

**SENATE BILL No. 103**

By Committee on Judiciary

2-5

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to hate crimes; sentencing; amending K.S.A. 2018 Supp. 21-6804 and  
3 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. 2018 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 31
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
30-60 Days
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. 2018 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 K.S.A. 2018 Supp. 21-5414(b)(3), 21-5823(b)(3)  
8 and (b)(4), 21-6412 and 21-6416, and amendments thereto, shall be as  
9 provided by the specific mandatory sentencing requirements of that section  
10 and shall not be subject to the provisions of this section or K.S.A. 2018  
11 Supp. 21-6807, and amendments thereto.

12 (2) If because of the offender's criminal history classification the  
13 offender is subject to presumptive imprisonment or if the judge departs  
14 from a presumptive probation sentence and the offender is subject to  
15 imprisonment, the provisions of this section and K.S.A. 2018 Supp. 21-  
16 6807, and amendments thereto, shall apply and the offender shall not be  
17 subject to the mandatory sentence as provided in K.S.A. 2018 Supp. 21-  
18 5823, and amendments thereto.

19 (3) Notwithstanding the provisions of any other section, the term of  
20 imprisonment imposed for the violation of the felony provision of K.S.A.  
21 8-2,144, and 8-1567 and K.S.A. 2018 Supp. 21-5414(b)(3), 21-5823(b)(3)  
22 and (b)(4), 21-6412 and 21-6416, and amendments thereto, shall not be  
23 served in a state facility in the custody of the secretary of corrections,  
24 except that the term of imprisonment for felony violations of K.S.A. 8-  
25 2,144 or 8-1567, and amendments thereto, may be served in a state  
26 correctional facility designated by the secretary of corrections if the  
27 secretary determines that substance abuse treatment resources and facility  
28 capacity is available. The secretary's determination regarding the  
29 availability of treatment resources and facility capacity shall not be subject  
30 to review. Prior to imposing any sentence pursuant to this subsection, the  
31 court may consider assigning the defendant to a house arrest program  
32 pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto.

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

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

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

43 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at

1 least one conviction for a sexually violent crime, as defined in K.S.A. 22-  
2 3717, and amendments thereto, in this state or comparable felony under  
3 the laws of another state, the federal government or a foreign government;  
4 or

5 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,  
6 prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments  
7 thereto; and

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

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

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

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

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

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

29 (C) its members have a common name or common identifying sign or  
30 symbol; and

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

39 (l) Except as provided in subsection (o), the sentence for a violation  
40 of K.S.A. 2018 Supp. 21-5807(a)(1), and amendments thereto, or any  
41 attempt or conspiracy, as defined in K.S.A. 2018 Supp. 21-5301 and 21-  
42 5302, and amendments thereto, to commit such offense, when such person  
43 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)

1 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2018 Supp.  
2 21-5807(a)(1) or (a)(2) or 21-5807(b), and amendments thereto, or any  
3 attempt or conspiracy to commit such offense, shall be presumptive  
4 imprisonment.

5 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2018  
6 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive  
7 imprisonment. If an offense under such sections is classified in grid blocks  
8 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison  
9 sentence as provided in subsection (q).

10 (n) The sentence for a violation of criminal deprivation of property, as  
11 defined in K.S.A. 2018 Supp. 21-5803, and amendments thereto, when  
12 such property is a motor vehicle, and when such person being sentenced  
13 has any combination of two or more prior convictions of K.S.A. 21-  
14 3705(b), prior to its repeal, or of criminal deprivation of property, as  
15 defined in K.S.A. 2018 Supp. 21-5803, and amendments thereto, when  
16 such property is a motor vehicle, shall be presumptive imprisonment. Such  
17 sentence shall not be considered a departure and shall not be subject to  
18 appeal.

19 (o) The sentence for a felony violation of theft of property as defined  
20 in K.S.A. 2018 Supp. 21-5801, and amendments thereto, or burglary as  
21 defined in K.S.A. 2018 Supp. 21-5807(a), and amendments thereto, when  
22 such person being sentenced has no prior convictions for a violation of  
23 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as  
24 defined in K.S.A. 2018 Supp. 21-5801, and amendments thereto, or  
25 burglary as defined in K.S.A. 2018 Supp. 21-5807(a), and amendments  
26 thereto; or the sentence for a felony violation of theft of property as  
27 defined in K.S.A. 2018 Supp. 21-5801, and amendments thereto, when  
28 such person being sentenced has one or two prior felony convictions for a  
29 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or  
30 theft of property as defined in K.S.A. 2018 Supp. 21-5801, and  
31 amendments thereto, or burglary or aggravated burglary as defined in  
32 K.S.A. 2018 Supp. 21-5807, and amendments thereto; or the sentence for a  
33 felony violation of burglary as defined in K.S.A. 2018 Supp. 21-5807(a),  
34 and amendments thereto, when such person being sentenced has one prior  
35 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,  
36 prior to their repeal, or theft of property as defined in K.S.A. 2018 Supp.  
37 21-5801, and amendments thereto, or burglary or aggravated burglary as  
38 defined in K.S.A. 2018 Supp. 21-5807, and amendments thereto, shall be  
39 the sentence as provided by this section, except that the court may order an  
40 optional nonprison sentence for a defendant to participate in a drug  
41 treatment program, including, but not limited to, an approved after-care  
42 plan, if the court makes the following findings on the record:

43 (1) Substance abuse was an underlying factor in the commission of

1 the crime;

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

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

7 A defendant sentenced to an optional nonprison sentence under this  
8 subsection shall be supervised by community correctional services. The  
9 provisions of K.S.A. 2018 Supp. 21-6824(f)(1), and amendments thereto,  
10 shall apply to a defendant sentenced under this subsection. The sentence  
11 under this subsection shall not be considered a departure and shall not be  
12 subject to appeal.

13 (p) The sentence for a felony violation of theft of property as defined  
14 in K.S.A. 2018 Supp. 21-5801, and amendments thereto, when such  
15 person being sentenced has any combination of three or more prior felony  
16 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to  
17 their repeal, or theft of property as defined in K.S.A. 2018 Supp. 21-5801,  
18 and amendments thereto, or burglary or aggravated burglary as defined in  
19 K.S.A. 2018 Supp. 21-5807, and amendments thereto; or the sentence for a  
20 violation of burglary as defined in K.S.A. 2018 Supp. 21-5807(a), and  
21 amendments thereto, when such person being sentenced has any  
22 combination of two or more prior convictions for violations of K.S.A. 21-  
23 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as  
24 defined in K.S.A. 2018 Supp. 21-5801, and amendments thereto, or  
25 burglary or aggravated burglary as defined in K.S.A. 2018 Supp. 21-5807,  
26 and amendments thereto, shall be presumed imprisonment and the  
27 defendant shall be sentenced to prison as provided by this section, except  
28 that the court may recommend that an offender be placed in the custody of  
29 the secretary of corrections, in a facility designated by the secretary to  
30 participate in an intensive substance abuse treatment program, upon  
31 making the following findings on the record:

32 (1) Substance abuse was an underlying factor in the commission of  
33 the crime;

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

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

40 The intensive substance abuse treatment program shall be determined  
41 by the secretary of corrections, but shall be for a period of at least four  
42 months. Upon the successful completion of such intensive treatment  
43 program, the offender shall be returned to the court and the court may

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

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

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

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

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

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

20 (r) The sentence for a violation of K.S.A. 2018 Supp. 21-5413(c)(2),  
21 and amendments thereto, shall be presumptive imprisonment and shall be  
22 served consecutively to any other term or terms of imprisonment imposed.  
23 Such sentence shall not be considered a departure and shall not be subject  
24 to appeal.

25 (s) The sentence for a violation of K.S.A. 2018 Supp. 21-5512, and  
26 amendments thereto, shall be presumptive imprisonment. Such sentence  
27 shall not be considered a departure and shall not be subject to appeal.

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

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

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

43 (u) The sentence for a violation of K.S.A. 2018 Supp. 21-6107, and



1 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.  
2 2018 Supp. 21-5301 and 21-5302, and amendments thereto, to commit  
3 such offense, when such person being sentenced has a prior conviction for  
4 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2018 Supp. 21-  
5 6107, and amendments thereto, or any attempt or conspiracy to commit  
6 such offense, shall be presumptive imprisonment. Such sentence shall not  
7 be considered a departure and shall not be subject to appeal.

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

13 (w) The sentence for aggravated criminal damage to property as  
14 defined in K.S.A. 2018 Supp. 21-5813(b), and amendments thereto, when  
15 such person being sentenced has a prior conviction for any nonperson  
16 felony shall be presumptive imprisonment. Such sentence shall not be  
17 considered a departure and shall not be subject to appeal.

18 (x) The sentence for a violation of K.S.A. 2018 Supp. 21-5807(a)(1),  
19 and amendments thereto, shall be presumptive imprisonment if the offense  
20 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such  
21 sentence shall not be considered a departure and shall not be subject to  
22 appeal.

23 (y) (1) Except as provided in subsection (y)(3), if the trier of fact  
24 makes a finding beyond a reasonable doubt that an offender committed a  
25 nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A.  
26 2018 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a  
27 nondrug felony offense, against a law enforcement officer, as defined in  
28 K.S.A. 2018 Supp. 21-5111(p)(1) and (3), and amendments thereto, while  
29 such officer was engaged in the performance of such officer's duty, or in  
30 whole or in any part because of such officer's status as a law enforcement  
31 officer, the sentence for such offense shall be:

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

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

41 (ii) The provisions of subsection (y)(1)(B)(i) requiring the court to  
42 impose a mandatory minimum term of imprisonment of 25 years shall not  
43 apply if the court finds the offender, because of the offender's criminal

1 history classification, is subject to presumptive imprisonment and the  
2 sentencing range exceeds 300 months. In such case, the offender is  
3 required to serve a mandatory minimum term equal to the sentence  
4 established pursuant to the sentencing range.

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

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

10 (z) (1) *If the trier of fact makes a finding beyond a reasonable doubt*  
11 *that an offender committed a nondrug felony offense, or any attempt or*  
12 *conspiracy, as defined in K.S.A. 2018 Supp. 21-5301 and 21-5302, and*  
13 *amendments thereto, to commit a nondrug felony offense, that was*  
14 *motivated entirely or in part by the race, color, religion, ethnicity, national*  
15 *origin, gender identity or sexual orientation of the victim or was motivated*  
16 *by the offender's belief or perception, entirely or in part, of the race, color,*  
17 *religion, ethnicity, national origin, gender identity or sexual orientation of*  
18 *the victim, regardless of whether the offender's belief or perception was*  
19 *correct, and such offense is classified in severity level 2 through 10, the*  
20 *sentence for such offense shall be one severity level above the appropriate*  
21 *level for such offense*

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

24 Sec. 2. K.S.A. 2018 Supp. 21-6815 is hereby amended to read as  
25 follows: 21-6815. (a) Except as provided in subsection (b), the sentencing  
26 judge shall impose the presumptive sentence provided by the sentencing  
27 guidelines unless the judge finds substantial and compelling reasons to  
28 impose a departure sentence. If the sentencing judge departs from the  
29 presumptive sentence, the judge shall state on the record at the time of  
30 sentencing the substantial and compelling reasons for the departure.

31 (b) Subject to the provisions of K.S.A. 2018 Supp. 21-6817(b), and  
32 amendments thereto, any fact that would increase the penalty for a crime  
33 beyond the statutory maximum, other than a prior conviction, shall be  
34 submitted to a jury and proved beyond a reasonable doubt.

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

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

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

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

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

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

10 (F) The offender committed such crime as a result of an injury,  
11 including major depressive disorder, polytrauma, post-traumatic stress  
12 disorder or traumatic brain injury, connected to service in a combat zone,  
13 as defined in section 112 of the federal internal revenue code of 1986, in  
14 the armed forces of the United States of America. As used in this  
15 subsection, "major depressive disorder," "polytrauma," "post-traumatic  
16 stress disorder" and "traumatic brain injury" shall mean the same as such  
17 terms are defined in K.S.A. 2018 Supp. 21-6630, and amendments thereto.

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

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

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

27 ~~(C) The offense was motivated entirely or in part by the race, color,  
28 religion, ethnicity, national origin or sexual orientation of the victim or the  
29 offense was motivated by the defendant's belief or perception, entirely or  
30 in part, of the race, color, religion, ethnicity, national origin or sexual  
31 orientation of the victim whether or not the defendant's belief or perception  
32 was correct.~~

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

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

38 (i) Commit any person felony;

39 (ii) assist in avoiding detection or apprehension for commission of  
40 any person felony; or

41 (iii) attempt, conspire or solicit, as defined in K.S.A. 2018 Supp. 21-  
42 5301, 21-5302 and 21-5303, and amendments thereto, to commit any  
43 person felony.

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

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

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

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

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

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

16 (d) aggravated human trafficking, as defined in K.S.A. 2018 Supp.  
17 21-5426(b), and amendments thereto, if the victim is less than 14 years of  
18 age; or

19 (e) commercial sexual exploitation of a child, as defined in K.S.A.  
20 2018 Supp. 21-6422, and amendments thereto, if the victim is less than 14  
21 years of age.

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

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

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

32 (iii) "Mental condition or personality disorder" means an emotional,  
33 mental or physical illness, disease, abnormality, disorder, pathology or  
34 condition which motivates the person, affects the predisposition or desires  
35 of the person, or interferes with the capacity of the person to control  
36 impulses to commit crimes of extreme sexual violence.

37 ~~(G)~~ (F) The defendant was incarcerated during the commission of the  
38 offense.

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

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

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

7 (d) In determining aggravating or mitigating circumstances, the court  
8 shall consider:

9 (1) Any evidence received during the proceeding;

10 (2) the presentence report;

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

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

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

21 (1) The court's evaluation of the significance and usefulness of the  
22 defendant's assistance, taking into consideration the prosecutor's  
23 evaluation of the assistance rendered;

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

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

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

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

30 Sec. 3. K.S.A. 2018 Supp. 21-6804 and 21-6815 are hereby repealed.

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