



Understanding the
Kansas Sentencing
Guidelines Act (JE
Focus)

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- **Jessica Domme, KS Deputy Attorney General**
- **May 2026**

Overview

KSGA overview

Criminal history scoring

Primary crime determination

Current sentencing issues

Question & answer

2026 Commission Members

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Chief District Judge, 8th Judicial District

Honorable Stacey Donovan, Vice Chair

District Judge, 7th Judicial District

Honorable Stephen Hill

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Office of Judicial Administration

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.



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

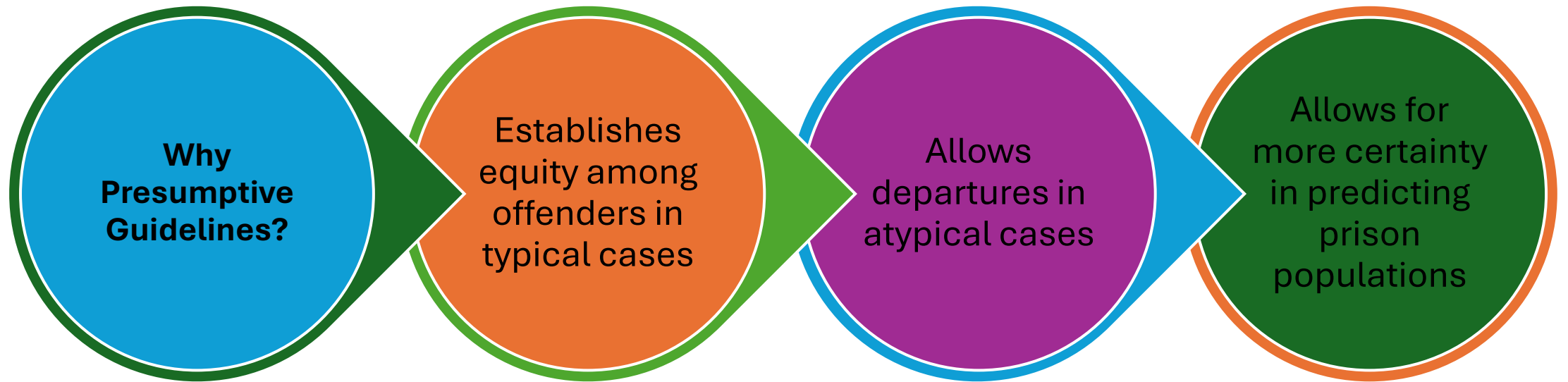
State Statistical Analysis Center for Criminal Justice

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

- Kansas Sentencing Application (KSApp) – mandatory for 2026

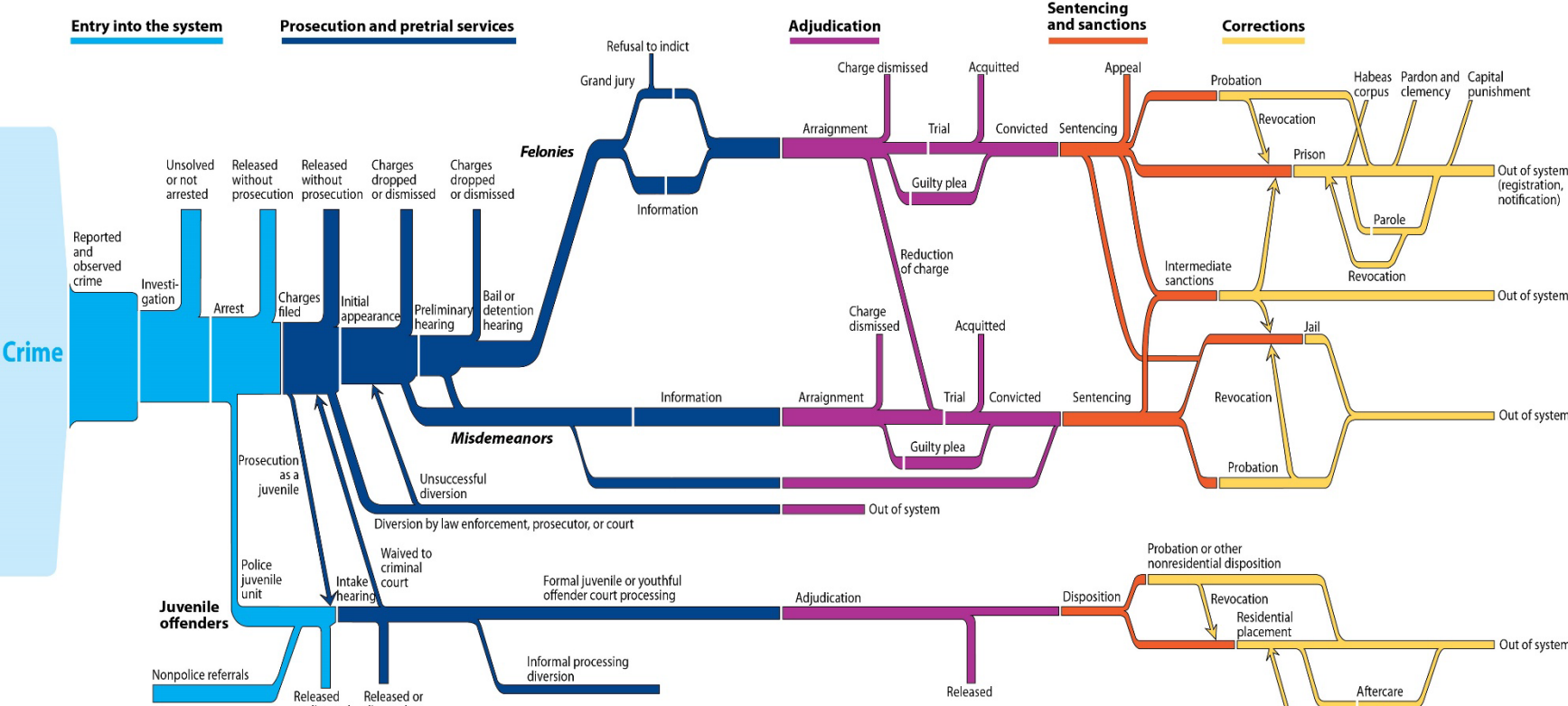
Annual prison bed population and inmate classification projections for KDOC

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



Criminal Justice System Flowchart

What is the sequence of events in the criminal justice system?



Note: This chart gives a simplified view of caseload flow through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

Source: Adapted from *The challenge of crime in a free society*. President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

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

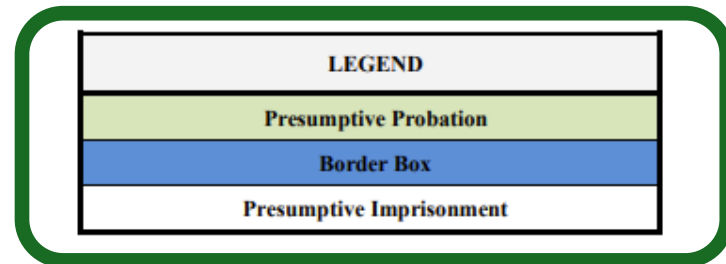
12 months (up to) for felonies classified in Severity Levels 9-10

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 | | | | | | | | |
|--------|--|---------------|--------------------------|--------------------------|--------------|-------------------|-------------|-----------|-----------|
| | Fentanyl-related Cont. Subst., Meth & Heroin | Cocaine | Marijuana | Manufacture (all) | Cultivate | Dosage Units | Postrelease | Probation | Good Time |
| I | ≥ 100 g | ≥ 1 kg | ≥ 30 kg | 2nd or 1st Meth/Fentanyl | > 100 plants | > 1000 (†≥ 250) | 36 | 36 | 15% |
| II | 3.5 g - 100 g | 100 g - 1 kg | 450 g - 30 kg | 1st | 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



Departing from the grid

Mitigating Factors

The following nonexclusive list of statutorily enumerated factors may be considered in determining whether substantial and compelling reasons for a departure exist.

- The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.
 - Does not apply to a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, or electronic solicitation as defined in K.S.A. 21-5509, and amendments thereto, when: (i) The victim is less than 14 years of age and the offender is 18 or more years of age; or (ii) the offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.
- The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.
- The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.
- The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.
- The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.
- The offender committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone in the armed forces of the United States of America. K.S.A. 2025 Supp. 21-6815(c)(1)(A) through (F).

Additional Mitigating Factors

K.S.A. 2025 Supp. 21-6815(e) provides additional mitigating factors to be considered. It provides that, upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist.

In considering this mitigating factor, the court may consider the following:

- the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;
- the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
- the nature and extent of the defendant's assistance;
- any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and
- the timeliness of the defendant's assistance. K.S.A. 2025 Supp. 21-6815(e).

Aggravating Factors

The following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

- the victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity that was known or should have been known to the offender;
- the defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense;
- the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim, whether or not the defendant's belief or perception was correct;
- the offense involved a fiduciary relationship that existed between the defendant and the victim;
- the defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed, or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation to commit any person felony regardless of whether the defendant knew the age of the individual was under 16 years of age;
- the defendant's current crime of conviction is a crime of extreme sexual violence, and the defendant is a predatory sex offender as defined by this section;
- the defendant was incarcerated at the time the crime was committed; or
- the crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager, or supervisor. K.S.A. 2025 Supp. 21- 6815(c)(2)(A) through (H).

Additional Aggravating Factors – Drug Grid Crimes

In addition to the previously mentioned aggravating factors, there are additional aggravating factors, which apply to drug felonies committed on or after July 1, 1993, may be considered in determining whether substantial and compelling reasons for departure exist. These factors are listed in K.S.A. 2025 Supp. 21-6816(a).

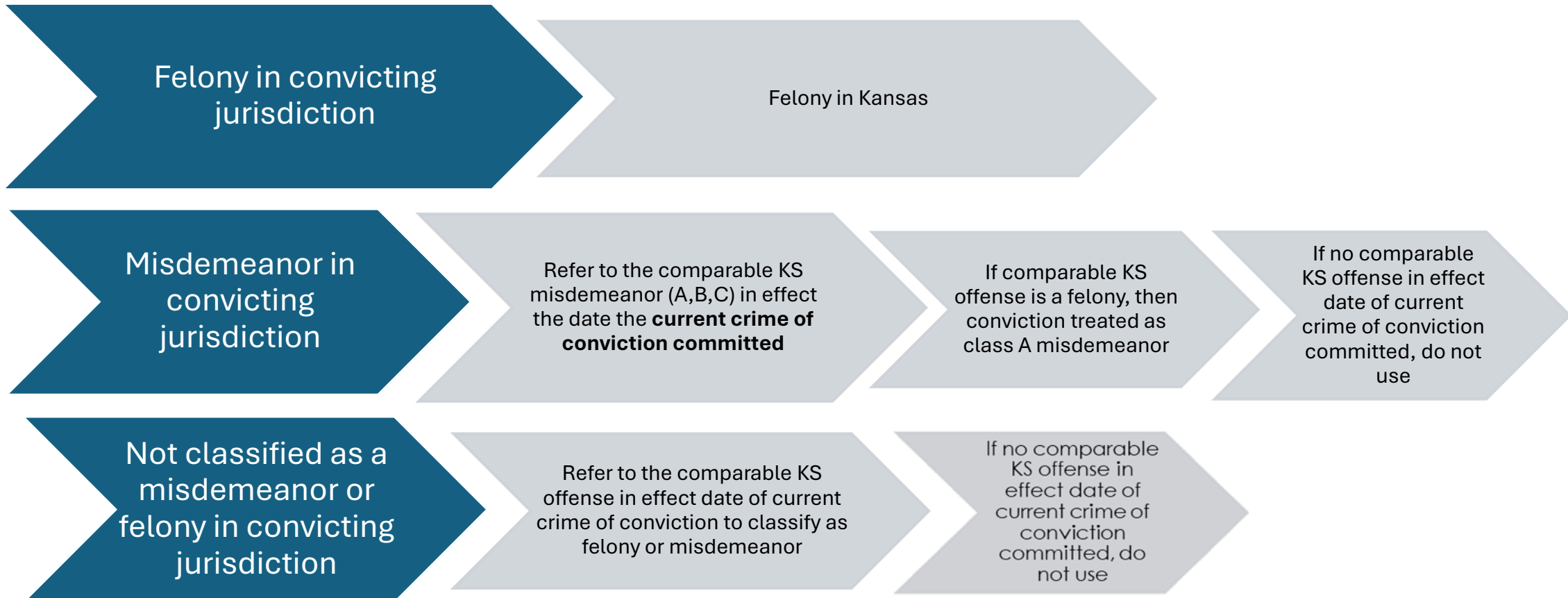
Criminal History Classification

Can the prior conviction be used?

Felony or misdemeanor?

Person or nonperson?

OUT OF STATE CONVICTION: FELONY OR MISDEMEANOR IN KANSAS?



See K.S.A. 2025 Supp. 21-6811(e)(2)

Misdemeanors: Person or Nonperson?

In designating a misdemeanor as person or nonperson, comparable offenses under the Kansas criminal code in effect on the date the current crime of conviction was committed shall be referred to. If the state of Kansas does not have a comparable person offense in effect on the date the current crime of conviction was committed, the out-of-state crime shall be classified as a nonperson crime. K.S.A. 21-6811(e)(3)(A).

What is comparable? For an out-of-state conviction to be comparable to an offense under the Kansas criminal code, the elements of the out-of-state crime cannot be broader than the elements of the Kansas crime. In other words, the elements of the out-of-state crime must be identical to, or narrower than, the elements of the Kansas crime to which it is being referenced. *State v. Wetrich*, 307 Kan. 552, 559, 412 P.3d 984 (2018)

Converting Misdemeanors to Person Felonies

- Prior adult convictions and juvenile adjudications for class A person misdemeanors and class B person misdemeanors convert to person felonies at a rate of 3 to 1.
 - If the resulting number is a fraction, do not convert the fractional portion because these figures must be in whole numbers. For example, eight person misdemeanor convictions and/or juvenile person adjudications would be converted to two person felony convictions (i.e., $8/3 = 2$). Do not count the remaining "unconverted" or fractional person misdemeanor convictions and/or juvenile person adjudications in the felony score. However, the two remaining convictions and/or adjudications in the example should still be listed in the Person Misdemeanor section. See K.S.A. 2025 Supp. 21-6811(a).
- The Assault Rule
 - Every three prior adult convictions or juvenile adjudications of misdemeanor assault (a class C person misdemeanor), as defined in K.S.A. 21-3408, prior to its repeal, or subsection (a) of K.S.A. 2024 Supp. 21-5412, that occurred within a period of three years commencing immediately prior to the date of conviction for the current crime, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. K.S.A. 2025 Supp. 21-6811(a).

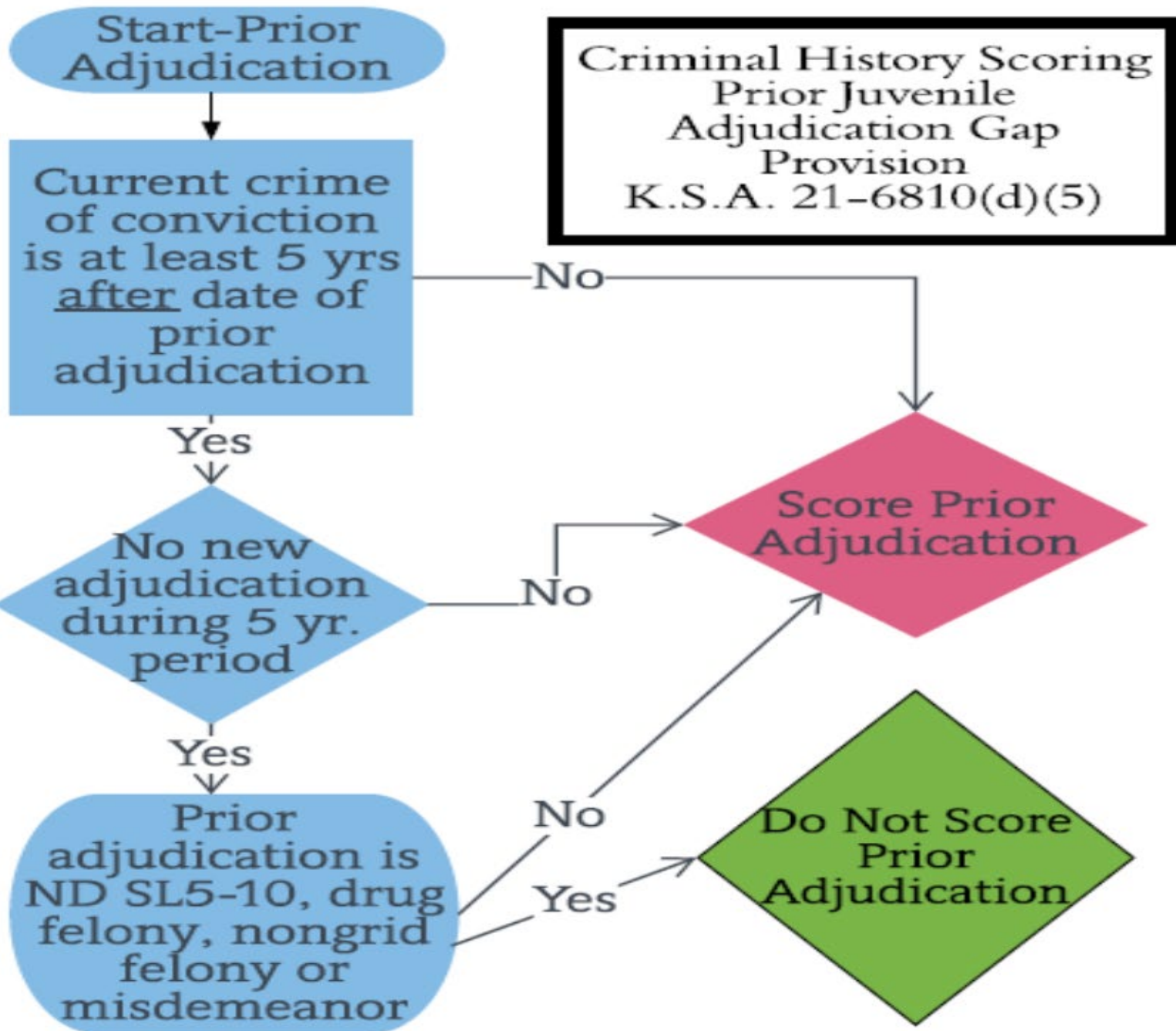
Person felony

- An out-of-state conviction or adjudication for the commission **of a felony offense**, or an attempt, conspiracy or criminal solicitation to commit a felony offense, **shall be classified as a person felony if one or more** of the following circumstances is present as defined by the convicting jurisdiction in the elements of the out-of-state offense:
 - (a) Death or killing of any human being;
 - (b) threatening or causing fear of bodily or physical harm or violence, causing terror, physically intimidating or harassing any person;
 - (c) bodily harm or injury, physical neglect or abuse, restraint, confinement or touching of any person, without regard to degree;
 - (d) the presence of a person, other than the defendant, a charged accomplice or another person with whom the defendant is engaged in the sale, distribution or transfer of a controlled substance or non-controlled substance;
 - (e) possessing, viewing, depicting, distributing, recording or transmitting an image of any person;
 - (f) lewd fondling or touching, sexual intercourse or sodomy with or by any person or an unlawful sexual act involving a child under the age of consent;
 - (g) being armed with, using, displaying or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
 - (h) entering or remaining within any residence, dwelling or habitation.

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!



Juvenile Decay

In K.S.A. 2025 Supp. 21-6810(d)(4), a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the adjudication is for an offense:

1. Committed before July 1, 1993, which would have been a class D or E felony, if committed by an adult;
2. Committed on or after July 1, 1993, which would have been a nondrug severity level 5-10 felony, a nongrid felony, or any drug felony, if committed by an adult; or
3. Would be a misdemeanor, if committed by an adult.



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.

What if the prior conviction's classification has changed?

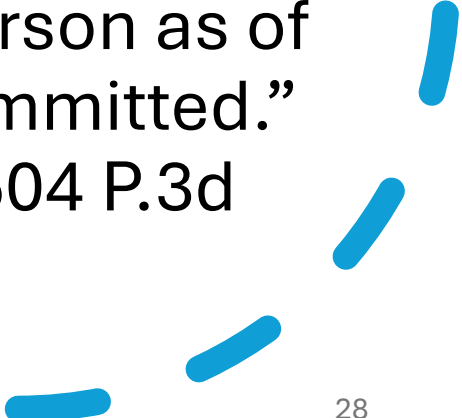
- The classification of a prior conviction will be made in accordance with the law applicable at the time of the current crime of conviction. See *State v. Keel*, 302 Kan. 560, 357 P.3d 251 (2015).

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).





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.



Double Rule

When consecutive sentences are imposed, the total prison sentence imposed cannot exceed twice the base sentence. This is referred to as the “double rule.” K.S.A. 2025 Supp. 21-6819(b)(4). This means that the sentencing court is not required to shorten the length of any of the individual non-base sentences given to an offender, as long as the court orders that the total sentence given to the offender is adjusted so that it does not exceed twice the base sentence. The term “base sentence” applies to the base sentence actually imposed, not to the maximum base sentence that could have been imposed according to the sentencing grid. *State v. Snow*, 282 Kan. 323, 341-42, 144 Kan. 729 (2006). The sentencing judge shall have the discretion to impose a consecutive term of imprisonment for a crime other than the primary crime of any term of months not to exceed the nonbase sentence. K.S.A. 2025 Supp. 21-6819(b)(1). This allows the court the discretion to impose less than the full sentence for each additional offense ordered to run consecutively to the primary offense.

What is consolidation?



The court may order two or more complaints, informations or indictments against a single defendant to be tried together if the crimes could have been joined in a single complaint, information or indictment.
K.S.A. 2025 Supp. 22-3203.

Why does it matter if a case is considered consolidated?

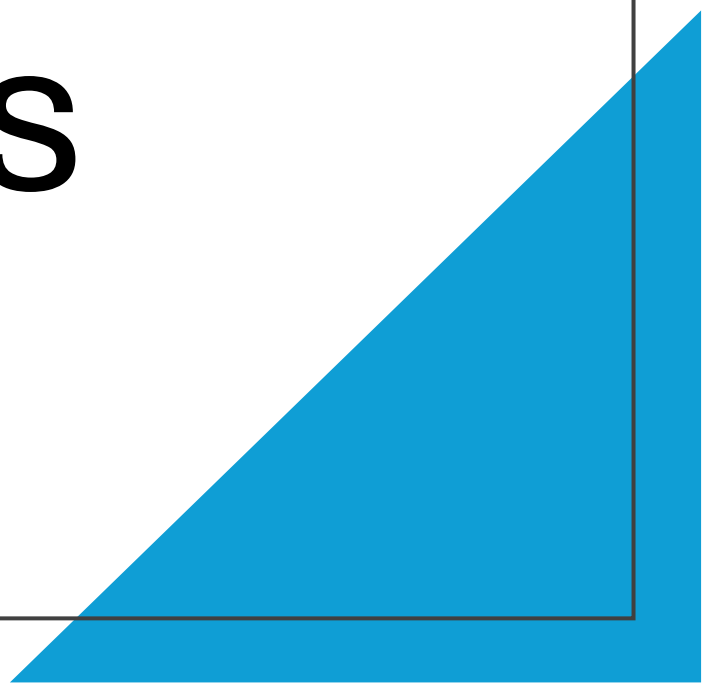
If cases are consolidated, the counts will be in one case and NOT scored against each other; not prior convictions

If the cases are not consolidated, the counts will be in separate cases and will be scored against each other for criminal history purposes; count as prior convictions

Consolidation

- In *Shiple*, where a defendant argued that his two cases were effectively consolidated, the Court of Appeals found that the cases counted as prior convictions for criminal history purposes because the cases were never joined for trial. See *State v. Shiple*, 62 Kan.App.2d 272, 280, 510 P.3d 1194 (Kan. App. 2022). Shiple had no trial because he pleaded, but his cases were set for trial on the same day, he pleaded to both cases by a joint plea agreement on the same day, and he was sentenced in both cases on the same day. *Id.* at 276. Neither party asked the court to consolidate the cases for trial. See *id.* at 272.
- The COA found that the district court did not err in relying on the convictions in each complaint to calculate a criminal history score in the other. See *id.* at 273.

Current Sentencing Issues in Kansas



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.

See *State v. Hopkins*, 317 Kan. 652, 652, 537 P.3d 845 (2023).

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 After *Hopkins*

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.

More amendments to jail credit statute coming July 1, 2026

- [HB 2444](#)
- K.S.A. 21-6615(d)(1) When consecutive sentences are imposed on a defendant, days spent in custody that are attributable to more than one case shall be credited only once against the aggregated consecutive term. The sentencing court may allocate such days to one case or apportion such days among cases, but the same days shall not be applied more than once to reduce multiple portions of consecutive terms.
- (2)The provisions of this subsection shall apply to:
 - (A) **All sentences, whether pronounced before, on or after July 1, 2026**, and to all computations of jail credit by the department of corrections and the courts; and
 - (B) any case posture, including, but not limited to, direct appeals, probation revocation proceedings, motions to correct illegal sentence, habeas corpus actions and actions under K.S.A. 60-1507, and amendments thereto, pending on or filed after July 1, 2026.
- (3) Any judicial interpretations regarding application of jail time credit to consecutive sentences in conflict with or inconsistent with this section and the amendments to this section by this act are superseded to the extent of such conflict or inconsistency.

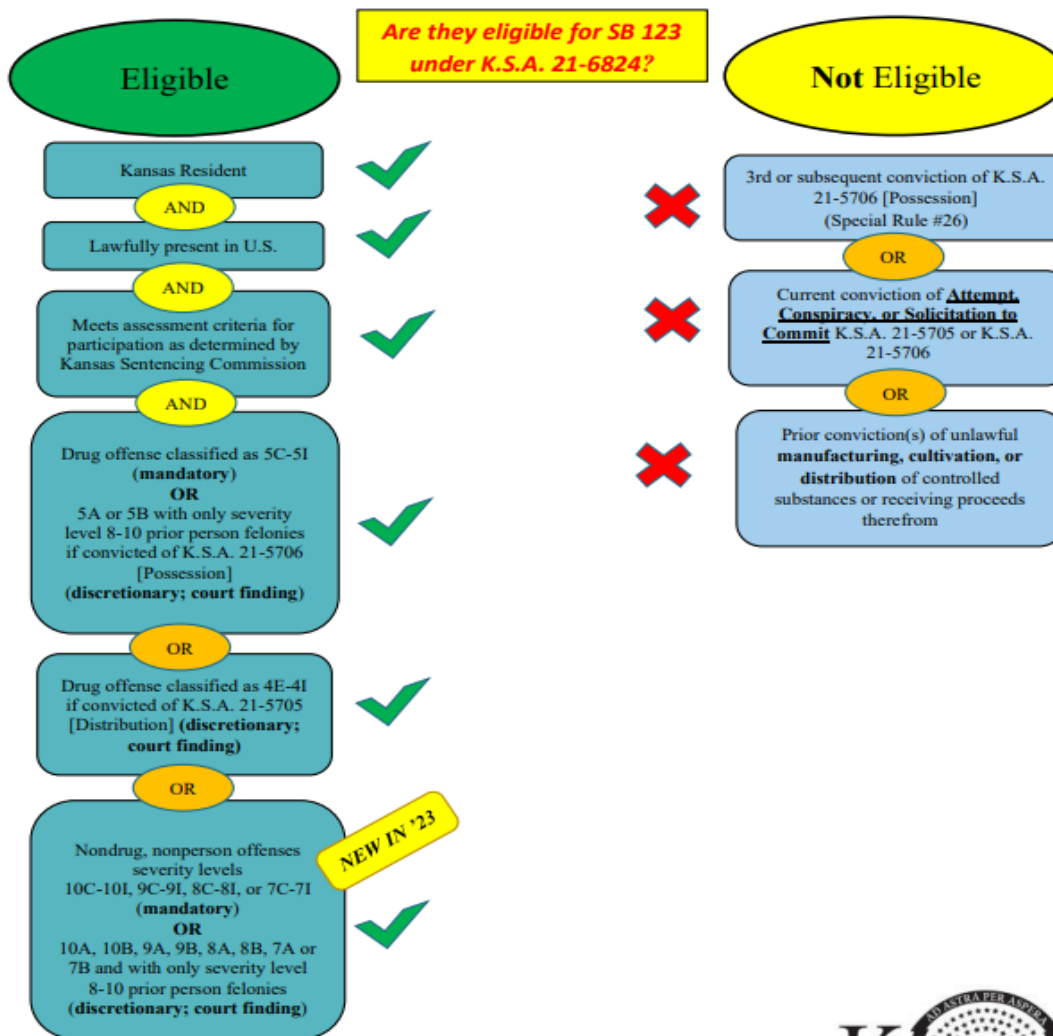
**Which JE should be used
in old cases?**

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

SB 123 Programs

2003 SB 123 ELIGIBILITY EFFECTIVE JULY 1, 2023

**Felony conviction of K.S.A. 21-5705 or K.S.A. 21-5706
or certain nondrug felonies (New)**



NEW IN '23



Nothing prohibits evaluation and treatment for any person that does not qualify for SB123

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

SB 123+ Changes Effective July 1, 2026: [HB 2192](#)

- Special Rule 27
 - BURGLARY WITH TWO OR MORE PRIOR CONVICTIONS FOR THEFT, BURGLARY OR AGGRAVATED BURGLARY The sentence for a violation of burglary, K.S.A. 2025 Supp. 21-5807(a), when the offender has any combination of two or more prior convictions of theft, (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2025 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2025 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2025 Supp. 21-6804(p). There is no indication in the statute it would include priors that are substantially similar offenses from another state.
- Special Rule 29
 - FELONY THEFT WITH THREE OR MORE PRIOR CONVICTIONS FOR A FELONY THEFT, BURGLARY, OR AGGRAVATED BURGLARY The sentence for a violation of theft of property, K.S.A. 2025 Supp. 21-5801, when the offender has any combination of three or more prior felony convictions for theft (K.S.A. 21-3701, prior to its repeal), burglary (K.S.A. 21-3715, prior to its repeal), aggravated burglary (K.S.A. 21-3716, prior to its repeal), theft of property as defined in K.S.A. 2025 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2025 Supp. 21-5807, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. K.S.A. 2025 Supp. 21-6804(p). There is no indication in the statute it would include priors that are substantially similar offenses from another state.
- Special Rule 47
 - RESIDENTIAL BURGLARY WITH CRIMINAL HISTORY C, D, OR E CRIMINAL HISTORY This may be imposed by K.S.A. 2025 Supp. 21-5807 for the crime of residential burglary. The law creates a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of 7C (one previous person felony and one previous nonperson felony), 7D (one previous person felony), or 7E (three or more nonperson felonies). K.S.A. 2025 Supp. 21-6804(x).

SB 123+ Changes Effective July 1, 2026: [HB 2192](#)

- Special Rule 30
 - SUBSTANCE ABUSE UNDERLYING FACTOR* The court may make findings that substance abuse is the underlying factor in the commission of crimes under special rules #27 and #29 above and place the offender in an intensive treatment program for at least 4 months if the state substance abuse facility is likely to be more effective than prison in reducing the risk of offender recidivism, serve community safety interests and promote offender reformation; return to court upon successful completion. K.S.A. 2025 Supp. 21-6804(p). *While this option is authorized by statute, it has never been funded and is not, therefore, an available option.
- Special Rule 31
 - THIRD OR SUBSEQUENT CRIMINAL DEPRIVATION OF A MOTOR VEHICLE The sentence for a third or subsequent violation of criminal deprivation of property that is a motor vehicle pursuant to K.S.A. 2025 Supp. 21-5803(b) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. K.S.A. 2025 Supp. 21-6804(n).
- Special Rule 37
 - SECOND OR SUBSEQUENT IDENTITY THEFT OR IDENTITY FRAUD The sentence for a violation of identity theft or identity fraud as defined in K.S.A. 2025 Supp. 21-6107, or any attempt or conspiracy to commit such offense, shall be presumptive prison when the offender has a prior conviction for a violation of identity theft under K.S.A. 21-4018, prior to its repeal, or identity theft or identity fraud under this statute, or any attempt or conspiracy to commit such offense. K.S.A. 2025 Supp. 21-6804(u). There is no indication in the statute it would include priors that are substantially similar offenses from another state. Such sentence is not considered a departure and is not subject to appeal.

RAFT Program Eligibility

K.S.A. 21-5706 only

5C-5I

No prior felony convictions of manufacture, cultivation or distribution, or unlawful acts involving proceeds from certain drug crimes

**Includes any substantially similar offense from another jurisdiction.*

See K.S.A. 2025 Supp. 21-6825(a)

Can an offender
qualify for SB
123 treatment
after being
revoked from
RAFT?

Nothing in case law...yet

However, because the offender will fall into grid blocks 5-C-5-I of the sentencing guidelines, then the plain language of K.S.A. 21-6824 mandates SB123 drug treatment if offender qualifies.
Offender would still need to meet the risk/needs criteria.



Website



Desk Reference Manual



Training

Francis.givens@ks.gov



Assistance With
Questions

KSSCArtorney@ks.gov