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**Testimony to the House Corrections and Juvenile Justice Committee
In Support of HB2029**

January 21, 2021

Chairman Jennings and Committee Members:

Our associations support HB2029. This bill will allow prior convictions for domestic violence offenses to be counted in determining sentencing for the crime of domestic battery.

Implementation of a domestic violence designation was initiated by 2010 legislation that was the result of a Judicial Council study requested by the Chair of the House Corrections and Juvenile Justice Committee in response to a 2019 bill proposing creation of the designation. The Judicial Council recommendations were made after their analysis of due process concerns. They found those concerns would be alleviated by the requirement for the court to make a determination if a crime of conviction was a domestic violence crime, which is in the current law. The bottom line is the DV designation can only be made by a finding of fact by the court a crime of conviction was indeed a domestic violence crime, as defined in KSA 21-5111(j). (KSA 22-4616)

It has long been understood that domestic violence can include criminal acts other than battery. It has also been long understood that domestic violence is very often preceded by other crimes. Thus, in many cases the battery is part of a continuing chain of abusive events including the preceding lesser crimes.

With the due process in place for the designation, we do not believe it is unreasonable to allow for those crimes to enhance the penalty for domestic violence.

We encourage the committee to move this bill forward favorably.

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KSA 22-4616. Domestic violence offenses; designation; special sentencing provision.

(a) On and after July 1, 2011, in all criminal cases filed in the district court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense. On and after July 1, 2013, in all criminal cases filed in the municipal court, if there is evidence that the defendant committed a domestic violence offense, the trier of fact shall determine whether the defendant committed a domestic violence offense.

(1) Except as provided further, if the trier of fact determines that the defendant committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and the defendant shall be subject to the provisions of subsection (p) of K.S.A. 2020 Supp. [21-6604](#), and amendments thereto.

(2) The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of subsection (p) of K.S.A. 2020 Supp. [21-6604](#), and amendments thereto, only if the court finds on the record that:

(A) The defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(B) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

(b) The term "domestic violence offense" shall have the meaning provided in K.S.A. 2020 Supp. [21-5111](#), and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas code for criminal procedure.

History: L. 2010, ch. 101, § 1; L. 2011, ch. 30, § 141; L. 2012, ch. 162, § 17; May 31.

KSA 21-5111(j) defines a "domestic violence offense" as "any crime committed whereby the underlying factual basis includes an act of domestic violence."