

**HOUSE BILL No. 2283**

By Committee on Corrections and Juvenile Justice

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to departure sentence; mitigating factors; amending K.S.A. 2018 Supp.  
3 21-6815 and repealing the existing section.  
4

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

6 Section 1. K.S.A. 2018 Supp. 21-6815 is hereby amended to read as  
7 follows: 21-6815. (a) Except as provided in subsection (b), the sentencing  
8 judge shall impose the presumptive sentence provided by the sentencing  
9 guidelines unless the judge finds substantial and compelling reasons to  
10 impose a departure sentence. If the sentencing judge departs from the  
11 presumptive sentence, the judge shall state on the record at the time of  
12 sentencing the substantial and compelling reasons for the departure.

13 (b) Subject to the provisions of K.S.A. 2018 Supp. 21-6817(b), and  
14 amendments thereto, any fact that would increase the penalty for a crime  
15 beyond the statutory maximum, other than a prior conviction, shall be  
16 submitted to a jury and proved beyond a reasonable doubt.

17 (c) (1) Subject to the provisions of subsections (c)(3) and (e), the  
18 following nonexclusive list of mitigating factors may be considered in  
19 determining whether substantial and compelling reasons for a departure  
20 exist:

21 (A) The victim was an aggressor or participant in the criminal  
22 conduct associated with the crime of conviction, *except that this factor*  
23 *shall not apply to a sexually violent crime as defined in K.S.A. 22-3717,*  
24 *and amendments thereto, or electronic solicitation as defined in K.S.A.*  
25 *2018 Supp. 21-5509, and amendments thereto, when: (i) The victim is less*  
26 *than 14 years of age and the offender is 18 years of age or older; or (ii)*  
27 *the offender hires any person by giving, or offering to or agreeing to give,*  
28 *anything of value to the person to engage in an unlawful sex act.*

29 (B) The offender played a minor or passive role in the crime or  
30 participated under circumstances of duress or compulsion. This factor may  
31 be considered when it is not sufficient as a complete defense.

32 (C) The offender, because of physical or mental impairment, lacked  
33 substantial capacity for judgment when the offense was committed. The  
34 voluntary use of intoxicants, drugs or alcohol does not fall within the  
35 purview of this factor.

36 (D) The defendant, or the defendant's children, suffered a continuing

1 pattern of physical or sexual abuse by the victim of the offense and the  
2 offense is a response to that abuse.

3 (E) The degree of harm or loss attributed to the current crime of  
4 conviction was significantly less than typical for such an offense.

5 (F) The offender committed such crime as a result of an injury,  
6 including major depressive disorder, polytrauma, post-traumatic stress  
7 disorder or traumatic brain injury, connected to service in a combat zone,  
8 as defined in section 112 of the federal internal revenue code of 1986, in  
9 the armed forces of the United States of America. As used in this  
10 subsection, "major depressive disorder," "polytrauma," "post-traumatic  
11 stress disorder" and "traumatic brain injury" shall mean the same as such  
12 terms are defined in K.S.A. 2018 Supp. 21-6630, and amendments thereto.

13 (2) Subject to the provisions of subsection (c)(3), the following  
14 nonexclusive list of aggravating factors may be considered in determining  
15 whether substantial and compelling reasons for departure exist:

16 (A) The victim was particularly vulnerable due to age, infirmity, or  
17 reduced physical or mental capacity which was known or should have  
18 been known to the offender.

19 (B) The defendant's conduct during the commission of the current  
20 offense manifested excessive brutality to the victim in a manner not  
21 normally present in that offense.

22 (C) The offense was motivated entirely or in part by the race, color,  
23 religion, ethnicity, national origin or sexual orientation of the victim or the  
24 offense was motivated by the defendant's belief or perception, entirely or  
25 in part, of the race, color, religion, ethnicity, national origin or sexual  
26 orientation of the victim whether or not the defendant's belief or perception  
27 was correct.

28 (D) The offense involved a fiduciary relationship which existed  
29 between the defendant and the victim.

30 (E) The defendant, 18 or more years of age, employed, hired, used,  
31 persuaded, induced, enticed or coerced any individual under 16 years of  
32 age to:

33 (i) Commit any person felony;

34 (ii) assist in avoiding detection or apprehension for commission of  
35 any person felony; or

36 (iii) attempt, conspire or solicit, as defined in K.S.A. 2018 Supp. 21-  
37 5301, 21-5302 and 21-5303, and amendments thereto, to commit any  
38 person felony.

39 That the defendant did not know the age of the individual under 16  
40 years of age shall not be a consideration.

41 (F) The defendant's current crime of conviction is a crime of extreme  
42 sexual violence and the defendant is a predatory sex offender. As used in  
43 this subsection:

1 (i) "Crime of extreme sexual violence" is a felony limited to the  
2 following:

3 (a) A crime involving a nonconsensual act of sexual intercourse or  
4 sodomy with any person;

5 (b) a crime involving an act of sexual intercourse, sodomy or lewd  
6 fondling and touching with any child who is 14 or more years of age but  
7 less than 16 years of age and with whom a relationship has been  
8 established or promoted for the primary purpose of victimization;

9 (c) a crime involving an act of sexual intercourse, sodomy or lewd  
10 fondling and touching with any child who is less than 14 years of age;

11 (d) aggravated human trafficking, as defined in K.S.A. 2018 Supp.  
12 21-5426(b), and amendments thereto, if the victim is less than 14 years of  
13 age; or

14 (e) commercial sexual exploitation of a child, as defined in K.S.A.  
15 2018 Supp. 21-6422, and amendments thereto, if the victim is less than 14  
16 years of age.

17 (ii) "Predatory sex offender" is an offender who has been convicted of  
18 a crime of extreme sexual violence as the current crime of conviction and  
19 who:

20 (a) Has one or more prior convictions of any crimes of extreme  
21 sexual violence. Any prior conviction used to establish the defendant as a  
22 predatory sex offender pursuant to this subsection shall also be counted in  
23 determining the criminal history category; or

24 (b) suffers from a mental condition or personality disorder which  
25 makes the offender likely to engage in additional acts constituting crimes  
26 of extreme sexual violence.

27 (iii) "Mental condition or personality disorder" means an emotional,  
28 mental or physical illness, disease, abnormality, disorder, pathology or  
29 condition which motivates the person, affects the predisposition or desires  
30 of the person, or interferes with the capacity of the person to control  
31 impulses to commit crimes of extreme sexual violence.

32 (G) The defendant was incarcerated during the commission of the  
33 offense.

34 (H) The crime involved two or more participants in the criminal  
35 conduct, and the defendant played a major role in the crime as the  
36 organizer, leader, recruiter, manager or supervisor.

37 In determining whether aggravating factors exist as provided in this  
38 section, the court shall review the victim impact statement.

39 (3) If a factual aspect of a crime is a statutory element of the crime or  
40 is used to subclassify the crime on the crime severity scale, that aspect of  
41 the current crime of conviction may be used as an aggravating or  
42 mitigating factor only if the criminal conduct constituting that aspect of the  
43 current crime of conviction is significantly different from the usual

1 criminal conduct captured by the aspect of the crime.

2 (d) In determining aggravating or mitigating circumstances, the court  
3 shall consider:

4 (1) Any evidence received during the proceeding;

5 (2) the presentence report;

6 (3) written briefs and oral arguments of either the state or counsel for  
7 the defendant; and

8 (4) any other evidence relevant to such aggravating or mitigating  
9 circumstances that the court finds trustworthy and reliable.

10 (e) Upon motion of the prosecutor stating that the defendant has  
11 provided substantial assistance in the investigation or prosecution of  
12 another person who is alleged to have committed an offense, the court may  
13 consider such mitigation in determining whether substantial and  
14 compelling reasons for a departure exist. In considering this mitigating  
15 factor, the court may consider the following:

16 (1) The court's evaluation of the significance and usefulness of the  
17 defendant's assistance, taking into consideration the prosecutor's  
18 evaluation of the assistance rendered;

19 (2) the truthfulness, completeness and reliability of any information  
20 or testimony provided by the defendant;

21 (3) the nature and extent of the defendant's assistance;

22 (4) any injury suffered, or any danger or risk of injury to the  
23 defendant or the defendant's family resulting from such assistance; and

24 (5) the timeliness of the defendant's assistance.

25 Sec. 2. K.S.A. 2018 Supp. 21-6815 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its  
27 publication in the statute book.