

21-5503. Rape. (a) Rape is:

(1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

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

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

(2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

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

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b)(1) Rape as defined in:

(A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

(B) subsection (a)(3) is a severity level 1, person felony, except as provided in subsection (b)(2); and

(C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(2) Rape as defined in subsection (a)(3) or attempt, conspiracy or criminal solicitation to commit rape as defined in subsection (a)(3) is an off-grid person felony, when the offender is 18 years of age or older.

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

(1) Subsection (c) of K.S.A. 2016 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as defined in subsection (a)(3);

(2) subsection (c) of K.S.A. 2016 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as defined in subsection (a)(3); and

(3) subsection (d) of K.S.A. 2016 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as defined in subsection (a)(3).

(d) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

History: L. 2010, ch. 136, § 67; L. 2011, ch. 30, § 29; July 1.