

HOUSE BILL No. 2518

By Committee on Judiciary

Requested by Representative Barrett

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to breach of privacy; increasing penalties for attempt, conspiracy or
3 criminal solicitation to commit certain violations of such crime;
4 modifying the culpable mental state required to commit such crime;
5 increasing penalties for certain violations if the victim is less than 18
6 years of age; amending K.S.A. 21-5301, 21-5302 and 21-5303 and
7 K.S.A. 2025 Supp. 21-6101 and repealing the existing sections.

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

10 Section 1. K.S.A. 21-5301 is hereby amended to read as follows: 21-
11 5301. (a) An attempt is any overt act toward the perpetration of a crime
12 done by a person who intends to commit such crime but fails in the
13 perpetration thereof or is prevented or intercepted in executing such crime.

14 (b) It shall not be a defense to a charge of attempt that the
15 circumstances under which the act was performed or the means employed
16 or the act itself were such that the commission of the crime was not
17 possible.

18 (c) (1) An attempt to commit an off-grid felony shall be ranked at
19 nondrug severity level 1. An attempt to commit any other nondrug felony
20 shall be ranked on the nondrug scale at two severity levels below the
21 appropriate level for the underlying or completed crime. The lowest
22 severity level for an attempt to commit a nondrug felony shall be a severity
23 level 10.

24 (2) The provisions of this subsection shall not apply to a violation of
25 attempting to commit the crime of:

26 (A) Aggravated human trafficking, as defined in K.S.A. 21-5426(b),
27 and amendments thereto, if the offender is 18 years of age or older and the
28 victim is less than 14 years of age;

29 (B) terrorism, as defined in K.S.A. 21-5421, and amendments thereto;

30 (C) illegal use of weapons of mass destruction, as defined in K.S.A.
31 21-5422, and amendments thereto;

32 (D) rape, as defined in K.S.A. 21-5503(a)(3), and amendments
33 thereto, if the offender is 18 years of age or older;

1 (E) aggravated indecent liberties with a child, as defined in K.S.A.
2 21-5506(b)(3), and amendments thereto, if the offender is 18 years of age
3 or older;

4 (F) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b)(1)
5 or (2), and amendments thereto, if the offender is 18 years of age or older;

6 (G) commercial sexual exploitation of a child, as defined in K.S.A.
7 21-6422, and amendments thereto, if the offender is 18 years of age or
8 older and the victim is less than 14 years of age;

9 (H) sexual exploitation of a child, as defined in K.S.A. 21-5510(a)(1)
10 or (4), and amendments thereto, if the offender is 18 years of age or older
11 and the child is less than 14 years of age;

12 (I) aggravated internet trading in child pornography, as defined in
13 K.S.A. 21-5514(b), and amendments thereto, if the offender is 18 years of
14 age or older and the child is less than 14 years of age;~~or~~

15 (J) capital murder, as defined in K.S.A. 21-5401, and amendments
16 thereto; *or*

17 (K) *breach of privacy, as defined in K.S.A. 21-6101(a)(6) or (7), and*
18 *amendments thereto, if the offender is 18 years of age or older and the*
19 *victim is less than 14 years of age.*

20 (d) (1) An attempt to commit a felony~~—which~~ *that* prescribes a
21 sentence on the drug grid shall reduce the prison term prescribed in the
22 drug grid block for an underlying or completed crime by six months.

23 (2) The provisions of this subsection shall not apply to a violation of
24 attempting to commit a violation of K.S.A. 21-5703, and amendments
25 thereto.

26 (e) An attempt to commit a class A person misdemeanor is a class B
27 person misdemeanor. An attempt to commit a class A nonperson
28 misdemeanor is a class B nonperson misdemeanor.

29 (f) An attempt to commit a class B or C misdemeanor is a class C
30 misdemeanor.

31 Sec. 2. K.S.A. 21-5302 is hereby amended to read as follows: 21-
32 5302. (a) A conspiracy is an agreement with another person to commit a
33 crime or to assist in committing a crime. No person may be convicted of a
34 conspiracy unless an overt act in furtherance of such conspiracy is alleged
35 and proved to have been committed by such person or by a co-conspirator.

36 (b) It is immaterial to the criminal liability of a person charged with
37 conspiracy that any other person with whom the defendant conspired
38 lacked the actual intent to commit the underlying crime provided that the
39 defendant believed the other person did have the actual intent to commit
40 the underlying crime.

41 (c) It shall be a defense to a charge of conspiracy that the accused
42 voluntarily and in good faith withdrew from the conspiracy, and
43 communicated the fact of such withdrawal to one or more of the accused

1 person's co-conspirators, before any overt act in furtherance of the
2 conspiracy was committed by the accused or by a co-conspirator.

3 (d) (1) Conspiracy to commit an off-grid felony shall be ranked at
4 nondrug severity level 2. Conspiracy to commit any other nondrug felony
5 shall be ranked on the nondrug scale at two severity levels below the
6 appropriate level for the underlying or completed crime. The lowest
7 severity level for conspiracy to commit a nondrug felony shall be a
8 severity level 10.

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

11 (A) Aggravated human trafficking, as defined in K.S.A. 21-5426(b),
12 and amendments thereto, if the offender is 18 years of age or older and the
13 victim is less than 14 years of age;

14 (B) terrorism, as defined in K.S.A. 21-5421, and amendments thereto;

15 (C) illegal use of weapons of mass destruction, as defined in K.S.A.
16 21-5422, and amendments thereto;

17 (D) rape, as defined in K.S.A. 21-5503(a)(3), and amendments
18 thereto, if the offender is 18 years of age or older;

19 (E) aggravated indecent liberties with a child, as defined in K.S.A.
20 21-5506(b)(3), and amendments thereto, if the offender is 18 years of age
21 or older;

22 (F) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b)(1)
23 or (2), and amendments thereto, if the offender is 18 years of age or older;

24 (G) commercial sexual exploitation of a child, as defined in K.S.A.
25 21-6422, and amendments thereto, if the offender is 18 years of age or
26 older and the victim is less than 14 years of age;

27 (H) sexual exploitation of a child, as defined in K.S.A. 21-5510(a)(1)
28 or (4), and amendments thereto, if the offender is 18 years of age or older
29 and the child is less than 14 years of age;

30 (I) aggravated internet trading in child pornography, as defined in
31 K.S.A. 21-5514(b), and amendments thereto, if the offender is 18 years of
32 age or older and the child is less than 14 years of age; ~~or~~

33 (J) violations of the Kansas racketeer influenced and corrupt
34 organization act, as described in K.S.A. 21-6329, and amendments
35 thereto; *or*

36 (K) *breach of privacy, as defined in K.S.A. 21-6101(a)(6) or (7), and*
37 *amendments thereto, if the offender is 18 years of age or older and the*
38 *victim is less than 14 years of age.*

39 (e) Conspiracy to commit a felony ~~which~~ *that* prescribes a sentence
40 on the drug grid shall reduce the prison term prescribed in the drug grid
41 block for an underlying or completed crime by six months.

42 (f) A conspiracy to commit a misdemeanor is a class C misdemeanor.

43 Sec. 3. K.S.A. 21-5303 is hereby amended to read as follows: 21-

1 5303. (a) Criminal solicitation is commanding, encouraging or requesting
2 another person to commit a felony, attempt to commit a felony or aid and
3 abet in the commission or attempted commission of a felony for the
4 purpose of promoting or facilitating the felony.

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

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

12 (d) (1) Criminal solicitation to commit an off-grid felony shall be
13 ranked at nondrug severity level 3. Criminal solicitation to commit any
14 other nondrug felony shall be ranked on the nondrug scale at three severity
15 levels below the appropriate level for the underlying or completed crime.
16 The lowest severity level for criminal solicitation to commit a nondrug
17 felony shall be a severity level 10.

18 (2) The provisions of this subsection shall not apply to a violation of
19 criminal solicitation to commit the crime of:

20 (A) Aggravated human trafficking, as defined in K.S.A. 21-5426(b),
21 and amendments thereto, if the offender is 18 years of age or older and the
22 victim is less than 14 years of age;

23 (B) terrorism, as defined in K.S.A. 21-5421, and amendments thereto;

24 (C) illegal use of weapons of mass destruction, as defined in K.S.A.
25 21-5422, and amendments thereto;

26 (D) rape, as defined in K.S.A. 21-5503(a)(3), and amendments
27 thereto, if the offender is 18 years of age or older;

28 (E) aggravated indecent liberties with a child, as defined in K.S.A.
29 21-5506(b)(3), and amendments thereto, if the offender is 18 years of age
30 or older;

31 (F) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b)(1)
32 or (2), and amendments thereto, if the offender is 18 years of age or older;

33 (G) commercial sexual exploitation of a child, as defined in K.S.A.
34 21-6422, and amendments thereto, if the offender is 18 years of age or
35 older and the victim is less than 14 years of age;

36 (H) sexual exploitation of a child, as defined in K.S.A. 21-5510(a)(1)
37 or (4), and amendments thereto, if the offender is 18 years of age or older
38 and the child is less than 14 years of age; ~~or~~

39 (I) aggravated internet trading in child pornography, as defined in
40 K.S.A. 21-5514(b), and amendments thereto, if the offender is 18 years of
41 age or older and the child is less than 14 years of age; *or*

42 (J) *breach of privacy, as defined in K.S.A. 21-6101(a)(6) or (7), and*
43 *amendments thereto, if the offender is 18 years of age or older and the*

1 *victim is less than 14 years of age.*

2 (e) Criminal solicitation to commit a felony ~~which~~ *that* prescribes a
3 sentence on the drug grid shall reduce the prison term prescribed in the
4 drug grid block for an underlying or completed crime by six months.

5 Sec. 4. K.S.A. 2025 Supp. 21-6101 is hereby amended to read as
6 follows: 21-6101. (a) Breach of privacy is ~~knowingly~~ *intentionally* and
7 without lawful authority:

8 (1) Intercepting, without the consent of the sender or receiver, a
9 message by telephone, telegraph, letter or other means of private
10 communication;

11 (2) divulging, without the consent of the sender or receiver, the
12 existence or contents of such message if such person knows that the
13 message was illegally intercepted, or if such person illegally learned of the
14 message in the course of employment with an agency in transmitting such
15 message;

16 (3) entering with intent to listen surreptitiously to private
17 conversations in a private place or to observe the personal conduct of any
18 other person or persons entitled to privacy therein;

19 (4) installing or using outside or inside a private place any device for
20 hearing, recording, amplifying or broadcasting sounds originating in such
21 place, which sounds would not ordinarily be audible or comprehensible
22 without the use of such device, without the consent of the person or
23 persons entitled to privacy therein;

24 (5) installing or using any device or equipment for the interception of
25 any telephone, telegraph or other wire or wireless communication without
26 the consent of the person in possession or control of the facilities for such
27 communication;

28 (6) installing or using ~~a camcorder, motion picture camera or~~
29 ~~photographic camera of any type to videotape, film, photograph or any~~
30 ~~device or software to record or view, by electronic or other means, the~~
31 ~~nude body of, or the undergarments worn by, another identifiable person~~
32 ~~under or through the clothing being worn by that other person or another~~
33 ~~identifiable person who is nude or in a state of undress, for the purpose of~~
34 ~~viewing the body of, or the undergarments worn by, that other person,~~
35 without the consent or knowledge of that other person, with the intent to
36 invade the privacy of that other person, under circumstances in which that
37 other person has a reasonable expectation of privacy;

38 (7) disseminating or permitting the dissemination of any ~~videotape,~~
39 ~~photograph, film or image, video or other recording~~ obtained in violation
40 of subsection (a)(6); or

41 (8) disseminating any ~~videotape, photograph, film or image, video or~~
42 **other recording** of another identifiable person 18 years of age or older
43 who is nude or engaged in sexual activity and under circumstances in

1 which such identifiable person had a reasonable expectation of privacy,
2 with the intent to harass, threaten or intimidate such identifiable person,
3 and such identifiable person did not consent to such dissemination. This
4 includes disseminating any ~~videotape, photograph, film or image,~~ **video or**
5 **other recording** that has been created, in whole or in part, altered or
6 modified by artificial intelligence or any digital means to appear to depict
7 or purport to depict such identifiable person, regardless of whether such
8 identifiable person was involved in the creation of the original image{,
9 **video or other recording**}.

10 (b) Breach of privacy as defined in:

11 (1) Subsection (a)(1) through (a)(5) is a class A nonperson
12 misdemeanor;

13 (2) subsection (a)(6) ~~or (a)(8)~~ is a:

14 (A) Severity level 8, person felony, except as provided in ~~subsection~~
15 *subsections (b)(2)(B), (b)(2)(C) and (b)(4); and*

16 (B) severity level 5, person felony upon a second or subsequent
17 conviction within the previous five years, *except as provided in subsection*
18 *(b)(4); and*

19 (C) *severity level 5, person felony if the victim is 14 years of age or*
20 *older but less than 18 years of age;*

21 (3) subsection (a)(7) is a severity level 5, person felony, *except as*
22 *provided in subsection (b)(4);*

23 (4) *subsection (a)(6) or (a)(7) or attempt, conspiracy or criminal*
24 *solicitation to commit breach of privacy as defined in subsection (a)(6) or*
25 *(a)(7) is an off-grid person felony if the offender is 18 years of age or*
26 *older and the victim is less than 14 years of age; and*

27 (5) subsection (a)(8) is a:

28 (A) Severity level 8, person felony, except as provided in subsection
29 *(b)(4)(B); and*

30 (B) severity level 5, person felony upon a second or subsequent
31 conviction within the previous five years.

32 (c) *If the offender is 18 years of age or older and the victim is less*
33 *than 14 years of age, the provisions of:*

34 (1) *K.S.A. 21-5301(c), and amendments thereto, shall not apply to a*
35 *violation of attempting to commit the crime of breach of privacy as defined*
36 *in subsection (a)(6) or (a)(7);*

37 (2) *K.S.A. 21-5302(d), and amendments thereto, shall not apply to a*
38 *violation of conspiracy to commit the crime of breach of privacy as*
39 *defined in subsection (a)(6) or (a)(7); and*

40 (3) *K.S.A. 21-5303(d), and amendments thereto, shall not apply to a*
41 *violation of criminal solicitation to commit the crime of breach of privacy*
42 *as defined in subsection (a)(6) or (a)(7).*

43 (d) Subsection (a)(1) shall not apply to messages overheard through a

1 regularly installed instrument on a telephone party line or on an extension.

2 ~~(d)~~(e) The provisions of this section shall not apply to:

3 (1) An operator of a switchboard, or any officer, employee or agent of
4 any public utility providing telephone communications service, whose
5 facilities are used in the transmission of a communication, to intercept,
6 disclose or use that communication in the normal course of employment
7 while engaged in any activity—~~which~~ *that* is incident to the rendition of
8 public utility service or to the protection of the rights of property of such
9 public utility;

10 (2) a provider of an interactive computer service, as defined in 47
11 U.S.C. § 230, for content provided by another person;

12 (3) a radio common carrier, as defined in K.S.A. 66-1,143, and
13 amendments thereto;

14 (4) a local exchange carrier or telecommunications carrier as defined
15 in K.S.A. 66-1,187, and amendments thereto;

16 (5) a cable service, as defined in 47 U.S.C. § 522;

17 (6) a provider of direct-to-home satellite services, as defined in 47
18 U.S.C. § 303(v); and

19 (7) a multichannel video programming distributor, as defined in 47
20 U.S.C. § 522(13), or an affiliate thereof.

21 ~~(e)~~(f) The provisions of subsection (a)(8) shall not apply to a person
22 acting with a bona fide and lawful scientific, educational, governmental,
23 news or other similar public purpose.

24 ~~(f)~~(g) As used in this section;:

25 (1) **{ "Image, video or other recording" means any photograph,**
26 **film, video picture, digital or computer-generated image or picture,**
27 **whether made or produced by electronic, mechanical or other means;**

28 (2) *{ "lawful authority" does not include any act or behavior*
29 *prohibited by this section that is undertaken with the intent to arouse or*
30 *satisfy the sexual desires or appeal to the prurient interest of the offender*
31 *or any other person;*

32 ~~(2)~~**{(3)}** *"nude" means any state of undress in which the human*
33 *genitals, pubic region, buttock or female breast, at a point below the top of*
34 *the areola, is less than completely and opaquely covered; and*

35 ~~(3)~~**{(4)}** *"private place" means a place where one may reasonably*
36 *expect to be safe from uninvited intrusion or surveillance.*

37 Sec. 5. K.S.A. 21-5301, 21-5302 and 21-5303 and K.S.A. 2025 Supp.
38 21-6101 are hereby repealed.

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