

Substitute for HOUSE BILL No. 2264

By Committee on Corrections and Juvenile Justice

3-16

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing of certain persons to a mandatory minimum term of
3 imprisonment; amending K.S.A. 2016 Supp. 21-6620, 21-6623 and 21-
4 6627 and repealing the existing sections.

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

7 Section 1. K.S.A. 2016 Supp. 21-6620 is hereby amended to read as
8 follows: 21-6620. (a) (1) Except as provided in subsection (a)(2) and
9 K.S.A. 2016 Supp. 21-6618 and 21-6622, and amendments thereto, if a
10 defendant is convicted of the crime of capital murder and a sentence of
11 death is not imposed pursuant to ~~subsection (c) of~~ K.S.A. 2016 Supp. 21-
12 6617(e), and amendments thereto, or requested pursuant to ~~subsection (a)~~
13 ~~or (b) of~~ K.S.A. 2016 Supp. 21-6617(a) or (b), and amendments thereto,
14 the defendant shall be sentenced to life without the possibility of parole.

15 (2) (A) Except as provided in subsection (a)(2)(B), a defendant
16 convicted of attempt to commit the crime of capital murder shall be
17 sentenced to imprisonment for life and shall not be eligible for probation
18 or suspension, modification or reduction of sentence. In addition, the
19 defendant shall not be eligible for parole prior to serving 25 years'
20 imprisonment, and such 25 years' imprisonment shall not be reduced by
21 the application of good time credits. No other sentence shall be permitted.

22 (B) The provisions of subsection (a)(2)(A) requiring the court to
23 impose a mandatory minimum term of imprisonment of 25 years shall not
24 apply if the court finds the defendant, because of the defendant's criminal
25 history classification, ~~is would be~~ subject to presumptive imprisonment
26 pursuant to the sentencing guidelines grid for nondrug crimes and the
27 sentencing range ~~exceeds would exceed~~ 300 months ~~if the sentence~~
28 ~~established for a severity level 1 crime was imposed~~. In such case, the
29 defendant is required to serve a mandatory minimum term equal to the
30 sentence established for a severity level 1 crime pursuant to the sentencing
31 range. *The defendant shall not be eligible for parole prior to serving such*
32 *mandatory minimum term of imprisonment, and such mandatory minimum*
33 *term of imprisonment shall not be reduced by the application of good time*
34 *credits. No other sentence shall be permitted.*

35 (b) The provisions of this subsection shall apply only to the crime of
36 murder in the first degree as described in ~~subsection (a)(2) of~~ K.S.A. 2016

1 Supp. 21-5402(a)(2), and amendments thereto, committed on or after July
2 1, 2014.

3 (1) Except as provided in subsection (b)(2), a defendant convicted of
4 murder in the first degree as described in ~~subsection (a)(2)~~ of K.S.A. 2016
5 Supp. 21-5402(a)(2), and amendments thereto, shall be sentenced to
6 imprisonment for life and shall not be eligible for probation or suspension,
7 modification or reduction of sentence. In addition, the defendant shall not
8 be eligible for parole prior to serving 25 years' imprisonment, and such 25
9 years' imprisonment shall not be reduced by the application of good time
10 credits. No other sentence shall be permitted.

11 (2) The provisions of subsection (b)(1) requiring the court to impose
12 a mandatory minimum term of imprisonment of 25 years shall not apply if
13 the court finds the defendant, because of the defendant's criminal history
14 classification, ~~is~~ *would be* subject to presumptive imprisonment pursuant
15 to the sentencing guidelines grid for nondrug crimes and the sentencing
16 range ~~exceeds~~ *would exceed* 300 months *if the sentence established for a*
17 *severity level 1 crime was imposed*. In such case, the defendant is required
18 to serve a mandatory minimum term equal to the sentence established *for*
19 *a severity level 1 crime* pursuant to the sentencing range. *The defendant*
20 *shall not be eligible for parole prior to serving such mandatory minimum*
21 *term of imprisonment, and such mandatory minimum term of*
22 *imprisonment shall not be reduced by the application of good time credits.*
23 *No other sentence shall be permitted.*

24 (c) The provisions of this subsection shall apply only to the crime of
25 murder in the first degree based upon the finding of premeditated murder
26 committed on or after July 1, 2014.

27 (1) (A) Except as provided in subsection (c)(1)(B), a defendant
28 convicted of murder in the first degree based upon the finding of
29 premeditated murder shall be sentenced pursuant to K.S.A. 2016 Supp. 21-
30 6623, and amendments thereto, unless the sentencing judge finds
31 substantial and compelling reasons, following a review of mitigating
32 circumstances, to impose the sentence specified in subsection (c)(2).

33 (B) The provisions of subsection (c)(1)(A) requiring the court to
34 impose the mandatory minimum term of imprisonment required by K.S.A.
35 2016 Supp. 21-6623, and amendments thereto, shall not apply if the court
36 finds the defendant, because of the defendant's criminal history
37 classification, ~~is~~ *would be* subject to presumptive imprisonment pursuant
38 to the sentencing guidelines grid for nondrug crimes and the sentencing
39 range ~~exceeds~~ *would exceed* 600 months *if the sentence established for a*
40 *severity level 1 crime was imposed*. In such case, the defendant is required
41 to serve a mandatory minimum term equal to the sentence established *for*
42 *a severity level 1 crime* pursuant to the sentencing range. *The defendant*
43 *shall not be eligible for parole prior to serving such mandatory minimum*

1 *term of imprisonment, and such mandatory minimum term of*
2 *imprisonment shall not be reduced by the application of good time credits.*
3 *No other sentence shall be permitted.*

4 (2) (A) If the sentencing judge does not impose the mandatory
5 minimum term of imprisonment required by K.S.A. 2016 Supp. 21-6623,
6 and amendments thereto, the judge shall state on the record at the time of
7 sentencing the substantial and compelling reasons therefor, and, except as
8 provided in subsection (c)(2)(B), the defendant shall be sentenced to
9 imprisonment for life and shall not be eligible for probation or suspension,
10 modification or reduction of sentence. In addition, the defendant shall not
11 be eligible for parole prior to serving 25 years' imprisonment, and such 25
12 years' imprisonment shall not be reduced by the application of good time
13 credits. No other sentence shall be permitted.

14 (B) The provisions of subsection (c)(2)(A) requiring the court to
15 impose a mandatory minimum term of imprisonment of 25 years shall not
16 apply if the court finds the defendant, because of the defendant's criminal
17 history classification, ~~is~~ *would be* subject to presumptive imprisonment
18 pursuant to the sentencing guidelines grid for nondrug crimes and the
19 sentencing range ~~exceeds~~ *would exceed* 300 months *if the sentence*
20 *established for a severity level 1 crime was imposed.* In such case, the
21 defendant is required to serve a mandatory minimum term equal to the
22 sentence established *for a severity level 1 crime* pursuant to the sentencing
23 range. *The defendant shall not be eligible for parole prior to serving such*
24 *mandatory minimum term of imprisonment, and such mandatory minimum*
25 *term of imprisonment shall not be reduced by the application of good time*
26 *credits. No other sentence shall be permitted.*

27 (d) The provisions of this subsection shall apply only to the crime of
28 murder in the first degree based upon the finding of premeditated murder
29 committed on or after September 6, 2013, *but prior to July 1, 2014.*

30 (1) If a defendant is convicted of murder in the first degree based
31 upon the finding of premeditated murder, upon reasonable notice by the
32 prosecuting attorney, the court shall determine, in accordance with this
33 subsection, whether the defendant shall be required to serve a mandatory
34 minimum term of imprisonment of 50 years or sentenced as otherwise
35 provided by law.

36 (2) The court shall conduct a separate proceeding following the
37 determination of the defendant's guilt for the jury to determine whether
38 one or more aggravating circumstances exist. Such proceeding shall be
39 conducted by the court before a jury as soon as practicable. If any person
40 who served on the trial jury is unable to serve on the jury for the
41 proceeding, the court shall substitute an alternate juror who has been
42 impaneled for the trial jury. If there are insufficient alternate jurors to
43 replace trial jurors who are unable to serve at the proceeding, the court

1 may conduct such proceeding before a jury which may have 12 or less
2 jurors, but at no time less than six jurors. If the jury has been discharged
3 prior to the proceeding, a new jury shall be impaneled. Any decision of the
4 jury regarding the existence of an aggravating circumstance shall be
5 beyond a reasonable doubt. Jury selection procedures, qualifications of
6 jurors and grounds for exemption or challenge of prospective jurors in
7 criminal trials shall be applicable to the selection of such jury. The jury at
8 the proceeding may be waived in the manner provided by K.S.A. 22-3403,
9 and amendments thereto, for waiver of a trial jury. If the jury at the
10 proceeding has been waived, such proceeding shall be conducted by the
11 court.

12 (3) In the proceeding, evidence may be presented concerning any
13 matter relating to any of the aggravating circumstances enumerated in
14 K.S.A. 2016 Supp. 21-6624, and amendments thereto. Only such evidence
15 of aggravating circumstances as the prosecuting attorney has made known
16 to the defendant prior to the proceeding shall be admissible and no
17 evidence secured in violation of the constitution of the United States or of
18 the state of Kansas shall be admissible. No testimony by the defendant at
19 the time of the proceeding shall be admissible against the defendant at any
20 subsequent criminal proceeding. At the conclusion of the evidentiary
21 presentation, the court shall allow the parties a reasonable period of time in
22 which to present oral argument.

23 (4) At the conclusion of the evidentiary portion of the proceeding, the
24 court shall provide oral and written instructions to the jury to guide its
25 deliberations. If the prosecuting attorney relies on ~~subsection (a)~~ of K.S.A.
26 2016 Supp. 21-6624(a), and amendments thereto, as an aggravating
27 circumstance, and the court finds that one or more of the defendant's prior
28 convictions satisfy such subsection, the jury shall be instructed that a
29 certified journal entry of a prior conviction is presumed to prove the
30 existence of such prior conviction or convictions beyond a reasonable
31 doubt.

32 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
33 that one or more of the aggravating circumstances enumerated in K.S.A.
34 2016 Supp. 21-6624, and amendments thereto, exist, the jury shall
35 designate, in writing, signed by the foreman of the jury, the statutory
36 aggravating circumstances which it found. If, after a reasonable time for
37 deliberation, the jury is unable to reach a unanimous sentencing decision,
38 the court shall dismiss the jury and the defendant shall be sentenced as
39 provided by law. In nonjury cases, the court shall designate, in writing, the
40 specific circumstance or circumstances which the court found beyond a
41 reasonable doubt.

42 (6) If one or more of the aggravating circumstances enumerated in
43 K.S.A. 2016 Supp. 21-6624, and amendments thereto, are found to exist

1 beyond a reasonable doubt pursuant to this subsection, the defendant shall
2 be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments
3 thereto, unless the sentencing judge finds substantial and compelling
4 reasons, following a review of mitigating circumstances, to impose the
5 sentence specified in this paragraph. If the sentencing judge does not
6 impose the mandatory minimum term of imprisonment required by K.S.A.
7 2016 Supp. 21-6623, and amendments thereto, the judge shall state on the
8 record at the time of sentencing the substantial and compelling reasons
9 therefor, and the defendant shall be sentenced to imprisonment for life and
10 shall not be eligible for probation or suspension, modification or reduction
11 of sentence. In addition, the defendant shall not be eligible for parole prior
12 to serving 25 years' imprisonment, and such 25 years' imprisonment shall
13 not be reduced by the application of good time credits. No other sentence
14 shall be permitted.

15 (e) The provisions of this subsection shall apply only to the crime of
16 murder in the first degree based upon the finding of premeditated murder
17 committed prior to September 6, 2013.

18 (1) If a defendant is convicted of murder in the first degree based
19 upon the finding of premeditated murder, upon reasonable notice by the
20 prosecuting attorney, the court shall conduct a separate sentencing
21 proceeding in accordance with this subsection to determine whether the
22 defendant shall be required to serve a mandatory minimum term of
23 imprisonment of 40 years or for crimes committed on and after July 1,
24 1999, a mandatory minimum term of imprisonment of 50 years or
25 sentenced as otherwise provided by law.

26 (2) The sentencing proceeding shall be conducted by the court before
27 a jury as soon as practicable. If the trial jury has been discharged prior to
28 sentencing, a new jury shall be impaneled. Any decision to impose a
29 mandatory minimum term of imprisonment of 40 or 50 years shall be by a
30 unanimous jury. Jury selection procedures, qualifications of jurors and
31 grounds for exemption or challenge of prospective jurors in criminal trials
32 shall be applicable to the selection of such jury. The jury at the sentencing
33 proceeding may be waived in the manner provided by K.S.A. 22-3403, and
34 amendments thereto, for waiver of a trial jury. If the jury at the sentencing
35 proceeding has been waived, such proceeding shall be conducted by the
36 court.

37 (3) In the sentencing proceeding, evidence may be presented
38 concerning any matter that the court deems relevant to the question of
39 sentence and shall include matters relating to any of the aggravating
40 circumstances enumerated in K.S.A. 2016 Supp. 21-6624, and
41 amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A.
42 21-4636, prior to its repeal, and any mitigating circumstances. Any such
43 evidence which the court deems to have probative value may be received

1 regardless of its admissibility under the rules of evidence, provided that
2 the defendant is accorded a fair opportunity to rebut any hearsay
3 statements. Only such evidence of aggravating circumstances as the
4 prosecuting attorney has made known to the defendant prior to the
5 sentencing proceeding shall be admissible and no evidence secured in
6 violation of the constitution of the United States or of the state of Kansas
7 shall be admissible. Only such evidence of mitigating circumstances
8 subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto,
9 that the defendant has made known to the prosecuting attorney prior to the
10 sentencing proceeding shall be admissible. No testimony by the defendant
11 at the time of sentencing shall be admissible against the defendant at any
12 subsequent criminal proceeding. At the conclusion of the evidentiary
13 presentation, the court shall allow the parties a reasonable period of time in
14 which to present oral argument.

15 (4) At the conclusion of the evidentiary portion of the sentencing
16 proceeding, the court shall provide oral and written instructions to the jury
17 to guide its deliberations. If the prosecuting attorney relies on ~~subsection~~
18 ~~(a)~~ of K.S.A. 2016 Supp. 21-6624(a), and amendments thereto, or for
19 crimes committed prior to July 1, 2011, ~~subsection (a)~~ of K.S.A. 21-
20 4636(a), prior to its repeal, as an aggravating circumstance, and the court
21 finds that one or more of the defendant's prior convictions satisfy such
22 subsection, the jury shall be instructed that a certified journal entry of a
23 prior conviction is presumed to prove the existence of such prior
24 conviction or convictions beyond a reasonable doubt.

25 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
26 that one or more of the aggravating circumstances enumerated in K.S.A.
27 2016 Supp. 21-6624, and amendments thereto, or for crimes committed
28 prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further,
29 that the existence of such aggravating circumstances is not outweighed by
30 any mitigating circumstances which are found to exist, the defendant shall
31 be sentenced pursuant to K.S.A. 2016 Supp. 21-6623, and amendments
32 thereto; otherwise, the defendant shall be sentenced as provided by law.
33 The sentencing jury shall designate, in writing, signed by the foreman of
34 the jury, the statutory aggravating circumstances which it found. The trier
35 of fact may make the findings required by this subsection for the purpose
36 of determining whether to sentence a defendant pursuant to K.S.A. 2016
37 Supp. 21-6623, and amendments thereto, notwithstanding contrary
38 findings made by the jury or court pursuant to ~~subsection (e)~~ of K.S.A.
39 2016 Supp. 21-6617(e), and amendments thereto, for the purpose of
40 determining whether to sentence such defendant to death. If, after a
41 reasonable time for deliberation, the jury is unable to reach a unanimous
42 sentencing decision, the court shall dismiss the jury and the defendant
43 shall be sentenced as provided by law. In nonjury cases, the court shall

1 designate in writing the specific circumstance or circumstances which the
2 court found beyond a reasonable doubt.

3 (f) The amendments to subsection (e) by chapter 1 of the 2013
4 Session Laws of Kansas (Special Session):

5 (1) Establish a procedural rule for sentencing proceedings, and as
6 such shall be construed and applied retroactively to all crimes committed
7 prior to the effective date of this act, except as provided further in this
8 subsection; (2) shall not apply to cases in which the defendant's conviction
9 and sentence were final prior to June 17, 2013, unless the conviction or
10 sentence has been vacated in a collateral proceeding, including, but not
11 limited to, K.S.A. 22-3504 or 60-1507, and amendments thereto; and (3)
12 shall apply only in sentencing proceedings otherwise authorized by law.

13 (g) Notwithstanding the provisions of subsection (h), for all cases on
14 appeal on or after September 6, 2013, if a sentence imposed under this
15 section, prior to amendment by chapter 1 of the 2013 Session Laws of
16 Kansas (Special Session), or under K.S.A. 21-4635, prior to its repeal, is
17 vacated for any reason other than sufficiency of the evidence as to all
18 aggravating circumstances, resentencing shall be required under this
19 section, as amended by chapter 1 of the 2013 Session Laws of Kansas
20 (Special Session), unless the prosecuting attorney chooses not to pursue
21 such a sentence.

22 (h) In the event any sentence imposed under this section is held to be
23 unconstitutional, the court having jurisdiction over a person previously
24 sentenced shall cause such person to be brought before the court and shall
25 sentence such person to the maximum term of imprisonment otherwise
26 provided by law.

27 (i) If any provision or provisions of this section or the application
28 thereof to any person or circumstance is held invalid, the invalidity shall
29 not affect other provisions or applications of this section which can be
30 given effect without the invalid provision or provisions or application, and
31 to this end the provisions of this section are severable.

32 Sec. 2. K.S.A. 2016 Supp. 21-6623 is hereby amended to read as
33 follows: 21-6623. When it is provided by law that a person shall be
34 sentenced pursuant to this section, such person shall be sentenced to
35 imprisonment for life and shall not be eligible for probation or suspension,
36 modification or reduction of sentence. Except as otherwise provided *in*
37 *this section*, in addition, a person sentenced pursuant to this section shall
38 not be eligible for parole prior to serving 40 years' imprisonment, and such
39 40 years' imprisonment shall not be reduced by the application of good
40 time credits. For crimes committed ~~on~~ *and* or after July 1, 1999, a person
41 sentenced pursuant to this section shall not be eligible for parole prior to
42 serving 50 years' imprisonment, and such 50 years' imprisonment shall not
43 be reduced by the application of good time credits. For crimes committed

1 on or after July 1, 2006, a mandatory minimum term of imprisonment of
 2 50 years shall not apply if the court finds that the defendant, because of the
 3 defendant's criminal history classification, ~~is would be~~ subject to
 4 presumptive imprisonment pursuant to the sentencing guidelines grid for
 5 nondrug crimes and the sentencing range ~~exceeds would exceed~~ 600
 6 months *if the sentence established for a severity level 1 crime was*
 7 *imposed*. In such case, the defendant is required to serve a mandatory
 8 minimum term equal to the sentence established *for a severity level 1*
 9 *crime* pursuant to the sentencing range, *the defendant shall not be eligible*
 10 *for parole prior to serving such mandatory minimum term of*
 11 *imprisonment, and such mandatory minimum term of imprisonment shall*
 12 *not be reduced by the application of good time credits. No other sentence*
 13 *shall be permitted*. Upon sentencing a defendant pursuant to this section,
 14 the court shall commit the defendant to the custody of the secretary of
 15 corrections and the court shall state in the sentencing order of the
 16 judgment form or journal entry, whichever is delivered with the defendant
 17 to the correctional institution, that the defendant has been sentenced
 18 pursuant to K.S.A. 2016 Supp. 21-6623, and amendments thereto.

19 Sec. 3. K.S.A. 2016 Supp. 21-6627 is hereby amended to read as
 20 follows: 21-6627. (a) (1) Except as provided in subsection (b) or (d), a
 21 defendant who is 18 years of age or older and is convicted of the following
 22 crimes committed on or after July 1, 2006, shall be sentenced to a term of
 23 imprisonment for life with a mandatory minimum term of imprisonment of
 24 not less than 25 years unless the court determines that the defendant
 25 should be sentenced as determined in subsection (a)(2):

26 (A) Aggravated human trafficking, as defined in ~~subsection (b) of~~
 27 K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if the victim is
 28 less than 14 years of age;

29 (B) rape, as defined in ~~subsection (a)(3) of~~ K.S.A. 2016 Supp. 21-
 30 5503(a)(3), and amendments thereto;

31 (C) aggravated indecent liberties with a child, as defined in
 32 ~~subsection (b)(3) of~~ K.S.A. 2016 Supp. 21-5506(b)(3), and amendments
 33 thereto;

34 (D) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or~~
 35 ~~(b)(2) of~~ K.S.A. 2016 Supp. 21-5504(b)(1) or (b)(2), and amendments
 36 thereto;

37 (E) commercial sexual exploitation of a child, as defined in K.S.A.
 38 2016 Supp. 21-6422, and amendments thereto, if the victim is less than 14
 39 years of age;

40 (F) sexual exploitation of a child, as defined in ~~subsection (a)(1) or~~
 41 ~~(a)(4) of~~ K.S.A. 2016 Supp. 21-5510(a)(1) or (a)(4), and amendments
 42 thereto, if the child is less than 14 years of age; and

43 (G) an attempt, conspiracy or criminal solicitation, as defined in

1 K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments
2 thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

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

6 (A) The defendant is an aggravated habitual sex offender and
7 sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments
8 thereto; or

9 (B) the defendant, because of the defendant's criminal history
10 classification, ~~is~~ *would be* subject to presumptive imprisonment pursuant
11 to the sentencing guidelines grid for nondrug crimes and the sentencing
12 range ~~exceeds~~ *would exceed* 300 months *if the sentence established for a*
13 *severity level 1 crime was imposed*. In such case, the defendant is required
14 to serve a mandatory minimum term equal to the sentence established *for*
15 *a severity level 1 crime* pursuant to the sentencing range.

16 (b) (1) On and after July 1, 2006, if a defendant who is 18 years of
17 age or older is convicted of a crime listed in subsection (a)(1) and such
18 defendant has previously been convicted of a crime listed in subsection (a)
19 (1), a crime in effect at any time prior to July 1, 2011, which is
20 substantially the same as a crime listed in subsection (a)(1) or a crime
21 under a law of another jurisdiction which is substantially the same as a
22 crime listed in subsection (a)(1), the court shall sentence the defendant to
23 a term of imprisonment for life with a mandatory minimum term of
24 imprisonment of not less than 40 years. The provisions of this paragraph
25 shall not apply to a crime committed under K.S.A. 2016 Supp. 21-5507,
26 and amendments thereto, or a crime under a law of another jurisdiction
27 which is substantially the same as K.S.A. 2016 Supp. 21-5507, and
28 amendments thereto.

29 (2) The provision of subsection (b)(1) requiring a mandatory
30 minimum term of imprisonment of not less than 40 years shall not apply if
31 the court finds:

32 (A) The defendant is an aggravated habitual sex offender and
33 sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments
34 thereto; or

35 (B) the defendant, because of the defendant's criminal history
36 classification, ~~is~~ *would be* subject to presumptive imprisonment pursuant
37 to the sentencing guidelines grid for nondrug crimes and the sentencing
38 range ~~exceeds~~ *would exceed* 480 months *if the sentence established for a*
39 *severity level 1 crime was imposed*. In such case, the defendant is required
40 to serve a mandatory minimum term equal to the sentence established *for*
41 *a severity level 1 crime* pursuant to the sentencing range.

42 (c) When a person is sentenced pursuant to subsection (a) or (b), such
43 person shall be sentenced to a mandatory minimum term of imprisonment

1 of not less than 25 years, 40 years or be sentenced as determined in
2 subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall
3 not be eligible for probation or suspension, modification or reduction of
4 sentence. In addition, a person sentenced pursuant to this section shall not
5 be eligible for parole prior to serving such mandatory term of
6 imprisonment, and such imprisonment shall not be reduced by the
7 application of good time credits. *Except as provided in subsection (d), no*
8 *other sentence shall be permitted.*

9 (d) (1) On or after July 1, 2006, for a first time conviction of an
10 offense listed in subsection (a)(1), the sentencing judge shall impose the
11 mandatory minimum term of imprisonment provided by subsection (a),
12 unless the judge finds substantial and compelling reasons, following a
13 review of mitigating circumstances, to impose a departure. If the
14 sentencing judge departs from such mandatory minimum term of
15 imprisonment, the judge shall state on the record at the time of sentencing
16 the substantial and compelling reasons for the departure. The departure
17 sentence shall be the sentence pursuant to the revised Kansas sentencing
18 guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated,
19 and amendments thereto, and, subject to the provisions of K.S.A. 2016
20 Supp. 21-6818, and amendments thereto, no sentence of a mandatory
21 minimum term of imprisonment shall be imposed hereunder.

22 (2) As used in this subsection, "mitigating circumstances" shall
23 include, but are not limited to, the following:

24 (A) The defendant has no significant history of prior criminal
25 activity;

26 (B) the crime was committed while the defendant was under the
27 influence of extreme mental or emotional disturbances;

28 (C) the victim was an accomplice in the crime committed by another
29 person, and the defendant's participation was relatively minor;

30 (D) the defendant acted under extreme distress or under the
31 substantial domination of another person;

32 (E) the capacity of the defendant to appreciate the criminality of the
33 defendant's conduct or to conform the defendant's conduct to the
34 requirements of law was substantially impaired; and

35 (F) the age of the defendant at the time of the crime.

36 (e) The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to
37 their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and
38 amendments thereto, shall not apply to any defendant sentenced pursuant
39 to this section.

40 Sec. 4. K.S.A. 2016 Supp. 21-6620, 21-6623 and 21-6627 are hereby
41 repealed.

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