

MEMORANDUM

To: Brendan Yorkey, Principal Analyst, Division of Budget
From: Scott M. Schultz, Executive Director
Date: January 26, 2013
Re: Prison Bed Impact Assessment, **SB 61** Human trafficking

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** The impact of this bill will result in **3 additional prison admissions** each year during the forecast period.
- **Impact on Prison Beds:** The impact of this bill will result in **3 additional prison beds** in FY 2014 and **15 additional prison beds** in FY 2023.

SUMMARY OF THE BILL

- **New Section 1** would authorize the Attorney General to coordinate training regarding human trafficking for law enforcement agencies throughout Kansas.
- **New Section 2** would designate the human trafficking advisory board established by the Attorney General as the official human trafficking advisory board for the state of Kansas.
- **New Section 3** would establish the human trafficking victim assistant fund in the state treasury.
- **New Section 4** would create a new crime, **commercial sexual exploitation of a child**. Commercial sexual exploitation of a child is a:
 - Severity level **5**, person felony;
 - Severity level **2**, person felony when committed by a person who has, prior to the commission of the crime, been convicted of a violation of this section; or
 - Commercial sexual exploitation of a child or attempt, conspiracy or criminal solicitation to commit commercial sexual exploitation of a child 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.
- **New Section 5** would supplement the provisions of the revised code for care of children.
- **New Section 6** would create a staff secure facility and define the services to be provided.

- **New Section 7** would provide help, support and services for the victims of human trafficking and establish a toll-free assistance hotline.
- **Section 9** would add a new subsection (b) by requiring, on and after July 1, 2013, that the judge or clerk of the municipal court remit any fine for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 2012 Supp. 21-6421 to the state treasurer and credit the entire amount to the human trafficking victim assistance fund.
- **Section 10** would add new subsection (b) providing criteria for a petition for expungement of violation of a city ordinance.
- **Section 11** would amend **K.S.A. 2012 Supp. 21-5301(c)(2)(G)** by replacing **promoting prostitution**, as defined in K.S.A. 2012 Supp. 21-6420, with **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age. This pertains to attempt.
- **Section 12** would amend **K.S.A. 2012 Supp. 21-5302(d)(2)(G)** by replacing **promoting prostitution**, as defined in K.S.A. 2012 Supp. 21-6420, with **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age. This pertains to conspiracy.
- **Section 13** would amend **K.S.A. 2012 Supp. 21-5303(d)(2)(G)** by replacing **promoting prostitution**, as defined in K.S.A. 2012 Supp. 21-6420, with **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age. This pertains to solicitation.
- **Section 14** would amend **K.S.A. 2012 Supp. 21-6419(b)**, by replacing **prostitution** with **selling sexual relations** and adding **promoting the sale of sexual relations** and **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age.
- **Section 15** would amend **K.S.A. 2012 Supp. 21-5502** to add a new subsection (a)(16), **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age.
- **Section 16** would amend **K.S.A. 2012 Supp. 21-6419**, by replacing **prostitution** with **selling sexual relations** and adding a new subsection (c), an affirmative defense to the charge.
- **Section 17** would amend **K.S.A. 2012 Supp. 21-6420**, by replacing **promoting prostitution** with **promoting the sale of sexual relations**. This section would also increase the severity level for **promoting the sale of sexual relations** from a **class A misdemeanor** to a **severity level 9, person felony** and delete the **severity level 6, person felony** penalty when the prostitute is under 16 years of age.
- **Section 18** would amend **K.S.A. 2012 Supp. 21-6421** by replacing **patronizing a prostitute**, a class C misdemeanor, with **buying sexual relations**. Buying sexual relations would be a:
 - Class A person misdemeanor; and
 - Severity level 9, person felony when committed by a person who has, prior to the commission of the crime, been convicted of a violation of this, or any prior violation of this section.
- **Section 20** would amend the definition in **K.S.A. 2012 Supp. 21-6626(c)(2)**, “sexually violent crime”, by adding **aggravated human trafficking** and **commercial sexual exploitation of a child** as defined in section 4 to the list of offenses considered for an offender being designated as an **aggravated habitual sex offender**.

- **Section 21** would amend the **K.S.A. 2012 Supp. 21-6627(a)(1)(E)** by replacing **promoting prostitution**, as defined in K.S.A.2012 Supp. 21-6420, with **commercial sexual exploitation of a child**, as defined in section 4, if the victim is less than 14 years of age.
- **Section 23** would amend the definition in **K.S.A. 2012 Supp. 21-6815**, “crime of extreme sexual violence”, by adding **aggravated human trafficking**, if the victim is less than 14 years of age and **commercial sexual exploitation of a child** as defined in section 4, if the victim is less than 14 years of age.
- **Section 24** would amend **K.S.A. 2012 Supp. 22-2515** by adding **human trafficking, aggravated human trafficking, sexual exploitation of a child, commercial sexual exploitation of a child, buying sexual relations** and **selling sexual relations** to the list of felonies in which a wiretap may be sought.
- **Section 25** would amend **K.S.A. 2012 Supp. 22-2530** by replacing **prostitution** with **selling sexual relations** in the requirements for obtaining a search warrant.
- **Section 26** would amend **K.S.A. 2012 Supp. 22-3601(b)(4)(F)**, by replacing **promoting prostitution**, as defined in K.S.A. 2012 Supp. 21-6420, to **commercial sexual exploitation of a child**, as defined in subsection (b)(2) of section 4.
- **Section 27** would amend the definition in **K.S.A. 2012 Supp. 22-3717**, “sexually violent crime” by adding **aggravated human trafficking** and **commercial sexual exploitation of a child**, as defined in section 4.
- **Section 28** would amend the definition of common nuisances in **K.S.A. 2012 Supp. 22-3901**, by replacing **promoting and habitual prostitution**, with **promoting and habitually promoting the sale of sexual relations**.
- **Section 29** would amend **K.S.A. 2012 Supp. 22-4902**, the Kansas offender registration act, by adding **aggravated human trafficking** and **commercial sexual exploitation of a child** as defined in section 4 to the list.
- The remaining sections have no criminal penalties.

KEY ASSUMPTIONS

- The target population of this bill includes any offender who commits a crime or crimes as defined above.
- Projected admission to prison for the target offender is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2012 by the Kansas Sentencing Commission.
- It is assumed that the effective date is on July 1, 2013.

FINDINGS

- **Aggravated Human Trafficking**
 - Currently, **two** offenders are incarcerated in prison for the crime of aggravated human trafficking. One was sentenced at nondrug severity level 1 and one at nondrug severity level 2.

- **Commercial Sexual Exploitation of a Child**
 - In FY 2012, **one offender** was convicted of the crime of **promoting prostitution**, in which the prostitute was less than 14 years of age and the offender was 18 years of age or older. The offender was sentenced to probation at severity level 7.
 - According to the Kansas Bureau of Investigation, **four** offenders were arrested for the crime of promoting prostitution, in which the prostitutes were 16 years of age and older.
 - No arrest data is available for FY 2012.
- **Selling Sexual Relations (formerly Prostitution):**
 - According to the Kansas Bureau of Investigation, in FY 2011, there were 359 misdemeanor arrests for the crime of **prostitution** involving 152 offenders.
- **Promoting the Sale of Sexual Relations (formerly Promoting Prostitution):**
 - According to the Kansas Bureau of Investigation, in FY 2011, there were 59 misdemeanor arrests for the crime of **promoting prostitution** involving 29 offenders.
 - In FY 2011, **one** offender was sentenced to prison at severity level 9 for the crime of **promoting prostitution**.
- **Buying Sexual Relations (formerly Patronizing a Prostitute):**
 - According to the Kansas Bureau of Investigation, in FY 2011, there were 72 misdemeanor arrests for the crime of **patronizing a prostitute** involving 50 offenders.

IMPACT ASSESSMENT

- **Commercial Sexual Exploitation of a Child**
 - If **one** offender each year is convicted of the crime of commercial sexual exploitation of a child, the victim is less than 14 years of age and the offender was 18 years of age or older and the offender is sentenced to an off-grid prison term of 25 years, by:
 - FY 2014, **one prison bed** would be needed; and
 - FY 2023, **10 prison beds** would be needed.
 - If **four** offenders are convicted of the crime of commercial sexual exploitation of a child and **two** are sentenced to prison at severity level 5 with 32 months and the other **two** are sentenced to probation at severity level 5, by:
 - FY 2014, **two prison beds** would be needed; and
 - FY 2023, **five prison beds** would be needed.

**Commercial Sexual Exploitation of a Child
Prison Bed Space Impact Assessment**

Fiscal Year	Offgrid Sentence		Sentenced at N5		Total	
	Prison Admission	Prison Bed Needed	Prison Admission	Prison Bed Needed	Prison Admission	Prison Bed Needed
2014	1	1	2	2	3	3
2015	1	2	2	4	3	6
2016	1	3	2	5	3	8
2017	1	4	2	5	3	9
2018	1	5	2	5	3	10
2019	1	6	2	5	3	11
2020	1	7	2	5	3	12
2021	1	8	2	5	3	13
2022	1	9	2	5	3	14
2023	1	10	2	5	3	15

- **Selling Sexual Relations (formerly Prostitution)**
 - The penalty of this section remains unchanged. Therefore, there is **no impact** on prison admission and bed need.
- **Promoting the Sale of Sexual Relations (formerly Promoting Prostitution)**
 - If 50% of the 29 offenders who were arrested for the crime of promoting the sale of sexual relations are convicted and sentenced to probation at **severity level 9, person felony**, there would be **no immediate impact** on prison admission or bed need.
- **Buying Sexual Relations (formerly Patronizing a Prostitute)**
 - Creating a severity level 9, person felony for the second conviction would result in **no immediate impact** on prison admission and bed need.
- The remaining sections of the bill have **no impact** on prison admission and bed need.

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