

**IN THE DISTRICT COURT OF _____ COUNTY, KANSAS
JUVENILE DIVISION**

IN THE MATTER OF:

_____, juvenile
DOB: xx-xx-____ A male female

Case No. 20__-JV-_____

MODIFICATION OF SENTENCE ORDER

Pursuant to K.S.A. 38-2367

On this ____ day of _____ 20____, this matter comes before the Court to consider the motion for sentence modification, the Honorable _____, district judge, presides.

THE COURT FINDS that the juvenile named above was previously adjudicated a juvenile offender in this proceeding and jurisdiction and venue are proper. Notice to parties and those required to receive notice has been given as required by law.

The State appears by _____, assistant county/district attorney or designee.

The juvenile appears **in person and** **not in person, but** by the juvenile's attorney, _____.

The mother **is** **is not** present.

The father **is** **is not** present.

The Court Services Office (CSO) is present through _____

The Commissioner is present through _____

Also present is/are: _____

THE COURT, having reviewed the file, received the evidence, and heard statements of counsel, makes the following findings and enters the following orders:

The sentence previously imposed in this matter continues to be in the best interests of the juvenile offender, and the motion is denied.

OR

The sentence previously imposed in this matter is not in the best interests of the juvenile offender and the Court rescinds and sets aside that sentence and enters the following sentence: *(An Order Authorizing Removal, Form 312, must be entered if this is the first order removing the juvenile from the home in the present case.)* _____

OR

The Court entered a sentence on _____ (less than 60 days before this modification) committing the juvenile to the custody of the Commissioner for commitment to a juvenile correctional facility and the sentence should be modified. The Court rescinds and sets aside that sentence and enters the following sentence: *(Form 350 may be used) (An Order Authorizing Removal, Form 312, must be entered if this is the first order removing the juvenile from the home in the present case.)*

OR

The Court entered a sentence committing the juvenile to the custody of the Commissioner for commitment to a juvenile correctional facility. Upon motion of the Commissioner, the Court finds that the medical condition of the juvenile justifies a reduction in sentence **OR** the juvenile's exceptional adjustment and rehabilitation merit a reduction in sentence. The Court rescinds and sets aside that sentence and enters the following sentence: *(Form # 350 may be used) (An Order Authorizing Removal, Form 312, must be entered if this is the first order removing the juvenile from the home in the present case.)*

THE COURT FURTHER FINDS: _____

THE COURT FURTHER ORDERS: _____

IT IS SO ORDERED THIS _____ DAY OF _____ 20____.

Judge of the District Court

Prepared by:

Acknowledged by:

Assistant County/District Attorney #

Attorney for Juvenile #

Authority

K.S.A. 38-2367.

Notes on Use

The statute provides for modification of an order of custody or placement issued as part of the sentence after a hearing on a motion for modification. An order of commitment to a juvenile correctional facility may be modified any time within 60 days of the order of commitment, except upon the motion of the commissioner. Upon the motion of the commissioner, the court may modify an order of commitment to a juvenile correctional facility at any time if the medical condition of the juvenile justifies a reduction in sentence or where the juvenile's exceptional adjustment and habilitation merit a reduction in sentence. K.S.A. 38-2367(e). Sentencing Form 350 may accompany this form. If the order of modification is the first removal of the juvenile from the home or if the juvenile is removed after having been back in the home for 6 months or longer, then an Order Authorizing Removal (Form 312) or an alternative form approved by Supreme Court Administrative Order No. 155 must be completed and attached for filing.

Although proceedings under the revised juvenile justice code are considered civil proceedings, adjudication as a juvenile offender may be a consideration in the imposition of an adult sentence for a subsequent conviction under the criminal code. For this reason, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), may be a consideration. The Supreme Court found that it is unconstitutional to remove from a jury the assessment of facts that serve to increase the prescribed range of penalties to which the defendant is exposed.

Comments

Within 60 days after commitment, the sentencing court can enter any other appropriate sentence, including one below statutory minimum. *In re T.A.L.*, 28 Kan.App.2d 396, 15 P.3d 850 (2000).

A juvenile is subject to the jurisdiction of the court until completion of the community based program. *In re Habeas Corpus Petition of S.J.K.*, 32 Kan.App.2d 1067, 94 P.3d 734 (2004).