

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE MATTER OF

_____, Juvenile
Year of Birth _____ A male female

Case No. _____

**ORDER ACCEPTING WAIVER OF
DETENTION HEARING AND
ORDER FOR DETENTION**

Pursuant to K.S.A. 38-2343 and 38-2331

On this _____ day of _____, 20_____, the Court considers the request for detention, Judge _____ presiding.

THE COURT FINDS 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 _____ County/District Attorney or designee.

The juvenile appears

- in person and by the juvenile’s attorney, _____.
- by two-way electronic audio-video communication and by the juvenile’s attorney, _____.
- not in person, but by the juvenile’s attorney, _____.

The mother is present is not present.

The father is present is not present.

The Court Services Office (CSO) is present through _____.

The Secretary is present through _____.

_____.

Also present is/are: _____.

_____.

The Court, having reviewed the file, received the evidence, heard statements of counsel, finds that the juvenile and counsel have waived the right to a detention hearing, and that waiver is approved and accepted by the Court.

The Court finds:

1. There has been a prior determination of probable cause to believe the juvenile has committed the alleged offense(s).

OR

- The court finds probable cause to believe the juvenile has committed the alleged offense(s).

2. A detention risk assessment has been conducted pursuant to K.S.A. 75-7023(d). The detention risk assessment **assessed** **did not assess** the juvenile as detention-eligible.

- A. The Court adopts the detention risk assessment recommendation.

OR

- B. There are grounds to override the detention risk assessment's recommendation that the juvenile is detention-eligible. The court finds that community-based alternatives are sufficient to secure the presence of the juvenile at the next hearing and protect the physical safety of another person and property from serious threat.

(state the basis for each finding supporting the override of the detention risk assessment)

OR

- C. There are grounds to override the detention risk assessment's recommendation that the juvenile is not detention-eligible. The Court finds probable cause that community-based alternatives to detention are insufficient to:

- secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent failures to appear at juvenile court proceedings and an exhaustion of detention alternatives.

OR

- protect the physical safety of another person or property from serious threat if the juvenile is not detained.

(state the basis for each finding supporting the override of the detention risk assessment)

(The Initial Order Removing Juvenile from Custody of Parent and Authorizing Out of Home Placement, Form 309, must be filed if this is the first order removing the juvenile from the home.)

3. The juvenile shall be detained and shall appear before the Court on the _____ day of _____, 20_____, for a detention review hearing. *(Must occur within 14 days unless an exception applies.)*

IT IS SO ORDERED THIS _____ day of _____, 20_____.

Judge of the District Court

Authority

K.S.A. 38-2343 and 38-2331.

Notes on Use

Detention shall not exceed 48 hours, excluding Saturdays, Sundays and legal holidays, without a detention hearing and court order for further detention. That hearing shall take place within the 48 hour period. The court shall appoint an attorney to represent the juvenile if no attorney has been retained and appears to represent the juvenile. A 24 hour recess may be taken to obtain attendance of the attorney appointed. The juvenile and the juvenile's attorney may waive the detention hearing. The waiver must be in writing, but the juvenile, or the attorney or parent may reassert the right to a detention hearing, not less than 48 hours prior to trial. K.S.A. 38-2343(c).

If the juvenile is detained due to a new offense which would be a felony or misdemeanor if committed by an adult and no prior judicial determination of probable cause has been made, the court must determine whether there is probable cause to believe that the juvenile committed the alleged offense. K.S.A. 38-2343(a)(1). If a judicial finding of probable cause has been made in a prior hearing, the court should indicate such by checking the appropriate box.

Before the detention hearing, a detention risk assessment pursuant to K.S.A. 75-7023(d) must be completed. The court may not order the juvenile detained unless the detention risk assessment assessed the juvenile as detention-eligible or the court overrides the detention risk assessment tool's outcome of non-detention-eligible. To override the detention risk assessment tool the court must find probable cause that (1) community-based alternatives to detention are insufficient to either secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent failures to appear at juvenile court proceedings and an exhaustion of detention alternatives; or (2) to protect the physical safety of another person or property from serious threat if the juvenile is not detained. The court must state the basis for each finding in writing. K.S.A. 38-2331(a).

If the juvenile is detained, the court must hold a detention review hearing at least every 14 days to determine if the juvenile should continue to be held in detention, unless (1) the juvenile is charged with a crime that, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 felony, or (2) the juvenile is being held in detention awaiting disposition pursuant to K.S.A. 38-2360(f). K.S.A. 38-2343(i).

If the court removes the juvenile from the home and if this is the first order doing so, then **the Initial Order Removing Juvenile from the Custody of Parents and Authorizing Out of Home Placement (Form 309), or another ASFA form approved by the Supreme Court, must be completed and attached to this form for filing.**

The Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, prohibits detention of status offenders or non-criminal traffic or fish and game offenders in any secure facility, except for a minimal period (6 hours under K.S.A. 38-2332) for investigation and identification, but always sight and sound separate from adult prisoners if the site is an adult jail.