

House Substitute for SENATE BILL No. 60

By Committee on Judiciary

3-21

1 AN ACT concerning crimes and punishment; relating to a mandatory term
2 of imprisonment of 35 years for certain sex offenders; amending K.S.A.
3 2013 Supp. 21-6627 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 21-6627 is hereby amended to read as
7 follows: 21-6627. (a) (1) Except as provided in subsection ~~(b) or (d)~~ (c) or
8 (e), a defendant who is 18 years of age or older and is convicted of ~~the~~
9 ~~following crimes~~ a crime listed in subsection (g) committed on or after
10 July 1, 2006, but prior to July 1, 2014, shall be sentenced to a term of
11 imprisonment for life with a mandatory minimum term of imprisonment of
12 not less than 25 years unless the court determines that the defendant
13 should be sentenced as determined in subsection ~~(a)(2):~~ (a)(3).

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

17 ~~(B) rape, as defined in subsection (a)(3) of K.S.A. 2013 Supp. 21-~~
18 ~~5503, and amendments thereto;~~

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

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

23 ~~(E) commercial sexual exploitation of a child, as defined in K.S.A.~~
24 ~~2013 Supp. 21-6422, and amendments thereto, if the victim is less than 14~~
25 ~~years of age;~~

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

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

32 (2) Except as provided in subsection (b), (c) or (e), a defendant who
33 is 18 years of age or older and is convicted of a crime listed in subsection
34 (g) committed on or after July 1, 2014, shall be sentenced to a term of
35 imprisonment for life with a mandatory minimum term of imprisonment of
36 not less than 25 years unless the court determines that the defendant

1 *should be sentenced as determined in subsection (a)(3).*

2 (3) The provision of ~~subsection (a)(1)~~ *subsections (a)(1) and (a)(2)*
3 *requiring a mandatory minimum term of imprisonment of not less than 25*
4 *years shall not apply if the court finds:*

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

8 (B) *the defendant, because of the defendant's criminal history*
9 *classification, is subject to presumptive imprisonment pursuant to the*
10 *sentencing guidelines grid for nondrug crimes and the sentencing range*
11 *exceeds: (i) 300 months for a mandatory minimum term of imprisonment*
12 *of not less than 25 years; or (ii) exceeds 420 months for a mandatory term*
13 *of imprisonment of not less than 35 years. In such case, the defendant is*
14 *required to serve a mandatory minimum term equal to the sentence*
15 *established pursuant to the sentencing range.*

16 (b) (1) *Except as provided in subsection (c), if a defendant who is 18*
17 *years of age or older is convicted of a crime listed in subsection (g)*
18 *committed on or after July 1, 2014, upon reasonable notice by the*
19 *prosecuting attorney, the court shall determine whether the defendant*
20 *shall be required to serve an additional term of imprisonment of 10 years,*
21 *in addition to being sentenced to a term of imprisonment for life with a*
22 *mandatory minimum term of imprisonment of not less than 25 years.*

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

42 (3) *In the proceeding, evidence may be presented concerning any*
43 *matter relating to any of the aggravating circumstances enumerated in*

1 subsection (f). Only such evidence of aggravating circumstances as the
2 prosecuting attorney has made known to the defendant prior to the
3 proceeding shall be admissible and no evidence secured in violation of the
4 constitution of the United States or of the state of Kansas shall be
5 admissible. No testimony by the defendant at the time of the proceeding
6 shall be admissible against the defendant at any subsequent criminal
7 proceeding.

8 (4) At the conclusion of the evidentiary presentation, the court shall
9 allow the parties a reasonable period of time in which to present oral
10 argument. At the conclusion of the evidentiary portion of the proceeding,
11 the court shall provide oral and written instructions to the jury to guide its
12 deliberations. If the prosecuting attorney relies on subsection (f)(2)(A) as
13 an aggravating circumstance, and the court finds that one or more of the
14 defendant's prior convictions satisfy such subsection, the jury shall be
15 instructed that a certified journal entry of a prior conviction is presumed
16 to prove the existence of such prior conviction or convictions beyond a
17 reasonable doubt.

18 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
19 that one or more of the aggravating circumstances enumerated in
20 subsection (f) exist, the defendant shall be sentenced to serve an additional
21 term of imprisonment of 10 years in addition to being sentenced to a term
22 of imprisonment for life with a mandatory minimum term of imprisonment
23 of not less than 25 years. The jury shall designate, in writing, signed by
24 the foreman of the jury, the statutory aggravating circumstances which it
25 found. If, after a reasonable time for deliberation, the jury is unable to
26 reach a unanimous decision on the existence of one or more of such
27 aggravating circumstances, the court shall dismiss the jury and the
28 defendant shall be sentenced to imprisonment for life with a mandatory
29 minimum term of imprisonment of not less than 25 years. In nonjury cases,
30 the court shall follow the requirements of this subsection in determining
31 the existence of one or more of the aggravating circumstances.

32 ~~(b)~~ (c) (1) On and after July 1, 2006, if a defendant who is 18 years of
33 age or older is convicted of a crime listed in subsection ~~(a)(1)~~ (g) and such
34 defendant has previously been convicted of a crime listed in subsection ~~(a)~~
35 ~~(1)~~ (g), a crime in effect at any time prior to July 1, 2011, which is
36 substantially the same as a crime listed in subsection ~~(a)(1)~~ (g) or a crime
37 under a law of another jurisdiction which is substantially the same as a
38 crime listed in subsection ~~(a)(1)~~ (g), the court shall sentence the defendant
39 to a term of imprisonment for life with a mandatory minimum term of
40 imprisonment of not less than 40 years. The provisions of this paragraph
41 shall not apply to a crime committed under K.S.A. 2013 Supp. 21-5507,
42 and amendments thereto, or a crime under a law of another jurisdiction
43 which is substantially the same as K.S.A. 2013 Supp. 21-5507, and

1 amendments thereto.

2 (2) The provision of subsection ~~(b)(1)~~ (c)(1) requiring a mandatory
3 minimum term of imprisonment of not less than 40 years shall not apply if
4 the court finds:

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

8 (B) the defendant, because of the defendant's criminal history
9 classification, is subject to presumptive imprisonment pursuant to the
10 sentencing guidelines grid for nondrug crimes and the sentencing range
11 exceeds 480 months. In such case, the defendant is required to serve a
12 mandatory minimum term equal to the sentence established pursuant to the
13 sentencing range.

14 ~~(e)~~ (d) When a person is sentenced pursuant to subsection (a) ~~or~~, (b)
15 or (c), such person shall be sentenced to a mandatory minimum term of
16 imprisonment of not less than 25 years, 35 years, 40 years or be sentenced
17 as determined in subsection ~~(a)(2)~~ (a)(3) or subsection (b)(2), whichever is
18 applicable, and shall not be eligible for probation or suspension,
19 modification or reduction of sentence. In addition, a person sentenced
20 pursuant to this section shall not be eligible for parole prior to serving such
21 mandatory term of imprisonment, and such imprisonment shall not be
22 reduced by the application of good time credits.

23 ~~(d)~~ (1) (e) On or after July 1, 2006, for a first time conviction of ~~an~~
24 offense a crime listed in subsection ~~(a)(1)~~ (g), the sentencing judge shall
25 impose the mandatory minimum term of imprisonment provided by
26 subsection (a) or (b), unless the judge finds substantial and compelling
27 reasons, following a review of mitigating circumstances, to impose a
28 departure. If the sentencing judge departs from such mandatory minimum
29 term of imprisonment, the judge shall state on the record at the time of
30 sentencing the substantial and compelling reasons for the departure. The
31 departure sentence shall be the sentence pursuant to the revised Kansas
32 sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes
33 Annotated, and amendments thereto, and, subject to the provisions of
34 K.S.A. 2013 Supp. 21-6818, and amendments thereto, no sentence of a
35 mandatory minimum term of imprisonment shall be imposed hereunder.

36 ~~(2)~~ (f) As used in this subsection, section:

37 (1) "Mitigating circumstances" shall include, but are not limited to,
38 the following:

39 (A) The defendant has no significant history of prior criminal
40 activity;

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

43 (C) the victim was an accomplice in the crime committed by another

1 person, and the defendant's participation was relatively minor;

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

4 (E) the capacity of the defendant to appreciate the criminality of the
5 defendant's conduct or to conform the defendant's conduct to the
6 requirements of law was substantially impaired; and

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

8 (2) *"Aggravating circumstances" shall be limited to the following:*

9 (A) *The defendant committed the crime in an especially heinous,*
10 *atrocious or cruel manner. A finding that the victim was aware of such*
11 *victim's fate or had conscious pain and suffering as a result of the physical*
12 *trauma is not necessary to find that the manner in which the defendant*
13 *harmed the victim was especially heinous, atrocious or cruel. Conduct*
14 *which is heinous, atrocious or cruel may include, but is not limited to:*

15 (1) *Prior stalking of or criminal threats to the victim;*

16 (2) *preparation or planning, indicating an intention that the harm*
17 *was meant to be especially heinous, atrocious or cruel;*

18 (3) *infliction of mental anguish or physical abuse;*

19 (4) *torture of the victim;*

20 (5) *continuous acts of violence; or*

21 (6) *any other conduct the trier of fact expressly finds is especially*
22 *heinous.*

23 (B) *The defendant had a fiduciary relationship with the victim.*

24 (C) *The defendant had knowledge that the victim was in a vulnerable*
25 *position.*

26 (g) *Crimes in this section shall include the following:*

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

30 (2) *rape, as defined in subsection (a)(3) of K.S.A. 2013 Supp. 21-*
31 *5503, and amendments thereto;*

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

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

36 (5) *commercial sexual exploitation of a child, as defined in K.S.A.*
37 *2013 Supp. 21-6422, and amendments thereto, if the victim is less than 14*
38 *years of age;*

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

42 (7) *an attempt, conspiracy or criminal solicitation, as defined in*
43 *K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto,*

1 *of an offense defined in subsections (c)(1) through (c)(6).*

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

6 Sec. 2. K.S.A. 2013 Supp. 21-6627 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.