

Human Trafficking; House Sub. for SB 40

House Sub. for SB 40 amends law concerning human trafficking, including the creation of new crimes and amendments to existing crimes and other related provisions.

Crimes

New Crimes

The bill creates new crimes concerning use of a “communication facility,” which the bill defines as any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers, and all other means of communication. The bill provides it is a severity level 7 person felony for a person to knowingly or intentionally use any communication facility to commit the crimes of human trafficking, commercial sexual exploitation of a child, or promoting the sale of sexual relations, as well as in any attempt, conspiracy, or solicitation of those crimes. Further, it is a class A person misdemeanor to use a communication facility in committing, causing, or facilitating the commission of the crime of buying sexual relations. Defendants have an affirmative defense if they were subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child.

Additionally, the bill creates the crime of promoting travel for child exploitation, a severity level 5 person felony, which the bill defines as knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute aggravated human trafficking (using the definition as amended by the bill), sexual exploitation of a child, Internet trading in child pornography (a new crime created by the bill and described below), and commercial sexual exploitation of a child if it occurred in Kansas. The bill defines “travel services” as transportation by air, sea, or ground; hotel or any lodging accommodations; package tours; or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

The bill also creates the crime of Internet trading in child pornography, which is defined by incorporating certain elements of the crime of sexual exploitation of a child when the offender is 18 years of age or older and knowingly causes or permits the performance to be viewed by use of any electronic device connected to the Internet by any person other than the offender or a person depicted in the performance. The crime is a severity level 5 person felony when an offender possesses any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

The conduct constitutes aggravated Internet trading in child pornography when the offender either:

- Employs, uses, persuades, induces, entices, or coerces a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or

- Being a parent, guardian, or other person having custody or control of a child under 18 years of age, knowingly permits such child to engage in, or assist another to engage in, sexually explicit conduct with the intent to promote any performance or with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

Aggravated Internet trading in child pornography is a severity level 3 person felony or an off-grid felony when the child is under 14 years of age. If the child is under 14 years of age, the provisions specifying the severity levels for attempt, conspiracy, and criminal solicitation do not apply. The bill also amends statutes governing attempt, conspiracy, and criminal solicitation of a crime to reflect this change.

In addition to the venue provided for under any other provision of law, the bill allows prosecution for these crimes to be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the Internet and is viewed by a law enforcement officer using an electronic device connected to the Internet while engaged in such officer's official duties.

The Internet trading in child pornography crimes do not apply where the crimes of unlawful possession of a visual depiction of a child or unlawful transmission of a visual depiction of a child apply.

Related to the creation of these crimes, the bill adds Internet trading in child pornography and aggravated Internet trading in child pornography to the definition of "sex offense" in the capital murder statute and to the definition of "sexually violent crime" in the aggravated habitual sex offender statute and in the statute governing parole and postrelease supervision. When the child is less than 14 years of age, the bill adds aggravated Internet trading in child pornography to the statute governing crimes for which a defendant is sentenced to imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years, a statute concerning sentencing for off-grid crimes, and to the statute prohibiting direct appeal of certain cases to the Kansas Supreme Court. Additionally, the bill amends a rule governing admissibility of a witness' previous sexual conduct as evidence in certain prosecutions to apply in prosecutions of the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography.

Human Trafficking

The bill amends the definition of aggravated human trafficking, which is a severity level 1 person felony or an off-grid crime if the victim is less than 14 years of age. The bill amends one of the four definitions of the crime to read "recruiting, harboring, transporting, providing, or obtaining by any means, a child knowing that the person, with or without force, fraud, threat, or coercion, will be used to engage in forced labor, involuntary servitude, or sexual gratification of the defendant or another involving the exchange of anything of value." The amendment to this subsection removes the elements of the crime of human trafficking from the definition, changes "person under the age of 18 years of age" to "child," and adds the "exchange of anything of value." The bill also adds a subsection providing a new definition for the crime of aggravated human trafficking: hiring a child by giving, or offering or agreeing to give, anything of value to any person to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of another, sexual intercourse, sodomy, or

any unlawful sexual act when the offender recklessly disregards the age of the child. This definition is similar to one used to define the crime of commercial sexual exploitation of a child, which the bill modifies. For the purposes of the crime of human trafficking, “child” means a person under 18 years of age.

The bill creates an affirmative defense to prosecution for these two definitions of aggravated human trafficking for a defendant who, at the time of the violation, was under 18 and committed the violation because the defendant was subjected to human trafficking or aggravated human trafficking. It is not a defense that a victim consented or willingly participated in the forced labor, involuntary servitude, or sexual gratification of the defendant or another, or that the offender had no knowledge of the age of the victim.

The bill specifies a person who violates any of the provisions of the human trafficking statute could be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child or any form of homicide. Further, in addition to any other sentence imposed, a person convicted of human trafficking will be fined between \$2,500 and \$5,000. A person convicted of aggravated human trafficking, as well as any attempt, conspiracy, or solicitation of that crime, will be fined a minimum of \$5,000. Fines collected are remitted to the Human Trafficking Victim Assistance Fund. Additionally, the court can order any person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

The bill amends the definition of “sex offense” in the capital murder statute to add aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of another.

Sexual Exploitation of a Child

The bill amends the crime of sexual exploitation of a child to increase the severity level from a level 5 to a level 3 person felony when committed by:

- Employing, using, persuading, inducing, enticing, or coercing a child under 18 years of age, or a person who the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or
- Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

Buying Sexual Relations

The bill amends the crime of buying sexual relations to provide a person convicted of this crime will be fined between \$1,200 and \$5,000. Prior law provided for a fine of \$2,500 for a first-time offense and a fine of up to \$5,000 for a second or subsequent offense. Half of all fines collected will be remitted to the Human Trafficking Victim Assistance Fund. Similarly, the bill designates half of any fine imposed for a municipal violation of buying sexual relations to be remitted to the Human Trafficking Victim Assistance Fund. Prior law provided for \$2,500 of any such fine to be remitted to that fund.

Commercial Sexual Exploitation of a Child

The bill replaces two definitions for the crime of commercial sexual exploitation of a child with one definition containing language modified from the existing definitions. Language similar to these definitions is already included in or is added to provisions regarding the crime of human trafficking. The bill also increases the severity level for commercial sexual exploitation of a child from a level 5 to a level 4 person felony.

Other Provisions

Training regarding trafficking. On and after July 1, 2018, the bill requires an applicant for issuance or renewal of a commercial driver's license to complete training approved by the Attorney General in human trafficking identification and prevention and provide satisfactory proof of such completion to the Division of Vehicles prior to such issuance or renewal. The bill requires the Attorney General, in consultation with the Director of Vehicles, to promulgate rules and regulations no later than January 1, 2019, to implement this requirement.

Addition to list of sexually violent crimes. The bill amends the Kansas Offender Registration Act to add the crime of promoting the sale of sexual relations to the list of sexually violent crimes and specifies a person convicted of such crime is required to register for 15 years.

Expungement. The bill requires a court to order expungement of records and files if it finds the juvenile is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of disorderly conduct or selling sexual relations, and the hearing on expungement occurred on or after the date of final discharge.

Additionally, the bill adds to the list of crimes for which juvenile and adult expungement is not allowed the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography. [Note: The bill appears to make additional substantive amendments regarding copies of orders of expungement and bail enforcement agent licensing. However, these provisions were in prior law and are technical amendments to reconcile different versions of the statutes created by 2016 legislation.]

Compensation for crime. The bill specifies provisions allowing reduction or denial of compensation from the Crime Victims Compensation Board shall not be construed to reduce or deny compensation to a victim of human trafficking or commercial sexual exploitation of a child who was 18 years or younger at the time the crime was committed and is otherwise qualified for compensation.

Hotline. The bill updates the name of the National Human Trafficking Hotline, which formerly was known as the National Human Trafficking Resource Center.