

**SENATE BILL No. 1**

By Senator Haley

11-5

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to hate crimes; sentencing; reporting requirements; amending K.S.A.  
3 2014 Supp. 21-6804 and 21-6815 and repealing the existing sections.

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

6 Section 1. K.S.A. 2014 Supp. 21-6804 is hereby amended to read as  
7 follows: 21-6804.(a) The provisions of this section shall be applicable to  
8 the sentencing guidelines grid for nondrug crimes. The following  
9 sentencing guidelines grid shall be applicable to nondrug felony crimes:  
10

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

<b>LEGEND</b>
Presumptive Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for nondrug  
2 crimes represent months of imprisonment.

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

8 (d) The sentencing guidelines grid for nondrug crimes as provided in  
9 this section defines presumptive punishments for felony convictions,  
10 subject to the sentencing court's discretion to enter a departure sentence.  
11 The appropriate punishment for a felony conviction should depend on the  
12 severity of the crime of conviction when compared to all other crimes and  
13 the offender's criminal history.

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

19 (2) In presumptive imprisonment cases, the sentencing court shall  
20 pronounce the complete sentence which shall include the:

21 (A) Prison sentence;

22 (B) maximum potential reduction to such sentence as a result of good  
23 time; and

24 (C) period of postrelease supervision at the sentencing hearing.  
25 Failure to pronounce the period of postrelease supervision shall not negate  
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall  
28 pronounce the:

29 (A) Prison sentence; and

30 (B) duration of the nonprison sanction at the sentencing hearing.

31 (f) Each grid block states the presumptive sentencing range for an  
32 offender whose crime of conviction and criminal history place such  
33 offender in that grid block. If an offense is classified in a grid block below  
34 the dispositional line, the presumptive disposition shall be  
35 nonimprisonment. If an offense is classified in a grid block above the  
36 dispositional line, the presumptive disposition shall be imprisonment. If an  
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose  
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,  
40 aggravated battery against a law enforcement officer committed prior to  
41 July 1, 2006, or a violation of ~~subsection (d) of~~ K.S.A. 2014 Supp. 21-  
42 5412(d), and amendments thereto, aggravated assault against a law  
43 enforcement officer, which places the defendant's sentence in grid block 6-

1 H or 6-I shall be presumed imprisonment. The court may impose an  
2 optional nonprison sentence as provided in subsection (q).

3 (h) When a firearm is used to commit any person felony, the  
4 offender's sentence shall be presumed imprisonment. The court may  
5 impose an optional nonprison sentence as provided in subsection (q).

6 (i) (1) The sentence for the violation of the felony provision of K.S.A.  
7 2014 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, ~~subsection (b)(3) of~~  
8 K.S.A. 2014 Supp. 21-5414(b)(3), ~~subsections (b)(3) and (b)(4) of~~ K.S.A.  
9 2014 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2014 Supp. 21-6412 and  
10 K.S.A. 2014 Supp. 21-6416, and amendments thereto, shall be as provided  
11 by the specific mandatory sentencing requirements of that section and  
12 shall not be subject to the provisions of this section or K.S.A. 2014 Supp.  
13 21-6807, and amendments thereto.

14 (2) If because of the offender's criminal history classification the  
15 offender is subject to presumptive imprisonment or if the judge departs  
16 from a presumptive probation sentence and the offender is subject to  
17 imprisonment, the provisions of this section and K.S.A. 2014 Supp. 21-  
18 6807, and amendments thereto, shall apply and the offender shall not be  
19 subject to the mandatory sentence as provided in K.S.A. 2014 Supp. 21-  
20 5823, and amendments thereto.

21 (3) Notwithstanding the provisions of any other section, the term of  
22 imprisonment imposed for the violation of the felony provision of K.S.A.  
23 2014 Supp. 8-1025, K.S.A. 8-2,144, K.S.A. 8-1567, ~~subsection (b)(3) of~~  
24 K.S.A. 2014 Supp. 21-5414(b)(3), ~~subsections (b)(3) and (b)(4) of~~ K.S.A.  
25 2014 Supp. 21-5823(b)(3) and (b)(4), K.S.A. 2014 Supp. 21-6412 and  
26 K.S.A. 2014 Supp. 21-6416, and amendments thereto, shall not be served  
27 in a state facility in the custody of the secretary of corrections, except that  
28 the term of imprisonment for felony violations of K.S.A. 2014 Supp. 8-  
29 1025 or K.S.A. 8-2,144 or K.S.A. 8-1567, and amendments thereto, may  
30 be served in a state correctional facility designated by the secretary of  
31 corrections if the secretary determines that substance abuse treatment  
32 resources and facility capacity is available. The secretary's determination  
33 regarding the availability of treatment resources and facility capacity shall  
34 not be subject to review. Prior to imposing any sentence pursuant to this  
35 subsection, the court may consider assigning the defendant to a house  
36 arrest program pursuant to K.S.A. 2014 Supp. 21-6609, and amendments  
37 thereto.

38 (j) (1) The sentence for any persistent sex offender whose current  
39 convicted crime carries a presumptive term of imprisonment shall be  
40 double the maximum duration of the presumptive imprisonment term. The  
41 sentence for any persistent sex offender whose current conviction carries a  
42 presumptive nonprison term shall be presumed imprisonment and shall be  
43 double the maximum duration of the presumptive imprisonment term.

1 (2) Except as otherwise provided in this subsection, as used in this  
2 subsection, "persistent sex offender" means a person who:

3 (A) (i) Has been convicted in this state of a sexually violent crime, as  
4 defined in K.S.A. 22-3717, and amendments thereto; and

5 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at  
6 least one conviction for a sexually violent crime, as defined in K.S.A. 22-  
7 3717, and amendments thereto, in this state or comparable felony under  
8 the laws of another state, the federal government or a foreign government;  
9 or

10 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior  
11 to its repeal, or K.S.A. 2014 Supp. 21-5503, and amendments thereto; and

12 (ii) at the time of the conviction under subsection (j)(2)(B)(i) has at  
13 least one conviction for rape in this state or comparable felony under the  
14 laws of another state, the federal government or a foreign government.

15 (3) Except as provided in subsection (j)(2)(B), the provisions of this  
16 subsection shall not apply to any person whose current convicted crime is  
17 a severity level 1 or 2 felony.

18 (k) (1) If it is shown at sentencing that the offender committed any  
19 felony violation for the benefit of, at the direction of, or in association with  
20 any criminal street gang, with the specific intent to promote, further or  
21 assist in any criminal conduct by gang members, the offender's sentence  
22 shall be presumed imprisonment. The court may impose an optional  
23 nonprison sentence as provided in subsection (q).

24 (2) As used in this subsection, "criminal street gang" means any  
25 organization, association or group of three or more persons, whether  
26 formal or informal, having as one of its primary activities:

27 (A) The commission of one or more person felonies; or

28 (B) the commission of felony violations of article 57 of chapter 21 of  
29 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010  
30 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony  
31 violation of any provision of the uniform controlled substances act prior to  
32 July 1, 2009; and

33 (C) its members have a common name or common identifying sign or  
34 symbol; and

35 (D) its members, individually or collectively, engage in or have  
36 engaged in the commission, attempted commission, conspiracy to commit  
37 or solicitation of two or more person felonies or felony violations of article  
38 57 of chapter 21 of the Kansas Statutes Annotated, and amendments  
39 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their  
40 transfer, any felony violation of any provision of the uniform controlled  
41 substances act prior to July 1, 2009, or any substantially similar offense  
42 from another jurisdiction.

43 (l) Except as provided in subsection (o), the sentence for a violation

1 of ~~subsection (a)(1)~~ of K.S.A. 2014 Supp. 21-5807(a)(1), and amendments  
2 thereto, or any attempt or conspiracy, as defined in K.S.A. 2014 Supp. 21-  
3 5301 and 21-5302, and amendments thereto, to commit such offense, when  
4 such person being sentenced has a prior conviction for a violation of  
5 ~~subsection (a) or (b)~~ of K.S.A. 21-3715(a) or (b), prior to its repeal, 21-  
6 3716, prior to its repeal, ~~subsection (a)(1) or (a)(2)~~ of K.S.A. 2014 Supp.  
7 21-5807(a)(1) or (a)(2), or ~~subsection (b)~~ of K.S.A. 2014 Supp. 21-  
8 5807(b), and amendments thereto, or any attempt or conspiracy to commit  
9 such offense, shall be presumptive imprisonment.

10 (m) The sentence for a violation of K.S.A. 22-4903 or ~~subsection (a)~~  
11 ~~(2)~~ of K.S.A. 2014 Supp. 21-5913(a)(2), and amendments thereto, shall be  
12 presumptive imprisonment. If an offense under such sections is classified  
13 in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional  
14 nonprison sentence as provided in subsection (q).

15 (n) The sentence for a violation of criminal deprivation of property, as  
16 defined in K.S.A. 2014 Supp. 21-5803, and amendments thereto, when  
17 such property is a motor vehicle, and when such person being sentenced  
18 has any combination of two or more prior convictions of ~~subsection (b)~~ of  
19 K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of  
20 property, as defined in K.S.A. 2014 Supp. 21-5803, and amendments  
21 thereto, when such property is a motor vehicle, shall be presumptive  
22 imprisonment. Such sentence shall not be considered a departure and shall  
23 not be subject to appeal.

24 (o) The sentence for a felony violation of theft of property as defined  
25 in K.S.A. 2014 Supp. 21-5801, and amendments thereto, or burglary as  
26 defined in ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5807(a), and  
27 amendments thereto, when such person being sentenced has no prior  
28 convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their  
29 repeal, or theft of property as defined in K.S.A. 2014 Supp. 21-5801, and  
30 amendments thereto, or burglary as defined in ~~subsection (a)~~ of K.S.A.  
31 2014 Supp. 21-5807(a), and amendments thereto; or the sentence for a  
32 felony violation of theft of property as defined in K.S.A. 2014 Supp. 21-  
33 5801, and amendments thereto, when such person being sentenced has one  
34 or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715  
35 or 21-3716, prior to their repeal, or theft of property as defined in K.S.A.  
36 2014 Supp. 21-5801, and amendments thereto, or burglary or aggravated  
37 burglary as defined in K.S.A. 2014 Supp. 21-5807, and amendments  
38 thereto; or the sentence for a felony violation of burglary as defined in  
39 ~~subsection (a)~~ of K.S.A. 2014 Supp. 21-5807(a), and amendments thereto,  
40 when such person being sentenced has one prior felony conviction for a  
41 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or  
42 theft of property as defined in K.S.A. 2014 Supp. 21-5801, and  
43 amendments thereto, or burglary or aggravated burglary as defined in

1 K.S.A. 2014 Supp. 21-5807, and amendments thereto, shall be the  
2 sentence as provided by this section, except that the court may order an  
3 optional nonprison sentence for a defendant to participate in a drug  
4 treatment program, including, but not limited to, an approved after-care  
5 plan, if the court makes the following findings on the record:

6 (1) Substance abuse was an underlying factor in the commission of  
7 the crime;

8 (2) substance abuse treatment in the community is likely to be more  
9 effective than a prison term in reducing the risk of offender recidivism;  
10 and

11 (3) participation in an intensive substance abuse treatment program  
12 will serve community safety interests.

13 A defendant sentenced to an optional nonprison sentence under this  
14 subsection shall be supervised by community correctional services. The  
15 provisions of ~~subsection (f)(1) of~~ K.S.A. 2014 Supp. 21-6824(j)(1), and  
16 amendments thereto, shall apply to a defendant sentenced under this  
17 subsection. The sentence under this subsection shall not be considered a  
18 departure and shall not be subject to appeal.

19 (p) The sentence for a felony violation of theft of property as defined  
20 in K.S.A. 2014 Supp. 21-5801, and amendments thereto, when such  
21 person being sentenced has any combination of three or more prior felony  
22 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to  
23 their repeal, or theft of property as defined in K.S.A. 2014 Supp. 21-5801,  
24 and amendments thereto, or burglary or aggravated burglary as defined in  
25 K.S.A. 2014 Supp. 21-5807, and amendments thereto; or the sentence for a  
26 violation of burglary as defined in ~~subsection (a) of~~ K.S.A. 2014 Supp. 21-  
27 5807(a), and amendments thereto, when such person being sentenced has  
28 any combination of two or more prior convictions for violations of K.S.A.  
29 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as  
30 defined in K.S.A. 2014 Supp. 21-5801, and amendments thereto, or  
31 burglary or aggravated burglary as defined in K.S.A. 2014 Supp. 21-5807,  
32 and amendments thereto, shall be presumed imprisonment and the  
33 defendant shall be sentenced to prison as provided by this section, except  
34 that the court may recommend that an offender be placed in the custody of  
35 the secretary of corrections, in a facility designated by the secretary to  
36 participate in an intensive substance abuse treatment program, upon  
37 making the following findings on the record:

38 (1) Substance abuse was an underlying factor in the commission of  
39 the crime;

40 (2) substance abuse treatment with a possibility of an early release  
41 from imprisonment is likely to be more effective than a prison term in  
42 reducing the risk of offender recidivism; and

43 (3) participation in an intensive substance abuse treatment program

1 with the possibility of an early release from imprisonment will serve  
2 community safety interests by promoting offender reformation.

3 The intensive substance abuse treatment program shall be determined  
4 by the secretary of corrections, but shall be for a period of at least four  
5 months. Upon the successful completion of such intensive treatment  
6 program, the offender shall be returned to the court and the court may  
7 modify the sentence by directing that a less severe penalty be imposed in  
8 lieu of that originally adjudged within statutory limits. If the offender's  
9 term of imprisonment expires, the offender shall be placed under the  
10 applicable period of postrelease supervision. The sentence under this  
11 subsection shall not be considered a departure and shall not be subject to  
12 appeal.

13 (q) As used in this section, an "optional nonprison sentence" is a  
14 sentence which the court may impose, in lieu of the presumptive sentence,  
15 upon making the following findings on the record:

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

19 (2) the recommended treatment program is available and the offender  
20 can be admitted to such program within a reasonable period of time; or

21 (3) the nonprison sanction will serve community safety interests by  
22 promoting offender reformation.

23 Any decision made by the court regarding the imposition of an optional  
24 nonprison sentence shall not be considered a departure and shall not be  
25 subject to appeal.

26 (r) The sentence for a violation of ~~subsection (c)(2) of~~ K.S.A. 2014  
27 Supp. 21-5413(c)(2), and amendments thereto, shall be presumptive  
28 imprisonment and shall be served consecutively to any other term or terms  
29 of imprisonment imposed. Such sentence shall not be considered a  
30 departure and shall not be subject to appeal.

31 (s) The sentence for a violation of K.S.A. 2014 Supp. 21-5512, and  
32 amendments thereto, shall be presumptive imprisonment. Such sentence  
33 shall not be considered a departure and shall not be subject to appeal.

34 (t) (1) If the trier of fact makes a finding that an offender wore or  
35 used ballistic resistant material in the commission of, or attempt to  
36 commit, or flight from any felony, in addition to the sentence imposed  
37 pursuant to the Kansas sentencing guidelines act, the offender shall be  
38 sentenced to an additional 30 months' imprisonment.

39 (2) The sentence imposed pursuant to subsection (t)(1) shall be  
40 presumptive imprisonment and shall be served consecutively to any other  
41 term or terms of imprisonment imposed. Such sentence shall not be  
42 considered a departure and shall not be subject to appeal.

43 (3) As used in this subsection, "ballistic resistant material" means:



1 (A) Any commercially produced material designed with the purpose of  
2 providing ballistic and trauma protection, including, but not limited to,  
3 bulletproof vests and kevlar vests; and (B) any homemade or fabricated  
4 substance or item designed with the purpose of providing ballistic and  
5 trauma protection.

6 (u) The sentence for a violation of K.S.A. 2014 Supp. 21-6107, and  
7 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.  
8 2014 Supp. 21-5301 and 21-5302, and amendments thereto, to commit  
9 such offense, when such person being sentenced has a prior conviction for  
10 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2014 Supp. 21-  
11 6107, and amendments thereto, or any attempt or conspiracy to commit  
12 such offense, shall be presumptive imprisonment. Such sentence shall not  
13 be considered a departure and shall not be subject to appeal.

14 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,  
15 and amendments thereto, shall be presumptive imprisonment and shall be  
16 served consecutively to any other term or terms of imprisonment imposed.  
17 Such sentence shall not be considered a departure and shall not be subject  
18 to appeal.

19 (w) *If the trier of fact makes a finding that an offender's crime was*  
20 *motivated entirely or in part by the race, color, religion, ethnicity, national*  
21 *origin or sexual orientation of the victim or the crime was motivated by*  
22 *the offender's belief or perception, entirely or in part, of the race, color,*  
23 *religion, ethnicity, national origin or sexual orientation of the victim,*  
24 *whether or not the offender's belief or perception was correct, the sentence*  
25 *for such offender shall be as follows:*

26 (1) *If the underlying crime of conviction carries a presumptive term*  
27 *of imprisonment, the sentence shall be double the maximum duration of*  
28 *the presumptive imprisonment term;*

29 (2) *if the underlying crime of conviction carries a presumptive*  
30 *nonprison term, the sentence shall be presumed imprisonment and shall be*  
31 *double the maximum duration of the presumptive imprisonment term; and*

32 (3) *if the underlying crime of conviction is an off-grid crime, the*  
33 *sentence shall be double the sentence prescribed by law for such crime.*

34 Sec. 2. K.S.A. 2014 Supp. 21-6815 is hereby amended to read as  
35 follows: 21-6815. (a) Except as provided in subsection (b), the sentencing  
36 judge shall impose the presumptive sentence provided by the sentencing  
37 guidelines unless the judge finds substantial and compelling reasons to  
38 impose a departure sentence. If the sentencing judge departs from the  
39 presumptive sentence, the judge shall state on the record at the time of  
40 sentencing the substantial and compelling reasons for the departure.

41 (b) Subject to the provisions of ~~subsection (b)~~ of K.S.A. 2014 Supp.  
42 21-6817(b), and amendments thereto, any fact that would increase the  
43 penalty for a crime beyond the statutory maximum, other than a prior

1 conviction, shall be submitted to a jury and proved beyond a reasonable  
2 doubt.

3 (c) (1) Subject to the provisions of subsections (c)(3) and (e), the  
4 following nonexclusive list of mitigating factors may be considered in  
5 determining whether substantial and compelling reasons for a departure  
6 exist:

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

9 (B) The offender played a minor or passive role in the crime or  
10 participated under circumstances of duress or compulsion. This factor may  
11 be considered when it is not sufficient as a complete defense.

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

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

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

21 (2) Subject to the provisions of subsection (c)(3), the following  
22 nonexclusive list of aggravating factors may be considered in determining  
23 whether substantial and compelling reasons for departure exist:

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

27 (B) The defendant's conduct during the commission of the current  
28 offense manifested excessive brutality to the victim in a manner not  
29 normally present in that offense.

30 ~~(C) The offense was motivated entirely or in part by the race, color,  
31 religion, ethnicity, national origin or sexual orientation of the victim or the  
32 offense was motivated by the defendant's belief or perception, entirely or  
33 in part, of the race, color, religion, ethnicity, national origin or sexual  
34 orientation of the victim whether or not the defendant's belief or  
35 perception was correct.~~

36 ~~(D)~~ The offense involved a fiduciary relationship which existed  
37 between the defendant and the victim.

38 ~~(E)~~ (D) The defendant, 18 or more years of age, employed, hired,  
39 used, persuaded, induced, enticed or coerced any individual under 16 years  
40 of age to:

41 (i) Commit any person felony;

42 (ii) assist in avoiding detection or apprehension for commission of  
43 any person felony; or

1 (iii) attempt, conspire or solicit, as defined in K.S.A. 2014 Supp. 21-  
2 5301, 21-5302 and 21-5303, and amendments thereto, to commit any  
3 person felony.

4 That the defendant did not know the age of the individual under 16  
5 years of age shall not be a consideration.

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

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

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

13 (b) a crime involving an act of sexual intercourse, sodomy or lewd  
14 fondling and touching with any child who is 14 or more years of age but  
15 less than 16 years of age and with whom a relationship has been  
16 established or promoted for the primary purpose of victimization;

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

19 (d) aggravated human trafficking, as defined in ~~subsection (b) of~~  
20 K.S.A. 2014 Supp. 21-5426(b), and amendments thereto, if the victim is  
21 less than 14 years of age; or

22 (e) commercial sexual exploitation of a child, as defined in K.S.A.  
23 2014 Supp. 21-6422, and amendments thereto, if the victim is less than 14  
24 years of age.

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

28 (a) Has one or more prior convictions of any crimes of extreme  
29 sexual violence. Any prior conviction used to establish the defendant as a  
30 predatory sex offender pursuant to this subsection shall also be counted in  
31 determining the criminal history category; or

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

35 (iii) "Mental condition or personality disorder" means an emotional,  
36 mental or physical illness, disease, abnormality, disorder, pathology or  
37 condition which motivates the person, affects the predisposition or desires  
38 of the person, or interferes with the capacity of the person to control  
39 impulses to commit crimes of extreme sexual violence.

40 ~~(G)~~ (F) The defendant was incarcerated during the commission of the  
41 offense.

42 ~~(H)~~ (G) The crime involved two or more participants in the criminal  
43 conduct, and the defendant played a major role in the crime as the

1 organizer, leader, recruiter, manager or supervisor.

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

4 (3) If a factual aspect of a crime is a statutory element of the crime or  
5 is used to subclassify the crime on the crime severity scale, that aspect of  
6 the current crime of conviction may be used as an aggravating or  
7 mitigating factor only if the criminal conduct constituting that aspect of the  
8 current crime of conviction is significantly different from the usual  
9 criminal conduct captured by the aspect of the crime.

10 (d) In determining aggravating or mitigating circumstances, the court  
11 shall consider:

12 (1) Any evidence received during the proceeding;

13 (2) the presentence report;

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

16 (4) any other evidence relevant to such aggravating or mitigating  
17 circumstances that the court finds trustworthy and reliable.

18 (e) Upon motion of the prosecutor stating that the defendant has  
19 provided substantial assistance in the investigation or prosecution of  
20 another person who is alleged to have committed an offense, the court may  
21 consider such mitigation in determining whether substantial and  
22 compelling reasons for a departure exist. In considering this mitigating  
23 factor, the court may consider the following:

24 (1) The court's evaluation of the significance and usefulness of the  
25 defendant's assistance, taking into consideration the prosecutor's  
26 evaluation of the assistance rendered;

27 (2) the truthfulness, completeness and reliability of any information  
28 or testimony provided by the defendant;

29 (3) the nature and extent of the defendant's assistance;

30 (4) any injury suffered, or any danger or risk of injury to the  
31 defendant or the defendant's family resulting from such assistance; and

32 (5) the timeliness of the defendant's assistance.

33 New Sec. 3. (a) The attorney general shall collect and disseminate  
34 data on incidents of criminal acts that evidence prejudice based on race,  
35 color, religion, ethnicity, national origin, sexual orientation or disability.  
36 All law enforcement agencies shall report monthly to the attorney general  
37 concerning such offenses in such form and in such manner as prescribed  
38 by rules and regulations adopted by the attorney general. Such information  
39 shall be compiled by the attorney general and disseminated upon request to  
40 any local law enforcement agency, unit of local government or state  
41 agency. Dissemination of such information shall be subject to  
42 confidentiality requirements otherwise imposed by law. Data required  
43 pursuant to this subsection shall be used only for research or statistical

1 purposes and shall not include any information that may reveal the identity  
2 of an individual victim of a crime. The attorney general shall publish an  
3 annual summary of the data required pursuant to this subsection.

4 (b) The attorney general shall provide training for all law  
5 enforcement officers in identifying, responding to and reporting criminal  
6 acts that evidence prejudice based on race, color, religion, ethnicity,  
7 national origin, sexual orientation or disability. The Kansas commission on  
8 peace officers' standards and training shall develop and certify a course of  
9 such training to be made available to all law enforcement officers.

10 Sec. 4. K.S.A. 2014 Supp. 21-6804 and 21-6815 are hereby repealed.

11 Sec. 5. This act shall take effect and be in force from and after its  
12 publication in the statute book.