

SENATE BILL No. 60

By Committee on Insurance

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to **{criminal sodomy, aggravated criminal sodomy and aggravated**
3 **sexual battery; creating criminal liability for such offenses when**
4 **consent was obtained through a knowing misrepresentation;}**
5 jurisdictional application; defining proximate result for purposes of
6 determining when a crime is committed partly within this state;
7 amending K.S.A. 2020 Supp. 21-5106{, **21-5504 and 21-5505**} and
8 repealing the existing ~~section~~ **{sections}**.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 Section 1. K.S.A. 2020 Supp. 21-5106 is hereby amended to read as
12 follows: 21-5106. (a) A person is subject to prosecution and punishment
13 under the law of this state if:

- 14 (1) The person commits a crime wholly or partly within this state;
15 (2) being outside the state, the person counsels, aids, abets or
16 conspires with another to commit a crime within this state; or
17 (3) being outside the state, the person commits an act which
18 constitutes an attempt to commit a crime within this state.
19 (b) A crime is committed partly within this state if:
20 (1) An act which is a constituent and material element of the offense;
21 (2) an act which is a substantial and integral part of an overall
22 continuing criminal plan; or
23 (3) the proximate result of such act, occurs within the state.
24 (c) If the body of a homicide victim is found within the state, a person
25 who is charged with committing the homicide is subject to prosecution and
26 punishment under the laws of this state for commission of the homicide.
27 (d) A crime which is based on an omission to perform a duty imposed
28 by the law of this state, is committed within the state, regardless of the
29 location of the person omitting to perform such duty at the time of the
30 omission.
31 (e) It is not a defense that the person's conduct is also a crime under
32 the laws of another state or of the United States or of another country.
33 (f) This state includes the land and water and the air space above such
34 land and water with respect to which the state has legislative jurisdiction.

1 (g) Jurisdiction is a question of law to be determined by the court by
2 the preponderance of the evidence.

3 (h) *As used in this section, "proximate result" means any logical*
4 *effect or consequence of such act regardless of whether the statute*
5 *governing the charged offense considers the specific effect or consequence*
6 *of such act.*

7 {**Sec. 2. 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) **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**
19 **with 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**
22 **with any person or an animal under any of the following**
23 **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; or**

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

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

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

37 (c) (1) **Criminal sodomy as defined in:**

38 (A) **Subsection (a)(1) or (a)(2) is a class B nonperson**
39 **misdemeanor; and**

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

41 (2) **Aggravated criminal sodomy as defined in:**

42 (A) **Subsection (b)(3) or (b)(4) is a severity level 1, person felony;**
43 **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
4 (b)(2) or attempt, conspiracy or criminal solicitation to commit
5 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is
6 an off-grid 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~~
9 ~~amendments thereto, shall not apply to a violation of attempting to~~
10 ~~commit the crime of aggravated criminal sodomy as defined in~~
11 ~~subsection (b)(1) or (b)(2);~~

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

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

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

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

29 Sec. 3. K.S.A. 2020 Supp. 21-5505 is hereby amended to read as
30 follows: 21-5505. (a) Sexual battery is the touching of a victim who
31 is not the spouse of the offender, who is 16 or more years of age and
32 who does not consent thereto, with the intent to arouse or satisfy the
33 sexual desires of the offender or another.

34 (b) Aggravated sexual battery is:

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

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

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

41 ~~(C)~~ (C) when the victim is incapable of giving consent because of
42 mental deficiency or disease, or when the victim is incapable of giving
43 consent because of the effect of any alcoholic liquor, narcotic, drug or

1 **other substance, which condition was known by, or was reasonably**
2 **apparent to, the offender; or**

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

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

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

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

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

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

17 **Sec. ~~2~~ {4.} K.S.A. 2020 Supp. 21-5106 ~~is~~ {, 21-5504 and 21-5505**
18 **are} hereby repealed.**

19 **Sec. ~~3~~ {5.} This act shall take effect and be in force from and after its**
20 **publication in the ~~statute book~~ Kansas register.**