

Kansas Offender Registration Act

A statutory, caselaw, and prior legislative proposals overview



WHAT THIS PRESENTATION COVERS

- What the Kansas Legislature did from 1993-2022 to get us to where we are now
- How the Kansas appellate courts have repeatedly upheld KORA requirements on adults and children
- If it is a “civil regulatory scheme” and not part of the sentence why are we talking about it at a Sentencing Commission workshop
- What the Sentencing Commission and other groups have proposed to modify KORA



STATUTORY HISTORY

HABITUAL SEX OFFENDER REGISTRATION ACT

- ▶ created April 1993
- ▶ covered people who had been convicted twice of a sexually violent crime (list is on next slide)
- ▶ required registration in county where they live - 10 years
- ▶ open to law enforcement only
- ▶ failing to comply was a Class A misdemeanor
- ▶ side note (for context): this is about three months before the debut of the Kansas Sentencing Guidelines Act

KANSAS SEX OFFENDER REGISTRATION ACT

- ▶ expanded in April 1994 to include first-time offenders and provide for public access at sheriffs' offices
- ▶ list of covered offenses:
 - Rape
 - Indecent liberties, aggravated indecent liberties with a child
 - Criminal sodomy, aggravated criminal sodomy
 - Indecent solicitation of a child, aggravated indecent solicitation of a child
 - Sexual exploitation of a child
 - Aggravated sexual battery
- Plus:
 - Any comparable conviction for a felony offense committed prior to this act
 - Any federal or state conviction for a felony offense that would be one of these crimes in KS
 - An attempt, conspiracy or criminal solicitation of one of the above crimes
 - Any act determined beyond a reasonable doubt to have been sexually motivated

KANSAS OFFENDER REGISTRATION ACT

- ▶ 1997: changed name of the Act (which remains the same to this day)
- ▶ 1997: all levels of murder and manslaughter added
- ▶ 1997: added these crimes when the victim is under 18:
 - Kidnapping, Aggravated kidnapping
 - Criminal restraint, except by a parent
 - Adultery
 - Criminal sodomy
 - Promoting prostitution, Patronizing a prostitute
 - Lewd and lascivious
 - Unlawful sexual relations
 - Any conviction for a comparable offense in effect at any time prior to the effective date of this act, or any federal or other state conviction for one of these offenses
 - Any attempt, conspiracy or criminal solicitation of these victim-under-18 crimes

EXPANSION CONTINUES

- ▶ 1999: penalty changed from a misdemeanor to a SL 10 nonperson felony; some aggravated offenses increased from 10 years to life
- ▶ 2001: added people civilly committed as sexually violent predators
- ▶ 2002: added children adjudicated of sexually violent crimes
- ▶ 2006:
 - penalty increased from SL 10 to SL 5 and changed to a person felony
 - special rule makes all KORA violations presumptive prison
 - for context, this was also the year of Jessica's Law
 - people with convictions from other states have to register for whichever timeframe is longer

BIG INCREASES IN PEOPLE COVERED

- ▶ Also 2006: added a new category, *i.e.* people convicted of a person felony when a deadly weapon was used in the commission of the felony
- ▶ person felonies include aggravated battery, aggravated assault, aggravated robbery, etc. (has even been applied to person felonies where no deadly weapon is an element, but is part of the underlying facts)

\$20 FEE

- ▶ Also 2006: \$20 quarterly fee required
- ▶ 2013: created a specific penalty for not paying \$20 - a Class A misdemeanor if not paid within 15 days; SL 9 felony if two or more payments have not been made (that's a person felony) - strict liability offense
- ▶ Can get a waiver if prior to reporting and within three years there has been a court finding of indigence
- ▶ *State v. Owens*, 55 Kan. App. 2d 290 (2018): procedural due process violation as applied - no one (including Legislature) gave him notice of a procedure to get such a finding
- ▶ *Owens* has not been addressed by the Legislature

BIG INCREASES, CON'T.

- ▶ 2007: added drug offenders (manufacturing, possession of precursors, distribution or possession with intent)
- ▶ the bill started out with just manufacturing
- ▶ floor amendment brought by then-Senator Schmidt based on a constituent
- ▶ covered all possession with intent; did not have a start date so applied retroactively until 2013
- ▶ had a manufactured-for-personal-use exception
- ▶ included federal and out-of-state convictions
- ▶ Also 2007: did away with reminders (postcards to registrants)

SWEEPING CHANGES IN 2011

- ▶ KBI-led Working Group proposed changes in order to come into compliance with SORNA (Sex Offender Registration and Notification Act, which is Title I of the Adam Walsh Child Protection and Safety Act of 2006), but Group suggested things that exceeded requirements
- ▶ SORNA has nothing to do with violent or drug categories, but no attempt was made to treat those registrants differently
- ▶ did away with personal use exception, added attempts/consp./solicit., made all kidnappings registerable offenses
- ▶ penalty changed from SL 5 to SL 6 (first offense), SL 5 (second offense), or SL 3 (third or subsequent, or violation over 180 days)
- ▶ expanded what had to be reported, made reporting quarterly, required changes to be reported within three business days

2012-2016 CHANGES

- ▶ 2012: added some juvenile adjudications; expungement changes; employment information not on website (but still available when you sign up for community notifications)
- ▶ 2013: drug offender category changed to be convictions after July 1, 2007
- ▶ 2016: Sentencing Commission proposal—for CH purposes, KORA violations scored as nonperson felonies if the registrant registers for a nonperson offense (and a person felony if registrants registers for a violent or sex offense) (and it counts in criminal history going by what it is at the time of current offense)

2017-2022 CHANGES

- ▶ 2017: added promoting the sale of sexual relations to the list of sexually violent offenses
- ▶ 2021: added new crime of sexual extortion to list
- ▶ 2022: created exit mechanism for drug registrants; added three subsections of breach of privacy and internet trading in child pornography to list of registerable offenses
- ▶ No changes since 2022

THE HOW OF SOME CHANGES

- ▶ 15 of the last 31 years had substantive changes
- ▶ legislators rarely speak about their reasons for supporting (or not) changes to KORA—the journals of the House and Senate for votes on amendments to KORA in 2005, 2006, 2007, 2010, 2011, 2012, 2013, and 2016 contain only two explanations of vote (one in 2005 and one in 2006)
- ▶ 2006: unknown who suggested adding the new category of any person felony with any deadly weapon—it was none of the three conferees at the only hearing; the jump in KORA noncompliance penalty was done on the House floor; provisions not heard on Senate side—was done in conference committee
- ▶ 2007: adding distribution offenses was done on the Senate floor; KBI cautioned against it
- ▶ 2011: sweeping changes not heard on Senate side—was done in conference committee

JUVENILE REGISTRATION

- ▶ children 14 years old or older have to register for life for crimes that would be offgrid or SL 1 if an adult committed them
 - ▶ rape
 - ▶ aggravated criminal sodomy
 - ▶ aggravated human trafficking
 - ▶ some electronic solicitation
- ▶ this includes a 14 year old having voluntary contact with a 13 year old

JUVENILE REGISTRATION

- ▶ court has three choices for children under 14 years of age who are adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime (including offgrid or SL 1):
 - ▶ child required to registered until age 18 or five years from adjudication or release, whichever is later;
 - ▶ not require registration; or
 - ▶ require it but not make it public
- ▶ same options as above for a child 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime that would not be offgrid or a SL 1

JUVENILE REGISTRATION

- ▶ because it covers adjudications for things that would constitute a sexually violent crime if child had been an adult, then that means a child may be required to register as a sex offender “for any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated”
- ▶ children subject to same requirements as adults, etc. - prosecuted for failure to comply

So to sum up...

THEN VS. NOW

1993-94

A completed act, attempt, conspiracy, or criminal solicitation of:

Rape

Indecent liberties, aggravated indecent liberties with a child

Criminal sodomy, aggravated criminal sodomy

Indecent solicitation of a child, aggravated indecent solicitation of a child

Sexual exploitation of a child

Aggravated sexual battery

and

Any act determined beyond a reasonable doubt to have been sexually motivated

Register for 10 years

Case No. _____

OFFENDER REGISTRATION SUPPLEMENT – K.S.A. 22-4901 et seq. (PAGE 1 of 2)
(If applicable, complete both pages and attach to the Journal Entry.)

SECTION A. REGISTRATION REQUIREMENT - Check appropriate boxes to indicate the REASON for registration. See K.S.A. 22-4902(a)

Offender required by court order to register for an offense not otherwise required as provided by the Kansas Offender Registration Act

_____ Enter age of victim (K.S.A. 22-4904(a)(2))

Offender required to register due to **SEX OFFENDER** status as indicated by any of the following:

Conviction of any of the following crimes:

<input type="checkbox"/> Sexual Battery – K.S.A. 21-5505(a)	<input type="checkbox"/> Sexual Extortion – K.S.A. 21-5515
<input type="checkbox"/> Breach of Privacy- K.S.A. 21-6101(a)(6)-(8)	<input type="checkbox"/> Any conviction for any comparable offense
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of a comparable crime	

Conviction of any of the following crimes when one of the parties involved is under 18 years of age:

<input type="checkbox"/> Adultery – K.S.A. 21-5511	<input type="checkbox"/> Criminal Sodomy - K.S.A. 21-5504(a)(1) or (a)(2)
<input type="checkbox"/> Promoting Sale of Sexual Relations – K.S.A. 21-6420	<input type="checkbox"/> Buying Sexual Relations – K.S.A. 21-6421
<input type="checkbox"/> Lewd and Lascivious Behavior – K.S.A. 21-5513	<input type="checkbox"/> Conviction for any comparable offense
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Conviction of any of the following sexually violent crimes or adjudication as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime, UNLESS the court finds on the record that the act involved non-forcible sexual conduct, the victim was at least 14 and the offender not more than 4 years older than victim:

<input type="checkbox"/> Indecent Liberties With a Child – K.S.A. 21-5506(a)	<input type="checkbox"/> Criminal Sodomy – K.S.A. 21-5504(a)(3),(a)(4)
<input type="checkbox"/> Rape – K.S.A. 21-5503	<input type="checkbox"/> Indecent Solicitation of a Child – K.S.A. 21-5508(a)
<input type="checkbox"/> Agg. Indecent Liberties With a Child – K.S.A. 21-5506(b)	<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510
<input type="checkbox"/> Agg. Criminal Sodomy – K.S.A. 21-5504(b)	<input type="checkbox"/> Commercial Sexual Exploitation of a Child – K.S.A. 21-6422
<input type="checkbox"/> Agg. Indecent Solicitation of a Child – K.S.A. 21-5508(b)	<input type="checkbox"/> Agg. Incest – K.S.A. 21-5604(b)
<input type="checkbox"/> Agg. Sexual Battery – K.S.A. 21-5505(b)	<input type="checkbox"/> Unlawful Sexual Relations - K.S.A. 21-5512
<input type="checkbox"/> Electronic Solicitation – K.S.A. 21-5509	<input type="checkbox"/> Promoting the Sale of Sexual Relations - K.S.A. 21-6420
<input type="checkbox"/> Agg. Human Trafficking, if committed in whole or in part for the purpose of sexual gratification of the defendant or another - K.S.A. 21-5426(b)	
<input type="checkbox"/> Internet Trading In Child Pornography – K.S.A. 21-5514(a)	
<input type="checkbox"/> Agg. Internet Trading in Child Pornography – K.S.A. 21-5514(b), if the victim is at least 14 years of age but less than 18 years of age	
<input type="checkbox"/> Any conviction for any comparable offense	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of a sexually violent crime	
<input type="checkbox"/> Any act determined beyond a reasonable doubt to have been sexually motivated AND the act did not involve non-forcible sexual conduct between a victim at least 14 and offender no more than 4 years older than victim – K.S.A. 22-4902 (c)(19)	

Offender required to register due to **VIOLENT OFFENDER** status (Indicated by conviction of any of the following crimes):

<input type="checkbox"/> Capital Murder – K.S.A. 21-5401	<input type="checkbox"/> Murder in the First Degree – K.S.A. 21-5402
<input type="checkbox"/> Murder in the Second Degree - K.S.A. 21-5403	<input type="checkbox"/> Voluntary Manslaughter - K.S.A. 21-5404
<input type="checkbox"/> Involuntary Manslaughter - K.S.A. 21-5405(a)(1), (a)(2) or (a)(4)	<input type="checkbox"/> Kidnapping - K.S.A. 21-5408(a)
<input type="checkbox"/> Agg. Kidnapping - K.S.A. 21-5408(b)	<input type="checkbox"/> Criminal Restraint - K.S.A. 21-5411
<input type="checkbox"/> Agg. Human Trafficking, if not committed in whole or in part for the purpose of sexual gratification of the defendant or another – K.S.A. 21-5426(b)	<input type="checkbox"/> (except by parent, and only when victim is less than 18 years of age)
<input type="checkbox"/> Any conviction for any comparable offense	
<input type="checkbox"/> Any out of state conviction for an offense that under the laws of Kansas would be an offense listed in this section	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
<input type="checkbox"/> Any person felony with court finding on the record that such felony was committed with a DEADLY WEAPON (On or after July 1, 2006)	
<input type="checkbox"/> Any conviction for any comparable person felony, committed with a DEADLY WEAPON	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of a person felony committed with a DEADLY WEAPON	

Offender required to register due to **DRUG OFFENDER** status (Indicated by conviction of any of the following crimes):

<input type="checkbox"/> Manufacture or attempted manufacture of any <u>controlled substance</u> – K.S.A. 21-5703	
<input type="checkbox"/> Possession of precursors with intent to manufacture any <u>controlled substance</u> – K.S.A. 21-5709(a)	
<input type="checkbox"/> Cultivation, Distribution, Possession with intent to distribute <u>opiates, opium or narcotic drugs or any stimulant</u> in K.S.A. 65-4107(d)(1), (d)(3), or (f)(1) – K.S.A. 21-5705(a)(1), ONLY	
<input type="checkbox"/> Any conviction for any comparable offense	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Case No. _____

OFFENDER REGISTRATION SUPPLEMENT CONT. – K.S.A. 22-4901 et seq. (PAGE 2 of 2)

SECTION B. REGISTRATION TERMS - check appropriate boxes indicating REQUIRED TERM of registration See K.S.A. 22-4906

Offender must register for 15 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 15 YEARS from the date of conviction due to conviction of any of the following crimes:

<input type="checkbox"/> Capital Murder - K.S.A. 21-5401	<input type="checkbox"/> Murder in the First Degree – K.S.A. 21-5402
<input type="checkbox"/> Murder in the Second Degree – K.S.A. 21-5403	<input type="checkbox"/> Voluntary Manslaughter – K.S.A. 21-5404
<input type="checkbox"/> Involuntary Manslaughter – K.S.A. 21-5405(a)(1), (a)(2) or (a)(4)	<input type="checkbox"/> Sexual Battery- K.S.A. 21-5505(a)
<input type="checkbox"/> Promoting the Sale of Sexual Relations - K.S.A. 21-6420	<input type="checkbox"/> Sexual Extortion – K.S.A. 21-5515
	<input type="checkbox"/> Breach of Privacy – K.S.A. 21-6101(a)(6)-(8)

Criminal Restraint – K.S.A. 21-5411 (except by parent, and only when victim is less than 18 years of age)

Any act determined beyond a reasonable doubt to have been sexually motivated AND the act did not involve non-forcible sexual conduct between a victim at least 14 and offender no more than 4 years older than victim – K.S.A. 22-4902(c)(19)

Any conviction of a person felony w/ court finding on the record that such felony was committed with a **DEADLY WEAPON**- K.S.A. 22-4902(e)(2)

An offense not otherwise required, as provided by the Kansas Offender Registration Act, K.S.A. 22-4902(a)(5)

Manufacture or attempted manufacture of any controlled substance – K.S.A. 21-5703

Possession of precursors with intent to manufacture any controlled substance – K.S.A. 21-5709(a)

Cultivation, Distribution, Possession with intent to distribute opiates, opium or narcotic drugs or any stimulant in K.S.A. 65-4107(d)(1), (d)(3), or (f)(1) – K.S.A. 21-5705(a)(1), **ONLY**

Any of the following crimes when one of the parties is less than 18 years of age:

<input type="checkbox"/> Adultery - K.S.A. 21-5511	<input type="checkbox"/> Buying Sexual Relations – K.S.A. 21-6421
<input type="checkbox"/> Lewd and Lascivious Behavior – K.S.A. 21-5513	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Offender must register for 25 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 25 YEARS from the date of conviction due to conviction of any of the following crimes:

<input type="checkbox"/> Indecent Solicitation of a Child – K.S.A. 21-5508(a)	<input type="checkbox"/> Electronic Solicitation – K.S.A. 21-5509
<input type="checkbox"/> Agg. Incest – K.S.A. 21-5604(b)	<input type="checkbox"/> Indecent Liberties With a Child – K.S.A. 21-5506(a)
<input type="checkbox"/> Unlawful Sexual Relations – K.S.A. 21-5512	<input type="checkbox"/> Agg. Sexual Battery – K.S.A. 21-5505(b)
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, if the victim is at least 14 years of age but less than 18 years of age	
<input type="checkbox"/> Promoting Sale of Sexual Relations – K.S.A. 21-6420, if the victim is at least 14 years of age but less than 18 years of age	
<input type="checkbox"/> Criminal Sodomy - K.S.A. 21-5504(a)(1) or (a)(2) when one of the parties involved is less than 18 years of age	
<input type="checkbox"/> Internet Trading In Child Pornography – K.S.A. 5514(a)	
<input type="checkbox"/> Agg. Internet Trading in Child Pornography – K.S.A. 21-5514(b), if the victim is at least 14 years of age but less than 18 years of age	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Offender is subject to LIFETIME registration due to any of the following:

<input type="checkbox"/> 2 nd or Subsequent conviction of an offense requiring registration	
<input type="checkbox"/> Conviction of any of the following crimes:	
<input type="checkbox"/> Rape – K.S.A. 21-5503	
<input type="checkbox"/> Agg. Kidnapping – K.S.A. 21-5408(b)	
<input type="checkbox"/> Kidnapping – K.S.A. 21-5408(a)	
<input type="checkbox"/> Agg. Criminal Sodomy – K.S.A. 21-5504(b)	
<input type="checkbox"/> Criminal Sodomy – K.S.A. 21-5504(a)(3) or (a)(4)	
<input type="checkbox"/> Agg. Indecent Liberties With a Child – K.S.A. 21-5506(b)	
<input type="checkbox"/> Agg. Indecent Solicitation of a Child – K.S.A. 21-5508(b)	
<input type="checkbox"/> Agg. Human Trafficking – K.S.A. 21-5426(b)	
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, if the victim is less than 14 years of age	
<input type="checkbox"/> Commercial Sexual Exploitation of a Child – K.S.A. 21-6422	
<input type="checkbox"/> Promoting Sale of Sexual Relations – K.S.A. 21-6420, if the victim is less than 14 years of age	
<input type="checkbox"/> Agg. Internet Trading in Child Pornography – K.S.A. 21-5514(b), if the victim is less than 14 years of age	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Duration determined by diversionary agreement, probation order or juvenile sentencing order: _____ years _____ months (K.S.A. 22-4906(i))

22-4904. Registration of offender.

(a) Within 15 days of the sex offender coming into any county in which the sex offender resides or is temporarily domiciled for more than 15 days, the sex offender shall register with the sheriff of the county.

(b) (1) If any person required to register as provided in this act changes the address of their residence, the sex offender shall, within 10 days, inform in writing the law enforcement agency where last registered of the new address.

(2) The law enforcement agency shall, within three days of receipt of the new address, forward this information to the Kansas bureau of investigation and to the law enforcement agency having jurisdiction of the new place of residence.

ACKNOWLEDGEMENT OF THE OFFENDER

I have been convicted or adjudicated of a crime that requires registration under the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., hereafter referred to as "the Act", and must honor all duties specified by the Act.

At the time of conviction or adjudication, the court will complete a notice of duty to register if I am released prior to sentencing. Within three (3) business days, I will report 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 I reside, maintain employment or attend school, to complete the registration form. See K.S.A. 22-4901 (a)(1)

If in the custody of a correctional facility, I will register with the correctional facility within three business days of initial custody and shall not be required to update such registration until released from custody, granted work release or otherwise allowed to leave the grounds of the correctional facility. See K.S.A. 22-4905 (d)

Within three (3) days of coming into any county or location of jurisdiction where I reside or intend to reside, maintain employment or intend to maintain employment, attend school or intend to attend school, I must register with each registering law enforcement agency in the county or location of jurisdiction. Each time I register, I must be photographed, pay a registration fee of \$20, and complete the registration form with all information and updated information required for registration as provided in K.S.A. 22-4907. In addition to the Kansas Offender Registration Act, sex offenders who reside, work or attend school on tribal land shall register pursuant to tribal law. Tribes in the state of Kansas that require registration include the Prairie Band Potawatomi Nation, Iowa Tribe of Kansas and Nebraska and the Kickapoo Tribe in Kansas. See and Fox Nation has delegated the registration responsibility to the state of Kansas through the local sheriff's offices, therefore compliance with the Kansas law is sufficient. See K.S.A. 22-4905

I am required to report four times a year in person to the registering law enforcement agency in the county or location of jurisdiction where I reside, maintain employment, or attend school. After initial registration, I must report in the month of my birthday and every third, sixth, and ninth month occurring before and after my birth month.

- If my birthday is in January, April, July, or October, I am required to report to the registering law enforcement agency in January, April, July, and October.
- If my birthday is in February, May, August, or November, I am required to report to the registering law enforcement agency in February, May, August, and November.
- If my birthday is in March, June, September, or December, I am required to report to the registering law enforcement agency in March, June, September, and December. See K.S.A. 22-4905 (b)

If I am transient, I must report in person to the registering law enforcement agency of such county or location of jurisdiction in which I am physically present within three business days of arrival in the county or location of jurisdiction. I am required to register in person with the registering law enforcement agency every 30 days, or more often at the discretion of the registering law enforcement agency and provide a list of places where I have slept and otherwise frequented during the period of time since the last date of registration and provide a list of places where I may be contacted and where I intend to sleep and otherwise frequent during the period of time prior to the next required date of registration. See K.S.A. 22-4905 (c)

I must register in person upon any commencement, change or termination of residence location, employment status, school attendance or other information 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. See K.S.A. 22-4905 (b)

If required by out of state law, I will register in any out of state jurisdiction where I reside, maintain employment or attend school. See K.S.A. 22-4905 (g)

I am required to immediately renew any Kansas driver's license or state identification card issued to me, and I must annually renew such license or identification card on or before my birthday. The driver's license and identification card shall indicate that I am a registered offender. If maintaining primary residence in Kansas, I must surrender all other driver's licenses and identification cards from other states, territories, and the District of Columbia, except if I am or an immediate family member is maintaining active duty in any branch of the United States military. See K.S.A. 22-4905 (m), (n)

If this is my first adult conviction, I must register for fifteen (15) years unless a longer term is specified or present term limits are amended by statute for any of the following: Sexual battery, Adultery if one party is less than 18 years of age, Promoting the Sale of Sexual Relations if all parties are 18 years of age or older, Patronizing a prostitute if one party is less than 18 years of age, Lewd and lascivious behavior if one party is less than 18 years of age, Capital murder, Murder in the first degree, Murder in the second degree, Voluntary manslaughter, Involuntary manslaughter, Criminal restraint if the victim is less than 18 years of age, Any act which has been determined beyond a reasonable doubt to have been sexually motivated, Conviction 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, Unlawful manufacture or attempting such of any controlled substance or controlled substance analog, Possession of epinephrine, 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, Unlawful sale of or distribution of a controlled substance. This time period does not include any time incarcerated in any jail or correctional facility or any period of non-compliance with the requirements of the Act. If I am convicted as an adult of a second or subsequent offense(s) covered by the Act, I will be required to register for life. Any conviction for an attempt, conspiracy or solicitation requires registration for the same term as the underlying offense. See K.S.A. 22-4906 (a)

If this is my first adult conviction, I must register for twenty-five (25) years unless a longer term is specified or present term limits are amended by statute for any of the following: Criminal sodomy if victim is 16 or more years of age but less than 18 years of age and a member of the same sex or an animal, Indecent solicitation of a child, Electronic solicitation, Aggravated incest, Indecent liberties with a child, Unlawful sexual relations, Sexual exploitation of a child if the victim is 14 or more years of age but less than 18 years of age, Aggravated sexual battery, Promoting prostitution if the prostitute is 14 or more years of age but less than 18 years of age. This time period does not include any time incarcerated in any jail or correctional facility or any period of non-compliance with the requirements of the Act. If I am convicted as an adult of a second or subsequent offense(s) covered by the Act, I will be required to register for life. Any conviction for an attempt, conspiracy or solicitation requires registration for the same term as the underlying offense. See K.S.A. 22-4906 (b)

I must register for life if I am convicted of any of the following crimes: Rape, Aggravated indecent solicitation of a child, Aggravated indecent liberties with a child, Criminal sodomy if the victim is 14 or more years of age but less than 16 years of age or animal, Aggravated criminal sodomy, Aggravated human trafficking, Sexual exploitation of a child if the victim is less than 14 years of age, Commercial sexual exploitation of a child, Promoting prostitution if the prostitute is less than 14 years of age, Kidnapping, Aggravated kidnapping, Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. Any conviction for an attempt, conspiracy or solicitation requires registration for the same term as the underlying offense. See K.S.A. 22-4906 (d)

If adjudicated as a juvenile and required to register by law for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the non-drug grid or by court order, I must register until eighteen (18) years of age, or for five (5) years from the date of adjudication or release from confinement, whichever date occurs later. This time period does not include time incarcerated in any jail,

TODAY

juvenile facility or correctional facility or any period of non-compliance with the requirements of the Act. As a juvenile, the court may order that my registration not be an open record displayed on the public website. In such cases, it is my duty to provide a copy of the court order to the sheriff at the time of registration. See K.S.A. 22-4906 (f)

If I am 14 years of age or more and adjudicated as a juvenile of an offense that if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is an off-grid felony or a felony ranked in severity level 1 of the non-drug grid, I shall be required to register for life. See K.S.A. 22-4906 (g)

If I reside, maintain employment, or attend school in the state of Kansas on a full-time, part-time, or temporary basis and I have been convicted or adjudicated in an out of state court, or where I was required to register by an out of state law, or if I have been convicted or adjudicated of an offense comparable to a Kansas law that requires registration, I shall register for the same length of time required either by that out of state jurisdiction or by Kansas requirements, whichever term is longer. I must register in person with the registering law enforcement agency in the county or location of jurisdiction where I am residing, maintaining employment, or attending school within three (3) days to complete a registration form. See K.S.A. 22-4906 (k)

If receiving inpatient treatment at any treatment facility, inform the treatment facility of my 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 my presence at the treatment facility and the expected duration of the treatment. See K.S.A. 22-4905 (j)

If I travel outside of the United States, I will report in person to the registering law enforcement agency and provide written notice to the Kansas bureau of investigation 21 days prior to any such travel. I will provide an itinerary including, but not limited to, destination, means of transport and duration of travel. See K.S.A. 22-4905 (p)

If I use the internet, I am required to report to the registering law enforcement agency any and all: email addresses; online identities; information relating to membership in any and all personal web pages or online social networks; and internet screen names. See K.S.A. 22-4907 (a) (19)

If I fail to register, fail to update my registration, provide any false information or otherwise violate any requirement of the Act, I have committed a violation of the Kansas offender registration Act. A first conviction of a violation of the Kansas offender registration act is a severity level 6 felony; upon a second conviction, a severity level 5 felony; and upon a third or subsequent conviction, a severity level 3 felony. A new and separate offense of non-compliance will occur every 30 days that have elapsed until such time as I comply with the law. Aggravated violation of the Kansas offender registration Act is failing to register for more than 180 consecutive days and is a severity level 3 felony. If I fail to remit payment to the sheriff's office as required in subsection (1) of K.S.A. 22-4905, I have committed a violation of the Kansas offender registration act. A first conviction of a violation of not remitting payment within 15 days of registration is a class A misdemeanor. If I do not remit payment within 15 days of the most recent registration and two or more full payments have not been remitted to the sheriff's office, I have committed a violation of the Kansas offender registration act which is a severity level 9 felony. See K.S.A. 22-4902

Pursuant to Title 18, United States Code, Section 2250, if a sex offender fails to register or fails to report a change in residence, employment, or student status, and travels in or moves across state lines, the offender can be charged with a federal crime and punished by up to ten (10) years imprisonment.

I understand that if I receive an expungement for the crime that required registration, my registration obligation does not terminate. See K.S.A. 22-4909 (s)

TODAY

Duties of registrants include:

- ▶ quarterly visits (more if “transient”); changes must be reported within three business days
- ▶ register in counties where you work, live, and go to school
- ▶ email addresses, social media accounts, boats, cars, planes
- ▶ lengths of registration - 15, 25, or life
- ▶ driver’s license renewal annually
- ▶ noncompliance is presumptive prison; SL 6, 5, or 3
- ▶ no consequences for any other participant with duties in KORA if they fail to comply with their KORA requirements

22-4908. Court order to relieve offender of duty to register; limitations; hearing; procedure for convictions set aside.

(a) Any offender registered as provided in this act may apply to the sentencing court for an order relieving the offender of the duty of registration... [have a hearing]

(b) ...If, after the hearing involving such person, the court finds by a preponderance of the evidence that the sex offender is rehabilitated and that the sex offender, does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent crime, the court shall grant an order relieving the offender of the duty of further registration under this act.

(c) If, after the hearing involving a person who is an offender who was not required to register due to a conviction of a sexually violent crime ... the court finds by a preponderance of the evidence that the offender is rehabilitated, the court shall grant an order relieving the offender of the duty of further registration under this act.

2001 – 2022

No person required to register as an offender pursuant to the Kansas offender registration act shall be granted an order relieving the offender of further registration under this act.

This section shall include any person with any out-of-state conviction or adjudication for an offense that would require registration under the laws of this state.

(see also expungement, custody law)

TODAY

- ▶ K.S.A. 22-4908: explicitly provides for early removal for drug registrants – everyone else is still prohibited from early removal

- ▶ See also K.S.A. 21-6614 (expungement statute):

(f) Except as provided in K.S.A. 22-4908, and amendments thereto, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.



CASELAW

THE 1990'S AND 2000'S

- ▶ *State v. Myers*, 260 Kan. 669 (1996): only part of KORA that is punishment (thus it cannot be applied retroactively) is public access
- ▶ *Smith v. Doe*, 538 U.S. 84 (2003): SCOTUS found Alaska's act nonpunitive (but later the Alaska Supreme Court found it violated the state constitution's ex post facto clause)

2016-PRESENT

- ▶ April 22, 2016: *Doe v. Thompson* found KORA punitive in effect, but *Petersen-Beard* overruled it the same day
- ▶ *State v. Davidson*, 314 Kan. 88 (2021): upheld *Petersen-Beard*; this is the most recent time the Court considered this issue
- ▶ *State v. N.R.*, 314 Kan. 98 (2021): as applied to a person who was adjudicated as a child, retroactively requiring lifetime sex offender registration did not violate due process, nor the Ex Post Facto Clause of U.S. Constitution, nor was it cruel and/or unusual punishment (side note: Kansas Constitution has no Ex Post Facto Clause)

KANSAS APPELLATE COURT DECISIONS

- ▶ *State v. Huey*, 306 Kan. 1005 (2017) for registrants in violent category and *State v. Meredith*, 306 Kan. 906 (2017) for registrants in drug category: record must show “the clearest proof” that the scheme is punitive (as far as I know, this has never happened at the district or appellate court levels)
- ▶ *State v. Rocheleau*, 307 Kan. 761 (2018): KORA is not part of the sentence so if your notice of appeal says “sentencing” that does not cover KORA-related issues
- ▶ *State v. Marinelli*, 307 Kan. 768 (2018):
 - registration is not part of the sentence (also see *N.R.* three years later: “we find that the registration requirement ... is not part of a juvenile offender’s sentence”)
 - checking a box on the sentencing journal entry is good enough to make (e)(2) finding (*i.e.* any person felony with any deadly weapon)
 - district court’s failure to inform defendant on the record at the time of conviction about the procedure to register and the requirements of KORA did not excuse defendant’s obligation to register (“No provision in KORA creates a consequence for the failure to inform a defendant at the appropriate time.”)

KORA COVERS MUNICIPAL COURT CONVICTIONS

City of Shawnee v. Adem, 314 Kan. 12 (2021):

- conviction for sexual battery under city's municipal code was an "offense" within the meaning of the KORA
- conviction for sexual battery under city's municipal code was "comparable" to crime of sexual battery under the state criminal code, within the meaning of KORA
- KORA is not part of the Kansas Code of Criminal Procedure* and thus KORA's registration requirements applied to municipal court proceedings, although Legislature had not specifically stated that KORA applied to municipal court proceedings

*But it is in the Code of Criminal Procedure,
and has been for over 30 years:

Chapter 22. - CRIMINAL PROCEDURE

you are here: [Home](#) » [Statute](#) » [Chapter 22](#) » [Article 49](#) »

2023 Statute

Section Number

Full Text Search

Note: To access the Kansas Statutes Annotated which have been authenticated in accordance with the law, see the current printed bound volumes of the Kansas Statutes Annotated and the current printed volumes of the Cumulative Supplement to the Kansas Statutes Annotated as published by the Office of Revisor of Statutes.

[22-4901](#) - Citation of act.

[22-4902](#) - Definitions.

[22-4903](#) - Violation of act; aggravated violation; penalties; new and separate offense; prosecution, venue.

[22-4904](#) - Registration of offender; duties of court, correctional facility, treatment facility, registering law enforcement agency, Kansas bureau of investigation, attorney general; notification of schools and licensed child care facilities.

[22-4905](#) - Duties of offender required to register; reporting; updated photograph; fee; driver's license; identification card.

[22-4906](#) - Duration and termination of registration requirement.

[22-4907](#) - Information required in registration.

[22-4908](#) - Petition for relief from registration; procedure; elements of proof; expungement.

[22-4909](#) - Information subject to open records act; website posting; exceptions; nondisclosure of certain information.

[22-4910](#) - Effective date of act.

[22-4911](#) - No cause of action created against employee related to registration requirements.

[22-4913](#) - Offender residency restrictions; prohibition from adopting or enforcing; exceptions; definitions.

[Article 21. - TITLE AND SCOPE](#)

[Article 22. - GENERAL DEFINITIONS](#)

[Article 23. - PRELIMINARY PROCEEDINGS](#)

[Article 24. - ARREST](#)

[Article 25. - SEARCH AND SEIZURE](#)

[Article 26. - JURISDICTION AND VENUE](#)

[Article 27. - UNIFORM CRIMINAL EXTRADITION ACT](#)

[Article 28. - CONDITIONS OF RELEASE](#)

[Article 29. - PROCEDURE AFTER ARREST](#)

[Article 30. - GRAND JURIES](#)

[Article 31. - INQUISITIONS IN CRIMINAL CASES](#)

[Article 32. - PROCEEDINGS BEFORE TRIAL](#)

[Article 33. - COMPETENCY OF DEFENDANT TO STAND TRIAL](#)

[Article 34. - TRIALS AND INCIDENTS THERETO](#)

[Article 35. - POST-TRIAL MOTIONS](#)

[Article 36. - APPEALS](#)

[Article 37. - RELEASE PROCEDURES](#)

[Article 38. - COSTS IN CRIMINAL CASES](#)

[Article 39. - ABATEMENT OF COMMON NUISANCES](#)

[Article 40. - EXECUTION OF DEATH SENTENCES](#)

[Article 41. - PAROLE VIOLATIONS](#)

[Article 42. - OUT-OF-STATE WITNESSES](#)

[Article 43. - UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT](#)

[Article 44. - AGREEMENT ON DETAINERS](#)

[Article 45. - AID TO INDIGENT DEFENDANTS](#)

[Article 46. - GENERAL PROVISIONS](#)

[Article 47. - CRIMINAL HISTORY RECORD INFORMATION](#)

[Article 48. - FORFEITURE](#)

[Article 49. - OFFENDER REGISTRATION](#)

[Article 50. - NATIONAL CRIME PREVENTION AND PRIVACY COMPACT](#)

THERE ARE NO DEFENSES

State v. Anderson, 40 Kan. App. 2d 69 (2008): it doesn't matter if the sheriff doesn't tell you what you are supposed to do as a KORA registrant (*i.e.*, it doesn't matter that there are no consequences for anyone else's failures but the registrant)

2010: as part of Recodification, the Legislature amended K.S.A. 21-5203 to make KORA noncompliance a **strict liability offense**: "A person may be guilty of a crime without having a culpable mental state if the crime is ... (e) a violation of K.S.A. 22-4901 et seq."

State v. Stoll, 312 Kan. 726 (2021): even though KORA is a remedial statute, substantial compliance is not an available defense for offenders who fail to register

State v. Genson, 316 Kan. 130 (2022): strict liability criminalization of failure to register as a sex offender under KORA did not violate substantive due process

Why we are talking about this at the Sentencing Commission workshop

Offender Characteristics by Offense Type

Dimension	Number of Cases	Gender (%) - Male	Gender (%) - Ferr
Drugs	4429	71.9%	28
Burglary	793	86.9%	13
Agg Battery	746	87.3%	12
Theft	728	71.9%	28
DUI	450	78.5%	21
Fleeing and Eluding	386	90.7%	9
Agg Assault	383	89.0%	11
Criminal Threat	367	89.4%	10
Fail to Register	356	87.6%	12
Domestic Battery	265	97.7%	2
GRAND TOTAL	Count 8903	78.5%	21.

Distribution of Special Sentencing Rules

Special Rule	↓ Number	Percent
crime committed while incarcerated, probation, parole, etc.	4,057	44.7%
crime committed while on felony bond	2,297	25.3%
third or sub. drug possession	717	7.9%
person felony committed with a firearm	506	5.6%
offender registration act violation	310	3.4%

Why we are talking about this at the Sentencing Commission workshop

Jennifer Roth @JenniferRothKS · Mar 14, 2022

THIS ¹⁰⁰

Last year during argument, KS Supreme Court justices described our state registry as “tangled”, “jumbled”, and “a brain knot”. And non-law-trained people subjected to this so-called civil regulatory scheme face prison for 17-247 months for not getting it right. #ksleg

Stephen Hardwick @Nonfinality · Mar 14, 2022

People can go to prison for decades for not understanding this mass of text, which is not even one full sentence. These laws make my head spin, & I'm a public defender who's been litigating them for at least a decade.

§ 2950.04. Duty to register

(A) (1) Each of the following types of offender who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense that is not a registration-exempt sexually oriented offense shall register personally with the sheriff of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days, shall register personally with the sheriff of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in this state or another state, shall register personally with the sheriff of the county in which the offender is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than fourteen days or for an aggregate period of thirty or more days in that calendar year, shall register personally with the sheriff of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state more than fourteen days or for an aggregate period of thirty or more days in that calendar year, and shall register with the sheriff or other appropriate person of the other state immediately upon entering into any state other than this state in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than this state for more than fourteen days or for an aggregate period of thirty or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in this state, the other state, or a different state:

III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	88 79 74	77 72 68	71 66 61	61 59 55
V	196 180 122	128 120 114	60 57 58	55 52 50	51 49 46	47 44 41	48 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17

Why we are talking about this at the Sentencing Commission workshop

Excerpt from *State v. N.R.*, 314 Kan. 98, 100 (2021):

Each affidavit purportedly explained the various ways in which KORA's lifetime registration requirements specifically act as a punishment for N.R., his fiancée, and his young child.

Both affidavits described how difficult it was for them to find and secure housing due to N.R.'s status as a sex offender;

how hard it was for N.R. to find and maintain employment;

how the \$20 reporting fee imposed additional financial strain on the family because they already were a low-income household;

how N.R. continued to struggle with his sobriety because treatment facilities and sober living houses across Kansas would turn him away due to his status, which led to homelessness and seeking shelter in drug houses;

how neighbors and community members ostracized N.R. and his family when those individuals learned of his status, including two occasions where N.R. was threatened at gunpoint;

how N.R. and his fiancée feared for their child's safety;

how N.R. was concerned about not being able to participate in his child's school activities due to his status;

how N.R. suffered from depression as a result of the lifetime registration requirements; and

how N.R. attempted suicide as a result of his depression.

Why we are talking about this at the Sentencing Commission workshop

Arguably, under the current KORA, public safety has become a pretext. Without differentiating between the 18-year-old immature, marginally intelligent, sexually naïve person who succumbs to the seduction of a mature-acting, sexually informed 15-year-old child and the 30-year-old confirmed pedophile that rapes preschoolers and is not amenable to rehabilitation, KORA fails to effectively notify the public of the danger of recidivism. Too much is too little.

Doe v. Thompson, 304 Kan. 291, 326, 373 P.3d 750, 770 (2016), *overruled by State v. Petersen-Beard*, 304 Kan. 192, 377 P.3d 1127 (2016)

Why we are talking about this at the Sentencing Commission workshop

Under KORA, these things are *not* allowed, which seems counter to what we know about best practices in other supervision contexts:

- ▶ being released early (except drug registrants, who can at least apply)
- ▶ expunging any convictions while registering
- ▶ arguing your noncompliance was unintentional
- ▶ risk assessments or individualized determinations
- ▶ any discretion by the court, in most instances

Why we are talking about this at the Sentencing Commission workshop

SOME (ADMITTEDLY) OLDER KORA NUMBERS

As of the first quarter of FY 19, registrants were:

4,497 drug

4,782 violent

10,272 sex

For a total of 19,551 registered offenders (not sure if this included juvenile registrants)

There were 336 lifetime drug registrants

In FY 2017, 1,357 offenders were required to register by courts;

100 people sent to prison in FY 2017 for KORA noncompliance

In FY 2018, 1,321 offenders were required to register by courts;

116 people were sent to prison for KORA noncompliance (53 were drug offenders - not sure of other breakdown)

Why we are talking about this at the Sentencing Commission workshop

MORE RECENT NUMBERS

in FY 2021:

275 people were convicted of failing to comply with KORA
(12 of those convictions were for aggravated failure)

66% got probation

130 people went to prison for an avg. sentence of 34 months
(the highest number of people (86) went to prison for SL 6)

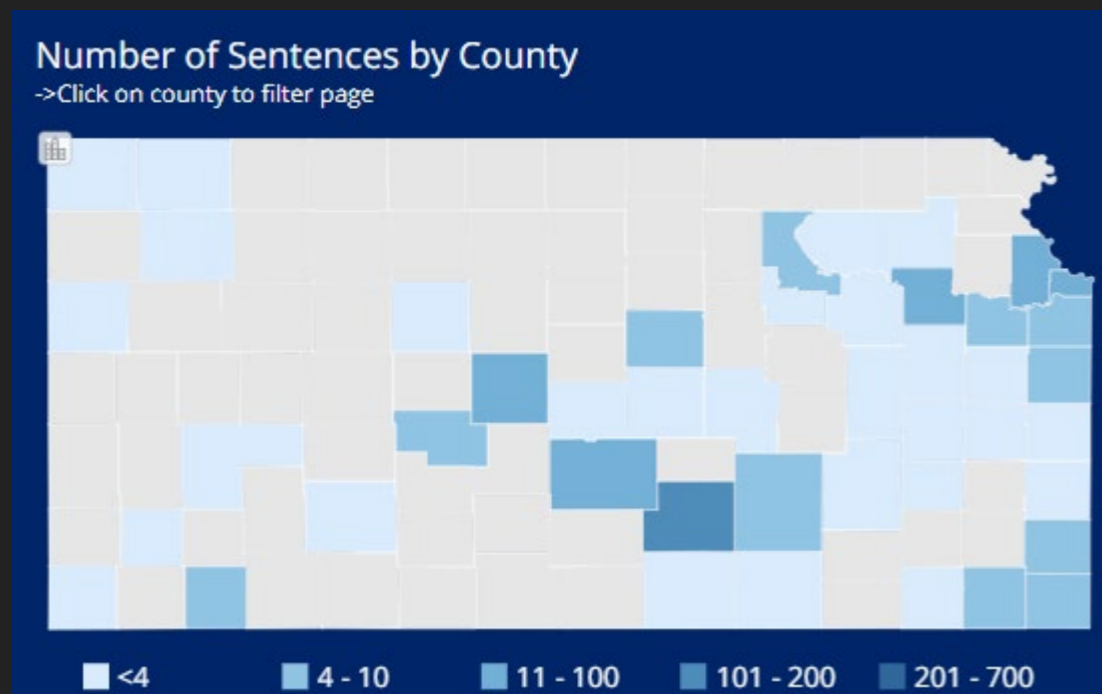
Why we are talking about this at the Sentencing Commission workshop

LATEST DASHBOARD NUMBERS

356 convictions for noncompliance in FY 2023 (up from 303 in 2022)

138 of them were Sedgwick, 36 Shawnee, and 23 Wyandotte

67% were SL 6



Why we are talking about this at the Sentencing Commission workshop, con't.

Operating Cost by Location FY 2023				
	Average Daily Population (ADP)	Annual Cost per Facility	Annual Cost Per Resident	Daily Cost per Resident
El Dorado	656	\$ 27,361,001	\$ 41,708.84	\$ 114.27
Ellsworth	1602	\$ 64,324,261	\$ 40,152.47	\$ 110.01
Hutchinson	1,723	\$ 63,947,169	\$ 37,113.85	\$ 101.68
Lansing	1,842	\$ 62,612,877	\$ 33,991.79	\$ 93.13
Larned	520	\$ 21,212,066	\$ 40,792.43	\$ 111.76
Norton	858	\$ 31,251,082	\$ 36,423.17	\$ 99.79
Topeka	725	\$ 32,191,398	\$ 44,401.93	\$ 121.65
Winfield/WWRF	649	\$ 30,190,237	\$ 46,518.08	\$ 127.45
Total	8575	\$ 333,090,091	\$ 38,844.33	\$ 106.42
Average		\$ 41,636,261	\$ 40,137.82	\$ 109.97

Fiscal Year 2023

\$40,137.82 annual cost per resident
 x 227 people sentenced to prison

\$9,111,285.14 price for one year*

*NOTE: people were doing more than one year--
 29 people went for SL 6, 13 for SL 5, 1 for SL 3,
 1 for SL 7, and 2 for SL 8

Gender of Offender

Race of Offender

prison

Person or Non-Person

Fail to Register

Severity Level

Drug or Non-Drug

Probation/Parole Violators

227
Individuals Sentenced

38
Parole Condition Violators

46
Probation Condition Violators

Avg Offense Age
38.3
Years Old

Avg Sentence Age
39.7
Years Old

Offense to Sentence
520
Days on Avg

Why we are talking about this at the Sentencing Commission workshop, con't.

and imposed an almost five-years-long prison sentence based on what Mr. Whitaker didn't do, *i.e.* not report the same information twice to the same Sheriff's Department.

Treatment and supervision would have benefitted both Mr. Whitaker and his community. Instead, Kansas taxpayers are paying nearly \$185,000 to imprison Mr. Whitaker for a nonviolent offense with no victim. For a fraction of that cost, Mr. Whitaker could have gotten the treatment that the court identified as existing in the community. And that treatment would have been consistent with medically recognized best practices for treating substance abuse issues and preventing recidivism. Instead, the court locked up Mr.

Instead of ordering Mr. Payne to serve a jail sanction of 2, 3, or 60 days—all of which are authorized by K.S.A. 22-3716—the court revoked probation and sent Mr. Payne to prison to serve more than three times longer for an admittedly minor KORA violation than he served for the offenses that cause him to register. As of Fiscal Year 2022, the average yearly cost to imprison someone in Kansas was \$37,302.53. See Annual Report Fiscal Year 2022, Kansas Department of Corrections, p. 44. Kansas taxpayers will pay almost \$150,000 to imprison Mr. Payne for a one-month (at most) KORA violation, and Mr. Payne will lose 46 months of his liberty.

The district court abused its discretion when it revoked Mr. Martell's probation and sentenced him to prison for over 10 years for essentially telling the property manager that he did not live at the place on his registration form when, in fact, he did live there, which GPS monitoring confirmed. The Court of Appeals erred by affirming the district court.

 **Jennifer Roth** @JenniferRothKS · Apr 22, 2022

Today I had 3 clients lose their probation revocation appeals. These 3 people will be locked up for a collective 321 months—their sentences are 54, 122, and 136 months, which is 3x / 10x / 11x longer than the sentence was for the offense they have to register for. #ksleg 1/

 **Jennifer Roth** @JenniferRothKS · Apr 25

Appeal ends with no relief for this man. 10 years of his life for a 5-day registration violation. Over \$350,000 of KS tax dollars to imprison him. Yet KS offender registration isn't punishment, just a "civil regulatory scheme." And #ksleg did nothing this session about this law. ...

 **Jennifer Roth** @JenniferRothKS · Sep 20, 2022

Replying to @JenniferRothKS

The one instance is the State saying he didn't report a change of address w/in 3 business days. The State knew where he was (*i.e.* in jail) before they charged him with the KORA violation. Your tax dollars at work! #ksleg #butitsnotpunishment 🤔

Mr. Tafolla registers for a SL 7 aggravated assault from 2011. The State alleged he did not come in during January 2019, one of his four reporting months. The only details in the record about that noncompliance come from Mr. Tafolla at his sentencing, where he explained that he went to the state hospital during January and did not intend to miss.

He argued to remain on probation. The state opposed that, saying he was not amenable to probation, which is what the court also found. The court sent Mr. Tafolla to prison for 136 months.

Why we are talking about this at the Sentencing Commission workshop, con't.

probation. But the policy argument about the cost of incarceration is one for the Legislature, not the courts. And Brown did not raise these points in the district court. We



Nor has Payne shown an abuse of discretion. His argument that it is costly to the State and to Payne's liberty to imprison him for so long for a minor infraction is a policy argument for the Legislature, not the courts. And a reasonable judge could have found as this judge did. Payne thus fails to show that the district court abused its discretion.



conclusion in comparable circumstances. To support his position, he cites studies he says show that criminals with substance abuse problems tend to fare better in community treatment programs than in prison. And he says the cost to the State in maintaining a probationer is far less than the per capita cost of incarcerating that person. Whitaker did not present those specific policy arguments to the district court. Even if he had, they alone are insufficient to establish an abuse of discretion here.



So too here, Busch's policy arguments might be persuasive to the Legislature but are unfit to reverse the district court's decision. He failed to report to his probation officer





LEGISLATIVE PROPOSALS

SENTENCING COMMISSION AND JUDICIAL COUNCIL PROPOSALS

- ▶ 2017 HB 2086 (kept in manufacture and possession of precursors but removed other drug registrants) - hearing in House Corrections
- ▶ 2018 HB 2565 (removed all drug offenders) - hearing in House Corrections
- ▶ 2019 HB 2051 (eliminated drug registry and made all nonpayment of \$20 registration fee a Class A misdemeanor) – no hearing
- ▶ 2020 HB 2474 – hearing in House Corrections
- ▶ 2021 HB 2349 – hearing in House Corrections
- ▶ 2022 HB 2581 – no hearing
- ▶ 2023 HB 2212, 2213 – no hearing

It is important to note that registration of drug offenders is not required by the Sex Offender Registration and Notification Act, the federal act in which Kansas receives federal funding for being in substantial compliance. SORNA provides a comprehensive set of minimum standards for sex offender registration and notification in the United States. Kansas is one of only 18 states that participate. The question then becomes whether policy interests in tracking offenders for 15 years for certain drug offenses after they have served their time is reasonable. It also brings into question whether the registry is a deterrent, provides public safety or effective in decreasing recidivism.

As the Committee's study progressed, it focused on several major reforms to KORA. These include:

- 1) Creating an exit mechanism to give offenders the ability to petition the district court to be relieved of registration after a period of time in substantial compliance.
- 2) Repealing registration entirely for juvenile offenders.
- 3) Lowering the penalties for violations of KORA.
- 4) Decreasing the term of registration for some offenses, especially certain drug and violent offenses.

QUESTIONS? COMMENTS?

Jennifer Roth
jroth@sbids.org