

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 61

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

SB 61 would create or amend several statutes related to the issue of human trafficking.

First, the bill would authorize 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 would establish the Human Trafficking Victim Assistance Fund, which would be funded by the collection of fines imposed as described in the following paragraphs. The funds would 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" would be 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

*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>

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 would be a severity level 5, person felony and carry 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 would be a severity level 2, person felony and carry a fine of not less than \$5,000.

Further, the crime or attempt, conspiracy, or criminal solicitation to commit the crime would be 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 would be imposed.

Additionally, the court could 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 would change “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 would provide that it would be 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 would allow 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 would require 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 would be 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 would be required to report progress to the House and Senate Judiciary Committees on or before February 1, 2014.

“Promoting prostitution” would become “promoting the sale of sexual relations,” which would be a severity level 9, person felony, rather than a class A person misdemeanor, and require a fine of not less than \$2,500 nor more than \$5,000. An exception would exist if the person, prior to the commission of the crime, has been convicted of a violation of KSA 2012 Supp. 21-6420, in which case it would be a severity level 7 person felony and carry a fine of not less than \$5,000.

The bill also would rename the crime of “patronizing a prostitute” to “buying sexual relations” and expand 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 would become a class A person misdemeanor, rather than a class C misdemeanor, and would carry 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 would be a severity level 9 person felony and carry a fine of not less than \$5,000. Additionally, the court would be allowed to 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 would be 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 would be required to register for life.

The bill would add 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 would add 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, to the list of crimes classified 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 would be added to the list of suspected crimes that justify a wiretap.

Statutes related to municipal courts would be 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 would create a new section in and make amendments to the Revised Code for the Care of Children, which would 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 would be required to refer the child to the Secretary of DCF. The Secretary would be 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 would allow 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 would be required to place the child in protective custody and would be allowed to deliver the child to a staff secure facility. The officer would be 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” would be added to statutes and would 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 would 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 would be trained to counsel and assist victims of human trafficking and sexual exploitation.

The bill also would allow 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, DCF would have the discretionary authority to

place the child in a staff secure facility, if the above circumstances exist.

The bill would allow 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 would be authorized to place the child in a staff secure facility. Similarly, if the court places the child with DCF, DCF would have 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 would amend 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 would add commercial sexual exploitation of a child to the list of offenses giving rise to civil forfeiture.

Background

The bill was introduced by the Senate Judiciary Committee at the request of the Kansas Attorney General. In the Senate Committee, the following conferees testified in support of the bill: Judge Timothy Henderson, 18th Judicial District; Secretary Phyllis Gilmore, DCF; Attorney General Derek Schmidt; the Sedgwick County District Attorney; and representatives of the Attorney General's Office, the Kansas Bureau of Investigation, and the Wichita Children's Home.

Written testimony supporting the bill was submitted by representatives of the Anti-Sexual Exploitation Roundtable for Community Action; the Child Advocacy Center of Sedgwick County; the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association; the Wichita Chief of Police; and the Kansas Highway Patrol. A representative of the Kansas Association of Counties testified as a neutral conferee. The Office of Judicial Administration submitted neutral written testimony. No opposition testimony was presented.

The Senate Committee amended the bill to make the provision regarding court orders for educational and treatment program regarding commercial sexual exploitation for persons convicted of buying sexual relations permissive rather than mandatory. The Committee recommended the bill be passed as amended.

In the House Committee on Corrections and Juvenile Justice, the following conferees testified in support of the bill: Attorney General Derek Schmidt and another representative of his office; Secretary Phyllis Gilmore, DCF; Judge Timothy Henderson, 18th Judicial District; the Sedgwick County District Attorney; and representatives of the WSU Center for Combating Human Trafficking, Veronica's Voice, and the Wichita Children's Home. Written proponent testimony was submitted by the Wichita Chief of Police; by representatives of the Child Advocacy Center of Sedgwick County, Children's Alliance, Kansas Association of Chiefs of Police, Kansas Catholic Conference, Kansas Peace Officers Association, Kansas Sheriffs Association, and ICT S.O.S.; and by a concerned citizen. A representative of the Kansas Association of Counties testified as a neutral conferee, and a representative of the Office of Judicial Administration submitted neutral written testimony.

The House Committee amended the bill with various technical amendments.

The revised fiscal note on the bill, as introduced, indicates the Office of the Attorney General estimates fine revenue of \$636,000 would be remitted to the Human Trafficking Victim Assistance Fund in FY 2014, which would be applied to an equal amount of costs to provide various training and services related to the issue. These services would require 2.00 FTE positions. For FY 2015, revenue and expenditures are expected to increase to \$1,272,000, and the addition of 2.00 FTE positions would continue.

Also according to the fiscal note prepared by the Division of the Budget, DCF estimates additional expenditures of \$147,100 would be required in FY 2014 for placement, facility, and assessment costs. DCF estimates 25 children would be placed in staff secure facilities in FY 2014, with placement costs of \$62,850. FY 2014 maintenance costs for a four-bed staff secure facility are estimated at \$58,000. DCF estimates its Rapid Response Team would have total assessment costs of \$26,250 for FY 2014. It anticipates an increase in total costs to \$165,160 for FY 2015 and to \$184,405 for FY 2016. All DCF expenditures would require State General Fund financing.

The Kansas Department of Health and Environment expects existing resources could be used to regulate and inspect staff secure facilities.

The Juvenile Justice Authority suggests the bill could result in additional expenditures, but it cannot predict a precise fiscal effect.

The League of Kansas Municipalities estimates cities could incur costs from the municipal provisions, but cannot calculate a precise fiscal effect.

The Kansas Sentencing Commission estimates the bill would result in an increase of three adult prison beds in FY 2014 and an increase of 15 adult prison beds by FY 2023.

For all crimes, the Kansas Sentencing Commission estimates the total number of inmates will exceed available capacity by 325 beds by the end of FY 2014 and by 590 beds by the end of FY 2015. The Governor's budget includes \$2.0 million in FY 2014 and another \$1.0 million in FY 2015 for community corrections treatment and supervisions programs to reduce the number of probationers entering prison. These funds and policy changes are expected to make 135 beds available in FY 2014 and 853 beds available in FY 2015. However, it is likely that projected population increases will require new construction providing 512 beds at a construction cost of approximately \$24.5 million and operating costs of approximately \$8.4 million (\$45 per inmate per day). Should passage of the bill require capacity beyond the scenario described above, additional costs for contract beds or facility expansion would be incurred in the near term.

Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.