

**HOUSE BILL No. 2332**

By Committee on Judiciary

2-11

1 AN ACT concerning crimes and punishment; relating to sexual  
2 exploitation of a child; amending sections 33, 34, 35 and 74 of chapter  
3 136 of the 2010 Session Laws of Kansas and repealing the existing  
4 sections.  
5

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

7 Section 1. Section 33 of chapter 136 of the 2010 Session Laws of  
8 Kansas is hereby amended to read as follows: Sec. 33. (a) An attempt is  
9 any overt act toward the perpetration of a crime done by a person who  
10 intends to commit such crime but fails in the perpetration thereof or is  
11 prevented or intercepted in executing such crime.

12 (b) It shall not be a defense to a charge of attempt that the  
13 circumstances under which the act was performed or the means employed  
14 or the act itself were such that the commission of the crime was not  
15 possible.

16 (c) (1) An attempt to commit an off-grid felony shall be ranked at  
17 nondrug severity level 1. An attempt to commit any other nondrug felony  
18 shall be ranked on the nondrug scale at two severity levels below the  
19 appropriate level for the underlying or completed crime. The lowest  
20 severity level for an attempt to commit a nondrug felony shall be a  
21 severity level 10.

22 (2) The provisions of this subsection shall not apply to a violation of  
23 attempting to commit the crime of:

24 (A) *Aggravated human trafficking, as defined in subsection (b) of*  
25 *section 61 of chapter 136 of the 2010 Session Laws of Kansas, and*  
26 *amendments thereto, if the offender is 18 years of age or older and the*  
27 *victim is less than 14 years of age;*

28 (B) ~~terrorism pursuant to section 56 as defined in section 56 of~~  
29 ~~chapter 136 of the 2010 Session Laws of Kansas, and amendments~~  
30 ~~thereto; or of~~

31 (C) ~~illegal use of weapons of mass destruction pursuant to section 57~~  
32 ~~as defined in section 57 of chapter 136 of the 2010 Session Laws of~~  
33 ~~Kansas, and amendments thereto;~~

34 (D) *rape, as defined in subsection (a)(3) of section 67 of chapter*  
35 *136 of the 2010 Session Laws of Kansas, and amendments thereto, if the*  
36 *offender is 18 years of age or older;*

1       (E) *aggravated indecent liberties with a child, as defined in*  
2 *subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws*  
3 *of Kansas, and amendments thereto, if the offender is 18 years of age or*  
4 *older;*

5       (F) *aggravated criminal sodomy, as defined in subsection (b)(1) or*  
6 *(b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,*  
7 *and amendments thereto, if the offender is 18 years of age or older;*

8       (G) *promoting prostitution, as defined in section 230 of chapter 136*  
9 *of the 2010 Session Laws of Kansas, and amendments thereto, if the*  
10 *offender is 18 years of age or older and the prostitute is less than 14*  
11 *years of age; or*

12       (H) *sexual exploitation of a child, as defined in subsection (a)(1),*  
13 *(a)(4) or (a)(5) of section 74 of chapter 136 of the 2010 Session Laws of*  
14 *Kansas, and amendments thereto, if the offender is 18 years of age or*  
15 *older and the child is less than 14 years of age.*

16       (d) (1) An attempt to commit a felony which prescribes a sentence  
17 on the drug grid shall reduce the prison term prescribed in the drug grid  
18 block for an underlying or completed crime by six months.

19       (2) *The provisions of this subsection shall not apply to a violation of*  
20 *attempting to commit a violation of K.S.A. 2010 Supp. 21-36a03, and*  
21 *amendments thereto.*

22       (e) An attempt to commit a class A person misdemeanor is a  
23 class B person misdemeanor. An attempt to commit a class A nonperson  
24 misdemeanor is a class B nonperson misdemeanor.

25       (f) An attempt to commit a class B or C misdemeanor is a class  
26 C misdemeanor.

27       Sec. 2. Section 34 of chapter 136 of the 2010 Session Laws of  
28 Kansas is hereby amended to read as follows: Sec. 34. (a) A conspiracy is  
29 an agreement with another person to commit a crime or to assist in  
30 committing a crime. No person may be convicted of a conspiracy unless  
31 an overt act in furtherance of such conspiracy is alleged and proved to  
32 have been committed by such person or by a co-conspirator.

1 (b) It shall be a defense to a charge of conspiracy that the accused  
2 voluntarily and in good faith withdrew from the conspiracy, and  
3 communicated the fact of such withdrawal to one or more of the accused  
4 person's co-conspirators, before any overt act in furtherance of the  
5 conspiracy was committed by the accused or by a co-conspirator.

6 (c) (1) Conspiracy to commit an off-grid felony shall be ranked at  
7 nondrug severity level 2. Conspiracy to commit any other nondrug felony  
8 shall be ranked on the nondrug scale at two severity levels below the  
9 appropriate level for the underlying or completed crime. The lowest  
10 severity level for conspiracy to commit a nondrug felony shall be a  
11 severity level 10.

12 (2) The provisions of this subsection shall not apply to a violation of  
13 conspiracy to commit the crime of:

14 (A) *Aggravated human trafficking, as defined in subsection (b) of*  
15 *section 61 of chapter 136 of the 2010 Session Laws of Kansas, and*  
16 *amendments thereto, if the offender is 18 years of age or older and the*  
17 *victim is less than 14 years of age;*

18 (B) *terrorism pursuant to as defined in section 56 of chapter 136 of the*  
19 *2010 Session Laws of Kansas, and amendments thereto; ~~or of~~*

20 (C) *illegal use of weapons of mass destruction pursuant to as defined*  
21 *in section 57 of chapter 136 of the 2010 Session Laws of Kansas, and*  
22 *amendments thereto;;*

23 (D) *rape, as defined in subsection (a)(3) of section 67 of chapter*  
24 *136 of the 2010 Session Laws of Kansas, and amendments thereto, if the*  
25 *offender is 18 years of age or older;*

26 (E) *aggravated indecent liberties with a child, as defined in*  
27 *subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws*  
28 *of Kansas, and amendments thereto, if the offender is 18 years of age or*  
29 *older;*

30 (F) *aggravated criminal sodomy, as defined in subsection (b)(1) or*  
31 *(b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,*  
32 *and amendments thereto, if the offender is 18 years of age or older;*

33 (G) *promoting prostitution, as defined in section 230 of chapter 136*  
34 *of the 2010 Session Laws of Kansas, and amendments thereto, if the*  
35 *offender is 18 years of age or older and the prostitute is less than 14*  
36 *years of age; or*

37 (H) *sexual exploitation of a child, as defined in subsection (a)(1),*  
38 *(a)(4) or (a)(5) of section 74 of chapter 136 of the 2010 Session Laws of*  
39 *Kansas, and amendments thereto, if the offender is 18 years of age or*  
40 *older and the child is less than 14 years of age.*

41 (d) Conspiracy to commit a felony which prescribes a sentence

42 on the drug grid shall reduce the prison term prescribed in the drug grid

1 block for an underlying or completed crime by six months.

2 (e) A conspiracy to commit a misdemeanor is a class C  
3 misdemeanor.

4 Sec. 3. Section 35 of chapter 136 of the 2010 Session Laws of  
5 Kansas is hereby amended to read as follows: Sec. 35. (a) Criminal  
6 solicitation is commanding, encouraging or requesting another person to  
7 commit a felony, attempt to commit a felony or aid and abet in the  
8 commission or attempted commission of a felony for the purpose of  
9 promoting or facilitating the felony.

10 (b) It is immaterial under subsection (a) that the actor fails to  
11 communicate with the person solicited to commit a felony if the person's  
12 conduct was designed to effect a communication.

13 (c) It is an affirmative defense that the actor, after soliciting another  
14 person to commit a felony, persuaded that person not to do so or  
15 otherwise prevented the commission of the felony, under circumstances  
16 manifesting a complete and voluntary renunciation of the actor's criminal  
17 purposes.

18 (d) (1) Criminal solicitation to commit an off-grid felony shall be  
19 ranked at nondrug severity level 3. Criminal solicitation to commit any  
20 other nondrug felony shall be ranked on the nondrug scale at three  
21 severity levels below the appropriate level for the underlying or  
22 completed crime. The lowest severity level for criminal solicitation to  
23 commit a nondrug felony shall be a severity level 10.

24 (2) The provisions of this subsection shall not apply to a violation of  
25 criminal solicitation to commit the crime of:

26 (A) *Aggravated human trafficking, as defined in subsection (b) of*  
27 *section 61 of chapter 136 of the 2010 Session Laws of Kansas, and*  
28 *amendments thereto, if the offender is 18 years of age or older and the*  
29 *victim is less than 14 years of age;*

30 (B) *terrorism pursuant to as defined in section 56 of chapter 136 of the*  
31 *2010 Session Laws of Kansas, and amendments thereto;* ~~or of~~

32 (C) *illegal use of weapons of mass destruction pursuant to as*  
33 *defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas,*  
34 *and amendments thereto;*

1       (D) rape, as defined in subsection (a)(3) of section 67 of chapter  
2 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the  
3 offender is 18 years of age or older;

4       (E) aggravated indecent liberties with a child, as defined in  
5 subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws  
6 of Kansas, and amendments thereto, if the offender is 18 years of age or  
7 older;

8       (F) aggravated criminal sodomy, as defined in subsection (b)(1) or  
9 (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,  
10 and amendments thereto, if the offender is 18 years of age or older;

11       (G) promoting prostitution, as defined in section 230 of chapter 136  
12 of the 2010 Session Laws of Kansas, and amendments thereto, if the  
13 offender is 18 years of age or older and the prostitute is less than 14  
14 years of age; or

15       (H) sexual exploitation of a child, as defined in subsection (a)(1),  
16 (a)(4) or (a)(5) of section 74 of chapter 136 of the 2010 Session Laws of  
17 Kansas, and amendments thereto, if the offender is 18 years of age or  
18 older and the child is less than 14 years of age.

19       (e) Criminal solicitation to commit a felony which prescribes a  
20 sentence on the drug grid shall reduce the prison term prescribed in the  
21 drug grid block for an underlying or completed crime by six months.

22           Sec. 4. Section 74 of chapter 136 of the 2010 Session Laws of  
23 Kansas is hereby amended to read as follows: Sec. 74. (a) Sexual  
24 exploitation of a child is:

25       (1) Employing, using, persuading, inducing, enticing or coercing a  
26 child under 18 years of age to engage in sexually explicit conduct with  
27 the intent to promote any performance;

28       (2) possessing any visual depiction of a child under 18 years of age  
29 shown or heard engaging in sexually explicit conduct with intent to  
30 arouse or satisfy the sexual desires or appeal to the prurient interest of the  
31 offender, *the child* or any other person;

32       (3) being a parent, guardian or other person having custody or  
33 control of a child under 18 years of age and knowingly permitting such  
34 child to engage in, or assist another to engage in, sexually explicit  
35 conduct for any purpose described in subsection (a)(1) ~~or (2); or~~, (a)(2)  
36 or (a)(5);

37       (4) promoting any performance that includes sexually explicit

1 conduct by a child under 18 years of age, knowing the character and  
2 content of the performance; or

3 (5) *distributing any visual depiction of a child under 18 years of age*  
4 *shown or heard engaging in sexually explicit conduct with intent to*  
5 *arouse or satisfy the sexual desires or appeal to the prurient interest of*  
6 *the offender or any other person.*

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

8 ~~(+)~~ (A) Subsection (a)(2) or (a)(3) is a severity level 5, person  
9 felony; ~~and, except as provided in subsection (b)(3);~~

10 ~~(2)~~ (B) subsection (a)(1) or (a)(4) is a:

11 ~~(A)~~ severity level ~~5~~2, person felony, except as provided in  
12 subsection ~~(b)(2)(B); and(2); and~~

13 ~~(B) off-grid person felony, when the offender is 18 years of age or~~  
14 ~~older and the child is under 14 years of age.~~

15 (C) *subsection (a)(5) is a severity level 3, person felony, except as*  
16 *provided in subsection (b)(2).*

17 (2) *Sexual exploitation of a child as defined in subsection (a)(1), (a)*  
18 *(4) or (a)(5) or attempt, conspiracy or criminal solicitation to commit*  
19 *sexual exploitation of a child as defined in subsection (a)(1), (a)(4) or (a)*  
20 *(5) is an off-grid person felony, when the offender is 18 years of age or*  
21 *older and the child is under 14 years of age.*

22 (3) *Sexual exploitation of a child as defined in subsection (a)(2) or*  
23 *(a)(3) is a severity level 3, person felony, when the sexually explicit*  
24 *conduct the child is engaged in is sexual intercourse, sodomy, depictions*  
25 *of sadistic or masochistic abuse with the intent of sexual stimulation,*  
26 *depictions of violence or humiliation with the intent of sexual stimulation,*  
27 *depictions of bondage or other physical restraint with the intent of sexual*  
28 *stimulation, or sexually explicit conduct with an animal.*

29 (c) *If the offender is 18 years of age or older and the child is under*  
30 *14 years of age, the provisions of:*

31 (1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session*  
32 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
33 *of attempting to commit the crime of sexual exploitation of a child as*  
34 *defined in subsection (a)(1), (a)(4) or (a)(5);*

35 (2) *subsection (c) of section 34 of chapter 136 of the 2010 Session*  
36 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
37 *of conspiracy to commit the crime of sexual exploitation of a child as*  
38 *defined in subsection (a)(1), (a)(4) or (a)(5); and*

39 (3) *subsection (d) of section 35 of chapter 136 of the 2010 Session*  
40 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
41 *of criminal solicitation to commit the crime of sexual exploitation of a*  
42 *child as defined in subsection (a)(1), (a)(4) or (a)(5).*

43 ~~(e)~~(d) As used in this section:

1 (1) "Sexually explicit conduct" means actual or simulated:  
2 Exhibition in the nude; sexual intercourse or sodomy, including genital-  
3 genital, oral-genital, anal-genital or oral-anal contact, whether between  
4 persons of the same or opposite sex; masturbation; ~~sado-~~  
5 ~~masochistic~~ ~~sadistic or masochistic~~ abuse with the intent of sexual  
6 stimulation; *violence or humiliation with the intent of sexual stimulation;*  
7 *bondage or other physical restraint with the intent of sexual stimulation;*  
8 *sexually explicit conduct with an animal;* or lewd exhibition of the  
9 genitals, female breasts, ~~or~~ pubic area, *anus or buttocks* of any person;

10 (2) "promoting" means procuring, ~~transmitting, distributing,~~  
11 ~~circulating, presenting,~~ producing, directing; *or* manufacturing, ~~issuing,~~  
12 ~~publishing, displaying, exhibiting or advertising:~~

13 (A) For pecuniary profit; or

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

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

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

26 (5) "visual depiction" means any photograph, film, video  
27 picture, digital or computer-generated image or picture, whether made or  
28 produced by electronic, mechanical or other means; *and*

29 (6) *"distributing" means actual, constructive or attempted*  
30 *selling, giving, advertising, displaying, exhibiting for others, mailing,*  
31 *shipping, transmitting, circulating, presenting, issuing, publishing,*  
32 *sharing or making available:*

33 (A) *For pecuniary profit; or*

34 (B) *with intent to arouse or gratify the sexual desire or appeal*

1 *to the prurient interest of the offender or any other person..*

2 Sec. 5. Sections 33, 34, 35 and 74 of chapter 136 of the 2010  
3 Session Laws of Kansas are hereby repealed.

4 Sec. 6. This act shall take effect and be in force from and after its  
5 publication in the statute book.

6