

## 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.