

2017 CHANGES IN HUMAN TRAFFICKING LAWS

The amended human trafficking crime, K.S.A. 21-5426, and the amended commercial sexual exploitation of a child crime, K.S.A. 21-6422, are provided below. This is followed by the new crimes that do not yet have official titles or statute numbers. There are other changes in penalties, fines, HT training etc. but these are the basic changes in the HT crimes.

Amended Human Trafficking Statute.

K.S.A. 2016 Supp. 21-5426 is hereby amended to read as follows: 21-5426. (a) **Human trafficking is:**

- (1) *Except as provided in subsection (b)(4) and (5)*, 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;
- (2) 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);
- (3) knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:
 - (A) Causing or threatening to cause physical injury to any person;
 - (B) physically restraining or threatening to physically restrain another person;
 - (C) abusing or threatening to abuse the law or legal process;
 - (D) threatening to withhold food, lodging or clothing; or
 - (E) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person; or
- (4) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person.

(b) Aggravated human trafficking is:

- (1) *Human trafficking, as defined in subsection (a)*, involving the commission or attempted commission of kidnapping, as defined in K.S.A. 2016 Supp. 21-5408(a), and amendments thereto;
 - (2) *human trafficking, as defined in subsection (a)*, committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
 - (3) *human trafficking, as defined in subsection (a)*, resulting in a death;
 - (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) (1) Human trafficking is a severity level 2, person felony.
- (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)(1) 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 (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, and amendments thereto.*
- (5) *In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.*
- (d) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

- (1) K.S.A. 2016 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;
- (2) K.S.A. 2016 Supp. 21-5302(d), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and
- (3) K.S.A. 2016 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.
- (e) *It shall be an affirmative defense to any prosecution under subsection (b)(4) or (5) 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.*
- (f) *It shall not be a defense to a charge of aggravated human trafficking, as defined in subsection (b)(4) or (5), that: (1) The victim consented or willingly participated in the forced labor, involuntary servitude or sexual gratification of the defendant or another; or (2) the offender had no knowledge of the age of the victim.*
- (g) *A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or for any form of homicide.*
- (h) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.
- (f)(i) As used in this section :
- (1) *“Child” means a person under 18 years of age; and*
- (2) *“peonage” means a condition of involuntary servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.*

Amended Commercial Sexual Exploitation of a Child Statute:

K.S.A. 2016 Supp. 21-6422 is hereby amended to read as follows: 21-6422. (a) Commercial sexual exploitation of a child is knowingly:

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; or

(b) (1) Commercial sexual exploitation of a child is a:

(A) Severity level 4, person felony, except as provided in subsections (b)(1)(B) and (b)(2); and

(B) severity level 2, person felony when committed by a person who has, prior to the commission of the crime, been convicted of a violation of this section, except as provided in subsection (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, and amendments thereto.

(4) In addition to any other sentence imposed, for any conviction under this section, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

(c) If the offender is 18 years of age or older and the victim is less than 14 years of age, the provisions of:

- (1) K.S.A. 2016 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of commercial sexual exploitation of a child pursuant to this section;
- (2) K.S.A. 2016 Supp. 21-5302(d), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of commercial sexual exploitation of a child pursuant to this section; and
- (3) K.S.A. 2016 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of commercial sexual exploitation of a child pursuant to this section.

NEW CRIMES

Use of a Communication Facility in Human Trafficking: New K.S.A. 21-6424 (a) It shall be unlawful for any person to knowingly or intentionally use any communication facility:

- (1) In committing, causing, or facilitating the commission of any felony under K.S.A. 2016 Supp. 21-5426, 21-6422 or 21-6420, and amendments thereto;
- (2) in any attempt to commit, any conspiracy to commit, or any criminal solicitation of any felony under K.S.A. 2016 Supp. 21-5426, 21-6422 or 21-6420, and amendments thereto; or
- (3) in committing, causing, or facilitating the commission of any felony or misdemeanor under K.S.A. 2016 Supp. 21-6421, and amendments thereto, or in any attempt to commit, any conspiracy to commit, or any criminal solicitation of any felony or misdemeanor under K.S.A. 2016 Supp. 21-6421, and amendments thereto.

Each separate use of a communication facility may be charged as a separate offense under this subsection.

(b) (1) Violation of subsection (a)(1) or (a)(2) is a severity level 7 person felony.

(2) Violation of subsection (a)(3) is a class A person misdemeanor.

(c) As used in this section, "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.

(d) 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 by K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto.

(e) This section shall be part of and supplemental to the Kansas criminal code.

Travel Services for Sexual Exploitation New K.S.A. 21-5612 (a) Promoting travel for child exploitation is knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute a violation of K.S.A. 2016 Supp. 21-5426(b)(4) or (5), 21-5510, section 3 or 21-6422, and amendments thereto, if such conduct occurred in this state.

(b) Promoting travel for child exploitation is a severity level 5, person felony.

(c) As used in this section, "travel services" means transportation by air, sea or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission or other valuable consideration.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Internet Trading in Child Pornography New K.S.A. 21-5514 (a) Except as provided in K.S.A. 2016 Supp. 21-5610 and 21-5611, and amendments thereto, internet trading in child pornography is sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-5510(a)(2), and amendments thereto, when the offender is 18 years of age or older, and the offender knowingly causes or permits the visual depiction to be viewed, by use of any electronic device connected to the internet, by any person other than the offender or a person depicted in the visual depiction.

(b) Except as provided in K.S.A. 2016 Supp. 21-5610 and 21-5611, and amendments thereto, aggravated internet trading in child pornography is sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-

5510(a)(1) or (4), and amendments thereto, when the offender is 18 years of age or older and the offender knowingly causes or permits the performance to be viewed, by use of any electronic device connected to the internet, by any person other than the offender or a person depicted in the performance.

(c) (1) Internet trading in child pornography is a severity level 5, person felony.

(2) **Aggravated internet trading in child pornography** is a severity level 3, person felony, except as provided in subsection (c)(3).

(3) Aggravated internet trading in child pornography or attempt, conspiracy or criminal solicitation to commit aggravated internet trading in child pornography is an off-grid person felony when the child is under 14 years of age.

(d) If the child is under 14 years of age, the provisions of:

(1) K.S.A. 2016 Supp. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated internet trading in child pornography pursuant to this section;

(2) K.S.A. 2016 Supp. 21-5302(d), and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated internet trading in child pornography pursuant to this section; and

(3) K.S.A. 2016 Supp. 21-5303(d), and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated internet trading in child pornography pursuant to this section.

(e) In addition to the venue provided for under any other provision of law, a prosecution for internet trading in child pornography or aggravated internet trading in child pornography may be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the internet and is viewed by a law enforcement officer using an electronic device connected to the internet while engaged in such officer's official duties.

(f) As used in this section, "the internet" has the meaning as provided in K.S.A. 66-2011, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas criminal code.