

HOUSE BILL No. 2523

AN ACT concerning law enforcement officers; relating to the office of sheriff; qualifications for office; crime of unlawful sexual relations; Kansas law enforcement training act; definitions; amending K.S.A. 2017 Supp. 19-801b, 21-5512, 74-5602 and 74-5605 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2017 Supp. 19-801b is hereby amended to read as follows: 19-801b. (a) No person shall be eligible for nomination, election or appointment to the office of sheriff unless such person:

(1) Is a citizen of the United States and a qualified elector of the county;

~~(2) possesses a high school education or its recognized equivalent, and~~

~~(3) has never been convicted of or pleaded guilty or entered a plea of nolo contendere to any felony charge, a misdemeanor crime of domestic violence as defined in K.S.A. 74-5602, and amendments thereto, or to any violation of any federal or state laws or city ordinances relating to gambling, liquor or narcotics.~~

~~(b) Every person elected to the office of sheriff for the first time, or anyone reelected or appointed to the office after having been out of the office for five years or more shall be required to attend the law enforcement training center as established by K.S.A. 74-5601 et seq., and amendments thereto, and satisfactorily complete the required training course of not less than 320 hours, unless such person has satisfactorily completed such training course within the five years prior to election or appointment, passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas law enforcement training center or unless the commission, as defined in subsection (b) of K.S.A. 74-5602, and amendments thereto, waives the requirements of this subsection as provided in K.S.A. 74-5608a, and amendments thereto. Unless the requirements are waived, any person elected or appointed to the office of sheriff who has not attended the law enforcement training center shall hold office on a provisional basis, and such person shall attend the next scheduled training program at the law enforcement training center and satisfactorily complete such training program or the one subsequent to it, or shall forfeit such office.~~

~~(2) has not been convicted of a crime that would constitute a misdemeanor crime of domestic violence or a felony under the laws of this state;~~

~~(3) has not been convicted of a misdemeanor related to gambling, liquor or narcotics within five years immediately preceding the date of election or appointment; and~~

~~(4) has: (A) Graduated from a high school accredited by the state board of education or the appropriate accrediting agency of another state jurisdiction; (B) obtained a high school education from a nonaccredited private secondary school as defined in K.S.A. 2017 Supp. 72-4345, and amendments thereto; or (C) obtained the equivalent of a high school education as defined by rules and regulations of the Kansas commission on peace officers' standards and training.~~

~~(b) Unless the commission waives the training requirements of this subsection pursuant to K.S.A. 74-5608a, and amendments thereto, any person elected or appointed to the office of sheriff:~~

~~(1) Shall possess current full-time law enforcement certification from the commission;~~

~~(2) if such person has allowed such full-time certification to lapse due to more than five years since employment as a Kansas law enforcement officer, shall:~~

~~(A) Pass the next scheduled written competency test and firearms proficiency qualification course developed and administered by the Kansas law enforcement training center that is available for such person to attend after election or appointment to the office of sheriff, or the subsequent scheduled written competency test and firearms proficiency qualification course; or~~

~~(B) satisfactorily complete the next scheduled full-time basic training course required by K.S.A. 74-5607a, and amendments thereto, that is available for such person to attend after election or appointment to the office of sheriff, or the one subsequent to it; or~~

~~(3) if such person has not obtained full-time certification by the commission, shall satisfactorily complete the next scheduled full-time basic training course required by K.S.A. 74-5607a, and amendments thereto,~~

that is available for such person to attend after election or appointment to the office of sheriff, or the one subsequent to it.

(c) Unless the training requirements of subsection (b) are waived by the commission, any person elected or appointed to the office of sheriff who does not meet the training requirements of subsection (b) shall complete such training requirements, or forfeit such office.

~~(c)~~(d) Each newly elected sheriff of each county who is required to attend the law enforcement training center shall be hired as a deputy sheriff and shall be paid a salary as deputy sheriff while attending the law enforcement training center. The tuition, board, room and travel expense for the sheriff-elect at the law enforcement training center shall be paid by the county.

Sec. 2. K.S.A. 2017 Supp. 21-5512 is hereby amended to read as follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision;

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

(5) the offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility;

(6) the offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide direct supervision and offender control services to the department of corrections and:

(A) The person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been:

(i) Released on conditional release from a juvenile correctional facility under the supervision and control of the department of corrections or juvenile community supervision agency; or

(ii) placed in the custody of the department of corrections under the supervision and control of the department of corrections or juvenile community supervision agency; and

(B) the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the Kansas department for aging

and disability services or the Kansas department for children and families or the employee of a contractor who is under contract to provide services in an aging and disability or children and families institution or to the Kansas department for aging and disability services or the Kansas department for children and families and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a patient in such institution or in the custody of the secretary for aging and disability services or the secretary for children and families;

(8) the offender is a worker, volunteer or other person in a position of authority in a family foster home licensed by the department of health and environment and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;

(9) the offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5604(b), and amendments thereto, shall apply, not this subsection;

(10) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services;

(11) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections; ~~or~~

(12) the offender is a surety or an employee of a surety and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is the subject of a surety or bail bond agreement with such surety and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is the subject of a surety or bail bond agreement with such surety; *or*

(13) *the offender is a law enforcement officer and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is interacting with such law enforcement officer during the course of a traffic stop, a custodial interrogation, an interview in connection with an investigation, or while the law enforcement officer has such person detained.*

(b) Unlawful sexual relations as defined in:

(1) Subsection (a)(5) is a severity level 4, person felony; and

(2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11) ~~or~~, (a)(12) *or* (a)(13) is a severity level 5, person felony.

(c) (1) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of K.S.A. 2017 Supp. 21-5503, and amendments thereto, the provisions of K.S.A. 2017 Supp. 21-5503, and amendments thereto, shall apply, not this section.

(2) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of ~~subsection (b)(1) of~~ K.S.A. 2017 Supp. 21-5506(b)(1), and amendments

thereto, the provisions of ~~subsection (b)(1) of K.S.A. 2017 Supp. 21-5506(b)(1)~~, and amendments thereto, shall apply, not this section.

(3) If an offender violates the provisions of this section by engaging in sodomy which would constitute a violation of ~~subsection (a)(3), (a)(4) or (b) of K.S.A. 2017 Supp. 21-5504(a)(3), (a)(4) or (b)~~, and amendments thereto, the provisions of ~~subsection (a)(3), (a)(4) or (b) of K.S.A. 2017 Supp. 21-5504(a)(3), (a)(4) or (b)~~, and amendments thereto, shall apply, not this section.

(4) If an offender violates the provisions of this section by engaging in lewd fondling or touching which would constitute a violation of ~~subsection (b)(2) of K.S.A. 2017 Supp. 21-5506(b)(2)~~, and amendments thereto, the provisions of ~~subsection (b)(2) of K.S.A. 2017 Supp. 21-5506(b)(2)~~, and amendments thereto, shall apply, not this section.

(d) As used in this section:

(1) “Correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto;

(2) “inmate” means the same as in K.S.A. 75-5202, and amendments thereto;

(3) “parole officer” means the same as in K.S.A. 75-5202, and amendments thereto;

(4) “postrelease supervision” means the same as in K.S.A. 2017 Supp. 21-6803, and amendments thereto;

(5) “juvenile detention facility” means the same as in K.S.A. 2017 Supp. 38-2302, and amendments thereto;

(6) “juvenile correctional facility” means the same as in K.S.A. 2017 Supp. 38-2302, and amendments thereto;

(7) “sanctions house” means the same as in K.S.A. 2017 Supp. 38-2302, and amendments thereto;

(8) “institution” means the same as in K.S.A. 76-12a01, and amendments thereto;

(9) “teacher” means and includes teachers, coaches, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;

(10) “community corrections” means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 2017 Supp. 38-2301 et seq., and amendments thereto;

(11) “court services” means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state;

(12) “juvenile community supervision agency” means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the department of corrections; and

(13) “surety” means the same as in K.S.A. 22-2809a, and amendments thereto.

Sec. 3. K.S.A. 2017 Supp. 74-5602 is hereby amended to read as follows: 74-5602. As used in the Kansas law enforcement training act:

(a) “Training center” means the law enforcement training center within the university of Kansas, created by K.S.A. 74-5603, and amendments thereto.

(b) “Commission” means the Kansas commission on peace officers’ standards and training, created by K.S.A. 74-5606, and amendments thereto, or the commission’s designee.

(c) “Chancellor” means the chancellor of the university of Kansas, or the chancellor’s designee.

(d) “Director of police training” means the director of police training at the law enforcement training center.

(e) “Director” means the executive director of the Kansas commission on peace officers’ standards and training.

(f) “Law enforcement” means the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof.

(g) “Police officer” or “law enforcement officer” means a full-time or part-time salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the en-

forcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to: The sheriff, undersheriff and full-time or part-time salaried deputies in the sheriff's office in each county; deputy sheriffs deputized pursuant to K.S.A. 19-2858, and amendments thereto; conservation officers of the Kansas department of wildlife, parks and tourism; university police officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus police officers, as defined in K.S.A. 22-2401a, and amendments thereto; law enforcement agents of the director of alcoholic beverage control; law enforcement agents designated by the secretary of revenue pursuant to K.S.A. 2017 Supp. 75-5157, and amendments thereto; law enforcement agents of the Kansas lottery; law enforcement agents of the Kansas racing commission; deputies and assistants of the state fire marshal having law enforcement authority; capitol police, existing under the authority of K.S.A. 75-4503, and amendments thereto; special investigators of the juvenile justice authority; special investigators designated by the secretary of labor; and law enforcement officers appointed by the adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also include railroad policemen appointed pursuant to K.S.A. 66-524, and amendments thereto; school security officers designated as school law enforcement officers pursuant to K.S.A. 2017 Supp. 72-6146, and amendments thereto; the manager and employees of the horsethief reservoir benefit district pursuant to K.S.A. 2017 Supp. 82a-2212, and amendments thereto; and the director of the Kansas commission on peace officers' standards and training and any other employee of such commission designated by the director pursuant to K.S.A. 74-5603, and amendments thereto, as a law enforcement officer. Such terms shall not include any elected official, other than a sheriff, serving in the capacity of a law enforcement or police officer solely by virtue of such official's elected position; any attorney-at-law having responsibility for law enforcement and discharging such responsibility solely in the capacity of an attorney; any employee of the commissioner of juvenile justice who is employed solely to perform correctional, administrative or operational duties related to juvenile correctional facilities; any employee of the secretary of corrections, any employee of the secretary for children and families; any deputy conservation officer of the Kansas department of wildlife, parks and tourism; or any employee of a city or county who is employed solely to perform correctional duties related to jail inmates and the administration and operation of a jail; or any full-time or part-time salaried officer or employee whose duties include the issuance of a citation or notice to appear provided such officer or employee is not vested by law with the authority to make an arrest for violation of the laws of this state or any municipality thereof, and is not authorized to carry firearms when discharging the duties of such person's office or employment. Such term shall include any officer appointed or elected on a provisional basis.

(h) "Full-time" means employment requiring at least 1,000 hours of law enforcement related work per year.

(i) "Part-time" means employment on a regular schedule or employment which requires a minimum number of hours each payroll period, but in any case requiring less than 1,000 hours of law enforcement related work per year.

(j) "Misdemeanor crime of domestic violence" means a violation of domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2017 Supp. 21-5414, and amendments thereto, or any other misdemeanor under federal, municipal or state law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed ~~by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim~~ *against a person with whom the offender is involved or has been involved in a "dating relationship" or is a "family or household member" as defined in K.S.A. 2017 Supp. 21-5414, and amendments thereto, at the time of the offense.*

(k) "Auxiliary personnel" means members of organized nonsalaried groups who operate as an adjunct to a police or sheriff's department, including reserve officers, posses and search and rescue groups.

(l) "Active law enforcement certificate" means a certificate which at-

tests to the qualification of a person to perform the duties of a law enforcement officer and which has not been suspended or revoked by action of the Kansas commission on peace officers' standards and training and has not lapsed by operation of law as provided in K.S.A. 74-5622, and amendments thereto.

Sec. 4. K.S.A. 2017 Supp. 74-5605 is hereby amended to read as follows: 74-5605. (a) Every applicant for certification shall be an employee of a state, county or city law enforcement agency, a municipal university police officer, a railroad policeman appointed pursuant to K.S.A. 66-524, and amendments thereto; an employee of the tribal law enforcement agency of an Indian nation that has entered into a tribal-state gaming compact with this state; a manager or employee of the horsethief reservoir benefit district pursuant to K.S.A. 2017 Supp. 82a-2212, and amendments thereto; or a school security officer designated as a school law enforcement officer pursuant to K.S.A. 2017 Supp. 72-6146, and amendments thereto.

(b) Prior to admission to a course conducted at the training center or at a certified state or local law enforcement agency, the applicant's appointing authority or agency head shall furnish to the director of police training and to the commission a statement certifying that the applicant has been found to meet the minimum requirements of certification established by this subsection. The commission may rely upon the statement of the appointing authority or agency head as evidence that the applicant meets the minimum requirements for certification to issue a provisional certification. Each applicant for certification shall meet the following minimum requirements:

- (1) Be a United States citizen;
- (2) have been fingerprinted and a search of local, state and national fingerprint files made to determine whether the applicant has a criminal record;
- (3) not have been convicted of a crime that would constitute a felony under the laws of this state, a misdemeanor crime of domestic violence or a misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission;
- (4) have: (A) graduated from a high school accredited by the Kansas state board of education or the appropriate accrediting agency of another state jurisdiction ~~or have~~; (B) *obtained a high school education from a nonaccredited private secondary school as defined in K.S.A. 2017 Supp. 72-4345, and amendments thereto*; or (C) obtained the equivalent of a high school education as defined by rules and regulations of the commission;
- (5) be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer;
- (6) have completed an assessment, including psychological testing approved by the commission, to determine that the applicant does not have a mental or personality disorder that would adversely affect the ability to perform the essential functions of a police officer or law enforcement officer with reasonable skill, safety and judgment;
- (7) be free of any physical or mental condition which adversely affects the ability to perform the essential functions of a police officer or law enforcement officer with reasonable skill, safety and judgment; and
- (8) be at least 21 years of age.

(c) The commission may deny a provisional or other certification upon a finding that the applicant has engaged in conduct for which a certificate may be revoked, suspended or otherwise disciplined as provided in K.S.A. 74-5616, and amendments thereto. When it appears that grounds for denial of a certification exist under this subsection, after a conditional offer of employment has been made to an applicant seeking appointment as a police officer or law enforcement officer, the applicant's appointing authority or agency head may request an order from the commission to determine whether a provisional certification will be issued to that applicant.

(d) As used in this section, "conviction" includes rendering of judgment by a military court martial pursuant to the uniform code of military justice, by a court of the United States or by a court of competent jurisdiction in any state, whether or not expunged; and any diversion or de-

ferred judgment agreement entered into for a misdemeanor crime of domestic violence or a misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations by the commission and any diversion agreement or deferred judgment entered into on or after July 1, 1995, for a felony.

Sec. 5. K.S.A. 2017 Supp. 19-801b, 21-5512, 74-5602 and 74-5605 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.