



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Kan. Stat. Ann. § 21-5426(b)(5) (Human trafficking; aggravated human trafficking) expressly applies to buyers of commercial sex with a minor; it states,

Aggravated human trafficking is:

....

(5) 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 the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

Further, following federal precedent, Kan. Stat. Ann. § 21-5426(b)(4) could apply to buyers based on the term “obtaining.”¹

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Kan. Stat. Ann. § 21-6422(a) (Commercial sexual exploitation of a child) specifically criminalizes both purchasing and soliciting commercial sex with a minor; it states,

Commercial sexual exploitation of a child is knowingly:

¹ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

(1) Hiring a person younger than 18 years of age by giving, or offering or agreeing to give, anything of value to any person, to engage in a manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act . . .

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Kansas’s commercial sexual exploitation of a child law applies to traffickers but only under limited circumstances. Pursuant to Kan. Stat. Ann. § 21-6422(a)(2), (3) (Commercial sexual exploitation of a child),

Commercial sexual exploitation of a child is knowing:

. . . .

(2) establishing, owning, maintaining or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance or management thereof;

or

(3) permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age.

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Kansas law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to Kan. Stat. Ann. § 21-5426(f)(2) (Human trafficking; aggravated human trafficking), “It shall not be a defense to a charge of aggravated human trafficking, as defined in subsection (b)(4) or (5), that . . . the offender had no knowledge of the age of the victim.” Further, Kan. Stat. Ann. § 21-5204(b) (Culpable mental state; exclusions) generally prohibits a mistake of age defense, stating, “Proof of a culpable mental state does not require proof . . . that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which the accused is charged.”

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Kansas’s criminal attempt statute, Kan. Stat. Ann. § 21-5301 (Attempt), could provide prosecutors with an alternative avenue to prosecute those cases. Kan. Stat. Ann. § 21-5301(b) states, “It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense despite the use of a law enforcement decoy.

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Kansas’s human trafficking law allows for business entity liability but does not provide for a business-specific penalty scheme. Pursuant to Kan. Stat. Ann. § 21-5426(b), (c) (Human trafficking; aggravated human trafficking),

(b) Aggravated human trafficking is:

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- (4) recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value; or
- (5) 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 the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.
- (c)
-
- (2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).
- (3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.
- (4) In addition to any other sentence imposed, a person convicted under subsection (c)(2) or (c)(3) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2016 Supp. 75-758 [Human trafficking victim assistance fund established; expenditures], and amendments thereto.
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Importantly, Kan. Stat. Ann. § 21-5111(t) (Definitions) defines “person” as “an individual, public or private corporation, government, partnership, or unincorporated association.” Accordingly, business entities can be held liable for a human trafficking violation. However, despite allowing for business entity liability, Kan. Stat. Ann. § 21-5426 does not establish a business-specific penalty scheme, leaving a violation of the child sex trafficking law punishable by penalties most pertinent to individuals.

1.6.1 Recommendation: Strengthen state law to provide for a business-specific penalty scheme.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Kansas law requires convicted CSEC offenders, but not convicted trafficking offenders, to pay a fine that is to be deposited into a victim services fund. In addition, both trafficking and CSEC offenders face asset forfeiture; however, a percentage of their forfeited assets is not directed into a victim services fund.

Specifically, Kan. Stat. Ann. § 21-6422(b)(3) (Commercial sexual exploitation of a child) requires CSEC offenders to pay a mandatory fine, which is directed to the Human Trafficking Victim Assistance Fund; it states,

In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) or (b)(2) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2016 Supp. 75-758 [Human trafficking victim assistance fund established; expenditures], and amendments thereto.

Under Kan. Stat. Ann. § 75-758 (Human trafficking victim assistance fund established; expenditures), funds deposited in the Human Trafficking Victim Assistance Fund will be used for the following purposes:

There is hereby established in the state treasury the human trafficking victim assistance fund. All moneys credited to such fund shall be used to pay for the training authorized by K.S.A. 2013 Supp. 75-756 [Authorizing coordination of training regarding human trafficking], and amendments thereto, and to

support care, treatment and other services for victims of human trafficking and commercial sexual exploitation of a child. All expenditures from such fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

Regarding asset forfeiture, Kan. Stat. Ann. § 60-4104(i)–(aa) (Covered offenses and conduct giving rise to forfeiture) provides for forfeiture in cases involving sex trafficking and CSEC. It states,

Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

.....

(i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

.....

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 2015 Supp. 21-5426, and amendments thereto;

.....

(aa) commercial sexual exploitation of a child, as defined in K.S.A. 2015 Supp. 21-6422, and amendments thereto;

Under Kan. Stat. Ann. § 60-4105(b)–(f) (Property subject to forfeiture), property subject to forfeiture includes the following:

(b) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:

(1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or

(2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including, but not limited to, any electronic device, computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;

(c) all proceeds of any conduct giving rise to forfeiture;

(d) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;

.....

(f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

Disposition of forfeited assets is governed by Kan. Stat. Ann. § 60-4117(a)–(d) (Disposition of forfeited property; use of proceeds of sale), which states,

(a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

- (2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;
- (3) sell property which is not required by law to be destroyed and which is not harmful to the public . . . ;
- (4) salvage the property, subject to any lien preserved by the court.

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- (c) The proceeds of any sale shall be distributed in the following order of priority:
 - (1) For satisfaction of any court preserved security interest or lien, or in the case of a violation, as defined by K.S.A. 60-4104(i), and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;
 - (2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;
 - (3) reasonable attorney fees
 - (4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.
- (d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:
 - (1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund
 - (2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund.

As noted above, however, state asset forfeiture laws do not direct a percentage of a sex trafficking or CSEC offender's forfeited assets into a victim services fund.

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund.



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Under Kan. Stat. Ann. § 21-5426(b)(5) (Human trafficking; aggravated human trafficking),

Aggravated human trafficking is:

.....

(5) 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 the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

Accordingly, Kansas’s human trafficking law expressly applies to buyers of sex with minors, meaning a buyer can be charged regardless of whether a trafficker is involved or identified. Accordingly, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Kansas law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Kansas law requires child welfare to conduct CSEC screening of children known or suspected to have experience sex trafficking and commercial sexual exploitation. Pursuant to Kan. Stat. Ann. § 38-2287 (Child in custody; special assessment to determine safety, placement and treatment needs),

(a) whenever a child is in custody² . . . and there is reason to believe such child has been subjected to an act which would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 2015 Supp. 21-5426 [Human trafficking; aggravated human trafficking]. . . or commercial sexual exploitation, as defined by K.S.A. 2015 Supp. 21-6422 [Commercial sexual exploitation of a child]. . . or the child committed an act which, if committed by an adult, would constitute selling sexual relations as defined by

² Kan. Stat. Ann. § 38-2202 (Definitions) defines “custody” as, “whether temporary, protective, or legal, means the status created by court order or statute that vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.”

K.S.A. 2015 Supp. 21-6419 [Selling sexual relations] . . . the court shall refer the child to the secretary for children and families for an assessment to determine safety, placement, treatment and service needs for the child. The secretary shall use a validated, evidence-based assessment tool or instrument to assess such needs and shall make appropriate recommendations to the court

(b) When any law enforcement officer takes into custody any child as provided in K.S.A. 2015 Supp. 28-2231(b)(3) [Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway] . . . the law enforcement officer shall contact the department of children and families to begin an assessment to determine safety, appropriate and timely placement and appropriate services to meet the immediate needs of the child.

. . . .

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Kansas law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

- 2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

Kansas law fails to prohibit the criminalization of minors for prostitution; however, child sex trafficking victims may raise an affirmative defense in a resulting prosecution. Pursuant to Kan. Stat. Ann. § 21-6419 (Selling sexual relations),

- (a) Selling sexual relations is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:
- (1) Sexual intercourse;
 - (2) sodomy; or
 - (3) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender of another.
- (b) Selling sexual relations is a class B nonperson misdemeanor.
- (c) It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subjected to human trafficking or aggravated human trafficking, as defined in K.S.A. 2013 Supp. 21-5426 [Human trafficking; aggravated human trafficking], and amendments thereto, or commercial sexual exploitation of a child, as defined in K.S.A. 2013 Supp. 21-6422 [Commercial sexual exploitation of a child], and amendments thereto.

Consequently, while an affirmative defense protection may be available for child sex trafficking and CSEC victims, Kansas law permits the arrest, detention, charging, and prosecution of minors for prostitution.

- 2.5.1 Recommendation: Amend state law to prohibit the criminalization of minors for prostitution offenses.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Kansas law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Although Kansas law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization, an affirmative defense may be available for trafficking offenses. Specifically, Kan. Stat. Ann. § 21-5426(e) (Human trafficking; aggravated human trafficking) states,

It shall be an affirmative defense to any prosecution under subsection (b)(4) or (5)³ that the defendant: (1) Was under 18 years of age at the time of the violation; and (2) committed the violation because such defendant, at the time of the violation, was subjected to human trafficking or aggravated human trafficking, as defined by this section.

- 2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Kansas law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

Kansas law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While juvenile court jurisdiction extends to all minors under 18 years of age, Kansas law

³ Pursuant to Kan. Stat. Ann. § 21-5426(b),

Aggravated human trafficking is:

....

(4) recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value; or

(5) 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 the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

establishes a minimum age of 10 years for purposes of juvenile court jurisdiction and permits direct file in cases involving minors previously convicted in criminal court.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	10; “Juvenile” is defined as, “a person to whom one or more of the following applies, the person: (1) is 10 or more years of age but less than 18 years of age”	17	Yes. Minors who have been previously convicted in criminal court.	Yes. Minors: (1) 14+ years of age can be prosecuted as an adult; or (2) any minor charged with certain felony offenses can be waived over to an extended jurisdiction juvenile prosecution. ⁴	No.
Relevant Statute(s)	Kan. Stat. Ann. § 38-2302(n), (s) (Definitions)	Kan. Stat. Ann. § 38-2302(n), (s) (Definitions)	Kan. Stat. Ann. § 38-2302(s)(3) (Definitions)	Kan. Stat. Ann. § 38-2347(a)(1)–(2) (Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization)	Kan. Stat. Ann. § 38-2347(d) (Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization)

Consequently, Kansas law fails to provide age-appropriate juvenile court responses to all minors, including child sex trafficking victims, as governing state statute: (1) establishes a minimum age for juvenile court jurisdiction that is in conflict with international human rights standards; (2) allows minors to be subject to direct file; and (3) does not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

⁴ Pursuant to Kan. Stat. Ann. § 38-2347(a)(1), (2),

(1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2015 Supp. 38-2356 [Adjudication], and amendments thereto, the county or district attorney or the county or district attorney’s designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile, and the presumption must be rebutted by a preponderance of the evidence. No juvenile less than 14 years of age shall be prosecuted as an adult.

(2) At any time after commencement of proceedings under this code against a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony, and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2015 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney’s designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

Kansas law defines “child in need of care” to include child victims of sex trafficking and commercial sexual exploitation. Kan. Stat. Ann. § 38-2202(d) (Definitions) states in part,

As used in the revised Kansas code for care of children, unless the context otherwise indicates . . .

. . . .

(d) “Child in need of care” means a person less than 18 years of age at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2018 Supp. 38-2242, and amendments thereto, who:

. . . .

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;⁵

. . . .

(14) has been subjected to an act that would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 2018 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and amendments thereto, or has committed an act which, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 2018 Supp. 21-6419, and amendments thereto.

EXTRA CREDIT



Child labor trafficking is included in the definition of “child in need of care” under Kan. Stat. Ann. § 38-2202(d)(14).

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Kansas law provides access to child welfare services for child sex trafficking victims regardless of parent or caregiver fault, but it does not outline a child sex trafficking-specific protocol for responding to non-familial sex trafficking cases. Specifically, the definition of “child in need of care” under Kan. Stat. Ann. § 38-2202(d)

⁵ Kan. Stat. Ann. § 38-2202(gg) (Definitions) defines “sexual abuse” to include the following:

[A]llowing, permitting or encouraging a child to . . . be subjected to aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the offender or another, or be subjected to an act that would constitute conduct proscribed by article 55 of chapter 21 [Sexual offenses] of the Kansas Statutes Annotated or K.S.A. 2018 Supp. 21-6419 [Selling sexual relations] or 21-6422 [Commercial sexual exploitation of a child], and amendments thereto.

(Definitions) expressly includes child sex trafficking and, unlike other enumerated conduct, is not limited to acts or omissions by a caregiver.

- 2.11.1 Recommendation: Strengthen existing law to statutorily outline a child sex trafficking-specific protocol for responding to non-familial child sex trafficking cases that does not hinge on caregiver fault.



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Kansas law provides child sex trafficking victims with access to specialized services through a non-punitive system. Pursuant to Kan. Stat. Ann. § 38-2231(b)(3) (Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway), “A law enforcement officer shall take a child under 18 years of age into custody when the officer . . . reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.” When a child has been taken into custody pursuant to this provision, Kan. Stat. Ann. § 38-2232(b)(2) (Child under 18 taken into custody) provides,

[T]he law enforcement officer shall place the child in protective custody and may deliver the child to a staff secure facility. The law enforcement officer shall contact the department of children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a secure facility

Once a child sex trafficking victim has been referred to the Department of Children and Families, the Department assesses the child for placement, treatment, and specialized services. Pursuant to Kan. Stat. Ann. § 38-2287(a) (Child in custody, victim of certain conduct; special assessment to determine safety, placement, and treatment needs),

Whenever a child is in custody, as defined in K.S.A. 2018 Supp. 38-2202 [Child under 18 taken into custody; duties of officers; referral of cases for proceedings under this code and interstate compact on juveniles; etc.], and amendments thereto, and there is a reason to believe such child has been subjected to an act which would constitute human trafficking or aggravated human trafficking . . . or commercial sexual exploitation of a child, . . . or the child committed an act which, if committed by an adult, would constitute selling of sexual relations, . . . the court shall refer the child to the secretary for children and families for an assessment to determine safety, placement, treatment, and service needs for the child. The secretary shall use a validated, evidence-based assessment tool or instrument to assess such needs and shall make appropriate recommendations to the court. The secretary shall provide only a summary of the results from the assessment tool or instrument, not the complete assessment tool or instrument.

A child may be placed in protective custody until services are in place “[i]f the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child.” Kan. Stat. Ann. § 38-2242(c)(2) (Ex parte orders of protective custody; application of determination of probable cause; period of time; placement; procedures; orders for removal of child from custody of parent, limitations). Generally, however, Kan. Stat. Ann. § 38-2242(b)(2) states that “[n]o child shall be held in protective custody for more than 72 hours . . . unless within the 72-hour period a determination is made as to the necessity for temporary custody in a temporary custody hearing.”

Pursuant to Kan. Stat. Ann. § 38-2243(f) (Orders of temporary custody), an order for temporary custody may be entered under the following circumstances:

The court may enter an order of temporary custody after determining there is probable cause to believe that the . . . (4) child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2018 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and amendments thereto; (5) child is experiencing a mental health

crisis and is in need of treatment; or (6) child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419 [Selling sexual relations], and amendments thereto.

When protective or temporary custody are necessary, Kan. Stat. Ann. § 38-2242(c)(1)(E), (G) and Kan. Stat. Ann. § 38-2243(g)(1) both state that a child may be placed in the custody of:

(E) a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2018 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419, and amendments thereto;

.....
(G) the secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

Under Kan. Stat. Ann. § 38-2255(b), (d) (Authorized dispositions; prohibitions), upon disposition, a child sex trafficking victim may be placed in the custody of a parent or other suitable person, a shelter facility, a youth residential facility, a staff secure facility, or the secretary of the Department of Children and Families until further order of the court.

As noted above, a child sex trafficking victim may be placed in a staff secure facility at various points, including upon initial encounter or final disposition. Pursuant to Kan. Stat. Ann. § 65-535(b), (c) (Staff secure facility; requirements; services; rules and regulations),

(b) A staff secure facility shall provide the following services to children placed in such facility, as appropriate, for the duration of placement:

- (1) Case management;
- (2) life skills training;
- (3) health care;
- (4) mental health counseling;
- (5) substance abuse screening and treatment; and
- (6) any other appropriate services.

(c) Service providers in a staff secure facility shall be trained to counsel and assist victims of human trafficking and sexual exploitation.

Accordingly, law enforcement must refer a child sex trafficking victim to the Department of Children and Families for assessment, and the Department must create an individualized plan for services, treatment, and placement. Placement in a staff secure facility provides a child sex trafficking victim with access to service providers who are trained to meet the specialized needs of these children.

EXTRA CREDIT



Kansas law extends access to specialized services to victims of child labor trafficking based on the definition of “aggravated human trafficking” under Kan. Stat. Ann. § 21-5426(b)(4) (Human trafficking; aggravated human trafficking), which includes “recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value”

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Kansas does not statutorily require a multi-disciplinary team response to child sex trafficking cases.

- 3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response to child sex trafficking victims.

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Kansas law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.4 State law extends foster care services to older foster youth.

Kansas law extends foster care services to youth under 21 years of age.⁶ However, these services are not extended to youth under 23 years of age as permitted under federal law.⁷ Specifically, Kan. Stat. Ann. § 38-2203(c) (Jurisdiction; age of child, presumptions; precedence of certain orders.) states in part,

When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (2) been adopted; or (3) been discharged by the court. Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

There are specific programs within Kansas’s foster care program that are expanded to include eligible foster children through the age of 23. Under Kan. Stat. Ann. § 75-53, 112 (Same; definitions) and Kan. Stat. Ann. § 75-53, 111 (Foster child educational assistance act; purpose), foster children who are between the ages of 18 and 23 are eligible to receive funds under the Kansas foster child educational assistance act. However, this expansion does not apply generally to child welfare programs in the state.

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

⁶ This may be expanded under Kan. Stat. Ann. § 38-23, 100 (Community integration system), which allows for “community integration programs for juveniles who are ready to transition to independent living.” However this is merely an offer of transitional services and not an extension of foster care services.

⁷ For more information, see Shared Hope Int’l, *Issue Brief 3.4: Continuum of Care*, https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Kansas state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Kansas state legislature did appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

Kansas law allows trafficking victims to seek ex parte civil orders of protection against their exploiters. Pursuant to Kan. Stat. Ann. § 60-31a04(a)–(c) (Commencement of proceedings; persons seeking relief on behalf of minor; forms; no docket fee; confidentiality exceptions),

- (a) A person may seek relief under the protection⁸ from stalking, sexual assault or human trafficking act by filing a verified petition with any judge of the district court or clerk of the court
- (b) The following persons may seek relief under the protection from stalking, sexual assault or human trafficking act on behalf of a minor child by filing a verified petition with the judge of the district court or with the clerk of the court in the county where the stalking, sexual assault or human trafficking occurred:
 - (1) A parent of the minor child; (2) an adult residing with the minor child; or (3) the child’s court-appointed legal custodian or court-appointed legal guardian..
- (c) The following persons may seek relief for a minor child who is alleged to be a human trafficking victim under the protection from stalking, sexual assault or human trafficking act on behalf of the minor child by

⁸ Pursuant to Kan. Stat. Ann. § 60-31a06(a) (Orders; time periods; extension of orders; amendments; costs),

The court may issue a protection from stalking, sexual assault or human trafficking order granting any one or more of the following orders:

- (1) Restraining the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim. The order shall contain a statement that, if the order is violated, the violation may constitute stalking as defined in K.S.A. 2017 Supp. 21-5427, and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.
- (2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. The order shall contain a statement that, if the order is violated, the violation may constitute stalking as defined in K.S.A. 2017 Supp. 21-5427, and amendments thereto, assault as defined in K.S.A. 2017 Supp. 21-5412(a), and amendments thereto, battery as defined in K.S.A. 2017 Supp. 21-5413(a), and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.
- (3) Restraining the defendant from entering upon or in the victim’s residence or the immediate vicinity thereof. The order shall contain a statement that, if the order is violated, the violation shall constitute criminal trespass as defined in K.S.A. 2017 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.
- (4) Restraining the defendant from committing or attempting to commit a sexual assault upon the victim. The order shall contain a statement that, if the order is violated, the violation shall constitute violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. The order shall also contain a statement that, if the order is violated, the violation may constitute a sex offense under article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such sex offense.
- (5) Restraining the defendant from following, harassing, telephoning, contacting, recruiting, harboring, transporting, or committing or attempting to commit human trafficking upon the human trafficking victim, or otherwise communicating with the human trafficking victim. The order shall contain a statement that, if the order is violated, the violation shall constitute violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. The order shall also contain a statement that, if the order is violated, the violation may constitute an offense under chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such offense.
- (6) Any other order deemed necessary by the court to carry out the provisions of this act.

filing a verified petition with any district judge or with the clerk of the court alleging acts committed by an individual that are alleged to constitute human trafficking: (1) A parent of the minor child; (2) an adult residing with the minor child; (3) the child’s court-appointed legal custodian or court-appointed legal guardian; (4) a county or district attorney; or (5) the attorney general.

Further, Kan. Stat. Ann. § 60-31a05(b) (Hearing; temporary orders pending hearing) allows those orders to be granted on an ex parte basis, stating,

Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with K.S.A. 60-31a06 [Orders; time periods; extension of orders; amendments; costs], and amendments thereto, or any combination thereof, as it deems necessary to protect the victim from being stalked, sexually assaulted or trafficked. Temporary orders may be granted ex parte on presentation of a verified petition by the victim supporting a prima facie case of stalking, sexual assault or human trafficking.

EXTRA CREDIT



Victims of child labor trafficking may seek ex parte civil orders of protection against their exploiters under Kan. Stat. Ann. § 60-31a04, which broadly protects victims of human trafficking. Importantly, the definition of “aggravated human trafficking” under Kan. Stat. Ann. § 21-5426(b)(4) (Human trafficking; aggravated human trafficking) includes “recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value”

Policy Goal 4.2 Ineligibility factors for crime victims’ compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Kansas’s crime victims’ compensation laws provide victims of child sex trafficking and CSEC with limited exceptions to some, but not all, ineligibility factors, leaving some commercially sexually exploited children without access to an award.

For purposes of accessing crime victims’ compensation, Kan. Stat. Ann. § 74-7301(m)(1) (Definitions) defines “victim” to include “a person who suffers personal injury or death as a result of . . . [c]riminally injurious conduct.” “Criminally injurious conduct” is defined under Kan. Stat. Ann. § 74-7301(e)(1) as follows:

[C]onduct that:

(1)

(A) Occurs or is attempted in this state or occurs to a person whose domicile is in Kansas who is the victim of a violent crime which occurs in another state, possession, or territory of the United States of America may make an application for compensation if:

(i) The crimes would be compensable had it occurred in the state of Kansas; and

(ii) the places the crimes occurred are states, possessions or territories of the United States of America not having eligible crime victim compensation programs;

(B) poses a substantial threat or personal injury or death; and

(C) either is punishable by fine, imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or

Further, Kansas law carves out exceptions to several ineligibility factors. Pursuant to Kan. Stat. Ann. § 74-7305(d)–(k) (Claims for compensation; applications; conditions; limitations; amount),

(d) Compensation otherwise payable to a claimant shall be reduced or denied, to the extent, if any that the:

.....

(2) board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; or

(3) board deems reasonable, because the victim was likely engaging in, or attempting to engage in, unlawful activity at the time of the crime upon which the claim for compensation is based. This subsection shall not be construed to reduce or deny compensation to a victim of domestic abuse or sexual assault.

.....

(f) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

(g) The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

.....

(k) Nothing in subsections (d)(2), (d)(3), (f) and (g) shall be construed to reduce or deny compensation to a victim of human trafficking or aggravated human trafficking, as defined in K.S.A. 2020 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined in K.S.A. 2020 Supp. 21-6422, and amendments thereto, who was 18 years of age or younger at the time the crime was committed and is otherwise qualified for compensation.

Further, Kan. Stat. Ann. § 74-7305(b) extends the filing deadline, stating,

(1) Except as otherwise provided in this subsection, compensation may not be awarded unless an application has been filed with the division within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes:

(A) Enticement of a child as defined in K.S.A. 21-3509, prior to its repeal;

(B) human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(a), and amendments thereto;

(C) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto; or

(D) a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto.

(2) Compensation for mental health counseling may be awarded to a:

(A) Victim, as defined in K.S.A. 74-7301(m)(4), and amendments thereto, if the board finds there was good cause for the failure to file within the time specified in this subsection and the claim is filed before the victim turns 19 years of age; or

(B) victim of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, if the board finds there was good cause for the failure to file within the time specified in this subsection and:

(i) The claim is filed with the division within 10 years of the date such crime was committed; or

(ii) if the victim was less than 18 years of age at the time such crime was committed, the claim is filed within 10 years of the date the victim turns 18 years of age.

(3) For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the division within two years after the injury or death upon which the claim is based.

Lastly, Kan. Stat. Ann. § 74-7305(h) removes the requirement that a victim suffer economic loss in excess of \$100 for cases involving human trafficking and CSEC.⁹ Kan. Stat. Ann. § 74-7305(h) provides,

Except in . . . K.S.A. 2020 Supp. 21-6419 through 21-6422 [including commercial sexual exploitation of a child], and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2020 Supp. 21-5426, and amendments thereto, compensation may not be awarded if the economic loss is less than \$100

Despite these protections, a commercially sexually exploited child may still be denied access if not falling within one of the noted exceptions or if deemed to be an accomplice of their exploiter. Kan. Stat. Ann. § 74-7305(c) states, “Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.”

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims’ compensation.

Policy Goal 4.3 Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Kansas law does not allow sex trafficked children and youth to vacate delinquency adjudications or criminal convictions for offenses arising from trafficking victimization.

- 4.3.1 Recommendation: Enact a law that allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Kansas law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Kan. Stat. Ann. § 22-3424(d)(2) (Judgment and sentence),

(A) The court shall order a person convicted of human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2014 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2014 Supp. 21-6422, and amendments thereto, to pay restitution to the victim of the offense for:

⁹ Kan. Stat. Ann. § 74-7305(e) requires a claimant to suffer financial stress, stating,

Compensation may be awarded only if the board finds that unless the claimant is awarded compensation the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant’s customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:

- (1) The number of the claimant’s dependents;
- (2) the usual living expenses of the claimant and the claimant’s family;
- (3) the special needs of the claimant and the claimant’s dependents;
- (4) the claimant’s income and potential earning capacity; and
- (5) the claimant’s resources.

- (i) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney fees and costs; and
- (ii) an amount equal to three times the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
 - (a) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - (b) the amount the defendant contracted to pay the victim; or
 - (c) the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the federal fair labor standards act, 29 U.S.C. § 201 et seq., or under K.S.A. 44-1203, and amendments thereto, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.
- (B) The court shall order restitution under subsection (d)(2) even if the victim is unavailable to accept payment of restitution.
- (C) If the victim does not claim restitution ordered under subsection (d)(2) for five years after entry of the order, the restitution must be paid to the human trafficking victim assistance fund created by K.S.A. 2014 Supp. 75-758, and amendments thereto, to help victims.

EXTRA CREDIT



Kansas law mandates restitution for victims of child labor trafficking under Kan. Stat. Ann. § 22-3424(d)(2), which requires offenders convicted of Kan. Stat. Ann. § 21-5426 (Human trafficking; aggravated human trafficking) to pay victim restitution. Importantly, Kan. Stat. Ann. § 21-5426 criminalizes both sex and labor trafficking.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Kansas law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Kan. Stat. Ann. § 60-5003(a), (b) (Damages for human trafficking or commercial exploitation of a child victim) states,

- (a) A victim of the conduct of another that would constitute conduct prohibited by K.S.A. 2014 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking, or K.S.A. 2014 Supp. 21-6422, and amendments thereto, commercial sexual exploitation of a child, may bring an action in an appropriate state court against the person or persons who engaged in such conduct if the victim suffered personal or psychological injury as a result of the conduct. Such victim may seek actual damages, exemplary or punitive damages, injunctive relief and any other appropriate relief.
- (b) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees. A victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.

EXTRA CREDIT



Kansas law provides sex trafficked youth with a trafficking-specific civil remedy under Kan. Stat. Ann. § 60-5003, which applies broadly to all cases involving sex trafficking under Kan. Stat. Ann. § 21-5426 (Human trafficking; aggravated human trafficking) regardless of the victim's age.



Kansas law provides child labor trafficking victims with a trafficking-specific civil remedy under Kan. Stat. Ann. § 60-5003, which applies broadly to cases involving trafficking under Kan. Stat. Ann. § 21-5426 (Human trafficking; aggravated human trafficking), including both sex and labor trafficking.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Kansas law lengthens, but does not eliminate, statutes of limitation for criminal and civil actions related to child sex trafficking and CSEC. Pursuant to Kan. Stat. Ann. § 21-5107(c) (Time limitations for commencement of prosecutions),

Except as provided in subsection (e),¹⁰ a prosecution for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto:

¹⁰ Pursuant to Kan. Stat. Ann. § 21-5107(e)(6),

The period within which a prosecution shall be commenced shall not include any period in which:

.....

(6) whether the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present:

(A) The victim was a child under 15 years of age at the time of the crime;

(B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime;

(C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and

(D) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in subsection (e)(6) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime.

- (1) When the victim is 18 years of age or older shall be commenced within 10 years or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later; or
- (2) when the victim is under 18 years of age shall be commenced within 10 years of the date the victim turns 18 years of age or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

Importantly, Kan. Stat. Ann. § 22-3717(5)(K), (N)–(O) (Parole or postrelease supervision; eligibility; interviews, notices and hearings; rules and regulations; conditions of parole or postrelease supervision) defines “sexually violent crime” to include the following offenses:

- (K) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
-
- (N) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto; or
- (O) an attempt, conspiracy or criminal solicitation . . . of a sexually violent crime as defined in this section.

Accordingly, prosecutions for Kansas’s child sex trafficking and CSEC offenses are subject to a 10-year statute of limitation. Otherwise, Kan. Stat. Ann. § 21-5107(d) generally establishes a general 5-year statute of limitation.

Regarding civil actions, Kan. Stat. Ann. § 60-5003(c) (Damages for human trafficking or commercial exploitation of a child victim) provides,

Notwithstanding any other provision of law, any action commenced under this section¹¹ shall be filed within 10 years after the later of the date on which the victim:

- (1) Was freed from the human trafficking situation; or
- (2) attained 18 years of age.

4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC.

¹¹ See *supra* Policy Goal 4.5 for a full discussion of the trafficking-specific civil remedy provided for under Kan. Stat. Ann. § 60-5003.



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Kansas law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child’s testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Kansas law allows child sex trafficking victims who are under 13 years of age to testify by an alternative method regardless of the prosecuted offense. Specifically, Kan. Stat. Ann. § 22-3434(a), (b) (Videotape of testimony of child victim-admissible in certain cases; limitations; standard of proof; objection, restrictions) states,

- (a) On motion of the attorney for any party to a criminal proceeding in which a child less than 13 years of age is alleged to be a victim of the crime, subject to the conditions of subsection (b), the court may order that the testimony of the child be taken:
 - (1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or
 - (2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties.
- (b) The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify

Notably, child victims who are 13 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

Policy Goal 5.3 Child sex trafficking victims have access to victim protections in the criminal justice system.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their	Child sex trafficking victims’ identifying information is protected
--	--	---	--

		exploiter are provided supports in the courtroom	from disclosure in court records
Summary	Not statutorily required.	Not statutorily required.	Not statutorily required.
Relevant Statute(s)	None.	None.	None.

- 5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate, courtroom supports are provided when they are testifying against their exploiter, and their identifying information is kept confidential in court records.

Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.

Kansas law does not provide for privileged communications between caseworkers and child sex trafficking victims.

- 5.4.1 Recommendation: Enact a child sex trafficking-specific caseworker privilege law that protects a child sex trafficking victim’s communications with a caseworker from being disclosed.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Service providers in staff secure facilities¹² must receive training on counseling and assisting trafficking victims; however, Kansas law does not mandate training for child welfare agencies. Pursuant to Kan. Stat. Ann. § 65-535(c), (e) (Staff secure facility; requirements; services; rules and regulations),

(c) Service providers in a staff secure facility shall be trained to counsel and assist victims of human trafficking and sexual exploitation.

.....

(e) The secretary for children and families, in consultation with the attorney general, shall promulgate rules and regulations to implement the provisions of this section on or before January 1, 2017.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

¹² Under Kan. Stat. Ann. § 65-535(a), (b),

(a) A staff secure facility shall:

- (1) Not include construction features designed to physically restrict the movements and activities of residents, but shall have a design, structure, interior and exterior environment, and furnishings to promote a safe, comfortable and therapeutic environment for the residents;
- (2) implement written policies and procedures that include the use of a combination of supervision, inspection and accountability to promote safe and orderly operations;
- (3) rely on locked entrances and delayed-exit mechanisms to secure the facility, and implement reasonable rules restricting entrance to and egress from the facility;
- (4) implement written policies and procedures for staff monitoring of all facility entrances and exits;
- (5) implement written policies and procedures for the screening and searching of both residents and visitors;
- (6) implement written policies and procedures for knowing the whereabouts of all residents at all times and for handling runaways and unauthorized absences; and
- (7) implement written policies and procedures for determining when the movements and activities of individual residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

(b) A staff secure facility shall provide the following services to children placed in such facility, as appropriate, for the duration of the placement:

- (1) Case management;
- (2) life skills training;
- (3) health care;
- (4) mental health counseling;
- (5) substance abuse screening and treatment; and
- (6) any other appropriate services.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Kansas law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.¹³

- 6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Kansas law authorizes trafficking-specific training for law enforcement. Pursuant to Kan. Stat. Ann. § 75-756 (Authorizing coordination of training regarding human trafficking), “The attorney general, in consultation with other appropriate state agencies, is authorized to coordinate training regarding human trafficking for law enforcement agencies throughout Kansas.”

Funding for such training is provided for under Kan. Stat. Ann. § 75-758 (Human trafficking victim assistance fund established; expenditures), which states,

There is hereby established in the state treasury the human trafficking victim assistance fund. All moneys credited to such fund shall be used to pay for the training authorized by K.S.A. 2013 Supp. 75-756, and amendments thereto, and to support care, treatment and other services for victims of human trafficking and commercial sexual exploitation of a child. All expenditures from such fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general’s designee.

Resultingly, training regarding child sex trafficking may be, or become, available to law enforcement. However, law enforcement officers are not statutorily mandated to receive such training nor is the training required to be ongoing.

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Kansas law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

¹³ Although not specific to child sex trafficking, Kan. Stat. Ann. § 75-7023 (Juvenile intake and assessment system; confidentiality of records; information collected; dispositional alternatives; custody of child; conditions of release) requires juvenile intake and assessment workers to “receive training in evidence-based practices, including, but not limited to: . . . trauma-informed care”

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

Kansas law does not mandate training on child sex trafficking for school personnel.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

Kansas law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

State Laws Addressing Child Sex Trafficking

1. Kan. Stat. Ann. § 21-5426(b), (c) (Human trafficking; aggravated human trafficking) states,

(b) Aggravated human trafficking is:

....

(4) recruiting, harboring, transporting, providing or obtaining, by any means, a child knowing that the child, with or without force, fraud, threat or coercion, will be used to engage in: (A) Forced labor; (B) involuntary servitude; or (C) sexual gratification of the defendant or another involving the exchange of anything of value; or

(5) 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 the offender or another, sexual intercourse, sodomy or any unlawful sexual act, and the offender recklessly disregards the age of the child.

(c)

....

(2) Aggravated human trafficking is a severity level 1, person felony, except as provided in subsection (c)(3).

(3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is an off-grid person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

(4) In addition to any other sentence imposed, a person convicted under subsection (c)(2) or (c)(3) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2016 Supp. 75-758 [Human trafficking victim assistance fund established; expenditures], and amendments thereto.

....

Kan. Stat. Ann. § 21-5426 is a severity level 1, person felony punishable by imprisonment for 240–267 months (recommended 253 months) and a possible fine up to \$300,000. Kan Stat. Ann. §§ 21-5426(c)(2), 21-6804(a), 21-6611(a)(2). If, however, the victim is under 14 years of age and the offender is 18 years of age or older, Kan. Stat. Ann. § 21-5426 is an off-grid person felony punishable by imprisonment for 25 years to life and a possible fine up to \$500,000. Kan Stat. Ann. §§ 21-5426(c)(3), 21-6627(a)(1)(A), 21-6611(a)(1).

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Kan. Stat. Ann. § 21-6422(a)–(b)(3) (Commercial sexual exploitation of a child) states,
 - (a) Commercial sexual exploitation of a child is knowingly:
 - (1) Hiring a person younger than 18 years of age by giving, or offering or agreeing to give, anything of value to any person, to engage in a manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act;
 - (2) establishing, owning, maintaining or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance or management thereof; or
 - (3) permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age.
 - (b)
 - (1) Commercial sexual exploitation of a child is a:
 - (A) Severity level 4, person felony, except as provided in . . . (b)(2)
 -
 - (2) Commercial sexual exploitation of a child or attempt, conspiracy or criminal solicitation to commit commercial sexual exploitation of a child is an off-grid person felony when the offender is 18 years of age or older and the victim is less than 14 years of age.
 - (3) In addition to any other sentence imposed, a person convicted under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more than \$5,000. In addition to any other sentence imposed, a person convicted under subsection (b)(1)(B) or (b)(2) shall be fined not less than \$5,000. All fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2016 Supp. 75-758 [Human trafficking victim assistance fund established; expenditures], and amendments thereto.

Kan. Stat. Ann. § 21-6422 is a severity level 4, person felony punishable by imprisonment for 62–69 months (recommended 66 months) and a possible fine up to \$300,000. Kan Stat. Ann. §§ 21-6422(b)(1), 21-6804(a), 21-6611(a)(2). If, however, the victim is under 14 years of age and the offender is 18 years of age or older, Kan. Stat. Ann. § 21-6422 is an off-grid person felony punishable by imprisonment for 25 years to life and a possible fine up to \$500,000. Kan Stat. Ann. §§ 21-6422(b)(2), 21-6627(a)(1)(E), 21-6611(a)(1).