

## SENATE BILL No. 230

By Senator Haley

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AN ACT concerning crimes, criminal procedure and penalties; relating to sentencing; hate crimes; amending K.S.A. 2000 Supp. 21-4716 and repealing the existing section.

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

New Section 1. If the trier of fact in a trial in which the defendant is charged with a felony finds beyond a reasonable doubt that the defendant intentionally selected the person against whom the felony is committed or selected the property that is damaged or otherwise affected by such felony committed by the defendant in whole or in part because of the defendant's belief or perception regarding the race, color, religion, disability, sexual orientation, national origin, ethnicity or ancestry of that person or the owner or occupant of that property, whether or not the defendant's belief or perception was correct, the defendant's sentence shall be presumed imprisonment and such sentence shall be up to double the maximum duration of the presumptive imprisonment term for the underlying felony.

Sec. 2. K.S.A. 2000 Supp. 21-4716 is hereby amended to read as follows: 21-4716. (a) The sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) (1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

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

1 purview of this factor.

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

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

7 (2) Subject to the provisions of subsection (b)(3), the following no-  
8 nexclusive list of aggravating factors may be considered in determining  
9 whether substantial and compelling reasons for departure exist:

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

13 (B) The defendant's conduct during the commission of the current  
14 offense manifested excessive brutality to the victim in a manner not nor-  
15 mally present in that offense.

16 (C) ~~The offense was motivated entirely or in part by the race, color,~~  
17 ~~religion, ethnicity, national origin or sexual orientation of the victim.~~

18 ~~(D)~~ The offense involved a fiduciary relationship which existed be-  
19 tween the defendant and the victim.

20 ~~(E)~~ (D) The defendant, 18 or more years of age, employed, hired,  
21 used, persuaded, induced, enticed or coerced any individual under 16  
22 years of age to commit or assist in avoiding detection or apprehension for  
23 commission of any person felony or any attempt, conspiracy or solicitation  
24 as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments  
25 thereto to commit any person felony regardless of whether the defendant  
26 knew the age of the individual under 16 years of age.

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

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

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

34 (b) a crime involving an act of sexual intercourse, sodomy or lewd  
35 fondling and touching with any child who is 14 or more years of age but  
36 less than 16 years of age and with whom a relationship has been estab-  
37 lished or promoted for the primary purpose of victimization; or

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

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

43 (a) Has one or more prior convictions of any crimes of extreme sexual

1 violence. Any prior conviction used to establish the defendant as a pred-  
2 atory sex offender pursuant to this subsection shall also be counted in  
3 determining the criminal history category; or

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

7 (iii) "Mental condition or personality disorder" means an emotional,  
8 mental or physical illness, disease, abnormality, disorder, pathology or  
9 condition which motivates the person, affects the predisposition or desires  
10 of the person, or interferes with the capacity of the person to control  
11 impulses to commit crimes of extreme sexual violence.

12 ~~(G)~~ (F) The defendant was incarcerated during the commission of  
13 the offense.

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

16 (3) If a factual aspect of a crime is a statutory element of the crime  
17 or is used to subclassify the crime on the crime severity scale, that aspect  
18 of the current crime of conviction may be used as an aggravating or mit-  
19 igating factor only if the criminal conduct constituting that aspect of the  
20 current crime of conviction is significantly different from the usual crim-  
21 inal conduct captured by the aspect of the crime.

22 (c) In determining aggravating or mitigating circumstances, the court  
23 shall consider:

- 24 (1) Any evidence received during the proceeding;
- 25 (2) the presentence report;
- 26 (3) written briefs and oral arguments of either the state or counsel  
27 for the defendant; and
- 28 (4) any other evidence relevant to such aggravating or mitigating cir-  
29 cumstances that the court finds trustworthy and reliable.

30 New Sec. 3. (a) Independent of any criminal prosecution or the re-  
31 sult thereof, any person suffering injury or damage to such person or such  
32 person's property whether it be physical, emotional or financial injury or  
33 damage as a result of felony violation as provided in section 1 and amend-  
34 ments thereto may bring a civil action for damages, injunction or other  
35 appropriate relief. The court may award actual damages, including dam-  
36 ages for emotional distress or punitive damages. A judgment may include  
37 attorney fees and costs.

38 (b) The attorney general shall collect and disseminate data on inci-  
39 dents of criminal acts that evidence prejudice based on race, color, relig-  
40 ion, disability, sexual orientation, national origin, ethnicity or ancestry. All  
41 law enforcement agencies shall report monthly to the attorney general  
42 concerning such offenses in such form and in such manner as prescribed  
43 by rules and regulations adopted by the attorney general. Such informa-

1 tion shall be compiled by the attorney general and disseminated upon  
2 request to any local law enforcement agency, municipality or state agency.  
3 Dissemination of such information shall be subject to all confidentiality  
4 requirements otherwise imposed by law. Data required pursuant to this  
5 subsection shall be used only for research or statistical purposes and shall  
6 not include any information that may reveal the identity of an individual  
7 victim of a crime. The attorney general shall publish an annual summary  
8 of the data required pursuant to this subsection. The attorney general  
9 shall provide training for all law enforcement officers in identifying, re-  
10 sponding to and reporting all offenses as provided in section 1 and amend-  
11 ments thereto. The Kansas law enforcement training commission shall  
12 develop and certify a course of such training to be made available to all  
13 enforcement officers.

14 Sec. 4. K.S.A. 2000 Supp. 21-4716 is hereby repealed.

15 Sec. 5. This act shall take effect and be in force from and after its  
16 publication in the statute book.

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