

The Capitol Lobby Group

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Kevin A. Barone

TO: House Corrections and Juvenile Justice Committee
FROM: Kevin Barone
DATE: February 2, 2012
RE: HB2209 Offender Registration “Safety Valves”

Good afternoon Chairman and members of the Committee, my name is Kevin Barone and I am the lobbyist for a group called Coalition for Fair Sentencing. This group is made up of defense attorneys whom have a number of young clients who made mistakes when they were between the ages of 18 and 26, served short prison sentences or probation periods, and under current law are required to be on the offender registry for the remainder of their lives. Sex offender evaluations have indicated that these young men pose a low-risk for re-offending. Psychological evaluations performed on most of them concluded that their conduct was primarily driven by immaturity and impairment by alcohol. The mistakes we are talking about are where the only issue is the age of those involved, no other crime and had both parties been few years older, there would be no crime.

These young men have no hope for a normal life. They will spend more than 50 years with the stigma of being a registered sex offender. Jobs will be hard to find and healthy relationships will be virtually impossible to find. They will be forever ostracized from society because of a mistake committed while they were still growing up. Ironically, lifetime registration has virtually no impact on my truly dangerous clients. There are people who are actually fixated pedophiles and a danger to society. Sentences handed down to these clients have been “life” sentences. They will surely die in prison and registration is meaningless to them.

That is the true irony of the lifetime registration requirement – it principally impacts those who are of little or no risk to society. If these young men fail to comply with the registration requirements at any point during their entire life, they are subject to prosecution for a strict-liability felony. If the young man is also on lifetime postrelease supervision (and he likely is), the felony failure to register mandates that he return to prison for the rest of his natural life (the commission of a felony by someone on lifetime postrelease supervision mandates a return to prison for life).

Young men who made mistakes in their youth need hope. Without hope, they will live a pitiful life, with no economic opportunity, and may even resort to crime in order to survive. The proposed amendment gives them hope to one day be removed from the registry. Without that hope, the registry is doing enormous harm and very little good.

The proposed safety-valve allows a registrant to seek release from the requirements for a very limited group of offenders after 10 years of registration. It puts the burden on the registrant to prove by clear and convincing evidence that registration is no longer necessary to protect the public. It only seems fair to give relief from the tremendous burden of registration if that difficult standard is met.

Safety-valve for lifetime postrelease supervision

The same young men who get lifetime registration often get lifetime postrelease supervision (parole). That is simply excessive. Under current law, a 20-year old who made advances with 13 year old, can get both lifetime registration and lifetime postrelease supervision if convicted. This begs the question, what is lifetime postrelease supervision? Is it that bad? I was shocked that to learn that if that same 20 year-old commits a new misdemeanor ever after being found guilty, the consequence is return to prison for “up to life.” See K.S.A. § 75-5217. If he commits any felony, the consequence is that he must go back to prison for the rest of his natural life. Id. (“If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment.”). I underscore any felony.

Beyond making minor crimes into mandatory life in prison, there are tremendously onerous requirements of lifetime postrelease supervision for sex offenders. There are the standard 12 conditions of postrelease supervision, <http://www.doc.ks.gov/victim-services/information/conditions-of-post-release-supervision>, which include (1) regular reporting to a parole officer and restrictions on travel, (2) not consume alcohol and be subject to random testing for drugs and alcohol, (3) notify employers of the person’s convictions and “status as an offender,” (4) pay various fees, (5) complete and pay for any required treatment or counseling, (6) have no contact, direct or indirect, with the victim, and (7) be subject to random searches of you, your home, your car, and any “property under your control.”

Many states (13) already have or are seeking provisions allowing early termination of the requirement to register, as well as a mechanism to be released from lifetime parole. Kansas appears to be uniquely harsh by not having a mechanism for early discharge. With respect to “safety valve” statutes allowing removal from the registry, note that SMART has determined all of the states listed have been deemed SORNA compliant. “Substantial compliance” with SORNA should not be put into jeopardy by this amendment. Society has a moral obligation to give hope and an opportunity for a future to young adults who made a mistake before they really grew up, often while intoxicated, and who are not a threat to society.

Besides the other issues, the issue of cost is just now starting to come around. These young offenders will be on the register and be required to report and keep information updated. That means someone has to be there to report to. Iowa did one study and currently working on an update that puts the cost in the \$10’s of millions in just a few years to keep track of everyone.

I have vetted this language with the KBI and the Attorney’s General Offender working group. The language has been sent to the national SMART office to determine if the State of Kansas would remain in compliance with SORNA if we have this language. We are hoping this type of language is approved and allows the State to give hope to those who are registered sex offenders because of the age they were when the act was committed.