

**INSTRUCTIONS FOR THE KANSAS SENTENCING GUIDELINES ACT**  
**PRESENTENCE INVESTIGATION REPORT (PSI)**

In all cases involving felony crimes committed on or after July 1, 1993 the Presentence Investigation Report (PSI) must be on a form approved by the Kansas Sentencing Commission. K.S.A. 2011 Supp 21-6813(g).

The complete Presentence Investigation Report and the Criminal History Worksheet should be stapled to the Journal Entry of Judgment form when these forms are sent to the Kansas Sentencing Commission. K.S.A. 2011 Supp. 22-3439(a). The PSI form found in this Manual must be used for all felony Presentence Investigation Reports prepared for crimes committed on or after July 1, 2012.

A separate form must be used for each separate case number, even if the separate cases are scheduled to be sentenced on the same day.

**PRESENTENCE INVESTIGATION FACE SHEET**

**1. OFFENDER AND CASE IDENTIFICATION INFORMATION**

**Judicial District**

Enter the number of the judicial district in which the case was filed.

**County and ORI number**

Enter the name of the County in which the district court sits and the ORI Number (i.e., the Originating Agency Identification number). This nine-digit number, in the form XX XXX XX X X, is assigned by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation, and serves to identify all agencies having access to the national communications system. Questions concerning an assigned O.R.I. number should be addressed to the Central Repository located at the Kansas Bureau of Investigation, (785) 296-2454.

**Case No.**

Enter the official district court Case Number in the present case. If the Court designates the case as a domestic violence case, check the DV Case box.

**Name**

Enter the offender's full legal name. Please be aware of nicknames, or designations (i.e., Jr., Sr., III, etc.).

**A/K/A's**

Enter any known aliases that have been or are now being used by the offender. Also please note maiden names and previous married names.

**Age**

Enter the offender's age at the time of the commission of the offense.

**K.B.I. Number**

The K.B.I. Number is the State Identification Number (SID) assigned to an individual by the Kansas Bureau of Investigation Central Repository, upon the individual's first entry into the state criminal history record system. The basis for this number is the number contained on the individual's initial arrest fingerprint card. All subsequent records concerning such individual will be assigned this same number (i.e., it is the identification number listed on an Abstract of Record received from the Central Repository).

**Sex**

Check the appropriate box for the offender's gender, male or female.

**Race**

Check the appropriate box. Designations are as follows: W (White) - a person having origins in any of the original peoples of Europe, North America, or the Middle East; B (Black) - a person having origins in any of the original peoples of Africa; A.I. (American Indian or Alaskan Native) - a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition; or A (Asian or Pacific Islander) - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**Ethnicity**

Check the appropriate box. "Hispanic" refers to a person of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or national origin.

**Address**

Enter the last known address of the offender. Do not use the address of the facility in which an offender is being held.

**Citizenship**

Check the appropriate box. If citizenship is other than the United States, please specify such if known.

**Detainer or Other Charges Pending**

Check the appropriate box. If yes, a brief description of the detainer or other charges and the jurisdiction in which they are pending, may be set forth in the "Official Version" section of the report.

**Subject in Custody and Awaiting Sentencing**

Check the appropriate box and indicate jail credit if applicable. Enter the beginning and ending dates for the time period the offender was in custody awaiting sentencing.

**DNA Sample Taken**

Indicate whether a DNA sample has been taken pursuant to K.S.A. 2011 Supp. 21-2511.

## 2. JUVENILE OFFENDER TRIED AS ADULT

### **If Offender Was Under 18 Years of Age When Crime(s) Was Committed and Was Tried as an Adult**

Check the appropriate box indicating whether the offender was found to be an adult under K.S.A. 2011 Supp. 38-2347, or if the offender was automatically considered an adult because of a prior juvenile adjudication which would constitute a felony if committed by an adult.

## 3. CO-DEFENDANT INFORMATION

### **Names of Co-Defendants, If Any**

Identify any co-defendants by entering the name and the district court case number, if any. Do not list juveniles by name; however, enter the number of juvenile co-defendants, if any.

## 4. ATTORNEY AND TRIAL INFORMATION

### **Name of Defense Attorney**

Enter the full name of the defense attorney representing the offender in the present case.

### **Type of Counsel Prior to Sentencing**

Check the applicable box.

### **Name of Prosecuting Attorney**

Enter the full name of the prosecuting attorney in the present case.

### **Name of Sentencing Judge**

Enter the name of the district court judge who is scheduled to preside over the sentencing proceedings in the present case.

### **Date of Guilty Plea or Judgment**

Enter the Month/Day/Year that the offender was convicted in the present case.

### **Date of Sentencing**

Enter the Month/Day/Year the sentencing of the offender in the present case is scheduled.

## 5. PRESENTENCE INVESTIGATION INFORMATION

### **Name of Presentence Investigator**

Print the full name of the presentence investigator in the present case.

### **Date Assigned**

Enter the Month/Day/Year the Presentence Investigation Report in the present case is ordered by the district court.

### **Date Submitted**

Enter the Month/Day/Year the Presentence Investigation Report in the present case is filed in the district court.

### **Signature of Presentence Investigator**

Affix the signature of the presentence investigator.

## **6. PRIMARY OFFENSE INFORMATION**

### **Name of Primary Offense**

Enter the descriptive name of the offense (i.e., Attempted First Degree Murder, Possession of Cocaine, etc.). The Primary Offense is generally the crime with the highest severity ranking. However, when an off-grid crime is part of a multiple count case, please use the primary on-grid crime for determining the base guideline sentence, using full criminal history.

### **K.S.A. No.**

Enter the offense of conviction by the proper K.S.A. number, and also include all of the applicable subsections (i.e., a severity level 4 Aggravated Battery would be K.S.A. 2011 Supp. 21-5413(b)(1)(A).

Check the appropriate boxes indicating: Felony or Misdemeanor; Off-grid or Nongrid; Person or Nonperson; Drug grid or Nondrug grid; and Attempt, Conspiracy, or a Solicitation, if applicable.

### **Severity Level or Class**

Enter the appropriate severity level or class. Please check Severity Level and History score with the appropriate grid box amounts.

### **Criminal History Score**

Enter the letter that corresponds to the offender's criminal history classification as determined from the Criminal History Worksheet.

### **Maximum Good Time**

Please mark whether the offense is eligible for 15% or 20% maximum good time.

- 15%: Nondrug severity level 1, 2, 3, 4, 5 or 6; Drug severity level 1, 2 or 3.
- 20%: Nondrug severity level 7, 8, 9, or 10; Drug severity level 4 or 5.

### **Sentencing Range**

The Presumptive Sentencing Range for the offense is represented by the three numbers in the KSGA drug/nondrug sentencing grid box corresponding to the severity level and the criminal history classification of the offense. Enter the grid box numbers representing the “Aggravated,” “Standard” and “Mitigated” sentencing range within the grid box. **Please note these numbers are entered in the same order as they are read, from left to right, in the grid box.** The “Aggravated” number is the highest number in the grid box. The “Standard” number is the middle number in the grid box. The “Mitigated” number is the lowest number in the grid box.

Check the appropriate box indicating all that apply: Presumptive Prison, Presumptive Prison per Special Rule, Presumptive Probation, Border Box, Special Rule No. and Description, This Offense REQUIRES REGISTRATION, Sentence Enhancement, Firearm Finding and Ballistic Resistant Material Finding.

If a special rule applies to the offense, check the “Special Rule No. and Description” box, complete the Special Rule Supplement on page 5, and attach it to the PSI.

If this offense REQUIRES REGISTRATION, please mark this box and attach the “Offender Registration Supplement to the PSI” page - K.S.A. 2011 Supp. 22-4901 *et seq.* For a listing of offenses that require registration, please refer to the Criminal Code Statute listing in this manual or on our web site <http://www.accesskansas.org/ksc/publications.shtml>. All offenses requiring registration are marked with an “R” in a separate column.

**NOTE: Selling marijuana, depressants, hallucinogens and the like DOES NOT require registration. K.S.A. 21-5705(a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and ALL subsections.**

**Sentence Enhancement: Be sure to mark the applicable special rules on page 5.**

- **Firearm finding (drug felony only):** If the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the grid sentence imposed, the offender shall be sentenced to:
  - an additional 6 months’ imprisonment for firearm possession.
  - an additional 18 months’ imprisonment if the trier of fact makes a finding that the firearm was discharged. K.S.A. 2011 Supp. 21-6806(g).

**NOTE:** When a firearm is used to commit any person felony, the sentence shall be presumed imprisonment; there is no enhancement of additional months’ imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. K.S.A. 2011 Supp. 21-6804(h).

- **Ballistic resistant material finding:** If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, the offender shall be sentenced to an additional 30 months’ imprisonment. The additional 30 months shall be served consecutively to any other sentence imposed. K.S.A. 2011 Supp. 21-6804(s).

**K.S.A. 2012 Supp. 21-6824 (2003 Senate Bill 123 nonprison sanction) establishes mandatory drug treatment:**

- for adult offenders;
- convicted of a felony drug possession violation of K.S.A. 2012 Supp. 21-5706;
- whose offenses are classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H, or 5-I of the sentencing guidelines grid for drug crimes; OR
- whose offenses are classified in grid blocks 5-A or 5-B, of the sentencing guidelines grid for drug crimes, but only if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes under circumstances where the present sentencing court is willing to find and set forth reasons with particularity for finding that the offender’s placement in a nonprison drug abuse treatment program will not jeopardize safety of the public;
- who do not have previous convictions for K.S.A. 2011 Supp. 21-5703 or K.S.A. 2012 Supp. 21-5705, or K.S.A. 2011 Supp. 21-5716;
- who have not been convicted of a 3<sup>rd</sup> or subsequent felony drug possession;
- who have no prior convictions of off-grid felonies and severity level 1 through 7 person felonies if

- offender has a criminal severity level and criminal history score of 5A or 5B; and
- who are residents of Kansas. Residents of another state or who are not lawfully present in the U.S. and are being detained for deportation proceedings shall be sentenced as otherwise provided by law. K.S.A. 2011 Supp. 21-6824(h).

**NOTE:** Offenders convicted of attempted possession are not eligible for SB 123. *State v. Perry-Coutcher* 45 Kan. App. 2d 911, 254 P.3d 556 (2011)

Offenses eligible for Senate Bill 123 treatment committed on or after July 1, 2009 have a standard 18-month probation term. For offenses committed prior to July 1, 2009, when the district court orders offenders to attend mandatory drug treatment for up to 18 months pursuant to Senate Bill 123 (K.S.A. 2011 Supp. 21-6824), the district court simultaneously must impose a longer period of probation pursuant to K.S.A. 2011 Supp. 21-6608(c)(5)) together with specific findings that public safety will be jeopardized or that the welfare of the offender will not be served by imposing the 12 month statutory maximum probation term provided by K.S.A. 2011 Supp. 21-6608(c)(3) on the offender. K.S.A. 2011 Supp. 21-6819 only addresses the duration of the term of drug treatment and not the duration of the offender's term of probation.

### **Postrelease Supervision Duration**

Check the appropriate box indicating the term of postrelease supervision applicable to the offense. **Please be careful when completing this information.**

Some retroactive changes were made to the lengths of postrelease supervision during the 2000 Kansas Legislative Session. Also be aware that for some crimes committed between July 1, 1993, and April 20, 1995, the applicable postrelease supervision term may be only 24 months at certain severity levels.

For convictions of certain child sex offenses where the offender was 18 years of age or older and the victim was less than 14 years of age, upon release at the discretion of the Prison Review Board after a mandatory minimum imprisonment term, the offender will be subject to lifetime parole and lifetime electronic monitoring. K.S.A. 2011 Supp. 22-3717(u). A downward departure to a guidelines sentence results in a lifetime postrelease supervision term. *State v. Ballard*, 289 Kan. 1000, 218 P.3d 432 (2009).

For convictions of other sexually violent crimes, as defined in K.S.A. 2011 Supp. 22-3717(d)(1)(G), upon release from prison, the offender shall be subject to lifetime postrelease supervision.

### **Probation Duration**

Check the appropriate box indicating the term of probation applicable to the offense. K.S.A. 2011 Supp. 21-6608(c) (formerly K.S.A. 21-4611(c)(5)). If "Other" is checked, please fill in the blank.

### **DUI Supervision**

The term of supervision is 12 months for a third or subsequent conviction for DUI. K.S.A. 2011 Supp. 8-1567(b)(3). Please check the appropriate box. For a third or subsequent conviction for a DUI violation, after the term of imprisonment imposed by the court, the person shall be supervised by community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management

and mental health counseling as needed. K.S.A. 2011 Supp. 8-1567(b)(3).

**Electronic Monitoring**

In addition to other dispositions, any defendant sentenced to prison pursuant to K.S.A. 21-4643 or K.S.A. 2011 Supp. 21-6627, for crimes committed on or after July 1, 2006, the court is required to order lifetime electronic monitoring upon release from prison with reimbursement to the state for the costs of monitoring by the defendant. K.S.A. 2012 Supp. 2106604(r).

**FACE SHEET SUPPLEMENTAL PAGE**

**CASE NO. (PAGES 2 and 3)**

Please list the case number for this case at the top of each page where indicated.

**ADDITIONAL OFFENSE INFORMATION**

**Additional Offenses:** Make as many copies of this page as needed in order to include all of the offender’s additional offenses. Instructions for the primary offense as described above will also apply to additional offenses on the Supplemental Page(s).

**CURRENT OFFENSE INFORMATION**

**CASE NO. (PAGE 4)**

Please list the case number for this case at the top of each page where indicated.

**1. OFFICIAL VERSION**

This section should be utilized by the individual preparing the PSI to briefly relate the facts of the offense that have been clearly established during the prosecution of the case.

**2. DEFENDANT’S VERSION/DATE OF BIRTH/SOCIAL SECURITY NUMBER**

List the Defendant’s Date of Birth and Social Security Number.

If the defendant chooses to provide a description of the facts and/or circumstances surrounding the offense, that information should be included here. If the defendant chooses not to provide any information, the defendant’s date of birth and social security number should be the only information listed in this area. **Please include with Journal Entry Information.**

**3. VICTIM’S INJURY/DAMAGE/STATEMENT(S)**

Include the appropriate information pertaining to victim’s injury due to the crime committed.

**4. TOTAL RESTITUTION OWED**

Include name, address, and amount owed to each victim, then enter the total restitution owed in the space provided.

**5. OTHER PENDING INFORMATION**

Include any victim statements pertaining to the crime committed.

## CASE NO. (PAGE 5)

Please list the case number for this case at the top of each page where indicated.

### 6. PLACEMENT OPTIONS

In this section, the individual preparing the PSI should indicate that individual's professional recommendation to the sentencing court on a nonprison placement. **In all cases**, the individual preparing the PSI should mark all applicable boxes for criteria that qualify the offender for placement in a Community Corrections program, even if the individual completing the PSI does not recommend a Community Corrections placement.

### 7. OFFICER'S ASSESSMENT OF CONDITIONS OF PROBATION

Check the appropriate box(es) and insert additional information as required.

#### Domestic Violence Offender Assessment

Pursuant to K.S.A. 2011 Supp. 21-6604(p), in addition to other dispositions for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2011 Supp. 22-4616, and amendments thereto, the court shall require the defendant to undergo a domestic violence offender assessment and follow all recommendations unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence assessment and any other evaluation to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

Insert any additional assessments not provided for in the PSI form in the "Other" space as provided.

### 8. COSTS PROPOSED

Please identify any costs to which the offender may be subject. Court costs should include any surcharges. On and after July 1, 2011, the range of mandatory DUI fines is as follows:

- 1<sup>st</sup> DUI: not less than \$750 nor more than \$1,000
- 2<sup>nd</sup> DUI: not less than \$1,250 nor more than \$1,750
- 3<sup>rd</sup> DUI: not less than \$1,750 nor more than \$2,500
- 4<sup>th</sup> or subsequent DUI: \$2,500

If convicted for DUI, \$250 of DUI fines imposed shall be sent to State Treasurer for the Community Corrections Supervision Fund. K.S.A. 2011 Supp. 8-2,144(p) and 8-1567(r)(2).

In 2012, the drug treatment criteria of SB 123 was modified so that it is possible for an offender to only receive a drug abuse assessment. In that instance, only a \$200 SB 123 Assessment Fee should be ordered. But if SB 123 treatment is ordered, the SB 123 Assessment Fee and the \$100 SB 123 Reimbursement should be ordered together for a total of \$300.

**CASE NO. (PAGE 6)**

Please list the case number for this case at the top of each page where indicated.

**SPECIAL RULES SUPPLEMENTAL PAGE**

**(Attach this page only if one or more special rules apply.)**

Indicate the applicable special sentencing rules, if any, that the sentencing court should be aware of for the individual offender. Many of the special sentencing rules include specific directions for the sentencing court to consider regarding sentencing requirements and procedures. (Note: The numbers for the special rules are intentionally non-sequential for data coding purposes. **Please do not renumber them.** The numbers 7, 14, and 18 were assigned to rules that are no longer in use and they will not be reassigned.)

Felony Test Refusal has been added in 2012 as Special Rule 39. It is an unclassified, nonperson felony, resulting in a severity level 10 designation, but the offense is sentenced pursuant to specific mandatory sentencing requirements of K.S.A. 2012 Supp. 8-1025.

**CASE NO. (Page 7)**

Please list the case number for this case at the top of each page where indicated.

**OFFENDER REGISTRATION SUPPLEMENT TO THE PSI-  
REGISTRATION TERMS**

**ATTACH THIS PAGE IF THE OFFENSE REQUIRES REGISTRATION.** K.S.A. 2011 Supp. 22-4901 *et seq.* This registration supplement pertains to the registration terms. K.S.A. 2012 Supp. 22-4906. Please check the appropriate boxes indicating REQUIRED TERM of registration and confirming that the defendant was advised of the Notice of Duty to Register.

**CRIMINAL HISTORY WORKSHEET INSTRUCTIONS**

**1. K.B.I. #**

Enter the K.B.I. Number, which is the State Identification Number (SID) assigned to an individual by the Kansas Bureau of Investigation Central Repository, upon the individual's first entry into the state criminal history record system. The basis for this number is the number contained on the individual's initial arrest fingerprint card. All subsequent records concerning the individual will be assigned this same number (i.e., it is the identification number listed on the Abstract of Record received from the Central Repository).

**2. CASE #**

Enter the official district court case number.

**3. DISTRICT #**

Enter the number of the judicial district in which the offender was convicted of the present offense(s).

#### **4. COURT/ORI #**

Enter the District Court ORI number. This nine digit number is assigned by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI) and serves to identify all agencies having access to the national communications system. In the form XX XXX XX X X, each criminal justice agency in Kansas has an assigned ORI number. The first two digits represent the state (KS), the next three digits the county (001 through 105, plus additional assignments), the next two digits represent a sequential assignment within the county, the next digit is for the level of government (1 = local, 3 = state, 5 = federal, etc.) and the last digit is for the type of agency (A = county/district attorneys, C = jails, J = courts, etc.). For example, KS001013A would represent the Allen County Attorney and KS046051J represents the Overland Park Municipal Court. Questions concerning assigned ORI numbers may be addressed to the KBI at (785) 296-2454.

#### **5. PSI INVESTIGATOR NAME**

Enter the last name, the first name, and the middle initial of the investigating court services or community corrections officer.

#### **6. PRIOR RECORD**

Check whether the offender has a prior conviction record.

#### **7. OFFENDER NAME**

Enter the offender's last name, the first name, and the middle name, or initial. The name should be copied as it is listed on the Presentence Investigation Report face sheet.

#### **8. DATE OF OFFENSE**

In Month, Day and four-digit Year format (xx/xx/xxxx), enter the date the primary offense was committed. This date should be the same as that on the journal entry.

#### **9. DATE OF CONVICTION**

In Month, Day and four-digit Year format (xx/xx/xxxx), enter the date of a guilty plea or a district court finding.

#### **10. DATE OF WORKSHEET**

In Month, Day and four-digit Year format (xx/xx/xxxx), enter the date the Worksheet was prepared.

#### **11. DATE OF SENTENCING**

In Month, Day and four-digit Year format (xx/xx/xxxx), enter the date the district court has set the case for final disposition.

#### **12. CUSTODY SUPERVISION**

Check Yes if the offender was under custody supervision when the current offense(s) was committed. Then check the type of supervision and enter the jurisdiction (i.e., federal, state, municipal, etc.), the district court Case Number and the sentencing date for that case.

#### **13. CURRENT CRIME(S) OF CONVICTION**

Enter the crime(s) of conviction in the current case for which the Criminal History Worksheet is being prepared. Enter the Kansas statute violated, including subsections and a description of the offense. Also indicate whether the crime of conviction is a misdemeanor or a felony (M/F), a person or a nonperson

offense (P/N) and the felony severity level or the misdemeanor classification.

#### **14. CRIMINAL HISTORY CONVICTIONS AND/OR ADJUDICATIONS PRIOR TO SENTENCING**

All convictions relevant to calculating the criminal history classification under the sentencing guidelines should be recorded on the Criminal History Worksheet as part of the Presentence Investigation Report in the present case. Prior convictions should be recorded on the Supplemental Worksheet for Prior Convictions in descending order by the date of conviction, starting with the most recent conviction.

Include any and all scoreable additional offense supplemental pages(s) of the PSI report and any Supplemental Worksheets for Prior Convictions pages. Count the convictions for each conviction type and enter the total number of convictions in the corresponding boxes. Add the number of adult convictions to the number of juvenile adjudications for each criminal history type, in order to obtain totals for each criminal history type. "Person Misdemeanors" that are converted to "Person Felonies" should not be counted in the Person Misdemeanors total. However, Nonperson "select" Misdemeanors should be added to the Nonperson Misdemeanors total.

**Multiple Conviction Cases:** In all sentencing cases involving multiple convictions, the "BASE" sentence for the primary crime must be established pursuant to K.S.A. 2011 Supp. 21-6819. The primary crime is the offense with the highest severity level under the sentencing guidelines. The offender's full criminal history classification is to be applied to the severity level of the primary guidelines crime to determine the presumptive sentence range for the base crime. However, the criminal history category "I" must be used to determine the presumptive range of sentencing for each "NONBASE" crime, regardless of whether sentencing is concurrent or consecutive. K.S.A. 2011 Supp. 21-6819(a)(2).

For nondrug and drug offenses with simultaneous presumptive imprisonment and presumptive probation sentences, the base crime is the presumptive imprisonment crime.

For nondrug and drug offenses that have the same presumption, the base crime is the crime with the longest prison term within the grid box range.

#### **Information Not Relevant to Criminal History**

The following information is **not** relevant to establishing an offender's criminal history classification under the KSGA therefore; the following types of prior criminal activity **should not** be recorded on the Criminal History Worksheet.

- **Juveniles:** Do not include informal dispositions, traffic infractions, child in need of care adjudications, contacts with law enforcement, or arrests not resulting in adjudication. **NOTE:** a juvenile diversion for DUI counts as a prior DUI conviction for the purpose of elevating a DUI crime based on the number of prior offenses. *State v. Bishop*, 44 Kan. App. 2d 739, 240 P.3d 614 (2010).

- **Adults:** Do not include traffic infractions, diversions (except DUI diversions for subsequent DUI convictions or Involuntary Manslaughter while driving under the influence of alcohol or drugs), contacts with law enforcement, or arrests not resulting in conviction

#### **15. AMENDED CRIMINAL HISTORY CONVICTIONS AND/OR ADJUDICATIONS**

Enter in the gray area any amendments approved by the district court prior to the sentencing. It is not necessary to complete a new Worksheet when criminal history is amended.

In some cases the status of a prior conviction will be unclear and the attorneys may stipulate to some convictions and not to others for the purposes of classifying an offender in a criminal history category. In other cases, particular convictions appearing on the Worksheet may be successfully challenged at the sentencing hearing and will thus not be relied upon to establish the offender's criminal history classification. Any amendments should be noted in this section of the Criminal History Worksheet.

**16. CRIMINAL HISTORY CATEGORY**

After all prior criminal convictions and adjudications have been totaled, indicate the final criminal history category by checking a letter from A to I.

**17. NUMBER OF PERSON MISDEMEANORS CONVERTED**

Enter the number of person misdemeanors converted to felonies.

**18. PRIOR CONVICTION USED TO ENHANCE, ELEVATE OR IS AN ELEMENT OF THE CURRENT CRIME OF CONVICTION**

Check the applicable box indicating whether a prior conviction is being used to enhance/elevate or is an element of the current crime of conviction.

**19. NUMBER OF DECAYED JUVENILE ADJUDICATIONS**

Enter the number of felony and misdemeanor decayed juvenile adjudications. Juvenile felony and misdemeanor adjudications that have decayed should not be considered in the totals or in determining the final criminal history category. However, the total should be listed in box 19 of the first page of the Kansas Criminal History Worksheet and also individually in the prior conviction listing on the Supplemental Criminal History Worksheet – Prior Convictions page (and also on the supplemental pages, if any), so that future PSI writers will have knowledge of the offender's entire record.

**SUPPLEMENTAL CRIMINAL HISTORY WORKSHEET-  
PRIOR CONVICTIONS AND/OR ADJUDICATIONS**

Each page of the Criminal History Worksheet should contain the offender's name, the judicial district, the county, and the district court Case Number. For each prior conviction include the following information.

**STATUTE/ORDINANCE NUMBER & DESCRIPTION**

Enter the actual statute or ordinance violated. If the conviction is in another state or jurisdiction, enter the statute number from that jurisdiction. Please enter in the Description section, the Kansas statute used for comparison to the ordinance or out-of-state conviction. Descriptions for prior convictions should be brief but descriptive.

**JURISDICTION CODE**

Enter the Jurisdiction Code using the listing of Jurisdiction Codes at the bottom of the page (i.e., a Federal, State, Military, or Municipal Court).

**STATE/COUNTY**

Enter the state in which the conviction occurred by using the assigned TWO-LETTER ABBREVIATION.

Also use the assigned TWO-LETTER ABBREVIATION for the county in which the conviction occurred.

**CITY**

If a conviction is listed which occurred in a municipal or a county court, enter the name of the city in which the court is located.

**CONVICTION DATE**

In Month, Day and four-digit Year format (xx/xx/xxxx), enter the date of conviction.

**CASE NUMBER**

Enter the official court Case Number.

**CONVICTION CODE**

Indicate the type of conviction using the Conviction and Amended Codes located at the bottom of the page. Consult the Crime Lists in this Manual to determine whether the prior conviction should be classified as a felony or a misdemeanor, a person or a nonperson crime, or a “select” misdemeanor for criminal history purposes.

**AMENDED CODE**

Indicate any amendments to the crime classification using the Conviction and Amended Codes at the bottom of the page.

**SOURCE OF INFORMATION**

This indicates where the PSI writer found the information on a specific conviction. Source of Information Codes are listed at the bottom of the page. The source for specific information can be referred to later when requesting documentation.

**(SPECIAL CONVERSION RULES)**

The following special rules apply to “person” crimes when categorizing criminal history.

**The 3 to 1 Rule**

Prior adult convictions and/or juvenile adjudications for class A person misdemeanors and class B person misdemeanors, convert to person felonies at a rate of 3 to 1. The number entered in this box can be calculated by dividing the number of adult person misdemeanors convictions and/or juvenile person adjudications by three (i.e., the total number ÷ 3). If the resulting number is a fraction, disregard the fractional portion because these figures must be in whole numbers. See K.S.A. 2011 Supp. 21-6811(a).

For example, eight person misdemeanor convictions and/or juvenile person adjudications would be converted to two person felony convictions (i.e.,  $8 \div 3 = 2$ ). 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. 2011 Supp. 21-6811(a).

Those misdemeanors converted to a felony under this Rule or “The Assault Rule” below should be identified in the conviction code column of the Worksheet as JMC or AMC.

## The Assault Rule

If the offender has three prior convictions for assault pursuant to K.S.A. 2011 Supp. 21-5412 within the three-year period immediately preceding the current crime(s) of conviction, then the three assault misdemeanors are converted into one person felony. Any remaining prior convictions for assault should be added to the Person Misdemeanor total. See K.S.A. 2011 Supp. 21-6811(a).

### (OTHER RULES TO CONSIDER)

#### Failure to Register as an Offender - Prior Convictions as Elements of the Crime

The crime of failure to register as an offender as required by the Kansas Offender Registration Act, K.S.A. 2011 Supp. 22-4901 *et seq.*, requires as an element of the crime one prior conviction for an offense requiring registration. All other prior convictions, including other convictions for offenses requiring registration, may be counted and scored unless otherwise prohibited (i.e. if the conviction is used to enhance the penalty). If an offender is required to register due to a prior case with multiple counts, and the offender was convicted of more than one count of crimes requiring registration, then one count will serve as an element of the crime of failure to register and the other count(s) may be scored as part of the criminal history. *State v. Deist*, 44 Kan. App. 2d 655, 239 P.3d 896 (2010).

#### Anticipatory Crimes

A prior felony conviction of attempt, conspiracy or a solicitation to commit a crime should be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime. See K.S.A. 2011 Supp. 21-6811(g).

#### Prior DUI Convictions

The Worksheet does not provide a special box for converting prior adult convictions, diversions or juvenile adjudications of violations of K.S.A. 2011 Supp. 8-1567 (DUI) to person felonies at a rate of 1 to 1. This conversion rule applies only when one of the current crime of conviction involves Involuntary Manslaughter in the commission of a DUI, namely K.S.A. 2011 Supp. 21-5405(a)(3). In such cases, if the current crime of conviction was committed on or after July 1, 1996, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for a DUI or a violation of a law of another state, ordinance of any city, or resolution of any county which prohibits the act described in K.S.A. 2011 Supp. 8-1567, shall count as one person felony. See K.S.A. 2011 Supp. 21-6811(c)(2).

The “five year decay” rule for only counting the DUI convictions which occurred during the previous five years preceding the current conviction was repealed in 2001. A DUI prosecution for an offense committed on or after July 1, 2001, will count only previous DUI convictions that have occurred after July 1, 2001. “Conviction” includes being convicted of a violation of K.S.A. 2011 Supp. 8-1567, a law of another state, an ordinance of any city or a resolution of any county which prohibits the acts that prohibited by K.S.A. 2011 Supp. 8-1567, or a diversion agreement in lieu of prosecution for any such violations. K.S.A. 2011 Supp. 8-1567(j)(3). Only one diversion agreement in lieu of criminal prosecution for a DUI offense will be allowed for each offender’s lifetime. K.S.A. 2011 Supp. 8-1567(j)(5).

A third DUI is a nongrid felony if the person has a prior conviction within the preceding 10 years, not including any period of incarceration. K.S.A. 2011 Supp. 8-1567(b)(1)(D). A fourth or subsequent DUI is

also a nongrid felony. K.S.A. 2011 Supp. 8-1567(b)(1)(E). These felonies are not sentenced pursuant to the KSGA and they do not have a severity level assigned. Offenders are sentenced according to the specific penalty provisions provided in the relevant sections of the statute. K.S.A. 21-6804(i). An offender cannot be sent to the KDOC to serve any sentence except as provided for by subsection (b)(2) of K.S.A. 2011 Supp. 8-1567. In the PSI, Felony DUI is represented in Special Rule 6, located on the Special Rules Supplemental Page. Pursuant to that subsection the court may order mandatory substance abuse treatment in a state facility in the custody of the secretary of corrections in accordance with the rules and regulations of the secretary. However, the funding for this program was never established.

On a third or subsequent conviction for a DUI violation, after the term of imprisonment imposed by the court, the offender shall be supervised by community correctional services or court services, as determined by the court, for a mandatory one-year period (12 months) of supervision. Such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. K.S.A. 2011 Supp. 8-1567(b)(3). Any violation of DUI supervision may subject the offender to jail for the remainder of the period of imprisonment, supervision period, or any combination of the two. K.S.A. 2011 Supp. 8-1567(b)(3).

### **Prior Conviction for Criminal Deprivation of Property; Motor Vehicle**

The crime of criminal deprivation of property; motor vehicle, found at K.S.A. 2011 Supp. 21-5803(b), shall be a Class A, nonperson misdemeanor for a first or second conviction. A third or subsequent conviction is a severity level 9, nonperson felony. Effective on and after July 1, 2008, the sentence for the felony is presumptive imprisonment. K.S.A. 2011 Supp. 21-6804(n).

The crime shall be a Class A, nonperson misdemeanor if the offense was committed on or after July 1, 1999, but prior to July 1, 2008. However, if the offense was committed prior to July 1, 1999, it was a nonperson felony and should be scored for criminal history purposes as a severity level 10, nonperson felony. See K.S.A. 2011 Supp. 21-6804, 21-6807(c)(3) and 21-6810(d)(6).