

SENATE BILL No. 95

By Committee on Federal and State Affairs

1-24

1 AN ACT concerning statutes of limitation for childhood sexual abuse;
2 relating to time limitations for commencement of prosecution in
3 criminal actions; permitting a prosecution for childhood sexual abuse to
4 be commenced at any time; relating to limitations on civil actions;
5 permitting a claim for damages caused by childhood sexual abuse to be
6 brought at any time; reviving claims against any party for such
7 damages that occurred on or after July 1, 1984; amending K.S.A. 2022
8 Supp. 21-5107 and 60-523 and repealing the existing sections.
9

10 WHEREAS, The amendments made to the provisions of K.S.A. 2022
11 Supp. 21-5107 and 60-523 by this act shall be known as the protecting
12 children from sexual predators act.

13 Now, therefore:

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

15 Section 1. K.S.A. 2022 Supp. 21-5107 is hereby amended to read as
16 follows: 21-5107. (a) (1) A prosecution for any of the following crimes
17 may be commenced at any time:

18 (A) Rape; as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
19 2022 Supp. 21-5503, and amendments thereto;

20 (B) aggravated criminal sodomy; as defined in K.S.A. 21-3506, prior
21 to its repeal, or K.S.A. 2022 Supp. 21-5504(b), and amendments thereto;

22 (C) murder; as described in K.S.A. 21-3401, 21-3402 or 21-3439,
23 prior to their repeal, or K.S.A. 2022 Supp. 21-5401, 21-5402 or 21-5403,
24 and amendments thereto;

25 (D) terrorism as defined in K.S.A. 21-3449, prior to its repeal, or
26 K.S.A. 2022 Supp. 21-5421, and amendments thereto; or

27 (E) illegal use of weapons of mass destruction ~~may be commenced at~~
28 ~~any time~~ as defined in K.S.A. 21-3450, prior to its repeal, or K.S.A. 2022
29 Supp. 21-5422, and amendments thereto.

30 (2) A prosecution for childhood sexual abuse may be commenced at
31 any time. As used in this paragraph, "childhood sexual abuse" means any
32 of the following crimes when the victim is under 18 years of age:

33 (A) Indecent liberties with a child as defined in K.S.A. 21-3503, prior
34 to its repeal, or K.S.A. 2022 Supp. 21-5506(a), and amendments thereto;

35 (B) aggravated indecent liberties with a child as defined in K.S.A. 21-
36 3504, prior to its repeal, or K.S.A. 2022 Supp. 21-5506(b), and

1 *amendments thereto;*

2 (C) *criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a)(3),*
3 *prior to its repeal, or K.S.A. 2022 Supp. 21-5504(a)(3) and (a)(4), and*
4 *amendments thereto;*

5 (D) *enticement of a child as defined in K.S.A. 21-3509, prior to its*
6 *repeal;*

7 (E) *indecent solicitation of a child as defined in K.S.A. 21-3510,*
8 *prior to its repeal, or K.S.A. 2022 Supp. 21-5508(a), and amendments*
9 *thereto;*

10 (F) *aggravated indecent solicitation of a child as defined in K.S.A.*
11 *21-3511, prior to its repeal, or K.S.A. 2022 Supp. 21-5508(b), and*
12 *amendments thereto;*

13 (G) *sexual exploitation of a child as defined in K.S.A. 21-3516, prior*
14 *to its repeal, or K.S.A. 2022 Supp. 21-5510, and amendments thereto;*

15 (H) *aggravated sexual battery as defined in K.S.A. 21-3518, prior to*
16 *its repeal, or K.S.A. 2022 Supp. 21-5505(b), and amendments thereto;*

17 (I) *aggravated incest as defined in K.S.A. 21-3603, prior to its repeal,*
18 *or K.S.A. 2022 Supp. 21-5604(b), and amendments thereto;*

19 (J) *aggravated human trafficking as defined in K.S.A. 21-3447, prior*
20 *to its repeal, or K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if*
21 *committed in whole or in part for the purpose of the sexual gratification of*
22 *the defendant or another;*

23 (K) *internet trading in child pornography or aggravated internet*
24 *trading in child pornography as defined in K.S.A. 2022 Supp. 21-5514,*
25 *and amendments thereto; or*

26 (L) *commercial sexual exploitation of a child as defined in K.S.A.*
27 *2022 Supp. 21-6422, and amendments thereto.*

28 (b) Except as provided in subsection (e), a prosecution for any crime
29 shall be commenced within 10 years after its commission if the victim is
30 the Kansas public employees retirement system.

31 (c) Except as provided in ~~subsection~~ *subsections (a) and (e)*, a
32 prosecution for a sexually violent crime as defined in K.S.A. 22-3717, and
33 amendments thereto:

34 (1) When the victim is 18 years of age or older shall be commenced
35 within 10 years or one year from the date on which the identity of the
36 suspect is conclusively established by DNA testing, whichever is later; or

37 (2) when the victim is under 18 years of age shall be commenced
38 within 10 years of the date the victim turns 18 years of age or one year
39 from the date on which the identity of the suspect is conclusively
40 established by DNA testing, whichever is later.

41 (d) Except as provided ~~by~~ *in* subsection (e), a prosecution for any
42 crime; as defined in K.S.A. 2022 Supp. 21-5102, and amendments thereto,
43 not governed by subsection (a), (b) or (c) shall be commenced within five

1 years after it is committed.

2 (e) The period within which a prosecution shall be commenced shall
3 not include any period in which:

4 (1) The accused is absent from the state;

5 (2) the accused is concealed within the state so that process cannot be
6 served upon the accused;

7 (3) the fact of the crime is concealed;

8 (4) a prosecution is pending against the defendant for the same
9 conduct, even if the indictment or information which commences the
10 prosecution is quashed or the proceedings thereon are set aside, or are
11 reversed on appeal;

12 (5) an administrative agency is restrained by court order from
13 investigating or otherwise proceeding on a matter before it as to any
14 criminal conduct defined as a violation of any of the provisions of article
15 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes
16 Annotated, and amendments thereto, which may be discovered as a result
17 thereof regardless of who obtains the order of restraint; or

18 (6) whether the fact of the crime is concealed by the active act or
19 conduct of the accused, there is substantially competent evidence to
20 believe two or more of the following factors are present:

21 (A) The victim was a child under 15 years of age at the time of the
22 crime;

23 (B) the victim was of such age or intelligence that the victim was
24 unable to determine that the acts constituted a crime;

25 (C) the victim was prevented by a parent or other legal authority from
26 making known to law enforcement authorities the fact of the crime
27 whether or not the parent or other legal authority is the accused; and

28 (D) there is substantially competent expert testimony indicating the
29 victim psychologically repressed such witness' memory of the fact of the
30 crime, and in the expert's professional opinion the recall of such memory is
31 accurate and free of undue manipulation, and substantial corroborating
32 evidence can be produced in support of the allegations contained in the
33 complaint or information but in no event may a prosecution be
34 commenced as provided in subsection (e)(6) later than the date the victim
35 turns 28 years of age. Corroborating evidence may include, but is not
36 limited to, evidence the defendant committed similar acts against other
37 persons or evidence of contemporaneous physical manifestations of the
38 crime.

39 (f) An offense is committed either when every element occurs, or, if a
40 legislative purpose to prohibit a continuing offense plainly appears, at the
41 time when the course of conduct or the defendant's complicity therein is
42 terminated. Time starts to run on the day after the offense is committed.

43 (g) A prosecution is commenced when a complaint or information is

1 filed, or an indictment returned, and a warrant thereon is delivered to the
 2 sheriff or other officer for execution. No such prosecution shall be deemed
 3 to have been commenced if the warrant so issued is not executed without
 4 unreasonable delay.

5 (h) As used in this section, "parent or other legal authority" shall
 6 include, but not be limited to, natural and stepparents, grandparents, aunts,
 7 uncles or siblings.

8 Sec. 2. K.S.A. 2022 Supp. 60-523 is hereby amended to read as
 9 follows: 60-523. (a) ~~Not~~ An action *against any party* for recovery of
 10 damages suffered as a result of childhood sexual abuse ~~shall may~~ be
 11 commenced ~~more than three years after the date the person attains 18 years~~
 12 ~~of age or more than three years from the date the person discovers or~~
 13 ~~reasonably should have discovered that the injury or illness was caused by~~
 14 ~~childhood sexual abuse, whichever occurs later at any time.~~

15 (b) As used in this section:

16 (1) "Injury or illness" includes psychological injury or illness, whether
 17 or not accompanied by physical injury or illness.

18 (2) "childhood sexual abuse" includes any act committed against the
 19 person ~~which act~~ that occurred when the person was under the age of 18
 20 years and ~~which act~~ that would have been a violation of any of the
 21 following:

22 (1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
 23 2022 Supp. 21-5503, and amendments thereto;

24 (A)(2) indecent liberties with a child as defined in K.S.A. 21-3503,
 25 prior to its repeal, or ~~subsection (a) of~~ K.S.A. 2022 Supp. 21-5506(a), and
 26 amendments thereto;

27 (B)(3) aggravated indecent liberties with a child as defined in K.S.A.
 28 21-3504, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2022 Supp. 21-
 29 5506(b), and amendments thereto;

30 (4) criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a)(3),
 31 prior to its repeal, or K.S.A. 2022 Supp. 21-5504(a)(3) and (a)(4), and
 32 amendments thereto;

33 (C)(5) aggravated criminal sodomy as defined in K.S.A. 21-3506,
 34 prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2022 Supp. 21-5504(b), and
 35 amendments thereto;

36 (D)(6) enticement of a child as defined in K.S.A. 21-3509, prior to its
 37 repeal;

38 (E)(7) indecent solicitation of a child as defined in K.S.A. 21-3510,
 39 prior to its repeal, or ~~subsection (a) of~~ K.S.A. 2022 Supp. 21-5508(a), and
 40 amendments thereto;

41 (F)(8) aggravated indecent solicitation of a child as defined in K.S.A.
 42 21-3511, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2022 Supp. 21-
 43 5508(b), and amendments thereto;

1 ~~(G)~~(9) sexual exploitation of a child as defined in K.S.A. 21-3516,
2 prior to its repeal, or K.S.A. 2022 Supp. 21-5510, and amendments
3 thereto; ~~or~~

4 (10) *aggravated sexual battery as defined in K.S.A. 21-3518, prior to*
5 *its repeal, or K.S.A. 2022 Supp. 21-5505(b), and amendments thereto;*

6 ~~(H)~~(11) aggravated incest as defined in K.S.A. 21-3603, prior to its
7 repeal, or ~~subsection (b) of~~ K.S.A. 2022 Supp. 21-5604(b), and
8 amendments thereto;

9 (12) *aggravated human trafficking as defined in K.S.A. 21-3447,*
10 *prior to its repeal, or K.S.A. 2022 Supp. 21-5426(b), and amendments*
11 *thereto, if committed in whole or in part for the purpose of the sexual*
12 *gratification of the defendant or another;*

13 (13) *internet trading in child pornography or aggravated internet*
14 *trading in child pornography as defined in K.S.A. 2022 Supp. 21-5514,*
15 *and amendments thereto;*

16 (14) *commercial sexual exploitation of a child as defined in K.S.A.*
17 *2022 Supp. 21-6422, and amendments thereto; or*

18 (15) any prior laws of this state of similar effect at the time the act
19 was committed.

20 ~~(c) Discovery that the injury or illness was caused by childhood~~
21 ~~sexual abuse shall not be deemed to have occurred solely by virtue of the~~
22 ~~person's awareness, knowledge or memory of the acts of abuse. The person~~
23 ~~need not establish which act in a series of continuing sexual abuse~~
24 ~~incidents caused the injury or illness complained of, but may compute the~~
25 ~~date of discovery from the date of discovery of the last act by the same~~
26 ~~perpetrator which is a part of a common scheme or plan of sexual abuse.~~

27 ~~(d) This section shall be applicable to:~~

28 ~~(1) any action commenced on or after July 1, 1992, including any~~
29 ~~action which that would be barred by application of the period of~~
30 ~~limitation applicable prior to July 1, 1992;~~

31 ~~(2) any action commenced prior to July 1, 1992, and pending on July~~
32 ~~1, 1992.~~

33 (d) *All claims against any party for damages suffered as a result of*
34 *childhood sexual abuse that occurred on or after July 1, 1984, are hereby*
35 *revived.*

36 Sec. 3. K.S.A. 2022 Supp. 21-5107 and 60-523 are hereby repealed.

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