

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 420

As Amended by House Committee on Judiciary

Brief*

SB 420, as amended, would amend and create law related to the Kansas Offender Registration Act (KORA), as follows.

Registration for Breach of Privacy

The bill would add to the definition of “sex offender” in the KORA any person who is convicted on and after July 1, 2020, of breach of privacy by the following means:

- Installing or using a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape, film, photograph, or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy;
- Disseminating or permitting the dissemination of any videotape, photograph, film, or image obtained in violation of the above provision; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Disseminating any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which such identifiable person had a reasonable expectation of privacy, with the intent to harass, threaten, or intimidate such identifiable person, and such identifiable person did not consent to such dissemination.

The bill would specify the definition of “offender” in KORA (to require registration) would not include a person adjudicated as a juvenile offender for the above acts.

The bill would add convictions of breach of privacy under the above provisions to those crimes for which an offender must register under the KORA for 15 years.

Registration Requirements

Current law requires offenders to register quarterly with the sheriff in each county in which they live, work, and attend school. To register, offenders are required to complete a Kansas Bureau of Investigation (KBI) form and remit a \$20 fee. The KBI maintains a database with offender registration information.

The bill would narrow the county registration requirement to require registration in the county in which the person lives and would remove registration requirements in counties in which the person works and attends school.

The bill would also require, if an offender reports an employer or school in a county other than the county in which they live or intend to live, the KBI to notify the sheriff of the county in which the employer or school is located and provide the registration information of the offender.

Remittance of Registration Fee

The bill would add the following exceptions to payment of the \$20 quarterly registration fee:

- Offenders under 18 years of age; or
- If a court has found that payment of the fee would impose manifest hardship, pursuant to procedures established by the bill.

Additionally, the bill would specify a current exception from payment of the fee for offenders determined to be indigent by a court of law prior to the required reporting and within the last three years would apply only if the determination was made in the criminal case for which the offender is required to register.

Registration Fee Waiver

The bill would allow a person required to register as an offender under KORA to petition the district court in the county where the offender resides to waive payment of the registration fee required by current law. The offender would be required to submit an affidavit to the court in the form required by the Office of Judicial Administration (OJA), and the bill would prohibit a docket fee. The court could:

- Question the offender under oath concerning the contents of the affidavit; and
- Require the offender to produce evidence on the issue of the offender's financial inability to make the payment.

The bill would specify, if it appeared to the satisfaction of the court that requiring payment would impose a manifest hardship on the offender or the offender's immediate family, the court could:

- Waive the current payment owed by the offender;

- Extend the time in which the offender has to make the payment; or
- Waive the payment for a specified period of time not to exceed three years.

The bill would require the court to provide the offender with a copy of the order modifying the offender's obligation, if issued by the court. The order would be effective to modify the offender's obligation to pay the registration fee in any county where the offender is required to register.

Penalties for Obstructing Apprehension or Prosecution

The bill would modify the penalties for obstructing apprehension or prosecution. Current law applies a penalty of:

- A severity level 5, person felony for aiding a person in non-compliance with KORA;
- A severity level 8, nonperson felony penalty for aiding a person charged with a felony; or
- A class C misdemeanor for aiding a person charged with a misdemeanor.

The bill would remove the heightened penalty for aiding a person in non-compliance with KORA, leaving all penalties based upon the crime charged.

Violation of KORA

The bill would expand the initial time period after which an ongoing violation of KORA constitutes a new and separate offense from 30 consecutive days to 90 consecutive days. Continuing law states continued violation thereafter constitutes a new and separate offense every 30 days for as long as the violation continues.

Penalties

The bill would lower the penalty for violation from a severity level 5 felony to a class B nonperson misdemeanor for a first conviction and from a severity level 6 felony to a class A nonperson misdemeanor for a second conviction.

A third or subsequent conviction would constitute an aggravated violation of KORA. Current law classifies a third or subsequent conviction as a severity level 3 felony and specifies violations are classified as person or nonperson based upon the underlying sentence.

The bill would remove a special sentencing rule that makes the sentence for a violation of KORA presumptive imprisonment and replace it with a special sentencing rule that makes the sentence for an aggravated violation of KORA presumptive imprisonment.

Aggravated Violation of KORA

The bill would amend provisions related to the crime of aggravated violation of KORA by amending the definition of the crime to state an aggravated violation is a violation that continues for one year or more, or is committed by a person with two or more prior convictions for violations or aggravated violations of KORA.

Current law defines an aggravated violation of KORA to be a violation that continues for more than 180 consecutive days and provides that continuation upon the 181st consecutive day constitutes a new and separate offense and continues to be a new and separate offense every 30 days thereafter, or a new and separate aggravated offense every 180 days thereafter for as long as the violation continues.

Penalties

The bill would specify an aggravated violation of KORA would be a severity level 8 nonperson felony, except, if the

underlying crime is a misdemeanor, the aggravated violation would be a class A nonperson misdemeanor.

Current law classifies aggravated violations of KORA as a severity level 3 felony and classifies the violation as person or nonperson based upon the underlying sentence.

Violation of KORA Due to Failure to Remit Payment

The bill would amend penalties associated with a violation or aggravated violation of KORA due to failure to remit payment by specifying either such violation would be a class C nonperson misdemeanor.

Current law classifies the crime as a:

- Class A misdemeanor if, within 15 days of registration, full payment is not remitted to the sheriff's office; or
- Severity level 9 felony if, within 15 days of the most recent registration, two or more full payments have not been remitted to the sheriff's office.

Current law classifies the violations as person or nonperson based upon the underlying sentence.

Background

As introduced and passed by the Senate, SB 420 contained provisions regarding KORA registration for breach of privacy. The House Committee on Judiciary amended the bill to insert additional provisions regarding KORA from HB 2474, as amended by the House Committee on Corrections and Juvenile Justice.

SB 420 (KORA Registration for Breach of Privacy)

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Lynn. In the Senate

Committee hearing, a representative of the Johnson County District Attorney's Office and four private citizens testified in support of the bill, stating such incidents are increasing and the bill would simplify the process for requiring registration for such offenders. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to add dissemination of any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity as one of the variants of breach of privacy requiring registration. [Note: This amendment was retained by the House Committee.]

In the House Committee on Judiciary hearing, Senator Lynn testified in support of the bill. Four private citizens submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The House Committee on Judiciary amended the bill to apply the new breach of privacy registration requirements to persons convicted on and after July 1, 2020, exempt juvenile offenders from the breach of privacy registration requirements, and add the contents of HB 2474, as amended by the House Committee on Corrections and Juvenile Justice.

According to the fiscal note prepared by the Division of the Budget on SB 420 as introduced, the KBI states there were four breach of privacy arrests entered into the database it maintains in fiscal year (FY) 2019. The agency indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources.

The Kansas Sentencing Commission (Commission) estimates enactment of SB 420 could have an effect on prison admissions, prison beds, and the workload of the Commission, but a fiscal effect cannot be determined. Based upon the Commission's most recent ten-year projection, it is estimated that the year-end population for available prison capacity will be over capacity by 258 inmates in FY 2020 and

524 inmates in FY 2021. The Department of Corrections would house any additional inmates over the capacity limit in county jails or out-of-state contract beds at a rate ranging from \$40.00 to \$74.76 per day.

The OJA indicates enactment of SB 420 would have a negligible fiscal effect that could be absorbed within existing resources. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

HB 2474 (Penalties, Payment of Fees, Registration)

HB 2474 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Judicial Council.

In the House Committee hearing, representatives of the Judicial Council and the Kansas Association of Criminal Defense Lawyers testified in support of the bill. Proponents stated the bill was drafted in response to *State v. Owens*, 55 Kan. App. 2D 290 (2018), which, among other findings, directed the State to develop an indigency provision in KORA. Written-only proponent testimony was provided by the ACLU of Kansas.

Neutral written-only testimony was provided by the Kansas Department of Corrections. Opponent testimony was provided by a representative of the Kansas Sheriffs' Association.

The House Committee amended the bill by removing the requirement that persons register separately in jurisdictions in which they work and attend school, and by adding related notifications by the KBI.

According to the fiscal note prepared by the Division of the Budget on HB 2474 as introduced, the KBI indicates enactment of the bill would not have a fiscal effect on the agency, but the bill could reduce registration fees collected by local sheriff's offices as the court would have the authority to

waive such fees. The OJA indicates enactment of the bill could increase the number of cases filed in district courts, which could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. In addition, the bill would increase the amount of supervision of offenders required to be performed by court services officers; however, OJA does not anticipate the need to hire additional personnel to handle the increased caseload. OJA also indicates the bill could result in the collection of additional docket fees, fines, and supervision fees assessed in cases filed under the provisions of the bill. However, a fiscal effect cannot be determined because the additional cases that would be filed cannot be estimated.

The Commission estimates enactment of HB 2474 would result in a decrease of 75 adult prison beds needed by the end of FY 2021 and 129 fewer beds by the end of FY 2030. The Commission also estimates a decrease of 75 prison admissions in FY 2021 and 82 prison admissions by FY 2030. The bill would also reduce the Commission's workload by 187 journal entries each year. The Department of Corrections estimates a reduction in the prison population is beneficial toward avoiding future costs for construction, operating expenses, or contract beds, but is not sufficient to reduce current prison expenditures. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.