

HOUSE BILL No. 2121

AN ACT concerning crimes, punishment and criminal procedure; relating to issuance of identification certificates by court services and community corrections agencies; use thereof to obtain replacement driver's license; increasing criminal penalty for mistreatment of a dependent adult or elder person when the victim is a resident of an adult care home; relating to defendants who abscond from supervision; definitions; surrender of obligor by surety; release of surety; requiring delivery to county where the complaint subject to the bond was filed; adding a definition of custodial officer of the court; requiring the secretary of corrections to develop guidance to address violations of parole and postrelease supervision; amending K.S.A. 22-2809, 75-5216 and 75-5217 and K.S.A. 2020 Supp. 8-246, 21-5417 and 22-2202 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2020 Supp. 8-246 is hereby amended to read as follows: 8-246. (a) If a driver's license issued under the provisions of this act is lost or destroyed, or if a new name is acquired, the person to whom such driver's license was issued may obtain a replacement upon:

(1) Furnishing satisfactory proof of the loss, destruction or name change to the division, including an affidavit stating the circumstances of the loss, destruction or name change;

(2) payment of a fee of \$8; and

(3) furnishing proof of the person's identity as provided in subsection (b). The driver's license examiner also shall compare the applicant with the division's existing information and facial image database.

(b) For the purposes of obtaining a replacement driver's license, proof of a person's identity shall include at least two of the following documents, one of the documents shall bear the person's signature and one of the documents shall bear the person's age or one of the documents shall bear the person's signature and age:

(1) Military identification card;

(2) military dependent identification card;

(3) military discharge papers;

(4) military DD214;

(5) an original or certified copy of a state issued birth certificate;

(6) marriage license;

(7) medicare identification card;

(8) certified copy of court order specifying a change of name of the person;

(9) commercially produced school yearbook with photograph of the person, and the book is less than five years old;

(10) an official passport issued by any country;

(11) alien registration documents issued by the United States;

(12) expired or current driver's license or identification card issued by the Kansas division of vehicles or an expired or current driver's license or identification card of another state issued by similar authority, and for any document in this ~~item~~ *paragraph* the document must bear a photograph of the person;

(13) student identification card bearing the photograph of the person;

(14) employee identification card bearing the photograph of the person;

(15) a copy of any federal or state income tax return bearing the signature of the person; ~~or~~

(16) an identification certificate issued by the department of corrections to an offender under the supervision of the secretary of corrections; *or*

(17) *an identification certificate issued by a court services or community corrections agency to an offender under the probation supervision of such agency.*

(c) The division may waive the furnishing of one of the documents required by subsection (b) in the case of:

(1) A person who is 65 or more years of age; or

(2) an inmate who has been released on parole, conditional release or expiration of the inmate's maximum sentence. When additional clarification is needed to adequately describe any of the above items,

the division shall specify such clarification in making the requirement for such item.

(d) In lieu of providing one of the documents required by subsection (b), a person may recite to the satisfaction of the driver's license examiner the recent motor vehicle operating record of the person.

(e) Any person who loses a driver's license and who, after obtaining a replacement, finds the original license shall immediately surrender the original license to the division.

Sec. 2. K.S.A. 2020 Supp. 21-5417 is hereby amended to read as follows: 21-5417. (a) Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

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

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

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

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

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

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

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

(b) Mistreatment of a dependent adult or an elder person as defined in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) a court approved the transaction before the transaction occurred.

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

(e) As used in this section:

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

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

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

(B) adult cared for in a private residence;

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

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

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

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

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

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

Sec. 3. K.S.A. 2020 Supp. 22-2202 is hereby amended to read as follows: 22-2202. (a) *"Absconds from supervision" means knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising court services officer or community correctional services officer.*

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

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

~~(e)~~(d) "Arraignment" means the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is

guilty or not guilty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. K.S.A. 22-2809 is hereby amended to read as follows: 22-2809. (a) Any person who is released on an appearance bond may be arrested by such person's surety or any person authorized by such surety and delivered to a custodial officer of the court ~~in any the county in the state in which such person is charged~~ *where the complaint subject to the bond was filed*. Such person who is arrested as provided in this section shall be brought before any magistrate having power to commit for the crime charged. The magistrate shall indorse on the bond, or a certified copy of such bond, the discharge of such surety upon the sworn statement, either written or oral, of the surety setting forth the reasons for the discharge. The magistrate may commit the party who is arrested as provided in this section. Such person committed as provided in this section shall be held in custody until released as provided by law.

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

Sec. 5. K.S.A. 75-5216 is hereby amended to read as follows: 75-5216. (a) Parole officers shall investigate all persons referred to them for investigation by the secretary of corrections. Parole officers shall furnish to each person released under their supervision a written statement of the conditions of parole or postrelease supervision and shall give instructions regarding these conditions. Parole officers shall keep informed of the conduct and condition of a parolee or inmate on postrelease supervision and use all suitable methods to aid, encourage and bring about improvement in the conduct and condition of such parolee or inmate ~~or on~~ postrelease supervision. Parole officers shall keep detailed records of their work and shall make such reports in writing and perform such other duties as may be incidental to those above enumerated or as the secretary may require. Parole officers shall coordinate their work with that of social welfare agencies.

(b) *The secretary of corrections shall develop guidance for use by parole officers that includes intervention responses to behavior that would constitute a violation of parole or postrelease supervision and incentive responses to compliant behavior and pro-social achievements. Parole officers shall use such guidance developed by the secretary while supervising offenders on parole or postrelease supervision.*

Sec. 6. K.S.A. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written or verbal arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate's release. A written arrest and detain order delivered to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for

detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary or the secretary's designee may cause the released inmate to be brought before the prisoner review board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt, or may dismiss the charges that the released inmate has violated the conditions of release and order the released inmate to remain on parole, conditional release or post release supervision. A dismissal of charges may be conditioned on the released inmate agreeing to the withholding of credit for the period of time from the date of the issuance of the secretary's warrant and the offender's arrest or return to Kansas as provided by subsection (f). ~~It is within the discretion of~~ The board *may determine* whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor. An offender under determinative sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the board under such conditions and terms as may be prescribed by rules and regulations promulgated by the secretary of corrections. Relevant written statements made under oath shall be admitted and considered by the board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. The revocation of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the board, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participation during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

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

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

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

(f) (1) If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas,

either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, except as provided by subsection (i).

(2) If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest, except as provided by subsection (i). If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas, except as provided by subsection (i). If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision, except as provided by subsection (i).

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

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

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

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

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

Sec. 7. K.S.A. 22-2809, 75-5216 and 75-5217 and K.S.A. 2020 Supp. 8-246, 21-5417 and 22-2202 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.