

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 179

By Committee on Judiciary

2-2

10 AN ACT concerning offenses against children; relating to enhancing pen-
11 alties; amending K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp.
12 21-3516 and repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 21-3510 is hereby amended to read as follows: 21-
16 3510. (a) Indecent solicitation of a child is:

17 (1) Enticing or soliciting a child 14 or more years of age but less than
18 16 years of age to commit or to submit to an unlawful sexual act; or

19 (2) inviting, persuading or attempting to persuade a child 14 or more
20 years of age but less than 16 years of age to enter any vehicle, building,
21 room or secluded place with intent to commit an unlawful sexual act upon
22 or with the child.

23 (b) Indecent solicitation of a child is a severity level ~~7~~6, person felony.

24 Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-
25 3511. Aggravated indecent solicitation of a child is:

26 (a) Enticing or soliciting a child under the age of 14 years to commit
27 or to submit to an unlawful sexual act; or

28 (b) inviting, persuading or attempting to persuade a child under the
29 age of 14 years to enter any vehicle, building, room or secluded place
30 with intent to commit an unlawful sexual act upon or with the child.

31 Aggravated indecent solicitation of a child is a severity level ~~6~~5, person
32 felony.

33 Sec. 3. K.S.A. 2004 Supp. 21-3516 is hereby amended to read as
34 follows: 21-3516. (a) Sexual exploitation of a child is:

35 (1) Employing, using, persuading, inducing, enticing or coercing a
36 child under 18 years of age to engage in sexually explicit conduct for the
37 purpose of promoting any performance;

38 (2) possessing any ~~film, photograph, negative, slide, book, magazine~~
39 ~~or other printed or visual medium or any audio tape recording or any~~
40 ~~photocopy, video tape, video laser disk, computer hardware, software,~~
41 ~~floppy disk or any other computer related equipment or computer gen-~~
42 ~~erated image that contains or incorporates in any manner any film, pho-~~
43 ~~tograph, negative, photocopy, video tape or video laser disk in which a~~

1 ~~visual depiction~~ *visual depiction, including any photograph, film, video*
2 *picture, digital or computer generated image or picture, whether made*
3 *or produced by electronic, mechanical or other means, where such visual*
4 *depiction is, or appears to be,* of a child under 18 years of age is shown
5 or heard engaging in sexually explicit conduct with intent to arouse or
6 satisfy the sexual desires or appeal to the prurient interest of the offender,
7 the child or another;

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

12 (4) promoting any performance that includes sexually explicit conduct
13 by a child under 18 years of age, knowing the character and content of
14 the performance.

15 (b) As used in this section:

16 (1) “Sexually explicit conduct” means actual or simulated: Exhibition
17 in the nude; sexual intercourse or sodomy, including genital-genital, oral-
18 genital, anal-genital or oral-anal contact, whether between persons of the
19 same or opposite sex; masturbation; sado-masochistic abuse for the pur-
20 pose of sexual stimulation; or lewd exhibition of the genitals, female
21 breasts or pubic area of any person.

22 (2) “Promoting” means procuring, selling, providing, lending, mail-
23 ing, delivering, transferring, transmitting, distributing, circulating, dis-
24 seminating, presenting, producing, directing, manufacturing, issuing,
25 publishing, displaying, exhibiting or advertising:

26 (A) For pecuniary profit; or
27 (B) with intent to arouse or gratify the sexual desire or appeal to the
28 prurient interest of the offender, the child or another.

29 (3) “Performance” means any film, photograph, negative, slide, book,
30 magazine or other printed or visual medium, any audio tape recording or
31 any photocopy, video tape, video laser disk, computer hardware, software,
32 floppy disk or any other computer related equipment or computer gen-
33 erated image that contains or incorporates in any manner any film, pho-
34 tograph, negative, photocopy, video tape or video laser disk or any play
35 or other live presentation.

36 (4) “Nude” means any state of undress in which the human genitals,
37 pubic region, buttock or female breast, at a point below the top of the
38 areola, is less than completely and opaquely covered.

39 (c) Sexual exploitation of a child is a severity level 5, person felony.

40 (d) ~~It shall be an affirmative defense to a charge filed under this sec-~~
41 ~~tion that:~~

42 ~~—(1) (A) The alleged child pornography was produced using an actual~~
43 ~~person or persons engaging in sexually explicit conduct, and~~

- 1 ~~—(B) each such person was an adult at the time the material was pro-~~
2 ~~duced, or~~
3 ~~—(2) the alleged child pornography was not produced using any actual~~
4 ~~minor or minors.~~
5 ~~—(e) No affirmative defense under subsection (d) shall be available in~~
6 ~~any prosecution that involves child pornography as described in 18~~
7 ~~U.S.C. §1460 - 1470, §2241 - 2248 or §2251 - 2260.~~
8 ~~—(f) A defendant may not assert an affirmative defense to a charge of~~
9 ~~violating paragraphs (1), (2), (3) or (4) of subsection (a) unless, within~~
10 ~~the time provided for filing pretrial motions or at such time prior to trial~~
11 ~~as the judge may direct, but in no event later than 10 days prior to trial,~~
12 ~~the defendant provides the court and the prosecution with notice of the~~
13 ~~intent to assert such affirmative defense and the substance of any expert~~
14 ~~or other specialized testimony or evidence upon which the defendant in-~~
15 ~~tends to rely. If the defendant fails to comply with this subsection, the~~
16 ~~court shall, absent a finding of extraordinary circumstances that prevents~~
17 ~~timely compliance, prohibit the defendant from asserting such defense to~~
18 ~~a charge of violating paragraph (1), (2), (3) or (4) of subsection (a) for~~
19 ~~presenting any evidence for which the defendant has failed to provide~~
20 ~~proper and timely notice.~~
21 ~~—(g) This section shall be part of and supplemental to the Kansas crim-~~
22 ~~inal code.~~
23 Sec. 4. K.S.A. 21-3510 and 21-3511 and K.S.A. 2004 Supp. 21-3516
24 are hereby repealed.
25 Sec. 5. This act shall take effect and be in force from and after its
26 publication in the statute book.