

HOUSE BILL No. 2851

By Committee on Judiciary

2-13

AN ACT concerning juveniles; relating to miscreants and delinquents; relating to decaying sentences; amending K.S.A. 21-4709, 21-4710, 38-1601 and 38-1602 and K.S.A. 2001 Supp. 21-4711 and repealing the existing sections.

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

Section 1. K.S.A. 21-4709 is hereby amended to read as follows: 21-4709. The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

Criminal
History

Descriptive Criminal History

- Category
- A The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.
 - B The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.
 - C The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a nonperson felony.
 - D The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a nonperson felony.
 - E The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
 - F The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.

1 G The offender's criminal history includes one adult conviction or ju-
2 venile adjudication for a nonperson felony, but no adult convic-
3 tion or juvenile adjudication for a person felony.

4 H The offender's criminal history includes two or more adult convic-
5 tions or juvenile adjudications for nonperson and/or select mis-
6 demeanors, and no more than two adult convictions or juvenile
7 adjudications for person misdemeanors, but no adult conviction
8 or juvenile adjudication for either a person or nonperson felony.

9 I The offender's criminal history includes no prior record; or, one
10 adult conviction or juvenile adjudication for a person, nonperson,
11 or select misdemeanor, but no adult conviction or juvenile ad-
12 judication for either a person or nonperson felony.

13 *As used in this section, "adult convictions" includes extended jurisdic-
14 tion juvenile prosecutions, pursuant to K.S.A. 38-1636, and amendments
15 thereto.*

16 *For the purposes of the descriptive criminal history, juvenile adjudi-
17 cations are those adjudications for a person felony by a juvenile who is
18 17 years of age.*

19 Sec. 2. K.S.A. 21-4710 is hereby amended to read as follows: 21-
20 4710. (a) Criminal history categories contained in the sentencing guide-
21 lines grid for nondrug crimes and the sentencing guidelines grid for drug
22 crimes are based on the following types of prior convictions: Person felony
23 adult convictions, nonperson felony adult convictions, person felony ju-
24 venile adjudications, nonperson felony juvenile adjudications, person mis-
25 demeanor adult convictions, nonperson class A misdemeanor adult con-
26 victions, person misdemeanor juvenile adjudications, nonperson class A
27 misdemeanor juvenile adjudications, select class B nonperson misde-
28 meanor adult convictions, select class B nonperson misdemeanor juvenile
29 adjudications and convictions and adjudications for violations of municipal
30 ordinances or county resolutions which are comparable to any crime clas-
31 sified under the state law of Kansas as a person misdemeanor, select
32 nonperson class B misdemeanor or nonperson class A misdemeanor. A
33 prior conviction is any conviction, other than another count in the current
34 case which was brought in the same information or complaint or which
35 was joined for trial with other counts in the current case pursuant to
36 K.S.A. 22-3203 and amendments thereto, which occurred prior to sen-
37 tencing in the current case regardless of whether the offense that led to
38 the prior conviction occurred before or after the current offense or the
39 conviction in the current case.

40 (b) A class B nonperson select misdemeanor is a special classification
41 established for weapons violations. Such classification shall be considered
42 and scored in determining an offender's criminal history classification.

43 (c) Except as otherwise provided, all convictions, whether sentenced

1 consecutively or concurrently, shall be counted separately in the of-
2 fender's criminal history.

3 (d) Except as provided in K.S.A. 21-4716, and amendments thereto,
4 the following are applicable to determining an offender's criminal history
5 classification:

6 (1) Only verified convictions will be considered and scored.

7 (2) All prior adult felony convictions, ~~including expungements~~, will
8 be considered and scored.

9 (3) There will be no decay factor applicable for adult convictions.

10 (4) Except as otherwise provided, a juvenile adjudication *for juveniles*
11 *17 years of age when the crime occurred*, which would have been a non-
12 person class D or E felony if committed before July 1, 1993, or a nondrug
13 level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on
14 or after July 1, 1993, or a misdemeanor if committed by an adult, will
15 decay if the current crime of conviction is committed after the offender
16 reaches the age of ~~25~~ 23.

17 (5) For convictions of crimes committed before July 1, 1993, a ju-
18 venile adjudication *for juveniles 17 years of age when the crime occurred*
19 which would constitute a class A, B or C felony, if committed by an adult,
20 will not decay. For convictions of crimes committed on or after July 1,
21 1993, a juvenile adjudication *for juveniles 17 years of age when the crime*
22 *occurred* which would constitute an off-grid felony, a nondrug severity
23 level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if
24 committed by an adult, will not decay.

25 (6) All juvenile adjudications *for juveniles 17 years of age when the*
26 *crime occurred* which would constitute a person felony will not decay or
27 be forgiven.

28 (7) All person misdemeanors, class A nonperson misdemeanors and
29 class B select nonperson misdemeanors, and all municipal ordinance and
30 county resolution violations comparable to such misdemeanors, shall be
31 considered and scored.

32 (8) Unless otherwise provided by law, unclassified felonies and mis-
33 demeanors, shall be considered and scored as nonperson crimes for the
34 purpose of determining criminal history.

35 (9) Prior convictions of a crime defined by a statute which has since
36 been repealed shall *not* be scored using the classification assigned at the
37 time of such conviction.

38 (10) Prior convictions of a crime defined by a statute which has since
39 been determined unconstitutional by an appellate court shall not be used
40 for criminal history scoring purposes.

41 (11) Prior convictions of any crime shall not be counted in determin-
42 ing the criminal history category if they enhance the severity level or
43 applicable penalties, elevate the classification from misdemeanor to fel-

1 ony, or are elements of the present crime of conviction. Except as oth-
2 erwise provided, all other prior convictions will be considered and scored.

3 *(12) Except as provided further, a juvenile adjudication for juveniles*
4 *16 years of age and younger when the crime occurred will decay if the*
5 *current crime of conviction is committed after the offender reaches the*
6 *age of 21. If a juvenile is prosecuted and adjudicated as an extended*
7 *jurisdiction juvenile prosecution, such adjudication will not decay. For*
8 *the purposes of a juvenile adjudication for juveniles 16 years of age and*
9 *younger, decay means an automatic termination, deletion and destruction*
10 *of the records from any law enforcement agency that has records of the*
11 *adjudication, including, but not limited to, arrest or detention records.*
12 *Such decayed juvenile adjudication shall not be used for any criminal*
13 *proceeding, including, but not limited to sentencing.*

14 *(e) Notwithstanding the provisions of subsection (d)(4), (5), (6) and*
15 *(12), any juvenile adjudication that occurred prior to July 1, 1996 shall*
16 *not be considered and scored for criminal history purposes.*

17 Sec. 3. K.S.A. 2001 Supp. 21-4711 is hereby amended to read as
18 follows: 21-4711. In addition to the provisions of K.S.A. 21-4710 and
19 amendments thereto, the following shall apply in determining an of-
20 fender's criminal history classification as contained in the presumptive
21 sentencing guidelines grid for nondrug crimes and the presumptive sen-
22 tencing guidelines grid for drug crimes:

23 (a) Every three prior adult convictions or juvenile adjudications of
24 class A and class B person misdemeanors in the offender's criminal his-
25 tory, or any combination thereof, shall be rated as one adult conviction
26 or one juvenile adjudication of a person felony for criminal history pur-
27 poses. Every three prior adult convictions or juvenile adjudications of
28 assault as defined in K.S.A. 21-3408 and amendments thereto occurring
29 within a period commencing three years prior to the date of conviction
30 for the current crime of conviction shall be rated as one adult conviction
31 or one juvenile adjudication of a person felony for criminal history
32 purposes.

33 (b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amend-
34 ments thereto, criminal possession of firearms by a person who is both
35 addicted to and an unlawful user of a controlled substance, subsection
36 (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm
37 on school grounds or K.S.A. 21-4218 and amendments thereto, possession
38 of a firearm on the grounds or in the state capitol building, will be scored
39 as a select class B nonperson misdemeanor conviction or adjudication and
40 shall not be scored as a person misdemeanor for criminal history
41 purposes.

42 (c) (1) If the current crime of conviction was committed before July
43 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary man-

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

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

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

15 (1) As a prior person felony if the prior conviction or adjudication
16 was classified as a burglary as described in subsection (a) of K.S.A. 21-
17 3715 and amendments thereto.

18 (2) As a prior nonperson felony if the prior conviction or adjudication
19 was classified as a burglary as described in subsection (b) or (c) of K.S.A.
20 21-3715 and amendments thereto.

21 The facts required to classify prior burglary adult convictions and ju-
22 venile adjudications must be established by the state by a preponderance
23 of the evidence.

24 (e) Out-of-state convictions and juvenile adjudications will be used in
25 classifying the offender's criminal history. An out-of-state crime will be
26 classified as either a felony or a misdemeanor according to the convicting
27 jurisdiction. If a crime is a felony in another state, it will be counted as a
28 felony in Kansas. The state of Kansas shall classify the crime as person or
29 nonperson. In designating a crime as person or nonperson comparable
30 offenses shall be referred to. If the state of Kansas does not have a com-
31 parable offense, the out-of-state conviction shall be classified as a non-
32 person crime. Convictions or adjudications occurring within the federal
33 system, other state systems, the District of Columbia, foreign, tribal or
34 military courts are considered out-of-state convictions or adjudications.
35 The facts required to classify out-of-state adult convictions and juvenile
36 adjudications must be established by the state by a preponderance of the
37 evidence.

38 (f) Except as provided in subsections (4), (5) ~~and~~, (6) *and* (12) of
39 K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be
40 applied in the same manner as adult convictions. Out-of-state juvenile
41 adjudications will be treated as juvenile adjudications in Kansas.

42 (g) A prior felony conviction of an attempt, a conspiracy or a solici-
43 tation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amend-

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

4 (h) Drug crimes are designated as nonperson crimes for criminal his-
5 tory scoring.

6 Sec. 4. K.S.A. 38-1601 is hereby amended to read as follows: 38-
7 1601. Article 16 of chapter 38 of the Kansas Statutes Annotated and
8 K.S.A. 38-16,126, 38-16,127 and 38-16,128, and amendments thereto,
9 shall be known and may be cited as the Kansas juvenile justice code. The
10 primary goal of the juvenile justice code is to promote public safety, hold
11 juvenile offenders accountable for such juvenile's behavior and improve
12 the ability of juveniles to live more productively and responsibly in the
13 community. To accomplish this goal, juvenile justice policies developed
14 pursuant to the Kansas juvenile justice code shall be designed to: (a)
15 Protect public safety; (b) recognize that the ultimate solutions to juvenile
16 crime lie in the strengthening of families and educational institutions, the
17 involvement of the community and the implementation of effective pre-
18 vention and early intervention programs; (c) be community based to the
19 greatest extent possible; (d) be family centered when appropriate; (e)
20 facilitate efficient and effective cooperation, coordination and collabora-
21 tion among agencies of the local, state and federal government; (f) be
22 outcome based, allowing for the effective and accurate assessment of
23 program performance; (g) be cost-effectively implemented and admin-
24 istered to utilize resources wisely; (h) encourage the recruitment and
25 retention of well-qualified, highly trained professionals to staff all com-
26 ponents of the system; (i) appropriately reflect community norms and
27 public priorities; and (j) encourage public and private partnerships to
28 address community risk factors.

29 *In all proceedings concerning a juvenile offender, such offender shall*
30 *be known as a miscreant or delinquent, as such terms apply.*

31 Sec. 5. K.S.A. 38-1602 is hereby amended to read as follows: 38-
32 1602. As used in this code, unless the context otherwise requires:

33 (a) "Juvenile" means a person 10 or more years of age but less than
34 18 years of age.

35 (b) "Juvenile offender" means a person who commits an offense
36 while a juvenile which if committed by an adult would constitute the
37 commission of a felony or misdemeanor as defined by K.S.A. 21-3105,
38 and amendments thereto, or who violates the provisions of K.S.A. 21-
39 4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amend-
40 ments thereto, but does not include:

41 (1) A person 14 or more years of age who commits a traffic offense,
42 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

43 (2) a person 16 years of age or over who commits an offense defined

1 in chapter 32 of the Kansas Statutes Annotated;

2 (3) a person under 18 years of age who previously has been:

3 (A) Convicted as an adult under the Kansas code of criminal
4 procedure;

5 (B) sentenced as an adult under the Kansas code of criminal proce-
6 dure following termination of status as an extended jurisdiction juvenile
7 pursuant to K.S.A. 38-16,126, and amendments thereto; or

8 (C) convicted or sentenced as an adult in another state or foreign
9 jurisdiction under substantially similar procedures described in K.S.A. 38-
10 1636, and amendments thereto, or because of attaining the age of majority
11 designated in that state or jurisdiction.

12 (c) "Parent," when used in relation to a juvenile or a juvenile of-
13 fender, includes a guardian, conservator and every person who is by law
14 liable to maintain, care for or support the juvenile.

15 (d) "Law enforcement officer" means any person who by virtue of
16 that person's office or public employment is vested by law with a duty to
17 maintain public order or to make arrests for crimes, whether that duty
18 extends to all crimes or is limited to specific crimes.

19 (e) "Youth residential facility" means any home, foster home or struc-
20 ture which provides twenty-four-hour-a-day care for juveniles and which
21 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
22 Annotated.

23 (f) "Juvenile detention facility" means any secure public or private
24 facility which is used for the lawful custody of accused or adjudicated
25 juvenile offenders and which shall not be a jail.

26 (g) "Juvenile correctional facility" means a facility operated by the
27 commissioner for juvenile offenders.

28 (h) "Warrant" means a written order by a judge of the court directed
29 to any law enforcement officer commanding the officer to take into cus-
30 tody the juvenile named or described therein.

31 (i) "Commissioner" means the commissioner of juvenile justice.

32 (j) "Jail" means:

33 (1) An adult jail or lockup; or

34 (2) a facility in the same building as an adult jail or lockup, unless the
35 facility meets all applicable licensure requirements under law and there
36 is (A) total separation of the juvenile and adult facility spatial areas such
37 that there could be no haphazard or accidental contact between juvenile
38 and adult residents in the respective facilities; (B) total separation in all
39 juvenile and adult program activities within the facilities, including rec-
40 reation, education, counseling, health care, dining, sleeping, and general
41 living activities; and (C) separate juvenile and adult staff, including man-
42 agement, security staff and direct care staff such as recreational, educa-
43 tional and counseling.

1 (k) “Court-appointed special advocate” means a responsible adult,
2 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-
3 ments thereto, who is appointed by the court to represent the best inter-
4 ests of a child, as provided in K.S.A. 38-1606a, and amendments thereto,
5 in a proceeding pursuant to this code.

6 (l) “Juvenile intake and assessment worker” means a responsible
7 adult authorized to perform intake and assessment services as part of the
8 intake and assessment system established pursuant to K.S.A. 75-7023, and
9 amendments thereto.

10 (m) “Institution” means the following institutions: The Atchison ju-
11 venile correctional facility, the Beloit juvenile correctional facility, the
12 Larned juvenile correctional facility and the Topeka juvenile correctional
13 facility.

14 (n) “Sanctions house” means a facility which is operated or structured
15 so as to ensure that all entrances and exits from the facility are under the
16 exclusive control of the staff of the facility, whether or not the person
17 being detained has freedom of movement within the perimeters of the
18 facility, or which relies on locked rooms and buildings, fences, or physical
19 restraint in order to control the behavior of its residents. Upon an order
20 from the court, a licensed juvenile detention facility may serve as a sanc-
21 tions house.

22 (o) “Sentencing risk assessment tool” means an instrument adminis-
23 tered to juvenile offenders which delivers a score, or group of scores,
24 describing, but not limited to describing, the juvenile’s potential risk to
25 the community.

26 (p) “Educational institution” means all schools at the elementary and
27 secondary levels.

28 (q) “Educator” means any administrator, teacher or other profes-
29 sional or paraprofessional employee of an educational institution who has
30 exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A.
31 ~~2000~~ 2001 Supp. 72-89b03, and amendments thereto.

32 (r) *“Delinquent” means a person who commits an offense while a*
33 *juvenile which if committed by an adult would constitute the commission*
34 *of a felony as defined by K.S.A. 21-3105, and amendments thereto.*

35 (s) *“Miscreant” means a person who commits an offense while a ju-*
36 *venile which if committed by an adult would constitute commission of a*
37 *misdemeanor as defined by K.S.A. 21-3105, and amendments thereto.*

38 Sec. 6. K.S.A. 21-4709, 21-4710, 38-1601 and 38-1602 and K.S.A.
39 2001 Supp. 21-4711 are hereby repealed.

40 Sec. 7. This act shall take effect and be in force from and after its
41 publication in the statute book.