

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2121

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to defendants who abscond from supervision; definitions; amending
3 K.S.A. 75-5217 and K.S.A. 2020 Supp. 22-2202 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 22-2202 is hereby amended to read as
8 follows: 22-2202. (a) ~~"Absconds from supervision" means intentionally~~
9 **knowingly** avoiding supervision or ~~intentionally~~ **knowingly** making the
10 defendant's whereabouts unknown to the defendant's supervising court
11 services officer or community correctional services officer.

12 (b) "Appellate court" means the supreme court or court of appeals,
13 depending on the context in which the term is used and the respective
14 jurisdiction of those courts over appeals in criminal cases, as provided in
15 K.S.A. 22-3601, and amendments thereto.

16 ~~(b)~~(c) "Appearance bond" means an agreement, with or without
17 security, entered into by a person in custody by which the person is bound
18 to comply with the conditions specified in the agreement.

19 ~~(c)~~(d) "Arraignment" means the formal act of calling the defendant
20 before a court having jurisdiction to impose sentence for the offense
21 charged, informing the defendant of the offense with which the defendant
22 is charged, and asking the defendant whether the defendant is guilty or not
23 guilty.

24 ~~(d)~~(e) "Arrest" means the taking of a person into custody in order that
25 the person may be forthcoming to answer for the commission of a crime.
26 The giving of a notice to appear is not an arrest.

27 ~~(e)~~(f) "Bail" means the security given for the purpose of insuring
28 compliance with the terms of an appearance bond.

29 ~~(f)~~(g) "Bind over" means require a defendant to appear and answer
30 before a district judge having jurisdiction to try the defendant for the
31 felony with which the defendant is charged.

32 ~~(g)~~(h) "Charge" means a written statement presented to a court
33 accusing a person of the commission of a crime and includes a complaint,
34 information or indictment.

35 ~~(h)~~(i) "Complaint" means a written statement under oath of the
36 essential facts constituting a crime, except that a citation or notice to

1 appear issued by a law enforcement officer pursuant to and in compliance
2 with K.S.A. 8-2106, and amendments thereto, or a citation or notice to
3 appear issued pursuant to and in compliance with K.S.A. 32-1049, and
4 amendments thereto, shall be deemed a valid complaint if it is signed by
5 the law enforcement officer.

6 ~~(i)~~(j) "Custody" means the restraint of a person pursuant to an arrest
7 or the order of a court or magistrate.

8 ~~(j)~~(k) "Detention" means the temporary restraint of a person by a law
9 enforcement officer.

10 ~~(k)~~(l) "Indictment" means a written statement, presented by a grand
11 jury to a court, which charges the commission of a crime.

12 ~~(l)~~(m) "Information" means a verified written statement signed by a
13 county attorney or other authorized representative of the state of Kansas
14 presented to a court, which charges the commission of a crime. An
15 information verified upon information and belief by the county attorney or
16 other authorized representative of the state of Kansas shall be sufficient.

17 ~~(m)~~(n) "Law enforcement officer" means any person who by virtue of
18 office or public employment is vested by law with a duty to maintain
19 public order or to make arrests for violation of the laws of the state of
20 Kansas or ordinances of any municipality thereof or with a duty to
21 maintain or assert custody or supervision over persons accused or
22 convicted of crime, and includes court services officers, community
23 corrections officers, parole officers and directors, security personnel and
24 keepers of correctional institutions, jails or other institutions for the
25 detention of persons accused or convicted of crime, while acting within the
26 scope of their authority.

27 ~~(n)~~(o) "Magistrate" means an officer having power to issue a warrant
28 for the arrest of a person charged with a crime and includes justices of the
29 supreme court, judges of the court of appeals and judges of district courts.

30 ~~(o)~~(p) "Notice to appear" means a written request, issued by a law
31 enforcement officer, that a person appear before a designated court at a
32 stated time and place.

33 ~~(p)~~(q) "Preliminary examination" means a hearing before a magistrate
34 on a complaint or information to determine if a felony has been committed
35 and if there is probable cause to believe that the person charged committed
36 ~~it~~ *such felony*.

37 ~~(q)~~(r) "Prosecuting attorney" means any attorney who is authorized
38 by law to appear for and on behalf of the state of Kansas in a criminal
39 case, and includes the attorney general, an assistant attorney general, the
40 county or district attorney, an assistant county or district attorney and any
41 special prosecutor whose appearance is approved by the court. In the case
42 of prosecution for violation of a city ordinance, ~~also~~, "prosecuting
43 attorney" means the city attorney or any assistant city attorney.

1 ~~(s)~~(s) "Search warrant" means a written order made by a magistrate
2 directed to a law enforcement officer commanding the officer to search the
3 premises described in the search warrant and to seize property described or
4 identified in the search warrant.

5 ~~(t)~~(t) "Summons" means a written order issued by a magistrate
6 directing that a person appear before a designated court at a stated time
7 and place and answer to a charge pending against the person.

8 ~~(u)~~(u) "Warrant" means a written order made by a magistrate directed
9 to any law enforcement officer commanding the officer to arrest the person
10 named or described in the warrant.

11 Sec. 2. K.S.A. 75-5217 is hereby amended to read as follows: 75-
12 5217. (a) At any time during release on parole, conditional release or
13 postrelease supervision, the secretary of corrections may issue a warrant
14 for the arrest of a released inmate for violation of any of the conditions of
15 release, or a notice to appear to answer to a charge of violation. Such
16 notice shall be served personally upon the released inmate. The warrant
17 shall authorize any law enforcement officer to arrest and deliver the
18 released inmate to a place as provided by subsection (g). Any parole
19 officer may arrest such released inmate without a warrant, or may deputize
20 any other officer with power of arrest to do so by giving such officer a
21 written or verbal arrest and detain order setting forth that the released
22 inmate, in the judgment of the parole officer, has violated the conditions of
23 the inmate's release. A written arrest and detain order delivered to the
24 official in charge of the institution or place to which the released inmate is
25 brought for detention shall be sufficient warrant for detaining the inmate.
26 After making an arrest the parole officer shall present to the detaining
27 authorities a similar arrest and detain order and statement of the
28 circumstances of violation. Pending a hearing, as provided in this section,
29 upon any charge of violation the released inmate shall remain incarcerated
30 in the institution or place to which the inmate is taken for detention.

31 (b) Upon such arrest and detention, the parole officer shall notify the
32 secretary of corrections, or the secretary's designee, within five days and
33 shall submit in writing a report showing in what manner the released
34 inmate had violated the conditions of release. After such notification is
35 given to the secretary of corrections, or upon an arrest by warrant as herein
36 provided and the finding of probable cause pursuant to procedures
37 established by the secretary of a violation of the released inmate's
38 conditions of release, the secretary or the secretary's designee may cause
39 the released inmate to be brought before the prisoner review board, its
40 designee or designees, for a hearing on the violation charged, under such
41 rules and regulations as the board may adopt, or may dismiss the charges
42 that the released inmate has violated the conditions of release and order the
43 released inmate to remain on parole, conditional release or post release

1 supervision. A dismissal of charges may be conditioned on the released
2 inmate agreeing to the withholding of credit for the period of time from the
3 date of the issuance of the secretary's warrant and the offender's arrest or
4 return to Kansas as provided by subsection (f). ~~It is within the discretion of~~
5 The board *may determine* whether such hearing requires the released
6 inmate to appear personally before the board when such inmate's violation
7 results from a conviction for a new felony or misdemeanor. An offender
8 under determinative sentencing whose violation does not result from a
9 conviction of a new felony or misdemeanor may waive the right to a final
10 revocation hearing before the board under such conditions and terms as
11 may be prescribed by rules and regulations promulgated by the secretary
12 of corrections. Relevant written statements made under oath shall be
13 admitted and considered by the board, its designee or designees, along
14 with other evidence presented at the hearing. If the violation is established
15 to the satisfaction of the board, the board may continue or revoke the
16 parole or conditional release, or enter such other order as the board may
17 see fit. The revocation of release of inmates who are on a specified period
18 of postrelease supervision shall be for a six-month period of confinement
19 from the date of the revocation hearing before the board or the effective
20 date of waiver of such hearing by the offender pursuant to rules and
21 regulations promulgated by the board, if the violation does not result from
22 a conviction for a new felony or misdemeanor. Such period of confinement
23 may be reduced by not more than three months based on the inmate's
24 conduct, work and program participation during the incarceration period.
25 The reduction in the incarceration period shall be on an earned basis
26 pursuant to rules and regulations adopted by the secretary of corrections.

27 (c) If the violation results from a conviction for a new felony, upon
28 revocation, the inmate shall serve a period of confinement, to be
29 determined by the prisoner review board, which shall not exceed the
30 remaining balance of the period of postrelease supervision, even if the new
31 conviction did not result in the imposition of a new term of imprisonment.

32 (d) If the violation results from a conviction for a new misdemeanor,
33 upon revocation, the inmate shall serve a period of confinement, to be
34 determined by the prisoner review board, which shall not exceed the
35 remaining balance of the period of postrelease supervision.

36 (e) In the event the released inmate reaches conditional release date
37 as provided by K.S.A. 22-3718, and amendments thereto, after a finding of
38 probable cause, pursuant to procedures established by the secretary of
39 corrections of a violation of the released inmate's conditions of release, but
40 prior to a hearing before the prisoner review board, the secretary of
41 corrections shall be authorized to detain the inmate until the hearing by the
42 board. The secretary shall then enforce the order issued by the board.

43 (f) (1) If the secretary of corrections issues a warrant for the arrest of

1 a released inmate for violation of any of the conditions of release and
2 released inmate is subsequently arrested in the state of Kansas, either
3 pursuant to the warrant issued by the secretary of corrections or for any
4 other reason, the released inmate's sentence shall not be credited with the
5 period of time from the date of the issuance of the secretary's warrant to
6 the date of the released inmate's arrest, except as provided by subsection
7 (i).

8 (2) If a released inmate for whom a warrant has been issued by the
9 secretary of corrections for violation of the conditions of release is
10 subsequently arrested in another state, and the released inmate has been
11 authorized as a condition of such inmate's release to reside in or travel to
12 the state in which the released inmate was arrested, and the released
13 inmate has not absconded from supervision, the released inmate's sentence
14 shall not be credited with the period of time from the date of the issuance
15 of the warrant to the date of the released inmate's arrest, except as
16 provided by subsection (i). If the released inmate for whom a warrant has
17 been issued by the secretary of corrections for violation of the conditions
18 of release is subsequently arrested in another state for reasons other than
19 the secretary's warrant and the released inmate does not have authorization
20 to be in the other state or if authorized to be in the other state has been
21 charged by the secretary with having absconded from supervision, the
22 released inmate's sentence shall not be credited with the period of time
23 from the date of the issuance of the warrant by the secretary to the date the
24 released inmate is first available to be returned to the state of Kansas,
25 except as provided by subsection (i). If the released inmate for whom a
26 warrant has been issued by the secretary of corrections for violation of a
27 condition of release is subsequently arrested in another state pursuant only
28 to the secretary's warrant, the released inmate's sentence shall not be
29 credited with the period of time from the date of the issuance of the
30 secretary's warrant to the date of the released inmate's arrest, regardless of
31 whether the released inmate's presence in the other state was authorized or
32 the released inmate had absconded from supervision, except as provided
33 by subsection (i).

34 (3) The secretary may issue a warrant for the arrest of a released
35 inmate for violation of any of the conditions of release and may direct that
36 all reasonable means to serve the warrant and detain such released inmate
37 be employed including, but not limited to, notifying the federal bureau of
38 investigation of such violation and issuance of warrant and requesting
39 from the federal bureau of investigation any pertinent information it may
40 possess concerning the whereabouts of the released inmate.

41 (g) Law enforcement officers shall execute warrants issued by the
42 secretary of corrections, and shall deliver the inmate named in the warrant
43 to the jail used by the county where the inmate is arrested unless some

1 other place is designated by the secretary, in the same manner as for the
2 execution of any arrest warrant.

3 (h) For the purposes of this section, an inmate or released inmate is
4 an individual under the supervision of the secretary of corrections,
5 including, but not limited to, an individual on parole, conditional release,
6 postrelease supervision, probation granted by another state or an individual
7 supervised under any interstate compact in accordance with the provisions
8 of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 et
9 seq., and amendments thereto.

10 (i) Time not credited to the released inmate's sentence pursuant to
11 subsection (f) shall be credited if the violation charges are dismissed
12 without an agreement providing otherwise or the violations are not
13 established to the satisfaction of the board.

14 (j) *As used in this section, "absconded from supervision" means*
15 *~~intentionally~~ knowingly avoiding supervision or ~~intentionally~~ knowingly*
16 *making the defendant's whereabouts unknown to the defendant's*
17 *supervising parole officer, court services officer or community*
18 *correctional services officer.*

19 Sec. 3. K.S.A. 75-5217 and K.S.A. 2020 Supp. 22-2202 are hereby
20 repealed.

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