

HOUSE BILL No. 2223

By Committee on Judiciary

2-3

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to criminal sodomy, aggravated criminal sodomy and aggravated sexual
3 battery; creating criminal liability for such offenses when consent was
4 obtained through a knowing misrepresentation; amending K.S.A. 2020
5 Supp. 21-5504 and 21-5505 and repealing the existing sections.

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

8 Section 1. K.S.A. 2020 Supp. 21-5504 is hereby amended to read as
9 follows: 21-5504. (a) Criminal sodomy is:

10 (1) ~~Sodomy between persons who are 16 or more years of age and~~
11 ~~members of the same sex;~~

12 (2) Sodomy between a person and an animal;

13 (3) sodomy with a child who is 14 or more years of age but less
14 than 16 years of age; or

15 (4) causing a child 14 or more years of age but less than 16 years
16 of age to engage in sodomy with any person or animal.

17 (b) Aggravated criminal sodomy is:

18 (1) Sodomy with a child who is under 14 years of age;

19 (2) causing a child under 14 years of age to engage in sodomy with
20 any person or an animal; or

21 (3) sodomy with a victim who does not consent to the sodomy or
22 causing a victim, without the victim's consent, to engage in sodomy with
23 any person or an animal under any of the following circumstances:

24 (A) When the victim is overcome by force or fear;

25 (B) when the victim is unconscious or physically powerless; or

26 (C) when the victim is incapable of giving consent because of mental
27 deficiency or disease, or when the victim is incapable of giving consent
28 because of the effect of any alcoholic liquor, narcotic, drug or other
29 substance, which condition was known by, or was reasonably apparent to,
30 the offender; or

31 (4) sodomy with a victim when the victim's consent was obtained
32 through a knowing misrepresentation made by the offender that the
33 sodomy was a:

34 (A) Medically or therapeutically necessary procedure; or

35 (B) legally required procedure within the scope of the offender's
36 authority.

1 (c) (1) Criminal sodomy as defined in:

2 (A) Subsection (a)(1) ~~or (a)(2)~~ is a class B nonperson misdemeanor;
3 and

4 (B) subsection (a)(2) ~~or (a)(3) or (a)(4)~~ is a severity level 3, person
5 felony.

6 (2) Aggravated criminal sodomy as defined in:

7 (A) Subsection (b)(3) ~~or (b)(4)~~ is a severity level 1, person felony;
8 and

9 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,
10 except as provided in subsection (c)(3).

11 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)
12 (2) or attempt, conspiracy or criminal solicitation to commit aggravated
13 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid
14 person felony, when the offender is 18 years of age or older.

15 (d) If the offender is 18 years of age or older, the provisions of:

16 (1) ~~Subsection (e) of K.S.A. 2020 Supp. 21-5301(c)~~, and amendments
17 thereto, shall not apply to a violation of attempting to commit the crime of
18 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

19 (2) ~~subsection (e) of K.S.A. 2020 Supp. 21-5302(c)~~, and amendments
20 thereto, shall not apply to a violation of conspiracy to commit the crime of
21 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

22 (3) ~~subsection (d) of K.S.A. 2020 Supp. 21-5303(d)~~, and amendments
23 thereto, shall not apply to a violation of criminal solicitation to commit the
24 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
25 (2).

26 (e) It shall be a defense to a prosecution of criminal sodomy, as
27 defined in subsection (a)(3), and aggravated criminal sodomy, as defined
28 in subsection (b)(1), that the child was married to the accused at the time
29 of the offense.

30 (f) Except as provided in subsection (b)(3)(C), it shall not be a
31 defense that the offender did not know or have reason to know that the
32 victim did not consent to the sodomy, that the victim was overcome by
33 force or fear; or that the victim was unconscious or physically powerless.

34 Sec. 2. K.S.A. 2020 Supp. 21-5505 is hereby amended to read as
35 follows: 21-5505. (a) Sexual battery is the touching of a victim who is
36 not the spouse of the offender, who is 16 or more years of age and who
37 does not consent thereto, with the intent to arouse or satisfy the sexual
38 desires of the offender or another.

39 (b) Aggravated sexual battery is:

40 (1) The touching of a victim who is 16 or more years of age and who
41 does not consent thereto with the intent to arouse or satisfy the sexual
42 desires of the offender or another and under any of the following
43 circumstances:

- 1 ~~(1)~~(A) When the victim is overcome by force or fear;
- 2 ~~(2)~~(B) when the victim is unconscious or physically powerless; or
- 3 ~~(3)~~(C) when the victim is incapable of giving consent because of
- 4 mental deficiency or disease, or when the victim is incapable of giving
- 5 consent because of the effect of any alcoholic liquor, narcotic, drug or
- 6 other substance, which condition was known by, or was reasonably
- 7 apparent to, the offender; or

8 (2) *the touching of a victim who is 16 or more years of age with the*

9 *intent to arouse or satisfy the sexual desires of the offender when the*

10 *victim's consent was obtained through a knowing misrepresentation made*

11 *by the offender that the touching was a:*

- 12 (A) *Medically or therapeutically necessary procedure; or*
- 13 (B) *legally required procedure within the scope of the offender's*
- 14 *authority.*

15 (c) (1) Sexual battery is a class A person misdemeanor.

16 (2) Aggravated sexual battery is a severity level 5, person felony.

17 (d) Except as provided in subsection ~~(b)(3)~~ (b)(1)(C), it shall not be a

18 defense that the offender did not know or have reason to know that the

19 victim did not consent to the battery, that the victim was overcome by

20 force or fear, or that the victim was unconscious or physically powerless.

21 Sec. 3. K.S.A. 2020 Supp. 21-5504 and 21-5505 are hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its

23 publication in the statute book.