

SENATE BILL No. 45

By Committee on Judiciary

1-24

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to involuntary manslaughter; battery; public safety sector employees;
3 penalties; amending K.S.A. 2018 Supp. 21-5405 and 21-5413, and
4 repealing the existing sections; also repealing K.S.A. 2018 Supp. 21-
5 5413a.

murder in the first degree;

21-5402,

and 21-6620

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

Insert Attachment A

8 Section 1. K.S.A. 2018 Supp. 21-5405 is hereby amended to read as
9 follows: 21-5405. (a) Involuntary manslaughter is the killing of a human
10 being committed:

And by renumbering sections accordingly

- 11 (1) Recklessly;
- 12 (2) in the commission of, or attempt to commit, or flight from any
13 felony, other than an inherently dangerous felony as defined in K.S.A.
14 2018 Supp. 21-5402, and amendments thereto, that is enacted for the
15 protection of human life or safety or a misdemeanor that is enacted for the
16 protection of human life or safety, including acts described in K.S.A. 8-
17 1566 and 8-1568(a), and amendments thereto, but excluding the acts
18 described in K.S.A. 8-1567, and amendments thereto;
- 19 (3) in the commission of, or attempt to commit, or flight from an act
20 described in K.S.A. 8-1567, and amendments thereto;
- 21 (4) during the commission of a lawful act in an unlawful manner; or
- 22 (5) in the commission of, or attempt to commit, or flight from an act
23 described in K.S.A. 8-1567, and amendments thereto, while:
 - 24 (A) In violation of any restriction imposed on such person's driving
25 privileges pursuant to article 10 of chapter 8 of the Kansas Statutes
26 Annotated, and amendments thereto;
 - 27 (B) such person's driving privileges are suspended or revoked
28 pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and
29 amendments thereto; or
 - 30 (C) such person has been deemed a habitual violator as defined in
31 K.S.A. 8-285, and amendments thereto, including at least one violation of
32 K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any
33 city in this state, any resolution of any county in this state or any law of
34 another state, which ordinance, resolution or law declares to be unlawful
35 the acts prohibited by that statute.
- 36 (b) Involuntary manslaughter as defined in:

1 board of indigents' defense services or an attorney who is appointed by the
2 court to perform services for an indigent person as provided by article 45
3 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;

4 (9) "community corrections officer" means an employee of a
5 community correctional services program responsible for supervision of
6 adults or juveniles as assigned by the court to community corrections
7 supervision and any other employee of a community correctional services
8 program that provides enhanced supervision of offenders such as house
9 arrest and surveillance programs; ~~and~~

10 (10) "court services officer" means an employee of the Kansas
11 judicial branch or local judicial district responsible for supervising,
12 monitoring or writing reports relating to adults or juveniles as assigned by
13 the court, or performing related duties as assigned by the court;

14 (11) "federal law enforcement officer" means a law enforcement
15 officer employed by the United States federal government who, as part of
16 such officer's duties, is permitted to make arrests and to be armed; and

17 (12) "public safety sector employee" means an employee of any law
18 enforcement office, sheriff's department, municipal fire department,
19 volunteer and non-volunteer fire protection association, emergency
20 management department, public works department or other similar public
21 or private agency, while actually engaged in official duties of the
22 department or agency.

23 Sec. 3. K.S.A. 2018 Supp. 21-5405, 21-5413 and 21-5413a are
24 hereby repealed.

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

Insert Attachment B

and 21-6620

21-5402,

Section 1. K.S.A. 2018 Supp. 21-5402 is hereby amended to read as follows: 21-5402. (a) Murder in the first degree is the killing of a human being committed:

(1) ~~The killing of a human being committed~~ intentionally, and with premeditation; ~~or~~

(2) ~~the killing of a human being committed~~ in the commission of, attempt to commit, or flight from any inherently dangerous felony; ~~or~~

(3) ~~the intentional killing of a public safety sector employee, while such employee is engaged in the performance of such employee's duty, and the offender knew or reasonably should have known that the person was a public safety sector employee engaged in the performance of such employee's duty.~~

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an "inherently dangerous felony" means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in K.S.A. 2018 Supp. 21-5408(a), and amendments thereto;

(B) aggravated kidnapping, as defined in K.S.A. 2018 Supp. 21-5408(b), and amendments thereto;

(C) robbery, as defined in K.S.A. 2018 Supp. 21-5420(a), and amendments thereto;

(D) aggravated robbery, as defined in K.S.A. 2018 Supp. 21-5420(b), and amendments thereto;

(E) rape, as defined in K.S.A. 2018 Supp. 21-5503, and amendments thereto;

(F) aggravated criminal sodomy, as defined in K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 2018 Supp. 21-5602, and amendments thereto;

(H) felony theft of property, as defined in K.S.A. 2018 Supp. 21-5801(a)(1) or (a)(3), and amendments thereto;

(I) burglary, as defined in K.S.A. 2018 Supp. 21-5807(a), and amendments thereto;

(J) aggravated burglary, as defined in K.S.A. 2018 Supp. 21-5807(b), and amendments thereto;

(K) arson, as defined in K.S.A. 2018 Supp. 21-5812(a), and amendments thereto;

(L) aggravated arson, as defined in K.S.A. 2018 Supp. 21-5812(b), and amendments thereto;

(M) treason, as defined in K.S.A. 2018 Supp. 21-5901, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2018 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;

(O) any felony offense as provided in K.S.A. 2018 Supp. 21-6308(a) or (b), and amendments thereto;

(P) endangering the food supply, as defined in K.S.A. 2018 Supp. 21-6317(a), and amendments thereto;

(Q) aggravated endangering the food supply, as defined in K.S.A. 2018 Supp. 21-6317(b), and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in K.S.A. 8-1568(b), and amendments thereto;

(S) aggravated endangering a child, as defined in K.S.A. 2018 Supp. 21-5601(b)(1), and amendments thereto;

(T) abandonment of a child, as defined in K.S.A. 2018 Supp. 21-5605(a), and amendments thereto;

(U) aggravated abandonment of a child, as defined in K.S.A. 2018 Supp. 21-5605(b), and amendments thereto; or

(V) mistreatment of a dependent adult or mistreatment of an elder person, as defined in K.S.A. 2018 Supp. 21-5417, and amendments thereto; and

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Murder in the first degree, as defined in subsection (a)(1);

(B) murder in the second degree, as defined in K.S.A. 2018 Supp. 21-5403(a)(1), and amendments thereto;

(C) voluntary manslaughter, as defined in K.S.A. 2018 Supp. 21-5404(a)(1), and amendments thereto;

(D) aggravated assault, as defined in K.S.A. 2018 Supp. 21-5412(b), and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in K.S.A. 2018 Supp. 21-5412(d), and amendments thereto;

(F) aggravated battery, as defined in K.S.A. 2018 Supp. 21-5413(b)(1), and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in K.S.A. 2018 Supp. 21-5413(d), and amendments thereto.

Attachment A pg. 2

(d) As used in this section, "public safety sector employee" means an employee of any law enforcement office, sheriff's department, municipal fire department, volunteer and non-volunteer fire protection association, emergency management department, emergency medical service provider, public works department or other similar public or private agency, while actually engaged in official duties of the department or agency.

(e) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 2018 Supp. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 2018 Supp. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 2018 Supp. 21-5109(b), and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e)(f) The amendments to this section by chapter 96 of the 2013 Session Laws of Kansas establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

Attachment B pg. 1

Sec. 4. K.S.A. 2018 Supp. 21-6620 is hereby amended to read as follows: 21-6620. (a) (1) Except as provided in subsection (a)(2) and K.S.A. 2018 Supp. 21-6618 and 21-6622, and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to K.S.A. 2018 Supp. 21-6617 (e), and amendments thereto, or requested pursuant to K.S.A. 2018 Supp. 21-6617(a) or (b), and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

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

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

(b) The provisions of this subsection shall apply only to the crime of murder in the first degree as described in K.S.A. 2018 Supp. 21-5402 (a)(2), and amendments thereto, committed on or after July 1, 2014.

(1) Except as provided in subsection (b)(2), a defendant convicted of murder in the first degree as described in K.S.A. 2018 Supp. 21-5402 (a)(2), and amendments thereto, shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

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

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

(1) (A) Except as provided in subsection (c)(1)(B), a defendant convicted of murder in the first degree based upon the finding of premeditated murder shall be sentenced pursuant to K.S.A. 2018 Supp. 21-6623, and amendments thereto, unless the sentencing judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose the sentence specified in subsection (c)(2).

(B) The provisions of subsection (c)(1)(A) requiring the court to impose the mandatory minimum term of imprisonment required by K.S.A. 2018 Supp. 21-6623, and amendments thereto, shall not apply if the court finds the defendant, because of the defendant's criminal history classification, would be subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range would exceed 600 months if the sentence established for a severity level 1 crime was imposed. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established for a severity level 1 crime pursuant to the sentencing range. The defendant shall not be eligible for parole prior to serving such mandatory minimum term of imprisonment, and such mandatory minimum term of imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

(2) (A) If the sentencing judge does not impose the mandatory minimum term of imprisonment required by K.S.A. 2018 Supp. 21-6623, and amendments thereto, the judge shall state on the record at the time of sentencing the substantial and compelling reasons therefor, and, except as provided in subsection (c)(2) (B), the defendant shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

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

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

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

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

(3) In the proceeding, evidence may be presented concerning any matter relating to any of the aggravating circumstances enumerated in K.S.A. 2018 Supp. 21-6624, and amendments thereto. Only such evidence of aggravating circumstances as the prosecuting attorney has made known to the defendant prior to the proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of the proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting attorney relies on K.S.A. 2018 Supp. 21-6624 (a), and amendments thereto, as an aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is presumed to prove the existence of such prior conviction or convictions beyond a reasonable doubt.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2018 Supp. 21-6624, and amendments thereto, exist, the jury shall designate, in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate, in writing, the specific circumstance or circumstances which the court found beyond a reasonable doubt.

(6) If one or more of the aggravating circumstances enumerated in K.S.A. 2018 Supp. 21-6624, and amendments thereto, are found to exist beyond a reasonable doubt pursuant to this subsection, the defendant shall be sentenced pursuant to K.S.A. 2018 Supp. 21-6623, and amendments thereto, unless the sentencing judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose the sentence specified in this paragraph. If the sentencing judge does not impose the mandatory minimum term of imprisonment required by K.S.A. 2018 Supp. 21-6623, and amendments thereto, the judge shall state on the record at the time of sentencing the substantial and compelling reasons therefor, and the defendant shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall not be reduced by the application of good time credits. No other sentence shall be permitted.

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

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

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

(3) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 2018 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the prosecuting attorney has made known to the defendant prior to the sentencing proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. Only such evidence of mitigating circumstances subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto, that the defendant has made known to the prosecuting attorney prior to the sentencing proceeding shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting attorney relies on K.S.A. 2018 Supp. 21-6624 (a), and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636(a), prior to its repeal, as an aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is presumed to prove the existence of such prior conviction or convictions beyond a reasonable doubt.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2018 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 2018 Supp. 21-6623, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The sentencing jury shall designate, in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found. The trier of fact may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 2018 Supp. 21-6623, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to K.S.A. 2018 Supp. 21-6617 (e), and amendments thereto, for the purpose of determining whether to sentence such defendant to death. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate in writing the specific circumstance or circumstances which the court found beyond a reasonable doubt.

(f) A defendant convicted of the crime of murder in the first degree as described in K.S.A. 2018 Supp. 21-5402(a)(3), and amendments thereto, shall be sentenced to life without the possibility of parole. No other sentence shall be permitted. The defendant shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for commutation of sentence, parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, functional incapacitation release pursuant to K.S.A. 22-3728, and amendments thereto, or suspension, modification or reduction of sentence.

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

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

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

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

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