

**House Corrections and Juvenile Justice Committee  
February 4, 2020**

**House Bill 2474  
Testimony of the Kansas Association of Criminal Defense Lawyers  
presented by Jennifer Roth  
Proponent**

Dear Chairman Jennings and Members of the Committee:

Since at least 2006, this organization has been raising concerns about the severity of punishment for KORA violations. We support HB 2474, and thank the Judicial Council Advisory Committee for its work on this proposal. All of the changes in this bill are long overdue.

**History of the penalties for failing to comply with KORA**

From 1993 to mid-1999, failure to comply with KORA was a Class A nonperson misdemeanor. In 1999, the Legislature made failure to comply a severity level (SL) 10 nonperson felony. It remained that way until 2006, when failure to comply got caught up in HB 2576 (commonly referred to as Jessica's Law): the penalty jumped five levels on the grid to SL 5, was elevated to a person felony, and provided that every thirty days of failure was a separate offense.

As of July 1, 2011, failing to comply is a SL 6 person felony for a first offense, a SL 5 person felony for a second offense, a SL 3 person felony for a third or subsequent offense, and a SL 3 person felony for an aggravated violation (i.e. violation that lasts over 180 consecutive days). To put this in context, here is one example: someone convicted of SL 4 possession with intent to distribute/distribution (which is the lowest level) is required to register. The sentencing range she faces for failing to comply with KORA (17-46 months) is almost the same as her underlying drug crime (14-51 months).

In 2016, HB 2463 made it a nonperson crime for failing to register when the underlying crime was a nonperson offense (i.e. drug offenses). It remains a person felony for those who register for person offenses.

**What KORA requires, and there is no defense to failing to comply**

Periods of registration are 15 years, 25 years, and lifetime. Attached are some FAQs from the KBI's website that list out a registrant's duties. However, this text does not illustrate the amount of detail that exists in the form the registrants have to fill out (ex.: tattoos, e-mail and online accounts, cars/boats/planes/motorcycles makes and models, etc.). Registrants do not receive any sort of reminder when it is time to register (put another way, your dentist sends you a postcard or your doctor leaves you a voice message, but there are no reminders for KORA registrants). In addition to quarterly in-

person visits, registrants must report in person whenever there is a change in their information, i.e. they get a new job, get a new e-mail address, buy a boat, get a new tattoo, want to take a trip out of the country, etc.

Failure to comply with any of these duties, even unintentionally, is prosecuted as a SL 6, 5, or 3 felony for all types of registrants (drug, violent, and sex). Failing to comply is a strict liability offense. In other words, there is no criminal intent required. The only other strict liability crimes specifically listed in our statutes are DUI, commercial DUI, and smoking. See K.S.A. 21-5203. In other words, a person is cut off from raising a defense to failing to comply. Here are some real-life examples:

- You forgot to register on time, get there two weeks (or less) late, but your information has not changed since your previous registration. It's a SL 6 felony.
- Your apartment burned down - which law enforcement knows - but you failed to go tell them within three business days that you had to move. It's a SL 6 felony.
- You work in a county that is different from where you live and you failed to register in that other county (but are compliant - and therefore all of your information is on a public website - in your home county). It's a SL 6 felony.
- You are homeless and do not report as frequently as law enforcement tells you to (which, if you are homeless, can be every 30 days or more). It's a SL 6 felony.
- You buy a jet ski and forget to list it on your registration form. It's a SL 6 felony.
- You register in jail and get out the next day. This happens during your registration month and you don't go in to register again during that month. It's a SL 6 felony.

Given the interest in criminal justice reform, removing barriers to employment and positive participation in society, and prison overcrowding, it is time to act on HB 2474. It is past time to return the punishment for KORA violations to a misdemeanor, and to make the other changes recommended in HB 2474. We urge this Committee to pass this bill out of committee, and to fight for its passage on the floor of the House.

Thank you for your consideration,

  
Jennifer Roth  
co-chair, KACDL Legislative Committee  
jrothlegislative@gmail.com  
785.550.5365

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## What are the duties of a registered 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.
- 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 discharged, paroled, furloughed or released on work or school release from a correctional facility.
- 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. Sac 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..

- 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.
- 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.
- 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.
- If required by out of state law, I will register in any out of state jurisdiction where I reside, maintain employment or attend school.
- 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.
- 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, 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 ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance, 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.

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.

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, 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.

- 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 subsection (c) of K.S.A. 22-4902, and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug 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, 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.  
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 subsection (c) of K.S.A. 22-4902, 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.
- 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 Offender Registration Act, 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.
- 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.
- 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.
- 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.
- 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, person felony; upon a second conviction, a severity level 5, person felony; and upon a third or subsequent conviction, a severity level 3, person 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, person felony. If I fail to remit payment to the sheriff's office as required in subsection (k) 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, person felony.

- 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.

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### **Who is required to register?**

- Any adult convicted of a crime set forth in KSA 22-4902.
- Any person who has been convicted or adjudicated in a federal, military, foreign, tribal or in another state court of a comparable crime that requires registration.
- Any juvenile adjudicated of a sexually violent crime. However, the Court may relieve a juvenile from registration requirements if it finds substantial and compelling reasons for doing so.

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### **Do all adult offenders, who are required to register pursuant to the Kansas Offender Registration Act, appear on the Offender Registration website?**

No, if an adult offender's date of offense is before April 14, 1994, that offender's record is restricted pursuant to the Kansas Supreme Court's decision in State v. Myers.

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### **Do all juvenile offenders, who are required to register pursuant to the Kansas Offender Registration Act, appear on the Offender Registration website?**

No, because the Court has discretion, in certain circumstances, to order a juvenile offenders information be restricted from the public.

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### **Is every offender on the KBI Offender Registration website a sex offender?**

No, in addition to sex offenders, Kansas requires registration for certain drug and violent offenders.

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### **How long is an offender required to register?**

- Adults are required to register for 15 years, 25 years, or lifetime depending on their crime of conviction. If an adult is convicted of a second or subsequent offense that requires registration, the offender must register for life.
- Juveniles less than 14 years of age who are adjudicated of a sexually violent crime are required to register until 18 years of age, at the expiration of five years from the date of adjudication or, if confined, five years from release from confinement, whichever date occurs later.
- Juveniles 14 years of age or more who are adjudicated of a sexually violent crime and such crime is not an off-grid felony or a felony ranked in severity level 1, are required to register until 18 years of age, at the expiration of five years from the date of adjudication or, if confined, five years from release from confinement, whichever date occurs later.
- Juveniles 14 years of age or more who are adjudicated of a sexually violent crime and such crime is an off-grid felony or a felony ranked in severity level 1, the juveniles are required to register for life.

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