

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2349

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2349, as amended would amend the Kansas Offender Registration Act (KORA) and create new provisions.

KORA Definitions (Section 5)

The bill would amend several terms used in KORA and would remove the requirement to register for persons convicted of certain crimes.

Offender

The bill would amend the definition of “offender” to include any person required by an agreement entered into by the parties to register for an offense not otherwise required by KORA, and would remove a provision allowing a court to order such person to register. The bill would specify that the duration of registration would be controlled by such agreement.

The bill would exclude a person who is convicted of a crime in municipal court from the definition of offender. The bill would also remove a reference to the Revised Kansas Juvenile Justice Code, but would clarify that a juvenile offender adjudicated for unlawful transmission of a visual depiction of a child, aggravated transmission of a visual depiction of a child, or unlawful possession of a visual

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

depiction of a child would be excluded from the definition of offender.

Sex Offender

The definition for “sex offender” in current law includes convictions for certain sex crimes after July 1, 1997, when one of the parties involved is under 18 years of age. The bill would specify that the party under 18 years of age would be other than the offender. The bill would also remove from the definition of sex offender a conviction when one of the parties other than the offender is under age 18 of the crimes of adultery or patronizing a prostitute, prior to amendments made to the section defining the latter crime in 2013.

The bill would further amend the definition to include convictions of breach of privacy involving videotape or other images taken of a person without the knowledge and consent of the person and dissemination of those videos and photos. The bill would also remove misdemeanor violations of lewd and lascivious behavior from the convictions that define “sex offender.”

Sexually Violent Crime

The bill would amend the definition of “sexually violent crime” to include the crime of internet trading in child pornography as defined in continuing law, and would remove a reference to any out-of-state juvenile adjudication for an offense that requires registration under the laws of that state.

Violent Offender

The bill would amend the definition of “violent offender” to remove convictions after July 1, 1997, of the crimes of voluntary manslaughter, involuntary manslaughter, kidnapping of an adult, aggravated kidnapping of an adult, and criminal restraint from the offenses that require an offender to register.

Amendments to Criminal Penalties (Sections 2, 4, and 6)

Aiding in Obstructing Apprehension or Prosecution

Current law defines the crime as a person knowingly harboring, concealing, or aiding certain persons who have committed certain crimes and who are intending to avoid or escape from arrest, trial, conviction, or punishment for such crime, or who are required to register under KORA and are not in compliance with KORA, with the intent that such person may avoid registration. Current law provides for different penalties depending on the elements applied.

The bill would amend the penalty to a level 8, nonperson felony if the person who is harbored, concealed, or aided has committed or been charged with committing a felony. The bill would amend the criminal penalty to a class C misdemeanor if the person who is harbored, concealed, or aided has committed or been charged with a misdemeanor.

The bill would also remove a provision that requires a presumptive imprisonment sentence for the offense, but allows an optional probation sentence if the offense is classified in certain grid blocks.

Offender Obstructing Apprehension or Prosecution

A special sentencing rule making a violation of KORA or a violation of obstructing apprehension or prosecution with intent to avoid registration presumptive imprisonment would be removed, and the bill would make only aggravated violations of KORA punishable by presumptive imprisonment.

Violation of KORA

Current law provides that a violation of KORA that continues for more than 30 consecutive days, upon the 31st day, constitutes a new and separate violation. The bill would

amend the length of time to be more than 90 consecutive days and constitute a new offense on the 91st day. As provided in continuing law, continued violation constitutes a new and separate offense every 30 days thereafter for as long as the violation continues.

Violation of KORA—Classification

Current law classifies a KORA violation as person or nonperson based on the underlying offense for which the person is required to register. The bill would remove those provisions.

Current law also provides a violation of KORA is a level 6 felony on first conviction, level 5 felony on second conviction, and a level 3 felony on third or subsequent convictions. The bill would remove a requirement that violation be a presumptive imprisonment sentence.

The bill would make a violation of KORA when the crime that requires registration is a felony:

- A Class A nonperson misdemeanor upon a first conviction;
- A severity level 8, nonperson felony upon a second conviction; and
- A severity level 5, nonperson felony upon a third or subsequent conviction.

The bill would make a violation of KORA when the crime that requires registration is a misdemeanor:

- A Class A nonperson misdemeanor upon a first or second conviction; and
- A severity level 8, nonperson felony upon a third or subsequent conviction.

Aggravated Violation of KORA

Current law provides that a violation of KORA that continues for more than 180 consecutive days is an aggravated violation; and any aggravated violation that continues for more than 180 consecutive days shall, upon the 181st day, constitute a new and separate offense, and shall continue to constitute a new and separate aggravated violation every 180 days thereafter for as long as the violation continues.

The bill would add the following to the definition of an aggravated violation:

- Providing a false address or an address where the offender does not reside, or providing false information about the offender's employer; or
- Failure to register if, within the immediately preceding 120 days, the offender has not registered and is not residing at the residence listed in the last registration, or is not employed at the place of employment listed in the last registration.

Aggravated Violation of KORA—Classification

The bill would remove provisions that provide an aggravated violation of KORA is a level 3 felony, and classify an aggravated KORA violation as person or nonperson based on the underlying offense for which the person is required to register.

The bill would make an aggravated violation of KORA a severity level 7, nonperson felony and a severity level 5, nonperson felony if the person being sentenced has a prior conviction for a violation of providing a false address or false employment information or failure to register within the previous 120 days.

The bill would clarify that aggravated violation of KORA shall be presumptive imprisonment and would remove a provision allowing a court to impose an optional probation sentence.

The bill would specify that an aggravated violation of KORA is a Class A nonperson misdemeanor when the underlying crime for which the offender is required to be registered is a misdemeanor.

Registration Location and Notification (Sections 7, 8, and 10)

Court Order—Registration

Current law requires the court, upon any conviction or adjudication for an offense requiring registration to provide certain registration information to the offender, and if the offender is released, follow certain statutory duties concerning a notice to register, including ordering the offender to report within three business days to the registering law enforcement agency in certain jurisdictions, including where the offender resides, to complete a registration form. The bill would remove the requirement that the order require the offender to report to the registering law enforcement agency where the offender maintains employment or attends school.

Registration—Location

Continuing law requires an offender required to register in person with the registering law enforcement agency within three business days of coming into any county or location or jurisdiction in which the offender resides or intends to reside. The bill would remove a requirement that requires the offender complete such registration in the jurisdiction where the offender maintains or intends to maintain employment, attends school, or intends to attend school.

Continuing law requires offenders to report in person four times each year to the registering law enforcement agency in the county or location of jurisdiction and in which the offender resides. The bill would remove a requirement that requires the offender also complete such registration in the jurisdiction where the offender maintains employment or attends school.

The bill would make conforming amendments to provisions requiring an updated photograph be taken on each occasion the offender registers, and requiring remission of payment required under continuing law, to remove references that require the offender take an updated photograph and remit payment in the jurisdiction in which the offender maintains employment or attends school.

Registration—Employer or School Location

Continuing law requires offenders report certain information on a registration form. The bill would specify that if an offender reports an employer or a school that is in a county other than the county in which the offender resides or intends to reside, the Kansas Bureau of Investigation (KBI) shall notify the sheriff of the county in which the employer or school is located, and provide registration information

Registration—Fee Waiver or Modification (New Section 1 and Section 8)

The bill would make changes to law that requires an offender to remit payment of \$20 each time the offender is required to report as part of the reporting process.

Payment of Fee—Minor

The bill would specify that when an offender is under 18 years of age, payment of the registration fee is not required.

Waiver—Indigency

Current law allows a court of law to waive the required registration fee if the offender has, prior to the required reporting and within the last three years, been determined to be indigent. The bill would clarify that the indigency determination must have been made by a court of law in the criminal case for which the offender is required to register.

Waiver—Petition

The bill would allow a person who is required to register as an offender, pursuant to KORA, to petition the district court in their residing county to waive payment of the registration fee required by KORA.

The offender would be required to submit an affidavit form created by the Judicial Council to the court for determination of the registration fee waiver, and no docket fee would be required. The court would be able to question the offender under oath regarding the affidavit and require the offender to produce evidence concerning their financial inability to pay.

Manifest Hardship

If the court determines requiring a payment would impose a manifest hardship on the offender or the offender's immediate family, the bill would allow the court to waive the current payment, extend the time for making the payment, or waive the payment for a specific time period not to exceed one year.

If the court orders a modification for the offender's payment, then the court would be required to provide the offender with a copy of the order, which would modify the offender's obligation to pay the fee in any county where the offender is required to register.

Registration Duration (Section 9)

The KORA requires registration for 15 years, 25 years, or a lifetime. Continuing law provides that the duration of registration shall be, if confined, applicable to the number of years after the date of parole, discharge, or release, whichever date is most recent; or if not confined, the applicable number of years from the date of conviction. Further, continuing law provides that any period of time during which an offender is incarcerated in any jail or correctional facility, or during which the offender does not comply with KORA, shall not count toward the duration of registration.

The bill would add a 5-year registration period, and would make amendments to the crimes listed in the 15-year and 25-year required registration durations.

5-Year Registration

The bill would create provisions requiring registration for a period of five years for conviction of the following crimes, including any attempt, conspiracy, or criminal solicitation of the crimes:

- Possession of certain controlled substance precursors;
- Unlawful cultivation or distribution of a controlled substance; or
- A person felony when the court makes a finding that a deadly weapon was used.

15-Year Registration

The bill would add the following crimes to the list of convictions requiring registration for 15 years:

- Breach of privacy involving videotapes and images taken of a person without the knowledge and

consent of such person, and dissemination of such videotapes and images; and

- Kidnapping a person under age 18.

The bill would also remove the following crimes from the list of convictions requiring registration for 15 years: adultery; patronizing a prostitute prior to 2013 amendments; misdemeanor violations of lewd and lascivious behavior; capital murder; murder in the first degree; voluntary manslaughter; involuntary manslaughter; criminal restraint; convictions requiring registration by court order; convictions of a person felony when the court makes a finding that a deadly weapon was used; possession of certain controlled substance precursors; and unlawful cultivation or distribution of a controlled substance.

25-Year Registration

Current law requires a 25-year registration for a conviction of criminal sodomy when one of the parties involved is less than 18 years of age. The bill would clarify that the involved party under age 18 must be a party other than the offender.

The bill would also add internet trading in child pornography, if the victim is 14 or more years of age but less than 18 years of age, to the list of convictions requiring registration for 25 years.

Lifetime Registration

Continuing law requires lifetime registration for certain offenses. The bill would add internet trading in child pornography if the victim is less than 14 years of age, capital murder, and murder in the first degree to the list of convictions requiring lifetime registration.

Current law requires lifetime registration for persons convicted of aggravated kidnapping. The bill would remove that requirement if the victim is 18 or older. The bill would also remove the crime of kidnapping from the list.

Current law requires lifetime registration for a second or subsequent conviction of an offense requiring registration. The bill would remove that condition for offenders convicted of more than one drug offense requiring registration. The bill would further specify that upon a second or subsequent conviction of an offense requiring registration that does not result in lifetime registration, the registration terms shall not aggregate.

Registration Relief Mechanism (Sections 3, 11, and 13)

Current law provides that no person required to register under KORA shall be granted an order relieving the offender of further registration.

The bill would create provisions to allow an offender to seek relief from registration requirements if the offender has registered for a certain period of time after the date of parole, discharge, or release, whichever date is most recent, or if not confined, a certain period of time from the date of conviction or adjudication.

Eligibility

The bill would allow offenders to file a verified petition for relief from registration requirements if the offender was:

- Required to register for 15 years, and the offender has registered for a period of at least 5 years;
- Required to register for 25 years, and the offender has registered for a period of at least 10 years; or

- Required to register for lifetime, and the offender has registered for a period of at least 25 years.

The bill would allow the following offenders required to register to file a petition for relief if the offender has registered for at least 10 years:

- An offender who was convicted or adjudicated of an offense prior to July 1, 2011, that at the time of conviction or adjudication, did not require registration, but is required to register due to the retroactive application of certain provisions enacted in 2011; and
- An offender who was originally required to register under KORA for ten years due to an offense committed prior to July 1, 2011, but is required to register for a longer period due to the retroactive application of certain provisions enacted in 2011.

The bill would clarify that any period of time during which the offender is incarcerated in any jail or correctional facility, or during which the offender does not substantially comply with KORA, shall not count toward the duration of registration required to file a petition.

Out-of-State Conviction or Adjudication

The bill would specify that an offender who is required to register because of an out-of-state conviction or adjudication may not petition for relief from registration requirements if the offender would be required to register under the law of the state or jurisdiction where the conviction or adjudication occurred. The bill would clarify that if the offender would no longer be required to register under the law of such jurisdiction, the offender may file a petition for relief.

Sexually Violent Predators

The bill would prohibit an offender who has been declared a sexually violent predator from petitioning for relief from registration requirements under KORA.

Filing of Petition and Petition Requirements

The bill would provide that the petition shall be subject to a docket fee as provided in continuing law, and filed in the district court in which the offender was convicted or adjudicated of the offense requiring registration. The bill would provide that, for out-of-state convictions or adjudications, the petition would be filed in the district court of the county where the offender is currently required to register.

The bill would require the petition to include:

- The offender's full name;
- The offender's full name at the time of conviction or adjudication for the offense or offenses requiring registration, if different than the offender's current name;
- The offender's sex, race, and date of birth;
- The offense or offenses requiring registration;
- The date of conviction or adjudication for such offenses;
- The court in which the offender was convicted of such offenses;
- Whether the offender has been arrested, convicted, or adjudicated or has entered into a diversion agreement for any crime during the period of required registration; and

- The names of all treatment providers and agencies that have treated the offender for mental health, substance abuse, and offense-related behavior since the date of the offense or offenses requiring registration.

The bill would require the Judicial Council to develop a petition form for use under the relief provisions.

The bill would also allow an offender to combine a petition for registration requirement relief with an expungement petition, if the offense requiring registration is one for which expungement is authorized.

Process and Hearing

The bill would require a court to set a date for a hearing on the petition when filed and cause notice of the hearing to be given to the county or district attorney in the county where the petition is filed. The bill would specify that any person who may have relevant information about the offender may testify at the hearing.

The bill would require the county or district attorney to notify any victim of the offense requiring registration who is alive and whose address is known or, if the victim is deceased, the victim's family if the family's address is known. The bill would provide that the victim or victim's family shall not be compelled to testify or provide any discovery to the offender.

The bill would provide the county or district attorney access to all applicable records, including records that are otherwise confidential or privileged.

Hearings on relief from registration requirements would be public hearings pursuant to the Bill of Rights for Victims Crime Act.

Risk Assessment

The bill would require the court to order any petitioning offender who is required to register for life, except for an offender with lifetime registration due to a second offense requiring registration, to undergo a risk assessment. The court would have discretion to order any other petitioning offender to undergo such assessment.

The bill would provide that any ordered risk assessment shall be performed by a professional agreed upon by the parties or a professional approved by the court, and shall be performed at the offender's expense.

Requirements for Relief

The bill would require a court to order relief from registration requirements if the offender shows by clear and convincing evidence:

- The offender has not been convicted or adjudicated of a new felony, other than a felony violation or aggravated felony violation of KORA, within the five years immediately preceding the filing of the petition, and no new proceedings involving such felony are pending, or being instituted against the offender;
- The offender's circumstances, behavior, and treatment history demonstrate the offender is sufficiently rehabilitated to warrant relief; and
- Registration of the offender is no longer necessary to promote public safety.

Relief

The bill would require that if a court grants relief from the registration requirements, it shall order that the offender be

removed from the offender registry and that the offender is no longer required to comply with registration requirements.

The bill would further require, within 14 days of any order, the court notify the KBI and any local law enforcement agency that registers the offender that the offender has been granted relief from registration requirements. The bill would direct the KBI to remove such offender from any internet website the agency maintains pursuant to continuing law.

Denial of Petition

The bill would provide that, if the court denies a petition for relief, the offender shall not file another petition for relief until three years have elapsed, unless the court orders a shorter time period.

Expungement of Criminal Records and Non-Public Information (Sections 3, 9, and 11)

Current law provides there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register pursuant to KORA.

The bill would clarify that except as the bill provides in the relief from registration requirements mechanism, there shall be no expungement of any conviction or any part of the offender's criminal record while required to register pursuant to KORA.

Continuing law requires that certain juvenile offender registration records be restricted from public access by the public, or posted on any internet website. The bill would also provide that registration information for persons required to register for drug offenses would be available only to law enforcement, and shall not be open to inspection by the public or posted on any website.

Technical and Conforming Amendments

The bill would make technical amendments to ensure consistency in statutory phrasing and conforming amendments to implement the provisions of the bill.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Kansas Sentencing Commission (Commission).

House Committee on Corrections and Juvenile Justice

In the House Committee hearing, the chairperson of the Judicial Council's Advisory Committee on Sex Offenses and Registration, Representative Humphries, and representatives of the Kansas Association of Criminal Defense Lawyers and the Association for the Treatment of Sexual Abusers testified as **proponents** of the bill. The proponents stated the bill was the result of a two-year Judicial Council committee's recommendations.

Opponent testimony was provided by representatives of the Kansas Sheriffs Association, the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Johnson County Sheriff's Office.

Neutral written-only testimony was provided by the Kansas Bureau of Investigation.

No other testimony was provided.

The House Committee amended the bill to retain current law regarding registration requirements for juvenile offenders, modify the length of time payments may be waived, modify

the definitions of certain crimes, and modify criminal penalties.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill would require district court clerks to file the petitions, schedule the hearings, and provide a copy of the order from the judge to the petitioner. This would also include offenders who were convicted out-of-state, but now live in Kansas. The OJA indicates the new requirements would increase the workload of the district court personnel and, depending on the number of petitions, it is possible additional trial court clerks would need to be hired to handle the increased workload. In addition, the bill could require more supervision of offenders by court services officers due to lowered penalties in the bill for aggravated violations of the Act, which includes a potential penalty for probation. The OJA also indicates that enactment of the bill could reduce revenues because it allows an offender to have the docket fee waived when filing a petition. The OJA further notes that the bill would affect local governments as each offender currently pays the registration fee to the local law enforcement agency. However, a fiscal effect cannot be determined because the number of additional petitions that would be received and supervision that would be required cannot be estimated.

The KBI indicates enactment of the bill would require 3,777 offenders to be removed from the registry. Of these, 1,767 would be single-entry registrations while 2,010 would be dual registrations for employment and school requirements that would also need to be removed. The KBI estimates it will take approximately 75 minutes per record and would require 5.00 Administrative Officer FTE positions 23.5 weeks to complete the removals. The agency states it would cost \$121,600 from the State General Fund (SGF) in FY 2022 to complete the removals, which could be done on overtime

status, therefore alleviating the need to hire any additional staff. The bill would also require drug offenders to be removed from the public registry and the information made available only to law enforcement. There are currently 5,746 drug offenders on the registry and the KBI estimates it will take 15 minutes to move each offender off the public registry, would require the same 5.00 Administrative Officer FTE positions seven weeks to complete the removals, and would cost \$37,000 from the SGF in overtime in FY 2022. In addition, the agency states that minor programming would need to be performed to the registry to create a new five-year term for drug offenders, which is expected to cost \$2,125 from the SGF in FY 2022. In total, the KBI estimates enactment of the bill would increase its expenditures in FY 2022 by \$160,725 from the SGF.

The KBI also notes that the removal of the requirement for a sex offender to register in the location of employment and school would make Kansas out of compliance with the federal Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act). The KBI states that Kansas was one of the leading states to substantially implement the Act in 2011. States not complying with the Act would lose 10.0 percent of their funding under the federal Edward J. Byrne Memorial Justice Assistance Grant program; moneys from that grant program are used by multiple criminal justice agencies across Kansas.

The Office of the Attorney General indicates enactment of the bill could increase litigation at the trial level for offenders who were convicted by prosecutors from the Office seeking to remove themselves from the registry. The Office also notes that the majority of the burden for litigation with persons seeking relief from the requirement to register would be on the county and district attorneys. However, the fiscal effect cannot be determined because the number of additional cases and litigation that would be required cannot be estimated.

According to the prison bed impact assessment provided by the Commission on the bill as introduced, enactment of the bill would reduce prison admissions by 64 in FY 2022 and by 70 in FY 2031. Enactment of the bill would reduce prison beds by 68 in FY 2022 and by 132 in FY 2031. The bill would reduce the Commission's journal entry workload by 303 in FY 2022 and 331 in FY 2031.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Kansas Offender Registration Act; drug offender; juvenile offender; sex offender; violent offender