

Senate Judiciary Committee
March 17, 2022
House Bill 2515
Testimony of the Kansas Association of Criminal Defense Lawyers
Proponent

Dear Committee Chair Warren and Members of the Committee:

The Kansas Offender Registration Act used to have an early removal process. From its creation in 1993 to 2000, the Kansas Offender Registration Act (KORA) had a means by which all registrants could petition for early removal from the registry. At that time, KORA included registrants who had been convicted of sex offenses, kidnapping of a child, or homicide. From 2001 to 2010, K.S.A. 22-4912 limited the early removal process to registrants who were “required to be registered ... prior to July 1, 1999, and who would not have been required to be registered ... on and after July 1, 1999” but for later changes to KORA. See K.S.A. 22-4912. In 2011, the Legislature made sweeping changes to KORA, eliminating the removal process altogether. See 2011 H. Sub. for SB 37. **House Bill 2515 would restore an early removal process, but only for registrants with drug convictions.**

Background on the inclusion of drug offenses in KORA

In 2007, SB 14 would have added the crimes of manufacture and possession of precursors to the list of registrable offenses. After a proponent conferee said that the odds were greater of living near a person who sells drugs than a meth lab house, an amendment to add distribution offenses was offered on the Senate floor and passed. On the House side, some supported the amendment thinking what had been added was distribution of methamphetamine within 1,000 feet of a school.

But that was not the case—it was all sale/possession with intent to sell offenses. This concerned the KBI, which suggested that the amendment be removed and a more thorough discussion held the following year. Its concerns included the impact and strain on sheriff’s offices, the problematic nature of collecting a registration fee from some registrants, and “a question about dilution—we need to keep the registry workable so that the public can readily find the registrants that concern them. Too many people on the list will make it unwieldy and less useful.” Testimony from KBI to House Judiciary Committee, March 14, 2007.

Despite the concerns, the provisions ended up in SB 204, and required that people convicted of manufacturing, possession of precursors, and drug distribution or possession with intent to distribute (regardless of amount; marijuana is not included) must register for 10 years. Because SB 204 did not include an effective date, the law was applied retroactively and swept up people who had been convicted before there was a drug registry. As of 2011, the minimum length of registration for someone with a qualifying drug conviction is 15 years. See 2011 H. Sub. for SB 37.

The registry includes people who give drugs to their friends, sell drugs to police informants (including their own spouse or former girlfriend/boyfriend who are working off charges with police) or undercover officers, and sell drugs to support their own addictions. It includes any amount of drugs. It includes people with qualifying drug convictions from other states or federal courts, even though there is no registry requirement for federal drug crimes and no other state registers distribution offenses by requiring a person to take affirmative steps to comply.

Why the change is warranted

Besides Kansas being an outlier (after 15+ years, no other state has adopted what Kansas has RE: drug registration or “any person felony with a deadly weapon”), what the KBI and the opponents said in 2007 would happen, has happened: 1) law enforcement resources have been strained to comply with KORA requirements; 2) the registry has been diluted; 3) having thousands of registrants who have been convicted of distribution-related offenses is expensive; and 4) registrants have a hard time getting jobs (employment being the main predictor of success/not recidivating, according to the DOC and others), housing, being with their families, participating in positive life activities, etc. As of last year, there were over 5,700 people who register for a drug conviction, with a total of over 22,000 people on the registry over all categories.

Additionally, there is no research, data, or other evidence-based assessment on whether including thousands of people with convictions for distribution/possession with intent to distribute on a public registry does anything to reduce recidivism or increase public safety. There was none in 2007 and none today.

The reasons given by the Judicial Council for restoring an exit mechanism to KORA include: “First, the possibility of an early exit gives offenders an incentive to comply with registration requirements. Second, the hearing process allows the court to make an individual determination based on an offender’s behavior in the community over a period of years. And, finally, allowing an offender to petition for relief after a period of 5 or 10 years is evidence-based. It is consistent with the reduction in the recidivism rate that occurs after 5 and 10 years.” Testimony on HB 2349 from Kansas Judicial Council by Judge Ben Sexton, to House Corrections and Juvenile Justice Committee, on 2/21/21.

Last year, the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association supported (in HB 2349) “the proposed process for judicial review of an offender for possible release from the offender registration seems to us to be a reasonable and balanced approach to considering an individual case and the merits of shortening the length of a registration period. We believe it will provide incentives for offenders to continue in treatment and other programs.” Testimony of Ed Klumpp to House Corrections and Juvenile Justice Committee, 2/22/21.

Although its recommendation was more limited, the Kansas Criminal Justice Reform Commission also told the Legislature that “KORA should include an exit mechanism for non-violent offenders to get off of the offender registry[.]” Report of the Kansas Criminal Justice Reform Commission to 2022 Kansas Legislature, p. 19.

The sweeping changes the Legislature made to KORA in 2011 also included prohibiting a registrant from being able to expunge any part of their criminal record while they are registering. A person could meet the requirements for expungement—i.e. has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner; the circumstances and behavior of the petitioner warrant the expungement; and the expungement is consistent with the public welfare—five years after their supervision ends, but they would have to wait another several years before being able to apply for that expungement because KORA has no early release provision and forbids expungement until the complete period is satisfied. And for people with two qualifying drug convictions, registration is for life—so they would never have a chance at an expungement even though they would be eligible for it if they did not have a registration requirement. This is antithetical to encouraging someone to better their life, which this Legislature should support.

Conclusion, with recommendations

The Kansas Judicial Council Advisory Committee on Sex Offenses and Registration met 24 times over 2 ½ years, and decided on recommendations for changes to KORA, including the return of an exit mechanism for all registrants. See Report of the Judicial Council Advisory Committee on Sex Offenses and Registration, December 11, 2020, p. 14. In fact, the exit mechanism language in HB 2515 mirrors that of 2021 HB 2349/2022 HB 2581, i.e. the Council’s KORA bill. As explained in last year’s 2349 testimony discussed above, the reasons to restore it for drug registrants are the same for making it available to all registrants, and KACDL asks this Committee to support eligibility of an exit mechanism for all categories.

Attached is a chart summarizing how KORA—as it relates to drug registration, exit mechanism, and penalties—has both changed over time and how groups of stakeholders have proposed to bring it in line with data, research, available resources, etc. Changes to KORA are long overdue, and HB 2515 would be one step in the process. But we need more than one step to return us to a not-so-extreme place (with the majority of the current extreme measures a result of the 2011 sweeping overhaul to KORA). To that end, we encourage this Committee to also consider 2022 HB 2581 and pass it out of committee favorably.

Sincerely,
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KACDL Legislative Committee co-chair
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Bill # and whether it became law	How it relates to drug registrants or penalties or exit mechanism	When introduced and by whom, if known	What happened to the bill or provisions
Before there was a drug category in KORA:			
SB 149 (became law)	Amended penalty for noncompliance with KORA from a class A misdemeanor (which it had been since 1993) to a severity level 10 nonperson felony	1999	History of the bill is not available on legislature's website
HB 2176 (became law)	Removed the ability for registrants to petition the court to end their duty to register (an exit mechanism had existed since 1993); still permitted people whose registration period would have ended on or after July 1, 1999, to use the mechanism	2001	History of the bill is not available on legislature's website
HB 2576 (became law)	<p>Doubled the penalty for noncompliance from a severity level 10 nonperson felony to a severity level 5 person felony</p> <p>Established a special sentencing rule making all violations presumptive imprisonment</p>	2006	History of the bill is not available on the legislature's website (but I recall the penalty provisions came by way of an amendment offered in committee or on the House floor)
The creation of the drug category of KORA and what followed:			
SB 204 (became law)	<p>Required registration for 10 years (or lifetime if they have a second or subsequent qualifying drug convictions) for people convicted of:</p> <p>*manufacturing or attempted manufacturing "unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use"</p>	2007	<p>It started out as SB 14 and would only have covered manufacturing and possession of precursors;</p> <p>Amended on the Senate floor to include possession with intent to distribute/ distribution;</p>

	<p>*possession of ephedrine</p> <p>*possession with intent to sell, sale, or distribute</p>		<p>In House-side hearing, KBI suggested that distribution be taken out and discussed more thoroughly;</p> <p>But changes passed as part of SB 204;</p> <p>Took effect 7/1/07, but there wasn't an explicit effective date so KBI applied it retroactively to people convicted before 7/1/07</p>
<p>House Sub. for SB 37 (became law)</p>	<p>Extended minimum registration period from 10 to 15 years for drug registrants</p> <p>Added people convicted in other states (or in federal courts) and people convicted in Kansas or anywhere else of attempts, conspiracy or solicitation of certain drug offenses</p> <p>Removed personal use exception</p> <p>Kept all violations as person felonies, but amended penalties to SL 6 for 1st offense, SL 5 for 2nd offense, and SL 3 for 3rd or subsequent offense</p> <p>Amended expungement statutes to forbid expungement of any part of the registrant's criminal record while required to register</p>	<p>2011</p> <p>Offender Registration Working Group and KBI</p>	<p>It started out as HB 2322;</p> <p>Heard in House Corrections and Juvenile Justice (KCJJ), and passed the House;</p> <p>No hearing held on the Senate side;</p> <p>Was worked in conference committee and passed as part of SB 37;</p> <p>Effective 7/1/11, and the changes and additions were applied retroactively</p>

<p>SB 20 (became law)</p>	<p>Made drug registry apply only to people convicted on or after July 1, 2007</p> <p>Made it a class A misdemeanor to not pay \$20 within 15 days or a severity level 9 felony if two or more \$20 payments were not made</p>	<p>2013</p>	<p>The addition of a start date to the drug registry was originally part of HB 2209, which passed in the House;</p> <p>Kansas Sheriffs Association asked Senate to create the crime of not paying \$20 fee;</p> <p>HB 2209 died, but both provisions were worked in conference committee and passed as part of SB 20;</p> <p>Took effect in 2013</p>
<p>HB 2463 (became law)</p>	<p>The person/nonperson designation for failing to register depends on the crime for which the person registers (ex.: it's a nonperson felony if the person registers for a nonperson drug felony)</p>	<p>2016</p> <p>Kansas Sentencing Commission</p>	<p>This provision started out in HB 2460;</p> <p>It passed as part of HB 2463;</p> <p>Took effect in 2016</p>
<p>Proposals from groups with wide range of stakeholders – have not passed:</p>			
<p>HB 2086 (did not become law)</p>	<p>Removes distribution offenses from drug registry</p> <p>Removes felony penalty for failure to pay \$20 fee (makes it a nonperson misdemeanor)</p>	<p>2017</p> <p>Kansas Sentencing Commission</p>	<p>Heard in HCJJ on 1/24/17, and passed out on 1/31/17;</p> <p>Referred to Committee on Appropriations;</p> <p>Died in that committee on 5/4/18</p>

<p>HB 2051 (did not become law)</p>	<p>Removes drug registrants from registry</p> <p>Removes felony penalty for failure to pay \$20 fee (makes it a nonperson misdemeanor)</p>	<p>2019</p> <p>Kansas Sentencing Commission</p>	<p>No hearing held;</p> <p>Died in committee 5/21/20</p>
<p>HB 2475 (did not become law)</p>	<p>Makes registration for most drug crimes five years and only available to law enforcement</p>	<p>2020</p> <p>Kansas Judicial Council</p>	<p>Bill heard on 2/4/20;</p> <p>Passed out of House Corrections and Juvenile Justice on 2/18/20, as amended— amendment would keep registration public;</p> <p>Stricken from calendar on 2/27/21</p>
<p>HB 2474 (did not become law)</p>	<p>Amends penalties for registration violations (making them class A, then class B, then severity level 8)</p> <p>Creates fee waiver mechanism</p> <p>Removes felony penalty for failure to pay \$20 fee (makes it a class C nonperson misdemeanor)</p> <p>As amended, would permit single-point registration in county of residence</p>	<p>2020</p> <p>Kansas Judicial Council</p>	<p>Bill heard on 2/4/20;</p> <p>Passed out of House Corrections and Juvenile Justice on 2/18/20, as amended— would allow for single-point registration;</p> <p>Stricken from calendar on 2/27/21</p>
<p>HB 2092 (did not become law)</p>	<p>Removes drug registry from KORA</p> <p>Removes felony penalty for failure to pay \$20 fee (makes it a nonperson misdemeanor)</p>	<p>2021</p> <p>Kansas Sentencing Commission</p>	<p>No hearing held</p>

<p>HB 2349 (did not become law)</p>	<p>Amends registration to 5 years of private registration (but manufacture remains 15 years of public registration)</p> <p>Repeals lifetime registration for more than one qualifying drug convictions</p> <p>Puts back into law a registrant's ability to petition the district court to be relieved of registration</p> <p>Amends penalties for registration violations to a Class B misdemeanor for a first offense; a Class A misd. for a second offense; and a severity level 8 felony for a third or subsequent or aggravated offense</p> <p>When the registerable offense is a misdemeanor, a 1st or 2nd offense would be a Class A misd. and a 3rd a SL 8 felony</p> <p>All noncompliance would be classified as nonperson</p> <p>Failure to pay the \$20 fee would be a class C misd.</p> <p>Eliminates presumptive prison special sentencing rule</p> <p>Creates a fee waiver process</p> <p>Creates single-point registration in county of residence only</p>	<p>2021</p> <p>Kansas Judicial Council</p>	<p>Bill heard on 2/22/21;</p> <p>Passed out of House Corrections and Juvenile Justice on 2/26/21, as amended—</p> <p>amendments increased the penalties from originally proposed to class A misdemeanor for 1st, severity level 8 for 2nd, and severity level 5 for 3rd (with “aggravated violations” for felonies being severity level 7 or 5);</p> <p>Stricken from calendar on 3/5/21</p>
<p>HB 2581</p>	<p>Same as above</p>	<p>2022</p> <p>Same as above</p>	<p>Introduced 2/1/22</p>