



Understanding the
Kansas Sentencing
Guidelines Act (PSI
Focus)

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- **February 2026**

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Patricia Colloton

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Office of Judicial Administration

Duties and Responsibilities

Legislative

- Gatekeepers of Guidelines - Recommend legislative and administrative changes to the Governor and Legislature
- Prison Bed Space Impacts - Track and review all relevant criminal bills that are introduced and provide prison bed space impacts

State Statistical Analysis Center for Criminal Justice

Maintain database of sentencing journal entries, PSIs and probation revocation journal entries

- Kansas Sentencing Application (KSApp) – mandatory for 2026

Annual prison bed population and inmate classification projections for KDOC

2003 SB 123 (SB 123/123+/RAFT) substance abuse treatment program to eligible offenders

SENTENCING RANGE – NONDRUG OFFENSES

| Category → | A | B | C | D | E | F | G | H | I |
|------------------|--------------------|-------------------|---------------------------------|-------------------|-----------------------|----------------------|--------------------|-------------------|-------------------------|
| Severity Level ↓ | 3+ Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3+ Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanor | 1 Misdemeanor No Record |
| I | 653 620 592 | 618 596 554 | 285 272 258 | 267 253 240 | 246 234 221 | 226 214 203 | 203 195 184 | 186 176 166 | 165 155 147 |
| II | 493 467 442 | 460 438 416 | 216 205 194 | 200 190 181 | 184 174 165 | 168 160 152 | 154 146 138 | 138 131 123 | 123 117 109 |
| III | 247 233 221 | 228 216 206 | 107 102 96 | 100 94 89 | 92 88 82 | 83 79 74 | 77 72 68 | 71 66 61 | 61 59 55 |
| IV | 172 162 154 | 162 154 144 | 75 71 68 | 69 66 62 | 64 60 57 | 59 56 52 | 52 50 47 | 48 45 42 | 43 41 38 |
| V | 136 130 122 | 128 120 114 | 60 57 53 | 55 52 50 | 51 49 46 | 47 44 41 | 43 41 38 | 38 36 34 | 34 32 31 |
| VI | 46 43 40 | 41 39 37 | 38 36 34 | 36 34 32 | 32 30 28 | 29 27 25 | 26 24 22 | 21 20 19 | 19 18 17 |
| VII | 34 32 30 | 31 29 27 | 29 27 25 | 26 24 22 | 23 21 19 | 19 18 17 | 17 16 15 | 14 13 12 | 13 12 11 |
| VIII | 23 21 19 | 20 19 18 | 19 18 17 | 17 16 15 | 15 14 13 | 13 12 11 | 11 10 9 | 11 10 9 | 9 8 7 |
| IX | 17 16 15 | 15 14 13 | 13 12 11 | 13 12 11 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 |
| X | 13 12 11 | 12 11 10 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 | 7 6 5 | 7 6 5 |

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5

24 months recommended for felonies classified in Severity Levels 6-7

18 months (up to) for felonies classified in Severity Level 8

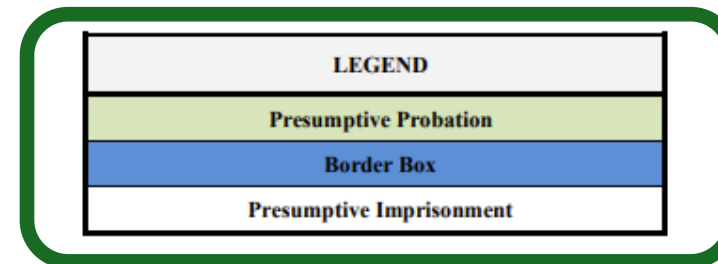
12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4

24 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10



SENTENCING RANGE- DRUG OFFENSES

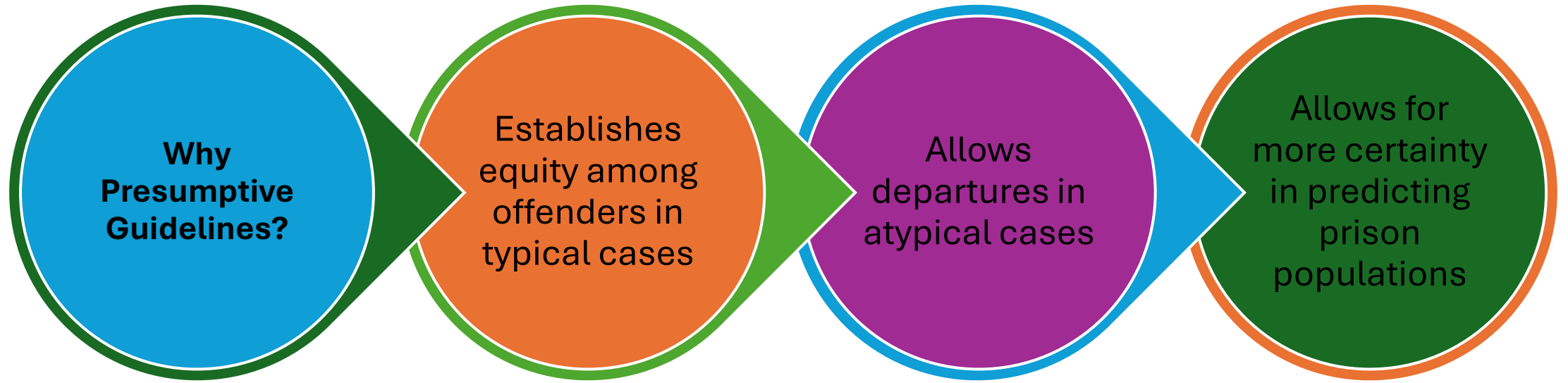
| Categories→ | A | B | C | D | E | F | G | H | I |
|--------------------------|------------------------|---|-------------------------------------|--------------------|---------------------------|-------------------------|-----------------------|---------------------|----------------------------|
| Severity Level ↓ | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felony | 1 Person Felony | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2 + Misdemeanors | 1 Misdemeanor No Record |
| I | 204 194 185 | 196 186 176 | 187 178 169 | 179 170 161 | 170 162 154 | 167 158 150 | 162 154 146 | 161 150 142 | 154 146 138 |
| II | 144 136 130 | 137 130 122 | 130 123 117 | 124 117 111 | 116 111 105 | 113 108 101 | 110 104 99 | 108 100 96 | 103 98 92 |
| III | 83 78 74 | 77 73 68 | 72 68 65 | 68 64 60 | 62 59 55 | 59 56 52 | 57 54 51 | 54 51 49 | 51 49 46 |
| IV | 51 49 46 | 47 44 41 | 42 40 37 | 36 34 32 | 32 30 28 | 26 24 23 | 23 22 20 | 19 18 17 | 16 15 14 |
| V | 42 40 37 | 36 34 32 | 32 30 28 | 26 24 23 | 22 20 18 | 18 17 16 | 16 15 14 | 14 13 12 | 12 11 10 |
| Presumptive Probation | | Fines not to exceed \$500,000 (SL1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5) | | | | | | | |
| Border Box | | | | | | | | | |
| Presumptive Imprisonment | | | | | | | | | |

| Levels | ** Distribute or Possess w/ intent to Distribute | | | Manufacture (all) 2nd or 1 st Meth/Fentanyl | Cultivate | Dosage Units | Postrelease | Probation | Good Time |
|--------|--|---------------|-----------------------------|--|--------------|-------------------|-------------|-----------|-----------|
| | Fentanyl-related Cont. Subst., Meth & Heroin | Cocaine | Marijuana | | | | | | |
| I | ≥ 100 g | ≥ 1 kg | ≥ 30 kg | | > 100 plants | > 1000 (†≥ 250) | 36 | 36 | 15% |
| II | 3.5 g - 100 g | 100 g - 1 kg | 450 g - 30 kg | 1 st | 50-99 plants | 100-999 (†50-250) | 36 | 36 | 15% |
| III | 1 g - 3.5 g | 3.5 g - 100 g | 25 g - 450 g | | 5-49 plants | 10-99 (†10-50) | 36 | 36 | 20% |
| IV | < 1 g | < 3.5 g | < 25 g | | | < 10 | 24 | *≤ 18 | 20% |
| V | Possession | Possession | Possession - 3rd offense | | | | 12 | *≤ 12 | 20% |

* ≤ 18 months for 2003 SB123 offender

** Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

† Fentanyl-related controlled substance



Agency Mission

We oversee and evaluate the Kansas Sentencing Guidelines Act to ensure fair, effective, and data-driven sentencing practices. Through collaboration with the governor, legislature, and Department of Corrections, we align felony sentencing policies with correctional resources. We maintain the sentencing guidelines system, administer SB 123 substance use treatment programs, provide education to stakeholders, and recommend improvements that promote equity and efficiency in sentencing across the state.



**What role do PSIs play in
the sentencing process?**

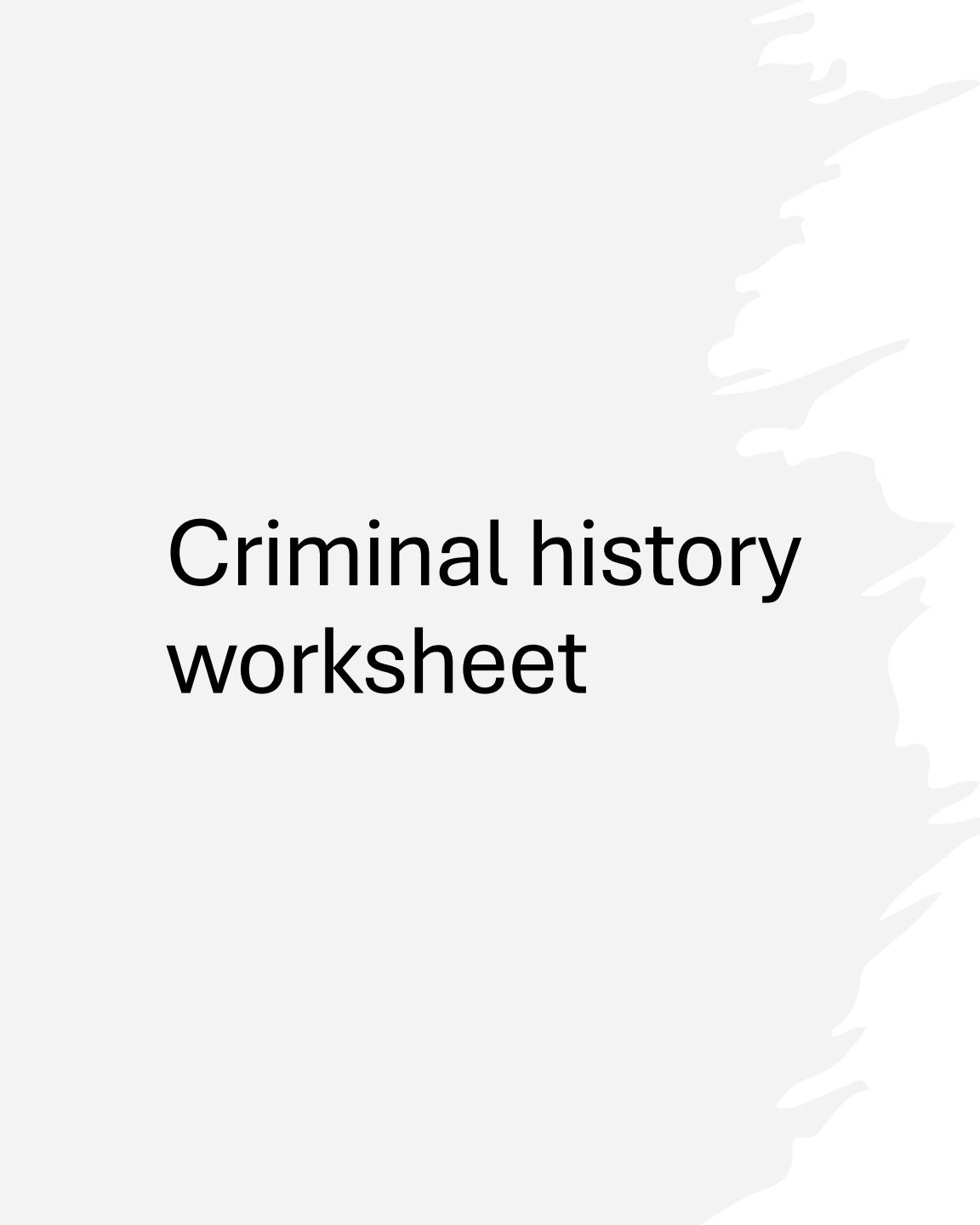
What should the PSI include?

- Each PSI prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:
 - A summary of the factual circumstances of the crime or crimes of conviction.
 - If the defendant desires to provide one, a summary of the defendant's version of the crime.
 - When there is an identifiable victim, a victim report. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.
 - An appropriate classification of each crime of conviction on the crime severity scale.

- A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.
- Proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.
- If the proposed grid block classification is a grid block that presumes imprisonment, the presumptive prison term range and the presumptive duration of postrelease supervision as it relates to the crime severity.

- If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be included as part of the nonprison sanction.
- For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 21-5706 or K.S.A. 21-5705 and meet the requirements of K.S.A. 21-6824 (Senate Bill 123), the drug abuse assessment package as provided in K.S.A. 21-6824.
- For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 21-5706 (Special Rule 26), and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-6824, and amendments thereto.

- The PSI will become part of the court record (i.e. public), HOWEVER....
- The official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to: The parties; the sentencing judge; the department of corrections; community correctional services; any entity required to receive the information under the interstate compact for adult offender supervision; and, if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.
 - These documents should be filed confidentially



Criminal history worksheet

- primary purpose of the PSI report is to provide complete and accurate information about the criminal history of the offender
- should indicate the officer's source of information for each prior conviction listed, and copies of any verifying documents available to the officer should be attached, including criminal history worksheets prepared in prior cases



Primary Crime Determination

- When there is more than one conviction, the sentencing court must establish the base sentence for the primary crime.
- Generally, the crime with the highest severity ranking is the primary crime.
- Presumptive imprisonment crime is primary over a presumptive nonimprisonment crime.

See K.S.A. 2025 Supp. 21-6819(b)(2).

What should be listed as the primary crime when there is an off-grid and grid felony in the same case?

When an off-grid crime is part of a multiple count case, the primary on-grid crime should be used for determining the base guideline sentence, using full criminal history. See K.S.A. 2025 Supp. 21-6819(b)(2). Additionally, if the sentences are consecutive, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and postrelease term is based on the off-grid sentence. *Id.*

What is the primary crime when an offender is convicted of crimes sentenced on the nondrug and drug grids?

When the offender is convicted of crimes sentenced on nondrug and drug grids, and when the crimes simultaneously have a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. Additionally, in sentencing with the drug grid and nondrug, both crimes having the same presumption of probation or imprisonment, the primary crime shall be the crime with the longest sentence term. See K.S.A. 2025 Supp. 21-6819(b)(2).

What is the primary crime
when there is a nongrid and
a grid crime?

**What is the primary crime
when a special rule applies?**

State v. Kimberlin, 362 P.3d 19, 52 Kan. App. 2d. 15 (Kan. App. 2015).

- In multiple conviction cases, the sentencing court first must apply Special Rule 26 to any third or subsequent conviction for possession of a controlled substance before designating the primary crime to be used in calculating the base and nonbase sentences under K.S.A.2014 Supp. 21-6819(b)(2).
- Because Counts 2 and 4 involved Kimberlin's third or subsequent felony drug possession convictions, however, application of the special rule set forth in K.S.A.2014 Supp. 21-6805(f)(1) was triggered. This special rule provides that the presumptive sentence for a third or subsequent felony drug possession conviction is prison. The sixth sentence of K.S.A.2014 Supp. 21-6819(b)(2) states that “[i]n the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime.” In this case, Kimberlin was convicted of a nondrug crime that had a presumptive probation sentence and two drug crimes that had presumptive imprisonment sentences. The fact that Counts 2 and 4 are listed on the drug grid as presumptive probation sentences when the special rule in K.S.A.2014 Supp. 21-6805(f)(1) does not apply is irrelevant to the facts presented here.

Rule 1802

COURT SERVICES OFFICER ASSESSMENT OF OFFENDERS

- (a) **Purpose.** This rule sets forth the requirements for a court services officer in conducting a risk and needs assessment for certain offenders. Nothing in this rule prevents a court from ordering a risk and needs assessment.

(b) **Adult Offender.**

(1) **Felony Conviction.**

(A) **Assessment Requirement.** Except as provided in subsection (b)(3), a court services officer must conduct a risk and needs assessment of an adult offender who is convicted of a felony after June 30, 2014.

(B) **Assessment Tool.** A court services officer must use the standardized risk and needs assessment tool specified by the Kansas Sentencing Commission in accordance with •K.S.A. 75-5291(a)(2) and any subsequent amendments.

(A) **Timing of Assessment.** Except as provided in subsection (b)(4), a court services officer must complete the assessment at the same time as the presentence investigation.

•
(1) **No Assessment Required.** A court services officer is not required to conduct a risk and needs assessment of an offender if the following circumstances apply:

- (c) the crime severity level and offender's criminal history establish a presumptive prison sentence under the Kansas Sentencing Guidelines Act, unless subsection (b)(4) applies.

Community Corrections Target Population Continued

(D) for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in the offender being required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections;

(E) who have been placed in a community correctional services program as a condition of supervision following the successful completion of a conservation camp program;

(F) who have been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2023 Supp. 21-6824, and amendments thereto; or

(G) who have been placed in a community correctional services program for supervision by the court pursuant to K.S.A. 8-1567, and amendments thereto.

KSA 2025 Supp. 75-5291(a)(2)

Jail Credit

In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated ***pending the disposition of the defendant's case***. In recording the commencing date of such sentence the date as specifically set forth by the court shall be used as the date of sentence and all good time allowances as are authorized by the secretary of corrections are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any of the institutions of the state correctional system.

State v. Hopkins

- Pled to two counts of premeditated murder & sentenced to hard 50
 - At the time of sentencing, there was a MTR probation in a theft case; he also was charged with a new crime relating to his escape from custody
 - As part of his plea deal, the new escape case was dismissed, the State agreed to withdraw MTR and a separate pending case in another county was dismissed
- Spent 572 days in jail awaiting sentencing
 - District Court did not award defendant any jail credit
- KS Supreme Court overruled prior case law and stated that the defendant will be awarded the 572 days of jail credit against his hard 50 sentences
- Prior rule “unworkable”
- The award of credit under K.S.A. 2022 Supp. 21-6615(a) is not limited to time spent “solely” in custody for the charge for which the defendant is being sentenced.

Since 1978 we have held that the language in K.S.A. 2022 Supp. 21-6615(a) requires the sentencing judge to award a defendant credit for all time spent in custody “solely” on the charge for which the defendant is being sentenced while awaiting disposition of his or her case, and that a defendant is not entitled to credit for time “ ‘which he has spent in jail upon other, distinct, and wholly unrelated charges.’ ” *Smith*, 309 Kan. at 981, 441 P.3d 1041; *Campbell*, 223 Kan. 528, Syl. ¶ 2, 575 P.2d 524. But the statute does not say that. *State v. Hopkins*, 317 Kan. 652, 655-56, 537 P.3d 845 (2023).

A defendant shall be awarded jail time credit for all time spent in custody pending the disposition of his or her case. See *id.* at 657.



Amendments to Jail Credit Statute

K.S.A. 21-6615. Deduction of time spent incarcerated or in confinement, residential facility or community correctional residential services program. (a) (1) In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing the defendant's sentence and parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time that the defendant has spent incarcerated pending the disposition of the defendant's case. The defendant shall be entitled to have credit applied for each day spent incarcerated. In recording the commencing date of such sentence the date as specifically set forth by the court shall be used as the date of sentence and all good time allowances as are authorized by the secretary of corrections are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any of the institutions of the state correctional system.

- (2) When computing the defendant's sentence, the following shall not be considered time spent incarcerated pending disposition of the defendant's case:
 - (A) Any time awarded as credit in another case when consecutive sentences are imposed on a defendant; or
 - (B) any time spent incarcerated in another jurisdiction if no hold has been issued in such jurisdiction for the case being sentenced.

State v. Ervin, 320 Kan. 287, 566 P.3d 481 (2025).

- Defendant sentenced to life in prison with parole eligibility after 724 months in prison **consecutive to all other cases**
- Judge did not give all days jail credit as to avoid duplicate credit
- On appeal, defendant argued the judge's failure to allow a credit for all of his time in jail (the 346 days not credited plus the 403 days credited) is contrary to K.S.A. 21-6615(a) and *State v. Hopkins*, 317 Kan. 652, 537 P.3d 845 (2023).
- State argues that Hopkins doesn't clarify jail credit in consecutive sentences.

State v. Ervin, 320 Kan. 287, 566 P.3d 481 (2025).



- K.S.A. 21-6615(a), as worded when Ervin was sentenced, directed courts to credit a defendant with "an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant's case.
- This language required the district judge to award one day of credit for each day that Ervin was incarcerated pending disposition of this case regardless of whether he received an allowance for some or all that time against a sentence in another case.
- The Court then says, “Finally, we note that the Legislature acted expeditiously to amend the statute following *Hopkins*. See L. 2024, ch. 96, §§ 7, 13. We mention this to clarify that our focus is on the language of K.S.A. 21-6615. **The State does not ask us to apply the 2024 amendments retroactively, and we leave for another day any questions about whether the amendments are retroactive or about application of the amended statute.**

Juvenile Adjudications Are NOT Convictions!

- *State v. Crawford*, 39 Kan.App.2d 897, 185 P.3d 315 (Ct. App. 2008) addressed whether an adult sentence could be consecutive to a juvenile sanction.
 - Judge applied Rule 9 to run the current sentence consecutive to prior sentence because the defendant committed a new felony while he was on juvenile probation
 - The rule of *expressio unius est exclusio alterius* (the inclusion of one thing implies the exclusion of another) governs in situations where a trial court utilizes juvenile adjudications for sentencing purposes.
 - Based on the legislature's exclusion of specific language listing juvenile adjudications, we conclude that body meant to exclude juvenile adjudications from cases calling for consecutive adult sentences. The court here had no authority to impose a consecutive sentence.

When it comes to
Special Rules, make
sure to look at the
specific statute!



Criminal Threat

- The Kansas Supreme Court found that the provision in the Kansas criminal threat statute, K.S.A. 2018 Supp. 21-5415(a)(1), that allows for a criminal conviction if a person makes a threat in reckless disregard of causing fear is unconstitutionally overbroad. See *State v. Boettger*, 310 Kan. 800, 801, 450 P.3d 805 (2019).
- Then, *Counterman v. Colorado* was decided....
- In *State v. Phipps*, the Kansas Court of Appeals held that *Counterman v. Colorado* effectively overrules *State v. Boettger*. See *State v. Phipps*, 63 Kan.App.2d 698, 707, 539 P.3d 227. (Kan. App. 2023)(review granted January 29, 2024).

Kansas Supreme Court has now said....

- Our Legislature's direction was clear. If a prior conviction arose under a statute "that has since been determined unconstitutional by an appellate court," it cannot be counted in a criminal history score. Nothing in the plain language of the statute qualifies this limitation by considering subsequent repudiations of an appellate court's holding that a statute is unconstitutional.
- As applied here, *Boettger*, 310 Kan. at 822, held that the portion of K.S.A. 2018 Supp. 21-5415 criminalizing reckless criminal threat is unconstitutional. This holding further invalidated the corresponding portion of K.S.A. 2003 Supp. 21-3419, under which Smith's 2003 conviction arose. And while the parties argue at length as to whether *Counterman v. Colorado*, 600 U.S. 66, 81-82, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023), effectively overruled *Boettger*, this consideration is irrelevant under the plain language of K.S.A. 21-6810(d)(9), which asks only whether an appellate court "has since" ruled the statute unconstitutional—not whether that holding remains good law.


**Which PSI should be
used in old cases?**

What if the prior conviction's classification has changed?

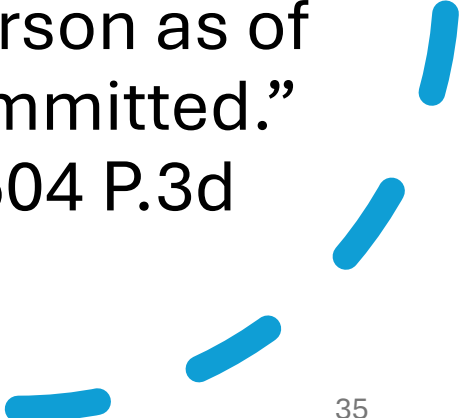
- The classification of a prior conviction will be made in accordance with the law applicable at the time of the current crime of conviction. See *State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).

State v. Terrell

- Current conviction of Aggravated Escape
- Prior conviction of failure to register
- Registration offense was a nonperson felony when defendant was convicted of it, but was a person felony when he was convicted of aggravated escape
(underlying offense for which he had to register for was rape which made it a PF)
- District Court classified failure to register conviction as person felony under *Keel*
- See *State v. Terrell*, 315 Kan. 68, 504 P.3d 405 (2022).



Under the KSGA, all prior convictions, whether out-of-state, pre-guidelines, or amended post-guidelines, are to be classified as person or nonperson as of the time the new crime is committed. The Court specifically said, “We conclude that the better understanding of the statutory sentencing scheme requires that all prior convictions, whether out-of-state, pre-guidelines, or amended post-guidelines, be classified as person or nonperson as of the time the new infraction is committed.” *State v. Terrell*, 315 Kan. 68, 75, 504 P.3d 405 (2022).



If an offender is ineligible for SB 123 (i.e. SR 26), does that automatically make them ineligible for SB 123+?

Reminders

1

Fill out any applicable supplemental forms

- Special Rules
- Offender Registration
- Supplemental Criminal History Sheets

2

Use comment boxes on KSApp when necessary

3

Documents can be attached to KSApp



If you have a question, go to OJA Intranet and review the CSO Q & A to see if a question has been asked and answered that may be relevant to their question **BEFORE** emailing the KSSC for assistance.



Website



Desk Reference Manual



Training

Francis.givens@ks.gov



Assistance With
Questions

KSSCAAttorney@ks.gov