

House Substitute for SENATE BILL No. 19

By Committee on Corrections and Juvenile Justice

3-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to aggravated battery; criminal history; out-of-state misdemeanors;
3 amending K.S.A. 2013 Supp. 21-5413 and 21-6811 and repealing the
4 existing sections.
5

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

7 Section 1. K.S.A. 2013 Supp. 21-6811 is hereby amended to read as
8 follows: 21-6811. In addition to the provisions of K.S.A. 2013 Supp. 21-
9 6810, and amendments thereto, the following shall apply in determining an
10 offender's criminal history classification as contained in the presumptive
11 sentencing guidelines grids:

12 (a) Every three prior adult convictions or juvenile adjudications of
13 class A and class B person misdemeanors in the offender's criminal history,
14 or any combination thereof, shall be rated as one adult conviction or one
15 juvenile adjudication of a person felony for criminal history purposes.
16 Every three prior adult convictions or juvenile adjudications of assault as
17 defined in K.S.A. 21-3408, prior to its repeal, or subsection (a) of K.S.A.
18 2013 Supp. 21-5412, and amendments thereto, occurring within a period
19 commencing three years prior to the date of conviction for the current
20 crime of conviction shall be rated as one adult conviction or one juvenile
21 adjudication of a person felony for criminal history purposes.

22 (b) A conviction of criminal possession of a firearm as defined in
23 subsection (a)(1) or (a)(5) of K.S.A. 21-4204, prior to its repeal, criminal
24 use of weapons as defined in subsection (a)(10) or (a)(11) of K.S.A. 2013
25 Supp. 21-6301, and amendments thereto, or unlawful possession of a
26 firearm as in effect on June 30, 2005, and as defined in K.S.A. 21-4218,
27 prior to its repeal, will be scored as a select class B nonperson
28 misdemeanor conviction or adjudication and shall not be scored as a
29 person misdemeanor for criminal history purposes.

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

36 (2) If the current crime of conviction was committed on or after July

1 1, 1996, and is for a violation of subsection (a)(3) of K.S.A. 2013 Supp.
2 21-5405, and amendments thereto, each prior adult conviction, diversion
3 in lieu of criminal prosecution or juvenile adjudication for: (A) An act
4 described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of
5 a law of another state or an ordinance of any city, or resolution of any
6 county, which prohibits the act described in K.S.A. 8-1567, and
7 amendments thereto, shall count as one person felony for criminal history
8 purposes.

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

11 (1) As a prior person felony if the prior conviction or adjudication
12 was classified as a burglary as defined in subsection (a) of K.S.A. 21-3715,
13 prior to its repeal, or subsection (a)(1) of K.S.A. 2013 Supp. 21-5807, and
14 amendments thereto.

15 (2) As a prior nonperson felony if the prior conviction or adjudication
16 was classified as a burglary as defined in subsection (b) or (c) of K.S.A.
17 21-3715, prior to its repeal, or subsection (a)(2) or (a)(3) of K.S.A. 2013
18 Supp. 21-5807, and amendments thereto.

19 The facts required to classify prior burglary adult convictions and
20 juvenile adjudications shall be established by the state by a preponderance
21 of the evidence.

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

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

26 (A) If a crime is a felony in another state, it will be counted as a
27 felony in Kansas.

28 (B) *If a crime is a misdemeanor in another state, the state of Kansas*
29 *shall refer to the comparable offense in order to classify the out-of-state*
30 *crime as a class A, B or C misdemeanor. If the comparable offense in the*
31 *state of Kansas is a felony, the out-of-state crime shall be classified as a*
32 *class A misdemeanor. If the state of Kansas does not have a comparable*
33 *offense, the out-of-state crime shall be classified as a class C*
34 *misdemeanor.*

35 (3) The state of Kansas shall classify the crime as person or
36 nonperson. In designating a crime as person or nonperson comparable
37 offenses shall be referred to. If the state of Kansas does not have a
38 comparable offense, the out-of-state conviction shall be classified as a
39 nonperson crime.

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

43 (5) The facts required to classify out-of-state adult convictions and

1 juvenile adjudications shall be established by the state by a preponderance
2 of the evidence.

3 (f) Except as provided in subsections (d)(4), (d)(5) or (d)(6) of K.S.A.
4 21-4710, prior to its repeal, or subsections (d)(3)(B), (d)(3)(C), (d)(3)(D)
5 and (d)(4) of K.S.A. 2013 Supp. 21-6810, and amendments thereto,
6 juvenile adjudications will be applied in the same manner as adult
7 convictions. Out-of-state juvenile adjudications will be treated as juvenile
8 adjudications in Kansas.

9 (g) A prior felony conviction of an attempt, a conspiracy or a
10 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
11 their repeal, or K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and
12 amendments thereto, to commit a crime shall be treated as a person or
13 nonperson crime in accordance with the designation assigned to the
14 underlying crime.

15 (h) Drug crimes are designated as nonperson crimes for criminal
16 history scoring.

17 (i) If the current crime of conviction is for a violation of subsections
18 (b)(2) through (b)(4) of K.S.A. 8-1602, and amendments thereto, each of
19 the following prior convictions committed on or after July 1, 2011, shall
20 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
21 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
22 and amendments thereto, and subsection (a)(3) of K.S.A. 2013 Supp. 21-
23 5405 and 21-5406, and amendments thereto, or a violation of a city
24 ordinance or law of another state which would also constitute a violation
25 of such sections.

26 Sec. 2. K.S.A. 2013 Supp. 21-5413 is hereby amended to read as
27 follows: 21-5413. (a) Battery is:

28 (1) Knowingly or recklessly causing bodily harm to another person;
29 or

30 (2) knowingly causing physical contact with another person when
31 done in a rude, insulting or angry manner;

32 (b) Aggravated battery is:

33 (1) (A) Knowingly causing great bodily harm to another person or
34 disfigurement of another person;

35 (B) knowingly causing bodily harm to another person with a deadly
36 weapon, or in any manner whereby great bodily harm, disfigurement or
37 death can be inflicted;

38 (C) *except as provided in subsection (b)(1)(D)*, knowingly causing
39 physical contact with another person when done in a rude, insulting or
40 angry manner with a deadly weapon, or in any manner whereby great
41 bodily harm, disfigurement or death can be inflicted; *or*

42 (D) *knowingly impeding the normal breathing or circulation of the*
43 *blood by applying pressure on the throat or neck of another person or by*

1 *blocking the nose or mouth of another person, when done in a rude,*
2 *insulting or angry manner;*

3 (2) (A) recklessly causing great bodily harm to another person or
4 disfigurement of another person; or

5 (B) recklessly causing bodily harm to another person with a deadly
6 weapon, or in any manner whereby great bodily harm, disfigurement or
7 death can be inflicted; or

8 (3) (A) committing an act described in K.S.A. 8-1567, and
9 amendments thereto, when great bodily harm to another person or
10 disfigurement of another person results from such act; or

11 (B) committing an act described in K.S.A. 8-1567, and amendments
12 thereto, when bodily harm to another person results from such act under
13 circumstances whereby great bodily harm, disfigurement or death can
14 result from such act.

15 (c) Battery against a law enforcement officer is:

16 (1) Battery, as defined in subsection (a)(2), committed against a:

17 (A) Uniformed or properly identified university or campus police
18 officer while such officer is engaged in the performance of such officer's
19 duty; or

20 (B) uniformed or properly identified state, county or city law
21 enforcement officer, other than a state correctional officer or employee, a
22 city or county correctional officer or employee, a juvenile correctional
23 facility officer or employee or a juvenile detention facility officer, or
24 employee, while such officer is engaged in the performance of such
25 officer's duty; or

26 (2) battery, as defined in subsection (a)(1), committed against a:

27 (A) Uniformed or properly identified university or campus police
28 officer while such officer is engaged in the performance of such officer's
29 duty; or

30 (B) uniformed or properly identified state, county or city law
31 enforcement officer, other than a state correctional officer or employee, a
32 city or county correctional officer or employee, a juvenile correctional
33 facility officer or employee or a juvenile detention facility officer, or
34 employee, while such officer is engaged in the performance of such
35 officer's duty; or

36 (3) battery, as defined in subsection (a) committed against a:

37 (A) State correctional officer or employee by a person in custody of
38 the secretary of corrections, while such officer or employee is engaged in
39 the performance of such officer's or employee's duty;

40 (B) juvenile correctional facility officer or employee by a person
41 confined in such juvenile correctional facility, while such officer or
42 employee is engaged in the performance of such officer's or employee's
43 duty;

1 (C) juvenile detention facility officer or employee by a person
2 confined in such juvenile detention facility, while such officer or employee
3 is engaged in the performance of such officer's or employee's duty; or

4 (D) city or county correctional officer or employee by a person
5 confined in a city holding facility or county jail facility, while such officer
6 or employee is engaged in the performance of such officer's or employee's
7 duty.

8 (d) Aggravated battery against a law enforcement officer is:

9 (1) An aggravated battery, as defined in subsection (b)(1)(A)
10 committed against a:

11 (A) Uniformed or properly identified state, county or city law
12 enforcement officer while the officer is engaged in the performance of the
13 officer's duty; or

14 (B) uniformed or properly identified university or campus police
15 officer while such officer is engaged in the performance of such officer's
16 duty;

17 (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)
18 (C), committed against a:

19 (A) Uniformed or properly identified state, county or city law
20 enforcement officer while the officer is engaged in the performance of the
21 officer's duty; or

22 (B) uniformed or properly identified university or campus police
23 officer while such officer is engaged in the performance of such officer's
24 duty; or

25 (3) knowingly causing, with a motor vehicle, bodily harm to a:

26 (A) Uniformed or properly identified state, county or city law
27 enforcement officer while the officer is engaged in the performance of the
28 officer's duty; or

29 (B) uniformed or properly identified university or campus police
30 officer while such officer is engaged in the performance of such officer's
31 duty.

32 (e) Battery against a school employee is a battery, as defined in
33 subsection (a), committed against a school employee in or on any school
34 property or grounds upon which is located a building or structure used by a
35 unified school district or an accredited nonpublic school for student
36 instruction or attendance or extracurricular activities of pupils enrolled in
37 kindergarten or any of the grades one through 12 or at any regularly
38 scheduled school sponsored activity or event, while such employee is
39 engaged in the performance of such employee's duty.

40 (f) Battery against a mental health employee is a battery, as defined in
41 subsection (a), committed against a mental health employee by a person in
42 the custody of the secretary of social and rehabilitation services, while
43 such employee is engaged in the performance of such employee's duty.

- 1 (g) (1) Battery is a class B person misdemeanor.
- 2 (2) Aggravated battery as defined in:
- 3 (A) Subsection (b)(1)(A) is a severity level 4, person felony;
- 4 (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person
- 5 felony;
- 6 (C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person
- 7 felony; ~~and~~
- 8 (D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person
- 9 felony; *and*
- 10 (E) *subsection (b)(1)(D) is a severity level 6, person felony.*
- 11 (3) Battery against a law enforcement officer as defined in:
- 12 (A) Subsection (c)(1) is a class A person misdemeanor;
- 13 (B) subsection (c)(2) is a severity level 7, person felony; and
- 14 (C) subsection (c)(3) is a severity level 5, person felony.
- 15 (4) Aggravated battery against a law enforcement officer as defined
- 16 in:
- 17 (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony;
- 18 and
- 19 (B) subsection (d)(2) is a severity level 4, person felony.
- 20 (5) Battery against a school employee is a class A person
- 21 misdemeanor.
- 22 (6) Battery against a mental health employee is a severity level 7,
- 23 person felony.
- 24 (h) *The provisions of subsection (b)(1)(D) shall not apply to: (1) A*
- 25 *legitimate medical procedure performed by a physician or other licensed*
- 26 *medical professional; or (2) a restraint performed by a law enforcement*
- 27 *officer in accordance with acceptable law enforcement practices.*
- 28 (i) As used in this section:
- 29 (1) "Correctional institution" means any institution or facility under
- 30 the supervision and control of the secretary of corrections;
- 31 (2) "state correctional officer or employee" means any officer or
- 32 employee of the Kansas department of corrections or any independent
- 33 contractor, or any employee of such contractor, working at a correctional
- 34 institution;
- 35 (3) "juvenile correctional facility officer or employee" means any
- 36 officer or employee of the juvenile justice authority or any independent
- 37 contractor, or any employee of such contractor, working at a juvenile
- 38 correctional facility, as defined in K.S.A. 2013 Supp. 38-2302, and
- 39 amendments thereto;
- 40 (4) "juvenile detention facility officer or employee" means any officer
- 41 or employee of a juvenile detention facility as defined in K.S.A. 2013
- 42 Supp. 38-2302, and amendments thereto;
- 43 (5) "city or county correctional officer or employee" means any

1 correctional officer or employee of the city or county or any independent
2 contractor, or any employee of such contractor, working at a city holding
3 facility or county jail facility;

4 (6) "school employee" means any employee of a unified school
5 district or an accredited nonpublic school for student instruction or
6 attendance or extracurricular activities of pupils enrolled in kindergarten or
7 any of the grades one through 12; and

8 (7) "mental health employee" means an employee of the department
9 of social and rehabilitation services working at Larned state hospital,
10 Osawatomie state hospital and Rainbow mental health facility, Kansas
11 neurological institute and Parsons state hospital and training center and the
12 treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

13 Sec. 3. K.S.A. 2013 Supp. 21-5413 and 21-6811 are hereby repealed.

14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.