

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 class B
23 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 C
26 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.

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

38 (c) (1) Conspiracy to commit an off-grid felony shall be ranked at
39 nondrug severity level 2. Conspiracy to commit any other nondrug felony
40 shall be ranked on the nondrug scale at two severity levels below the
41 appropriate level for the underlying or completed crime. The lowest
42 severity level for conspiracy to commit a nondrug felony shall be a
43 severity level 10.

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

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

7 (B) *terrorism pursuant to as defined in section 56 of chapter 136 of the*
8 *2010 Session Laws of Kansas, and amendments thereto;* ~~or of~~

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

12 (D) *rape, as defined in subsection (a)(3) of section 67 of chapter*
13 *136 of the 2010 Session Laws of Kansas, and amendments thereto, if the*
14 *offender is 18 years of age or older;*

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

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

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

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

30 (d) Conspiracy to commit a felony which prescribes a sentence on
31 the drug grid shall reduce the prison term prescribed in the drug grid
32 block for an underlying or completed crime by six months.

33 (e) A conspiracy to commit a misdemeanor is a class C
34 misdemeanor.

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

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

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

6 (d) (1) Criminal solicitation to commit an off-grid felony shall be
7 ranked at nondrug severity level 3. Criminal solicitation to commit any
8 other nondrug felony shall be ranked on the nondrug scale at three
9 severity levels below the appropriate level for the underlying or
10 completed crime. The lowest severity level for criminal solicitation to
11 commit a nondrug felony shall be a severity level 10.

12 (2) The provisions of this subsection shall not apply to a violation of
13 criminal solicitation 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*
21 *defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas,*
22 *and 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 (e) Criminal solicitation to commit a felony which prescribes a
42 sentence on the drug grid shall reduce the prison term prescribed in the
43 drug grid block for an underlying or completed crime by six months.

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

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

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

11 (3) being a parent, guardian or other person having custody or
 12 control of a child under 18 years of age and knowingly permitting such
 13 child to engage in, or assist another to engage in, sexually explicit
 14 conduct for any purpose described in subsection (a)(1) ~~or (2); or, (a)(2)~~
 15 *or (a)(5);*

16 (4) promoting any performance that includes sexually explicit
 17 conduct by a child under 18 years of age, knowing the character and
 18 content of the performance; *or*

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

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

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

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

27 ~~(A)~~ severity level 52, person felony, except as provided in
 28 subsection (b)(2) ~~(B); and(2); and~~

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

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

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

38 (3) *Sexual exploitation of a child as defined in subsection (a)(2) or*
 39 *(a)(3) is a severity level 3, person felony, when the sexually explicit*
 40 *conduct the child is engaged in is sexual intercourse, sodomy, depictions*
 41 *of sadistic or masochistic abuse with the intent of sexual stimulation,*
 42 *depictions of violence or humiliation with the intent of sexual stimulation,*
 43 *depictions of bondage or other physical restraint with the intent of sexual*

1 *stimulation, or sexually explicit conduct with an animal.*

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

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

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

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

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

17 (1) "Sexually explicit conduct" means actual or simulated:
 18 Exhibition in the nude; sexual intercourse or sodomy, including genital-
 19 genital, oral-genital, anal-genital or oral-anal contact, whether between
 20 persons of the same or opposite sex; masturbation; ~~sado-~~
 21 ~~masochistic~~ *sadistic or masochistic* abuse with the intent of sexual
 22 stimulation; *violence or humiliation with the intent of sexual stimulation;*
 23 *bondage or other physical restraint with the intent of sexual stimulation;*
 24 *sexually explicit conduct with an animal;* or lewd exhibition of the
 25 genitals, female breasts, ~~or~~ pubic area, *anus or buttocks* of any person;

26 (2) "promoting" means procuring, ~~transmitting, distributing,~~
 27 ~~circulating, presenting,~~ producing, directing; *or* manufacturing, ~~issuing,~~
 28 ~~publishing, displaying, exhibiting or advertising.~~

29 (A) For pecuniary profit; or

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

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

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

42 (5) "visual depiction" means any photograph, film, video picture,
 43 digital or computer-generated image or picture, whether made or

1 produced by electronic, mechanical or other means; and
2 (6) "distributing" means actual, constructive or attempted selling,
3 giving, advertising, displaying, exhibiting for others, mailing, shipping,
4 transmitting, circulating, presenting, issuing, publishing, sharing or
5 making available:

6 (A) For pecuniary profit; or

7 (B) with intent to arouse or gratify the sexual desire or appeal to the
8 prurient interest of the offender or any other person..

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

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

13