

HOUSE BILL No. 2667

By Representatives Whipple, Burroughs, Clayton, Trimmer and Winn

2-10

1 AN ACT concerning crimes and punishment; relating to a mandatory term
2 of imprisonment of 35 years for certain sex offenders; amending K.S.A.
3 2015 Supp. 21-6627 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2015 Supp. 21-6627 is hereby amended to read as
7 follows: 21-6627. (a) (1) Except as provided in subsection ~~(b) or (d)~~ (c) or
8 (e), a defendant who is 18 years of age or older and is convicted ~~of the~~
9 ~~following crimes~~ a crime listed in subsection (g) committed on or after
10 July 1, 2006, but prior to July 1, 2016, shall be sentenced to a term of
11 imprisonment for life with a mandatory minimum term of imprisonment of
12 not less than 25 years unless the court determines that the defendant
13 should be sentenced as determined in subsection (a)(2):

14 (A) ~~Aggravated human trafficking, as defined in subsection (b) of~~
15 ~~K.S.A. 2015 Supp. 21-5426, and amendments thereto, if the victim is less~~
16 ~~than 14 years of age;~~

17 (B) ~~rape, as defined in subsection (a)(3) of K.S.A. 2015 Supp. 21-~~
18 ~~5503, and amendments thereto;~~

19 (C) ~~aggravated indecent liberties with a child, as defined in~~
20 ~~subsection (b)(3) of K.S.A. 2015 Supp. 21-5506, and amendments thereto;~~

21 (D) ~~aggravated criminal sodomy, as defined in subsection (b)(1) or~~
22 ~~(b)(2) of K.S.A. 2015 Supp. 21-5504, and amendments thereto;~~

23 (E) ~~commercial sexual exploitation of a child, as defined in K.S.A.~~
24 ~~2015 Supp. 21-6422, and amendments thereto, if the victim is less than 14~~
25 ~~years of age;~~

26 (F) ~~sexual exploitation of a child, as defined in subsection (a)(1) or~~
27 ~~(a)(4) of K.S.A. 2015 Supp. 21-5510, and amendments thereto, if the child~~
28 ~~is less than 14 years of age; and~~

29 (G) ~~an attempt, conspiracy or criminal solicitation, as defined in~~
30 ~~K.S.A. 2015 Supp. 21-5301, 21-5302 or 21-5303, and amendments~~
31 ~~thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F)~~
32 ~~(3).~~

33 (2) *Except as provided in subsection (b), (c) or (e), a defendant who*
34 *is 18 years of age or older and is convicted of a crime listed in subsection*
35 *(g) committed on or after July 1, 2016, shall be sentenced to a term of*
36 *imprisonment for life with a mandatory minimum term of imprisonment of*

1 *not less than 25 years unless the court determines that the defendant*
2 *should be sentenced as determined in subsection (a)(3).*

3 (3) The provision of ~~subsection~~ *subsections (a)(1) and (a)(2)*
4 *requiring a mandatory minimum term of imprisonment of not less than 25*
5 *years shall not apply if the court finds:*

6 (A) The defendant is an aggravated habitual sex offender and
7 sentenced pursuant to K.S.A. 2015 Supp. 21-6626, and amendments
8 thereto; or

9 (B) the defendant, because of the defendant's criminal history
10 classification, is subject to presumptive imprisonment pursuant to the
11 sentencing guidelines grid for nondrug crimes and the sentencing range
12 exceeds: *(i) 300 months for a mandatory minimum term of imprisonment*
13 *of not less than 25 years; or (ii) 420 months for a mandatory term of*
14 *imprisonment of not less than 35 years.* In such case, the defendant is
15 required to serve a mandatory minimum term equal to the sentence
16 established pursuant to the sentencing range.

17 (b) (1) *Except as provided in subsection (c), if a defendant who is 18*
18 *years of age or older is convicted of a crime listed in subsection (g)*
19 *committed on or after July 1, 2016, upon reasonable notice by the*
20 *prosecuting attorney, the court shall determine whether the defendant*
21 *shall be required to serve an additional term of imprisonment of 10 years,*
22 *in addition to being sentenced to a term of imprisonment for life with a*
23 *mandatory minimum term of imprisonment of not less than 25 years.*

24 (2) *The court shall conduct a separate proceeding following the*
25 *determination of the defendant's guilt for the jury to determine whether*
26 *one or more aggravating circumstances enumerated in subsection (f) exist.*
27 *Such proceeding shall be conducted by the court before a jury as soon as*
28 *practicable. If any person who served on the trial jury is unable to serve*
29 *on the jury for the proceeding, the court shall substitute an alternate juror*
30 *who has been impaneled for the trial jury. If there are insufficient*
31 *alternate jurors to replace trial jurors who are unable to serve at the*
32 *proceeding, the court may conduct such proceeding before a jury which*
33 *may have 12 or less jurors, but at no time less than six jurors. If the jury*
34 *has been discharged prior to the proceeding, a new jury shall be*
35 *impaneled. Any decision of the jury regarding the existence of an*
36 *aggravating circumstance shall be beyond a reasonable doubt. Jury*
37 *selection procedures, qualifications of jurors and grounds for exemption*
38 *or challenge of prospective jurors in criminal trials shall be applicable to*
39 *the selection of such jury. The jury at the proceeding may be waived in the*
40 *manner provided by K.S.A. 22-3403, and amendments thereto, for waiver*
41 *of a trial jury. If the jury at the proceeding has been waived, such*
42 *proceeding shall be conducted by the court.*

43 (3) *In the proceeding, evidence may be presented concerning any*

1 matter relating to any of the aggravating circumstances enumerated in
2 subsection (f). Only such evidence of aggravating circumstances as the
3 prosecuting attorney has made known to the defendant prior to the
4 proceeding shall be admissible and no evidence secured in violation of the
5 constitution of the United States or of the state of Kansas shall be
6 admissible. No testimony by the defendant at the time of the proceeding
7 shall be admissible against the defendant at any subsequent criminal
8 proceeding.

9 (4) At the conclusion of the evidentiary presentation, the court shall
10 allow the parties a reasonable period of time in which to present oral
11 argument. At the conclusion of the evidentiary portion of the proceeding,
12 the court shall provide oral and written instructions to the jury to guide its
13 deliberations. If the prosecuting attorney relies on subsection (f)(2)(A) as
14 an aggravating circumstance, and the court finds that one or more of the
15 defendant's prior convictions satisfy such subsection, the jury shall be
16 instructed that a certified journal entry of a prior conviction is presumed
17 to prove the existence of such prior conviction or convictions beyond a
18 reasonable doubt.

19 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
20 that one or more of the aggravating circumstances enumerated in
21 subsection (f) exist, the defendant shall be sentenced to serve an
22 additional term of imprisonment of 10 years in addition to being sentenced
23 to a term of imprisonment for life with a mandatory minimum term of
24 imprisonment of not less than 25 years. The jury shall designate, in
25 writing, signed by the foreman of the jury, the statutory aggravating
26 circumstances which it found. If, after a reasonable time for deliberation,
27 the jury is unable to reach a unanimous decision on the existence of one or
28 more of such aggravating circumstances, the court shall dismiss the jury
29 and the defendant shall be sentenced to imprisonment for life with a
30 mandatory minimum term of imprisonment of not less than 25 years. In
31 nonjury cases, the court shall follow the requirements of this subsection in
32 determining the existence of one or more of the aggravating
33 circumstances.

34 (c) (1) On and after July 1, 2006, if a defendant who is 18 years of
35 age or older is convicted of a crime listed in subsection ~~(a)(1)~~ (g) and such
36 defendant has previously been convicted of a crime listed in subsection ~~(a)~~
37 ~~(1)~~ (g), a crime in effect at any time prior to July 1, 2011, which is
38 substantially the same as a crime listed in subsection ~~(a)(1)~~ (g) or a crime
39 under a law of another jurisdiction which is substantially the same as a
40 crime listed in subsection ~~(a)(1)~~ (g), the court shall sentence the defendant
41 to a term of imprisonment for life with a mandatory minimum term of
42 imprisonment of not less than 40 years. The provisions of this paragraph
43 shall not apply to a crime committed under K.S.A. 2015 Supp. 21-5507,

1 and amendments thereto, or a crime under a law of another jurisdiction
 2 which is substantially the same as K.S.A. 2015 Supp. 21-5507, and
 3 amendments thereto.

4 (2) The provision of subsection~~(b)~~ (c)(1) requiring a mandatory
 5 minimum term of imprisonment of not less than 40 years shall not apply if
 6 the court finds:

7 (A) The defendant is an aggravated habitual sex offender and
 8 sentenced pursuant to K.S.A. 2015 Supp. 21-6626, and amendments
 9 thereto; or

10 (B) the defendant, because of the defendant's criminal history
 11 classification, is subject to presumptive imprisonment pursuant to the
 12 sentencing guidelines grid for nondrug crimes and the sentencing range
 13 exceeds 480 months. In such case, the defendant is required to serve a
 14 mandatory minimum term equal to the sentence established pursuant to the
 15 sentencing range.

16 ~~(e)~~ (d) When a person is sentenced pursuant to subsection (a)~~or~~, (b)
 17 or (c), such person shall be sentenced to a mandatory minimum term of
 18 imprisonment of not less than 25 years, 35 years, 40 years or be sentenced
 19 as determined in subsection (a)~~(2)~~ (3) or subsection (b)(2), whichever is
 20 applicable, and shall not be eligible for probation or suspension,
 21 modification or reduction of sentence. In addition, a person sentenced
 22 pursuant to this section shall not be eligible for parole prior to serving such
 23 mandatory term of imprisonment, and such imprisonment shall not be
 24 reduced by the application of good time credits.

25 ~~(d)~~(1) (e) On or after July 1, 2006, for a first time conviction of ~~an~~
 26 offense a crime listed in subsection~~(a)~~(1) (g), the sentencing judge shall
 27 impose the mandatory minimum term of imprisonment provided by
 28 subsection (a) or (b), unless the judge finds substantial and compelling
 29 reasons, following a review of mitigating circumstances, to impose a
 30 departure. If the sentencing judge departs from such mandatory minimum
 31 term of imprisonment, the judge shall state on the record at the time of
 32 sentencing the substantial and compelling reasons for the departure. The
 33 departure sentence shall be the sentence pursuant to the revised Kansas
 34 sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes
 35 Annotated, and amendments thereto, and, subject to the provisions of
 36 K.S.A. 2015 Supp. 21-6818, and amendments thereto, no sentence of a
 37 mandatory minimum term of imprisonment shall be imposed hereunder.

38 ~~(2)~~ (f) As used in this ~~subsection~~, section:

39 (1) "Mitigating circumstances" shall include, but are not limited to,
 40 the following:

41 (A) The defendant has no significant history of prior criminal
 42 activity;

43 (B) the crime was committed while the defendant was under the

- 1 influence of extreme mental or emotional disturbances;
- 2 (C) the victim was an accomplice in the crime committed by another
3 person, and the defendant's participation was relatively minor;
- 4 (D) the defendant acted under extreme distress or under the
5 substantial domination of another person;
- 6 (E) the capacity of the defendant to appreciate the criminality of the
7 defendant's conduct or to conform the defendant's conduct to the
8 requirements of law was substantially impaired; and
- 9 (F) the age of the defendant at the time of the crime.
- 10 (2) *"Aggravating circumstances" shall be limited to the following:*
- 11 (A) *The defendant committed the crime in an especially heinous,*
12 *atrocious or cruel manner. A finding that the victim was aware of such*
13 *victim's fate or had conscious pain and suffering as a result of the physical*
14 *trauma is not necessary to find that the manner in which the defendant*
15 *harmed the victim was especially heinous, atrocious or cruel. Conduct*
16 *which is heinous, atrocious or cruel may include, but is not limited to:*
- 17 (1) *Prior stalking of or criminal threats to the victim;*
- 18 (2) *preparation or planning, indicating an intention that the harm*
19 *was meant to be especially heinous, atrocious or cruel;*
- 20 (3) *infliction of mental anguish or physical abuse;*
- 21 (4) *torture of the victim;*
- 22 (5) *continuous acts of violence; or*
- 23 (6) *any other conduct the trier of fact expressly finds is especially*
24 *heinous.*
- 25 (B) *The defendant had a fiduciary relationship with the victim.*
- 26 (C) *The defendant had knowledge that the victim was in a vulnerable*
27 *position.*
- 28 (g) *Crimes sentenced pursuant to this section shall include the*
29 *following:*
- 30 (1) *Aggravated human trafficking, as defined in K.S.A. 2015 Supp.*
31 *21-5426(b), and amendments thereto, if the victim is less than 14 years of*
32 *age;*
- 33 (2) *rape, as defined in K.S.A. 2015 Supp. 21-5503(a)(3), and*
34 *amendments thereto;*
- 35 (3) *aggravated indecent liberties with a child, as defined in K.S.A.*
36 *2015 Supp. 21-5506(b)(3), and amendments thereto;*
- 37 (4) *aggravated criminal sodomy, as defined in K.S.A. 2015 Supp. 21-*
38 *5504(b)(1) or (b)(2), and amendments thereto;*
- 39 (5) *commercial sexual exploitation of a child, as defined in K.S.A.*
40 *2015 Supp. 21-6422, and amendments thereto, if the victim is less than 14*
41 *years of age;*
- 42 (6) *sexual exploitation of a child, as defined in K.S.A. 2015 Supp. 21-*
43 *5510(a)(1) or (a)(4), and amendments thereto, if the child is less than 14*

1 *years of age; and*

2 *(7) an attempt, conspiracy or criminal solicitation, as defined in*
3 *K.S.A. 2015 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto,*
4 *of an offense defined in subsections (g)(1) through (g)(6).*

5 ~~(e)~~ *(h)* The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior
6 to their repeal, or K.S.A. 2015 Supp. 21-5301, 21-5302 or 21-5303, and
7 amendments thereto, shall not apply to any defendant sentenced pursuant
8 to this section.

9 Sec. 2. K.S.A. 2015 Supp. 21-6627 is hereby repealed.

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