

HOUSE BILL No. 2208

By Committee on Corrections and Juvenile Justice

2-8

Proposed Amendments to HB 2208 - Jennings
House Corrections and Juvenile Justice
Prepared by: Natalie Scott, Assistant Revisor
February 20, 2019

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sex offenses; creating the crime of sexual extortion; offender
3 registration; amending K.S.A. 2018 Supp. 22-4902 and repealing the
4 existing section.
5

and 22-4906

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Sexual extortion is communicating by any means
8 a threat to injure the property or reputation of a person, or a threat to
9 distribute an image or video of a person that is of a sexual nature or depicts
10 such person in a state of nudity:

11 (1) With the intent to coerce such person to: (A) Engage in sexual
12 contact, sexual intercourse or conduct that is of a sexual nature; or (B)
13 produce, provide or distribute an image, video or other recording of a
14 person in a state of nudity or engaging in conduct that is of a sexual nature;
15 or

16 (2) that causes such person to: (A) Engage in sexual contact, sexual
17 intercourse or conduct that is of a sexual nature; or (B) produce, provide or
18 distribute an image, video or other recording of a person in a state of
19 nudity or engaging in conduct that is of a sexual nature.

20 (b) Sexual extortion as defined in:

21 (1) Subsection (a)(1) is a severity level 7, person felony; and

22 (2) subsection (a)(2) is a severity level 4, person felony.

23 (c) This section shall be part of and supplemental to the Kansas
24 criminal code.

25 Sec. 2. K.S.A. 2018 Supp. 22-4902 is hereby amended to read as
26 follows: 22-4902. As used in the Kansas offender registration act, unless
27 the context otherwise requires:

28 (a) "Offender" means:

29 (1) A sex offender;

30 (2) a violent offender;

31 (3) a drug offender;

32 (4) any person who has been required to register under out-of-state
33 law or is otherwise required to be registered; and

34 (5) any person required by court order to register for an offense not
35 otherwise required as provided in the Kansas offender registration act.

36 (b) "Sex offender" includes any person who:

1 unlawful possession of a visual depiction of a child, as defined in K.S.A.
2 2018 Supp. 21-5610, and amendments thereto; or

3 (B) adjudicated as a juvenile offender for an act which if committed
4 by an adult would constitute the commission of a crime defined in
5 subsection (t)(1)(A).

6 (2) Notwithstanding any other provision of law, a court shall not
7 order any person to register under the Kansas offender registration act for
8 the offenses described in subsection (t)(1).

9 ~~Sec. 3. K.S.A. 2018 Supp. 22-4902 is hereby repealed.~~

10 Sec. 4. This act shall take effect and be in force from and after its
11 publication in the statute book.

Sec. 3. K.S.A. 22-4906 is hereby amended - see attachment

and 22-4906

Renumber sections

Sec. 3. K.S.A. 2018 Supp. 22-4906 is hereby amended to read as follows: (a) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 15 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 15 years from the date of conviction:

(A) Sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(a), and amendments thereto;

(B) adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2018 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;

(C) promoting the sale of sexual relations, as defined in K.S.A. 2018 Supp. 21-6420, and amendments thereto;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2018 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, when one of the parties involved is less than 18 years of age;

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2018 Supp. 21-5513, and amendments thereto, when one of the parties involved is less than 18 years of age;

(F) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto;

(G) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto;

(H) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto;

(I) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto;

(J) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto;

(K) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2018 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age;

(L) sexual extortion, as defined in section 1, and amendments thereto, when one of the parties involved is less than 18 years of age;

(L) ~~(M)~~ any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

(M) ~~(N)~~ conviction of any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act;

(N) ~~(O)~~ conviction 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;

(O) ~~(P)~~ unlawful manufacture or attempting such of any controlled substance or controlled substance analog, as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2018 Supp. 21-5703, and amendments thereto;

(P) ~~(Q)~~ 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(a), prior to its repeal, K.S.A. 2010 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2018 Supp. 21-5709(a), and amendments thereto;

(Q) ~~(R)~~ K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-36a05(a)(1), prior to its transfer, or K.S.A. 2018 Supp. 21-5705(a)(1), and amendments thereto;

or

(R) ~~(S)~~ any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 15 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.

(b) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 25 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 25 years from the date of conviction:

- (A) Criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto, when one of the parties involved is less than 18 years of age;
 - (B) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto;
 - (C) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, or K.S.A. 2018 Supp. 21-5509, and amendments thereto;
 - (D) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto;
 - (E) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto;
 - (F) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2018 Supp. 21-5512, and amendments thereto;
 - (G) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto, if the victim is 14 or more years of age but less than 18 years of age;
 - (H) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2018 Supp. 21-5505(b), and amendments thereto;
 - (I) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2018 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if the person selling sexual relations is 14 or more years of age but less than 18 years of age; or
 - (J) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.
- (2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 25 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.
- (c) Upon a second or subsequent conviction of an offense requiring registration, an offender's duration of registration shall be for such offender's lifetime.
- (d) The duration of registration for any offender who has been convicted of any of the following offenses shall be for such offender's lifetime:
- (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto;
 - (2) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto;
 - (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto;
 - (4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2018 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;
 - (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;
 - (6) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto;
 - (7) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto, if the victim is less than 14 years of age;
 - (8) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2018 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if the person selling sexual relations is less than 14 years of age;
 - (9) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or K.S.A. 2018 Supp. 21-5408(a), and amendments thereto;
 - (10) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or K.S.A. 2018 Supp. 21-5408(b), and amendments thereto;
 - (11) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto; or
 - (12) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.
- (e) Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall register for such person's lifetime.

(f) Notwithstanding any other provisions of this section, for an offender less than 14 years of age who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, the court shall:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(g) Notwithstanding any other provisions of this section, for an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or K.S.A. 2018 Supp. 21-6804, and amendments thereto, the court shall:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(h) Notwithstanding any other provisions of this section, an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or K.S.A. 2018 Supp. 21-6804, and amendments thereto, shall be required to register for such offender's lifetime.

(i) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act for an offense that would not otherwise require registration as provided in K.S.A. 22-4902(a)(5), and amendments thereto, then all provisions of the Kansas offender registration act shall apply, except that the duration of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(j) The duration of registration does not terminate if the convicted or adjudicated offender again becomes liable to register as provided by the Kansas offender registration act during the required period of registration.

(k) For any person moving to Kansas who has been convicted or adjudicated in an out-of-state court, or who was required to register under an out-of-state law, the duration of registration shall be the length of time required by the out-of-state jurisdiction or by the Kansas offender registration act, whichever length of time is longer. The provisions of this subsection shall apply to convictions or adjudications prior to June 1, 2006, and to persons who moved to Kansas prior to June 1, 2006, and to convictions or adjudications on or after June 1, 2006, and to persons who moved to Kansas on or after June 1, 2006.

(l) For any person residing, maintaining employment or attending school in this state who has been convicted or adjudicated by an out-of-state court of an offense that is comparable to any crime requiring registration pursuant to the Kansas offender registration act, but who was not required to register in the jurisdiction of conviction or adjudication, the duration of registration shall be the duration required for the comparable offense pursuant to the Kansas offender registration act.