

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; ***appeal of sentence; correction of***
4 ***sentence***; amending K.S.A. 2018 Supp. 21-6811, ***21-6820 and 22-3504***
5 and repealing the existing sections; also repealing K.S.A. 2018 Supp.
6 21-6811c.
7

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

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

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

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

32 (c) (1) If the current crime of conviction was committed before July
33 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
34 involuntary manslaughter in the commission of driving under the

1 influence, then, each prior adult conviction or juvenile adjudication for
2 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
3 for criminal history purposes.

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

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

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

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

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

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

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

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

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

43 (2) An out-of-state crime will be classified as either a felony or a

1 misdemeanor according to the convicting jurisdiction.

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

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

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

21 (3) The state of Kansas shall classify the crime as person or
22 nonperson.

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

29 ~~(B)(i)~~ **In designating a felony crime as person or nonperson, *the***
30 ***felony crime shall be classified as follows:***

31 **(i) An out-of-state conviction or adjudication for the commission**
32 **of a felony offense, or an attempt, conspiracy or criminal solicitation**
33 **to commit a felony offense, shall be classified as a person felony if one**
34 **or more of the following circumstances is present as defined by the**
35 **convicting jurisdiction in the elements of the out-of-state offense:**

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

37 **(b) threatening or causing fear of bodily or physical harm or**
38 **violence, causing terror, physically intimidating or harassing any**
39 **person;**

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

42 **(d) the presence of a person, other than the defendant, a charged**
43 **accomplice or another person with whom the defendant is engaged in**

1 the sale, distribution or transfer of a controlled substance or non-
2 controlled substance;

3 (e) possessing, viewing, depicting, distributing, recording or
4 transmitting an image of any person;

5 (f) lewd fondling or touching, sexual intercourse or sodomy with
6 or by any person or an unlawful sexual act involving a child under the
7 age of consent;

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

10 (h) entering or remaining within any residence, dwelling or
11 habitation.

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

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

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

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

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

41 (g) A prior felony conviction of an attempt, a conspiracy or a
42 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
43 their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and

1 amendments thereto, to commit a crime shall be treated as a person or
2 nonperson crime in accordance with the designation assigned to the
3 underlying crime.

4 (h) Drug crimes are designated as nonperson crimes for criminal
5 history scoring.

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

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

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

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

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

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

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

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

31 *Sec. 2. K.S.A. 2018 Supp. 21-6820 is hereby amended to read as*
32 *follows: 21-6820. (a) A departure sentence is subject to appeal by the*
33 *defendant or the state. The appeal shall be to the appellate courts in*
34 *accordance with rules adopted by the supreme court.*

35 (b) *Pending review of the sentence, the sentencing court or the*
36 *appellate court may order the defendant confined or placed on*
37 *conditional release, including bond.*

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

40 (1) *Any sentence that is within the presumptive sentence for the*
41 *crime; or*

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

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

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

7 *(2) constitute substantial and compelling reasons for departure.*

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

10 *(1) A sentence that departs from the presumptive sentence resulted*
11 *from partiality, prejudice, oppression or corrupt motive;*

12 *(2) the sentencing court erred in either including or excluding*
13 *recognition of a prior conviction or juvenile adjudication for criminal*
14 *history scoring purposes; or*

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

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

23 *(g) The appellate court shall issue a written opinion whenever the*
24 *judgment of the sentencing court is reversed. The court may issue a*
25 *written opinion in any other case when it is believed that a written*
26 *opinion will provide guidance to sentencing judges and others in*
27 *implementing the sentencing guidelines adopted by the Kansas*
28 *sentencing commission. The appellate courts may provide by rule for*
29 *summary disposition of cases arising under this section when no*
30 *substantial question is presented by the appeal.*

31 *(h) A review under summary disposition shall be made solely upon*
32 *the record that was before the sentencing court. Written briefs shall not*
33 *be required unless ordered by the appellate court and the review and*
34 *decision shall be made in an expedited manner according to rules*
35 *adopted by the supreme court.*

36 *(i) The sentencing court shall retain authority irrespective of any*
37 *notice of appeal for 90 days after entry of judgment of conviction to*
38 *modify its judgment and sentence to correct any arithmetic or clerical*
39 *errors.*

40 *(j) The amendments made to this section by this act are procedural in*
41 *nature and shall be construed and applied retroactively.*

42 *Sec. 3. K.S.A. 2018 Supp. 22-3504 is hereby amended to read as*
43 *follows: 22-3504. (†) (a) The court may correct an illegal sentence at*

1 *any time while the defendant is serving such sentence. The defendant*
2 *shall receive full credit for time spent in custody under the sentence*
3 *prior to correction. Unless the motion and the files and records of the*
4 *case conclusively show that the defendant is entitled to no relief, the*
5 *defendant shall have a right to a hearing, after reasonable notice to be*
6 *fixed by the court, to be personally present and to have the assistance of*
7 *counsel in any proceeding for the correction of an illegal sentence.*

8 ~~(2)~~(b) *Clerical mistakes in judgments, orders or other parts of the*
9 *record and errors in the record arising from oversight or omission may*
10 *be corrected by the court at any time and after such notice, if any, as the*
11 *court orders.*

12 ~~(3)~~(c) *For the purposes of this section:*

13 (1) *"Illegal sentence" means a sentence: Imposed by a court*
14 *without jurisdiction; that does not conform to the applicable statutory*
15 *provision, either in character or punishment; or that is ambiguous with*
16 *respect to the time and manner in which it is to be served at the time it is*
17 *pronounced. A sentence is not an "illegal sentence" because of a change*
18 *in the law that occurs after the sentence is pronounced.*

19 (2) *"Change in the law" means a statutory change or an opinion by*
20 *an appellate court of the state of Kansas, unless the opinion is issued*
21 *while the sentence is pending an appeal from the judgment of conviction.*

22 (d) *The amendments made to this section by this act are procedural*
23 *in nature and shall be construed and applied retroactively.*

24 ***New Sec. 4. If any provision or provisions of this act or the***
25 ***application thereof to any person or circumstance is held invalid, the***
26 ***invalidity shall not affect other provisions or applications of this act that***
27 ***can be given effect without the invalid provision or provisions or***
28 ***application, and to this end the provisions of this act are severable.***

29 ~~Sec. 2.~~ **5.** *K.S.A. 2018 Supp. 21-6811~~and~~, 21-6811c, 21-6820 and*
30 ***22-3504*** *are hereby repealed.*

31 ~~Sec. 3.~~ **6.** *This act shall take effect and be in force from and after its*
32 *publication in the Kansas register.*