



Mastering KSApp:
FAQ Session for
Journal Entries

- Francis Givens, J.D., KSSC Special Projects Manager
- Payton Fenwick, KSSC Research Analyst
- April 30th, 2026

Registration Questions

Can we count prior Criminal
Threat convictions in the
criminal history?



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.

If an offense covers date ranges, what year JE should be used?

Status of Jail Credit



The Kansas Supreme Court recently overruled prior case law by finding that the award of jail 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. See *State v. Hopkins*, 317 Kan. 652, 652, 537 P.3d 845 (2023). Rather, the Court held that 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.


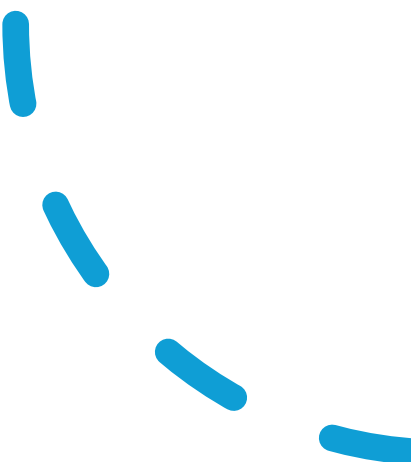
- (2) When computing the defendant's sentence, the following shall not be considered time spent incarcerated pending disposition of the defendant's case:
 - (A) Any time awarded as credit in another case when consecutive sentences are imposed on a defendant; or
 - (B) any time spent incarcerated in another 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 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.**

- 
- The Kansas Court of Appeals recently held that the amendments in the jail credit statute (K.S.A. 2024 Supp. 21-6615) do not apply retroactively, but rather, the version of the statute in effect at the time the crime was committed applies. See *State v. Mitchell*, 579 P.3d 970, 972 (Kan. App. 2025).
- 

How will the new laws
from the legislative
session affect the
journal entry?

Questions?

KSSC Resources

- KSSC Assistance
 - Payton.fenwick@ks.gov
 - [\(785\) 296-8928](tel:(785)296-8928)
- Other Questions
 - KSSCAttorney@ks.gov
 - Francis.givens@ks.gov