

**Approved and Disapproved Non-Statutory Departure Reasons Cited by Sentencing Courts  
(Update through August 2010)**

| <b>Departure Reason</b>  | <b>Type of Departure</b> | <b>Approved or Disapproved</b>   | <b>Case Name</b>   |
|--|--------------------------|--|--|
| Possibility that offender's actions could have resulted in death.                    | Upward durational        | <b>Disapproved</b> - 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        | <b>Disapproved</b> - 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        | <b>Disapproved</b> - 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        | <b>Disapproved</b> - 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   | <b>Approved</b> - 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   | <b>Approved</b> - 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   | <b>Approved</b> - 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   | <b>Approved</b> - 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   | <b>Approved</b>  | <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  | <b>Approved</b> - 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  | <b>Disapproved</b> - 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  | <b>Disapproved</b>   | <i>State v. Heath</i> , 21 Kan. App. 2d 410, 901 P.2d 29 (1995)  |
| Age of prior conviction.  | Downward dispositional  | <b>Approved</b>  | <i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995)  |
| Prior conviction unrelated to current offense.  | Downward dispositional  | <b>Approved</b>  | <i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995)<br>[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  | <b>Approved</b>  | <i>State v. Richardson</i> , 20 Kan. App. 2d 932, 901 P.2d 1 (1995)<br>[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  | <b>Approved</b>  | <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<br>( <i>Meyer</i> involved either a upward dispositional or upward durational) | <b>Approved</b>  | <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                     | <b>Approved</b> - 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                     | <b>Approved</b>   | <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 | <b>Approved</b>   | <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 | <b>Approved</b>   | <i>State v. Favela</i> , 259 Kan. 215, 911 P.2d 792 (1996)  |
| Offender's age and immaturity.  | Downward durational and dispositional | <b>Approved</b>   | <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                     | <b>Disapproved</b> - 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                     | <b>Disapproved</b> - 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                     | <b>Disapproved</b> - 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                   | <b>Disapproved</b> - 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 | <b>Approved</b>   | <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                   | <b>Approved</b>   | <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                   | <b>Approved</b>   | <i>State v. Mitchell</i> , 262 Kan. 434, 939 P.2d 879 (1997)   |
| Child victim of crime was sexual aggressor.   | Downward durational                 | <b>Approved</b>   | <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                   | <b>Disapproved</b> - 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                   | <b>Disapproved</b> - 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                | <b>Approved</b>   | <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                | <b>Approved</b>   | <i>State v. Billington</i> , 24 Kan. App. 2d 759, 953 P.2d 1059 (1998)                                       |

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| Defendant's nonamenability to probation.  |                          | <b>Approved</b>   | <i>State v. Sewell</i> , 25 Kan. App. 2d 731, 971 P2d 1201 (1998).  |
| Defendant's nonamenability to probation.  | Upward dispositional     | <b>Approved</b>   | <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     | <b>Disapproved</b> - 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   | <b>Disapproved</b> - 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. Chrisco</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        | <b>Approved</b>   | <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        | <b>Approved</b>   | <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     | <b>Approved</b> - 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      | <b>Approved</b> - 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     | <b>Disapproved</b> - 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   | <b>Approved</b> - 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   | <b>Approved</b> - see above.  | <i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)  |
| Offender had already been accepted into Labette.  | Downward dispositional   | <b>Approved</b> - see above.  | <i>State v. Murphy</i> , 270 Kan. 804, 19 P.3d 80 (2001)  |
| Offender had a supportive family.   | Downward dispositional   | <b>Approved</b> - 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 to probation.        | Upward dispositional     | <b>Approved</b>   | <i>State v. Benoit</i> , 31 Kan. App. 2d 591, 97 P.3d 497 (2003)  |

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| Offender owed a fiduciary duty to his clients   | Upward durational                     | <b>Disapproved</b>   | <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                  | <b>Disapproved</b>   | <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                  | <b>Disapproved</b>   | <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 | <b>Disapproved</b> - 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, <i>rev. denied</i> , 280 Kan. ____ (2005) (all four reasons taken in totality were sufficient for departure but the court abused its discretion in the extent of departure awarded) [ See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735, <i>rev. denied</i> 280 Kan. (2005). |

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| Relatively small degree of harm or loss associated with the particular crime.   | Downward dispositional and durational | <b>Disapproved</b> - when the court relied on the relative ages of victim and defendant in determining degree of harm              | <i>State v. Haney</i> , 34 Kan. App. 2d 232, 116 P.3d 747, rev. denied, 280 Kan. ____ (2005) (all four reasons taken in totality were sufficient for departure but the court abused it's discretion in the extent of departure awarded) [ See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735, rev. denied 280 Kan. (2005). |
| Willing participation of the victim in the criminal conduct. (Specifically, victim was an experienced drinker; the alcohol had not been furnished by defendant; there were no threats, force, or weapons involved in defendant's conduct; and the victim requested defendant to wear a condom before engaging in sex with her.) | Downward dispositional and durational | <b>Approved</b> - 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, rev. denied, 280 Kan. ____ (2005) (all four reasons taken in totality were sufficient for departure but the court abused it's discretion in the extent of departure awarded) [ See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735, rev. denied 280 Kan. (2005). |



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| Defendant's receptiveness to rehabilitation.  | Downward dispositional and durational | <b>Disapproved</b> - must be considered in the totality of the circumstances   | <i>State v. Haney</i> , 34 Kan. App. 2d 232, 116 P.3d 747, rev. denied, 280 Kan. ___ (2005) (all four reasons taken in totality were sufficient for departure but the court abused it's discretion in the extent of departure awarded) [ See also, <i>State v. Ussery</i> , 34 Kan. App. 2d 250, 116 P.3d 735, rev. denied 280 Kan. (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                | <b>Approved</b> -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   | <b>Approved</b>  | <i>State v. Snow</i> , 282 Kan. 323, 144 P.3d 729 (2006).   |
| Defendant illegal alien status makes him nonamenable to probation.  | Upward dispositional                  | <b>Disapproved</b> -If defendant has not previously been deported, then the mere fact of his illegal alien status does not in itself render him nonamenable to probation                         | <i>State v. Martinez</i> , 38 Kan. App. 2d 324, P3d (2007.)   |
| 14-year-old's voluntary participation and defendant's age of 19   | Downward dispositional                | <b>Approved</b>  | <i>State v. Chapman</i> , #95,687 Unpublished (May 2007)  |

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| Trial Court's personal opinion that the jury should have convicted the defendant of involuntary manslaughter rather than 2nd degree unintentional murder                                  | Downward dispositional   | <b>Disapproved</b>             | <i>State v. Blackmon</i> , #95,696<br>Unpublished (April, 2007)                                       |
| Fiduciary relationship between defendant and co-defendant son.  | Upward dispositional     | <b>Disapproved</b>             | <i>State v. Martin</i> , #95,819<br>Unpublished (April, 2007)   |
| <b>Additional Departure Information:</b>  |                          |                                |   |
| 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. |                          |                                | <i>State v. Peterson</i> , 25 Kan. App. 2d 354, 964 P.2d 695, <i>rev. denied</i> 266 Kan. 1114 (1998) |
| Victims' request for leniency   | Downward dispositional   | <b>Disapproved</b>             | <i>State v. Hines</i> , Ct App. No. 102,233 (August, 2010)  |