

SENATE JUDICIARY COMMITTEE
Senator Kellie Warren, Chair

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
March 25, 2021

Proponent Testimony – HB 2121

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill amends K.S.A. 2020 Supp. 22-2202 and 75-5217, to add a definition for absconding from supervision as it relates to supervision by court services, community corrections, and KDOC parole. This bill passed out of the House 101-22.

The Commission received feedback from practitioners to propose a codification of a definition when an offender “absconds from supervision.” As a result, the KSSC is presenting the committee with language it believes is consistent with the holding of the Kansas Supreme Court in *State v. Dooley*, 308 Kan. 641, 423 P.3d 469 (2018).

Dooley tested positive for drug use and did not report to community corrections for about a month because he was scared. The district court revoked his probation. Specific to this issue was whether his failure to report to his community corrections officer constituted the less serious violation of failure to report or a more egregious violation of absconding from supervision. At stake was the application of the graduated sanctions that would have required the trial court to order a jail sanction before revoking Dooley’s probation. If he was found to have absconded, the law allows the court to bypass the graduated sanctions, revoke his probation and send him to prison. The Supreme Court held to invoke the K.S.A. 2013 Supp. 22-3716(c)(8) "absconds from supervision" exception to the requisite intermediate probation violation sanctions, the State must show (by alleging and proving by a preponderance of the evidence), and the district court must find, that the probation violator engaged in some course of action (or inaction) with the conscious intent to hide from or otherwise evade the legal process, such as intentionally avoiding probation supervision by hiding within or secretly leaving the jurisdiction. 308 Kan. at ¶¶3-4. The trial court made no finding whether the State proved Dooley had absconded. Accordingly, the Court affirmed Dooley violated his probation but reversed the trial court and remanded the matter to require the trial court to either impose the graduated sanctions or make a finding that it was invoking the bypass provision because Dooley absconded from supervision.

The House amended language in Section 1 (K.S.A. 22-2202(a)) and Section 2 (K.S.A. 75-5217(j)) to require the level of intent to be knowingly rather than the higher standard of intentionally. Inclusion of this definition in statute provides direction to the judiciary, attorneys, court services, community corrections, and parole in determining whether an offender has failed

to report or has absconded, thereby requiring a higher level of scrutiny and possibly subjecting the offender to increased sanctions. The Commission also believes this addition in statute will result in better continuity statewide of the application of this phrase.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.