

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2073

By Committee on Corrections and Juvenile Justice

1-24

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sodomy; appeal of departure sentence; liability of defendant for
3 expenses by state board of indigents' defense services; amending
4 K.S.A. 22-4513 and K.S.A. 2018 Supp. 21-5504 and 21-6820 and
5 repealing the existing sections.

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

8 Section 1. K.S.A. 2018 Supp. 21-5504 is hereby amended to read as
9 follows: 21-5504. (a) Criminal sodomy is:

10 (1) ~~Sodomy between persons who are 16 or more years of age and~~
11 ~~members of the same sex;~~

12 (2) ~~—Sodomy between a person and an animal;~~

13 (3) ~~(2)~~ sodomy with a child who is 14 or more years of age but less
14 than 16 years of age; or

15 (4) ~~(3)~~ causing a child 14 or more years of age but less than 16 years
16 of age to engage in sodomy with any person *other than the offender* or an
17 animal.

18 (b) Aggravated criminal sodomy is:

19 (1) Sodomy with a child who is under 14 years of age;

20 (2) causing a child under 14 years of age to engage in sodomy with
21 any person *other than the offender* or an animal; or

22 (3) sodomy with a victim who does not consent to the sodomy or
23 causing a victim, without the victim's consent, to engage in sodomy with
24 any person or an animal under any of the following circumstances:

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

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

27 (C) when the victim is incapable of giving consent because of mental
28 deficiency or disease, or when the victim is incapable of giving consent
29 because of the effect of any alcoholic liquor, narcotic, drug or other
30 substance, which condition was known by, or was reasonably apparent to,
31 the offender.

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

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

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

1 (2) Aggravated criminal sodomy as defined in:

2 (A) Subsection (b)(3) is a severity level 1, person felony; and

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

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

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

10 (1) ~~Subsection (e) of K.S.A. 2018 Supp. 21-5301(c)~~, and amendments
11 thereto, shall not apply to a violation of attempting to commit the crime of
12 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

13 (2) ~~subsection (e) of K.S.A. 2018 Supp. 21-5302(c)~~, and amendments
14 thereto, shall not apply to a violation of conspiracy to commit the crime of
15 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

16 (3) ~~subsection (d) of K.S.A. 2018 Supp. 21-5303(d)~~, and amendments
17 thereto, shall not apply to a violation of criminal solicitation to commit the
18 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
19 (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 defined
22 in subsection (b)(1), that the child was married to the accused at the time
23 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 the
26 victim did not consent to the sodomy, that the victim was overcome by
27 force or fear, or that the victim was unconscious or physically powerless.

28 Sec. 2. K.S.A. 2018 Supp. 21-6820 is hereby amended to read as
29 follows: 21-6820. (a) A departure sentence is subject to appeal by the
30 defendant or the state. The appeal shall be to the appellate courts in
31 accordance with rules adopted by the supreme court.

32 (b) Pending review of the sentence, the sentencing court or the
33 appellate court may order the defendant confined or placed on conditional
34 release, including bond.

35 (c) On appeal from a judgment or conviction entered for a felony
36 committed on or after July 1, 1993, the appellate court shall not review:

37 (1) Any sentence that is within the presumptive sentence for the
38 crime; or

39 (2) any sentence resulting from an agreement between the state and
40 the defendant which the sentencing court approves on the record.

41 (d) In any appeal from a judgment of conviction imposing a sentence
42 that departs from the presumptive sentence prescribed by the sentencing
43 grid for a crime, sentence review shall be limited to whether the sentencing

1 court's findings of fact and reasons justifying a departure:

2 (1) Are supported by the evidence in the record; and

3 (2) constitute substantial and compelling reasons for departure.

4 (e) In any *direct* appeal, the appellate court may review a claim that:

5 (1) A sentence that departs from the presumptive sentence resulted
6 from partiality, prejudice, oppression or corrupt motive;

7 (2) the sentencing court erred in either including or excluding
8 recognition of a prior conviction or juvenile adjudication for criminal
9 history scoring purposes; or

10 (3) the sentencing court erred in ranking the crime severity level of
11 the current crime or in determining the appropriate classification of a prior
12 conviction or juvenile adjudication for criminal history purposes.

13 (f) The appellate court may reverse or affirm the sentence. If the
14 appellate court concludes that the trial court's factual findings are not
15 supported by evidence in the record or do not establish substantial and
16 compelling reasons for a departure, it shall remand the case to the trial
17 court for resentencing.

18 (g) The appellate court shall issue a written opinion whenever the
19 judgment of the sentencing court is reversed. The court may issue a written
20 opinion in any other case when it is believed that a written opinion will
21 provide guidance to sentencing judges and others in implementing the
22 sentencing guidelines adopted by the Kansas sentencing commission. The
23 appellate courts may provide by rule for summary disposition of cases
24 arising under this section when no substantial question is presented by the
25 appeal.

26 (h) A review under summary disposition shall be made solely upon
27 the record that was before the sentencing court. Written briefs shall not be
28 required unless ordered by the appellate court and the review and decision
29 shall be made in an expedited manner according to rules adopted by the
30 supreme court.

31 (i) The sentencing court shall retain authority irrespective of any
32 notice of appeal for 90 days after entry of judgment of conviction to
33 modify its judgment and sentence to correct any arithmetic or clerical
34 errors.

35 Sec. 3. K.S.A. 22-4513 is hereby amended to read as follows: 22-
36 4513. (a) If the defendant is convicted, all expenditures made by the state
37 board of indigents' defense services to provide counsel and other defense
38 services to such defendant or the amount allowed by the board of
39 indigents' defense reimbursement tables as provided in K.S.A. 22-4522,
40 and amendments thereto, whichever is less, shall be taxed against the
41 defendant and shall be enforced as judgments for payment of money in
42 civil cases.

43 (b) ~~In determining the amount and method of payment of such sum,~~

1 ~~the court shall take account of the financial resources of the defendant and~~
2 ~~the nature of the burden that payment of such sum will impose. A~~
3 ~~defendant who has been required to pay such sum and who is not willfully~~
4 ~~in default in the payment thereof may at any time petition the court which~~
5 ~~sentenced the defendant to waive payment of such sum or of any unpaid~~
6 ~~portion thereof. If it appears to the satisfaction of the court that payment of~~
7 ~~the amount due will impose manifest hardship on the defendant or the~~
8 ~~defendant's immediate family, the court may waive payment of all or part~~
9 ~~of the amount due or modify the method of payment.~~

10 (e) Whenever any judgment has been entered pursuant to subsection
11 (a) ~~of this section~~, a sum equal to such judgment may be recovered by the
12 state of Kansas for the benefit of the state general fund from any persons
13 to whom the indigent defendant shall have transferred any of the
14 defendant's property without adequate monetary consideration after the
15 commission of the alleged crime, to the extent of the value of such
16 transfer, and such persons are hereby made liable to reimburse the state of
17 Kansas with interest at 6% per annum. Any action to recover judgment for
18 such expenditures shall be prosecuted by the attorney general, who may
19 require the assistance of the county attorney of the county in which the
20 action is to be filed, and such action shall be governed by the provisions of
21 the code of civil procedure relating to actions for the recovery of money.
22 No action shall be brought against any person under the provisions of this
23 section to recover for sums expended on behalf of an indigent defendant,
24 unless such action shall have been filed within two years after the date of
25 the expenditure by the state board of indigents' defense services.

26 Sec. 4. K.S.A. 22-4513 and K.S.A. 2018 Supp. 21-5504 and 21-6820
27 are hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after its
29 publication in the statute book.