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TO: House Committee on Corrections and Juvenile Justice
FROM: Kansas Judicial Council – Hon. Ben Sexton
DATE: February 4, 2020
RE: 2020 HB 2473 re unlawful voluntary sexual relations

The Kansas Judicial Council and its Advisory Committee on Sex Offenses and Registration (Committee) recommend HB 2473. The bill would amend K.S.A. 21-5507, commonly known as the “Romeo and Juliet” statute, to reduce penalties for voluntary sexual conduct between minors. The bill would also amend K.S.A. 22-4902 to make clear that convictions or adjudications for unlawful voluntary sexual relations do not require offender registration.

The Committee’s recommendation of HB 2473 arose out of a study request by Rep. Russell Jennings asking the Judicial Council to review 2018 House Bill 2738. That bill had been requested by Rep. Boog Highberger, and he attended several Committee meetings and provided some background on the bill. He explained that the impetus for the bill was a constituent whose 14-year-old child had faced the possibility of serious criminal consequences for a voluntary encounter with another child who was 13. The bill was intended to decrease penalties and, in some cases, decriminalize voluntary sexual conduct between minors who are close in age.

Under current law, K.S.A. 21-5507 (sometimes known as the “Romeo and Juliet” provision) reduces penalties for voluntary sexual conduct between an offender and a child when the child is 14 or 15 years old and the offender is less than 19 and less than four years older than the child. Offenses under K.S.A. 21-5507 are classified as severity level 8, 9, or 10 person felonies depending on the conduct.

However, K.S.A. 21-5507 does not apply to voluntary conduct between an offender and a child under 14. Rather, voluntary conduct involving children under 14 falls under the rape, aggravated criminal sodomy, and aggravated indecent liberties statutes. See K.S.A. 21-5503(a)(3); 21-5504(b)(1); and 21-5506(b)(3). This is true even if the offender is also a child close in age. Under these statutes, offenses are classified as severity level 1 or 3 person felonies, or even off-grid felonies if the offender is 18 or older.

2018 HB 2738 would have amended K.S.A. 21-5507 to apply to voluntary conduct between children as young as 10, and it would have decriminalized voluntary conduct between children within an age range of 11 to 14, based on the premise that sexual experimentation between children in that age range is better handled by parents, teachers and counselors than by the juvenile justice system.

2018 HB 2738 also would have repealed the provision in K.S.A. 21-5507 allowing reduced penalties only when the offender and child are of the opposite sex. This provision was declared unconstitutional almost 15 years ago by the Kansas Supreme Court in *State v. Limon*, 280 Kan. 275, 122 P.3d 22 (2005).

The Committee generally agreed with the rationale behind the introduction of 2018 HB 2738 but had some concern about entirely decriminalizing sexual conduct between children within a certain age range. The Committee believes that the point of having criminal penalties for voluntary sexual conduct between minors is to allow the state to intervene and provide services for juveniles in need, not simply to impose punishment.

As an alternative to 2018 HB 2738, the Committee drafted the proposed amendments to K.S.A. 21-5507 that became HB 2473. Those amendments would change current law as follows:

- Lower the age of the child victim from a range of 14-15 to 10-15;
- Make voluntary intercourse and voluntary sodomy the same severity level, consistent with other statutes;
- Provide that, when an offender is under the age of 13, the offense of unlawful voluntary sexual relations is a class A misdemeanor;
- Reduce penalties for offenders between the ages of 13 to 18 so that they would range from a class A misdemeanor to a severity level 9 person felony, depending on the conduct involved and the difference in age between the offender and child;
- Determine the difference in age based on months rather than years;
- Delete the unconstitutional requirement that the offender and child be members of the opposite sex; and
- Make clear that no offender may be required to register for the offense of unlawful voluntary sexual relations.

The Committee is recommending calculating the age range between the offender and child in months rather than years based on input from Rep. Highberger. He pointed out that two minors who are, for example, 14 and 17 years old may actually be anywhere from 25 months to 47 months apart in age. He suggested that the Committee set the age gap in terms of months rather than years to avoid any misinterpretation, and the Committee agreed.

The Committee understands that prosecutorial discretion plays an important role in when minors are charged for voluntary sexual conduct. The Committee's proposed changes are not intended to encourage prosecutors to charge minors; rather, they are intended to be a more accurate reflection of the seriousness of the conduct involved.

Penalty charts showing offense levels under current law and under HB 2473 are attached.

The members of the Judicial Council Advisory Committee on Sex Offenses and Registration are:

Hon. Ben Sexton, Chair, Abilene; Dickinson County District Judge
Natalie Chalmers, Topeka; Assistant Solicitor General
Sheriff Jeff Cope, Emporia
Jason Covington, Olathe; Johnson County Assistant District Attorney – Sex Crimes Unit
Jeff Cowger, Topeka; Chief Legal Counsel, Kansas Department of Corrections
Dr. Mitchell Flesher, Lenexa; clinical psychologist and attorney
Sen. Randall Hardy, Salina; State Senator from the 24th District
Rep. Susan Humphries, Wichita; State Representative from the 99th District
Rep. Russell Jennings, Lakin; State Representative from the 122nd District
Donna Longworth, Wichita; Sedgwick County Assistant District Attorney – Juvenile Division
Jennifer Roth, Topeka; Appellate Defender
Dionne Scherff, Overland Park; criminal defense attorney
Phil Stein, Shawnee; criminal defense attorney
Seth Wescott, Lenexa; licensed master's level psychologist and sex offender treatment provider
Prof. Corey Rayburn Yung, Lawrence; KU School of Law

Penalties for voluntary sexual contact under HB 2473

| Age of the child | Age of the person being charged | | | | | | | | | | | | | | | | |
|------------------|---------------------------------|----|----|------|------|------|------|------|------|------|-----|--|--|--|--|--|--|
| | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | ≥19 | | | | | | | |
| 10 | A | A | A | 9/10 | 9/10 | 1/3 | 1/3 | 1/3 | 1/3 | OG | ≥19 | | | | | | |
| 11 | A | A | A | A | 9/10 | 9/10 | 1/3 | 1/3 | OG | OG | | | | | | | |
| 12 | A | A | A | A | A | 9/10 | 9/10 | 1/3 | OG | OG | | | | | | | |
| 13 | A | A | A | A | A | A | 9/10 | 9/10 | OG | OG | | | | | | | |
| 14 | A | A | A | A | A | A | A | 9/10 | 9/10 | 3/5 | | | | | | | |
| 15 | A | A | A | A | A | A | A | A | 9/10 | 9/10 | 3/5 | | | | | | |
| ≥16 | | | | | | | | | | | | | | | | | |

| | | |
|---|---|---|
| sexual intercourse sodomy lewd fondling or touching | NA KSA 21-5504(a)(1) NA | NA B nonperson misdemeanor NA |
| sexual intercourse or sodomy lewd fondling or touching | KSA 21-5507(b)(1)(A) KSA 21-5507(b)(2)(A) | A person misdemeanor A person misdemeanor |
| sexual intercourse or sodomy lewd fondling or touching | KSA 21-5507(b)(1)(B) KSA 21-5507(b)(2)(B) | 9 person felony 10 person felony |
| sexual intercourse sodomy lewd fondling or touching | KSA 21-5506(b)(1) KSA 21-5504(a)(3) KSA 21-5506(a)(1) | 3 person felony 3 person felony 5 person felony |
| sexual intercourse sodomy lewd fondling or touching | KSA 21-5503(b)(2) KSA 21-5504(c)(3) KSA 21-5506(c)(3) | off-grid felony off-grid felony off-grid felony |
| sexual intercourse sodomy lewd fondling or touching | KSA 21-5503(b)(1) KSA 21-5504(b)(1) KSA 21-5506(b)(3) | 1 person felony 1 person felony 3 person felony |