



**OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT**

MARC BENNETT  
*District Attorney*

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March 8, 2022

**Testimony In Support of HB 2516 with amendments  
Submitted by Aaron Breitenbach, Deputy District Attorney,  
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District  
and the Kansas County and District Attorneys Association**

Honorable Chair Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2516 on behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, and the Kansas County and District Attorneys Association.

While we share the Attorney General's goal of this bill, we also share some of the concerns raised by the Office of Judicial Administration and the Kansas Judicial Branch. Fortunately, it is our understanding the Attorney General would welcome a balloon amendment proposed by the Kansas Judicial Branch to the bill passed by the House. This amendment would remove the amended language proposed in Section 1 (page 1, line 36 through page 2, lines 1-7) and a portion of Section 2 (page 3, lines 20-23). These provisions would have dramatically increased inefficiencies, expense, and delay for prosecutors, court staff, and many defendants without a compelling need or benefit.

To the extent there is any concern, the language of the remaining bill does nothing to lower a prosecutor's burden to establish a defendant's criminal history score prior to sentencing, nor does it limit a defendant's ability to exercise his or her right to challenge the same before the district court. Rather, the language proposed as 21-6814(d) (page 3, lines 35-43, and page 4, lines 1-4) would simply require a defendant who previously failed to object to his or her criminal history score at the district court level to then bear the burden of establishing an error occurred when raising the question for the first time on appeal. Some appellate cases had taken exception to the State's failure to introduce evidence of prior convictions (even in the absence of a defendant's objection) and prevented the State from effectively supplementing the record when the matter was raised for the first time on appeal. In effect, a defendant could remain silent or potentially agree to a criminal history score before the district court at sentencing, raise the issue for the first time on appeal, and the State would then be left with no evidence to cite to in the record to defend against the appeal. This "bait-and-switch" process defied common sense. Fortunately, subsequent appellate cases have largely closed that door, and this statute seeks to codify those more recent cases.

Accordingly, we ask this committee to approve HB 2516 with the balloon amendments noted herein.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Aaron Breitenbach  
Deputy District Attorney  
Eighteenth Judicial District