



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee
Monday, January 28, 2013

Mark Gleeson, Director of Trial Court Programs, Office of Judicial Administration

Neutral Testimony Requesting Amendments to 2013 SB 61

Thank you for the opportunity to request two amendments to 2013 SB 61. I was a member of the Attorney General's Human Trafficking Advisory Board, which worked on this bill. Additionally, I serve as the Chair of the Compliance Committee for the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention. I am pleased to say that the bill's provisions regarding a staff secure facility, as defined in New Section 6 and Section 31 of the bill, appear to address concerns previously raised regarding compliance with the federal Juvenile Justice and Delinquency Prevention Act. This was a significant problem with the human trafficking bill introduced last year, and I believe that concern has been resolved with this version of the bill.

I am requesting two amendments to the bill, as shown on the attached balloon amendment. Both amendments address the same issue and are found in New Section 4 and Section 18 of the bill.

There are two reasons for the requested amendments. First, the language in New Section 4 and Section 18 is inconsistent regarding whether the court "may" (as provided in New Section 4) or "shall" (as provided in Section 18) order the person into an educational and treatment program. The proposed amendment to New Section 4 would provide that the court "may" order the person into an educational and treatment program, giving the court discretion in both sections of the bill. One reason this is important is that educational and treatment programs may not be available or accessible in all sections of the state at any given time.

The second proposed amendment would require that the educational and treatment program referenced in the bill be evidence-based. This means, among other things, that the programs must be able to demonstrate outcomes for success. The current bill language sets no standard for performance and would allow anyone, regardless of education, experience, or background, to provide an educational and treatment program. Over the past few years, the Legislature has required the courts and corrections to use evidence-based practices in the supervision and treatment of offenders. This same standard should be applied to the sentencing options for offenders convicted of commercial sexual exploitation of a child (New Section 4) or

2013 SB 61
January 28, 2013
Page 2

hiring a person selling sexual relations (Section 18). I have done some preliminary research in this area in anticipation of implementing the provisions of this bill, and I have not been able to find an existing evidence-based educational and treatment program. While these programs are being developed and tested, it is important that judges have discretion in this regard, and that they not be required to order a person into a program that may or may not exist.

I appreciate the opportunity to testify and your attention to the attached balloon amendment. I would be happy to respond to any questions you might have.

1 and runaway services;

2 (14) academic researchers who are dedicated to the subject of human
3 trafficking;

4 (15) any other federal, state, or local government entity deemed
5 necessary by the attorney general; and

6 (16) any other private sector or nongovernmental organization
7 deemed necessary by the attorney general.

8 New Sec. 3. There is hereby established in the state treasury the
9 human trafficking victim assistance fund. All moneys credited to such fund
10 shall be used to pay for the training authorized by section 1, and
11 amendments thereto, and to support care, treatment and other services for
12 victims of human trafficking and commercial sexual exploitation of a
13 child. All expenditures from such fund shall be made in accordance with
14 appropriation acts, upon warrants of the director of accounts and reports
15 issued pursuant to vouchers approved by the attorney general or the
16 attorney general's designee.

17 New Sec. 4. (a) Commercial sexual exploitation of a child is
18 knowingly:

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

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

26 (B) Procuring, recruiting, inducing, soliciting, hiring or otherwise
27 obtaining a patron where there is an exchange of value, for any person
28 younger than 18 years of age to engage in sexual intercourse, sodomy or
29 manual or other bodily contact stimulation of the genitals of any person
30 with the intent to arouse or gratify the sexual desires of the patron, the
31 offender or another;

32 (2) establishing, owning, maintaining or managing any property,
33 whether real or personal, where sexual relations are being sold or offered
34 for sale by a person younger than 18 years of age, or participating in the
35 establishment, ownership, maintenance or management thereof;

36 (3) permitting any property, whether real or personal, partially or
37 wholly owned or controlled by the defendant to be used as a place where
38 sexual relations are being sold or offered for sale by a person who is
39 younger than 18 years of age; or

40 (4) procuring transportation for, paying for the transportation of or
41 transporting any person younger than 18 years of age within this state with
42 the intent of causing, assisting or promoting that person's engaging in
43 selling sexual relations.

1 (b) (1) Commercial sexual exploitation of a child is a:

2 (A) Severity level 5, person felony, except as provided in subsections
3 (b)(1)(B) and (b)(2); and

4 (B) severity level 2, person felony when committed by a person who
5 has, prior to the commission of the crime, been convicted of a violation of
6 this section, except as provided in subsection (b)(2).

7 (2) Commercial sexual exploitation of a child or attempt, conspiracy
8 or criminal solicitation to commit commercial sexual exploitation of a
9 child is an off-grid person felony when the offender is 18 years of age or
10 older and the victim is less than 14 years of age.

11 (3) In addition to any other sentence imposed, a person convicted
12 under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more
13 than \$5,000. In addition to any other sentence imposed, a person convicted
14 under subsection (b)(1)(B) or subsection (b)(2) shall be fined not less than
15 \$5,000. All fines collected pursuant to this section shall be remitted to the
16 human trafficking victim assistance fund created by section 3, and
17 amendments thereto.

18 (4) In addition to any other sentence imposed, for any conviction
19 under this section, the court may order the person convicted to enter into
20 and complete a suitable educational and treatment program regarding
21 commercial sexual exploitation of a child.

22 (c) If the offender is 18 years of age or older and the victim is less
23 than 14 years of age, the provisions of:

24 (1) Subsection (c) of K.S.A. 2012 Supp. 21-5301, and amendments
25 thereto, shall not apply to a violation of attempting to commit the crime of
26 commercial sexual exploitation of a child pursuant to this section;

27 (2) subsection (c) of K.S.A. 2012 Supp. 21-5302, and amendments
28 thereto, shall not apply to a violation of conspiracy to commit the crime of
29 commercial sexual exploitation of a child pursuant to this section; and

30 (3) subsection (d) of K.S.A. 2012 Supp. 21-5303, and amendments
31 thereto, shall not apply to a violation of criminal solicitation to commit the
32 crime of commercial sexual exploitation of a child pursuant to this section.

33 (d) This section shall be part of and supplemental to the Kansas
34 criminal code.

35 New Sec. 5. (a) Whenever a child is in custody, as defined in K.S.A.
36 2012 Supp. 38-2202, and amendments thereto, and such child has been
37 subjected to human trafficking or aggravated human trafficking, as defined
38 by K.S.A. 2012 Supp. 21-5426, and amendments thereto, or commercial
39 sexual exploitation of a child, as defined by section 4, and amendments
40 thereto, or the child committed an act which, if committed by an adult,
41 would constitute a violation of K.S.A. 2012 Supp. 21-6419, and
42 amendments thereto, the court shall refer the child to the secretary of the
43 department for children and families for an assessment to determine safety,

an
evidence
based

1 14 years of age.

2 (e) If the offender is 18 years of age or older and the victim is less
3 than 14 years of age, the provisions of:

4 (1) ~~Subsection (e) of K.S.A. 2012 Supp. 21-5301, and amendments~~
5 ~~thereto, shall not apply to a violation of attempting to commit the crime of~~
6 ~~promoting prostitution as described in subsection (b)(2);~~

7 (2) ~~subsection (e) of K.S.A. 2012 Supp. 21-5302, and amendments~~
8 ~~thereto, shall not apply to a violation of conspiracy to commit the crime of~~
9 ~~promoting prostitution as described in subsection (b)(2); and~~

10 (3) ~~subsection (d) of K.S.A. 2012 Supp. 21-5303, and amendments~~
11 ~~thereto, shall not apply to a violation of criminal solicitation to commit the~~
12 ~~crime of promoting prostitution as described in subsection (b)(2).~~

13 (2) *In addition to any other sentence imposed, a person convicted*
14 *under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more*
15 *than \$5,000. In addition to any other sentence imposed, a person*
16 *convicted under subsection (b)(1)(B) shall be fined not less than \$5,000.*
17 *All fines collected pursuant to this section shall be remitted to the human*
18 *trafficking victim assistance fund created by section 3, and amendments*
19 *thereto.*

20 Sec. 18. K.S.A. 2012 Supp. 21-6421 is hereby amended to read as
21 follows: 21-6421. (a) ~~Patronizing a prostitute~~ *Buying sexual relations* is
22 knowingly:

23 (1) ~~Entering or remaining in a house of prostitution place where~~
24 ~~sexual relations are being sold or offered for sale with intent to engage in~~
25 ~~manual or other bodily contact stimulation of the genitals of any person~~
26 ~~with the intent to arouse or gratify the sexual desires of the offender or~~
27 ~~another; sexual intercourse, sodomy or any unlawful sexual act with a~~
28 ~~prostitute person selling sexual relations who is 18 years of age or older;~~
29 or

30 (2) hiring a ~~prostitute~~ *person selling sexual relations who is 18 years*
31 *of age or older to engage in manual or other bodily contact stimulation of*
32 *the genitals of any person with the intent to arouse or gratify the sexual*
33 *desires of the offender or another; sexual intercourse, sodomy or any*
34 *unlawful sexual act.*

35 (b) ~~Patronizing a prostitute is a class C misdemeanor~~

36 (b) (1) *Buying sexual relations is a:*

37 (A) *Class A person misdemeanor, except as provided in subsection (b)*
38 *(1)(B);*

39 (B) *severity level 9, person felony when committed by a person who*
40 *has, prior to the commission of the crime, been convicted of a violation of*
41 *this section, or any prior version of this section.*

42 (2) *In addition to any other sentence imposed, a person convicted*
43 *under subsection (b)(1)(A) shall be fined \$2,500. In addition to any other*

1 sentence imposed, a person convicted under subsection (b)(1)(B) shall be
2 fined not less than \$5,000. All fines collected pursuant to this section shall
3 be remitted to the human trafficking victim assistance fund created by
4 section 3, and amendments thereto.

5 (3) In addition to any other sentence imposed, for any conviction
6 under this section, the court shall order the person convicted to enter into
7 and complete a suitable educational and treatment program regarding
8 commercial sexual exploitation.

9 (c) (1) Nothing contained in this section shall be construed as
10 preventing any city from enacting ordinances, or any county from adopting
11 resolutions, declaring acts prohibited or made unlawful by this act as
12 unlawful or prohibited in such city or county and prescribing penalties for
13 violation thereof.

14 (2) The minimum penalty prescribed by any such ordinance or
15 resolution shall not be less than the minimum penalty prescribed by this
16 section for the same violation, and the maximum penalty in any such
17 ordinance or resolution shall not exceed the maximum penalty prescribed
18 for the same violation.

19 Sec. 19. K.S.A. 2012 Supp. 21-6614 is hereby amended to read as
20 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d)
21 and, (e) and (f), any person convicted in this state of a traffic infraction,
22 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
23 for crimes committed on or after July 1, 1993, nondrug crimes ranked in
24 severity levels 6 through 10, or for crimes committed on or after July 1,
25 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the
26 drug grid, or for crimes committed on or after July 1, 2012, any felony
27 ranked in severity level 5 of the drug grid may petition the convicting
28 court for the expungement of such conviction or related arrest records if
29 three or more years have elapsed since the person: (A) Satisfied the
30 sentence imposed; or (B) was discharged from probation, a community
31 correctional services program, parole, postrelease supervision, conditional
32 release or a suspended sentence.

33 (2) Except as provided in subsections (b), (c), (d) and, (e) and (f), any
34 person who has fulfilled the terms of a diversion agreement may petition
35 the district court for the expungement of such diversion agreement and
36 related arrest records if three or more years have elapsed since the terms of
37 the diversion agreement were fulfilled.

38 (b) Any person convicted of prostitution as defined in K.S.A. 21-3512,
39 prior to its repeal, convicted of a violation of K.S.A. 2012 Supp. 21-6419,
40 and amendments thereto, or who entered into a diversion agreement in
41 lieu of further criminal proceedings for such violation, may petition the
42 convicting court for the expungement of such conviction or diversion
43 agreement and related arrest records if:

an
evidence
based

may