

SENATE BILL No. 203

By Committee on Judiciary

2-4

9 AN ACT concerning juveniles; relating to sentencing alternatives;
10 amending K.S.A. 38-1663 and repealing the existing section.

11

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

13 Section 1. K.S.A. 38-1663 is hereby amended to read as follows: 38-
14 1663. (a) When a respondent has been adjudicated to be a juvenile of-
15 fender, the judge may select from the following alternatives:

16 (1) Place the juvenile offender on probation for a fixed period, subject
17 to the terms and conditions the court deems appropriate based on the
18 juvenile justice programs in the community, including a requirement of
19 making restitution as required by subsection (d).

20 (2) Place the juvenile offender in the custody of a parent or other
21 suitable person, subject to the terms and conditions the court orders
22 based on the juvenile justice programs in the community, including a
23 requirement of making restitution as required by subsection (d).

24 (3) Place the juvenile offender in the custody of a youth residential
25 facility or, in the case of a chronic runaway youth, place the youth in a
26 secure facility, subject to the terms and conditions the court orders.

27 (4) Place the juvenile offender in the custody of the commissioner,
28 as provided in K.S.A. 38-1664, and amendments thereto.

29 (5) Commit the juvenile offender to a sanctions house for a period
30 no longer than seven days. Following such period, the court shall review
31 the placement. The court may continue to recommit the juvenile offender
32 to a sanctions house for a period no longer than seven days followed by
33 a court review. Commitment to a sanctions house shall not exceed 28
34 total days for the same act or transaction. If in the adjudication order, the
35 court orders a sanctions house placement for a verifiable probation vio-
36 lation and such probation violation occurs, the juvenile may immediately
37 be taken to a sanctions house and detained for no more than 48 hours,
38 excluding Saturdays, Sundays and holidays, prior to court review of the
39 placement. The court and all other interested parties shall be notified of
40 the sanctions house placement. An offender over 18 years of age or less
41 than 23 years of age at sentencing may be committed to a county jail, in
42 lieu of a sanctions house, under the same time restrictions imposed by
43 this paragraph. No offender may be committed under this paragraph un-

1 less such offender has violated the terms of probation.

2 (6) Commit the juvenile offender to a community based program
3 available in such judicial district subject to the terms and conditions the
4 court orders.

5 (7) Impose any appropriate combination of paragraphs (1) through
6 (6) of this subsection and make other orders directed to the juvenile
7 offender as the court deems appropriate.

8 (8) Commit the juvenile offender ~~to~~ *directly to the custody of the*
9 *commissioner for a period of confinement* in a juvenile correctional facility
10 as provided by the placement matrix established in K.S.A. 38-16,129, and
11 amendments thereto, *and any aftercare term*. The provisions of K.S.A.
12 38-1664, and amendments thereto, shall not apply to juvenile offenders
13 committed directly to *the custody of the commissioner for a period of*
14 *confinement* in a juvenile correctional facility *and any aftercare term*.

15 (9) Place the juvenile offender under a house arrest program admin-
16 istered by the court pursuant to K.S.A. 21-4603b, and amendments
17 thereto.

18 (b) (1) In addition to any other order authorized by this section, the
19 court may order the: (A) Juvenile offender and the parents of the juvenile
20 offender to:

21 (i) Attend counseling sessions as the court directs; or

22 (ii) participate in mediation as the court directs. Participants in such
23 mediation may include, but shall not be limited to, the victim, the juvenile
24 offender and the juvenile offender's parents. Mediation shall not be man-
25 datory for the victim;

26 (B) parents of the juvenile offender to participate in parenting classes;
27 or

28 (C) juvenile offender to participate in a program of education offered
29 by a local board of education including placement in an alternative edu-
30 cational program approved by a local board of education.

31 (2) Upon entering an order requiring a juvenile offender's parent to
32 attend counseling sessions or mediation, the court shall give the parent
33 notice of the order. The notice shall inform the parent of the parent's
34 right to request a hearing within 10 days after entry of the order and the
35 parent's right to employ an attorney to represent the parent at the hearing
36 or, if the parent is financially unable to employ an attorney, the parent's
37 right to request the court to appoint an attorney to represent the parent.
38 If the parent does not request a hearing within 10 days after entry of the
39 order, the order shall take effect at that time. If the parent requests a
40 hearing, the court shall set the matter for hearing and, if requested, shall
41 appoint an attorney to represent the parent. The expense and fees of the
42 appointed attorney may be allowed and assessed as provided by K.S.A.
43 38-1606, and amendments thereto.

1 (3) The costs of any counseling or mediation may be assessed as ex-
2 penses in the case. No mental health center shall charge a fee for court-
3 ordered counseling greater than what the center would have charged the
4 person receiving the counseling if the person had requested counseling
5 on the person's own initiative. No mediator shall charge a fee for court-
6 ordered mediation greater than what the mediator would have charged
7 the person participating in the mediation if the person had requested
8 mediation on the person's own initiative.

9 (c) (1) If a respondent has been adjudged to be a juvenile offender,
10 the court, in addition to any other order authorized by this section, may
11 suspend the juvenile offender's driver's license or privilege to operate a
12 motor vehicle on the streets and highways of this state. The duration of
13 the suspension ordered by the court shall be for a definite time period to
14 be determined by the court. Upon suspension of a license pursuant to
15 this subsection, the court shall require the juvenile offender to surrender
16 the license to the court. The court shall transmit the license to the division
17 of motor vehicles of the department of revenue, to be retained until the
18 period of suspension expires. At that time, the licensee may apply to the
19 division for return of the license. If the license has expired, the juvenile
20 offender may apply for a new license, which shall be issued promptly
21 upon payment of the proper fee and satisfaction of other conditions es-
22 tablished by law for obtaining a license unless another suspension or rev-
23 ocation of the juvenile offender's privilege to operate a motor vehicle is
24 in effect. As used in this subsection, "highway" and "street" have the
25 meanings provided by K.S.A. 8-1424 and 8-1473, and amendments
26 thereto. Any respondent who is adjudicated to be a juvenile offender who
27 does not have a driver's license may have such juvenile offender's driving
28 privileges revoked. No Kansas driver's license shall be issued to a juvenile
29 offender whose driving privileges have been revoked pursuant to this
30 section for a definite time period to be determined by the court.

31 (2) In lieu of suspending the driver's license or privilege to operate
32 a motor vehicle on the highways of this state of any respondent adjudi-
33 cated to be a juvenile offender, as provided in subsection (c)(1), the court
34 in which such juvenile offender was adjudicated to be a juvenile offender
35 may enter an order which places conditions on such juvenile offender's
36 privilege of operating a motor vehicle on the streets and highways of this
37 state, a certified copy of which such juvenile offender shall be required
38 to carry any time such juvenile offender is operating a motor vehicle on
39 the streets and highways of this state. Any such order shall prescribe the
40 duration of the conditions imposed and shall specify that such duration
41 shall be for a definite time period to be determined by the court. Upon
42 entering an order restricting a juvenile offender's license hereunder, the
43 court shall require such juvenile offender to surrender such juvenile of-

1 fender's driver's license to the court. The court shall transmit the license
2 to the division of vehicles, together with a copy of the order. Upon receipt
3 thereof, the division of vehicles shall issue without charge a driver's li-
4 cense which shall indicate on its face that conditions have been imposed
5 on such juvenile offender's privilege of operating a motor vehicle and that
6 a certified copy of the order imposing such conditions is required to be
7 carried by the juvenile offender for whom the license was issued any time
8 such juvenile offender is operating a motor vehicle on the streets and
9 highways of this state. If the juvenile offender is a nonresident, the court
10 shall cause a copy of the order to be transmitted to the division and the
11 division shall forward a copy of it to the motor vehicle administrator of
12 such juvenile offender's state of residence. Such court shall furnish to any
13 juvenile offender whose driver's license has had conditions imposed on
14 it under this section a copy of the order, which shall be recognized as a
15 valid Kansas driver's license until such time as the division shall issue the
16 restricted license provided for in this subsection. Upon expiration of the
17 period of time for which conditions are imposed pursuant to this subsec-
18 tion, the licensee may apply to the division for the return of the license
19 previously surrendered by such licensee. In the event such license has
20 expired, such juvenile offender may apply to the division for a new license,
21 which shall be issued immediately by the division upon payment of the
22 proper fee and satisfaction of the other conditions established by law,
23 unless such juvenile offender's privilege to operate a motor vehicle on
24 the streets and highways of this state has been suspended or revoked
25 prior thereto. If any juvenile offender shall violate any of the conditions
26 imposed under this subsection, such juvenile offender's driver's license
27 or privilege to operate a motor vehicle on the streets and highways of this
28 state shall be revoked for a period as determined by the court in which
29 such juvenile offender is convicted of violating such conditions.

30 (d) Whenever a juvenile offender is placed pursuant to subsection
31 (a)(1) or (2), the court, unless it finds compelling circumstances which
32 would render a plan of restitution unworkable, shall order the juvenile
33 offender to make restitution to persons who sustained loss by reason of
34 the offense. The restitution shall be made either by payment of an amount
35 fixed by the court or by working for the persons in order to compensate
36 for the loss. If the court finds compelling circumstances which would
37 render a plan of restitution unworkable, the court may order the juvenile
38 offender to perform charitable or social service for organizations perform-
39 ing services for the community.

40 Nothing in this subsection shall be construed to limit a court's authority
41 to order a juvenile offender to make restitution or perform charitable or
42 social service under circumstances other than those specified by this sub-
43 section or when placement is made pursuant to subsection (a)(3) or (4).

- 1 (e) In addition to or in lieu of any other order authorized by this
2 section, the court may order a juvenile offender to pay a fine not exceed-
3 ing \$250 for each offense. In determining whether to impose a fine and
4 the amount to be imposed, the court shall consider the following:
- 5 (1) Imposition of a fine is most appropriate in cases where the juve-
6 nile offender has derived pecuniary gain from the offense.
- 7 (2) The amount of the fine should be related directly to the serious-
8 ness of the juvenile offender's offense and the juvenile offender's ability
9 to pay.
- 10 (3) Payment of a fine may be required in a lump sum or installments.
- 11 (4) Imposition of a restitution order is preferable to imposition of a
12 fine.
- 13 (5) The juvenile offender's duty of payment should be limited in du-
14 ration and in no event should the time necessary for payment exceed the
15 maximum term which would be authorized if the offense had been com-
16 mitted by an adult.
- 17 (f) In addition to or in lieu of any other order authorized by this
18 section, if a juvenile is adjudicated to be a juvenile offender by reason of
19 a violation of K.S.A. 41-719, 41-727, 65-4101 through 65-4164 or K.S.A.
20 ~~2000 Supp.~~ 8-1599, and amendments thereto, the court shall order the
21 juvenile offender to submit to and complete an alcohol and drug evalu-
22 ation by a community-based alcohol and drug safety action program cer-
23 tified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a
24 fee not to exceed the fee established by that statute for such evaluation.
25 The court may waive such evaluation if the court finds that the juvenile
26 offender has completed successfully an alcohol and drug evaluation, ap-
27 proved by the community-based alcohol and drug safety action program,
28 within 12 months before sentencing. If such evaluation occurred more
29 than 12 months before sentencing, the court shall order the juvenile of-
30 fender to resubmit to and complete such evaluation and program as pro-
31 vided herein. If the court finds that the juvenile offender and those legally
32 liable for the offender's support are indigent, the fee may be waived. In
33 no event shall the fee be assessed against the commissioner or the juvenile
34 justice authority. The court may require the parent or guardian of the
35 juvenile offender to attend such program with the juvenile offender.
- 36 (g) The board of county commissioners of a county may provide by
37 resolution that the parents or guardians of any juvenile offender placed
38 under a house arrest program pursuant to subsection (a)(9) shall be re-
39 quired to pay to the county the cost of such house arrest program. The
40 board of county commissioners shall prepare a sliding financial scale
41 based on the ability of the parents to pay for such a program.
- 42 (h) In addition to any other order authorized by this section, if child
43 support has been requested and the parent or parents have a duty to

1 support the respondent the court may order, and when custody is placed
2 with the commissioner shall order, one or both parents to pay child sup-
3 port. The court shall determine, for each parent separately, whether the
4 parent already is subject to an order to pay support for the respondent.
5 If the parent currently is not ordered to pay support for the respondent
6 and the court has personal jurisdiction over the parent, the court shall
7 order the parent to pay child support in an amount determined under
8 K.S.A. 38-16,117, and amendments thereto. Except for good cause
9 shown, the court shall issue an immediate income withholding order pur-
10 suant to K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent
11 ordered to pay support under this subsection, regardless of whether a
12 payor has been identified for the parent. A parent ordered to pay child
13 support under this subsection shall be notified, at the hearing or other-
14 wise, that the child support order may be registered pursuant to K.S.A.
15 38-16,119, and amendments thereto. The parent also shall be informed
16 that, after registration, the income withholding order may be served on
17 the parent's employer without further notice to the parent and the child
18 support order may be enforced by any method allowed by law. Failure
19 to provide this notice shall not affect the validity of the child support
20 order.

21 (i) Any order issued by the judge pursuant to this section shall be in
22 effect immediately upon entry into the court's journal.

23 (j) In addition to the requirements of K.S.A. 38-1671, and amend-
24 ments thereto, if a person is under 18 years of age and convicted of a
25 felony or adjudicated as a juvenile offender for an offense if committed
26 by an adult would constitute the commission of a felony, the court shall
27 forward a signed copy of the journal entry to the commissioner within 30
28 days of final disposition.

29 (k) The sentencing hearing shall be open to the public as provided in
30 K.S.A. 38-1652, and amendments thereto.

31 Sec. 2. K.S.A. 38-1663 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.