

HOUSE BILL No. 2567

By Committee on Corrections and Juvenile Justice

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to determination of an offender's criminal history classification;
3 amending K.S.A. 2017 Supp. 21-6811 and repealing the existing
4 section.

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

7 Section 1. K.S.A. 2017 Supp. 21-6811 is hereby amended to read as
8 follows: 21-6811. In addition to the provisions of K.S.A. 2017 Supp. 21-
9 6810, and amendments thereto, the following shall apply in determining an
10 offender's criminal history classification as contained in the presumptive
11 sentencing guidelines grids:

12 (a) Every three prior adult convictions or juvenile adjudications of
13 class A and class B person misdemeanors in the offender's criminal history,
14 or any combination thereof, shall be rated as one adult conviction or one
15 juvenile adjudication of a person felony for criminal history purposes.
16 Every three prior adult convictions or juvenile adjudications of assault as
17 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2017 Supp. 21-
18 5412(a), and amendments thereto, occurring within a period commencing
19 three years prior to the date of conviction for the current crime of
20 conviction shall be rated as one adult conviction or one juvenile
21 adjudication of a person felony for criminal history purposes.

22 (b) A conviction of criminal possession of a firearm as defined in
23 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
24 as defined in K.S.A. 2017 Supp. 21-6301(a)(10) or (a)(11), and
25 amendments thereto, or unlawful possession of a firearm as in effect on
26 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
27 scored as a select class B nonperson misdemeanor conviction or
28 adjudication and shall not be scored as a person misdemeanor for criminal
29 history purposes.

30 (c) (1) If the current crime of conviction was committed before July
31 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
32 involuntary manslaughter in the commission of driving under the
33 influence, then, each prior adult conviction or juvenile adjudication for
34 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
35 for criminal history purposes.

36 (2) If the current crime of conviction was committed on or after July

1 1, 1996, and is for a violation of K.S.A. 2017 Supp. 21-5405(a)(3), and
2 amendments thereto, each prior adult conviction, diversion in lieu of
3 criminal prosecution or juvenile adjudication for: (A) Any act described in
4 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
5 thereto; or (B) a violation of a law of another state or an ordinance of any
6 city, or resolution of any county, which prohibits any act described in
7 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
8 thereto, shall count as one person felony for criminal history purposes.

9 (3) If the current crime of conviction is for a violation of K.S.A. 2017
10 Supp. 21-5413(b)(3), and amendments thereto:

11 (A) The first prior adult conviction, diversion in lieu of criminal
12 prosecution or juvenile adjudication for the following shall count as one
13 nonperson felony for criminal history purposes: (i) Any act described in
14 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
15 thereto; or (ii) a violation of a law of another state or an ordinance of any
16 city, or resolution of any county, which prohibits any act described in
17 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
18 thereto; and

19 (B) each second or subsequent prior adult conviction, diversion in
20 lieu of criminal prosecution or juvenile adjudication for the following shall
21 count as one person felony for criminal history purposes: (i) Any act
22 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
23 amendments thereto; or (ii) a violation of a law of another state or an
24 ordinance of any city, or resolution of any county, which prohibits any act
25 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
26 amendments thereto.

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

29 (1) As a prior person felony if the prior conviction or adjudication
30 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its
31 repeal, or K.S.A. 2017 Supp. 21-5807(a)(1), and amendments thereto.

32 (2) As a prior nonperson felony if the prior conviction or adjudication
33 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to
34 its repeal, or K.S.A. 2017 Supp. 21-5807(a)(2) or (a)(3), and amendments
35 thereto.

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

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

41 (2) An out-of-state crime will be classified as either a felony or a
42 misdemeanor according to the convicting jurisdiction.

43 (A) If a crime is a felony in ~~another state~~ *the convicting jurisdiction*,

1 it will be counted as a felony in Kansas.

2 (B) If a crime is a misdemeanor in ~~another state~~ *the convicting*
3 *jurisdiction*, the state of Kansas shall refer to the comparable offense ~~in~~
4 ~~order~~ *under the Kansas criminal code in effect on the date the current*
5 *crime of conviction was committed* to classify the out-of-state crime as a
6 class A, B or C misdemeanor. If the comparable ~~misdemeanor crime~~
7 ~~offense~~ in the state of Kansas is a felony, the out-of-state crime shall be
8 classified as a class A misdemeanor. If the state of Kansas does not have a
9 comparable ~~crime~~ *offense in effect on the date the current crime of*
10 *conviction was committed*, the out-of-state crime shall not be used in
11 classifying the offender's criminal history.

12 (C) *If a crime is not classified as either a felony or a misdemeanor in*
13 *the convicting jurisdiction, the state of Kansas shall refer to the*
14 *comparable offense under the Kansas criminal code in effect on the date*
15 *the current crime of conviction was committed to classify the out-of-state*
16 *crime as either a felony or a misdemeanor. If the state of Kansas does not*
17 *have a comparable offense in effect on the date the current crime of*
18 *conviction was committed, the out-of-state crime shall not be used in*
19 *classifying the offender's criminal history.*

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

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

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

33 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),
34 prior to its repeal, or K.S.A. 2017 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)
35 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications
36 will be applied in the same manner as adult convictions. Out-of-state
37 juvenile adjudications will be treated as juvenile adjudications in Kansas.

38 (g) A prior felony conviction of an attempt, a conspiracy or a
39 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
40 their repeal, or K.S.A. 2017 Supp. 21-5301, 21-5302 or 21-5303, and
41 amendments thereto, to commit a crime shall be treated as a person or
42 nonperson crime in accordance with the designation assigned to the
43 underlying crime.

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

3 (i) If the current crime of conviction is for a violation of K.S.A. 8-
4 1602(b)(3) through (b)(5), and amendments thereto, each of the following
5 prior convictions for offenses committed on or after July 1, 2011, shall
6 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
7 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
8 and amendments thereto, and K.S.A. 2017 Supp. 21-5405(a)(3) and 21-
9 5406, and amendments thereto, or a violation of a city ordinance or law of
10 another state which would also constitute a violation of such sections.

11 (j) The amendments made to this section by chapter 5 of the 2015
12 Session Laws of Kansas are procedural in nature and shall be construed
13 and applied retroactively.

14 Sec. 2. K.S.A. 2017 Supp. 21-6811 is hereby repealed.

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