



To: Hon. J. Russell Jennings, Chair, House Corrections and Juvenile Justice
From: Brandon L. Jones, Franklin County Attorney and KCDA A President
Date: January 29, 2021

Re: Testimony in Support of HB 2121

Hon. Chairman Jennings and members of House Corrections and Juvenile Justice:

Thank you for the opportunity to provide written testimony in support of HB 2121. My name is Brandon L. Jones and I am the Franklin County Attorney, but I am writing on behalf of the Kansas County and District Attorneys Association (KCDA A) as the current President of that organization.

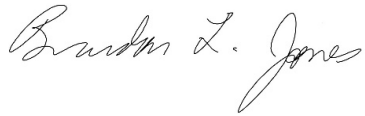
HB 2121 would amend K.S.A. 2020 Supp. 22-2202 to add a definition for “Absconds from supervision” which currently is without a legal definition in the Kansas Criminal Procedure code. This has led to confusion and the reversal of several criminal cases by the Kansas appellate courts.

This problem is clearly illustrated in *State v. Dooley*, 308 Kan. 641, 423 P.3d 469 (2018), in which the Kansas Supreme Court reversed and remanded a McPherson County probation revocation case so that specific findings could be made on whether or not the defendant “absconded from supervision.” The problem is there is no definition of “absconded from supervision” upon which the district court can make those specific findings. In *Dooley*, the State suggested that the Kansas Supreme Court use the language from a North Carolina statute, N.C. Gen. Stat. § 15A-1343(b)(3a), that set forth as a probation condition that the probationer shall “[n]ot abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.” The Court pointed out, “the Legislature in Kansas chose not to define the phrase, ‘absconds from supervision,’...When our Legislature does not define a term or phrase, we ascertain legislative intent by giving common words their ordinary meanings. *Cady v. Schroll*, 298 Kan. 731, 738, 317 P.3d 90 (2014). The Legislature should be well aware of that construction rule...Ordinarily, then, we do not seek to fill a definitional void in our Kansas statutes with a definition plucked from a foreign source, unless such a definition is persuasive in ascertaining the common meaning of a common term.”

HB 2121 would provide a common sense, straightforward definition of the phrase “absconds from supervision” to be defined as “intentionally avoiding supervision or intentionally making the defendant’s whereabouts unknown to the defendant’s supervising court services or community correctional services officer.” This definition is the common-sense meaning as understood by prosecutors and probation officers around this state. Adding this definition to the Kansas Criminal Procedure statutes will remove any confusion and give guidance to both district and appellate courts.

Thank you for the opportunity to provide written testimony in support of HB 2121. I respectfully request that the committee report HB 2121 favorably for passage. I am available for questions at any time if requested.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brandon L. Jones". The signature is written in black ink and is positioned above the typed name.

Franklin County Attorney
President, Kansas County and District Attorneys Association