

HOUSE BILL No. 2046

By Representative Owens

1-27

AN ACT concerning juveniles; relating to juvenile offender classification; relating to decaying sentences; amending K.S.A. 21-4709, 21-4710, 38-1601 and 38-1602 and K.S.A. 2002 Supp. 21-4711 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-4709 is hereby amended to read as follows: 21-4709. The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

Criminal

History

Category

Descriptive Criminal History

- A The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.
- B The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.
- C The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a nonperson felony.
- D The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a nonperson felony.
- E The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
- F The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.

1 G The offender's criminal history includes one adult conviction or juvenile adjudication for a nonperson felony, but no adult conviction or juvenile adjudication for a person felony.

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4 H The offender's criminal history includes two or more adult convictions or juvenile adjudications for nonperson and/or select misdemeanors, and no more than two adult convictions or juvenile adjudications for person misdemeanors, but no adult conviction or juvenile adjudication for either a person or nonperson felony.

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8 I The offender's criminal history includes no prior record; or, one adult conviction or juvenile adjudication for a person, nonperson, or select misdemeanor, but no adult conviction or juvenile adjudication for either a person or nonperson felony.

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11 *As used in this section, "adult convictions" includes extended jurisdiction juvenile prosecutions, pursuant to K.S.A. 38-1636, and amendments thereto.*

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14 *For the purposes of the descriptive criminal history, juvenile adjudications are those adjudications for a person felony by a juvenile who is 17 years of age.*

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17 Sec. 2. K.S.A. 21-4710 is hereby amended to read as follows: 21-4710. (a) Criminal history categories contained in the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203 and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

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38 (b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

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41 (c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

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1 (d) Except as provided in K.S.A. 21-4716, and amendments thereto,
2 the following are applicable to determining an offender's criminal history
3 classification:

4 (1) Only verified convictions will be considered and scored.

5 (2) All prior adult felony convictions, ~~including expungements~~, will
6 be considered and scored.

7 (3) There will be no decay factor applicable for adult convictions.

8 (4) Except as otherwise provided, a juvenile adjudication *for juveniles*
9 *17 years of age when the crime occurred*, which would have been a non-
10 person class D or E felony if committed before July 1, 1993, or a nondrug
11 level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on
12 or after July 1, 1993, or a misdemeanor if committed by an adult, will
13 decay if the current crime of conviction is committed after the offender
14 reaches the age of ~~25~~ 23.

15 (5) For convictions of crimes committed before July 1, 1993, a ju-
16 venile adjudication *for juveniles 17 years of age when the crime occurred*
17 which would constitute a class A, B or C felony, if committed by an adult,
18 will not decay. For convictions of crimes committed on or after July 1,
19 1993, a juvenile adjudication *for juveniles 17 years of age when the crime*
20 *occurred* which would constitute an off-grid felony, a nondrug severity
21 level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if
22 committed by an adult, will not decay.

23 (6) All juvenile adjudications *for juveniles 17 years of age when the*
24 *crime occurred* which would constitute a person felony will not decay or
25 be forgiven.

26 (7) All person misdemeanors, class A nonperson misdemeanors and
27 class B select nonperson misdemeanors, and all municipal ordinance and
28 county resolution violations comparable to such misdemeanors, shall be
29 considered and scored.

30 (8) Unless otherwise provided by law, unclassified felonies and mis-
31 demeanors, shall be considered and scored as nonperson crimes for the
32 purpose of determining criminal history.

33 (9) Prior convictions of a crime defined by a statute which has since
34 been repealed shall *not* be scored using the classification assigned at the
35 time of such conviction.

36 (10) Prior convictions of a crime defined by a statute which has since
37 been determined unconstitutional by an appellate court shall not be used
38 for criminal history scoring purposes.

39 (11) Prior convictions of any crime shall not be counted in determin-
40 ing the criminal history category if they enhance the severity level or
41 applicable penalties, elevate the classification from misdemeanor to fel-
42 ony, or are elements of the present crime of conviction. Except as oth-
43 erwise provided, all other prior convictions will be considered and scored.

1 (12) *Except as provided further, a juvenile adjudication for juveniles*
2 *16 years of age and younger when the crime occurred will decay if the*
3 *current crime of conviction is committed after the offender reaches the*
4 *age of 21. If a juvenile is prosecuted and adjudicated as an extended*
5 *jurisdiction juvenile prosecution, such adjudication will not decay. For*
6 *the purposes of a juvenile adjudication for juveniles 16 years of age and*
7 *younger, decay means an automatic termination, deletion and destruction*
8 *of the records from any law enforcement agency that has records of the*
9 *adjudication, including, but not limited to, arrest or detention records.*
10 *Such decayed juvenile adjudication shall not be used for any criminal*
11 *proceeding, including, but not limited to sentencing.*

12 (e) *Notwithstanding the provisions of subsection (d)(4), (5), (6) and*
13 *(12), any juvenile adjudication that occurred prior to July 1, 1996 shall*
14 *not be considered and scored for criminal history purposes.*

15 Sec. 3. K.S.A. 2002 Supp. 21-4711 is hereby amended to read as
16 follows: 21-4711. In addition to the provisions of K.S.A. 21-4710 and
17 amendments thereto, the following shall apply in determining an of-
18 fender's criminal history classification as contained in the presumptive
19 sentencing guidelines grid for nondrug crimes and the presumptive sen-
20 tencing guidelines grid for drug crimes:

21 (a) Every three prior adult convictions or juvenile adjudications of
22 class A and class B person misdemeanors in the offender's criminal his-
23 tory, or any combination thereof, shall be rated as one adult conviction
24 or one juvenile adjudication of a person felony for criminal history pur-
25 poses. Every three prior adult convictions or juvenile adjudications of
26 assault as defined in K.S.A. 21-3408 and amendments thereto occurring
27 within a period commencing three years prior to the date of conviction
28 for the current crime of conviction shall be rated as one adult conviction
29 or one juvenile adjudication of a person felony for criminal history
30 purposes.

31 (b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amend-
32 ments thereto, criminal possession of firearms by a person who is both
33 addicted to and an unlawful user of a controlled substance, subsection
34 (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm
35 on school grounds or K.S.A. 21-4218 and amendments thereto, possession
36 of a firearm on the grounds or in the state capitol building, will be scored
37 as a select class B nonperson misdemeanor conviction or adjudication and
38 shall not be scored as a person misdemeanor for criminal history
39 purposes.

40 (c) (1) If the current crime of conviction was committed before July
41 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary man-
42 slaughter in the commission of K.S.A. 8-1567 and amendments thereto
43 driving under the influence, then, each prior adult conviction or juvenile

1 adjudication for K.S.A. 8-1567 and amendments thereto shall count as
2 one person felony for criminal history purposes.

3 (2) If the current crime of conviction was committed on or after July
4 1, 1996, and is for involuntary manslaughter while driving under the in-
5 fluence of alcohol and drugs, each prior adult conviction, diversion in lieu
6 of criminal prosecution or juvenile adjudication for: (A) An act described
7 in K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of
8 another state or an ordinance of any city, or resolution of any county,
9 which prohibits the act described in K.S.A. 8-1567 and amendments
10 thereto shall count as one person felony for criminal history purposes.

11 (d) Prior burglary adult convictions and juvenile adjudications will be
12 scored for criminal history purposes as follows:

13 (1) As a prior person felony if the prior conviction or adjudication
14 was classified as a burglary as described in subsection (a) of K.S.A. 21-
15 3715 and amendments thereto.

16 (2) As a prior nonperson felony if the prior conviction or adjudication
17 was classified as a burglary as described in subsection (b) or (c) of K.S.A.
18 21-3715 and amendments thereto.

19 The facts required to classify prior burglary adult convictions and ju-
20 venile adjudications must be established by the state by a preponderance
21 of the evidence.

22 (e) Out-of-state convictions and juvenile adjudications will be used in
23 classifying the offender's criminal history. An out-of-state crime will be
24 classified as either a felony or a misdemeanor according to the convicting
25 jurisdiction. If a crime is a felony in another state, it will be counted as a
26 felony in Kansas. The state of Kansas shall classify the crime as person or
27 nonperson. In designating a crime as person or nonperson comparable
28 offenses shall be referred to. If the state of Kansas does not have a com-
29 parable offense, the out-of-state conviction shall be classified as a non-
30 person crime. Convictions or adjudications occurring within the federal
31 system, other state systems, the District of Columbia, foreign, tribal or
32 military courts are considered out-of-state convictions or adjudications.
33 The facts required to classify out-of-state adult convictions and juvenile
34 adjudications must be established by the state by a preponderance of the
35 evidence.

36 (f) Except as provided in subsections (4), (5) ~~and~~, (6) *and* (12) of
37 K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be
38 applied in the same manner as adult convictions. Out-of-state juvenile
39 adjudications will be treated as juvenile adjudications in Kansas.

40 (g) A prior felony conviction of an attempt, a conspiracy or a solici-
41 tation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amend-
42 ments thereto, to commit a crime shall be treated as a person or non-
43 person crime in accordance with the designation assigned to the

1 underlying crime.

2 (h) Drug crimes are designated as nonperson crimes for criminal his-
3 tory scoring.

4 Sec. 4. K.S.A. 38-1601 is hereby amended to read as follows: 38-
5 1601. Article 16 of chapter 38 of the Kansas Statutes Annotated and
6 K.S.A. 38-16,126, 38-16,127 and 38-16,128, and amendments thereto,
7 shall be known and may be cited as the Kansas juvenile justice code. The
8 primary goal of the juvenile justice code is to promote public safety, hold
9 juvenile offenders accountable for such juvenile's behavior and improve
10 the ability of juveniles to live more productively and responsibly in the
11 community. To accomplish this goal, juvenile justice policies developed
12 pursuant to the Kansas juvenile justice code shall be designed to: (a)
13 Protect public safety; (b) recognize that the ultimate solutions to juvenile
14 crime lie in the strengthening of families and educational institutions, the
15 involvement of the community and the implementation of effective pre-
16 vention and early intervention programs; (c) be community based to the
17 greatest extent possible; (d) be family centered when appropriate; (e)
18 facilitate efficient and effective cooperation, coordination and collabora-
19 tion among agencies of the local, state and federal government; (f) be
20 outcome based, allowing for the effective and accurate assessment of
21 program performance; (g) be cost-effectively implemented and admin-
22 istered to utilize resources wisely; (h) encourage the recruitment and
23 retention of well-qualified, highly trained professionals to staff all com-
24 ponents of the system; (i) appropriately reflect community norms and
25 public priorities; and (j) encourage public and private partnerships to
26 address community risk factors.

27 *In all proceedings concerning a juvenile offender, such offender shall*
28 *be known as a juvenile offender type A or a juvenile offender type B, as*
29 *such terms apply.*

30 Sec. 5. K.S.A. 38-1602 is hereby amended to read as follows: 38-
31 1602. As used in this code, unless the context otherwise requires:

32 (a) "Juvenile" means a person 10 or more years of age but less than
33 18 years of age.

34 (b) "Juvenile offender" means a person who commits an offense
35 while a juvenile which if committed by an adult would constitute the
36 commission of a felony or misdemeanor as defined by K.S.A. 21-3105,
37 and amendments thereto, or who violates the provisions of K.S.A. 21-
38 4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amend-
39 ments thereto, but does not include:

40 (1) A person 14 or more years of age who commits a traffic offense,
41 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

42 (2) a person 16 years of age or over who commits an offense defined
43 in chapter 32 of the Kansas Statutes Annotated;

- 1 (3) a person under 18 years of age who previously has been:
2 (A) Convicted as an adult under the Kansas code of criminal
3 procedure;
4 (B) sentenced as an adult under the Kansas code of criminal proce-
5 dure following termination of status as an extended jurisdiction juvenile
6 pursuant to K.S.A. 38-16,126, and amendments thereto; or
7 (C) convicted or sentenced as an adult in another state or foreign
8 jurisdiction under substantially similar procedures described in K.S.A. 38-
9 1636, and amendments thereto, or because of attaining the age of majority
10 designated in that state or jurisdiction.
- 11 (c) “Parent,” when used in relation to a juvenile or a juvenile of-
12 fender, includes a guardian, conservator and every person who is by law
13 liable to maintain, care for or support the juvenile.
- 14 (d) “Law enforcement officer” means any person who by virtue of
15 that person’s office or public employment is vested by law with a duty to
16 maintain public order or to make arrests for crimes, whether that duty
17 extends to all crimes or is limited to specific crimes.
- 18 (e) “Youth residential facility” means any home, foster home or struc-
19 ture which provides twenty-four-hour-a-day care for juveniles and which
20 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
21 Annotated.
- 22 (f) “Juvenile detention facility” means any secure public or private
23 facility which is used for the lawful custody of accused or adjudicated
24 juvenile offenders and which shall not be a jail.
- 25 (g) “Juvenile correctional facility” means a facility operated by the
26 commissioner for juvenile offenders.
- 27 (h) “Warrant” means a written order by a judge of the court directed
28 to any law enforcement officer commanding the officer to take into cus-
29 tody the juvenile named or described therein.
- 30 (i) “Commissioner” means the commissioner of juvenile justice.
- 31 (j) “Jail” means:
32 (1) An adult jail or lockup; or
33 (2) a facility in the same building as an adult jail or lockup, unless the
34 facility meets all applicable licensure requirements under law and there
35 is (A) total separation of the juvenile and adult facility spatial areas such
36 that there could be no haphazard or accidental contact between juvenile
37 and adult residents in the respective facilities; (B) total separation in all
38 juvenile and adult program activities within the facilities, including rec-
39 reation, education, counseling, health care, dining, sleeping, and general
40 living activities; and (C) separate juvenile and adult staff, including man-
41 agement, security staff and direct care staff such as recreational, educa-
42 tional and counseling.
- 43 (k) “Court-appointed special advocate” means a responsible adult,

1 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-
2 ments thereto, who is appointed by the court to represent the best inter-
3 ests of a child, as provided in K.S.A. 38-1606a, and amendments thereto,
4 in a proceeding pursuant to this code.

5 (l) “Juvenile intake and assessment worker” means a responsible
6 adult authorized to perform intake and assessment services as part of the
7 intake and assessment system established pursuant to K.S.A. 75-7023, and
8 amendments thereto.

9 (m) “Institution” means the following institutions: The Atchison ju-
10 venile correctional facility, the Beloit juvenile correctional facility, the
11 Larned juvenile correctional facility and the Topeka juvenile correctional
12 facility.

13 (n) “Sanctions house” means a facility which is operated or structured
14 so as to ensure that all entrances and exits from the facility are under the
15 exclusive control of the staff of the facility, whether or not the person
16 being detained has freedom of movement within the perimeters of the
17 facility, or which relies on locked rooms and buildings, fences, or physical
18 restraint in order to control the behavior of its residents. Upon an order
19 from the court, a licensed juvenile detention facility may serve as a sanc-
20 tions house.

21 (o) “Sentencing risk assessment tool” means an instrument adminis-
22 tered to juvenile offenders which delivers a score, or group of scores,
23 describing, but not limited to describing, the juvenile’s potential risk to
24 the community.

25 (p) “Educational institution” means all schools at the elementary and
26 secondary levels.

27 (q) “Educator” means any administrator, teacher or other profes-
28 sional or paraprofessional employee of an educational institution who has
29 exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A.
30 ~~2000 Supp. 72-89b03~~, and amendments thereto.

31 (r) *“Juvenile offender type A” means a person who commits an offense*
32 *while a juvenile which if committed by an adult would constitute the*
33 *commission of a felony as defined by K.S.A. 21-3105, and amendments*
34 *thereto.*

35 (s) *“Juvenile offender type B” means a person who commits an offense*
36 *while a juvenile which if committed by an adult would constitute com-*
37 *mission of a misdemeanor as defined by K.S.A. 21-3105, and amendments*
38 *thereto.*

39 Sec. 6. K.S.A. 21-4709, 21-4710, 38-1601 and 38-1602 and K.S.A.
40 2002 Supp. 21-4711 are hereby repealed.

41 Sec. 7. This act shall take effect and be in force from and after its
42 publication in the statute book.