



Kansas Bureau of Investigation

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Testimony in Support of HB 2568
Before the Senate Committee on Judiciary
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Chairman Owens and Members of the Committee,

Deputy Director Smith and I appear today on behalf of the Kansas Bureau of Investigation (KBI) and the Offender Registration Working Group (ORWG) to support HB 2568. The KBI has been charged with maintaining the state's offender registry since its inception in 1993. The ORWG is a multidisciplinary group consisting of representatives from law enforcement, prosecution, courts, community corrections, defense attorneys, the Kansas Juvenile Justice Authority, and the Kansas Department of Corrections. The mission of the ORWG is to bring interested entities and disciplines together in an open forum to address and improve the management of the Registered Offender Program in Kansas by reviewing and making recommendations related to legislation, enforcement and prosecution issues, the supervision of offenders required to register under the Kansas Offender Registration Act, and the overall improvement of administration of justice in this state. Meetings are held about quarterly but as often as deemed necessary by the body of the ORWG.

This bill would amend the Kansas Offender Registration Act to clarify duties of each registering entity and make technical changes to the act. This legislation is intended to protect children by providing a more consistent and comprehensive interstate system of managing sex offenders.

The KBI and the ORWG proposed HB 2568 amending the Kansas Offender Registration Act (K.S.A 22-4901, et seq.) to resolve several issues, concerns, and loopholes brought to our attention by prosecutors, courts, citizens and local law enforcement. In order to further improve the Kansas Offender Registration Act, the KBI and the ORWG are asking for some technical revisions to the Act.

In broad terms, the KBI and the ORWG proposed the following changes:

- Provides criteria to require registration in county of employment or school if offenders are employed/attending school for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

- Requires the court to register offenders at time of conviction/adjudication instead of sentencing or disposition.
- Removes treatment facilities as a registering entity
- Transfers responsibility of national sex offender registry (NSOR) entries from registering law enforcement agencies to KBI.

We do have some amendments to propose to HB 2568, as explained below.

Amendment #1 Restoring Sexual Battery Application to Adults and Juveniles

The term ‘sex offender’ is defined in K.S.A. 22-4902(b) to cover four basic classes of persons who are required to register:

1. Persons convicted of statutorily defined sexually violent offenses,
2. Juveniles adjudicated of sexually violent offenses, unless a court found exception applies.
3. Persons determined to be sexually violent predators, and
4. Persons convicted of a list of misdemeanor offenses where the victim is a minor.

Last year’s bill on this topic accidentally moved the misdemeanor crime of sexual battery from the list of sexually violent crimes, category 1, to the list of misdemeanors with child victims, category 4. Due to this mistake, while adults were required to register, there is no duration stated in 22-4906. Even worse, juveniles were no longer were required to register because it was moved from the definition of sexually violent crime and juveniles only register for sexually violent crimes. The working group recommended that the law be restored to what it was before the mistake.

Some members of the House Corrections and Juvenile Justice Committee apparently were concerned about the name (they felt that ‘sexually violent crime’ seemed worse, even though the label has nothing to do with the term of registration) and they struck this change back. Balloon number one restores the statutes concerning this crime back to what it was before last year’s change.

Amendment #2, Section 3, amending K.S.A. 22-4904 re time of journal entry

The duty to register and the length of registration starts at conviction, not sentencing, However, at the top of page 8, HB 2568 still requires the court “ensure the age of the victim is documented in the journal entry of conviction or adjudication.” Since there is no journal entry at the time the conviction occurs, this amendment merely moves that duty to sentencing, not at conviction.

Amendment #3 Addressing duty to register despite expungement

Last year’s bill attempted to clarify that an expungement does not relieve a person of the duty to register by prohibiting expungements. However, a 1987 Kansas appellate case, *State v Anderson*, 12 Kan.2d 342 (1987)

held that a person's interest in getting a conviction expunged is a right that cannot be changed later without violating the *ex post facto* clause in the constitution. The third amendment clarifies that there is still a duty to register, even if the conviction is expunged. The result is that the offender's information will not be available to the general public, just to law enforcement for investigative purposes.

Amendment #4
Public Access to the address where an offender is working.

The House added a provision making the address where an offender works only available at the local sheriff's office and prohibiting that information from being displayed on law enforcement agencies' websites. To be compliant with federal law, SORNA, it should be clarified that when a person signs up for community notification they will be electronically notified of the address of any offenders working within 1 mile of their location. An alternative is provided striking this amendment if the Senate would prefer to retain the public's access on the web to where offenders are employed.

We would be happy to stand for any questions.

**KBI Proposed Amendments to HB 2568 before Senate Judiciary
Amendment #1
Returning 'Sexual Battery' to original status**

Sec. 1. K.S.A. 2011 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means:

- (1) A sex offender, as defined in subsection (b);
- (2) a violent offender, as defined in subsection (e);
- (3) a drug offender, as defined in subsection (f);
- (4) any person who has been required to register under any out of state law or is otherwise required to be registered; and
- (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);
- (2) On or after April 14, 1994, 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), unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;
- (3) has been determined to be a sexually violent predator, as defined in subsection (d);
- (4) 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;

~~(5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;~~

~~(5) 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;~~

~~(6) (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~~

~~(7) (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, or any municipal conviction for an offense that under the laws of this state would be an offense defined in this subsection.~~

(c) “Sexually violent crime” means:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(6) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(11) electronic solicitation as defined by in K.S.A. 21-3523, prior to its repeal, and section 73 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, committed on or after April 17, 2008;

(12) unlawful sexual relations as defined in K.S.A. 21-3520, prior to its repeal, or section 76 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, ~~committed on or after July 1, 2010;~~

(13) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

~~(13) 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;~~

~~(13-14) any conviction or adjudication for an offense *in effect at any time prior to July 1, 2011*, that is comparable to a sexually violent crime as defined in this subsection, or any out of state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;~~

~~(14 15) 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 a sexually violent crime, as defined in this subsection; or~~

~~(15 16) any act which *at the time of sentencing for the offense* has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved nonforcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, “sexually motivated” means~~

that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

Amendment #2
amending Section 3, K.S.A. 22-4904, re time of journal entry

Sec. 3.

K.S.A. 2011 Supp. 22-4904 is hereby amended to read as follows: 22-4904. (a) At the time of ~~sentencing or disposition~~ *conviction or adjudication* for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall:

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

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

~~(A) (2) Complete the initial registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;~~

~~(B) (3) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender; and~~

~~(4) provide one copy of the form to the offender and, within three business days, send a copy of the form to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation;~~

~~(C) (5) order the offender to report within three business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends school, to complete the registration form with all information and any updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto; and~~

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

~~(4) (6) (2) ensure the age of the victim is documented in the journal entry of conviction or adjudication; and~~

(3) (2) if the offender is released, the court shall:

(A) Complete a notice of duty to register, which shall include title and statute number of conviction or adjudication, date of conviction or adjudication, case number, county of conviction or adjudication, and the following offender information: Name, address, date of birth, social security number, race, ethnicity and gender;

(B) require the offender to read and sign the notice of duty to register, which shall include a statement that the requirements provided in this subsection have been explained to the offender;

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

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

(D) provide one copy of the notice of duty to register to the offender and, within three business days, send a copy of the form to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation.

(b) At the time of sentencing or disposition for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall ensure the age of the victim is documented in the journal entry of conviction or adjudication.

~~(b)~~ (c) The staff of any correctional facility or the registering law enforcement agency's designee shall:

...

Amendment #3 Addressing duty to register despite expungement

Proposed amendment to 2012 HB 2568, Section 8, amending K.S.A. 2011 Supp. 22-4909

(a) K.S.A. 2011 Supp. 22-4909 is hereby amended to read as follows: 22-4909. (a) Except as prohibited by subsections (c) ~~and (d)~~, **(d) and (e), (e) and (f)** of this section and subsections ~~(e) and (f)~~ and (g) of K.S.A. 22-4906. . . .

~~(d)~~ **(e) Notwithstanding subsection (a), when a court orders expungement of a conviction that requires an offender to register pursuant to the Kansas offender registration act, the registration requirement for that conviction does not terminate. The offender shall be required to register continue registering pursuant to the Kansas offender registration act, but such registration shall not be open to inspection by the public or posted on any internet website. If a court orders expungement of a conviction that requires an offender to register pursuant to the Kansas offender registration act, and the offender has any other conviction requiring registration, the offender shall be required to register pursuant to the Kansas offender registration act and the registration for any conviction not expunged shall be open to inspection by the public and may be posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation, unless the registration has been ordered restricted pursuant to subsections (f) or (g) of K.S.A. 22-4906.**

~~(e)~~ **(f)** Notwithstanding subsection (a), the following information shall not be disclosed other than to law enforcement agencies. . . .

Amendment #4 Two versions dealing with whether offender's employment address should be available on the internet.

Amendment #4 - Version #1
Remove from general public websites but
allow when requested under community notification.

Sec. 8. K.S.A. 2011 Supp. 22-4909 is hereby amended to read as follows: 22-4909.

(a) Except as prohibited subsections (c), (d) and (e) of this section and subsections (e f) and (f g) of K.S.A. 22-4906, and amendments thereto, the statements or any other information required by the Kansas offender registration act shall be open to inspection by the public at the registering law enforcement agency, at the headquarters of the Kansas bureau of investigation and on any internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation that contains such statements or information, and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(b) Any information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall identify, in a prominent manner, whether an offender is a sex offender, a violent offender or a drug offender. Such internet websites shall include the following information for each offender:

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

(2) address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has their home or habitually lives. If current information of this type is not available because the offender is in violation of the requirement to register or cannot be located, the website must so note;

(3) temporary lodging information;

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

~~(5)~~ (4) address of any place where the offender is a student or will be a student;

~~(6)~~ (5) license plate number and a description of any vehicle owned or operated by the offender, including any aircraft or watercraft;

~~(7)~~ (6) physical description of the offender;

~~(8)~~ (5) the offense or offenses for which the offender is registered and any other offense for which the offender has been convicted or adjudicated;

~~(9)~~ (8) a current photograph of the offender; and

~~(10)~~ (9) all professional licenses, designations and certifications.

(c) Notwithstanding subsection (a), information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall not contain the address of any place where the offender is an employee or any other information about where the offender works. Such internet website shall contain a statement that employment information is publicly available and may be obtained by contacting the appropriate registering law enforcement agency and such employment information is publicly available and may be obtained by signing up for community notification through the Kansas bureau of investigation website.

~~(e)~~ (d) Notwithstanding subsection (a), pursuant to a court finding petitioned by the prosecutor, any offender who is required to register pursuant to the Kansas offender registration act, but has been provided a new identity and relocated under the federal witness security program or who has worked as a

confidential informant, or is otherwise a protected witness, shall be required to register pursuant to the Kansas offender registration act, but shall not be subject to public registration.

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

- (1) The name, address, telephone number or any other information which specifically and individually identifies the identity of any victim of a registerable offense;
- (2) the social security number of the offender;
- (3) the offender's criminal history arrests that did not result in convictions *or adjudications*;
- (4) travel and immigration document numbers of the offender; and
- (5) internet identifiers of the offender.

Amendment #4 - Version2 **Reversing the House amendment restricting access to employment addresses**

Sec. 8. K.S.A. 2011 Supp. 22-4909 is hereby amended to read as follows: 22-4909.

(a) Except as prohibited subsections (c) ~~and~~ (d) ~~and (e)~~ of this section and subsections (e f) and (f g) of K.S.A. 22-4906, and amendments thereto, the statements or any other information required by the Kansas offender registration act shall be open to inspection by the public at the registering law enforcement agency, at the headquarters of the Kansas bureau of investigation and on any internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation that contains such statements or information, and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(b) Any information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall identify, in a prominent manner, whether an offender is a sex offender, a violent offender or a drug offender. Such internet websites shall include the following information for each offender:

- (1) Name of the offender, including any aliases;
- (2) address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has their home or habitually lives. If current information of this type is not available because the offender is in violation of the requirement to register or cannot be located, the website must so note;
- (3) temporary lodging information;
- ~~(4) address of any place where the offender is an employee or will be an employee and, if the offender is employed but does not have a definite employment address, other information about where the offender works;~~
(4) address of any place where the offender is an employee or will be an employee and, if the offender is employed but does not have a definite employment address, other information about where the offender works;
- ~~(5) (4) (5) address of any place where the offender is a student or will be a student;~~
- ~~(6) (5) (6) license plate number and a description of any vehicle owned or operated by the offender, including any aircraft or watercraft;~~
- ~~(7) (6) (7) physical description of the offender;~~

- ~~(8)~~ ~~(7)~~ (8) the offense or offenses for which the offender is registered and any other offense for which the offender has been convicted or adjudicated;
- ~~(9)~~ ~~(8)~~ (9) a current photograph of the offender; and
- ~~(10)~~ ~~(9)~~ (10) all professional licenses, designations and certifications.

~~(e) Notwithstanding subsection (a), information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall not contain the address of any place where the offender is an employee or any other information about where the offender works. Such internet website shall contain a statement that employment information is publicly available and may be obtained by contacting the appropriate registering law enforcement agency.~~

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

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

- (1) The name, address, telephone number or any other information which specifically and individually identifies the identity of any victim of a registerable offense;
- (2) the social security number of the offender;
- (3) the offender's criminal history arrests that did not result in convictions *or adjudications*;
- (4) travel and immigration document numbers of the offender; and
- (5) internet identifiers of the offender.