

**House Corrections and Juvenile Justice Committee
February 24, 2021**

**House Bill 2360
Testimony of the Kansas Association of Criminal Defense Lawyers (KACDL)
Presented by Clayton Perkins
Proponent**

Dear Chairman Jennings and Members of the Committee:

In *State v. Boettger*, 310 Kan. 800 (2019) the Kansas Supreme Court held that the “reckless” form of criminal threat in K.S.A. 21-5415 unconstitutionally violated the First Amendment’s protections of free speech. In doing so, the Kansas Supreme Court noted that the reckless threats provision could lead to a felony conviction for speech intended as political hyperbole clearly protected by the First Amendment. HB 2360 removes the unconstitutional language from the statute, and puts it in compliance with the First Amendment’s protections of free speech. We support this bill.

I would also point out that, even with these changes, our criminal threat statute remains concerningly disproportionate with other offenses. For example, if someone punches someone else, they could be convicted of battery, a class B person misdemeanor pursuant to K.S.A. 21-5413. If someone tries to punch someone, but misses, they could be convicted of assault, a class C person misdemeanor pursuant to K.S.A. 21-5412. However, if someone sends a text message saying “I am going to punch you” they could be convicted of criminal threat, a severity level 9 person felony pursuant to K.S.A. 21-5415. This Summer, the Kansas Criminal Justice Reform Commission’s Proportionality subcommittee conducted a survey of judges, prosecutors, defense counsel, and law enforcement officers, asking if each of the five most common nondrug felonies should be re-worked for proportionality.¹ 63 percent of respondents said criminal threat should be reworked. Hopefully, we will see some recommendations from the Commission on this issue in the future.

Finally, because I was the appellant’s counsel in the *State v. Boettger* case, I am happy to answer any questions this Committee may have about the holding of the case. Thank you for your time.

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¹ <https://www.sentencing.ks.gov/docs/default-source/publications-reports-and-presentations/kcjrc-final-survey-results2020.pdf>