

Human Trafficking—Advisory Board; Victim Assistance Fund; Related Crimes; Staff Secure Facilities; Civil Forfeiture; Senate Sub. for HB 2034

Senate Sub. for HB 2034 creates or amends several statutes related to the issue of human trafficking.

First, the bill authorizes the Attorney General, in conjunction with other appropriate state agencies, to coordinate training regarding human trafficking for law enforcement agencies throughout the state and would designate the Attorney General's Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. The bill also establishes the Human Trafficking Victim Assistance Fund, which will be funded by the collection of fines imposed as described in the following paragraphs. The funds will be used to pay for training provided and support care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a child.

The crime of "commercial sexual exploitation of a child" is created and defined as knowingly:

- Giving, receiving, offering or agreeing to give, or offering or agreeing to receive, anything of value to perform any of the following acts:
 - Procuring, recruiting, inducing, soliciting, hiring, or otherwise obtaining any person younger than 18 years of age to engage in sexual intercourse, sodomy, or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another; or
 - Procuring, recruiting, inducing, soliciting, hiring, or otherwise obtaining any person where there is an exchange of value, for any person younger than 18 years of age to engage in sexual intercourse, sodomy, or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the patron, the offender, or another;
- Establishing, owning, maintaining, or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance, or management thereof;
- Permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant, to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age; or
- Procuring transportation for, paying for the transportation of, or transporting any person younger than 18 years of age within this state with the intent of causing, assisting, or promoting that person's engaging in selling sexual relations.

Commercial sexual exploitation of a child is a severity level 5, person felony and carries a fine of not less than \$2,500 nor more than \$5,000, unless the person, prior to the commission of the crime, has been convicted of a violation of this section, in which case it is a severity level 2, person felony and carries a fine of not less than \$5,000.

Further, the crime or attempt, conspiracy, or criminal solicitation to commit the crime is an off-grid person felony when the offender is 18 years of age or older and the victim is less than 14 years of age. A fine of not less than \$5,000 also will be imposed.

Additionally, the court may order any person convicted of this crime to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation of a child.

Throughout, the bill changes "prostitution" to "selling sexual relations," "house of prostitution" to "place where sexual relations are being sold or offered for sale by a person who is 18 years of age or older," and "prostitute" to "person selling sexual relations who is 18 years of age or older."

The bill provides it is an affirmative defense to the crime of "selling sexual relations" that the defendant committed the crime because the defendant was subjected to human trafficking, aggravated human trafficking, or commercial exploitation of a child. Additionally, the bill allows persons convicted of prostitution or selling sexual relations who entered into a diversion agreement and who can prove they were acting under coercion caused by the act of another to petition the convicting court for the expungement of the conviction or diversion agreement and related arrest records after one or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release, or a suspended sentence.

The bill requires a notice offering help to victims of human trafficking to be posted on the official websites of the Attorney General, Department for Children and Families (DCF), and the Department of Labor, providing information to help and support victims of human trafficking, including information about the National Human Trafficking Resource Center Hotline. The Secretary of Labor is required to consult with the Attorney General and create an education plan to raise awareness among Kansas employers about human trafficking, the hotline, and other resources. The Secretary is required to report progress to the House and Senate Judiciary Committees on or before February 1, 2014.

"Promoting prostitution" becomes "promoting the sale of sexual relations," which is a severity level 9, person felony, rather than a class A person misdemeanor, and requires a fine of not less than \$2,500 nor more than \$5,000. An exception will exist if the person, prior to the commission of the crime, has been convicted of a violation of KSA 2012 Supp. 21-6420 (promoting the sale of sexual relations), in which case it is a severity level 7 person felony and carries a fine of not less than \$5,000.

The bill also renames the crime of "patronizing a prostitute" to "buying sexual relations" and expands the definition to include hiring a person selling sexual relations who is 18 years of age or older or entering a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

The crime becomes a class A person misdemeanor, rather than a class C misdemeanor, and carries a fine of \$2,500, except if the person, prior to the commission of the crime, has been convicted of a violation of this section, in which case it is a severity level 9 person felony and carries a fine of not less than \$5,000. Additionally, the court may order any person convicted to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation of a child.

Aggravated human trafficking committed in whole or in part for the sexual gratification of the defendant or another and commercial sexual exploitation of a child are classified as “sexually violent crimes” for the purposes of sentencing, postrelease supervision, and offender registration. A person convicted of commercial sexual exploitation of a child is required to register for life.

The bill adds commercial sexual exploitation of a child, if the victim is less than 14 years of age, to the list of crimes in the statute imposing a minimum 25-year sentence. Similarly, the bill adds aggravated human trafficking committed if the victim is less than 14 years of age and commercial sexual exploitation of a child, if the victim is less than 14 years of age, as a crime listed as a “crime of extreme sexual violence,” which is an aggravating factor considered in determining whether substantial and compelling reasons exist to impose a departure sentence.

Further, human trafficking, aggravated human trafficking, sexual exploitation of a child, commercial sexual exploitation of a child, and buying or selling sexual relations are added to the list of suspected crimes that justify a wiretap.

Statutes related to municipal courts are amended to impose the fines provided for the offenses described above and to direct the fines collected to the Human Trafficking Victim Assistance Fund.

The bill also creates a new section in and makes amendments to the Revised Code for the Care of Children, which will take effect January 1, 2014. Specifically, when any child is in custody who has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations, the court is required to refer the child to the Secretary of DCF. The Secretary is required to use a research-based assessment tool to assess the safety, placement, and treatment needs of the child, and make appropriate recommendations to the court.

The bill allows a law enforcement officer to take a child into custody if the officer reasonably believes the child is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child. The officer is required to place the child in protective custody and is allowed to deliver the child to a staff secure facility. The officer is required to contact DCF to begin an assessment of the child *via* a rapid response team to determine appropriate and timely placement.

The requirements for a “staff secure facility” are added to statutes and include: no construction features designed to physically restrict the movements and activities of residents; written policies and procedures that include the use of supervision, inspection, and accountability to promote safe and orderly operations; locked entrances and delayed-exit mechanisms to secure the facility; 24-hour-a-day staff observation of all entrances and exits by a retired or off-duty law enforcement officer; screening and searching of residents and visitors;

policies and procedures for knowing resident whereabouts, handling runaways and unauthorized absences; and restricting or controlling resident movement or activity for treatment purposes. Such a facility will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation.

The bill also allows the court to issue an *ex parte* order placing a child in a staff secure facility when the court determines the necessity for an order of temporary custody and there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. If the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

The bill allows the court to enter an order of temporary custody following a hearing if the court determines there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. Under such circumstances, the court is authorized to place the child in a staff secure facility. Similarly, if the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

If a child has been removed from the custody of a parent, the court may award custody to a staff secure facility if the circumstances described above exist.

Further, the bill amends the Revised Kansas Juvenile Justice Code to allow for expungement of a juvenile's records and files if the court finds one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile, which, if committed by an adult, would constitute selling sexual relations.

Finally, the bill adds commercial sexual exploitation of a child to the list of offenses giving rise to civil forfeiture.