

**Senate Judiciary Committee  
Substitute for House Bill 2318  
Testimony of Jennifer Roth  
Proponent (with concerns)  
March 21, 2011**

**Proposed Balloon Amendment with Rationale**

**Proposed balloon amendment:  
(the actual change is on page 2, but all of K.S.A. 22-4902 is provided)**

**22-4902. Definitions.** As used in this act, unless the context otherwise requires:

- (a) "Offender" means: (1) A sex offender as defined in subsection (b);
- (2) a violent offender as defined in subsection (d);
- (3) a sexually violent predator as defined in subsection (f);
- (4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:
  - (A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;
  - (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or
  - (C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;
- (5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:
  - (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
  - (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;
  - (C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;
  - (D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;
  - (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto; or
  - (F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;
- (6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;

(7) any person who, 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;

(8) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A. 2009 Supp. 21-36a03, and amendments thereto, 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;

(B) 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 by K.S.A. 65-7006, prior to its repeal or K.S.A. 2009 Supp. 21-36a09 or 21-36a10, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, prior to its repeal or subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto *(i) if the quantity of the material was 100 grams or more, unless otherwise provided herein; (ii) if the controlled substance was heroin or methamphetamine, then if the quantity of the material was 3.5 grams or more; or (iii) if the controlled substance is distributed by dosage unit, then if the number of dosage units was 10 or more.* 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 and after July 1, 2009, through the effective date of this act.

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 another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or 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 (c).

(c) "Sexually violent crime" means:

- (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;
- (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;
- (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;
- (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;
- (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;
- (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;
- (7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;
- (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;
- (9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;
- (10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;
- (11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or
- (12) electronic solicitation as defined by K.S.A. 21-3523, and amendments thereto, committed on and after the effective date of this act;
- (13) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;
- (14) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; 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. As used in this subparagraph, "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) "Violent offender" includes any person who, after the effective date of this act, is convicted of any of the following crimes:

(1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;

(2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;

(3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;

(4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;

(5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto; or

(6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) "Law enforcement agency having jurisdiction" means the sheriff of the county in which the offender expects to reside upon the offender's discharge, parole or release.

(f) "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.

(g) "Nonresident student or worker" includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) "Aggravated offenses" means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) "Institution of higher education" means any post-secondary school under the supervision of the Kansas board of regents.

## **Rationale:**

Years of work by the Recodification Commission, followed by the work of the Judicial Council, produced a lot of valuable information. Surrounding states use the weight system in classifying drug crimes. Not all people who distribute drugs or possess with intent to distribute should be treated the same. There are people who “distribute” drugs to their friends, there are people who sell drugs to support their own addictions and there are people who are truly drug dealers.<sup>1</sup>

Current law provides that anyone convicted of distribution/possession with intent to distribute opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 – regardless of the amount of drug involved – must register under the Kansas Offender Registration Act. The addition of these offenders to the registry occurred in 2007. The drug crimes did not specify an effective date and, after much confusion, were applied retroactively. People convicted before the registry even included drugs were suddenly subject to the registry and all of its requirements and penalties. The current minimum time period is ten years (although pending HB 2322 would increase the minimum period for all registrants to 15 years). Failure to comply with the registration requirements is a severity level 5 person felony. Obviously, being on a public offender registry (and, until recently, having a driver’s license branded with “OFFENDER”) presents its own challenges to people’s rehabilitation.

As a result of the growing offender registry population, we have seen an impact on the number of people sent to prison for severity level 5 crimes. “Nondrug severity level V represents the third largest increase of prison population during the ten-year forecast period.” (Kansas Sentencing Commission Fiscal Year 2010 Adult Inmate Prison Population Projections Report, p. 3). During FY 2010, 166 offenders were convicted of registration offenses. Of this number, 47 offenders were sentenced to prison and 119 offenders were sentenced to probation. (Kansas Sentencing Commission HB 2322 Bed Impact Statement). This number will continue to grow.

Earlier this month, the House Corrections and Juvenile Justice Committee held hearings on HB 2322, a bill that would dramatically change the offender registry. According to the fiscal note, the changes would add 2,150 offenders to the Offender Registry per year. Testimony from the KBI indicated our registry already has about 4,000 non-sex offenders. While I do not know how many of these are drug offenders, I have little doubt our registry has a large number of people on it for drug offenses – and that a good chunk of that 2,150 people/year will also be drug offenders.

**Sub for House 2318 tells us it is time to stop treating alike all people who distribute/possess with intent to distribute drugs – and start considering the amount of drugs involved. Under the same reasoning, it is time to stop treating them all alike for registry purposes as well.**

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<sup>1</sup> When reading through the minutes of the Recodification Committee, it is clear that members recognized a distinction between “small-time dealers” and “big-time dealers.” (Sample comment: it is easier to catch small-time dealers than big-time dealers because they are often caught holding drugs, not selling them – see 9/26/07 meeting minutes). Even the KBI thought small-time dealers should be treated differently. (1/9/08 meeting minutes). That was the reason the Committee went to great lengths to come up with justifiable amounts/severity levels, so that proportionality could result. The minutes reflect that [one member – a prosecutor –] commented that “everyone who habitually used drugs becomes a dealer at some point as a means to support their habit or help make drugs available to others.” (12/3/08 meeting minutes, p. 3).

