

## HOUSE BILL No. 2115

By Joint Committee on Corrections and Juvenile Justice Oversight

1-20

1 AN ACT concerning the revised Kansas juvenile justice code; prohibiting  
2 the use of restraints during hearings; authorizing exceptions if the court  
3 holds a hearing and makes certain findings on the record; defining  
4 hearing under the code; amending K.S.A. 38-2302 and 38-2353 and  
5 repealing the existing sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) Except as provided in subsection (b), restraints  
9 shall not be used on a juvenile during a hearing and shall be removed prior  
10 to the juvenile's appearance before the court.

11 (b) (1) The court, on its own motion or upon the recommendation of  
12 an officer of the court or the county or district attorney, may authorize the  
13 use of restraints on a juvenile during a hearing if the court holds a hearing  
14 and makes a finding on the record that such restraints are the least  
15 restrictive means available and are necessary for any of the following  
16 reasons:

17 (A) To prevent physical harm to the juvenile or another person during  
18 the hearing;

19 (B) a well-founded belief that the juvenile is a substantial flight risk;  
20 or

21 (C) the juvenile has a recent history of disruptive behavior that has  
22 placed others at risk of substantial physical harm.

23 (2) If an officer of the court or the county or district attorney  
24 recommends the use of restraints on a juvenile, the officer or attorney shall  
25 provide written notice to the court and the juvenile's attorney of the  
26 specific circumstances that support such recommendation. Such notice  
27 shall also be made part of the record.

28 (3) The court shall allow the juvenile's attorney and, if applicable, the  
29 officer or attorney recommending the use of restraints to be heard before  
30 the court makes a ruling on the use of restraints.

31 (4) If the court orders the use of restraints on a juvenile, the court  
32 shall:

33 (A) Make written findings of fact in support of such order; and

34 (B) order the least restrictive restraints necessary and allow the  
35 juvenile sufficient movement of the hands to be able to read and handle  
36 documents and writings necessary to the hearing.

1 (c) (1) The use of any restraints necessary for purposes of security  
2 and courtroom decorum shall properly account for the care, protection and  
3 positive mental and physical development of the juvenile.

4 (2) A juvenile shall not be restrained to a wall, the floor, another  
5 juvenile or furniture during a hearing under any circumstances.

6 (d) This section shall be a part of and supplemental to the revised  
7 Kansas juvenile justice code.

8 Sec. 2. K.S.A. 38-2302 is hereby amended to read as follows: 38-  
9 2302. As used in this code, unless the context otherwise requires:

10 (a) "Commissioner" means the secretary of corrections or the  
11 secretary's designee.

12 (b) "Community supervision officer" means any officer from court  
13 services, community corrections or any other individual authorized to  
14 supervise a juvenile on an immediate intervention, probation or  
15 conditional release.

16 (c) "Conditional release" means release from a term of commitment  
17 in a juvenile correctional facility for an aftercare term pursuant to K.S.A.  
18 38-2369, and amendments thereto, under conditions established by the  
19 secretary of corrections.

20 (d) "Court-appointed special advocate" means a responsible adult,  
21 other than an attorney appointed pursuant to K.S.A. 38-2306, and  
22 amendments thereto, who is appointed by the court to represent the best  
23 interests of a child, as provided in K.S.A. 38-2307, and amendments  
24 thereto, in a proceeding pursuant to this code.

25 (e) "Detention risk assessment tool" means a risk assessment  
26 instrument adopted pursuant to K.S.A. 75-7023(f), and amendments  
27 thereto, used to identify factors shown to be statistically related to a  
28 juvenile's risk of failing to appear in court or reoffending pre-adjudication  
29 and designed to assist in making detention determinations.

30 (f) "Educational institution" means all schools at the elementary and  
31 secondary levels.

32 (g) "Educator" means any administrator, teacher or other professional  
33 or paraprofessional employee of an educational institution who has  
34 exposure to a pupil specified in K.S.A. 72-6143(a)(1) through (5), and  
35 amendments thereto.

36 (h) "Evidence-based" means practices, policies, procedures and  
37 programs demonstrated by research to produce reduction in the likelihood  
38 of reoffending.

39 (i) "Graduated responses" means a system of community-based  
40 sanctions and incentives developed pursuant to K.S.A. 75-7023(h) and  
41 K.S.A. 38-2392, and amendments thereto, used to address violations of  
42 immediate interventions, terms and conditions of probation and  
43 conditional release and to incentivize positive behavior.

1 (j) "Immediate intervention" means all programs or practices  
2 developed by the county to hold juvenile offenders accountable while  
3 allowing such offenders to be diverted from formal court processing  
4 pursuant to K.S.A. 38-2346, and amendments thereto.

5 (k) "Institution" means the Larned juvenile correctional facility and  
6 the Kansas juvenile correctional complex.

7 (l) "Investigator" means an employee of the department of corrections  
8 assigned by the secretary of corrections with the responsibility for  
9 investigations concerning employees at the juvenile correctional facilities  
10 and juveniles in the custody of the secretary of corrections at a juvenile  
11 correctional facility.

12 (m) "Jail" means:

13 (1)- An adult jail or lockup; or

14 (2) a facility in the same building as an adult jail or lockup, unless the  
15 facility meets all applicable licensure requirements under law and there is:  
16 (A) Total separation of the juvenile and adult facility spatial areas such that  
17 there could be no haphazard or accidental contact between juvenile and  
18 adult residents in the respective facilities; (B) total separation in all  
19 juvenile and adult program activities within the facilities, including  
20 recreation, education, counseling, health care, dining, sleeping and general  
21 living activities; and (C) separate juvenile and adult staff, including  
22 management, security staff and direct care staff such as recreational,  
23 educational and counseling.

24 (n) "Juvenile" means a person to whom one or more of the following  
25 applies, the person: (1) Is 10 or more years of age but less than 18 years of  
26 age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as  
27 a juvenile offender and continues to be subject to the jurisdiction of the  
28 court.

29 (o) "Juvenile correctional facility" means a facility operated by the  
30 secretary of corrections for the commitment of juvenile offenders.

31 (p) "Juvenile corrections officer" means a certified employee of the  
32 department of corrections working at a juvenile correctional facility  
33 assigned by the secretary of corrections with responsibility for maintaining  
34 custody, security and control of juveniles in the custody of the secretary of  
35 corrections at a juvenile correctional facility.

36 (q) "Juvenile detention facility" means a public or private facility  
37 licensed pursuant to article 5 of chapter 65 of the Kansas Statutes  
38 Annotated, and amendments thereto, which is used for the lawful custody  
39 of alleged or adjudicated juvenile offenders.

40 (r) "Juvenile intake and assessment worker" means a responsible  
41 adult trained and authorized to perform intake and assessment services as  
42 part of the intake and assessment system established pursuant to K.S.A.  
43 75-7023, and amendments thereto.

1 (s) "Juvenile offender" means a person who commits an offense while  
2 10 or more years of age but less than 18 years of age which if committed  
3 by an adult would constitute the commission of a felony or misdemeanor  
4 as defined by K.S.A. 2022 Supp. 21-5102, and amendments thereto, or  
5 who violates the provisions of K.S.A. 41-727, K.S.A. 74-8810(j) or K.S.A.  
6 2022 Supp. 21-6301(a)(14), and amendments thereto, but does not include:

7 (1) A person 14 or more years of age who commits a traffic offense,  
8 as defined in K.S.A. 8-2117(d), and amendments thereto;

9 (2) a person 16 years of age or over who commits an offense defined  
10 in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

11 (3) a person under 18 years of age who previously has been:

12 (A) Convicted as an adult under the Kansas criminal code;

13 (B) sentenced as an adult under the Kansas criminal code following  
14 termination of status as an extended jurisdiction juvenile pursuant to  
15 K.S.A. 38-2364, and amendments thereto; or

16 (C) convicted or sentenced as an adult in another state or foreign  
17 jurisdiction under substantially similar procedures described in K.S.A. 38-  
18 2347, and amendments thereto, or because of attaining the age of majority  
19 designated in that state or jurisdiction.

20 (t) "Law enforcement officer" means any person who by virtue of that  
21 person's office or public employment is vested by law with a duty to  
22 maintain public order or to make arrests for crimes, whether that duty  
23 extends to all crimes or is limited to specific crimes.

24 (u) "Overall case length limit" when used in relation to a juvenile  
25 adjudicated a juvenile offender means the maximum jurisdiction of the  
26 court following disposition on an individual case. Pursuant to K.S.A. 38-  
27 2304, and amendments thereto, the case and the court's jurisdiction shall  
28 terminate once the overall case length limit expires and may not be  
29 extended.

30 (v) "Parent" when used in relation to a juvenile, includes a guardian  
31 and every person who is, by law, liable to maintain, care for or support the  
32 juvenile.

33 (w) "Probation" means a period of community supervision ordered  
34 pursuant to K.S.A. 38-2361, and amendments thereto, overseen by either  
35 court services or community corrections, but not both.

36 (x) "Reasonable and prudent parenting standard" means the standard  
37 characterized by careful and sensible parental decisions that maintain the  
38 health, safety and best interests of a child while at the same time  
39 encouraging the emotional and developmental growth of the child, that a  
40 caregiver shall use when determining whether to allow a child in foster  
41 care under the responsibility of the state to participate in extracurricular,  
42 enrichment, cultural and social activities.

43 (y) "Reintegration plan" means a written document prepared in

1 consultation with the child's parent or guardian that:

2 (1) Describes the reintegration goal, which, if achieved, will most  
3 likely give the juvenile and the victim of the juvenile a permanent and safe  
4 living arrangement;

5 (2) describes the child's level of physical health, mental and  
6 emotional health and educational functioning;

7 (3) provides an assessment of the needs of the child and family;

8 (4) describes the services to be provided to the child, the child's  
9 family and the child's foster parents, if appropriate;

10 (5) includes a description of the tasks and responsibilities designed to  
11 achieve the plan and to whom assigned;

12 (6) includes measurable objectives and time schedules for achieving  
13 the plan; and

14 (7) if the child is in an out of home placement:

15 (A) Provides a statement for the basis of determining that  
16 reintegration is determined not to be a viable option if such a  
17 determination is made and includes a plan for another permanent living  
18 arrangement;

19 (B) describes available alternatives;

20 (C) justifies the alternative placement selected, including a  
21 description of the safety and appropriateness of such placement; and

22 (D) describes the programs and services that will help the child  
23 prepare to live independently as an adult.

24 (z) "Risk and needs assessment" means a standardized instrument  
25 administered on juveniles to identify specific risk factors and needs shown  
26 to be statistically related to a juvenile's risk of reoffending and, when  
27 properly addressed, can reduce a juvenile's risk of reoffending.

28 (aa) "Secretary" means the secretary of corrections or the secretary's  
29 designee.

30 (bb) "Technical violation" means an act that violates the terms or  
31 conditions imposed as part of a probation disposition pursuant to K.S.A.  
32 38-2361, and amendments thereto, and that does not constitute a new  
33 juvenile offense or a new child in need of care violation pursuant to K.S.A.  
34 38-2202(d), and amendments thereto.

35 (cc) "Warrant" means a written order by a judge of the court directed  
36 to any law enforcement officer commanding the officer to take into  
37 custody the juvenile named or described therein.

38 (dd) "Youth residential facility" means any home, foster home or  
39 structure which provides 24-hour-a-day care for juveniles and which is  
40 licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of  
41 the Kansas Statutes Annotated, and amendments thereto.

42 (ee) "Hearing" means any court proceeding held under this code,  
43 including, but not limited to, detention, first appearance, adjudicatory,

1 *dispositional and sentencing hearings.*

2 *(ff) "Restraints" means handcuffs, leg shackles, leg irons, belly belts,*  
3 *belly chains or other restraint devices used to restrict a juvenile's free*  
4 *movement of limbs or appendages, including, but not limited to, those*  
5 *made of cloth and leather.*

6 Sec. 3. K.S.A. 38-2353 is hereby amended to read as follows: 38-  
7 2353. (a) All hearings shall be open to the public, unless the judge  
8 determines that opening the hearing to the public is not in the best interests  
9 of the victim or of any juvenile who at the time of the alleged offense was  
10 less than 16 years of age.

11 (b) If the court determines that opening the court proceedings to the  
12 public is not in the best interest of the juvenile, the court may exclude all  
13 persons except the juvenile, the juvenile's parents, attorneys for parties,  
14 officers of the court, the witness testifying and the victim, as defined in  
15 ~~subsection (b) of K.S.A. 74-7333(b)~~, and amendments thereto, or such  
16 members of the victim's family, as defined in ~~subsection (c)(2) of K.S.A.~~  
17 ~~74-7335(c)(2)~~, and amendments thereto, as the court deems appropriate.  
18 Upon agreement of all parties, the court shall allow other persons to attend  
19 the hearing unless the court finds the presence of the persons would be  
20 disruptive to the proceedings.

21 ~~(c) As used in this section, "hearings" shall include detention, first~~  
22 ~~appearance, adjudicatory, sentencing and all other hearings held under this~~  
23 ~~code. Nothing in this section shall limit the judge's authority to sequester~~  
24 ~~witnesses.~~

25 Sec. 4. K.S.A. 38-2302 and 38-2353 are hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its  
27 publication in the statute book.