

HOUSE BILL No. 2779

By Committee on Federal and State Affairs

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RS - JThompson - 03/15/12

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to human trafficking; human trafficking advisory board; establishing  
3 the human trafficking victim assistance fund; creating the crime of  
4 commercial sexual exploitation of a child; relating to selling sexual  
5 relations; promoting the sale of sexual relations; buying sexual  
6 relations; amending K.S.A. 2011 Supp. 21-6419, 21-6420, 21-6421, 21-  
7 6614, 21-6626, 21-6627, 21-6815, 22-2515, 22-3717, 22-4902, 22-  
8 4906, 38-2243, 38-2260 and 38-2312 and repealing the existing  
9 sections; also repealing K.S.A. 2011 Supp. 21-6614a, 21-6614b, 21-  
10 6614c, 22-4902a, 22-4906a, 38-2312a and 38-2312b.  
11

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

13 New Section 1. The attorney general, in consultation with other  
14 appropriate state agencies, is authorized to coordinate training regarding  
15 human trafficking for law enforcement agencies throughout Kansas.

16 New Sec. 2. The human trafficking advisory board established by the  
17 attorney general is hereby designated the official human trafficking  
18 advisory board for the state of Kansas.

19 New Sec. 3. There is hereby established in the state treasury the  
20 human trafficking victim assistance fund. All moneys credited to such  
21 fund shall be used to pay for the training required by section 1, and  
22 amendments thereto, and to support secure care, treatment and other  
23 services for victims of human trafficking and commercial sexual  
24 exploitation of a child. All expenditures from such fund shall be made in  
25 accordance with appropriation acts, upon warrants of the director of  
26 accounts and reports issued pursuant to vouchers approved by the attorney  
27 general or the attorney general's designee.

28 New Sec. 4. (a) Commercial sexual exploitation of a child is  
29 knowinglly:

30 (1) Giving, receiving, offering or agreeing to give, or offering or  
31 agreeing to receive anything of value to perform any of the following acts:

32 (A) Procuring, recruiting, inducing, soliciting, hiring or otherwise  
33 obtaining any person younger than 18 years of age to engage in sexual  
34 intercourse, sodomy or manual or other bodily contact stimulation of the  
35 genitals of any person with the intent to arouse or gratify the sexual desires  
36 of the offender or another; or

1 witnesses. Such restraining order shall be served by personal service  
2 pursuant to subsection (a) of K.S.A. 2011 Supp. 38-2237, and amendments  
3 thereto, on any alleged perpetrator to whom the order is directed.

4 (i) (1) The court shall not enter the initial order removing a child from  
5 the custody of a parent pursuant to this section unless the court first finds  
6 probable cause that: (A)(i) the child is likely to sustain harm if not  
7 immediately removed from the home;

8 (ii) allowing the child to remain in home is contrary to the welfare of  
9 the child; or

10 (iii) immediate placement of the child is in the best interest of the  
11 child; and

12 (B) reasonable efforts have been made to maintain the family unit and  
13 prevent the unnecessary removal of the child from the child's home or that  
14 an emergency exists which threatens the safety to the child.

15 (2) Such findings shall be included in any order entered by the court.  
16 If the child is placed in the custody of the secretary, upon making the order  
17 the court shall provide the secretary with a written copy.

18 (f) If the court enters an order of temporary custody that provides for  
19 placement of the child with a person other than the parent, the court shall  
20 make a child support determination pursuant to K.S.A. 2011 Supp. 38-  
21 2277, and amendments thereto.

22 Sec. 17. K.S.A. 2011 Supp. 38-2260 is hereby amended to read as  
23 follows: 38-2260. (a) ~~Valid court order orders.~~ (1) During proceedings  
24 under this code, the court may enter an order directing a child who is the  
25 subject of the proceedings to remain in a present or future placement if:

26 (†) (A) The child and the child's guardian *ad litem* are present in court  
27 when the order is entered;

28 (‡) (B) the court finds that the child has been adjudicated a child in  
29 need of care pursuant to subsections (d)(6), (d)(7), (d)(8), (d)(9), (d)(10) or  
30 (d)(12) of K.S.A. 2011 Supp. 38-2202, and amendments thereto, and that  
31 the child is not likely to be available within the jurisdiction of the court for  
32 future proceedings;

33 (‡) (C) the child and the guardian *ad litem* receive oral and written  
34 notice of the consequences of violation of the order; and

35 (‡) (D) a copy of the written notice is filed in the official case file.

36 (2) (A) ~~When a child is placed in protective custody pursuant to an ex~~  
37 ~~parte order entered under K.S.A. 2011 Supp. 38-2242, and amendments~~  
38 ~~thereto, the court may directly place the child with a secure facility—youth—~~

authorize placement

39 ~~residential facility or juvenile detention facility if the court finds that there~~  
40 ~~is probable cause to believe the child: (i) Has been subjected to human~~  
41 ~~trafficking or aggravated human trafficking as defined by K.S.A. 2011~~  
42 ~~Supp. 21-5426, and amendments thereto, or commercial sexual~~  
43 ~~exploitation of a child as defined by section 4, and amendments thereto, or~~

1 committed an act which, if committed by an adult, would constitute a  
 2 violation of K.S.A. 2011 Supp. 21-6419, and amendments thereto, selling  
 3 sexual relations; and (ii) has a history of running as described in  
 4 subsection (d)(9) of K.S.A. 2011 Supp. 38-2202, and amendments thereto,  
 5 or is not likely to remain in a foster home or similarly restrictive  
 6 placement. Such placement is limited until a valid temporary court order  
 7 pursuant to this section is entered.

8 (B) When a temporary custody hearing has been held pursuant to  
 9 subsection (b)(4) or (b)(5) of K.S.A. 2011 Supp. 38-2243, and amendments  
 10 thereto, the court may directly place the child with a secure facility; youth-  
 11 residential facility; or juvenile detention facility if the court finds that there  
 12 is probable cause to believe the child: (i) Has been subjected to human  
 13 trafficking or aggravated human trafficking as defined by K.S.A. 2011  
 14 Supp. 21-5426, and amendments thereto, or commercial sexual  
 15 exploitation of a child as defined by section 4, and amendments thereto, or  
 16 committed an act which, if committed by an adult, would constitute a  
 17 violation of K.S.A. 2011 Supp. 21-6419, and amendments thereto, or  
 18 sexual relations; and (ii) has a history of running as described in  
 19 subsection (d)(9) of K.S.A. 2011 Supp. 38-2202, and amendments thereto,  
 20 or is not likely to remain in a foster home or similarly restrictive  
 21 placement. Such placement is limited until a valid dispositional court  
 22 order pursuant to this section is entered.

authorize placement

23 (C) When a child has been adjudicated a child in need of care  
 24 pursuant to K.S.A. 2011 Supp. 38-2251, and amendments thereto, and the  
 25 court is entering dispositional orders pursuant to K.S.A. 2011 Supp. 38-  
 26 2255, and amendments thereto, the court may directly place the child with  
 27 a secure facility; youth-residential facility; or juvenile detention facility if  
 28 the court finds that there is clear and convincing evidence to believe the  
 29 child: (i) Has been subjected to human trafficking or aggravated human  
 30 trafficking as defined by K.S.A. 2011 Supp. 21-5426, and amendments  
 31 thereto, or commercial sexual exploitation of a child as defined by section  
 32 4, and amendments thereto, or committed an act which, if committed by an  
 33 adult, would constitute a violation of K.S.A. 2011 Supp. 21-6419, and  
 34 amendments thereto, selling sexual relations; and (ii) has a history of  
 35 running as described in subsection (d)(9) of K.S.A. 2011 Supp. 38-2202,  
 36 and amendments thereto, or is not likely to remain in a foster home or  
 37 similarly restrictive placement.  
 38 (D) Except as provided further, the length of such secure placement  
 39 under this subsection shall not exceed 90 days. Upon a finding of  
 40 necessity, the court may extend the period of detention for additional  
 41 increments of 30 days, not to exceed 180 days, notwithstanding any other  
 42 provision of chapter 38 of the Kansas Statutes Annotated, and  
 43 amendments thereto. Notwithstanding any other provision of law, an

authorize placement

placement authorization

*adjudication-of-the-child-as-a-child-in-need-of-care-is-not-required.*

(b) *Application.* Any person may file a verified application for determination that a child has violated an order entered pursuant to subsection (a) and for an order authorizing holding the child in a secure facility or juvenile detention facility. The application shall state the applicant's belief that the child has violated the order entered pursuant to subsection (a) without good cause and the specific facts supporting the allegation.

(c) *Ex parte order.* After reviewing the application filed pursuant to subsection (b), the court may enter an *ex parte* order directing that the child be taken into custody and held in a secure facility or juvenile detention facility designated by the court, if the court finds probable cause that the child violated the court's order to remain in placement without good cause. Pursuant to K.S.A. 2011 Supp. 38-2237, and amendments thereto, the order shall be served on the child's parents, the child's legal custodian and the child's guardian *ad litem*.

(d) *Preliminary hearing.* Within 24 hours following a child's being taken into custody pursuant to an order issued under subsection (c), the court shall hold a preliminary hearing to determine whether the child admits or denies the allegations of the application and, if the child denies the allegations, to determine whether probable cause exists to support the allegations.

(1) Notice of the time and place of the preliminary hearing shall be given orally or in writing to the child's parents, the child's legal custodian and the child's guardian *ad litem*.

(2) At the hearing, the child shall have the right to a guardian *ad litem* and shall be served with a copy of the application.

(3) If the child admits the allegations or enters a no contest statement and if the court finds that the admission or no contest statement is knowledgeable and voluntary, the court shall proceed without delay to the placement hearing pursuant to subsection (f).

(4) If the child denies the allegations, the court shall determine whether probable cause exists to hold the child in a secure facility or juvenile detention facility pending an evidentiary hearing pursuant to subsection (e). After hearing the evidence, if the court finds that: (A) There is probable cause to believe that the child has violated an order entered pursuant to subsection (a) without good cause; and (B) placement in a secure facility or juvenile detention facility is necessary for the protection of the child or to assure the presence of the child at the evidentiary hearing pursuant to subsection (e), the court may order the child held in a secure facility or juvenile detention facility pending the evidentiary hearing.

(e) *Evidentiary hearing.* The court shall hold an evidentiary hearing on an application within 72 hours of the child's being taken into custody.

1 Notice of the time and place of the hearing shall be given orally or in  
2 writing to the child's parents, the child's legal custodian and the child's  
3 guardian *ad litem*. At the evidentiary hearing, the court shall determine by  
4 a clear and convincing evidence whether the child has:

5 (1) Violated a court order entered pursuant to subsection (a) without  
6 good cause;

7 (2) been provided at the hearing with the rights enumerated in  
8 subsection (d)(2); and

9 (3) been informed of:

10 (A) The nature and consequences of the proceeding;

11 (B) the right to confront and cross-examine witnesses and present  
12 evidence;

13 (C) the right to have a transcript or recording of the proceedings; and

14 (D) the right to appeal.

15 (f) *Placement.* (1) If the child admits violating the order entered  
16 pursuant to subsection (a) or if, after an evidentiary hearing, the court finds  
17 that the child has violated such an order, the court shall immediately  
18 proceed to a placement hearing. The court may enter an order awarding  
19 custody of the child to:

20 (A) A parent or other legal custodian;

21 (B) a person other than a parent or other person having custody, who  
22 shall not be required to be licensed under article 5 of chapter 65 of the  
23 Kansas Statutes Annotated, and amendments thereto;

24 (C) a youth residential facility; or

25 (D) the secretary, if the secretary does not already have legal custody  
26 of the child.

27 (2) The court may authorize the custodian to place the child in a  
28 secure facility or juvenile detention facility, if the court determines that all  
29 other placement options have been exhausted or are inappropriate, based  
30 upon a written report submitted by the secretary, if the child is in the  
31 secretary's custody, or submitted by a public agency independent of the  
32 court and law enforcement, if the child is in the custody of someone other  
33 than the secretary. The report shall detail the behavior of the child and the  
34 circumstances under which the child was brought before the court and  
35 made subject to the order entered pursuant to subsection (a).

36 (3) The authorization to place the child in a secure facility or juvenile  
37 detention facility pursuant to this subsection shall expire 60 days, inclusive  
38 of weekend and legal holidays, after its issue. The court may grant  
39 extensions of such authorization for two additional periods, each not to  
40 exceed 60 days, upon rehearing pursuant to K.S.A. 2011 Supp. 38-2256,  
41 and amendments thereto.

42 (g) *Payment.* The secretary shall only pay for placement and services  
43 for a child placed in a secure facility or juvenile detention facility pursuant

1 to subsection (f) upon receipt of a valid court order authorizing secure care  
2 placement.

3 (h) *Limitations on facilities used.* Nothing in this section shall  
4 authorize placement of a child in an adult jail or lockup.

5 (i) *Time limits, computation.* Except as otherwise specifically  
6 provided by subsection (f), Saturdays, Sundays, legal holidays, and days  
7 on which the office of the clerk of the court is not accessible shall not be  
8 counted in computing any time limit imposed by this section.

9 Sec. 18. K.S.A. 2011 Supp. 38-2312 is hereby amended to read as  
10 follows: 38-2312. (a) Except as provided in subsection (b) *and (c)*, any  
11 records or files specified in this code concerning a juvenile may be  
12 expunged upon application to a judge of the court of the county in which  
13 the records or files are maintained. The application for expungement may  
14 be made by the juvenile, if 18 years of age or older or, if the juvenile is  
15 less than 18 years of age, by the juvenile's parent or next friend.

16 (b) There shall be no expungement of records or files concerning acts  
17 committed by a juvenile which, if committed by an adult, would constitute  
18 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-  
19 5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,  
20 prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto,  
21 murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A.  
22 2011 Supp. 21-5404, and amendments thereto, voluntary manslaughter;  
23 K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and  
24 amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to  
25 its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto, capital  
26 murder; K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A.  
27 2011 Supp. 21-5405, and amendments thereto, involuntary manslaughter  
28 while driving under the influence of alcohol or drugs; K.S.A. 21-3502,  
29 prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto,  
30 rape; K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011  
31 Supp. 21-5506, and amendments thereto, indecent liberties with a child;  
32 K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp.  
33 21-5506, and amendments thereto, aggravated indecent liberties with a  
34 child; K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011  
35 Supp. 21-5504, and amendments thereto, aggravated criminal sodomy;  
36 K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp.  
37 21-5508, and amendments thereto, indecent solicitation of a child; K.S.A.  
38 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-  
39 5508, and amendments thereto, aggravated indecent solicitation of a child;  
40 K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and  
41 amendments thereto, sexual exploitation; K.S.A. 21-3603, prior to its  
42 repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments  
43 thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or