



Kansas County & District Attorneys Association

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To: Chairman Patton and Members of the House Judiciary
From: Kim T Parker Kansas County and District Attorneys Association
Date: March 19th, 2019
Re: Neutral Testimony House Bill 2048
Good Afternoon Chairman Jennings and Committee Members,

Thank you for the opportunity to provide neutral testimony regarding HB2048. I am addressing you on behalf of the Kansas County and District Attorney's Association. This bill seeks to address a series of Kansas Appellate rulings that effect the Kansas Sentencing Guidelines for all criminal cases

The rules for classifying out- of -state convictions are contained primarily at K.S.A. 21-6811. Kansas first classifies an out-of-state conviction, as either a felony or a misdemeanor according to the convicting jurisdiction. Kansas then classifies the out-of-state conviction as either a person or nonperson crime by comparing it to the relevant crime in Kansas.

If Kansas does not have a comparable offense, the out-of-state conviction is scored a nonperson felony. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence

In *State v. Wetrich*, 307 Kan. 552, 560, 412 P.3d 984 (2018), the Kansas Supreme Court found that the term “comparable” was ambiguous. The *Wetrich* Court interpreted “comparable offenses” to mean that the out-of-state crime cannot have broader elements than the Kansas reference offense, “In other words, the elements of the out-of-state crime must be identical to, or narrower than, the elements of the Kansas crime to which it is being referenced.” *Wetrich*, 307 Kan. at 561-62.

Wetrich has made a huge impact on the sentences of defendants who have prior out-of-state “person” convictions. It is of concern to our border counties. If our statute is not corrected individuals with out of state convictions will be scored lower in criminal history categories that individuals who have prior Kansas convictions for criminal acts that are substantially the same. We believe this problem is ripe for equal protections claims.

The elements of criminal statutes across the nation are similar among states, municipalities and the federal government, but rarely identical. It can be simply explained by comparing the elements of three Kansas and Missouri criminal statutes.

Kansas Murder in the first degree is the killing of a human being committed Intentionally, and with premeditation

Missouri Murder in the first degree; A person commits the offense of murder in the first degree if he or she knowingly causes the death of another person after deliberation upon the matter.

Kansas Murder in the second degree is the killing of a human being committed:

(1) Intentionally; or

(2) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.

Missouri Murder in the second degree ; knowingly causing the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person

Kansas Burglary; Aggravated Burglary; Burglary is, without authority, entering into or remaining within any:(1) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein;(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or (3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexually motivated crime therein.

(b) Aggravated burglary is, without authority, entering into or remaining within any building, manufactured home, mobile home, tent or other structure, or any vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being with intent to commit a felony, theft or sexually motivated crime therein.

Missouri Burglary; A person commits the offense of burglary in the first degree if he or she knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing an offense therein, and when in effecting entry or while in the building or inhabitable structure or in immediate flight therefrom, the person or another participant in the offense: (1) Is armed with explosives or a deadly weapon; or (2) Causes or threatens immediate physical injury to any person who is not a participant in the crime; or (3) There is present in the structure another person who is not a participant in the crime.

HB2048 seeks to define the term “comparable,” or replace “comparable” with an unambiguous word or phrase. We are concerned HB2048 does not go far enough to satisfy the concerns of our Kansas Supreme Court. Therefore, we have worked to submit appropriate changes to allow prosecutors and courts to appropriately maintain existing sentences We urge the passage of this bill.

Kim T Parker Kansas County and District Attorney’s Association

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