

**SENATE BILL No. 56**

By Committee on Judiciary

1-25

1 AN ACT concerning crimes and punishment; relating to criminal  
2 sodomy; amending section 68 of chapter 136 of the 2010 Session  
3 Laws of Kansas and repealing the existing section; also repealing  
4 K.S.A. 2010 Supp. 21-3506.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. Section 68 of chapter 136 of the 2010 Session Laws of  
8 Kansas is hereby amended to read as follows: Sec. 68. (a) Criminal  
9 sodomy is:

10 ~~(1) Sodomy between persons who are 16 or more years of age and~~  
11 ~~members of the same sex;~~

12 ~~(2) (1) Sodomy between a person and an animal;~~

13 ~~(3) (2) sodomy with a child who is 14 or more years of age but less~~  
14 ~~than 16 years of age; or~~

15 ~~(4) (3) causing a child 14 or more years of age but less than 16 years~~  
16 ~~of age to engage in sodomy with any person or animal.~~

17 (b) Aggravated criminal sodomy is:

18 (1) Sodomy with a child who is under 14 years of age;

19 (2) causing a child under 14 years of age to engage in sodomy with  
20 any person or an animal; or

21 (3) sodomy with a victim who does not consent to the sodomy or  
22 causing a victim, without the victim's consent, to engage in sodomy with  
23 any person or an animal under any of the following circumstances:

24 (A) When the victim is overcome by force or fear;

25 (B) when the victim is unconscious or physically powerless; or

26 (C) when the victim is incapable of giving consent because of  
27 mental deficiency or disease, or when the victim is incapable of giving  
28 consent because of the effect of any alcoholic liquor, narcotic, drug or  
29 other substance, which condition was known by, or was reasonably  
30 apparent to, the offender.

31 (c) (1) Criminal sodomy as defined in:

32 (A) Subsection (a)(1) ~~or (a)(2)~~ is a class B nonperson misdemeanor;  
33 and

34 (B) subsection (a)(2) ~~or (a)(3) or (a)(4)~~ is a severity level 3, person  
35 felony.

36 (e) (2) Aggravated criminal sodomy as defined in:

- 1 (A) subsection (b)(3) is a severity level 1, person felony; and  
2 (B) subsection (b)(1) or (b)(2) is a:  
3 (i) severity level 1, person felony, except as provided in subsection  
4 (c)(2)(B)(ii); and (3).  
5 (ii) ~~off-grid person felony, when the offender is 18 years of age or~~  
6 ~~older.~~  
7 (3) *Aggravated criminal sodomy as defined in subsection (b)(1) or*  
8 *(b)(2) or attempt, conspiracy or criminal solicitation to commit*  
9 *aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is*  
10 *an off-grid person felony, when the offender is 18 years of age or older.*  
11 (d) *If the offender is 18 years of age or older, the provisions of:*  
12 (1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session*  
13 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
14 *of attempting to commit the crime of aggravated criminal sodomy as*  
15 *defined in subsection (b)(1) or (b)(2);*  
16 (2) *subsection (c) of section 34 of chapter 136 of the 2010 Session*  
17 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
18 *of conspiracy to commit the crime of aggravated criminal sodomy as*  
19 *defined in subsection (b)(1) or (b)(2); and*  
20 (3) *subsection (d) of section 35 of chapter 136 of the 2010 Session*  
21 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
22 *of criminal solicitation to commit the crime of aggravated criminal*  
23 *sodomy as defined in subsection (b)(1) or (b)(2).*  
24 (e) It shall be a defense to a prosecution of criminal sodomy, as  
25 defined in subsection (a)(3) (2), and aggravated criminal sodomy, as  
26 defined in subsection (b)(1), that the child was married to the accused at  
27 the time of the offense.  
28 (f) Except as provided in subsection (b)(3)(C), it shall not be a  
29 defense that the offender did not know or have reason to know that the  
30 victim did not consent to the sodomy, that the victim was overcome by  
31 force or fear, or that the victim was unconscious or physically powerless.  
32 Sec. 2. K.S.A. 2010 Supp. 21-3506 and section 68 of chapter 136 of  
33 the 2010 Session Laws of Kansas are hereby repealed.  
34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the statute book.  
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