

HOUSE BILL No. 2463

By Committee on Corrections and Juvenile Justice

1-14

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to criminal history; juvenile adjudications; amending K.S.A. 2015
3 Supp. 21-6810 and 21-6811 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2015 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. 2015 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. Prior adult felony convictions for offenses that
2 were committed before July 1, 1993, shall be scored as a person or
3 nonperson crime using a comparable offense under the Kansas criminal
4 code in effect on the date the current crime of conviction was committed;

5 (3) *Except as provided in paragraph (5), there will be no decay factor*
6 *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 for
10 offenses that were committed before July 1, 1993, shall be scored as a
11 person or nonperson crime using a comparable offense under the Kansas
12 criminal code in effect on the date the current crime of conviction was
13 committed;

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

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

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

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

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

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

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

35 (A) *If the current crime of conviction is committed at least five years*
36 *after the date of final discharge of the adjudication;*

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

39 (C) *the juvenile adjudication is for an offense which would be a*
40 *nondrug severity level 5 through 10 felony, drug felony, non-grid felony or*
41 *misdemeanor if committed by an adult.*

42 ~~(5)~~ (6) All person misdemeanors, class A nonperson misdemeanors
43 and class B select nonperson misdemeanors, and all municipal ordinance

1 and county resolution violations comparable to such misdemeanors, shall
2 be considered and scored. Prior misdemeanors for offenses that were
3 committed before July 1, 1993, shall be scored as a person or nonperson
4 crime using a comparable offense under the Kansas criminal code in effect
5 on the date the current crime of conviction was committed.

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

9 ~~(7)~~ (8) Prior convictions of a crime defined by a statute which has
10 since been repealed shall be scored using the classification assigned at the
11 time of such conviction.

12 ~~(8)~~ (9) Prior convictions of a crime defined by a statute which has
13 since been determined unconstitutional by an appellate court shall not be
14 used for criminal history scoring purposes.

15 ~~(9)~~ (10) Prior convictions of any crime shall not be counted in
16 determining the criminal history category if they enhance the severity
17 level, elevate the classification from misdemeanor to felony, or are
18 elements of the present crime of conviction. Except as otherwise provided,
19 all other prior convictions will be considered and scored.

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

22 Sec. 2. K.S.A. 2015 Supp. 21-6811 is hereby amended to read as
23 follows: 21-6811. In addition to the provisions of K.S.A. 2015 Supp. 21-
24 6810, and amendments thereto, the following shall apply in determining an
25 offender's criminal history classification as contained in the presumptive
26 sentencing guidelines grids:

27 (a) Every three prior adult convictions or juvenile adjudications of
28 class A and class B person misdemeanors in the offender's criminal history,
29 or any combination thereof, shall be rated as one adult conviction or one
30 juvenile adjudication of a person felony for criminal history purposes.
31 Every three prior adult convictions or juvenile adjudications of assault as
32 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2015 Supp. 21-
33 5412(a), and amendments thereto, occurring within a period commencing
34 three years prior to the date of conviction for the current crime of
35 conviction shall be rated as one adult conviction or one juvenile
36 adjudication of a person felony for criminal history purposes.

37 (b) A conviction of criminal possession of a firearm as defined in
38 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
39 as defined in K.S.A. 2015 Supp. 21-6301(a)(10) or (a)(11), and
40 amendments thereto, or unlawful possession of a firearm as in effect on
41 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
42 scored as a select class B nonperson misdemeanor conviction or
43 adjudication and shall not be scored as a person misdemeanor for criminal

1 history purposes.

2 (c) (1) If the current crime of conviction was committed before July
3 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
4 involuntary manslaughter in the commission of driving under the
5 influence, then, each prior adult conviction or juvenile adjudication for
6 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
7 for criminal history purposes.

8 (2) If the current crime of conviction was committed on or after July
9 1, 1996, and is for a violation of K.S.A. 2015 Supp. 21-5405(a)(3), and
10 amendments thereto, each prior adult conviction, diversion in lieu of
11 criminal prosecution or juvenile adjudication for: (A) Any act described in
12 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
13 thereto; or (B) a violation of a law of another state or an ordinance of any
14 city, or resolution of any county, which prohibits any act described in
15 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
16 thereto, shall count as one person felony for criminal history purposes.

17 (3) If the current crime of conviction is for a violation of K.S.A. 2015
18 Supp. 21-5413(b)(3), and amendments thereto:

19 (A) The first prior adult conviction, diversion in lieu of criminal
20 prosecution or juvenile adjudication for the following shall count as one
21 nonperson felony for criminal history purposes: (i) Any act described in
22 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
23 thereto; or (ii) a violation of a law of another state or an ordinance of any
24 city, or resolution of any county, which prohibits any act described in
25 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments
26 thereto; and

27 (B) each second or subsequent prior adult conviction, diversion in
28 lieu of criminal prosecution or juvenile adjudication for the following shall
29 count as one person felony for criminal history purposes: (i) Any act
30 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and
31 amendments thereto; or (ii) a violation of a law of another state or an
32 ordinance of any city, or resolution of any county, which prohibits any act
33 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and
34 amendments thereto.

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

37 (1) As a prior person felony if the prior conviction or adjudication
38 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its
39 repeal, or K.S.A. 2015 Supp. 21-5807(a)(1), and amendments thereto.

40 (2) As a prior nonperson felony if the prior conviction or adjudication
41 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to
42 its repeal, or K.S.A. 2015 Supp. 21-5807(a)(2) or (a)(3), and amendments
43 thereto.

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

4 (e) (1) Out-of-state convictions and juvenile adjudications shall be
5 used in classifying the offender's criminal history.

6 (2) An out-of-state crime will be classified as either a felony or a
7 misdemeanor according to the convicting jurisdiction:

8 (A) If a crime is a felony in another state, it will be counted as a
9 felony in Kansas.

10 (B) If a crime is a misdemeanor in another state, the state of Kansas
11 shall refer to the comparable offense in order to classify the out-of-state
12 crime as a class A, B or C misdemeanor. If the comparable misdemeanor
13 crime in the state of Kansas is a felony, the out-of-state crime shall be
14 classified as a class A misdemeanor. If the state of Kansas does not have a
15 comparable crime, the out-of-state crime shall not be used in classifying
16 the offender's criminal history.

17 (3) The state of Kansas shall classify the crime as person or
18 nonperson. In designating a crime as person or nonperson, comparable
19 offenses under the Kansas criminal code in effect on the date the current
20 crime of conviction was committed shall be referred to. If the state of
21 Kansas does not have a comparable offense in effect on the date the
22 current crime of conviction was committed, the out-of-state conviction
23 shall be classified as a nonperson crime.

24 (4) Convictions or adjudications occurring within the federal system,
25 other state systems, the District of Columbia, foreign, tribal or military
26 courts are considered out-of-state convictions or adjudications.

27 (5) The facts required to classify out-of-state adult convictions and
28 juvenile adjudications shall be established by the state by a preponderance
29 of the evidence.

30 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),
31 prior to its repeal, or K.S.A. 2015 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)
32 (3)(D)—~~and~~, (d)(4) *and* (d)(5), and amendments thereto, juvenile
33 adjudications will be applied in the same manner as adult convictions.
34 Out-of-state juvenile adjudications will be treated as juvenile adjudications
35 in Kansas.

36 (g) A prior felony conviction of an attempt, a conspiracy or a
37 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
38 their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302 or 21-5303, and
39 amendments thereto, to commit a crime shall be treated as a person or
40 nonperson crime in accordance with the designation assigned to the
41 underlying crime.

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

1 (i) If the current crime of conviction is for a violation of K.S.A. 8-
2 1602(b)(3) through (b)(5), and amendments thereto, each of the following
3 prior convictions for offenses committed on or after July 1, 2011, shall
4 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
5 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
6 and amendments thereto, and K.S.A. 2015 Supp. 21-5405(a)(3) and 21-
7 5406, and amendments thereto, or a violation of a city ordinance or law of
8 another state which would also constitute a violation of such sections.

9 (j) The amendments made to this section by 2015 House Bill No.
10 2053 are procedural in nature and shall be construed and applied
11 retroactively.

12 Sec. 3. K.S.A. 2015 Supp. 21-6810 and 21-6811 are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.