

March 14, 2012

The Honorable Pat Colloton, Chairperson
House Committee on Corrections and Juvenile Justice
Statehouse, Room 167-W
Topeka, Kansas 66612

Dear Representative Colloton:

SUBJECT: Fiscal Note for HB 2779 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2779 is respectfully submitted to your committee.

HB 2779 would amend several statutes relating to human trafficking and sexual exploitation of children. The bill would designate the Human Trafficking Advisory Board, which was established by the Attorney General, as the official human trafficking advisory board for the state. The Attorney General, in consultation with other state agencies, would be authorized to coordinate training regarding human trafficking for law enforcement agencies throughout Kansas. The Human Trafficking Victim Assistance Fund would be established within the Office of the Attorney General to be used for law enforcement training and victim services. The fund would be capitalized through the collection of fines.

The bill would create the new crime of commercial sexual exploitation of a child, which would be either a severity level two person felony or a severity level five person felony according to the specific violations of the law. However, commercial sexual exploitation of a child; or attempt, conspiracy, or criminal solicitation to commit the crime when the offender is 18 years of age or older and the victim is less than 14 years of age would be and off-grid person felony. Both aggravated human trafficking and commercial sexual exploitation of a child would be defined as sexually violent crimes. Offenders would be required to register under the Kansas Offender Registration Act and serve lifetime post-release supervision upon release from prison.

The crime of prostitution would be changed to the crime of selling sexual relations. Offenders who promote the sale of sexual relations could be convicted of a severity level nine person felony and be fined at least \$2,500. The penalty for any offender who has a prior conviction of promoting the sale of sexual relations would be a severity level seven person felony and a fine of at least \$5,000. The penalty for the crime of buying sexual relations would be modified from a class C misdemeanor to a class A person misdemeanor; however, any prior convictions of the crime would result in a severity level nine person felony. The fine for buying sexual relations would be at least \$2,500 and in cases of prior convictions, fines would be at least \$2,500 but not more than \$5,000. All fines collected would be remitted to the Human

Trafficking Victim Assistance Fund. The bill identifies circumstances in which offenders who are convicted of selling sexual relations may petition the court for expungement of the conviction and related arrest records.

HB 2779 would allow courts, in some circumstances, to directly place children who have been subject to human trafficking or aggravated human trafficking into temporary custody or some other court-ordered placement if a child has been determined to be a “child in need of care.” Children may be placed by courts in secure facilities, youth residential facilities or juvenile detention facilities.

The Department of Social and Rehabilitation Services (SRS) states that enactment of HB 2779 could result in a loss of federal resources totaling \$126,782,750. Amendments to the temporary custody and court-ordered placement statutes would, in some cases, allow courts rather than SRS to determine the placement of children. Current state and federal law assign the responsibility of placement decisions with only SRS. Under KSA 38-2202(g), the Secretary of Social and Rehabilitation Services is required to consider the recommendations of the court; however, final authority for placement decisions rests with the Secretary. Likewise, Title IV-E, 42 USC 672 (a)(2)(B) of the Social Security Act gives the responsibility for placement and care of a child to the state agency. It is assumed that as a result of the amendments, Kansas would not be in compliance with federal law and would be unable to claim federal financial participation for Title IV-E foster care maintenance payments, which are estimated to total \$24.9 million in FY 2013. Since Temporary Assistance for Needy Families (TANF) is conditioned on the state operating an approved Title IV-E plan, the TANF Block Grant of \$101.9 million would be at risk as well. SRS analysis further assumes that the loss in federal funding would be offset by the State General Fund to continue current programs.

The Office of the Attorney General estimates that the total revenue generated from fines for the Human Trafficking Victim Assistance Fund would be approximately \$636,000 for FY 2013. Using FY 2011 data provided by the Kansas Sentencing Commission, the estimate includes \$478,667 (120 offenders x \$4,000) from selling sexual relations convictions; \$49,167 (20 offenders x \$2,500) from promoting the sale of sexual relations convictions; and \$108,000 (24 offenders x \$4,500) from buying sexual relations convictions. It is expected that the total amount of revenue for FY 2014 would be \$1,272,000. This estimate assumes that the number of human trafficking cases would double.

The Office also estimates that \$219,000 from the new fund would be needed for the salaries and wages of two new positions and associated expenses to provide training to law enforcement, technical assistance to local jurisdictions, and prosecution of any human trafficking cases referred to the Attorney General. Other costs include coordinating and processing the disbursement of funds to victim service agencies, on-going coordination of the Human Trafficking Advisory Board, and providing victim-witness coordination for human trafficking victims handled by the Office.

According to the Kansas Sentencing Commission, HB 2779 would not have an effect on prison admissions and bed needs. The Commission states that there are currently only two

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offenders incarcerated for aggravated human trafficking. Also, it is assumed that the crime of commercial sexual exploitation of a child would have no effect because the current convictions of sexual exploitation of a child may already be included in the new crime. Finally, the penalties for selling sexual relations, which was formerly the crime of prostitution, remain unchanged in the bill.

HB 2779 has the potential for increasing litigation in the courts because of the new crimes created by the bill. If it does, there would be a fiscal effect on the operations of the court system. At this time, however, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. A request for information has been sent to the Office of Judicial Administration; however, a response had not been received at the time this note was prepared. A revised fiscal note will be submitted upon reception of fiscal effect information from the Office.

The Juvenile Justice Authority (JJA) estimates that any increase in the number of adjudicated youth who might enter JJA custody because of the bill would be small. As a result, any associated increase in operating costs would be negligible and could be accommodated within existing resources. Any fiscal effect associated with HB 2779 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Linda Durand, KBI
Marcy Watson, JJA
Jackie Aubert, SRS
Megan Henry, Attorney General's Office
Scott Schultz, Sentencing Commission
Mary Rinehart, Judiciary
Jeremy Barclay, Corrections