

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2052

By Committee on Corrections and Juvenile Justice

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to criminal history; nonprison sanctions; amending K.S.A. 2014 Supp.
3 21-6810 and 21-6824 and repealing the existing sections **section**.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. ~~K.S.A. 2014 Supp. 21-6810 is hereby amended to read as~~
7 ~~follows: 21-6810. (a) Criminal history categories contained in the~~
8 ~~sentencing guidelines grids are based on the following types of prior~~
9 ~~convictions: Person felony adult convictions, nonperson felony adult~~
10 ~~convictions, person felony juvenile adjudications, nonperson felony~~
11 ~~juvenile adjudications, person misdemeanor adult convictions, nonperson~~
12 ~~class A misdemeanor adult convictions, person misdemeanor juvenile~~
13 ~~adjudications, nonperson class A misdemeanor juvenile adjudications,~~
14 ~~select class B nonperson misdemeanor adult convictions, select class B~~
15 ~~nonperson misdemeanor juvenile adjudications and convictions and~~
16 ~~adjudications for violations of municipal ordinances or county resolutions~~
17 ~~which are comparable to any crime classified under the state law of~~
18 ~~Kansas as a person misdemeanor, select nonperson class B misdemeanor~~
19 ~~or nonperson class A misdemeanor. A prior conviction is any conviction,~~
20 ~~other than another count in the current case which was brought in the same~~
21 ~~information or complaint or which was joined for trial with other counts in~~
22 ~~the current case pursuant to K.S.A. 22-3203, and amendments thereto,~~
23 ~~which occurred prior to sentencing in the current case regardless of~~
24 ~~whether the offense that led to the prior conviction occurred before or after~~
25 ~~the current offense or the conviction in the current case.~~

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

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

32 (d) ~~Except as provided in K.S.A. 2014 Supp. 21-6815, and~~
33 ~~amendments thereto, the following are applicable to determining an~~
34 ~~offender's criminal history classification:~~

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

36 (2) ~~All prior adult felony convictions, including expungements, will~~

1 be considered and scored.

2 ~~(3) Adult diversions for felony violations of K.S.A. 2014 Supp. 21-~~
3 ~~5706, and amendments thereto, committed on or after July 1, 2015. Such~~
4 ~~diversions shall be scored as a nonperson felony adult conviction.~~

5 ~~(4) There will be no decay factor applicable for:~~

6 ~~(A) Adult convictions;~~

7 ~~(B) a juvenile adjudication for an offense which would constitute a~~
8 ~~person felony if committed by an adult;~~

9 ~~(C) a juvenile adjudication for an offense committed before July 1,~~
10 ~~1993, which would have been a class A, B or C felony, if committed by an~~
11 ~~adult; or~~

12 ~~(D) a juvenile adjudication for an offense committed on or after July~~
13 ~~1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,~~
14 ~~3, 4 or 5 felony, a drug severity level 1, 2 or 3 felony for an offense~~
15 ~~committed on or after July 1, 1993, but prior to July 1, 2012, or a drug~~
16 ~~severity level 1, 2, 3 or 4 felony for an offense committed on or after July~~
17 ~~1, 2012, if committed by an adult.~~

18 ~~(4) (5) Except as otherwise provided, a juvenile adjudication will~~
19 ~~decay if the current crime of conviction is committed after the offender~~
20 ~~reaches the age of 25, and the juvenile adjudication is for an offense:~~

21 ~~(A) Committed before July 1, 1993, which would have been a class D~~
22 ~~or E felony if committed by an adult;~~

23 ~~(B) committed on or after July 1, 1993, which would be a nondrug~~
24 ~~severity level 6, 7, 8, 9 or 10, a drug severity level 4 felony for an offense~~
25 ~~committed on or after July 1, 1993, but prior to July 1, 2012, or a drug~~
26 ~~severity level 5 felony for an offense committed on or after July 1, 2012, if~~
27 ~~committed by an adult; or~~

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

29 ~~(5) (6) All person misdemeanors, class A nonperson misdemeanors~~
30 ~~and class B select nonperson misdemeanors, and all municipal ordinance~~
31 ~~and county resolution violations comparable to such misdemeanors, shall~~
32 ~~be considered and scored.~~

33 ~~(6) (7) Unless otherwise provided by law, unclassified felonies and~~
34 ~~misdemeanors, shall be considered and scored as nonperson crimes for the~~
35 ~~purpose of determining criminal history.~~

36 ~~(7) (8) Prior convictions of a crime defined by a statute which has~~
37 ~~since been repealed shall be scored using the classification assigned at the~~
38 ~~time of such conviction.~~

39 ~~(8) (9) Prior convictions of a crime defined by a statute which has~~
40 ~~since been determined unconstitutional by an appellate court shall not be~~
41 ~~used for criminal history scoring purposes.~~

42 ~~(9) (10) Prior convictions of any crime shall not be counted in~~
43 ~~determining the criminal history category if they enhance the severity~~

1 level, elevate the classification from misdemeanor to felony, or are
2 elements of the present crime of conviction. Except as otherwise provided,
3 all other prior convictions will be considered and scored.

4 ~~Sec. 2.~~ **Section 1.** K.S.A. 2014 Supp. 21-6824 is hereby amended to
5 read as follows: 21-6824. (a) There is hereby established a nonprison
6 sanction of certified drug abuse treatment programs for certain offenders
7 who are sentenced on or after November 1, 2003, *or placed on diversion*
8 *on or after July 1, 2015*. Placement of offenders in certified drug abuse
9 treatment programs by the court shall be limited to placement of adult
10 offenders; convicted of a felony violation of K.S.A. 65-4160 or 65-4162,
11 prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or
12 K.S.A. 2014 Supp. 21-5706, and amendments thereto, *or placed on*
13 *diversion for a felony violation of K.S.A. 2014 Supp. 21-5706, and*
14 *amendments thereto*:

15 (1) Whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G,
16 5-H or 5-I of the sentencing guidelines grid for drug crimes and such
17 offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161,
18 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03,
19 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2014 Supp. 21-
20 5703, 21-5705 or 21-5716, and amendments thereto, or any substantially
21 similar offense from another jurisdiction; or

22 (2) whose offense is classified in grid blocks 5-A or 5-B of the
23 sentencing guidelines grid for drug crimes, such offender has no felony
24 conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164,
25 prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16,
26 prior to their transfer, or K.S.A. 2014 Supp. 21-5703, 21-5705 or 21-5716,
27 and amendments thereto, or any substantially similar offense from another
28 jurisdiction, if the person felonies in the offender's criminal history were
29 severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
30 grid for nondrug crimes, and the court finds and sets forth with
31 particularity the reasons for finding that the safety of the members of the
32 public will not be jeopardized by such placement in a drug abuse treatment
33 program.

34 (b) As a part of the presentence investigation pursuant to K.S.A. 2014
35 Supp. 21-6813, and amendments thereto, offenders who meet the
36 requirements of subsection (a), unless otherwise specifically ordered by
37 the court, shall be subject to:

38 (1) A drug abuse assessment which shall include a clinical interview
39 with a mental health professional and a recommendation concerning drug
40 abuse treatment for the offender; and

41 (2) a criminal risk-need assessment. The criminal risk-need
42 assessment shall assign a high or low risk status to the offender.

43 (c) If the offender is assigned a high risk status as determined by the

1 drug abuse assessment performed pursuant to subsection (b)(1) and a
2 moderate or high risk status as determined by the criminal risk-need
3 assessment performed pursuant to subsection (b)(2), the sentencing court
4 shall commit the offender to treatment in a drug abuse treatment program
5 until the court determines the offender is suitable for discharge by the
6 court. The term of treatment shall not exceed 18 months. The court may
7 extend the term of probation, pursuant to ~~subsection (e)(3)~~ of K.S.A. 2014
8 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may
9 not exceed the term of probation.

10 (d) (1) Offenders who are committed to a drug abuse treatment
11 program pursuant to subsection (c) shall be supervised by community
12 correctional services.

13 (2) Offenders who are not committed to a drug abuse treatment
14 program pursuant to subsection (c) shall be supervised by community
15 correctional services or court services based on the result of the criminal
16 risk assessment.

17 (e) Placement of offenders under subsection (a)(2) shall be subject to
18 the departure sentencing statutes of the revised Kansas sentencing
19 guidelines act.

20 (f) (1) Offenders in drug abuse treatment programs shall be
21 discharged from such program if the offender:

22 (A) Is convicted of a new felony; or

23 (B) has a pattern of intentional conduct that demonstrates the
24 offender's refusal to comply with or participate in the treatment program,
25 as established by judicial finding.

26 (2) Offenders who are discharged from such program shall be subject
27 to the revocation provisions of ~~subsection (n)~~ of K.S.A. 2014 Supp. 21-
28 6604(n), and amendments thereto.

29 (g) As used in this section, "mental health professional" includes
30 licensed social workers, persons licensed to practice medicine and surgery,
31 licensed psychologists, licensed professional counselors or registered
32 alcohol and other drug abuse counselors licensed or certified as addiction
33 counselors who have been certified by the secretary of corrections to treat
34 offenders pursuant to K.S.A. 2014 Supp. 75-52,144, and amendments
35 thereto.

36 (h) (1) Offenders who meet the requirements of subsection (a) shall
37 not be subject to the provisions of this section and shall be sentenced as
38 otherwise provided by law, if such offenders:

39 (A) Are residents of another state and are returning to such state
40 pursuant to the interstate corrections compact or the interstate compact for
41 adult offender supervision; or

42 (B) are not lawfully present in the United States and being detained
43 for deportation; or

1 (C) do not meet the risk assessment levels provided in subsection (c).

2 (2) Such sentence shall not be considered a departure and shall not be
3 subject to appeal.

4 (i) The court may order an offender who otherwise does not meet the
5 requirements of subsection (c) to undergo one additional drug abuse
6 assessment while such offender is on probation. Such offender may be
7 ordered to undergo drug abuse treatment pursuant to subsection (a) if such
8 offender is determined to meet the requirements of subsection (c). The cost
9 of such assessment shall be paid by such offender.

10 (j) *Offenders committed to a certified drug abuse treatment program*
11 *pursuant to subsection (a) that are placed on diversion may receive drug*
12 *abuse treatment for up to 18 months and shall be supervised by community*
13 *correctional services. The term of such treatment shall not exceed the term*
14 *of diversion.*

15 ~~Sec. 3.~~ **2.** K.S.A. 2014 Supp. ~~21-6810 and 21-6824~~ **are** hereby
16 repealed.

17 ~~Sec. 4.~~ **3.** This act shall take effect and be in force from and after its
18 publication in the statute book.