

## HOUSE BILL No. 2048

By Committee on Corrections and Juvenile Justice

1-22

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing; determination of offender's criminal history  
3 classification, comparable offense; amending K.S.A. 2018 Supp. 21-  
4 6811 and repealing the existing sections; also repealing K.S.A. 2018  
5 Supp. 21-6811c.  
6

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

8 Section 1. K.S.A. 2018 Supp. 21-6811 is hereby amended to read as  
9 follows: 21-6811. In addition to the provisions of K.S.A. 2018 Supp. 21-  
10 6810, and amendments thereto, the following shall apply in determining an  
11 offender's criminal history classification as contained in the presumptive  
12 sentencing guidelines grids:

13 (a) Every three prior adult convictions or juvenile adjudications of  
14 class A and class B person misdemeanors in the offender's criminal history,  
15 or any combination thereof, shall be rated as one adult conviction or one  
16 juvenile adjudication of a person felony for criminal history purposes.  
17 Every three prior adult convictions or juvenile adjudications of assault as  
18 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2018 Supp. 21-  
19 5412(a), and amendments thereto, occurring within a period commencing  
20 three years prior to the date of conviction for the current crime of  
21 conviction shall be rated as one adult conviction or one juvenile  
22 adjudication of a person felony for criminal history purposes.

23 (b) A conviction of criminal possession of a firearm as defined in  
24 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons  
25 as defined in K.S.A. 2018 Supp. 21-6301(a)(10) or (a)(11), and  
26 amendments thereto, or unlawful possession of a firearm as in effect on  
27 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be  
28 scored as a select class B nonperson misdemeanor conviction or  
29 adjudication and shall not be scored as a person misdemeanor for criminal  
30 history purposes.

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

1 (2) If the current crime of conviction was committed on or after July  
2 1, 1996, and is for a violation of K.S.A. 2018 Supp. 21-5405(a)(3) *or* (a)  
3 (5), and amendments thereto, each prior adult conviction, diversion in lieu  
4 of criminal prosecution or juvenile adjudication for: (A) Any act described  
5 in K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (B) a violation of  
6 a law of another state or an ordinance of any city, or resolution of any  
7 county, which prohibits any act described in K.S.A. 8-2,144 or 8-1567, and  
8 amendments thereto, shall count as one person felony for criminal history  
9 purposes.

10 (3) If the current crime of conviction is for a violation of K.S.A. 2018  
11 Supp. 21-5413(b)(3) *or* (b)(4), and amendments thereto:

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

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

28 (1) As a prior person felony if the prior conviction or adjudication  
29 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its  
30 repeal, or K.S.A. 2018 Supp. 21-5807(a)(1), and amendments thereto.

31 (2) As a prior nonperson felony if the prior conviction or adjudication  
32 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to  
33 its repeal, or K.S.A. 2018 Supp. 21-5807(a)(2) or (a)(3), and amendments  
34 thereto.

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

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

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

42 (A) If a crime is a felony in the convicting jurisdiction, it will be  
43 counted as a felony in Kansas.

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

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

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

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

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

31 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),  
32 prior to its repeal, or K.S.A. 2018 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)  
33 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications  
34 will be applied in the same manner as adult convictions. Out-of-state  
35 juvenile adjudications will be treated as juvenile adjudications 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. 2018 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. 2018 Supp. 21-5405(a)(3) *or* (a)(5)  
7 and 21-5406, and amendments thereto, or a violation of a city ordinance or  
8 law of another state which would also constitute a violation of such  
9 sections.

10 (j) *(1) For the purposes of determining whether an offense is*  
11 *comparable, the following shall be considered:*

12 *(A) The name of the out-of-state offense;*

13 *(B) the elements of the out-of-state offense; and*

14 *(C) whether the out-of-state offense prohibits similar conduct to the*  
15 *conduct prohibited by the closest approximate Kansas offense.*

16 *(2) The legislature intends that this provision related to*  
17 *comparability of an out-of-state offense to a Kansas offense shall be*  
18 *liberally construed to allow comparable offenses, regardless of whether*  
19 *the elements are identical to or narrower than the corresponding Kansas*  
20 *offense, to be used in classifying the offender's criminal history.*

21 *(k) The amendments made to this section by chapter 5 of the 2015*  
22 *Session Laws of Kansas are procedural in nature and shall be construed*  
23 *and applied retroactively.*

24 Sec. 2. K.S.A. 2018 Supp. 21-6811 and 21-6811c are hereby  
25 repealed.

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