

SENATE BILL No. 388

By Senator Miller

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to criminal sodomy and aggravated criminal sodomy; aggravated
3 sexual battery; amending K.S.A. 2019 Supp. 21-5504 and 21-5505 and
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2019 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) sodomy with a child who is 14 or more years of age but less
13 than 16 years of age; or

14 (4) 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; or

30 (4) sodomy with a victim when the victim's consent was obtained
31 through a knowing misrepresentation made by the offender that the
32 sodomy was a:

33 (A) Medically or therapeutically necessary procedure; or

34 (B) legally required procedure within the scope of the offender's
35 authority.

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

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

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

5 (2) Aggravated criminal sodomy as defined in:

6 (A) Subsection (b)(3) *or* (b)(4) is a severity level 1, person felony;
7 and

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

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

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

15 (1) ~~Subsection (e) of K.S.A. 2019 Supp. 21-5301(c)~~, and amendments
16 thereto, shall not apply to a violation of attempting to commit the crime of
17 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

18 (2) ~~subsection (e) of K.S.A. 2019 Supp. 21-5302(c)~~, and amendments
19 thereto, shall not apply to a violation of conspiracy to commit the crime of
20 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

21 (3) ~~subsection (d) of K.S.A. 2019 Supp. 21-5303(d)~~, and amendments
22 thereto, shall not apply to a violation of criminal solicitation to commit the
23 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
24 (2).

25 (e) It shall be a defense to a prosecution of criminal sodomy, as
26 defined in subsection (a)(3), and aggravated criminal sodomy, as defined
27 in subsection (b)(1), that the child was married to the accused at the time
28 of the offense.

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

33 Sec. 2. K.S.A. 2019 Supp. 21-5505 is hereby amended to read as
34 follows: 21-5505. (a) Sexual battery is the touching of a victim who is
35 not the spouse of the offender, who is 16 or more years of age and who
36 does not consent thereto, with the intent to arouse or satisfy the sexual
37 desires of the offender or another.

38 (b) Aggravated sexual battery is:

39 (1) The touching of a victim who is 16 or more years of age and who
40 does not consent thereto with the intent to arouse or satisfy the sexual
41 desires of the offender or another and under any of the following
42 circumstances:

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

1 ~~(2)(B)~~ when the victim is unconscious or physically powerless; or
2 ~~(3)(C)~~ when the victim is incapable of giving consent because of
3 mental deficiency or disease, or when the victim is incapable of giving
4 consent because of the effect of any alcoholic liquor, narcotic, drug or
5 other substance, which condition was known by, or was reasonably
6 apparent to, the offender; or

7 (2) *the touching of a victim who is 16 or more years of age with the*
8 *intent to arouse or satisfy the sexual desires of the offender when the*
9 *victim's consent was obtained through a knowing misrepresentation made*
10 *by the offender that the touching was a:*

11 (A) *Medically or therapeutically necessary procedure; or*

12 (B) *legally required procedure within the scope of the offender's*
13 *authority.*

14 (c) (1) Sexual battery is a class A person misdemeanor.

15 (2) Aggravated sexual battery is a severity level 5, person felony.

16 (d) Except as provided in subsection ~~(b)(3)~~ (b)(1)(C), it shall not be a
17 defense that the offender did not know or have reason to know that the
18 victim did not consent to the battery, that the victim was overcome by
19 force or fear, or that the victim was unconscious or physically powerless.

20 Sec. 3. K.S.A. 2019 Supp. 21-5504 and 21-5505 are hereby repealed.

21 Sec. 4. This act shall take effect and be in force from and after its
22 publication in the statute book.