

SENATE JUDICIARY COMMITTEE
Senator Richard E. Wilborn, Chairman

KANSAS SENTENCING COMMISSION

Scott M. Schultz, Executive Director

March 6, 2018

Proponent Testimony – HB 2567

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. In response to a recent appellate court case, HB 2567 was introduced by the KSSC and amends K.S.A. 2017 Supp. 21-6811 regarding classification of certain out-of-state prior convictions in the classification of an offender's criminal history.

State v. Horselooking, 54 Kan.App.2d 343, 400 P.3d 189, *petition for rev. filed* July 13, (2017), recently held that the Kansas Sentencing Guidelines Act contains no explicit language on how to classify out-of-state convictions as a felony or misdemeanor for criminal history purposes where the convicting jurisdiction does not designate crimes as felonies or misdemeanors. The appellate court invited legislative action to remedy what it termed as a "defect" to be remedied.

The KSSC collaborated with the Attorney General's office, the defense bar and the Kansas County and District Attorneys Association to draft the current bill that specifically sets forth how to calculate prior out-of state criminal history in the event that the convicting jurisdiction does not designate crimes as felonies or misdemeanors. If a prior conviction is not classified as either a felony or misdemeanor in the convicting jurisdiction, Kansas would refer to the comparable offense in Kansas in effect on the date of the current crime of conviction to classify the prior conviction as either a felony or misdemeanor. If Kansas does not have a comparable offense, then the out-of-state crime would not be used in classifying the offender's criminal history.

Please note the bill is intended to be prospective in nature and is drafted to take effect upon publication in the *Kansas Register*.

On February 22, 2018, this bill passed out of the House 117-0.

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.