



The Kansas District Judges' Association



SENATE JUDICIARY COMMITTEE

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WRITTEN TESTIMONY IN OPPOSITION TO REVISIONS TO K.S.A. 21-6813 CONTAINED IN SECTION 1 OF HB 2516.

Thank you for the opportunity to testify in opposition to one provision in this bill. My name is Merlin G. Wheeler. I am the Chief Judge of the 5th Judicial District (Lyon and Chase Counties) and a member of the Legislative Committee of the Kansas District Judges Association. I am joined on that committee by Hon. Thomas Kelly Ryan, District Judge in the 10th Judicial District; Hon. Glenn R. Braun, Chief Judge of the 23rd Judicial District; Hon. Amy Hanley, District Judge in the 7th Judicial District; Hon. Grant D. Bannister, Chief Judge of the 21st Judicial District; Hon. Tyler Roush, District Judge in the 18th Judicial District; and Hon. Kim W. Cudney, KDJA President and Chief Judge of the 12th Judicial District.

Our organization expresses opposition only to the revisions to K.S.A. 21-6813 (b)(5) that are contained in Section 1 of this bill. We express no opposition to the other revisions suggested in Sections 2 and 3 of HB 2516.

The provision to which we object contains a requirement that journal entries for prior convictions necessary to establish the criminal history classification of a defendant or to establish a special sentencing rule shall be attached to the criminal history worksheet portion of a presentence investigation report. Currently our Court Services Officers (CSO's) are not required to obtain the journal entries as a part of a presentence investigation (PSI). Instead, the defendant can object to any findings in the PSI, and if the defendant objects, the state has the burden to prove criminal history by a preponderance of the evidence. At that time, the State (not the CSO) must obtain the journal entries needed to establish criminal history.

KDJA's objections can be summarized as follows:

1. Most importantly, this proposed amendment will likely result in offenders being classified at an inaccurate and lower criminal history than would be warranted. This is because some states either refuse to provide records, refuse to certify records, or make obtaining the records so onerous that we could not realistically expect to receive them on a timely basis. In addition, some municipal courts do not prepare journal entries and thus a conviction in municipal court for a person misdemeanor—which might aggregate to a person felony—would inaccurately not be scored for criminal history classification.
2. This amendment will also, at the least, delay sentencing proceedings to allow time to gather documents. Defendants will likely object to delays in sentencing needed to obtain copies, hoping that the criminal history classification will be reduced because our staff cannot get a timely response from another jurisdiction. This delay would also likely result in increased detention times in county jails while awaiting sentencing.
3. We anecdotally estimate that in over 90% of the cases (probably more like 99%), criminal history is not an issue. There are no objections, and the parties accept the findings of the PSI. This added provision will cause an immense administrative headache for our already overworked CSO's. Please note that eliminating this amendment will not affect any defendant's rights to object to a finding in the PSI. Rather, it will only eliminate an administrative burden on our CSO's that is irrelevant in over 90% of our cases.
4. This provision automatically shifts the burden of proving criminal history to our CSO's. When there is a disagreement about criminal history, the court is required to resolve the issue after hearing evidence and the State has the burden to prove the criminal history. Under this proposal, our CSO's would be put in the position of gathering evidence on behalf of the prosecution and essentially relieving the state from its burden to prove criminal history. Putting court staff in the position of becoming an advocate in the case impairs the concept that a court should play a neutral and detached role in determining controversies between parties.
5. Since the amendment seems to require only a copy of prior journal entry to be attached, challenges to criminal history will still occur because a mere copy is not self-authenticating and not automatically admissible should there be a challenge to the criminal record. This will not prevent the need to obtain certified copies, or even in some circumstances the need to subpoena a court clerk or other witness to prove criminal history.
6. Finally, I want to stress the vast disparity between the amount of work this will require for our CSO's versus the problems it will solve which are virtually none. A defendant will still have the right to object

to criminal history and force a hearing. All we are asking is that we don't require our CSO's obtain in advance documents which are mostly undisputed before we even know it is a contested issue.

Respectfully submitted on behalf of KDJA,

Merlin G. Wheeler, Chief Judge, 5th Judicial District.