

HOUSE BILL No. 2144

By Committee on Corrections and Juvenile Justice

1-26

Proposed Amendments to HB 2144 - KACDL  
House Corrections and Juvenile Justice  
Prepared by the Office of Revisor of Statutes  
February 15, 2021

the journal entries used to establish criminal history be attached to a criminal history worksheet and

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing guidelines; criminal history calculation; requiring an  
3 offender who raises error in calculation for first time on appeal to show  
4 prejudicial error; amending K.S.A. 2020 Supp. 21-6814 and repealing  
5 the existing section.

21-6813,

; authorizing the court jurisdiction to correct an illegal sentence while a direct appeal is pending

and 21-6820

sections

Insert Section 1 - see attachment

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

8 Section 1. K.S.A. 2020 Supp. 21-6814 is hereby amended to read as  
9 follows: 21-6814. (a) The offender's criminal history shall be admitted in  
10 open court by the offender or determined by a preponderance of the  
11 evidence at the sentencing hearing by the sentencing judge.

criminal history worksheet and attached documents prepared for the court pursuant to K.S.A. 2020 Supp. 21-6813 (c)(5), and amendments thereto,

12 (b) Except to the extent disputed in accordance with subsection (c),  
13 the summary of the offender's criminal history prepared for the court by  
14 the state shall satisfy the state's burden of proof regarding an offender's  
15 criminal history.

In designating a record that shows prejudicial error, the offender may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet, and the state may provide the appellate court with journal entries establishing a lack of prejudicial error. The court may take judicial notice of such journal entries, complaints, plea agreements, jury instructions and verdict forms for Kansas convictions when determining whether prejudicial error exists. The court may remand the case if there is a reasonable question as to whether prejudicial error exists.

16 (c) Upon receipt of the criminal history worksheet prepared for the  
17 court, the offender shall immediately notify the district attorney and the  
18 court with written notice of any error in the proposed criminal history  
19 worksheet. Such notice shall specify the exact nature of the alleged error.  
20 The state shall have the burden of proving the disputed portion of the  
21 offender's criminal history. The sentencing judge shall allow the state  
22 reasonable time to produce evidence to establish its burden of proof. If the  
23 offender later challenges such offender's criminal history, which has been  
24 previously established, the burden of proof shall shift to the offender to  
25 prove such offender's criminal history by a preponderance of the evidence.

26 (d) *If an offender raises a challenge to the offender's criminal history  
27 for the first time on appeal, the offender shall have the burden of  
28 designating a record that shows prejudicial error. If the offender fails to  
29 provide such record, the appellate court shall dismiss the claim.*

Insert Section 3 - see attachment

30 Sec. 2. K.S.A. 2020 Supp. 21-6814 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its  
32 publication in the statute book.

21-6813,

and 21-6820 are

Section 1. K.S.A. 2020 Supp. 21-6813 is hereby amended to read as follows: (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence investigation report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents The journal entries for each listed prior conviction that is necessary to establish the appropriate classification on the criminal history scale or to establish a special sentencing rule shall be attached to the criminal history worksheet and be a part of the court record. If any other documents verifying the listed convictions are obtained by the court services officer, they shall be attached to the presentence investigation report criminal history worksheet and be a part of the court record. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block that presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, and meet the requirements of K.S.A. 2020 Supp. 21-6824, and amendments thereto, the drug abuse assessment as provided in K.S.A. 2020 Supp. 21-6824, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, the drug abuse assessment as provided in K.S.A. 2020 Supp. 21-6824, and amendments thereto.

(c) The presentence investigation report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to: The parties; the sentencing judge; the department of corrections; community correctional services; any entity required to receive the information under the interstate compact for adult offender supervision; and, if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence investigation report.

(e) The presentence investigation report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) Except as provided in K.S.A. 2020 Supp. 21-6814, and amendments thereto, the court may take judicial notice in a subsequent felony proceeding of an earlier presentence investigation report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence investigation reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

Section 3. K.S.A. 2020 Supp. 21-6820 is hereby amended to read as follows: (a) A departure sentence or ruling on a motion filed pursuant to K.S.A. 22-3504, and amendments thereto, is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

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

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

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

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

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

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

(2) constitute substantial and compelling reasons for departure.

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

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

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

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

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

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

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

(i) ~~The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors to~~ correct an illegal sentence or clerical error pursuant to K.S.A. 22-3504, and amendments thereto. Notwithstanding the provisions of K.S.A. 22-3504, and amendments thereto, if a motion to correct an illegal sentence is filed while a direct appeal is pending, any change in the law that occurs during the pending direct appeal shall apply.

(j) The amendments made to this section by this act section 14 of chapter 59 of the 2019 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.