

21-6816. Departure sentencing for drug crimes; finding substantial and compelling reasons for departure; aggravating factors considered in determining if reasons exist. (a) The following aggravating factors apply to drug crimes and may be considered in determining whether substantial and compelling reasons for departure exist:

- (1) The crime was committed as part of a major organized drug manufacture, cultivation or distribution activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, cultivation or distribution activity:
 - (A) The offender derived a substantial amount of money or asset ownership from the illegal drug activity.
 - (B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.
 - (C) The presence of drug transaction records or customer lists that indicate a drug activity of major size.
 - (D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.
 - (E) Building acquisitions or building modifications including, but not limited to, painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense.
 - (F) Possession of large amounts of illegal drugs or substantial quantities of controlled substances.
 - (G) A showing that the offender has engaged in repeated criminal acts associated with the manufacture, cultivation or distribution of controlled substances.
- (2) The offender possessed illegal drugs with the intent to distribute, which were distributed, or offered for distribution:
 - (A) to a person under 18 years of age; or
 - (B) in the immediate presence of a person under 18 years of age.
- (3) The offender, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age:
 - (A) To violate any provision of K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto;
 - (B) to assist in avoiding detection or apprehension for violation of any provision of K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto; or
 - (C) to attempt, conspire or solicit, as defined in K.S.A. 2014 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, to commit a violation of any provision of K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto.That the offender did not know the age of the individual under 16 years of age shall not be a consideration.
- (4) The offender was incarcerated during the commission of the offense.
- (b) In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

History: L. 2010, ch. 136, § 297; July 1, 2011.