

**HOUSE BILL No. 2009**

By Representative Carmichael

12-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to criminal sodomy; members of the same sex; removing criminal  
3 penalty; amending K.S.A. 2020 Supp. 21-5504 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. 2020 Supp. 21-5504 is hereby amended to read as  
8 follows: 21-5504. (a) Criminal sodomy is:

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

11 (2) ~~—Sodomy between a person and an animal;~~

12 (3) ~~(2)~~ sodomy with a child who is 14 or more years of age but less  
13 than 16 years of age; or

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

16 (b) Aggravated criminal sodomy is:

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

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

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

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

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

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

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

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

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

35 (2) Aggravated criminal sodomy as defined in:

36 (A) Subsection (b)(3) is a severity level 1, person felony; and

1 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,  
2 except as provided in subsection (c)(3).

3 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)  
4 (2) or attempt, conspiracy or criminal solicitation to commit aggravated  
5 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid  
6 person felony, when the offender is 18 years of age or older.

7 (d) If the offender is 18 years of age or older, the provisions of:

8 (1) ~~Subsection (e) of K.S.A. 2020 Supp. 21-5301(c)~~, and amendments  
9 thereto, shall not apply to a violation of attempting to commit the crime of  
10 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

11 (2) ~~subsection (e) of K.S.A. 2020 Supp. 21-5302(c)~~, and amendments  
12 thereto, shall not apply to a violation of conspiracy to commit the crime of  
13 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

14 (3) ~~subsection (d) of K.S.A. 2020 Supp. 21-5303(d)~~, and amendments  
15 thereto, shall not apply to a violation of criminal solicitation to commit the  
16 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)  
17 (2).

18 (e) It shall be a defense to a prosecution of criminal sodomy, as  
19 defined in subsection (a)(~~3~~)(2), and aggravated criminal sodomy, as  
20 defined in subsection (b)(1), that the child was married to the accused at  
21 the time of the offense.

22 (f) Except as provided in subsection (b)(3)(C), it shall not be a  
23 defense that the offender did not know or have reason to know that the  
24 victim did not consent to the sodomy, that the victim was overcome by  
25 force or fear, or that the victim was unconscious or physically powerless.

26 Sec. 2. K.S.A. 2020 Supp. 21-5504 is hereby repealed.

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