

# Criminal Statutes of Limitations

## Kansas

*Last Updated: April 2023*

### Rape

Question	Answer
What is the statute of limitations for this crime?	Rape is a severity Level One (1) or Two (2) person felony, or an off-grid person felony, depending upon the circumstances.  1. A prosecution for rape may be commenced at any time.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5503. 2. Citation for the statute of limitations: Kan. Stat. § 21-5107(a).

### Criminal sodomy; aggravated criminal sodomy

Question	Answer
What is the statute of limitations for this crime?	<p>Criminal sodomy is classified as follows:</p> <ul style="list-style-type: none"><li>• A Class B nonperson misdemeanor if sodomy occurs between persons who are sixteen (16) or more years of age and members of the same sex, or between a person and an animal; or</li><li>• A severity Level Three (3) person felony if sodomy occurs with a child who is fourteen (14) or above but less than sixteen (16), or if the perpetrator causes a child fourteen (14) or above but less than sixteen (16) to engage in sodomy with any person or animal.</li></ul> <p>Aggravated criminal sodomy is classified as follows:</p> <ul style="list-style-type: none"><li>• Severity Level One (1) person felony if: (i) sodomy is with a child who is under fourteen (14) years of age; (ii) the offender causes a child under the age of fourteen (14) to engage in sodomy with any person or animal; or (iii) sodomy is with a victim who does not consent to the sodomy or causes the victim, without the victim's consent, to engage with any person or animal under any of the following circumstances: (a) victim is overcome by force or fear; (b) victim is unconscious or physically powerless; (c) victim is incapable of giving consent because of mental deficiency or disease; or (d) victim is incapable of giving consent because of the effect of any alcohol, narcotic drug or other substance, which condition was known or reasonably apparent to offender; or</li></ul>

	<ul style="list-style-type: none"> <li>• However, in the case of clauses (i) and (ii) above, it is an off-grid person felony if the perpetrator is aged eighteen (18) years old or above.</li> </ul> <p>The statute of limitations is as follows:</p> <ol style="list-style-type: none"> <li>1. For criminal sodomy: <ul style="list-style-type: none"> <li>• When the victim is eighteen (18) years of age or older, prosecution must be commenced within ten (10) years of the occurrence of the violation, or within one (1) year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.</li> <li>• When the victim is less than eighteen (18) years of age, prosecution may be commenced at any time.</li> </ul> </li> <li>2. For aggravated criminal sodomy: A prosecution for aggravated criminal sodomy may be commenced at any time.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Kan. Stat. § 21-5504.</li> <li>2. Citation for the statute of limitations: Kan. Stat. §§ 21-5107, 22-3717.</li> </ol> <p>Note: The portion of the criminal sodomy statute that prohibits consensual acts of anal intercourse between consenting adults (individuals aged 16 or older) of the same sex (Kan. Stat. § 21-5504(a)(1)) was found unconstitutional and unenforceable in <i>State v. Franco</i>, 49 Kan. App. 2d 924, 934-35, 319 P.3d 551, 558 (2014), <u>review denied</u> (Apr. 29, 2015), and new legislation was introduced amending § 21-554(a)(1) to eliminate sodomy between persons who are 16 or more years of age and members of the same sex as a punishable offense. See 2021 Kansas House Bill No. 2223, Kansas Eighty-Ninth Legislature 2021 Regular Session.</p>

## Sexual battery; aggravated sexual battery

Question	Answer
What is the statute of limitations for this crime?	<p>Sexual battery is a Class A person misdemeanor. Aggravated sexual battery is a severity Level Five (5) person felony.</p> <p>The statute of limitations is as follows:</p> <ol style="list-style-type: none"> <li>1. For sexual battery, a prosecution must be commenced within five (5) years after the crime is committed.</li> <li>2. For aggravated sexual battery, when the victim is eighteen (18) years of age or older, prosecution must be commenced within ten (10) years of the occurrence of the violation, or one (1) year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later. When the victim is less than eighteen (18) years of age, prosecution may be commenced at any time.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Kan. Stat. § 21-5505.</li> <li>2. Citation for the statute of limitations: Kan. Stat. §§ 21-5107; 22-3717.</li> </ol>

## Indecent liberties with a child; aggravated indecent liberties with a child

Question	Answer
What is the statute of limitations for this crime?	<p>This offense is classified as follows:</p> <ul style="list-style-type: none"> <li>• Indecent liberty with a child is a severity Level Five (5) person felony.</li> <li>• Aggravated indecent liberties with a child is a severity Level Three (3) or Four (4) person felony, depending upon the circumstances.</li> <li>• If, however, the offender is eighteen (18) years or older, and the victim is under the age of fourteen (14), and he/she commits or attempts, conspires or solicits to commit aggravated indecent liberties, this offense constitutes an off-grid person felony.</li> </ul> <p>The statute of limitations is as follows:</p> <ol style="list-style-type: none"> <li>1. Prosecution may be commenced at any time.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Kan. Stat. § 21-5506.</li> <li>2. Citation for the statute of limitations: Kan. Stat. §§ 21-5107, 22-3717.</li> </ol>

## Unlawful voluntary sexual relations

Question	Answer
What is the statute of limitations for this crime?	<p>Unlawful voluntary sexual relations is a severity Level Eight (8), Nine (9) or Ten (10) person felony depending upon the circumstances.</p> <ol style="list-style-type: none"> <li>1. A prosecution must commence within five (5) years after the crime is committed.</li> </ol>
Statutory citation(s):	<ol style="list-style-type: none"> <li>1. Citation for the crime: Kan. Stat. § 21-5507.</li> <li>2. Citation for the statute of limitations: Kan. Stat. § 21-5107.</li> </ol> <p>Note: This statute was held unconstitutional by <i>State v. Limon</i>, 280 Kan. 275, 122 P.3d 22 (2005), resulting in the Kansas Supreme Court striking the unconstitutional language, and there is newly proposed legislation that limits the statute's application to members of the opposite sex. See 2021 Kansas House Bill No. 2347, Kansas Eighty-Ninth Legislature 2021 Regular Session.</p>

## **Indecent solicitation of a child; aggravated indecent solicitation of a child**

Question	Answer
What is the statute of limitations for this crime?	Indecent solicitation of a child is a severity Level Six (6) person felony. Aggravated indecent solicitation of a child is a severity Level Five (5) person felony.  1. Prosecution may be commenced at any time.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5508. 2. Citation for the statute of limitations: Kan. Stat. §§ 21-5107.

## **Electronic solicitation**

Question	Answer
What is the statute of limitations for this crime?	Electronic solicitation is a severity Level Three (3) person felony if the offender believes the child to be aged fourteen (14) or more years of age but less than sixteen (16), and a severity Level One (1) person felony if the offender believes the child to be under fourteen (14) years of age.  1. A prosecution must commence within five (5) years after the crime is committed.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5509. 2. Citation for the statute of limitations: Kan. Stat. § 21-5107.

## **Sexual exploitation of a child**

Question	Answer
----------	--------

What is the statute of limitations for this crime?	Sexual exploitation of a child is a severity Level Five (5) or Three (3) person felony, or an off-grid person felony, depending upon the circumstances.  1. Prosecution may be commenced at any time.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5510. 2. Citation for the statute of limitations: Kan. Stat. §§ 21-5107 and 22-3717.

## Unlawful sexual relations

Question	Answer
What is the statute of limitations for this crime?	Unlawful sexual relations is a severity Level Four (4) or Five (5) person felony, depending upon the circumstances.  Prosecution must commence within five (5) years after the crime is committed.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5512. 2. Citation for the statute of limitations: Kan. Stat. § 21-5107.

## Internet trading in child pornography; aggravated internet trading in child pornography

Question	Answer
What is the statute of limitations for this crime?	Internet trading in child pornography is a severity Level Five (5) person felony. Aggravated internet trading in child pornography is a severity Level Three (3) person felony or an off-grid person felony if the victim is under fourteen (14) years of age.  1. Prosecution may be commenced at any time.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5514. 2. Citation for the statute of limitations: Kan. Stat. § 21-5107.

## **Incest; aggravated incest**

Question	Answer
What is the statute of limitations for this crime?	<p>Incest is a severity Level Ten (10) person felony. Aggravated incest is a severity Level Five (5) person felony if it involves sexual intercourse or sodomy, severity Level Three (3) person felony if the victim is the offender's biological, step or adoptive child, or a severity Level Seven (7) person felony if it involves lewd touching.</p> <ol style="list-style-type: none"><li>1. For Incest: Prosecution must commence within five (5) years after the crime is committed.</li><li>2. For Aggravated Incest: When the victim is eighteen (18) years of age or older, prosecution must be commenced within ten (10) years of the occurrence of the violation, or one (1) year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later. When the victim is less than eighteen (18) years of age, prosecution may be commenced at any time.</li></ol>
Statutory citation(s):	<ol style="list-style-type: none"><li>1. Citation for the crime: Kan. Stat. § 21-5604.</li><li>2. Citation for the statute of limitations: Kan. Stat. § 21-5107</li></ol>

## **Exposing another to a life threatening communicable disease**

Question	Answer
What is the statute of limitations for this crime?	<p>Exposing another to a life-threatening communicable disease is a severity Level Seven (7) person felony.</p> <ol style="list-style-type: none"><li>1. Prosecution must commence within five (5) years after the crime is committed.</li></ol>
Statutory citation(s):	<ol style="list-style-type: none"><li>1. Citation for the crime: Kan. Stat. § 21-5424.</li><li>2. Citation for the statute of limitations: Kan. Stat. § 21-5107.</li></ol>

## **Female genital mutilation**

Question	Answer
----------	--------

What is the statute of limitations for this crime?	Female genital mutilation is a severity Level Three (3) person felony. 1. Prosecution must commence within five (5) years after the crime is committed.
Statutory citation(s):	1. Citation for the crime: Kan. Stat. § 21-5431. 2. Citation for the statute of limitations: Kan. Stat. § 21-5107.

### Are there any exceptions to the statute of limitations laws?

Question	Answer
Are there any exceptions to the statute of limitations laws?	<ul style="list-style-type: none"> <li>• The period within which a prosecution must be commenced shall not include any period in which: <ul style="list-style-type: none"> <li>• the accused is absent from the state;</li> <li>• the accused is concealed within the state so that process cannot be served upon the accused;</li> <li>• the fact of the crime is concealed;</li> <li>• a prosecution is pending against the defendant for the same conduct;</li> <li>• an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it;</li> </ul> </li> <li>• whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: <ul style="list-style-type: none"> <li>• the victim was a child under fifteen (15) years of age at the time of the crime;</li> <li>• the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;</li> <li>• the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and</li> <li>• there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns twenty-eight (28) years of age. Kan. Stat. § 21-5107(e).</li> </ul> </li> </ul>

## Anything else I should know?

Question	Answer
Anything else I should know?	<ul style="list-style-type: none"> <li>• <i>State v. Bentley</i>, 1986, 239 Kan. 334, 721 P.2d 227:               <ul style="list-style-type: none"> <li>• Threat by uncle who allegedly sexually abused nine-year-old niece that if she told anybody, he would “try to do it again” did not constitute “concealment” which would have excepted the crime from the two-year criminal statute of limitations.</li> </ul> </li> <li>• <i>State v. Donham</i>, 2001, 24 P.3d 750, 29 Kan.App.2d 78:               <ul style="list-style-type: none"> <li>• Because sexual exploitation of a child, by possessing material depicting a child engaged in sexually explicit conduct, requires a specific intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another, that crime is not a “continuing offense.”</li> </ul> </li> <li>• <i>State v. Mills</i>, 1985, 238 Kan. 189, 707 P.2d 1079:               <ul style="list-style-type: none"> <li>• To constitute concealment of fact of a crime sufficient to toll statute of limitations, there must be positive act done by or on behalf of accused calculated to prevent discovery of fact of the crime; mere silence, inaction or nondisclosure by the accused is not concealment of fact of crime.</li> </ul> </li> <li>• An offense is deemed committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant’s complicity therein is terminated. Time starts to run on the day after the offense is committed. Kan. Stat. § 21-5107(f).</li> <li>• A prosecution is deemed commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay. Kan. Stat. § 21-5107(g).</li> </ul>