

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2018

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2018 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 but less than 18 years of age in a state of nudity when the offender is less than 19 years of age. 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 such visual depiction to more than one person. 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 class A, person misdemeanor for a first conviction and a severity level 10, person felony upon a second or subsequent conviction. Aggravated unlawful transmission would be a severity level 9, person felony for a first conviction and a severity level 7, person felony upon a second or subsequent conviction.

*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 but less than 16 years of age in a state of nudity, if the possessor is less than 19 years of age and received the depiction directly and exclusively from the child who is the subject of the depiction. This crime would be a class B, 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 or to a visual depiction of a child engaged in sexually explicit conduct or a depiction that constitutes obscenity.

The bill would define “sexually explicit conduct,” “state of nudity,” “transmission,” and “visual depiction” for the purposes of the new crimes. “Transmission” would include, among other communications, a request to receive a transmission of a visual depiction if the request results in such a transmission.

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 2015 House Committee hearing, Representative Gonzalez, representatives of the Jefferson County Sheriff's Office and American Family Action of Kansas and Missouri, a citizen, 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. A representative of the American Civil Liberties Union of Kansas testified in opposition to the bill.

In the 2016 House Committee hearing, a representative of American Family Action of Kansas and Missouri, a citizen, 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. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to section 2 of the bill, regarding possession of a visual depiction of a child.

The House Committee adopted amendments clarifying the age of the victim; clarifying language related to the offender; removing an element that the offender be less than six years of age older than the child; lowering the penalty for a first offense for unlawful transmission from a severity level 10 felony to a class A, person misdemeanor; requiring transmission to more than one person for the rebuttable presumption to operate; lowering the penalty for unlawful possession from a class A, person misdemeanor to a class B, person misdemeanor; and adding a definition for "transmission."

According to the 2015 fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Sentencing Commission estimated the bill would result in an increase of 36 to 54 juvenile probationers in FY 2016 and require 2 or 3 additional juvenile facility beds each year. As of December 2014, the available juvenile correctional facility

was 387 beds with a population of 276 youth. The bill would not impact adult bed space needs or the Commission's journal entry workload.

The Office of Judicial Administration indicated 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.

Any fiscal effect associated with the bill was not reflected in *The FY 2016 Governor's Budget Report*.

The Sentencing Commission released an updated impact assessment in January 2016 for the bill, as introduced, estimating it would result in 36, 45, or 54 additional juvenile probationers in FY 2017 and 43, 54, or 65 additional juvenile probationers in FY 2026, based on three different scenarios. The bill would require 2 or 3 additional juvenile facility beds each year.