

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 12:20 p.m. on March 11, 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

Others attending:

See attached.

Chairperson Colloton called the meeting to order and opened the floor for further consideration of **HB 2332-Sexual exploitation of a child: increasing the penalty for certain offenses.** Jason Thompson, Office of the Revisor of Statutes, reviewed each section of the bill and each section of the balloons on the bill. There was lengthy discussions following each section.

The following attachments were offered during the consideration of the bill:

- Sarah Fertig, Executive Director, Kansas Sentencing Commission, Memorandum. ([Attachment 1](#))
- Jason Thompson, Office of the Revisor of Statutes, **HB 2232**\_22\_4902 balloon. ([Attachment 2](#))
- Jason Thompson, Office of the Revisor of Statutes, **HB 2232**\_SL10\_balloon. ([Attachment 3](#))
- Sarah Fertig, Executive Director, Kansas Sentencing Commission, Memorandum ([Attachment 4](#))

Chairperson Colloton continued the consideration of **HB 2322** to Monday, March 14, 2011 and adjourned the meeting at 2:30 pm with the next meeting scheduled for March 14, 2011, at 1:30 pm in room 144-S.

DATE: 3-11-11

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

Sam Brownback, Governor

## MEMORANDUM

**To:** Rep. Pat Colloton, Chair, House Committee on Corrections and Juvenile Justice

**From:** Sarah Fertig, Executive Director

**Date:** March 3, 2011

**Re:** Prison Bed Space Impact, HB 2322, Sex Offender Registration Overhaul/Adam Walsh Act  
*(Modified to assume 100% of second registration offenses are sentenced to prison)*

### 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.

***This revised assessment assumes that new subsection (d) of K.S.A. 22-4903 would effectively bar any convictions for attempted violation of K.S.A. 22-4903. The initial impact assessment assumed that attempt convictions would continue to be permitted. The new subsection (d) reads as follows:***

(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.

### 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.

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- 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. 22-4903 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. 22-4903 will violate the Kansas offender registration act for the second offense at **nondrug severity level 5** and **100%** of them will be sentenced to prison with an average sentence length of 38 months, which is the actual percentage sentenced to prison and actual average sentence length of the offenders under K.S.A. 22-4903 observed in FY 2010.
  - It is assumed that **5%** of the current offenders convicted under K.S.A. 22-4903 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 sentenced 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. 22-4903. Of this number,
  - 47 (28%) offenders were sentenced to prison with an average length of sentence of 38 months, and
  - 119 (72%) offenders were sentenced to probation with an average underlying prison term of 41 months.
- *Of the 166 offenders convicted under K.S.A. 22-4903 in FY 2010,*
  - *39 were convicted of attempt to violate the Kansas offender registration act,*
  - *2 were sentenced at nondrug severity level 10 and sentenced to probation, and*
  - *40 were sentenced at nondrug severity level 7 and most of these offenders were sentenced to probation.*
- 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. 22-4903 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 **100%** of them are sentenced to prison; and **5%** of the current offenders convicted under K.S.A. 22-4903 violate the Kansas offender registration act for the third offense at **N3** and **100%** of them are sentenced to prison,
  - by the end of FY 2012, **81** prison beds will be needed,
    - This represents **33** additional prison beds needed over current policy, and **31** beds needed over our initial impact assessment, which assumed that only 28% of offenders

- sentenced for failure to register at nondrug severity level 5 would be sent to prison.
- by the end of FY 2021, **226** prison beds will be needed.
  - This represents **73** additional prison beds needed over current policy, and **100** beds needed over our initial impact assessment, which assumed that only 28% of offenders sentenced for failure to register at nondrug severity level 5 would be sent to 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	81	33	48	81	33
2013	49	83	34	97	152	55
2014	50	84	34	131	192	61
2015	51	86	35	135	199	64
2016	52	88	36	137	201	64
2017	53	90	37	142	200	58
2018	54	91	37	142	209	67
2019	55	93	38	147	214	67
2020	57	95	38	148	219	71
2021	58	97	39	153	226	73

#### IMPACT SUMMARY:

- **Impact on Prison Admissions:** The impact of this bill will result in 33 to 39 additional prison admissions each year from FY 2012 to FY 2021.
- **Impact on Prison Beds:** The impact of this bill will result in
  - **33** additional prison beds needed by the end of FY 2012 and
  - **73** additional 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.

## HOUSE BILL No. 2322

By Committee on Corrections and Juvenile Justice

2-11

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RS - JThompson - 03/11/11

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~~

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(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.

(2) on or after April 14, 1994,

, unless the act involves consensual sexual  
 conduct, the victim was at least 13 years of  
 age and the offender was not more than  
 four years older than the victim  
 (Redesignate subsections accordingly)

this word  
mandatory

1- Category for adults  
convicted

(2) Adjudicated

Comes from SOENA

Also out from  
PB 10/1/11



2-4

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

, unless the act was committed by a  
juvenile and the act involves consensual  
sexual conduct, the victim was at least 13  
years of age and the offender was not more  
than four years older than the victim

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

amendments thereto, of an offense defined in this subsection.

(g) 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 any out of state court shall constitute a conviction for purposes of this section.

(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 postsecondary school under the supervision of the Kansas board of regents.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 Sec. 3. K.S.A. 22-4903 is hereby amended to read as follows: 22-  
33 4903. (a) Any person who is required to register as provided in the  
34 Kansas offender registration act who violates any of the provisions of  
35 such act, including all duties set out in K.S.A. 22-4904 through 22-4907,  
36 and amendments thereto, is guilty of a severity level 5, person felony.  
37 Any violation of any provision of such act, including a violation of the  
38 duties set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and  
39 amendments thereto, which continues for more than 30 consecutive days  
40 shall, upon the 31st consecutive day, constitute a new and separate  
41 offense and shall continue to constitute a new and separate offense upon  
42 completion of every 30 days thereafter for as long as the offense  
43 continues.

## HOUSE BILL No. 2322

By Committee on Corrections and Juvenile Justice

2-11

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RS - JThompson - 03/10/11

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~~

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~~(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~~

~~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.~~

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

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

(1) 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);

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

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

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

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

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

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

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

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

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

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

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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

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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 (I) 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

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

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

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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*

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

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

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

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

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

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

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

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

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

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

32 Sec. 3. K.S.A. 22-4903 is hereby amended to read as follows: 22-  
33 4903. ~~(a) Any person who is required to register as provided in the~~  
34 ~~Kansas offender registration act who violates any of the provisions of~~  
35 ~~such act, including all duties set out in K.S.A. 22-4904 through 22-4907,~~  
36 ~~and amendments thereto, is guilty of a severity level 5, person felony.~~  
37 ~~Any violation of any provision of such act, including a violation of the~~  
38 ~~duties set forth in K.S.A. 22-4904 through K.S.A. 22-4907, and~~  
39 ~~amendments thereto, which continues for more than 30 consecutive days~~  
40 ~~shall, upon the 31st consecutive day, constitute a new and separate~~  
41 ~~offense and shall continue to constitute a new and separate offense upon~~  
42 ~~completion of every 30 days thereafter for as long as the offense~~  
43 ~~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.

by a sex offender, as defined in K.S.A. 22-4902, and amendments thereto,

(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.

by a sex offender, as defined in K.S.A. 22-4902, and amendments thereto,

(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

(3) Violation of the Kansas offender registration act by a violent offender or drug offender, as defined in K.S.A. 22-4902, and amendments thereto, is a severity level 10, nonperson felony.

(4) Aggravated violation of the Kansas offender registration act by a violent offender or drug offender, as defined in K.S.A. 22-4902, and amendments thereto, is a severity level 10, nonperson felony.



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

Sam Brownback, Governor

## MEMORANDUM

TO: Rep. Pat Colloton, Chair, House Committee on Corrections and Juvenile Justice

FROM: Sarah Fertig, Executive Director

DATE: March 10, 2011

RE: Requested information re: impact of HB 2322 if the penalty for registration failures is changed to a severity level 10, person felony

The Kansas Sentencing Commission's Senior Research Analyst, Fengfang Lu, has reviewed the potential impact of HB 2322 if different classes of offenders subject to registration requirements faced different penalties for registration noncompliance. This memorandum includes separate impact assessments to compare the effects of current HB 2322 language versus a proposal to reduce the penalty for registration failures to a severity level 10, person felony for drug offenders and violent offenders. Although the Committee's request did not include sex offender registrations, we have included an impact statement for sex offenders for informational purposes.

According to the Kansas Sentencing Commission's database, of the offenders sentenced in FY 2010 for crimes requiring registration, 46.5% were drug offenders as defined by HB 2322, 41.6% were sex offenders as defined by HB 2322, and 11.9% were violent offenders as defined by HB 2322.

By contrast, of the 8,829 active offenders included in the KBI's offender registry, 67% are sex offenders, 24% are drug offenders, and 9% are violent offenders. For the purposes of conducting this impact assessment, we relied on the KBI's percentages because they represent cumulative data rather than a single fiscal year.

## ASSUMPTIONS

- It is assumed that if the severity level is dropped to nondrug severity level 10, actual sentences will follow trends observed in FY 2006, when registration failures were classified as severity level 10 felonies.
- The percentage of sentence served in prison is assumed to be 80% for offenders at severity level 10, which is consistent with the projections released in August 2010.
- It is assumed that 24% of the offenders will be drug offenders, 67% will be sex offenders and 9% will be violent offenders.
- It is also assumed that no offenders charged with a second registration offense will be permitted to plea down to a lower severity level.

## FINDINGS

- During FY 2010, **166** offenders were convicted under K.S.A. 22-4903. Of this number,
  - 47 (28%) offenders were sentenced to prison with an average length of sentence of 38 months, and

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- 119 (72%) offenders were sentenced to probation with an average underlying prison term of 41 months.
- During FY 2006, **39** offenders were convicted under K.S.A. 22-4903 at nondrug severity level 10. Of this number,
  - 10 (25.6%) offenders were sentenced to prison with an average length of sentence of 8 months, and
  - 29 (74.4%) offenders were sentenced to probation with an average underlying prison term of 9 months.

## IMPACT SUMMARY

If violation of K.S.A. 22-4903 for all offenders is reduced to a severity level 10, person felony, there would be a prison bed savings of **23** by FY 2012 and **122** by FY 2021.

If violation of K.S.A. 22-4903 for drug offenders is reduced to a severity level 10, person felony, there would be a prison bed savings of **6** by FY 2012 and **29** by FY 2021.

If violation of K.S.A. 22-4903 for sex offenders is reduced to a severity level 10, person felony, there would be a prison bed savings of **15** by FY 2012 and **82** by FY 2021.

If violation of K.S.A. 22-4903 for violent offenders is reduced to a severity level 10, person felony, there would be a prison bed savings of **2** by FY 2012 and **11** by FY 2021.

### Total Prison Bed Space Impact Comparison: Current HB 2322 Language versus All Registration Offenses Reduced to Severity Level 10, Person Felony

Fiscal Year	Current HB 2322 Language			All Registration Violations at Level 10		
	Current Policy N5	HB 2322 Policy 70% to N6 25% to N5 5% to N3	Change in Prison Beds Needed	Current Policy N5	Proposed Policy N10	Change in Prison Beds Needed
2012	48	81	33	48	25	-23
2013	97	152	55	97	25	-72
2014	131	192	61	131	24	-107
2015	135	199	64	135	26	-109
2016	137	201	64	137	26	-111
2017	142	200	58	142	26	-116
2018	142	209	67	142	28	-114
2019	147	214	67	147	28	-119
2020	148	219	71	148	27	-121
2021	153	226	73	153	31	-122



### Drug Offenders Only: Prison Bed Space Impact Comparison

Fiscal Year	Current HB 2322 Language			Drug Offender Registration Violations at Level 10		
	Current Policy N5	HB 2322 Policy 70% to N6 25% to N5 5% to N3	Change in Prison Beds Needed	Current Policy N5	Proposed Policy N10	Change in Prison Beds Needed
2012	12	19	8	12	6	-6
2013	23	36	13	23	6	-17
2014	31	46	15	31	6	-26
2015	32	48	15	32	6	-26
2016	33	48	15	33	6	-27
2017	34	48	14	34	6	-28
2018	34	50	16	34	7	-27
2019	35	51	16	35	7	-29
2020	36	53	17	36	6	-29
2021	37	54	18	37	7	-29

### Sex Offenders Only: Prison Bed Space Impact Comparison

Fiscal Year	Current HB 2322 Language			Sex Offender Registration Violations at Level 10		
	Current Policy N5	HB 2322 Policy 70% to N6 25% to N5 5% to N3	Change in Prison Beds Needed	Current Policy N5	Proposed Policy N10	Change in Prison Beds Needed
2012	32	54	22	32	17	-15
2013	65	102	37	65	17	-48
2014	88	129	41	88	16	-72
2015	90	133	43	90	17	-73
2016	92	135	43	92	17	-74
2017	95	134	39	95	17	-78
2018	95	140	45	95	19	-76
2019	98	143	45	98	19	-80
2020	99	147	48	99	18	-81
2021	103	151	49	103	21	-82

**Violent Offenders Only: Prison Bed Space Impact Comparison**

Fiscal Year	Current HB 2322 Language			Violent Offender Registration Violations at Level 10		
	Current Policy N5	HB 2322 Policy 70% to N6 25% to N5 5% to N3	Change in Prison Beds Needed	Current Policy N5	Proposed Policy N10	Change in Prison Beds Needed
2012	4	7	3	4	2	-2
2013	9	14	5	9	2	-6
2014	12	17	5	12	2	-10
2015	12	18	6	12	2	-10
2016	12	18	6	12	2	-10
2017	13	18	5	13	2	-10
2018	13	19	6	13	3	-10
2019	13	19	6	13	3	-11
2020	13	20	6	13	2	-11
2021	14	20	7	14	3	-11