

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 366**

As Agreed to March 29, 2022

Brief*

SB 366 would create a mechanism to seek relief from the Kansas Offender Registration Act (KORA) for certain drug offenders. It would also require KORA registration for certain convictions of breach of privacy and for convictions of internet trading in child pornography.

Relief from KORA Registration for Certain Drug Offenders

The bill would allow a drug offender to file a verified petition for relief from registration requirements if the offender has registered for a period of at least five years after parole, discharge, release, conviction, or adjudication. Time spent in incarceration, or time during which the offender does not substantially comply with KORA requirements, would not count toward the five-year duration of the registration period.

An offender who must register due to an out-of-state conviction or adjudication would not be eligible to apply for relief under the bill unless that jurisdiction no longer required the offender to file.

The bill would outline requirements for the contents of the petition and would require the Judicial Council to develop a petition form for use under the bill's provisions. The bill would include filing, notice, hearing, and other procedural requirements for the petition, including notification to any living victims of the offense requiring registration. The bill would allow the court to require a risk-assessment of the registrant and would provide the process for that risk-assessment.

The bill would require the court order relief from registration requirements if the offender shows by clear and convincing evidence that:

- The offender has not been convicted or adjudicated of a felony, other than a violation of KORA, within the five years immediately preceding the filing of the petition, and no proceedings involving any such felony are presently pending or being instituted against the offender;

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- The offender’s circumstances, behavior, and treatment history demonstrate that the offender is sufficiently rehabilitated to warrant relief; and
- Registration of the offender is no longer necessary to promote public safety.

If the court denies a petition, the bill would prohibit the offender from filing another petition until three years have elapsed, unless the court orders a shorter time period.

The bill would require successful petitioners to be removed from the offender registry and the Kansas Bureau of Investigation (KBI) website, and would relieve such petitioners from compliance with registration requirements.

The bill would create an exception to allow offenders who have successfully been removed from the offender registry to petition for expungement of that offense and would allow an offender to combine a petition for relief from registration requirements with a petition for expungement, if the offense is otherwise eligible for expungement.

Offender Registration for Breach of Privacy and Internet Trading in Child Pornography

The bill would amend the definition of “sex offender” in the KORA to include any person who is convicted of breach of privacy by the following means:

- Installing or using a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape, film, photograph, or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy;
- Disseminating or permitting the dissemination of any videotape, photograph, film, or image obtained in violation of the above provision; or
- Disseminating any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which such identifiable person had a reasonable expectation of privacy, with the intent to harass, threaten, or intimidate such identifiable person, and such identifiable person did not consent to such dissemination.

The bill would specify the definition of “offender” in KORA (to require registration) would not include a person adjudicated as a juvenile offender for the above acts.

The bill would add convictions of breach of privacy under the above provisions to those crimes for which an offender must register under KORA for 15 years.

The bill would amend the definition of “sexually violent crime” in KORA to include the crimes of internet trading in child pornography and aggravated internet trading in child pornography.

The bill would require an offender to register under KORA for a period of 25 years if convicted of internet trading in child pornography or aggravated internet trading in child pornography if the victim is more than 14 years of age but less than 18 years of age. The bill would require an offender to register under KORA for such offender's lifetime if convicted of aggravated internet trading in child pornography if the victim is less than 14 years of age.

Conference Committee Action

As it entered conference, SB 366 contained provisions regarding the definition of the crime of burglary when entering into or remaining within any locked or secured portion of any dwelling, building, or other structure with the intent to commit a crime. These provisions are included in the Conference Committee Report for SB 408, agreed to on March 29, 2022.

The Conference Committee removed the contents of SB 366 and inserted the contents of HB 2515, as passed by the House, regarding relief from KORA for certain drug offenders and the contents of SB 385, as passed by the Senate, regarding registration for certain breaches of privacy and internet trading in child pornography in KORA.

Background

The Conference Committee report contains the contents of HB 2515, as passed by the House, and SB 385, as amended by the House Committee on Corrections and Juvenile Justice.

HB 2515 (Relief from KORA Registration for Certain Drug Offenders)

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Owens.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 7, 2022, representatives from the American Civil Liberties Union (ACLU) of Kansas and the Kansas Association of Criminal Defense Lawyers (KACDL) provided **proponent** testimony, stating Kansas is an outlier among other states in regard to a drug registry; registry maintenance is costly and provides a strain on law enforcement resources, security risks arise through publishing registrants' personally identifiable information, there is a lack of evidence showing registries promote public safety, and registrants have difficulty engaging in positive life activities such as obtaining employment or purchasing a car.

Written-only proponent testimony was provided by representatives of the Council of State Governments (CSG) Justice Center, the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, the Kansas Sheriffs Association, and a private citizen.

A representative of the Johnson County Sheriff's Office provided **opponent** testimony, stating drug offenders have a high rate of recidivism, and the registry is a non-punitive civil procedure serving as an effective means of overseeing drug offenders. No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 17, 2022, a representative of KACDL testified as a **proponent** to the bill. Written-only proponent testimony was provided by representatives of ACLU Kansas and CSG Justice Center. No other testimony was provided.

On March 18, 2022, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain the amendment.]

SB 385 (Offender Registration for Breach of Privacy and Internet Trading in Child Pornography)

As introduced, the bill contained the provisions requiring registration for certain convictions of breach of privacy. The House Committee on Corrections and Juvenile Justice amended the bill to add the contents of SB 368, requiring registration for convictions of internet trading in child pornography.

The bill was introduced by Senators Warren, Alley, Baumgardner, Billinger, Bowers, Claeys, Corson, Dietrich, Doll, Erickson, Fagg, Faust-Goudeau, Francisco, Gossage, Haley, Hilderbrand, Holscher, Kerschen, Kloos, Longbine, Masterson, McGinn, Olson, O'Shea, Peck, Petersen, Pettey, Ryckman, Steffen, Straub, Suellentrop, Sykes, Thompson, Ware, and Wilborn.

[Note: The bill's provisions, as introduced, are similar to those of 2020 SB 420, as amended by the Senate Committee on Judiciary.]

Senate Committee on Judiciary

In the Senate Committee hearing on February 8, 2022, three private citizens provided **proponent** testimony. No other testimony was provided.

On February 11, 2022, the Senate Committee amended the bill to exempt juvenile offenders from the breach of privacy registration requirements. [Note: The Conference Committee retained the amendment.]

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 8, 2022, Senator Warren and seven private citizens provided **proponent** testimony. A private citizen submitted written-only proponent testimony. No other testimony was provided.

On March 9, 2022, the House Committee amended the bill to add the contents of SB 368, requiring registration for convictions of internet trading in child pornography or aggravated internet trading in child pornography. [Note: The Conference Committee retained the amendment.]

SB 368 (Offender Registration for Internet Trading in Child Pornography)

SB 368 was introduced by the Senate Committee on Judiciary at the request of the Office of the Attorney General (OAG).

Senate Committee on Judiciary

In the Senate Committee hearing on February 7, 2022, a representative of the OAG provided **proponent** testimony, stating the bill is necessary to require registration under KORA for the crimes specified in the bill. Written-only proponent testimony was provided by a representative of the Johnson County Sheriff's Office. No other testimony was provided.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 8, 2022, the same **proponent** conferee appeared and written-only proponent testimony was provided as in the Senate Committee hearing. No other testimony was provided.

Fiscal Information

HB 2515 (Relief from KORA Registration for Certain Drug Offenders)

According to the revised fiscal note prepared by the Division of the Budget on the bill, the Kansas Sentencing Commission estimates enactment of the bill would save 43 adult prison beds by the end of FY 2023 and 71 prison beds by the end of FY 2032.

The Kansas Department of Corrections (KDOC) indicates a reduction in the prison population is beneficial toward avoiding future costs, but is not sufficient to reduce the current prison expenditures. The KDOC also indicates that enactment of the bill could require it to update information on the Kansas Adult Supervised Population Electronic Repository if the offender requests such information be readily available. The KDOC also indicates any fiscal effect would be minimal and could be absorbed within existing resources.

The KBI states there are currently 5,964 drug offenders on the registry, of which 3,556 have been registered for five years or more. The KBI also indicates that it is unknown how many offenders would apply for relief from the registry, but if all 3,556 offenders applied and were immediately approved, it would take 2.0 full-time equivalent (FTE) positions working approximately 55.5 weeks to remove all from the registry. The KBI also states that it would be unlikely that all drug offenders would apply and be approved at once, and it would require \$51,468 from the State General Fund beginning in FY 2023 for 1.0 FTE position.

The Office of Judicial Administration (OJA) indicates that enactment of the bill would increase the workload of judges and district court personnel to process and research new petitions, provide notice and hold hearings, issue court orders, allow expungements on additional cases and provide notice to KBI and other law enforcement agencies within 14 days. The bill would also require additional work from court services officers to complete offender risk assessments, verify no new felony convictions within five years, complete record checks, and

allow prosecutors access to confidential files. OJA further states enactment of the bill could result in collection of additional docket fees, but the fiscal effect could not be estimated because the amount of additional fees and whether the district courts could absorb the additional duties with existing staff or would need to hire additional employees is unknown.

The Kansas Association of Counties indicates enactment of the bill could increase expenditures for counties who are financially responsible for holding hearings to review the petitions for relief and for victim notification of the offender's status change. A fiscal effect cannot be estimated because the frequency of requests for relief and ability of offenders to meet eligibility requirements is unknown.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

SB 385 (Offender Registration for Breach of Privacy and Internet Trading in Child Pornography)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OJA states enactment of the bill would have a negligible fiscal effect on Judicial Branch operations. The KBI, KDOC, and the OAG indicate the enactment of the bill would not have a fiscal effect on the operations of each agency.

The Kansas Sentencing Commission estimates that enactment of the bill would result in an increase of two adult prison beds needed by the end of FY 2023 and six by the end of FY 2032. Any fiscal effect associated with enactment of SB 385 is not reflected in *The FY 2023 Governor's Budget Report*.

SB 368 (Offender Registration for Internet Trading in Child Pornography)

According to the fiscal note prepared by the Division of the Budget on the bill, the OJA indicates enactment of the bill would have a negligible fiscal effect on Judicial Branch operations.

The Kansas Sentencing Commission indicates enactment of the bill could have an effect on prison admission and beds; however, the Commission does not have enough information to estimate what that effect would be. Any fiscal effect associated with enactment of SB 368 is not reflected in *The FY 2023 Governor's Budget Report*.

Kansas Offender Registration Act; drug offenders; relief from registration requirements; expungement; judiciary; breach of privacy; internet trading in child pornography

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