

February 14, 2018

HB 2738

Proponent Testimony: Randy G. Masten

House Committee Corrections and Juvenile Justice

Ladies and Gentlemen,

Thank you for the opportunity to address the House today. I am here today to draw your attention to what I believe is a grievous oversight in current Kansas law, producing serious and negative lifelong consequences for our children. Under the existing law, children exploring their emerging sexuality can, and are, being charged and convicted of felonies for consensual sexual exploration. While in eighth grade, my son and his girlfriend, who was also in eighth grade, entered the school elevator together began to kiss and grind on each other for approximately 4-5 minutes. My son alleges that was the extent of the event.

Approximately six weeks later, the mother of the young lady found her daughter's posts in an adult chat room, where she claimed she "gave a boy a blow job for his birthday." She also made additional claims of sexual activity with other young men. The mother called the school to find out if any of the boys her daughter had mentioned by name attended the middle school. My son was the only name that was recognized. The mother explained what had happened to the school secretary and asked for my phone number, so she could call and discuss the matter with me. The secretary gave her my contact information and I spoke with the mother for approximately 30 minutes. I told her my son denied that anything happened beyond kissing and grinding. She said that her daughter initially denied anything more, so perhaps nothing more than that happened. At the end of the conversation, we agreed that we would discuss this matter with our children and explain to them that this was not acceptable behavior for their age or acceptable behavior at the school. I believed this was the end of the matter.

However, a few days later, I was contacted by the School Resource Officer (a Lawrence Police Officer assigned to the middle school) and was informed that the school secretary had told the police officer about the incident and he was investigating it. He said he had spoken with the mother and that he would like to question my son, if I was willing to let him. I asked why. The

officer said he wanted to clarify a few points. I said that the mother and I had spoken and that I believed the matter had been resolved by the parents of the children involved. However, if the officer had any specific questions, I would let him speak directly with my son. He said he would let me know, but he never called back, so I again thought the matter was resolved.

On 26 January 2017, nearly one year later, my son was charged with “Aggravated Indecent Liberties with a Child,” which is a Level 3 Felony. The charge states:

“That on or about the 21st day of December 2015, in Douglas County, Kansas, [my son], did then and there unlawfully and feloniously solicit a child under 14 years of age, to-wit: [a female classmate], (DOB: 02/05/2002) [February 5, 2002], to engage in any lewd fondling or touching of the person of another with the intent to arouse or to satisfy the sexual desires of the child, the offender or another, all in violation of K.S.A. 21-5506(b)(3)(B) (Aggravated Indecent Liberties with a Child, Level 3/Person/Felony)” with a potential sentence of nearly six years in prison (59 months) and registration on the sex offender registry for 25 years.

The girl involved was only 55 days younger than my son and had turned 14 by the time the complaint was filed by the School Resource Officer (Lawrence Police Officer). My son’s birthday is on 12 December and hers is on the 5th of February.

Had my son been convicted of the offense, it would have had a profoundly negative and long-term effect on his life. Our legal system would have taken a middle school honor student, gifted athlete, and well-respected young man and potentially placed him in prison. It would have prohibited him from military service, most government work, work associated with government, and also ineligible for most jobs that require even the most cursory back ground check. It ultimately would have made him a less productive member of our society – all because he made out for 4-5 minutes with a girl in his middle school. To prevent this from happening, our family hired a lawyer, spent nearly \$13,000, and were under a great deal of stress for months until the charges were dismissed, 16 months later after the incident, in August of 2017. What if we did not have the means to defend our son? An overzealous DA and judicial system, following the letter of the law as it stands, could have destroyed my son’s life and wrecked the lives of my wife and myself as well.

I spent 22 years of my life serving our Nation as an officer in the United States Army. I strongly believe in the powers of all three branches of government. The executive and juridical branches act in accordance with the laws set forth by the legislative branch in these matters, which is why I am here today. I request that you change the laws to stop the prosecution of our children for the crime of entering adolescence, for the crime of being sexually curious, for the crime of discovering their sexuality, for the crime of normal childhood development.

Within KSA Chapter 21 Article 35, there are no provisions for the age of the accused. If a 14-year old child sexually touches another child aged 13 or younger, this falls under **21-3504.**

Aggravated indecent liberties with a child per “(3) engaging in any of the following acts with a child who is under 14 years of age:” Or, if both children are between 14-16 years of age, then it is **21-3503. Indecent liberties with a child.**

These acts become felonies for children, where they would be legal if both were over the age of 16. Additionally, the child, if convicted, is placed on the Sex Offender List for up to 25 years. Therefore, we are putting a greater burden of self-restraint and impulse control on children who are far less capable of controlling their behavior and far less likely to understand that their actions are considered illegal by the State of Kansas. This does not pass the common sense test and serves as part of the unintended public school to prison pipeline. Key points for consideration are:

- The age of only the victim is considered and not the age of the accused.
- There is no ability to consent for a child, so if the act is committed it is a felony.
- If two children, peers, decide to make out and one sexual touches the other, it is a felony.
- In these cases, we are dealing with a developing child’s brain and normal sexual exploration and behaviors. If a one of the children touches another and then stops when asked to do so, a felony has still occurred.
- Our School Resource Officers in Lawrence and the Douglas County juvenile DA pursue these cases as felonies. Therefore, it can and should be assumed that they are pursued in other parts of our state as well.
- These behaviors occur every day in our Middle Schools and High Schools, as they have since recorded history.

In Shakespeare's *Romeo and Juliet*, Juliet was only 13 and Romeo was only slightly older. High schools across our state still teach this famous Shakespearean work and likely without mention of the life-long consequences that exist under the current Kansas laws for acting in a similar manner. With regard to the play, we do not treat Romeo as a felon and Juliet as the victim. They are simply viewed as two young children in love with tragic consequences. Yet, the consequences for a similar love today can be imprisonment and a life-long felony record. While I believe these are unintended consequences, they are in fact very real and very damaging consequences none-the-less.

I ask that you make the changes in the law to avoid the senseless prosecution of our children. I am not a lawyer, so I do not propose any specific changes. My belief is, now you are informed of the unintended consequences of the current laws, you will take appropriate legislative action. You, the members of this committee, are best educated, best informed, and most experienced to make the most appropriate changes to fix the existing laws. Thank you for your time today.

Respectfully,

Randy G. Masten

21-3501. Definitions.

The following definitions apply in this article unless a different meaning is plainly required:

(1) 'Sexual intercourse' means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse.

(4) 'Unlawful sexual act' means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.

21-3502. Rape.

(2) sexual intercourse with a child who is under 14 years of age;

21-3503. Indecent liberties with a child.

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(3) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of indecent liberties with a child as described in subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Indecent liberties with a child is a severity level 5, person felony.

21-3504. Aggravated indecent liberties with a child.

(a) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.

(c) Except as provided further, aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3), or attempt, conspiracy or criminal solicitation to commit aggravated indecent liberties with a child as described in subsection (a)(3) is an off-grid person felony.

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

(1) Subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3);

(2) subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3); and

(3) subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated indecent liberties with a child as described in subsection (a)(3).

History: L. 1969, ch. 180, § 21-3504; L. 1975, ch. 193, § 2; L. 1983, ch. 109, § 4; L. 1984, ch. 112, § 3; L. 1984, ch. 118, §2; L. 1992, ch. 298, § 22; L. 1993, ch. 253, § 5; L. 1993, ch. 291, § 271; L. 2006, ch. 212, § 11; L. 2010, ch. 109, § 8; April 29.