

SENATE BILL No. 231

By Committee on Judiciary

2-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to hate crimes; increasing penalties for nondrug felony offenses
3 motivated entirely or in part by the race, color, religion, ethnicity,
4 national origin, gender identity or sexual orientation of the victim;
5 amending K.S.A. 2020 Supp. 21-6804 and 21-6815 and repealing the
6 existing sections.

7

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

9 Section 1. K.S.A. 2020 Supp. 21-6804 is hereby amended to read as
10 follows: 21-6804. (a) The provisions of this section shall be applicable to
11 the sentencing guidelines grid for nondrug crimes. The following
12 sentencing guidelines grid shall be applicable to nondrug felony crimes:

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 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	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 30
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

LEGEND
Presumptive Probation
Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for nondrug
2 crimes represent months of imprisonment.

3 (c) The sentencing guidelines grid is a two-dimensional crime
4 severity and criminal history classification tool. The grid's vertical axis is
5 the crime severity scale which classifies current crimes of conviction. The
6 grid's horizontal axis is the criminal history scale which classifies criminal
7 histories.

8 (d) The sentencing guidelines grid for nondrug crimes as provided in
9 this section defines presumptive punishments for felony convictions,
10 subject to the sentencing court's discretion to enter a departure sentence.
11 The appropriate punishment for a felony conviction should depend on the
12 severity of the crime of conviction when compared to all other crimes and
13 the offender's criminal history.

14 (e) (1) The sentencing court has discretion to sentence at any place
15 within the sentencing range. In the usual case it is recommended that the
16 sentencing judge select the center of the range and reserve the upper and
17 lower limits for aggravating and mitigating factors insufficient to warrant a
18 departure.

19 (2) In presumptive imprisonment cases, the sentencing court shall
20 pronounce the complete sentence which shall include the:

21 (A) Prison sentence;

22 (B) maximum potential reduction to such sentence as a result of good
23 time; and

24 (C) period of postrelease supervision at the sentencing hearing.
25 Failure to pronounce the period of postrelease supervision shall not negate
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall
28 pronounce the:

29 (A) Prison sentence; and

30 (B) duration of the nonprison sanction at the sentencing hearing.

31 (f) Each grid block states the presumptive sentencing range for an
32 offender whose crime of conviction and criminal history place such
33 offender in that grid block. If an offense is classified in a grid block below
34 the dispositional line, the presumptive disposition shall be
35 nonimprisonment. If an offense is classified in a grid block above the
36 dispositional line, the presumptive disposition shall be imprisonment. If an
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,
40 aggravated battery against a law enforcement officer committed prior to
41 July 1, 2006, or a violation of K.S.A. 2020 Supp. 21-5412(d), and
42 amendments thereto, aggravated assault against a law enforcement officer,
43 which places the defendant's sentence in grid block 6-H or 6-I shall be

1 presumed imprisonment. The court may impose an optional nonprison
2 sentence as provided in subsection (q).

3 (h) When a firearm is used to commit any person felony, the
4 offender's sentence shall be presumed imprisonment. The court may
5 impose an optional nonprison sentence as provided in subsection (q).

6 (i) (1) The sentence for the violation of the felony provision of K.S.A.
7 8-2,144 and 8-1567, *and amendments thereto*, and K.S.A. 2020 Supp. 21-
8 5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
9 amendments thereto, shall be as provided by the specific mandatory
10 sentencing requirements of that section and shall not be subject to the
11 provisions of this section or K.S.A. 2020 Supp. 21-6807, and amendments
12 thereto.

13 (2) If because of the offender's criminal history classification the
14 offender is subject to presumptive imprisonment or if the judge departs
15 from a presumptive probation sentence and the offender is subject to
16 imprisonment, the provisions of this section and K.S.A. 2020 Supp. 21-
17 6807, and amendments thereto, shall apply and the offender shall not be
18 subject to the mandatory sentence as provided in K.S.A. 2020 Supp. 21-
19 5823, and amendments thereto.

20 (3) Notwithstanding the provisions of any other section, the term of
21 imprisonment imposed for the violation of the felony provision of K.S.A.
22 8-2,144, and 8-1567, *and amendments thereto*, and K.S.A. 2020 Supp. 21-
23 5414(b)(3), 21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and
24 amendments thereto, shall not be served in a state facility in the custody of
25 the secretary of corrections, except that the term of imprisonment for
26 felony violations of K.S.A. 8-2,144 or 8-1567, and amendments thereto,
27 may be served in a state correctional facility designated by the secretary of
28 corrections if the secretary determines that substance abuse treatment
29 resources and facility capacity is available. The secretary's determination
30 regarding the availability of treatment resources and facility capacity shall
31 not be subject to review. Prior to imposing any sentence pursuant to this
32 subsection, the court may consider assigning the defendant to a house
33 arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments
34 thereto.

35 (j) (1) The sentence for any persistent sex offender whose current
36 convicted crime carries a presumptive term of imprisonment shall be
37 double the maximum duration of the presumptive imprisonment term. The
38 sentence for any persistent sex offender whose current conviction carries a
39 presumptive nonprison term shall be presumed imprisonment and shall be
40 double the maximum duration of the presumptive imprisonment term.

41 (2) Except as otherwise provided in this subsection, as used in this
42 subsection, "persistent sex offender" means a person who:

43 (A) (i) Has been convicted in this state of a sexually violent crime, as

1 defined in K.S.A. 22-3717, and amendments thereto; and

2 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at
3 least one conviction for a sexually violent crime, as defined in K.S.A. 22-
4 3717, and amendments thereto, in this state or comparable felony under
5 the laws of another state, the federal government or a foreign government;
6 or

7 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
8 prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments
9 thereto; and

10 (ii) at the time of the conviction under subsection (j)(2)(B)(i) has at
11 least one conviction for rape in this state or comparable felony under the
12 laws of another state, the federal government or a foreign government.

13 (3) Except as provided in subsection (j)(2)(B), the provisions of this
14 subsection shall not apply to any person whose current convicted crime is
15 a severity level 1 or 2 felony.

16 (k) (1) If it is shown at sentencing that the offender committed any
17 felony violation for the benefit of, at the direction of, or in association with
18 any criminal street gang, with the specific intent to promote, further or
19 assist in any criminal conduct by gang members, the offender's sentence
20 shall be presumed imprisonment. The court may impose an optional
21 nonprison sentence as provided in subsection (q).

22 (2) As used in this subsection, "criminal street gang" means any
23 organization, association or group of three or more persons, whether
24 formal or informal, having as one of its primary activities:

25 (A) The commission of one or more person felonies; or

26 (B) the commission of felony violations of article 57 of chapter 21 of
27 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010
28 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony
29 violation of any provision of the uniform controlled substances act prior to
30 July 1, 2009; and

31 (C) its members have a common name or common identifying sign or
32 symbol; and

33 (D) its members, individually or collectively, engage in or have
34 engaged in the commission, attempted commission, conspiracy to commit
35 or solicitation of two or more person felonies or felony violations of article
36 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
37 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their
38 transfer, any felony violation of any provision of the uniform controlled
39 substances act prior to July 1, 2009, or any substantially similar offense
40 from another jurisdiction.

41 (l) Except as provided in subsection (o), the sentence for a violation
42 of K.S.A. 2020 Supp. 21-5807(a)(1), and amendments thereto, or any
43 attempt or conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-

1 5302, and amendments thereto, to commit such offense, when such person
2 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)
3 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2020 Supp.
4 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any
5 attempt or conspiracy to commit such offense, shall be presumptive
6 imprisonment.

7 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2020
8 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
9 imprisonment. If an offense under such sections is classified in grid blocks
10 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
11 sentence as provided in subsection (q).

12 (n) The sentence for a violation of criminal deprivation of property, as
13 defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when
14 such property is a motor vehicle, and when such person being sentenced
15 has any combination of two or more prior convictions of K.S.A. 21-
16 3705(b), prior to its repeal, or of criminal deprivation of property, as
17 defined in K.S.A. 2020 Supp. 21-5803, and amendments thereto, when
18 such property is a motor vehicle, shall be presumptive imprisonment. Such
19 sentence shall not be considered a departure and shall not be subject to
20 appeal.

21 (o) The sentence for a felony violation of theft of property as defined
22 in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or burglary as
23 defined in K.S.A. 2020 Supp. 21-5807(a), and amendments thereto, when
24 such person being sentenced has no prior convictions for a violation of
25 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as
26 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or
27 burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and amendments
28 thereto; or the sentence for a felony violation of theft of property as
29 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when
30 such person being sentenced has one or two prior felony convictions for a
31 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
32 theft of property as defined in K.S.A. 2020 Supp. 21-5801, and
33 amendments thereto, or burglary or aggravated burglary as defined in
34 K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a
35 felony violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a),
36 and amendments thereto, when such person being sentenced has one prior
37 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
38 prior to their repeal, or theft of property as defined in K.S.A. 2020 Supp.
39 21-5801, and amendments thereto, or burglary or aggravated burglary as
40 defined in K.S.A. 2020 Supp. 21-5807, and amendments thereto, shall be
41 the sentence as provided by this section, except that the court may order an
42 optional nonprison sentence for a defendant to participate in a drug
43 treatment program, including, but not limited to, an approved after-care

1 plan, if the court makes the following findings on the record:

2 (1) Substance abuse was an underlying factor in the commission of
3 the crime;

4 (2) substance abuse treatment in the community is likely to be more
5 effective than a prison term in reducing the risk of offender recidivism;
6 and

7 (3) participation in an intensive substance abuse treatment program
8 will serve community safety interests.

9 A defendant sentenced to an optional nonprison sentence under this
10 subsection shall be supervised by community correctional services. The
11 provisions of K.S.A. 2020 Supp. 21-6824(f)(1), and amendments thereto,
12 shall apply to a defendant sentenced under this subsection. The sentence
13 under this subsection shall not be considered a departure and shall not be
14 subject to appeal.

15 (p) The sentence for a felony violation of theft of property as defined
16 in K.S.A. 2020 Supp. 21-5801, and amendments thereto, when such
17 person being sentenced has any combination of three or more prior felony
18 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
19 their repeal, or theft of property as defined in K.S.A. 2020 Supp. 21-5801,
20 and amendments thereto, or burglary or aggravated burglary as defined in
21 K.S.A. 2020 Supp. 21-5807, and amendments thereto; or the sentence for a
22 violation of burglary as defined in K.S.A. 2020 Supp. 21-5807(a), and
23 amendments thereto, when such person being sentenced has any
24 combination of two or more prior convictions for violations of K.S.A. 21-
25 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
26 defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, or
27 burglary or aggravated burglary as defined in K.S.A. 2020 Supp. 21-5807,
28 and amendments thereto, shall be presumed imprisonment and the
29 defendant shall be sentenced to prison as provided by this section, except
30 that the court may recommend that an offender be placed in the custody of
31 the secretary of corrections, in a facility designated by the secretary to
32 participate in an intensive substance abuse treatment program, upon
33 making the following findings on the record:

34 (1) Substance abuse was an underlying factor in the commission of
35 the crime;

36 (2) substance abuse treatment with a possibility of an early release
37 from imprisonment is likely to be more effective than a prison term in
38 reducing the risk of offender recidivism; and

39 (3) participation in an intensive substance abuse treatment program
40 with the possibility of an early release from imprisonment will serve
41 community safety interests by promoting offender reformation.

42 The intensive substance abuse treatment program shall be determined
43 by the secretary of corrections, but shall be for a period of at least four

1 months. Upon the successful completion of such intensive treatment
2 program, the offender shall be returned to the court and the court may
3 modify the sentence by directing that a less severe penalty be imposed in
4 lieu of that originally adjudged within statutory limits. If the offender's
5 term of imprisonment expires, the offender shall be placed under the
6 applicable period of postrelease supervision. The sentence under this
7 subsection shall not be considered a departure and shall not be subject to
8 appeal.

9 (q) As used in this section, an "optional nonprison sentence" is a
10 sentence which the court may impose, in lieu of the presumptive sentence,
11 upon making the following findings on the record:

12 (1) An appropriate treatment program exists which is likely to be
13 more effective than the presumptive prison term in reducing the risk of
14 offender recidivism; and

15 (2) the recommended treatment program is available and the offender
16 can be admitted to such program within a reasonable period of time; or

17 (3) the nonprison sanction will serve community safety interests by
18 promoting offender reformation.

19 Any decision made by the court regarding the imposition of an optional
20 nonprison sentence shall not be considered a departure and shall not be
21 subject to appeal.

22 (r) The sentence for a violation of K.S.A. 2020 Supp. 21-5413(c)(2),
23 and amendments thereto, shall be presumptive imprisonment and shall be
24 served consecutively to any other term or terms of imprisonment imposed.
25 Such sentence shall not be considered a departure and shall not be subject
26 to appeal.

27 (s) The sentence for a violation of K.S.A. 2020 Supp. 21-5512, and
28 amendments thereto, shall be presumptive imprisonment. Such sentence
29 shall not be considered a departure and shall not be subject to appeal.

30 (t) (1) If the trier of fact makes a finding beyond a reasonable doubt
31 that an offender wore or used ballistic resistant material in the commission
32 of, or attempt to commit, or flight from any felony, in addition to the
33 sentence imposed pursuant to the Kansas sentencing guidelines act, the
34 offender shall be sentenced to an additional 30 months' imprisonment.

35 (2) The sentence imposed pursuant to subsection (t)(1) shall be
36 presumptive imprisonment and shall be served consecutively to any other
37 term or terms of imprisonment imposed. Such sentence shall not be
38 considered a departure and shall not be subject to appeal.

39 (3) As used in this subsection, "ballistic resistant material" means:

40 (A) Any commercially produced material designed with the purpose
41 of providing ballistic and trauma protection, including, but not limited to,
42 bulletproof vests and kevlar vests; and

43 (B) any homemade or fabricated substance or item designed with the

1 purpose of providing ballistic and trauma protection.

2 (u) The sentence for a violation of K.S.A. 2020 Supp. 21-6107, and
3 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
4 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
5 such offense, when such person being sentenced has a prior conviction for
6 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2020 Supp. 21-
7 6107, and amendments thereto, or any attempt or conspiracy to commit
8 such offense, shall be presumptive imprisonment. Such sentence shall not
9 be considered a departure and shall not be subject to appeal.

10 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,
11 and amendments thereto, shall be presumptive imprisonment and shall be
12 served consecutively to any other term or terms of imprisonment imposed.
13 Such sentence shall not be considered a departure and shall not be subject
14 to appeal.

15 (w) The sentence for aggravated criminal damage to property as
16 defined in K.S.A. 2020 Supp. 21-5813(b), and amendments thereto, when
17 such person being sentenced has a prior conviction for any nonperson
18 felony shall be presumptive imprisonment. Such sentence shall not be
19 considered a departure and shall not be subject to appeal.

20 (x) The sentence for a violation of K.S.A. 2020 Supp. 21-5807(a)(1),
21 and amendments thereto, shall be presumptive imprisonment if the offense
22 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
23 sentence shall not be considered a departure and shall not be subject to
24 appeal.

25 (y) (1) Except as provided in subsection (y)(3), if the trier of fact
26 makes a finding beyond a reasonable doubt that an offender committed a
27 nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A.
28 2020 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a
29 nondrug felony offense, against a law enforcement officer, as defined in
30 K.S.A. 2020 Supp. 21-5111(p)(1) and (3), and amendments thereto, while
31 such officer was engaged in the performance of such officer's duty, or in
32 whole or in any part because of such officer's status as a law enforcement
33 officer, the sentence for such offense shall be:

34 (A) If such offense is classified in severity level 2 through 10, one
35 severity level above the appropriate level for such offense; and

36 (B) (i) if such offense is classified in severity level 1, except as
37 otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and
38 such offender shall not be eligible for probation or suspension,
39 modification or reduction of sentence. In addition, such offender shall not
40 be eligible for parole prior to serving 25 years' imprisonment, and such 25
41 years' imprisonment shall not be reduced by the application of good time
42 credits. No other sentence shall be permitted.

43 (ii) The provisions of subsection (y)(1)(B)(i) requiring the court to

1 impose a mandatory minimum term of imprisonment of 25 years shall not
2 apply if the court finds the offender, because of the offender's criminal
3 history classification, is subject to presumptive imprisonment and the
4 sentencing range exceeds 300 months. In such case, the offender is
5 required to serve a mandatory minimum term equal to the sentence
6 established pursuant to the sentencing range.

7 (2) The sentence imposed pursuant to subsection (y)(1) shall not be
8 considered a departure and shall not be subject to appeal.

9 (3) The provisions of this subsection shall not apply to an offense
10 described in subsection (y)(1) if the factual aspect concerning a law
11 enforcement officer is a statutory element of such offense.

12 (z) (1) *If the trier of fact makes a finding beyond a reasonable doubt*
13 *that an offender committed a nondrug felony offense, or any attempt or*
14 *conspiracy, as defined in K.S.A. 2020 Supp. 21-5301 and 21-5302, and*
15 *amendments thereto, to commit a nondrug felony offense, that was*
16 *motivated entirely or in part by the race, color, religion, ethnicity, national*
17 *origin, gender identity or sexual orientation of the victim or was motivated*
18 *by the offender's belief or perception, entirely or in part, of the race, color,*
19 *religion, ethnicity, national origin, gender identity or sexual orientation of*
20 *the victim, regardless of whether the offender's belief or perception was*
21 *correct, and such offense is classified in severity level 2 through 10, the*
22 *sentence for such offense shall be one severity level above the appropriate*
23 *level for such offense*

24 (2) *The sentence imposed pursuant to subsection (z)(1) shall not be*
25 *considered a departure and shall not be subject to appeal.*

26 Sec. 2. K.S.A. 2020 Supp. 21-6815 is hereby amended to read as
27 follows: 21-6815. (a) Except as provided in subsection (b), the sentencing
28 judge shall impose the presumptive sentence provided by the sentencing
29 guidelines unless the judge finds substantial and compelling reasons to
30 impose a departure sentence. If the sentencing judge departs from the
31 presumptive sentence, the judge shall state on the record at the time of
32 sentencing the substantial and compelling reasons for the departure.

33 (b) Subject to the provisions of K.S.A. 2020 Supp. 21-6817(b), and
34 amendments thereto, any fact that would increase the penalty for a crime
35 beyond the statutory maximum, other than a prior conviction, shall be
36 submitted to a jury and proved beyond a reasonable doubt.

37 (c) (1) Subject to the provisions of subsections (c)~~(3)~~(4) and (e), the
38 following nonexclusive list of mitigating factors may be considered in
39 determining whether substantial and compelling reasons for a departure
40 exist:

41 (A) The victim was an aggressor or participant in the criminal
42 conduct associated with the crime of conviction, except that this factor
43 shall not apply to a sexually violent crime as defined in K.S.A. 22-3717,

1 and amendments thereto, or electronic solicitation as defined in K.S.A.
2 2020 Supp. 21-5509, and amendments thereto, when:

3 (i) The victim is less than 14 years of age and the offender is 18 or
4 more years of age; or

5 (ii) the offender hires any person by giving, or offering to or agreeing
6 to give, anything of value to the person to engage in an unlawful sex act.

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

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

14 (D) The defendant, or the defendant's children, suffered a continuing
15 pattern of physical or sexual abuse by the victim of the offense and the
16 offense is a response to that abuse.

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

19 (F) The offender committed such crime as a result of an injury,
20 including major depressive disorder, polytrauma, post-traumatic stress
21 disorder or traumatic brain injury, connected to service in a combat zone,
22 as defined in section 112 of the federal internal revenue code of 1986, in
23 the armed forces of the United States of America. As used in this
24 subsection, "major depressive disorder," "polytrauma," "post-traumatic
25 stress disorder" and "traumatic brain injury" ~~shall~~ mean the same as such
26 terms are defined in K.S.A. 2020 Supp. 21-6630, and amendments thereto.

27 (2) Subject to the provisions of subsection (c)(3)(4), the following
28 nonexclusive list of aggravating factors may be considered in determining
29 whether substantial and compelling reasons for departure exist:

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

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

36 ~~(C) The offense was motivated entirely or in part by the race, color,
37 religion, ethnicity, national origin or sexual orientation of the victim or the
38 offense was motivated by the defendant's belief or perception, entirely or
39 in part, of the race, color, religion, ethnicity, national origin or sexual
40 orientation of the victim whether or not the defendant's belief or perception
41 was correct.~~

42 ~~(D)~~ (D) The offense involved a fiduciary relationship which existed
43 between the defendant and the victim.

1 ~~(E)~~(D) (i) The defendant, 18 or more years of age, employed, hired,
2 used, persuaded, induced, enticed or coerced any individual under 16 years
3 of age to:

4 ~~(i)~~(a) Commit any person felony;

5 ~~(ii)~~(b) assist in avoiding detection or apprehension for commission of
6 any person felony; or

7 ~~(iii)~~(c) attempt, conspire or solicit, as defined in K.S.A. 2020 Supp.
8 21-5301, 21-5302 and 21-5303, and amendments thereto, to commit any
9 person felony.

10 (ii) That the defendant did not know the age of the individual under
11 16 years of age shall not be a consideration.

12 ~~(F)~~(E) The defendant's current crime of conviction is a crime of
13 extreme sexual violence and the defendant is a predatory sex offender. As
14 used in this subsection:

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

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

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

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

25 (d) aggravated human trafficking, as defined in K.S.A. 2020 Supp.
26 21-5426(b), and amendments thereto, if the victim is less than 14 years of
27 age; or

28 (e) commercial sexual exploitation of a child, as defined in K.S.A.
29 2020 Supp. 21-6422, and amendments thereto, if the victim is less than 14
30 years of age.

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

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

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

41 (iii) "Mental condition or personality disorder" means an emotional,
42 mental or physical illness, disease, abnormality, disorder, pathology or
43 condition which motivates the person, affects the predisposition or desires

1 of the person, or interferes with the capacity of the person to control
2 impulses to commit crimes of extreme sexual violence.

3 ~~(G)~~(F) The defendant was incarcerated during the commission of the
4 offense.

5 ~~(H)~~(G) The crime involved two or more participants in the criminal
6 conduct, and the defendant played a major role in the crime as the
7 organizer, leader, recruiter, manager or supervisor.

8 (3) In determining whether aggravating factors exist as provided in
9 this section, the court shall review the victim impact statement.

10 ~~(3)~~(4) If a factual aspect of a crime is a statutory element of the crime
11 or is used to subclassify the crime on the crime severity scale, that aspect
12 of the current crime of conviction may be used as an aggravating or
13 mitigating factor only if the criminal conduct constituting that aspect of the
14 current crime of conviction is significantly different from the usual
15 criminal conduct captured by the aspect of the crime.

16 (d) In determining aggravating or mitigating circumstances, the court
17 shall consider:

18 (1) Any evidence received during the proceeding;

19 (2) the presentence report;

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

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

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

30 (1) The court's evaluation of the significance and usefulness of the
31 defendant's assistance, taking into consideration the prosecutor's
32 evaluation of the assistance rendered;

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

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

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

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

39 Sec. 3. K.S.A. 2020 Supp. 21-6804 and 21-6815 are hereby repealed.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the statute book.