

HOUSE BILL No. 2144

By Committee on Corrections and Juvenile Justice

1-26

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing guidelines; criminal history calculation; requiring **the**
3 **journal entries used to establish criminal history be attached to a**
4 **criminal history worksheet and** an offender who raises error in
5 calculation for first time on appeal to show prejudicial error;
6 **authorizing the court jurisdiction to correct an illegal sentence**
7 **while a direct appeal is pending**; amending K.S.A. 2020 Supp. 21-
8 **6813, 21-6814 and 21-6820** and repealing the existing ~~section~~ **sections**.
9

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

11 **Section 1. K.S.A. 2020 Supp. 21-6813 is hereby amended to read**
12 **as follows: 21-6813. (a) The court shall order the preparation of the**
13 **presentence investigation report by the court services officer as soon**
14 **as possible after conviction of the defendant.**

15 **(b) Each presentence investigation report prepared for an**
16 **offender to be sentenced for one or more felonies committed on or**
17 **after July 1, 1993, shall be limited to the following information:**

18 **(1) A summary of the factual circumstances of the crime or**
19 **crimes of conviction.**

20 **(2) If the defendant desires to do so, a summary of the**
21 **defendant's version of the crime.**

22 **(3) When there is an identifiable victim, a victim report. The**
23 **person preparing the victim report shall submit the report to the**
24 **victim and request that the information be returned to be submitted**
25 **as a part of the presentence investigation. To the extent possible, the**
26 **report shall include a complete listing of restitution for damages**
27 **suffered by the victim.**

28 **(4) An appropriate classification of each crime of conviction on**
29 **the crime severity scale.**

30 **(5) A listing of prior adult convictions or juvenile adjudications**
31 **for felony or misdemeanor crimes or violations of county resolutions**
32 **or city ordinances comparable to any misdemeanor defined by state**
33 **law. Such listing shall include an assessment of the appropriate**
34 **classification of the criminal history on the criminal history scale and**
35 **the source of information regarding each listed prior conviction and**
36 **any available source of journal entries or other documents through**

1 **which the listed convictions may be verified.** ~~If any such journal entries~~
2 ~~or other documents~~ *The journal entries for each listed prior conviction*
3 *that is necessary to establish the appropriate classification on the criminal*
4 *history scale or to establish a special sentencing rule shall be attached to*
5 *the criminal history worksheet and be a part of the court record. If any*
6 *other documents verifying the listed convictions* **are obtained by the**
7 **court services officer, they shall be attached to the** ~~presentence~~
8 ~~investigation report~~ *criminal history worksheet and be a part of the court*
9 *record. Any prior criminal history worksheets of the defendant shall*
10 **also be attached.**

11 (6) A proposed grid block classification for each crime, or crimes
12 of conviction and the presumptive sentence for each crime, or crimes
13 of conviction.

14 (7) If the proposed grid block classification is a grid block that
15 presumes imprisonment, the presumptive prison term range and the
16 presumptive duration of postprison supervision as it relates to the
17 crime severity scale.

18 (8) If the proposed grid block classification does not presume
19 prison, the presumptive prison term range and the presumptive
20 duration of the nonprison sanction as it relates to the crime severity
21 scale and the court services officer's professional assessment as to
22 recommendations for conditions to be mandated as part of the
23 nonprison sanction.

24 (9) For defendants who are being sentenced for a conviction of a
25 felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or
26 K.S.A. 2020 Supp. 21-5706, and amendments thereto, and meet the
27 requirements of K.S.A. 2020 Supp. 21-6824, and amendments thereto,
28 the drug abuse assessment as provided in K.S.A. 2020 Supp. 21-6824,
29 and amendments thereto.

30 (10) For defendants who are being sentenced for a third or
31 subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-
32 4162, prior to their repeal, or K.S.A. 2020 Supp. 21-5706, and
33 amendments thereto, the drug abuse assessment as provided in K.S.A.
34 2020 Supp. 21-6824, and amendments thereto.

35 (c) The presentence investigation report will become part of the
36 court record and shall be accessible to the public, except that the
37 official version, defendant's version and the victim's statement, any
38 psychological reports, risk and needs assessments and drug and
39 alcohol reports and assessments shall be accessible only to: The
40 parties; the sentencing judge; the department of corrections;
41 community correctional services; any entity required to receive the
42 information under the interstate compact for adult offender
43 supervision; and, if requested, the Kansas sentencing commission. If

1 the offender is committed to the custody of the secretary of
2 corrections, the report shall be sent to the secretary and, in
3 accordance with K.S.A. 75-5220, and amendments thereto, to the
4 warden of the state correctional institution to which the defendant is
5 conveyed.

6 (d) The criminal history worksheet will not substitute as a
7 presentence investigation report.

8 (e) The presentence investigation report will not include optional
9 report components, which would be subject to the discretion of the
10 sentencing court in each district except for psychological reports and
11 drug and alcohol reports.

12 (f) Except as provided in K.S.A. 2020 Supp. 21-6814, and
13 amendments thereto, the court may take judicial notice in a
14 subsequent felony proceeding of an earlier presentence investigation
15 report criminal history worksheet prepared for a prior sentencing of
16 the defendant for a felony committed on or after July 1, 1993.

17 (g) All presentence investigation reports in any case in which the
18 defendant has been convicted of a felony shall be on a form approved
19 by the Kansas sentencing commission.

20 ~~Section 1.~~ **Sec. 2.** K.S.A. 2020 Supp. 21-6814 is hereby amended to
21 read as follows: 21-6814. (a) The offender's criminal history shall be
22 admitted in open court by the offender or determined by a preponderance
23 of the evidence at the sentencing hearing by the sentencing judge.

24 (b) Except to the extent disputed in accordance with subsection (c),
25 ~~the summary of the offender's criminal history prepared for the court by~~
26 ~~the state~~ **criminal history worksheet and attached documents prepared**
27 **for the court pursuant to K.S.A. 2020 Supp. 21-6813(c)(5), and**
28 **amendments thereto**, shall satisfy the state's burden of proof regarding an
29 offender's criminal history.

30 (c) Upon receipt of the criminal history worksheet prepared for the
31 court, the offender shall immediately notify the district attorney and the
32 court with written notice of any error in the proposed criminal history
33 worksheet. Such notice shall specify the exact nature of the alleged error.
34 The state shall have the burden of proving the disputed portion of the
35 offender's criminal history. The sentencing judge shall allow the state
36 reasonable time to produce evidence to establish its burden of proof. If the
37 offender later challenges such offender's criminal history, which has been
38 previously established, the burden of proof shall shift to the offender to
39 prove such offender's criminal history by a preponderance of the evidence.

40 (d) *If an offender raises a challenge to the offender's criminal history*
41 *for the first time on appeal, the offender shall have the burden of*
42 *designating a record that shows prejudicial error. If the offender fails to*
43 *provide such record, the appellate court shall dismiss the claim.* **In**

1 designating a record that shows prejudicial error, the offender may
2 provide the appellate court with journal entries of the challenged
3 criminal history that were not originally attached to the criminal
4 history worksheet, and the state may provide the appellate court with
5 journal entries establishing a lack of prejudicial error. The court may
6 take judicial notice of such journal entries, complaints, plea
7 agreements, jury instructions and verdict forms for Kansas
8 convictions when determining whether prejudicial error exists. The
9 court may remand the case if there is a reasonable question as to
10 whether prejudicial error exists.

11 **Sec. 3. K.S.A. 2020 Supp. 21-6820 is hereby amended to read as**
12 **follows: 21-6820. (a) A departure sentence or ruling on a motion filed**
13 **pursuant to K.S.A. 22-3504, and amendments thereto, is subject to appeal**
14 **by the defendant or the state. The appeal shall be to the appellate**
15 **courts in accordance with rules adopted by the supreme court.**

16 **(b) Pending review of the sentence, the sentencing court or the**
17 **appellate court may order the defendant confined or placed on**
18 **conditional release, including bond.**

19 **(c) On appeal from a judgment of conviction entered for a felony**
20 **committed on or after July 1, 1993, the appellate court shall not**
21 **review:**

22 **(1) Any sentence that is within the presumptive sentence for the**
23 **crime; or**

24 **(2) any sentence resulting from an agreement between the state**
25 **and the defendant which the sentencing court approves on the record.**

26 **(d) In any appeal from a judgment of conviction imposing a**
27 **sentence that departs from the presumptive sentence prescribed by the**
28 **sentencing grid for a crime, sentence review shall be limited to**
29 **whether the sentencing court's findings of fact and reasons justifying a**
30 **departure:**

31 **(1) Are supported by the evidence in the record; and**

32 **(2) constitute substantial and compelling reasons for departure.**

33 **(e) In any appeal from a judgment of conviction, the appellate**
34 **court may review a claim that:**

35 **(1) A sentence that departs from the presumptive sentence**
36 **resulted from partiality, prejudice, oppression or corrupt motive;**

37 **(2) the sentencing court erred in either including or excluding**
38 **recognition of a prior conviction or juvenile adjudication for criminal**
39 **history scoring purposes; or**

40 **(3) the sentencing court erred in ranking the crime severity level**
41 **of the current crime or in determining the appropriate classification of**
42 **a prior conviction or juvenile adjudication for criminal history**
43 **purposes.**

1 (f) The appellate court may reverse or affirm the sentence. If the
2 appellate court concludes that the trial court's factual findings are not
3 supported by evidence in the record or do not establish substantial
4 and compelling reasons for a departure, it shall remand the case to the
5 trial court for resentencing.

6 (g) The appellate court shall issue a written opinion whenever the
7 judgment of the sentencing court is reversed. The court may issue a
8 written opinion in any other case when it is believed that a written
9 opinion will provide guidance to sentencing judges and others in
10 implementing the sentencing guidelines adopted by the Kansas
11 sentencing commission. The appellate courts may provide by rule for
12 summary disposition of cases arising under this section when no
13 substantial question is presented by the appeal.

14 (h) A review under summary disposition shall be made solely
15 upon the record that was before the sentencing court. Written briefs
16 shall not be required unless ordered by the appellate court and the
17 review and decision shall be made in an expedited manner according
18 to rules adopted by the supreme court.

19 (i) **The sentencing court shall retain authority irrespective of any**
20 ~~notice of appeal for 90 days after entry of judgment of conviction to~~
21 ~~modify its judgment and sentence to correct any arithmetic or clerical~~
22 ~~errors to correct an illegal sentence or clerical error pursuant to K.S.A.~~
23 ~~22-3504, and amendments thereto. Notwithstanding the provisions of~~
24 ~~K.S.A. 22-3504, and amendments thereto, if a motion to correct an illegal~~
25 ~~sentence is filed while a direct appeal is pending, any change in the law~~
26 ~~that occurs during the pending direct appeal shall apply.~~

27 (j) **The amendments made to this section by this act section 14 of**
28 **chapter 59 of the 2019 Session Laws of Kansas are procedural in nature**
29 **and shall be construed and applied retroactively.**

30 ~~Sec.-2.~~ **4.** K.S.A. 2020 Supp. **21-6813**, 21-6814 ~~is~~ and **21-6820** are
31 hereby repealed.

32 ~~Sec.-3.~~ **5.** This act shall take effect and be in force from and after its
33 publication in the statute book.