

SENATE BILL No. 63

By Committee on Judiciary

1-26

1 AN ACT concerning crimes and punishment; relating to sexual
2 exploitation of a child; amending section 74 of chapter 136 of the
3 2010 Session Laws of Kansas and repealing the existing section; also
4 repealing K.S.A. 2010 Supp. 21-3516.

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

7 Section 1. Section 74 of chapter 136 of the 2010 Session Laws of
8 Kansas is hereby amended to read as follows: Sec. 74. (a) Sexual
9 exploitation of a child is:

10 (1) Employing, using, persuading, inducing, enticing or coercing a
11 child under 18 years of age, *or a person whom the offender believes to be*
12 *a child under 18 years of age*, to engage in sexually explicit conduct with
13 the intent to promote any performance;

14 (2) possessing any visual depiction of a child under 18 years of age
15 shown or heard engaging in sexually explicit conduct with intent to
16 arouse or satisfy the sexual desires or appeal to the prurient interest of the
17 offender or any other person;

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

22 (4) promoting any performance that includes sexually explicit
23 conduct by a child under 18 years of age, *or a person whom the offender*
24 *believes to be a child under 18 years of age*, knowing the character and
25 content of the performance.

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

27 (1) Subsection (a)(2) or (a)(3) is a severity level 5, person felony;
28 and

29 (2) subsection (a)(1) or (a)(4) is a:

30 ~~(A) severity level 5, person felony, except as provided in subsection~~
31 ~~(b)(2)(B); and (3).~~

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

34 (3) *Sexual exploitation of a child as defined in subsection (a)(1) or*
35 *(a)(4) or attempt, conspiracy or criminal solicitation to commit sexual*
36 *exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-*

1 grid person felony, when the offender is 18 years of age or older and the
2 child is under 14 years of age.

3 (c) If the offender is 18 years of age or older and the child is under
4 14 years of age, the provisions of:

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

9 (2) subsection (c) of section 34 of chapter 136 of the 2010 Session
10 Laws of Kansas, and amendments thereto, shall not apply to a violation
11 of conspiracy to commit the crime of sexual exploitation of a child as
12 defined in subsection (a)(1) or (a)(4); and

13 (3) subsection (d) of section 35 of chapter 136 of the 2010 Session
14 Laws of Kansas, and amendments thereto, shall not apply to a violation
15 of criminal solicitation to commit the crime of sexual exploitation of a
16 child as defined in subsection (a)(1) or (a)(4).

17 (e) (d) As used in this section:

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

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

27 (A) For pecuniary profit; or

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

30 (3) "performance" means any film, photograph, negative, slide,
31 book, magazine or other printed or visual medium, any audio tape
32 recording or any photocopy, video tape, video laser disk, computer
33 hardware, software, floppy disk or any other computer related equipment
34 or computer generated image that contains or incorporates in any manner
35 any film, photograph, negative, photocopy, video tape or video laser disk
36 or any play or other live presentation;

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

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

43 Sec. 2. K.S.A. 2010 Supp. 21-3516 and section 74 of chapter 136

1 of the 2010 Session Laws of Kansas is hereby repealed.

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