

HOUSE BILL No. 2053

AN ACT concerning crimes, punishment and criminal procedure; relating to calculation of criminal history; amending K.S.A. 2014 Supp. 21-6810 and 21-6811 and repealing the existing sections.

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

Section 1. K.S.A. 2014 Supp. 21-6810 is hereby amended to read as follows: 21-6810. (a) Criminal history categories contained in the sentencing guidelines grids are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

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

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in K.S.A. 2014 Supp. 21-6815, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

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

(2) All prior adult felony convictions, including expungements, will be considered and scored. *Prior adult felony convictions for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed;*

(3) There will be no decay factor applicable for:

(A) Adult convictions;

(B) a juvenile adjudication for an offense which would constitute a person felony if committed by an adult. *Prior juvenile adjudications for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed;*

(C) a juvenile adjudication for an offense committed before July 1, 1993, which would have been a class A, B or C felony, if committed by an adult; or

(D) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, a drug severity level 1, 2 or 3 felony for an offense committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2, 3 or 4 felony for an offense committed on or after July 1, 2012, if committed by an adult.

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is for an offense:

(A) Committed before July 1, 1993, which would have been a class D or E felony if committed by an adult;

(B) committed on or after July 1, 1993, which would be a nondrug severity level 6, 7, 8, 9 or 10, a drug severity level 4 felony for an offense committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 5 felony for an offense committed on or after July 1, 2012, if committed by an adult; or

(C) which would be a misdemeanor if committed by an adult.

(5) All person misdemeanors, class A nonperson misdemeanors and

class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored. *Prior misdemeanors for offenses that were committed before July 1, 1993, shall be scored as a person or nonperson crime using a comparable offense under the Kansas criminal code in effect on the date the current crime of conviction was committed.*

(6) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(7) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

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

(9) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

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

Sec. 2. K.S.A. 2014 Supp. 21-6811 is hereby amended to read as follows: 21-6811. In addition to the provisions of K.S.A. 2014 Supp. 21-6810, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408, prior to its repeal, or ~~subsection (a) of K.S.A. 2014 Supp. 21-5412(a)~~, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal possession of a firearm as defined in ~~subsection (a)(1) or (a)(5) of K.S.A. 21-4204(a)(1) or (a)(5)~~, prior to its repeal, criminal use of weapons as defined in ~~subsection (a)(10) or (a)(11) of K.S.A. 2014 Supp. 21-6301(a)(10) or (a)(11)~~, and amendments thereto, or unlawful possession of a firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

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

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of ~~subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3)~~, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

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

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in ~~subsection (a) of K.S.A. 21-3715(a)~~, prior to its repeal, or ~~subsection (a)(1) of K.S.A. 2014 Supp. 21-5807(a)(1)~~, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in ~~subsection (b) or (c) of K.S.A. 21-3715(b) or (c)~~, prior to its repeal, or ~~subsection (a)(2) or (a)(3) of K.S.A. 2014 Supp. 21-5807(a)(2) or (a)(3)~~, and amendments thereto.

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

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson, comparable offenses *under the Kansas criminal code in effect on the date the current crime of conviction was committed* shall be referred to. If the state of Kansas does not have a comparable offense *in effect on the date the current crime of conviction was committed*, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in ~~subsections (d)(4), (d)(5) or (d)(6) of K.S.A. 21-4710(d)(4), (d)(5) and (d)(6)~~, prior to its repeal, or ~~subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of K.S.A. 2014 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4)~~, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2014 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

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

(i) If the current crime of conviction is for a violation of ~~subsections (b)(2) through (b)(4) of K.S.A. 8-1602(b)(3) through (b)(5)~~, and amendments thereto, each of the following prior convictions *for offenses* committed on or after July 1, 2011, shall count as a person felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments thereto, and ~~subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3) and 21-5406~~, and amendments thereto, or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.

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

New Sec. 3. If any provision of this act is held invalid, the invalidity shall not affect other provisions or applications of the act, and to this end the provisions of this act are severable.

Sec. 4. K.S.A. 2014 Supp. 21-6810 and 21-6811 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.