

Senate Judiciary Committee
March 5, 2012
Testimony of Kansas Association of Criminal Defense Lawyers
as prepared and presented by Jennifer Roth
Opponent of House Bill 2568

The Kansas Association of Criminal Defense Lawyers is a 350-member organization dedicated to justice and due process for people accused of crimes. **KACDL opposes House Bill 2568**, which continues to unnecessarily expand the scope of the Kansas Offender Registration Act.

SORNA continues to present Kansas with a large-scale, unfunded mandate. The deadline for states to comply with SORNA was July 27, 2011. As March 2, 2012, 15 states were in substantial compliance with SORNA (as well as 24 tribes and two territories).¹ There is a grant program for FY 2012, but the 20-page document describing said program does not state how much money is available.² This grant money is inapplicable to almost half of the offenders who make up our state's registry, as explained below.

Kansas continues to burden itself by treating all registered offenders the same. It bears repeating: SORNA only covers sex offenders, yet KORA treats all offenders the same. Last year, the proponents of what started as HB 2322 and passed as SB 37 testified there were 9,000 offenders on the registry: 5,000 sex and 4,000 drug and violent. The KBI said the changes made in SB 37 would add 2,150 offenders *per year*. **We are paying for a registry where almost half of the registrants have no relevance whatsoever to the unfunded federal mandate.**

HB 2568 expands what qualifies as a registerable juvenile adjudication. Out-of-state juvenile adjudications “for an offense that is comparable to a sexually violent crime” in Kansas would be registerable. Without researching juvenile criminal law in 49 states, it is impossible to know how adjudications are handled in those courts across the nation – what rights a juvenile has, etc. This also presents a number of constitutional issues.

A comment on continued retroactivity. The repeated changes to what is required of registered offenders continue to be retroactive. The KBI contends “[t]he Kansas Offender Registration Act is a regulatory scheme that is civil and nonpunitive, and therefore all provisions are retroactive and apply to offenders, regardless of when their underlying offense(s) occurred. *Smith v. Doe*, 538 U.S. 84 (2003).” (Form letter sent to offenders in June 2011 notifying them of SB 37 changes.) As one who has analyzed the Alaska statutes at issue in *Doe* (which dealt only with sex offenders) compared to what passed in SB 37, I can say **this Committee should have serious concerns about relying on *Smith v. Doe* to perpetuate or justify the retroactivity of KORA.**

Thank you for your consideration,

Jennifer C. Roth
KACDL Legislative Committee Chairperson
rothjennifer@yahoo.com
785.550.5365.

¹ <http://www.ojp.usdoj.gov/smart/newsroom.htm>

² <http://www.ojp.usdoj.gov/smart/pdfs/SMARTFY12AWA.pdf>, pg. 7: “Individual grant awards will be up to \$400,000, depending on funding availability, for a period of up to 24 months. Thirty percent of the total amount awarded under this solicitation will be set aside for tribal jurisdictions.”