

**House Corrections and Juvenile Justice Committee  
February 22, 2021**

**House Bill 2349  
Testimony of the Kansas Association of Criminal Defense Lawyers  
Proponent**

Dear Chairman Jennings and Members of the Committee:

The Kansas Judicial Council’s Advisory Committee on Sex Offenses and Registration worked for over two years on the recommendations that resulted in HB 2349. We support this bill. Given that other proponents will address other sections of the bill, **this testimony addresses three areas—penalties for violations of the Kansas Offender Registration Act, changes to the drug registry, and changes to a certain category in the definition of “violent offender”**—but KACDL is happy to address questions about any part of HB 2349.

I have knowledge of and experience with the Kansas Offender Registration Act (hereafter “KORA”) via several different avenues. I have testified about KORA-related bills on behalf of KACDL since 2006. I have worked as a Kansas state public defender for over 22 years, during which time I have handled KORA cases in district and appellate courts. I was a member of the Sentencing Commission from 2009-2015. I was a member of the advisory committee that recommends the changes that are now HB 2349. I prepared this testimony with two main goals: to share with you 1) how we got to where we are with KORA, and 2) why HB 2349 is necessary.

**Brief history of the evolution of KORA**

The first registry act in Kansas was created on April 29, 1993. It was called the Habitual Sex Offender Registration Act, and required a person twice convicted of a sexually violent crime to register with the sheriff in the county where he/she lived. The information was open to law enforcement agencies only.

On April 14, 1994, the Act was amended/expanded and renamed the Kansas Sex Offender Registration Act. That same year, the Act was expanded to allow public access to registrants’ information at the sheriff’s office.

In 1997, the Act was again renamed and has since remained the Kansas Offender Registration Act. Murder and manslaughter, as well as certain crimes with victims under 18, were added that same year. Since 1997, additional sex offenses have been added to the list. Juvenile adjudications for sex offenses were added in 2002. In 2006, people “convicted of any person felony [where a finding was made that] a deadly weapon was used in the commission of such person felony” were added.

In 2007, SB 204 added people convicted of manufacturing, possession of precursors, and drug distribution or possession with intent to distribute (regardless of amount) (not including marijuana). The Legislature included a personal use exception to the registration requirement for manufacturing. SB 204 also did away with the KBI sending out compliance letters and instead required in-person visits to the local sheriff's office(s) three times a year for all offenders. In 2011, attempts, conspiracies, and solicitations of the enumerated drug offenses were added.

In 2011, SB 37 dramatically changed KORA. The stated reason was to bring Kansas into "substantial compliance" with federal law (SORNA) in order to avoid the loss of Byrne Grant money. At that time, there were four states in substantial compliance; today there are still only 18. *SORNA has nothing to do with the drug or violent categories*, yet the sweeping changes in SB 37 were applied to all three types of registrants (sex, drug, and violent).

In 2012, HB 2568 added juvenile adjudications to some provisions. At the request of a local businessman and the Department of Corrections, HB 2568 also restricted employment information from being on the offender registry website, but it is publicly available by contacting the registering law enforcement agency or by signing up for community notification through the KBI website.

In 2013, SB 20 made a few changes to KORA, including specifying that drug offenders affected by KORA were those convicted after July 1, 2007. For the six years prior to that, KORA was applied retroactively to drug offenders who were convicted before a drug offender registry even existed.

## **Amending penalties for noncompliance with KORA**

### ***Background of penalties for noncompliance***

From 1993 to mid-1999, failure to comply with KORA's requirements was a Class A nonperson misdemeanor. In 1999, the Legislature increased the penalty to a severity level 10 nonperson felony. It remained that way until 2006, when a legislator offered an amendment to increase the penalty by five levels on the grid to severity level (SL) 5, elevate it to a person felony, and make every thirty days of failure a separate offense. That provision eventually made it into a conference committee report and became law.

As of July 1, 2011, a violation of KORA requirements is a SL 6 person felony for a first offense, a SL 5 person felony for a second offense, a SL 3 person felony for a third or subsequent offense, and a SL 3 person felony for an aggravated violation (i.e. violation that lasts over 180 consecutive days).

To put this in context, here are two examples: someone convicted of SL 4 possession with intent to distribute (which is the lowest level) is required to register. The sentencing range she faces for failing to comply with every KORA requirement (17-46 months) is almost the same as her underlying drug crime (14-51 months). A person convicted of aggravated assault (a severity level 7 offense) with a firearm faces a prison sentence of 11-34 months, but if he fails to comply with any KORA requirement (an offense that's one level higher than his underlying offense), he faces a prison sentence of 17-46 months.

As of July 1, 2013, it is a Class A misdemeanor to not pay, within 15 days, the \$20 registration fee that is owed when a registrant goes in for the quarterly registrations. It is a SL 9 person felony if, within 15 days of the recent registration, two or more \$20 payments have not been paid if the person registers for a person offense; it is a SL 9 nonperson felony if they register for a nonperson offense.

In 2016, HB 2463 made it a nonperson crime for failing to comply with KORA when the underlying crime was a nonperson offense (i.e. drug offenses). It remains a person felony for those who register for person offenses.

### ***Recommendation from the Judicial Council***

HB 2349 would return the penalties for violating KORA requirements to severity levels more in line with their original classification. A first offense would be a class B nonperson misdemeanor, a second offense a class A nonperson misdemeanor, and a third or subsequent offense (or an aggravated offense) a severity level 8 nonperson felony. It would make it so that if someone registers because of a misdemeanor, then a KORA violation would also be a misdemeanor.

### ***Reasons why this change is warranted***

In addition to the reasons set out in the advisory committee's report (see pages 19-23), another reason for this change is that current penalties are too severe in the context of what conduct it covers.

Currently, periods of registration are 15 years, 25 years, and lifetime. KORA requires registrants to provide lots of detail on the form that registrants have to fill out (ex.: tattoos, e-mail and online accounts, cars/boats/planes/motorcycles makes and models, etc.). Registrants do not receive any sort of reminder when it is time to register (put another way, your dentist sends you a postcard or your doctor leaves you a voice message, but there are no reminders for KORA registrants). In addition to quarterly in-person visits, registrants must report in person whenever there is a change in their information, i.e. they get a new job, get a new e-mail address, buy a boat, get a new tattoo, want to take a trip out of the country, etc.

Failure to comply with any of these duties, even unintentionally, is currently prosecuted as a SL 6, 5, or 3 felony for all types of registrants (drug, violent, and sex). Failing to comply is a strict liability offense. In other words, there is no criminal intent required. (The only other strict liability crimes specifically listed in our statutes are DUI, commercial DUI, and smoking.) In other words, a person is cut off from raising a defense to failing to comply. Here are some real-life examples of people who were prosecuted in Kansas for KORA violations:

- You forgot to register on time and get there two weeks late, but none of your information has changed. The sheriff's registration unit tells you to come back another day because they don't take registration updates on Mondays.
- Your apartment burned down, which law enforcement knows, but you failed to go tell them within three business days that you had to move.
- You work in a county that is different from where you live and you failed to register in that other county, but you are compliant in your home county (and, therefore, all of your information is on a public website).
- You are homeless and do not report as frequently as law enforcement tells you to (which, if you are homeless, can be every 30 days or more).
- You buy a jet ski and forget to list it on your registration form.
- You register while in jail and get out the next day. This happens during your registration month and you don't go in to register again during that month.
- You forget to report a new email address relating to your employment.
- You fail to timely report a change of address. The offense that requires you to register is for voluntary sexual contact with your girlfriend when she was 15 and you were 19. Years later, she is still your girlfriend (now 20+ years old).
- You move to another state (which would be any of the other 49) that does not require people to register for a conviction for possession with intent to distribute. You tell the sheriff's office but not the KBI.

Simply put, the current penalties for noncompliance with KORA's requirements are too high. It is past time to restore the punishment for KORA violations to a misdemeanor and lower-level felony.

### **Changes to the drug registry**

#### ***Background on the inclusion of drug offenses in KORA***

In 2007, what started as 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 drug dealer than a meth lab house, an amendment to add distribution offenses was offered on the Senate floor and passed. Once on the House side, this idea was supported by some who

thought that what had been added was distribution of methamphetamine within 1,000 feet of a school. But that was not the case—it was drafted and offered as the entire sale/possession with intent to sell statute. This was concerning to the KBI, which suggested that the amendment be removed and a more thorough discussion held the following year:

It is certainly true that drug trafficking, in any form and any drug, can be a very dangerous profession. And it is true that innocent bystanders are shot or injured when deals go bad or retribution is attempted. However, our first concern is resources — we estimated 100-200 meth cooks who would need to register, a number we could absorb. But there may be 1000 to 2000 convictions each year for sale, attempted sale and possession with intent to sell under K.S.A. 65-4161. . . . Obviously, additional personnel and resources will be necessary. Our second concern would be the impact on the local sheriff offices. While the bill contemplates collecting a fee, that might be problematic with some offenders. Furthermore, even with a fee, the number of registrants might strain the support staff at many sheriff offices. Third, there is 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.)

Nevertheless, 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 ten (now 15) years.

This 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 also 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 (that we know of) registers distribution offenses by requiring a person to take affirmative steps to comply.

### ***Recommendation from Judicial Council***

HB 2349 would require registration for five years for possession with intent to distribute/distribution and possession of precursors, and make the information private and available only to law enforcement. For convictions for manufacturing, registration would remain 15 years and public. HB 2349 also eliminates lifetime registration for people with multiple qualifying drug convictions.

## ***Reasons why these changes are warranted***

Kansas is an outlier—there is no other state with a registry akin to ours. See, e.g., Report of the Judicial Council Advisory Committee on Sex Offenses and Registration, p. 30-31; <https://www.themarshallproject.org/2018/03/08/convicted-of-a-drug-crime-registered-with-sex-offenders>.

And what at least one proponent (i.e. 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.

Despite its strain on its resources, law enforcement appears to want to maintain the drug offender registry—they say it is a tool for them. HB 2349 would make registration open to law enforcement only. This is how the registry was when it began in 1993, i.e. open to law enforcement only. Making registration private would address some of the problems KORA creates.

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

## **Changes to any person felony/any deadly weapon**

### ***Background on this category***

In 2006, HB 2754 proposed to add alerts and a new category of registrant, often referred to as any person felony where a deadly weapon was used. Three conferees (two in favor, and I was opposed) testified in House Federal and State Affairs on February 16, 2006. A review of the testimony shows *no proponents of the addition of a new category of offenders*. Rather, Miki Martinez’s family and their community wanted a law “requir[ing] public broadcast by local media informing local and physical description of offenders registered through Megan’s Law.” Testimony from James Martinez, p. 2. Despite there being no proponents of this new category, HB 2754 passed out of committee and later the full House.

There was no hearing on this bill in any Senate committee. But in May 2006, the “any person felony/deadly weapon used” language from HB 2754 was folded into SB 506 during a conference committee, along with the doubling of severity level for

KORA violations (that I addressed in the first part of this testimony). Throughout the life of this provision (in HB 2754 and SB 506), there was no testimony or other comment in the legislative record that explained why this addition of offenders was proposed or how it could enhance public safety, or why the severity level for violations was doubled.

“Any person felony” is just what it sounds like. “Deadly weapon” includes not just firearms or long knives, but also any object that a court determines to be a “deadly weapon.” This includes a BB gun, a table knife, a car, a bowling ball, and a Taser (all of these are taken from actual cases I have handled or read).

### ***Recommendation from Judicial Council***

Currently this category carries a 15-year registration period. HB 2349 would shorten it to five years and require the court to make a finding on the record “in open court and stated with particularity.”

### ***Why these changes are warranted***

The reason these changes should be made are basically the same as those that support the drug registry changes. First, Kansas is again an outlier; we know of no other such registry. Second, there is no research, study, data, or other evidence-based assessment on whether including thousands of people with convictions for “any person felony” with “any deadly weapon” does anything to reduce recidivism or increase public safety, at least that we have seen. Third, this category is the biggest driver of the “violent offender” category. It has overwhelmed the registry, and diverts law enforcement resources away from solving crimes or working on prevention, requiring instead that they be spent on registration.

### **Conclusion**

Given the Legislature’s interests in reforming our criminal laws, being more intentional about who goes to prison and for how long, removing barriers to employment, and promoting positive participation in society, it is time to overhaul KORA. For all of the reasons above, we wholeheartedly urge this Committee to pass out HB 2349 favorably and see to its passage in the House.

Sincerely,

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