments thereto.

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K.S.A. 21-6422. Commercial sexual exploitation of a child.

(a) Commercial sexual exploitation of a child is knowingly:

(1) Giving, receiving, offering or agreeing to give, or offering or agreeing to receive anything of value to perform any of the following acts:

(A) Procuring, recruiting, inducing, soliciting, hiring or otherwise obtaining any person younger than 18 years of age to engage in sexual intercourse, sodomy or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another; or

(B) procuring, recruiting, inducing, soliciting, hiring or otherwise obtaining a patron where there is an exchange of value, for any person younger than 18 years of age to engage in sexual intercourse, sodomy or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the patron, the offender or another;

(2) establishing, owning, maintaining or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance or management thereof;

(3) permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age; or

(4) procuring transportation for, paying for the transportation of or transporting any person younger than 18 years of age within this state with the intent of causing, assisting or promoting that person's engaging in selling sexual relations.

(b) (1) Commercial sexual exploitation of a child is a:

(A) Severity level 5, person felony, except as provided in subsections (b)(1)(B) and (b)(2); and

(B) severity level 2, person felony when committed by a person who has, prior to the commission of the crime, been convicted of a violation of this section, except as provided in subsection (b)(2).

(2) Commercial sexual exploitation of a child or attempt, conspiracy or criminal solicitation to commit commercial sexual exploitation of a child is an off-grid person felony when the offender is 18 years of age or older and the victim is less than 14 years of age.

(3) In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) or subsection (b)(2) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2015 Supp. 75-758, and amendments thereto.

(4) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

(c) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

(1) Subsection (c) of K.S.A. 2015 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of commercial sexual exploitation of a child pursuant to this section;

(2) subsection (c) of K.S.A. 2015 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of commercial sexual exploitation of a child pursuant to this section; and

(3) subsection (d) of K.S.A. 2015 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of commercial sexual exploitation of a child pursuant to this section.

(d) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 2013, ch. 120, § 4; L. 2014, ch. 28, § 4; July 1.

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