

## HOUSE BILL No. 2423

By Representative Whipple

1-7

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing of certain sex offenders to a mandatory minimum term of  
3 imprisonment of 50 years or imprisonment for life without parole;  
4 amending K.S.A. 2013 Supp. 21-6626 and 21-6627 and repealing the  
5 existing sections.  
6

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

8 Section 1. K.S.A. 2013 Supp. 21-6626 is hereby amended to read as  
9 follows: 21-6626.(a) An aggravated habitual sex offender shall be  
10 sentenced to imprisonment for life without the possibility of parole. Such  
11 offender shall spend the remainder of the offender's natural life  
12 incarcerated and in the custody of the secretary of corrections. An offender  
13 who is sentenced to imprisonment for life without the possibility of parole  
14 shall not be eligible for parole, probation, assignment to a community  
15 correctional services program, conditional release, postrelease supervision,  
16 or suspension, modification or reduction of sentence.

17 (b) Upon sentencing a defendant to imprisonment for life without the  
18 possibility of parole, the court shall commit the defendant to the custody of  
19 the secretary of corrections and the court shall state in the sentencing order  
20 of the judgment form or journal entry, whichever is delivered with the  
21 defendant to the correctional institution, that the defendant has been  
22 sentenced to imprisonment for life without the possibility of parole.

23 (c) As used in this section:

24 (1) "Aggravated habitual sex offender" means a person who, ~~on and~~  
25 ~~after July 1, 2006:~~

26 (A) (i) Has been convicted in this state of a sexually violent crime, as  
27 described in subsection (c)(2)(A) through (c)(2)(J) or (c)(2)(L), *on or after*  
28 *July 1, 2006, but prior to July 1, 2014;* and ~~(B)(ii)~~ prior to the conviction  
29 of the felony under ~~subparagraph (A)~~ subsection (c)(1)(A)(i), has been  
30 convicted of two or more sexually violent crimes;

31 (B) (i) *Has been convicted in this state of a sexually violent crime, as*  
32 *described in subsection (c)(2)(A) through (c)(2)(J) or (c)(2)(L) on and*  
33 *after July 1, 2014;* and (ii) *prior to the conviction of the felony under*  
34 *subsection (c)(1)(B)(i), has been convicted of one or more sexually violent*  
35 *crimes;*

36 (2) "Sexually violent crime" means:

1 (A) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.  
2 2013 Supp. 21-5503, and amendments thereto;

3 (B) indecent liberties with a child or aggravated indecent liberties  
4 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,  
5 or K.S.A. 2013 Supp. 21-5506, and amendments thereto;

6 (C) criminal sodomy, as defined in subsection (a)(2) or (a)(3) of  
7 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.  
8 2013 Supp. 21-5504, and amendments thereto;

9 (D) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior  
10 to its repeal, or K.S.A. 2013 Supp. 21-5504, and amendments thereto;

11 (E) indecent solicitation of a child or aggravated indecent solicitation  
12 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,  
13 or K.S.A. 2013 Supp. 21-5508, and amendments thereto;

14 (F) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior  
15 to its repeal, or K.S.A. 2013 Supp. 21-5510, and amendments thereto;

16 (G) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to  
17 its repeal, or K.S.A. 2013 Supp. 21-5505, and amendments thereto;

18 (H) aggravated incest, as defined in K.S.A. 21-3603, prior to its  
19 repeal, or K.S.A. 2013 Supp. 21-5604, and amendments thereto;

20 (I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior  
21 to its repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5426, and  
22 amendments thereto, if committed in whole or in part for the purpose of  
23 the sexual gratification of the defendant or another;

24 (J) commercial sexual exploitation of a child, as defined in K.S.A.  
25 2013 Supp. 21-6422, and amendments thereto;

26 (K) any federal or other state conviction for a felony offense that  
27 under the laws of this state would be a sexually violent crime as defined in  
28 this section;

29 (L) an attempt, conspiracy or criminal solicitation, as defined in  
30 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2013  
31 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a  
32 sexually violent crime as defined in this section; or

33 (M) any act which at the time of sentencing for the offense has been  
34 determined beyond a reasonable doubt to have been sexually motivated.  
35 As used in this subparagraph, "sexually motivated" means that one of the  
36 purposes for which the defendant committed the crime was for the purpose  
37 of the defendant's sexual gratification.

38 Sec. 2. K.S.A. 2013 Supp. 21-6627 is hereby amended to read as  
39 follows: 21-6627. (a) (1) Except as provided in subsection (b) or (d)(I), a  
40 defendant who is 18 years of age or older and is convicted of the following  
41 crimes committed on or after July 1, 2006, *but prior to July 1, 2014*, shall  
42 be sentenced to a term of imprisonment for life with a mandatory  
43 minimum term of imprisonment of not less than 25 years unless the court

1 determines that the defendant should be sentenced as determined in  
2 subsection (a)(2):

3 (A) Aggravated human trafficking, as defined in subsection (b) of  
4 K.S.A. 2013 Supp. 21-5426, and amendments thereto, if the victim is less  
5 than 14 years of age;

6 (B) rape, as defined in subsection (a)(3) of K.S.A. 2013 Supp. 21-  
7 5503, and amendments thereto;

8 (C) aggravated indecent liberties with a child, as defined in  
9 subsection (b)(3) of K.S.A. 2013 Supp. 21-5506, and amendments thereto;

10 (D) aggravated criminal sodomy, as defined in subsection (b)(1) or  
11 (b)(2) of K.S.A. 2013 Supp. 21-5504, and amendments thereto;

12 (E) commercial sexual exploitation of a child, as defined in K.S.A.  
13 2013 Supp. 21-6422, and amendments thereto, if the victim is less than 14  
14 years of age;

15 (F) sexual exploitation of a child, as defined in subsection (a)(1) or  
16 (a)(4) of K.S.A. 2013 Supp. 21-5510, and amendments thereto, if the child  
17 is less than 14 years of age; and

18 (G) an attempt, conspiracy or criminal solicitation, as defined in  
19 K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and amendments  
20 thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

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

24 (A) The defendant is an aggravated habitual sex offender and  
25 sentenced pursuant to K.S.A. 2013 Supp. 21-6626, and amendments  
26 thereto; or

27 (B) the defendant, because of the defendant's criminal history  
28 classification, is subject to presumptive imprisonment pursuant to the  
29 sentencing guidelines grid for nondrug crimes and the sentencing range  
30 exceeds 300 months. In such case, the defendant is required to serve a  
31 mandatory minimum term equal to the sentence established pursuant to the  
32 sentencing range.

33 (3) (A) *If a defendant who is 18 years of age or older is convicted of*  
34 *the following crimes committed on or after July 1, 2014, upon reasonable*  
35 *notice by the prosecuting attorney, the court shall determine whether the*  
36 *defendant shall be required to serve a mandatory minimum term of*  
37 *imprisonment of 50 years or sentenced as otherwise provided by law:*

38 (i) *Aggravated human trafficking, as defined in subsection (b) of*  
39 *K.S.A. 2013 Supp. 21-5426, and amendments thereto, if the victim is less*  
40 *than 14 years of age;*

41 (ii) *rape, as defined in subsection (a)(3) of K.S.A. 2013 Supp. 21-*  
42 *5503, and amendments thereto;*

43 (iii) *aggravated indecent liberties with a child, as defined in*

1 subsection (b)(3) of K.S.A. 2013 Supp. 21-5506, and amendments thereto;

2 (iv) aggravated criminal sodomy, as defined in subsection (b)(1) or  
3 (b)(2) of K.S.A. 2013 Supp. 21-5504, and amendments thereto;

4 (v) commercial sexual exploitation of a child, as defined in K.S.A.  
5 2013 Supp. 21-6422, and amendments thereto, if the victim is less than 14  
6 years of age;

7 (vi) sexual exploitation of a child, as defined in subsection (a)(1) or  
8 (a)(4) of K.S.A. 2013 Supp. 21-5510, and amendments thereto, if the child  
9 is less than 14 years of age; and

10 (vii) an attempt, conspiracy or criminal solicitation, as defined in  
11 K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto,  
12 of an offense defined in subsections (a)(3)(A) through (a)(3)(F).

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

32 (ii) In the proceeding, evidence may be presented concerning any  
33 matter relating to any of the aggravating circumstances enumerated in  
34 K.S.A. 2013 Supp. 21-6624, and amendments thereto. Only such evidence  
35 of aggravating circumstances as the prosecuting attorney has made known  
36 to the defendant prior to the proceeding shall be admissible and no  
37 evidence secured in violation of the constitution of the United States or of  
38 the state of Kansas shall be admissible. No testimony by the defendant at  
39 the time of the proceeding shall be admissible against the defendant at any  
40 subsequent criminal proceeding.

41 (iii) At the conclusion of the evidentiary presentation, the court shall  
42 allow the parties a reasonable period of time in which to present oral  
43 argument. At the conclusion of the evidentiary portion of the proceeding,

1 *the court shall provide oral and written instructions to the jury to guide its*  
2 *deliberations. If the prosecuting attorney relies on subsection (a) of K.S.A.*  
3 *2012 Supp. 21-6624, and amendments thereto, as an aggravating*  
4 *circumstance, and the court finds that one or more of the defendant's prior*  
5 *convictions satisfy such subsection, the jury shall be instructed that a*  
6 *certified journal entry of a prior conviction is presumed to prove the*  
7 *existence of such prior conviction or convictions beyond a reasonable*  
8 *doubt.*

9 *(iv) If, by unanimous vote, the jury finds beyond a reasonable doubt*  
10 *that one or more of the aggravating circumstances enumerated in K.S.A.*  
11 *2013 Supp. 21-6624, and amendments thereto, exist, the jury shall*  
12 *designate, in writing, signed by the foreman of the jury, the statutory*  
13 *aggravating circumstances which it found. If, after a reasonable time for*  
14 *deliberation, the jury is unable to reach a unanimous sentencing decision,*  
15 *the court shall dismiss the jury and the defendant shall be sentenced to*  
16 *imprisonment for life and shall not be eligible for probation or suspension,*  
17 *modification or reduction of sentence. In addition, the defendant shall not*  
18 *be eligible for parole prior to serving 25 years' imprisonment, and such 25*  
19 *years' imprisonment shall not be reduced by the application of good time*  
20 *credits. No other sentence shall be permitted. In nonjury cases, if the court*  
21 *finds beyond a reasonable doubt that one or more of the aggravating*  
22 *circumstances enumerated in K.S.A. 2013 Supp. 21-6624, and*  
23 *amendments thereto, exists, the court shall designate, in writing, the*  
24 *specific circumstances which the court found beyond a reasonable doubt.*

25 *(v) If, by unanimous vote, the jury finds beyond a reasonable doubt*  
26 *that no aggravating circumstances enumerated in K.S.A. 2013 Supp. 21-*  
27 *6624, and amendments thereto, exist, the court shall dismiss the jury and*  
28 *the defendant shall be sentenced to imprisonment for life and shall not be*  
29 *eligible for probation or suspension, modification or reduction of*  
30 *sentence. In nonjury cases, if the court finds beyond a reasonable doubt*  
31 *that no aggravating circumstances enumerated in K.S.A. 2013 Supp. 21-*  
32 *6624, and amendments thereto, exist, the defendant shall be sentenced to*  
33 *imprisonment for life and shall not be eligible for probation or suspension,*  
34 *modification or reduction of sentence. In both jury and nonjury cases, the*  
35 *defendant shall not be eligible for parole prior to serving 25 years'*  
36 *imprisonment, and such 25 years' imprisonment shall not be reduced by*  
37 *the application of good time credits. No other sentence shall be permitted.*

38 *(vi) Except as provided in subsection (d)(2), if one or more of the*  
39 *aggravating circumstances enumerated in K.S.A. 2013 Supp. 21-6624, and*  
40 *amendments thereto, are found to exist beyond a reasonable doubt*  
41 *pursuant to this subsection, the defendant shall be sentenced pursuant to*  
42 *K.S.A. 2013 Supp. 21-6623, and amendments thereto.*

43 *(4) The provisions of subsection (a)(3) requiring the court to*

1 *determine whether the defendant shall be required to serve a mandatory*  
2 *minimum term of imprisonment of 50 years shall not apply if the court*  
3 *finds:*

4 (A) *The defendant is an aggravated habitual sex offender and*  
5 *sentenced pursuant to K.S.A. 2013 Supp. 21-6626, and amendments*  
6 *thereto; or*

7 (B) *the defendant, because of the defendant's criminal history*  
8 *classification, is subject to presumptive imprisonment pursuant to the*  
9 *sentencing guidelines grid for nondrug crimes and the sentencing range*  
10 *exceeds 600 months. In such case, the defendant is required to serve a*  
11 *mandatory minimum term equal to the sentence established pursuant to*  
12 *the sentencing range.*

13 (b) (1) On and after July 1, 2006, *but prior to July 1, 2014*, if a  
14 defendant who is 18 years of age or older is convicted of a crime listed in  
15 subsection (a)(1) and such defendant has previously been convicted of a  
16 crime listed in subsection (a)(1), a crime in effect at any time prior to July  
17 1, 2011, which is substantially the same as a crime listed in subsection (a)  
18 (1) or a crime under a law of another jurisdiction which is substantially the  
19 same as a crime listed in subsection (a)(1), the court shall sentence the  
20 defendant to a term of imprisonment for life with a mandatory minimum  
21 term of imprisonment of not less than 40 years. The provisions of this  
22 paragraph shall not apply to a crime committed under K.S.A. 2013 Supp.  
23 21-5507, and amendments thereto, or a crime under a law of another  
24 jurisdiction which is substantially the same as K.S.A. 2013 Supp. 21-5507,  
25 and amendments thereto.

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

29 (A) The defendant is an aggravated habitual sex offender and  
30 sentenced pursuant to K.S.A. 2013 Supp. 21-6626, and amendments  
31 thereto; or

32 (B) the defendant, because of the defendant's criminal history  
33 classification, is subject to presumptive imprisonment pursuant to the  
34 sentencing guidelines grid for nondrug crimes and the sentencing range  
35 exceeds 480 months. In such case, the defendant is required to serve a  
36 mandatory minimum term equal to the sentence established pursuant to the  
37 sentencing range.

38 (c) When a person is sentenced pursuant to subsection (a) or (b), such  
39 person shall be sentenced to a mandatory minimum term of imprisonment  
40 ~~of not less than 25 years, 40 years or be sentenced as determined in~~  
41 ~~subsection (a)(2) or subsection (b)(2) as determined in subsection (a) or~~  
42 ~~(b), whichever is applicable, and shall not be eligible for probation or~~  
43 ~~suspension, modification or reduction of sentence. In addition, a person~~

1 sentenced pursuant to this section shall not be eligible for parole prior to  
2 serving such mandatory term of imprisonment, and such imprisonment  
3 shall not be reduced by the application of good time credits.

4 (d) (1) On or after July 1, 2006, *but prior to July 1, 2014*, for a first  
5 time conviction of an offense listed in subsection (a)(1), the sentencing  
6 judge shall impose the mandatory minimum term of imprisonment  
7 provided by subsection (a)(1), unless the judge finds substantial and  
8 compelling reasons, following a review of mitigating circumstances, to  
9 impose a departure. If the sentencing judge departs from such mandatory  
10 minimum term of imprisonment, the judge shall state on the record at the  
11 time of sentencing the substantial and compelling reasons for the  
12 departure. The departure sentence shall be the sentence pursuant to the  
13 revised Kansas sentencing guidelines act, article 68 of chapter 21 of the  
14 Kansas Statutes Annotated, and amendments thereto, and, subject to the  
15 provisions of K.S.A. 2013 Supp. 21-6818, and amendments thereto, no  
16 sentence of a mandatory minimum term of imprisonment shall be imposed  
17 hereunder.

18 (2) *On or after July 1, 2014, for a first time conviction of an offense*  
19 *listed in subsection (a)(3), the sentencing judge shall impose the*  
20 *mandatory minimum term of imprisonment provided by subsection (a)(3),*  
21 *unless the sentencing judge finds substantial and compelling reasons,*  
22 *following a review of mitigating circumstances, to impose the sentence*  
23 *specified in this paragraph. If the sentencing judge does not impose the*  
24 *mandatory minimum term of imprisonment required by K.S.A. 2013 Supp.*  
25 *21-6623, and amendments thereto, the sentencing judge shall state on the*  
26 *record at the time of sentencing the substantial and compelling reasons*  
27 *therefor, and the defendant shall be sentenced to imprisonment for life and*  
28 *shall not be eligible for probation or suspension, modification or*  
29 *reduction of sentence. In addition, the defendant shall not be eligible for*  
30 *parole prior to serving 25 years' imprisonment, and such 25 years'*  
31 *imprisonment shall not be reduced by the application of good time credits.*  
32 *No other sentence shall be permitted.*

33 ~~(2)~~ (3) As used in this subsection, "mitigating circumstances" shall  
34 include, but are not limited to, the following:

35 (A) The defendant has no significant history of prior criminal  
36 activity;

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

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

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

43 (E) the capacity of the defendant to appreciate the criminality of the

1 defendant's conduct or to conform the defendant's conduct to the  
2 requirements of law was substantially impaired; and

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

4 (e) The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to  
5 their repeal, or K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and  
6 amendments thereto, shall not apply to any defendant sentenced pursuant  
7 to this section.

8 Sec. 3. K.S.A. 2013 Supp. 21-6626 and 21-6627 are hereby repealed.

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

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