

HOUSE BILL No. 2505

By Representatives Owens and W. Carpenter

1-27

1 AN ACT concerning children and minors; relating to the revised Kansas
2 juvenile justice code; violation of probation; detention; amending
3 K.S.A. 2019 Supp. 38-2361 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2019 Supp. 38-2361 is hereby amended to read as
7 follows: 38-2361. (a) Upon adjudication as a juvenile offender pursuant to
8 K.S.A. 2019 Supp. 38-2356, and amendments thereto, modification of
9 sentence pursuant to K.S.A. 2019 Supp. 38-2367, and amendments thereto,
10 or violation of a condition of sentence pursuant to K.S.A. 2019 Supp. 38-
11 2368, and amendments thereto, the court may impose one or more of the
12 following sentencing alternatives for a fixed period pursuant to K.S.A.
13 2019 Supp. 38-2369 and 38-2391, and amendments thereto.

14 (1) Place the juvenile on probation for a fixed period pursuant to
15 K.S.A. 2019 Supp. 38-2391, and amendments thereto, subject to terms and
16 conditions the court deems appropriate consistent with juvenile justice
17 programs in the community. Any juvenile placed on probation shall be
18 supervised according to the juvenile's risk and needs as determined by a
19 risk and needs assessment. Placement of juvenile offenders to community
20 corrections for probation supervision shall be limited to offenders
21 adjudicated for an offense that are determined to be moderate-risk, high-
22 risk or very high-risk on a risk and needs assessment using the cutoff
23 scores established by the secretary pursuant to K.S.A. 2019 Supp. 38-
24 2360, and amendments thereto.

25 (2) Order the juvenile to participate in a community based program
26 available in such judicial district subject to the terms and conditions the
27 court deems appropriate. This alternative shall not be ordered with the
28 alternative in paragraph—(H) (10). Requirements pertaining to child
29 support may apply if custody is vested with other than a parent.

30 (3) Place the juvenile in the custody of a parent or other suitable
31 person, which is not a group home or other facility licensed pursuant to
32 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
33 thereto, subject to terms and conditions consistent with juvenile justice
34 programs in the community. This alternative shall not be ordered with the
35 alternative in paragraph—(H) (10). Requirements pertaining to child
36 support may apply if custody is vested with other than a parent.

1 (4) Order the juvenile to attend counseling, educational, mediation or
 2 other sessions, or to undergo a drug evaluation ~~pursuant~~ *subject to the*
 3 *provisions of* subsection (b).

4 (5) Suspend or restrict the juvenile's driver's license or privilege to
 5 operate a motor vehicle on the streets and highways of this state ~~pursuant~~
 6 *subject to the provisions of* subsection (c).

7 (6) Order the juvenile to perform charitable or community service
 8 work.

9 (7) Order the juvenile to make appropriate reparation or restitution
 10 ~~pursuant~~ *subject to the provisions of* subsection (d).

11 (8) Order the juvenile to pay a fine not exceeding \$1,000 ~~pursuant~~
 12 *subject to the provisions of* subsection (e).

13 (9) Place the juvenile under a house arrest program administered by
 14 the court pursuant to K.S.A. 2019 Supp. 21-6609, and amendments
 15 thereto.

16 ~~(10) Place the juvenile in the custody of the secretary of corrections~~
 17 ~~as provided in K.S.A. 2019 Supp. 38-2365, and amendments thereto. This~~
 18 ~~alternative shall not be ordered with the alternative in paragraph (3) or~~
 19 ~~(12). Except for mandatory drug and alcohol evaluation, when this~~
 20 ~~alternative is ordered with alternatives in paragraphs (2), (4) and (9), such~~
 21 ~~orders shall constitute a recommendation by the court. Requirements~~
 22 ~~pertaining to child support shall apply under this alternative. The~~
 23 ~~provisions of this paragraph shall expire on January 1, 2018.~~

24 ~~(H)~~ (A) Upon a violation of a condition of sentence, other than a
 25 technical violation, pursuant to K.S.A. 2019 Supp. 38-2368, and
 26 amendments thereto, commit the juvenile to detention for a period ~~no~~ *not*
 27 longer than 30 days subject to the provisions of subsection (g).

28 (B) Upon a fourth violation of a condition of sentence, including any
 29 technical violation, pursuant to K.S.A. 2019 Supp. 38-2368, and
 30 amendments thereto, commit the juvenile to detention for a period *not*
 31 longer than 48 hours subject to the provisions of subsections (g)(4) and
 32 (g)(5).

33 (C) Upon a fifth or subsequent violation of a condition of sentence,
 34 including any technical violation, pursuant to K.S.A. 2019 Supp. 38-2368,
 35 and amendments thereto, commit the juvenile to detention for a period *not*
 36 longer than five days subject to the provisions of subsections (g)(4) and
 37 (g)(5).

38 ~~(I2)~~(I1) If the judge finds and enters into the written record that the
 39 juvenile poses a significant risk of harm to another or damage to property,
 40 and the juvenile is otherwise eligible for commitment pursuant to K.S.A.
 41 2019 Supp. 38-2369, and amendments thereto, commit the juvenile
 42 directly to the custody of the secretary of corrections for placement in a
 43 juvenile correctional facility or a youth residential facility. Placement in a

1 youth residential facility shall only be permitted as authorized in K.S.A.
2 2019 Supp. 38-2369(e), and amendments thereto. If the court elects, a
3 period of conditional release pursuant to K.S.A. 2019 Supp. 38-2369, and
4 amendments thereto, may also be ordered. The period of conditional
5 release shall be limited to a maximum of six months and shall be subject to
6 graduated responses. Twenty-one days prior to the juvenile's release from a
7 juvenile correctional facility, the secretary of corrections or designee shall
8 notify the court of the juvenile's anticipated release date. This alternative
9 may be ordered with the alternative in paragraph (7). Requirements
10 pertaining to child support shall apply under this alternative.

11 ~~(13)~~(12) Upon a finding by the trier of fact during adjudication that a
12 firearm was used in the commission of an offense by the accused which, if
13 committed by an adult, would constitute a felony, a judge may commit the
14 juvenile directly to the custody of the secretary of corrections for
15 placement in a juvenile correctional facility or youth residential facility for
16 a minimum term of six months and up to a maximum term of 18 months,
17 regardless of the risk level of such juvenile as determined by a risk and
18 needs assessment. If the juvenile is committed to the custody of the
19 secretary, and the court elects, a period of conditional release, pursuant to
20 K.S.A. 2019 Supp. 38-2369, and amendments thereto, may also be
21 ordered. The period of conditional release shall be limited to a maximum
22 of six months and shall be subject to graduated responses. Twenty-one
23 days prior to the juvenile's release from a juvenile correctional facility or
24 youth residential facility, the secretary of corrections or the secretary's
25 designee shall notify the court of the juvenile's anticipated release date.

26 (b) If the court orders the juvenile to attend counseling, educational,
27 mediation or other sessions, or to undergo a drug and alcohol evaluation
28 pursuant to subsection (a)(4), the following provisions apply:

29 (1) The court may order the juvenile offender to participate in
30 counseling or mediation sessions or a program of education, including
31 placement in an alternative educational program approved by a local
32 school board. The costs of any counseling or mediation may be assessed as
33 expenses in the case. No mental health center shall charge a fee for court-
34 ordered counseling greater than what the center would have charged the
35 person receiving the counseling if the person had requested counseling on
36 the person's own initiative. No mediator shall charge a fee for court-
37 ordered mediation greater than what the mediator would have charged the
38 person participating in the mediation if the person had requested mediation
39 on the person's own initiative. Mediation may include the victim but shall
40 not be mandatory for the victim; and

41 (2) if the juvenile has been adjudicated to be a juvenile by reason of a
42 violation of a statute that makes such a requirement, the court shall order
43 and, if adjudicated for any other offense, the court may order the juvenile

1 to submit to and complete a drug and alcohol evaluation by a community-
2 based drug and alcohol safety action program certified pursuant to K.S.A.
3 8-1008, and amendments thereto, and to pay a fee not to exceed the fee
4 established by that statute for such evaluation. The court may waive the
5 mandatory evaluation if the court finds that the juvenile completed a drug
6 and alcohol evaluation, approved by the community-based alcohol and
7 drug safety action program, within 12 months before sentencing. If the
8 evaluation occurred more than 12 months before sentencing, the court
9 shall order the juvenile to resubmit to and complete the evaluation and
10 program as provided herein. If the court finds that the juvenile and those
11 legally liable for the juvenile's support are indigent, the court may waive
12 the fee. In no event shall the fee be assessed against the secretary of
13 corrections or the department of corrections nor shall the fee be assessed
14 against the secretary of the department for children and families or the
15 Kansas department for children and families if the juvenile is in the
16 secretary's care, custody and control.

17 (c) If the court orders suspension or restriction of a juvenile offender's
18 driver's license or privilege to operate a motor vehicle on the streets and
19 highways of this state pursuant to subsection (a)(5), the following
20 provisions apply:

21 (1) The duration of the suspension ordered by the court shall be for a
22 definite time period to be determined by the court. Upon suspension of a
23 license pursuant to this subsection, the court shall require the juvenile
24 offender to surrender the license to the court. The court shall transmit the
25 license to the division of motor vehicles of the department of revenue, to
26 be retained until the period of suspension expires. At that time, the licensee
27 may apply to the division for return of the license. If the license has
28 expired, the juvenile offender may apply for a new license, which shall be
29 issued promptly upon payment of the proper fee and satisfaction of other
30 conditions established by law for obtaining a license unless another
31 suspension or revocation of the juvenile offender's privilege to operate a
32 motor vehicle is in effect. As used in this subsection, "highway" and
33 "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and
34 amendments thereto. Any juvenile offender who does not have a driver's
35 license may have driving privileges revoked. No Kansas driver's license
36 shall be issued to a juvenile offender whose driving privileges have been
37 revoked pursuant to this section for a definite time period to be determined
38 by the court; and

39 (2) in lieu of suspending a juvenile offender's driver's license or
40 privilege to operate a motor vehicle on the highways of this state, the court
41 may enter an order which places conditions on the juvenile offender's
42 privilege of operating a motor vehicle on the streets and highways of this
43 state, a certified copy of which the juvenile offender shall be required to

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

34 (d) The following provisions apply to the court's determination of
35 whether to order reparation or restitution pursuant to subsection (a)(7):

36 (1) The court shall order the juvenile to make reparation or restitution
37 to the aggrieved party for the damage or loss caused by the juvenile
38 offender's offense unless it finds compelling circumstances that would
39 render a plan of reparation or restitution unworkable. If the court finds
40 compelling circumstances that would render a plan of reparation or
41 restitution unworkable, the court shall enter such findings with
42 particularity on the record. In lieu of reparation or restitution, the court
43 may order the juvenile to perform charitable or social service for

1 organizations performing services for the community; and

2 (2) restitution may include, but shall not be limited to, the amount of
3 damage or loss caused by the juvenile's offense. Restitution may be made
4 by payment of an amount fixed by the court or by working for the parties
5 sustaining loss in the manner ordered by the court. An order of monetary
6 restitution shall be a judgment against the juvenile that may be collected
7 by the court by garnishment or other execution as on judgments in civil
8 cases. Such judgment shall not be affected by the termination of the court's
9 jurisdiction over the juvenile offender.

10 (e) If the court imposes a fine pursuant to subsection (a)(8), the
11 following provisions apply:

12 (1) The amount of the fine may not exceed \$1,000 for each offense.
13 The amount of the fine should be related to the seriousness of the offense
14 and the juvenile's ability to pay. Payment of a fine may be required in a
15 lump sum or installments;

16 (2) in determining whether to impose a fine and the amount to be
17 imposed, the court shall consider that imposition of a fine is most
18 appropriate in cases where the juvenile has derived pecuniary gain from
19 the offense and that imposition of a restitution order is preferable to
20 imposition of a fine; and

21 (3) any fine imposed by *the* court shall be a judgment against the
22 juvenile that may be collected by the court by garnishment or other
23 execution as on judgments in civil cases. Such judgment shall not be
24 affected by the termination of the court's jurisdiction over the juvenile.

25 (f) Before the court sentences a juvenile offender pursuant to
26 subsection (a), the court shall administer a risk assessment tool, as
27 described in K.S.A. 2019 Supp. 38-2360, and amendments thereto, or
28 review a risk assessment tool that was administered within the past six
29 months to the juvenile and use the results of that assessment to inform
30 orders made pursuant to K.S.A. 2019 Supp. 38-2369 and 38-2391, and
31 amendments thereto.

32 (g) If the court commits the juvenile to detention pursuant to
33 subsection ~~(a)(11)~~ (a)(10), the following provisions shall apply:

34 (1) The court shall only order commitment to detention upon
35 violation of sentencing conditions where all other alternatives have been
36 exhausted.

37 (2) In order to commit a juvenile to detention upon violation of
38 sentencing conditions, the court shall find that the juvenile poses a
39 significant risk of harm to another or damage to property, is charged with a
40 new felony offense, or violates conditional release.

41 (3) The court shall not order commitment to detention upon
42 adjudication as a juvenile offender pursuant to K.S.A. 2019 Supp. 38-
43 2356, and amendments thereto, for solely technical violations of probation,

1 contempt, a violation of a valid court order, to protect from self-harm or
2 due to any state or county failure to find adequate alternatives.

3 (4) Cumulative detention use shall be limited to a maximum of 45
4 days over the course of a juvenile offender's case pursuant to K.S.A. 2019
5 Supp. 38-2391, and amendments thereto. The court shall review any
6 detention commitment every seven days and may shorten the initial
7 commitment or extend the commitment. In no case, however, may the term
8 of detention or any extension thereof exceed the cumulative detention limit
9 of 45 days or the overall case length limit.

10 (5) A juvenile over 18 years of age and less than 23 years of age at
11 sentencing shall be committed to a county jail, in lieu of a juvenile
12 detention center, under the same time restrictions imposed by paragraph
13 ~~(4)~~ (4), but shall not be committed to or confined in a juvenile detention
14 facility.

15 (h) Any order issued by the judge pursuant to this section shall be in
16 effect immediately upon entry into the court's minutes.

17 (i) In addition to the requirements of K.S.A. 2019 Supp. 38-2373, and
18 amendments thereto, if a person is under 18 years of age and convicted of
19 a felony or adjudicated as a juvenile offender for an offense *which*, if
20 committed by an adult, would constitute the commission of a felony, the
21 court shall forward a signed copy of the journal entry to the secretary of
22 corrections within 30 days of final disposition.

23 (j) Except as further provided, if a juvenile has been adjudged to be a
24 juvenile offender for an offense which, if committed by an adult, would
25 constitute the commission of: (1) Aggravated human trafficking, as defined
26 in K.S.A. 2019 Supp. 21-5426(b), and amendments thereto, if the victim is
27 less than 14 years of age; (2) rape, as defined in K.S.A. 2019 Supp. 21-
28 5503(a)(3), and amendments thereto; (3) aggravated indecent liberties with
29 a child, as defined in K.S.A. 2019 Supp. 21-5506(b)(3), and amendments
30 thereto; (4) aggravated criminal sodomy, as defined in K.S.A. 2019 Supp.
31 21-5504(b)(1) or (b)(2), and amendments thereto; (5) commercial sexual
32 exploitation of a child, as defined in K.S.A. 2019 Supp. 21-6422, and
33 amendments thereto, if the victim is less than 14 years of age; (6) sexual
34 exploitation of a child, as defined in K.S.A. 2019 Supp. 21-5510(a)(1) or
35 (a)(4), and amendments thereto, if the victim is less than 14 years of age;
36 or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A.
37 2019 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an
38 offense defined in paragraphs (1) through (6); the court shall issue an order
39 prohibiting the juvenile from attending the attendance center that the
40 victim of the offense attends. If only one attendance center exists, for
41 which the victim and juvenile are eligible to attend, in the school district
42 where the victim and the juvenile reside, the court shall hear testimony and
43 take evidence from the victim, the juvenile, their families and a

1 representative of the school district as to why the juvenile should or should
2 not be allowed to remain at the attendance center attended by the victim.
3 After such hearing, the court may issue an order prohibiting the juvenile
4 from attending the attendance center that the victim of the offense attends.

5 (k) The court may order a short-term alternative placement of a
6 juvenile pursuant to subsection (a)(3) in an emergency shelter, therapeutic
7 foster home or community integration program if:

8 (1) Such juvenile has been adjudicated to be a juvenile offender for
9 an offense which, if committed by an adult, would constitute the
10 commission of:

11 (A) Aggravated human trafficking, as defined in K.S.A. 2019 Supp.
12 21-5426(b), and amendments thereto, if the victim is less than 14 years of
13 age;

14 (B) rape, as defined in K.S.A. 2019 Supp. 21-5503, and amendments
15 thereto;

16 (C) commercial sexual exploitation of a child, as defined in K.S.A.
17 2019 Supp. 21-6422, and amendments thereto, if the victim is less than 14
18 years of age;

19 (D) sexual exploitation of a child, as defined in K.S.A. 2019 Supp.
20 21-5510(a)(1) or (a)(4), and amendments thereto, if the victim is less than
21 14 years of age;

22 (E) aggravated indecent liberties with a child, as defined in K.S.A.
23 2019 Supp. 21-5506, and amendments thereto, if the victim is less than 14
24 years of age; or

25 (F) an attempt, conspiracy or criminal solicitation, as defined in
26 K.S.A. 2019 Supp. 21-5301, 21-5302 or 21-5303, and amendments
27 thereto, of an offense defined in paragraphs (1) through (4); and

28 (2) (A) the victim resides in the same home as the juvenile offender;

29 (B) a community supervision officer in consultation with the
30 department for children and families determines that an adequate safety
31 plan, which shall include the physical and psychological well-being of the
32 victim, cannot be developed to keep the juvenile in the same home; and

33 (C) there are no relevant child in need of care issues that would
34 permit a case to be filed under the Kansas code for care of children.

35 The presumptive term of commitment shall not extend beyond the
36 overall case length limit but may be modified pursuant to K.S.A. 2019
37 Supp. 38-2367 and 38-2397, and amendments thereto. If a child is placed
38 outside the child's home at the dispositional hearing pursuant to this
39 subsection and no reintegration plan is made a part of the record of the
40 hearing, a written reintegration plan shall be prepared pursuant to K.S.A.
41 2019 Supp. 38-2397, and amendments thereto, and submitted to the court
42 within 15 days of the initial order of the court.

43 (l) The sentencing hearing shall be open to the public as provided in

1 K.S.A. 2019 Supp. 38-2353, and amendments thereto.

2 (m) The overall case length limit shall be calculated by the court and
3 entered into the written record when one or more of the sentencing options
4 under this section are imposed. The period fixed by the court pursuant to
5 subsection (a) shall not extend beyond the overall case length limit.

6 Sec. 2. K.S.A. 2019 Supp. 38-2361 is hereby repealed.

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