

February 15, 2013

REVISED

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Revised Fiscal Note for SB 61 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 61 is respectfully submitted to your committee.

SB 61 would modify existing laws relating to the crime of human trafficking and it would also create the new crime of commercial sexual exploitation of a child. The Attorney General would be designated as the authority for coordination of training on human trafficking for law enforcement agencies throughout Kansas. The Human Trafficking Advisory Board would be established by the Attorney General and would consist of representatives from the Office of the Governor; the Attorney General's Office; the Department of Labor; the Department of Children and Families; the Department of Health and Environment; the Juvenile Justice Authority; the Kansas Association of Chiefs of Police; the Kansas Sheriffs' Association; the Highway Patrol; the Kansas Bureau of Investigation; local law enforcement agencies; the Legislature; nongovernmental organizations; academic researchers; any other federal, state, or local government entity deemed necessary by the Attorney General; and any other private or nongovernmental organization considered necessary by the Attorney General. The Human Trafficking Victim Assistance Fund would be established with the proceeds used for law enforcement training and to support and provide treatment for victims of human trafficking and commercial sexual exploitation of a child. Municipal courts must remit \$2,500 from each fine for violations of city ordinances prohibiting prostitution to the Human Trafficking Assistance Fund.

Commercial sexual exploitation of a child would be a severity level 5, person felony; however, for offenders who have been convicted of a prior violation of the new crime, the penalty would be classified as a severity level 2, person felony. Commercial sexual exploitation of a child or attempt, conspiracy, or criminal solicitation to commit commercial sexual exploitation of a child when the offender is an adult and the victim is less than 14 years of age would be an off-grid person felony.

Children who are victims of human trafficking or commercial sexual exploitation and who have been taken into custody must be referred by the courts to the Department of Children and Families (DCF) for assessment. Children who are victims of these crimes and who are placed in protective or temporary custody may be placed in a staff secure facility, which would be a new type of facility under SB 61. In addition to specific security features, processes, and policies, the facility would be required to provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and any other appropriate services. All facility points of entry and exit must be staffed by personnel who are either a retired or off-duty law enforcement officer. No staff secure facility may be in a city or county jail. The Kansas Department of Health and Environment, in consultation with the Attorney General, would be required to create rules and regulations regarding staff secure facilities.

The official websites of the Attorney General, the Department of Children and Families, and the Department of Labor would be required to post notices offering help to victims of human trafficking. The notices may also be placed in prominent locations in workplaces. The Department of Labor, in consultation with the Attorney General, would be required to develop and implement an education plan to raise awareness among Kansas employers about the problem of human trafficking and available resources. The Secretary of Labor must report to the House Committee on Judiciary and the Senate Committee on Judiciary the progress in developing or implementing the notice requirements and education plan on or before February 1, 2014.

The bill would modify the criteria for petitioning courts for the expungement of prostitution convictions or diversion agreements. The crime of prostitution would be redefined as “selling sexual relations.” It would be an affirmative defense that a victim committed a prostitution violation because the defendant was subjected to human trafficking, aggravated trafficking, or commercial exploitation of a child. Selling sexual relations would be a class B nonperson misdemeanor.

The crime of promoting prostitution would be redefined as the “sale of sexual relations.” The sale of sexual relations would be a severity level 9, person felony; however, for offenders who have prior convictions of the crime the penalty would be a severity level 7, person felony. First offenses would require a fine between \$2,500 and \$5,000. For offenders with prior convictions of the sale of sexual relations, a fine of at least \$5,000 would be imposed. All fines collected would be remitted to the Human Trafficking Victim Assistance Fund.

The crime of patronizing a prostitute would be redefined as “buying sexual relations.” Buying sexual relations would be a class A person misdemeanor and result in a fine of \$2,500. Offenders with prior convictions of this crime would face a severity level 9, person felony and a fine not less than \$5,000. All fines collected would be remitted to the Human Trafficking Victim Assistance Fund. Courts would be permitted to order offenders to complete an education and treatment program regarding commercial sexual exploitation.

The crimes of aggravated human trafficking and commercial sexual exploitation of a child would be included in the definition of sexually violent crime as it relates to aggravated

habitual sex offenders and life sentences without the possibility of parole. Conviction of commercial exploitation of a child if the victim is less than 14 years of age would result in a life sentence with a mandatory minimum term of imprisonment of not less than 25 years. When offenders who are convicted of aggravated human trafficking and commercial sexual exploitation of a child are released from prison, they would be released to a mandatory lifetime period of postrelease supervision.

The bill would add human trafficking, aggravated human trafficking, sexual exploitation of a child, commercial sexual exploitation of a child, buying sexual relations, or selling sexual relations to the list of crimes for which the Attorney General, district attorney, or county attorney may apply to a judge for authorization of intercepting wire, oral, or electronic communications.

Cases involving commercial exploitation of a child would be included in the cases specified by law in which an appeal of a district court’s decision is taken directly to the Supreme Court. Offenders convicted for aggravated human trafficking and commercial sexual exploitation of a child would be required to register under the Kansas Offender Registration Act.

Estimated State Fiscal Effect				
	FY 2013 SGF	FY 2013 All Funds	FY 2014 SGF	FY 2014 All Funds
Revenue	--	--	--	\$636,000
Expenditure	--	--	\$147,100	\$783,100
FTE Pos.	--	--	--	2.00

The Office of the Attorney General estimates that total fine revenue of \$636,000 would be remitted to the Human Trafficking Victim Assistance Fund in FY 2014. The revenue would be applied to an equal amount of costs in FY 2014 to provide training to law enforcement; address expected increased technical assistance requests from local jurisdictions; coordinate and processing the disbursement of funds to victim service agencies; coordinate and administer the Human Trafficking Advisory Board; and provide victim-witness coordination for human trafficking victims in cases handled by the Attorney General’s Office. A portion of the funds would be used for grant awards to victim service agencies. Providing these services would also require 2.00 FTE positions. It is expected that both revenue and expenditures would increase to \$1,272,000 for FY 2015 and the addition of 2.00 FTE positions would continue. The additional revenue would be used to expand the number and amount of grants to victim services programs. The Office indicates that local law enforcement would be trained to identify victims and to investigate cases. This would, in turn, result in an increased number of arrests for the crimes described in the bill. This assumption is based upon data from the Exploited and Missing Children’s Unit in Wichita that show cases increasing from nine in 2008 to 44 in 2011.

The Department of Children and Families (DCF) calculates that additional expenditures of \$147,100 would be required in FY 2014 for placement, facility and assessment costs. In the original fiscal effect statement, DCF estimated additional expenditures totaling \$107,500. The

Department now states that the costs for law enforcement observation of children placed in safe secure facilities were inadvertently omitted from the initial statement. Using juvenile arrest data from the Kansas Bureau of Investigation, DCF estimates that 25 children would be placed in staff secure facilities in FY 2014, which would yield placement costs totaling \$62,850 (previously estimated at \$23,250). It is assumed that the children would stay a total of 75 days at the facility at a cost of \$838 per day. Expenses for maintaining a four-bed staff secure facility are estimated to total \$58,000 in FY 2014. Also, the Department assumes that its Rapid Response Team would be required to investigate three times the number of children placed in staff secure facilities. Each immediate assessment is estimated to cost \$350 with total assessment costs projected to be \$26,250 (75 investigations X \$350 per assessment). DCF anticipates the number of children to increase to 30 by FY 2015 and to 35 by FY 2016. The additional caseloads would increase total costs for DCF to \$165,160 and \$184,405 for FY 2015 and FY 2016, respectively. All DCF expenditures associated with SB 61 would require State General Fund financing.

The Kansas Department of Health and Environment expects that existing resources could be used to regulate and inspect staff secure facilities.

While the bill prohibits children taken into police custody to be placed in juvenile detention facilities or other secure facilities, the Juvenile Justice Authority (JJA) suggests enactment of the bill could result in additional expenditures for the agency. The fiscal effect would be directly related to the number of youth adjudicated under SB 61 and the disposition of the youth imposed by the courts. However, JJA indicates the precise effect is difficult to determine because an estimate of the number of youth who would be directed to other placement facilities overseen by JJA is unavailable to the agency.

The League of Kansas Municipalities estimates that cities could incur costs from amending ordinances and remitting fine payments; however, the precise fiscal effect is difficult to quantify because no data currently exist that allows for the calculation and projection of municipal aggregate costs.

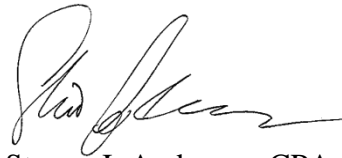
The Kansas Sentencing Commission estimates that passage of SB 61 would result in an increase of three adult prison beds in FY 2014 and an increase of 15 adult prison beds by FY 2023. As of January 14, 2013, the available bed capacity is 9,564. Based upon the Kansas Sentencing Commission projections, it is estimated that by the end of FY 2014 and FY 2015 the number of inmates will exceed available capacity by 325 beds and 590 beds, respectively.

To address capacity issues, the Governor's budget includes additional funding of \$3.0 million (\$2.0 million in FY 2014 and another \$1.0 million in FY 2015) for community corrections treatment and supervision programs to reduce the number of probationers entering prison. It is expected that the added funds plus policy changes recommended by the Justice Reinvestment group will make 135 beds available in FY 2014 and 853 beds available in FY 2015. However, it is likely that continued projected population increases will also require construction of new cell houses at El Dorado Correctional Facility. The project would include building two new medium security housing units, which would provide a total of 512 beds. It is

estimated that the new units would have a construction cost of approximately \$24.5 million and operating costs of approximately \$8.4 million (or about \$45.00 per inmate per day). Presumably, bonding authority would be required in FY 2015 for the constructions costs with operations at the new cell houses beginning in FY 2016.

Should passage of the bill require capacity needed beyond the options outlined above, additional costs for contract beds or facility expansion would be incurred in the near term. The actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied. Likewise, any further prison commitments that result in additional parolees could require additional staff and resources so that the parolees could be effectively supervised. Any fiscal effect associated with SB 61 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,



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

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