

SENATE BILL No. 407

By Committee on Corrections and Juvenile Justice

2-4

Proposed Amendments to SB 407
House Judiciary
March 16, 2016
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Office of Revisor of Statutes

1 AN ACT concerning civil commitment of sexually violent predators;
2 reviving K.S.A. 59-29a18.

relating to registration under the Kansas offender registration act; involuntary
commitment, transitional release, conditional release; amending K.S.A. 2015
Supp. 22-4903, 22-4904 and 22-4905 and repealing the existing sections; and

3 *Be it enacted by the Legislature of the State of Kansas:*

Insert Attachment

4 Section 1. K.S.A. 59-29a18 is hereby revived to read as follows: 59-
5 29a18. (a) During any period the person is in transitional release, the
6 person committed under this act at least annually, and at any other time
7 deemed appropriate by the treatment staff, shall be examined by the
8 treatment staff to determine if the person's mental abnormality or
9 personality disorder has so changed so as to warrant such person being
10 considered for conditional release. The treatment staff shall forward a
11 report of its examination to the court. The court shall review the same. If
12 the court determines that probable cause exists to believe that the person's
13 mental abnormality or personality disorder has so changed that the person
14 is safe to be placed in conditional release, the court shall then set a hearing
15 on the issue. The attorney general shall have the burden of proof to show
16 beyond a reasonable doubt that the person's mental abnormality or
17 personality disorder remains such that the person is not safe to be at large
18 and that if placed on conditional release is likely to engage in repeat acts
19 of sexual violence. The person shall have the same rights as enumerated in
20 K.S.A. 59-29a06 and amendments thereto. Subsequent to either a court
21 review or a hearing, the court shall issue an appropriate order with findings
22 of fact. The order of the court shall be provided to the attorney general, the
23 person and the secretary.
24 (b) If, after the hearing, the court is convinced beyond a reasonable
25 doubt that the person is not appropriate for conditional release, the court
26 shall order that the person remain either in secure commitment or in
27 transitional release. Otherwise, the court shall order that the person be
28 placed on conditional release.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.
31

Sec. 5. K.S.A. 2015 Supp. 22-4903, 22-4904 and 22-4905 are
hereby repealed.

And by renumbering sections accordingly

Section 1. K.S.A. 2015 Supp. 22-4903 is hereby amended to read as follows: 22-4903. (a) Violation of the Kansas offender registration act is the failure by an offender, as defined in K.S.A. 22-4902, and amendments thereto, to comply with any and all provisions of such act, including any and all duties set forth in K.S.A. 22-4905 through 22-4907, and amendments thereto. Any violation of the Kansas offender registration act which continues for more than 30

consecutive days shall, upon the 31st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate offense every 30 days thereafter for as long as the violation continues.

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

(c) (1) Except as provided in subsection (c)(3), violation of the Kansas offender registration act is:

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

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

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

(2) Except as provided in subsection (c)(3), aggravated violation of the Kansas offender registration act is a severity level 3, person felony.

(3) Violation of the Kansas offender registration act or aggravated violation of the Kansas offender registration act consisting only of failing to remit payment to the sheriff's office as required in subsection (4) of K.S.A. 22-4905(1), and amendments thereto, is:

(A) Except as provided in subsection (c)(3)(B), a class A misdemeanor if, within 15 days of registration, full payment is not remitted to the sheriff's office;

(B) a severity level 9, person felony if, within 15 days of the most recent registration, two or more full payments have not been remitted to the sheriff's office.

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

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

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

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

(4) in the county in which any conviction or adjudication occurred for which the offender is required to be registered under the Kansas offender registration act.

Sec. 2. K.S.A. 2015 Supp. 22-4904 is hereby amended to read as follows: 22-4904. (a) (1) At the time of conviction or adjudication for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall:

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

(B) if the offender is released:

(i) 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;

(ii) 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;

- (iii) 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
- (iv) 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.
- (2) 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.
- (3) Upon commitment for control, care and treatment by the Kansas department for aging and disability services pursuant to K.S.A. 59-29a07, and amendments thereto, the court shall notify the registering law enforcement agency of the county where the offender resides during commitment of such offender's commitment. Such notice shall be prepared by the office of the attorney general for transmittal by the court by electronic means, including by fax or e-mail.
- (b) The staff of any correctional facility or the registering law enforcement agency's designee shall:
 - (1) At the time of initial custody, register any offender within three business days:
 - (A) Inform the offender of the procedure for registration and of the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) complete the registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;
 - (C) 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;
 - (D) provide one copy of the form to the offender and, within three business days, send a copy of the form to the Kansas bureau of investigation; and
 - (E) enter all offender information required by the national crime information center into the national sex offender registry system within three business days of completing the registration or electronically submit all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto, within three business days to the Kansas bureau of investigation;
 - (2) notify the Kansas bureau of investigation of the incarceration of any offender and of the location or any change in location of the offender while in custody;
 - (3) prior to any offender being discharged, paroled, furloughed or released on work or school release that does not require the daily return to a correctional facility;
 - (A) Inform the offender of the procedure for registration and of the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) complete the registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;
 - (C) 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;
 - (D) photograph the offender's face and any identifying marks;
 - (E) obtain fingerprint and palm prints of the offender; and
 - (F) provide one copy of the form to the offender and, within three business days, send a copy of the form and of the photograph or photographs to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation; and
 - (4) notify the law enforcement agency having initial jurisdiction and the Kansas bureau of investigation seven business days prior to any offender being discharged, paroled, furloughed or released on work or school release.
- (c) The staff of any treatment facility shall:
 - (1) Within three business days of an offender's arrival for inpatient treatment, inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located of the offender's presence at the treatment facility and the expected duration of the treatment, and immediately notify the registering law enforcement agency of an unauthorized or unexpected absence of the offender during the offender's treatment;
 - (2) inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located within three business days of an offender's discharge or release; and
 - (3) provide information upon request to any registering law enforcement agency having jurisdiction relevant to determining the presence of an offender within the treatment facility.

- (d) The registering law enforcement agency, upon the reporting of any offender, shall:
 - (1) Inform the offender of the duty to register as provided by the Kansas offender registration act;
 - (2) (A) explain the procedure for registration and the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) obtain the information required for registration as provided in K.S.A. 22-4907, and amendments thereto; and
 - (C) 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;
 - (3) complete the registration form with all information and updated information required for registration, as provided in K.S.A. 22-4907, and amendments thereto, each time the offender reports to the registering law enforcement agency. All information and updated information reported by an offender shall be forwarded to the Kansas bureau of investigation within three business days;
 - (4) maintain the original signed registration form, provide one copy of the completed registration form to the offender and, within three business days, send one copy of the completed form to the Kansas bureau of investigation;
 - (5) forward a copy of any certified letter used for reporting pursuant to K.S.A. 22-4905, and amendments thereto, when utilized, within three business days to the Kansas bureau of investigation;
 - (6) obtain registration information from every offender required to register regardless of whether or not the offender remits payment;
 - (7) upon every required reporting, update the photograph or photographs of the offender's face and any new identifying marks and immediately forward copies or electronic files of the photographs to the Kansas bureau of investigation;
 - (8) enter all offender information required by the national crime information center into the national sex offender registry system within three business days of completing the registration or electronically submit all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto, within three business days to the Kansas bureau of investigation;
 - (9) maintain a special fund for the deposit and maintenance of fees paid by offenders. All funds retained by the registering law enforcement agency pursuant to the provisions of this section shall be credited to a special fund of the registering law enforcement agency which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to reduce the amount of funding otherwise made available to the registering law enforcement agency; and
 - (10) forward any initial registration and updated registration information within three business days to any out of state jurisdiction where the offender is expected to reside, maintain employment or attend school.
- (e) (1) The Kansas bureau of investigation shall:
 - (A) Forward all additions or changes in information to any registering law enforcement agency, other than the agency that submitted the form, where the offender expects to reside, maintain employment or attend school;
 - (B) ensure that offender information is immediately entered in the state registered offender database and the Kansas registered offender website, as provided in K.S.A. 22-4909, and amendments thereto;
 - (C) transmit offender conviction or adjudication data, fingerprints and palm prints to the federal bureau of investigation; and
 - (D) ensure all offender information required by the national crime information center is transmitted into the national sex offender registry system within three business days of such information being electronically submitted to the Kansas bureau of investigation.
- (2) The director of the Kansas bureau of investigation may adopt rules and regulations necessary to implement the provisions of the Kansas offender registration act.
- (f) The attorney general shall, within 10 business days of an offender being declared a sexually violent predator, forward to the Kansas bureau of investigation all relevant court documentation declaring an offender a sexually violent predator.
- (g) The state department of education shall annually notify any school of the Kansas bureau of investigation internet website, and any internet website containing information on the Kansas offender registration act sponsored or created by the registering law enforcement agency of the county or location of jurisdiction in which the school is located, for the purpose of locating offenders who reside near such school. Such notification shall include information that the registering law enforcement agency of the county or location of jurisdiction where such school is located is available to the school to assist in using the registry and providing additional information on registered offenders.

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

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

Sec. 3. K.S.A. 2015 Supp. 22-4905 is hereby amended to read as follows: 22-4905. Any offender required to register as provided in the Kansas offender registration act shall:

(a) Except as otherwise provided in this subsection, register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Any such offender who cannot physically register in person with the registering law enforcement agency for such reasons including, but not limited to, incapacitation or hospitalization, as determined by a person licensed to practice medicine or surgery, or involuntarily committed pursuant to the Kansas sexually violent predator act, shall be subject to verification requirements other than in-person registration, as determined by the registering law enforcement agency having jurisdiction;

(b) except as provided further, for any: (1) Sex offender, including a violent offender or drug offender who is also a sex offender, report in person four times each year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or is attending a school; and (2) violent offender or drug offender, report in person four times each year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or is attending a school, except that, at the discretion of the registering law enforcement agency, one of the four required reports may be conducted by certified letter. When utilized, the certified letter for reporting shall be sent by the registering law enforcement agency to the reported residence of the offender. The offender shall indicate any changes in information as required for reporting in person. The offender shall respond by returning the certified letter to the registering law enforcement agency within 10 business days by certified mail. The offender shall be required to report to the registering law enforcement agency once during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday. The registering law enforcement agency may determine the appropriate times and days for reporting by the offender, consistent with this subsection. Nothing contained in this subsection shall be construed to alleviate any offender from meeting the requirements prescribed in the Kansas offender registration act;

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

(d) if in the custody of a correctional facility, register with the correctional facility within three business days of initial custody and shall not be required to update such registration until discharged, paroled, furloughed or released on work or school release from a correctional facility. A copy of the registration form and any updated registrations for an offender released on work or school release shall be sent, within three business days, to the registering law enforcement agency where the offender is incarcerated, maintains employment or attends school, and to the Kansas bureau of investigation;

(e) if involuntarily committed pursuant to the Kansas sexually violent predator act, register within three business days of arrival in the county where the offender resides during commitment. The offender shall not be required to update such registration until placed in a reintegration facility, on transitional release or on conditional release. Upon placement in a reintegration facility, on transitional release or on conditional release, the offender shall be personally responsible for complying with the provisions of the Kansas offender registration act;

(f) notwithstanding subsections (a) and (b), if the offender is transient, report in person to the registering law enforcement agency of such county or location of jurisdiction in which the offender is physically present within three business days of arrival in the county or location of jurisdiction. Such offender shall be 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. Such offender shall comply with the provisions of the Kansas offender registration act and, in addition, shall:

- (1) Provide a list of places where the offender has slept and otherwise frequented during the period of time since the last date of registration; and
 - (2) provide a list of places where the offender may be contacted and where the offender intends to sleep and otherwise frequent during the period of time prior to the next required date of registration;
 - (f)(g) if required by out of state law, register in any out of state jurisdiction, where the offender resides, maintains employment or attends school;
 - (g)(h) register in person upon any commencement, change or termination of residence location, employment status, school attendance or other information as provided in K.S.A. 22-4907, and amendments thereto, within three business days of such commencement, change or termination, to the registering law enforcement agency or agencies where last registered and provide written notice to the Kansas bureau of investigation;
 - (h)(i) report in person to the registering law enforcement agency or agencies within three business days of any change in name;
 - (i)(j) if receiving inpatient treatment at any treatment facility, inform the treatment facility of the offender's status as an offender and inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located of the offender's presence at the treatment facility and the expected duration of the treatment;
 - (j)(k) submit to the taking of an updated photograph by the registering law enforcement agency on each occasion when the offender registers with or reports to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or attends school. In addition, such offender shall submit to the taking of a photograph to document any changes in identifying characteristics, including, but not limited to, scars, marks and tattoos;
 - (k)(l) remit payment to the sheriff's office in the amount of \$20 as part of the reporting process required pursuant to subsection (b) in each county in which the offender resides, maintains employment or is attending school. Registration will be completed regardless of whether or not the offender remits payment. Failure of the offender to remit full payment within 15 days of registration is a violation of the Kansas offender registration act and is subject to prosecution pursuant to K.S.A. 22-4903, and amendments thereto. Notwithstanding other provisions herein, payment of this fee is not required:
- (1) When an offender provides updates or changes in information or during an initial registration unless such updates, changes or initial registration is during the month of such offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday;
 - (2) when an offender is transient and is required to register every 30 days, or more frequently as ordered by the registering law enforcement agency, except during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday; or
 - (3) if an offender has, prior to the required reporting and within the last three years, been determined to be indigent by a court of law, and the basis for that finding is recorded by the court;
- (l)(m) annually renew any driver's license pursuant to K.S.A. 8-247, and amendments thereto, and annually renew any identification card pursuant to K.S.A. 2015 Supp. 8-1325a, and amendments thereto;
 - (m)(n) if maintaining primary residence in this state, surrender all driver's licenses and identification cards from other states, territories and the District of Columbia, except if the offender is presently serving and maintaining active duty in any branch of the United States military or the offender is an immediate family member of a person presently serving and maintaining active duty in any branch of the United States military;
 - (n)(o) read and sign the registration form noting whether the requirements provided in this section have been explained to the offender; and
 - (o)(p) report in person to the registering law enforcement agency in the jurisdiction of the offender's residence and provide written notice to the Kansas bureau of investigation 21 days prior to any travel outside of the United States, and provide an itinerary including, but not limited to, destination, means of transport and duration of travel, or if under emergency circumstances, within three business days of making travel arrangements.