

**REPORT OF THE JUDICIAL COUNCIL ADVISORY COMMITTEE
ON SEX OFFENSES AND REGISTRATION**

December 11, 2020

COMMITTEE ASSIGNMENT

The Judicial Council Advisory Committee on Sex Offenses and Registration (Committee) was formed in 2018 and asked to undertake a comprehensive review of the Kansas criminal code's sex offense structure and related registration requirements for both juveniles and adults. The Committee's assignment was later expanded to include a review of registration requirements for drug offenders and violent offenders, in addition to sex offenders.

The original study requests, which came from Reps. Russell Jennings and Blaine Finch, also asked that the Committee review three specific bills: 2018 H.B. 2738, H.B. 2739, and S.B. 265. The Committee made recommendations as to those three bills in a report to the Council in December 2019.

At the same time, the Committee made some preliminary recommendations that were approved by the Council and introduced as bills in the 2020 legislative session: 2020 H.B. 2473, amending the law relating to unlawful voluntary sexual relations between minors; 2020 H.B. 2474, reducing penalties for registration violations and creating a fee waiver mechanism; and 2020 H.B. 2475, reducing registration requirements for some drug crimes. All three bills were heard in the House Corrections and Juvenile Justice Committee but, because of the Covid-19 pandemic, the 2020 session came to an abrupt halt and the bills did not pass.

This report constitutes the Committee's final and complete set of recommendations relating to sex offenses and offender registration. It includes the same recommendations made last year as well as some new ones. The report will

identify which recommendations were the subject of legislation in 2020 and which are new.

COMMITTEE MEMBERSHIP

The members of the Advisory Committee on Sex Offenses and Registration are:

Hon. Ben Sexton, Chair, Abilene; Dickinson County District Judge

Natalie Chalmers, Topeka; Assistant Solicitor General

Sheriff Jeff Cope, Emporia

Jason Covington, Olathe; Johnson County Assistant District Attorney – Sex Crimes Unit

Jeff Cowger, Topeka; Chief Legal Counsel, Kansas Department of Corrections

Dr. Mitchell Flesher, Lenexa; clinical psychologist and attorney

Sen. Randall Hardy, Salina; State Senator from the 24th District

Rep. Susan Humphries, Wichita; State Representative from the 99th District

Rep. Russell Jennings, Lakin; State Representative from the 122nd District

Donna Longworth, Wichita; Sedgwick County Assistant District Attorney – Juvenile Division

Jennifer Roth, Topeka; Appellate Defender

Dionne Scherff, Overland Park; criminal defense attorney

Phil Stein, Shawnee; criminal defense attorney

Seth Wescott, Lenexa; licensed master’s level psychologist and sex offender treatment provider

Prof. Corey Rayburn Yung, Lawrence; KU School of Law

The Committee appreciates the continuing assistance of Natalie Scott of the Revisor’s Office.

SUMMARY OF RECOMMENDATIONS

Recommendations Relating to Offender Registration:

Create an exit mechanism to give offenders the ability to petition the district court to be relieved of registration after a period of time in successful compliance. Victims would receive notice, and offenders currently registering for life would have a mandatory risk assessment. The burden would be on the offender to demonstrate rehabilitation.

Repeal registration requirements for juvenile sex offenders except those waived to adult court or serving an adult sentence under extended juvenile jurisdiction, or juveniles ordered to register in an out-of-state jurisdiction.

Reduce penalties for registration violations to a Class B misdemeanor for a first offense; a Class A misdemeanor for a second offense; and a severity level 8 felony for a third or subsequent or aggravated offense. All violations would be classified as nonperson. A violation based on a failure to pay the fee would be a Class C misdemeanor. Also lower penalty for aiding a KORA violator. (2020 H.B. 2474)

Redefine KORA violations so that a new offense is committed every 90 days an offender is out of compliance, and an aggravated violation is committed when offender is out of compliance for one year. (2020 H.B. 2474)

Create a fee waiver process, and impose no fee for a minor. (2020 H.B. 2474)

Other miscellaneous KORA changes:

- Single point registration in county of residence only. (2020 H.B. 2474 as amended)
- Eliminate provisions that give courts unfettered discretion to impose registration for any offense not listed in KORA. Instead, allow parties to agree to registration for non-KORA offenses.
- Clarify that municipal court convictions are not registrable offenses under KORA.

Recommendations Relating to Offender Registration (cont.):

Sex Offenses –

- Repeal registration for some lower level offenses listed in K.S.A. 22-4902(b)(4), such as adultery and buying sexual relations.
- Change registration for lewd and lascivious behavior under K.S.A. 21-5513(a)(2) (public exposure) to require 15-year registration only when offense committed in presence of someone under 16 (felony violation).
- Require registration for internet trading in child pornography, K.S.A. 21-5514 (same terms as sexual exploitation of a child); and for breach of privacy under K.S.A. 21-6101(a)(6) and (a)(7) – 15 years.
- For sexually motivated offenses, amend the exception for “non-forcible sexual conduct when the victim was at least 14 years of age and the offender was not more than four years older than the victim” to make clear that victim must be a minor.

Drug Offenses –

- Reduce registration for possession of drug precursors and distribution offenses to 5 years private registration. (2020 HB 2475)
- Repeal lifetime registration for second time drug offenders. Registration terms for multiple drug offenses would run concurrently.

Violent Offenses –

- Repeal registration for criminal restraint, voluntary and involuntary manslaughter, and kidnapping and aggravated kidnapping of an adult.
- Increase registration to lifetime for capital murder and first degree murder.
- Change registration to 15 years for kidnapping of a minor.
- Change registration for person felony with deadly weapon finding to 5 years. Also, deadly weapon finding must be made on the record, “in open court and with particularity.”