

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2048

By Committee on Corrections and Juvenile Justice

1-22

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.

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

26 (B) (i) **In designating a felony crime as person or nonperson, an**  
27 **out-of-state conviction or adjudication for the commission of a felony**  
28 **offense, or an attempt, conspiracy or criminal solicitation to commit a**  
29 **felony offense, shall be classified as a person felony if one or more of**  
30 **the following circumstances is present as defined by the convicting**  
31 **jurisdiction in the elements of the out-of-state offense:**

32 (a) **Death or killing of any human being;**

33 (b) **threatening or causing fear of bodily or physical harm or**  
34 **violence, causing terror, physically intimidating or harassing any**  
35 **person;**

36 (c) **bodily harm or injury, physical neglect or abuse, restraint,**  
37 **confinement or touching of any person, without regard to degree;**

38 (d) **the presence of a person, other than the defendant, a charged**  
39 **accomplice or another person with whom the defendant is engaged in**  
40 **the sale, distribution or transfer of a controlled substance or non-**  
41 **controlled substance;**

42 (e) **possessing, viewing, depicting, distributing, recording or**  
43 **transmitting an image of any person;**

1       **(f) lewd fondling or touching, sexual intercourse or sodomy with**  
2 **or by any person or an unlawful sexual act involving a child under the**  
3 **age of consent;**

4       **(g) being armed with, using, displaying or brandishing a firearm**  
5 **or other weapon, excluding crimes of mere unlawful possession; or**

6       **(h) entering or remaining within any residence, dwelling or**  
7 **habitation.**

8       **(ii) An out-of-state conviction or adjudication for the commission**  
9 **of a felony offense, or an attempt, conspiracy or criminal solicitation**  
10 **to commit a felony offense, shall be classified as a person felony if the**  
11 **elements of the out-of-state felony conviction or adjudication**  
12 **necessarily prove that a person was present during the commission of**  
13 **the offense that resulted in the out-of-state conviction. For purposes of**  
14 **this clause, the person present must be someone other than the**  
15 **defendant, a charged accomplice or another person with whom the**  
16 **defendant is engaged in the sale, distribution or transfer of a**  
17 **controlled substance or non-controlled substance. The presence of a**  
18 **person includes physical presence and presence by electronic or**  
19 **telephonic communication.**

20       **(iii) An out-of-state conviction or adjudication for the commission**  
21 **of a felony offense, or an attempt, conspiracy or criminal solicitation**  
22 **to commit a felony offense, shall be classified as nonperson if the**  
23 **elements of the offense that resulted in the out-of-state conviction or**  
24 **adjudication do not require proof of any of the circumstances in**  
25 **subparagraph (B)(i) or (ii).**

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

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

32       (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),  
33 prior to its repeal, or K.S.A. 2018 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)  
34 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications  
35 will be applied in the same manner as adult convictions. Out-of-state  
36 juvenile adjudications will be treated as juvenile adjudications in Kansas.

37       (g) A prior felony conviction of an attempt, a conspiracy or a  
38 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to  
39 their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and  
40 amendments thereto, to commit a crime shall be treated as a person or  
41 nonperson crime in accordance with the designation assigned to the  
42 underlying crime.

43       (h) Drug crimes are designated as nonperson crimes for criminal

1 history scoring.

2 (i) If the current crime of conviction is for a violation of K.S.A. 8-  
3 1602(b)(3) through (b)(5), and amendments thereto, each of the following  
4 prior convictions for offenses committed on or after July 1, 2011, shall  
5 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-  
6 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,  
7 and amendments thereto, and K.S.A. 2018 Supp. 21-5405(a)(3) *or* (a)(5)  
8 and 21-5406, and amendments thereto, or a violation of a city ordinance or  
9 law of another state which would also constitute a violation of such  
10 sections.

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

13 ~~(A) The name of the out-of-state offense;~~

14 ~~(B) the elements of the out-of-state offense; and~~

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

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

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

25 **(k) The amendments made to this section by this act are**  
26 **procedural in nature and shall be construed and applied retroactively.**

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

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