

**Proposed Legislation for 2009**  
Revised Kansas Juvenile Justice Code

1 AN ACT concerning juvenile offenders; amending K.S.A. 2008 Supp. 38-2304 and K.S.A. 38-2305,  
2 38-2344, 38-2357, 38-2364, 38-2365, 38-2373 and repealing the existing sections.

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4 **Section 1. K.S.A. 2008 Supp. 38-2304. Jurisdiction; presumption of age of juvenile; placement**  
5 **with department of social and rehabilitation services or juvenile justice authority; costs.** (a)

6 Except as provided in K.S.A. 2007 Supp. 38-2347, and amendments thereto, proceedings concerning  
7 a juvenile shall be governed by the provisions of this code.

8 (b) The district court shall have original jurisdiction to receive and determine proceedings under  
9 this code.

10 (c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this  
11 code, unless the contrary is proved.

12 (d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as  
13 otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

14 (1) The complaint is dismissed;

15 (2) the juvenile is adjudicated not guilty at trial;

16 (3) the juvenile, after being adjudicated guilty and sentenced:

17 (i) Successfully completes the term of probation or order of assignment to community  
18 corrections;

19 (ii) is discharged by the commissioner pursuant to K.S.A. 2007 Supp. 38-2376, and amendments  
20 thereto;

21 (iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction beyond  
22 age 21;

23 (4) the court terminates jurisdiction; or

24 (5) the offender is convicted of a new felony while the offender is incarcerated in a juvenile  
25 correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2007 Supp. 38-2373, and  
26 amendments thereto, for an offense, which if committed by an adult would constitute the commission  
27 of a felony.

28 (e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall  
29 continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd  
30 birthday if either or both of the following conditions apply:

31 (1) The juvenile offender is sentenced pursuant to K.S.A. 2007 Supp. 38-2369, and amendments  
32 thereto, and the term of the sentence including successful completion of aftercare extends beyond the  
33 juvenile offender's 21st birthday; or

34 (2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution  
35 and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile  
36 justice code.

37 (f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile  
38 offender's continuing responsibility to pay restitution ordered.

39 (g) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the  
40 custody of the secretary of social and rehabilitation services under the Kansas code for care of  
41 children, the sentencing court may order the continued placement of the juvenile offender as a child  
42 in need of care unless the offender was adjudicated for a felony or a second or subsequent  
43 misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the  
44 continued placement cannot be ordered unless the court finds there are compelling circumstances  
45 which, in the best interest of the juvenile offender, require that the placement should be continued. In  
46 considering whether compelling circumstances exist, the court shall consider the reports and  
47 recommendations of the foster placement, the contract provider, the secretary of social and

1 rehabilitation services, the presentence investigation and all other relevant factors. If the foster  
2 placement refuses to continue the juvenile in the foster placement the court shall not order continued  
3 placement as a child in need of care.

4 (2) If a placement with the secretary of social and rehabilitation services is continued after  
5 sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

6 (3) If the juvenile offender is placed in the custody of the juvenile justice authority, the secretary  
7 of social and rehabilitation services shall not be responsible for furnishing services ordered in the  
8 child in need of care proceeding during the time of the placement pursuant to the revised Kansas  
9 juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing  
10 other services provided by the department of social and rehabilitation services or any other state  
11 agency if the juvenile offender is otherwise eligible for the services.

12 (h) A court's order affecting a child's custody, residency, parenting time and visitation that is  
13 issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding  
14 under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (parentage  
15 act), a proceeding under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments  
16 thereto (divorce), a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and  
17 amendments thereto (protection from abuse act), a proceeding under article 21 of chapter 59 of the  
18 Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), a proceeding  
19 under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians  
20 and conservators), or a comparable case in another jurisdiction, except as provided by Kansas  
21 Statutes Annotated, 38-1336 et seq., and amendments thereto.

22 **Section 2. K.S.A. 38-2305. Venue.** (a) Venue for proceedings in any case involving a juvenile shall  
23 be in any county where any act of the alleged offense was committed.

24 (b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county  
25 of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the  
26 county where the adjudication occurred. When the sentencing hearing is to be held in a county other  
27 than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court  
28 and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing  
29 court a facsimile of the complaint, the adjudication journal entry or judge's minutes, if available, and  
30 any recommendations in regard to sentencing. Such documents shall be sent for purposes of  
31 notification and shall not constitute original court documents. The adjudicating court shall also send  
32 to the sentencing court a complete copy of the official and social files in the case by mail within five  
33 working days of the adjudication.

34 (c) If the juvenile offender is adjudicated in a county other than the county of the juvenile  
35 offender's residence, the sentencing hearing may be held in the county in which the adjudication was  
36 made or, if there are not any ongoing proceedings under the Kansas code for care of children, in the  
37 county of the residence of the custodial parent, parents, guardian or conservator if the adjudicating  
38 judge, upon motion ~~by any person authorized to appeal~~, finds that it is in the interest of justice. If  
39 there are ongoing proceedings under the revised Kansas code for care of children, then the  
40 sentencing hearing shall be held in the county in which the proceedings under the revised Kansas  
41 code for care of children are being held.

42 **Section 3. K.S.A. 38-2344. First appearance; plea.** (a) When the juvenile appears without an  
43 attorney in response to a complaint, the court shall inform the juvenile of the following:

- 44 (1) The nature of the charges in the complaint;
- 45 (2) the right to hire an attorney of the juvenile's own choice;
- 46 (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile  
47 or parent; and
- 48 (4) that the court may require the juvenile or parent to pay the expense of a court appointed  
49 attorney.

1 Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no  
2 request is made or the juvenile or parent is financially unable to hire an attorney, the court shall  
3 forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to  
4 confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

5 (b) When the juvenile appears with an attorney in response to a complaint, the court shall require  
6 the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the complaint,  
7 unless there is an application for and approval of an immediate intervention program. Prior to making  
8 this requirement, the court shall inform the juvenile of the following:

- 9 (1) The nature of the charges in the complaint;  
10 (2) the right of the juvenile to be presumed innocent of each charge;  
11 (3) the right to *a jury* trial without unnecessary delay;  
12 (4) ~~and the right~~ to confront and cross-examine witnesses appearing in support of the allegations of  
13 the complaint;  
14 ~~(4) (5)~~ the right to subpoena witnesses;  
15 ~~(5) (6)~~ the right of the juvenile to testify or to decline to testify; and  
16 ~~(6) (7)~~ the sentencing alternatives the court may select as the result of the juvenile being  
17 adjudicated a juvenile offender.

18 (c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo*  
19 *contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That there  
20 has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4) and (5); and (2) that  
21 there is a factual basis for the plea.

22 (d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial ~~to the court~~.

23 (e) First appearance may be conducted by two-way electronic audio-video communication between  
24 the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the  
25 courtroom from any location within Kansas in the discretion of the court. The juvenile may be  
26 accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be  
27 personally present in court as long as a means of confidential communication between the juvenile and  
28 the juvenile's attorney is available.

29 **Section 4. K.S.A. 38-2357. Jury trials in certain cases. In all cases involving offenses committed by**  
30 **a juvenile which, if done by an adult, would make the person liable to be arrested and prosecuted for**  
31 **the commission of a felony, the judge may upon motion, order that the juvenile be afforded a trial by**  
32 **jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall proceed with**  
33 **sentencing. Method of Trial. A juvenile is entitled to a trial by one of the following means: (a) The**  
34 **trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in**  
35 **writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time**  
36 **requirement provided in this subsection regarding when a jury trial shall be requested may be waived**  
37 **in the discretion of the court upon a finding that imposing such time requirement would cause undue**  
38 **hardship or prejudice to the juvenile.**

39 **(1) A jury in a felony case shall consist of twelve members. However the parties may agree in**  
40 **writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any**  
41 **number less than twelve.**

42 **(2) A jury in a misdemeanor case shall consist of six members.**

43 **(3) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall**  
44 **be determined by the jury.**

45 **(4) The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and**  
46 **an inquiry shall be made whether it is the jury's verdict. If any juror disagrees, the jury must be sent**  
47 **out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the**  
48 **verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it**  
49 **may be corrected by the court, with the assent of the jury, before it is discharged.**

1 (5) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony  
2 cases shall apply to jury trials in misdemeanor cases.

3 (6) Trials in the municipal court of a city shall be to the court.

4 (7) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

5 **Section 5. K.S.A. 38-2364. Extended jurisdiction juvenile prosecution; violating conditions of**  
6 **stayed juvenile sentence; hearing.** (a) If an extended jurisdiction juvenile prosecution results in a  
7 guilty plea or finding of guilt, the court shall:

8 (1) Impose one or more juvenile sentences under K.S.A. 2007 Supp. 38-2361, and amendments  
9 thereto; and

10 (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that  
11 the juvenile offender not violate the provisions of the juvenile sentence and not commit a new  
12 offense.

13 (b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated ~~the~~  
14 one or more conditions of the juvenile sentence or is alleged to have committed a new offense, the  
15 court, without notice, may revoke the stay and ~~probation juvenile sentence~~ and direct that the juvenile  
16 offender be immediately taken into custody and delivered to the secretary of corrections pursuant to  
17 K.S.A. 21-4621, and amendments thereto. The court shall notify the juvenile offender and such  
18 juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303,  
19 and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for  
20 revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the  
21 reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be  
22 heard and represented by counsel. After the hearing, if the court finds by substantial a preponderance  
23 of the evidence that the juvenile committed a new offense or that violated one or more conditions of  
24 the juvenile's sentence ~~have been violated~~, the court ~~shall~~ may revoke the juvenile sentence and order  
25 the imposition of the adult sentence previously ordered pursuant to subsection (a)(2). Upon such  
26 finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is  
27 terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the  
28 department of corrections, is with the adult court. The juvenile offender shall be credited for time  
29 served in a juvenile correctional or detention facility on the juvenile sentence as service on any  
30 authorized adult sanction.

31 (c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection  
32 (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the  
33 sentence is continued, the court shall set a date of further review in no later than 36 months.

34 **Section 6. K.S.A. 38-2365. Juvenile offender placed in custody of commissioner; placement;**  
35 **permanency plan; progress report to court; hearing; notification; termination of parental rights.**

36 (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner  
37 shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any  
38 party who believes that the amount of time elapsed without placement has exceeded a reasonable time  
39 may file a motion for review with the court. In determining what is a reasonable amount of time,  
40 matters considered by the court shall include, but not be limited to, the nature of the underlying  
41 offense, efforts made for placement of the juvenile offender and the availability of a suitable  
42 placement. The commissioner shall notify the court, the juvenile's attorney of record and the juvenile  
43 offender's parent, in writing, of the initial placement and any subsequent change of placement as soon  
44 as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to  
45 such parent's last known address or addresses. The court shall have no power to direct a specific  
46 placement by the commissioner, but may make recommendations to the commissioner. The  
47 commissioner may place the juvenile offender in an institution operated by the commissioner, a youth  
48 residential facility or any other appropriate placement. If the court has recommended an out-of-home  
49 placement, the commissioner may not return the juvenile offender to the home from which removed  
50 without first notifying the court of the plan.

1 (b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a  
2 permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place  
3 under a child in need of care proceeding, the court may adopt the plan under the present proceeding.  
4 The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family  
5 or, if reintegration is not a viable alternative, for other permanent placement of the juvenile.

6 Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have  
7 committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second  
8 degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments  
9 thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated a law  
10 of another state which prohibits such murder or manslaughter of a child;

11 (2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or  
12 voluntary manslaughter of a child;

13 (3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the  
14 subject of this proceeding or another child;

15 (4) the parent has subjected the juvenile who is the subject of this proceeding or another child to  
16 aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

17 (5) the parental rights of the parent to another child have been terminated involuntarily; or

18 (6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2007 Supp. 38-  
19 2202, and amendments thereto.

20 (c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and  
21 submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other  
22 than the commissioner, the plan shall be prepared and submitted by a court services officer. If the  
23 permanency goal is reintegration into the family, the permanency plan shall include measurable  
24 objectives and time schedules for reintegration.

25 (d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall  
26 submit to the court, at least every six months, a written report of the progress being made toward the  
27 goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions  
28 taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court  
29 may request the foster parent to submit to the court, at least every six months, a report in regard to the  
30 juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court  
31 social file. The court shall review the plan submitted by the commissioner and the report, if any,  
32 submitted by the foster parent and determine whether reasonable efforts and progress have been made  
33 to achieve the goals of the permanency plan. If the court determines that progress is inadequate or  
34 that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

35 (e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no  
36 more than 12 months after the juvenile is first placed outside such juvenile's home and at least every  
37 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be  
38 provided a permanency hearing within 30 days of a request from the commissioner. The court may  
39 appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing. At each  
40 hearing, the court shall make a written finding whether reasonable efforts have been made to  
41 accomplish the permanency goal and whether continued out-of-home placement is necessary for the  
42 juvenile's safety.

43 (f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties  
44 of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care  
45 for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be  
46 made a party to the action solely on the basis of this notice and opportunity to be heard. After  
47 providing the persons receiving notice an opportunity to be heard, the court shall determine whether  
48 the juvenile's needs are being adequately met; whether services set out in the permanency plan  
49 necessary for the safe return of the juvenile have been made available to the parent with whom

1 reintegration is planned; and whether reasonable efforts and progress have been made to achieve the  
2 goals of the permanency plan.

3 (g) If the court finds reintegration continues to be a viable alternative, the court shall determine  
4 whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any  
5 of its prior dispositional orders and enter any dispositional order authorized by this code or may order  
6 that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be  
7 accomplished as approved by the court, the court shall be informed and shall schedule a hearing  
8 pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes  
9 parental rights or agrees to appointment of a permanent guardian.

10 (h) When the court finds any of the following conditions exist, the county or district attorney or  
11 the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need  
12 of care and requesting termination of parental rights pursuant to the Kansas code for care of children:

13 (1) The court determines that reintegration is not a viable alternative and either adoption or  
14 permanent guardianship might be in the best interests of the juvenile;

15 (2) the goal of the permanency plan is reintegration into the family and the court determines after  
16 12 months from the time such plan is first submitted that progress is inadequate; or

17 (3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22  
18 months, excluding trial home visits and juvenile in runaway status.

19 Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to  
20 the expiration of 12 months.

21 (i) A petition to terminate parental rights is not required to be filed if one of the following  
22 exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

23 (2) services set out in the case plan necessary for the safe return of the juvenile have not been  
24 made available to the parent with whom reintegration is planned; or

25 (3) there are one or more documented reasons why such filing would not be in the best interests of  
26 the juvenile. Documented reasons may include, but are not limited to: The juvenile has close  
27 emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older  
28 and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of  
29 parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or  
30 compelling foreign policy reasons precluding termination of parental rights.

31 **Section 7. K.S.A. 38-2373. Commitment to juvenile correctional facility; transfers.** (a) *Actions by*  
32 *the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk  
33 of the court shall forthwith notify the commissioner of the commitment and provide the commissioner  
34 with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court  
35 shall provide those items from the social file which could relate to a rehabilitative program. If the court  
36 wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the  
37 recommendation shall be included in the sentence. After the court has received notice of the juvenile  
38 correctional facility designated as provided in subsection (b), it shall be the duty of the court or the  
39 sheriff of the county to deliver the juvenile offender to the facility at the time designated by the  
40 commissioner.

41 (2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back  
42 to court for any reason, the county demanding the juvenile's presence shall be responsible for  
43 transportation, detention, custody and control of such offender. In these cases, the county sheriff shall  
44 be responsible for all transportation, detention, custody and control of such offender.

45 (b) *Actions by the commissioner.* (1) Within three days after receiving notice of commitment as  
46 provided in subsection (a), the commissioner shall notify the committing court of the facility to which  
47 the juvenile offender should be conveyed, and when to effect the immediate transfer of ~~study~~ custody  
48 The date of admission shall be no more than five days after the notice to the committing court. Until  
49 received at the designated facility, the continuing detention, custody, and control of and transport for a  
50 juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the

1 responsibility of the committing county.

2 (2) Except as provided by K.S.A. 2007 Supp. 38-2332, and amendments thereto, the commissioner  
3 may make any temporary out-of-home placement the commissioner deems appropriate pending  
4 placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify  
5 the court, local law enforcement agency and school district in which the juvenile will be residing if the  
6 juvenile is still required to attend a secondary school of that placement.

7 (c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional  
8 facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to  
9 another.

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