

## HOUSE BILL No. 2516

By Committee on Corrections and Juvenile Justice

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing guidelines; criminal history calculation; requiring the  
3 journal entries used to establish criminal history to be attached to a  
4 criminal history worksheet and an offender who raises error in  
5 calculation for the first time on appeal to show prejudicial error;  
6 authorizing jurisdiction of the court to correct an illegal sentence while  
7 a direct appeal is pending; amending K.S.A. 2021 Supp. 21-6813, 21-  
8 6814 and 21-6820 and repealing the existing sections.  
9

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

11 Section 1. K.S.A. 2021 Supp. 21-6813 is hereby amended to read as  
12 follows: 21-6813. (a) The court shall order the preparation of the  
13 presentence investigation report by the court services officer as soon as  
14 possible after conviction of the defendant.

15 (b) Each presentence investigation report prepared for an offender to  
16 be sentenced for one or more felonies committed on or after July 1, 1993,  
17 shall be limited to the following information:

18 (1) A summary of the factual circumstances of the crime or crimes of  
19 conviction.

20 (2) If the defendant desires to do so, a summary of the defendant's  
21 version of the crime.

22 (3) When there is an identifiable victim, a victim report. The person  
23 preparing the victim report shall submit the report to the victim and  
24 request that the information be returned to be submitted as a part of the  
25 presentence investigation. To the extent possible, the report shall include a  
26 complete listing of restitution for damages suffered by the victim.

27 (4) An appropriate classification of each crime of conviction on the  
28 crime severity scale.

29 (5) A listing of prior adult convictions or juvenile adjudications for  
30 felony or misdemeanor crimes or violations of county resolutions or city  
31 ordinances comparable to any misdemeanor defined by state law. Such  
32 listing shall include an assessment of the appropriate classification of the  
33 criminal history on the criminal history scale and the source of information  
34 regarding each listed prior conviction and any available source of journal  
35 entries or other documents through which the listed convictions may be  
36 verified. ~~If any such journal entries or other documents~~ *The journal entries*

1 *for each listed prior conviction that is necessary to establish the*  
2 *appropriate classification on the criminal history scale or to establish a*  
3 *special sentencing rule shall be attached to the criminal history worksheet*  
4 *and be a part of the court record. If any other documents verifying the*  
5 *listed convictions are obtained by the court services officer, they shall be*  
6 *attached to the ~~presentence investigation report~~ criminal history worksheet*  
7 *and be a part of the court record. Any prior criminal history worksheets of*  
8 *the defendant shall also be attached.*

9 (6) A proposed grid block classification for each crime, or crimes of  
10 conviction and the presumptive sentence for each crime, or crimes of  
11 conviction.

12 (7) If the proposed grid block classification is a grid block that  
13 presumes imprisonment, the presumptive prison term range and the  
14 presumptive duration of postprison supervision as it relates to the crime  
15 severity scale.

16 (8) If the proposed grid block classification does not presume prison,  
17 the presumptive prison term range and the presumptive duration of the  
18 nonprison sanction as it relates to the crime severity scale and the court  
19 services officer's professional assessment as to recommendations for  
20 conditions to be mandated as part of the nonprison sanction.

21 (9) For defendants who are being sentenced for a conviction of a  
22 felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or  
23 K.S.A. 2021 Supp. 21-5706, and amendments thereto, and meet the  
24 requirements of K.S.A. 2021 Supp. 21-6824, and amendments thereto, the  
25 drug abuse assessment as provided in K.S.A. 2021 Supp. 21-6824, and  
26 amendments thereto.

27 (10) For defendants who are being sentenced for a third or subsequent  
28 felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to  
29 their repeal, or K.S.A. 2021 Supp. 21-5706, and amendments thereto, the  
30 drug abuse assessment as provided in K.S.A. 2021 Supp. 21-6824, and  
31 amendments thereto.

32 (c) The presentence investigation report will become part of the court  
33 record and shall be accessible to the public, except that the official version,  
34 defendant's version and the victim's statement, any psychological reports,  
35 risk and needs assessments and drug and alcohol reports and assessments  
36 shall be accessible only to: The parties; the sentencing judge; the  
37 department of corrections; community correctional services; any entity  
38 required to receive the information under the interstate compact for adult  
39 offender supervision; and, if requested, the Kansas sentencing  
40 commission. If the offender is committed to the custody of the secretary of  
41 corrections, the report shall be sent to the secretary and, in accordance  
42 with K.S.A. 75-5220, and amendments thereto, to the warden of the state  
43 correctional institution to which the defendant is conveyed.

1 (d) The criminal history worksheet will not substitute as a  
2 presentence investigation report.

3 (e) The presentence investigation report will not include optional  
4 report components, which would be subject to the discretion of the  
5 sentencing court in each district except for psychological reports and drug  
6 and alcohol reports.

7 (f) Except as provided in K.S.A. 2021 Supp. 21-6814, and  
8 amendments thereto, the court may take judicial notice in a subsequent  
9 felony proceeding of an earlier presentence investigation report criminal  
10 history worksheet prepared for a prior sentencing of the defendant for a  
11 felony committed on or after July 1, 1993.

12 (g) All presentence investigation reports in any case in which the  
13 defendant has been convicted of a felony shall be on a form approved by  
14 the Kansas sentencing commission.

15 Sec. 2. K.S.A. 2021 Supp. 21-6814 is hereby amended to read as  
16 follows: 21-6814. (a) The offender's criminal history shall be admitted  
17 in open court by the offender or determined by a preponderance of the  
18 evidence at the sentencing hearing by the sentencing judge.

19 (b) Except to the extent disputed in accordance with subsection (c),  
20 ~~the summary of the offender's criminal history prepared for the court by~~  
21 ~~the state criminal history worksheet and attached documents prepared for~~  
22 ~~the court pursuant to K.S.A. 2021 Supp. 21-6813(c)(5), and amendments~~  
23 ~~thereto~~, shall satisfy the state's burden of proof regarding an offender's  
24 criminal history.

25 (c) Upon receipt of the criminal history worksheet prepared for the  
26 court, the offender shall immediately notify the district attorney and the  
27 court with written notice of any error in the proposed criminal history  
28 worksheet. Such notice shall specify the exact nature of the alleged error.  
29 The state shall have the burden of proving the disputed portion of the  
30 offender's criminal history. The sentencing judge shall allow the state  
31 reasonable time to produce evidence to establish its burden of proof. If the  
32 offender later challenges such offender's criminal history, which has been  
33 previously established, the burden of proof shall shift to the offender to  
34 prove such offender's criminal history by a preponderance of the evidence.

35 (d) *If an offender raises a challenge to the offender's criminal history*  
36 *for the first time on appeal, the offender shall have the burden of*  
37 *designating a record that shows prejudicial error. If the offender fails to*  
38 *provide such record, the appellate court shall dismiss the claim. In*  
39 *designating a record that shows prejudicial error, the offender may*  
40 *provide the appellate court with journal entries of the challenged criminal*  
41 *history that were not originally attached to the criminal history worksheet,*  
42 *and the state may provide the appellate court with journal entries*  
43 *establishing a lack of prejudicial error. The court may take judicial notice*

1 *of such journal entries, complaints, plea agreements, jury instructions and*  
2 *verdict forms for Kansas convictions when determining whether*  
3 *prejudicial error exists. The court may remand the case if there is a*  
4 *reasonable question as to whether prejudicial error exists.*

5 Sec. 3. K.S.A. 2021 Supp. 21-6820 is hereby amended to read as  
6 follows: 21-6820. (a) A departure sentence *or a ruling on a motion filed*  
7 *pursuant to K.S.A. 22-3504, and amendments thereto,* is subject to appeal  
8 by the defendant or the state. The appeal shall be to the appellate courts in  
9 accordance with rules adopted by the supreme court.

10 (b) Pending review of the sentence, the sentencing court or the  
11 appellate court may order the defendant confined or placed on conditional  
12 release, including bond.

13 (c) On appeal from a judgment of conviction entered for a felony  
14 committed on or after July 1, 1993, the appellate court shall not review:

15 (1) Any sentence that is within the presumptive sentence for the  
16 crime; or

17 (2) any sentence resulting from an agreement between the state and  
18 the defendant which the sentencing court approves on the record.

19 (d) In any appeal from a judgment of conviction imposing a sentence  
20 that departs from the presumptive sentence prescribed by the sentencing  
21 grid for a crime, sentence review shall be limited to whether the sentencing  
22 court's findings of fact and reasons justifying a departure:

23 (1) Are supported by the evidence in the record; and

24 (2) constitute substantial and compelling reasons for departure.

25 (e) In any appeal from a judgment of conviction, the appellate court  
26 may review a claim that:

27 (1) A sentence that departs from the presumptive sentence resulted  
28 from partiality, prejudice, oppression or corrupt motive;

29 (2) the sentencing court erred in either including or excluding  
30 recognition of a prior conviction or juvenile adjudication for criminal  
31 history scoring purposes; or

32 (3) the sentencing court erred in ranking the crime severity level of  
33 the current crime or in determining the appropriate classification of a prior  
34 conviction or juvenile adjudication for criminal history purposes.

35 (f) The appellate court may reverse or affirm the sentence. If the  
36 appellate court concludes that the trial court's factual findings are not  
37 supported by evidence in the record or do not establish substantial and  
38 compelling reasons for a departure, it shall remand the case to the trial  
39 court for resentencing.

40 (g) The appellate court shall issue a written opinion whenever the  
41 judgment of the sentencing court is reversed. The court may issue a written  
42 opinion in any other case when it is believed that a written opinion will  
43 provide guidance to sentencing judges and others in implementing the

1 sentencing guidelines adopted by the Kansas sentencing commission. The  
2 appellate courts may provide by rule for summary disposition of cases  
3 arising under this section when no substantial question is presented by the  
4 appeal.

5 (h) A review under summary disposition shall be made solely upon  
6 the record that was before the sentencing court. Written briefs shall not be  
7 required unless ordered by the appellate court and the review and decision  
8 shall be made in an expedited manner according to rules adopted by the  
9 supreme court.

10 (i) The sentencing court shall retain authority irrespective of any  
11 ~~notice of appeal for 90 days after entry of judgment of conviction to~~  
12 ~~modify its judgment and sentence to correct any arithmetic or clerical~~  
13 ~~errors to correct an illegal sentence or clerical error pursuant to K.S.A.~~  
14 ~~22-3504, and amendments thereto. Notwithstanding the provisions of~~  
15 ~~K.S.A. 22-3504, and amendments thereto, if a motion to correct an illegal~~  
16 ~~sentence is filed while a direct appeal is pending, any change in the law~~  
17 ~~that occurs during the pending direct appeal shall apply.~~

18 (j) The amendments made to this section by ~~this act~~ *section 14 of*  
19 *chapter 59 of the 2019 Session Laws of Kansas* are procedural in nature  
20 and shall be construed and applied retroactively.

21 Sec. 4. K.S.A. 2021 Supp. 21-6813, 21-6814 and 21-6820 are hereby  
22 repealed.

23 Sec. 5. This act shall take effect and be in force from and after its  
24 publication in the statute book.