

Juvenile Offender Re-draft of SB 88

1 AN ACT concerning juvenile offenders; relating to right to jury trial; amending K.S.A. 2008
2 Supp. 38-2344, 38-2357, 38-2364, 38-2365, and 38-2373 and repealing the existing
3 sections.

4 *Be it enacted by the Legislature of the State of Kansas:*

5
6 **Sec. 1.** K.S.A. 2008 Supp. 38-2344 is hereby amended to read as follows: 38-2344. (a)
7 When the juvenile appears without an attorney in response to a complaint, the court shall
8 inform the juvenile of the following:

- 9 (1) The nature of the charges in the complaint;
10 (2) the right to hire an attorney of the juvenile's own choice;
11 (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by
12 the juvenile or parent; and
13 (4) that the court may require the juvenile or parent to pay the expense of a court
14 appointed attorney.

15 Upon request the court shall give the juvenile or parent an opportunity to hire an attorney.
16 If no request is made or the juvenile or parent is financially unable to hire an attorney, the
17 court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile
18 an opportunity to confer with the attorney before requiring the juvenile to plead to the
19 allegations of the complaint.

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

- 25 (1) The nature of the charges in the complaint;
26 (2) the right of the juvenile to be presumed innocent of each charge;
27 (3) the right to **a jury** trial without unnecessary delay **and**;
28 **(4) the right** to confront and cross-examine witnesses appearing in support of the
29 allegations of the complaint;
30 **(4) (5)** the right to subpoena witnesses;
31 **(5) (6)** the right of the juvenile to testify or to decline to testify; and
32 **(6) (7)** the sentencing alternatives the court may select as the result of the juvenile being
33 adjudicated a juvenile offender.

34 (c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo*
35 *contendere*, the court shall determine, before accepting the plea and entering a sentence:

- 36 (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2),
37 (3), (4) **and**, (5) **and (6)**; and (2) that there is a factual basis for the plea.

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

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

47 **Sec. 2.** K.S.A. 2008 Supp. 38-2357 is hereby amended to read as follows: 38-2357. ~~In all~~
48 ~~cases involving offenses committed by a juvenile which, if done by an adult, would~~
49 ~~make the person liable to be arrested and prosecuted for the commission of a~~
50 ~~felony, the judge may upon motion, order that the juvenile be afforded a trial by~~
51 ~~jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall~~
52 ~~proceed with sentencing. A juvenile is entitled to a trial by one of the following~~
53 ~~means:~~

54 **(a) The trial of a felony or misdemeanor case shall be to the court unless the**
55 **juvenile requests a jury trial in writing within 30 days from the date of the juvenile's**
56 **entry of a plea of not guilty. The time requirement provided in this subsection**

1 *regarding when a jury trial shall be requested may be waived in the discretion of*
2 *the court upon a finding that imposing such time requirement would cause undue*
3 *hardship or prejudice to the juvenile.*

4 *(1) A jury in a felony case shall consist of 12 members. However the parties may*
5 *agree in writing, at any time before the verdict, with the approval of the court, that*
6 *the jury shall consist of any number less than 12.*

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

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

10 *(4) The verdict shall be written, signed by the presiding juror and read by the clerk*
11 *to the jury, and an inquiry shall be made whether it is the jury's verdict. If any juror*
12 *disagrees, the jury must be sent out again; but if no disagreement is expressed,*
13 *and neither party requires the jury to be polled, the verdict is complete and the jury*
14 *discharged from the case.*

15 *If the verdict is defective in form only, it may be corrected by the court, with the*
16 *assent of the jury, before it is discharged.*

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

19 *(b) Trials in the municipal court of a city shall be to the court.*

20 *(c) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to*
21 *the court.*

22 **Sec. 3.** K.S.A. 2008 Supp. 38-2364 is hereby amended to read as follows: 38-2364. (a) If
23 an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the
24 court shall:

25 (1) Impose one or more juvenile sentences under K.S.A. 2008 Supp. 38-2361, and
26 amendments thereto; and

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

30 (b) When it appears that a person sentenced as an extended jurisdiction juvenile has
31 violated ~~the one or more~~ conditions of the juvenile sentence or is alleged to have
32 committed a new offense, the court, without notice, may revoke the stay and ~~probation~~
33 **juvenile sentence** and direct that the juvenile offender be immediately taken into custody
34 and delivered to the secretary of corrections pursuant to K.S.A. 21-4621, and
35 amendments thereto. The court shall notify the juvenile offender and such juvenile
36 offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303,
37 and amendments thereto, or certified mail, return receipt requested, of the reasons
38 alleged to exist for revocation of the stay of execution of the adult sentence. If the juvenile
39 offender challenges the reasons, the court shall hold a hearing on the issue at which the
40 juvenile offender is entitled to be heard and represented by counsel.

41 After the hearing, if the court finds by ~~substantial a preponderance of the~~ evidence that
42 **the juvenile committed a new offense or violated one or more** conditions of the
43 juvenile's sentence ~~have been violated~~, the court **shall may** revoke the juvenile
44 sentence and order the imposition of the adult sentence previously ordered pursuant to
45 subsection (a)(2). Upon such finding, the juvenile's extended jurisdiction status is
46 terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any
47 adult sanction, other than the commitment to the department of corrections, is with the
48 adult court. The juvenile offender shall be credited for time served in a juvenile
49 correctional or detention facility on the juvenile sentence as service on any authorized
50 adult sanction.

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

55 **Sec. 4.** K.S.A. 2008 Supp. 38-2365 is hereby amended to read as follows: 38-2365. (a)
56 When a juvenile offender has been placed in the custody of the commissioner, the

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1 commissioner shall have a reasonable time to make a placement. If the juvenile offender
2 has not been placed, any party who believes that the amount of time elapsed without
3 placement has exceeded a reasonable time may file a motion for review with the court. In
4 determining what is a reasonable amount of time, matters considered by the court shall
5 include, but not be limited to, the nature of the underlying offense, efforts made for
6 placement of the juvenile offender and the availability of a suitable placement. The
7 commissioner shall notify the court ~~and the juvenile offender's, the juvenile's attorney~~
8 **of record and the juvenile's** parent, in writing, of the initial placement and any
9 subsequent change of placement as soon as the placement has been accomplished. The
10 notice to the juvenile offender's parent shall be sent to such parent's last known address
11 or addresses. The court shall have no power to direct a specific placement by the
12 commissioner, but may make recommendations to the commissioner. The commissioner
13 may place the juvenile offender in an institution operated by the commissioner, a youth
14 residential facility or any other appropriate placement. If the court has recommended an
15 out-of-home placement, the commissioner may not return the juvenile offender to the
16 home from which removed without first notifying the court of the plan.

17 (b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare
18 and present a permanency plan at sentencing or within 30 days thereafter. If a
19 permanency plan is already in place under a child in need of care proceeding, the court
20 may adopt the plan under the present proceeding. The written permanency plan shall
21 provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not
22 a viable alternative, for other permanent placement of the juvenile. Reintegration may not
23 be a viable alternative when: (1) The parent has been found by a court to have committed
24 murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the
25 second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-
26 3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and
27 amendments thereto, of a child or violated a law of another state which prohibits such
28 murder or manslaughter of a child;

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

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

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

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

37 (6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2008
38 Supp. 38-2202, and amendments thereto.

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

44 (d) During the time a juvenile remains in the custody of the commissioner, the
45 commissioner shall submit to the court, at least every six months, a written report of the
46 progress being made toward the goals of the permanency plan submitted pursuant to
47 subsections (b) and (c) and the specific actions taken to achieve the goals of the
48 permanency plan. If the juvenile is placed in foster care, the court may request the foster
49 parent to submit to the court, at least every six months, a report in regard to the juvenile's
50 adjustment, progress and condition. Such report shall be made a part of the juvenile's
51 court social file. The court shall review the plan submitted by the commissioner and the
52 report, if any, submitted by the foster parent and determine whether reasonable efforts
53 and progress have been made to achieve the goals of the permanency plan. If the court
54 determines that progress is inadequate or that the permanency plan is no longer viable,
55 the court shall hold a hearing pursuant to subsection (e).

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

10 (f) Whenever a hearing is required under subsection (e), the court shall notify all
11 interested parties of the hearing date, the commissioner, foster parent and preadoptive
12 parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving
13 notice pursuant to this subsection shall not be made a party to the action solely on the
14 basis of this notice and opportunity to be heard. After providing the persons receiving
15 notice an opportunity to be heard, the court shall determine whether the juvenile's needs
16 are being adequately met; whether services set out in the permanency plan necessary for
17 the safe return of the juvenile have been made available to the parent with whom
18 reintegration is planned; and whether reasonable efforts and progress have been made
19 to achieve the goals of the permanency plan.

20 (g) If the court finds reintegration continues to be a viable alternative, the court shall
21 determine whether and, if applicable, when the juvenile will be returned to the parent. The
22 court may rescind any of its prior dispositional orders and enter any dispositional order
23 authorized by this code or may order that a new plan for the reintegration be prepared
24 and submitted to the court. If reintegration cannot be accomplished as approved by the
25 court, the court shall be informed and shall schedule a hearing pursuant to subsection

26 (h). No such hearing is required when the parent voluntarily relinquishes parental rights
27 or agree(s) to appointment of a permanent guardian.

28 (h) When the court finds any of the following conditions exist, the county or district
29 attorney or the county or district attorney's designee shall file a petition alleging the
30 juvenile to be a child in need of care and requesting termination of parental rights
31 pursuant to the Kansas code for care of children: (1) The court determines that
32 reintegration is not a viable alternative and either adoption or permanent guardianship
33 might be in the best interests of the juvenile;

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

37 (3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last
38 22 months, excluding trial home visits and juvenile in runaway status.

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

41 (i) A petition to terminate parental rights is not required to be filed if one of the following
42 exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;
43 (2) services set out in the case plan necessary for the safe return of the juvenile have not
44 been made available to the parent with whom reintegration is planned; or (3) there are
45 one or more documented reasons why such filing would not be in the best interests of the
46 juvenile. Documented reasons may include, but are not limited to: The juvenile has close
47 emotional bonds with a parent which should not be broken; the juvenile is 14 years of age
48 or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist
49 for termination of parental rights; the juvenile is an unaccompanied refugee minor; or
50 there are international legal or compelling foreign policy reasons precluding termination of
51 parental rights.

52 **Sec. 5.** K.S.A. 2008 Supp. 38-2373 is hereby amended to read as follows: 38-2373. (a)
53 *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile
54 correctional facility, the clerk of the court shall forthwith notify the commissioner of the
55 commitment and provide the commissioner with a certified copy of the complaint, the
56 journal entry of the adjudication and sentencing. The court shall provide those items from

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1 the social file which could relate to a rehabilitative program. If the court wishes to
2 recommend placement of the juvenile offender in a specific juvenile correctional facility,
3 the recommendation shall be included in the sentence. After the court has received
4 notice of the juvenile correctional facility designated as provided in subsection (b), it shall
5 be the duty of the court or the sheriff of the county to deliver the juvenile offender to the
6 facility at the time designated by the commissioner.

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

12 (b) *Actions by the commissioner.* (1) Within three days after receiving notice of
13 commitment as provided in subsection (a), the commissioner shall notify the committing
14 court of the facility to which the juvenile offender should be conveyed, and when to effect
15 the immediate transfer of ~~study~~ **custody** and control to the juvenile justice authority. The
16 date of admission shall be no more than five days after the notice to the committing court.
17 Until received at the designated facility, the continuing detention, custody, and control of
18 and transport for a juvenile offender sentenced to a direct commitment to a juvenile
19 correctional facility shall be the responsibility of the committing county.

20 (2) Except as provided by K.S.A. 2008 Supp. 38-2332, and amendments thereto, the
21 commissioner may make any temporary out-of-home placement the commissioner
22 deems appropriate pending placement of the juvenile offender in a juvenile correctional
23 facility, and the commissioner shall notify the court, local law enforcement agency and
24 school district in which the juvenile will be residing if the juvenile is still required to attend
25 a secondary school of that placement.

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