

HOUSE BILL No. 2435

By Representatives Garner, Ballard, Findley, Levinson, Loganbill,
Toelkes and Wells

2-7

AN ACT concerning injuries by an offender based on the belief of the offender regarding the race or religion of the victim; relating to sentencing, punishment and civil remedies; amending K.S.A. 2000 Supp. 21-4704 and 21-4716 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

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1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

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

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, aggravated as-
6 sult against a law enforcement officer or K.S.A. 21-3415, aggravated
7 battery against a law enforcement officer and amendments thereto which
8 places the defendant's sentence in grid block 6-H or 6-I shall be pre-
9 sumed imprisonment. The court may impose an optional nonprison sen-
10 tence upon making a finding on the record that the nonprison sanction
11 will serve community safety interests by promoting offender reformation.
12 Any decision made by the court regarding the imposition of the optional
13 nonprison sentence, if the offense is classified in grid block 6-H or 6-I,
14 shall not be considered departure and shall not be subject to appeal.

15 (h) When a firearm is used to commit any person felony, the of-
16 fender's sentence shall be presumed imprisonment. The court may im-
17 pose an optional nonprison sentence upon making a finding on the record
18 that the nonprison sanction will serve community safety interests by pro-
19 moting offender reformation. Any decision made by the court regarding
20 the imposition of the optional nonprison sentence shall not be considered
21 a departure and shall not be subject to appeal.

22 (i) The sentence for the violation of the felony provision of K.S.A. 8-
23 1567 and subsection (c)(3) of K.S.A. 21-3412 and amendments thereto
24 shall be as provided by the specific mandatory sentencing requirements
25 of that section and shall not be subject to the provisions of this section or
26 K.S.A. 21-4707 and amendments thereto. Notwithstanding the provisions
27 of any other section, the term of imprisonment imposed for the violation
28 of the felony provision of K.S.A. 8-1567 and subsection (c)(3) of K.S.A.
29 21-3412 and amendments thereto shall not be served in a state facility in
30 the custody of the secretary of corrections.

31 (j) The sentence for any persistent sex offender whose current con-
32 victed crime carries a presumptive term of imprisonment shall be double
33 the maximum duration of the presumptive imprisonment term. The sen-
34 tence for any persistent sex offender whose current conviction carries a
35 presumptive nonprison term shall be presumed imprisonment and shall
36 be double the maximum duration of the presumptive imprisonment term.
37 Except as otherwise provided in this subsection, as used in this subsection,
38 "persistent sex offender" means a person who: (1) Has been convicted in
39 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
40 amendments thereto; and (2) at the time of the conviction under subsec-
41 tion (1) has at least one conviction for a sexually violent crime, as defined
42 in K.S.A. 22-3717 and amendments thereto in this state or comparable
43 felony under the laws of another state, the federal government or a for-

1 eign government. The provisions of this subsection shall not apply to any
2 person whose current convicted crime is a severity level 1 or 2 felony.

3 (k) If it is shown at sentencing that the offender committed any felony
4 violation for the benefit of, at the direction of, or in association with any
5 criminal street gang, with the specific intent to promote, further or assist
6 in any criminal conduct by gang members, the offender's sentence shall
7 be presumed imprisonment. Any decision made by the court regarding
8 the imposition of the optional nonprison sentence shall not be considered
9 a departure and shall not be subject to appeal. As used in this subsection,
10 "criminal street gang" means any organization, association or group of
11 three or more persons, whether formal or informal, having as one of its
12 primary activities the commission of one or more person felonies or felony
13 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
14 and amendments thereto, which has a common name or common iden-
15 tifying sign or symbol, whose members, individually or collectively engage
16 in or have engaged in the commission, attempted commission, conspiracy
17 to commit or solicitation of two or more person felonies or felony viola-
18 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
19 amendments thereto, or any substantially similar offense from another
20 jurisdiction.

21 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
22 and amendments thereto when such person being sentenced has a prior
23 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
24 3716 and amendments thereto shall be presumed imprisonment.

25 (m) *If the offender commits a felony and intentionally selects the per-*
26 *son against whom the felony is committed or selects the property that is*
27 *damaged or otherwise affected by the felony committed by the offender*
28 *in whole or in part because of the offender's belief or perception regarding*
29 *the race, color, religion, disability, sexual orientation, national origin, eth-*
30 *nicity or ancestry of that person or the owner or occupant of that prop-*
31 *erty, whether or not the offender's belief or perception was correct, the*
32 *offender's sentence shall be presumed imprisonment and such sentence*
33 *shall be up to double the maximum duration of the presumptive impris-*
34 *onment term for the underlying felony.*

35 Sec. 2. K.S.A. 2000 Supp. 21-4716 is hereby amended to read as
36 follows: 21-4716. (a) The sentencing judge shall impose the presumptive
37 sentence provided by the sentencing guidelines for crimes committed on
38 or after July 1, 1993, unless the judge finds substantial and compelling
39 reasons to impose a departure. If the sentencing judge departs from the
40 presumptive sentence, the judge shall state on the record at the time of
41 sentencing the substantial and compelling reasons for the departure.

42 (b) (1) Subject to the provisions of subsection (b)(3), the following
43 nonexclusive list of mitigating factors may be considered in determining

1 whether substantial and compelling reasons for a departure exist:

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

4 (B) The offender played a minor or passive role in the crime or par-
5 ticipated under circumstances of duress or compulsion. This factor is not
6 sufficient as a complete defense.

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

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

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

16 (2) Subject to the provisions of subsection (b)(3), the following no-
17 nexclusive list of aggravating factors may be considered in determining
18 whether substantial and compelling reasons for departure exist:

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

22 (B) The defendant's conduct during the commission of the current
23 offense manifested excessive brutality to the victim in a manner not nor-
24 mally present in that offense.

25 ~~(C) The offense was motivated entirely or in part by the race, color,
26 religion, ethnicity, national origin or sexual orientation of the victim.~~

27 ~~(D) The offense involved a fiduciary relationship which existed be-
28 tween the defendant and the victim.~~

29 ~~(E) (D)~~ (D) The defendant, 18 or more years of age, employed, hired,
30 used, persuaded, induced, enticed or coerced any individual under 16
31 years of age to commit or assist in avoiding detection or apprehension for
32 commission of any person felony or any attempt, conspiracy or solicitation
33 as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments
34 thereto to commit any person felony regardless of whether the defendant
35 knew the age of the individual under 16 years of age.

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

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

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

43 (b) a crime involving an act of sexual intercourse, sodomy or lewd

1 fondling and touching with any child who is 14 or more years of age but
2 less than 16 years of age and with whom a relationship has been estab-
3 lished or promoted for the primary purpose of victimization; or

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

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

9 (a) Has one or more prior convictions of any crimes of extreme sexual
10 violence. Any prior conviction used to establish the defendant as a pred-
11 atory sex offender pursuant to this subsection shall also be counted in
12 determining the criminal history category; or

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

16 (iii) "Mental condition or personality disorder" means an emotional,
17 mental or physical illness, disease, abnormality, disorder, pathology or
18 condition which motivates the person, affects the predisposition or desires
19 of the person, or interferes with the capacity of the person to control
20 impulses to commit crimes of extreme sexual violence.

21 ~~(G)~~ (F) The defendant was incarcerated during the commission of
22 the offense.

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

25 (3) If a factual aspect of a crime is a statutory element of the crime
26 or is used to subclassify the crime on the crime severity scale, that aspect
27 of the current crime of conviction may be used as an aggravating or mit-
28 igating factor only if the criminal conduct constituting that aspect of the
29 current crime of conviction is significantly different from the usual crim-
30 inal conduct captured by the aspect of the crime.

31 (c) In determining aggravating or mitigating circumstances, the court
32 shall consider:

33 (1) Any evidence received during the proceeding;

34 (2) the presentence report;

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

37 (4) any other evidence relevant to such aggravating or mitigating cir-
38 cumstances that the court finds trustworthy and reliable.

39 New Sec. 3. Independent of any criminal prosecution or the result
40 thereof, any person suffering injury or damage to such person or such
41 person's property whether it be physical, emotional or financial injury or
42 damage as a result of a felony violation as provided in subsection (m) of
43 K.S.A. 21-4704 and amendments thereto may bring a civil action for dam-

1 ages, injunction or other appropriate relief. The court may award actual
2 damages, including damages for emotional distress or punitive damages.
3 A judgment may include attorney fees and costs.

4 New Sec. 4. The attorney general shall collect and disseminate data
5 on incidents of criminal acts that evidence prejudice based on race, color,
6 religion, disability, sexual orientation, national origin, ethnicity or ances-
7 try. All law enforcement agencies shall report monthly to the attorney
8 general concerning such offenses in such form and in such manner as
9 prescribed by rules and regulations adopted by the attorney general. Such
10 information shall be compiled by the attorney general and disseminated
11 upon request to any local law enforcement agency, unit of local govern-
12 ment or state agency. Dissemination of such information shall be subject
13 to all confidentiality requirements otherwise imposed by law. Data re-
14 quired pursuant to this section shall be used only for research or statistical
15 purposes and shall not include any information that may reveal the iden-
16 tity of an individual victim of a crime. The attorney general shall publish
17 an annual summary of the data required pursuant to this section. The
18 attorney general shall provide training for all law enforcement officers in
19 identifying, responding to and reporting all offenses as provided in sub-
20 section (m) of K.S.A. 21-4704 and amendments thereto. The Kansas law
21 enforcement training commission shall develop and certify a course of
22 such training to be made available to all law enforcement officers.

23 Sec. 5. K.S.A. 2000 Supp. 21-4704 and 21-4716 are hereby repealed.

24 Sec. 6. This act shall take effect and be in force from and after its
25 publication in the statute book.

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