

UPDATED
SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 214

As Amended by Senate Committee on
Corrections and Juvenile Justice

Brief*

SB 214, as amended, would create and amend law related to human trafficking crimes and the crime of commercial sexual exploitation of a child.

The bill would create a civil cause of action for a victim of conduct that would constitute human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, against the person or persons who engaged in such conduct, if the victim suffered personal or psychological injury as a result of the conduct. The victim could seek actual damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief. The court would be required to award costs to the prevailing plaintiff, including reasonable attorney fees, and a victim awarded damages would be deemed to have sustained damages of at least \$150,000. The action would have to be filed within ten years after the victim was freed from the human trafficking situation or turned 18 years of age, whichever is later. A victim would be allowed to request the Attorney General pursue the case on the victim's behalf, with damages awarded going to the victim. The Attorney General would be allowed to seek reasonable attorney fees and costs. The action would be subject to the subrogation provisions for compensation by the Crime Victims Compensation Board, and it would not preclude any other remedy available to the victim under federal or state law.

*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>

The bill would add human trafficking, aggravated human trafficking, and commercial sexual exploitation of a child to the list of offenses covered by the civil action available for victims of such offenses when any portion of the offense was used in the production of child pornography.

The bill would require a sentencing court to order a person convicted of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child to pay restitution to the victim of the offense for expenses incurred or reasonably certain to be incurred as a result of the offense, including reasonable attorney fees and costs, as well as the greater of three times the following amounts, without reduction for the defendant's expenses in maintaining the victim:

- Gross income to the defendant for, or the value to the defendant of, the victim's labor, services, or sexual activity;
- Amount the defendant contracted to pay the victim; or
- The value of the victim's labor, services, or sexual activity, calculated under the higher of the state or federal minimum wage.

The restitution would be required even if the victim is unavailable to accept the restitution. If the restitution is not claimed within five years, the restitution would be paid to the Human Trafficking Victim Assistance Fund.

The bill would add statutory references to the crimes of human trafficking, aggravated human trafficking, and commercial sexual exploitation of a child within the following statutory provisions, for the purpose of including the crimes within those provisions:

- Prohibition on the polygraph examination of certain victims;

- Convictions giving rise to a presumption of parental unfitness under the Code for Care of Children;
- Information identifying victims of certain offenses that shall not be open for public inspection as part of the files of proceedings under the Revised Juvenile Justice Code;
- Information identifying victims of certain offenses that shall not be disclosed or open to public inspection when part of law enforcement records or municipal court records under the Revised Juvenile Justice Code;
- Worker convictions disqualifying the operation of an adult care home;
- Worker convictions disqualifying the operation of a home health agency;
- Convictions preventing the issuance or renewal of a teacher's license; and
- Special timing requirements for application for compensation from the Crime Victims Compensation Board and an exception from the lower limit for compensation.

Similarly, the bill would add statutory references to the crime of commercial sexual exploitation of a child within the following statutory provisions, for the purpose of including the crime within those provisions:

- Application of sex offense definitions;
- Definition of a "covered person" under the Kansas Racketeer Influenced and Corrupt Organization Act;

- Information a prosecuting attorney must provide to victims of certain crimes, and the victim's right to be present at certain hearings;
- Notice to be given to victims (or their families) of certain crimes of an application for pardon or commutation;
- Notice to be given by the Secretary of Corrections to victims (or their families) of certain crimes prior to the release or after the escape or death of the inmate;
- Notice to be given by the county or district attorney to victims (or their families) of certain crimes upon the escape or death of committed defendants in the custody of the Secretary for Aging and Disability Services;
- Exception from notice of change in child's residence under the Parentage Act when the other parent has been convicted of certain crimes;
- Exception from notice of change in child's residence under provisions related to child custody when the other parent has been convicted of certain crimes;
- Convictions that may be used to prove the existence of domestic violence for the purpose of avoiding disqualification for unemployment benefits;
- Convictions to be included in a criminal history determination as part of an adoption assessment;
- Criminal cases excluded from requirements that a county or district attorney file a special allegation of sexual motivation and a court make a finding thereon;

- Application of the rule of evidence regarding other crimes or civil wrongs to sex offenses, and the definition of “act or offense of sexual misconduct” within this rule;
- Definition of “sexual assault” for the purposes of a substitute mailing address, making victims of the crime eligible for a substitute mailing address; and
- Exceptions from due process requirements for teachers at the state schools for the blind and the deaf whose certificates are nonrenewed or revoked for certain convictions.

The bill would amend the definition of “sexual abuse” within the Code for Care of Children to include allowing, permitting, or encouraging a child to engage in aggravated human trafficking, if committed for the sexual gratification of the offender or another.

The bill also would update references to the Juvenile Justice Authority and physicians’ assistants and would make technical updates to statutory references.

Background

The bill was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the Attorney General. In the Senate Committee, the Attorney General testified in support of the bill, stating the bill would build upon recent comprehensive human trafficking legislation passed by the Legislature. The Secretary for Children and Families submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The Senate Committee amended the bill to triple the restitution amount.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department for Children and Families indicates the bill would result in additional intakes by the Kansas Protection Report Center, but these additional intakes could be absorbed within existing resources. The bill also could increase removals from homes, which the Department estimates could result in 16 additional out-of-home placements in FY 2016. At an annual cost of \$17,676 per placement, the bill could require total additional expenditures of \$282,816 in FY 2016, which would include \$206,795 from the State General Fund (SGF) and \$76,021 from federal funds. In FY 2017, the bill could require 45 additional placements for a total cost of \$795,420, including \$581,611 from SGF and \$213,809 from federal funds.

The Office of the Attorney General indicates the bill could increase revenues to the Human Trafficking Victims Assistance Fund, but the amount of additional revenue that could be generated is unknown. Any fiscal effect is not reflected in *The FY 2016 Governor's Budget Report*.