

SENATE BILL No. 128

By Senator Haley

2-1

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to hate crimes; sentencing; reporting requirements; amending K.S.A.
3 2016 Supp. 21-6804 and 21-6815 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2016 Supp. 21-6804 is hereby amended to read as
7 follows: 21-6804. (a) The provisions of this section shall be applicable to
8 the sentencing guidelines grid for nondrug crimes. The following
9 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
Prison
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. 2016 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 2016 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2016 Supp.
8 21-5414(b)(3), K.S.A. 2016 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2016
9 Supp. 21-6412 and K.S.A. 2016 Supp. 21-6416, and amendments thereto,
10 shall be as provided by the specific mandatory sentencing requirements of
11 that section and shall not be subject to the provisions of this section or
12 K.S.A. 2016 Supp. 21-6807, and amendments 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. 2016 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. 2016 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 2016 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, K.S.A. 2016 Supp.
23 21-5414(b)(3), K.S.A. 2016 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2016
24 Supp. 21-6412 and K.S.A. 2016 Supp. 21-6416, and amendments thereto,
25 shall not be served in a state facility in the custody of the secretary of
26 corrections, except that the term of imprisonment for felony violations of
27 K.S.A. 2016 Supp. 8-1025 or K.S.A. 8-2,144 or K.S.A. 8-1567, and
28 amendments thereto, may be served in a state correctional facility
29 designated by the secretary of corrections if the secretary determines that
30 substance abuse treatment resources and facility capacity is available. The
31 secretary's determination regarding the availability of treatment resources
32 and facility capacity shall not be subject to review. Prior to imposing any
33 sentence pursuant to this subsection, the court may consider assigning the
34 defendant to a house arrest program pursuant to K.S.A. 2016 Supp. 21-
35 6609, and amendments thereto.

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

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

1 (A) (i) Has been convicted in this state of a sexually violent crime, as
2 defined in K.S.A. 22-3717, and amendments thereto; and

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

8 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
9 prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments
10 thereto; and

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

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

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

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

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

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

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

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

42 (l) Except as provided in subsection (o), the sentence for a violation
43 of K.S.A. 2016 Supp. 21-5807(a)(1), and amendments thereto, or any

1 attempt or conspiracy, as defined in K.S.A. 2016 Supp. 21-5301 and 21-
2 5302, and amendments thereto, to commit such offense, when such person
3 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)
4 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2016 Supp.
5 21-5807(a)(1) or (a)(2), or K.S.A. 2016 Supp. 21-5807(b), and
6 amendments thereto, or any attempt or conspiracy to commit such offense,
7 shall be presumptive imprisonment.

8 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2016
9 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
10 imprisonment. If an offense under such sections is classified in grid blocks
11 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
12 sentence as provided in subsection (q).

13 (n) The sentence for a violation of criminal deprivation of property, as
14 defined in K.S.A. 2016 Supp. 21-5803, and amendments thereto, when
15 such property is a motor vehicle, and when such person being sentenced
16 has any combination of two or more prior convictions of K.S.A. 21-
17 3705(b), prior to its repeal, or of criminal deprivation of property, as
18 defined in K.S.A. 2016 Supp. 21-5803, and amendments thereto, when
19 such property is a motor vehicle, shall be presumptive imprisonment. Such
20 sentence shall not be considered a departure and shall not be subject to
21 appeal.

22 (o) The sentence for a felony violation of theft of property as defined
23 in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or burglary as
24 defined in K.S.A. 2016 Supp. 21-5807(a), and amendments thereto, when
25 such person being sentenced has no prior convictions for a violation of
26 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as
27 defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or
28 burglary as defined in K.S.A. 2016 Supp. 21-5807(a), and amendments
29 thereto; or the sentence for a felony violation of theft of property as
30 defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, when
31 such person being sentenced has one or two prior felony convictions for a
32 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
33 theft of property as defined in K.S.A. 2016 Supp. 21-5801, and
34 amendments thereto, or burglary or aggravated burglary as defined in
35 K.S.A. 2016 Supp. 21-5807, and amendments thereto; or the sentence for a
36 felony violation of burglary as defined in K.S.A. 2016 Supp. 21-5807(a),
37 and amendments thereto, when such person being sentenced has one prior
38 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
39 prior to their repeal, or theft of property as defined in K.S.A. 2016 Supp.
40 21-5801, and amendments thereto, or burglary or aggravated burglary as
41 defined in K.S.A. 2016 Supp. 21-5807, and amendments thereto, shall be
42 the sentence as provided by this section, except that the court may order an
43 optional nonprison sentence for a defendant to participate in a drug

1 treatment program, including, but not limited to, an approved after-care
2 plan, if the court makes the following findings on the record:

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

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

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

10 A defendant sentenced to an optional nonprison sentence under this
11 subsection shall be supervised by community correctional services. The
12 provisions of K.S.A. 2016 Supp. 21-6824(f)(1), and amendments thereto,
13 shall apply to a defendant sentenced under this subsection. The sentence
14 under this subsection shall not be considered a departure and shall not be
15 subject to appeal.

16 (p) The sentence for a felony violation of theft of property as defined
17 in K.S.A. 2016 Supp. 21-5801, and amendments thereto, when such
18 person being sentenced has any combination of three or more prior felony
19 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
20 their repeal, or theft of property as defined in K.S.A. 2016 Supp. 21-5801,
21 and amendments thereto, or burglary or aggravated burglary as defined in
22 K.S.A. 2016 Supp. 21-5807, and amendments thereto; or the sentence for a
23 violation of burglary as defined in K.S.A. 2016 Supp. 21-5807(a), and
24 amendments thereto, when such person being sentenced has any
25 combination of two or more prior convictions for violations of K.S.A. 21-
26 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
27 defined in K.S.A. 2016 Supp. 21-5801, and amendments thereto, or
28 burglary or aggravated burglary as defined in K.S.A. 2016 Supp. 21-5807,
29 and amendments thereto, shall be presumed imprisonment and the
30 defendant shall be sentenced to prison as provided by this section, except
31 that the court may recommend that an offender be placed in the custody of
32 the secretary of corrections, in a facility designated by the secretary to
33 participate in an intensive substance abuse treatment program, upon
34 making the following findings on the record:

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

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

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

43 The intensive substance abuse treatment program shall be determined

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

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

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

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

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

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

23 (r) The sentence for a violation of K.S.A. 2016 Supp. 21-5413(c)(2),
24 and amendments thereto, shall be presumptive imprisonment and shall be
25 served consecutively to any other term or terms of imprisonment imposed.
26 Such sentence shall not be considered a departure and shall not be subject
27 to appeal.

28 (s) The sentence for a violation of K.S.A. 2016 Supp. 21-5512, and
29 amendments thereto, shall be presumptive imprisonment. Such sentence
30 shall not be considered a departure and shall not be subject to appeal.

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

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

40 (3) As used in this subsection, "ballistic resistant material" means:
41 (A) Any commercially produced material designed with the purpose of
42 providing ballistic and trauma protection, including, but not limited to,
43 bulletproof vests and kevlar vests; and (B) any homemade or fabricated

1 substance or item designed with the purpose of providing ballistic and
2 trauma protection.

3 (u) The sentence for a violation of K.S.A. 2016 Supp. 21-6107, and
4 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
5 2016 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
6 such offense, when such person being sentenced has a prior conviction for
7 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2016 Supp. 21-
8 6107, and amendments thereto, or any attempt or conspiracy to commit
9 such offense, shall be presumptive imprisonment. Such sentence shall not
10 be considered a departure and shall not be subject to appeal.

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

16 (w) The sentence for aggravated criminal damage to property as
17 defined in K.S.A. 2016 Supp. 21-5813(b), and amendments thereto, when
18 such person being sentenced has a prior conviction for any nonperson
19 felony shall be presumptive imprisonment. Such sentence shall not be
20 considered a departure and shall not be subject to appeal.

21 (x) The sentence for a violation of K.S.A. 2016 Supp. 21-5807(a)(1),
22 and amendments thereto, shall be presumptive imprisonment if the offense
23 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
24 sentence shall not be considered a departure and shall not be subject to
25 appeal.

26 (y) *If the trier of fact makes a finding that an offender's crime was*
27 *motivated entirely or in part by the race, color, religion, ethnicity, national*
28 *origin or sexual orientation of the victim or the crime was motivated by*
29 *the offender's belief or perception, entirely or in part, of the race, color,*
30 *religion, ethnicity, national origin or sexual orientation of the victim,*
31 *regardless of whether the offender's belief or perception was correct, the*
32 *sentence for such offender shall be as follows:*

33 (1) *If the underlying crime of conviction carries a presumptive term*
34 *of imprisonment, the sentence shall be double the maximum duration of*
35 *the presumptive imprisonment term;*

36 (2) *if the underlying crime of conviction carries a presumptive*
37 *nonprison term, the sentence shall be presumed imprisonment and shall be*
38 *double the maximum duration of the presumptive imprisonment term; and*

39 (3) *if the underlying crime of conviction is an off-grid crime, the*
40 *sentence shall be double the sentence prescribed by law for such crime.*

41 *Such sentence shall not be considered a departure and shall not be*
42 *subject to appeal.*

43 Sec. 2. K.S.A. 2016 Supp. 21-6815 is hereby amended to read as

1 follows: 21-6815. (a) Except as provided in subsection (b), the sentencing
2 judge shall impose the presumptive sentence provided by the sentencing
3 guidelines unless the judge finds substantial and compelling reasons to
4 impose a departure sentence. If the sentencing judge departs from the
5 presumptive sentence, the judge shall state on the record at the time of
6 sentencing the substantial and compelling reasons for the departure.

7 (b) Subject to the provisions of K.S.A. 2016 Supp. 21-6817(b), and
8 amendments thereto, any fact that would increase the penalty for a crime
9 beyond the statutory maximum, other than a prior conviction, shall be
10 submitted to a jury and proved beyond a reasonable doubt.

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

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

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

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

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

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

29 (F) The offender committed such crime as a result of an injury,
30 including major depressive disorder, polytrauma, post-traumatic stress
31 disorder or traumatic brain injury, connected to service in a combat zone,
32 as defined in section 112 of the federal internal revenue code of 1986, in
33 the armed forces of the United States of America. As used in this
34 subsection, "major depressive disorder," "polytrauma," "post-traumatic
35 stress disorder" and "traumatic brain injury" shall mean the same as such
36 terms are defined in K.S.A. 2016 Supp. 21-6630, and amendments thereto.

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

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

43 (B) The defendant's conduct during the commission of the current

1 offense manifested excessive brutality to the victim in a manner not
2 normally present in that offense.

3 ~~(C) The offense was motivated entirely or in part by the race, color,~~
4 ~~religion, ethnicity, national origin or sexual orientation of the victim or the~~
5 ~~offense was motivated by the defendant's belief or perception, entirely or~~
6 ~~in part, of the race, color, religion, ethnicity, national origin or sexual~~
7 ~~orientation of the victim whether or not the defendant's belief or perception~~
8 ~~was correct.~~

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

11 ~~(E)~~(D) The defendant, 18 or more years of age, employed, hired,
12 used, persuaded, induced, enticed or coerced any individual under 16 years
13 of age to:

- 14 (i) Commit any person felony;
15 (ii) assist in avoiding detection or apprehension for commission of
16 any person felony; or
17 (iii) attempt, conspire or solicit, as defined in K.S.A. 2016 Supp. 21-
18 5301, 21-5302 and 21-5303, and amendments thereto, to commit any
19 person felony.

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

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

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

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

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

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

35 (d) aggravated human trafficking, as defined in K.S.A. 2016 Supp.
36 21-5426(b), and amendments thereto, if the victim is less than 14 years of
37 age; or

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

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

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

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

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

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

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

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

20 (3) If a factual aspect of a crime is a statutory element of the crime or
21 is used to subclassify the crime on the crime severity scale, that aspect of
22 the current crime of conviction may be used as an aggravating or
23 mitigating factor only if the criminal conduct constituting that aspect of the
24 current crime of conviction is significantly different from the usual
25 criminal conduct captured by the aspect of the crime.

26 (d) In determining aggravating or mitigating circumstances, the court
27 shall consider:

28 (1) Any evidence received during the proceeding;

29 (2) the presentence report;

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

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

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

40 (1) The court's evaluation of the significance and usefulness of the
41 defendant's assistance, taking into consideration the prosecutor's
42 evaluation of the assistance rendered;

43 (2) the truthfulness, completeness and reliability of any information

1 or testimony provided by the defendant;

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

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

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

6 New Sec. 3. (a) The attorney general shall collect and disseminate
7 data on incidents of criminal acts that evidence prejudice based on race,
8 color, religion, ethnicity, national origin, sexual orientation or disability.
9 All law enforcement agencies shall report monthly to the attorney general
10 concerning such offenses in such form and in such manner as prescribed
11 by rules and regulations adopted by the attorney general. Such information
12 shall be compiled by the attorney general and disseminated upon request to
13 any local law enforcement agency, unit of local government or state
14 agency. Dissemination of such information shall be subject to
15 confidentiality requirements otherwise imposed by law. Data required
16 pursuant to this subsection shall be used only for research or statistical
17 purposes and shall not include any information that may reveal the identity
18 of an individual victim of a crime. The attorney general shall publish an
19 annual summary of the data required pursuant to this subsection.

20 (b) The attorney general shall provide training for all law
21 enforcement officers in identifying, responding to and reporting criminal
22 acts that evidence prejudice based on race, color, religion, ethnicity,
23 national origin, sexual orientation or disability. The Kansas commission on
24 peace officers' standards and training shall develop and certify a course of
25 such training to be made available to all law enforcement officers.

26 Sec. 4. K.S.A. 2016 Supp. 21-6804 and 21-6815 are hereby repealed.

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