

SENATE BILL No. 279

By Committee on Judiciary

1-12

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RS - JThompson - 01/24/12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to unlawful sexual relations; amending K.S.A. 2011 Supp. 21-5512 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2011 Supp. 21-5512 is hereby amended to read as
7 follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual
8 sexual intercourse, lewd fondling or touching, or sodomy with a person
9 who is not married to the offender if:

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

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

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

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

1 person 16 years of age or older who is confined to such facility or
2 sanctions house;

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

9 (6) the offender is an employee of the juvenile justice authority or the
10 employee of a contractor who is under contract to provide direct
11 supervision and offender control services to the juvenile justice authority
12 and the person with whom the offender is engaging in consensual sexual
13 intercourse, lewd fondling or touching, or sodomy is 16 years of age or
14 older and:

15 (A) Released on conditional release from a juvenile correctional
16 facility under the supervision and control of the juvenile justice authority
17 or juvenile community supervision agency; or

18 (B) placed in the custody of the juvenile justice authority under the
19 supervision and control of the juvenile justice authority or juvenile
20 community supervision agency and the offender has knowledge that the
21 person with whom the offender is engaging in consensual sexual
22 intercourse, lewd fondling or touching, or sodomy is currently under
23 supervision;

24 (7) the offender is an employee of the department of social and
25 rehabilitation services or the employee of a contractor who is under
26 contract to provide services in a social and rehabilitation services
27 institution to the department of social and rehabilitation services and the
28 person with whom the offender is engaging in consensual sexual
29 intercourse, not otherwise subject to subsection (a)(2) of K.S.A. 2011
30 Supp. 21-5503, and amendments thereto, lewd fondling or touching, or
31 sodomy, not otherwise subject to subsection (b)(3)(C) of K.S.A. 2011
32 Supp. 21-5504, and amendments thereto, is a person 16 years of age or
33 older who is a patient in such institution in the custody of the department
34 of social and rehabilitation services;

35 (8) the offender is a person living, working or regularly volunteering
36 in a family foster home licensed by the department of health and
37 environment and the person with whom the offender is engaging in
38 consensual sexual intercourse, not otherwise subject to subsection (a)(2)
39 of K.S.A. 2011 Supp. 21-5503, and amendments thereto, lewd fondling or
40 touching or sodomy, not otherwise subject to subsection (b)(3)(C) of
41 K.S.A. 2011 Supp. 21-5504, and amendments thereto, is a person 16 years
42 of age or older who is a foster child in the care of such family foster home;
43 (9) the offender is a teacher or a other person in a position of

(A) a person who has been

(i)

; and (B)

in a social and rehabilitation services institution or

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a patient in such institution or in the custody of the secretary

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the offender is a worker, regular 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;

1 authority and the person with whom the offender is engaging in consensual
 2 sexual intercourse, ~~not otherwise subject to subsection (a)(3) of K.S.A.~~
 3 ~~2011 Supp. 21-5503, or subsection (b)(1) of K.S.A. 2011 Supp. 21-5506,~~
 4 ~~and amendments thereto, lewd fondling or touching, not otherwise subject~~
 5 ~~to subsection (a) of K.S.A. 2011 Supp. 21-5506, or subsection (b)(2) or (b)~~
 6 ~~(3) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, or sodomy,~~
 7 ~~not otherwise subject to subsection (a) of K.S.A. 2011 Supp. 21-5504, or~~
 8 ~~subsection (b)(1) or (b)(2) of K.S.A. 2011 Supp. 21-5504, and~~
 9 ~~amendments thereto, is a student enrolled at the school where the offender~~
 10 ~~is employed. If the offender is the parent of the student, the provisions of~~
 11 ~~subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto,~~
 12 ~~shall apply, not this subsection;~~

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

22 ~~(4a) (11)~~ the offender is a community correctional services officer or
 23 the employee of a contractor who is under contract to provide supervision
 24 services for persons under community corrections supervision and the
 25 person with whom the offender is engaging in consensual sexual
 26 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
 27 age or older who has been assigned to a community correctional services
 28 program under the supervision and control of community corrections and
 29 the 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 currently under the supervision of community corrections.

32 (b) Unlawful sexual relations as defined in:
 33 (1) Subsection (a)(5) is a severity level 4, person felony; and
 34 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),
 35 ~~or (a)(10) or (a)(11) is a severity level 5, person felony.~~

36 (c) As used in this section:
 37 (1) "Correctional institution" means the same as in K.S.A. 75-5202,
 38 and amendments thereto;
 39 (2) "inmate" means the same as in K.S.A. 75-5202, and amendments
 40 thereto;
 41 (3) "parole officer" means the same as in K.S.A. 75-5202, and
 42 amendments thereto;
 43 (4) "postrelease supervision" means the same as in K.S.A. 2011 Supp.

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is a person 16 years of age or older who

(d)

Insert new subsection (c) Attached

1 21-6803, and amendments thereto;

2 (5) "juvenile detention facility" means the same as in K.S.A. 2011
3 Supp. 38-2302, and amendments thereto;

4 (6) "juvenile correctional facility" means the same as in K.S.A. 2011
5 Supp. 38-2302, and amendments thereto;

6 (7) "sanctions house" means the same as in K.S.A. 2011 Supp. 38-
7 2302, and amendments thereto;

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

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

13 (10) "community corrections" means the entity responsible for
14 supervising adults and juvenile offenders for confinement, detention, care
15 or treatment, subject to conditions imposed by the court pursuant to the
16 community corrections act, K.S.A. 75-5290, and amendments thereto, and
17 the revised Kansas juvenile justice code, K.S.A. 2011 Supp. 38-2301 *et*
18 *seq.*, and amendments thereto;

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

22 (12) "juvenile community supervision agency" means an entity that
23 receives grants for the purpose of providing direct supervision to juveniles
24 in the custody of the juvenile justice authority.

25 Sec. 2. K.S.A. 2011 Supp. 21-5512 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the statute book.
28

New subsection (c):

- (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. 2011 Supp. 21-5503, and amendments thereto, the provisions of K.S.A. 2011 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. 2011 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(1) of K.S.A. 2011 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. 2011 Supp. 21-5504, and amendments thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2011 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. 2011 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(2) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, shall apply, not this section.