

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2127**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2127 would permit a criminal prosecution for childhood sexual abuse to be commenced at any time, extend the time to file a civil action for recovery of damages resulting from childhood sexual abuse, and provide exceptions in the Kansas Tort Claims Act (KTCA) for claims arising from such abuse.

Criminal Prosecution (Section 2)

The bill would add the crime of childhood sexual abuse, as defined by the bill, to the list of crimes in which a criminal prosecution may be commenced at any time. [*Note:* Current law provides that the prosecution for the crimes of rape, aggravated criminal sodomy, murder, terrorism, or illegal use of weapons of mass destruction may be prosecuted at any time.]

For the purposes of the bill, “childhood sexual abuse” would mean any of the following crimes, as defined by the Kansas Criminal Code, when the victim is under 18 years of age:

- Indecent liberties with a child or aggravated indecent liberties with a child;
- Criminal sodomy;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Enticement of a child;
- Indecent solicitation of a child or aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography; or
- Commercial sexual exploitation of a child.

Limitations on Civil Actions (Section 3)

The bill would amend law governing the limitations on civil actions for recovery of damages suffered as a result of childhood sexual abuse to allow such actions be commenced within the following time frames, whichever occurs later:

- No more than 13 years after the date the victim turns 18 years of age; or
- No more than three years after the date of a criminal conviction for a crime related to childhood sexual abuse, as specified by the bill.

Under current law, such actions may be brought no more than three years after the victim turns 18, or no more than three years after the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse.

In addition, the bill would clarify that the damages recovered for childhood sexual abuse would include those for illness or injury suffered as a result of such abuse, would remove language concerning the discovery of the injury or illness that was caused by childhood sexual abuse to reflect the amendments made by the bill, and would make a technical amendment to remove a reference to actions pending on July 1, 1992.

Kansas Tort Claims Act (Sections 1, 4, and 5)

Written Notice of Claim Against Municipality (Section 1)

The bill would amend law governing the procedure for payment of claims against a municipality to exempt civil childhood sexual abuse claims from the general requirement that persons with claims against a municipality or its employees under the KTCA must provide a written notice of such claims before commencing an action as provided by the section.

Exceptions (Section 4)

The bill would amend law governing exceptions from liability under the KTCA for a governmental entity or an employee acting within the scope of the employee's employment to allow claims related to childhood sexual abuse in the following circumstances:

- For injuries resulting from the use of any public property intended or permitted to be used as a park, playground, or open area for recreational purposes, if the employee of the governmental entity commits childhood sexual abuse; and
- For claims arising from providing a juvenile justice program to juvenile offenders also involves a claim for childhood sexual abuse.

The bill would state certain exceptions to liability specified in the KTCA would not be construed to preclude prohibit, or otherwise limit, a claim for damages arising from childhood sexual abuse.

In addition, in determining the question of a governmental entity's negligence, the trier of fact could consider:

- Failure of a governmental entity to adopt or enforce a policy, regulation, or law related to childhood sexual abuse; and
- Failure to exercise reasonable discretion in the supervision of a governmental employee who commits childhood sexual abuse.

Maximum Liability for Claims; Punitive or Exemplary Damages (Section 5)

The bill would specify any claim for recovery of damages against a governmental entity arising from childhood sexual abuse would not be subject to provisions in the KTCA limiting liability to \$500,000 for claims arising out of a single occurrence. Childhood sexual abuse claims against a governmental entity would also not be subject to the general prohibition on punitive or exemplary damages or awards for pre-judgment interest in claims within the scope of the KTCA.

Technical Amendments

The bill would make technical changes to ensure consistency in statutory phrasing.

Background

The Senate Committee on Judiciary recommended a substitute bill containing modified contents of SB 317,

pertaining to criminal and civil actions for childhood sexual abuse.. [Note: The provisions of HB 2127 were not retained in the substitute bill, but are contained in HB 2130, as amended by the Senate Committee on Judiciary.]

SB 317

Senate Committee on Judiciary

In the Senate Committee hearing on March 23, 2023, Senator Reddi and representatives of the Child USA and the Metropolitan Organization to Counter Sexual Assault provided **proponent** testimony. Twelve private citizens also testified as proponents, sharing their stories of childhood sexual abuse and expressing support for the bill's expansion of criminal and civil liability for perpetrators of childhood sexual abuse. Written-only proponent testimony was provided by Senator Holscher, a representative of the Kansas Coalition Against Sexual and Domestic Violence, and four private citizens.

Written-only neutral testimony was provided by representatives of the Kansas Association of Property and Casualty Insurance Companies, the Kansas Bar Association, and the League of Kansas Municipalities.

No other testimony was provided.

The Senate Committee amendments:

- Clarify a civil action for recovery of damages suffered as a result of childhood sexual abuse could include damages for an injury or illness related to such abuse;
- Reinsert a definition of "injury or illness" in the section governing limitations on civil actions; and
- Modify the list of crimes specified in the section governing limitations on civil actions to mirror those

crimes specified in the section governing criminal prosecutions.

The Senate Committee recommended a substitute bill incorporating its amendments to SB 317.

Fiscal Information

SB 317

According to the fiscal note prepared by the Division of the Budget on SB 317, as introduced, the Office of Judicial Administration (OJA) states enactment of the bill could increase the number of cases filed in district court, which would increase the time spent by judges and court employees processing and hearing cases. OJA also states enactment of the bill could result in the collection of docket fees in those cases filed under the bill's provisions, which would be credited to the State General Fund. OJA states a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The Office of the Attorney General states the agency is unable to estimate a fiscal effect as a result of any future civil lawsuits that could be filed against the state related to childhood sexual abuse. The agency also indicates because of the removal of damage caps, there could also be a fiscal effect on the Tort Claims Fund; however, the agency is not able to estimate a precise fiscal effect.

The Kansas Sentencing Commission estimates that enactment of the bill could increase prison admissions and the number of beds needed, but a precise effect cannot be determined. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties states there could be increased costs related to prosecutions; however, the

Association does not have enough information to estimate a fiscal effect related to prosecution expenditures.

The League of Kansas Municipalities declined the Division of the Budget's request for a fiscal effect.

Childhood sexual abuse; statute of limitations; prosecution; crimes; civil actions;
Kansas Tort Claims Act