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**Testimony in Support of House Bill 2048
Clarifying the definition of comparable offense under the Kansas criminal code**

**Presented to the Senate Committee on the Judiciary
By Assistant Solicitor General Natalie Chalmers**

March 19, 2019

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to provide testimony in support of HB 2048 on behalf of Attorney General Derek Schmidt. First, the Office of the Attorney General supports fixing *State v. Wetrich*, 307 Kan. 552, 412 P.3d 984 (2018), which has seriously undermined the ability of the State to score most out-of-state convictions as person felonies. This bill takes strong steps towards limiting the opinion's effects.

Additionally, the Office of the Kansas Attorney supports the proposed amendment to HB 2048 as presented by KCDAA. As drafted, many of the amendments add additional important fixes. For example, Section 2 ensures that cases such *Wetrich* cannot apply to final sentences. It does so by ensuring that challenges to a defendant's criminal history score must either occur during the direct appeal or through the use of K.S.A. 22-3504.

Further supporting the goal of finality in sentences, Section 3 enacts changes to ensure the original intent of the legislature in passing K.S.A. 2017 Supp. 22-3504 succeeds. To that end, it expressly provides that a change in law includes changes in judicial opinions as well as statutory changes. Whether the statute applies to changes in judicial decisions is currently being litigated in the appellate courts, and thus this section will provide further clarity on the original intent of the legislature. Additionally, adding "while the defendant is serving such sentence" ensures that, once a sentence is served, neither the State nor the defendant can attempt to modify the sentence. Again, this promotes finality in sentences.

Finally, the Office of the Attorney General supports removing the retroactivity of the *Wetrich* fix in Section 1 as it likely cannot be constitutionally applied.

For the above reasons, the Office of the Attorney General encourages this committee to adopt this bill with the amendments proposed by the KCDAA. Thank you for your time.