



Kansas County & District Attorneys Association
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Testimony Regarding SB 179
Submitted by Marc Bennett, District Attorney, 18th Judicial District
On Behalf of the Kansas County and District Attorney's Association (KCDA)

Honorable Chairman LaTurner and Members of the Senate Federal and State Affairs, thank you for the opportunity to briefly address SB 179. Given the length of SB 179, I will directly address the primary changes.

New Section 1 was a suggestion from the sex crimes prosecutors in Sedgwick County which creates the new crime of using a communication facility to commit Aggravated Human Trafficking (hereinafter "A.H.T.") K.S.A. 21-5426, Commercial Sexual Exploitation of a Child (hereinafter, "C.S.E.C.") K.S.A. 21-6422, or Promoting the Sale of Sex, K.S.A. 21-6420. K.S.A. 21-5707 already makes it a crime to use a communication "facility" (phones, computers etc) to facilitate the sale or purchase of drugs. We thought it made sense to treat the sale or purchase of human beings the same. The crime will be listed as a severity level 7 person felony for A.H.T. and C.S.E.C. and a class A misdemeanor if the victim is an adult.

New Section 2 creates the crime for promoting travel for child exploitation. This language makes it a crime to sell travel services for people who want to commit Sexual Exploitation of a Child or Commercial Sex Exploit. This may be rarely invoked as we don't see travel agents or the like setting up sex tourism but it makes clear the public policy of the State of Kansas and creates the crime in the event such a crime is uncovered.

New Section 3 creates the crime of internet trading in child pornography and an aggravated version of the same for trading child porn on the internet. This behavior is already addressed in K.S.A. 21-5510(a)(2), but this version is clearer and has the same penalties.

New Section 6 contains the following changes to A.H.T.:

First, and most important, the subsections of K.S.A. 21-5426, A.H.T., are renumbered to remove the argument that A.H.T. under (b)(4) requires the use of "force, fraud or coercion" in the first instance of "recruitment, harboring, transportation, provision or obtaining" of the victim. (page 4, lines 24-35 of SB 179). This also removes any potential overlap between A.H.T. and C.S.E.C. under the McAdam line of



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cases (that if the crime is defined under two statutes, the defendant is subject to the lesser offense only).

Second, SB 179 adds the requirement under (b)(4) that there be an “exchange of anything of value.” This alleviates the concern that the unwitting person who simply gives someone a ride, without participation in the endeavor would face charges.

Third, SB 179 adds fines to A.H.T. to go to the human trafficking victims’ fund (page 5, lines 4-14). This puts A.H.T. in line with C.S.E.C. and Promoting, all of which currently require fines to the human trafficking victims’ fund.

Additionally, General Schmidt has proposed amendments which we also support. Briefly, these include: **(1)** replacing language of “person under 18” with “child”; **(2)** punishing those who buy children for sex under A.H.T. instead of C.S.E.C. by adding a (b)(5) to K.S.A. 21-5426: “hiring a child by giving, or offering or agreeing to give, anything of value to any person, 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, sexual intercourse, sodomy or any unlawful sexual act and the offender knows, should have known, is deliberately indifferent to, is willfully blind to, or recklessly disregards the age of the child.” This again clarifies that the crime is to be defined in this statute alone, removing the McAdam concern; **(3)** adding a new (b)(6), to define “child” as “person under 18” for consistency throughout the law; **(4)** at (g) [p. 5, line 34], insert “or (b)(5)” after “(b)(4)”; **(5)** correcting a potential McAdam issue by inserting a new paragraph (h), to wit: “A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for violating K.S.A. 21-6422 [CSEC], and amendments thereto, or for any form of homicide; **(6)** Inserting a new provision in AHT that reads, “*It shall be an affirmative defense to any prosecution under subsection (b)(4) or (b)(5) that the defendant (A) was younger than 18 years of age at the time of the offense and (B) committed the violation because such defendant at the time of the offense was subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto.*” This mirrors the affirmative defense in K.S.A. 21-6419 (selling sexual relations) but with the added restrictions that the defense here is available only to defendants who were minors AND that the HT/AHT that caused the defendant to commit the crime of AHT against another occurred “at the time” of the defendant’s AHT crime against another. We aren’t creating a lifetime defense. Finally, (7), on p. 8, strike lines 31 through 43, (i.e., strike all of #1) and renumber the remaining paragraphs accordingly.



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Finally, new New Section 10 adds promoting the sale of sex to the list of crimes that require offender registration to bring this crime in line with other traffickers who already have to register. New Section 11 amends K.S.A. 38-2312(e)(1)(A)(iii) to allow expungements for juveniles who are victims of HT and AHT and committed certain offenses, including sale of selling sexual relations, as a result of such victimization. New Section 12 amends the Crime Victims' Compensation Board statute to clarify that payment to HT and AHT victims who were under 18 are not reduced or denied because they participated in the act.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

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