

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 40**

As Agreed to April 5, 2017

Brief*

House Sub. for SB 40 would amend the law concerning human trafficking, including the creation of new crimes and amendments to existing crimes and other related provisions.

Crimes

New Crimes

The bill would create new crimes concerning use of a “communication facility,” which the bill would define as any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers, and all other means of communication. It would be a severity level 7 person felony for a person to knowingly or intentionally use any communication facility to commit the crimes of human trafficking, commercial sexual exploitation of a child, or promoting the sale of sexual relations, as well as in any attempt, conspiracy, or solicitation of those crimes. Further, it would be a class A person misdemeanor to use a communication facility in committing, causing, or facilitating the commission of the crime of buying sexual relations. Defendants would have an affirmative defense if they were

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subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child.

Additionally, the bill would create the crime of promoting travel for child exploitation, a severity level 5 person felony, which the bill would define as knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute aggravated human trafficking, using the definition as amended by the bill, sexual exploitation of a child, Internet trading in child pornography (a new crime created by the bill and described below), and commercial sexual exploitation of a child if it occurred in Kansas. The bill would define “travel services” as transportation by air, sea, or ground; hotel or any lodging accommodations; package tours; or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

The bill would also create the crime of Internet trading in child pornography, which would be defined by incorporating certain elements of the crime of sexual exploitation of a child when the offender is 18 years of age or older and knowingly causes or permits the performance to be viewed by use of any electronic device connected to the Internet by any person other than the offender or a person depicted in the performance. The crime would be a severity level 5 person felony when an offender possesses any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

The conduct would constitute aggravated Internet trading in child pornography when the offender either:

- Employs, uses, persuades, induces, entices or coerces a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or

- Being a parent, guardian, or other person having custody or control of a child under 18 years of age, knowingly permits such child to engage in, or assist another to engage in, sexually explicit conduct with the intent to promote any performance or with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

Aggravated Internet trading in child pornography would be a severity level 3 person felony or an off-grid felony when the child is under 14 years of age. If the child is under 14 years of age, the bill would state the provisions specifying the severity levels for attempt, conspiracy, and criminal solicitation would not apply. The bill would also amend the statutes governing attempt, conspiracy, and criminal solicitation of a crime to reflect this language.

In addition to the venue provided for under any other provision of law, the bill would allow prosecution for these crimes to be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the Internet and is viewed by a law enforcement officer using an electronic device connected to the Internet while engaged in such officer's official duties.

The Internet trading in child pornography crimes would not apply where the crimes of unlawful possession of a visual depiction of a child or unlawful transmission of a visual depiction of a child apply.

Related to the creation of these crimes, the bill would add Internet trading in child pornography and aggravated Internet trading in child pornography to the definition of "sex offense" in the capital murder statute and to the definition of "sexually violent crime" in the aggravated habitual sex offender statute and in the statute governing parole and postrelease supervision. When the child is less than 14 years of age, the bill would add aggravated Internet trading in child

pornography to the statute governing crimes for which a defendant would be sentenced to imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years, a statute concerning sentencing for offgrid crimes, and to the statute prohibiting direct appeal of certain cases to the Kansas Supreme Court. Additionally, the bill would amend a rule governing admissibility of a witness' previous sexual conduct as evidence in certain prosecutions to apply in prosecutions of the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography.

Human Trafficking

The bill would amend the definition of the crime of aggravated human trafficking, which is a severity level 1 person felony or an offgrid crime if the victim is less than 14 years of age. The bill would amend one of the four existing definitions of the crime to read "recruiting, harboring, transporting, providing, or obtaining by any means, a child knowing that the person, with or without force, fraud, threat, or coercion, will be used to engage in forced labor, involuntary servitude, or sexual gratification of the defendant or another involving the exchange of anything of value." The amendment to this subsection would remove the elements of the crime of human trafficking from the definition, change "person under the age of 18 years of age" to "child," and add the exchange of anything of value. The bill would also add a subsection providing a new definition for the crime of aggravated human trafficking: 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 another, sexual intercourse, sodomy, or any unlawful sexual act when the offender recklessly disregards the age of the child. This definition is similar to one currently found in the crime of commercial sexual exploitation of a child, which the bill would modify. For the purposes of the

crime of human trafficking, “child” would mean a person under 18 years of age.

Additionally, the bill would create an affirmative defense to prosecution for these two definitions of aggravated human trafficking for a defendant who at the time of the violation was under 18 and committed the violation because the defendant was subjected to human trafficking or aggravated human trafficking. It would not be a defense that a victim consented or willingly participated in the forced labor, involuntary servitude, or sexual gratification of the defendant or another, or that the offender had no knowledge of the age of the victim.

The bill would specify a person who violates any of the provisions of the human trafficking statute could be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child or any form of homicide. Further, in addition to any other sentence imposed, a person convicted of human trafficking would be fined between \$2,500 and \$5,000. A person convicted of aggravated human trafficking, as well as any attempt, conspiracy, or solicitation of that crime, would be fined a minimum of \$5,000. Fines collected would be remitted to the Human Trafficking Victim Assistance Fund. Additionally, the court could order any person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

The bill would amend the definition of “sex offense” in the capital murder statute to add aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of another.

Sexual Exploitation of a Child

The bill would amend the crime of sexual exploitation of a child to increase the severity level from a level 5 to a level 3 person felony when committed by:

- Employing, using, persuading, inducing, enticing, or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or
- Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

Buying Sexual Relations

The bill would amend the crime of buying sexual relations to provide a person convicted of this crime would be fined between \$1,200 and \$5,000. Current law provides for a fine of \$2,500 for a first-time offense and a fine of up to \$5,000 for a second or subsequent offense. Half of all fines collected would be remitted to the Human Trafficking Victim Assistance Fund. Similarly, the bill would designate half of any fine imposed for a municipal violation of buying sexual relations to be remitted to the Human Trafficking Victim Assistance Fund. Current law provides for \$2,500 of any such fine to be remitted to that fund.

Commercial Sexual Exploitation of a Child

The bill would replace two definitions for the crime of commercial sexual exploitation of a child with one definition containing language modified from the existing definitions. Language similar to these definitions also is currently included in or would be added to the crime of human trafficking. The bill would also increase the severity level for commercial sexual exploitation of a child from a level 5 to a level 4 person felony.

Other Provisions

On and after July 1, 2018, the bill would require an applicant for issuance or renewal of a commercial driver's license to complete training approved by the Attorney General in human trafficking identification and prevention and provide satisfactory proof of such completion to the Division of Vehicles prior to such issuance or renewal. The bill would require the Attorney General, in consultation with the Director of Vehicles, to promulgate rules and regulations no later than January 1, 2019, to implement this requirement.

The bill would also amend the Kansas Offender Registration Act to add the crime of promoting the sale of sexual relations to the list of sexually violent crimes and specify a person convicted of such crime would be required to register for 15 years.

Concerning expungement of juvenile records, the bill would require a court to order expungement of records and files if it finds the juvenile is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; the adjudication concerned acts committed by the juvenile as a result of such victimization, including but not limited to acts which, if committed by an adult, would constitute a violation of disorderly conduct or selling sexual relations; and the hearing on expungement occurred on or after the date of final discharge.

Additionally, the bill would add to the list of crimes for which juvenile and adult expungement is not allowed the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography. [Note: The bill appears to make additional substantive amendments regarding copies of orders of expungement and bail enforcement agent licensing. However, these provisions are in current law and are technical amendments to reconcile different versions of the statutes created by 2016 legislation.]

The bill would specify provisions allowing reduction or denial of compensation from the Crime Victims Compensation Board shall not be construed to reduce or deny compensation to a victim of human trafficking or commercial sexual exploitation of a child who was 18 years or younger at the time the crime was committed and is otherwise qualified for compensation.

Finally, the bill would update the name of the National Human Trafficking Hotline, which formerly was known as the National Human Trafficking Resource Center.

Conference Committee Action

The Conference Committee agreed to House Sub. for SB 40 and adopted amendments to:

- Add Internet trading in child pornography and commercial sexual exploitation of a child to the definition of the crime of promoting travel for child exploitation;
- Add Internet trading in child pornography and aggravated Internet trading in child pornography to the list of crimes for which expungement is not allowed and to the definition of “sexually violent crime” in statutes concerning aggravated habitual sex offenders and parole and postrelease supervision;
- Amend the definition of “sex offense” in the capital murder statute to include Internet trading in child pornography, aggravated Internet trading in child pornography, and aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of another;
- Add aggravated Internet trading in child pornography when the child is less than 14 years

of age to the statutes governing attempt, conspiracy, criminal solicitation, crimes for which a defendant will be sentenced to life in prison with a mandatory minimum term of not less than 25 years, sentencing for offgrid crimes, and direct appeal of certain cases to the Kansas Supreme Court;

- Amend a rule governing admissibility of a witness' previous sexual conduct as evidence in certain prosecutions to apply in prosecutions of the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography; and
- Delay the training requirement for applicants for issuance or renewal of a commercial driver's license to July 1, 2018, with rules and regulations to be promulgated by January 1, 2019.

Background

House Sub. for SB 40

As introduced and amended by the Senate Committee on Judiciary and heard by the House Committee on Judiciary, SB 40 would have amended law related to revocation of appearance bonds.

The House Committee recommended a substitute bill replacing the contents of SB 40 with language based on SB 179, as amended by the Senate Committee on Judiciary, regarding human trafficking. The House Committee modified the language of SB 179 by clarifying that the new crimes regarding Internet trading in child pornography would not apply where the crimes of unlawful possession or transmission of a visual depiction of a child apply, clarifying the culpability required for the means of committing the crime

of human trafficking added by the bill, adding that lack of knowledge of the age of the victim cannot be used as a defense to the charge of aggravated human trafficking, and incorporating language requested by the Attorney General to restore some of the language removed from the crime of commercial sexual exploitation of a child by the original bill. Further background regarding SB 179 is provided below. [Note: The Conference Committee retained these amendments.]

No fiscal note was available for House Sub. for SB 40 at the time of the House Committee action. Fiscal note information regarding SB 179 is provided below.

SB 179

SB 179 was introduced at the request of the Office of the Attorney General. In the Senate Committee on Judiciary hearing, the Attorney General and representatives of the Human Trafficking Advisory Board, the Center for Combating Human Trafficking at Wichita State University, the Kansas County and District Attorneys Association, and Truckers Against Trafficking appeared in support of the bill. Shared Hope International submitted written proponent testimony, and the Division of Vehicles submitted written neutral testimony. No other testimony was provided.

The Senate Committee adopted an amendment to clarify persons convicted of promoting sexual relations would be required to register pursuant to the Kansas Offender Registration Act for 15 years; require the Attorney General, rather than the Secretary of Revenue, to promulgate rules and regulations to implement the requirement for training on human trafficking; amend the definition of aggravated human trafficking with language similar to that of the current crime of commercial sexual exploitation and make related amendments; provide an affirmative defense to aggravated human trafficking when the defendant was a victim; and replace “person under 18 years of age” with “child,” which

would be defined to have the same meaning. [Note: The Conference Committee retained these amendments.]

As of the date of action by the House Committee on Judiciary incorporating the language of SB 179 into House Sub. for SB 40, SB 179 was below the line on General Orders in the Senate. The House Committee held an informational briefing on the contents of SB 179 prior to its action on House Sub. for SB 40. The Attorney General spoke in support of the contents of SB 179 at the House Committee briefing and requested some of the language regarding the crime of commercial sexual exploitation of a child be restored. Another representative of the Office of the Attorney General, Truckers Against Trafficking, and Shared Hope International submitted written materials supporting the contents of SB 179.

According to the fiscal note prepared by the Division of the Budget on SB 179, as introduced, the Office of Judicial Administration indicates enactment could increase the number of cases filed in the district courts, which could cause judicial and non-judicial staff to spend more time processing, researching, and hearing cases. Since some of the crimes are misdemeanors, there could be additional supervision of offenders required to be performed by court service officers. The bill could also result in the collection of docket fees from those cases filed under the provisions of the bill. It is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be, however. Therefore, a fiscal effect cannot be determined.

The Office of the Attorney General indicates enactment of the bill would increase revenues to the Human Trafficking Victim Assistance Fund, which would be expended through grants to local victim service agencies and to support anti-human trafficking programs.

The Department of Revenue estimates additional expenditures of \$77,558 in FY 2018 for training commercial driver's license applicants in human trafficking, including \$10,510 to modify the Driver's License Knowledge Testing

System, \$11,048 to notify commercial driver's license holders to complete training prior to renewal; and \$56,000 to convert the training and testing into Spanish.

The Kansas Bureau of Investigation indicates any fiscal effect on that agency resulting from enactment would be negligible.

The League of Kansas Municipalities and the Kansas Association of Counties indicate enactment could add additional expenditures to local law enforcement agencies, depending on the population and resources of each city or county.

The Kansas Sentencing Commission estimates the bill would result in an increase of two adult prison beds needed in FY 2018 and four adult prison beds needed in FY 2019. By FY 2027, an additional 15 beds would be needed. As of January 17, 2017, the available bed capacity is 8,739 for males and 915 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2017 Adult Inmate Prison Population Projections report, it is estimated the year-end population will exceed available male capacity by 139 inmates in FY 2017, 101 inmates in FY 2018, and 164 inmates in FY 2019. The Department of Corrections intends to manage the projected shortfall by housing inmates in contract beds.

Any fiscal effect associated with SB 179 is not reflected in *The FY 2018 Governor's Budget Report*.

Human trafficking

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