



PRESENTENCE INVESTIGATION REPORTS

Webinar

May 19th, 2021

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KSSC introduction



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graph TD; A[KSSC introduction] --> B[Basics of a PSI]; B --> C[Contents of a PSI]; C --> D[Completing a PSI]; D --> E[Q&A];
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Basics of a PSI

Contents of a PSI

Completing a PSI

Q&A

WHAT IS THE KANSAS SENTENCING COMMISSION?

- ▶ Established in 1989 with passage of K.S.A. 74-9101
- ▶ Senate Bill 50, which became law in 1989, established the Kansas Sentencing Commission, and directed the Commission to: "Develop a sentencing guidelines model or grid based on fairness and equity and...provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices."
- ▶ The philosophy of the Kansas Sentencing Commission is that criminal sentences should be imposed fairly, rationally and consistently, and that incarceration should be reserved for the most serious offenders.

KSSC AGENCY MISSION

To develop monitoring procedures and reporting methods to evaluate the guideline sentencing system where public safety is the focus; to advise and consult in developing mechanisms to link sentencing practices with correctional resources and policies; and to determine the impact of guidelines on the state's prison population. Agency resources are devoted to this mission at the direction of the Commission.

COMMISSION MEMBERS

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District Judge, 5th Judicial District

Honorable Benjamin Sexton, Vice Chair

District Judge, 8th Judicial District

Honorable Stephen Hill

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Wyandotte County District Attorney

Pat Colloton

Public Member

Shelly Williams

Director of Community Corrections, Riley County

Jermaine Wilson

Public Member

Spence Koehn

Office of Judicial Administration

WHAT DO WE DO?

- ▶ Desk Reference Manual
- ▶ Annual Report
- ▶ Involvement with legislative process
- ▶ Impact Statements
- ▶ Respond to Research Requests
- ▶ Administer SB 123 program
- ▶ Training for Criminal Justice groups
- ▶ Staff Attorney email for questions
(KSSCAAttorney@ks.gov)



Website



Desk Reference Manual



Training

Francis.givens@ks.gov



Assistance With
Questions

KSSCAAttorney@ks.gov

KSSC RESOURCES

HOW IS A DEFENDANT'S SENTENCE DETERMINED?

- ▶ Nondrug grid and drug grid charts
 - ▶ Special Rules
 - ▶ Is there a plea agreement?
- ▶ Who is responsible for determining criminal history?
 - ▶ If there is a question about a prior conviction, the state and defense can argue to the judge

WHAT ROLE DOES THE PSI PLAY?

CONTENTS OF A PSI

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

CONTENTS OF A PSI CONT'D.

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

CONTENTS OF A PSI CONT'D.

- ▶ If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be included as part of the nonprison sanction.
- ▶ For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 2020 Supp. 21-5706 or K.S.A. 2020 Supp. 21-5705 and meet the requirements of K.S.A. 2020 Supp. 21-6824 (2003 Senate Bill 123), the drug abuse assessment package as provided in K.S.A. 2020 Supp. 21-6824.
- ▶ For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, the drug abuse assessment as provided in K.S.A. 2020 Supp. 21-6824, and amendments thereto.

See K.S.A. 2020 Supp. 21-6813

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

CRIMINAL HISTORY WORKSHEET

- ▶ The primary purpose of the PSI report is to provide complete and accurate information about the criminal history of the offender.
- ▶ The criminal history worksheet should indicate the officer's source of information for each prior conviction listed, and copies of any verifying documents available to the officer should be attached, including criminal history worksheets prepared in prior cases in which sentencing occurred after July 1, 1993, and in which the worksheet was prepared in accordance with the requirements of the KSGA.
- ▶ The criminal history worksheet is not a substitute for the PSI!

COMPLETING THE PSI

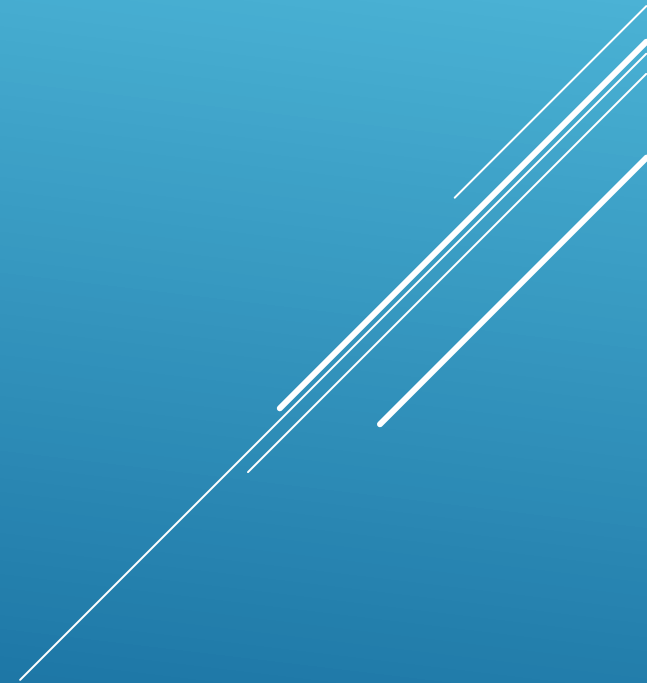
- ▶ Fill out any applicable supplemental pages
 - ▶ Special Rules
 - ▶ Registration: If the offense requires the offender to register under the Kansas Offender Registration Act (K.S.A. 2020 Supp. 22-4901 et seq.), the PSI Offender Registration Supplement should be completed.
 - ▶ Supplemental Criminal History worksheet, etc.
- ▶ The PSI will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports. K.S.A. 2020 Supp. 21-6813(e).

REMINDERS

WHAT DO YOU DO WITH A PSI ONCE COMPLETED?

- ▶ Provide a copy to state, defense, judge prior to sentencing
- ▶ After sentencing,
 - ▶ If defendant is sentenced to prison
 - ▶ If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and the warden of the state correctional institution to which the defendant is conveyed in accordance with K.S.A. 2020 Supp. 75-5220. K.S.A. 2020 Supp. 21-6813(c).
 - ▶ Send to KSSC
 - ▶ A copy of the PSI, including the Criminal History Worksheet, and the Journal Entry of Judgment, all attached together, must be sent to the Kansas Sentencing Commission for each felony case within thirty days after sentencing. K.S.A. 2020 Supp. 22-3439(a).
 - ▶ ***E-file and then clerks send out? What is the process in your jurisdiction?***
 - ▶ What else?

RESPONSES TO QUESTIONS SUBMITTED



WHEN WOULD
YOU CHECK
ADJUDICATED
AS AN ADULT
UNDER K.S.A.
38-2347?

- ▶ Waiver
- ▶ EJJP



SPECIAL RULES



DO SPECIAL RULES APPLY TO JUVENILE ADJUDICATIONS?

- ▶ It depends.
- ▶ *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.
- ▶ Look at the specific statute that applies
- ▶ Juvenile adjudications do not constitute criminal convictions
- ▶ See *State v. Crawford*, 39 Kan.App.2d 897, 185 P.3d 315 (Ct. App. 2008).

EXAMPLE
WHERE
JUVENILE
ADJUDICATION
IS EXPRESSLY
MENTIONED

Special Rule 44: Aggravated Battery by DUI

- ▶ Applies when current conviction is for Aggravated Battery by DUI defined in K.S.A. 21-5413(b)(3) or (b)(4)
- ▶ the first prior conviction, adjudication or diversion of K.S.A. 8-1567 (DUI), K.S.A. 8-2,144 (Commercial DUI), or comparable law of a different jurisdiction, shall count as a nonperson felony for criminal history purposes.
- ▶ Each second and subsequent prior adult conviction, diversion or juvenile adjudication of these offenses shall count as a person felony for criminal history purposes. K.S.A. 2019 Supp. 21-6811(c)(3).

COMMON QUESTIONS: SPECIAL RULE 9

- ▶ K.S.A. 21-6604(f)(1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, **or while the offender is on** probation, assignment to a community correctional services program, parole, **conditional release** or postrelease supervision for a felony, a new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2020 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

IF AN ADULT OFFENDER IS ON CONDITIONAL RELEASE FROM JCF, CAN SPECIAL RULE #9 BE APPLIED?

- ▶ KSSC believes the answer is no.
- ▶ *State v. Sims* addressed the older version of the statute but I believe the reasoning applies to the current version of the statute as well.
- ▶ Statute didn't explicitly refer to juvenile adjudications and Kansas caselaw has established that the legislature tells us explicitly when juvenile adjudications should count the same as adult convictions. See *State v. Sims* 40 Kan.App.2d 119, 119, 190 P.3d 271 (Kan. App. 2008).
- ▶ Like the older version, the current version of the statute does not explicitly mention adjudications.
- ▶ Juvenile adjudications are different than adult convictions!

SPECIAL RULE 13: DO JUVENILE ADJUDICATIONS COUNT?

- ▶ The sentence for the violation of burglary of a residence, K.S.A. 21-3715(a), prior to its repeal, K.S.A. 2020 Supp. 21-5807(a)(1), or an attempt or conspiracy to commit such, when the offender has a prior conviction for residential or nonresidential burglary, K.S.A. 21-3715(a) or (b), prior to its repeal; K.S.A. 2020 Supp. 21-5807(a)(1) or (a)(2) (automobile burglary is not included); aggravated burglary, K.S.A. 21-3716, prior to its repeal, K.S.A. 2020 Supp. 21-5807(b); or an attempt or conspiracy to commit such, shall be presumed imprisonment. K.S.A. 2020 Supp. 21-6804(l). There is no indication in the statute it would include priors that are substantially similar offenses from another state.
- ▶ K.S.A. 2020 Supp. 21-6804(l) currently references prior convictions, no mention of adjudications.

SPECIAL RULE 27: DO JUVENILE ADJUDICATIONS COUNT?

- ▶ The sentence for a violation of burglary, K.S.A. 2020 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. 2020 Supp. 21-5801, burglary or aggravated burglary as defined in K.S.A. 2020 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. 2020 Supp. 21-6804(p).
- ▶ Whether a juvenile adjudication may or may not be treated the same as a criminal conviction for purposes of sentencing under our criminal code depends on the language and intent of the specific statute at issue. When the statute refers to convictions but excludes mention of adjudications, where other statutes refer to both terms, we can presume the legislature intended that adjudications be excluded from consideration as convictions. *State v. Dale*, 42 Kan.App.2d 1043, Syl. ¶ 1, 220 P.3d 1102 (Kan. App. 2009).
- ▶ Old statute analyzed in *Dale*; however, current statute K.S.A. 2020 Supp. 21-6804(p) refers to convictions, no mention of adjudications.

SPECIAL RULE 27: DO MISDEMEANORS COUNT?

- ▶ Yes.
- ▶ The sentence for a violation of burglary, K.S.A. 2020 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. 2020 Supp. 21-5801**, burglary or aggravated burglary as defined in K.S.A. 2020 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. 2020 Supp. 21-6804(p).
- ▶ K.S.A. 2020 Supp. 21-5801 includes misdemeanor theft

WHAT'S THE LENGTH OF MISDEMEANOR PROBATION?

- ▶ K.S.A. 2020 Supp. 21-6608(a)
- ▶ 2 years maximum
 - ▶ subject to renewal and extension for additional fixed periods of two years

PRIOR CONVICTION OF 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 (Kan. 2019).
- ▶ KSSC's belief is that if it can be proven a defendant was convicted of intentional criminal threat, the conviction will count. If it cannot be proven whether a defendant was convicted of reckless or intentional, it cannot be counted.
- ▶ How can this be proven?
- ▶ Case by case basis
- ▶ Issue when jury instructed on both intentional and reckless criminal threat and when the state's argument included both versions. See *State v. Lindemuth*, 470 P.3d 1279 (Kan. August 28, 2020) and *State v. Johnson*, 310 Kan. 835, 450 P.3d 790 (2019).

Although this court can take judicial notice of the original complaint in Barton County case No. 83JV61, we observe that this evidence alone does not necessarily resolve whether Rankin's juvenile adjudication for terroristic threat was based on the intentional or reckless version of the statute; the original complaint may have been amended later in the proceedings. Rankin should receive a full hearing in district court to resolve the issue. At such a hearing the district court should consider all available records in case No. 83JV61 including the original and any amended charging documents, any plea agreements, transcripts of plea colloquies, findings of fact and conclusions of law from a bench trial, and the journal entry of adjudication. See *Obregon*, 309 Kan. at 1274 (addressing documents the district court may consider in applying modified categorical approach to determine a defendant's criminal history). *State v. Rankin*, No. 122,818, 2021 WL 1704407 at *3 (Kan. App. April 30, 2021).

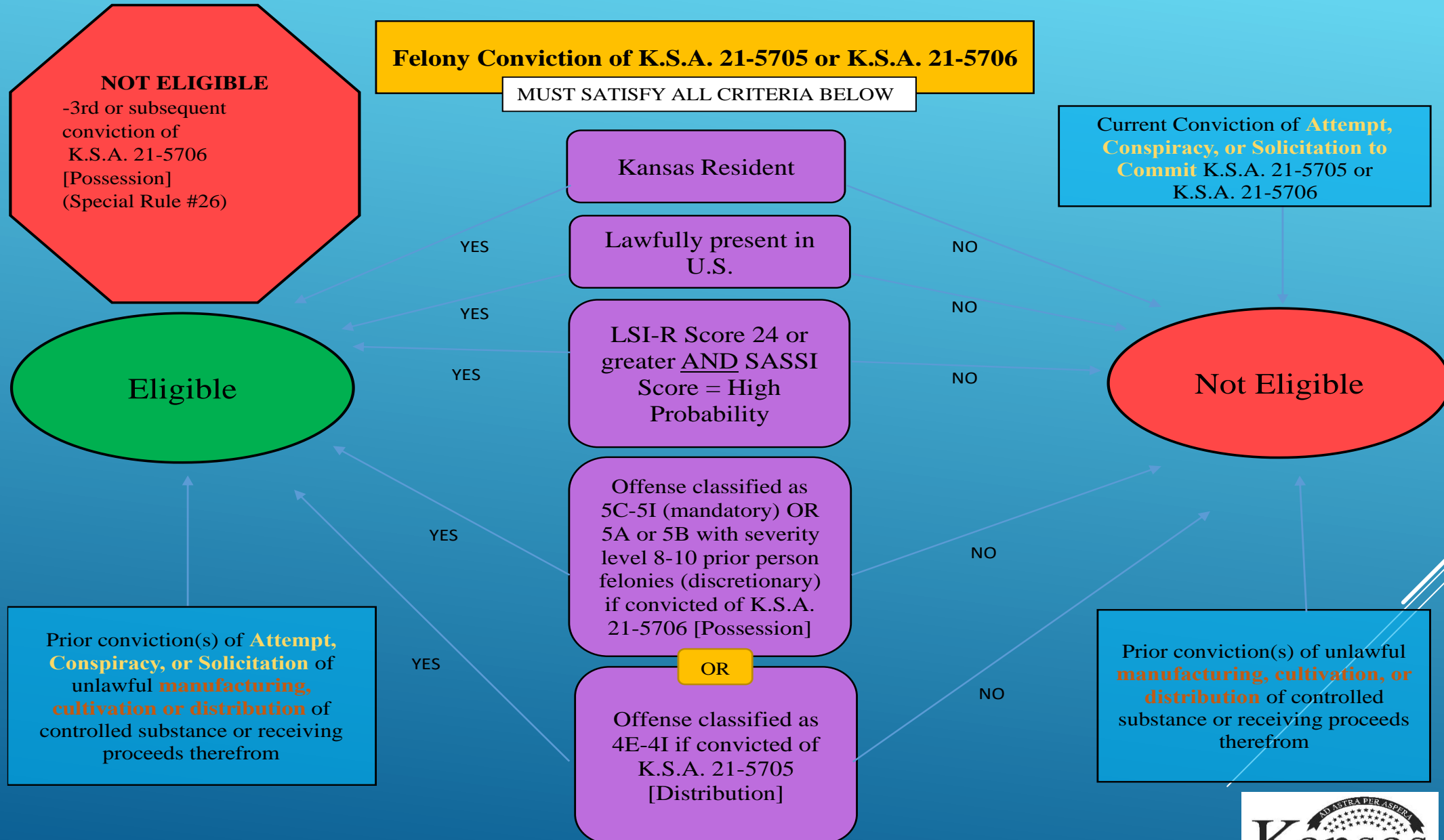
- ▶ A defendant was convicted of 21-5413(b)(3) or (b)(4), Aggravated Battery by DUI and Special Rule 44 was applied making his first DUI, a non-person felony and every other DUI a person felony. The defendant has numerous previous DUIs so applying the rule made him a Criminal History A.
- ▶ Does the change in criminal history only apply for this case? Meaning if, in the future, he commits a new felony like Criminal Damage for example, does his criminal history score remain an A and do all the DUIs remain person felonies?

SPECIAL RULE 44 ONLY APPLIES TO THE CURRENT CRIME OF CONVICTION. SEE K.S.A. 2020 SUPP. 21-6811(C)(3).

IF THERE IS A DEADLY WEAPON IN THE CHARGE, DOES KORA AUTOMATICALLY APPLY?

- ▶ K.S.A. 2020 Supp. 22-(e)(2) "Violent offender" includes any person who...on or after July 1, 2006, is convicted of any person felony and **the court makes a finding on the record** that a deadly weapon was used in the commission of such person felony;
- ▶ Defendant robbed a Dollar General store using a Taser. District Court found that a dangerous weapon was used; defendant required to register as violent offender
- ▶ The Kansas Supreme Court ruled that a Taser used by the defendant in an aggravated robbery is a deadly weapon for purposes of the Kansas Offender Registration Act (KORA). See *State v. Carter*, 311 Kan. 206, 213, 459 P.3d 186 (2020). Although the district judge made an oral finding that there was a "dangerous weapon involved", instead of the finding required by statute, the Court found that indicating a deadly weapon was used in the commission of the crime on the journal entry was enough to satisfy the requirement for KORA. See *id.* at 3.

2003 SB 123 ELIGIBILITY (K.S.A. 21-6824) AS OF JULY 1, 2020



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



SHOULD A RECENT
MARIJUANA
CONVICTION
SPECIFIED AS A
"1ST CONVICTION"
BE UNSCORED
EVEN IF THEY HAVE
A PREVIOUS MJ
CONVICTION?

- ▶ K.S.A. 2020 Supp. 21-5706(c)(3)
- ▶ (3)If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto, violation of subsection (b) is a:
 - ▶ (A)Class B nonperson misdemeanor, except as provided in subparagraphs (B) and (C);
 - ▶ (B)class A nonperson misdemeanor if that person has **a prior conviction** under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and
 - ▶ (C)drug severity level 5 felony if that person has **two or more** prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

JUVENILE “DECAY” PROVISION

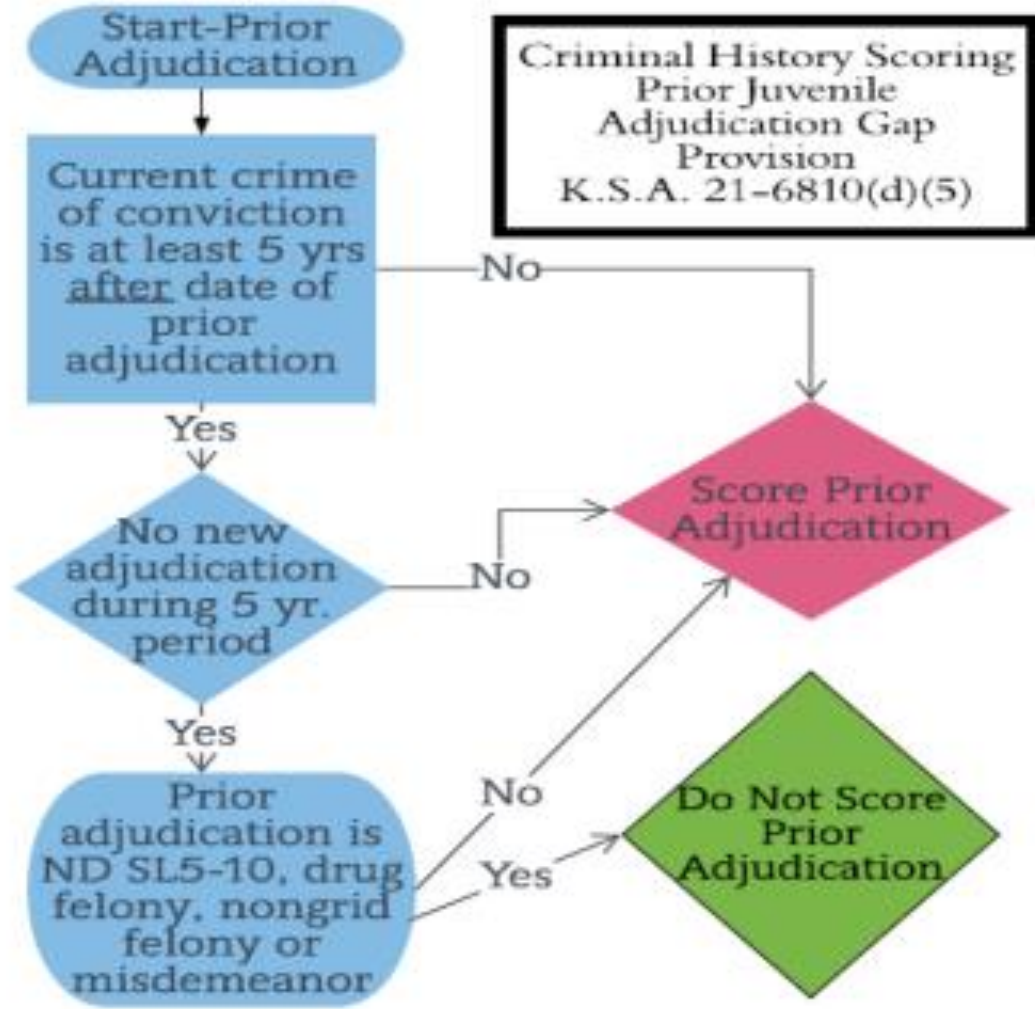
JUVENILE ADJUDICATIONS

A juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25 **and the juvenile adjudication is for an offense:**

- ▶ A) Committed before July 1, 1993, which would have been a class D or E felony, if committed by an adult;
- ▶ (B) committed on or after July 1, 1993, which would be a **nondrug severity level 5 through 10 felony, a nongrid felony or any drug felony**, if committed by an adult; or
- ▶ (C) which would be a **misdemeanor**, if committed by an adult.

See K.S.A. 2019 Supp. 21-6810(d)(4)

Note: Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas for criminal history purposes. K.S.A. 2019 Supp. 21-6811(f).



PLACEMENT WITH COMMUNITY CORRECTIONS: WHAT WOULD BE AN EXAMPLE OF WHEN “SPECIAL RULES APPLY” SHOULD BE CHECKED?

▶ 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.”

▶ Page 5, #6 on the PSI



REMINDERS FROM THE RESEARCH DEPARTMENT





Website



Desk Reference Manual



Training

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Assistance With
Questions

KSSCAAttorney@ks.gov

THANK YOU!