

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2053

By 2014 Special Committee on Judiciary

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to calculation of criminal history; correction of sentence; amending
3 ~~K.S.A. 22-3504~~ and K.S.A. 2014 Supp. 21-6810 and 21-6811 and
4 repealing the existing sections.
5

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

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

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

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

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

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

1 (2) All prior adult felony convictions, including expungements, will
2 be considered and scored. *Prior adult felony convictions that were*
3 *committed before July 1, 1993, shall be scored as a person or nonperson*
4 *crime using an existing comparable offense under the Kansas criminal*
5 *code;*

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

7 (A) Adult convictions;

8 (B) a juvenile adjudication for an offense which would constitute a
9 person felony if committed by an adult. *Prior juvenile adjudications that*
10 *were committed before July 1, 1993, shall be scored as a person or*
11 *nonperson crime using an existing comparable offense under the Kansas*
12 *criminal code;*

13 (C) a juvenile adjudication for an offense committed before July 1,
14 1993, which would have been a class A, B or C felony, if committed by an
15 adult; or

16 (D) a juvenile adjudication for an offense committed on or after July
17 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,
18 3, 4 or 5 felony, a drug severity level 1, 2 or 3 felony for an offense
19 committed on or after July 1, 1993, but prior to July 1, 2012, or a drug
20 severity level 1, 2, 3 or 4 felony for an offense committed on or after July
21 1, 2012, if committed by an adult.

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

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

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

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

33 (5) All person misdemeanors, class A nonperson misdemeanors and
34 class B select nonperson misdemeanors, and all municipal ordinance and
35 county resolution violations comparable to such misdemeanors, shall be
36 considered and scored.

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

40 (7) Prior convictions of a crime defined by a statute which has since
41 been repealed shall be scored using the classification assigned at the time
42 of such conviction.

43 (8) Prior convictions of a crime defined by a statute which has since

1 been determined unconstitutional by an appellate court shall not be used
2 for criminal history scoring purposes.

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

8 **(e) The amendments made to this section by this act are**
9 **procedural in nature and shall be construed and applied retroactively.**

10 Sec. 2. K.S.A. 2014 Supp. 21-6811 is hereby amended to read as
11 follows: 21-6811. In addition to the provisions of K.S.A. 2014 Supp. 21-
12 6810, and amendments thereto, the following shall apply in determining an
13 offender's criminal history classification as contained in the presumptive
14 sentencing guidelines grids:

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

25 (b) A conviction of criminal possession of a firearm as defined in
26 ~~subsection (a)(1) or (a)(5) of K.S.A. 21-4204(a)(1) or (a)(5),~~ prior to its
27 repeal, criminal use of weapons as defined in ~~subsection (a)(10) or (a)(11)~~
28 ~~of K.S.A. 2014 Supp. 21-6301(a)(10) or (a)(11),~~ and amendments thereto,
29 or unlawful possession of a firearm as in effect on June 30, 2005, and as
30 defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select
31 class B nonperson misdemeanor conviction or adjudication and shall not
32 be scored as a person misdemeanor for criminal history purposes.

33 (c) (1) If the current crime of conviction was committed before July
34 1, 1996, and is for ~~subsection (b) of K.S.A. 21-3404(b),~~ as in effect on
35 June 30, 1996, involuntary manslaughter in the commission of driving
36 under the influence, then, each prior adult conviction or juvenile
37 adjudication for K.S.A. 8-1567, and amendments thereto, shall count as
38 one person felony for criminal history purposes.

39 (2) If the current crime of conviction was committed on or after July
40 1, 1996, and is for a violation of ~~subsection (a)(3) of K.S.A. 2014 Supp.~~
41 21-5405(a)(3), and amendments thereto, each prior adult conviction,
42 diversion in lieu of criminal prosecution or juvenile adjudication for: (A)
43 An act described in K.S.A. 8-1567, and amendments thereto; or (B) a

1 violation of a law of another state or an ordinance of any city, or resolution
2 of any county, which prohibits the act described in K.S.A. 8-1567, and
3 amendments thereto, shall count as one person felony for criminal history
4 purposes.

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

7 (1) As a prior person felony if the prior conviction or adjudication
8 was classified as a burglary as defined in ~~subsection (a)~~ of K.S.A. 21-
9 3715(a), prior to its repeal, or ~~subsection (a)(1)~~ of K.S.A. 2014 Supp. 21-
10 5807(a)(1), and amendments thereto.

11 (2) As a prior nonperson felony if the prior conviction or adjudication
12 was classified as a burglary as defined in ~~subsection (b) or (c)~~ of K.S.A.
13 21-3715(b) or (c), prior to its repeal, or ~~subsection (a)(2) or (a)(3)~~ of
14 K.S.A. 2014 Supp. 21-5807(a)(2) or (a)(3), and amendments thereto.

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

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

32 (f) Except as provided in ~~subsections (d)(4), (d)(5) or (d)(6)~~ of K.S.A.
33 21-4710(d)(4), (d)(5) and (d)(6), prior to its repeal, or ~~subsections (d)(3)~~
34 ~~(B), (d)(3)(C), (d)(3)(D) and (d)(4)~~ of K.S.A. 2014 Supp. 21-6810(d)(3)
35 (B), (d)(3)(C), (d)(3)(D) and (d)(4), and amendments thereto, juvenile
36 adjudications will be applied in the same manner as adult convictions.
37 Out-of-state juvenile adjudications will be treated as juvenile adjudications
38 in Kansas.

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

1 underlying crime.

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

4 (i) If the current crime of conviction is for a violation of ~~subsections~~
5 ~~(b)(2) through (b)(4) of K.S.A. 8-1602(b)(3) through (b)(5),~~ and
6 amendments thereto, each of the following prior convictions committed on
7 or after July 1, 2011, shall count as a person felony for criminal history
8 purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-
9 1602, 8-1605 and 40-3104, and amendments thereto, and ~~subsection (a)(3)~~
10 ~~of K.S.A. 2014 Supp. 21-5405(a)(3) and 21-5406,~~ and amendments
11 thereto, or a violation of a city ordinance or law of another state which
12 would also constitute a violation of such sections.

13 **(j) The amendments made to this section by this act are**
14 **procedural in nature and shall be construed and applied retroactively.**

15 ~~Sec. 3. K.S.A. 22-3504 is hereby amended to read as follows: 22-~~
16 ~~3504. (1) (a) The court may correct an illegal sentence at any time as~~
17 ~~provided in subsection (c). The defendant shall receive full credit for time~~
18 ~~spent in custody under the sentence prior to correction. Unless the motion~~
19 ~~and the files and records of the case conclusively show that the defendant~~
20 ~~is not entitled to relief, the defendant shall have a right to a hearing, after~~
21 ~~reasonable notice to be fixed by the court, to be personally present and to~~
22 ~~have the assistance of counsel in any proceeding for the correction of an~~
23 ~~illegal sentence.~~

24 ~~(2) (b) Clerical mistakes in judgments, orders or other parts of the~~
25 ~~record and errors in the record arising from oversight or omission may be~~
26 ~~corrected by the court at any time and after such notice, if any, as the court~~
27 ~~orders.~~

28 ~~(c) (1) Any motion under subsection (a) must be brought within one~~
29 ~~year of:~~

30 ~~(A) The final order of the last appellate court in this state to exercise~~
31 ~~jurisdiction on a direct appeal or the termination of such appellate~~
32 ~~jurisdiction; or~~

33 ~~(B) the denial of a petition for writ of certiorari to the United States~~
34 ~~supreme court or issuance of such court's final order following the~~
35 ~~granting of such petition.~~

36 ~~(2) The time limitations herein may be extended by the court only to~~
37 ~~prevent a manifest injustice concerning why the motion was not timely~~
38 ~~filed. Manifest injustice does not include a sentence that is imposed in~~
39 ~~compliance with the appellate case law existing at the time of sentencing.~~

40 **New Sec. 3. If any provision of this act is held invalid, the**
41 **invalidity shall not affect other provisions or applications of the act,**
42 **and to this end the provisions of this act are severable.**

43 ~~Sec. 4. K.S.A. 22-3504 and K.S.A. 2014 Supp. 21-6810 and 21-6811~~

1 are hereby repealed.

2 Sec. 5. This act shall take effect and be in force from and after its
3 publication in the Kansas register.