

(Special Session)
As Amended by House Committee

Special Session of 2013

HOUSE BILL No. 2002

By Committee on Judiciary

9-3

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing of certain persons to mandatory minimum term of
3 imprisonment of 40 or 50 years; amending K.S.A. 2012 Supp. 21-6620
4 and 21-6624 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 21-6620 is hereby amended to read as
8 follows: 21-6620. (a) Except as provided in K.S.A. 2012 Supp. 21-6618
9 and 21-6622, and amendments thereto, if a defendant is convicted of the
10 crime of capital murder and a sentence of death is not imposed pursuant to
11 subsection (e) of K.S.A. 2012 Supp. 21-6617, and amendments thereto, or
12 requested pursuant to subsection (a) or (b) of K.S.A. 2012 Supp. 21-6617,
13 and amendments thereto, the defendant shall be sentenced to life without
14 the possibility of parole.

15 (b) *The provisions of this subsection shall apply only to the crime of*
16 *murder in the first degree based upon the finding of premeditated murder*
17 *committed on or after the effective date of this act.*

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

24 (2) *The court shall conduct a separate proceeding following the*
25 *determination of the defendant's guilt for the jury to determine whether*
26 *one or more aggravating circumstances exist. Such proceeding shall be*
27 *conducted by the court before a jury as soon as practicable. If any person*
28 *who served on the trial jury is unable to serve on the jury for the*
29 *proceeding, the court shall substitute an alternate juror who has been*
30 *impaneled for the trial jury. If there are insufficient alternate jurors to*
31 *replace trial jurors who are unable to serve at the proceeding, the court*
32 *may conduct such proceeding before a jury which may have 12 or less*
33 *jurors, but at no time less than six jurors. If the jury has been discharged*
34 *prior to the proceeding, a new jury ~~may~~ shall be impaneled. Any decision*
35 *of the jury regarding the existence of an aggravating circumstance shall*
36 *be beyond a reasonable doubt. Jury selection procedures, qualifications of*

1 jurors and grounds for exemption or challenge of prospective jurors in
2 criminal trials shall be applicable to the selection of such jury. The jury at
3 the proceeding may be waived in the manner provided by K.S.A. 22-3403,
4 and amendments thereto, for waiver of a trial jury. If the jury at the
5 proceeding has been waived, such proceeding shall be conducted by the
6 court.

7 (3) In the proceeding, evidence may be presented concerning any
8 matter relating to any of the aggravating circumstances enumerated in
9 K.S.A. 2012 Supp. 21-6624, and amendments thereto. Only such evidence
10 of aggravating circumstances as the prosecuting attorney has made known
11 to the defendant prior to the proceeding shall be admissible and no
12 evidence secured in violation of the constitution of the United States or of
13 the state of Kansas shall be admissible. No testimony by the defendant at
14 the time of the proceeding shall be admissible against the defendant at any
15 subsequent criminal proceeding. At the conclusion of the evidentiary
16 presentation, the court shall allow the parties a reasonable period of time
17 in which to present oral argument.

18 (4) At the conclusion of the evidentiary portion of the proceeding, the
19 court shall provide oral and written instructions to the jury to guide its
20 deliberations. If the prosecuting attorney relies on subsection (a) of K.S.A.
21 2012 Supp. 21-6624, and amendments thereto, as an aggravating
22 circumstance, and the court finds that one or more of the defendant's prior
23 convictions satisfy such subsection, the jury shall be instructed that a
24 certified journal entry of a prior conviction is ~~sufficient~~ **presumed** to
25 prove the existence of such ~~aggravating circumstance~~ **prior conviction or**
26 **convictions** beyond a reasonable doubt.

27 (5) If, by unanimous vote, the jury finds beyond a reasonable doubt
28 that one or more of the aggravating circumstances enumerated in K.S.A.
29 2012 Supp. 21-6624, and amendments thereto, exist, the jury shall
30 designate, in writing, signed by the foreman of the jury, the statutory
31 aggravating circumstances which it found. If, after a reasonable time for
32 deliberation, the jury is unable to reach a unanimous sentencing decision,
33 the court shall dismiss the jury and the defendant shall be sentenced as
34 provided by law. In nonjury cases, the court shall designate, in writing, the
35 specific circumstance or circumstances which the court found beyond a
36 reasonable doubt.

37 (6) If one or more of the aggravating circumstances enumerated in
38 K.S.A. 2012 Supp. 21-6624, and amendments thereto, are found to exist
39 beyond a reasonable doubt pursuant to this subsection, the defendant shall
40 be sentenced pursuant to K.S.A. 2012 Supp. 21-6623, and amendments
41 thereto, unless the sentencing judge finds substantial and compelling
42 reasons, following a review of mitigating circumstances, to impose the
43 sentence specified in this paragraph. If the sentencing judge does not

1 *impose the mandatory minimum term of imprisonment required by K.S.A.*
2 *2012 Supp. 21-6623, and amendments thereto, the judge shall state on the*
3 *record at the time of sentencing the substantial and compelling reasons*
4 *therefor, and the defendant shall be sentenced to imprisonment for life and*
5 *shall not be eligible for probation or suspension, modification or*
6 *reduction of sentence. In addition, the defendant shall not be eligible for*
7 *parole prior to serving 25 years' imprisonment, and such 25 years'*
8 *imprisonment shall not be reduced by the application of good time credits.*
9 *No other sentence shall be permitted.*

10 *(c) The provisions of this subsection shall apply only to the crime of*
11 *murder in the first degree based upon the finding of premeditated murder*
12 *committed prior to the effective date of this act.*

13 *(1) If a defendant is convicted of murder in the first degree based*
14 *upon the finding of premeditated murder, upon reasonable notice by the*
15 *prosecuting attorney, the court shall conduct a separate sentencing*
16 *proceeding in accordance with this subsection to determine whether the*
17 *defendant shall be required to serve a mandatory minimum term of*
18 *imprisonment of 40 years or for crimes committed on and after July 1,*
19 *1999, a mandatory minimum term of imprisonment of 50 years or*
20 *sentenced as otherwise provided by law.*

21 *(2) The sentencing proceeding shall be conducted by the court before*
22 *a jury as soon as practicable. ~~If any person who served on the trial jury is~~*
23 *~~unable to serve on the jury for the sentencing proceeding, the court shall~~*
24 *~~substitute an alternate juror who has been impaneled for the trial jury. If~~*
25 *~~there are insufficient alternate jurors to replace trial jurors who are~~*
26 *~~unable to serve at the sentencing proceeding, the court may conduct such~~*
27 *~~proceeding before a jury which may have 12 or less jurors, but at no time~~*
28 *~~less than six jurors. If there are insufficient alternate jurors to replace trial~~*
29 *~~jurors who are unable to serve at the sentencing proceeding, the court may~~*
30 *~~summon a special jury of 12 persons which shall determine the~~*
31 *~~defendant's sentence. If the trial jury has been discharged prior to~~*
32 *~~sentencing, a new jury ~~may~~ shall be impaneled. Any decision to impose a~~*
33 *~~mandatory minimum term of imprisonment of 40 or 50 years shall be by a~~*
34 *~~unanimous jury. Jury selection procedures, qualifications of jurors and~~*
35 *~~grounds for exemption or challenge of prospective jurors in criminal trials~~*
36 *~~shall be applicable to the selection of such jury. The jury at the sentencing~~*
37 *~~proceeding may be waived in the manner provided by K.S.A. 22-3403, and~~*
38 *~~amendments thereto, for waiver of a trial jury. If the jury at the sentencing~~*
39 *~~proceeding has been waived, such proceeding shall be conducted by the~~*
40 *~~court.~~*

41 *~~(e) (3) In order to make such determination, the court may be~~*
42 *~~presented evidence the sentencing proceeding, evidence may be presented~~*
43 *~~concerning any matter that the court deems relevant to the question of~~*

1 sentence and shall include matters relating to any of the aggravating
2 circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and
3 amendments thereto, *or for crimes committed prior to July 1, 2011, K.S.A.*
4 *21-4636, prior to its repeal*, and any mitigating circumstances. Any such
5 evidence which the court deems to have probative value may be received
6 regardless of its admissibility under the rules of evidence, provided that
7 the defendant is accorded a fair opportunity to rebut any hearsay
8 statements. Only such evidence of aggravating circumstances as the ~~state~~
9 *prosecuting attorney* has made known to the defendant prior to the
10 sentencing *proceeding* shall be admissible and no evidence secured in
11 violation of the constitution of the United States or of the state of Kansas
12 shall be admissible. *Only such evidence of mitigating circumstances*
13 *subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto,*
14 *that the defendant has made known to the prosecuting attorney prior to the*
15 *sentencing proceeding shall be admissible.* No testimony by the defendant
16 at the time of sentencing shall be admissible against the defendant at any
17 subsequent criminal proceeding. At the conclusion of the evidentiary
18 presentation, the court shall allow the parties a reasonable period of time in
19 which to present oral argument.

20 (4) *At the conclusion of the evidentiary portion of the sentencing*
21 *proceeding, the court shall provide oral and written instructions to the*
22 *jury to guide its deliberations. If the prosecuting attorney relies on*
23 *subsection (a) of K.S.A. 2012 Supp. 21-6624, and amendments thereto, or*
24 *for crimes committed prior to July 1, 2011, subsection (a) of K.S.A. 21-*
25 *4636, prior to its repeal, as an aggravating circumstance, and the court*
26 *finds that one or more of the defendant's prior convictions satisfy such*
27 *subsection, the jury shall be instructed that a certified journal entry of a*
28 *prior conviction is ~~sufficient~~ **presumed** to prove the existence of such*
29 *~~aggravating circumstance~~ **prior conviction or convictions** beyond a*
30 *reasonable doubt.*

31 (d) (5) ~~If the court finds~~, *by unanimous vote, the jury finds beyond a*
32 *reasonable doubt* that one or more of the aggravating circumstances
33 enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto, *or*
34 *for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its*
35 *repeal*, exist and, further, that the existence of such aggravating
36 circumstances is not outweighed by any mitigating circumstances which
37 are found to exist, the defendant shall be sentenced pursuant to K.S.A.
38 2012 Supp. 21-6623, and amendments thereto; otherwise, the defendant
39 shall be sentenced as provided by law. ~~The court~~ *sentencing jury* shall
40 designate, in writing, *signed by the foreman of the jury*, the statutory
41 aggravating circumstances which it found. ~~The court~~ *trier of fact* may
42 make the findings required by this subsection for the purpose of
43 determining whether to sentence a defendant pursuant to K.S.A. 2012

1 Supp. 21-6623, and amendments thereto, notwithstanding contrary
2 findings made by the jury or court pursuant to subsection (e) of K.S.A.
3 2012 Supp. 21-6617, and amendments thereto, for the purpose of
4 determining whether to sentence such defendant to death. *If, after a*
5 *reasonable time for deliberation, the jury is unable to reach a unanimous*
6 *sentencing decision, the court shall dismiss the jury and the defendant*
7 *shall be sentenced as provided by law. In nonjury cases, the court shall*
8 *designate in writing the specific circumstance or circumstances which the*
9 *court found beyond a reasonable doubt.*

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

19 (e) *Notwithstanding the provisions of subsection (f), for all cases on*
20 *appeal on or after the effective date of this act, if a sentence imposed*
21 *under this section, prior to amendment by this act, or under K.S.A. 21-*
22 *4635, prior to its repeal, is vacated for any reason other than sufficiency*
23 *of the evidence as to all aggravating circumstances, resentencing shall be*
24 *required under this section, as amended by this act, unless the prosecuting*
25 *attorney chooses not to pursue such a sentence.*

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

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

36 Sec. 2. K.S.A. 2012 Supp. 21-6624 is hereby amended to read as
37 follows: 21-6624. Aggravating circumstances shall be limited to the
38 following:

39 (a) The defendant was previously convicted of a felony in which the
40 defendant inflicted great bodily harm, disfigurement, dismemberment or
41 death on another.

42 (b) The defendant knowingly or purposely killed or created a great
43 risk of death to more than one person.

1 (c) The defendant committed the crime for the defendant's self or
2 another for the purpose of receiving money or any other thing of monetary
3 value.

4 (d) The defendant authorized or employed another person to commit
5 the crime.

6 (e) The defendant committed the crime in order to avoid or prevent a
7 lawful arrest or prosecution.

8 (f) The defendant committed the crime in an especially heinous,
9 atrocious or cruel manner. A finding that the victim was aware of such
10 victim's fate or had conscious pain and suffering as a result of the physical
11 trauma that resulted in the victim's death is not necessary to find that the
12 manner in which the defendant killed the victim was especially heinous,
13 atrocious or cruel. Conduct which is heinous, atrocious or cruel may
14 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 killing
17 was meant to be especially heinous, atrocious or cruel;

18 (3) infliction of mental anguish or physical abuse before the victim's
19 death;

20 (4) torture of the victim;

21 (5) continuous acts of violence begun before or continuing after the
22 killing;

23 (6) desecration of the victim's body in a manner indicating a
24 particular depravity of mind, either during or following the killing; or

25 (7) any other conduct the ~~court~~ *trier of fact* expressly finds is
26 especially heinous.

27 (g) The defendant committed the crime while serving a sentence of
28 imprisonment on conviction of a felony.

29 (h) The victim was killed while engaging in, or because of the
30 victim's performance or prospective performance of, the victim's duties as
31 a witness in a criminal proceeding.

32 Sec. 3. K.S.A. 2012 Supp. 21-6620 and 21-6624 are hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its
34 publication in the Kansas register.

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