

HOUSE BILL No. 2048

By Committee on Corrections and Juvenile Justice

1-22

Proposed Amendments to HB 2048 - Patton
Corrections and Juvenile Justice Committee
Prepared by: Natalie Scott, Assistant Revisor
February 25, 2019

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; determination of offender's criminal history
3 classification, comparable offense; amending K.S.A. 2018 Supp. 21-
4 6811 and repealing the existing sections; also repealing K.S.A. 2018
5 Supp. 21-6811c.
6

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

8 Section 1. K.S.A. 2018 Supp. 21-6811 is hereby amended to read as
9 follows: 21-6811. In addition to the provisions of K.S.A. 2018 Supp. 21-
10 6810, and amendments thereto, the following shall apply in determining an
11 offender's criminal history classification as contained in the presumptive
12 sentencing guidelines grids:

13 (a) Every three prior adult convictions or juvenile adjudications of
14 class A and class B person misdemeanors in the offender's criminal history,
15 or any combination thereof, shall be rated as one adult conviction or one
16 juvenile adjudication of a person felony for criminal history purposes.
17 Every three prior adult convictions or juvenile adjudications of assault as
18 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2018 Supp. 21-
19 5412(a), and amendments thereto, occurring within a period commencing
20 three years prior to the date of conviction for the current crime of
21 conviction shall be rated as one adult conviction or one juvenile
22 adjudication of a person felony for criminal history purposes.

23 (b) A conviction of criminal possession of a firearm as defined in
24 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
25 as defined in K.S.A. 2018 Supp. 21-6301(a)(10) or (a)(11), and
26 amendments thereto, or unlawful possession of a firearm as in effect on
27 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
28 scored as a select class B nonperson misdemeanor conviction or
29 adjudication and shall not be scored as a person misdemeanor for criminal
30 history purposes.

31 (c) (1) If the current crime of conviction was committed before July
32 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
33 involuntary manslaughter in the commission of driving under the
34 influence, then, each prior adult conviction or juvenile adjudication for
35 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
36 for criminal history purposes.

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

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

18 ~~(3) The state of Kansas shall classify the crime as person or~~
 19 ~~nonperson. In designating a crime as person or nonperson, comparable~~
 20 ~~offenses under the Kansas criminal code in effect on the date the current~~
 21 ~~crime of conviction was committed shall be referred to. If the state of~~
 22 ~~Kansas does not have a comparable offense in effect on the date the~~
 23 ~~current crime of conviction was committed, the out-of-state crime shall be~~
 24 ~~classified as a nonperson crime.~~

(A)

misdemeanor

person

Insert attachment here

25 (4) Convictions or adjudications occurring within the federal system,
 26 other state systems, the District of Columbia, foreign, tribal or military
 27 courts are considered out-of-state convictions or adjudications.

28 (5) The facts required to classify out-of-state adult convictions and
 29 juvenile adjudications shall be established by the state by a preponderance
 30 of the evidence.

31 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),
 32 prior to its repeal, or K.S.A. 2018 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)
 33 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications
 34 will be applied in the same manner as adult convictions. Out-of-state
 35 juvenile adjudications will be treated as juvenile adjudications in Kansas.

36 (g) A prior felony conviction of an attempt, a conspiracy or a
 37 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
 38 their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and
 39 amendments thereto, to commit a crime shall be treated as a person or
 40 nonperson crime in accordance with the designation assigned to the
 41 underlying crime.

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

1 (i) If the current crime of conviction is for a violation of K.S.A. 8-
 2 1602(b)(3) through (b)(5), and amendments thereto, each of the following
 3 prior convictions for offenses committed on or after July 1, 2011, shall
 4 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
 5 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
 6 and amendments thereto, and K.S.A. 2018 Supp. 21-5405(a)(3) or (a)(5)
 7 and 21-5406, and amendments thereto, or a violation of a city ordinance or
 8 law of another state which would also constitute a violation of such
 9 sections.

10 ~~(j) (1) For the purposes of determining whether an offense is~~
 11 ~~comparable, the following shall be considered:~~

12 ~~(A) The name of the out-of-state offense;~~

13 ~~(B) the elements of the out-of-state offense; and~~

14 ~~(C) whether the out-of-state offense prohibits similar conduct to the~~
 15 ~~conduct prohibited by the closest approximate Kansas offense.~~

16 ~~(2) The legislature intends that this provision related to~~
 17 ~~comparability of an out-of-state offense to a Kansas offense shall be~~
 18 ~~liberally construed to allow comparable offenses, regardless of whether~~
 19 ~~the elements are identical to or narrower than the corresponding Kansas~~
 20 ~~offense, to be used in classifying the offender's criminal history.~~

21 ~~(k) The amendments made to this section by chapter 5 of the 2015~~
 22 ~~Session Laws of Kansas are procedural in nature and shall be construed~~
 23 ~~and applied retroactively.~~

24 Sec. 2. K.S.A. 2018 Supp. 21-6811 and 21-6811c are hereby
 25 repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
 27 publication in the Kansas register.

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

(B)(i) In designating a felony crime as person or nonperson, an out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as a person felony if one or more of the following circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense:

- (a) death or killing of any human being;
- (b) threatening or causing fear of bodily or physical harm or violence, causing terror, physically intimidating or harassing any person;
- (c) bodily harm or injury, physical neglect or abuse, restraint, confinement or touching of any person, without regard to degree;
- (d) the presence of a person, other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance;
- (e) possessing, viewing, depicting, distributing, recording or transmitting an image of any person;
- (f) lewd fondling or touching, sexual intercourse or sodomy with or by any person or an unlawful sexual act involving a child under the age of consent;
- (g) being armed with, using, displaying or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
- (h) entering or remaining within any residence, dwelling or habitation.

(ii) An out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as a person felony if the elements of the out-of-state felony conviction or adjudication necessarily prove a person was present during the commission of the offense that resulted in the out-of-state conviction. For purposes of this clause, the person present must be someone other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance. The presence of a person includes physical presence and presence by electronic or telephonic communication.

(iii) An out-of-state conviction or adjudication for the commission of a felony offense, or an attempt, conspiracy or criminal solicitation to commit a felony offense, shall be classified as nonperson if the elements of the offense that resulted in the out-of-state conviction or adjudication do not require proof of any of the circumstances in subparagraph (B).