

21-6627. Mandatory term of imprisonment of 25 or 40 years for certain offenders; exceptions. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in subsection (a)(2):

- (A) Aggravated human trafficking, as defined in subsection (b) of K.S.A. 2014 Supp. 21-5426, and amendments thereto, if the victim is less than 14 years of age;
- (B) rape, as defined in subsection (a)(3) of K.S.A. 2014 Supp. 21-5503, and amendments thereto;
- (C) aggravated indecent liberties with a child, as defined in subsection (b)(3) of K.S.A. 2014 Supp. 21-5506, and amendments thereto;
- (D) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)(2) of K.S.A. 2014 Supp. 21-5504, and amendments thereto;
- (E) commercial sexual exploitation of a child, as defined in K.S.A. 2014 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age;
- (F) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of K.S.A. 2014 Supp. 21-5510, and amendments thereto, if the child is less than 14 years of age; and
- (G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2014 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F).

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

- (A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2014 Supp. 21-6626, and amendments thereto; or
- (B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to July 1, 2011, which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 2014 Supp. 21-5507, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 2014 Supp. 21-5507, and amendments thereto.

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

- (A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2014 Supp. 21-6626, and amendments thereto; or
- (B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

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

(d) (1) On or after July 1, 2006, for a first time conviction of an offense listed in subsection (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the revised Kansas sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and, subject to the provisions of K.S.A. 2014 Supp. 21-6818, and amendments thereto, no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder.

(2) As used in this subsection, "mitigating circumstances" shall include, but are not limited to, the following:

- (A) The defendant has no significant history of prior criminal activity;
- (B) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbances;
- (C) the victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor;
- (D) the defendant acted under extreme distress or under the substantial domination of another person;
- (E) the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired; and
- (F) the age of the defendant at the time of the crime.

(e) The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2014 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.

History: L. 2010, ch. 136, § 267; L. 2011, ch. 30, § 73; L. 2013, ch. 120, § 21; July 1.