

## HOUSE BILL No. 2747

By Committee on Judiciary

Requested by Representative Ward

2-6

AN ACT concerning crimes, punishment and criminal procedure; relating to the revised Kansas sentencing guidelines act; specifying that courts shall consider certain factors in determining whether a prior violation of law is comparable to any act described in certain driving under the influence crimes when calculating a person's criminal history classification; amending K.S.A. 21-6811 and repealing the existing section.

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

Section 1. K.S.A. 21-6811 is hereby amended to read as follows: 21-6811. In addition to the provisions of K.S.A. 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. 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. 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

1 K.S.A. 8-1567, and amendments thereto, shall count as one person felony  
2 for criminal history purposes.

3 (2) If the current crime of conviction was committed on or after July  
4 1, 1996, and is for a violation of K.S.A. 21-5405(a)(3) or (a)(5), and  
5 amendments thereto, each prior adult conviction, diversion in lieu of  
6 criminal prosecution or juvenile adjudication for: (A) Any act described in  
7 K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (B) a violation of a  
8 law of another state ~~or~~, an ordinance of any city; or resolution of any  
9 county, ~~which~~ *that* prohibits any act described in K.S.A. 8-2,144 or 8-  
10 1567, and amendments thereto, shall count as one person felony for  
11 criminal history purposes.

12 (3) If the current crime of conviction is for a violation of K.S.A. 21-  
13 5413(b)(3) or (b)(4), and amendments thereto:

14 (A) The first prior adult conviction, diversion in lieu of criminal  
15 prosecution or juvenile adjudication for the following shall count as one  
16 nonperson felony for criminal history purposes: (i) Any act described in  
17 K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (ii) a violation of a  
18 law of another state ~~or~~, an ordinance of any city; or resolution of any  
19 county, ~~which~~ *that* prohibits any act described in K.S.A. 8-2,144 or 8-  
20 1567, and amendments thereto; and

21 (B) each second or subsequent prior adult conviction, diversion in  
22 lieu of criminal prosecution or juvenile adjudication for the following shall  
23 count as one person felony for criminal history purposes: (i) Any act  
24 described in K.S.A. 8-2,144 or 8-1567, and amendments thereto; or (ii) a  
25 violation of a law of another state ~~or~~, an ordinance of any city; or  
26 resolution of any county, ~~which~~ *that* prohibits any act described in K.S.A.  
27 8-2,144 or 8-1567, and amendments thereto.

28 (4) *For the purposes of this subsection, in determining whether a*  
29 *violation of a law of another state, an ordinance of any city or resolution*  
30 *of any county prohibits any act described in K.S.A. 8-2,144 or 8-1567, and*  
31 *amendments thereto, the court shall consider the factors listed in K.S.A. 8-*  
32 *1567(j), and amendments thereto.*

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

35 (1) As a prior person felony if the prior conviction or adjudication  
36 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its  
37 repeal, or K.S.A. 21-5807(a)(1), and amendments thereto.

38 (2) As a prior nonperson felony if the prior conviction or adjudication  
39 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to  
40 its repeal, or K.S.A. 21-5807(a)(2) or (a)(3), and amendments thereto.

41 The facts required to classify prior burglary adult convictions and  
42 juvenile adjudications shall be established by the state by a preponderance  
43 of the evidence.

1 (e) (1) Out-of-state convictions and juvenile adjudications shall be  
2 used in classifying the offender's criminal history.

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

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

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

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

24 (3) The state of Kansas shall classify the crime as person or  
25 nonperson.

26 (A) In designating a misdemeanor as person or nonperson,  
27 comparable offenses under the Kansas criminal code in effect on the date  
28 the current crime of conviction was committed shall be referred to. If the  
29 state of Kansas does not have a comparable person offense in effect on the  
30 date the current crime of conviction was committed, the out-of-state crime  
31 shall be classified as a nonperson crime.

32 (B) In designating a felony crime as person or nonperson, the felony  
33 crime shall be classified as follows:

34 (i) An out-of-state conviction or adjudication for the commission of a  
35 felony offense, or an attempt, conspiracy or criminal solicitation to commit  
36 a felony offense, shall be classified as a person felony if one or more of the  
37 following circumstances is present as defined by the convicting  
38 jurisdiction in the elements of the out-of-state offense:

39 (a) Death or killing of any human being;

40 (b) threatening or causing fear of bodily or physical harm or violence,  
41 causing terror, physically intimidating or harassing any person;

42 (c) bodily harm or injury, physical neglect or abuse, restraint,  
43 confinement or touching of any person, without regard to degree;

1 (d) the presence of a person, other than the defendant, a charged  
2 accomplice or another person with whom the defendant is engaged in the  
3 sale, distribution or transfer of a controlled substance or non-controlled  
4 substance;

5 (e) possessing, viewing, depicting, distributing, recording or  
6 transmitting an image of any person;

7 (f) lewd fondling or touching, sexual intercourse or sodomy with or  
8 by any person or an unlawful sexual act involving a child under the age of  
9 consent;

10 (g) being armed with, using, displaying or brandishing a firearm or  
11 other weapon, excluding crimes of mere unlawful possession; or

12 (h) entering or remaining within any residence, dwelling or  
13 habitation.

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

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

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

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

36 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),  
37 prior to its repeal, or K.S.A. 21-6810(d)(3)(B), (d)(3)(C), (d)(3)(D), (d)(4)  
38 and (d)(5), and amendments thereto, juvenile adjudications will be applied  
39 in the same manner as adult convictions. Out-of-state juvenile  
40 adjudications will be treated as juvenile adjudications in Kansas.

41 (g) A prior felony conviction of an attempt, a conspiracy or a  
42 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to  
43 their repeal, or K.S.A. 21-5301, 21-5302 or 21-5303, and amendments

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

3 (h) Drug crimes are designated as nonperson crimes for criminal  
4 history scoring.

5 (i) If the current crime of conviction is for a violation of K.S.A. 8-  
6 1602(b)(3) through (b)(5), and amendments thereto, each of the following  
7 prior convictions for offenses committed on or after July 1, 2011, shall  
8 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-  
9 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605, *21-5405(a)*  
10 *(3) or (a)(5), 21-5406* and 40-3104, and amendments thereto, ~~and K.S.A.~~  
11 ~~21-5405(a)(3) or (a)(5) and 21-5406, and amendments thereto,~~ or a  
12 violation of a city ordinance or law of another state ~~which~~ *that* would also  
13 constitute a violation of such sections. *For the purposes of this subsection,*  
14 *in determining whether a violation of a city ordinance or law of another*  
15 *state would also constitute a violation of K.S.A. 8-1567, and amendments*  
16 *thereto, the court shall consider the factors listed in K.S.A. 8-1567(j), and*  
17 *amendments thereto.*

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

21 Sec. 2. K.S.A. 21-6811 is hereby repealed.

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