

## Substitute for SENATE BILL NO. 39

By Committee on Judiciary

AN ACT concerning the Kansas offender registration act; relating to aggravated sex offenders; amending K.S.A. 2011 Supp. 22-4902 and 22-4913 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 22-4902a.

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

Section 1. K.S.A. 2011 Supp. 22-4902 is hereby amended to read as follows: 22-4902.

As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means:

(1) A sex offender, ~~as defined in subsection (b)~~;

(2) an aggravated sex offender;

~~(2) (3)~~ a violent offender, ~~as defined in subsection (c)~~;

~~(3) (4)~~ a drug offender, ~~as defined in subsection (f)~~;

~~(4) (5)~~ any person who has been required to register under out of state law or is otherwise required to be registered; and

~~(5) (6)~~ any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.

(b)(1) "Sex offender" includes any person who:

~~(A)~~ On or after April 14, 1994, and prior to July 1, 2012, is convicted of any sexually violent crime ~~set forth in subsection (e)~~;

(B) on or after July 1, 2012, is convicted of any sexually violent crime, if none of the parties involved are less than 16 years of age;

~~(2) (C)~~ on or after April 14, 1994, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime ~~set forth in~~

~~subsection (e)~~, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

~~(3)~~(D) has been determined to be a sexually violent predator, ~~as defined in subsection (d)~~;

~~(4)~~(E) on or after May 29, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:

~~(A)~~(i) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2011 Supp. 21-5511, and amendments thereto;

~~(B)~~(ii) criminal sodomy, as defined in subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(1) or (a)(2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

~~(C)~~(iii) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2011 Supp. 21-6420, and amendments thereto;

~~(D)~~(iv) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2011 Supp. 21-6421, and amendments thereto; or

~~(E)~~(v) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2011 Supp. 21-5513, and amendments thereto;

~~(F)~~(F) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

~~(G)~~(G) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or

~~(A)~~(H) has been convicted of an offense in effect at any time prior to July 1, 2011, that is comparable to any crime defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection.

(2) "Aggravated sex offender" includes any person who, on or after July 1, 2012, is convicted of any sexually violent crime, if any of the parties involved is less than 16 years of age.

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(6) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(10) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5605, and amendments thereto;

(11) electronic solicitation as defined in K.S.A. 21-3523, prior to its repeal, and K.S.A. 2011 Supp. 21-5509, and amendments thereto, committed on or after April 17, 2008;

(12) unlawful sexual relations as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2011 Supp. 21-5512, and amendments thereto, committed on or after July 1, 2010;

(13) any conviction for an offense in effect at any time prior to July 1, 2011, that is comparable to a sexually violent crime as defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;

(14) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or

(15) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for

the purpose of the defendant's sexual gratification.

(d) "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto.

(e) "Violent offender" includes any person who:

(1) On or after May 29, 1997, is convicted of any of the following crimes:

(A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

(B) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

(C) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

(D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

(E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

(F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;

(G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5408, and amendments thereto;

(H) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2011 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less

than 18 years of age; or

(1) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5426, and amendments thereto;

(2) on or after July 1, 2006, is convicted 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;

(3) has been convicted of an offense in effect at any time prior to July 1, 2011, that is comparable to any crime defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(4) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(f) "Drug offender" means any person who has been convicted of:

(1) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined in K.S.A. 65-4159, prior to its repeal, ~~or~~ K.S.A. 2010 Supp. 21-36a03, [prior to its transfer, or K.S.A. 2011 Supp. 21-5703](#), and amendments thereto;

(2) 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 as defined in subsection (a) of K.S.A. 65-7006, prior to its repeal, ~~or~~ subsection (a) of K.S.A. 2010 Supp. 21-36a09, [prior to its transfer, or subsection \(a\) of K.S.A. 2011 Supp. 21-5709](#), and amendments thereto;

(3) K.S.A. 65-4161, prior to its repeal, or subsection (a)(1) of K.S.A. 2010 Supp. 21-

36a05, prior to its transfer, or subsection (a)(1) of K.S.A. 2011 Supp. 21-5705, and amendments thereto. The provisions of this paragraph shall not apply to violations of subsections (a)(2) through (a)(6) or (b) of K.S.A. 2010 Supp. 21-36a05, ~~and amendments thereto~~, which occurred on or after July 1, 2009, through April 15, 2010;

(4) an offense in effect at any time prior to July 1, 2011, that is comparable to any crime defined in this subsection, or any out of state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(5) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2011 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from any out of state court shall constitute a conviction for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender.

(i) "Employment" means any full-time, part-time, transient or day-labor employment, with or without compensation.

(j) "Reside" means to stay, sleep or maintain with regularity one's person and property

in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or maintains the offender's person for seven or more consecutive days or parts of days, or for seven or more non-consecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, or correctional facility, treatment facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments, correctional facilities and treatment facilities.

(p) "Treatment facility" means any public or private facility, hospital or institution providing inpatient treatment or counseling.

(q) "Correctional facility" means any public or private correctional facility, juvenile



detention facility, prison or jail.

(r) "Out of state" means: the District of Columbia; any federal, military, or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

Sec. 2. K.S.A. 2011 Supp. 22-4913 is hereby amended to read as follows: 22-4913. (a) On and after July 1, 2012, an aggravated sex offender shall not reside within 500 feet of the real property of any school upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any grades one through 12. This subsection shall not apply to any state institution or facility.

~~(a)~~(b) Except as provided in subsection ~~(b)~~(c), on and after June 1, 2006, cities and counties shall be prohibited from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders as defined by K.S.A. 22-4902, and amendments thereto.

~~(b)~~(c) The prohibition in subsection ~~(a)~~(b), shall not apply to any city or county residential licensing or zoning program for correctional placement residences that includes regulations for the housing of such offenders.

~~(e)~~(d) As used in this section, "correctional placement residence" means a facility that provides residential services for individuals or offenders who reside or have been placed in such facility due to any one of the following situations:

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- (1) Prior to, or instead of, being sentenced to prison;
- (2) as a conditional release prior to a hearing;
- (3) as a part of a sentence of confinement of not more than one year;
- (4) in a privately operated facility housing parolees;
- (5) as a deferred sentence when placed in a facility operated by community corrections;
- (6) as a requirement of court-ordered treatment services for alcohol or drug abuse; or
- (7) as part of voluntary treatment services for alcohol or drug abuse.

Correctional placement residence shall not include a single or multi-family dwelling or commercial residential building that provides a residence to staff and persons other than those described in paragraphs (1) through (7).

Sec. 3. K.S.A. 2011 Supp. 22-4902, 22-4902a and 22-4913 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.