

## MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:00 p.m. on March 3, 2011 in Room 144-S of the Capitol.

All members were present

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Lauren Douglass, Legislative Research  
Robert Allison-Gallimore, Legislative Research  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Sarah Fertig, Executive Director, Kansas Sentencing Commission

Others attending:

See attached.

Chairperson Colloton called the meeting to order and opened the floor for consideration of **HB 2318-Amendments to the recodified criminal controlled substances provisions and the drug sentencing grid.** Jason Thompson, Office of the Revisor of Statutes, explained the amendments on the bill. Mr. Thompson presented written copy of the amendments. (Attachments 1, 2, & 3) **Representative Brookens moved to adopt the amendments and move the bill out as a substitute bill favorably for passage. Representative Pauls seconded.** A discussion followed. **Motion carried.**

Chairperson Colloton opened the hearing on **HB 2322-Amendments to the Kansas offender registration act,** and called on Sarah Fertig, Executive Director, Kansas Sentencing Commission, to review the bill impact. (Attachment 4) Jason Thompson, Office of the Revisor of Statutes, explained the bill and amendments. The following testified as proponents of the bill and presented written copy of their testimony, which can be found in their entirety in the offices of Legislative Administrative Services:

- Kyle Smith, Attorney General's Office (Attachment 5)
- Dave Hutchings, KBI (Attachment 6)
- Nicole Dekat, Public Service Administrator II, KBI (Attachment 7)
- Sgt. Al Deathe, Douglas County Sheriff's Office (Attachment 8)

The following appeared as an opponent of the bill. She presented written copy of her testimony, which can be found in the offices of Legislative Administrative Services:

- Jennifer Roth, Kansas Association of Criminal Defense Lawyers (Attachment 9)

A lengthy discussion followed. Chairperson Colloton continued the hearing.

The meeting was adjourned at 3:25 pm with the next meeting scheduled for March 4, 2011 at 1:30pm in room 144-S.

# CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-3-11

NAME	REPRESENTING
Christine Thoraton	Washburn Univ. - Social work Dept.
Deborah Jackson	Washburn Univ - Social Work
Antonia Stahl	Washburn University - SW
Mindie McClain	Washburn University - SW
Zoe HORN	UNIVERSITY OF KANSAS - SW
Ladan Soleimani	University of Kansas - SW
Emily Gawith	University of Kansas - SW
Isabelle Walker	University of Kansas - Social Welfare
Greg Bryant	University of Kansas - SW
Clare Pontello	University of Kansas - SW
La'Shaune Rice	Washburn University - masters of social work
Sarah Fertig	KSC
Ed Klump	KACP/KSA/KPOA
Tom Stacy	KCCRC
John W. White	KCCRC
Steven Galt	KCLAC/JC
Natalie Gibson	KS Judicial Council
Mark Gleason	Judicial Branch
Patrick Vogelberg	KCDAA

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## MEMORANDUM

To: Chairperson Colloton and Members of the  
House Corrections and Juvenile Justice Committee

From: Jason Thompson, Senior Assistant Revisor

Date: March 3, 2011

Subject: Proposed Substitute for HB 2318 – 11rs0986

The Committee asked me to prepare a substitute bill for HB 2318 that will make the policy changes contained in the original draft, but also create and utilize a drug sentencing grid with five levels. This requires a few changes to drug crime penalties and a number of technical changes in other statutes. Below is a summary of all 17 sections of the drug code, specifically identifying the changes to be made in the substitute bill.

K.S.A. 21-36a01, definitions.

Change to definition of "manufacture" as recommended in HB 2318.

No crimes or penalties, no other change needed.

K.S.A. 21-36a02, effective date; scope of act.

No crimes or penalties, no change needed.

K.S.A. 21-36a03, unlawful manufacturing of controlled substances.

Subsection (b), drug severity level 1 felony changes to:

1<sup>st</sup> offense, drug SL 2 felony; 2<sup>nd</sup> offense, drug SL 1 felony;

1<sup>st</sup> offense if manufacturing methamphetamine, drug SL 1 felony.

K.S.A. 21-36a04, unlawful manufacturing; costs and expenses.

No crimes or penalties, no change needed.

K.S.A. 21-36a05, unlawful cultivation or distribution of controlled substances.

Quantities added as recommended in HB 2318, subsection (d)(1) through (d)(4), severity levels 4 through 1.

Subsection (d)(5), school zone enhancement, no change.

Subsection (d)(6), misdemeanor, no change.

Subsection (d)(7), SL 7, person felony, no change.

Subsection (d)(8), levels 3 through 1, as written in HB 2318.

K.S.A. 21-36a06, unlawful possession of controlled substances.

Subsection (c)(1), drug SL 4 felony, changes to drug SL 5 felony.

Subsection (c)(2), misdemeanor, no change; 2<sup>nd</sup> offense, SL 4, changes to SL 5.

K.S.A. 21-36a07, unlawful manufacture, distribution, cultivation or possession of controlled substances using a communication facility.

Nondrug severity level crimes, no change needed.

K.S.A. 21-36a08, unlawfully obtaining or selling a prescription-only drug.

Nondrug severity level crimes, no change needed.

K.S.A. 21-36a09, unlawful possession of certain precursors and paraphernalia.

HB 2318 removes penalties, no further change needed.

K.S.A. 21-36a10, unlawful distribution of certain precursors and paraphernalia.

As recommended in HB2318:

Subsection (e)(1), SL 2 becomes SL 3.

Subsection (e)(2), SL 4 becomes SL 5;

Subsection (e)(3), school zone violation, SL 3 becomes SL 4.

Subsection (e)(4), SL 9, nonperson felony, no change;

Subsection (e)(5), school zone violation, SL 4 becomes SL 5.

Subsection (e)(6), misdemeanor, no change;

Subsection (e)(7), SL 9, nonperson felony, no change.

K.S.A. 21-36a11, factors to consider when determining what is drug paraphernalia.

No crimes or penalties, no change needed.

K.S.A. 21-36a12, unlawful abuse of toxic vapors.

Subsection (b), misdemeanor, no change.

K.S.A. 21-36a13, unlawful distribution or possession of simulated controlled substance.

School zone change. Nondrug severity level crimes, no further change needed.

K.S.A. 21-36a14, unlawful representation that substance is controlled substance.

School zone change. Nondrug severity level crimes, no further change needed.

K.S.A. 21-36a15, treatment of a controlled substance analog.

No crimes or penalties, no change needed.

K.S.A. 21-36a16, unlawful acts involving proceeds derived from violations.

Subsection (e)(1), value of the proceeds is less than \$5,000, SL 4 becomes SL 5.

Subsection (e)(2), at least \$5,000 but less than \$100,000, SL 3 becomes SL 4;

Subsection (e)(3), at least \$100,000 but less than \$500,000, SL 2, split into 2 levels:

(e)(3), at least \$100,000 but less than \$250,000, SL 3; and

(e)(4), at least \$250,000 but less than \$500,000, SL 2.

Subsection (e)(4) becomes (e)(5), \$500,000 or more, remains a SL 1.

K.S.A. 21-36a17, uniformity of act.

Remove reference to K.S.A. 21-36a09 because penalties are removed in HB 2318.

No crimes or penalties, no further change needed.

## (PROPOSED) SUBSTITUTE FOR HOUSE BILL NO. 2318

By Committee on Corrections and Juvenile Justice

AN ACT concerning crimes, punishment and criminal procedure; relating to controlled

substances; sentencing guidelines grid for drug crimes; amending K.S.A. 22-2908, as amended by section 9 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-36a01, 21-36a03, 21-36a05, 21-36a06, 21-36a09, 21-36a10, 21-36a13, 21-36a14, 21-36a16, 21-36a17, 22-2802, 22-3412, 22-3604, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376 and 75-5291 and sections 244, 248, 251, 254, 286, 289, 291, 302 and 305 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2009 Supp. 21-4603d, as amended by section 7 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-4603d, 21-4619, 21-4710 and 22-3717c.

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 3-3-11Attachment # 2-1*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2010 Supp. 21-36a01 is hereby amended to read as follows: 21-36a01. As used in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto:

(a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-

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4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a



controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(e) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) "Drug paraphernalia" means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act.

"Drug paraphernalia" shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting,

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producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP),

methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) "Immediate precursor" means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis ~~and includes any packaging or repackaging of the substance or labeling or relabeling of its container.~~ "Manufacture" does not include:

(1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

~~(1)~~ (A) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

~~(2)~~ (B) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance; or

(2) the addition of dilutents or adulterants, including, but not limited to, quinine

hydrochloride, manitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "Minor" means a person under 18 years of age.

(l) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions

of coca leaves which do not contain cocaine or ecgonine.

(m) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

(o) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(p) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a

defense to the crime charged or the sentence imposed.

(s) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 2. K.S.A. 2010 Supp. 21-36a03 is hereby amended to read as follows: 21-36a03.

(a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a ~~drug severity level 1 felony~~;

(1) Drug severity level 2 felony, except as provided in subsections (b)(2) and (b)(3);

(2) drug severity level 1 felony if the offender has a prior conviction under this section, under K.S.A. 65-4159, prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

(c) The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance or controlled substance analog pursuant to this section.

~~(e)~~ (d) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed

or certified drug treatment program.

~~(d)~~ (e) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

~~(e)~~ (f) The sentence of a person who violates this section or K.S.A. 65-4159, prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to ~~such sections~~ their repeal, or K.S.A. 2010 Supp. 21-36a05, and amendments thereto.

Sec. 3. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05.

(a) It shall be unlawful for any person to ~~cultivate~~, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and



amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

~~(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:~~

~~(A) Violation of subsection (a) is a drug severity level 2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or the violation occurs on or within 1,000 feet of any school property;~~

~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and~~

~~(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.~~

~~(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.~~

~~(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.~~

(c) It shall be unlawful for any person to cultivate any controlled substance or

controlled substance analog listed in subsection (a).

(d) (1) Except as provided further, violation of subsection (a) is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 3.5 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 3.5 grams but less than 100 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 100 grams but less than 1 kilogram; or

(D) drug severity level 1 felony if the quantity of the material was 1 kilogram or more.

(2) Violation of subsection (a) with respect to material containing any quantity of marijuana, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 25 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 25 grams but less than 450 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 450 grams but less than 30 kilograms; or

(D) drug severity level 1 felony if the quantity of the material was 30 kilograms or more.

(3) Violation of subsection (a) with respect to material containing any quantity of heroin or methamphetamine, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 1 gram;

(B) drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; or

(D) drug severity level 1 felony if the quantity of the material was 100 grams or more.

(4) Violation of subsection (a) with respect to material containing any quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments thereto, or an analog thereof, distributed by dosage unit, is a:

(A) Drug severity level 4 felony if the number of dosage units was fewer than 10;

(B) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100;

(C) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; or

(D) drug severity level 1 felony if the number of dosage units was 1,000 or more.

(5) For any violation of subsection (a), the severity level of the offense shall be increased one level if the controlled substance or controlled substance analog was distributed or possessed with the intent to distribute on or within 1,000 feet of any school property.

(6) Violation of subsection (b) is a class A person misdemeanor, except as provided in subsection (d)(7).

(7) Violation of subsection (b) is a severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.

(8) Violation of subsection (c) is a:

(A) Drug severity level 3 felony if the number of plants cultivated was more than 4 but fewer than 50;

(B) drug severity level 2 felony if the number of plants cultivated was at least 50 but fewer than 100; or

(C) drug severity level 1 felony if the number of plants cultivated was 100 or more.

(e) In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the following quantities of controlled substances or controlled substance analogs thereof:

(1) 450 grams or more of marijuana;

(2) 3.5 grams or more of heroin or methamphetamine;

(3) 100 dosage units or more containing a controlled substance; or

(4) 100 grams or more of any other controlled substance.

(f) It shall not be a defense to charges arising under this section that the defendant:

(1) Was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog;

(2) did not know the quantity of the controlled substance or controlled substance analog; or

(3) did not know the specific controlled substance or controlled substance analog contained in the material that was distributed or possessed with the intent to distribute.

(g) As used in this section:

(1) "Material" means the total amount of any substance, including a compound or a mixture, which contains any quantity of a controlled substance or controlled substance analog.

(2) "Dosage unit" means a controlled substance or controlled substance analog distributed or possessed with the intent to distribute as a discrete unit, including, but not limited

to, one pill, one capsule or one microdot, and not distributed by weight.

(A) For steroids, or controlled substances or controlled substance analogs in liquid solution legally manufactured for prescription use, "dosage unit" means the smallest medically-approved dosage unit, as determined by the label, materials provided by the manufacturer, a prescribing authority, licensed health care professional or other qualified health authority.

(B) For illegally manufactured controlled substances or controlled substance analogs in liquid solution, or controlled substances or controlled substance analogs in liquid products not intended for ingestion by human beings, "dosage unit" means 10 milligrams, including the liquid carrier medium, except as provided in subsection (g)(2)(C).

(C) For lysergic acid diethylamide (LSD) or an analog thereof in liquid form, a dosage unit is defined as 0.4 milligrams, including the liquid medium.

Sec. 4. K.S.A. 2010 Supp. 21-36a06 is hereby amended to read as follows: 21-36a06.

(a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; or

(6) any substance designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 4.5 felony;

(2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b)(1) through (b)(5) is a drug severity level 4.5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto, or an analog thereof.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

Sec. 5. K.S.A. 2010 Supp. 21-36a09 is hereby amended to read as follows: 21-36a09.

~~(a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the product~~

~~to manufacture a controlled substance.~~

~~(b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:~~

~~(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or~~

~~(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.~~

~~(c) It shall be unlawful for any person to use or possess with intent to use anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.~~

~~(d) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.~~

~~(e) (1) Violation of subsection (a) is a drug severity level 2 felony;~~

~~(2) violation of subsection (b)(1) is a drug severity level 4 felony, except that violation of subsection (b)(1) is a class A nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants;~~

~~(3) violation of subsection (b)(2) is a class A nonperson misdemeanor;~~

~~(4) violation of subsection (c) is a drug severity level 4 felony;~~

~~(5) violation of subsection (d) is a class A nonperson misdemeanor.~~

~~(f) For persons arrested and charged under subsection (a) or (c), bail shall be at least~~

~~\$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.~~

(a) Possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance or controlled substance analog is an attempted violation of subsection (a) of K.S.A. 2010 Supp. 21-36a03, and amendments thereto.

(b) Possession of drug paraphernalia with the intent to manufacture a controlled substance or controlled substance analog is an attempted violation of subsection (a) of K.S.A. 2010 Supp. 21-36a03, and amendments thereto.

(c) Possession of any drug paraphernalia with the intent to:

(1) Distribute or cultivate a controlled substance designated in subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, or a controlled substance analog thereof, is an attempted violation of subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto;

or

(2) distribute a controlled substance or controlled substance analog designated in K.S.A. 65-4113, and amendments thereto, is an attempted violation of subsection (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto.

(d) Possession of any drug paraphernalia with the intent to possess or have under one's control, any controlled substance designated in:

(1) Subsection (a) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, or a



controlled substance analog thereof, is an attempted violation of subsection (a) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto; or

(2) subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, or a controlled substance analog thereof, is an attempted violation of subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

(e) This section does not preclude a person from being prosecuted for, convicted of and punished for an attempted violation of K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto, based upon overt acts other than those described in this section.

Sec. 6. K.S.A. 2010 Supp. 21-36a10 is hereby amended to read as follows: 21-36a10.

(a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance or controlled substance analog; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to distribute, possess with the intent to distribute

or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance or controlled substance analog in violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, except subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level 2 3 felony;.

(2) Violation of subsection (b) is a drug severity level 4 5 felony, except ~~that~~ as provided in subsection (e)(3).

(3) Violation of subsection (b) is a drug severity level 3 4 felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;.

~~(3)~~ (4) Violation of subsection (c) is a severity level 9, nonperson felony, except ~~that~~ as provided in subsection (e)(5).

(5) Violation of subsection (c) is a drug severity level 4\_5 felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;.

~~(4)~~ (6) Violation of subsection (d) is a class A nonperson misdemeanor, except ~~that~~ as provided in subsection (e)(7).

(7) Violation of subsection (d) is a severity level 9, nonperson felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property.

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

- (1) Actual knowledge from prior experience or statements by customers;
- (2) inappropriate or impractical design for alleged legitimate use;
- (3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or
- (4) receipt of a written warning from a law enforcement or prosecutorial agency having

jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 7. K.S.A. 2010 Supp. 21-36a13 is hereby amended to read as follows: 21-36a13.

(a) It shall be unlawful for any person to distribute, possess with the intent to distribute; or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, except ~~that~~ as provided in subsection (c)(2).

(2) Violation of subsection (a) is a nondrug severity level 7, nonperson felony, if the trier of fact makes a finding that ~~the offender is 18 or more years of age and the violation occurred on or within 1,000 feet of any school property; and~~.

~~(2)~~ (3) Violation of subsection (b) is a class A nonperson misdemeanor.

Sec. 8. K.S.A. 2010 Supp. 21-36a14 is hereby amended to read as follows: 21-36a14.

(a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) (1) Violation of subsection (a) is a class A nonperson misdemeanor, except ~~that~~ as

provided in subsection (b)(2).

(2) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, if the distributor is 18 or more years of age, distributing to a ~~person under 18 years of age~~ minor and at least three years older than the ~~person under 18 years of age~~ minor to whom the distribution is made.

(c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(d) A person who commits a violation of subsection (a) also may be prosecuted for, convicted of and punished for theft by deception.

Sec. 9. K.S.A. 2010 Supp. 21-36a16 is hereby amended to read as follows: 21-36a16.

(a) It shall be unlawful for any person to receive or acquire proceeds or engage in transactions involving proceeds, known to be derived from a violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction. The provisions of this subsection do not apply to any transaction between an

individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto.

(b) It shall be unlawful for any person to distribute, invest, conceal, transport or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any crime in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(c) It shall be unlawful for any person to direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds known to be derived from commission of any crime in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(d) It shall be unlawful for any person to conduct a financial transaction involving proceeds derived from commission of any crime in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from commission of any crime in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction, or to avoid a transaction reporting requirement under

state or federal law.

(e) Violation of this section is a:

(1) ~~Violation of this section is a~~ Drug severity level 4\_5 felony if the value of the proceeds is less than \$5,000;

(2) ~~violation of this section is a~~ drug severity level 3\_4 felony if the value of the proceeds is at least \$5,000 but less than \$100,000;

(3) ~~violation of this section shall be a~~ drug severity level 2\_3 felony if the value of the proceeds is at least \$100,000 but less than ~~\$500,000~~ \$250,000;

(4) drug severity level 2 felony if the value of the proceeds is at least \$250,000 but less than \$500,000; and

~~(4)(5) violation of this section shall be a~~ drug severity level 1 felony if the value of the proceeds is \$500,000 or more.

Sec. 10. K.S.A. 2010 Supp. 21-36a17 is hereby amended to read as follows: 21-36a17. The statutes listed below shall be applicable and uniform throughout this state and in all cities and counties therein. No city or county shall enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions listed below unless expressly authorized by law to do so:

(a) Subsection (c) of K.S.A. 21-2501a, and amendments thereto;

(b) subsections (k) and (l) of K.S.A. 65-1643, and amendments thereto;

(c) subsections (e), (f) and (g) of K.S.A. 65-4113, and amendments thereto;

(d) subsection (c) of K.S.A. 2010 Supp. 21-36a03, and amendments thereto;

~~(e) subsection (f) of K.S.A. 2010 Supp. 21-36a09, and amendments thereto;~~

~~(f)~~(e) subsection (f) of K.S.A. 2010 Supp. 21-36a10, and amendments thereto.

Sec. 11. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ section



## HOUSE BILL No. 2322

By Committee on Corrections and Juvenile Justice

2-11

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RS - JThompson - 03/03/11

1 AN ACT concerning the Kansas offender registration act; amending  
2 K.S.A. 22-4901, 22-4903, 22-4908, 22-4909 and 22-4911 and K.S.A.  
3 2010 Supp. 22-4902, 22-4904, 22-4905, 22-4906, 22-4907 and 22-  
4 4913 and repealing the existing sections; also repealing K.S.A. 22-  
5 4912.

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

8 Section 1. K.S.A. 22-4901 is hereby amended to read as follows: 22-  
9 4901. K.S.A. 22-4901 through ~~22-4910~~ 22-4911 and 22-4913, and  
10 amendments thereto, shall be known and may be cited as the Kansas  
11 offender registration act.

12 Sec. 2. K.S.A. 2010 Supp. 22-4902 is hereby amended to read as  
13 follows: 22-4902. As used in the Kansas offender registration act, unless  
14 the context otherwise requires:

15 (a) "Offender" means:

16 (1) A sex offender, as defined in subsection (b);

17 (2) a violent offender, as defined in subsection (d) (e);

18 ~~(3) a sexually violent predator as defined in subsection (f);~~

19 ~~(4) any person who, on and after May 29, 1997, is convicted of any~~  
20 ~~of the following crimes when the victim is less than 18 years of age:~~

21 ~~(A) Kidnapping as defined in K.S.A. 21-3420 and amendments~~  
22 ~~thereto, except by a parent;~~

23 ~~(B) aggravated kidnapping as defined in K.S.A. 21-3421 and~~  
24 ~~amendments thereto; or~~

25 ~~(C) criminal restraint as defined in K.S.A. 21-3424 and amendments~~  
26 ~~thereto, except by a parent;~~

27 ~~(5) any person convicted of any of the following criminal sexual~~  
28 ~~conduct if one of the parties involved is less than 18 years of age:~~

29 ~~(A) Adultery as defined by K.S.A. 21-3507, and amendments~~  
30 ~~thereto;~~

31 ~~(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-~~  
32 ~~3505, and amendments thereto;~~

33 ~~(C) promoting prostitution as defined by K.S.A. 21-3513, and~~  
34 ~~amendments thereto;~~

35 ~~(D) patronizing a prostitute as defined by K.S.A. 21-3515, and~~  
36 ~~amendments thereto; or~~

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 3-3-11

Attachment # 3-1

~~(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto;~~

~~(3) a drug offender, as defined in subsection (f);~~

~~(6) (4) any person who has been required to register under any federal, military or other state's out of state law or is otherwise required to be registered; and~~

~~(7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;~~

~~(8) any person who has been convicted of an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);~~

~~(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);~~

~~(10) any person who has been convicted of aggravated human trafficking as defined in K.S.A. 21-3447, and amendments thereto; or~~

~~(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;~~

~~(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by subsection (a) of K.S.A. 65-7006, prior to its repeal or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or~~

~~(C) K.S.A. 65-4161, prior to its repeal or subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of this paragraph shall not apply to violations of subsections (a)(2) through (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, which occurred on and after July 1, 2009, through the effective date of this act.~~

~~Convictions which result from or are connected with the same act, or~~

1 ~~result from crimes committed at the same time, shall be counted for the~~  
2 ~~purpose of this section as one conviction. Any conviction set aside~~  
3 ~~pursuant to law is not a conviction for purposes of this section. A~~  
4 ~~conviction from another state shall constitute a conviction for purposes of~~  
5 ~~this section.~~

6 (5) *any person required by court order to register for an offense not*  
7 *otherwise required as provided in the Kansas offender registration act.*

8 (b) "Sex offender" includes any person who: :

9 (1) *On or after April 14, 1994, is convicted of any sexually violent*  
10 *crime set forth in subsection (c) or is adjudicated as a juvenile offender*  
11 *for an act which if committed by an adult would constitute the*  
12 *commission of a sexually violent crime set forth in subsection (c); ;*

13 (2) *has been determined to be a sexually violent predator, as defined*  
14 *in subsection (d);*

15 (3) *on or after May 29, 1997, is convicted of any of the following*  
16 *crimes when one of the parties involved is less than 18 years of age:*

17 (A) *Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or*  
18 *section 75 of chapter 136 of the 2010 Session Laws of Kansas, and*  
19 *amendments thereto;*

20 (B) *criminal sodomy, as defined in subsection (a)(1) of K.S.A. 21-*  
21 *3505, prior to its repeal, or subsection (a)(1) or (a)(2) of section 68 of*  
22 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*  
23 *thereto;*

24 (C) *promoting prostitution, as defined in K.S.A. 21-3513, prior to its*  
25 *repeal, or section 230 of chapter 136 of the 2010 Session Laws of*  
26 *Kansas, and amendments thereto;*

27 (D) *patronizing a prostitute, as defined in K.S.A. 21-3515, prior to*  
28 *its repeal, or section 231 of chapter 136 of the 2010 Session Laws of*  
29 *Kansas, and amendments thereto; or*

30 (E) *lewd and lascivious behavior, as defined in K.S.A. 21-3508,*  
31 *prior to its repeal, or section 77 of chapter 136 of the 2010 Session Laws*  
32 *of Kansas, and amendments thereto;*

33 (4) *is convicted of sexual battery, as defined in K.S.A. 21-3517,*  
34 *prior to its repeal, or subsection (a) of section 69 of chapter 136 of the*  
35 *2010 Session Laws of Kansas, and amendments thereto;*

36 (5) *is convicted of an attempt, conspiracy or criminal solicitation, as*  
37 *defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or*  
38 *section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas,*  
39 *and amendments thereto, of an offense defined in this subsection; or*

40 (6) *has been convicted of an offense in effect at any time prior to*  
41 *July 1, 2011, that is comparable to any crime defined in this subsection,*  
42 *or any out of state conviction for an offense that under the laws of this*  
43 *state would be an offense defined in this subsection.*

- 1 (c) "Sexually violent crime" means:
- 2 (1) Rape as defined in K.S.A. 21-3502, *prior to its repeal, or section*
- 3 *67 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 4 *thereto*;
- 5 (2) indecent liberties with a child as defined in K.S.A. 21-3503,
- 6 *prior to its repeal, or subsection (a) of section 70 of chapter 136 of the*
- 7 *2010 Session Laws of Kansas*, and amendments thereto;
- 8 (3) aggravated indecent liberties with a child as defined in K.S.A.
- 9 *21-3504, prior to its repeal, or subsection (b) of section 70 of chapter*
- 10 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;
- 11 (4) criminal sodomy as defined in subsection (a)(2) ~~and~~ (a)(3) of
- 12 *K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of*
- 13 *section 68 of chapter 136 of the 2010 Session Laws of Kansas*, and
- 14 *amendments thereto*;
- 15 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506, *prior*
- 16 *to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010*
- 17 *Session Laws of Kansas*, and amendments thereto;
- 18 (6) indecent solicitation of a child as defined ~~by~~ in K.S.A. 21-3510,
- 19 *prior to its repeal, or subsection (a) of section 72 of chapter 136 of the*
- 20 *2010 Session Laws of Kansas*, and amendments thereto;
- 21 (7) aggravated indecent solicitation of a child as defined ~~by~~ in
- 22 *K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of*
- 23 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 24 *thereto*;
- 25 (8) sexual exploitation of a child as defined ~~by~~ in K.S.A. 21-3516,
- 26 *prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws*
- 27 *of Kansas*, and amendments thereto;
- 28 ~~(9) sexual battery as defined by K.S.A. 21-3517 and amendments~~
- 29 ~~thereto~~;
- 30 ~~(10) (9) aggravated sexual battery as defined by in K.S.A. 21-3518,~~
- 31 ~~prior to its repeal, or subsection (b) of section 69 of chapter 136 of the~~
- 32 ~~2010 Session Laws of Kansas~~, and amendments thereto;
- 33 ~~(11) (10) aggravated incest as defined by in K.S.A. 21-3603, prior~~
- 34 ~~to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010~~
- 35 ~~Session Laws of Kansas~~, and amendments thereto;
- 36 ~~(12) (11) electronic solicitation as defined by in K.S.A. 21-3523,~~
- 37 ~~prior to its repeal, and section 73 of chapter 136 of the 2010 Session~~
- 38 ~~Laws of Kansas~~, and amendments thereto, committed on or after April 17,
- 39 ~~2008~~;
- 40 ~~(13) (12) unlawful sexual relations as defined by in K.S.A. 21-3520,~~
- 41 ~~prior to its repeal, or section 76 of chapter 136 of the 2010 Session Laws~~
- 42 ~~of Kansas~~, and amendments thereto, committed on or after July 1, 2010;
- 43 ~~(14) (13) any conviction for an offense in effect at any time prior to~~

1 ~~April 29, 1993~~ July 1, 2011, that is comparable to a sexually violent crime  
2 as defined in ~~subparagraphs (1) through (11) this subsection~~, or any  
3 ~~federal, military or other~~ out of state conviction for an offense that under  
4 the laws of this state would be a sexually violent crime as defined in this  
5 ~~section subsection~~;

6 ~~(15)~~ (14) an attempt, conspiracy or criminal solicitation, as defined  
7 in K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or section*  
8 *33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas*, and  
9 amendments thereto, of a sexually violent crime, as defined in this ~~section~~  
10 ~~subsection~~; or

11 ~~(16)~~ (15) any act which at the time of sentencing for the offense has  
12 been determined beyond a reasonable doubt to have been sexually  
13 motivated. As used in this ~~subparagraph~~ *paragraph*, "sexually motivated"  
14 means that one of the purposes for which the defendant committed the  
15 crime was for the purpose of the defendant's sexual gratification.

16 (d) "Sexually violent predator" means any person who, on or after  
17 July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.  
18 59-29a01 et seq., and amendments thereto.

19 ~~(d)~~ (e) "Violent offender" includes any person who; :

20 (1) On or after May 29, 1997, is convicted of any of the following  
21 crimes:

22 ~~(1)~~ (A) Capital murder, as defined ~~by~~ in K.S.A. 21-3439, *prior to its*  
23 *repeal, or section 36 of chapter 136 of the 2010 Session Laws of Kansas*,  
24 and amendments thereto;

25 ~~(2)~~ (B) murder in the first degree, as defined ~~by~~ in K.S.A. 21-3401,  
26 *prior to its repeal, or section 37 of chapter 136 of the 2010 Session Laws*  
27 *of Kansas*, and amendments thereto;

28 ~~(3)~~ (C) murder in the second degree, as defined ~~by~~ in K.S.A. 21-  
29 3402, *prior to its repeal, or section 38 of chapter 136 of the 2010*  
30 *Session Laws of Kansas*, and amendments thereto;

31 ~~(4)~~ (D) voluntary manslaughter, as defined ~~by~~ in K.S.A. 21-3403,  
32 *prior to its repeal, or section 39 of chapter 136 of the 2010 Session Laws*  
33 *of Kansas*, and amendments thereto;

34 ~~(5)~~ (E) involuntary manslaughter, as defined ~~by~~ in K.S.A. 21-3404,  
35 *prior to its repeal, or section 40 of chapter 136 of the 2010 Session Laws*  
36 *of Kansas*, and amendments thereto;

37 (F) kidnapping, as defined in K.S.A. 21-3420, *prior to its repeal, or*  
38 *subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of*  
39 *Kansas*, and amendments thereto;

40 (G) aggravated kidnapping, as defined in K.S.A. 21-3421, *prior to*  
41 *its repeal, or subsection (b) of section 43 of chapter 136 of the 2010*  
42 *Session Laws of Kansas*, and amendments thereto;

43 (H) criminal restraint, as defined in K.S.A. 21-3424, *prior to its*

1 *repeal, or section 46 of chapter 136 of the 2010 Session Laws of Kansas,*  
2 *and amendments thereto, except by a parent, and only when the victim is*  
3 *less than 18 years of age; or*

4 *(1) aggravated human trafficking, as defined in K.S.A. 21-3447,*  
5 *prior to its repeal, or subsection (b) of section 61 of chapter 136 of the*  
6 *2010 Session Laws of Kansas, and amendments thereto;*

7 *(2) on or after July 1, 2006, is convicted of any person felony and*  
8 *the court makes a finding on the record that a deadly weapon was used in*  
9 *the commission of such person felony;*

10 ~~*(6) (3) any conviction for an offense in effect at any time prior to*~~  
11 ~~*May 29, 1997 has been convicted of an offense in effect at any time prior*~~  
12 ~~*to July 1, 2011, that is comparable to any crime defined in this subsection,*~~  
13 ~~*or any federal, military or other out of state conviction for an offense that*~~  
14 ~~*under the laws of this state would be an offense defined in this*~~  
15 ~~*subsection; or*~~

16 ~~*(7) (4) is convicted of an attempt, conspiracy or criminal solicitation,*~~  
17 ~~*as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal,*~~  
18 ~~*or section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of*~~  
19 ~~*Kansas, and amendments thereto, of an offense defined in this subsection.*~~

20 *(f) "Drug offender" means any person who has been convicted of:*

21 *(1) Unlawful manufacture or attempting such of any controlled*  
22 *substance or controlled substance analog as defined in K.S.A. 65-4159,*  
23 *prior to its repeal, or K.S.A. 2010 Supp. 21-36a03, and amendments*  
24 *thereto;*

25 *(2) possession of ephedrine, pseudoephedrine, red phosphorus,*  
26 *lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized*  
27 *ammonia or phenylpropanolamine, or their salts, isomers or salts of*  
28 *isomers with intent to use the product to manufacture a controlled*  
29 *substance as defined in subsection (a) of K.S.A. 65-7006, prior to its*  
30 *repeal, or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and*  
31 *amendments thereto;*

32 *(3) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of K.S.A.*  
33 *2010 Supp. 21-36a05, and amendments thereto. The provisions of this*  
34 *paragraph shall not apply to violations of subsections (a)(2) through (a)*  
35 *(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, which*  
36 *occurred on or after July 1, 2009, through April 15, 2010;*

37 *(4) an offense in effect at any time prior to July 1, 2011, that is*  
38 *comparable to any crime defined in this subsection, or any out of state*  
39 *conviction for an offense that under the laws of this state would be an*  
40 *offense defined in this subsection; or*

41 *(5) an attempt, conspiracy or criminal solicitation, as defined in*  
42 *K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33,*  
43 *34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and*

1 amendments thereto, of an offense defined in this subsection.

2 (g) Convictions which result from or are connected with the same  
3 act, or result from crimes committed at the same time, shall be counted  
4 for the purpose of this section as one conviction. Any conviction set aside  
5 pursuant to law is not a conviction for purposes of this section. A  
6 conviction from any out of state court shall constitute a conviction for  
7 purposes of this section.

8 (e) ~~"Law enforcement agency having jurisdiction" means the sheriff~~  
9 ~~of the county in which the offender expects to reside upon the offender's~~  
10 ~~discharge, parole or release.~~

11 (f) ~~"Sexually violent predator" means any person who, on or after~~  
12 ~~July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A.~~  
13 ~~59-29a01 et seq. and amendments thereto.~~

14 (g) ~~"Nonresident student or worker" includes any offender who~~  
15 ~~crosses into the state or county for more than 14 days, or for an aggregate~~  
16 ~~period exceeding 30 days in a calendar year, for the purposes of~~  
17 ~~employment, with or without compensation, or to attend school as a~~  
18 ~~student.~~

19 (h) ~~"Aggravated offenses" means engaging in sexual acts involving~~  
20 ~~penetration with victims of any age through the use of force or the threat~~  
21 ~~of serious violence, or engaging in sexual acts involving penetration with~~  
22 ~~victims less than 14 years of age, and includes the following offenses:~~

23 (1) ~~Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of~~  
24 ~~K.S.A. 21-3502, and amendments thereto;~~

25 (2) ~~aggravated criminal sodomy as defined in subsection (a)(1) and~~  
26 ~~subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and~~

27 (3) ~~any attempt, conspiracy or criminal solicitation, as defined in~~  
28 ~~K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an~~  
29 ~~offense defined in this subsection.~~

30 (i) ~~"Institution of higher education" means any postsecondary school~~  
31 ~~under the supervision of the Kansas board of regents.~~

32 (h) ~~"School" means any public or private educational institution,~~  
33 ~~including, but not limited to, postsecondary school, college, university,~~  
34 ~~community college, secondary school, high school, junior high school,~~  
35 ~~middle school, elementary school, trade school, vocational school or~~  
36 ~~professional school providing training or education to an offender.~~

37 (i) ~~"Employment" means any full-time, part-time, transient or day-~~  
38 ~~labor employment, with or without compensation.~~

39 (j) ~~"Reside" means to stay, sleep or maintain with regularity one's~~  
40 ~~person and property in a particular place other than a location where the~~  
41 ~~offender is incarcerated. It shall be presumed that an offender resides at~~  
42 ~~any and all locations where the offender stays, sleeps or maintains the~~  
43 ~~offender's person for seven or more consecutive days or parts of days, or~~

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for seven or more non-consecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, or correctional facility, treatment facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments, correctional facilities and treatment facilities.

(p) "Treatment facility" means any public or private facility, hospital or institution providing inpatient treatment or counseling.

(q) "Correctional facility" means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) "Out of state" means: the District of Columbia; any federal, military, or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

Sec. 3. K.S.A. 22-4903 is hereby amended to read as follows: 22-4903. ~~(a) Any person who is required to register as provided in the Kansas offender registration act who violates any of the provisions of such act, including all duties set out in K.S.A. 22-4904 through 22-4907, and amendments thereto, is guilty of a severity level 5, person felony. Any violation of any provision of such act, including a violation of the duties set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and amendments thereto, which continues for more than 30 consecutive days shall, upon the 31st consecutive day, constitute a new and separate offense and shall continue to constitute a new and separate offense upon completion of every 30 days thereafter for as long as the offense continues.~~



~~(b) Prosecution of violations under subsection (a), shall be held: (1) In the county in which the offender resides; (2) if the offender is temporarily domiciled in a county and is required to be registered, in such county; or (3) in the county in which the offender is required to be registered under this act.~~

(a) Violation of the Kansas offender registration act is the failure by an offender, as defined in K.S.A. 22-4902, and amendments thereto, to comply with any and all provisions of such act, including any and all duties set forth in K.S.A. 22-4905 through 22-4907, and amendments thereto. Any violation of the Kansas offender registration act which continues for more than 30 consecutive days shall, upon the 31st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate offense every 30 days thereafter for as long as the violation continues.

(b) Aggravated violation of the Kansas offender registration act is violation of the Kansas offender registration act which continues for more than 180 consecutive days. Any aggravated violation of the Kansas offender registration act which continues for more than 180 consecutive days shall, upon the 181st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate violation of the Kansas offender registration act every 30 days thereafter; or a new and separate aggravated violation of the Kansas offender registration act every 180 days thereafter, for as long as the violation continues.

(c) (1) Violation of the Kansas offender registration act is:

(A) Upon a first conviction, a severity level 6, person felony;

(B) upon a second conviction, a severity level 5, person felony; and

(C) upon a third or subsequent conviction, a severity level 3, person felony.

(2) Aggravated violation of the Kansas offender registration act is a severity level 3, person felony.

(d) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with violation or aggravated violation of the Kansas offender registration act to avoid the severity level of the offense and the mandated penalties established by law.

(e) Prosecution of violations of this section may be held:

(1) In any county in which the offender resides;

(2) in any county in which the offender is required to be registered under the Kansas offender registration act;

(3) in any county in which the offender is located during which time the offender is not in compliance with the Kansas offender registration act; or

(4) in the county in which any conviction occurred for which the

1 offender is required to be registered under the Kansas offender  
2 registration act.

3 Sec. 4. K.S.A. 2010 Supp. 22-4904 is hereby amended to read as  
4 follows: 22-4904. (a) (1) Except as provided in subsection (a)(2), within  
5 14 days of the offender coming into any county in which the offender  
6 resides or is temporarily domiciled for more than 14 days, the offender  
7 shall register with the sheriff of the county.

8 (2) ~~Within 14 days of the offender coming into any county in which~~  
9 ~~the offender resides or temporarily resides for more than 14 days, any~~  
10 ~~offender who has provided the information and completed and signed the~~  
11 ~~registration form as required in K.S.A. 22-4905, and amendments thereto;~~  
12 ~~shall verify with the sheriff of the county that the sheriff has received~~  
13 ~~such offender's information and registration form.~~

14 (3) ~~Upon registration with a school or educational institution, a~~  
15 ~~nonresident student attending such school or educational institution shall~~  
16 ~~register with the sheriff within 14 days of the commencement of the~~  
17 ~~school term.~~

18 (4) ~~Upon commencement of employment, a nonresident worker~~  
19 ~~shall register with the sheriff within 14 days of the commencement date~~  
20 ~~of employment.~~

21 (5) ~~For persons required to register as provided in subsections (a)(1);~~  
22 ~~(a)(3) and (a)(4), the sheriff shall: (A) Explain the duty to register and the~~  
23 ~~procedure for registration;~~

24 ~~(B) obtain the information required for registration as provided in~~  
25 ~~K.S.A. 22-4907, and amendments thereto;~~

26 ~~(C) inform the offender that the offender must give written notice of~~  
27 ~~any change of address within 14 days of a change in residence to the law~~  
28 ~~enforcement agency where last registered and the Kansas bureau of~~  
29 ~~investigation;~~

30 ~~(D) inform the nonresident student offender that the offender must~~  
31 ~~give written notice to the sheriff and the Kansas bureau of investigation~~  
32 ~~of any change or termination of attendance at the school or educational~~  
33 ~~institution the offender is attending, within 14 days of such change or~~  
34 ~~termination;~~

35 ~~(E) inform the nonresident worker offender that the offender must~~  
36 ~~give written notice to the sheriff and the Kansas bureau of investigation~~  
37 ~~of any termination of employment at the offender's place of employment,~~  
38 ~~within 14 days of such termination;~~

39 ~~(F) inform the offender that if the offender changes residence to~~  
40 ~~another state, the offender must inform the law enforcement agency~~  
41 ~~where last registered and the Kansas bureau of investigation of such~~  
42 ~~change in residence and must register in the new state within 14 days of~~  
43 ~~such change in residence;~~

~~(G) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;~~

~~(H) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within 14 days upon commencement of enrollment or employment;~~

~~(I) inform the offender that if there is any change or termination in attendance or employment at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within 14 days of the change or termination;~~

~~(J) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. 8-1325a, and amendments thereto; and~~

~~(K) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.~~

~~(6) Such sheriff, within seven days of receipt of the initial registration shall forward this information to the Kansas bureau of investigation.~~

~~(7) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act then all provisions of that act shall apply, except that the term of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.~~

~~(b) If any person required to register as provided in this act changes the address of the person's residence, the offender, within 14 days, shall inform in writing the law enforcement agency where such offender last registered and the Kansas bureau of investigation of the new address.~~

~~(c) Any person who is required to register under this act shall report in person three times each year to the sheriff's office in the county in which the person resides or is otherwise located. The person shall be required to report once during the month of the person's birthday and every four months thereafter. The sheriff's office may determine the appropriate times and days for reporting by the person, consistent with this subsection. The person shall verify:~~

~~(1) Whether the person still resides at the address last reported;~~

~~(2) whether the person still attends the school or educational institution last reported;~~

~~(3) whether the person is still employed at the place of employment last reported; and~~

~~(4) whether the person's vehicle registration information is the same as last reported.~~

~~Nothing contained in this subsection shall be construed to alleviate any person required to register as provided in this act from meeting the requirements prescribed in subsections (a)(1), (a)(2) and (b).~~

~~The sheriff's office shall forward any updated information and current photograph required under subsection (d), to the Kansas bureau of investigation.~~

~~(d) Every person who is required to register under this act shall submit to the taking of an updated photograph by the sheriff's office on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located.~~

~~(e) Every person who is required to register under this act shall remit payment to the sheriff in the amount of \$20 on each occasion when the person reports to the sheriff's office in the county in which the person resides or is otherwise located. All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to reduce the amount of funding otherwise made available to the sheriff's office.~~

sentencing or disposition

*(a) At the time of conviction or adjudication for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall:*

*(1) Inform any offender, on the record, of the procedure to register and the requirements of K.S.A. 22-4905, and amendments thereto;*

*(2) if the offender is released on probation, receiving a suspended sentence, sentenced to community corrections or released on postrelease supervision:*

*(A) Complete the initial registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;*

*(B) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender; and*

*(C) order the offender to report within three business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends*

1 school, to complete the registration form with all information and any  
2 updated information required for registration as provided in K.S.A. 22-  
3 4907, and amendments thereto;

4 (3) if the offender is to remain in custody until sentencing, direct the  
5 correctional facility to complete the initial registration form within three  
6 business days for submission to the Kansas bureau of investigation, as set  
7 forth in subsection (b);

and

8 (4) ensure the age of the victim is documented in the journal entry of  
9 conviction or adjudication; and

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10 ~~(5) not allow the expungement of any part of an offender's criminal~~  
11 ~~record while the offender is required to register as provided in the Kansas~~  
12 ~~offender registration act.~~

13 (b) The staff of any correctional facility shall:

14 (1) Notify the Kansas bureau of investigation of the incarceration of  
15 any offender and of the location or any change in location of the offender  
16 while in custody;

17 (2) prior to any offender being discharged, paroled, furloughed or  
18 released on work or school release from a correctional facility, or  
19 otherwise released from incarceration:

20 (A) Inform the offender of the procedure for registration and of the  
21 offender's registration requirements as provided in K.S.A. 22-4905, and  
22 amendments thereto;

23 (B) complete the registration form with all information and updated  
24 information required for registration as provided in K.S.A. 22-4907, and  
25 amendments thereto; and

26 (C) require the offender to read and sign the registration form,  
27 which shall include a statement that the requirements provided in this  
28 subsection have been explained to the offender;

29 (3) photograph the offender's face and any identifying marks;

30 (4) provide one copy of the form to the offender and, within three  
31 days, send a copy of the form and of the photograph or photographs to  
32 the law enforcement agency having initial jurisdiction and to the Kansas  
33 bureau of investigation;

34 (5) notify the law enforcement agency having initial jurisdiction and  
35 the Kansas bureau of investigation seven business days prior to any  
36 offender being discharged, paroled, furloughed or released on work or  
37 school release; and

38 (6) enter all offender information required by the national crime  
39 information center into the national sex offender registry system.

40 (c) The staff of any treatment facility shall:

41 (1) Within three days of an offender's arrival for inpatient treatment,  
42 inform the registering law enforcement agency of the county or location  
43 of jurisdiction in which the treatment facility is located of the offender's

1 presence at the treatment facility and the expected duration of the  
2 treatment, and immediately notify the registering law enforcement agency  
3 of an unauthorized or unexpected absence of the offender during the  
4 offender's treatment;

5 (2) provide information upon request to any registering law  
6 enforcement agency having jurisdiction relevant to determining the  
7 presence of an offender within the treatment facility; and

8 (3) prior to any offender receiving court ordered treatment being  
9 discharged or otherwise released:

10 (A) Inform the offender of the procedure for registration and the  
11 offender's registration requirements, as provided in K.S.A. 22-4905, and  
12 amendments thereto;

13 (B) obtain the information required for registration as provided in  
14 K.S.A. 22-4907, and amendments thereto; and

15 (C) require the offender to read and sign the registration form which  
16 shall include a statement that the requirements provided in this  
17 subsection have been explained to the offender.

18 (d) The registering law enforcement agency, upon the reporting of  
19 any offender, shall:

20 (1) Inform the offender of the duty to register as provided by the  
21 Kansas offender registration act;

22 (2) (A) Explain the procedure for registration and the offender's  
23 registration requirements as provided in K.S.A. 22-4905, and  
24 amendments thereto;

25 (B) obtain the information required for registration as provided in  
26 K.S.A. 22-4907, and amendments thereto; and

27 (C) require the offender to read and sign the registration form,  
28 which shall include a statement that the requirements provided in this  
29 subsection have been explained to the offender;

30 (3) complete the registration form with all information and updated  
31 information required for registration, as provided in K.S.A. 22-4907, and  
32 amendments thereto, each time the offender reports to the registering law  
33 enforcement agency. All additions or changes in the information reported  
34 by an offender shall be forwarded to the Kansas bureau of investigation  
35 within three business days;

36 (4) maintain the original signed registration form, provide one copy  
37 of the completed registration form to the offender and, within three  
38 business days, send one copy of the completed form to the Kansas bureau  
39 of investigation;

40 (5) obtain registration information from every offender required to  
41 register regardless of whether or not the offender remits payment. Failure  
42 of the offender to remit payment is a violation of the Kansas offender  
43 registration act and is subject to prosecution pursuant to K.S.A. 22-4903,

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1 and amendments thereto;

2 (6) upon every required reporting, update the photograph or  
3 photographs of the offender's face and any new identifying marks and  
4 immediately forward copies or electronic files of the photographs to the  
5 Kansas bureau of investigation;

6 (7) enter all offender information required by the national crime  
7 information center into the national sex offender registry system within  
8 three days of completing the registration;

9 (8) maintain a special fund for the deposit and maintenance of fees  
10 paid by offenders. All funds retained by the registering law enforcement  
11 agency pursuant to the provisions of this section shall be credited to a  
12 special fund of the registering law enforcement agency which shall be  
13 used solely for law enforcement and criminal prosecution purposes and  
14 which shall not be used as a source of revenue to reduce the amount of  
15 funding otherwise made available to the registering law enforcement  
16 agency; and

17 (9) forward any initial registration and updated registration  
18 information within three days to any out of state jurisdiction where the  
19 offender is expected to reside, maintain employment or attend school.

20 (e) (1) The Kansas bureau of investigation shall:

21 (A) Forward all additions or changes in information to any  
22 registering law enforcement agency, other than the agency that submitted  
23 the form, where the offender expects to reside, maintain employment or  
24 attend school;

25 (B) ensure that offender information is immediately entered in the  
26 state registered offender database and the Kansas registered offender  
27 website, as provided in K.S.A. 22-4909, and amendments thereto; and

28 (C) transmit offender conviction or adjudication data and  
29 fingerprints to the federal bureau of investigation.

30 (2) The director of the Kansas bureau of investigation may adopt  
31 rules and regulations necessary to implement the provisions of the  
32 Kansas offender registration act.

33 (f) The attorney general shall, within 10 business days of an  
34 offender being declared a sexually violent predator, forward to the  
35 Kansas bureau of investigation all relevant court documentation  
36 declaring an offender a sexually violent predator.

37 (g) The state department of education shall annually notify any  
38 school of the Kansas bureau of investigation internet website, and any  
39 internet website containing information on the Kansas offender  
40 registration act sponsored or created by the registering law enforcement  
41 agency of the county or location of jurisdiction in which the school is  
42 located, for the purpose of locating offenders who reside near such  
43 school. Such notification shall include information that the registering

1 law enforcement agency of the county or location of jurisdiction where  
 2 such school is located is available to the school to assist in using the  
 3 registry and providing additional information on registered offenders.

4 (h) The secretary of health and environment shall annually notify  
 5 any licensed child care facility of the Kansas bureau of investigation  
 6 internet website, and any internet website containing information on the  
 7 Kansas offender registration sponsored or created by the registering law  
 8 enforcement agency of the county in which the facility is located, for the  
 9 purpose of locating offenders who reside near such facility. Such  
 10 notification shall include information that the registering law  
 11 enforcement agency of the county or location of jurisdiction where such  
 12 child care facility is located is available to the child care facilities to  
 13 assist in using the registry and providing additional information on  
 14 registered offenders.

15 (i) Upon request, the clerk of any court of record shall provide the  
 16 Kansas bureau of investigation copies of complaints, indictments,  
 17 information, journal entries, commitment orders or any other documents  
 18 necessary to the performance of the duties of the Kansas bureau of  
 19 investigation under the Kansas offender registration act. No fees or  
 20 charges for providing such documents may be assessed. ←

21 Sec. 5. K.S.A. 2010 Supp. 22-4905 is hereby amended to read as  
 22 follows: 22-4905. (a) (1) Any offender, who is discharged or paroled from  
 23 a prison, hospital or other institution or facility involving a violation of  
 24 any crime or confinement as provided in subsection (a), (b), (d) or (f) of  
 25 K.S.A. 22-4902, and amendments thereto, prior to discharge, parole or  
 26 release, shall be informed by the staff of the facility in which the offender  
 27 was confined of the duty to register as provided in this act.

28 (2) (A) The staff of the facility shall: (i) Explain the duty to register  
 29 and the procedure for registration;

30 (ii) obtain the information required for registration as provided in  
 31 K.S.A. 22-4907, and amendments thereto;

32 (iii) inform the offender that the offender must give written notice of  
 33 any change of address within 14 days of a change in residence to the law  
 34 enforcement agency where last registered and the Kansas bureau of  
 35 investigation;

36 (iv) inform the offender that if the offender changes residence to  
 37 another state, the offender must inform the law enforcement agency  
 38 where last registered and the Kansas bureau of investigation of such  
 39 change in residence and must register in the new state within 14 days of  
 40 such change in residence;

41 (v) inform the offender that the offender must also register in any  
 42 state or county where the offender is employed, carries on a vocation or is  
 43 a student;

(j) Notwithstanding any other law to the contrary, a court shall not allow the expungement of any part of an offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.



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1 ~~(vi) inform the offender that if the offender expects to or~~  
2 ~~subsequently becomes enrolled in any institution of higher education in~~  
3 ~~the state of Kansas on a full-time or part-time basis or have any full-time~~  
4 ~~or part-time employment at an institution of higher education in the state~~  
5 ~~of Kansas, with or without compensation, for more than 14 days or an~~  
6 ~~aggregate period exceeding 30 days in one calendar year, the offender~~  
7 ~~must provide written notice to the Kansas bureau of investigation within~~  
8 ~~14 days upon commencement of enrollment or employment;~~

9 ~~(vii) inform the offender that if there is any change or termination in~~  
10 ~~attendance or employment, at an institution of higher education, the~~  
11 ~~offender must provide written notice to the Kansas bureau of~~  
12 ~~investigation within 14 days of the change or termination;~~

13 ~~(viii) inform the offender of the requirement of an annual driver's~~  
14 ~~license renewal pursuant to K.S.A. 8-247, and amendments thereto, and~~  
15 ~~an annual identification card renewal pursuant to K.S.A. 2010 Supp. 8-~~  
16 ~~1325a, and amendments thereto; and~~

17 ~~(ix) require the offender to read and sign the registration form which~~  
18 ~~shall include a statement that the requirements provided in this subsection~~  
19 ~~have been explained to the offender.~~

20 ~~(B) The staff of the facility shall give one copy of the form to the~~  
21 ~~person, within seven days, and shall send two copies of the form provided~~  
22 ~~by subsection (2)(A)(v) to the Kansas bureau of investigation, which shall~~  
23 ~~then forward one copy to the law enforcement agency having jurisdiction~~  
24 ~~where the person expects to reside upon discharge, parole or release. The~~  
25 ~~Kansas bureau of investigation must immediately ensure that such~~  
26 ~~information is entered in the state law enforcement record system. The~~  
27 ~~Kansas bureau of investigation shall transmit such conviction data and~~  
28 ~~fingerprints to the federal bureau of investigation.~~

29 ~~(b) (1) Any offender who is released on probation, receives a~~  
30 ~~suspended sentence, sentenced to community corrections or released on~~  
31 ~~postrelease supervision because of the commission of any crime as~~  
32 ~~provided in subsection (a), (b) or (d) of K.S.A. 22-4902, and amendments~~  
33 ~~thereto, prior to release, shall be informed of the offenders duty to register~~  
34 ~~as provided in this act by the court in which the offender is convicted.~~

35 ~~(2) (A) The court shall: (i) Explain the duty to register and the~~  
36 ~~procedure for registration;~~

37 ~~(ii) obtain the information required for registration as provided in~~  
38 ~~K.S.A. 22-4907, and amendments thereto;~~

39 ~~(iii) inform the offender that the offender must give written notice of~~  
40 ~~any change of address within 14 days of a change in residence to the law~~  
41 ~~enforcement agency where last registered and the Kansas bureau of~~  
42 ~~investigation;~~

43 ~~(iv) inform the offender that if the offender changes residence to~~

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~~another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 14 days of such change in residence;~~

~~(v) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;~~

~~(vi) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days or for an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within 14 days upon commencement of enrollment or employment;~~

~~(vii) inform the offender that if there is any change or termination in attendance or employment at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within 14 days of the change or termination;~~

~~(viii) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. 2010 Supp. 8-1325a, and amendments thereto; and~~

~~(ix) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.~~

~~(B) The court shall give one copy of the form to the person and, within seven days, shall send two copies of the form provided by subsection (2)(A)(v) to the Kansas bureau of investigation which shall then forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon release. The Kansas bureau of investigation must immediately ensure that such information is entered in the state law enforcement record system. The Kansas bureau of investigation shall transmit such conviction data and fingerprints to the federal bureau of investigation.~~

*Any offender required to register as provided in the Kansas offender registration act shall:*

*(a) Except as otherwise provided in this subsection, 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. Any such offender who cannot physically register in person with the*

1 registering law enforcement agency for such reasons including, but not  
2 limited to, incapacitation or hospitalization, as determined by a person  
3 licensed to practice medicine or surgery, shall be subject to verification  
4 requirements other than in-person registration, as determined by the  
5 registering law enforcement agency having jurisdiction;

6 (b) report in person four times each year to the registering law  
7 enforcement agency in the county or location of jurisdiction in which the  
8 offender resides, maintains employment or is attending a school. The  
9 offender shall be required to report once during the month of the  
10 offender's birthday and every third, sixth and ninth month occurring  
11 before and after the month of the offender's birthday. The registering law  
12 enforcement agency may determine the appropriate times and days for  
13 reporting by the offender, consistent with this subsection. Nothing  
14 contained in this subsection shall be construed to alleviate any offender  
15 from meeting the requirements prescribed in the Kansas offender  
16 registration act;

17 (c) provide the information required for registration as provided in  
18 K.S.A. 22-4907, and amendments thereto, and verify all information  
19 previously provided is accurate;

20 (d) if in the custody of a correctional facility or in the care or  
21 custody of any treatment facility, register with the correctional facility or  
22 treatment facility within three business days of initial care or custody and  
23 shall not be required to update such registration until released from care  
24 or custody, granted work release or otherwise allowed to leave the  
25 grounds of the correctional facility or treatment facility;

26 (e) notwithstanding subsections (a) and (b), if the offender is  
27 transient, report in person to the registering law enforcement agency of  
28 such county or location of jurisdiction in which the offender is physically  
29 present within three business days of arrival in the county or location of  
30 jurisdiction. Such offender shall be required to register in person with the  
31 registering law enforcement agency every 30 days, or more often at the  
32 discretion of the registering law enforcement agency. Such offender shall  
33 comply with the provisions of the Kansas offender registration act and, in  
34 addition, shall:

35 (1) Provide a list of places where the offender has slept and  
36 otherwise frequented during the period of time since the last date of  
37 registration; and

38 (2) provide a list of places where the offender may be contacted and  
39 where the offender intends to sleep and otherwise frequent during the  
40 period of time prior to the next required date of registration;

41 (f) if required by out of state law, register in any out of state  
42 jurisdiction, where the offender resides, maintains employment or attends  
43 school;

(g) register in person upon any commencement, change or termination of residence location, employment status, school attendance or other information as provided in K.S.A. 22-4907, and amendments thereto, within three days of such commencement, change or termination, to the registering law enforcement agency or agencies where last registered and provide written notice to the Kansas bureau of investigation;

(h) report in person to the registering law enforcement agency or agencies within three days of any change in name;

(i) if receiving inpatient treatment at any treatment facility, inform the treatment facility of the offender's status as an offender and inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located of the offender's presence at the treatment facility and the expected duration of the treatment;

(j) submit to the taking of an updated photograph by the registering law enforcement agency on each occasion when the offender registers with or reports to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or attends school. In addition, such offender shall submit to the taking of a photograph to document any changes in identifying characteristics, including, but not limited to, scars, marks and tattoos;

(k) remit payment to the sheriff's office in the amount of \$20 during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday in each county in which the offender resides, maintains employment or is attending school. Notwithstanding other provisions herein, payment of this fee is not required:

(1) When an offender provides updates or changes in information or during an initial registration unless such updates, changes or initial registration is during the month of such offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday;

(2) when an offender is transient and is required to register every 30 days, or more frequently as ordered by the registering law enforcement agency, except during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday; or

(3) if an offender has, prior to the required reporting and within the last three years, been determined to be indigent by a court of law, and the basis for that finding is recorded by the court;

(l) annually renew any driver's license pursuant to K.S.A. 8-247, and amendments thereto, and annually renew any identification card

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1 pursuant to K.S.A. 2010 Supp. 8-1325a, and amendments thereto;

2 (m) if maintaining primary residence in this state and not presently  
3 serving and maintaining active duty in any branch of the United States  
4 military, surrender all driver's licenses and identification cards from  
5 other states, territories and the District of Columbia;

6 (n) read and sign the registration form noting whether the  
7 requirements provided in this section have been explained to the  
8 offender; and

9 (o) notify the registering law enforcement agency in the jurisdiction  
10 of the offender's residence and the Kansas bureau of investigation 21  
11 days prior to any travel outside of the United States, or if under  
12 emergency circumstances, within three days of making travel  
13 arrangements.

14 Sec. 6. K.S.A. 2010 Supp. 22-4906 is hereby amended to read as  
15 follows: 22-4906. (a) ~~Except as provided in subsection (d), any person~~  
16 ~~required to register as provided in this act shall be required to register: (1)~~  
17 ~~Upon the first conviction of a sexually violent crime as defined in~~  
18 ~~subsection (c) of K.S.A. 22-4902, and amendments thereto, any offense~~  
19 ~~as defined in subsection (a) of K.S.A. 22-4902, and amendments thereto,~~  
20 ~~or any offense as defined in subsection (d) of K.S.A. 22-4902, and~~  
21 ~~amendments thereto, if not confined, for a period of 10 years after~~  
22 ~~conviction, or, if confined, for a period of 10 years after paroled,~~  
23 ~~discharged or released, whichever date is most recent. The ten-year~~  
24 ~~period shall not apply to any person while the person is incarcerated in~~  
25 ~~any jail or correctional facility. The ten-year registration requirement does~~  
26 ~~not include any time period when any person who is required to register~~  
27 ~~under this act knowingly or willfully fails to comply with the registration~~  
28 ~~requirement; or (2) upon a second or subsequent conviction for such~~  
29 ~~person's lifetime.~~

30 (b) ~~Upon the first conviction, liability for registration terminates, if~~  
31 ~~not confined, at the expiration of 10 years from the date of conviction, or,~~  
32 ~~if confined, at the expiration of 10 years from the date of parole,~~  
33 ~~discharge or release, whichever date is most recent. The ten-year period~~  
34 ~~shall not apply to any person while the person is incarcerated in any jail~~  
35 ~~or correctional facility. The ten-year registration requirement does not~~  
36 ~~include any time period when any person who is required to register~~  
37 ~~under this act knowingly or willfully fails to comply with the registration~~  
38 ~~requirement. Liability for registration does not terminate if the convicted~~  
39 ~~offender again becomes liable to register as provided by this act during~~  
40 ~~that period.~~

41 (c) ~~Any person who has been convicted of an aggravated offense~~  
42 ~~shall be required to register for such person's lifetime.~~

43 (d) ~~Any person who has been convicted of any of the following~~

1 offenses shall be required to register for such person's lifetime:

2 (1) ~~Aggravated human trafficking, as defined in K.S.A. 21-3447,~~  
3 ~~and amendments thereto, if the victim is less than 14 years of age;~~

4 (2) ~~rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and~~  
5 ~~amendments thereto;~~

6 (3) ~~aggravated indecent liberties with a child, as defined in~~  
7 ~~subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;~~

8 (4) ~~aggravated criminal sodomy, as defined in subsection (a)(1) or~~  
9 ~~(a)(2) of K.S.A. 21-3506, and amendments thereto;~~

10 (5) ~~promoting prostitution, as defined in K.S.A. 21-3513, and~~  
11 ~~amendments thereto, if the prostitute is less than 14 years of age;~~

12 (6) ~~sexual exploitation of a child, as defined in subsection (a)(5) or~~  
13 ~~(a)(6) of K.S.A. 21-3516, and amendments thereto; or~~

14 (7) ~~any attempt, conspiracy or criminal solicitation, as defined in~~  
15 ~~K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an~~  
16 ~~offense defined in this subsection.~~

17 (e) ~~Any person who has been declared a sexually violent predator~~  
18 ~~pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall~~  
19 ~~register for such person's lifetime.~~

20 (f) ~~Any nonresident worker shall register for the duration of such~~  
21 ~~person's employment. The provisions of this subsection are in addition to~~  
22 ~~subsections (a) and (b).~~

23 (g) ~~Any nonresident student shall register for the duration of such~~  
24 ~~person's attendance at a school or educational institution as provided in~~  
25 ~~this act. The provisions of this subsection are in addition to subsections~~  
26 ~~(a) and (b).~~

27 (h) (1) ~~Notwithstanding any other provisions of this section, a~~  
28 ~~person who is adjudicated as a juvenile offender for an act which if~~  
29 ~~committed by an adult would constitute the commission of a sexually~~  
30 ~~violent crime set forth in subsection (c) of K.S.A. 22-4902, and~~  
31 ~~amendments thereto, and such crime is an off-grid felony or a felony~~  
32 ~~ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-~~  
33 ~~4704, and amendments thereto, shall be required to register until such~~  
34 ~~person reaches 18 years of age, at the expiration of five years from the~~  
35 ~~date of adjudication or, if confined, from release from confinement,~~  
36 ~~whichever date occurs later. The five-year period shall not apply to any~~  
37 ~~person while that person is incarcerated in any jail, juvenile facility or~~  
38 ~~correctional facility. The five-year registration requirement does not~~  
39 ~~include any time period when any person who is required to register~~  
40 ~~under this act knowingly or willfully fails to comply with the registration~~  
41 ~~requirement.~~

42 (2) (A) ~~A person who is adjudicated as a juvenile offender for an act~~  
43 ~~which if committed by an adult would constitute the commission of a~~

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1 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
2 amendments thereto, and such crime is not an off-grid felony or a felony  
3 ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-  
4 4704, and amendments thereto, may, by the court:

5 ~~(i) Be required to register pursuant to the provisions of paragraph~~  
6 ~~(1);~~

7 ~~(ii) not be required to register if the judge, on the record, finds~~  
8 ~~substantial and compelling reasons therefor; or~~

9 ~~(iii) be required to register with the sheriff pursuant to K.S.A. 22-~~  
10 ~~4904, and amendments thereto, but such registration information shall not~~  
11 ~~be open to inspection by the public or posted on any internet website, as~~  
12 ~~provided in K.S.A. 22-4909, and amendments thereto. If the court~~  
13 ~~requires the juvenile to register but such registration is not open to the~~  
14 ~~public, the juvenile shall provide a copy of such court order to the sheriff~~  
15 ~~at the time of registration. The sheriff shall forward a copy of such court~~  
16 ~~order to the Kansas bureau of investigation.~~

17 ~~(B) If such juvenile offender violates a condition of release during~~  
18 ~~the term of the conditional release, the judge may require the juvenile~~  
19 ~~offender to register pursuant to paragraph (1).~~

20 ~~(3) Liability for registration does not terminate if the adjudicated~~  
21 ~~offender again becomes liable to register as provided by this act during~~  
22 ~~the required period.~~

23 ~~(4) The provisions of paragraph (2)(A)(i) shall apply to~~  
24 ~~adjudications on and after July 1, 2007, and retroactively to adjudications~~  
25 ~~prior to July 1, 2007.~~

26 ~~(i) Any person moving to the state of Kansas who has been~~  
27 ~~convicted in another state, and who was required to register under that~~  
28 ~~state's laws, shall register for the same length of time required by that~~  
29 ~~state or Kansas, whichever length of time is longer. The provisions of this~~  
30 ~~subsection shall apply to convictions prior to June 1, 2006, and to persons~~  
31 ~~who moved to Kansas prior to June 1, 2006.~~

32 ~~(a) Except as otherwise provided in this section, an offender's~~  
33 ~~duration of registration is:~~

34 ~~(1) If confined, 15 years after the date of parole, discharge or~~  
35 ~~release, whichever date is most recent. The 15-year duration of~~  
36 ~~registration shall not apply to any offender while the offender is~~  
37 ~~incarcerated in any jail or correctional facility. The 15-year duration of~~  
38 ~~registration does not include any time period when any offender fails to~~  
39 ~~comply with the registration requirement; and~~

40 ~~(2) upon a second or subsequent conviction of an offense requiring~~  
41 ~~registration, for such offender's lifetime.~~

42 ~~(b) Except as otherwise provided by the Kansas offender~~  
43 ~~registration act, the duration of registration terminates, if not confined, at~~

1 the expiration of 15 years from the date of conviction. Any period of time  
2 during which any offender is incarcerated in any jail or correctional  
3 facility or during which the offender does not comply with any and all  
4 requirements of the Kansas offender registration act shall not count  
5 toward the duration of registration.

6 (c) The duration of registration for any offender who has been  
7 convicted of any of the following offenses shall be for such offender's  
8 lifetime:

9 (1) Any sexually violent crime, as defined in subsection (c) of K.S.A.  
10 22-4902, and amendments thereto;

11 (2) aggravated human trafficking, as defined in K.S.A. 21-3447,  
12 prior to its repeal, or subsection (b) of section 61 of chapter 136 of the  
13 2010 Session Laws of Kansas, and amendments thereto;

14 (3) promoting prostitution, as defined in K.S.A. 21-3513, prior to its  
15 repeal, or section 230 of chapter 136 of the 2010 Session Laws of  
16 Kansas, and amendments thereto;

17 (4) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or  
18 subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of  
19 Kansas, and amendments thereto;

20 (5) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its  
21 repeal, or subsection (b) of section 43 of chapter 136 of the 2010 Session  
22 Laws of Kansas, and amendments thereto; or

23 (6) any attempt, conspiracy or criminal solicitation, as defined in  
24 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or section 33,  
25 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and  
26 amendments thereto, of an offense defined in this subsection.

27 (d) Any person who has been declared a sexually violent predator  
28 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall  
29 register for such person's lifetime.

30 (e) Notwithstanding any other provisions of this section, for an  
31 offender less than 14 years of age who is adjudicated as a juvenile  
32 offender for an act which if committed by an adult would constitute a  
33 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
34 amendments thereto, the duration of registration shall be until such  
35 offender reaches 18 years of age, at the expiration of five years from the  
36 date of adjudication or, if confined, at the expiration of five years from  
37 the date of release from confinement, whichever date occurs later. Any  
38 period of time during which the offender is incarcerated in any jail or  
39 correctional facility or during which the offender does not comply with  
40 any and all requirements of the Kansas offender registration act shall not  
41 count toward the duration of registration.

42 (f) Notwithstanding any other provisions of this section, for an  
43 offender 14 years of age or more who is adjudicated as a juvenile



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1 offender for an act which if committed by an adult would constitute a  
2 sexually violent crime set forth in subsection (c) of K.S.A. 22-4902, and  
3 amendments thereto, and such crime is not an off-grid felony or a felony  
4 ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-  
5 4704, prior to its repeal, or section 285 of chapter 136 of the 2010  
6 Session Laws of Kansas, and amendments thereto, the duration of  
7 registration shall be 15 years from the date of adjudication or, if  
8 confined, at the expiration of ~~five~~ years from the date of release from  
9 confinement, whichever date occurs later. Any period of time during  
10 which the offender is incarcerated in any jail or correctional facility or  
11 during which the offender does not comply with any and all requirements  
12 of the Kansas offender registration act shall not count toward the  
13 duration of registration.

14 (g) Notwithstanding any other provisions of this section, an offender  
15 14 years of age or more who is adjudicated as a juvenile offender for an  
16 act which if committed by an adult would constitute a sexually violent  
17 crime set forth in subsection (c) of K.S.A. 22-4902, and amendments  
18 thereto, and such crime is an off-grid felony or a felony ranked in  
19 severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior  
20 to its repeal, or section 285 of chapter 136 of the 2010 Session Laws of  
21 Kansas, and amendments thereto, shall be required to register for such  
22 offender's lifetime.

23 (h) Notwithstanding any other provision of law, if a diversionary  
24 agreement or probation order, either adult or juvenile, or a juvenile  
25 offender sentencing order, requires registration under the Kansas  
26 offender registration act for an offense that would not otherwise require  
27 registration as provided in subsection (a)(5) of K.S.A. 22-4902, and  
28 amendments thereto, then all provisions of the Kansas offender  
29 registration act shall apply, except that the duration of registration shall  
30 be controlled by such diversionary agreement, probation order or  
31 juvenile offender sentencing order.

32 (i) The duration of registration does not terminate if the convicted  
33 or adjudicated offender again becomes liable to register as provided by  
34 the Kansas offender registration act during the required period of  
35 registration.

36 (j) The provisions of subsection (e), (f) and (g) shall apply to  
37 adjudications on and after July 1, 2007, and retroactively to  
38 adjudications prior to July 1, 2007.

39 (k) For any person moving to Kansas who has been convicted or  
40 adjudicated in an out of state court, and who was required to register  
41 under an out of state law, the duration of registration shall be the length  
42 of time required by the out of state jurisdiction or by the Kansas offender  
43 registration act, whichever length of time is longer. The provisions of this

1 subsection shall apply to convictions prior to June 1, 2006, and to  
2 persons who moved to Kansas prior to June 1, 2006, and to convictions  
3 on or after June 1, 2006, and to persons who moved to Kansas on or  
4 after June 1, 2006.

5 (l) For any person residing, maintaining employment or attending  
6 school in this state who has been convicted or adjudicated by an out of  
7 state court of an offense that is comparable to any crime requiring  
8 registration pursuant to the Kansas offender registration act, but who  
9 was not required to register in the jurisdiction of conviction, the duration  
10 of registration shall be the duration required for the comparable offense  
11 pursuant to the Kansas offender registration act. The duration of  
12 registration shall begin upon establishing residency, beginning  
13 employment or beginning school.

14 Sec. 7. K.S.A. 2010 Supp. 22-4907 is hereby amended to read as  
15 follows: 22-4907. (a) Registration as required by ~~this~~ the Kansas offender  
16 registration act shall consist of a form ~~prepared~~ approved by the Kansas  
17 bureau of investigation, which shall include a statement that the  
18 requirements provided in this section have been reviewed and explained  
19 to the ~~person~~ offender, and shall be signed by the ~~person~~ offender and  
20 witnessed by the person registering the offender. Such registration form  
21 shall include the following offender information:

22 (1) Name and all alias names;

23 (2) date and ~~place of birth~~ city, state and country of birth, and any  
24 alias dates or places of birth;

25 (3) title and statute number of each offense or offenses committed,  
26 date of each conviction or ~~convictions-obtained~~ adjudication and court  
27 case numbers for each conviction or adjudication;

28 (4) city, county, state or ~~county~~ country of conviction or ~~convictions~~  
29 ~~obtained~~ adjudication;

30 (5) sex and ~~age~~ date of birth or purported age of each victim of all  
31 offenses requiring registration;

32 (6) current residential address, any anticipated future residence and  
33 any temporary lodging information including, but not limited to, address,  
34 telephone number and dates of travel for any place in which the offender  
35 is staying for seven or more days; and, if transient, the locations where  
36 the offender has stayed and frequented since last reporting for  
37 registration;

38 (7) all telephone numbers at which the offender may be contacted  
39 including, but not limited to, all mobile telephone numbers;

40 ~~(7)~~ (8) social security number, and all alias social security numbers;

41 ~~(8)~~ (9) identifying characteristics such as race, ethnicity, skin tone,  
42 sex, age, height, weight, hair and eye color, scars, tattoos and blood type;

43 ~~(9)~~ (10) occupation and name, address or addresses and telephone

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- 1 number of employer or employers, and name of any anticipated employer  
2 and place of employment;  
3 ~~(10) (11) drivers license and all current driver's licenses or~~  
4 ~~identification cards, including a photocopy of all such driver's licenses or~~  
5 ~~identification cards and their numbers, states of issuance and expiration~~  
6 ~~dates;~~  
7 (12) all vehicle information, including the license plate number,  
8 registration number ~~of each license plate assigned to any motor vehicle~~  
9 ~~normally operated by the offender and any other identifier and~~  
10 ~~description of any vehicle owned or operated by the offender, or any~~  
11 ~~vehicle the offender regularly drives, either for personal use or in the~~  
12 ~~course of employment, and information concerning the location or~~  
13 ~~locations such vehicle or vehicles are habitually parked or otherwise~~  
14 ~~kept;~~  
15 (13) license plate number, registration number or other identifier  
16 and description of any aircraft or watercraft owned or operated by the  
17 offender, and information concerning the location or locations such  
18 aircraft or watercraft are habitually parked, docked or otherwise kept;  
19 (14) all professional licenses, designations and certifications;  
20 ~~(11) (15)~~ (15) documentation of any treatment received for a mental  
21 abnormality or personality disorder of the offender; for purposes of  
22 documenting the treatment received, ~~sheriffs, prison officials and courts~~  
23 ~~registering law enforcement agencies, correctional facility officials,~~  
24 ~~treatment facility officials and courts~~ may rely on information that is  
25 readily available to them from existing records and the offender;  
26 ~~(12) anticipated future residence;~~  
27 ~~(13) (16)~~ (16) a photograph or photographs;  
28 ~~(14) (17)~~ (17) fingerprints and palm prints;  
29 ~~(15) (18) school; and any and all schools and satellite schools~~  
30 ~~attended or expected to be attended and the locations of attendance and~~  
31 ~~telephone number;~~  
32 ~~(16) (19)~~ (19) any and all e-mail addresses ~~and~~ , any and all online  
33 identities used by the offender on the internet; and any information  
34 relating to membership in any online social networks;  
35 (20) all travel and immigration documents; and  
36 (21) name and telephone number of the offender's probation, parole  
37 or community corrections officer.  
38 (b) (1) The offender shall also provide to the registering law  
39 enforcement agency DNA exemplars, unless already on file at the Kansas  
40 bureau of investigation.  
41 (2) If the exemplars to be taken require the withdrawal of blood,  
42 such withdrawal may be performed only by:  
43 (A) A person licensed to practice medicine ~~and~~ or surgery, or a

1 person acting under the supervision of any such licensed person;

2 (B) a registered nurse or a licensed practical nurse;

3 (C) any qualified medical technician; or

4 (D) a licensed phlebotomist.

5 ~~(e) Unless the person has provided the information and completed~~  
6 ~~and signed the registration form as provided in K.S.A. 22-4905, and~~  
7 ~~amendments thereto, within seven days, the registering law enforcement~~  
8 ~~agency shall forward the registration form to the Kansas bureau of~~  
9 ~~investigation.~~

10 ~~(d) The Kansas bureau of investigation may participate in the federal~~  
11 ~~bureau of investigation's NCIC 2000.~~

12 Sec. 8. K.S.A. 22-4908 is hereby amended to read as follows: 22-  
13 4908. No person required to register as an offender pursuant to the  
14 Kansas offender registration act shall be granted an order relieving the  
15 offender of further registration under this act. *This section shall include*  
16 *any person with any out of state conviction or adjudication for an offense*  
17 *that would require registration under the laws of this state.*

18 Sec. 9. K.S.A. 22-4909 is hereby amended to read as follows: 22-  
19 4909. (a) Except as prohibited by ~~subsection (h)~~ *subsections (c) and (d)*  
20 *of this section and subsections (e) and (f) of K.S.A. 22-4906, and*  
21 *amendments thereto, the statements or any other information required by*  
22 *this the Kanas offender registration act shall be open to inspection by the*  
23 *public at the sheriffs office registering law enforcement agency, at the*  
24 *headquarters of the Kansas bureau of investigation and on any internet*  
25 *website sponsored or created by a sheriffs department registering law*  
26 *enforcement agency or the Kansas bureau of investigation that contains*  
27 *such statements or information, and specifically are subject to the*  
28 *provisions of the Kansas open records act, K.S.A. 45-215 et seq., and*  
29 *amendments thereto, except that the name, address, telephone number, or*  
30 *any other information which specifically and individually identifies the*  
31 *victim of any offender required to register as provided in this act shall not*  
32 *be disclosed other than to law enforcement agencies.*

33 (b) Any information posted on an internet website sponsored or  
34 created by a ~~sheriffs office~~ *registering law enforcement agency* or the  
35 Kansas bureau of investigation shall identify, in a prominent manner,  
36 whether an offender is ~~or is not~~ *a sex offender, a violent offender or a*  
37 *drug offender. Such internet websites shall include the following*  
38 *information for each offender:*

39 (1) *Name of the offender, including any aliases;*

40 (2) *address of each residence at which the offender resides or will*  
41 *reside and, if the offender does not have any present or expected*  
42 *residence address, other information about where the offender has their*  
43 *home or habitually lives. If current information of this type is not*

1 available because the offender is in violation of the requirement to  
2 register or cannot be located, the website must so note;

3 (3) temporary lodging information;

4 (4) address of any place where the offender is an employee or will  
5 be an employee and, if the offender is employed but does not have a  
6 definite employment address, other information about where the offender  
7 works;

8 (5) address of any place where the offender is a student or will be a  
9 student;

10 (6) license plate number and a description of any vehicle owned or  
11 operated by the offender, including any aircraft or watercraft;

12 (7) physical description of the offender;

13 (8) the offense or offenses for which the offender is registered and  
14 any other offense for which the offender has been convicted or  
15 adjudicated;

16 (9) a current photograph of the offender; and

17 (10) all professional licenses, designations and certifications.

18 (c) Notwithstanding subsection (a), pursuant to a court finding  
19 petitioned by the prosecutor, any offender who is required to register  
20 pursuant to the Kansas offender registration act, but has been provided a  
21 new identity and relocated under the federal witness security program or  
22 who has worked as a confidential informant, or is otherwise a protected  
23 witness, shall be required to register pursuant to the Kansas offender  
24 registration act, but shall not be subject to public registration.

25 (d) Notwithstanding subsection (a), the following information shall  
26 not be disclosed other than to law enforcement agencies:

27 (1) The name, address, telephone number or any other information  
28 which specifically and individually identifies the identity of any victim of  
29 a registerable offense;

30 (2) the social security number of the offender;

31 (3) the offender's criminal history arrests that did not result in  
32 convictions;

33 (4) travel and immigration document numbers of the offender;

34 (5) internet identifiers of the offender; and

35 (6) any information pertaining to a juvenile offender as provided in  
36 subsection (e) or (f) of K.S.A. 22-4906, and amendments thereto.

37 ~~(e) The state department of education shall annually notify any~~  
38 ~~school upon which is located a structure used by a unified school district~~  
39 ~~or an accredited nonpublic school for student instruction or attendance or~~  
40 ~~extracurricular activities of pupils enrolled in kindergarten or any grades~~  
41 ~~one through 12 of the Kansas bureau of investigation internet website and~~  
42 ~~any internet website containing information on the Kansas offender~~  
43 ~~registration sponsored or created by the sheriff of the county in which the~~

1 school is located for the purposes of locating offenders who reside near  
2 such school.

3 ~~(d) The secretary of health and environment shall annually notify~~  
4 ~~any licensed child care facility of the Kansas bureau of investigation~~  
5 ~~internet website and any internet website containing information on the~~  
6 ~~Kansas offender registration sponsored or created by the sheriff of the~~  
7 ~~county in which the facility is located for the purposes of locating~~  
8 ~~offenders who reside near such facility.~~

9 ~~(e) Such notification required in subsections (c) and (d) shall include~~  
10 ~~information that the sheriff of the county where such school or child care~~  
11 ~~facility is located is available to the school and child care facilities to~~  
12 ~~assist in using the registry and providing additional information on the~~  
13 ~~registered offenders.~~

14 Sec. 10. K.S.A. 22-4911 is hereby amended to read as follows: 22-  
15 4911. Nothing in the Kansas offender registration act shall create a cause  
16 of action against the state or an employee of the state acting within the  
17 scope of the employee's employment as a result of requiring an offender  
18 to register or an offender's failure to register. *This includes, but is not*  
19 *limited to, the person or persons assigned to a registering law*  
20 *enforcement agency to register offenders, and the person or persons*  
21 *assigned to enter all offender information required by the national crime*  
22 *information center into the national sex offender registry system.*

23 Sec. 11. K.S.A. 2010 Supp. 22-4913 is hereby amended to read as  
24 follows: 22-4913. (a) Except as provided in subsection (b), on and after  
25 ~~the effective date of this act June 1, 2006~~, cities and counties shall be  
26 prohibited from adopting or enforcing any ordinance, resolution or  
27 regulation establishing residential restrictions for offenders as defined by  
28 K.S.A. 22-4902, and amendments thereto.

29 (b) The prohibition in subsection (a), shall not apply to any city or  
30 county residential licensing or zoning program for correctional placement  
31 residences that includes regulations for the housing of such offenders.

32 (c) As used in this section, "correctional placement residence"  
33 means a facility that provides residential services for individuals or  
34 offenders who reside or have been placed in such facility due to any one  
35 of the following situations:

- 36 (1) Prior to, or instead of, being sentenced to prison;
- 37 (2) ~~received as~~ a conditional release prior to a hearing;
- 38 (3) as a part of a sentence of confinement of not more than one year;
- 39 (4) ~~in~~ a privately operated facility housing parolees;
- 40 (5) ~~received as~~ a deferred sentence ~~and when~~ placed in a facility  
41 operated by community corrections;
- 42 (6) ~~required as a requirement of~~ court-ordered treatment services for  
43 alcohol or drug abuse; or

1 (7) *as part of* voluntary treatment services for alcohol or drug abuse.  
2 Correctional placement residence shall not include a single or multi-  
3 family dwelling or commercial residential building that provides a  
4 residence to staff and persons other than those described in paragraphs (1)  
5 through (7).

6 Sec. 12. K.S.A. 22-4901, 22-4903, 22-4908, 22-4909, 22-4911 and  
7 22-4912 and K.S.A. 2010 Supp. 22-4902, 22-4904, 22-4905, 22-4906,  
8 22-4907 and 22-4913 are hereby repealed.

9 Sec. 13. This act shall take effect and be in force from and after its  
10 publication in the statute book.  
11  
12



Honorable Ernest L. Johnson, Chair  
Honorable Richard M. Smith, Vice Chair  
Sarah E. Fertig, Executive Director

Sam Brownback, Governor

## MEMORANDUM

**To:** Dennis Taylor, Secretary of Administration

**Attn:** Brendan Yorkey

**From:** Sarah Fertig, Executive Director

**Date:** February 17, 2011

**Re:** Prison Bed Space Impact, HB 2322, Sex Offender Registration Overhaul/Adam Walsh Act

House Corrections and Juvenile Justice  
Committee

2011 Session

Date 3-3-11

Attachment # 4-1

## SUMMARY OF THE BILL

This bill would amend Kansas law to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The bill includes the following:

- Offenders convicted of kidnapping, except by a parent, would be required to register under K.S.A. 22-4903.
- Offenders convicted of aggravated kidnapping would be required to register under K.S.A. 22-4903.
- Violation of K.S.A. 22-4903 would change from a severity level 5 person felony for every offense to a tiered system as follows:
  - First offense would drop to a severity level 6 person felony;
  - Second offense would be a severity level 5 person felony;
  - Third offense would be a severity level 3 person felony.
- A new crime of aggravated violation of the Kansas offender registration act, defined as 180 consecutive days of failing to comply with the act, would be a severity level 3 person felony.
- All offenders who are currently required to register for 10 years would now have to register for 15 years.
- Offenders convicted of kidnapping and aggravated kidnapping would have to register for life.

## KEY ASSUMPTIONS

- The target population of this assessment includes any offenders who violate the Kansas offender registration act under K.S.A. 22-4903 as amended in HB 2322.
- Projected admissions to prison are assumed to increase by an annual average of 2.75% in 2012 and by 2% in 2013 and after, which is consistent with the underlying growth assumption used in the baseline prison population forecast produced in August 2010 by the Kansas Sentencing Commission.
- The percentage of sentence served in prison is assumed to be 85% for offenders at severity levels 3, 5 and 6, which is consistent with the projections released in August 2010.
- It is assumed that the new policy effective date starts on July 1, 2011.
- **Severity Level and Length of Sentence:**
  - It is assumed that **70%** of the current offenders convicted under K.S.A. 21-4903 will violate the Kansas offender registration act for the first offense at nondrug severity level **6** and **25%** of them will be sentenced to prison with an average sentence length of 22 months. This is based on the actual lengths of sentences for nondrug severity level 6 offenses in FY 2010.
  - It is assumed that **25%** of the current offenders convicted under K.S.A. 21-4903 will violate the Kansas offender registration act for the second offense at nondrug severity level **5** and **28%** of them will be sentenced to prison with an average sentence length of 38 months, which is the

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actual percentage sentenced to prison and actual average sentence length of the offenders under K.S.A. 21-4903 observed in FY 2010.

- It is assumed that **5%** of the current offenders convicted under K.S.A. 21-4903 will violate the Kansas offender registration act for the third offense at nondrug severity level **3** and **100%** of them will be sentenced to prison with an average sentence length of 47 months. This is based on the actual lengths of sentences for nondrug severity level 3 offenses in FY 2010.
  - It is assumed that this population would include offenders who would be convicted of the new crime of aggravated violation of the Kansas offender registration act.

## FINDINGS

- During FY 2010, 34 offenders were convicted of kidnapping under K.S.A. 21-3420. Of this number,
  - 26 (77%) offenders were sentenced to prison with an average length of sentence of 86 months and
  - 8 (23%) offenders were sentence to probation with an average underlying prison term of 80 months.
  - There would be no immediate impact on prison admissions and beds from this group of offenders in the ten-year projection period.
- During FY 2010, 7 offenders were convicted of aggravated kidnapping under K.S.A. 21-3421. All of them were sentenced to prison with an average length of sentence of 326 months. There would be no impact on prison admissions and beds from this group of offenders in the ten-year projection period.
- During FY 2010, 166 offenders were convicted under K.S.A. 21-4903. Of this number,
  - 47 (28%) offenders were sentenced to prison with an average length of sentence of 38 months and
  - 119 (72%) offenders were sentence to probation with an average underlying prison term of 41 months.
- All offenders who are currently required to register for 10 years would now have to register for 15 years. Offenders convicted of kidnapping and aggravated kidnapping would have to register for life. This policy change would have no impact on prison admissions and beds during the ten-year forecast period from FY 2012 to FY 2021.

## IMPACT ASSESSMENT

- **Current Policy:** If current policy remains unchanged,
  - by the end of FY 2012, 48 prison bed will be needed and
  - by the end of FY 2021, 153 prison beds will be needed.
- **New Policy:** If **70%** of the current offenders convicted under K.S.A. 21-4903 violate the Kansas offender registration act for the first offense at nondrug severity level **6** and **25%** of them are sentenced to prison; **25%** of the current offenders convicted under K.S.A. 21-4903 violate the Kansas offender registration act for the second offense at nondrug severity level **5** and **28%** of them are sentenced to prison; and **5%** of the current offenders convicted under K.S.A. 21-4903 violate the Kansas offender registration act for the third offense at nondrug severity level **3** and **100%** of them are sentenced to prison,
  - by the end of FY 2012, 50 prison beds will be needed,
    - This represents 2 additional prison beds needed over current policy.
  - by the end of FY 2021, 126 prison beds will be needed.
    - This represents a reduction of 27 prison beds needed from the current policy.

The long-term prison bed reduction would be largely due to the reduction in severity level for the first violation of the Kansas offender registration act, which in turn reduces number of offenders sent to prison for such offenses, as well as the length of time such offenders would spend in prison.

### Prison Admission and Bed Space Impact Assessments

Fiscal Year	Prison Admissions			Prison Bed Space Needs		
	Current Policy N5	New Policy 70% to N6 25% to N5 5% to N3	Additional Admissions	Current Policy	New Policy 70% to N6 25% to N5 5% to N3	Prison Beds Changes
2012	48	50	2	48	50	2
2013	49	51	2	97	88	-9
2014	50	52	2	131	102	-29
2015	51	53	2	135	111	-24
2016	52	54	2	137	112	-25
2017	53	56	3	142	116	-26
2018	54	57	3	142	118	-24
2019	55	58	3	147	120	-27
2020	57	59	2	148	122	-26
2021	58	60	2	153	126	-27

#### IMPACT SUMMARY:

- **Impact on Prison Admissions:** The impact of this bill will result in 2 to 3 additional prison admissions each year from FY 2012 to FY 2021.
- **Impact on Prison Beds:** The impact of this bill will result in
  - 2 additional prison beds needed by the end of FY 2012 and
  - A reduction of 27 prison beds needed by the end of FY 2021.
- **Impact on Workload of the Commission:** The impact of this bill will have no impact on the journal entry workload of the Commission.



**STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL**

**DEREK SCHMIDT**  
ATTORNEY GENERAL

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**House Corrections and Juvenile Justice Committee**

In support of HB 2322  
Assistant Attorney General Kyle Smith  
March 3, 2011

Madam Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Derek Schmidt in support of HB 2322. Updating and improving the registered offender act is not only one of Attorney General Schmidt's top legislative priorities. Others will testify as to the how's and what's of HB 2322 and the proposed amendments, but I would like to spend a few minutes on the why's.

While bringing Kansas law into compliance with the Adam Walsh act, and avoiding any penalties regarding federal grants is a good thing, these revisions stand for far more than just coming into minimum compliance with the provisions of a federal law. Protecting children is not a state or a federal issue; it isn't partisan or even political. It is simply the right thing to do.

While not guaranteeing safety, offender registration provides three main benefits:

- It provides the public with critical information to base real, everyday decisions.
- It provided law enforcement with investigative leads and information.
- It provides substantial deterrence to criminals as they know that all their critical information, from DNA to residence, is on file and that law enforcement, and the public, are watching.

The Registered Offender Act has grown and expanded in Kansas as the public and legislators grew to appreciate how this information can impact lives. But these additions have resulted in a confusing and unwieldy law that was trying to do things it was not designed for; the need for a major overhaul became apparent. When I drafted the original law in 1993 it was simply an investigative tool to assist law enforcement by collecting and monitoring convicted sex offenders. The Working Group has done an excellent job in both bringing our statutes into 'substantial compliance' with the federal standards, and reorganizing the act to clearly and effectively incorporate the goals of the Kansas legislature.

On behalf of Attorney General Schmidt, I would urge passage of HB 2322.

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## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

Derek Schmidt  
*Attorney General*

Testimony in Support of HB 2322  
Before the House Committee on Corrections and Juvenile Justice  
David Hutchings, Special Agent in Charge  
Kansas Bureau of Investigation  
March 3, 2011

Chairperson Colloton and Members of the Committee,

I present this information today on behalf of the Kansas Bureau of Investigation in support of immediate passage of HB ~~2605~~ <sup>2322</sup>. This bill would amend the Kansas Offender Registration Act.

Detailed herein are the proposed changes to the Kansas Offender Registration Act. The changes have been vetted by the Offender Registration Working Group (ORWG), a multidisciplinary group consisting of representatives from law enforcement, prosecution, courts, community corrections, defense attorneys, the Kansas Juvenile Justice Authority, and the Kansas Department of Corrections. The bill would accomplish several things. It reorganizes portions of the Act so that requirements are categorized much more efficiently. It also brings us to substantial compliance with the Federal Adam Walsh Sex Offender Registration and Notification Act and makes several other changes that were proposed through the working group:

**1.) Changes to 22-4902 categorize all offenders as either sex, violent, or drug offenders.**

This gives statutory authority to do what is already done on the website and what, from discussions with legislators, I believe they expect. There has been concern that violent or drug offenders have been or may be inappropriately tagged as sex offenders.

**2.) Changes to 22-4902 remove Sexual Battery from the definition of a Sexually Violent Crime.**

This was done for duration of registration purposes. Sexual Battery is a misdemeanor and all other Sexually Violent Crime requires lifetime registration.

**3.) Changes to 22-4902 require registration for Kidnapping when not committed by the parent and Aggravated Kidnapping regardless of the age of the victim. Existing law required victim to be less than 18 years of age.**

This was a product of the ORWG. It was believed that the spirit of the act dictated that the public should know of any kidnapper residing nearby regardless of the age of the victim.

**4.) Changes to 22-4902 define "out of state."**

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This was done to comply with the Adam Walsh Act. The language "out of state" is now found throughout the proposed revisions of the Act, functionally adding D.C., territorial, municipal, tribal, and foreign offenses under the "comparable offenses" language.

**5.) Changes to 22-4902 redefine "school."**

This was a product of the working group to clarify the intent to include all schools. Some lay terms are added to avoid issues of interpretation.

**6.) Changes to 22-4902 define "employment."**

This was a product of the ORWG to simplify language throughout the Act and to clarify that the intent includes volunteer employment as well.

**7.) Changes to 22-4902 define "reside" and "residence."**

This was a product of the ORWG and necessary for Adam Walsh. The new language closes some loopholes as to what may or may not be termed a residence.

**8.) Changes to 22-4902 define "transient."**

This is a product of the ORWG and necessary for Adam Walsh. This allows the use of the term later in the Act when placing specific requirement on offenders who report no specific residence.

**9.) Changes to 22-4902 define "law enforcement agency having initial jurisdiction."**

This is a product of the ORWG. This term is used later in the Act and has specific requirement relating to initial registrations.

**10.) Changes to 22-4902 define "registering law enforcement agency."**

This is a product of the ORWG. This term is used throughout the Act in place of present language that refers only to Sheriff's Offices. New language would include tribal police agencies responsible for registration.

**11.) Changes to 22-4902 define "registering entity."**

This is a product of the ORWG. This was done to allow the use of the term throughout the act to replace more cumbersome language that includes any person or entity responsible for registration of an offender.

**12.) Changes to 22-4902 define "treatment facility."**

This is a product of the ORWG. This allows the use of the term later in the Act and includes any public or private facility, hospital, or institution providing inpatient treatment or counseling. Specific requirements for treatment facilities are added to the Act.

**13.) Changes to 22-4902 define "correctional facility."**

This is a product of the ORWG. For the purposes of the Act, a correctional facility would be any public or private correctional facility, juvenile detention facility, prison, or jail. This allows the term to be used later in the act and replaces more cumbersome language.

**14.) Changes to 22-4902 define "duration of registration."**

This is a product of the ORWG. This allows a standard term to be used within the Act when referring to that period of time for which an offender is required to register.

**15.) Changes to 22-4903 title the offenses of "Violation of the Kansas Offender Registration Act" and the new offense of "Aggravated Violation of the Kansas Offender Registration Act" and amend the penalties.**

This is a product of the ORWG. All offenses are now a level 5, person felony. The proposed revisions would tier the offenses to address first offenses more leniently and repeat offenders and absconders more harshly. A first offense would be moved to a level 6, person felony; a second offense would be a level 5, person felony; and a third offense would be a level 3, person felony. Absconders would be addressed with the new offense of "Aggravated Violation of the Kansas Offender Registration Act", defined as 180 days of consecutive non compliance. This offense would also be a level 3, person felony.

**16.) Changes to 22-4903 require that an offender be charged and convicted at the appropriate level and not a lesser included offense.**

This is a product of the ORWG and would allow for more consistent charging of offenders on violation of the Act.

**17.) Changes to 22-4903 would expand that venue for prosecution.**

This is a product of the ORWG. Present law allows for prosecution in the jurisdiction where the offender resides or where the offender is otherwise required to register. Additional venues would be the jurisdiction where the offender is located while noncompliant or where the offender was convicted of the offense requiring registration. This would allow offender noncompliance to be treated as a state problem.

**18.) Changes to 22-4904 would categorize all agency requires within this statute.**

This is a product of the ORWG. This would be a one stop shopping for agency requirements, some of which are presently peppered throughout the existing Act. Agency duties are divided by court, correctional facility, treatment facility, registering law enforcement agency, Kansas Bureau of Investigation, the Attorney General, the state department of education, and the Kansas Department of Health and Environment.

**19.) Changes to 22-4904 would require the court to document the age of the victim.**

This is a product of the ORWG and is necessary for the effective management of offenders as required by Kansas law. It is also a requirement of Adam Walsh.

**20.) Changes to 22-4904 would require the court to provide necessary information to the KBI upon request.**

This is a product of the ORWG and is necessary for the effective management of offenders as required by Kansas law. The KBI has in the past had difficulty with the courts providing necessary documents.

**21.) Changes to 22-4904 would preclude expungements of an offender's criminal record while the offender is required to register.**

This is a product of the ORWG. It would seem appropriate that, during the time an offender is under the greater scrutiny of the registration requirements, they not be allowed to change their criminal record.

**22.) Changes to 22-4904 would require the correctional facility:**

- To notify the KBI of the incarceration of any offender and the offender's location and any change in location;
- to notify the law enforcement agency having initial jurisdiction and the KBI 7 days prior to any release of an offender; and
- to photograph the offender and any identifying marks prior to release and to provide the photos to the law enforcement agency having initial jurisdiction and the KBI.

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law.

**23.) Changes to 22-4904 would require the treatment facility:**

- To notify the law enforcement agency in the location of the treatment facility of the presence of the offender and the expected duration of treatment;
- to immediately notify the law enforcement agency in the location of the treatment facility of any unauthorized or unexpected absence of the offender; and
- to provide information relating to the presence of an offender to the law any registering law enforcement agency upon request.

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law.

**24.) Changes to 22-4904 would require the registering law enforcement agency to enter NCIC information.**

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law and is a requirement of Adam Walsh.

**25.) Changes to 22-4904 would allow the KBI director to adopt rules and regs.**

This is a product of the ORWG. Rules and Regs may be necessary to effectively manage the program.

**26.) Changes to 22-4905 places all duties of an offender within this statute.**

This is a product of the ORWG. It allows for one-stop shopping for all duties of an offender.

**Changes to 22-4905 would require the offender to report 4 times a year and to register and report any changes within 3 days.**

This is a product of the ORWG and is a requirement of Adam Walsh. Present law requires registration three times a year and allows for registration and changes within 14 days rather than three.

**28.) Changes to 22-4905 would allow for different requirement for the registration of transients who cannot comply otherwise. The transient would be required to:**

- **Report in person upon arrival in a new jurisdiction;**
- **report every 30 days, or more often at the discretion of the registering law enforcement agency;**
- **provide a list of places where the offender has slept and otherwise frequented; and**
- **provide a list of places where the offender may be contacted.**

This is a product of the ORWG. Adam Walsh also required that a strategy be in place to address transient offenders.

**29.) Changes to 22-4905 would require the offender, if receiving inpatient treatment, to notify the treatment facility of the offender's status as an offender.**

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law and is a requirement of Adam Walsh.

**30.) Changes to 22-4905 would require the offender to report any change in required information within three days.**

This is a product of the ORWG and is a requirement of Adam Walsh. Present law allows for 14 days rather than three.

**31.) Changes to 22-4905 would require the offender to surrender of all other DL's if maintaining primary residence in Kansas, unless military.**

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law.

**32.) Changes to 22-4905 would waive the \$20 registration fee for offenders found to be indigent by the court.**

This is a product of the ORWG. It allows for prosecution of offenders not paying the fee while addressing the issue of those not able to do so.

**33.) Changes to 22-4906 would change all 10 year registration durations to 15 years and change some 10 year durations to life.**

This is a product of the ORWG and is a requirement of Adam Walsh which requires a tiered duration of registration of 15 years, 25 years, and lifetime registration. The ORWG prefers to manage the program within a two-tier system.

**34.) Changes to 22-4906 would require lifetime registration for kidnapping and aggravated kidnapping.**

This is a product of the ORWG and is a requirement of Adam Walsh.

**35.) Changes to 22-4906 would require lifetime registration for aggravated human trafficking and promoting prostitution when the victim is under 16 rather than under 14.**

This is a product of the ORWG.



**36.) Changes to 22-4906 would require registration for a juvenile offender less than 14 yoa to register until 18 or for 5 years.**

This is a product of the ORWG and is an attempt to comply with Adam Walsh.

**37.) Changes to 22-4906 would require a juvenile offender 14 or more yoa to register for 15 years.**

This is a product of the ORWG and is an attempt to comply with Adam Walsh.

**38.) Changes to 22-4906 would require a juvenile offender 14 or more yoa adjudicated of an off-grid felony or a felony ranked in severity level 1 of the nondrug grid to register for life.**

This is a product of the ORWG and is a requirement of Adam Walsh.

**39.) Changes to 22-4906 to eliminate court discretion to not require registration of a juvenile offender.**

This is a product of the ORWG and is an attempt to comply with Adam Walsh. Juvenile information would remain nonpublic.

**40.) Changes to 22-4907 would require the signing of registration form must be witnessed by the registering officer.**

This is a product of the ORWG. It is necessary for the efficient management of offender under Kansas law and would provide necessary information for prosecution of noncompliance.

**41.) Changes to 22-4907 would add alias information and more detailed information about conviction data to the information required to be reported by the offender.**

This is a product of the ORWG and is a requirement of Adam Walsh.

**42.) Rescinds 22-4912**

This is a requirement of Adam Walsh per The Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office.

The SMART Office has stated that implementation of this set of revisions will place Kansas in the required status of substantial compliance with the Adam Walsh Act.



## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

Derek Schmidt  
*Attorney General*

Testimony in Support of HB 2322  
Before the House Committee on Corrections and Juvenile Justice  
Nicole Dekat, Public Service Administrator II  
Kansas Bureau of Investigation  
March 3, 2011

Madam Chair Colloton and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in support of immediate passage of HB 2322. This bill would amend the Kansas Offender Registration Act (K.S.A 22-4901, et seq.) and help make Kansas substantially compliant with the Sex Offender Registration and Notification Act (SORNA), which is Title 1 of the federal Adam Walsh Child Protection and Safety Act (commonly referred to as the Adam Walsh Act). This legislation was intended to protect children by providing a more consistent and comprehensive interstate system of managing sex offenders.

On July 27<sup>th</sup>, 2006 President Bush signed into law the Adam Walsh Act, requiring that all states become compliant with the federal legislation by July 27, 2011. To this end, the Kansas Bureau of Investigation and the Offender Registration Working Group have proposed several changes to the Kansas Offender Registration Act to bring the state into compliance with this federal mandate and to resolve several issues, concerns, and loopholes brought to the attention of the Working Group and the Kansas Bureau of Investigation by prosecutors, courts, and local law enforcement.

The Kansas Bureau of Investigation has been charged with maintaining the state's offender registry since its inception in 1993. In order to further improve the Kansas Offender Registration Act, the Kansas Bureau of Investigation and the Working Group are asking for substantial revisions to the Act, to include most of the requirements found in the SORNA.

By adopting the changes as requested, the State of Kansas will have substantially implemented the requirements of the SORNA. If the state does not substantially implement the SORNA by July 27, 2011, it will stand to lose 10 percent of its Edward J. Byrne Justice Assistance Grant (Byrne JAG) monies annually, beginning in FY2012.

Additionally, the KBI and the Working Group seek the following changes that are not SORNA issues:

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- Restructuring the severity levels for violations of the Kansas Offender Registration Act. This is intended to treat repeat offenders and absconders more harshly than first time violators. By lowering the first offense to a level 6 person felony, we are able to accomplish this with an overall reduction in prison bed space requirements.
- Expanding venue to allow jurisdictions to better deal with the issues of noncompliant offenders.
- Requiring that, during an offender's term of registration, no part of the offender's criminal record may be expunged. We believe that, because of the great scrutiny placed upon registered offenders, their complete criminal history should remain intact throughout the time they are required to register.

All proposed changes, including those discussed above, are outlined in the attached "Summary of Proposed Changes" which is included with this testimony.

Thank you for your time and consideration. I would be happy to answer any questions.

## Summary of Proposed Changes to Act

### Amendments to KSA 22-4902:

1. Categorize and reorganize all offenders as either sex, violent, or drug offenders.
2. Remove Sexual Battery from the definition of a Sexually Violent Crime. Sexual Battery is a misdemeanor and all other Sexually Violent Crimes are felonies and require lifetime registration.
3. Require registration for Kidnapping, when not committed by the parent, and Aggravated Kidnapping regardless of the age of the victim. Existing law required the victim to be less than 18 years of age.
4. Redefined the term school and employment.
5. Added definitions for the following terms: reside, residence, transient, law enforcement agency having initial jurisdiction, registering law enforcement agency, registering entity, treatment facility, correctional facility, out of state, and duration of registration.

### Amendments to KSA 22-4903:

- 1) Amended this section to include three levels of felonies for violation of the Kansas Offender Registration Act (severity level 6, 5, and 3), and to include the crime of Aggravated Violation of the Kansas Offender Registration Act (severity level 3).
- 2) Requires the offender to be charged and convicted at the appropriate level and not a lesser included offense.
- 3) Allows for prosecution of violation of the Kansas Offender Registration Act also in the counties where the offender is located while in violation of the Kansas Offender Registration Act and in the county where the offender was convicted of the offense requiring registration.

### Amendments to KSA 22-4904:

- 1) Categorizes all agency requirements within this statute which is presently used throughout the Act. Agency duties are divided by court, correctional facility, treatment facility, registering law enforcement agency, Kansas Bureau of Investigation, the Attorney General, the state department of education, Kansas Department of Health and environment, and clerk of the court.
- 2) Requires the court to inform the offender of their duty to register, complete initial registration if released on probation/parole, order the offender to report to the registering law enforcement agency having initial jurisdiction within three days, requires the court to document the age of the victim, and not allow the expungement of any part of an offender's criminal record while required to register.
- 3) Requires any correctional facility to notify the KBI of the incarceration of any offender, register the offender, notify the initial jurisdiction and the KBI seven days prior to the offender being released, and enter all information into NCIC.
- 4) Requires any treatment facility to notify the agency in the location of the treatment facility of the presence of any offender, the expected duration of treatment, and register the offender prior to release.
- 5) Requires the KBI to forward all additions and changes in information to any registering law enforcement agency, enter offender information immediately in the state registered offender

database, and allow the KBI director to adopt rules and regulations to effectively manage the Offender Registration program.

- 6) Requires the Attorney General to forward any court documentation declaring an offender a sexually violent predator to the KBI.
- 7) Requires the court of the clerk to provide copies of conviction paperwork to the KBI without a fee assessed.

#### Amendments to KSA 22-4905:

- 1) Defines all duties of an offender and their obligations to register.
- 2) Requires the offender to report four times a year and to register any changes within three days.
- 3) Requires transient offenders to report in person upon arrival in a new jurisdiction, report every 30 days or more at the discretion of the registering law enforcement agency, provide a list of places where the offender has slept or otherwise frequented, and provide a list of places where the offender may be contacted.
- 4) Require the offender to notify the treatment facility of the offender's status.
- 5) Allows the registering agency to waive the \$20 registration fee for offenders if they have been found to be indigent by the court.
- 6) Require the offender to surrender all other DL/ID cards if maintaining primary residence in Kansas, unless it is a military ID.
- 7) Requires the offender to notify the KBI and law enforcement agency having jurisdiction 21 days in advance of any travel outside the United States.

#### Amendments to KSA 22-4906:

- 1) The duration of registration would change for all Sexually Violent Crimes, Kidnapping, and Aggravated Kidnapping to lifetime registration. All violent, drug, and non-felony sexual offenses would require 15 year registration for all adult offenders.
- 2) The duration of registration would require lifetime registration for aggravated human trafficking and promoting prostitution when the victim is under 16, rather than 14.
- 3) Require a juvenile offender 14 or more years of age to register for 15 years if adjudicated of a sexually violent crime and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in KSA 21-4704.
- 4) Require a juvenile offender 14 or more years of age to register for life if adjudicated of a sexually violent crime and is and such crime is an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in KSA 21-4704.
- 5) Eliminate court discretion to not require registration of a juvenile offender.

#### Amendments to KSA 22-4907:

- 1) Require the signing of the registration form to be witnessed by the registering officer.
- 2) Require additional fields to be collected on the registration form such as alias, all information regarding residences or other locations where the offender is staying, all telephone numbers, license plate number and description of any vehicle the offender regularly drives and locations

where the vehicle is parked, any professional licenses, palm prints, and travel and immigration documents.

Amendments to KSA 22-4909:

- 1) Amended this section to allow for all information required to be provided by the offender to be put on the public website except, victim identity, social security number of the offender, offender's criminal history that did not result in convictions, travel and immigration document numbers, internet identifiers, and certain juvenile information.

Amendments to KSA 22-4912:

- 1) Rescinds 22-4912 to not allow the offender to petition the court for relief from registration.

Testimony in Support of HB 2322

Before the House Committee Corrections and Juvenile Justice

Sgt Al Deathe

Douglas County Sheriff's Office

February 17<sup>th</sup>, 2011

Madam Chair Colloton and Members of the Committee,

I appear today on behalf of the Offender Registration Working Group in support of immediate passage of HB 2322. This bill would amend K.S.A. 22-4901, 22-4903, 22-4908, 22-4909 and KSA 2010 Supp. 22-4904, 22-4905, 22-4906, 22-4907 and 22-4913 and repealing the existing sections; also repealing K.S.A. 22-4912.

This bill will hopefully bring the State of Kansas into "substantial compliance" with the Federal Crime Act known as The Adam Walsh Act. The Offender Registration Working Group has been working towards gaining compliance for the State of Kansas for the past three years. During the past three years Kansas has been given two extensions to extend the deadline for compliance. As of June 30<sup>th</sup>, Kansas will start to lose funding awarded through Burn Grants if "substantial compliance" is not met. HB2322 blends requirements of the Walsh Act with all the additional requirements the State of Kansas has added over the past three years.

This bill would allow any person required by the court to register for an offense not otherwise required as provided in the Kansas offender registration act.

This bill creates an aggravated violation for those offenders who fail to comply for more than 180 days and have essentially absconded.

This bill addresses offenders who have a history of non-compliance by having an escalating severity for multiple convictions for failing to register. Convictions for first offense are a level 6 felony, second convictions are a level 5 person felony, third convictions are level 3 person felony and all aggravated violations are level 3 person felony.

Violations could be prosecuted in any county that an offender is required to be registered, in any county in which the offender is located during which time the offender is not in compliance or in any county in which any conviction occurred for which the offender is required to be registered.

The bill prohibits expungement of any part of an offender's criminal record while the offender is required to register.

The bill shortens the amount of time the offender is required to report changes of information from 14 business days to 3 business days to the registering law enforcement agency.

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The bill streamlines the KBI's ability to obtain any and all court documents that are required or necessary to complete the registration act.

This bill increases the number of in-person registrations from 3 times a year (birth month, fourth month and eight month) to 4 times each year (birth month, third month, sixth month and ninth month).

Transient offenders are required to report to the registering agency within 3 business days of arrival then every thirty days thereafter or more often at the discretion of the registering agency.

Duration of registration was changed from 10 years for first offense to 15 years. All second offenses become lifetime.

The changes requested in this bill serve the sole purpose to become "substantially compliant" with the Adam Walsh Act and to better perform the intent of this law.

Thank you for your time and consideration. I would be happy to answer your questions.



House Corrections and Juvenile Justice Committee  
March 3, 2011  
Testimony of Kansas Association of Criminal Defense Lawyers  
(Prepared and presented by Jennifer Roth)  
**Opponent of House Bill 2322**

Chairwoman Colloton and Members of the Committee:

The Kansas Association of Criminal Defense Lawyers is a 300-member organization dedicated to justice and due process for people accused of crimes. **KACDL opposes House Bill 2322, an effort to bring the Kansas Offender Registration Act into compliance with federal law, for the reasons below.**

The Adam Walsh Act was signed into law on July 27, 2006. Title I of that Act, known as SORNA, requires that states, territories and Indian tribes have their own offender registries that substantially comply with SORNA's requirements. Failure to do so subjects that jurisdiction to a 10% reduction of Byrne/JAG funding. **Nearly five years after enactment, there are four states, one territory and two Indian tribes in substantial compliance with SORNA. There are 46 states, five territories and 184 Indian tribes that are not.**<sup>1</sup> The deadline is July of this year. This speaks volumes.

**SORNA presents Kansas with an unfunded mandate of massive scale.** SORNA imposes huge requirements on state/territorial/tribal offender registries, but does not fund those already-strapped jurisdictions to meet said onerous requirements. In FY 2010, there was about \$9.1 million in grant money available to about 237 jurisdictions for SORNA implementation efforts.<sup>2</sup> While I do not know who received what, basic math says that's \$38,396 per jurisdiction. There is a grant program for FY 2011, but the 17-page document describing said program does not state how much money is available.<sup>3</sup>

**It is arguably cheaper for Kansas to reject this unfunded mandate than to lose 10% of our state's Byrne/JAG funds.** According to the National Conference of State Legislatures, at FY 2010 funding levels, Kansas would lose \$315,400 in Byrne/JAG funds if it fails to meet substantial compliance under SORNA.<sup>4</sup>

Kansas will need to budget additional monies to meet the demands of HB 2322, such as registering additional offenders, registering them in a three-day window (right now it is 10 days) and processing all of the additional required data into the registry database. I am not certain of the cost to the juvenile justice system; however, HB 2322 would require many juvenile offenders

<sup>1</sup> <http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/SMART11054.htm> and [http://www.ojp.usdoj.gov/smart/pdfs/SORNA\\_Extensions\\_Granted.pdf](http://www.ojp.usdoj.gov/smart/pdfs/SORNA_Extensions_Granted.pdf).

<sup>2</sup> <http://www.ojp.usdoj.gov/newsroom/pressreleases/2010/SMART10129.htm>

<sup>3</sup> <http://www.ojp.usdoj.gov/smart/funding/SMARTFY11AWA.pdf>. "Individual grant awards will be up to \$400,000 for a period of up to 18 months. Thirty percent of the total amount awarded under this solicitation will be set aside for tribal jurisdictions. . . . All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law." (Emphasis provided.)

<sup>4</sup> A chart prepared by NCSL entitled "SORNA Noncompliance Penalties" is attached to this testimony.

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to register for longer periods of time than current law provides (and in some cases, for life – which would be a new law). Once they are adults, their failure to comply with the offender registry will contribute to the adult costs.

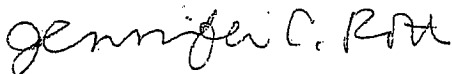
Second, if other states (and the federal system) are any indication, application of SORNA requirements to Kansas's registry will prompt constitutional litigation, in that there are extensive ex post facto and other issues.

Third, HB 2322 will result in more prosecutions and arguably more people being incarcerated every year, especially in light of the following: 1) the minimum registration period would increase 50% (from ten to 15 years) with shorter time limits to comply (from ten days to three), which means more chances an offender will violate the registry (intentionally or unknowingly); 2) more people will be subject to these stricter requirements than we have now (ex.: retroactivity, more drug offenders will be subject to it with removal of the current personal use exception, etc.); and 3) restrictions on plea bargaining (i.e. the language on page 9, lines 34-35 of online version restrains plea bargaining "to avoid the severity level of the offense"), which will lead to more jury trials and the costs associated with that.

**Kansas already has a comprehensive offender registry.** The current system is already far-reaching at this point. There are 11 "definitions" of types of offenders on the registry (with some of those definitions having subsections). A copy of what all is covered by our existing registry is attached hereto (i.e. K.S.A. 22-4902).

**HB 2322 goes way beyond what SORNA requires, since it applies the same provisions to all registered offenders.** SORNA is about sex offenders. However, Kansas has all of its offenders on the same registry. The rules – and penalties – are the same for all registered offenders. This results in great costs and those costs will further increase once ALL offenders (many whose offense which requires them to register was less harsh than the offense of failing to comply with the offender registration act and/or whose offense requiring registration was a nonperson felony whereas failure to register is a person felony) are subject to HB 2322.

Thank you for your consideration,



Jennifer C. Roth

KACDL Legislative Committee Chairperson

rothjennifer@yahoo.com

785.550.5365.

## SORNA Noncompliance Penalties

The deadline to comply with the SORNA provisions of the Adam Walsh Act is July 27, 2010. States may request a one year extension from the SMART Office in order to meet implementation goals. The extension form can be found at: <http://www.ojp.usdoj.gov/smart/sornaextenddc.doc>. The penalty for not substantially implementing SORNA requirements is ten percent loss of Byrne/JAG funds. The chart below shows what that loss will be assuming level funding in FY '12.

State	FY 2010 Enacted	FY 2011 President's Budget	10% Byrne/JAG Funding loss
Alabama	\$4,858,000	\$4,858,000	\$485,800
Alaska	\$1,404,000	\$1,404,000	\$140,400
Arizona	\$5,997,000	\$5,997,000	\$599,700
Arkansas	\$3,523,000	\$3,523,000	\$352,300
California	\$32,161,000	\$32,161,000	\$3,216,100
Colorado	\$4,503,000	\$4,503,000	\$450,300
Connecticut	\$3,906,000	\$3,906,000	\$390,600
Delaware	\$1,576,000	\$1,576,000	\$157,600
District of Columbia	\$2,715,000	\$2,715,000	\$271,500
Florida	\$19,412,000	\$19,412,000	\$1,941,200
Georgia	\$9,021,000	\$9,021,000	\$902,100
Hawaii	\$1,486,000	\$1,486,000	\$148,600
Idaho	\$1,805,000	\$1,805,000	\$180,500
Illinois	\$11,608,000	\$11,608,000	\$1,160,800
Indiana	\$5,264,000	\$5,264,000	\$526,400
Iowa	\$2,976,000	\$2,976,000	\$297,600
Kansas	\$3,154,000	\$3,154,000	\$315,400
Kentucky	\$3,723,000	\$3,723,000	\$372,300
Louisiana	\$5,281,000	\$5,281,000	\$528,100
Maine	\$1,662,000	\$1,662,000	\$166,200
Maryland	\$6,225,000	\$6,225,000	\$622,500
Massachusetts	\$6,214,000	\$6,214,000	\$621,400
Michigan	\$10,065,000	\$10,065,000	\$1,006,500
Minnesota	\$4,670,000	\$4,670,000	\$467,000
Mississippi	\$2,863,000	\$2,863,000	\$286,300
Missouri	\$6,367,000	\$6,367,000	\$636,700
Montana	\$876,000	\$876,000	\$87,600
Nebraska	\$1,963,000	\$1,963,000	\$196,300
Nevada	\$3,256,000	\$2,256,000	\$225,600
New Hampshire	\$1,665,000	\$1,665,000	\$166,500
New Jersey	\$7,404,000	\$7,404,000	\$740,400
New Mexico	\$2,734,000	\$2,734,000	\$273,400
New York	\$16,073,000	\$16,073,000	\$1,607,300
North Carolina	\$8,578,000	\$8,578,000	\$857,800
North Dakota	\$787,000	\$787,000	\$78,700
Ohio	\$9,399,000	\$9,399,000	\$939,900
Oklahoma	\$4,191,000	\$4,191,000	\$419,100
Oregon	\$3,392,000	\$3,392,000	\$339,200
Pennsylvania	\$11,458,000	\$11,458,000	\$1,145,800
Rhode Island	\$1,408,000	\$1,408,000	\$140,800
South Carolina	\$5,606,000	\$5,606,000	\$560,600
South Dakota	\$824,000	\$824,000	\$82,400
Tennessee	\$7,647,000	\$7,647,000	\$764,700
Texas	\$21,926,000	\$21,926,000	\$2,192,600
Utah	\$2,512,000	\$2,512,000	\$251,200
Vermont	\$808,000	\$808,000	\$80,800
Virginia	\$6,002,000	\$6,002,000	\$600,200
Washington	\$5,519,000	\$5,519,000	\$551,900
West Virginia	\$2,078,000	\$2,078,000	\$207,800
Wisconsin	\$4,779,000	\$4,779,000	\$477,900
Wyoming	\$828,000	\$828,000	\$82,800
Puerto Rico	\$5,015,000	\$5,015,000	\$501,500
Virgin Islands	\$1,150,000	\$1,150,000	\$115,000
Territories	\$2,300,000	\$2,300,000	\$230,000

Prepared by NCSL. For further information, please call Susan Frederick or Jennifer Arguinzi at (202)-624-5400.

\*Information on Byrne/JAG state funding estimated and provided by FFIS. 10% loss information provided by NCSL.

22-4902. ☐ Definitions. As used in the Kansas offender registration act, unless the context otherwise requires:

- (a) ☐ "Offender" means: (1) A sex offender as defined in subsection (b);
- (2) ☐ a violent offender as defined in subsection (d);
- (3) ☐ a sexually violent predator as defined in subsection (f);
- (4) ☐ any person who, on and after May 29, 1997, is convicted of any of the following crimes when the victim is less than 18 years of age:
  - (A) ☐ Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;
  - (B) ☐ aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or
  - (C) ☐ criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;
  - (5) ☐ any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

- (A) ☐ Adultery as defined by K.S.A. 21-3507, and amendments thereto;
  - (B) ☐ criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;
  - (C) ☐ promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;
  - (D) ☐ patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto; or
  - (E) ☐ lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto;
  - (6) ☐ any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;
  - (7) ☐ any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;
  - (8) ☐ any person who has been convicted of an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);
  - (9) ☐ any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);
  - (10) ☐ any person who has been convicted of aggravated human trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) ☐ any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) ☐ possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by subsection (a) of K.S.A. 65-7006, prior to its repeal or subsection (a) of K.S.A. 2010 Supp. 21-36a09, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) ☐ K.S.A. 65-4161, prior to its repeal or subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto. The provisions of this paragraph shall not apply to violations of subsections (a)(2) through (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto, which occurred on and after July 1, 2009, through the effective date of this act.

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) ☐ "Sex offender" includes any person who, on or after April 14, 1994, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) ☐ "Sexually violent crime" means:

- (1) ☐ Rape as defined in K.S.A. 21-3502 and amendments thereto;
- (2) ☐ indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;
- (3) ☐ aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;
- (4) ☐ criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;
- (5) ☐ aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;
- (6) ☐ indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;
- (7) ☐ aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;
- (8) ☐ sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;
- (9) ☐ sexual battery as defined by K.S.A. 21-3517 and amendments thereto;
- (10) ☐ aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;

(11) ☐ aggravated incest as defined by K.S.A. 21-3603 and amendments thereto;  
(12) ☐ electronic solicitation as defined by K.S.A. 21-3523, and amendments thereto, committed on or after April 17, 2008;

(13) ☐ unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto, committed on or after July 1, 2010;

(14) ☐ any conviction for an offense in effect at any time prior to April 29, 1993, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

(15) ☐ an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or

(16) ☐ any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) ☐ "Violent offender" includes any person who, on or after May 29, 1997, is convicted of any of the following crimes:

(1) ☐ Capital murder as defined by K.S.A. 21-3439 and amendments thereto;

(2) ☐ murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;

(3) ☐ murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;

(4) ☐ voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;

(5) ☐ involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto;

(6) ☐ any conviction for an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) ☐ an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) ☐ "Law enforcement agency having jurisdiction" means the sheriff of the county in which the offender expects to reside upon the offender's discharge, parole or release.

(f) ☐ "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.

(g) ☐ "Nonresident student or worker" includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) ☐ "Aggravated offenses" means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) ☐ Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) ☐ aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) ☐ any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) ☐ "Institution of higher education" means any post-secondary school under the supervision of the Kansas board of regents.