

## HOUSE BILL No. 2302

By Committee on Corrections and Juvenile Justice

2-4

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9 AN ACT concerning juveniles; relating to juvenile offender classification;  
10 relating to decaying sentences; amending K.S.A. 21-4709, 21-4710 and  
11 38-1601 and K.S.A. 2004 Supp. 21-4711 and 38-1602 and repealing  
12 the existing sections.  
13

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

15 Section 1. K.S.A. 21-4709 is hereby amended to read as follows: 21-  
16 4709. The criminal history scale is represented in abbreviated form on  
17 the horizontal axis of the sentencing guidelines grid for nondrug crimes  
18 and the sentencing guidelines grid for drug crimes. The relative severity  
19 of each criminal history category decreases from left to right on such grids.  
20 Criminal history category A is the most serious classification. Criminal  
21 history category I is the least serious classification. The criminal history  
22 categories in the criminal history scale are:

23 Criminal

24 History

25 Category

Descriptive Criminal History

- 26 A The offender's criminal history includes three or more adult con-  
27 victions or juvenile adjudications, in any combination, for person  
28 felonies.  
29 B The offender's criminal history includes two adult convictions or  
30 juvenile adjudications, in any combination, for person felonies.  
31 C The offender's criminal history includes one adult conviction or  
32 juvenile adjudication for a person felony, and one or more adult  
33 conviction or juvenile adjudication for a nonperson felony.  
34 D The offender's criminal history includes one adult conviction or  
35 juvenile adjudication for a person felony, but no adult conviction  
36 or juvenile adjudications for a nonperson felony.  
37 E The offender's criminal history includes three or more adult con-  
38 victions or juvenile adjudications for nonperson felonies, but no  
39 adult conviction or juvenile adjudication for a person felony.  
40 F The offender's criminal history includes two adult convictions or  
41 juvenile adjudications for nonperson felonies, but no adult convic-  
42 tion or juvenile adjudication for a person felony.  
43 G The offender's criminal history includes one adult conviction or

1 juvenile adjudication for a nonperson felony, but no adult conviction  
2 or juvenile adjudication for a person felony.

3 H The offender's criminal history includes two or more adult convictions  
4 or juvenile adjudications for nonperson and/or select misdemeanors,  
5 and no more than two adult convictions or juvenile adjudications  
6 for person misdemeanors, but no adult conviction or juvenile adjudication  
7 for either a person or nonperson felony.

8 I The offender's criminal history includes no prior record; or, one  
9 adult conviction or juvenile adjudication for a person, nonperson,  
10 or select misdemeanor, but no adult conviction or juvenile adjudication  
11 for either a person or nonperson felony.

12 *As used in this section, "adult convictions" includes extended jurisdiction  
13 juvenile prosecutions, pursuant to K.S.A. 38-1636, and amendments thereto.*

14 *For the purposes of the descriptive criminal history, juvenile adjudications  
15 are those adjudications for a person felony by a juvenile who is  
16 17 years of age.*

17 Sec. 2. K.S.A. 21-4710 is hereby amended to read as follows: 21-  
18 4710. (a) Criminal history categories contained in the sentencing guidelines  
19 grid for nondrug crimes and the sentencing guidelines grid for drug  
20 crimes are based on the following types of prior convictions: Person felony  
21 adult convictions, nonperson felony adult convictions, person felony juvenile  
22 adjudications, nonperson felony juvenile adjudications, person misdemeanor  
23 adult convictions, nonperson class A misdemeanor adult convictions,  
24 person misdemeanor juvenile adjudications, nonperson class A misdemeanor  
25 juvenile adjudications, select class B nonperson misdemeanor adult convictions,  
26 select class B nonperson misdemeanor juvenile adjudications and convictions  
27 and adjudications for violations of municipal ordinances or county resolutions  
28 which are comparable to any crime classified under the state law of Kansas  
29 as a person misdemeanor, select nonperson class B misdemeanor or nonperson  
30 class A misdemeanor. A prior conviction is any conviction, other than another  
31 count in the current case which was brought in the same information or complaint  
32 or which was joined for trial with other counts in the current case pursuant  
33 to K.S.A. 22-3203 and amendments thereto, which occurred prior to sentencing  
34 in the current case regardless of whether the offense that led to the prior  
35 conviction occurred before or after the current offense or the conviction in  
36 the current case.

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

40 (c) Except as otherwise provided, all convictions, whether sentenced  
41 consecutively or concurrently, shall be counted separately in the of-  
42  
43

1 offender's criminal history.

2 (d) Except as provided in K.S.A. 21-4716, and amendments thereto,  
3 the following are applicable to determining an offender's criminal history  
4 classification:

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

6 (2) All prior adult felony convictions, ~~including expungements~~, will  
7 be considered and scored.

8 (3) There will be no decay factor applicable for adult convictions.

9 (4) Except as otherwise provided, a juvenile adjudication *for juveniles*  
10 *17 years of age when the crime occurred*, which would have been a non-  
11 person class D or E felony if committed before July 1, 1993, or a nondrug  
12 level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on  
13 or after July 1, 1993, or a misdemeanor if committed by an adult, will  
14 decay if the current crime of conviction is committed after the offender  
15 reaches the age of ~~25~~ 23.

16 (5) For convictions of crimes committed before July 1, 1993, a ju-  
17 venile adjudication *for juveniles 17 years of age when the crime occurred*  
18 which would constitute a class A, B or C felony, if committed by an adult,  
19 will not decay. For convictions of crimes committed on or after July 1,  
20 1993, a juvenile adjudication *for juveniles 17 years of age when the crime*  
21 *occurred* which would constitute an off-grid felony, a nondrug severity  
22 level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if  
23 committed by an adult, will not decay.

24 (6) All juvenile adjudications *for juveniles 17 years of age when the*  
25 *crime occurred* which would constitute a person felony will not decay or  
26 be forgiven.

27 (7) All person misdemeanors, class A nonperson misdemeanors and  
28 class B select nonperson misdemeanors, and all municipal ordinance and  
29 county resolution violations comparable to such misdemeanors, shall be  
30 considered and scored.

31 (8) Unless otherwise provided by law, unclassified felonies and mis-  
32 demeanors, shall be considered and scored as nonperson crimes for the  
33 purpose of determining criminal history.

34 (9) Prior convictions of a crime defined by a statute which has since  
35 been repealed shall *not* be scored using the classification assigned at the  
36 time of such conviction.

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

40 (11) Prior convictions of any crime shall not be counted in determin-  
41 ing the criminal history category if they enhance the severity level or  
42 applicable penalties, elevate the classification from misdemeanor to fel-  
43 ony, or are elements of the present crime of conviction. Except as oth-

1 erwise provided, all other prior convictions will be considered and scored.  
2 (12) *Except as provided further, a juvenile adjudication for juveniles*  
3 *16 years of age and younger when the crime occurred will decay if the*  
4 *current crime of conviction is committed after the offender reaches the*  
5 *age of 21. If a juvenile is prosecuted and adjudicated as an extended*  
6 *jurisdiction juvenile prosecution, such adjudication will not decay. For*  
7 *the purposes of a juvenile adjudication for juveniles 16 years of age and*  
8 *younger, decay means an automatic termination, deletion and destruction*  
9 *of the records from any law enforcement agency that has records of the*  
10 *adjudication, including, but not limited to, arrest or detention records.*  
11 *Such decayed juvenile adjudication shall not be used for any criminal*  
12 *proceeding, including, but not limited to sentencing.*

13 (e) *Notwithstanding the provisions of subsection (d)(4), (5), (6) and*  
14 *(12), any juvenile adjudication that occurred prior to July 1, 1996 shall*  
15 *not be considered and scored for criminal history purposes.*

16 Sec. 3. K.S.A. 2004 Supp. 21-4711 is hereby amended to read as  
17 follows: 21-4711. In addition to the provisions of K.S.A. 21-4710 and  
18 amendments thereto, the following shall apply in determining an of-  
19 fender's criminal history classification as contained in the presumptive  
20 sentencing guidelines grid for nondrug crimes and the presumptive sen-  
21 tencing guidelines grid for drug crimes:

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

32 (b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amend-  
33 ments thereto, criminal possession of firearms by a person who is both  
34 addicted to and an unlawful user of a controlled substance, subsection  
35 (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm  
36 on school grounds or K.S.A. 21-4218 and amendments thereto, possession  
37 of a firearm on the grounds or in the state capitol building, will be scored  
38 as a select class B nonperson misdemeanor conviction or adjudication and  
39 shall not be scored as a person misdemeanor for criminal history  
40 purposes.

41 (c) (1) If the current crime of conviction was committed before July  
42 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary man-  
43 slaughter in the commission of K.S.A. 8-1567 and amendments thereto

1 driving under the influence, then, each prior adult conviction or juvenile  
2 adjudication for K.S.A. 8-1567 and amendments thereto shall count as  
3 one person felony for criminal history purposes.

4 (2) If the current crime of conviction was committed on or after July  
5 1, 1996, and is for a violation of an act described in K.S.A. 2004 Supp.  
6 21-3442, and amendments thereto, each prior adult conviction, diversion  
7 in lieu of criminal prosecution or juvenile adjudication for: (A) An act  
8 described in K.S.A. 8-1567 and amendments thereto; or (B) a violation  
9 of a law of another state or an ordinance of any city, or resolution of any  
10 county, which prohibits the act described in K.S.A. 8-1567 and amend-  
11 ments thereto shall count as one person felony for criminal history  
12 purposes.

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

15 (1) As a prior person felony if the prior conviction or adjudication  
16 was classified as a burglary as described in subsection (a) of K.S.A. 21-  
17 3715 and amendments thereto.

18 (2) As a prior nonperson felony if the prior conviction or adjudication  
19 was classified as a burglary as described in subsection (b) or (c) of K.S.A.  
20 21-3715 and amendments thereto.

21 The facts required to classify prior burglary adult convictions and ju-  
22 venile adjudications must be established by the state by a preponderance  
23 of the evidence.

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

38 (f) Except as provided in subsections (4), (5) ~~and~~, (6) *and* (12) of  
39 K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be  
40 applied in the same manner as adult convictions. Out-of-state juvenile  
41 adjudications will be treated as juvenile adjudications in Kansas.

42 (g) A prior felony conviction of an attempt, a conspiracy or a solici-  
43 tation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amend-

1 ments thereto, to commit a crime shall be treated as a person or non-  
2 person crime in accordance with the designation assigned to the  
3 underlying crime.

4 (h) Drug crimes are designated as nonperson crimes for criminal his-  
5 tory scoring.

6 Sec. 4. K.S.A. 38-1601 is hereby amended to read as follows: 38-  
7 1601. Article 16 of chapter 38 of the Kansas Statutes Annotated and  
8 K.S.A. 38-16,126, 38-16,127 and 38-16,128, and amendments thereto,  
9 shall be known and may be cited as the Kansas juvenile justice code. The  
10 primary goal of the juvenile justice code is to promote public safety, hold  
11 juvenile offenders accountable for such juvenile's behavior and improve  
12 the ability of juveniles to live more productively and responsibly in the  
13 community. To accomplish this goal, juvenile justice policies developed  
14 pursuant to the Kansas juvenile justice code shall be designed to: (a)  
15 Protect public safety; (b) recognize that the ultimate solutions to juvenile  
16 crime lie in the strengthening of families and educational institutions, the  
17 involvement of the community and the implementation of effective pre-  
18 vention and early intervention programs; (c) be community based to the  
19 greatest extent possible; (d) be family centered when appropriate; (e)  
20 facilitate efficient and effective cooperation, coordination and collabora-  
21 tion among agencies of the local, state and federal government; (f) be  
22 outcome based, allowing for the effective and accurate assessment of  
23 program performance; (g) be cost-effectively implemented and admin-  
24 istered to utilize resources wisely; (h) encourage the recruitment and  
25 retention of well-qualified, highly trained professionals to staff all com-  
26 ponents of the system; (i) appropriately reflect community norms and  
27 public priorities; and (j) encourage public and private partnerships to  
28 address community risk factors.

29 *In all proceedings concerning a juvenile offender, such offender shall*  
30 *be known as a juvenile offender type A or a juvenile offender type B, as*  
31 *such terms apply.*

32 Sec. 5. K.S.A. 2004 Supp. 38-1602 is hereby amended to read as  
33 follows: 38-1602. As used in this code, unless the context otherwise  
34 requires:

35 (a) "Juvenile" means a person 10 or more years of age but less than  
36 18 years of age.

37 (b) "Juvenile offender" means a person who commits an offense  
38 while a juvenile which if committed by an adult would constitute the  
39 commission of a felony or misdemeanor as defined by K.S.A. 21-3105,  
40 and amendments thereto, or who violates the provisions of K.S.A. 21-  
41 4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amend-  
42 ments thereto, but does not include:

43 (1) A person 14 or more years of age who commits a traffic offense,

- 1 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;
- 2 (2) a person 16 years of age or over who commits an offense defined
- 3 in chapter 32 of the Kansas Statutes Annotated;
- 4 (3) a person under 18 years of age who previously has been:
- 5 (A) Convicted as an adult under the Kansas code of criminal
- 6 procedure;
- 7 (B) sentenced as an adult under the Kansas code of criminal proce-
- 8 dure following termination of status as an extended jurisdiction juvenile
- 9 pursuant to K.S.A. 38-16,126, and amendments thereto; or
- 10 (C) convicted or sentenced as an adult in another state or foreign
- 11 jurisdiction under substantially similar procedures described in K.S.A. 38-
- 12 1636, and amendments thereto, or because of attaining the age of majority
- 13 designated in that state or jurisdiction.
- 14 (c) "Parent," when used in relation to a juvenile or a juvenile of-
- 15 fender, includes a guardian, conservator and every person who is by law
- 16 liable to maintain, care for or support the juvenile.
- 17 (d) "Law enforcement officer" means any person who by virtue of
- 18 that person's office or public employment is vested by law with a duty to
- 19 maintain public order or to make arrests for crimes, whether that duty
- 20 extends to all crimes or is limited to specific crimes.
- 21 (e) "Youth residential facility" means any home, foster home or struc-
- 22 ture which provides twenty-four-hour-a-day care for juveniles and which
- 23 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
- 24 Annotated.
- 25 (f) "Juvenile detention facility" means any secure public or private
- 26 facility which is used for the lawful custody of accused or adjudicated
- 27 juvenile offenders and which shall not be a jail.
- 28 (g) "Juvenile correctional facility" means a facility operated by the
- 29 commissioner for juvenile offenders.
- 30 (h) "Warrant" means a written order by a judge of the court directed
- 31 to any law enforcement officer commanding the officer to take into cus-
- 32 tody the juvenile named or described therein.
- 33 (i) "Commissioner" means the commissioner of juvenile justice.
- 34 (j) "Jail" means:
- 35 (1) An adult jail or lockup; or
- 36 (2) a facility in the same building as an adult jail or lockup, unless the
- 37 facility meets all applicable licensure requirements under law and there
- 38 is (A) total separation of the juvenile and adult facility spatial areas such
- 39 that there could be no haphazard or accidental contact between juvenile
- 40 and adult residents in the respective facilities; (B) total separation in all
- 41 juvenile and adult program activities within the facilities, including rec-
- 42 reation, education, counseling, health care, dining, sleeping, and general
- 43 living activities; and (C) separate juvenile and adult staff, including man-

- 1 agement, security staff and direct care staff such as recreational, educa-  
2 tional and counseling.
- 3 (k) “Court-appointed special advocate” means a responsible adult,  
4 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-  
5 ments thereto, who is appointed by the court to represent the best inter-  
6 ests of a child, as provided in K.S.A. 38-1606a, and amendments thereto,  
7 in a proceeding pursuant to this code.
- 8 (l) “Juvenile intake and assessment worker” means a responsible  
9 adult authorized to perform intake and assessment services as part of the  
10 intake and assessment system established pursuant to K.S.A. 75-7023, and  
11 amendments thereto.
- 12 (m) “Institution” means the following institutions: The Kansas juve-  
13 nile correctional complex, the Atchison juvenile correctional facility, the  
14 Beloit juvenile correctional facility, the Larned juvenile correctional fa-  
15 cility and the Topeka juvenile correctional facility.
- 16 (n) “Sanctions house” means a facility which is operated or structured  
17 so as to ensure that all entrances and exits from the facility are under the  
18 exclusive control of the staff of the facility, whether or not the person  
19 being detained has freedom of movement within the perimeters of the  
20 facility, or which relies on locked rooms and buildings, fences, or physical  
21 restraint in order to control the behavior of its residents. Upon an order  
22 from the court, a licensed juvenile detention facility may serve as a sanc-  
23 tions house.
- 24 (o) “Sentencing risk assessment tool” means an instrument adminis-  
25 tered to juvenile offenders which delivers a score, or group of scores,  
26 describing, but not limited to describing, the juvenile’s potential risk to  
27 the community.
- 28 (p) “Educational institution” means all schools at the elementary and  
29 secondary levels.
- 30 (q) “Educator” means any administrator, teacher or other profes-  
31 sional or paraprofessional employee of an educational institution who has  
32 exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A.  
33 72-89b03, and amendments thereto.
- 34 (r) “Juvenile corrections officer” means a certified employee of the  
35 juvenile justice authority working at a juvenile correctional facility as-  
36 signed by the commissioner with responsibility for maintaining custody,  
37 security and control of juveniles in the custody of the commissioner at a  
38 juvenile correctional facility.
- 39 (s) “Investigator” means an employee of the juvenile justice authority  
40 assigned by the commissioner with the responsibility for investigations  
41 concerning employees at the juvenile correctional facilities and juveniles  
42 in the custody of the commissioner at a juvenile correctional facility.
- 43 (t) *“Juvenile offender type A” means a person who commits an offense*

1 *while a juvenile which if committed by an adult would constitute the*  
2 *commission of a felony as defined by K.S.A. 21-3105, and amendments*  
3 *thereto.*

4 (u) *“Juvenile offender type B” means a person who commits an offense*  
5 *while a juvenile which if committed by an adult would constitute com-*  
6 *mission of a misdemeanor as defined by K.S.A. 21-3105, and amendments*  
7 *thereto.*

8 Sec. 6. K.S.A. 21-4709, 21-4710 and 38-1601 and K.S.A. 2004 Supp.  
9 21-4711 and 38-1602 are hereby repealed.

10 Sec. 7. This act shall take effect and be in force from and after its  
11 publication in the statute book.