

Proposed Amendments to HB 2686 - Highberger 3
House Corrections and Juvenile Justice
Prepared by: Natalie Scott, Assistant Revisor
February 24, 2020

HOUSE BILL No. 2686

By Committee on Corrections and Juvenile Justice

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to possession of marijuana; removing felony violation, releasing people
3 from custody for such violations; amending K.S.A. 2019 Supp. 21-
4 5706 and repealing the existing section

expungement of convictions and diversion
agreements; criminal history calculation;

, 21-6614 and 21-6810

5
6 *Be it enacted by the Legislature of the State of Kansas:* sections

7 New Section 1. (a) All persons serving a term of imprisonment in the
8 custody of the secretary of corrections for a violation of K.S.A. 2019
9 Supp. 21-5706(b), and amendments thereto, when the substance involved
10 is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto,
11 or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and
12 amendments thereto, shall be released from such person's term of
13 imprisonment by the secretary as provided in this section.

14 (b) All persons on probation or assignment to a community
15 correctional services program for a violation of K.S.A. 2019 Supp. 21-
16 5706(b), and amendments thereto, when the substance involved is
17 marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto,
18 or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and
19 amendments thereto, shall be discharged from probation or assignment to a
20 community correctional services program as provided in this section.

21 (c) (1) The secretary shall make appropriate calculation and
22 adjustments of sentence for inmates in the secretary's custody or on a
23 community correctional services program by July 1, 2020.

24 (2) The judicial branch shall make appropriate calculation and
25 adjustments of sentence for offenders on probation being supervised by
26 court services officers by July 1, 2020.

27 Sec. 2. K.S.A. 2019 Supp. 21-5706 is hereby amended to read as
28 follows: 21-5706. (a) It shall be unlawful for any person to possess any
29 opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-
30 4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled
31 substance analog thereof.

32 (b) It shall be unlawful for any person to possess any of the following
33 controlled substances or controlled substance analogs thereof:

34 (1) Any depressant designated in K.S.A. 65-4105(e), 65-4107(e), 65-
35 4109(b) or (c) or 65-4111(b), and amendments thereto;

36 (2) any stimulant designated in K.S.A. 65-4105(f), 65-4107(d)(2), (d)

- 1 (4), (d)(5) or (f)(2) or 65-4109(e), and amendments thereto;
- 2 (3) any hallucinogenic drug designated in K.S.A. 65-4105(d), 65-
3 4107(g) or 65-4109(g), and amendments thereto;
- 4 (4) any substance designated in K.S.A. 65-4105(g) and 65-4111(c),
5 (d), (e), (f) or (g), and amendments thereto;
- 6 (5) any anabolic steroids as defined in K.S.A. 65-4109(f), and
7 amendments thereto;
- 8 (6) any substance designated in K.S.A. 65-4113, and amendments
9 thereto; or
- 10 (7) any substance designated in K.S.A. 65-4105(h), and amendments
11 thereto.
- 12 (c) (1) Violation of subsection (a) is a drug severity level 5 felony.
- 13 (2) Except as provided in subsection (c)(3):
- 14 (A) Violation of subsection (b) is a class A nonperson misdemeanor,
15 except as provided in subparagraph (B); and
- 16 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
17 severity level 5 felony if that person has a prior conviction under such
18 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
19 similar offense from another jurisdiction, or under any city ordinance or
20 county resolution for a substantially similar offense if the substance
21 involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana
22 as designated in K.S.A. 65-4105(d), and amendments thereto, or any
23 substance designated in K.S.A. 65-4105(h), and amendments thereto, or an
24 analog thereof.
- 25 (3) If the substance involved is marijuana, as designated in K.S.A.
26 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as
27 designated in K.S.A. 65-4105(h), and amendments thereto, violation of
28 subsection (b) is a:
- 29 (A) Class B nonperson misdemeanor, except as provided in
30 subparagraphs subparagraph (B) and (C); and
- 31 (B) class A nonperson misdemeanor if that person has a one or more
32 prior conviction convictions under such subsection, under K.S.A. 65-4162,
33 prior to its repeal, under a substantially similar offense from another
34 jurisdiction; or under any city ordinance or county resolution for a
35 substantially similar offense; and
- 36 (C) drug severity level 5 felony if that person has two or more prior
37 convictions under such subsection, under K.S.A. 65-4162, prior to its
38 repeal, under a substantially similar offense from another jurisdiction, or
39 under any city ordinance or county resolution for a substantially similar
40 offense.
- 41 (d) It shall be an affirmative defense to prosecution under this section
42 arising out of a person's possession of any cannabidiol treatment
43 preparation if the person:

1 (1) Has a debilitating medical condition, as defined in K.S.A. 2019
2 Supp. 65-6235, and amendments thereto, or is the parent or guardian of a
3 minor child who has such debilitating medical condition;

4 (2) is possessing a cannabidiol treatment preparation, as defined in
5 K.S.A. 2019 Supp. 65-6235, and amendments thereto, that is being used to
6 treat such debilitating medical condition; and

7 (3) has possession of a letter, at all times while the person has
8 possession of the cannabidiol treatment preparation, that:

9 (A) Shall be shown to a law enforcement officer on such officer's
10 request;

11 (B) is dated within the preceding 15 months and signed by the
12 physician licensed to practice medicine and surgery in Kansas who
13 diagnosed the debilitating medical condition;

14 (C) is on such physician's letterhead; and

15 (D) identifies the person or the person's minor child as such
16 physician's patient and identifies the patient's debilitating medical
17 condition.

18 (e) It shall not be a defense to charges arising under this section that
19 the defendant was acting in an agency relationship on behalf of any other
20 party in a transaction involving a controlled substance or controlled
21 substance analog.

22 ~~Sec. 3. K.S.A. 2019 Supp. 21-5706 is hereby repealed.~~

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the Kansas register.

Sec 3. K.S.A. 2019 Supp. 21-6614 is hereby amended to read as follows: See attachment

Sec. 4. K.S.A. 2019 Supp. 21-6810 is hereby amended to read as follows: See attachment

, 21-6614 and 21-6810 are

1 (1) Has a debilitating medical condition, as defined in K.S.A. 2019
2 Supp. 65-6235, and amendments thereto, or is the parent or guardian of a
3 minor child who has such debilitating medical condition;

4 (2) is possessing a cannabidiol treatment preparation, as defined in
5 K.S.A. 2019 Supp. 65-6235, and amendments thereto, that is being used to
6 treat such debilitating medical condition; and

7 (3) has possession of a letter, at all times while the person has
8 possession of the cannabidiol treatment preparation, that:

9 (A) Shall be shown to a law enforcement officer on such officer's
10 request;

11 (B) is dated within the preceding 15 months and signed by the
12 physician licensed to practice medicine and surgery in Kansas who
13 diagnosed the debilitating medical condition;

14 (C) is on such physician's letterhead; and

15 (D) identifies the person or the person's minor child as such
16 physician's patient and identifies the patient's debilitating medical
17 condition.

18 (e) It shall not be a defense to ~~charges arising~~ under this section that
19 the defendant was acting in an agency relationship on behalf of any other
20 party in a transaction involving a controlled substance or controlled
21 substance analog.

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a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2019 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of

such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d) (1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in

K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2019 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2019 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2019 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2019 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2019 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 2019 Supp. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2019 Supp. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2019 Supp. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2019 Supp. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019 Supp. 21-5401, and amendments thereto;

(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A.

2019 Supp. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2019 Supp. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2019 Supp. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g) Any person convicted of a violation of K.S.A. 2019 Supp. 21-5706(b), and amendments thereto, when the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records immediately after the person has satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional

services program, parole, postrelease supervision, conditional release or a suspended sentence.

(h)(1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

- (A) Defendant's full name;
- (B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (C) defendant's sex, race and date of birth;
- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

~~(h)~~(i) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding

involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(+)(1) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

(K) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or

(L) to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

~~(j)~~(k) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(k)~~(l) (1) Subject to the disclosures required pursuant to subsection-~~(j)~~(j), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection-~~(k)~~(l)(1), and except as provided in K.S.A. 2019 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

~~(l)~~(m) Whenever the record of any arrest, conviction or diversion has been expunged under the

provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in

sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is

accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act; or

(B) act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 2019 Supp. 50-6,141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

~~(m)(n)~~ The provisions of subsection ~~(h)(m)~~(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 4. K.S.A. 2019 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. 2019 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 committed before July 1, 1993, which would have been a class A, B or C 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; or

(C) a juvenile adjudication for an offense committed on or after July 1, 1993, which would be an off-grid felony or a nondrug severity level 1 through 4 felony, 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 5 through 10 felony, a nongrid felony or any drug felony, if committed by an adult; or

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

(5) A juvenile adjudication will not be considered and scored if:

(A) The current crime of conviction is committed at least five years after the date of the prior adjudication;

(B) the offender has no new adjudications or convictions during such five-year period; and

(C) the juvenile adjudication is for an offense that would be a nondrug severity level 5 through 10 felony, drug felony, nongrid felony or misdemeanor, if committed by an adult.

(6) 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.

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

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

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

(10) 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.

(11) Prior felony convictions of K.S.A. 2019 Supp. 21-5706(b) and amendments thereto, when the substance involved is marijuana, as designated in K.S.A. 65-4105(d) and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, shall be considered and scored as class A nonperson misdemeanors.

(e) The amendments made to this section by section 1 of chapter 5 of the 2015 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.