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# Kansas Legislator Briefing Book 2014

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## Judiciary

### O-5 Human Trafficking

In 1865, the United States officially adopted the Thirteenth Amendment to the *U.S. Constitution*, which outlawed slavery and involuntary servitude except as a punishment for crime. However, slavery and involuntary servitude exist in the U.S. and in Kansas today, in the form of human trafficking.

Human trafficking is a growing problem in the country, and similarly in Kansas. Human trafficking victimizes U.S. citizens – including many children. It also victimizes immigrants. Although the exact number of persons trafficked is not readily available, estimates of the number of victims are high. According to one source:

- With 100,000 children estimated to be in the sex trade in the U.S. each year, it is clear that the total number of human trafficking victims in the U.S. reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated. (Source: <http://www.polarisproject.org/human-trafficking/overview/>)

## Background

### *Definition*

The definition of “human trafficking” illustrates that a label can be misleading. Although the word “trafficking” generally implies movement, human trafficking does not always involve moving the victim. Instead, human trafficking focuses on obtaining or holding another person in compelled service. According to the U.S. Department of State *2012 Trafficking in Persons Report* (hereinafter referred to as the *2012 Report*):

People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so.

In a presentation to the 2011 Joint Committee on Home and Community Based Oversight (HCBS Committee), a representative of the Kansas Attorney General identified the following key elements of human trafficking:

- The Act (What is done) – Recruitment, transportation, transfer, harboring, or receipt of persons.
- The Means (How it is done) – Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person who is in control of the victim.
- The Purpose (Why it is done) – For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices, and the removal of organs.

Kansas Law Definitions. KSA 21-5426, subsection (a), defines the crime of human trafficking as follows:

Human trafficking is:

- The intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;
- Intentionally benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1);
- Knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
  - Causing or threatening to cause physical injury to any person;
  - Physically restraining or threatening to physically restrain another person;
  - Abusing or threatening to abuse the law or legal process;
  - Threatening to withhold food, lodging or clothing; or

- Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
- Knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

Subsection (b) of the same statute defines “aggravated human trafficking” as human trafficking:

- Involving the commission or attempted commission of kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;
- Committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or
- Resulting in a death; or
- Recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age 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.

## Scope

According to the *2012 Report* (Page 359), “The U.S. is a source, transit, and destination for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking. The *2011 Trafficking in Persons Report (2011 Report)* breaks down the types of trafficking as follows:

- **Forced Labor** – A number of forms of forced labor exist in the U.S., including domestic labor and work in the agricultural, manufacturing, janitorial, construction, health and elder care, hospitality, and hotel industries, in addition to strip clubs. (Page 372)

- **Debt Bondage** – Although illegal in the U.S., debt bondage reportedly exists here nonetheless. (Pages 7 and 372)
- **Sex Trafficking** – An adult can be coerced, forced, or deceived into prostitution, or forced to remain in prostitution. According to the *2011 Report*, the crime of sex trafficking also can occur within debt bondage, “... as women and girls are forced to continue in prostitution through the use of unlawful ‘debt’ purportedly incurred through their transportation, recruitment, or even ... ‘sale’ – which exploiters insist they must pay off before they can be free.” (Pages 7 and 372)
- **Child Sex Trafficking** – The *2011 Report* (Page 372) states: U.S. citizen victims, both adults and children, are predominantly found in sex trafficking; U.S. citizen child victims are often runaways, troubled, and homeless youth.”

### Extent of the Problem in Kansas

As mentioned, the problem has been documented to exist within and adjacent to Kansas. During her 2011 HCBS Committee presentation, the Kansas Attorney General representative provided the following testimony:

Human trafficking is occurring in Kansas at a rate in which the state is currently unprepared to address. Both Wichita and Kansas City have been recognized as major originating cities for human trafficking. Officers located in the Wichita-Sedgwick County Exploited and Missing Child Unit report that sex traffickers often pick up runaways within 48 hours of their being on the streets and transport them to either Dallas or Chicago within 72 hours.

In addition to the sex trade, the vast rural areas in Western Kansas are conducive to human trafficking for forced labor on farms and in food processing plants. While originally

noticed in Wichita and Kansas City, human trafficking reports from victim service agencies indicate it is also occurring in many mid-level communities across the state. From July 1 through December 31, 2010, victim service agencies in El Dorado, Garden City, Newton, and Manhattan were faced with providing services to human trafficking victims in their communities, in addition to service agencies in Wichita and Kansas City.

### Federal Law

The first comprehensive federal law addressing human trafficking was enacted in 2000. Co-sponsored by then-U.S. Senator Sam Brownback, the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; also referred to as the Trafficking Victims Protection Act of 2000, or TVPA 2000), the TVPA used a “three-pronged approach” to combat the problem: “... **prevention** through public awareness programs overseas and a State Department-led monitoring and sanctions program; **protection** through a new T-Visa and services for foreign national victims; and **prosecution** through new federal crimes.” Among other provisions, the Act made human trafficking a federal crime with severe penalties, created a number of related new crimes, and mandated that restitution be paid to victims. (Source: “Polaris Project – Trafficking Victims’ Protection Act [TVPA] – Fact Sheet,” Copyright Polaris Project, 2008)

The Act has been reauthorized three times since its establishment, in 2003, 2005, and 2008. Over the course of these reauthorization acts (referred to as the Trafficking Victims Protection Reauthorization Act, or TVPRA, of each of the three years) approximately one-half billion federal dollars have been authorized to fight human trafficking. In addition, a number of changes including the following were made to the Act (Source: Polaris Project Fact Sheet):

- A federal civil cause of action was created for trafficking victims to sue their traffickers.
- New programs were authorized to serve U.S. citizen or legal permanent resident victims of domestic human trafficking, including a pilot program for sheltering minors.
- Grant programs were authorized to assist state and local law enforcement efforts in combating human trafficking.
- Federal criminal jurisdiction was expanded to trafficking offenses committed by U.S. government personnel and contractors while abroad.
- An integrated database was required to be created by the Human Smuggling and Trafficking Center to collect human trafficking data from all federal agencies.
- A new program was authorized for providing services to U.S. citizen survivors of human trafficking.
- Criminal liability was expanded to include financially benefiting from human trafficking crimes; obstruction and conspiracy were added as well.
- The crime of sex trafficking was modified to remove the knowledge-of-age requirement in certain instances involving minors; in addition, the standard of proof was lowered to “reckless disregard” of the use of force, fraud, or coercion to cause a person to engage in commercial sex.
- The Department of Justice was mandated to create a new model state law to further a comprehensive approach in investigating and prosecuting human trafficking, including provisions criminalizing sex trafficking without proof of force, fraud, or coercion whether or not the victim is a minor.
- Human trafficking crimes were placed in the most serious crime category under the two principle state reporting mechanisms (Uniform Crime Reports [UCR] and National Incident-Based Reporting System [NIBRS]).
- States were required to report prostitution and vice crimes separately to the FBI for annual crime statistics under

the categories of (a) those directing, managing, or profiting from commercial sex act; (b) those unlawfully purchasing commercial sex acts; and (c) those unlawfully providing commercial sex acts.

## Kansas Law

The Kansas law establishing the crimes of human trafficking and aggravated human trafficking was passed in 2005 and has been revised since, most recently with technical changes in 2012 HB 2318.

The 2013 Legislature passed Senate Sub. for HB 2034, which was a comprehensive effort to strengthen other sections of Kansas law related to human trafficking and sexual exploitation. The bill was presented by the Office of the Attorney General and was the product of the Attorney General’s work with a coalition of state agencies, law enforcement, prosecutors, victim services providers, advocates, non-government organizations, and others to respond to the ongoing issue of human trafficking.

The bill authorized the Attorney General to coordinate training regarding human trafficking for law enforcement agencies throughout the state and designates the Attorney General’s Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. It also established the Human Trafficking Victim Assistance Fund, which will be funded by the collection of fines established by the bill to be imposed for trafficking-related offenses. These funds will be used to pay for the training described above and for care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a child.

The crime of “commercial sexual exploitation of a child” was created by the bill. This crime involves giving, receiving, or offering anything of value to induce a person younger than 18 years of age to engage in sexual intercourse or related acts with the intent to arouse or gratify the sexual desires of the offender or another. The crime also prohibits the ownership, management, or use of any property for such purposes, or providing transportation for such purposes. The crime is a severity level 5, person felony for a first offense, and a severity

level 2, person felony for a subsequent offense. It also will give rise to civil forfeiture.

The bill changed the terminology or titles of several trafficking-related crimes. For example, “prostitution” became “selling sexual relations” and “promoting prostitution” became “promoting the sale of sexual relations.”

The bill created an affirmative defense to the crime of “selling sexual relations” where the defendant committed the crime because the defendant was subjected to human trafficking, aggravated human trafficking, or commercial exploitation of a child. Expungement is allowed where persons convicted of this crime (or a juvenile adjudication of the equivalent) can show they were acting under coercion.

The bill required notices offering help to victims of human trafficking be posted on the official websites of the Attorney General, Department for Children and Families (DCF), and the Department of Labor. The Secretary of Labor is required to consult with the Attorney General to create an education plan to raise awareness among Kansas employers about human trafficking.

The severity levels of the crimes of promoting the sale of sexual relations and buying sexual relations were increased, and new fines were imposed to fund the Human Trafficking Victim Assistance Fund.

The bill also amended the Revised Code for the Care of Children to implement a requirement that the Secretary of DCF conduct a research-based assessment of any child taken into custody who has been subjected to trafficking-related crimes or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations. A law enforcement officer is permitted to take a child into custody if the officer reasonably believes the child is a victim of a trafficking-related offense. The officer must place

the child in protective custody and contact DCF so that an assessment may be made.

The bill defines and lists the requirements for a “staff secure facility,” which will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation. The bill provides mechanisms by which a court may order a child to be placed in a staff secure facility or DCF may decide to place a child in such a facility.

The Kansas Attorney General’s Office, the Kansas Secretary of State’s Office, and DCF provide assistance in combating human trafficking. The Attorney General established the Human Trafficking Advisory Board (HTAB) in 2010, and 2013 Senate Sub. for HB 2034 designated this Board as the official human trafficking board of Kansas. The HTAB comprises a team of experts from a wide range of backgrounds, including law enforcement, prosecutors, court personnel, victim advocates, academia, health care, immigration services, and other areas of expertise. See <http://ag.ks.gov/public-safety/human-trafficking>. The Secretary of State’s Office offers an address confidentiality program, entitled “Safe at Home,” for victims of certain crimes including human trafficking. See <http://www.kssos.org/safeathome/>. DCF administers a program that provides cash assistance to, among others, “Adult victims of severe forms of trafficking who have been certified by the U.S. Department of Health and Human Services.” The DCF program also serves children subjected to trafficking, but they do not have to be certified. See the DCF policy statement at [http://content.dcf.ks.gov/ees/keesm/robo10-12/KEESM\\_05\\_01\\_09.htm#keesm2410.htm](http://content.dcf.ks.gov/ees/keesm/robo10-12/KEESM_05_01_09.htm#keesm2410.htm).

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