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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice

From: Office of Revisor of Statutes

Date: February 22, 2021

Subject: Bill Brief on HB 2349

HB 2349 makes changes to the Kansas offender registration act.

New Section 1 provides that a person required to register as an offender may petition the district court in the county where the offender resides to waive payment of the registration fee required by the act. Such offender shall submit an affidavit to the court on a form prescribed by the judicial council, and no docket fee shall be required. The court may question the offender concerning the affidavit and require the offender to produce evidence on the issue of the offender's financial inability. If it appears to the court that requiring the payment will impose manifest hardship on the offender or the offender's immediate family, the court may waive the current payment, extend the time in which the offender has to make payment or waive the payment for a specified period of time, not to exceed three years. If the court issues an order modifying an offender's obligation to pay the fee required by the act, the court shall provide the offender with a copy of such order, which will be effective to modify the offender's obligation to pay the fee in any county where the offender is required to register.

Section 2 amends K.S.A. 21-5913 to reduce the criminal penalty for obstructing apprehension or prosecution. Current law provides that a person knowingly harboring, concealing or aiding any person who is required to register under the Kansas offender registration act and who is not in compliance with such act with the intent that such person may avoid registration is a severity level 5, person felony. This bill would make such violation a severity level 8, nonperson felony if the person who is harbored, concealed or aided has committed or been charged with committing a felony and a class C misdemeanor if the person who is aided as committed or been charged with committing a misdemeanor.

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Section 3 amends K.S.A. 21-6614 which is the expungement statute. Current law in subsection (f) provides that there shall be no expungement for an offender required to register under the Kansas offender registration act. This bill would make an exception to allow expungement in accordance with the new relief from registration mechanism in K.S.A. 22-4908.

Section 4 amends K.S.A. 21-6804 to remove the special sentencing rule making a violation of the Kansas offender registration act or a violation of obstructing apprehension or prosecution with the intent to avoid registration presumptive imprisonment. Under the bill, only aggravated violations of the offender registration act would be presumptive imprisonment.

Section 5 amends K.S.A. 22-4902 to remove juveniles adjudicated of a sexually violent crime from the definition of “sex offender”. It also removes adultery, patronizing a prostitute, prior to the amendments made to the section in 2013 and misdemeanor violations of lewd and lascivious behavior from the list of convictions that define “sex offender”. It adds a conviction of breach of privacy involving videotapes and images taken of a person without the knowledge and consent of the person and dissemination of such videotapes or images to the list of offenses requiring registration. The section is also amended to add internet trading in child pornography and any out-of-state juvenile adjudication that requires registration under the laws of that state to the list of sexually violent offenses. The definition of “violent offender” is amended to remove voluntary manslaughter, involuntary manslaughter, kidnapping of an adult, aggravated kidnapping of an adult and criminal restraint from the offenses that require a person to register. Subsection (t) is amended to provide that the term “offender” does not include a person convicted of a crime in municipal court or a person adjudicated as a juvenile offender under the revised Kansas juvenile justice code.

Section 6 amends K.S.A. 22-4903 to reduce the criminal penalties for violation of the Kansas offender registration act. Current law provides that a violation that continues for more than 30 consecutive days constitutes a new and separate violation. This bill would change that to violations that continue for more than 90 days. It also changes an aggravated violation to one that continues for one year or more or is committed by a person with two or more prior convictions of violations of this section. Currently, violation of the act is a severity level 6 felony on a first conviction, a severity level 5 felony on a second conviction and a severity level 3 felony on a third or subsequent convictions. An aggravated violation is a severity level 3 felony. The felony is person or nonperson based on the underlying offense for which the person is required to register. This bill would make violation a class B nonperson misdemeanor on a first conviction and a class A nonperson misdemeanor on a second or subsequent conviction. An aggravated

violation would be a severity level 8, nonperson felony, except that an aggravated violation would be a class A nonperson misdemeanor when the underlying crime for which the offender is required to register is a misdemeanor.

Section 7 amends K.S.A. 22-4904 to remove the references to adjudications in the requirements the court has when requiring someone to register under the Kansas offender registration act.

Section 8 amends K.S.A. 22-4905 to remove the requirement that an offender register in the county in which they go to school or work, leaving only the requirement to register in the county in which they reside. The section is also amended to provide that payment of the fee to register is not required when the offender is under 18 years of age or if the court has determined that requiring payment of the fee would impose manifest hardship on the offender or the offender's immediate family pursuant to new section 1.

Section 9 amends K.S.A. 22-4906, which is the statute that provides that duration an offender is required to register. The bill removes adultery, patronizing a prostitute prior to its amendments in 2013, misdemeanor violations of lewd and lascivious behavior, capital murder, murder in the first degree, voluntary manslaughter, involuntary manslaughter, criminal restraint, convictions requiring registration by court order, convictions of a person felony when the court makes a finding that a deadly weapon was used, possession of precursors and unlawful cultivation or distribution of a controlled substance from the list requiring registration for 15 years. It adds to that list breach of privacy involving videotapes and images taken of a person without the knowledge and consent of the person and dissemination of such videotapes or images and kidnapping a person less than 18 years of age. A new subsection (c) is created to require offenders to register for five years if convicted of possession of precursors, unlawful cultivation or distribution of a controlled substance or a person felony when the court makes a finding that a deadly weapon was used. Current law provides that a second or subsequent conviction of an offense requiring registration results in lifetime registration. This bill would remove that rule for offenders convicted of two drug offenses requiring registration. Internet trading in child pornography, capital murder and murder in the first degree are added to the list of convictions requiring lifetime registration, and kidnapping is removed from that list. The bill also removes all the provisions related to registration of juveniles adjudicated under the revised Kansas juvenile justice code. Offenders moving to Kansas who have been adjudicated as a juvenile offender in an out-of-state court who would be required to register under that out-of-state law would be required to register for the time required by the out-of-state law. Registration information for

offenders required to register for a drug offense would only be available to law enforcement and would not be open to inspection or posted on any website.

Section 10 amends K.S.A. 22-4907, the statute that provides what information is required for registration under the Kansas offender registration act, to provide that if an offender reports an employer or school that is in a county other than the county in which the offender resides or intends to reside, the Kansas bureau of investigation shall notify the sheriff in the county where the employer or school is located of the registration information for such offender.

Section 11 amends K.S.A. 22-4908, which currently provides that no person required to register shall be granted relief from the registration requirements. This section is amended to provide a mechanism for an offender to seek relief from registration requirements. Under subsection (a), if an offender is required to register for 15 years, such offender may petition for relief after registering for five years. If an offender is required to register for 25 years, such offender may petition for relief after registering for 10 years. If an offender is required to register for life, such offender may petition for relief after registering for 25 years. An offender who, at the time of conviction, was not required to register or was required to register for 10 years but is required to register for a longer period of time because of the retroactive application of section 6 of chapter 95 of the 2011 Session Laws of Kansas may file a petition for relief if the offender has registered for at least 10 years. An offender required to register for an out-of-state conviction may not petition for relief from registration requirements if the offender would be required to register under the law of that state. An offender who has been declared a sexually violent predator shall not petition for relief from registration requirements. Any period of time during which an offender is incarcerated or does not substantially comply with the Kansas offender registration act shall not count toward the duration of registration required to file the petition under subsection (a). A petition for relief shall be filed in the district court in the county where the offender was convicted of the offense giving rise to registration or a county where the offender is required to register in the case of an out-of-state conviction. The petition shall include the offender's name, full name at the time of conviction, sex, race, date of birth, offense requiring registration, date of conviction, the court in which the offender was convicted, whether the offender has been arrested, convicted or entered into a diversion agreement during the duration of registration and the names of all treatment providers and agencies that have treated the offender for mental health, substance abuse and offense-related behavior since the offense. The judicial council shall develop a petition form for use under this section. When a petition is filed, the court shall set a date for hearing and give notice to the county or district attorney. Any

person who may have relevant information about the offender may testify at the hearing. The county or district attorney shall notify any victim or the victim's family if the victim is deceased. The victim or victim's family shall not be compelled to testify. The county or district attorney shall have access to all applicable records, including otherwise privileged or confidential records. If the offender is required to register for life for a reason other than having a second registerable offense, the court shall order a risk assessment. The court may require a risk assessment for any other offender. Such assessment shall be performed by a professional agreed to by the parties and at the offender's expense. The court shall order relief from registration requirements if the offender shows by clear and convincing evidence that the offender has not been convicted of a new felony in the immediately preceding five years, the offender's circumstances, behavior and treatment history demonstrate that the offender is sufficiently rehabilitated, and registration of the offender is no longer necessary to promote public safety. If the court denies the petition, the offender shall not file another petition for three years unless a shorter time is ordered by the court. If the court grants the petition, it shall order the offender be removed from the offender registry and the offender will no longer be required to comply with registration requirements. Within 14 days, the court shall notify the Kansas bureau of investigation which shall remove the offender from any internet website maintained pursuant to K.S.A. 22-4909. An offender may combine a petition for relief under this section with a petition for expungement if the offender is otherwise eligible for expungement.

Section 12 amends K.S.A. 22-4909 to provide that registration information that has been ordered restricted under K.S.A. 22-4906 shall be made available only to law enforcement and shall not be open to inspection by the public or posted on any website.

Section 13 amends K.S.A. 74-7335 to provide that hearings conducted to determine relief from registration requirements shall be public hearings under the bill of rights for victims crime act.