

House Substitute for SENATE BILL No. 63

By Committee on Corrections and Juvenile Justice

3-17

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to sexual exploitation of a child; relating to search incident to arrest;
3 amending K.S.A. 22-2501 and section 74 of chapter 136 of the 2010
4 Session Laws of Kansas and repealing the existing sections; also
5 repealing K.S.A. 2010 Supp. 21-3516.

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

8 Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-
9 2501. When a lawful arrest is effected a law enforcement officer may
10 reasonably search the person arrested and the area within such person's
11 immediate presence ~~for the purpose of~~

12 ~~(a) Protecting the officer from attack;~~
13 ~~(b) Preventing the person from escaping; or~~
14 ~~(c) Discovering the fruits, instrumentalities, or evidence of a crime to~~
15 *the full extent allowed by and consistent with the constitution of the United*
16 *States, or the constitution of the state of Kansas.*

17 Sec. 2. Section 74 of chapter 136 of the 2010 Session Laws of Kansas
18 is hereby amended to read as follows: Sec. 74. (a) Sexual exploitation of a
19 child is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (A) For pecuniary profit; or

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

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

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

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

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

10 Sec. 3. K.S.A. 22-2501 and K.S.A. 2010 Supp. 21-3516 and section
11 74 of chapter 136 of the 2010 Session Laws of Kansas are hereby
12 repealed.

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

15