

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2706**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

Sub. for HB 2706 would create the new crimes of unlawful transmission of a visual depiction of a child, aggravated unlawful transmission of a visual depiction of a child, and unlawful possession of a visual depiction of a child.

Unlawful transmission of a visual depiction of a child would be defined as knowingly transmitting a visual depiction of a child at least 12 years of age and in a state of nudity when the offender is less than 19 years of age and is less than 6 years older than the child. Aggravated transmission of a visual depiction of a child would require the same elements and would add the requirement that the transmitting occur with the intent to harass, embarrass, intimidate, defame, or otherwise inflict emotional, psychological, or physical harm. It would be a rebuttable presumption that the offender had this intent if the offender transmitted a visual depiction of a nude child other than the offender. It also would constitute aggravated transmission if the transmission was made for pecuniary or tangible gain or with the intent to exhibit or transmit the depiction to more than one person.

Unlawful transmission would be a severity level 10, person felony. Aggravated unlawful transmission would be a severity level 9, person felony for a first offense and a severity level 7, person felony for any subsequent offense.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

These crimes would not apply to the transmission of a depiction of a child in a state of nudity by the child who is the subject of the depiction. The crimes also would not apply to a visual depiction of a child engaged in sexually explicit conduct or a depiction that constitutes obscenity.

Unlawful possession of a visual depiction of a child would be defined as the knowing possession of a visual depiction of a child at least 12 years of age and in a state of nudity, if the possessor is less than 6 years of age older than the subject of the depiction and received the depiction directly and exclusively from the child who is the subject of the depiction. This crime would be a class A person misdemeanor. It would be a defense to the crime that the recipient of a depiction received it without requesting, coercing, or otherwise attempting to obtain the depiction; did not transmit, exhibit, or disseminate the depiction; and made a good faith effort to erase, delete, or destroy the depiction. The crime would not apply to the possession of a depiction of a child in a state of nudity by the child who is the subject of the depiction.

The bill would define “sexually explicit conduct,” “state of nudity,” and “visual depiction” for the purposes of the new crimes.

The crime of sexual exploitation of a child would be amended to except the circumstances covered by the crimes created by the bill and to add a provision stating sexual exploitation of a child shall not apply to possession of a depiction of a child in a state of nudity by the child who is the subject of the depiction.

## **Background**

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Gonzalez. In the House Committee, Representative Gonzalez, a representative of the Jefferson County Sheriff’s Office, and a representative of the Kansas

Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified in support of the bill. There was no neutral or opponent testimony.

The House Committee recommended a substitute bill removing language from the original bill that would have added a person under 18 years of age who possesses or transmits a visual depiction of that person in a state of nudity or engaging in sexually explicit conduct to the definition of "child in need of care" in the Revised Kansas Code for Care of Children.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Sentencing Commission estimates the bill would result in an increase of 36 to 54 juvenile probationers in FY 2015 and require 2 or 3 additional juvenile facility beds each year. As of January 2014, the available juvenile correctional facility was 387 beds with a population of 316 youth. The bill would not impact adult bed space needs or the Commission's journal entry workload.

The Office of Judicial Administration indicates the bill could increase the number of cases and appeals, requiring increased time by district and appellate court personnel. The bill also could result in the collection of added revenue from docket fees. However, a precise fiscal effect cannot be determined.

The Department for Children and Families states the bill could result in a considerable increase to the number of children in foster care. While the Department cannot accurately estimate the caseload increase, each additional child in foster care would cost \$17, 676 per year.

The Office of the Attorney General states the bill would have no fiscal effect on the Office. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.