

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR SUBSTITUTE FOR
HOUSE BILL NO. 2509**

As Agreed to March 30, 2010

Brief*

Senate Sub. for Sub. for HB 2509 would create a private cause of action for victims of child pornography that may be pursued through private counsel or by the Attorney General, at the victim's request. In order to bring a civil action in state court against a producer, promoter, or intentional possessor of child pornography, the plaintiff would have to allege and prove that while the person was under the age of 18, he or she was a victim of a sexual offense listed in the bill where such offense resulted in a conviction and any portion of that sexual offense was used in the production of child pornography; and the person suffers personal or psychological injury as a result of the production, promotion, or intentional possession of such child pornography. It would not be a defense that the respondent did not know the victim or commit the abuse depicted in the child pornography.

A prevailing plaintiff could recover actual damages and the costs of the suit, including reasonable attorney's fees. The bill would provide for a minimum recovery for actual damages in the amount of \$150,000. If the action was pursued by the Attorney General, all damages would be awarded to the victim but the Attorney General may seek reasonable attorney's fees and costs.

The bill would establish a statute of limitations that applies to this newly created cause of action. The bill would require the suit be filed within 3 years after one of the following options, whichever is later:

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- The conclusion of a related criminal case;
- The notification of the victim by law enforcement of the child pornography; or
- If the victim is younger than 18, within 3 years after the person reaches the age of 18.

The bill would provide that a civil cause of action may not be filed against law enforcement officers, forensic examiners, or child advocacy organizations for acts done in the performance of their duty.

Conference Committee Action

The Conference Committee agreed to the Senate position with amendments to the bill to clarify that in order to state a cause of action, the plaintiff must allege and prove the sexual offense used in the production of child pornography resulted in a conviction of a crime. Additionally, the Conference Committee clarified that a plaintiff may bring a cause of action pursuant to the bill against an intentional possessor of such child pornography.

Background

Sub. for HB 2509, as recommended by the House Committee on Corrections and Juvenile Justice, would have required the Secretary of Corrections, prior to placing offenders potentially subject to a sexually violent predator status on work release, to refer the offender to a multi-disciplinary team to assess whether the person meets the definition of sexually violent predator.

The Senate Committee on Judiciary deleted the provisions of the bill regarding referral of offenders potentially subject to a sexually violent predator status to a multi-disciplinary team prior

to placing the offender on work release. Instead, the Senate Committee inserted modified provisions of 2010 SB 549 regarding the creation of a private cause of action for victims of child pornography.

The proponents of the creation of a private cause of action for victims of child pornography, who presented testimony in the Senate Committee hearing, were representatives of the Kansas Attorney General's Office, the Kansas Peace Officers Association, Concerned Women for America of Kansas, and the District Attorney's Office in the 29th Judicial District (Wyandotte). No opponents presented testimony in the Senate Committee.

The fiscal note provided on the creation of a private cause of action for victims of child pornography was on 2010 SB 549, as introduced. It states the Office of the Attorney General notes that the number of Kansas victims of child pornography is unknown and the Attorney General can bring actions only on their behalf. It is assumed that most victims would be able to secure private counsel to bring claims because of the availability of damages and fees. The Attorney General thinks that it could undertake representation of victims within existing resources.

The Office of Judicial Administration reports that the bill would create a civil cause of action in addition to any criminal proceedings. It would cause additional case filings and the associated work requirements; however, the number of cases cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2011 Governor's Budget Report*.

civil child pornography