

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 46**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for SB 46 would make several amendments to the law in the area of human trafficking. First, it 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 designate the Attorney General's Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. It 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 secure 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 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

*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>

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; and
- 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, 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 2, person felony and carry a fine of not less than \$2,500 nor more than \$5,000. Further, the crime or attempt, conspiracy, or criminal solicitation to commit the crime would be a 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. Additionally, the court could order any person convicted 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." It 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, postrelease supervision, conditional release, or a suspended sentence.

"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 impose a fine of not less than \$2,500. An exception would exist 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 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 not less than \$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 \$2,500 nor more than \$5,000. Additionally, the court would be required 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 to the list of crimes in the statute imposing a minimum 25 year sentence, and promoting prostitution where the prostitute is less than 14 would be removed. 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 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.

The bill also would make amendments to the Revised Code for the Care of Children, which would take effect January 1, 2014. Specifically, it would allow the court to authorize placement of a child with a secure facility or juvenile detention 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 prostitution or selling sexual relations.

Similarly, the court could authorize such secure placement in the following circumstances if 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 prostitution or selling sexual relations, and the child has a history of running, *i.e.* is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian, or is not likely to remain in a foster home or similarly restrictive placement:

- When a child is placed in protective custody pursuant to an *ex parte* order, based on probable cause to believe the factors above;
- When a temporary custody hearing has been held, based on probable cause to believe the factors above; or
- When a child has been adjudicated a child in need of care and the court is entering dispositional orders, based on clear and convincing evidence of the factors above.

The length of secure placement would be limited to 90 days, however, upon a finding of necessity, it could be extended for additional increments of 30 days, up to 180 days.

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 prostitution or selling sexual relations.

Background

The text of SB 46, as introduced, was added to House Sub. for SB 63, which was enacted during the 2011 Legislative Session.

In the House Committee on Corrections, Attorney General Derek Schmidt and representatives of United Methodist Youthville and the Wichita Children's Home appeared in support of HB 2779. The Committee also received written testimony in support of the bill from Gina Meier-Hummel, Director of Children and Family Services, Department of Social and Rehabilitation Services (SRS), Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, Kansas Catholic Conference, and the Children's Alliance. No opponents offered testimony.

The Committee amended the bill to clarify that under certain circumstances, courts could authorize placement of children with a secure facility or juvenile detention facility, rather than make such placement directly. Federal law requires SRS to have responsibility for placement decisions, and the amendment was presumed to ensure continued receipt of federal funding dependent on compliance with those laws. The Committee also made the amendments to the Revised Code for the Care of Children effective January 1, 2014. The Committee then added the contents of HB 2779 to SB 46 as a substitute bill.

The fiscal note for HB 2779 indicates passage of the bill, as introduced, would put the State at risk of losing considerable federal funding due to the compliance issues explained above. The Committee's amendment would presumably remove that risk.

The Attorney General's Office estimates passage would generate \$636,000 in fines in FY 2013, and \$1.3 million in FY 2013, which would go to the Human Trafficking Victim Assistance Fund. The Office also estimates \$219,000 would be used to fund two new positions for law enforcement training, technical assistance to local jurisdictions, and prosecution of any human trafficking cases it is referred. Other costs would include coordinating and processing the disbursement of funds to victim services agencies, on-going coordination of the Human Trafficking Advisory Board, and providing victim-witness coordination for human trafficking cases it handles.

The Sentencing Commission estimates passage would have no impact on prison admissions or bed needs. The Juvenile Justice Authority estimates any increased costs could be accommodated within existing resources. The cost of increased litigation resulting from passage of the bill was not available at the time the fiscal note was provided.