

*As Amended by Senate Committee*

---

---

{As Amended by House Committee of the Whole}

---

---

**As Amended by House Committee**

---

---

*Session of 2015*

**HOUSE BILL No. 2053**

By 2014 Special Committee on Judiciary

1-20

---

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to calculation of criminal history; ~~correction of sentence~~; amending  
3 K.S.A. 22-3504 and K.S.A. 2014 Supp. 21-6810 and 21-6811 and  
4 repealing the existing sections.  
5

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

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

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

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

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

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

5 (2) All prior adult felony convictions, including expungements, will  
6 be considered and scored. *Prior adult felony convictions {for offenses}*  
7 *that were committed before July 1, 1993, shall be scored as a person or*  
8 *nonperson crime using an existing comparable offense under the Kansas*  
9 *criminal code;*

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

11 (A) Adult convictions;

12 (B) a juvenile adjudication for an offense which would constitute a  
13 person felony if committed by an adult. *Prior juvenile adjudications {for*  
14 *offenses} that were committed before July 1, 1993, shall be scored as a*  
15 *person or nonperson crime using an existing comparable offense under*  
16 *the Kansas criminal code;*

17 (C) a juvenile adjudication for an offense committed before July 1,  
18 1993, which would have been a class A, B or C felony, if committed by an  
19 adult; or

20 (D) a juvenile adjudication for an offense committed on or after July  
21 1, 1993, which would be an off-grid felony, a nondrug severity level 1, 2,  
22 3, 4 or 5 felony, a drug severity level 1, 2 or 3 felony for an offense  
23 committed on or after July 1, 1993, but prior to July 1, 2012, or a drug  
24 severity level 1, 2, 3 or 4 felony for an offense committed on or after July  
25 1, 2012, if committed by an adult.

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

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

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

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

37 (5) All person misdemeanors, class A nonperson misdemeanors and  
38 class B select nonperson misdemeanors, and all municipal ordinance and  
39 county resolution violations comparable to such misdemeanors, shall be  
40 considered and scored. *Prior misdemeanors for offenses that were*  
41 *committed before July 1, 1993, shall be scored as a person or nonperson*  
42 *crime using an existing comparable offense under the Kansas criminal*  
43 *code.*

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

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

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

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

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

17 Sec. 2. K.S.A. 2014 Supp. 21-6811 is hereby amended to read as  
18 follows: 21-6811. In addition to the provisions of K.S.A. 2014 Supp. 21-  
19 6810, and amendments thereto, the following shall apply in determining an  
20 offender's criminal history classification as contained in the presumptive  
21 sentencing guidelines grids:

22 (a) Every three prior adult convictions or juvenile adjudications of  
23 class A and class B person misdemeanors in the offender's criminal history,  
24 or any combination thereof, shall be rated as one adult conviction or one  
25 juvenile adjudication of a person felony for criminal history purposes.  
26 Every three prior adult convictions or juvenile adjudications of assault as  
27 defined in K.S.A. 21-3408, prior to its repeal, or ~~subsection (a)~~ of K.S.A.  
28 2014 Supp. 21-5412(a), and amendments thereto, occurring within a  
29 period commencing three years prior to the date of conviction for the  
30 current crime of conviction shall be rated as one adult conviction or one  
31 juvenile adjudication of a person felony for criminal history purposes.

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

40 (c) (1) If the current crime of conviction was committed before July  
41 1, 1996, and is for ~~subsection (b) of~~ K.S.A. 21-3404(b), as in effect on  
42 June 30, 1996, involuntary manslaughter in the commission of driving  
43 under the influence, then, each prior adult conviction or juvenile

1 adjudication for K.S.A. 8-1567, and amendments thereto, shall count as  
2 one person felony for criminal history purposes.

3 (2) If the current crime of conviction was committed on or after July  
4 1, 1996, and is for a violation of ~~subsection (a)(3) of~~ K.S.A. 2014 Supp.  
5 21-5405(a)(3), and amendments thereto, each prior adult conviction,  
6 diversion in lieu of criminal prosecution or juvenile adjudication for: (A)  
7 An act described in K.S.A. 8-1567, and amendments thereto; or (B) a  
8 violation of a law of another state or an ordinance of any city, or resolution  
9 of any county, which prohibits the act described in K.S.A. 8-1567, and  
10 amendments thereto, shall count as one person felony for criminal history  
11 purposes.

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

14 (1) As a prior person felony if the prior conviction or adjudication  
15 was classified as a burglary as defined in ~~subsection (a) of~~ K.S.A. 21-  
16 3715(a), prior to its repeal, or ~~subsection (a)(1) of~~ K.S.A. 2014 Supp. 21-  
17 5807(a)(1), and amendments thereto.

18 (2) As a prior nonperson felony if the prior conviction or adjudication  
19 was classified as a burglary as defined in ~~subsection (b) or (c) of~~ K.S.A.  
20 21-3715(b) or (c), prior to its repeal, or ~~subsection (a)(2) or (a)(3) of~~  
21 K.S.A. 2014 Supp. 21-5807(a)(2) or (a)(3), and amendments thereto.

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

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

39 (f) Except as provided in ~~subsections (d)(4), (d)(5) or (d)(6) of~~ K.S.A.  
40 21-4710(d)(4), (d)(5) and (d)(6), prior to its repeal, or ~~subsections (d)(3)~~  
41 ~~(B), (d)(3)(C), (d)(3)(D) and (d)(4) of~~ K.S.A. 2014 Supp. 21-6810(d)(3)  
42 (B), (d)(3)(C), (d)(3)(D) and (d)(4), and amendments thereto, juvenile  
43 adjudications will be applied in the same manner as adult convictions.

1 Out-of-state juvenile adjudications will be treated as juvenile adjudications  
2 in Kansas.

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

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

11 (i) If the current crime of conviction is for a violation of ~~subsections~~  
12 ~~(b)(2) through (b)(4) of K.S.A. 8-1602(b)(3) through (b)(5), and~~  
13 ~~amendments thereto, each of the following prior convictions {for~~  
14 ~~offenses}~~ committed on or after July 1, 2011, shall count as a person  
15 felony for criminal history purposes: K.S.A. 8-235, 8-262, 8-287, 8-291, 8-  
16 1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104, and amendments  
17 thereto, and ~~subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3) and 21-~~  
18 ~~5406, and amendments thereto, or a violation of a city ordinance or law of~~  
19 ~~another state which would also constitute a violation of such sections.~~

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

22 ~~Sec. 3. K.S.A. 22-3504 is hereby amended to read as follows: 22-~~  
23 ~~3504. (1) (a) The court may correct an illegal sentence at any time as~~  
24 ~~provided in subsection (c). The defendant shall receive full credit for time~~  
25 ~~spent in custody under the sentence prior to correction. Unless the motion~~  
26 ~~and the files and records of the case conclusively show that the defendant~~  
27 ~~is not entitled to relief, the defendant shall have a right to a hearing, after~~  
28 ~~reasonable notice to be fixed by the court, to be personally present and to~~  
29 ~~have the assistance of counsel in any proceeding for the correction of an~~  
30 ~~illegal sentence.~~

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

35 ~~(c) (1) Any motion under subsection (a) must be brought within one~~  
36 ~~year of:~~

37 ~~(A) The final order of the last appellate court in this state to exercise~~  
38 ~~jurisdiction on a direct appeal or the termination of such appellate~~  
39 ~~jurisdiction; or~~

40 ~~(B) the denial of a petition for writ of certiorari to the United States~~  
41 ~~supreme court or issuance of such court's final order following the~~  
42 ~~granting of such petition.~~

43 ~~(2) The time limitations herein may be extended by the court only to~~

1 ~~prevent a manifest injustice concerning why the motion was not timely~~  
2 ~~filed. Manifest injustice does not include a sentence that is imposed in~~  
3 ~~compliance with the appellate case law existing at the time of sentencing.~~

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

7 Sec. 4. ~~K.S.A. 22-3504~~ and K.S.A. 2014 Supp. 21-6810 and 21-6811  
8 are hereby repealed.

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