

As Amended by House Committee

As Amended by Senate Committee

Session of 2010

SENATE BILL No. 459

By Committee on Judiciary

1-26

12 AN ACT concerning juvenile offenders; ~~relating to right to jury trial;~~
13 amending K.S.A. 2009 Supp. ~~38-2344, 38-2357, 38-2364, 38-2365 and~~
14 ~~38-2373 and repealing the existing sections.~~

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 ~~Section 1. K.S.A. 2009 Supp. 38-2344 is hereby amended to read as~~
18 ~~follows: 38-2344. (a) When the juvenile appears without an attorney in~~
19 ~~response to a complaint, the court shall inform the juvenile of the~~
20 ~~following:~~

- 21 ~~—(1) The nature of the charges in the complaint;~~
- 22 ~~—(2) the right to hire an attorney of the juvenile's own choice;~~
- 23 ~~—(3) the duty of the court to appoint an attorney for the juvenile if no~~
24 ~~attorney is hired by the juvenile or parent; and~~
- 25 ~~—(4) that the court may require the juvenile or parent to pay the ex-~~
26 ~~penditure of a court appointed attorney.~~

27 ~~—Upon request the court shall give the juvenile or parent an opportunity~~
28 ~~to hire an attorney. If no request is made or the juvenile or parent is~~
29 ~~financially unable to hire an attorney, the court shall forthwith appoint~~
30 ~~an attorney for the juvenile. The court shall afford the juvenile an op-~~
31 ~~portunity to confer with the attorney before requiring the juvenile to~~
32 ~~plead to the allegations of the complaint.~~

33 ~~—(b) When the juvenile appears with an attorney in response to a com-~~
34 ~~plaint, the court shall require the juvenile to plead guilty, *nolo contendere*~~
35 ~~or not guilty to the allegations stated in the complaint, unless there is an~~
36 ~~application for and approval of an immediate intervention program. Prior~~
37 ~~to making this requirement, the court shall inform the juvenile of the~~
38 ~~following:~~

- 39 ~~—(1) The nature of the charges in the complaint;~~
- 40 ~~—(2) the right of the juvenile to be presumed innocent of each charge;~~
- 41 ~~—(3) the right to a jury trial without unnecessary delay and;~~
- 42 ~~—(4) the right to confront and cross-examine witnesses appearing in~~
43 ~~support of the allegations of the complaint;~~

1 —~~(4) (5) the right to subpoena witnesses;~~
2 —~~(5) (6) the right of the juvenile to testify or to decline to testify, and~~
3 —~~(6) (7) the sentencing alternatives the court may select as the result~~
4 ~~of the juvenile being adjudicated a juvenile offender.~~
5 —~~(c) If the juvenile pleads guilty to the allegations contained in a com-~~
6 ~~plaint or pleads *nolo contendere*, the court shall determine, before ac-~~
7 ~~cepting the plea and entering a sentence: (1) That there has been a vol-~~
8 ~~untary waiver of the rights enumerated in subsections (b)(2), (3), (4) and,~~
9 ~~(5) and (6); and (2) that there is a factual basis for the plea.~~
10 —~~(d) If the juvenile pleads not guilty, the court shall schedule a time~~
11 ~~and date for trial to the court.~~
12 —~~(e) First appearance may be conducted by two-way electronic audio-~~
13 ~~video communication between the juvenile and the judge in lieu of per-~~
14 ~~sonal presence of the juvenile or the juvenile's attorney in the courtroom~~
15 ~~from any location within Kansas in the discretion of the court. The ju-~~
16 ~~venile may be accompanied by the juvenile's attorney during such pro-~~
17 ~~ceedings or the juvenile's attorney may be personally present in court as~~
18 ~~long as a means of confidential communication between the juvenile and~~
19 ~~the juvenile's attorney is available.~~
20 —~~Sec. 2. K.S.A. 2009 Supp. 38-2357 is hereby amended to read as~~
21 ~~follows: 38-2357. In all cases involving offenses committed by a juvenile~~
22 ~~which, if done by an adult, would make the person liable to be arrested~~
23 ~~and prosecuted for the commission of a felony, the judge may upon mo-~~
24 ~~tion, order that the juvenile be afforded a trial by jury. Upon the juvenile~~
25 ~~being adjudged to be a juvenile offender, the court shall proceed with~~
26 ~~sentencing. A juvenile is entitled to a trial by one of the following means:~~
27 ~~(a) The trial of a felony or misdemeanor case shall be to the court unless~~
28 ~~the juvenile requests a jury trial in writing within 30 days from the date~~
29 ~~of the juvenile's entry of a plea of not guilty. The time requirement pro-~~
30 ~~vided in this subsection regarding when a jury trial shall be requested~~
31 ~~may be waived in the discretion of the court upon a finding that imposing~~
32 ~~such time requirement would cause undue hardship or prejudice to the~~
33 ~~juvenile.~~
34 —~~(1) A jury in a felony case shall consist of 12 members. However the~~
35 ~~parties may agree in writing, at any time before the verdict, with the~~
36 ~~approval of the court, that the jury shall consist of any number less than~~
37 ~~12.~~
38 —~~(2) A jury in a misdemeanor case shall consist of six members.~~
39 —~~(3) When the trial is to a jury, questions of law shall be decided by~~
40 ~~the court and issues of fact shall be determined by the jury.~~
41 —~~(4) The verdict shall be written, signed by the presiding juror and~~
42 ~~read by the clerk to the jury, and an inquiry shall be made whether it is~~
43 ~~the jury's verdict. If any juror disagrees, the jury must be sent out again,~~

1 ~~but if no disagreement is expressed, and neither party requires the jury~~
 2 ~~to be polled, the verdict is complete and the jury discharged from the case.~~
 3 ~~If the verdict is defective in form only, it may be corrected by the court,~~
 4 ~~with the assent of the jury, before it is discharged.~~

5 ~~—(5) Except as otherwise provided by law, the rules and procedures~~
 6 ~~applicable to jury trials in felony cases shall apply to jury trials in mis-~~
 7 ~~demeanor cases.~~

8 ~~—(b) Trials in the municipal court of a city shall be to the court.~~

9 ~~—(c) The trial of cigarette or tobacco infraction or traffic infraction~~
 10 ~~cases shall be to the court.~~

11 ~~Sec. 3.~~ **Section 1.** K.S.A. 2009 Supp. 38-2364 is hereby amended to
 12 read as follows: 38-2364. (a) If an extended jurisdiction juvenile prose-
 13 cution results in a guilty plea or finding of guilt, the court shall:

14 (1) Impose one or more juvenile sentences under K.S.A. 2009 Supp.
 15 38-2361, and amendments thereto; and

16 (2) impose an adult criminal sentence, the execution of which shall
 17 be stayed on the condition that the juvenile offender not violate the pro-
 18 visions of the juvenile sentence and not commit a new offense.

19 (b) When it appears that a person sentenced as an extended jurisdic-
 20 tion juvenile has violated ~~the one or more~~ conditions of the juvenile sen-
 21 tence or is alleged to have committed a new offense, the court, without
 22 notice, may revoke the stay and ~~probation juvenile sentence~~ and direct
 23 that the juvenile offender be immediately taken into custody and deliver-
 24 ed to the secretary of corrections pursuant to K.S.A. 21-4621, and
 25 amendments thereto. The court shall notify the juvenile offender and
 26 such juvenile offender's attorney of record, in writing by personal service,
 27 as provided in K.S.A. 60-303, and amendments thereto, or certified mail,
 28 return receipt requested, of the reasons alleged to exist for revocation of
 29 the stay of execution of the adult sentence. If the juvenile offender chal-
 30 lenges the reasons, the court shall hold a hearing on the issue at which
 31 the juvenile offender is entitled to be heard and represented by counsel.
 32 After the hearing, if the court finds by ~~substantial~~ *a preponderance of the*
 33 *evidence that the juvenile committed a new offense or violated one or*
 34 *more conditions of the juvenile's sentence have been violated*, the court
 35 ~~shall may~~ **shall** revoke the juvenile sentence and order the imposition of
 36 the adult sentence previously ordered pursuant to subsection (a)(2) **or,**
 37 **upon agreement of the county or district attorney and the juvenile**
 38 **offender's attorney of record, the court may modify the adult sen-**
 39 **tence previously ordered pursuant to subsection (a)(2).** Upon such
 40 finding, the juvenile's extended jurisdiction status is terminated, and ju-
 41 venile court jurisdiction is terminated. The ongoing jurisdiction for any
 42 adult sanction, other than the commitment to the department of correc-
 43 tions, is with the adult court. The juvenile offender shall be credited for

1 time served in a juvenile correctional or detention facility on the juvenile
2 sentence as service on any authorized adult sanction.

3 (c) Upon becoming 18 years of age, any juvenile who has been sen-
4 tenced pursuant to subsection (a) and is serving the juvenile sentence,
5 may move for a court hearing to review the sentence. If the sentence is
6 continued, the court shall set a date of further review in no later than 36
7 months.

8 ~~Sec. 4-2.~~ K.S.A. 2009 Supp. 38-2365 is hereby amended to read as
9 follows: 38-2365. (a) When a juvenile offender has been placed in the
10 custody of the commissioner, the commissioner shall have a reasonable
11 time to make a placement. If the juvenile offender has not been placed,
12 any party who believes that the amount of time elapsed without place-
13 ment has exceeded a reasonable time may file a motion for review with
14 the court. In determining what is a reasonable amount of time, matters
15 considered by the court shall include, but not be limited to, the nature
16 of the underlying offense, efforts made for placement of the juvenile
17 offender and the availability of a suitable placement. The commissioner
18 shall notify the court ~~and the juvenile offender's,~~ *the juvenile's attorney*
19 *of record and the juvenile's parent,* in writing, of the initial placement and
20 any subsequent change of placement as soon as the placement has been
21 accomplished. The notice to the juvenile offender's parent shall be sent
22 to such parent's last known address or addresses. The court shall have no
23 power to direct a specific placement by the commissioner, but may make
24 recommendations to the commissioner. The commissioner may place the
25 juvenile offender in an institution operated by the commissioner, a youth
26 residential facility or any other appropriate placement. If the court has
27 recommended an out-of-home placement, the commissioner may not re-
28 turn the juvenile offender to the home from which removed without first
29 notifying the court of the plan.

30 (b) If a juvenile is in the custody of the commissioner, the commis-
31 sioner shall prepare and present a permanency plan at sentencing or
32 within 30 days thereafter. If a permanency plan is already in place under
33 a child in need of care proceeding, the court may adopt the plan under
34 the present proceeding. The written permanency plan shall provide for
35 reintegration of the juvenile into such juvenile's family or, if reintegration
36 is not a viable alternative, for other permanent placement of the juvenile.
37 Reintegration may not be a viable alternative when: (1) The parent has
38 been found by a court to have committed murder in the first degree,
39 K.S.A. 21-3401, and amendments thereto, murder in the second degree,
40 K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-
41 3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403,
42 and amendments thereto, of a child or violated a law of another state
43 which prohibits such murder or manslaughter of a child;

- 1 (2) the parent aided or abetted, attempted, conspired or solicited to
2 commit such murder or voluntary manslaughter of a child;
- 3 (3) the parent committed a felony battery that resulted in bodily in-
4 jury to the juvenile who is the subject of this proceeding or another child;
- 5 (4) the parent has subjected the juvenile who is the subject of this
6 proceeding or another child to aggravated circumstances as defined in
7 K.S.A. 38-1502, and amendments thereto;
- 8 (5) the parental rights of the parent to another child have been ter-
9 minated involuntarily; or
- 10 (6) the juvenile has been in extended out-of-home placement as de-
11 fined in K.S.A. 2009 Supp. 38-2202, and amendments thereto.
- 12 (c) If the juvenile is placed in the custody of the commissioner, the
13 plan shall be prepared and submitted by the commissioner. If the juvenile
14 is placed in the custody of a facility or person other than the commis-
15 sioner, the plan shall be prepared and submitted by a court services of-
16 ficer. If the permanency goal is reintegration into the family, the per-
17 manency plan shall include measurable objectives and time schedules for
18 reintegration.
- 19 (d) During the time a juvenile remains in the custody of the com-
20 missioner, the commissioner shall submit to the court, at least every six
21 months, a written report of the progress being made toward the goals of
22 the permanency plan submitted pursuant to subsections (b) and (c) and
23 the specific actions taken to achieve the goals of the permanency plan. If
24 the juvenile is placed in foster care, the court may request the foster
25 parent to submit to the court, at least every six months, a report in regard
26 to the juvenile's adjustment, progress and condition. Such report shall be
27 made a part of the juvenile's court social file. The court shall review the
28 plan submitted by the commissioner and the report, if any, submitted by
29 the foster parent and determine whether reasonable efforts and progress
30 have been made to achieve the goals of the permanency plan. If the court
31 determines that progress is inadequate or that the permanency plan is no
32 longer viable, the court shall hold a hearing pursuant to subsection (e).
- 33 (e) When the commissioner has custody of the juvenile, a perma-
34 nency hearing shall be held no more than 12 months after the juvenile is
35 first placed outside such juvenile's home and at least every 12 months
36 thereafter. Juvenile offenders who have been in extended out-of-home
37 placement shall be provided a permanency hearing within 30 days of a
38 request from the commissioner. The court may appoint a *guardian ad*
39 *litem* to represent the juvenile offender at the permanency hearing. At
40 each hearing, the court shall make a written finding whether reasonable
41 efforts have been made to accomplish the permanency goal and whether
42 continued out-of-home placement is necessary for the juvenile's safety.
- 43 (f) Whenever a hearing is required under subsection (e), the court

1 shall notify all interested parties of the hearing date, the commissioner,
2 foster parent and preadoptive parent or relatives providing care for the
3 juvenile and hold a hearing. Individuals receiving notice pursuant to this
4 subsection shall not be made a party to the action solely on the basis of
5 this notice and opportunity to be heard. After providing the persons re-
6 ceiving notice an opportunity to be heard, the court shall determine
7 whether the juvenile's needs are being adequately met; whether services
8 set out in the permanency plan necessary for the safe return of the ju-
9 venile have been made available to the parent with whom reintegration
10 is planned; and whether reasonable efforts and progress have been made
11 to achieve the goals of the permanency plan.

12 (g) If the court finds reintegration continues to be a viable alternative,
13 the court shall determine whether and, if applicable, when the juvenile
14 will be returned to the parent. The court may rescind any of its prior
15 dispositional orders and enter any dispositional order authorized by this
16 code or may order that a new plan for the reintegration be prepared and
17 submitted to the court. If reintegration cannot be accomplished as ap-
18 proved by the court, the court shall be informed and shall schedule a
19 hearing pursuant to subsection (h). No such hearing is required when the
20 parent voluntarily relinquishes parental rights or ~~agree~~ *agrees* to appoint-
21 ment of a permanent guardian.

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

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

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

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

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

40 (2) services set out in the case plan necessary for the safe return of
41 the juvenile have not been made available to the parent with whom re-
42 integration is planned; or

43 (3) there are one or more documented reasons why such filing would

1 not be in the best interests of the juvenile. Documented reasons may
2 include, but are not limited to: The juvenile has close emotional bonds
3 with a parent which should not be broken; the juvenile is 14 years of age
4 or older and, after advice and counsel, refuses to be adopted; insufficient
5 grounds exist for termination of parental rights; the juvenile is an unac-
6 companied refugee minor; or there are international legal or compelling
7 foreign policy reasons precluding termination of parental rights.

8 Sec. ~~5~~ **3**. K.S.A. 2009 Supp. 38-2373 is hereby amended to read as
9 follows: 38-2373. (a) *Actions by the court*. (1) When a juvenile offender
10 has been committed to a juvenile correctional facility, the clerk of the
11 court shall forthwith notify the commissioner of the commitment and
12 provide the commissioner with a certified copy of the complaint, the
13 journal entry of the adjudication and sentencing. The court shall provide
14 those items from the social file which could relate to a rehabilitative pro-
15 gram. If the court wishes to recommend placement of the juvenile of-
16 fender in a specific juvenile correctional facility, the recommendation
17 shall be included in the sentence. After the court has received notice of
18 the juvenile correctional facility designated as provided in subsection (b),
19 it shall be the duty of the court or the sheriff of the county to deliver the
20 juvenile offender to the facility at the time designated by the
21 commissioner.

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

28 (b) *Actions by the commissioner*. (1) Within three days after receiving
29 notice of commitment as provided in subsection (a), the commissioner
30 shall notify the committing court of the facility to which the juvenile
31 offender should be conveyed, and when to effect the immediate transfer
32 of ~~study~~ *custody* and control to the juvenile justice authority. The date of
33 admission shall be no more than five days after the notice to the com-
34 mitting court. Until received at the designated facility, the continuing
35 detention, custody, and control of and transport for a juvenile offender
36 sentenced to a direct commitment to a juvenile correctional facility shall
37 be the responsibility of the committing county.

38 (2) Except as provided by K.S.A. 2009 Supp. 38-2332, and amend-
39 ments thereto, the commissioner may make any temporary out-of-home
40 placement the commissioner deems appropriate pending placement of
41 the juvenile offender in a juvenile correctional facility, and the commis-
42 sioner shall notify the court, local law enforcement agency and school
43 district in which the juvenile will be residing if the juvenile is still required

1 to attend a secondary school of that placement.
2 (c) *Transfers.* During the time a juvenile offender remains committed
3 to a juvenile correctional facility, the commissioner may transfer the ju-
4 venile offender from one juvenile correctional facility to another.
5 Sec. ~~6~~ **4.** K.S.A. 2009 Supp. ~~38-2344, 38-2357, 38-2364, 38-2365 and~~
6 ~~38-2373~~ are hereby repealed.
7 Sec. ~~7~~ **5.** This act shall take effect and be in force from and after its
8 publication in the statute book.