

## 2012 Kansas Statutes

**38-2371. Departure sentences; hearing; order; findings of fact; limitations.** (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 21 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in K.S.A. 2012 Supp. 21-6815 and 21-6816, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. When a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in this section. When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term;

(2) the court shall have no authority to reduce the minimum term of confinement as defined within the placement matrix; and

(3) the maximum term for commitment of any juvenile offender to a juvenile correctional facility is age 22 years, 6 months.

(e) A departure sentence may be appealed as provided in K.S.A. 2012 Supp. 38-2380, and amendments thereto.

**History:** L. 2006, ch. 169, § 71; L. 2010, ch. 135, § 54; L. 2011, ch. 30, § 171; July 1.