

No.

IN THE SUPREME COURT OF THE UNITED STATES

AMI LATRICE SIMMONS, Petitioner

v.

STATE OF KANSAS, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
KANSAS SUPREME COURT

APPENDIX

- Appendix A -- Kansas Supreme Court decision in *State v. Simmons*, decided December 1, 2017
- Appendix B -- Kansas Court of Appeals decision in *State v. Simmons*, decided June 27, 2014
- Appendix C -- K.S.A. 2011 Supp. 22-4906 et seq. (Kansas Offender Registration Act)

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 108,885

STATE OF KANSAS,
Appellee,

v.

AMI LATRICE SIMMONS,
Appellant.

SYLLABUS BY THE COURT

Nonsex offenders seeking to avoid retroactive application of provisions of the Kansas Offender Registration Act (KORA) must, in order to satisfy the "effects" prong of the test set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963), produce a record that distinguishes—by the "clearest proof"—KORA's effect on those classes of offenders from the Act's effects on sex offenders as a class.

Review of the judgment of the Court of Appeals in 50 Kan. App. 2d 448, 329 P.3d 523 (2014). Appeal from Saline District Court; RENE S. YOUNG, judge. Opinion filed December 1, 2017. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Rick Kittel, of Kansas Appellate Defender Office, argued the cause and was on the brief for appellant.

Amy E. Norton, assistant county attorney, argued the cause, and *Charles Ault-Duell*, assistant county attorney, *Ellen Mitchell*, county attorney, and *Derek Schmidt*, attorney general, were on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: In 2005, Ami Latrice Simmons pled guilty to possession of cocaine with the intent to distribute and to selling cocaine. The district court sentenced her to serve 30 months in prison, and she was paroled in October 2008. While serving her prison sentence, the Kansas Legislature amended the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq., to require drug offenders such as Simmons to register. After she was released on parole, Simmons alleges she was "ordered" or required to register by the Kansas Bureau of Investigation or the Kansas Department of Corrections, and she began to do so. The State does not contest the fact that Simmons was notified of her obligation to register by some agency of the executive branch of government.

In 2011, the State charged Simmons with failing to register as required by KORA. In response, Simmons argued the retroactive application of KORA violated the Ex Post Facto Clause of the United States Constitution. The district court disagreed. After a trial on stipulated facts, Simmons was found guilty and ordered to pay a \$200 DNA database fee.

Simmons appealed on three grounds: (1) she reasserted her ex post facto challenge; (2) she appealed the imposition of the DNA database fee; and (3) she argued that even if drug offender registration under KORA was not punishment and thus not subject to the Ex Post Facto Clause, it was nonetheless a part of her 2005 sentence which could not be modified by the executive branch. A panel of the Court of Appeals held the Legislature "intended the KORA registration requirements to be imposed automatically by operation of law without court involvement and to represent nonpunitive collateral consequences of judgment that are distinct from, and not a part of, a criminal sentence." *State v. Simmons*, 50 Kan. App. 2d 448, 463, 329 P.3d 523 (2014). As such, it rejected Simmons' unique claim that the executive branch had unlawfully modified her sentence. It also found no merit to her ex post facto challenge and concluded that she was statutorily required to pay a DNA database fee under the circumstances of this case.

We granted Simmons' petition for review. Finding no error below, we affirm.

ANALYSIS

Simmons first claims the application of KORA, as a whole, to her violates the Ex Post Facto Clause of article I, § 10 of the United States Constitution. We recently analyzed KORA in this context using the intent-effects test set forth by the United States Supreme Court and concluded lifetime sex offender registration does not constitute "punishment" for purposes of applying any provision of the federal Constitution. *State v. Petersen-Beard*, 304 Kan. 192, 198-209, 377 P.3d 1127 (2016) (relying on the factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69, 83 S. Ct. 554, 9 L. Ed. 2d 644 [1963]). We therefore held that the 2011 version of KORA could not violate federal prohibitions against cruel and unusual punishment. See 304 Kan. at 208-09. And not long ago, we "explicitly extend[ed] the holding of *Petersen-Beard* to apply to ex post facto challenges." *State v. Reed*, 306 Kan. 899, 904, 399 P.3d 865 (2017).

Therefore, to establish that the application of KORA to her amounts to a retroactive punishment, Simmons must demonstrate that drug offenders as a class are sufficiently distinguishable from the class of sex offenders such that the effects of the law become punitive rather than civil when applied to drug offenders. We recently confronted this question in *State v. Meredith*, 306 Kan. 906, 399 P.3d 859 (2017). In that case, we declined to hold that KORA registration is punishment where the record is insufficiently developed for the defendant to persuasively argue that the Legislature's nonpunitive intent must give way to KORA's allegedly punitive effects on drug offenders as a class separate and distinct from sex offenders. 306 Kan. at 910; see *Smith v. Doe*, 538 U.S. 84, 92, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003) ("Because we 'ordinarily defer to the legislature's stated intent,' [citation omitted], 'only the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty, [citations omitted]."); see also *State v. Myers*, 260 Kan. 669, 923 P.2d

1024 (1996) (holding that the Legislature's intent in enacting KORA was to create a nonpunitive civil regulatory scheme); *Doe v. Thompson*, 304 Kan. 291, 373 P.3d 750 (2016) (upholding *Myers*' determination that the Legislature intended to enact a nonpunitive scheme), *overruled on other grounds by Petersen-Beard*, 304 Kan. 192. We further explained in *Meredith* that such an inquiry "requires a robust record because the effects prong of the applicable legal test obliges an appellate court to premise its legal conclusion on at least some fact-intensive questions." 306 Kan. at 913.

Simmons' claim suffers from the same flaw. She is unable to satisfy the "clearest proof" standard because the record below has not been sufficiently developed. As a result, we cannot—at this time—hold that KORA's registration requirements as applied to drug offenders are punishment and subject to the limitations of the Ex Post Facto Clause.

Secondary to her ex post facto challenge, Simmons raises an issue of first impression in this court. Styled as an illegal sentence claim, Simmons challenges the authority of the executive branch to order her to register in the first instance. Simmons reasons that even if drug offender registration is not punishment for purposes of applying the Ex Post Facto Clause, it does arise out of and as a part of the underlying sentence. Therefore, the executive branch has no legal authority to order her to register because to do so would be, in effect, to illegally "modify" her sentence for the underlying drug conviction.

The Court of Appeals panel held:

"After careful review of the relevant provisions of the applicable statutes, the unambiguous language therein readily establishes that the legislature intended the KORA registration requirements to be imposed automatically by operation of law without court involvement and to represent nonpunitive collateral consequences of judgment that are distinct from, and not a part of, a criminal sentence. Because the registration requirement is not part of her sentence, we necessarily conclude there is no merit to Simmons' claim that her sentence was illegally modified." *Simmons*, 50 Kan. App. 2d at 463.

The parties spend most of their energy arguing from our prior caselaw defining the legal contours of a criminal sentence. But we need not follow either the lead of the panel below or that of the parties to resolve Simmons' illegal sentence claim as a question of law. Rather, her claim fails more prosaically on factual grounds. Simply put, Simmons' 2005 criminal sentence has not been "modified" because the obligation to register was imposed on her *after* she was sentenced by the district court. In a criminal proceeding, sentencing takes place when the trial court pronounces the sentence from the bench. *State v. Jackson*, 291 Kan. 34, 35, 238 P.3d 246 (2010); *State v. Garcia*, 288 Kan. 761, 765, 207 P.3d 251 (2009); *Abasolo v. State*, 284 Kan. 299, 304, 160 P.3d 471 (2007).

In *State v. Royse*, 252 Kan. 394, 397, 845 P.2d 44 (1993), the court defined what constitutes a criminal sentence:

"Ordinarily, in a legal sense, 'sentence' is synonymous with 'judgment' and denotes the action of a court of criminal jurisdiction formally declaring to the defendant the legal consequences of the guilt to which he has confessed or of which he has been convicted. *Roberts v. State*, 197 Kan. 687, Syl. ¶ 1, 421 P.2d 48 (1966). In criminal cases, the judgment must be rendered and sentence imposed in open court. The judgment in a criminal case, whether it imposes confinement, imposes a fine, grants probation, suspends the imposition of sentence, or imposes any combination of those alternatives, is effective upon its pronouncement from the bench."

In Simmons' case, the district court did not pronounce Simmons' duty to register at sentencing in the 2005 case or at any subsequent hearing on the subject, so it is simply not true that her sentence has been modified. Whatever role the executive branch played—even if it can be said the executive branch enforced a requirement on Simmons *inconsistent* with her sentence—the executive branch cannot have modified the sentence. The executive branch is not a court of criminal jurisdiction. And there is no claim the district court did anything after the 2005 sentencing proceeding. In other words, this particular defense against the subsequent criminal charge is factually off base. We need go no further to decide that Simmons' 2005 sentence was not illegal.

Lastly, Simmons claims the district court erred when it ordered her to pay the \$200 DNA database fee over her objection. Once again, this requires us to interpret a statute, which is a question of law subject to de novo review. *State v. Collins*, 303 Kan. 472, 473-74, 362 P.3d 1098 (2015).

The key statute in our analysis is K.S.A. 2012 Supp. 75-724, which governs when a court must impose a DNA database fee. It provides in relevant part:

"(a) Any person convicted or adjudicated of an offense that, pursuant to K.S.A. 21-2511, and amendments thereto, requires submission of a DNA sample upon arrest, charging or placement in custody, shall pay a separate court cost of \$200 as a Kansas bureau of investigation DNA database fee upon conviction or adjudication.

"(b) The court shall order such fees regardless of whether the person's DNA sample was already on file with the Kansas bureau of investigation at the time such person was arrested, charged or placed in custody, unless the person can prove to the court that the person: (1) Has paid such fees in connection with a prior conviction or adjudication; and (2) did not submit specimens of blood or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation for the current offense of conviction or adjudication." K.S.A. 2012 Supp. 75-724(a)-(b).

Simmons contends because the KBI's regulations require that "[e]ach convicted offender . . . currently incarcerated and required to provide blood and saliva samples shall provide these samples before release, discharge, or parole," K.A.R. 10-21-6(j), and because she was previously incarcerated from June 2007 until October 2008, she "must have provided a DNA sample before release, discharge or parole."

Simmons, however, ignores her burden under K.S.A. 2012 Supp. 75-724. The statute plainly states the court "shall order such fees regardless of whether the person's DNA sample was already on file" unless the person can prove that he or she has "paid such fees in connection with a prior conviction or adjudication" and "did not submit [a DNA] sample . . . for the current offense of conviction or adjudication." K.S.A. 2012 Supp. 75-724(a)-(b).

Simmons does not direct our attention to a place in the record where she showed she previously paid a DNA database fee or demonstrated she did not submit a DNA sample for the current offense. The only reference in the record is her counsel's brief objection at sentencing that the State must already have her DNA because she was previously in the prison system. As the party asserting prejudicial error, Simmons has the burden of designating a record that demonstrates error. See *State v. Sisson*, 302 Kan. 123, 128, 351 P.3d 1235 (2015). "[W]ithout such a record, we presume the actions of the trial court were proper." *State v. Warren*, 302 Kan. 601, 616, 356 P.3d 396 (2015). Simmons has not met her burden on appeal, let alone her burden below. The district court did not err by imposing the \$200 DNA database fee.

Affirmed.

* * *

BEIER, J., dissenting: I respectfully dissent from the majority's decision in this case.

In the four Kansas Offender Registration Act cases argued before *State v. Petersen-Beard*, 304 Kan. 192, 194, 377 P.3d 1127 (2016)—that is, in *State v. Redmond*, 304 Kan. 283, 371 P.3d 900 (2016); *State v. Buser*, 304 Kan. 181, 371 P.3d 886 (2016); and *Doe v. Thompson*, 304 Kan. 291, 373 P.3d 750 (2016), all of which dealt with sex offenders and application of the federal Ex Post Facto Clause, and in *State v. Charles*, 304 Kan. 158, 372 P.3d 1109 (2016), which dealt with a violent offender and the necessity that a jury find all facts necessary for imposition of certain punishments under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)—I agreed with three of my colleagues that Kansas' offender registration requirement constitutes punishment.

I would have extended the holdings of those four cases in *Petersen-Beard*, which asked whether the requirement of offender registration constituted not only punishment but also cruel and unusual punishment under the Eighth Amendment. I therefore joined Justice Lee A. Johnson's dissent in *Petersen-Beard*, explicitly agreeing with the result he would have reached and implicitly agreeing with all of the merits-based arguments Justice Johnson advanced to support his result. *Petersen-Beard*, 304 Kan. at 211-25 (Johnson, J., dissenting).

I decline to change course today. Kansas' requirement of offender registration—especially in its modern, maximally invasive, maximally pervasive, and infinitely more public incarnation—is punishment, certainly in effect if not in intent. It is no less so for a drug offender than for a sex offender or a violent offender. It is no less so when the Ex Post Facto Clause is before us than when *Apprendi* or the Eighth Amendment is before

us. Defendant Ami Latrice Simmons has met any burden of proof that she bears on this point, and the KORA registration obligation could not be imposed on her by legislative action after her conviction and without violating the Ex Post Facto Clause.

ROSEN and JOHNSON, JJ., join the foregoing dissent.

APPENDIX A

APPENDIX B

No. 108,885

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

AMI LATRICE SIMMONS,
Appellant.

SYLLABUS BY THE COURT

1.

An illegal sentence is where (1) the court lacked jurisdiction to sentence the defendant, (2) the character or the term of the punishment imposed as part of the sentence did not conform to the statute, or (3) the sentence was ambiguous as to how it was to be served.

2.

Interpretation of a statute is a question of law over which appellate courts have unlimited review. The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings.

3.

The Kansas Offender Registration Act (KORA) requires offenders convicted of certain offenses to register for 15 years from the most recent of either the date of parole, discharge, or release or, if not confined, from the date of conviction. The list of specified offenses includes selling, offering for sale, or having in such person's possession with

intent to sell any opiates, opium, or narcotic drugs as defined in K.S.A. 65-4161, prior to its repeal. K.S.A. 2013 Supp. 22-4906(a)(1).

4.

KORA requires the staff of a facility where an offender is confined to inform the offender about the duty to register before the offender is released. K.S.A. 2013 Supp. 22-4904(b) (formerly K.S.A. 22-4905[a][1]).

5.

KORA requires an offender, upon release from confinement, to register with the county sheriff within 10 days of the offender coming into any county in which the offender intends to reside for more than 10 days. K.S.A. 2013 Supp. 22-4904(a)(1). Thereafter, the sheriff is required to explain the duty to register and the procedure involved and then to obtain the information required for registration. K.S.A. 2013 Supp. 22-4904(d) (formerly K.S.A. 22-4904[a][5]).

6.

KORA requires the court to notify all offenders subject to registration of the duty to register and the procedure for doing so. Notification must occur at the time of conviction. K.S.A. 2013 Supp. 22-4904(a). KORA requires the court to draft a written notice of duty to register if the offender is released instead of remanded to custody. K.S.A. 2013 Supp. 22-4904(a)(1)(B).

7.

Ordinarily, in a legal sense, "sentence" is synonymous with "judgment" and denotes the action of a court of criminal jurisdiction formally declaring to the defendant the legal consequences of the guilt which he or she has confessed or of which he or she has been convicted.

8.

In criminal cases, the judgment must be rendered and sentence imposed in open court. The judgment in a criminal case, whether it imposes confinement, imposes a fine, grants probation, suspends the imposition of sentence, or imposes any combination of those alternatives, is effective upon its pronouncement from the bench.

9.

The duty to register as an offender is a civil penalty that is remedial in nature and intended to protect public safety, not to impose punishment.

10.

KORA does not require a court or any other entity to affirmatively act or issue a judgment in order to impose a statutory duty on an offender to register.

11.

A criminal defendant has both a statutory right and a constitutional right to be present with counsel at all critical stages of the prosecution of the case against him or her.

12.

A district court sentences a defendant when it orally pronounces punishment and other terms and conditions associated with the disposition of the crime of conviction from the bench. As a general rule, a sentence is complete when the district court concludes the sentencing hearing and the court does not have jurisdiction to change a sentence thereafter.

13.

The offender registration requirements set forth in KORA arise automatically by operation of law without court involvement and represent nonpunitive collateral

consequences of judgment; thus, a duty to register under KORA is distinct from, and not part of, an offender's criminal sentence.

14.

A statute violates ex post facto protections if it retroactively either criminalizes conduct that had not been proscribed or increases the punishment for conduct already treated as criminal.

15.

Punishment triggered by the failure to register is not a factor to be considered in the ex post facto determination because an offender who fails to comply with a registration requirement will be prosecuted for that failure in a proceeding separate from the individual's original offense.

16.

Any person convicted of a felony must submit specimens of blood or an oral or other biological sample to the Kansas Bureau of Investigation. K.S.A. 2013 Supp. 21-2511(a). If the person is placed directly on probation, the court is required to order the specimen or sample collected within 10 days after sentencing. K.S.A. 2013 Supp. 21-2511(c)(1).

17.

Any adult arrested or charged with the commission or attempted commission of any felony is required to submit a specimen of blood or an oral or other biological sample at the same time such person is fingerprinted pursuant to the booking procedure. Before taking this specimen or sample, the custodial law enforcement agency shall search the Kansas criminal justice information system to determine if it is already on file. If it cannot be reasonably established that the sample is on file, the agency shall cause a

sample to be collected. If it is on file, the agency is not required to take a sample. K.S.A. 2013 Supp. 21-2511(e)(2)-(3).

18.

Any person convicted of an offense that requires the person to submit a specimen of blood or an oral or other biological sample upon arrest, charging, or placement in custody shall pay a separate court cost of \$200 as a DNA database fee upon conviction. The court shall order such fee regardless of whether the person's DNA sample was already in the database at the time such person was arrested, charged, or placed in custody, unless the person can prove to the court that the person: (1) Has paid such fees in connection with a prior conviction or adjudication; and (2) did not submit specimens of blood or an oral or other biological sample authorized by the Kansas Bureau of Investigation to the Kansas Bureau of Investigation for the current offense of conviction or adjudication. K.S.A. 2013 Supp. 75-724.

Appeal from Saline District Court; RENE S. YOUNG, judge. Opinion filed June 27, 2014.
Affirmed.

Rick Kittel, of Kansas Appellate Defender Office, for appellant.

Charles Ault-Duell, assistant county attorney, *Ellen Mitchell*, county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before STANDRIDGE, P.J., BRUNS and POWELL, JJ.

STANDRIDGE, J.: Ami Latrice Simmons appeals from her conviction for failing to register as a drug offender. Specifically, Simmons argues retroactive application of 2007 legislation that requires her to register as a drug offender for a prior conviction that did not require registration at the time she originally was sentenced (1) illegally modifies the original sentence imposed and (2) violates the Ex Post Facto Clause of the United States

Constitution. She also challenges the \$200 DNA database fee imposed by the district court. Because an offender's statutory duty to register is imposed automatically by operation of law, without court intervention, as a collateral consequence of judgment with a stated objective of protecting public safety and not punishment, we necessarily conclude that the registration requirements—no matter when imposed—are not part of an offender's sentence. As such, Simmons' illegal sentence and ex post facto claims both fail. For the reasons stated below, her challenge to the \$200 DNA database fee imposed by the district court also fails.

FACTS

Simmons was convicted and sentenced in 2005 after pleading guilty to possession of cocaine with intent to distribute and sale of cocaine. When Simmons committed those crimes—and even when she was sentenced—the Kansas Offender Registration Act (KORA) did not require drug offenders to register. In 2007, however, KORA was amended to add certain drug offenders to the registration list. L. 2007, ch. 183, sec. 1. Although Simmons complied with her registration requirements until May 2011, she was charged in June 2011 with failing to register as required. Simmons filed a motion to dismiss the charges on grounds that the registration requirement violated "the Ex Post Facto Clause of the United States and Kansas Constitutions," but the motion was denied.

Waiving her right to a jury trial but reserving the right to appeal, Simmons' case went to a bench trial on the following stipulated facts.

"In March of 2005, the State filed a 13 count complaint against Ami Simmons in Saline County Case No. 2005 CR 359. The complaint alleged, among other things, that Simmons possessed cocaine with the intent to distribute it and that Simmons in fact sold cocaine, both in violation of K.S.A. 65-4161(a).

"On June 21, 2005, Simmons entered a guilty plea to possession of cocaine with the intent to distribute and the sale of cocaine. She was sentenced to 30 months in prison

with 24 months of post-release supervision, granted a border-box disposition to probation, and placed on 18 months of probation in October of 2005.

"Simmons' probation in 05 CR 359 was eventually revoked in May 2007, and Simmons was remanded to serve her 30-month prison sentence. Simmons was incarcerated from June 21, 2007, to October 22, 2008. She began serving her 24-month post-release supervision period when she was released.

"The Kansas Offender Registration Act (KORA) was amended effective July 1, 2007, L. 2007, ch.183, §1, to include offenders who had been convicted of K.S.A. 65-4161 offenses, including the sale of cocaine. K.S.A. 22-4902(a)(11)(C).

"Under K.S.A. 22-4906(a), Simmons' KORA registration obligations with the Saline County Sheriff's Office began on the date of her parole, October 22, 2008.

"On May 31, 2011, a Saline County Deputy Patrick Queen attempted to serve Simmons notice that she had failed to attend her May 2011 KORA compliance visit at her last reported address On that date, Deputy Queen was advised by the tenant . . . that Simmons no longer lived at that address. Simmons did not report her change of address.

"On June 1, 2011, Simmons called Saline County Sheriff's Office Compliance Officer Michelle McMillan by phone and advised that the missed visit was an oversight. McMillan instructed Simmons to come in immediately to complete her May 2011 compliance visit. Simmons did not reveal her location during the call.

"Beginning in December 2008 and continuing until June 8, 2011, Simmons acknowledged her registration responsibilities on 11 prior occasions, and she provided invalid addresses on 5 prior occasions to McMillan.

"On June 8, 2011, no reported telephone numbers for Simmons were valid, attempts to contact her through her former parole officer, Shawn Homan, were unsuccessful, and she had not completed her May 2011 compliance visit."

The district court found Simmons guilty of failing to register as required by KORA.

ANALYSIS

Illegal sentence

Under K.S.A. 22-3504(1), an illegal sentence is where (1) the court lacked jurisdiction to sentence the defendant, (2) the character or the term of the punishment imposed as part of the sentence did not conform to the statute, or (3) the sentence was ambiguous as to how it was to be served. *State v. Sims*, 294 Kan. 821, 825, 280 P.3d 780 (2012). Simmons argues her 2005 sentence was rendered illegal by the 2007 KORA amendments, which retroactively imposed upon her the requirement to periodically register as a drug offender. But Simmons' argument begs the question in that it assumes that the drug offender registration requirement is considered a part of her criminal sentence. For the reasons stated below, we find that it is not.

Resolution of this issue requires statutory construction. Interpretation of a statute is a question of law over which appellate courts have unlimited review. *State v. Johnson*, 297 Kan. 210, 215, 301 P.3d 287 (2013).

The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *State v. Arnett*, 290 Kan. 41, 47, 223 P.3d 780 (2010). An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. *State v. Urban*, 291 Kan. 214, 216, 239 P.3d 837 (2010). Generally, criminal statutes are strictly construed in favor of the accused. That rule is constrained by the rule that the interpretation of a statute must be reasonable and sensible in order to give effect to the legislative design and intent of the law. The rule of lenity arises only when there is any reasonable doubt as to meaning of the statute. *State v. Cameron*, 294 Kan. 884, 899, 281 P.3d 143 (2012).

K.S.A. 2013 Supp. 22-4902(a) of the registration act defines an "offender" as, among other things, a drug offender. Relevant here, the term "drug offender" is further defined in subsection (f) as:

- A person who, on or after July 1, 2007, is convicted of K.S.A. 65-4161; or
- A person who, on or after July 1, 2007, has been convicted of an offense that is comparable to any crime defined in the subsection, which includes K.S.A. 65-4161. See K.S.A. 2013 Supp. 22-4902(f)(1)(C) and (f)(2).

Before it was repealed in 2009, K.S.A. 65-4161 made it a crime to sell, offer for sale, or possess with intent to sell any opiates, opium, or narcotic drugs. Here, Simmons entered a guilty plea in 2005 to charges that she possessed cocaine with the intent to distribute and sold cocaine, both in violation of K.S.A. 65-4161(a); accordingly, she fits the definition of a drug offender, and thus an offender, under the registration act.

K.S.A. 2013 Supp. 22-4906(a)(1) requires offenders convicted of certain offenses to register for 15 years from the most recent of either the date of parole, discharge, or release or, if not confined, from the date of conviction. The list of specified offenses includes selling, offering for sale, or having in such person's possession with intent to sell any opiates, opium, or narcotic drugs as defined in K.S.A. 65-4161, prior to its repeal. See K.S.A. 2013 Supp. 22-4906(a)(1)(P). As a drug offender who, on or after July 1, 2007, had been convicted and confined for selling a narcotic drug, Simmons is now statutorily required to register as an offender for a period of 15 years from the date she was released from confinement.

Although conceding that if convicted and sentenced for her crimes today she would be subject to the current version of the statute and required to register, Simmons' claim of illegal sentence is grounded in the fact that she was not required to register as a drug offender when she was convicted for her crimes. And Simmons is factually correct;

based on the underlying crime of her conviction, she did not fit the definition of an offender under the 2005 version of the registration act. Thus, unlike most offenders who object to retroactive application of legislative amendments to KORA, there is no court order or journal entry in this case imposing any registration requirement on Simmons at all. In the absence of a court order, the question of whether the requirement to register is part of an offender's sentence turns on whether there is a statutory procedure for imposing the registration requirement on an offender like Simmons, who has never been subject to a court order to register.

In May 2007, Simmons' probation was revoked and she was remanded to serve her underlying prison sentence. By the time she was released from prison in 2008, the offender registration statute had been amended to make her subject to a 10-year postrelease registration requirement. K.S.A. 22-4906(a)(1). Pursuant to K.S.A. 22-4905(a)(1), the staff of the facility where Simmons was confined was required to inform her about the duty to register before she was released. Under subsection (a)(2)(A) of this statute, the staff of the facility was also required before she was released to:

- "(i) Explain the duty to register and the procedure for registration;
- "(ii) obtain the information required for registration as provided in K.S.A. 22-4907 and amendments thereto;
- "(iii) inform the offender that the offender must give written notice of any change of address within 10 days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;
- "(iv) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 10 days of such change in residence;
- "(v) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;
- "(vi) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or

part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days or an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within 10 days upon commencement of enrollment or employment;

"(vii) inform the offender that if there is any change or termination in attendance or employment, at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within 10 days of the change or termination;

"(viii) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. 2007 Supp. 8-1325a, and amendments thereto; and

"(ix) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender." K.S.A. 22-4905(a)(2)(A).

In the current version of KORA, the corresponding duties and responsibilities of staff members at the correctional facility are set forth in K.S.A. 2013 Supp. 22-4904(b).

Pursuant to K.S.A. 22-4904(a)(1), and as the prison staff was required to explain to her before she was released, Simmons was required upon her release to register with the county sheriff within 10 days of her coming into any county in which she intended to reside for more than 10 days. Thereafter, the sheriff was required to:

"(A) Explain the duty to register and the procedure for registration;

"(B) obtain the information required for registration as provided in K.S.A. 22-4907 and amendments thereto;

"(C) inform the offender that the offender must give written notice of any change of address within 10 days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

"(D) inform the nonresident student offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any change or termination

of attendance at the school or educational institution the offender is attending, within 10 days of such change or termination;

"(E) inform the nonresident worker offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any termination of employment at the offender's place of employment, within 10 days of such termination;

"(F) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 10 days of such change in residence;

"(G) inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student;

"(H) inform the offender that if the offender expects to or subsequently becomes enrolled in any institution of higher education in the state of Kansas on a full-time or part-time basis or have any full-time or part-time employment at an institution of higher education in the state of Kansas, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in one calendar year, the offender must provide written notice to the Kansas bureau of investigation within 10 days upon commencement of enrollment or employment;

"(I) inform the offender that if there is any change or termination in attendance or employment at an institution of higher education, the offender must provide written notice to the Kansas bureau of investigation within 10 days of the change or termination;

"(J) inform the offender of the requirement of an annual driver's license renewal pursuant to K.S.A. 8-247, and amendments thereto, and an annual identification card renewal pursuant to K.S.A. 8-1325a, and amendments thereto; and

"(K) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender." K.S.A. 22-4904(a)(5).

In the current version of KORA, the corresponding duties and responsibilities of the registering law enforcement agency are set forth in K.S.A. 2013 Supp. 22-4904(d).

Like prison staff and registering law enforcement agencies, the statute has a provision requiring the district court to notify all offenders subject to registration of the

duty to register and the procedure for doing so. See K.S.A. 2013 Supp. 22-4904(a). Notification must occur at the time of conviction unless of course, like here, there was no duty to register when the offender was convicted. If the offender is released instead of remanded to custody, the district court is required to draft a written notice of duty to register. K.S.A. 2013 Supp. 22-4904(a)(1)(B). Significantly, there is no provision in this statute or the offender registration act as a whole that refers to, let alone authorizes, the court to order offender registration as a criminal sentence as punishment for an offender's conviction. This affirmative obligation imposed by statute on the court to inform an offender of the duty to register at the time of conviction is not an indication that the legislature intended offender registration as part of a criminal sentence. The Kansas law relating to sentencing is codified in the Kansas Sentencing Guidelines Act (KSGA), K.S.A. 2013 Supp. 21-6801 *et seq.*, and the offender registration statutory scheme is wholly separate and distinct from the KSGA.

The KORA statutory scheme outlined above establishes a statutory procedure that adequately informs and explains a newly imposed registration requirement to an offender who had no requirement to register at the time he or she was convicted and sentenced. And considering this statutory scheme in its entirety, the provisions therein reflect the legislature's clear intent that the registration requirement be imposed automatically by operation of law as a nonpunitive collateral consequence of judgment that is distinct from, and not part of, a criminal sentence.

Our Supreme Court has defined what constitutes a sentence:

"Ordinarily, in a legal sense, 'sentence' is synonymous with 'judgment' and denotes the action of a court of criminal jurisdiction formally declaring to the defendant the legal consequences of the guilt to which he has confessed or of which he has been convicted. *Roberts v. State*, 197 Kan. 687, Syl. ¶ 1, 421 P.2d 48 (1966). In criminal cases, the judgment must be rendered and sentence imposed in open court. The judgment in a criminal case, whether it imposes confinement, imposes a fine, grants probation,

suspends the imposition of sentence, or imposes any combination of those alternatives, is effective upon its pronouncement from the bench." *State v. Royse*, 252 Kan. 394, 397, 845 P.2d 44 (1993).

Although the registration requirement is a legal consequence of a conviction for designated crimes, both the United States Supreme Court and the Kansas Supreme Court have held that the duty to register is a civil penalty that is remedial in nature and intended to protect public safety, not to impose punishment. *Smith v. Doe*, 538 U.S. 84, 105-06, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003); *State v. Myers*, 260 Kan. 669, 671, 681, 695-96, 923 P.2d 1024 (1996), *cert. denied* 521 U.S. 1118 (1997). And the Kansas offender registration statutory scheme itself specifically makes clear that the requirement to register need not be imposed by court order at all, let alone imposed by the court in open proceedings. As such, the registration requirements simply are not part of an offender's sentence.

Moreover, broad principles of criminal law weigh against a finding that registration requirements are part of an offender's sentence. A criminal defendant has both a statutory right and a constitutional right to be present with counsel at all critical stages of the prosecution of the case against him or her. See *Gardner v. Florida*, 430 U.S. 349, 358, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977); K.S.A. 22-3405(1); *State v. Engelhardt*, 280 Kan. 113, 122, 119 P.3d 1148 (2005). Sentencing is a critical stage of a prosecution. *Mempa v. Rhay*, 389 U.S. 128, 134, 88 S. Ct. 254, 19 L. Ed. 2d 336 (1967); *State v. Bristor*, 236 Kan. 313, 317-18, 691 P.2d 1 (1984) (citing *Mempa* with favor for the proposition that sentencing is a critical stage of a criminal proceeding to which the right to counsel applies). A district court sentences a defendant when it orally pronounces punishment and other terms and conditions associated with the disposition of the crime of conviction from the bench. *State v. McDaniel*, 292 Kan. 443, 445, 254 P.3d 534 (2011). As a general rule, a sentence is complete when the district court concludes the sentencing hearing. After the hearing, the district court no longer has jurisdiction to change a

sentence. See *State v. Hall*, 298 Kan. 978, 986, 319 P.3d 506 (2014) (Because restitution constitutes a part of a defendant's sentence, its amount can only be set by a sentencing judge with the defendant present in open court, and until any applicable restitution amount is decided, a defendant's sentencing is not complete.) (abrogating *State v. Cooper*, 267 Kan. 15, Syl. ¶ 2, 977 P.2d 960 [1999]). Those fundamental legal principles dictate the outcome here. If the legislature had intended the registration requirements to be part of an offender's sentencing, it would have provided a statutory procedure through which an offender could appear in open court for imposition of sentence or modification of sentence each time KORA was amended so as to affect that offender's registration requirements. There is no such procedure in KORA.

We readily acknowledge that our decision today directly conflicts with an unpublished decision reached by another panel of our court. *State v. Dandridge*, No. 109,066, 2014 WL 702408, at *3 (Kan. App. 2014) (unpublished opinion); see *State v. Urban*, 291 Kan. 214, 223, 239 P.3d 837 (2010) (panels of Kansas Court of Appeals not bound by prior rulings of another panel). "While we must carefully consider each precedent cited to us, we also must uphold our duty to correctly determine the law in each case that comes before us. In doing so, we sometimes find that we must respectfully disagree with the opinion of another panel." *Uhlmann v. Richardson*, 48 Kan. App. 2d 1, 13, 287 P.3d 287 (2012).

With limited analysis, the panel in *Dandridge* cited to several Kansas Supreme Court cases to support its finding that offender registration is part of a criminal sentence. 2014 WL 702408, at *3. Although we agree that our Supreme Court has issued various opinions over the last few years that reference offender registration as part of a sentence, we do not construe those references to mean that the Supreme Court has considered and decided the issue on its merits. For example, the offender registration issue presented in *State v. Mishmash*, 295 Kan. 1140, 290 P.3d 243 (2012), was a legal issue completely unrelated to sentencing. The offender registration statute in effect when *Mishmash* was

convicted defined an offender as "any person who has been convicted of: (A) [u]nlawful manufacture or attempting such of any controlled substance or controlled substance analog . . . *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.*" (Emphasis added.) K.S.A. 2009 Supp. 22-4902(a)(11)(A). After the defendant was convicted, he requested the sentencing court make such a finding on the record. The State objected, arguing he traded some of the drugs for nonmonetary items. During the sentencing hearing, the parties presented evidence to support their respective positions. The court ultimately concluded on the record that Mishmash was not manufacturing solely for personal use and registration as a drug offender would be required.

Unlike the issue presented here, the issue in *Mishmash* on appeal was whether the phrase "personal use" as used in K.S.A. 2009 Supp. 22-4902(a)(11)(A) implies that the manufacturer of a drug must use the drug solely or exclusively in order for the manufacturer to fall outside the classification of an offender as that word is defined in the statute. 295 Kan. at 1142-45. The Supreme Court held the district court erred in ordering offender registration and "vacat[ed] that portion of the sentence requiring Mishmash to register as a drug offender." 295 Kan. at 1145. Notably, this is the only reference to sentencing that the court makes related to registration requirements; the court was not presented with nor did it address whether the registration requirements should be considered part of a criminal sentence.

In comparing the underlying convictions in *Mishmash* to the one here, the sentencing court's decision to consider testimony about Mishmash's intended purpose for the drugs he manufactured was necessary under the KORA framework. Like here, there was no question in *Mishmash* that the obligation to register was automatically imposed upon an offender by operation of law and not by court order. But the question in *Mishmash* was whether the defendant was an "offender" as defined by statute. If the court determined he was an offender as defined by the statute (did not manufacture for personal

use), he thereafter would be a person subject to the duty to register, which arises by operation of law and not by order of the court through sentencing. If the court determined that he was not an offender as defined by statute (manufactured for personal use), he would not be a person subject to the duty to register. The fact that the sentencing court decided to hear this testimony in the context of a sentencing hearing has no bearing on the issue presented or the Supreme Court's conclusion and certainly does not mean that the registration requirement was part of Mishmash's sentence.

Like *Mishmash*, the court's reference in *State v. Denmark-Wagner*, 292 Kan. 870, 884, 258 P.3d 960 (2011), to the registration requirement as part of the defendant's sentence is not a legal conclusion creating binding precedent but, again, appears to have been phrased that way for purposes of simplicity and brevity. Denmark-Wagner was convicted of one count of felony first-degree murder pursuant to the terms of a plea agreement. The court's journal entry of judgment noted that Denmark-Wagner would be required to register as a violent offender for his lifetime based on the felony first-degree murder conviction and a finding on the record that the crime of conviction was a felony committed with a deadly weapon. On appeal, the Kansas Supreme Court determined that Denmark-Wagner had just one qualifying conviction under the offender registration statute and therefore was only required to register as an offender for a period of 10 years. It was only those persons with two or more qualifying convictions under the offender registration statute that were required to register as an offender for life. K.S.A. 22-4906(a). The court concluded that "[t]he lifetime offender registration requirement of [Denmark-Wagner's] sentence does not conform to the statute and is illegal. It must be vacated." 292 Kan. at 884. Although there can be no dispute that the court used the word "sentence" in its decision on the merits of the issue presented—the number of qualifying convictions—use of the word, in and of itself, cannot be construed as a legal holding that the registration requirement is part of the defendant's sentence.

In *State v. Jackson*, 291 Kan. 34, 238 P.3d 246 (2010), the defendant was convicted of three counts of aggravated battery pursuant to the terms of a plea agreement. After sentencing, the district court ordered the parties to submit written briefs on the legal issue of whether Jackson's juvenile adjudications would count as prior qualifying convictions under the offender registration statute. The court's journal entry of sentencing provided that Jackson was subject to lifetime registration as a violent offender under K.S.A. 22-4902(a)(7) based on two qualifying convictions for crimes committed with a deadly weapon. On appeal, Jackson argued the sentencing court did not have jurisdiction to impose the registration requirement in the journal entry because the requirement was not pronounced from the bench at sentencing. Our Supreme Court was not persuaded by this argument:

"We find that the statutorily required imposition of lifetime registration is an incident of sentencing, akin to restitution. K.S.A. 22-4906 speaks of persons who are 'required to register' and of a 'registration requirement.' Because registration is a mandatory, not a discretionary, act, the order of registration is the same kind of standard order of probation cited by our Court of Appeals in [*State v. Baldwin*], 37 Kan. App. 2d 140, 144, 150 P.3d 325 (2007)]. Because the defendant has constructive notice of the registration requirement, it is implicit in every sentence that falls within the scope of K.S.A. 22-4906. The journal entry did not modify the sentence but simply carried out a statutory imperative. The sentencing court had jurisdiction to include the registration requirement in the journal entry without making it part of the sentence imposed from the bench." 291 Kan. at 37.

Like *Mishmash* and *Denmark-Wagner*, *Jackson* is factually and legally distinguishable from the case presented here. The legal question in *Jackson* was whether juvenile adjudications constitute prior qualifying convictions under KORA. Unlike *Mishmash* and *Denmark-Wagner*, however, at no point in the opinion did the Supreme Court in *Jackson* refer to the registration requirement as part of the defendant's sentence. In fact, the excerpt from the opinion set forth above is much more consistent with a

finding that the registration requirement is *not* a part of the defendant's sentence. See *Jackson*, 291 Kan. at 37. To that end, the court appeared to construe the KORA obligations as we have here: (1) a statutorily mandated outcome over which a sentencing court has no discretion (2) that arises automatically by operation of law (3) upon the qualifying conviction (4) of a person who meets the definition of an offender as defined by the statute. Construing the KORA obligations this way necessarily means that the statutory duty of an offender to register is a collateral consequence of judgment that is separate and distinct from a criminal sentence. This is consistent with the underlying policy of KORA as announced in *Myers*, 260 Kan. at 671, 681, 695-96 (registration provisions are remedial and intended to protect public safety, not as punishment) and the statutory and constitutional rights of a criminal defendant to be present with counsel at all critical stages of the prosecution, including sentencing. See *Gardner*, 430 U.S. at 358; *Engelhardt*, 280 Kan. at 122; see also *Hall*, 298 Kan. at 986 (Because restitution constitutes a part of a defendant's sentence, its amount can only be set by a sentencing judge with the defendant present in open court, and until any applicable restitution amount is decided, a defendant's sentencing is not complete.).

After careful review of the relevant provisions of the applicable statutes, the unambiguous language therein readily establishes that the legislature intended the KORA registration requirements to be imposed automatically by operation of law without court involvement and to represent nonpunitive collateral consequences of judgment that are distinct from, and not a part of, a criminal sentence. Because the registration requirement is not part of her sentence, we necessarily conclude there is no merit to Simmons' claim that her sentence was illegally modified.

Ex post facto

Simmons argues that applying the 2007 KORA legislation to persons who already had been convicted of drug crimes amounts to unconstitutional punishment violating the

Ex Post Facto Clause of the United States Constitution. U.S. Const. art. I, § 10. A statute violates ex post facto protections if it retroactively either criminalizes conduct that had not been proscribed or increases the punishment for conduct already treated as criminal. *Myers*, 260 Kan. 669, Syl. ¶ 5. In support of her particular ex post facto claim, Simmons contends imposing the registration requirements of KORA on her increases the punishment for her original 2005 drug convictions. Resolution of her claim requires us to interpret constitutional and statutory provisions on undisputed facts, which in turn presents a question of law over which appellate courts have unlimited review. *State v. Johnson*, 297 Kan. 210, 215, 301 P.3d 287 (2013).

Our Supreme Court's decision in *Myers* essentially controls the ex post facto issue presented by Simmons here. The court in *Myers* engaged in a lengthy analysis of state and federal offender registration laws and of the legislative purpose behind the Kansas Sex Offender Registration Act (KSORA), which is the sex offender component of the offender act at issue here. The court concluded that the duty to register served a sound public safety interest, was enacted to further that public interest, and did not impose obligations so onerous as to be punitive in their effect. 260 Kan. at 681, 695-96. The court ultimately held that the requirements were not a form of punishment triggering ex post facto protections. 260 Kan. at 696.

As Simmons asserts, the *Myers* court considered only the impact of the registration obligations themselves and not the punishment imposed under KSORA for failing to register. But the United States Supreme Court expressly has rejected the notion that punishment triggered by the failure to register is a factor to be considered in the ex post facto determination. *Smith*, 538 U.S. at 102. Specifically, the Court noted, "[a] sex offender who fails to comply with the [law's requirements] may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense." 538 U.S. at 101-02. Thus, a separate prosecution for violation of the KORA registration provisions is not a second prosecution for the

underlying offense but instead is punishment imposed as a result of the subsequent prosecution. As such, any punishment imposed under KORA for failing to register is irrelevant to the ex post facto analysis.

Although Simmons acknowledges the holdings in *Smith* and *Myers*, she suggests that both the United States Supreme Court and the Kansas Supreme Court might now reach a different result in analyzing the current version of KORA. Specifically, Simmons points to the expanded scope of the offenders who are required to register, the heightened reporting obligations, and the more aggressive public notification provisions implemented since the court in *Myers* considered the constitutionality of KSORA in 1996. Although the changes Simmons points out between KSORA as it was upheld in *Myers* and the KORA version applied to her are significant, ultimately they are matters of degree rather than differences of kind. Thus, absent some indication the Kansas Supreme Court intends to retreat from its decision in *Myers*, it remains controlling authority. Likewise, many of the registration features challenged by Simmons were included in the Alaska sex offender registration act upheld by the United States Supreme Court in *Smith*. See 538 U.S. at 90-91, 105-06.

DNA database fee

On July 25, 2012, Simmons was sentenced for failing to register and placed on probation for 24 months, with an underlying sentence of 27 months' imprisonment, as well as 24 months' postrelease supervision. At sentencing, the court noted that Simmons would be "required to submit a DNA sample, and there's a \$200.00 DNA database fee the court is required to charge for that." Simmons argues the district court erred in requiring her to submit the DNA sample and pay the fee because her DNA already is on file with the Kansas Bureau of Investigation (KBI) as a result of her prior incarceration.

Simmons' argument requires us to interpret the statutes authorizing the collection of DNA samples and DNA database fees. Interpretation of a statute is a question of law over which we exercise unlimited review. *Johnson*, 297 Kan. at 215.

K.S.A. 2013 Supp. 21-2511 is the statute that authorizes the collection of DNA samples. Although initially limited in scope to the collection of blood and saliva from certain offenders such as sex offenders, the legislature amended K.S.A. 21-2511(a) in 2002 to require any person convicted of a felony "to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act." L. 2002, ch. 128, sec. 1. If the person is placed directly on probation, the court is required to order the sample collected within 10 days after sentencing. K.S.A. 2013 Supp. 21-2511(c)(1).

The legislature added subsection (e) to K.S.A. 21-2511 in 2006. L. 2006, ch. 171, sec. 2. This subsection extends the time period for collection from what used to be only the end of the legal process to the beginning of the legal process as well. Thus, after July 1, 2008, any adult arrested or charged with the commission or attempted commission of any felony is required to submit a specimen of blood or an oral or other biological sample "at the same time such person is fingerprinted pursuant to the booking procedure." K.S.A. 2013 Supp. 21-2511(e)(2). Before taking this DNA sample, however,

"the arresting, charging or custodial law enforcement agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently on file with the Kansas bureau of investigation. In the event that it cannot reasonably be established that a DNA sample for such person is on file at the Kansas bureau of investigation, the arresting, charging or custodial law enforcement agency shall cause a sample to be collected. If such person's sample is on file with the Kansas bureau of investigation, the law enforcement agency is not required to take the sample." K.S.A. 2013 Supp. 21-2511(e)(3).

K.S.A. 2013 Supp. 75-724 is the statute that authorizes the collection of DNA database fees. This statute provides, in relevant part:

"(a) Any person convicted or adjudicated of an offense that, pursuant to K.S.A. 21-2511, and amendments thereto, requires submission of a DNA sample upon arrest, charging or placement in custody, shall pay a separate court cost of \$200 as a Kansas bureau of investigation DNA database fee upon conviction or adjudication.

"(b) The court shall order such fees regardless of whether the person's DNA sample was already on file with the Kansas bureau of investigation at the time such person was arrested, charged or placed in custody, unless the person can prove to the court that the person: (1) Has paid such fees in connection with a prior conviction or adjudication; and (2) did not submit specimens of blood or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation for the current offense of conviction or adjudication."

Having set forth the applicable law, we begin our analysis by noting that the record is unclear about whether Simmons submitted a DNA sample and/or whether the agency searched the Kansas criminal history files to determine whether her DNA already was on file at the time Simmons went through the booking procedure on her charge of failing to register. See K.S.A. 2013 Supp. 21-2511(e)(2) and (e)(3). Having noted this ambiguity in the record, however, resolving it is unnecessary to our decision on the issue presented. This is because under K.S.A. 2013 Supp. 75-724(b), the court was required to order Simmons to pay the DNA database fee upon conviction—regardless of whether the person's DNA sample was already on file with the KBI at the time such person was arrested, charged, or placed in custody—unless Simmons provided evidence to establish to the court that (1) she already paid the fee in connection with a prior conviction *and* (2) she was not ordered to submit a DNA sample for the current offense. Therefore, even if Simmons had submitted a DNA sample upon her release from prison in 2008 and that sample had been entered into the database, the court would still be required to order her to pay the fee unless she could prove she paid the fee for the prison test. See K.S.A. 2013

Supp. 75-724(b)(1). Because Simmons failed to sustain her burden of proof, her claim fails.

Affirmed.

APPENDIX C

2016 Kansas Statutes

22-4901. Citation of act. K.S.A. 22-4901 through 22-4911 and 22-4913, and amendments thereto, shall be known and may be cited as the Kansas offender registration act.

History: L. 1993, ch. 253, § 17; L. 1994, ch. 107, § 1; L. 1997, ch. 181, § 7; L. 2011, ch. 95, § 1; July 1.

2016 Kansas Statutes

22-4902. Definitions. As used in the Kansas offender registration act, unless the context otherwise requires:

- (a) "Offender" means:
 - (1) A sex offender;
 - (2) a violent offender;
 - (3) a drug offender;
 - (4) any person who has been required to register under out-of-state law or is otherwise required to be registered; and
 - (5) any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.
- (b) "Sex offender" includes any person who:
 - (1) On or after April 14, 1994, is convicted of any sexually violent crime;
 - (2) on or after July 1, 2002, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime, 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;
 - (3) has been determined to be a sexually violent predator;
 - (4) on or after July 1, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:
 - (A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2016 Supp. 21-5511, and amendments thereto;
 - (B) criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its repeal, or K.S.A. 2016 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto;
 - (C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2016 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013;
 - (D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2016 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or
 - (E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2016 Supp. 21-5513, and amendments thereto;
 - (5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2016 Supp. 21-5505, and amendments thereto;
 - (6) is convicted of an 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. 2016 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or
 - (7) has been convicted of an offense that is comparable to any crime defined in this subsection, or any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection.
- (c) "Sexually violent crime" means:
 - (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto;
 - (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), 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. 2016 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. 2016 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. 2016 Supp. 21-5504(b), and amendments thereto;
 - (6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto;
 - (7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto;
 - (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;
 - (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto;
 - (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto;
 - (11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, and K.S.A. 2016 Supp. 21-5509, and amendments thereto;
 - (12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2016 Supp. 21-5512, and amendments thereto;
 - (13) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
 - (14) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto;
 - (15) any conviction or adjudication for an offense that is comparable to a sexually violent crime as defined in this subsection, or any out-of-state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;
 - (16) an 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. 2016 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or
 - (17) 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. As used in this paragraph, "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) "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.
- (e) "Violent offender" includes any person who:
 - (1) On or after July 1, 1997, is convicted of any of the following crimes:
 - (A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto;
 - (B) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;
 - (C) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments thereto;
 - (D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;
 - (E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2016 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2016 Supp. 21-5405(a)(3), and amendments thereto, which occurred on or after July 1, 2011, through July 1, 2013;
 - (F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or K.S.A. 2016 Supp. 21-5408(a), and amendments thereto;
 - (G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or K.S.A. 2016 Supp. 21-5408(b), and amendments thereto;
 - (H) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2016 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age; or
 - (I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if not committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
 - (2) 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;
 - (3) has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or
 - (4) is convicted of an 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. 2016 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.
- (f) "Drug offender" includes any person who, on or after July 1, 2007:
 - (1) Is convicted of any of the following crimes:
 - (A) 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. 2016 Supp. 21-5703, and amendments thereto;
 - (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 in 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. 2016 Supp. 21-5709(a), and amendments thereto;

(C) 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. 2016 Supp. 21-5705(a)(1), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b) which occurred on or after July 1, 2009, through April 15, 2010;

(2) has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(3) is or has been convicted of an 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. 2016 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions or adjudications 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 or adjudication. Any conviction or adjudication set aside pursuant to law is not a conviction or adjudication for purposes of this section. A conviction or adjudication from any out-of-state court shall constitute a conviction or adjudication for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(i) "Employment" means any full-time, part-time, transient, day-labor employment or volunteer work, with or without compensation, for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(j) "Reside" means to stay, sleep or maintain with regularity or temporarily one's person and property in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or maintains the offender's person for three or more consecutive days or parts of days, or for ten or more nonconsecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, correctional facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments and correctional facilities.

(p) "Treatment facility" means any public or private facility or institution providing inpatient mental health, drug or alcohol treatment or counseling, but does not include a hospital, as defined in K.S.A. 65-425, and amendments thereto.

(q) "Correctional facility" means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) "Out-of-state" means: the District of Columbia; any federal, military or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

(t)(1) Notwithstanding any other provision of this section, "offender" shall not include any person who is:

(A) Convicted of unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2016 Supp. 21-5611(a), and amendments thereto, aggravated unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2016 Supp. 21-5611(b), and amendments thereto, or unlawful possession of a visual depiction of a child, as defined in K.S.A. 2016 Supp. 21-5610, and amendments thereto; or

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

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

History: L. 1993, ch. 253, § 18; L. 1994, ch. 107, § 2; L. 1997, ch. 181, § 8; L. 1999, ch. 164, § 29; L. 2001, ch. 208, § 10; L. 2002, ch. 55, § 1; L. 2002, ch. 163, § 6; L. 2003, ch. 123, § 3; L. 2006, ch. 214, § 6; L. 2007, ch. 183, § 1; L. 2008, ch. 74, § 1; L. 2009, ch. 32, § 44; L. 2010, ch. 147, § 8; L. 2011, ch. 95, § 2; L. 2012, ch. 149, § 1; L. 2013, ch. 127, § 1; L. 2014, ch. 117, § 2; L. 2016, ch. 96, § 7; July 1.

Revisor's Note:

Section was also amended by L. 2010, ch. 74, § 11, L. 2010, ch. 122, § 4, and L. 2010, ch. 155, § 9, but those versions were repealed by L. 2010, ch. 147, § 9, and L. 2010, ch. 155, § 26.

Section was amended twice in the 2011 session, see also 22-4902a.

Section was amended twice in the 2013 session, see also 22-4902b.

2016 Kansas Statutes

22-4903. Violation of act; aggravated violation; penalties; new and separate offense; prosecution, venue. [See Revisor's Note] (a) Violation of the Kansas offender registration act is the failure by an offender, as defined in K.S.A. 22-4902, and amendments thereto, to comply with any and all provisions of such act, including any and all duties set forth in K.S.A. 22-4905 through 22-4907, and amendments thereto. Any violation of the Kansas offender registration act which continues for more than 30 consecutive days shall, upon the 31st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate offense every 30 days thereafter for as long as the violation continues.

(b) Aggravated violation of the Kansas offender registration act is violation of the Kansas offender registration act which continues for more than 180 consecutive days. Any aggravated violation of the Kansas offender registration act which continues for more than 180 consecutive days shall, upon the 181st consecutive day, constitute a new and separate offense, and shall continue to constitute a new and separate violation of the Kansas offender registration act every 30 days thereafter, or a new and separate aggravated violation of the Kansas offender registration act every 180 days thereafter, for as long as the violation continues.

(c) (1) Except as provided in subsection (c)(3), violation of the Kansas offender registration act is:

(A) Upon a first conviction, a severity level 6 felony;

(B) upon a second conviction, a severity level 5 felony; and

(C) upon a third or subsequent conviction, a severity level 3 felony.

Such violation shall be designated as a person or nonperson crime in accordance with the designation assigned to the underlying crime for which the offender is required to be registered under the Kansas offender registration act. If the offender is required to be registered under both a person and nonperson underlying crime, the violation shall be designated as a person crime.

(2) Except as provided in subsection (c)(3), aggravated violation of the Kansas offender registration act is a severity level 3 felony.

Such violation shall be designated as a person or nonperson crime in accordance with the designation assigned to the underlying crime for which the offender is required to be registered under the Kansas offender registration act. If the offender is required to be registered under both a person and nonperson underlying crime, the violation shall be designated as a person crime.

(3) Violation of the Kansas offender registration act or aggravated violation of the Kansas offender registration act consisting only of failing to remit payment to the sheriff's office as required in K.S.A. 22-4905(k), and amendments thereto, is:

(A) Except as provided in subsection (c)(3)(B), a class A misdemeanor if, within 15 days of registration, full payment is not remitted to the sheriff's office;

(B) a severity level 9 felony if, within 15 days of the most recent registration, two or more full payments have not been remitted to the sheriff's office.

Such violation shall be designated as a person or nonperson crime in accordance with the designation assigned to the underlying crime for which the offender is required to be registered under the Kansas offender registration act. If the offender is required to be registered under both a person and nonperson underlying crime, the violation shall be designated as a person crime.

(d) Prosecution of violations of this section may be held:

(1) In any county in which the offender resides;

(2) in any county in which the offender is required to be registered under the Kansas offender registration act;

(3) in any county in which the offender is located during which time the offender is not in compliance with the Kansas offender registration act; or

(4) in the county in which any conviction or adjudication occurred for which the offender is required to be registered under the Kansas offender registration act.

History: L. 1993, ch. 253, § 19; L. 1999, ch. 164, § 30; L. 2003, ch. 123, § 4; L. 2006, ch. 212, § 20; L. 2007, ch. 183, § 2; L. 2011, ch. 95, § 3; L. 2012, ch. 149, § 2; L. 2013, ch. 127, § 2; L. 2016, ch. 97, § 4; July 1.

Section was amended twice in the 2016 session, see also 22-4903a.

- 22-4904. Registration of offender; duties of court, correctional facility, treatment facility, registering law enforcement agency, Kansas bureau of investigation, attorney general; notification of schools and licensed child care facilities. (a) (1) At the time of conviction or adjudication for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall:
- (A) Inform any offender, on the record, of the procedure to register and the requirements of K.S.A. 22-4905, and amendments thereto; and
 - (B) if the offender is released:
 - (i) Complete a notice of duty to register, which shall include title and statute number of conviction or adjudication, date of conviction or adjudication, case number, county of conviction or adjudication, and the following offender information: Name, address, date of birth, social security number, race, ethnicity and gender;
 - (ii) require the offender to read and sign the notice of duty to register, which shall include a statement that the requirements provided in this subsection have been explained to the offender;
 - (iii) order the offender to report within three business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends school, to complete the registration form with all information and any updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto; and
 - (iv) provide one copy of the notice of duty to register to the offender and, within three business days, send a copy of the form to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation.
- (2) At the time of sentencing or disposition for an offense requiring registration as provided in K.S.A. 22-4902, and amendments thereto, the court shall ensure the age of the victim is documented in the journal entry of conviction or adjudication.
- (3) Upon commitment for control, care and treatment by the Kansas department for aging and disability services pursuant to K.S.A. 59-29a07, and amendments thereto, the court shall notify the registering law enforcement agency of the county where the offender resides during commitment of such offender's commitment. Such notice shall be prepared by the office of the attorney general for transmittal by the court by electronic means, including by fax or e-mail.
- (b) The staff of any correctional facility or the registering law enforcement agency's designee shall:
- (1) At the time of initial custody, register any offender within three business days:
 - (A) Inform the offender of the procedure for registration and of the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) complete the registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;
 - (C) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender;
 - (D) provide one copy of the form to the offender and, within three business days, send a copy of the form to the Kansas bureau of investigation; and
 - (E) enter all offender information required by the national crime information center into the national sex offender registry system within three business days of completing the registration or electronically submit all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto, within three business days to the Kansas bureau of investigation;
 - (2) notify the Kansas bureau of investigation of the incarceration of any offender and of the location or any change in location of the offender while in custody;
 - (3) prior to any offender being discharged, paroled, furloughed or released on work or school release that does not require the daily return to a correctional facility:
 - (A) Inform the offender of the procedure for registration and of the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) complete the registration form with all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto;
 - (C) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender;
 - (D) photograph the offender's face and any identifying marks;
 - (E) obtain fingerprint and palm prints of the offender; and
 - (F) provide one copy of the form to the offender and, within three business days, send a copy of the form and of the photograph or photographs to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation; and
 - (4) notify the law enforcement agency having initial jurisdiction and the Kansas bureau of investigation seven business days prior to any offender being discharged, paroled, furloughed or released on work or school release.
- (c) The staff of any treatment facility shall:
- (1) Within three business days of an offender's arrival for inpatient treatment, inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located of the offender's presence at the treatment facility and the expected duration of the treatment, and immediately notify the registering law enforcement agency of an unauthorized or unexpected absence of the offender during the offender's treatment;
 - (2) inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located within three business days of an offender's discharge or release; and
 - (3) provide information upon request to any registering law enforcement agency having jurisdiction relevant to determining the presence of an offender within the treatment facility.
- (d) The registering law enforcement agency, upon the reporting of any offender, shall:
- (1) Inform the offender of the duty to register as provided by the Kansas offender registration act;
 - (2) (A) explain the procedure for registration and the offender's registration requirements as provided in K.S.A. 22-4905, and amendments thereto;
 - (B) obtain the information required for registration as provided in K.S.A. 22-4907, and amendments thereto; and
 - (C) require the offender to read and sign the registration form, which shall include a statement that the requirements provided in this subsection have been explained to the offender;
 - (3) complete the registration form with all information and updated information required for registration, as provided in K.S.A. 22-4907, and amendments thereto, each time the offender reports to the registering law enforcement agency. All information and updated information reported by an offender shall be forwarded to the Kansas bureau of investigation within three business days;
 - (4) maintain the original signed registration form, provide one copy of the completed registration form to the offender and, within three business days, send one copy of the completed form to the Kansas bureau of investigation;
 - (5) forward a copy of any certified letter used for reporting pursuant to K.S.A. 22-4905, and amendments thereto, when utilized, within three business days to the Kansas bureau of investigation;
 - (6) obtain registration information from every offender required to register regardless of whether or not the offender remits payment;
 - (7) upon every required reporting, update the photograph or photographs of the offender's face and any new identifying marks and immediately forward copies or electronic files of the photographs to the Kansas bureau of investigation;
 - (8) enter all offender information required by the national crime information center into the national sex offender registry system within three business days of completing the registration or electronically submit all information and updated information required for registration as provided in K.S.A. 22-4907, and amendments thereto, within three business days to the Kansas bureau of investigation;
 - (9) maintain a special fund for the deposit and maintenance of fees paid by offenders. All funds retained by the registering law enforcement agency pursuant to the provisions of this section shall be credited to a special fund of the registering law enforcement agency which shall be used solely for law enforcement and criminal prosecution purposes and which shall not be used as a source of revenue to reduce the amount of funding otherwise made available to the registering law enforcement agency; and
 - (10) forward any initial registration and updated registration information within three business days to any out-of-state jurisdiction where the offender is expected to reside, maintain employment or attend school.
- (e) (1) The Kansas bureau of investigation shall:
- (A) Forward all additions or changes in information to any registering law enforcement agency, other than the agency that submitted the form, where the offender expects to reside, maintain employment or attend school;
 - (B) ensure that offender information is immediately entered in the state registered offender database and the Kansas registered offender

website, as provided in K.S.A. 22-4909, and amendments thereto;

(C) transmit offender conviction or adjudication data, fingerprints and palm prints to the federal bureau of investigation; and
(D) ensure all offender information required by the national crime information center is transmitted into the national sex offender registry system within three business days of such information being electronically submitted to the Kansas bureau of investigation.

(2) The director of the Kansas bureau of investigation may adopt rules and regulations necessary to implement the provisions of the Kansas offender registration act.

(f) The attorney general shall, within 10 business days of an offender being declared a sexually violent predator, forward to the Kansas bureau of investigation all relevant court documentation declaring an offender a sexually violent predator.

(g) The state department of education shall annually notify any school of the Kansas bureau of investigation internet website, and any internet website containing information on the Kansas offender registration act sponsored or created by the registering law enforcement agency of the county or location of jurisdiction in which the school is located, for the purpose of locating offenders who reside near such school. Such notification shall include information that the registering law enforcement agency of the county or location of jurisdiction where such school is located is available to the school to assist in using the registry and providing additional information on registered offenders.

(h) The secretary of health and environment shall annually notify any licensed child care facility of the Kansas bureau of investigation internet website, and any internet website containing information on the Kansas offender registration sponsored or created by the registering law enforcement agency of the county in which the facility is located, for the purpose of locating offenders who reside near such facility. Such notification shall include information that the registering law enforcement agency of the county or location of jurisdiction where such child care facility is located is available to the child care facilities to assist in using the registry and providing additional information on registered offenders.

(i) Upon request, the clerk of any court of record shall provide the Kansas bureau of investigation copies of complaints, indictments, information, journal entries, commitment orders or any other documents necessary to the performance of the duties of the Kansas bureau of investigation under the Kansas offender registration act. No fees or charges for providing such documents may be assessed.

History: L. 1993, ch. 253, § 20; L. 1994, ch. 107, § 3; L. 1996, ch. 224, § 4; L. 1997, ch. 181, § 9; L. 1999, ch. 164, § 31; L. 2000, ch. 150, § 2; L. 2001, ch. 208, § 11; L. 2003, ch. 123, § 5; L. 2006, ch. 214, § 7; L. 2007, ch. 183, § 3; L. 2010, ch. 135, § 35; L. 2011, ch. 95, § 4; L. 2012, ch. 149, § 3; L. 2013, ch. 127, § 3; L. 2016, ch. 64, § 2; July 1.

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22-4905. Duties of offender required to register; reporting; updated photograph; fee; driver's license; identification card. Any offender required to register as provided in the Kansas offender registration act shall:

- (a) Except as otherwise provided in this subsection, register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Any such offender who cannot physically register in person with the registering law enforcement agency for such reasons including, but not limited to, incapacitation or hospitalization, as determined by a person licensed to practice medicine or surgery, or involuntarily committed pursuant to the Kansas sexually violent predator act, shall be subject to verification requirements other than in-person registration, as determined by the registering law enforcement agency having jurisdiction;
- (b) except as provided further, for any: (1) Sex offender, including a violent offender or drug offender who is also a sex offender, report in person four times each year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or is attending a school; and (2) violent offender or drug offender, report in person four times each year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or is attending a school, except that, at the discretion of the registering law enforcement agency, one of the four required reports may be conducted by certified letter. When utilized, the certified letter for reporting shall be sent by the registering law enforcement agency to the reported residence of the offender. The offender shall indicate any changes in information as required for reporting in person. The offender shall respond by returning the certified letter to the registering law enforcement agency within 10 business days by certified mail. The offender shall be required to report to the registering law enforcement agency once during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday. The registering law enforcement agency may determine the appropriate times and days for reporting by the offender, consistent with this subsection. Nothing contained in this subsection shall be construed to alleviate any offender from meeting the requirements prescribed in the Kansas offender registration act;
- (c) provide the information required for registration as provided in K.S.A. 22-4907, and amendments thereto, and verify all information previously provided is accurate;
- (d) if in the custody of a correctional facility, register with the correctional facility within three business days of initial custody and shall not be required to update such registration until discharged, paroled, furloughed or released on work or school release from a correctional facility. A copy of the registration form and any updated registrations for an offender released on work or school release shall be sent, within three business days, to the registering law enforcement agency where the offender is incarcerated, maintains employment or attends school, and to the Kansas bureau of investigation;
- (e) if involuntarily committed pursuant to the Kansas sexually violent predator act, register within three business days of arrival in the county where the offender resides during commitment. The offender shall not be required to update such registration until placed in a reintegration facility, on transitional release or on conditional release. Upon placement in a reintegration facility, on transitional release or on conditional release, the offender shall be personally responsible for complying with the provisions of the Kansas offender registration act;
- (f) notwithstanding subsections (a) and (b), if the offender is transient, report in person to the registering law enforcement agency of such county or location of jurisdiction in which the offender is physically present within three business days of arrival in the county or location of jurisdiction. Such offender shall be required to register in person with the registering law enforcement agency every 30 days, or more often at the discretion of the registering law enforcement agency. Such offender shall comply with the provisions of the Kansas offender registration act and, in addition, shall:
 - (1) Provide a list of places where the offender has slept and otherwise frequented during the period of time since the last date of registration; and
 - (2) provide a list of places where the offender may be contacted and where the offender intends to sleep and otherwise frequent during the period of time prior to the next required date of registration;
- (g) if required by out-of-state law, register in any out-of-state jurisdiction, where the offender resides, maintains employment or attends school;
- (h) register in person upon any commencement, change or termination of residence location, employment status, school attendance or other information as provided in K.S.A. 22-4907, and amendments thereto, within three business days of such commencement, change or termination, to the registering law enforcement agency or agencies where last registered and provide written notice to the Kansas bureau of investigation;
- (i) report in person to the registering law enforcement agency or agencies within three business days of any change in name;
- (j) if receiving inpatient treatment at any treatment facility, inform the treatment facility of the offender's status as an offender and inform the registering law enforcement agency of the county or location of jurisdiction in which the treatment facility is located of the offender's presence at the treatment facility and the expected duration of the treatment;
- (k) submit to the taking of an updated photograph by the registering law enforcement agency on each occasion when the offender registers with or reports to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment or attends school. In addition, such offender shall submit to the taking of a photograph to document any changes in identifying characteristics, including, but not limited to, scars, marks and tattoos;
- (l) remit payment to the sheriff's office in the amount of \$20 as part of the reporting process required pursuant to subsection (b) in each county in which the offender resides, maintains employment or is attending school. Registration will be completed regardless of whether or not the offender remits payment. Failure of the offender to remit full payment within 15 days of registration is a violation of the Kansas offender registration act and is subject to prosecution pursuant to K.S.A. 22-4903, and amendments thereto. Notwithstanding other provisions herein, payment of this fee is not required:
 - (1) When an offender provides updates or changes in information or during an initial registration unless such updates, changes or initial registration is during the month of such offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday;
 - (2) when an offender is transient and is required to register every 30 days, or more frequently as ordered by the registering law enforcement agency, except during the month of the offender's birthday and every third, sixth and ninth month occurring before and after the month of the offender's birthday; or
 - (3) if an offender has, prior to the required reporting and within the last three years, been determined to be indigent by a court of law, and the basis for that finding is recorded by the court;
- (m) annually renew any driver's license pursuant to K.S.A. 8-247, and amendments thereto, and annually renew any identification card pursuant to K.S.A. 2016 Supp. 8-1325a, and amendments thereto;
- (n) if maintaining primary residence in this state, surrender all driver's licenses and identification cards from other states, territories and the District of Columbia, except if the offender is presently serving and maintaining active duty in any branch of the United States military or the offender is an immediate family member of a person presently serving and maintaining active duty in any branch of the United States military;
- (o) read and sign the registration form noting whether the requirements provided in this section have been explained to the offender; and
- (p) report in person to the registering law enforcement agency in the jurisdiction of the offender's residence and provide written notice to the Kansas bureau of investigation 21 days prior to any travel outside of the United States, and provide an itinerary including, but not limited to, destination, means of transport and duration of travel, or if under emergency circumstances, within three business days of making travel arrangements.

History: L. 1993, ch. 253, § 21; L. 1994, ch. 107, § 4; L. 1997, ch. 181, § 10; L. 1999, ch. 164, § 32; L. 2001, ch. 208, § 12; L. 2003, ch. 123, § 6; L. 2006, ch. 214, § 8; L. 2010, ch. 135, § 36; L. 2011, ch. 95, § 5; L. 2012, ch. 149, § 4; L. 2013, ch. 127, § 4; L. 2016, ch. 64, § 3; July 1.

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- 22-4906. Time period in which required to register; termination of registration requirement.** (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 subsection (a) of K.S.A. 2016 Supp. 21-5505, and amendments thereto;
 - (B) adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2016 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;
 - (C) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2016 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;
 - (D) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2016 Supp. 21-5513, and amendments thereto, when one of the parties involved is less than 18 years of age;
 - (E) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto;
 - (F) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;
 - (G) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments thereto;
 - (H) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;
 - (I) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or subsections (a)(1), (a)(2) or (a)(4) of K.S.A. 2016 Supp. 21-5405, and amendments thereto;
 - (J) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2016 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age;
 - (K) 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;
 - (L) conviction of any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act;
 - (M) 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;
 - (N) 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. 2016 Supp. 21-5703, and amendments thereto;
 - (O) 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 subsection (a) of K.S.A. 65-7006, prior to its repeal, subsection (a) of K.S.A. 2010 Supp. 21-36a09, prior to its transfer, or subsection (a) of K.S.A. 2016 Supp. 21-5709, and amendments thereto;
 - (P) K.S.A. 65-4161, prior to its repeal, subsection (a)(1) of K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or subsection (a)(1) of K.S.A. 2016 Supp. 21-5705, and amendments thereto; or
 - (Q) 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. 2016 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 subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(1) or (a)(2) of K.S.A. 2016 Supp. 21-5504, 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 subsection (a) of K.S.A. 2016 Supp. 21-5508, and amendments thereto;
 - (C) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, or K.S.A. 2016 Supp. 21-5509, and amendments thereto;
 - (D) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2016 Supp. 21-5604, and amendments thereto;
 - (E) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or subsection (a) of K.S.A. 2016 Supp. 21-5506, and amendments thereto;
 - (F) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2016 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. 2016 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 subsection (b) of K.S.A. 2016 Supp. 21-5505, and amendments thereto;
 - (I) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2016 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. 2016 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. 2016 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 subsection (b) of K.S.A. 2016 Supp. 21-5508, and amendments thereto;
 - (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b) of K.S.A. 2016 Supp. 21-5506, and amendments thereto;
 - (4) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2016 Supp. 21-5504, and amendments thereto;
 - (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2016 Supp. 21-5504, and amendments thereto;
 - (6) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or subsection (b) of K.S.A. 2016 Supp. 21-5426, 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. 2016 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. 2016 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 subsection (a) of K.S.A. 2016 Supp. 21-5408, and amendments thereto;
 - (10) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or subsection (b) of K.S.A. 2016 Supp. 21-5408, and amendments thereto;
 - (11) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto; or

(12) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3501, 21-3502 or 21-3503, prior to their repeal, or K.S.A. 2016 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 subsection (c) of K.S.A. 22-4902, 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 subsection (c) of K.S.A. 22-4902, 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. 2016 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 subsection (c) of K.S.A. 22-4902, 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. 2016 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 subsection (a)(5) of K.S.A. 22-4902, 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.

History: L. 1993, ch. 253, § 22; L. 1994, ch. 107, § 5; L. 1997, ch. 181, § 11; L. 1999, ch. 164, § 33; L. 2001, ch. 208, § 13; L. 2002, ch. 55, § 2; L. 2005, ch. 202, § 1; L. 2006, ch. 214, § 9; L. 2007, ch. 183, § 4; L. 2010, ch. 66, § 1; L. 2010, ch. 155, § 10; L. 2011, ch. 95, § 6; L. 2012, ch. 149, § 5; L. 2013, ch. 127, § 5; L. 2014, ch. 117, § 3; July 1.

Revisor's Note:

Section was also amended by L. 2010, ch. 122, § 5, but that version was repealed by L. 2010, ch. 155, § 26.

Section was amended twice in the 2011 session, see also 22-4906a.

Section was amended twice in the 2013 session, see also 22-4906b.

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22-4907. Information required in registration. (a) Registration as required by the Kansas offender registration act shall consist of a form approved by the Kansas bureau of investigation, which shall include a statement that the requirements provided in this section have been reviewed and explained to the offender, and shall be signed by the offender and, except when such reporting is conducted by certified letter as provided in subsection (b) of K.S.A. 22-4905, and amendments thereto, witnessed by the person registering the offender. Such registration form shall include the following offender information:

- (1) Name and all alias names;
- (2) date and city, state and country of birth, and any alias dates or places of birth;
- (3) title and statute number of each offense or offenses committed, date of each conviction or adjudication and court case numbers for each conviction or adjudication;
- (4) city, county, state or country of conviction or adjudication;
- (5) sex and date of birth or purported age of each victim of all offenses requiring registration;
- (6) current residential address, any anticipated future residence and any temporary lodging information including, but not limited to, address, telephone number and dates of travel for any place in which the offender is staying for seven or more days; and, if transient, the locations where the offender has stayed and frequented since last reporting for registration;
- (7) all telephone numbers at which the offender may be contacted including, but not limited to, all mobile telephone numbers;
- (8) social security number, and all alias social security numbers;
- (9) identifying characteristics such as race, ethnicity, skin tone, sex, age, height, weight, hair and eye color, scars, tattoos and blood type;
- (10) occupation and name, address or addresses and telephone number of employer or employers, and name of any anticipated employer and place of employment;
- (11) all current driver's licenses or identification cards, including a photocopy of all such driver's licenses or identification cards and their numbers, states of issuance and expiration dates;
- (12) all vehicle information, including the license plate number, registration number and any other identifier and description of any vehicle owned or operated by the offender, or any vehicle the offender regularly drives, either for personal use or in the course of employment, and information concerning the location or locations such vehicle or vehicles are habitually parked or otherwise kept;
- (13) license plate number, registration number or other identifier and description of any aircraft or watercraft owned or operated by the offender, and information concerning the location or locations such aircraft or watercraft are habitually parked, docked or otherwise kept;
- (14) all professional licenses, designations and certifications;
- (15) documentation of any treatment received for a mental abnormality or personality disorder of the offender; for purposes of documenting the treatment received, registering law enforcement agencies, correctional facility officials, treatment facility officials and courts may rely on information that is readily available to them from existing records and the offender;
- (16) a photograph or photographs;
- (17) fingerprints and palm prints;
- (18) any and all schools and satellite schools attended or expected to be attended and the locations of attendance and telephone number;
- (19) any and all: E-mail addresses; online identities used by the offender on the internet; information relating to membership in any and all personal web pages or online social networks; and internet screen names;
- (20) all travel and immigration documents; and
- (21) name and telephone number of the offender's probation, parole or community corrections officer.

(b) The offender shall provide biological samples for DNA analysis to the registering law enforcement agency as required by K.S.A. 21-2511, and amendments thereto. The biological samples shall be in the form using a DNA databank kit authorized by the Kansas bureau of investigation. The registering law enforcement agency shall forward such biological samples to the Kansas bureau of investigation. Prior to taking such sample, the registering law enforcement agency shall search the Kansas criminal justice information system to determine if such person's DNA profile is currently on file. If such person's DNA profile is on file with the Kansas bureau of investigation, the registering law enforcement agency is not required to take biological samples.

History: L. 1993, ch. 253, § 23; L. 1996, ch. 224, § 5; L. 1997, ch. 181, § 12; L. 2001, ch. 208, § 14; L. 2007, ch. 183, § 5; L. 2010, ch. 135, § 37; L. 2011, ch. 95, § 7; L. 2012, ch. 149, § 6; L. 2013, ch. 127, § 6; July 1.

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22-4908. Person required to register shall not be relieved of further registration. No person required to register as an offender pursuant to the Kansas offender registration act shall be granted an order relieving the offender of further registration under this act. This section shall include any person with any out-of-state conviction or adjudication for an offense that would require registration under the laws of this state.

History: L. 1993, ch. 253, § 24; L. 1994, ch. 107, § 6; L. 1997, ch. 181, § 13; L. 1999, ch. 164, § 34; L. 2001, ch. 208, § 15; L. 2011, ch. 95, § 8; L. 2012, ch. 149, § 7; July 1.

Section was not amended in the 2012 session.

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22-4909. Information subject to open records act; website posting; exceptions; nondisclosure of certain information. (a) Except as prohibited by subsections (c), (d), (e) and (f) of this section and subsections (f) and (g) of K.S.A. 22-4906, and amendments thereto, the statements or any other information required by the Kansas offender registration act shall be open to inspection by the public at the registering law enforcement agency, at the headquarters of the Kansas bureau of investigation and on any internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation that contains such statements or information, and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(b) Any information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall identify, in a prominent manner, whether an offender is a sex offender, a violent offender or a drug offender. Such internet websites shall include the following information for each offender:

- (1) Name of the offender, including any aliases;
 - (2) address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has their home or habitually lives. If current information of this type is not available because the offender is in violation of the requirement to register or cannot be located, the website must so note;
 - (3) temporary lodging information;
 - (4) address of any place where the offender is a student or will be a student;
 - (5) license plate number and a description of any vehicle owned or operated by the offender, including any aircraft or watercraft;
 - (6) physical description of the offender;
 - (7) the offense or offenses for which the offender is registered and any other offense for which the offender has been convicted or adjudicated;
 - (8) a current photograph of the offender; and
 - (9) all professional licenses, designations and certifications.
- (c) Notwithstanding subsection (a), information posted on an internet website sponsored or created by a registering law enforcement agency or the Kansas bureau of investigation shall not contain the address of any place where the offender is an employee or any other information about where the offender works. Such internet website shall contain a statement that employment information is publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the official website of the Kansas bureau of investigation.
- (d) Notwithstanding subsection (a), pursuant to a court finding petitioned by the prosecutor, any offender who is required to register pursuant to the Kansas offender registration act, but has been provided a new identity and relocated under the federal witness security program or who has worked as a confidential informant, or is otherwise a protected witness, shall be required to register pursuant to the Kansas offender registration act, but shall not be subject to public registration.
- (e) Notwithstanding subsection (a), when a court orders expungement of a conviction or adjudication that requires an offender to register pursuant to the Kansas offender registration act, the registration requirement for such conviction or adjudication does not terminate. Such offender shall be required to continue registering pursuant to the Kansas offender registration act, but shall not be subject to public registration. If a court orders expungement of a conviction or adjudication that requires an offender to register pursuant to the Kansas offender registration act, and the offender has any other conviction or adjudication that requires registration, such offender shall be required to register pursuant to the Kansas offender registration act, and the registration for such other conviction or adjudication shall be open to inspection by the public and shall be subject to the provisions of subsection (a), unless such registration has been ordered restricted pursuant to subsection (f) or (g) of K.S.A. 22-4906, and amendments thereto.
- (f) Notwithstanding subsection (a), the following information shall not be disclosed other than to law enforcement agencies:
- (1) The name, address, telephone number or any other information which specifically and individually identifies the identity of any victim of a registerable offense;
 - (2) the social security number of the offender;
 - (3) the offender's criminal history arrests that did not result in convictions or adjudications;
 - (4) travel and immigration document numbers of the offender; and
 - (5) internet identifiers of the offender.

History: L. 1993, ch. 253, § 25; L. 1994, ch. 107, § 7; L. 1997, ch. 181, § 14; L. 2001, ch. 208, § 16; L. 2005, ch. 202, § 2; L. 2006, ch. 214, § 10; L. 2011, ch. 95, § 9; L. 2012, ch. 149, § 8; July 1.

2016 Kansas Statutes

22-4911. Cause of action; not created. Nothing in the Kansas offender registration act shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of requiring an offender to register or an offender's failure to register. This includes, but is not limited to, the person or persons assigned to a registering law enforcement agency to register offenders, and the person or persons assigned to enter all offender information required by the national crime information center into the national sex offender registry system.

History: L. 1999, ch. 164, § 36; L. 2011, ch. 95, § 10; July 1.

2016 Kansas Statutes

22-4913. Offender residency restrictions; prohibition from adopting or enforcing; exceptions; definitions. (a) Except as provided in subsection (b), on and after June 1, 2006, cities and counties shall be prohibited from adopting or enforcing any ordinance, resolution or regulation establishing residential restrictions for offenders as defined by K.S.A. 22-4902, and amendments thereto.

(b) The prohibition in subsection (a), shall not apply to any city or county residential licensing or zoning program for correctional placement residences that includes regulations for the housing of such offenders.

(c) As used in this section, "correctional placement residence" means a facility that provides residential services for individuals or offenders who reside or have been placed in such facility due to any one of the following situations:

- (1) Prior to, or instead of, being sentenced to prison;
- (2) as a conditional release prior to a hearing;
- (3) as a part of a sentence of confinement of not more than one year;
- (4) in a privately operated facility housing parolees;
- (5) as a deferred sentence when placed in a facility operated by community corrections;
- (6) as a requirement of court-ordered treatment services for alcohol or drug abuse; or
- (7) as part of voluntary treatment services for alcohol or drug abuse.

Correctional placement residence shall not include a single or multi-family dwelling or commercial residential building that provides a residence to staff and persons other than those described in paragraphs (1) through (7).

History: L. 2006, ch. 214, § 2; L. 2008, ch. 57, § 1; L. 2011, ch. 95, § 11; July 1.