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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 23, 2023
Subject: Bill Brief for SB 317

Senate Bill 317 permits a prosecution for childhood sexual abuse to be commenced at any time, extends the time to file civil actions for recovery of damages caused by childhood sexual abuse and provides exceptions in the Kansas tort claims act for claims arising from such abuse.

The bill permits a prosecution for childhood sexual abuse to be commenced at any time. Section 2 amends K.S.A. 21-5107, the Kansas criminal code statute that provides time limitations for commencement of prosecution. Under current law, a prosecution for rape, aggravated criminal sodomy, murder, terrorism or illegal use of weapons of mass destruction may be commenced at any time. The bill provides that a prosecution for childhood sexual abuse may be commenced at any time and defines “childhood sexual abuse” as any of the following crimes when the victim is under 18 years of age: Indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, enticement of a child, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated sexual battery, aggravated incest, aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of the defendant or another, internet trading in child pornography or aggravated internet trading in child pornography, or commercial sexual exploitation of a child.

The bill also extends the time to file civil actions for recovery of damages caused by childhood sexual abuse. Section 3 amends K.S.A. 60-523, which currently provides that no action for recovery of damages suffered as a result of childhood sexual abuse shall be commenced more than three years after the date the person attains 18 years of age or more than three years from the date the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later. The bill provides that no action for recovery of damages suffered as a result of childhood sexual abuse shall be commenced more than 13 years

after the date the victim attains 18 years of age or more than three years after the date of a criminal conviction for a crime related to such childhood sexual abuse, whichever occurs later. The bill defines “childhood sexual abuse” as any act committed against the person that occurred when the person was under 18 years of age that would have been a violation of any of the following: Indecent liberties with a child, aggravated indecent liberties with a child, aggravated criminal sodomy, enticement of a child, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, internet trading in child pornography or aggravated internet trading in child pornography, aggravated incest, or any prior laws of this state of similar effect at the time the act was committed.

Finally, the bill provides exceptions in the Kansas tort claims act for claims arising from such abuse. Section 1 amends K.S.A. 12-105b, the statute that establishes a uniform procedure for payment of claims against a municipality. Current law in subsection (d) provides that any person having a claim against a municipality or against an employee of a municipality which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided in this subsection before commencing such action. The bill provides that the notice requirements shall not apply to any claim for recovery of damages against a governmental entity arising from childhood sexual abuse as defined in K.S.A. 60-523.

Section 4 amends K.S.A. 75-6104, the Kansas tort claims act statute that provides exceptions from liability for a governmental entity or an employee acting within the scope of the employee’s employment. Current law subsection (o), which becomes subsection (a)(15), has an exception for any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury. The bill adds another clause to allow such a claim when an employee of the governmental entity commits childhood sexual abuse as defined in K.S.A. 60-523. Current law subsection (u), which becomes subsection (a)(21), has an exception for any claim arising from providing a juvenile justice program to juvenile offenders if the program meets certain requirements, but provides that the exception does not apply to community service work within the scope of K.S.A. 60-3614. The bill adds that the exception does not apply to claims arising from childhood sexual abuse as defined in K.S.A. 60-523.

The bill also adds a new subsection (c), which provides that the exceptions to liability in subsections (a)(1) through (a)(4) shall not be construed to preclude, prohibit or otherwise limit a claim for damages arising from childhood sexual abuse as defined in K.S.A. 60-523. The new subsection also provides that failure of a governmental entity to adopt or enforce a policy, regulation or law related to childhood sexual abuse and failure to exercise reasonable discretion in the supervision of a governmental employee who commits childhood sexual abuse may be considered by the trier of fact in determining the question of a governmental entity's negligence.

Section 5 amends K.S.A. 75-6105, the Kansas tort claims act statute that provides the maximum liability for claims within the scope of the act and limits liability for punitive or exemplary damages or interest prior to judgment. The bill adds a new subsection (d), which provides that this section shall not apply to any claim for recovery of damages against a governmental entity arising from childhood sexual abuse as defined in K.S.A. 60-523.