

SENATE JUDICIARY COMMITTEE
Senator Rick Wilborn, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
March 14, 2017

Proponent Testimony – HB 2093

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill amends K.S.A. 2016 Supp. 21-6810, the statute for determining adult criminal history, by adding subsection (d)(5), which states a juvenile adjudication will not be considered and scored if:

- (A) The current crime of conviction is committed at least five years after the date of the final discharge of the adjudication;
- (B) the offender has no new adjudications or convictions during such five-year period; and
- (C) the juvenile adjudication is for an offense which would be a nondrug severity level 5 through 10, drug felony, nongrid felony or misdemeanor if committed by an adult.

Currently, juvenile adjudications with a few exceptions decay from criminal history when the offender reaches 25 years of age. This decay policy can be defined as one in which a prior conviction or adjudication ages out of the criminal history calculation. Once a defined period has passed, in Kansas the offender becomes 25, the previous adjudications is no longer counted for adult criminal history purposes.

The present bill complements the existing decay policy. It is known as a **gap policy** and is one that requires the offender to achieve a crime-free existence for a defined period of time (gap). Here, the Commission supports a five-year gap in which an adjudication would not be counted in determining punishment for the current offense if the offender remains crime-free during that time period. However, if they receive an adjudication or conviction during the gap period, the prior offense will count.

One policy consideration in favor of enacting a gap policy would include considering prison overcrowding and the use of limited public safety resources. The next would be determining whether the state wants to count juvenile adjudications in perpetuity. That decision requires the legislature to examine its justifications for using prior convictions or

adjudications as a basis for enhancing the current sentence and determine whether those justifications remain relevant even after a significant period of time has passed.

The Robina Institute of Criminal Law and Criminal Justice, the leader in initiating and supporting coordinated state criminal law research and policy analysis, specifically with sentencing guidelines states indicates that, “Research suggests that the value of prior convictions in predicting future offending declines with the passage of time... Utilizing a decay or gap policy focuses punishment on the *current* offense. As a result, some offenders who might have received a prison sentence when an old conviction is factored in might instead receive community supervision or other intermediate punishments without it. Moreover, if the current offense would not have warranted a prison sentence but for the enhancement due to an old prior conviction, it is most likely a nonviolent offense. In that case, enacting a decay or gap policy would have the added benefit of reserving prison for violent offenders.” Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell, Robina Institute of Criminal Law and Criminal Justice, *Criminal History Enhancements Sourcebook*, p. 33 (2015).

The Commission recommends this bill because it is primarily focused on two ideas: offender culpability and recognizing the value of crime-free periods. If an offender is more blameworthy or culpable under the guidelines due to criminal history, then the length between sentences should be relevant to mitigate that culpability. In utilizing the gap policy with adjudications, the Commission recognizes the value of tempering the punishment of a current offense by recognizing the crime-free period of five years.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.