

HOUSE BILL No. 2449

By Committee on Vision 2020

1-14

9 AN ACT concerning eavesdropping; amending K.S.A. 21-4001 and
10 K.S.A. 2009 Supp. 22-4902 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 21-4001 is hereby amended to read as follows: 21-
14 4001. (a) Eavesdropping is knowingly and without lawful authority:

15 (1) Entering into a private place with intent to listen surreptitiously
16 to private conversations or to observe the personal conduct of any other
17 person or persons therein;

18 (2) installing or using outside *or inside* a private place any device for
19 hearing, recording, amplifying or broadcasting sounds originating in such
20 place, which sounds would not ordinarily be audible or comprehensible
21 outside, without the consent of the person or persons entitled to privacy
22 therein;

23 (3) installing or using any device or equipment for the interception
24 of any telephone, telegraph or other wire *or wireless* communication with-
25 out the consent of the person in possession or control of the facilities for
26 such ~~wire~~ communication; ~~or~~

27 (4) installing or using a concealed camcorder, motion picture camera
28 or photographic camera of any type, to secretly videotape, film, photo-
29 graph or record by electronic *or other* means, another, identifiable person
30 under or through the clothing being worn by that other person or another,
31 identifiable person who is nude or in a state of undress, for the purpose
32 of viewing the body of, or the undergarments worn by, that other person,
33 without the consent or knowledge of that other person, with the intent
34 to invade the privacy of that other person, under circumstances in which
35 the other person has a reasonable expectation of privacy; *or*

36 (5) *looking into any hole or opening, or otherwise viewing by means*
37 *of instrumentality, a person with the intent to invade the privacy of the*
38 *person being viewed.*

39 (b) *Eavesdropping as described in subsection (a)(1) is a severity level*
40 *9, person felony. Eavesdropping as described in subsection (a)(2) or (a)(3)*
41 *is a severity level 8, person felony. Except as provided further, eaves-*
42 *dropping as described in subsection (a)(4) or (a)(5) is a severity level 7,*
43 *person felony. Eavesdropping as described in subsection (a)(4) or (a)(5)*

1 is a severity level 6, person felony if:

2 (1) The person viewed is less than 18 years of age at the time the
3 image was captured or the viewing occurred;

4 (2) the offender is in a position of authority, trust or control over the
5 person being viewed, including, but not limited to, a biological, step or
6 adoptive parent; a teacher, coach or other school administrator; or a mem-
7 ber of the clergy; or

8 (3) the offender has been previously convicted under any provisions
9 of this section.

10 (c) It shall not be a defense to this section that:

11 (1) The person being viewed was not in a state of partial or complete
12 undress or that the person being viewed was a landlord, tenant, cohabi-
13 tant, employer, employee, or business partner or associate or agent of any
14 of such persons; or

15 (2) no image was captured or recorded.

16 (d) As used in this section:

17 (1) "Instrumentality" shall include, but not be limited to, a telescope,
18 periscope, binoculars, telephoto lens or any other instrument which is
19 used to magnify or aid in viewing the image of the person being viewed.

20 ~~(b)~~ (2) "Private place" ~~within the meaning of this section is~~ means
21 a place where one may reasonably expect to be safe from uninvited in-
22 trusion or surveillance, but does not include a place to which the public
23 has lawful access.

24 ~~(e)~~ (e) It shall not be unlawful for an operator of a switchboard, or
25 any officer, employee, or agent of any public utility providing telephone
26 communications service, whose facilities are used in the transmission of
27 a communication, to intercept, disclose or use that communication in the
28 normal course of employment while engaged in any activity which is in-
29 cident to the rendition of public utility service or to the protection of the
30 rights of property of such public utility.

31 ~~(d) Eavesdropping is a class A nonperson misdemeanor.~~

32 Sec. 2. K.S.A. 2009 Supp. 22-4902 is hereby amended to read as
33 follows: 22-4902. As used in this act, unless the context otherwise
34 requires:

35 (a) "Offender" means: (1) A sex offender as defined in subsection (b);

36 (2) a violent offender as defined in subsection (d);

37 (3) a sexually violent predator as defined in subsection (f);

38 (4) any person who, on and after the effective date of this act, is
39 convicted of any of the following crimes when the victim is less than 18
40 years of age:

41 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments
42 thereto, except by a parent;

43 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-

- 1 ments thereto; or
- 2 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments
- 3 thereto, except by a parent;
- 4 (5) any person convicted of any of the following criminal sexual con-
- 5 duct if one of the parties involved is less than 18 years of age:
- 6 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
- 7 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-
- 8 3505, and amendments thereto;
- 9 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-
- 10 ments thereto;
- 11 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and
- 12 amendments thereto;
- 13 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and
- 14 amendments thereto; or
- 15 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and
- 16 amendments thereto;
- 17 (6) any person who has been required to register under any federal,
- 18 military or other state's law or is otherwise required to be registered;
- 19 (7) any person who, on or after July 1, 2006, is convicted of any person
- 20 felony and the court makes a finding on the record that a deadly weapon
- 21 was used in the commission of such person felony;
- 22 (8) any person who has been convicted of an offense in effect at any
- 23 time prior to the effective date of this act, that is comparable to any crime
- 24 defined in subsection (4), (5), (7) or (11), or any federal, military or other
- 25 state conviction for an offense that under the laws of this state would be
- 26 an offense defined in subsection (4), (5), (7) or (11);
- 27 (9) any person who has been convicted of an attempt, conspiracy or
- 28 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303
- 29 and amendments thereto, of an offense defined in subsection (4), (5), (7)
- 30 or (10);
- 31 (10) any person who has been convicted of aggravated trafficking as
- 32 defined in K.S.A. 21-3447, and amendments thereto; ~~or~~
- 33 (11) any person who has been convicted of: (A) Unlawful manufac-
- 34 ture or attempting such of any controlled substance or controlled sub-
- 35 stance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A.
- 36 2009 Supp. 21-36a03, and amendments thereto, unless the court makes
- 37 a finding on the record that the manufacturing or attempting to manu-
- 38 facture such controlled substance was for such person's personal use;
- 39 (B) possession of ephedrine, pseudoephedrine, red phosphorus, lith-
- 40 ium metal, sodium metal, iodine, anhydrous ammonia, pressurized am-
- 41 monia or phenylpropanolamine, or their salts, isomers or salts of isomers
- 42 with intent to use the product to manufacture a controlled substance as
- 43 defined by K.S.A. 65-7006, prior to its repeal or K.S.A. 2009 Supp. 21-

1 36a09 or 21-36a10, and amendments thereto, unless the court makes a
2 finding on the record that the possession of such product was intended
3 to be used to manufacture a controlled substance for such person's per-
4 sonal use; or

5 (C) K.S.A. 65-4161, prior to its repeal or K.S.A. 2009 Supp. 21-36a05,
6 and amendments thereto; *or*

7 (12) *any person who, on and after the effective date of this act, is*
8 *convicted of eavesdropping, as defined in K.S.A. 21-4001, and amend-*
9 *ments thereto.*

10 Convictions which result from or are connected with the same act, or
11 result from crimes committed at the same time, shall be counted for the
12 purpose of this section as one conviction. Any conviction set aside pur-
13 suant to law is not a conviction for purposes of this section. A conviction
14 from another state shall constitute a conviction for purposes of this
15 section.

16 (b) "Sex offender" includes any person who, after the effective date
17 of this act, is convicted of any sexually violent crime set forth in subsection
18 (c) or is adjudicated as a juvenile offender for an act which if committed
19 by an adult would constitute the commission of a sexually violent crime
20 set forth in subsection (c).

21 (c) "Sexually violent crime" means:

22 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

23 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
24 amendments thereto;

25 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
26 3504 and amendments thereto;

27 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
28 K.S.A. 21-3505 and amendments thereto;

29 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
30 amendments thereto;

31 (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and
32 amendments thereto;

33 (7) aggravated indecent solicitation of a child as defined by K.S.A.
34 21-3511 and amendments thereto;

35 (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and
36 amendments thereto;

37 (9) sexual battery as defined by K.S.A. 21-3517 and amendments
38 thereto;

39 (10) aggravated sexual battery as defined by K.S.A. 21-3518 and
40 amendments thereto;

41 (11) aggravated incest as defined by K.S.A. 21-3603 and amendments
42 thereto; or

43 (12) electronic solicitation as defined by K.S.A. 21-3523, and amend-

- 1 ments thereto, committed on and after the effective date of this act;
- 2 (13) any conviction for an offense in effect at any time prior to the
3 effective date of this act, that is comparable to a sexually violent crime as
4 defined in subparagraphs (1) through (11), or any federal, military or
5 other state conviction for an offense that under the laws of this state would
6 be a sexually violent crime as defined in this section;
- 7 (14) an attempt, conspiracy or criminal solicitation, as defined in
8 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sex-
9 ually violent crime, as defined in this section; or
- 10 (15) any act which at the time of sentencing for the offense has been
11 determined beyond a reasonable doubt to have been sexually motivated.
12 As used in this subparagraph, “sexually motivated” means that one of the
13 purposes for which the defendant committed the crime was for the pur-
14 pose of the defendant’s sexual gratification.
- 15 (d) “Violent offender” includes any person who, after the effective
16 date of this act, is convicted of any of the following crimes:
- 17 (1) Capital murder as defined by K.S.A. 21-3439 and amendments
18 thereto;
- 19 (2) murder in the first degree as defined by K.S.A. 21-3401 and
20 amendments thereto;
- 21 (3) murder in the second degree as defined by K.S.A. 21-3402 and
22 amendments thereto;
- 23 (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amend-
24 ments thereto;
- 25 (5) involuntary manslaughter as defined by K.S.A. 21-3404 and
26 amendments thereto; or
- 27 (6) any conviction for an offense in effect at any time prior to the
28 effective date of this act, that is comparable to any crime defined in this
29 subsection, or any federal, military or other state conviction for an offense
30 that under the laws of this state would be an offense defined in this
31 subsection; or
- 32 (7) an attempt, conspiracy or criminal solicitation, as defined in
33 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
34 fense defined in this subsection.
- 35 (e) “Law enforcement agency having jurisdiction” means the sheriff
36 of the county in which the offender expects to reside upon the offender’s
37 discharge, parole or release.
- 38 (f) “Sexually violent predator” means any person who, on or after July
39 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-
40 29a01 et seq. and amendments thereto.
- 41 (g) “Nonresident student or worker” includes any offender who
42 crosses into the state or county for more than 14 days, or for an aggregate
43 period exceeding 30 days in a calendar year, for the purposes of employ-

- 1 ment, with or without compensation, or to attend school as a student.
- 2 (h) “Aggravated offenses” means engaging in sexual acts involving
3 penetration with victims of any age through the use of force or the threat
4 of serious violence, or engaging in sexual acts involving penetration with
5 victims less than 14 years of age, and includes the following offenses:
- 6 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of
7 K.S.A. 21-3502, and amendments thereto;
- 8 (2) aggravated criminal sodomy as defined in subsection (a)(1) and
9 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and
- 10 (3) any attempt, conspiracy or criminal solicitation, as defined in
11 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-
12 fense defined in this subsection.
- 13 (i) “Institution of higher education” means any post-secondary school
14 under the supervision of the Kansas board of regents.
- 15 Sec. 3. K.S.A. 21-4001 and K.S.A. 2009 Supp. 22-4902 are hereby
16 repealed.
- 17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.