

HOUSE BILL No. 2706

By Committee on Corrections and Juvenile Justice

2-14

1 AN ACT concerning visual depictions of children; creating the crimes of
2 unlawful transmission of a visual depiction of a child and unlawful
3 possession of a visual depiction of a child; relating to sexual
4 exploitation of a child; revised Kansas code for care of children;
5 amending K.S.A. 2013 Supp. 21-5510 and 38-2202 and repealing the
6 existing sections.

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

9 New Section 1. (a) Unlawful transmission of a visual depiction of a
10 child is knowingly transmitting a visual depiction of a child 12 or more
11 years of age in a state of nudity:

12 (1) When the offender is less than 19 years of age; and

13 (2) when the offender is less than six years of age older than the
14 child.

15 (b) Aggravated unlawful transmission of a visual depiction of a child
16 is:

17 (1) Knowingly transmitting a visual depiction of a child 12 or more
18 years of age in a state of nudity:

19 (A) With the intent to harass, embarrass, intimidate, defame or
20 otherwise inflict emotional, psychological or physical harm;

21 (B) for pecuniary or tangible gain; or

22 (C) with the intent to exhibit or transmit such visual depiction to more
23 than one person;

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

25 (3) when the offender is less than six years of age older than the
26 child.

27 (c) (1) Unlawful transmission of a visual depiction of a child is a:

28 (A) Class A person misdemeanor, except as provided in subsection (c)
29 (1)(B); and

30 (B) Severity level 9, person felony upon a second or subsequent
31 conviction.

32 (2) Aggravated unlawful transmission of a visual depiction of a child
33 is a:

34 (A) Severity level 9, person felony, except as provided in subsection
35 (c)(2)(B); and

36 (B) Severity level 7, person felony upon a second or subsequent

1 conviction.

2 (d) It shall be a rebuttable presumption that a child had the intent to
3 harass, embarrass, intimidate, defame or otherwise inflict emotional,
4 psychological or physical harm if the child transmitted a visual depiction
5 of a person other than such child in a state of nudity.

6 (e) The provisions of this section shall not apply to transmission of a
7 visual depiction of a child in a state of nudity by the child who is the
8 subject of such visual depiction.

9 (f) The provisions of this section shall not apply to a visual depiction
10 of a child engaged in sexually explicit conduct or a visual depiction that
11 constitutes obscenity as defined in subsection (f)(1) of K.S.A. 2013 Supp.
12 21-6401, and amendments thereto.

13 (g) As used in this section and section 2, and amendments thereto:

14 (1) "Sexually explicit conduct" means actual or simulated: Sexual
15 intercourse or sodomy, including genital-genital, oral-genital, anal-genital
16 or oral-anal contact, whether between persons of the same or opposite sex;
17 masturbation and sado-masochistic abuse for the purpose of sexual
18 stimulation;

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

22 (3) "visual depiction" means any photograph, film, video picture,
23 digital or computer generated image or picture made or produced by
24 electronic, mechanical or other means.

25 New Sec. 2. (a) Unlawful possession of a visual depiction of a child
26 is knowingly possessing a visual depiction of a child 12 years of age or
27 older in a state of nudity, if committed by a person less than six years of
28 age older than the subject of the visual depiction, and the possessor of such
29 visual depiction received such visual depiction directly and exclusively
30 from the child who is the subject of such visual depiction.

31 (b) Unlawful possession of a visual depiction of a child is a severity
32 level 10, person felony.

33 (c) It shall be an affirmative defense to any prosecution under this
34 section that the recipient of a visual depiction of a child in a state of
35 nudity:

36 (1) Received such visual depiction without requesting, coercing or
37 otherwise attempting to obtain such visual depiction;

38 (2) did not transmit, exhibit or disseminate such visual depiction; and

39 (3) made a good faith effort to erase, delete or otherwise destroy such
40 visual depiction.

41 (d) The provisions of this section shall not apply to possession of a
42 visual depiction of a child in a state of nudity if the person possessing such
43 visual depiction is the child who is the subject of such visual depiction.

1 (e) The provisions of this section shall not apply to a visual depiction
2 of a child engaged in sexually explicit conduct or a visual depiction that
3 constitutes obscenity as defined in subsection (f)(1) of K.S.A. 2013 Supp.
4 21-6401, and amendments thereto.

5 Sec. 3. K.S.A. 2013 Supp. 21-5510 is hereby amended to read as
6 follows: 21-5510. (a) *Except as provided in sections 1 and 2, and*
7 *amendments thereto*, sexual exploitation of a child is:

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

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

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

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

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

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

27 (B) subsection (a)(1) or (a)(4) is a severity level 5, person felony,
28 except as provided in subsection (b)(2).

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

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

36 (1) Subsection (c) of K.S.A. 2013 Supp. 21-5301, and amendments
37 thereto, shall not apply to a violation of attempting to commit the crime of
38 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

39 (2) subsection (c) of K.S.A. 2013 Supp. 21-5302, and amendments
40 thereto, shall not apply to a violation of conspiracy to commit the crime of
41 sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

42 (3) subsection (d) of K.S.A. 2013 Supp. 21-5303, and amendments
43 thereto, shall not apply to a violation of criminal solicitation to commit the

1 crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)
2 (4).

3 (d) As used in this section:

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

10 (2) "promoting" means procuring, transmitting, distributing,
11 circulating, presenting, producing, directing, 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, book,
17 magazine or other printed or visual medium, any audio tape recording or
18 any photocopy, video tape, video laser disk, computer hardware, software,
19 floppy disk or any other computer related equipment or computer
20 generated image that contains or incorporates in any manner any film,
21 photograph, negative, photocopy, video tape or video laser disk or any
22 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; and

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

29 (e) *The provisions of this section shall not apply to possession of a*
30 *visual depiction of a child in a state of nudity if the person possessing such*
31 *visual depiction is the child who is the subject of such visual depiction.*

32 Sec. 4. K.S.A. 2013 Supp. 38-2202 is hereby amended to read as
33 follows: 38-2202. As used in the revised Kansas code for care of children,
34 unless the context otherwise indicates:

35 (a) "Abandon" or "abandonment" means to forsake, desert or, without
36 making appropriate provision for substitute care, cease providing care for
37 the child.

38 (b) "Adult correction facility" means any public or private facility,
39 secure or nonsecure, which is used for the lawful custody of accused or
40 convicted adult criminal offenders.

41 (c) "Aggravated circumstances" means the abandonment, torture,
42 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

43 (d) "Child in need of care" means a person less than 18 years of age

1 at the time of filing of the petition or issuance of an ex parte protective
2 custody order pursuant to K.S.A. 2013 Supp. 38-2242, and amendments
3 thereto, who:

4 (1) Is without adequate parental care, control or subsistence and the
5 condition is not due solely to the lack of financial means of the child's
6 parents or other custodian;

7 (2) is without the care or control necessary for the child's physical,
8 mental or emotional health;

9 (3) has been physically, mentally or emotionally abused or neglected
10 or sexually abused;

11 (4) has been placed for care or adoption in violation of law;

12 (5) has been abandoned or does not have a known living parent;

13 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
14 and amendments thereto;

15 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
16 of K.S.A. 74-8810, subsection (m) or (n) of K.S.A. 79-3321, or subsection
17 (a)(14) of K.S.A. 2013 Supp. 21-6301, and amendments thereto, or, except
18 as provided in paragraph (12), does an act which, when committed by a
19 person under 18 years of age, is prohibited by state law, city ordinance or
20 county resolution but which is not prohibited when done by an adult;

21 (8) while less than 10 years of age, commits any act which if done by
22 an adult would constitute the commission of a felony or misdemeanor as
23 defined by K.S.A. 2013 Supp. 21-5102, and amendments thereto;

24 (9) is willfully and voluntarily absent from the child's home without
25 the consent of the child's parent or other custodian;

26 (10) is willfully and voluntarily absent at least a second time from a
27 court ordered or designated placement, or a placement pursuant to court
28 order, if the absence is without the consent of the person with whom the
29 child is placed or, if the child is placed in a facility, without the consent of
30 the person in charge of such facility or such person's designee;

31 (11) has been residing in the same residence with a sibling or another
32 person under 18 years of age, who has been physically, mentally or
33 emotionally abused or neglected, or sexually abused;

34 (12) while less than 10 years of age commits the offense defined in
35 subsection (a)(14) of K.S.A. 2013 Supp. 21-6301, and amendments
36 thereto; ~~or~~

37 (13) has had a permanent custodian appointed and the permanent
38 custodian is no longer able or willing to serve; *or*

39 (14) *possesses or transmits to another a visual depiction of*
40 *themselves in a state of nudity or engaging in sexually explicit conduct, as*
41 *such terms are defined in section 1, and amendments thereto.*

42 (e) "Citizen review board" is a group of community volunteers
43 appointed by the court and whose duties are prescribed by K.S.A. 2013

1 Supp. 38-2207 and 38-2208, and amendments thereto.

2 (f) "Civil custody case" includes any case filed under chapter 23 of
3 the Kansas Statutes Annotated, and amendments thereto, the Kansas
4 family law code, article 11, of chapter 38 of the Kansas Statutes
5 Annotated, and amendments thereto, determination of parentage, article 21
6 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto,
7 adoption and relinquishment act, or article 30 of chapter 59 of the Kansas
8 Statutes Annotated, and amendments thereto, guardians and conservators.

9 (g) "Court-appointed special advocate" means a responsible adult
10 other than an attorney guardian ad litem who is appointed by the court to
11 represent the best interests of a child, as provided in K.S.A. 2013 Supp.
12 38-2206, and amendments thereto, in a proceeding pursuant to this code.

13 (h) "Custody" whether temporary, protective or legal, means the
14 status created by court order or statute which vests in a custodian, whether
15 an individual or an agency, the right to physical possession of the child and
16 the right to determine placement of the child, subject to restrictions placed
17 by the court.

18 (i) "Extended out of home placement" means a child has been in the
19 custody of the secretary and placed with neither parent for 15 of the most
20 recent 22 months beginning 60 days after the date at which a child in the
21 custody of the secretary was removed from the home.

22 (j) "Educational institution" means all schools at the elementary and
23 secondary levels.

24 (k) "Educator" means any administrator, teacher or other professional
25 or paraprofessional employee of an educational institution who has
26 exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and
27 amendments thereto.

28 (l) "Harm" means physical or psychological injury or damage.

29 (m) "Interested party" means the grandparent of the child, a person
30 with whom the child has been living for a significant period of time when
31 the child in need of care petition is filed, and any person made an
32 interested party by the court pursuant to K.S.A. 2013 Supp. 38-2241, and
33 amendments thereto, or Indian tribe seeking to intervene that is not a party.

34 (n) "Jail" means:

35 (1) An adult jail or lockup; or

36 (2) a facility in the same building or on the same grounds as an adult
37 jail or lockup, unless the facility meets all applicable standards and
38 licensure requirements under law and there is: (A) Total separation of the
39 juvenile and adult facility spatial areas such that there could be no
40 haphazard or accidental contact between juvenile and adult residents in the
41 respective facilities; (B) total separation in all juvenile and adult program
42 activities within the facilities, including recreation, education, counseling,
43 health care, dining, sleeping and general living activities; and (C) separate

1 juvenile and adult staff, including management, security staff and direct
2 care staff such as recreational, educational and counseling.

3 (o) "Juvenile detention facility" means any secure public or private
4 facility used for the lawful custody of accused or adjudicated juvenile
5 offenders which must not be a jail.

6 (p) "Juvenile intake and assessment worker" means a responsible
7 adult authorized to perform intake and assessment services as part of the
8 intake and assessment system established pursuant to K.S.A. 75-7023, and
9 amendments thereto.

10 (q) "Kinship care" means the placement of a child in the home of the
11 child's relative or in the home of another adult with whom the child or the
12 child's parent already has a close emotional attachment.

13 (r) "Law enforcement officer" means any person who by virtue of
14 office or public employment is vested by law with a duty to maintain
15 public order or to make arrests for crimes, whether that duty extends to all
16 crimes or is limited to specific crimes.

17 (s) "Multidisciplinary team" means a group of persons, appointed by
18 the court under K.S.A. 2013 Supp. 38-2228, and amendments thereto,
19 which has knowledge of the circumstances of a child in need of care.

20 (t) "Neglect" means acts or omissions by a parent, guardian or person
21 responsible for the care of a child resulting in harm to a child, or
22 presenting a likelihood of harm, and the acts or omissions are not due
23 solely to the lack of financial means of the child's parents or other
24 custodian. Neglect may include, but shall not be limited to:

25 (1) Failure to provide the child with food, clothing or shelter
26 necessary to sustain the life or health of the child;

27 (2) failure to provide adequate supervision of a child or to remove a
28 child from a situation which requires judgment or actions beyond the
29 child's level of maturity, physical condition or mental abilities and that
30 results in bodily injury or a likelihood of harm to the child; or

31 (3) failure to use resources available to treat a diagnosed medical
32 condition if such treatment will make a child substantially more
33 comfortable, reduce pain and suffering, or correct or substantially diminish
34 a crippling condition from worsening. A parent legitimately practicing
35 religious beliefs who does not provide specified medical treatment for a
36 child because of religious beliefs shall not for that reason be considered a
37 negligent parent; however, this exception shall not preclude a court from
38 entering an order pursuant to subsection (a)(2) of K.S.A. 2013 Supp. 38-
39 2217, and amendments thereto.

40 (u) "Parent" when used in relation to a child or children, includes a
41 guardian and every person who is by law liable to maintain, care for or
42 support the child.

43 (v) "Party" means the state, the petitioner, the child, any parent of the

1 child and an Indian child's tribe intervening pursuant to the Indian child
2 welfare act.

3 (w) "Permanency goal" means the outcome of the permanency
4 planning process which may be reintegration, adoption, appointment of a
5 permanent custodian or another planned permanent living arrangement.

6 (x) "Permanent custodian" means a judicially approved permanent
7 guardian of a child pursuant to K.S.A. 2013 Supp. 38-2272, and
8 amendments thereto.

9 (y) "Physical, mental or emotional abuse" means the infliction of
10 physical, mental or emotional harm or the causing of a deterioration of a
11 child and may include, but shall not be limited to, maltreatment or
12 exploiting a child to the extent that the child's health or emotional well-
13 being is endangered.

14 (z) "Placement" means the designation by the individual or agency
15 having custody of where and with whom the child will live.

16 (aa) "Relative" means a person related by blood, marriage or adoption
17 but, when referring to a relative of a child's parent, does not include the
18 child's other parent.

19 (bb) "Secretary" means the secretary of the department for children
20 and families or the secretary's designee.

21 (cc) "Secure facility" means a facility, other than a staff secure
22 facility which is operated or structured so as to ensure that all entrances
23 and exits from the facility are under the exclusive control of the staff of the
24 facility, whether or not the person being detained has freedom of
25 movement within the perimeters of the facility, or which relies on locked
26 rooms and buildings, fences or physical restraint in order to control
27 behavior of its residents. No secure facility shall be in a city or county jail.

28 (dd) "Sexual abuse" means any contact or interaction with a child in
29 which the child is being used for the sexual stimulation of the perpetrator,
30 the child or another person. Sexual abuse shall include allowing,
31 permitting or encouraging a child to engage in the sale of sexual relations
32 or commercial sexual exploitation of a child, or to be photographed, filmed
33 or depicted in pornographic material.

34 (ee) "Shelter facility" means any public or private facility or home,
35 other than a juvenile detention facility or staff secure facility, that may be
36 used in accordance with this code for the purpose of providing either
37 temporary placement for children in need of care prior to the issuance of a
38 dispositional order or longer term care under a dispositional order.

39 (ff) "Staff secure facility" means a facility described in K.S.A. 2013
40 Supp. 65-535, and amendments thereto: (1) That does not include
41 construction features designed to physically restrict the movements and
42 activities of juvenile residents who are placed therein; (2) that may
43 establish reasonable rules restricting entrance to and egress from the

1 facility; and (3) in which the movements and activities of individual
2 juvenile residents may, for treatment purposes, be restricted or subject to
3 control through the use of intensive staff supervision. No staff secure
4 facility shall be in a city or county jail.

5 (gg) "Transition plan" means, when used in relation to a youth in the
6 custody of the secretary, an individualized strategy for the provision of
7 medical, mental health, education, employment and housing supports as
8 needed for the adult and, if applicable, for any minor child of the adult, to
9 live independently and specifically provides for the supports and any
10 services for which an adult with a disability is eligible including, but not
11 limited to, funding for home and community based services waivers.

12 (hh) "Youth residential facility" means any home, foster home or
13 structure which provides 24-hour-a-day care for children and which is
14 licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
15 Annotated, and amendments thereto.

16 Sec. 5. K.S.A. 2013 Supp. 21-5510 and 38-2202 are hereby repealed.

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