

**HOUSE BILL No. 2121**

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure;  
2 *increasing criminal penalty for mistreatment of a dependent adult or*  
3 *elder person when the victim is a resident of an adult care home;*  
4 relating to defendants who abscond from supervision; definitions;  
5 *surrender of obligor by surety; release of surety; requiring delivery to*  
6 *county where the complaint subject to the bond was filed; adding a*  
7 *definition of custodial officer of the court; amending K.S.A. 22-2809*  
8 *and 75-5217 and K.S.A. 2020 Supp. 21-5417 and 22-2202 and*  
9 *repealing the existing sections.*

10  
11 *Be it enacted by the Legislature of the State of Kansas:*

12 *Section 1. K.S.A. 2020 Supp. 21-5417 is hereby amended to read as*  
13 *follows: 21-5417. (a) Mistreatment of a dependent adult or an elder*  
14 *person is knowingly committing one or more of the following acts:*

15 *(1) Infliction of physical injury, unreasonable confinement or*  
16 *unreasonable punishment upon a dependent adult or an elder person;*

17 *(2) taking the personal property or financial resources of a*  
18 *dependent adult or an elder person for the benefit of the defendant or*  
19 *another person by taking control, title, use or management of the*  
20 *personal property or financial resources of a dependent adult or an elder*  
21 *person through:*

22 *(A) Undue influence, coercion, harassment, duress, deception, false*  
23 *representation, false pretense or without adequate consideration to such*  
24 *dependent adult or elder person;*

25 *(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et*  
26 *seq., and amendments thereto;*

27 *(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et*  
28 *seq., and amendments thereto; or*

29 *(D) a violation of the act for obtaining a guardian or a conservator,*  
30 *or both, K.S.A. 59-3050 et seq., and amendments thereto; or*

31 *(3) omission or deprivation of treatment, goods or services that are*  
32 *necessary to maintain physical or mental health of such dependent adult*  
33 *or elder person.*

34 *(b) Mistreatment of a dependent adult or an elder person as defined*

1 **in:**

2 **(1) (A) Subsection (a)(1) is a severity level 5, person felony, except**  
3 **as provided in subsection (b)(1)(B);**

4 **(B) subsection (a)(1) is a severity level 2, person felony, when the**  
5 **victim is a dependent adult who is a resident of an adult care home, as**  
6 **described in subsection (e)(2)(A), during the commission of the offense;**

7 **(2) subsection (a)(2) if the aggregate amount of the value of the**  
8 **personal property or financial resources is:**

9 **(A) \$1,000,000 or more is a severity level 2, person felony;**

10 **(B) at least \$250,000 but less than \$1,000,000 is a severity level 3,**  
11 **person felony;**

12 **(C) at least \$100,000 but less than \$250,000 is a severity level 4,**  
13 **person felony;**

14 **(D) at least \$25,000 but less than \$100,000 is a severity level 5,**  
15 **person felony;**

16 **(E) at least \$1,500 but less than \$25,000 is a severity level 7, person**  
17 **felony;**

18 **(F) less than \$1,500 is a class A person misdemeanor, except as**  
19 **provided in subsection (b)(2)(G); and**

20 **(G) less than \$1,500 and committed by a person who has, within**  
21 **five years immediately preceding commission of the crime, been**  
22 **convicted of a violation of this section two or more times is a severity**  
23 **level 7, person felony; and**

24 **(3) (A) subsection (a)(3) is a severity level 8, person felony, except**  
25 **as provided in subsection (b)(3)(B); and**

26 **(B) subsection (a)(3) is a severity level 5, person felony, when the**  
27 **victim is a dependent adult who is a resident of an adult care home, as**  
28 **described in subsection (e)(2)(A), during the commission of the offense.**

29 **(c) It shall be an affirmative defense to any prosecution for**  
30 **mistreatment of a dependent adult or an elder person as described in**  
31 **subsection (a)(2) that:**

32 **(1) The personal property or financial resources were given as a**  
33 **gift consistent with a pattern of gift giving to the person that existed**  
34 **before the dependent adult or elder person became vulnerable;**

35 **(2) the personal property or financial resources were given as a gift**  
36 **consistent with a pattern of gift giving to a class of individuals that**  
37 **existed before the dependent adult or elder person became vulnerable;**

38 **(3) the personal property or financial resources were conferred as a**  
39 **gift by the dependent adult or elder person to the benefit of a person or**  
40 **class of persons, and such gift was reasonable under the circumstances;**  
41 **or**

42 **(4) a court approved the transaction before the transaction**  
43 **occurred.**

1       (d) *No dependent adult or elder person is considered to be*  
2 *mistreated under subsection (a)(1) or (a)(3) for the sole reason that such*  
3 *dependent adult or elder person relies upon or is being furnished*  
4 *treatment by spiritual means through prayer in lieu of medical treatment*  
5 *in accordance with the tenets and practices of a recognized church or*  
6 *religious denomination of which such dependent adult or elder person is*  
7 *a member or adherent.*

8       (e) *As used in this section:*

9       (1) *"Adequate consideration" means the personal property or*  
10 *financial resources were given to the person as payment for bona fide*  
11 *goods or services provided by such person and the payment was at a rate*  
12 *customary for similar goods or services in the community that the*  
13 *dependent adult or elder person resided in at the time of the transaction.*

14       (2) *"Dependent adult" means an individual 18 years of age or older*  
15 *who is unable to protect the individual's own interest. Such term shall*  
16 *include, but is not limited to, any:*

17       (A) *Resident of an adult care home including, but not limited to,*  
18 *those facilities defined by K.S.A. 39-923, and amendments thereto;*

19       (B) *adult cared for in a private residence;*

20       (C) *individual kept, cared for, treated, boarded, confined or*  
21 *otherwise accommodated in a medical care facility;*

22       (D) *individual with intellectual disability or a developmental*  
23 *disability receiving services through a community facility for people with*  
24 *intellectual disability or residential facility licensed under K.S.A. 2020*  
25 *Supp. 39-2001 et seq., and amendments thereto;*

26       (E) *individual with a developmental disability receiving services*  
27 *provided by a community service provider as provided in the*  
28 *developmental disability reform act; or*

29       (F) *individual kept, cared for, treated, boarded, confined or*  
30 *otherwise accommodated in a state psychiatric hospital or state*  
31 *institution for people with intellectual disability.*

32       (3) *"Elder person" means a person 60 years of age or older.*

33       (f) *An offender who violates the provisions of this section may also*  
34 *be prosecuted for, convicted of, and punished for any other offense in*  
35 *article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated,*  
36 *or K.S.A. 2020 Supp. 21-6418, and amendments thereto.*

37       ~~Section 1, Sec. 2.~~ K.S.A. 2020 Supp. 22-2202 is hereby amended to  
38 read as follows: 22-2202. (a) *"Absconds from supervision" means*  
39 ~~intentionally~~ **knowingly** *avoiding supervision or* ~~intentionally~~ **knowingly**  
40 *making the defendant's whereabouts unknown to the defendant's*  
41 *supervising court services officer or community correctional services*  
42 *officer.*

43       (b) *"Appellate court" means the supreme court or court of appeals,*

1 depending on the context in which the term is used and the respective  
2 jurisdiction of those courts over appeals in criminal cases, as provided in  
3 K.S.A. 22-3601, and amendments thereto.

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

7 ~~(e)~~(d) "Arraignment" means the formal act of calling the defendant  
8 before a court having jurisdiction to impose sentence for the offense  
9 charged, informing the defendant of the offense with which the defendant  
10 is charged, and asking the defendant whether the defendant is guilty or not  
11 guilty.

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

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

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

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

23 ~~(h)~~(i) "Complaint" means a written statement under oath of the  
24 essential facts constituting a crime, except that a citation or notice to  
25 appear issued by a law enforcement officer pursuant to and in compliance  
26 with K.S.A. 8-2106, and amendments thereto, or a citation or notice to  
27 appear issued pursuant to and in compliance with K.S.A. 32-1049, and  
28 amendments thereto, shall be deemed a valid complaint if it is signed by  
29 the law enforcement officer.

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

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

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

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

41 ~~(m)~~(n) "Law enforcement officer" means any person who by virtue of  
42 office or public employment is vested by law with a duty to maintain  
43 public order or to make arrests for violation of the laws of the state of

1 Kansas or ordinances of any municipality thereof or with a duty to  
2 maintain or assert custody or supervision over persons accused or  
3 convicted of crime, and includes court services officers, community  
4 corrections officers, parole officers and directors, security personnel and  
5 keepers of correctional institutions, jails or other institutions for the  
6 detention of persons accused or convicted of crime, while acting within the  
7 scope of their authority.

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

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

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

18 ~~(q)~~(r) "Prosecuting attorney" means any attorney who is authorized  
19 by law to appear for and on behalf of the state of Kansas in a criminal  
20 case, and includes the attorney general, an assistant attorney general, the  
21 county or district attorney, an assistant county or district attorney and any  
22 special prosecutor whose appearance is approved by the court. In the case  
23 of prosecution for violation of a city ordinance, ~~also~~, "prosecuting  
24 attorney" means the city attorney or any assistant city attorney.

25 ~~(r)~~(s) "Search warrant" means a written order made by a magistrate  
26 directed to a law enforcement officer commanding the officer to search the  
27 premises described in the search warrant and to seize property described or  
28 identified in the search warrant.

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

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

35 ***Sec. 3. K.S.A. 22-2809 is hereby amended to read as follows: 22-***  
36 ***2809. (a) Any person who is released on an appearance bond may be***  
37 ***arrested by such person's surety or any person authorized by such surety***  
38 ***and delivered to a custodial officer of the court in any the county in the***  
39 ***state in which such person is charged where the complaint subject to the***  
40 ***bond was filed. Such person who is arrested as provided in this section***  
41 ***shall be brought before any magistrate having power to commit for the***  
42 ***crime charged. The magistrate shall indorse on the bond, or a certified***  
43 ***copy of such bond, the discharge of such surety upon the sworn***

1 *statement, either written or oral, of the surety setting forth the reasons*  
2 *for the discharge. The magistrate may commit the party who is arrested*  
3 *as provided in this section. Such person committed as provided in this*  
4 *section shall be held in custody until released as provided by law.*

5 (b) *As used in this section, "custodial officer of the court" means the*  
6 *sheriff or the keeper of the jail in the county.*

7 Sec. ~~2~~ 4. K.S.A. 75-5217 is hereby amended to read as follows: 75-  
8 5217. (a) At any time during release on parole, conditional release or  
9 postrelease supervision, the secretary of corrections may issue a warrant  
10 for the arrest of a released inmate for violation of any of the conditions of  
11 release, or a notice to appear to answer to a charge of violation. Such  
12 notice shall be served personally upon the released inmate. The warrant  
13 shall authorize any law enforcement officer to arrest and deliver the  
14 released inmate to a place as provided by subsection (g). Any parole  
15 officer may arrest such released inmate without a warrant, or may deputize  
16 any other officer with power of arrest to do so by giving such officer a  
17 written or verbal arrest and detain order setting forth that the released  
18 inmate, in the judgment of the parole officer, has violated the conditions of  
19 the inmate's release. A written arrest and detain order delivered to the  
20 official in charge of the institution or place to which the released inmate is  
21 brought for detention shall be sufficient warrant for detaining the inmate.  
22 After making an arrest the parole officer shall present to the detaining  
23 authorities a similar arrest and detain order and statement of the  
24 circumstances of violation. Pending a hearing, as provided in this section,  
25 upon any charge of violation the released inmate shall remain incarcerated  
26 in the institution or place to which the inmate is taken for detention.

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

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

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

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

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

39 (f) (1) If the secretary of corrections issues a warrant for the arrest of  
40 a released inmate for violation of any of the conditions of release and the  
41 released inmate is subsequently arrested in the state of Kansas, either  
42 pursuant to the warrant issued by the secretary of corrections or for any  
43 other reason, the released inmate's sentence shall not be credited with the

1 period of time from the date of the issuance of the secretary's warrant to  
2 the date of the released inmate's arrest, except as provided by subsection  
3 (i).

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

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

37 (g) Law enforcement officers shall execute warrants issued by the  
38 secretary of corrections, and shall deliver the inmate named in the warrant  
39 to the jail used by the county where the inmate is arrested unless some  
40 other place is designated by the secretary, in the same manner as for the  
41 execution of any arrest warrant.

42 (h) For the purposes of this section, an inmate or released inmate is  
43 an individual under the supervision of the secretary of corrections,

1 including, but not limited to, an individual on parole, conditional release,  
2 postrelease supervision, probation granted by another state or an individual  
3 supervised under any interstate compact in accordance with the provisions  
4 of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 et  
5 seq., and amendments thereto.

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

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

15 Sec. ~~3~~ 5. K.S.A. 22-2809 and 75-5217 and K.S.A. 2020 Supp. 21-  
16 5417 and 22-2202 are hereby repealed.

17 Sec. ~~4~~ 6. This act shall take effect and be in force from and after its  
18 publication in the statute book.