

**SENATE BILL No. 416**

By Committee on Judiciary

2-8

1 AN ACT concerning deprivation of rights under color of law; creating the  
2 crime of deprivation of rights under color of law; civil cause of action;  
3 restitution; amending K.S.A. 2017 Supp. 22-3424 and repealing the  
4 existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Deprivation of rights under color of law is any  
8 action by any person, under color of any law, statute, county resolution,  
9 ordinance or regulation, that knowingly subjects another person to the  
10 deprivation of any rights, privileges or immunities secured or protected by  
11 the constitution or laws of the United States or the state of Kansas, by:

12 (1) Causing bodily harm to another person;

13 (2) causing great bodily harm to another person or disfigurement of  
14 another person;

15 (3) causing bodily harm to another person with a deadly weapon, or  
16 in any manner whereby great bodily harm, disfigurement or death can be  
17 inflicted;

18 (4) causing physical contact with another person when done in a rude,  
19 insulting or angry manner, or in any manner whereby great bodily harm,  
20 disfigurement or death can be inflicted;

21 (5) causing mental anguish, emotional harm, embarrassment or  
22 similar distress to another person; or

23 (6) causing monetary loss to another person.

24 (b) Deprivation of rights under color of law as described in:

25 (1) Subsection (a)(1) or (a)(5) is a class B person misdemeanor;

26 (2) subsection (a)(2) is a severity level 4, person felony;

27 (3) subsection (a)(3) or (a)(4) is a severity level 7, person felony;

28 (4) subsection (a)(6), when the monetary loss is:

29 (A) Less than \$1,000, is a class A nonperson misdemeanor;

30 (B) at least \$1,000, but less than \$25,000, is a severity level 9,  
31 nonperson felony; and

32 (C) \$25,000 or more, is a severity level 7, nonperson felony.

33 (c) A person convicted of deprivation of rights under color of law  
34 shall be subject to the provisions of K.S.A. 2017 Supp. 21-6804(h), and  
35 amendments thereto.

36 (d) This section shall be part of and supplemental to the Kansas

1 criminal code.

2 New Sec. 2. (a) A person injured as a result of the conduct of another  
3 that would constitute conduct prohibited by section 1, and amendments  
4 thereto, may bring an action in an appropriate state court against the  
5 person or persons who engaged in such conduct.

6 (b) In any action brought under this section, a prevailing plaintiff  
7 shall recover up to three times the actual damages such person sustained or  
8 \$10,000, whichever is greater, and the cost of the suit, including  
9 reasonable attorney's fees.

10 (c) Notwithstanding any other provision of law, any action  
11 commenced under this section shall be filed within three years after the  
12 later of:

13 (1) The date of discovery of the violation of section 1, and  
14 amendments thereto; or

15 (2) the conclusion of a related criminal case.

16 (d) At the victim's request, the attorney general may pursue cases on  
17 behalf of any Kansas victim under this section. All damages obtained shall  
18 go to the victim, and the attorney general may seek reasonable attorney's  
19 fees and costs.

20 (e) Any action brought under this section shall be subject to the  
21 provisions of K.S.A. 74-7312, and amendments thereto.

22 Sec. 3. K.S.A. 2017 Supp. 22-3424 is hereby amended to read as  
23 follows: 22-3424. (a) The judgment shall be rendered and sentence  
24 imposed in open court.

25 (b) If the verdict or finding is not guilty, judgment shall be rendered  
26 immediately and the defendant shall be discharged from custody and the  
27 obligation of the defendant's appearance bond.

28 (c) If the verdict or finding is guilty, judgment shall be rendered and  
29 sentence pronounced without unreasonable delay, allowing adequate time  
30 for the filing and disposition of post-trial motions and for completion of  
31 such presentence investigation as the court may require.

32 (d) (1) If the verdict or finding is guilty, upon request of the victim or  
33 the victim's family and before imposing sentence, the court shall hold a  
34 hearing to establish restitution. The defendant may waive the right to the  
35 hearing and accept the amount of restitution as established by the court. If  
36 the court orders restitution to be paid to the victim or the victim's family,  
37 the order shall be enforced as a judgment of restitution pursuant to K.S.A.  
38 60-4301 through 60-4304, and amendments thereto.

39 (2) (A) The court shall order a person convicted of human trafficking  
40 or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their  
41 repeal, or K.S.A. 2017 Supp. 21-5426, and amendments thereto, or  
42 commercial sexual exploitation of a child, K.S.A. 2017 Supp. 21-6422,  
43 and amendments thereto, to pay restitution to the victim of the offense for:

1 (i) Expenses incurred or reasonably certain to be incurred by the  
2 victim as a result of the offense, including reasonable attorney fees and  
3 costs; and

4 (ii) an amount equal to three times the greatest of the following, with  
5 no reduction for expenses the defendant incurred to maintain the victim:

6 (a) The gross income to the defendant for, or the value to the  
7 defendant of, the victim's labor or services or sexual activity;

8 (b) the amount the defendant contracted to pay the victim; or

9 (c) the value of the victim's labor or services or sexual activity,  
10 calculated under the minimum wage and overtime provisions of the federal  
11 fair labor standards act, 29 U.S.C. § 201 et seq., or under K.S.A. 44-1203,  
12 and amendments thereto, whichever is higher, even if the provisions do not  
13 apply to the victim's labor or services or sexual activity.

14 (B) The court shall order restitution under subsection (d)(2) even if  
15 the victim is unavailable to accept payment of restitution.

16 (C) If the victim does not claim restitution ordered under subsection  
17 (d)(2) for five years after entry of the order, the restitution must be paid to  
18 the human trafficking victim assistance fund created by K.S.A. 2017 Supp.  
19 75-758, and amendments thereto, to help victims.

20 (3) *The court shall order a person convicted of deprivation of rights*  
21 *under color of law, section 1, and amendments thereto, to pay restitution*  
22 *to the victim of the offense for expenses incurred or reasonably certain to*  
23 *be incurred by the victim as a result of the offense, including reasonable*  
24 *attorney fees and costs.*

25 (e) Before imposing sentence the court shall: (1) Allow the  
26 prosecuting attorney to address the court, if the prosecuting attorney so  
27 requests; (2) afford counsel an opportunity to speak on behalf of the  
28 defendant; (3) allow the victim or such members of the victim's family as  
29 the court deems appropriate to address the court, if the victim or the  
30 victim's family so requests; and (4) address the defendant personally and  
31 ask the defendant if the defendant wishes to make a statement on the  
32 defendant's own behalf and to present any evidence in mitigation of  
33 punishment.

34 (f) After imposing sentence in a case which has gone to trial on a plea  
35 of not guilty, the court shall advise the defendant of the defendant's right to  
36 appeal and of the right of a person who is unable to pay the costs of an  
37 appeal to appeal in forma pauperis.

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

40 Sec. 4. K.S.A. 2017 Supp. 22-3424 is hereby repealed.

41 Sec. 5. This act shall take effect and be in force from and after its  
42 publication in the statute book.