

HOUSE BILL No. 2401

By Committee on Federal and State Affairs

Requested by Representative Humphries

3-5

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; providing that prior convictions of a crime defined by a
3 statute that has since been determined unconstitutional by an appellate
4 court shall not be used for criminal history scoring purposes unless the
5 basis of the determination of unconstitutionality by the appellate court
6 is later overruled or reversed; amending K.S.A. 21-6810 and repealing
7 the existing section.
8

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

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

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

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

1 (d) Except as provided in K.S.A. 21-6815, and amendments thereto,
2 the following are applicable to determining an offender's criminal history
3 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 that
7 were committed before July 1, 1993, shall be scored as a person or
8 nonperson crime using a comparable offense under the Kansas criminal
9 code in effect on the date the current crime of conviction was committed.

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

11 (A) Adult convictions;

12 (B) a juvenile adjudication for an offense committed before July 1,
13 1993, which would have been a class A, B or C felony, if committed by an
14 adult. Prior juvenile adjudications for offenses that were committed before
15 July 1, 1993, shall be scored as a person or nonperson crime using a
16 comparable offense under the Kansas criminal code in effect on the date
17 the current crime of conviction was committed; or

18 (C) a juvenile adjudication for an offense committed on or after July
19 1, 1993, which would be an off-grid felony or a nondrug severity level 1
20 through 4 felony, if committed by an adult.

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

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

26 (B) committed on or after July 1, 1993, which would be a nondrug
27 severity level 5 through 10 felony, a nongrid felony or any drug felony, if
28 committed by an adult; or

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

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

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

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

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

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

1 on the date the current crime of conviction was committed.

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

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

8 (9) Prior convictions of a crime defined by a statute that has since
9 been determined unconstitutional by an appellate court shall not be used
10 for criminal history scoring purposes *unless the basis of the determination*
11 *of unconstitutionality by the appellate court is later overruled or reversed*
12 *by an order or opinion of the supreme court of the state of Kansas or the*
13 *United States supreme court.*

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

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

22 Sec. 2. K.S.A. 21-6810 is hereby repealed.

23 Sec. 3. This act shall take effect and be in force from and after its
24 publication in the statute book.