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Judiciary

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Sex Offender Registration

In recent years, the Kansas Legislature has made significant amendments to the Kansas Offender Registration Act (the Act), KSA 22-4901 to 22-4911 and 22-4913, to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law is to protect the public, in particular children, from violent sex offenders by using a more comprehensive, nationalized system for registration of sex offenders. It calls for state conformity to various aspects of sex offender registration, including the information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. Failure of a jurisdiction to comply would result in a 10 percent reduction in Byrne law enforcement assistance grants. Seventeen states, Kansas included, substantially have implemented SORNA. The other states are Alabama, Colorado, Delaware, Florida, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.

The Act outlines registration requirements for “offenders,” which is defined to include sex offenders, violent offenders, and drug offenders, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders are based on the commission and conviction of designated crimes. KSA 22-4902. A first conviction of failure to comply with the provisions of the Act is a severity level 6, person felony; a second conviction is a level 5, person felony; and a third or subsequent conviction is a level 3, person felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation – a level 3, person felony. KSA 22-4903.

Several entities collaborate to enforce the provisions of the Act. KSA 22-4904 lists the duties of each entity in its own subsection as follows:

- (a) Courts (at the time of conviction or adjudication);
- (b) Staff of a correctional facility;
- (c) Staff of a treatment facility;
- (d) Registering law enforcement agencies;
- (e) Kansas Bureau of Investigation (KBI);
- (f) Attorney General;

- (g) Kansas Department of Education;
- (h) Secretary of Health and Environment; and
- (i) The clerk of any court of record.

Registration Requirements

KSA 22-4905 describes registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender: resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions exist for anyone physically unable to register in person, at the discretion of the registering law enforcement agency. Additionally, sex offenders must report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. If incapacitated, the registering law enforcement agency may allow violent offenders and drug offenders to report by certified letter four times a year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. With some exceptions, the offender must pay a \$20 fee each time.

Recent law (2013 SB 20) amended this section to provide that registration is complete even when the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor, or, if within 15 days of the most recent registration two or more full payments have not been remitted, a severity level 9, person felony.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form, with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an

offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether these requirements have been explained.

Special conditions exist for registration in certain circumstances. If in the custody of a correctional facility, the bill requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until discharged, paroled, furloughed, or released on work or school release from a correctional facility. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the bill requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the United States, the offender must report in person to the registering law enforcement agency and the KBI 21 days prior to travel and provide an itinerary including destination, means of transport, and duration of travel. In an emergency, an offender must report within three business days of making arrangements for travel outside of the United States.

Duration of Registration

Pursuant to the Act, offenders are required to register for 15 or 25 years or for life, depending on the offense. Those crimes requiring registration for 15 years are: capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint, when the victim is less than 18; a sexually

motivated crime; a person felony where a deadly weapon was used; sexual battery; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; when one of the parties is less than 18, adultery, patronizing a prostitute, or lewd and lascivious behavior; attempt, conspiracy, or criminal solicitation of any of these crimes; and convictions of any person required by court order to register for an offense not otherwise required by the Act.

Those crimes requiring registration for 25 years are: criminal sodomy, when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are: second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life. Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is a severity level 1 non-drug felony or an off-grid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is not a severity level 1 non-drug felony or an off-grid felony, a court may:

- Require registration until the offender reaches 18, five years after adjudication or, if confined, five years after release from confinement, whichever occurs later;

- Not require registration if it finds on the record substantial and compelling reasons; or
- Require registration, but with the information not open to the public or posted on the internet. (The offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn, would forward the order to the KBI).

An offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register.

Public Access to Offender Registration Information and the Kansas Bureau of Investigation Registered Offender Website

KSA 22-4909 provides that information provided by offenders pursuant to the Act is open to inspection by the public and can be accessed at a registering law enforcement agency, as well as KBI headquarters. Additionally, the KBI maintains a website with this information (<http://www.kansas.gov/kbi/ro.shtml>), as do some registering law enforcement agencies. One of the provisions of this statute, added by 2012 HB 2568, prohibits disclosure of the address of any place where the offender is an employee or any other information about where the offender works on a website sponsored or created by a registering law enforcement agency or the KBI. While that information is not available online, it remains publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Additionally, when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the internet. If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the public and may be posted on the internet, unless the registration is ordered restricted.

Court Decisions Regarding Offender Registration

In *State v. Myers*, 260 Kan. 669 (1996), the Kansas Supreme Court rejected an *ex post facto* challenge to the registration requirements, holding they did not unconstitutionally increase the punishment for the applicable crimes. However, the *Myers* court did hold that the public disclosure of registrant information would be punitive and an *ex post facto* violation when imposed retroactively.

Recent Kansas appellate court decisions have noted that the *Myers* holding that public disclosure applied retroactively is unconstitutional has been cast into doubt by the United States Supreme Court's decision in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2D 164 (2003). The *Smith* court held that Alaska's offender registration scheme, including public disclosure of registrant information via a website, was nonpunitive and its retroactive application not an *ex post facto* violation. See, e.g., *State v. Brown*, No. 107,512, unpublished opinion filed May 24, 2013. A petition for review in *Brown* was filed June 24, 2013, and is pending as of October 2014.

Development of Sex Offender Policy

Consistent with Kansas' early compliance with SORNA, the Kansas Legislature has been at the forefront of state and federal efforts to deal with the problem of sex offenders and sex predators. In addition to the SORNA amendments, since 1993 the Kansas Legislature has passed the Kansas Offender Registration Act (the Act); passed the Civil Commitment of Sexually Violent Predators Act; reinstated the death penalty for various acts of intentional and premeditated murder following the rape or sodomy of the victim or following the kidnapping of the victim; made life without parole the sentence for those persons convicted of a capital murder crime who are not given the sentence of death; nearly quadrupled the length of time more serious offenders, including sex offenders, serve in prison; lengthened the statute of limitations for sex crimes; and required DNA testing.

Legislation enacted in 2006 (SB 506) authorized the creation of the Sex Offender Policy Board

(SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). The bill established the SOPB to consult with and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives, and the Secretary of the Senate. The SOPB's first report examined four topics: utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders, and restrictions on the residence of released sex offenders. The second report addressed the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision, and safety education and prevention strategies for the public.

Sex Offender Residency Restrictions

2006 SB 506 also prohibited cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders required to register under the Act. This provision was scheduled to expire on June 30, 2008. During the 2006 Interim, the Special Committee on Judiciary was charged by the Legislative Coordinating Council with studying actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences of such restriction and identifying actions Kansas might take that actually achieve the intended outcome of increasing public safety. The Committee held a joint hearing with the SOPB to take testimony from experts in the field. The Committee recommended the Legislature wait to receive the report from the SOPB on the topic before any legislative action was taken.

On January 8, 2007, the Kansas SOPB issued a report on its findings regarding sex offender residency restrictions, with the following conclusions:

- Although residency restrictions appear to have strong public support, the Board found no evidence to support their efficacy.

It is imperative that policy makers enact laws that actually will make the public safe and not laws giving the public a false sense of security;

- It is recommended the Legislature make permanent the moratorium on residency restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes;
- Residency restrictions should be determined based on individually identified risk factors;
- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the Legislature to educate Kansas parents, children, and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse; and
- In order for an effective model policy to be developed, the issue of sex offender residency restrictions should be referred to the Council of State Governments, the National Governor's Association, and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

During the 2008 Legislative Session, SB 536 was enacted to:

- Eliminate the sunset provision on the prohibition on cities and counties from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders;
- Add a provision to exempt any city or county residential licensing or zoning program for correctional placement residences that regulates housing for such offenders from the prohibition from

adopting or enforcing offender residency restrictions;

- Add a provision which defines "correctional placement residence" to mean a facility that provides residential services for offenders who reside or have been placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse; and
- Clarify that a correctional placement residence does not include a single or multifamily dwelling or commercial residential building that provides residence to persons other than those placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse.

During the 2010 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight studied the issue of residency restrictions and concluded that sex offender residency restrictions have no demonstrated efficacy as a means of protecting public safety.

Commitment of Sexually Violent Predators in Kansas

In Kansas, a sexually violent predator is a person who has been convicted of or charged with a "sexually violent offense" and who suffers from a mental abnormality or personality disorder, which makes the person likely to engage in repeat acts of sexual violence. Sexually violent predators are distinct from other sex offenders due to a higher risk to re-offend if their mental abnormality or personality disorder is left untreated. Those crimes considered "sexually violent offenses" are: rape, KSA 21-5503; indecent liberties with a child and aggravated indecent liberties, KSA 21-5506; criminal sodomy and aggravated criminal sodomy, KSA 21-5504; indecent solicitation of a child and aggravated indecent solicitation, KSA 21-5508; sexual exploitation of a child, KSA 21-5510; aggravated sexual battery, KSA 21-5505; and aggravated incest, KSA 21-5604. "Mental abnormality" is defined as a congenital or acquired condition affecting the emotional or volitional capacity, which predisposes the person to commit sexually violent offenses in a degree constituting

such person a menace to the health and safety of others. "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

Pursuant to KSA 59-29a01 *et seq.*, originally enacted in 1994, a sexually violent predator can be involuntarily committed to the Sexual Predator Treatment Program at Larned State Hospital. Civil commitment is different from a criminal conviction. Instead of having a definitive time frame, civil commitment continues until the offender's mental abnormality or personality disorder has changed to the extent that he or she is safe to be released. Commitment can be accomplished only following a civil trial in which the court or a jury finds that a person is a sexually violent predator. A sexually violent predator would be required to complete the seven phases of the treatment program, which include five inpatient phases at Larned State Hospital and two outpatient phases at Osawatomie State Hospital. There is no time limit for completion of each phase. The offender must meet the predetermined requirements of the phase to progress.

Upon release from the secure facility, a person would then go to a transitional release or conditional release facility. These facilities cannot be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or a school or facility used for extracurricular activities of pupils enrolled in Kindergarten through grade 12. KSA 59-29a11(b). Additionally, no more than eight sexually violent predators may be placed in any one county on transitional release or conditional release.

The Secretary of the Department for Children and Families is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include their number and location, the number of those who have been returned to treatment at Larned State Hospital and the reasons for the return; and any plans for the development of additional transitional or conditional release facilities.

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