

SENATE BILL No. 96

By Senator Haley

1-28

1 AN ACT concerning deprivation of rights under color of law; creating the
2 crime of deprivation of rights under color of law and providing criminal
3 penalties therefor; authorizing a civil cause of action; requiring
4 restitution to the victim; amending K.S.A. 22-3424 and repealing the
5 existing section.

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7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) Deprivation of rights under color of law is any
9 action by any person, under color of any law, statute, county resolution,
10 ordinance or regulation, that knowingly subjects another person to the
11 deprivation of any rights, privileges or immunities secured or protected by
12 the constitution or laws of the United States or the state of Kansas, by
13 causing:

- 14 (1) Bodily harm to another person;
15 (2) great bodily harm to another person or disfigurement of another
16 person;
17 (3) bodily harm to another person with a deadly weapon, or in any
18 manner whereby great bodily harm, disfigurement or death can be
19 inflicted;
20 (4) physical contact with another person when done in a rude,
21 insulting or angry manner, or in any manner whereby great bodily harm,
22 disfigurement or death can be inflicted;
23 (5) mental anguish, emotional harm, embarrassment or similar
24 distress to another person; or
25 (6) monetary loss to another person.

- 26 (b) Deprivation of rights under color of law as described in:
27 (1) Subsection (a)(1) or (a)(5) is a class B person misdemeanor;
28 (2) subsection (a)(2) is a severity level 4, person felony;
29 (3) subsection (a)(3) or (a)(4) is a severity level 7, person felony;
30 (4) subsection (a)(6), when the monetary loss is:
31 (A) Less than \$1,000, is a class A nonperson misdemeanor;
32 (B) at least \$1,000, but less than \$25,000, is a severity level 9,
33 nonperson felony; and
34 (C) \$25,000 or more, is a severity level 7, nonperson felony.
35 (c) This section shall be a part of and supplemental to the Kansas
36 criminal code.

1 New Sec. 2. (a) A person injured as a result of the conduct of another
2 that would constitute conduct prohibited by section 1, and amendments
3 thereto, may bring an action in an appropriate state court against the
4 person or persons who engaged in such conduct.

5 (b) In any action brought under this section, a prevailing plaintiff
6 shall recover up to three times the actual damages such person sustained or
7 \$10,000, whichever is greater, and the cost of the suit, including
8 reasonable attorney fees.

9 (c) Notwithstanding any other provision of law, any action
10 commenced under this section shall be filed within three years after the
11 later of:

12 (1) The date of discovery of the violation of section 1, and
13 amendments thereto; or

14 (2) the conclusion of a related criminal case.

15 (d) At the victim's request, the attorney general may pursue cases on
16 behalf of any Kansas victim under this section. All damages obtained shall
17 go to the victim, and the attorney general may seek reasonable attorney
18 fees and costs.

19 (e) Any action brought under this section shall be subject to the
20 provisions of K.S.A. 74-7312, and amendments thereto.

21 Sec. 3. K.S.A. 22-3424 is hereby amended to read as follows: 22-
22 3424. (a) The judgment shall be rendered and sentence imposed in open
23 court.

24 (b) If the verdict or finding is not guilty, judgment shall be rendered
25 immediately and the defendant shall be discharged from custody and the
26 obligation of the defendant's appearance bond.

27 (c) If the verdict or finding is guilty, judgment shall be rendered and
28 sentence pronounced without unreasonable delay, allowing adequate time
29 for the filing and disposition of post-trial motions and for completion of
30 such presentence investigation as the court may require.

31 (d) (1) If the verdict or finding is guilty, upon request of the victim or
32 the victim's family and before imposing sentence, the court shall hold a
33 hearing to establish restitution. The defendant may waive the right to the
34 hearing and accept the amount of restitution as established by the court. If
35 the court orders restitution to be paid to the victim or the victim's family,
36 the order shall be enforced as a judgment of restitution pursuant to K.S.A.
37 20-169, and amendments thereto, and K.S.A. 21-6604(b)(2), and
38 amendments thereto.

39 (2) (A) The court shall order a person convicted of human trafficking
40 or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their
41 repeal, or K.S.A. 21-5426, and amendments thereto, or commercial sexual
42 exploitation of a child, K.S.A. 21-6422, and amendments thereto, to pay
43 restitution to the victim of the offense for:

1 (i) Expenses incurred or reasonably certain to be incurred by the
2 victim as a result of the offense, including reasonable attorney fees and
3 costs; and

4 (ii) an amount equal to three times the greatest of the following, with
5 no reduction for expenses the defendant incurred to maintain the victim:

6 (a) The gross income to the defendant for, or the value to the
7 defendant of, the victim's labor or services or sexual activity;

8 (b) the amount the defendant contracted to pay the victim; or

9 (c) the value of the victim's labor or services or sexual activity,
10 calculated under the minimum wage and overtime provisions of the federal
11 fair labor standards act, 29 U.S.C. § 201 et seq., or under K.S.A. 44-1203,
12 and amendments thereto, whichever is higher, even if the provisions do not
13 apply to the victim's labor or services or sexual activity.

14 (B) The court shall order restitution under ~~subsection (d)(2)~~ *this*
15 *paragraph* even if the victim is unavailable to accept payment of
16 restitution.

17 (C) If the victim does not claim restitution ordered under ~~subsection~~
18 ~~(d)(2)~~ *this paragraph* for five years after entry of the order, the restitution
19 must be paid to the human trafficking victim assistance fund created by
20 K.S.A. 75-758, and amendments thereto, to help victims.

21 (3) *The court shall order a person convicted of deprivation of rights*
22 *under color of law section 1, and amendments thereto, to pay restitution to*
23 *the victim of the offense for expenses incurred or reasonably certain to be*
24 *incurred by the victim as a result of the offense, including reasonable*
25 *attorney fees and costs.*

26 (e) Before imposing sentence the court shall: (1) Allow the
27 prosecuting attorney to address the court, if the prosecuting attorney so
28 requests; (2) afford counsel an opportunity to speak on behalf of the
29 defendant; (3) allow the victim or such members of the victim's family as
30 the court deems appropriate to address the court, if the victim or the
31 victim's family so requests; and (4) address the defendant personally and
32 ask the defendant if the defendant wishes to make a statement on the
33 defendant's own behalf and to present any evidence in mitigation of
34 punishment.

35 (f) After imposing sentence in a case ~~which~~ *that* has gone to trial on a
36 plea of not guilty, the court shall advise the defendant of the defendant's
37 right to appeal and of the right of a person who is unable to pay the costs
38 of an appeal to appeal in forma pauperis.

39 Sec. 4. K.S.A. 22-3424 is hereby repealed.

40 Sec. 5. This act shall take effect and be in force from and after its
41 publication in the statute book.