

2018 Kansas Statutes

21-6811. Determination of offender's criminal history classification in presumptive sentencing guidelines grids. [See Revisor's Note] In addition to the provisions of K.S.A. 2018 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 K.S.A. 2018 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 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons as defined in K.S.A. 2018 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 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 K.S.A. 2018 Supp. 21-5405(a)(3), and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) Any act described in K.S.A. 8-2,144 or 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 any act described in K.S.A. 8-2,144 or 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

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

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

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

(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 K.S.A. 21-3715(a), prior to its repeal, or K.S.A. 2018 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 K.S.A. 21-3715(b) or (c), prior to its repeal, or K.S.A. 2018 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) (1) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history.

(2) An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction.

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

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

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

(3) 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 crime shall be classified as a nonperson crime.

(4) 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.

(5) 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 K.S.A. 21-4710(d)(4), (d)(5) and (d)(6), prior to its repeal, or K.S.A. 2018 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(4) and (d)(5), 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. 2018 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 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 K.S.A. 2018 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 chapter 5 of the 2015 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.

History: L. 2010, ch. 136, § 292; L. 2011, ch. 30, § 79; L. 2012, ch. 166, § 4; L. 2015, ch. 5, § 2; L. 2015, ch. 90, § 2; L. 2016, ch. 97, § 2; L. 2018, ch. 16, § 1; L. 2018, ch. 106, § 26; July 1.

Section was amended twice in the 2011 session, see also 21-6811a.

Section was amended twice in the 2018 session, see also 21-6811c.