

Proposed Substitute for HOUSE BILL NO. 2115

AN ACT concerning crimes, punishment and criminal procedure; relating to criminal history classification; aggravated battery, driving under the influence; amending K.S.A. 2014 Supp. 21-6811 and repealing the existing section.

WHEREAS, The provisions of K.S.A. 2014 Supp. 21-6811, as amended by this act, shall be known and may be cited as Mija Stockman's Law: Now, therefore

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

Section 1. K.S.A. 2014 Supp. 21-6811 is hereby amended to read as follows: 21-6811.

In addition to the provisions of K.S.A. 2014 Supp. 21-6810, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408, prior to its repeal, or ~~subsection (a) of~~ K.S.A. 2014 Supp. 21-5412(a), and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal possession of a firearm as defined in ~~subsection (a)(1) or (a)(5) of~~ K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons as defined in ~~subsection (a)(10) or (a)(11) of~~ K.S.A. 2014 Supp. 21-6301(a)(10) or (a)(11), and amendments thereto, or unlawful possession of a firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select class B nonperson misdemeanor

conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for ~~subsection (b) of K.S.A. 21-3404(b)~~, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of ~~subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3)~~, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(3) If the current crime of conviction is for a violation of K.S.A. 2014 Supp. 21-5413(b) (3), and amendments thereto:

(A) The first prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one nonperson felony for criminal history purposes:

(i) An act described in K.S.A. 8-1567, and amendments thereto; or (ii) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto; and

(B) each second or subsequent prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one person felony for

criminal history purposes: (i) An act described in K.S.A. 8-1567, and amendments thereto; or (ii) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto.

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

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in ~~subsection (a) of K.S.A. 21-3715(a), prior to its repeal, or subsection (a) (1) of K.S.A. 2014 Supp. 21-5807(a)(1), and amendments thereto.~~

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in ~~subsection (b) or (c) of K.S.A. 21-3715(b) or (c), prior to its repeal, or subsection (a)(2) or (a)(3) of K.S.A. 2014 Supp. 21-5807(a)(2) or (a)(3), and amendments thereto.~~

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state

adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in ~~subsections (d)(4), (d)(5) or (d)(6) of K.S.A. 21-4710(d)(4), (d)(5) or (d)(6), prior to its repeal, or subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of~~ K.S.A. 2014 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)(3)(D) or (d)(4), and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2014 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

(i) If the current crime of conviction is for a violation of ~~subsections (b)(2) through (b)(4) of K.S.A. 8-1602(b)(3) through (b)(5), and amendments thereto, each of the following prior~~ convictions committed on or after July 1, 2011, shall count as a person felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments thereto, and ~~subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3)~~ and 21-5406, and amendments thereto, or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.

Sec. 2. K.S.A. 2014 Supp. 21-6811 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.