

HOUSE BILL No. 2762

By Committee on Judiciary

Requested by Representative Barrett and Representative Helwig

2-6

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to unlawful sexual relations; describing who is a person in a position of
3 authority for a school; amending K.S.A. 21-5512 and repealing the
4 existing section.
5

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

7 Section 1. K.S.A. 21-5512 is hereby amended to read as follows: 21-
8 5512. (a) Unlawful sexual relations is engaging in consensual sexual
9 intercourse, lewd fondling or touching, or sodomy with a person who is
10 not married to the offender if:

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

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

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

33 (4) the offender is a law enforcement officer, an employee of a
34 juvenile detention facility or sanctions house, or the employee of a
35 contractor who is under contract to provide services in such facility or

1 sanctions house and the person with whom the offender is engaging in
2 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
3 person 16 years of age or older who is confined to such facility or
4 sanctions house;

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

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

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

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

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

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

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

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

43 (9) the offender is a teacher or other person in a position of authority

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

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

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

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

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

41 (b) Unlawful sexual relations as defined in:

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

43 (2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9),

1 (a)(10), (a)(11), (a)(12) or (a)(13) is a severity level 5, person felony.

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

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

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

17 (4) If an offender violates the provisions of this section by engaging
18 in lewd fondling or touching which would constitute a violation of K.S.A.
19 21-5506(b)(2), and amendments thereto, *the provisions of this section*
20 *shall not apply and* the provisions of K.S.A. 21-5506(b)(2), and
21 amendments thereto, shall apply; ~~not this section.~~

22 (d) As used in this section:

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

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

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

29 (4) ~~"postrelease supervision" means the same as in K.S.A. 21-6803,~~
30 ~~and amendments thereto;~~

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

33 (6) ~~"juvenile correctional facility" means the same as in K.S.A. 38-~~
34 ~~2302, and amendments thereto;~~

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

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

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

42 (10) "Community corrections" means the entity responsible for
43 supervising adults and juvenile offenders for confinement, detention, care

1 or treatment, subject to conditions imposed by the court pursuant to the
2 community corrections act, K.S.A. 75-5290, and amendments thereto, and
3 the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and
4 amendments thereto;

5 (2) *"correctional institution" means the same as defined in K.S.A. 75-*
6 *5202, and amendments thereto;*

7 ~~(11)~~(3) "court services" means the entity appointed by the district
8 court that is responsible for supervising adults and juveniles placed on
9 probation and misdemeanants placed on parole by district courts of this
10 state;

11 (4) *"inmate" means the same as defined in K.S.A. 75-5202, and*
12 *amendments thereto;*

13 (5) *"institution" means the same as defined in K.S.A. 76-12a01, and*
14 *amendments thereto;*

15 ~~(12)~~(6) "juvenile community supervision agency" means an entity
16 that receives grants for the purpose of providing direct supervision to
17 juveniles in the custody of the department of corrections; ~~and~~

18 (7) *"juvenile correctional facility" means the same as defined in*
19 *K.S.A. 38-2302, and amendments thereto;*

20 (8) *"juvenile detention facility" means the same as defined in K.S.A.*
21 *38-2302, and amendments thereto;*

22 (9) *"parole officer" means the same as defined in K.S.A. 75-5202,*
23 *and amendments thereto;*

24 (10) *"person in a position of authority for a school" includes, but is*
25 *not limited to, any person who is:*

26 (A) *Not a student enrolled at the school;*

27 (B) *delegated authority by the school to interact with students; and*

28 (C) (i) *a volunteer for the school;*

29 (ii) *designated or assigned to provide services for the school; or*

30 (iii) *a contractor or an employee of a contractor who is under*
31 *contract to provide services for the school;*

32 (11) *"postrelease supervision" means the same as defined in K.S.A.*
33 *21-6803, and amendments thereto;*

34 (12) *"sanctions house" means the same as defined in K.S.A. 38-2302,*
35 *and amendments thereto;*

36 (13) *"school" means any public or private school offering any of the*
37 *grades kindergarten through 12;*

38 ~~(13)~~(14) "surety" means the same as defined in K.S.A. 22-2809a, and
39 amendments thereto; *and*

40 (15) *"teacher" means and includes teachers, coaches, supervisors,*
41 *principals, superintendents and any other professional employee in any*
42 *school.*

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

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