

**Approved and Disapproved Non-Statutory Departure Reasons Cited by Sentencing Courts
(Update through December 2015)**

Departure Reason	Type of Departure	Approved or Disapproved	Case Name
Possibility that offender's actions could have resulted in death.	Upward durational	Disapproved - not unique to the circumstances of the offender's case.	<i>State v. Caldwell</i> , 21 Kan. App. 2d 466, 901 P.2d 35, <i>rev. denied</i> , 258 Kan. 859 (1995)
Offender's failure to take advantage of prior lenience by the court.	Upward durational	Disapproved - court stated conclusion without finding underlying facts.	<i>State v. Caldwell</i> , 21 Kan. App. 2d 466, 901 P.2d 35, <i>rev. denied</i> , 258 Kan. 859 (1995)
Escalating nature of crimes.	Upward durational	Disapproved - court stated conclusion without finding underlying facts.	<i>State v. Caldwell</i> , 21 Kan. App. 2d 466, 901 P.2d 35, <i>rev. denied</i> , 258 Kan. 859 (1995)
Legislature's intent to punish one crime more severely than another.	Upward durational	Disapproved - severity level and criminal history are already factored into the guidelines.	<i>State v. Caldwell</i> , 21 Kan. App. 2d 466, 901 P.2d 35, <i>rev. denied</i> , 258 Kan. 859 (1995)
Offender's age and immaturity made her less likely to commit offenses in the future.	Downward dispositional	Approved - when combined with other factors of the case.	<i>State v. Crawford</i> , 21 Kan. App. 2d 859, 908 P.2d 638 (1995)
Offender's family responsibilities of raising three children.	Downward dispositional	Approved - when combined with other factors of the case.	<i>State v. Crawford</i> , 21 Kan. App. 2d 859, 908 P.2d 638 (1995)
Rehabilitation efforts.	Downward dispositional	Approved - when combined with other factors of the case.	<i>State v. Crawford</i> , 21 Kan. App. 2d 859, 908 P.2d 638 (1995)
Impressive employment record.	Downward dispositional	Approved - when combined with other factors of the case.	<i>State v. Crawford</i> , 21 Kan. App. 2d 859, 908 P.2d 638 (1995) [See also <i>State v. Murphy</i>]
Offender not a threat to society and had gone to the victim's house out of concern.	Downward dispositional	Approved	<i>State v. Grady</i> , 258 Kan. 72, 900 P.2d 227 (1995)

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Defense failed but was not meritless.	Downward dispositional	Approved - if it shows no predisposition to commit crimes.	<i>State v. Grady</i> , 258 Kan. 72, 900 P.2d 227 (1995)
Lack of premeditation.	Downward dispositional	Disapproved - the lack of premeditation is common to all voluntary manslaughter crimes.	<i>State v. Grady</i> , 258 Kan. 72, 900 P.2d 227 (1995)
Sentencing court's general disagreement with the guidelines and classification of offense under the guidelines.	Downward dispositional	Disapproved	<i>State v. Heath</i> , 21 Kan. App. 2d 410, 901 P.2d 29 (1995)
Age of prior conviction.	Downward dispositional	Approved	<i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995)
Prior conviction unrelated to current offense.	Downward dispositional	Approved	<i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995) [See also <i>State v. Heath</i> , 21 Kan. App. 2d 410, 901 P.2d 29 (1995)]
Statement of victim's family in favor of a nonprison sentence.	Downward dispositional	Approved	<i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995) [See also <i>State v. Heath</i>]
Defendant's nonamenability to probation: Offender committed many burglaries while on parole and thus not amenable to probation supervision.	Upward dispositional	Approved	<i>State v. Trimble</i> , 21 Kan. App. 2d 32, 894 P.2d 920 (1995)
Offender committed many burglaries while on parole and thus not amenable to probation supervision.	Upward dispositional (<i>Meyer</i> involved either a upward dispositional or upward durational)	Approved	<i>State v. Trimble</i> , 21 Kan. App. 2d 32, 894 P.2d 920 (1995) [See also <i>State v. Meyer</i> , 25 Kan. App. 2d 195, 960 P.2d 261, <i>rev. denied</i> , 265 Kan. 888 (1998)]

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Uncharged criminal conduct which amounted to a continuing pattern of abuse.	Upward durational	Approved - to improve public safety, which is one of the purposes of the Guidelines.	<i>State v. Zuck</i> , 21 Kan. App. 2d 597, 904 P.2d 1005, <i>rev. denied</i> , 258 Kan. 863 (1995)
Total senseless and random nature of shooting of victim.	Upward durational	Approved	<i>State v. Alderson</i> , 260 Kan. 445, 922 P.2d 435 (1996). [See also <i>State v. Alderson</i> , 266 Kan. 603, 972 P.2d 1112 (1999)]
No prior felony convictions.	Downward durational and dispositional	Approved	<i>State v. Favela</i> , 259 Kan. 215, 911 P.2d 792 (1996) [See also <i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80, (2001)]
Brother of offender was stabbed and injured by offender's victim.	Downward durational and dispositional	Approved	<i>State v. Favela</i> , 259 Kan. 215, 911 P.2d 792 (1996)
Offender's age and immaturity.	Downward durational and dispositional	Approved	<i>State v. Favela</i> , 259 Kan. 215, 911 P.2d 792 (1996)[See also <i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80, (2001)]
Offender on parole at time committed crimes.	Upward durational	Disapproved - statute addresses how parole status affects sentence, so offender's parole status alone is not a reason to depart.	<i>State v. Hawes</i> , 22 Kan. App. 2d 837, 923 P.2d 1064 (1996) [See also <i>State v. Yardley</i> , 267 Kan. 37, 978 P.2d 886 (1999)]
Uncharged prior conduct unrelated to instant offense.	Upward durational	Disapproved - violates the presumption of innocence.	<i>State v. Hawes</i> , 22 Kan. App. 2d 837, 923 P.2d 1064 (1996)
Prior excessive nonperson felonies.	Upward durational	Disapproved - shows only persistent criminal conduct.	<i>State v. Hawes</i> , 22 Kan. App. 2d 837, 923 P.2d 1064 (1996)

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Finding that prior property crimes were committed to facilitate drug use.	Upward durational	Disapproved - finding was unsubstantiated in the record.	<i>State v. Hawes</i> , 22 Kan. App. 2d 837, 923 P.2d 1064 (1996)
Offender failed to render aid to victim.	Upward durational and dispositional	Approved	<i>State v. Hunter</i> , 22 Kan. App. 2d 103, 911 P.2d 1121 (1996), <i>rev. denied</i> 259 Kan. 929 (1996)
Offender had history of drug convictions that demonstrated his repeated involvement in drugs.	Upward durational	Approved	<i>State v. Hernandez</i> , 24 Kan. App. 2d 285, 944 P.2d 188 (1997), <i>rev. denied</i> 263 Kan. 888 (1997)
Offender knowingly lied in an affidavit to the trial court.	Upward durational	Approved	<i>State v. Mitchell</i> , 262 Kan. 434, 939 P.2d 879 (1997)
Child victim of crime was sexual aggressor.	Downward durational	Approved	<i>State v. Rush</i> , 24 Kan. App. 2d 113, 942 P.2d 55 (1997), <i>rev. denied</i> 262 Kan. 968 (1997)
Victim of sex crime vulnerable because of young age (7 years).	Upward durational	Disapproved - age of the victim is a statutory element of the offense.	<i>State v. Salcido-Corral</i> , 262 Kan. 392, 940 P.2d 11 (1997)
A murder while operating a crack house created danger to society as a whole.	Upward durational	Disapproved - insufficient evidence to support the finding in this case.	<i>State v. Bailey</i> , 263 Kan. 685, 952 P.2d 1289 (1998)
Offender absconded for 2 years while on bond, not amenable to probation.	Upward dispositional	Approved	<i>State v. Billington</i> , 24 Kan. App. 2d 759, 953 P.2d 1059 (1998)
Defendant's nonamenability to probation and absconding for 2 years while on bond.	Upward dispositional	Approved	<i>State v. Billington</i> , 24 Kan. App. 2d 759, 953 P.2d 1059 (1998)

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Defendant's nonamenability to probation.		Approved	<i>State v. Sewell</i> , 25 Kan. App. 2d 731, 971 P2d 1201 (1998).
Defendant's nonamenability to probation.	Upward dispositional	Approved	<i>State v. Meyer</i> , 25 Kan. App. 2d 759, 960 P2d 261 <i>rev. denied</i> 265 Kan 888 (1998)
Offender had “shown a pattern of exploiting young girls.”	Upward dispositional	Disapproved - finding was not sufficiently substantiated in the record.	<i>State v. French</i> , 26 Kan. App. 2d 24, 977 P.2d 281 (1999) [See also <i>State v. Peterson</i> , 25 Kan. App. 2d 354, 964 P.2d 695, (1998), <i>rev. denied</i> 266 Kan. 1114 (1998)]
Expert testimony.	Downward dispositional	Disapproved - expert testimony that excludes consideration of the crime committed should not as a matter of law, be relied upon by the sentencing court in a departure sentence.	<i>State v. Chrisko</i> , 26 Kan. App. 2d 816, 995 P.2d 401 (1999)
Criminal offender’s veracity, or the lack thereof, when the offender testifies on his/her own behalf.	Upward durational	Approved	<i>State v. Smart</i> , 26 Kan. App. 2d 808, 995 P.2d 407 (1999)
Defendant's nonamenability to probation, future dangerousness, and randomness of crimes	Upward durational	Approved	<i>State v. Yardley</i> , 267 Kan. 37, 978 P2d 886 (1999).

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Nonamenability to probation based on the offender's disregard of previous court orders.	Upward dispositional	Approved - although four nonstatutory reasons were also relied upon by the sentencing court, nonamenability to probation was sufficient by itself.	<i>State v. Rodriguez</i> , 269 Kan. 633, 8 P.3d 712 (2000)
Minor female victim's aggressiveness and actions leading up to act of sexual intercourse may be considered at sentencing.	Downward durational	Approved - under the facts of this case.	<i>State v. Sampsel</i> , 268 Kan. 264, 997 P.2d 664 (2000)
Offender's attitude towards the seriousness of the offense and the intentional missing of a court date when the offender absconded.	Upward dispositional	Disapproved - no substantial and compelling reasons to support a dispositional departure for nonstatutory reasons.	<i>State v. McKay</i> , 28 Kan. App. 2d 185, 12 P.3d 924 (2000) [See also <i>State v. McKay</i> , 271 Kan. 725, 26 P.3d 58, (2001)]
Offender had nothing to gain from the incident.	Downward dispositional	Approved - nonstatutory factors may be relied upon if they are supported by the evidence.	<i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)
Offender did not instigate the incident.	Downward dispositional	Approved - see above.	<i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)
Offender had already been accepted into Labette.	Downward dispositional	Approved - see above.	<i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)
Offender had a supportive family.	Downward dispositional	Approved - see above.	<i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)
Offender's presumptive sentence in another conviction, sentenced at the same time, rendered Benoit nonamenable	Upward dispositional	Approved	<i>State v. Benoit</i> , 31 Kan. App. 2d 591, 97 P.3d 497 (2003)

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to probation.			
Offender owed a fiduciary duty to his clients	Upward durational	Disapproved	<i>State v. Matthews</i> , 32 Kan. App. 2d 281, 81 P.3d 1268, <i>rev. denied</i> , 277 Kan. 926 (2003)
The court found the victims of the forgeries to be the children in the baseball program and that the children, because of their ages, were particularly vulnerable to the offender's actions.	Upward dispositional	Disapproved	<i>State v. Neri</i> , 32 Kan. App. 2d 1131, 95 P.3d 121, <i>rev. denied</i> , 278 Kan. 850 (2004)
Offender's role as the ring leader in a identity theft ring	Upward dispositional	Disapproved	<i>State v. Martin</i> , 279 Kan. 623, 112 P.3d 192 (2005)(reversing <i>State v. Martin</i> , 32 Kan. App. 2d 642, 87 P.3d 337 (2004))
Offender's presumptive sentence relative to the presumptive sentences of the codefendants in relation to each defendant's relative culpability.	Downward dispositional and durational	Disapproved - when the court based it upon the defendant's age relative to the age of the juvenile codefendants when comparing the presumptive sentence	<i>State v. Haney</i> , 34 Kan. App. 2d 232, 116 P.3d 747 (2005) [See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735 (2005).

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<p>Relatively small degree of harm or loss associated with the particular crime.</p>	<p>Downward dispositional and durational</p>	<p>Disapproved - when the court relied on the relative ages of victim and defendant in determining degree of harm</p>	<p><i>State v. Haney</i>, 34 Kan. App. 2d 232, 116 P.3d 747 (2005) [See also, <i>State v. Ussery</i>, 34 Kan. App. 2d 250, 116 P.3d 735 (2005).</p>
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Willing participation of the victim in the criminal conduct (victim was an experienced drinker; the alcohol was not furnished by defendant; no threats, force, or weapons involved; victim requested defendant to wear a condom before engaging in sex with her.)	Downward dispositional and durational	Approved - on facts of this case, i.e. conflicting stories of victim participation and absence of any threats or force used	<i>State v. Haney</i> , 34 Kan. App. 2d 232, 116 P.3d 747 (2005) [See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735 (2005).]
Defendant's receptiveness to rehabilitation.	Downward dispositional and durational	Disapproved - must be considered in the totality of the circumstances	<i>State v. Haney</i> , 34 Kan. App. 2d 232, 116 P.3d 747 (2005) [See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735 (2005).]
Four reasons provided: 1)Victims' actions invited the reaction; 2) removal of defendant from children's life would be detrimental to them; 3) defendant had sought treatment for anger issues; 4) Amenability to rehabilitation	Downward dispositional	Approved -any one of those factors, standing alone, would not necessarily justify a downward departure. However, when considered in their totality, they were substantial and compelling.	<i>State v. Bolden</i> , 35 Kan. App. 2d 576, 132 P3d 981 (2006)
Defendant's nonamenability to probation	Upward durational and dispositional	Approved	<i>State v. Snow</i> , 282 Kan. 323, 144 P.3d 729 (2006).
Defendant illegal alien status makes him nonamenable to probation.	Upward dispositional	Disapproved -If defendant has not previously been deported, then the mere fact of his illegal alien status does not in itself render him	<i>State v. Martinez</i> , 38 Kan. App. 2d 324, P3d (2007.)

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		nonamenable to probation	
14-year-old's voluntary participation and defendant's age of 19	Downward dispositional	Approved	<i>State v. Chapman</i> , #95,687 Unpublished (May 2007)
Trial Court's personal opinion that the jury should have convicted the defendant of involuntary manslaughter rather than 2nd degree unintentional murder	Downward dispositional	Disapproved	<i>State v. Blackmon</i> , #95,696 Unpublished (April, 2007)
Fiduciary relationship between defendant and co-defendant son.	Upward dispositional	Disapproved	<i>State v. Martin</i> , #95,819 Unpublished (April, 2007)
Victims' request for leniency	Downward dispositional	Disapproved	<i>State v. Hines</i> , Ct App. No. 102,233 (August, 2010)
Offender's age of 76 means that a hard 25 sentence is effectively life behind bars	Downward dispositional	Disapproved – there was no evidence that the defendant's age impaired his judgment or otherwise mitigated the offense.	<i>State v. Spencer</i> , 291 Kan. 796, 248 P.3d 256 (2011)
Offender's lack of criminal record (KS Sup. Ct. noted that evidence showed offenses had continued for years, even though there were no prior convictions)	Downward dispositional	Disapproved	<i>State v. Spencer</i> , 291 Kan. 796, 248 P.3d 256 (2011)
Support of <u>some</u> family and friends (disapproved because other family and friends felt strongly that prison was appropriate)	Downward dispositional	Disapproved	<i>State v. Spencer</i> , 291 Kan. 796, 248 P.3d 256 (2011)

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Trial court determined degree of harm less based on “lukewarm” statements from victims’ family members, which contradicted victims’ statement of harm.	Downward dispositional	Disapproved	<i>State v. Spencer</i> , 291 Kan. 796, 248 P.3d 256 (2011)
Departure Reason	Type of Departure	Approved or Disapproved	Case Name
If crime committed a week later it would have not been off-grid.	Downward durational	Disapproved - not rise to level of substantial and compelling	<i>State v. Beaman</i> , 286 P.3d 876 (2012)
Well-behaved while incarcerated before trial	Downward durational	Disapproved - not rise to level of substantial and compelling	<i>State v. Beaman</i> , 286 P.3d 876 (2012)
Sex crime criminal conduct was nonviolent	Downward durational	Disapproved - conduct was by definition violent.	<i>State v. Woodard</i> , 294 Kan. 717, 280 P.3d 203 (2012)
Lack of criminal history in Jessica's Law case	Downward durational	Disapproved - district court is not obligated to depart simply because a mitigating factor exists	<i>State v. Baptist</i> , 294 Kan. 728, 280 P.3d 210 (2012)
Length of time since prior conviction, work history, family support, accepted responsibility and offender registration sufficient	Downward durational	Disapproved - mitigating factors not substantial and compelling in light of the circumstances of the case	<i>State v. Mason</i> , 294 Kan. 675, 279 P.3d 707 (2012)
Motivated in part by victim's race and skin color	Upward dispositional	Approved - basis was a statutory factor	<i>State v. Stawski</i> , 47 Kan.App.2d 172, 271 P.3d 1282 (2012)

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Diminished mental capacity and maturity, lack of criminal history, and victim allegedly made the initial advances and was a willing participant	Downward durational	Disapproved - mitigating factors not substantial and compelling in light of the circumstances of the case	<i>State v. Roberts</i> , 293 Kan. 1093, 272 P.3d 24 (2012)
Departure Reason	Type of Departure	Approved or Disapproved	Case Name
Defendant accepted responsibility for his actions and character evidence showed he was not a danger to the public.	Downward Durational Departure	Approved	<i>State v. Bird</i> , Kansas Supreme Court No. 103,855
Victim's request for leniency was not compelling in light of the facts and nature of the crime.	Downward Durational Departure	Ks Supreme Court affirmed Court of Appeals ruling, which reversed the district court's grant of departure	<i>State v. Hines</i> 296 Kan. 608,294 P.3d 270 (2013)
The departure sentence imposed was not disproportionate to the severity level of the crime committed when weighed against the two mitigating factors (age at time of offense and previous prison time already served), which when considered collectively were substantial and compelling reasons that justified the departure sentence.	Downward Durational Departure	Approved	<i>State v. Cato-Perry</i> , 332 P.3d 191 (2014)
Additional Departure Information:			

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<p>On remand for resentencing, a sentencing court may state the “substantial and compelling reasons” justifying a departure, even if the reasons were not stated at the original sentencing.</p>			<p><i>State v. Peterson</i>, 25 Kan. App. 2d 354, 964 P.2d 695, <i>rev. denied</i> 266 Kan. 1114 (1998)</p>
<p>A sentencing judge who mistakenly references the nonexclusive list of mitigating factors found in K.S.A. 21-4716(c)(1) (presumptive sentencing guidelines sentence; downward departure), which is a part of the general statute under the Kansas Sentencing Guidelines Act, rather than the more specific Jessica’s Law’s nonexclusive list of mitigating departure factors found in K.S.A. 21-4643(d), abuses his or her discretion by making error of law.</p>			<p><i>State v. Randolph</i> 297 Kan. 320,301 P.3d 300 (2013)</p>
<p>A defendant who requests a durational departure to a specific term, and then receives a favorable durational departure but to a term longer than the one requested, could appeal that ruling.</p>	<p>Downward Durational Departure</p>	<p>Approved</p>	<p><i>State v. Looney</i>, 299 Kan. 903, 327 P.3d 425 (2014)</p>

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<p>Jessica’s Law Departures – K.S.A. 21-4643(d), now proper statutory method when considering a departure: first, review the mitigating circumstances without any attempt to weigh them against any aggravating circumstances; then, in considering the facts of the case, determine whether the mitigating circumstances rise to the level of substantial and compelling reasons to depart from the otherwise mandatory sentence; and, finally, if substantial and compelling reasons are found for a departure to a sentence within the appropriate sentencing guidelines, the district court must state on the record those substantial and compelling reasons.</p>	<p>Downward Durational Departure</p>	<p>Explained</p>	<p><i>State v. Jolly, 301 Kan. 313, 342 P.3d 935 (2015)</i></p>
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