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MEMORANDUM

To: Senate Committee on Judiciary
From: Natalie Scott, Assistant Revisor of Statutes
Jason Thompson, Senior Assistant Revisor of Statutes
Date: March 19, 2019
Subject: Bill Brief for HB 2048

HB 2048, as amended by House Committee, provides a process for determining whether an out-of-state offense is comparable to a Kansas offense for purposes of calculating criminal history in response to the Kansas Supreme Court decision in *State v. Wetrich*, 307 Kan. 552 (2018).

The bill, as introduced, provided in subsection (j) that for the purposes of determining whether an offense is comparable, the name of the out-of-state offense, the elements of the out-of-state offense, and whether the out-of-state offense prohibits similar conduct to the conduct prohibited by the closest approximate Kansas offense shall all be considered. The subsection also provided that this provision is to be liberally construed to allow comparable offenses to count in criminal history, regardless of whether the elements are identical to or narrower than the Kansas offense.

The House Committee on Corrections and Juvenile Justice removed the proposed additions to subsection (j) and made amendments to subsection (e). Subsection (e)(3)(B)(i) provides that in designating a felony crime as person or nonperson, an out-of-state conviction or adjudication for the commission of a felony offense will be classified as a person felony if one or more of the eight statutory circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense.

Subsection (e)(3)(B)(ii) further provides that an out-of-state conviction or adjudication for the commission of a felony offense will be classified as a person felony if the elements of the out-of-state felony conviction or adjudication necessarily prove that a person was present during the commission of the offense. For purposes of this clause, the person present must be someone other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance. The presence of a person includes physical presence and presence by electronic or telephonic communication.

Finally, subsection (e)(3)(B)(iii) provides that an out-of-state conviction or adjudication for the commission of a felony offense shall be classified as nonperson if the elements of the offense that resulted in the out-of-state conviction or adjudication do not require proof of any of the circumstances in subparagraph (B)(i) or (ii).

The House Committee also added a retroactivity provision in subsection (k).