

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2350

As Amended by Senate Committee on Judiciary

Brief*

HB 2350, as amended, would create the crimes of human smuggling and aggravated human smuggling, provide for criminal penalties, and make these provisions supplemental to the Kansas Criminal Code (Code).

Crime of Human Smuggling

The bill would define the crime of human smuggling as intentionally transporting, moving, concealing, harboring, or shielding from detection an alien with knowledge or reckless disregard of the fact that such alien has come to, entered, or remains in the United States in violation of the law in exchange for anything of value.

The bill would make the crime of human smuggling a severity level 5 person felony.

Crime of Aggravated Human Smuggling

The bill would define "aggravated human smuggling" as human smuggling that causes the individual being smuggled to become a victim of a sex offense or a victim of human trafficking, as those crimes are defined by the Code; or causes the person to commit selling sexual relations, as that crime is defined by the Code.

*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>

The bill would make the crime of aggravated human smuggling a severity level 3 person felony.

Exceptions to the Crimes

The bill would specifically exclude certain conduct from the crimes, as follows:

- Transporting, moving, concealing, harboring, or shielding from detection an alien that is expressly permitted by federal law; or
- For a religious denomination with a *bona fide* nonprofit religious organization in the United States or the agents or officers of such denomination or organization:
 - Encouraging, inviting, calling, allowing, or enabling an alien who is present in the United States to work as a minister or missionary for the denomination or organization. The alien could not be compensated other than the provision of room, board, travel, medical assistance, and other basic living expenses and would require that the alien to have been a member of the denomination or organization that is associated with the volunteer work for at least one year.

The bill would specify that the determination of whether an alien has come to, entered, or remains in the United States in violation of the law would be made by the federal government in accordance with federal immigration law and no state, county, or local law enforcement officer could independently determine if such violation has occurred. The bill would additionally specify that in determining a person's immigration status pursuant to the bill, a law enforcement officer or agency could not consider a person's race, color, or national origin.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representatives Barth and Schmoe.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 15, 2023, Representatives Barth and Schmoe testified as **proponents** on the bill, along with representatives of the Kansas Bureau of Investigation (KBI); and Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. The proponents generally stated individuals being smuggled are subject to abuse through a loophole in the current law, and the bill would close that loophole.

Written-only proponent testimony was provided by representatives of the Franklin County Attorney's Office and Hope Ranch for Women.

Opponent testimony was provided by a representative of the State Board of Indigents' Defense Services (BIDS). The opponent stated the bill, as introduced, would criminalize all kinds of everyday professional and humane acts people do, and human smuggling is currently a federal crime.

The House Committee amended the bill to:

- Modify the definition of human smuggling by including the term "intentionally" as it applies to transporting an individual;
- Expand human smuggling to include financial benefits and knowledge that the smuggled individual is likely being exploited for financial gain;

- Modify the definition of aggravated human smuggling to add the threat of use of a deadly weapon; and
- Include statutory references to human trafficking and selling of sexual relations to the elements of aggravated human trafficking. [*Note:* The bill, as introduced, includes sex offenses.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 15, 2023, Representatives Barth and Schmoe, the Attorney General, a representative of the KBI, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified as **proponents** on the bill. The proponents provided similar testimony to what was presented in the House hearing. In addition, the Attorney General proposed an amendment to make the bill conform more closely to federal law and thus avoid potential legal challenges. Written-only proponent testimony was submitted by the Franklin County Attorney and a representative of the Hope Ranch for Women.

A representative of BIDS testified as an **opponent** on the bill, expressing concerns related to the bill's impact on Kansas courts and due process rights of vulnerable populations as well as potential legal challenges associated with the bill.

On March 21, 2023, the Senate Committee amended the bill to:

- Modify the definitions of “human smuggling” and “aggravated human smuggling”;
- Add a provision excluding certain conduct from the crimes created by the bill; and

- Add a provision to specify the federal government would make determinations of immigration status as required by the bill.

On March 22, 2023, the Senate Committee reconsidered the bill and adopted amendments to:

- Further clarify the definition of human smuggling; and
- Further clarify the provision concerning the determination of immigration status.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Sentencing Commission estimates enactment of the bill would result in an increase in prison admissions and bed space but the effect could not be determined.

The Department of Corrections indicates enactment of the bill would have no fiscal effect. The Office of Judicial Administration (OJA) indicates enactment of the bill could increase the number of cases filed in district court because this bill creates two new crimes and could result in the collection of docket fees for those cases. The OJA could not estimate a fiscal effect until the Judicial Branch has had an opportunity to operate under the provisions of the bill.

The Attorney General indicates enactment of the bill could add criminal cases to the agency's workload but could not estimate a fiscal effect.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Crimes; aggravated human smuggling; human smuggling; Kansas Criminal Code

