

HOUSE BILL No. 2749

By Committee on Judiciary

Requested by Representative Barrett

2-6

AN ACT concerning crimes, punishment and criminal procedure; relating to sex offenses; adding an element to the crime of unlawful sexual relations to include a person in a position of trust or authority when such person uses such position to carry out the offense; providing criminal penalties therefor; amending K.S.A. 21-5512 and repealing the existing section.

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

Section 1. K.S.A. 21-5512 is hereby amended to read as follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision;

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

(4) the offender is a law enforcement officer, an employee of a

1 juvenile detention facility or sanctions house, or the employee of a
2 contractor who is under contract to provide services in such facility or
3 sanctions house and the person with whom the offender is engaging in
4 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
5 person 16 years of age or older who is confined to such facility or
6 sanctions house;

7 (5) the offender is an employee of the department of corrections or
8 the employee of a contractor who is under contract to provide services in a
9 juvenile correctional facility and the person with whom the offender is
10 engaging in consensual sexual intercourse, lewd fondling or touching, or
11 sodomy is a person 16 years of age or older who is confined to such
12 facility;

13 (6) the offender is an employee of the department of corrections or
14 the employee of a contractor who is under contract to provide direct
15 supervision and offender control services to the department of corrections
16 and:

17 (A) The person with whom the offender is engaging in consensual
18 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
19 years of age or older who has been:

20 (i) Released on conditional release from a juvenile correctional
21 facility under the supervision and control of the department of corrections
22 or juvenile community supervision agency; or

23 (ii) placed in the custody of the department of corrections under the
24 supervision and control of the department of corrections or juvenile
25 community supervision agency; and

26 (B) the offender has knowledge that the person with whom the
27 offender is engaging in consensual sexual intercourse, lewd fondling or
28 touching, or sodomy is currently under supervision;

29 (7) the offender is an employee of the Kansas department for aging
30 and disability services or the Kansas department for children and families
31 or the employee of a contractor who is under contract to provide services
32 in an aging and disability or children and families institution or to the
33 Kansas department for aging and disability services or the Kansas
34 department for children and families and the person with whom the
35 offender is engaging in consensual sexual intercourse, lewd fondling or
36 touching, or sodomy is a person 16 years of age or older who is a patient in
37 such institution or in the custody of the secretary for aging and disability
38 services or the secretary for children and families;

39 (8) the offender is a worker, volunteer or other person in a position of
40 authority in a family foster home licensed by the department of health and
41 environment and the person with whom the offender is engaging in
42 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
43 person 16 years of age or older who is a foster child placed in the care of

1 such family foster home;

2 (9) the offender is a teacher or other person in a position of authority
3 and the person with whom the offender is engaging in consensual sexual
4 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
5 age or older who is a student enrolled at the school where the offender is
6 employed. If the offender is the parent of the student, the provisions of
7 K.S.A. 21-5604(b), and amendments thereto, shall apply; ~~not this~~
8 ~~subsection;~~

9 (10) the offender is a court services officer or the employee of a
10 contractor who is under contract to provide supervision services for
11 persons under court services supervision and the person with whom the
12 offender is engaging in consensual sexual intercourse, lewd fondling or
13 touching, or sodomy is a person 16 years of age or older who has been
14 placed on probation under the supervision and control of court services
15 and the offender has knowledge that the person with whom the offender is
16 engaging in consensual sexual intercourse, lewd fondling or touching, or
17 sodomy is currently under the supervision of court services;

18 (11) the offender is a community correctional services officer or the
19 employee of a contractor who is under contract to provide supervision
20 services for persons under community corrections supervision and the
21 person with whom the offender is engaging in consensual sexual
22 intercourse, lewd fondling or touching, or sodomy is a person 16 years of
23 age or older who has been assigned to a community correctional services
24 program under the supervision and control of community corrections and
25 the offender has knowledge that the person with whom the offender is
26 engaging in consensual sexual intercourse, lewd fondling or touching, or
27 sodomy is currently under the supervision of community corrections;

28 (12) the offender is a surety or an employee of a surety and the person
29 with whom the offender is engaging in consensual sexual intercourse, lewd
30 fondling or touching, or sodomy is a person 16 years of age or older who
31 is the subject of a surety or bail bond agreement with such surety and the
32 offender has knowledge that the person with whom the offender is
33 engaging in consensual sexual intercourse, lewd fondling or touching, or
34 sodomy is the subject of a surety or bail bond agreement with such surety;
35 ~~or~~

36 (13) the offender is a law enforcement officer and the person with
37 whom the offender is engaging in consensual sexual intercourse, lewd
38 fondling or touching, or sodomy is a person 16 years of age or older who
39 is interacting with such law enforcement officer during the course of a
40 traffic stop, a custodial interrogation, an interview in connection with an
41 investigation, or while the law enforcement officer has such person
42 detained; *or*

43 (14) (A) *the offender is a person who is in a position of trust or*

1 authority;

2 (B) *the person with whom the offender is engaging in consensual*
3 *sexual intercourse, lewd fondling or touching or sodomy is a person 16*
4 *years of age or older; and*

5 (C) *the person who is in a position of trust or authority used, abused*
6 *or exploited such position of trust or authority to:*

7 (i) *Obtain access to the child;*

8 (ii) *cause the child to submit to the sexual intercourse, lewd fondling*
9 *or touching or sodomy; or*

10 (iii) *maintain secrecy, compliance or control over the child.*

11 (b) Unlawful sexual relations as defined in:

12 (1) Subsection (a)(5) is a severity level 4, person felony; and

13 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),
14 (a)(10), (a)(11), (a)(12) ~~or~~, (a)(13) *or (a)(14)* is a severity level 5, person
15 felony.

16 (c) (1) If an offender violates the provisions of this section by
17 engaging in consensual sexual intercourse which would constitute a
18 violation of K.S.A. 21-5503, and amendments thereto, *the provisions of*
19 *this section shall not apply and* the provisions of K.S.A. 21-5503, and
20 amendments thereto, shall apply; ~~not this section.~~

21 (2) If an offender violates the provisions of this section by engaging
22 in consensual sexual intercourse which would constitute a violation of
23 K.S.A. 21-5506(b)(1), and amendments thereto, *the provisions of this*
24 *section shall not apply and* the provisions of K.S.A. 21-5506(b)(1), and
25 amendments thereto, shall apply; ~~not this section.~~

26 (3) If an offender violates the provisions of this section by engaging
27 in sodomy which would constitute a violation of K.S.A. 21-5504(a)(3), (a)
28 (4) or (b), and amendments thereto, *the provisions of this section shall not*
29 *apply and* the provisions of K.S.A. 21-5504(a)(3), (a)(4) or (b), and
30 amendments thereto, shall apply; ~~not this section.~~

31 (4) If an offender violates the provisions of this section by engaging
32 in lewd fondling or touching which would constitute a violation of K.S.A.
33 21-5506(b)(2), and amendments thereto, *the provisions of this section*
34 *shall not apply and* the provisions of K.S.A. 21-5506(b)(2), and
35 amendments thereto, shall apply; ~~not this section.~~

36 (d) As used in this section:

37 (1) "Correctional institution" means the same as in K.S.A. 75-5202,
38 and amendments thereto;

39 (2) "inmate" means the same as in K.S.A. 75-5202, and amendments
40 thereto;

41 (3) "parole officer" means the same as in K.S.A. 75-5202, and
42 amendments thereto;

43 (4) "postrelease supervision" means the same as in K.S.A. 21-6803,

1 and amendments thereto;

2 (5) "juvenile detention facility" means the same as in K.S.A. 38-2302,
3 and amendments thereto;

4 (6) "juvenile correctional facility" means the same as in K.S.A. 38-
5 2302, and amendments thereto;

6 (7) "sanctions house" means the same as in K.S.A. 38-2302, and
7 amendments thereto;

8 (8) "institution" means the same as in K.S.A. 76-12a01, and
9 amendments thereto;

10 (9) "teacher" means and includes teachers, coaches, supervisors,
11 principals, superintendents and any other professional employee in any
12 public or private school offering any of grades kindergarten through 12;

13 (10) "community corrections" means the entity responsible for
14 supervising adults and juvenile offenders for confinement, detention, care
15 or treatment, subject to conditions imposed by the court pursuant to the
16 community corrections act, K.S.A. 75-5290, and amendments thereto, and
17 the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and
18 amendments thereto;

19 (11) "court services" means the entity appointed by the district court
20 that is responsible for supervising adults and juveniles placed on probation
21 and misdemeanants placed on parole by district courts of this state;

22 (12) "juvenile community supervision agency" means an entity that
23 receives grants for the purpose of providing direct supervision to juveniles
24 in the custody of the department of corrections; ~~and~~

25 (13) "surety" means the same as in K.S.A. 22-2809a, and
26 amendments thereto; *and*

27 (14) *"person in a position of trust or authority" means a person who,*
28 *by reason of employment, role, status or relationship exercises*
29 *supervision, guidance, counseling, mentorship, spiritual authority or*
30 *influence over the child, including, but not limited to:*

31 (A) *A clergy member, pastor, priest, rabbi, imam, minister or other*
32 *religious or spiritual leader;*

33 (B) *a youth group leader or ministry leader;*

34 (C) *a coach, athletic instructor or trainer who does not meet the*
35 *definition of a teacher;*

36 (D) *a counselor, advisor or mentor, whether formal or informal; or*

37 (E) *any person who has assumed responsibility for the child's*
38 *guidance, instruction, mentoring or spiritual development.*

39 Sec. 2. K.S.A. 21-5512 is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its
41 publication in the statute book.