

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **SB 186** be amended on page 1, following line 6, by inserting:

"Section 1. K.S.A. 21-6810 is hereby amended to read as follows: 21-6810. (a) Criminal history categories contained in the sentencing guidelines grids 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~~ that 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~~ that 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~~ that 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.

(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.

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

(d) Except as provided in K.S.A. 21-6815, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

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

(2) All prior adult felony convictions, including expungements, will be considered and scored. Prior adult felony convictions for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed.

(3) There will be no decay factor applicable for:

(A) Adult convictions;

(B) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult. Prior juvenile adjudications for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed; or

(C) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony or a nondrug severity level 1 through 4 felony, if committed by an adult.

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:

(A) Committed before July 1, 1993, which would have been a class D or E felony, if

committed by an adult;

(B) committed on or after July 1, 1993, which would be a nondrug severity level 5 through 10 felony, a nongrid felony or any drug felony, if committed by an adult; or

(C) which would be a misdemeanor, if committed by an adult.

(5) A juvenile adjudication will not be considered and scored if:

(A) The current crime of conviction is committed at least five years after the date of the prior adjudication;

(B) the offender has no new adjudications or convictions during such five-year period; and

(C) the juvenile adjudication is for an offense that would be a nondrug severity level 5 through 10 felony, drug felony, nongrid felony or misdemeanor, if committed by an adult.

(6) All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored. Prior misdemeanors for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed.

(7) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(8) Prior convictions of a crime defined by a statute that has since been repealed shall be scored using the classification assigned at the time of such conviction.

(9) Prior convictions of a crime defined by a statute that has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes unless the basis of the determination of unconstitutionality by the appellate court is later

overruled or reversed by an order or opinion of the supreme court of the state of Kansas or the United States supreme court.

(10) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

(e) The amendments made to this section by section 1 of chapter 5 of the 2015 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.";

On page 3, following line 34, by inserting:

"Sec. 3. K.S.A. 22-2802 is hereby amended to read as follows: 22-2802. ~~(1)~~(a) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection ~~(14)~~(n) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

~~(a)~~(1) Place the person in the custody of a designated person or organization agreeing to

supervise such person;

~~(b)~~(2) place restrictions on the travel, association or place of abode of the person during the period of release;

~~(e)~~(3) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

~~(d)~~(4) place the person under a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto; or

~~(e)~~(5) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate. The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed \$15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the \$15 per week.

~~(2)~~(b) In addition to any conditions of release provided in subsection ~~(1)~~ (a), for any person charged with a felony, the magistrate may order such person to submit to a drug and alcohol abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to treatment for such drug or alcohol abuse, as a condition of release.

~~(3)~~(c) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

~~(4)~~(d) A deposit of cash in the amount of the bond may be made in lieu of the execution

of the bond pursuant to subsection ~~(3)~~ (c). Except as provided in subsection ~~(5)~~ (e), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to subsection ~~(3)~~ (c).

~~(5)~~ (e) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection ~~(3)~~ (c) or posted with a deposit of cash as described in subsection ~~(4)~~ (d). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony committed prior to July 1, 2012, a drug severity level 5 felony committed on or after July 1, 2012, or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

~~(A)~~ (1) Is a resident of the state of Kansas;

~~(B)~~ (2) has a criminal history score category of G, H or I;

~~(C)~~ (3) has no prior history of failure to appear for any court appearances;

~~(D)~~ (4) has no detainer or hold from any other jurisdiction;

~~(E)~~ (5) has not been extradited from, and is not awaiting extradition to, another state;

and

~~(F)~~ (6) has not been detained for an alleged violation of probation.

~~(6)~~ (f) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the

person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

~~(7)~~(g) The court shall not impose any administrative fee.

~~(8)~~(h) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; whether the defendant is lawfully present in the United States; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

~~(9)~~(i) The appearance bond shall set forth all of the conditions of release.

~~(10)~~(j) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

~~(11)~~(k) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the

provisions of subsection ~~(10)~~ (j) shall apply.

~~(12)~~ (l) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

~~(13)~~ (m) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

~~(14)~~ (n) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

~~(15)~~ (o) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision. As a condition of sentencing under K.S.A. 21-6604, and amendments thereto, the court may impose the full amount of any such costs in addition to the \$15 per week, including, but not limited to, costs for treatment and evaluation under subsection ~~(2)~~ (b).

(p) (1) If a defendant is charged with rape, as described in K.S.A. 21-5503, and amendments thereto, criminal sodomy or aggravated criminal sodomy, as described in K.S.A. 21-5504, and amendments thereto, aggravated sexual battery, as described in K.S.A. 21-5505, and amendments thereto, or indecent liberties with a child or aggravated indecent liberties with a child, as described in K.S.A. 21-5506, and amendments thereto, the magistrate shall determine prior convictions of such offenses or comparable out-of-state convictions upon available evidence.

(2) If the magistrate determines that such defendant has a prior conviction of any crime that constitutes a sexually violent crime as defined in K.S.A. 22-4902, and amendments thereto, bond shall be at least \$750,000 cash or surety and have at least minimum conditions of no contact with any victims or witnesses and the magistrate shall place the person under a house arrest program pursuant to subsection (a)(4). Such bond shall not be reduced or modified downward unless the magistrate determines by a preponderance of the evidence at an evidentiary hearing and makes a written finding on the record that the defendant is not a public safety risk and not a flight risk. At such evidentiary hearing, there shall be a presumption that the defendant is both a public safety risk and a flight risk.

Sec. 4. K.S.A. 22-2803 is hereby amended to read as follows: 22-2803. A person who remains in custody after review of such person's application pursuant to ~~subsection (9) or (10) of~~ K.S.A. 22-2802(i) or (j), and amendments thereto, by a district magistrate judge may apply to a district judge of the judicial district in which the charge is pending to modify the order fixing conditions of release. Such motion shall be determined promptly.";

Also on page 3, in line 35, after "K.S.A." by inserting "21-6810,"; also in line 35, by striking "is" and inserting ", 22-2802 and 22-2803 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after "concerning" by inserting "crimes, punishment and"; also in line 1, after the semicolon by inserting "relating to sentencing; providing that prior convictions of a crime defined by a statute that has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes unless the basis of the determination of unconstitutionality by the appellate court is later overruled or reversed;"; in line 3, after the semicolon by inserting "relating to release prior to trial; requiring that certain prior convictions be considered when bond is being set for certain sex offenses; specifying minimum requirements and conditions for such bond;"; also in line 3, after "K.S.A." by inserting "21-6810,"; also in line 3, after "22-2302" by inserting ", 22-2802 and 22-2803"; in line 4, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson