

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 391

As Amended by Senate Committee on
Corrections and Juvenile Justice

Brief*

SB 391 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. There would be a rebuttable presumption 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 for a subsequent conviction. Aggravated unlawful transmission would be a severity level 9, person felony for a first conviction and a severity level 7, person felony for a 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.

The bill also would amend the Kansas Offender Registration Act (KORA) to specify the definition of “offender” would not include persons convicted or adjudicated of these

newly created crimes. Further, notwithstanding any other provision of law, the bill would prohibit a court from ordering a person to register under the KORA for these offenses.

Background

The bill was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of Senator Baumgardner. At the Senate Corrections and Juvenile Justice Committee hearing, Senator Baumgardner, a citizen, and representatives of American Family Action of Kansas and Missouri, the Jefferson County Sheriff's Office, 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 Coalition Against Sexual and Domestic Violence submitted written testimony 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 Senate Committee adopted an amendment to provide persons convicted under the provisions of the bill would not be required to register pursuant to the KORA.

According to the 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 2017 and require 2 or 3 additional juvenile facility beds each year. 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, requiring increased time by staff. 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 2017 Governor's Budget Report*.