Juvenile Justice Code Book

2019

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KANSAS JUVENILE JUSTICE CODE

K.S.A.

Chapter 38.—MINORS
Article 16.—KANSAS JUVENILE JUSTICE CODE

38-1601.

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Law Review and Bar Journal References:

"The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles in the Name of 'Justice'," William T. Stetzer, 35 W.L.J. 308 (1996).

"Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Court," Trey Meyer, 47 K.L.R. 1035 (1999).

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2. Cited; authority to modify restitution under 38-1663 and juvenile's rights to due process upheld. In re C.A.D., 11 K.A.2d 13, 711 P.2d 1336 (1985).

3. Cited; provisions of 60-460(dd) (statements by children) inapplicable to juvenile offender proceedings. In re Mary P., 237 K. 456, 701 P.2d 681 (1985).

4. Juvenile proceeding is civil proceeding, protective in nature and totally divorced from criminal implications. State v. Muhammad, 237 K. 850, 854, 703 P.2d 835 (1985).

5. Cited; where defendant had no juvenile offender status because of prior adjudications (38-1602(b)(3)), court lacked jurisdiction under code. State v. Lowe, 238 K. 755, 715 P.2d 404 (1986); R'ved, Lowe v. State, 242 K. 64, 744 P.2d 856 (1987)

6. Cited; deliberations and findings necessary to establish venue of dispositional hearing outside juvenile resident county (38-1605) examined. In re A.T.K., 11 K.A.2d 174, 176, 717 P.2d 528 (1986).

7. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 354, 720 P.2d 1141 (1986).

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9. Failure of state to proceed hereunder deprived court of jurisdiction to accept guilty plea to crime committed before 18. State v. Mayfield, 241 K. 555, 561, 738 P.2d 861 (1987).

10. Cited; legal obligation of county to provide counsel for indigent defendants charged with misdemeanors, hourly rate allowed examined. Board of Osage County Comm'rs v. Burns, 242 K. 544, 545, 747 P.2d 1338 (1988).

11. Cited; 21-3732 relating to incendiary or explosive devices as not including device known as "torpedo" examined. In re D.W.A., 244 K. 114, 765 P.2d 704 (1988).

12. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 789 P.2d 1153 (1990).

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14. Cited in holding crime of aiding a felon (21-3812) applies to aiding a juvenile offender.

State v. Busse, 252 K. 695, 698, 847 P.2d 1304 (1992).

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17. Whether juvenile adjudication can be used to enhance severity level of theft conviction examined. In re J.E.M., 20 K.A.2d 596, 598, 890 P.2d 364 (1995).

18. Juvenile adjudications may be considered in calculating offender's criminal history. State v. LaMunyon, 259 K. 54, 55, 911 P.2d 151 (1996).

19. Juvenile adjudication cannot carry criminal implications or qualify as crime; pre-1996 aggravated escape from custody section (21-3810) inapplicable. State v. Clint L., 262 K. 174, 177, 936 P.2d 235 (1997).

20. Juvenile under 14 must have opportunity to consult with attorney or parent before waiving Miranda rights or statements are inadmissible. In re B.M.B., 264 K. 417, 432, 955 P.2d 1302 (1998).

21. City's special use zoning ordinance discriminated against potential group home residents based on familial status in violation of FHA (42 U.S.C. 3601 et seq.) Keys Youth Services, Inc. v. City of Olathe, Kan., 52 F.Supp.2d 1284, 1306 (1999).

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23. Code provides no authority for imposition of consecutive sentences. In re W.H., 274 K. 813, 57 P.3d 1 (2002).

24. Cited in discussion of changes in policy goals of the juvenile offender system; juveniles have right to jury trials. In re L.M., 286 K. 460, 462, 466, 480, 487, 186 P.3d 164 (2008).

38-1602.

History: L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 171, § 8; L. 1999, ch. 156, § 11; L. 2003, ch. 72, § 2; L. 2003, ch. 158, § 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was also amended by L. 1990, ch. 146, § 3, effective May 3, 1990, but such amendment was repealed by L. 1990, ch. 150,§ 14, effective Jan. 1, 1993.

This section was also amended by L. 1993, ch. 209, § 2, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

Section was amended twice in the 1998 session; see also 38-1602a.

Section was amended twice in 1999 session, see also 38-1602b.

Cross References to Related Sections:

Traffic offenders 14 or over, see 8-2117.

Fish and game violators 16 or over, see 32-110c.

Law Review and Bar Journal References:

"The Kansas Hard-Forty Law," The Honorable Tom Malone, 32 W.L.J. 147, 154 (1993).

Survey of Recent Cases, 45 K.L.R. 1369, 1390 (1997).

Survey of Recent Cases, 46 K.L.R. 898 (1998).

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CASE ANNOTATIONS

1. Statutory changes represented herein not retroactively applied to juvenile charged before change effective. In re Hockenbury, 9 K.A.2d 450, 453, 680 P.2d 561 (1984).

2. Cited; provisions of 60-460(dd) (statements by children) inapplicable to juvenile offender proceedings. In re Mary P., 237 K. 456, 701 P.2d 681 (1985).

3. Where defendant had no juvenile offender status because of prior adjudications, court lacked jurisdiction under code. State v. Lowe, 238 K. 755, 758, 715 P.2d 404 (1986); R'ved, Lowe v. State, 242 K. 64, 744 P.2d 856 (1987).

4. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" examined. Reubke v. State, 11 K.A.2d 353, 720 P.2d 1141 (1986).

5. Two prior adjudications as juvenile offender made in one hearing is one proceeding. State v. Magness, 240 K. 719, 720, 721, 722, 732 P.2d 747 (1987).

6. History of 8-2117 (juvenile traffic offenders) examined; limitations on length and places of incarceration determined. State v. D.L.P., 13 K.A.2d 647, 652, 778 P.2d 851 (1989).

7. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 493, 789 P.2d 1153 (1990).

8. Driving with suspended license (8-262) held not a "traffic offense" as defined in 8-2117(d); minor over 14 years subject hereunder. State v. Frazier, 248 K. 963, 972, 811 P.2d 1240 (1991).

9. Cited in holding crime of aiding a felon (21-3812) applies to aiding a juvenile offender. State v. Busse, 252 K. 695, 697, 698, 847 P.2d 1304 (1993).

10. No specific procedure required to establish when juvenile not subject to code; state must provide sufficient evidence to exclude. State v. Shelton, 252 K. 319, 322, 845 P.2d 23 (1993).

11. Under facts, district court to which juvenile case was transferred was proper even if transferring court lacked subject matter jurisdiction. In re M.K.D., 21 K.A.2d 541, 542, 901 P.2d 536 (1995).

12. Juvenile adjudication may be used in determining criminal history score for sentencing of adult under KSGA (21-4701 et seq.). State v. Lanning, 260 K. 815, 816, 925 P.2d 1145 (1996).

13. Trial court has no duty to inform juvenile of future collateral consequences that plea to adult felony entails. In re J.C., 260 K. 851, 852, 925 P.2d 415 (1996).

14. Subsection (b)(3) applied to 17-year old notwithstanding no disposition made on second offense. State v. Fultz, 24 K.A.2d 242, 943 P.2d 938 (1997).

15. Defendant was statutorily excluded from definition of juvenile offender at time of his crimes in 1995. State v. Williams, 283 K. 492, 496, 153 P.3d 520 (2007).

16. Definitions of "misdemeanor" and "felony" have been incorporated into the Kansas juvenile justice code. In re J.R.A., 38 K.A.2d 86, 89, 161 P.3d 231 (2007).

17. Cited in holding adult convictions reversed for failure to follow juvenile code; no district court jurisdiction. State v. Breedlove, 285 K. 1006, 1010, 1014, 179 P.3d 1115 (2008).

18. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 482, 186 P.3d 164 (2008).

38-1602a.

History: L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 187, § 2; Repealed, L. 1999, ch. 116, § 51; Repealed, L. 1999, ch. 156, § 29; May 27.

38-1602b.

History: L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 171, § 8; L. 1999, ch. 116, § 44; Repealed, L. 2000, ch. 159, § 14; July 1.

38-1603.

History: L. 1982, ch. 182, § 61; L. 1991, ch. 116, § 1; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1604.

History: L. 1982, ch. 182, § 62; L. 1996, ch. 229, § 42; L. 1997, ch. 156, § 46; L. 1997, ch. 156, § 47; L. 1998, ch. 187, § 3; L. 1999, ch. 156, § 12; L. 2006, ch. 200, § 93; Repealed, L. 2013, ch. 51, § 2; July 1.

Law Review and Bar Journal References:

"The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles in the Name of 'Justice'," William T. Stetzer, 35 W.L.J. 308, 320 (1996).

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

"A Compromised Solution: Balancing the Constitutional Consequences and the Practical Benefits of Using Juvenile Adjudication for Sentence Enhancement Purposes," Nicole M. Romine, 45 W.L.J. 113 (2005).

"Criminal Procedure Survey," 56 K.L.R. 796 (2008).

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Municipal courts; prosecution of ordinance; violation of ordinance, conduct not prohibited by statute. 97-31.

Municipal courts; disclosure of records of juvenile charged with tobacco ordinance infraction. 1998-36.

CASE ANNOTATIONS

1. Statutory changes in 38-1602(b)(1) not retroactively applied to juvenile charged before change effective. In re Hockenbury, 9 K.A.2d 450, 452, 680 P.2d 561 (1984).

2. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 354, 720 P.2d 1141 (1986).

3. Noted in holding Kansas residency not required for unemancipated pregnant minor to seek waiver of parental notification. In re Doe, 17 K.A.2d 567, 569, 843 P.2d 735 (1992).

4. Whether state may try juvenile prosecuted as adult on charges not previously raised in juvenile proceeding examined. State v. Randolph, 19 K.A.2d 730, 735, 876 P.2d 177 (1994).

5. Cited in constitutional challenge to certification as an adult; no constitutional violation found. State v. Tyler, 286 K. 1087, 1096, 191 P.3d 306 (2008).

38-1605.

History: L. 1982, ch. 182, § 63; L. 1996, ch. 229, § 43; L. 1999, ch. 51, § 1; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Statute contemplates adjudicating court engaging in separate deliberation on venue; venue outside resident county only when best interests of juvenile are met. In re A.T.K., 11 K.A.2d 174, 176, 717 P.2d 528 (1986).

2. Venue proper in either county where cause of death inflicted or county where death ensued. In re J.W.S., 250 K. 65, 69, 70, 825 P.2d 125 (1992).

3. Noted in holding Kansas residency not required for unemancipated pregnant minor to seek waiver of parental notification. In re Doe, 17 K.A.2d 567, 569, 843 P.2d 735 (1992).

4. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 186 P.3d 164 (2008).

38-1606.

History: L. 1982, ch. 182, § 64; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

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1. Court may conduct hearing without voluntary waiver of appearance by juvenile if counsel is present. State v. Muhammad, 237 K. 850, 856, 703 P.2d 835 (1985).

2. Cited; legal obligation of county to provide counsel for indigent defendants charged with misdemeanors, hourly rate allowed examined. Board of Osage County Comm'rs v. Burns, 242 K. 544, 546, 747 P.2d 1338 (1988).

38-1606a.

History: L. 1994, ch. 282, § 9; L. 1996, ch. 229, § 44; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1607.

History: L. 1982, ch. 182, § 65; L. 1988, ch. 139, § 2; L. 1990, ch. 147, § 5; L. 1992, ch. 318, § 5; L. 1993, ch. 164, § 1; L. 1994, ch. 270, § 7; L. 1996, ch. 229, § 45; L. 1996, ch. 229, § 46; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was amended twice in 1992 session, see also 38-1607a.

Law Review and Bar Journal References:

"Expungement: Lies That Can Hurt You in and out of Court," Steven K. O'Hern, 27 W.L.J. 574, 578, 586, 589, 598 (1988).

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

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CASE ANNOTATIONS

1. Language "the hearing" open to public means only adjudicatory hearings for those over 15. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 494, 789 P.2d 1153 (1990).

2. Motion to exclude testimony denied; favorable treatment not exchanged for witness' testimony; charges were matter of public record. In re J.T.M., 22 K.A.2d 673, 681, 922 P.2d 1103 (1996).

3. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 490, 186 P.3d 164 (2008).

38-1607a.

History: L. 1982, ch. 182, § 65; L. 1988, ch. 139, § 2; L. 1990, ch. 147, § 5; L. 1992, ch. 286, § 14; Repealed, L. 1993, ch. 164, § 3; July 1.

38-1608.

History: L. 1982, ch. 182, § 66; L. 1983, ch. 140, § 30; L. 1984, ch. 157, § 2; L. 1990, ch. 147, § 6; L. 1992, ch. 318, § 6; L. 1993, ch. 164, § 2; L. 1994, ch. 270, § 8; L. 1996, ch. 229, § 47; L. 1996, ch. 229, § 48; L. 1997, ch. 156, § 48; L. 1998, ch. 171, § 9; L. 2006, ch. 200, § 94; Repealed, L. 2013, ch. 51, § 2; July 1.

Law Review and Bar Journal References:

"Kansas Sunshine Law: How Bright Does It Shine Now? The Kansas Open Meetings and Open Records Acts," Theresa "Terry" Marcel, 72 J.K.B.A. No. 5, 28 (2003).

Attorney General's Opinions:

Records of juveniles in NCIC system. 84-126.

Open records; law enforcement records; jail book, standard offense report, mug shots. 87-25.

Confidentiality of juvenile records; disclosure pursuant to court order. 93-75.

Confidentiality of information concerning juvenile offenders age 14 and older. 95-94.

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CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 490, 186 P.3d 164 (2008).

38-1609.

History: L. 1982, ch. 182, § 67; L. 1990, ch. 147, § 7; L. 1996, ch. 229, § 49; L. 2003, ch. 66, § 2; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1610.

History: L. 1982, ch. 182, § 68; L. 1983, ch. 140, § 31; L. 1986, ch. 129, § 2; L. 1989, ch. 96, § 2; L. 1992, ch. 312, § 14; L. 1996, ch. 229, § 50; L. 1997, ch. 156, § 49; L. 1998, ch. 131, § 7; L. 2005, ch. 168, § 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Expungement, defined, see 21-3110a.

Attorney General's Opinions:

Disqualification for admission to Kansas Law Enforcement Center. 1999-34.

38-1611.

History: L. 1982, ch. 182, § 69; L. 1983, ch. 140, § 32; L. 1984, ch. 157, § 3; L. 1992, ch. 312, § 15; L. 1993, ch. 291, § 221; L. 1994, ch. 291, § 68; L. 1996, ch. 229, § 51; L. 1997, ch. 156, § 50; L. 2001, ch. 208, § 17; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Custody requirement for taking juvenile fingerprints for felony-type offenses. 85-96.

Juveniles; collection of blood and saliva specimens; fingerprinting by KBI. 95-63.

CASE ANNOTATIONS

1. Allegation that photograph of defendant illegally taken without merit; identification not at issue; totality of circumstances considered. State v. Orr, 262 K. 312, 336, 940 P.2d 42 (1997).

38-1612.

History: L. 1982, ch. 182, § 70; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 354, 720 P.2d 1141 (1986).

38-1613.

History: L. 1982, ch. 182, § 71; L. 1992, ch. 128, § 10; L. 1996, ch. 234, § 12; L. 1997, ch. 156, § 51; L. 2006, ch. 215, § 9; Repealed, L. 2009, ch. 116, § 27; July 1.

Revisor's Note:

Section was also amended by L. 1996, ch. 229, § 52, but that version was repealed by L. 1997, ch. 156, § 115.

Cross References to Related Sections:

Prosecuting attorney's training fee, see 28-170.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Docket fees and expenses; recovery of court appointed attorney fees by county from parents of accused offender. 90-99.

Neither a school district nor an educational cooperative may charge fees for costs of conducting educational needs assessments ordered pursuant to 38-1514 or 38-1662. 97-44.

CASE ANNOTATIONS

1. Appellate counsel attorney fees of nonconsenting father in adoption proceedings assessed against stepfather. In re Adoption of J.M.D., 41 K.A.2d 157, 202 P.3d 27 (2009).

38-1614.

History: L. 1982, ch. 182, § 72; L. 1983, ch. 140, § 33; L. 1986, ch. 211, § 32; L. 1991, ch. 117, § 1; L. 1996, ch. 167, § 50; L. 1997, ch. 156, § 52; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was also amended by L. 1996, ch. 229, § 53, but that version was repealed by L. 1997, ch. 156, § 115.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

38-1615.

History: L. 1982, ch. 182, § 73; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1616.

History: L. 1982, ch. 182, § 74; L. 1983, ch. 140, § 34; L. 1984, ch. 157, § 5; L. 1985, ch. 115, § 42; L. 1991, ch. 112, § 3; L. 1995, ch. 214, § 1; L. 1996, ch. 229, § 54; L. 1996, ch. 229, § 55; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

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Neither a school district nor an educational cooperative may charge fees for costs of conducting educational needs assessments ordered pursuant to 38-1514 or 38-1662. 97-44.

CASE ANNOTATIONS

1. Exclusionary clause in insurance contract for "intentional" acts of mentally ill insured examined; liability for guardian ad litem fees discussed. Shelter Mut. Ins. Co. v. Williams, 248 K. 17, 20, 30, 804 P.2d 1374 (1991).

2. Whether SRS or county is responsible for mental health treatment costs for indigent juvenile offender placed by court examined. In re C.C., 19 K.A.2d 906, 909, 878 P.2d 865 (1994).

3. Under facts, SRS responsible for reimbursing county for cost of detention of juvenile. In re J.L., 21 K.A.2d 878, 881, 908 P.2d 629 (1995).

4. County has adequate remedy hereunder, mandamus improper. Board of Harvey County Comm'rs v. Whiteman, 23 K.A.2d 634, 638, 639, 933 P.2d 771 (1997).

38-1617.

History: L. 1983, ch. 140, § 35; L. 1996, ch. 229, § 56; L. 1996, ch. 229, § 57; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Confidentiality of information concerning juvenile offenders age 14 and older. 95-94.

Juvenile offenders; application of Kansas offender registration act and the juvenile offender information system. 97-101.

38-1618.

History: L. 1983, ch. 140, § 36; L. 1984, ch. 157, § 4; L. 1986, ch. 159, § 2; L. 1990, ch. 149, § 2; L. 1996, ch. 229, § 58; L. 1996, ch. 229, § 59; L. 1997, ch. 156, § 53; L. 1998, ch. 171, § 10; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Information on children in need of care, see 20-319.

Attorney General's Opinions:

Confidentiality of information concerning juvenile offenders age 14 and older. 95-94.

Juvenile offenders; application of Kansas offender registration act and the juvenile offender information system. 97-101.

PLEADINGS, PROCESS AND PRELIMINARY MATTERS

38-1621.

History: L. 1982, ch. 182, § 75; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Placement or detainment of juvenile in jail; detention of juvenile in the absence of a complaint. 95-50.

CASE ANNOTATIONS

1. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 493, 789 P.2d 1153 (1990).

38-1622.

History: L. 1982, ch. 182, § 76; L. 1992, ch. 312, § 16; L. 1996, ch. 229, § 60; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Confidentiality of juvenile records; disclosure pursuant to court order. 93-75.

CASE ANNOTATIONS

1. In pari materia with 22-3201; amended complaint not fatally defective; no showing of abuse of discretion or substantial rights prejudiced. In re J.T.M., 22 K.A.2d 673, 676, 922 P.2d 1103 (1996).

2. No abuse of court's discretion in allowing late endorsement of witness by prosecution. State v. Valdez, 266 K. 774, 783, 977 P.2d 242 (1999).

3. Juvenile offender may request bill of particulars as under criminal code; burden on respondent to request if additional specificity desired. In re S.M.D., 26 K.A.2d 165, 167, 980 P.2d 1028 (1999).

38-1623.

History: L. 1982, ch. 182, § 77; L. 1995, ch. 251, § 30; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1624.

History: L. 1982, ch. 182, § 78; L. 1983, ch. 140, § 37; L. 1984, ch. 157, § 6; L. 1986, ch. 156, § 2; L. 1986, ch. 162, § 3; L. 1986, ch. 163, § 1; L. 1993, ch. 291, § 275; L. 1996, ch. 229, § 61; L. 1996, ch. 229, § 62; L. 1998, ch. 187, § 4; L. 1999, ch. 156, § 13; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Criteria for detaining juvenile in detention facility, see 38-1640.

Law Review and Bar Journal References:

"Juvenile Informants - A Necessary Evil?" Darci G. Osther, 39 W.L.J. 106 (1999).

"Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Court," Trey Meyer, 47 K.L.R. 1035 (1999).

CASE ANNOTATIONS

1. Under facts, SRS responsible for reimbursing county for cost of detention of juvenile. In re J.L., 21 K.A.2d 878, 881, 908 P.2d 629 (1995).

38-1625.

History: L. 1982, ch. 182, § 79; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Custody requirement for taking juvenile fingerprints for felony-type offenses. 85-96.

CASE ANNOTATIONS

1. Censure of judge for failure to comply with provisions of statute noted. In re Long, 244 K. 719, 720, 772 P.2d 814 (1989).

38-1626.

History: L. 1982, ch. 182, § 80; L. 1983, ch. 140, § 38; L. 1992, ch. 312, § 17; L. 1996, ch. 229, § 63; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Docket fees and expenses; recovery of court appointed attorney fees by county from parents of accused offender. 90-99.

Disqualification for admission to Kansas Law Enforcement Center. 1999-34.

38-1627 to 38-1630.

History: L. 1982, ch. 182, §§ 81 to 84; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1631.

History: L. 1982, ch. 182, § 85; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Custody requirement for taking juvenile fingerprints for felony-type offenses. 85-96.

38-1632.

History: L. 1982, ch. 182, § 86; L. 1986, ch. 162, § 4; L. 1990, ch. 150, § 1; L. 1992, ch. 312, § 19; L. 1996, ch. 229, § 64; L. 1997, ch. 156, § 54; L. 2000, ch. 150, § 23; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was also amended by L. 1992, ch. 312, § 18, effective July 1, 1992, but such amendment was repealed by L. 1992, ch. 312, § 42, effective Jan. 1, 1993.

Cross References to Related Sections:

Criteria for detaining juvenile in detention facility, see 38-1640.

Attorney General's Opinions:

Confinement of juveniles in adult jails; potential liability of local officials. 90-63.

CASE ANNOTATIONS

1. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 493, 789 P.2d 1153 (1990).

2. Trial court has no duty to inform juvenile of future collateral consequences that plea to adult felony entails. In re J.C., 260 K. 851, 853, 925 P.2d 415 (1996).

38-1633.

History: L. 1982, ch. 182, § 87; L. 1996, ch. 229, § 65; L. 1997, ch. 156, § 55; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

Survey of Recent Cases, 45 K.L.R. 1368 (1997).

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Kansas juvenile offenders code; general provisions; waiver of right to an attorney. 94-53.

CASE ANNOTATIONS

1. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 354, 720 P.2d 1141 (1986).

2. Court expressly required to inform minor of information specifically contained in statute; reliance upon defense counsel insufficient. In re B.S., 15 K.A.2d 338, 339, 807 P.2d 692 (1991).

3. Cited in comparison of silent record regarding defendant's waiver of right to testify with record required for guilty plea. Taylor v. State, 252 K. 98, 105, 843 P.2d 682 (1992).

4. Trial court has no duty to inform juvenile of future collateral consequences that plea to adult felony entails. In re J.C., 260 K. 851, 852, 925 P.2d 415 (1996).

5. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 482, 186 P.3d 164 (2008).

38-1634.

History: L. 1982, ch. 182, § 88; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Cited where driving with suspended license (8-262) held not a "traffic offense" under 8-2117(d); minor over 14 years subject to code. State v. Frazier, 248 K. 963, 970, 811 P.2d 1240 (1991).

38-1635.

History: L. 1982, ch. 182, § 89; L. 1995, ch. 214, § 2; L. 1996, ch. 229, § 66; L. 1997, ch. 156, § 56; L. 2004, ch. 144, § 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Kansas Diversion: Defendant's Remedies and Prosecutorial Opportunities," Joseph Brian Cox, 20 W.L.J. 344 (1981).

Attorney General's Opinions:

Disqualification for admission to Kansas Law Enforcement Center. 1999-34.

38-1636.

History: L. 1982, ch. 182, § 90; L. 1986, ch. 115, § 82; L. 1990, ch. 149, § 3; L. 1991, ch. 89, § 2; L. 1992, ch. 239, § 298; L. 1993, ch. 291, § 222; L. 1996, ch. 229, § 67; L. 1997, ch. 156, § 57; L. 1997, ch. 156, § 58; L. 1998, ch. 187, § 5; L. 1999, ch. 156, § 14; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Juvenile Law: Jurisdiction Under the Kansas Juvenile Code: Juvenile Adjudication or Adult Trial?" Carmen D. Tucker, 27 W.L.J. 394, 399, 400, 401 (1988).

"Juvenile Law: Juvenile Involuntarily Absent from a Waiver Hearing is Not Denied Due Process [State v. Muhammad, 237 Kan. 850, 703 P.2d 835 (1985)]," Daniel J. Gronniger, 25 W.L.J. 598, 602, 604, 605, 608 (1986).

"Juvenile Law: Prosecuting Juveniles As Adults," The Hon. Tom Malone, 60 J.K.B.A. No. 5, 39 (1991).

"Juvenile Informants - A Necessary Evil?" Darci G. Osther, 39 W.L.J. 106 (1999).

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

"Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Court," Trey Meyer, 47 K.L.R. 1035 (1999).

Attorney General's Opinions:

Detention of juveniles in jail. 93-86.

Prosecution of juvenile traffic offenders; detainment of juvenile in jail. 94-68.

Juvenile offenders; application of Kansas offender registration act and the juvenile offender information system. 97-101.

Municipal courts; disclosure of records of juvenile charged with tobacco ordinance infraction. 1998-36.

Disqualification for admission to Kansas Law Enforcement Center. 1999-34.

CASE ANNOTATIONS

1. Trial court required to permit prosecution to present evidence at waiver hearing which could be offered at preliminary hearing. In re Davis, 234 K. 766, 767, 771, 674 P.2d 1045 (1984).

2. Cited in holding no appellate review of refusal of jury trial in juvenile offender proceeding. Findlay v. State, 235 K. 462, 465, 681 P.2d 20 (1984).

3. Cited; provisions of 60-460(dd) (statements by children) inapplicable to juvenile offender proceedings. In re Mary P., 237 K. 456, 458, 701 P.2d 681 (1985).

4. When provisions hereunder met, along with requirement of counsel, essentials of due process satisfied even though juvenile fails to appear. State v. Muhammad, 237 K. 850, 856, 703 P.2d 835 (1985).

5. Cited; where defendant had no juvenile offender status because of prior adjudications (38-1602(b)(3)), court lacked jurisdiction under code. State v. Lowe, 238 K. 755, 715 P.2d 404 (1986); R'ved, Lowe v. State, 242 K. 64, 744 P.2d 856 (1987).

6. Eight factors in determining whether juvenile should be prosecuted as adult stated and applied. State v. Meyers, 245 K. 471, 473, 781 P.2d 700 (1989).

7. Eight factors for consideration to try as an adult; prosecutorial delay in reporting juror misconduct examined. State v. Cady, 248 K. 743, 744, 811 P.2d 1143 (1991).

8. Factors in (e) may be given different weight and evidence of all factors not required. State v. Irvin, 16 K.A.2d 214, 215, 217, 219, 821 P.2d 1019 (1991).

9. Evidence supporting determination to try juvenile as adult upheld; trial on C and D felonies, admission of confession, evidence of gang membership examined. State v. Hooks, 251 K. 755, 840 P.2d 483 (1992).

10. Failure to find one or more of factors considered to be adverse to juvenile does not preclude prosecution as adult. State v. Walker, 252 K. 117, 131, 843 P.2d 203 (1992).

11. No abuse of discretion by trial court in certifying defendant for prosecution as an adult; supported by substantial evidence. State v. Tran, 252 K. 494, 508, 847 P.2d 680 (1993).

12. Whether state may try juvenile prosecuted as adult on charges not previously raised in juvenile proceeding examined. State v. Randolph, 19 K.A.2d 730, 731, 734, 738, 876 P.2d 177 (1994).

13. Trial court adequately considered and weighed factors in certifying defendant for prosecution as an adult. State v. Brown, 258 K. 374, 387, 904 P.2d 985 (1995).

14. Trial court considered all factors set out in subsection (e) in certifying defendant to be tried as adult. State v. McIntyre, 259 K. 488, 489, 497, 912 P.2d 156 (1996).

15. Substantial evidence existed to certify juvenile to be prosecuted as an adult. State v. Kaiser, 260 K. 235, 252, 261, 918 P.2d 629 (1996).

16. Trial court's decision to allow prosecution of minor as adult supported by substantial evidence. State v. Vargas, 260 K. 791, 799, 926 P.2d 223 (1996).

17. Certification as adult supported by substantial evidence; insufficiency of evidence pertaining to factors in subsection (e) not determinative. State v. Claiborne, 262 K. 416, 420, 940 P.2d 27 (1997).

18. Motion to certify 17-year old hereunder denied; on refiling 38-1602(b)(3) applied notwithstanding no disposition made on second offense. State v. Fultz, 24 K.A.2d 242, 943 P.2d 938 (1997).

19. Juvenile under 14 must have opportunity to consult with attorney or parent before waiving Miranda rights or statements are inadmissible. In re B.M.B., 264 K. 417, 432, 955 P.2d 1302 (1998).

20. Trial court denial of motion to try juvenile as an adult supported by substantial evidence. In re J.D.J., 266 K. 211, 217, 220, 967 P.2d 751 (1998).

21. Under facts, juvenile who pled no contest as an adult is not entitled to sentencing under juvenile code. Melton v. State, 25 K.A.2d 641, 642, 967 P.2d 356 (1998).

22. Substantial evidence existed to authorize prosecution as adult under (f) notwithstanding judge's failure to mention statutory factors of (e). State v. Avalos, 266 K. 517, 519, 521, 974 P.2d 97 (1999).

23. In determining whether to certify a juvenile as an adult, court not required to give equal weight to factors in subsection (e). State v. Valdez, 266 K. 774, 783, 977 P.2d 242 (1999).

24. Sufficient evidence for court to conclude defendant should be tried as an adult. State v. Stephens, 266 K. 886, 892, 975 P.2d 801 (1999).

25. No error in prosecuting 14 year old defendant as adult for rape but upon conviction of lesser included offense of attempted rape he is to be sentenced as a juvenile offender. State v. Perez, 267 K. 543, 546, 987 P.2d 1055 (1999).

26. Respondent is deemed adjudicated as a juvenile offender when conviction is affirmed but order authorizing prosecution as an adult is reversed. State v. Smith, 268 K. 222, 244, 993 P.2d 1213 (1999).

27. In extended juvenile prosecution, court not required to consider factors under subsection (b) if respondent stipulates presumption applies and

respondent cannot overcome presumption. In re S.M.D., 26 K.A.2d 165, 169, 980 P.2d 1028 (1999).

28. Failure of district court to adopt local rules for extended juvenile proceedings not reversible error absent showing of prejudice by absence of such rules. In re S.M.D., 26 K.A.2d 165, 170, 980 P.2d 1028 (1999).

29. In hearing to determine whether juvenile is to be tried as an adult, juvenile may refuse court-ordered psychological examination; where juvenile consents, no miranda warning required provided information obtained not introduced at trial or used for sentencing. State v. Davis, 268 K. 661, 998 P.2d 1127 (2000).

30. Stipulation to facts contained in state's motion to prosecute as adult constituted a rough approximation of factors to be considered by court. State v. Luna, 28 K.A.2d 148, 12 P.3d 911 (2000).

31. Factors in section concerning certification of juvenile to be tried as adult must be considered, but no requirement court mention factors used or that evidence on every factor be presented. State v. Medrano, 271 K. 504, 23 P.3d 836 (2001).

32. Sufficient evidence to support court's determination defendant should be tried as adult; issue of waiver of jury trial not before appellate courts as never raised at trial. State v. Luna, 271 K. 573, 23 P.3d 883 (2001).

33. No constitutional violations for prosecuting minor as adult. State v. Coleman, 271 K. 733, 26 P.3d 613 (2001).

34. Presumption in 38-1636(a)(2) does not violate due process rights of juvenile. State v. Jones, 273 K. 756, 47 P.3d 783 (2002).

35. Court's certification of defendant for trial as adult affirmed. State v. Hartpence, 30 K.A.2d 486, 42 P.3d 1197 (2002).

36. Failure to advise defendant of specifics of section does not bring determination to prosecute defendant as adult within requirement of Apprendi. State v. Williams, 277 K. 338, 85 P.3d 697 (2004).

37. Certification proceedings of juveniles to be tried as adults outside dictates of Apprendi. State v. Mays, 277 K. 359, 85 P.3d 1208 (2004).

38. Conviction of at least one qualifying felony certifying juvenile as an adult will keep entire case in adult court. State v. Flores, 283 K. 380, 387, 153 P.3d 506 (2007).

39. When one parent appears at adult certification hearing no reversible error for failure to serve other parent; exceptions. State v. Nguyen, 285 K. 418, 426, 427, 431, 172 P.3d 1165 (2007).

40. Cited in holding adult convictions reversed for failure to follow juvenile code; no district court jurisdiction. State v. Breedlove, 285 K. 1006, 1010, 1014, 179 P.3d 1115 (2008).

41. Cited in constitutional challenge to certification as an adult; no constitutional violation found. State v. Tyler, 286 K. 1087, 1097, 191 P.3d 306 (2008).

42. No appellate jurisdiction to consider the issues on judicial determination to waive juvenile jurisdiction despite the district court's failure to inform a juvenile of the items in 38-1636 (c)(2). State v. Ellmaker, 289 K. 1132, 221 P.3d 1105 (2009).

43. The defendant was properly certified as an adult; the district court had jurisdiction and the sentence was lawful. Makthepharak v. State, 298 K. 573, 314 P.3d 876 (2013).

38-1637.

History: L. 1982, ch. 182, § 91; L. 1983, ch. 140, § 39; L. 1986, ch. 299, § 5; L. 1992, ch. 312, § 20; L. 1996, ch. 229, § 68; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1638, 38-1639.

History: L. 1982, ch. 182, §§ 92, 93; L. 1996, ch. 229, §§ 69, 70; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Mentioned regarding burden of proof and rebuttable presumption to prosecute as an adult. State v. Davis, 37 K.A.2d 650, 665, 666, 155 P.3d 1207 (2007).

38-1640.

History: L. 1986, ch. 162, § 2; L. 1996, ch. 185, § 4; L. 1997, ch. 156, § 59; L. 1998, ch. 187, § 6; L. 1999, ch. 156, § 15; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was also amended by L. 1996, ch. 229, § 71, but that version was repealed by L. 1997, ch. 156, § 115.

38-1641.

History: L. 1994, ch. 282, § 6; L. 1994, ch. 337, § 4; L. 1996, ch. 229, § 72; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

ADJUDICATORY PROCEDURE

Law Review and Bar Journal References:

"Juvenile Justice: Procedural Safeguards for Delinquents at the Adjudicatory Stage—Not for Adults Only," Joanna V. Billingsley, 21 W.L.J. 175, 311, 312 (1982).

"Juvenile Law: Juvenile Involuntarily Absent from a Waiver Hearing is Not Denied Due Process [State v. Muhammad, 237 Kan. 850, 703 P.2d 835 (1985)]," Daniel J. Gronniger, 25 W.L.J. 598, 606 (1986).

38-1651.

History: L. 1982, ch. 182, § 94; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Language "the hearing" open to public means only adjudicatory hearings for those over 15. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 495, 789 P.2d 1153 (1990).

38-1652.

History: L. 1982, ch. 182, § 95; L. 1993, ch. 166, § 5; L. 1995, ch. 243, § 1; L. 1996, ch. 229, § 73; L. 1997, ch. 156, § 60; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Notification of public hearing to crime victim; juvenile offenders aged 16 or over. 90-54.

Municipal courts; disclosure of records of juvenile charged with tobacco ordinance infraction. 1998-36.

CASE ANNOTATIONS

1. Language "the hearing" open to public means only adjudicatory hearings for those over 15. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 498, 789 P.2d 1153 (1990).

2. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 489, 186 P.3d 164 (2008).

38-1653.

History: L. 1982, ch. 182, § 96; L. 1996, ch. 229, § 74; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"The New Kansas Law Regarding Admissibility of Child-Victim Hearsay Statements," G. Joseph Pierron, 52 J.K.B.A. 88, 92 (1983).

CASE ANNOTATIONS

1. Cited; provisions of 60-460(dd) (statements by children) inapplicable to juvenile offender proceedings. In re Mary P., 237 K. 456, 457, 701 P.2d 681 (1985).

2. Eight factors in determining whether juvenile should be prosecuted as adult stated and applied. State v. Meyers, 245 K. 471, 473, 781 P.2d 700 (1989).

3. Testimony by expert based partially on defendant's statements in psychiatric evaluation held not hearsay. State v. Kaiser, 260 K. 235, 258, 918 P.2d 629 (1996).

4. Trial court had no jurisdiction to compel prosecuting witness to produce medical records; respondents should have issued subpoena. In re J.T.M., 22 K.A.2d 673, 678, 922 P.2d 1103 (1996).

38-1654.

History: L. 1982, ch. 182, § 97; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles

in the Name of 'Justice'," William T. Stetzer, 35 W.L.J. 308, 315 (1996).

CASE ANNOTATIONS

1. State sustained burden under juvenile code of establishing utterance of terroristic threat. Findlay v. State, 235 K. 462, 466, 681 P.2d 20 (1984).

38-1655.

History: L. 1982, ch. 182, § 98; L. 1995, ch. 251, § 31; L. 1996, ch. 229, § 75; L. 1999, ch. 116, § 45; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Report of certain adjudications, see 8-253.

Law Review and Bar Journal References:

"The Kansas Hard-Forty Law," The Honorable Tom Malone, 32 W.L.J. 147, 154 (1993).

Attorney General's Opinions:

Disqualification for admission to Kansas Law Enforcement Center. 1999-34.

CASE ANNOTATIONS

1. Cited; deliberations and findings necessary to establish venue of dispositional hearing outside juvenile resident county (38-1605) examined. In re A.T.K., 11 K.A.2d 174, 176, 717 P.2d 528 (1986).

38-1656.

History: L. 1982, ch. 182, § 99; L. 1996, ch. 229, § 76; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"The Worst of Both Worlds: How the Kansas Sentencing Guidelines Have Abandoned Juveniles in the Name of 'Justice'," William T. Stetzer, 35 W.L.J. 308, 315 (1996).

CASE ANNOTATIONS

1. Jury trial in juvenile offender proceeding at option of court, with no rights of state or respondent nor appellate review. Findlay v. State, 235 K. 462, 466, 681 P.2d 20 (1984).

2. No right to jury trial under code; judge has discretion to order jury trial. In re L.A., 270 K. 879, 19 P.3d 172 (2001).

3. Procedure for calculating offender's criminal history score does not violate constitutional rights. State v. Fischer, 288 K. 470, 203 P.3d 1269 (2009).

38-1657, 38-1658.

History: L. 1986, ch. 119, §§ 5, 6; L. 1996, ch. 229, §§ 77, 78; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

DISPOSITIONAL PROCEDURE

38-1661.

History: L. 1982, ch. 182, § 100; L. 1990, ch. 147, § 8; L. 1996, ch. 229, § 79; L. 1997, ch. 156, § 61; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Language "the hearing" open to public means only adjudicatory hearings for those over 15. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 495, 789 P.2d 1153 (1990).

2. Noted in holding Kansas residency not required for unemancipated pregnant minor to seek waiver of parental notification. In re Doe, 17 K.A.2d 567, 569, 843 P.2d 735 (1992).

38-1662.

History: L. 1982, ch. 182, § 101; L. 1990, ch. 147, § 9; L. 1991, ch. 113, § 2; L. 1996, ch. 229, § 80; L. 1997, ch. 156, § 62; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Neither a school district nor an educational cooperative may charge fees for costs of conducting educational needs assessments ordered pursuant to 38-1514 or 38-1662. 97-44.

38-1663.

History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 95, § 10; L. 1990, ch. 48, § 1; L. 1992, ch. 312, § 21; L. 1993, ch. 291, § 223; L. 1994, ch. 270, § 5; L. 1994, ch. 337, § 3; L. 1996, ch. 229, § 81; L. 1997, ch. 156, § 63; L. 1998, ch. 187, § 7; L. 1998, ch. 187, § 8; L. 1999, ch. 156, § 16; L. 2000, ch. 150, § 24; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was amended twice in 1989 session, see also 38-1663a.

Section was amended twice in 1990 session, see also 38-1663b.

This section was also amended by L. 1992, ch. 239, § 280, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

Section was also amended by L. 1997, ch. 156, § 64, but that version was repealed by L. 1998, ch. 187, § 19.

Cross References to Related Sections:

Departure sentences, see 38-16,132.

Law Review and Bar Journal References:

"Juvenile Law: Jurisdiction Under the Kansas Juvenile Code: Juvenile Adjudication or Adult Trial?" Carmen D. Tucker, 27 W.L.J. 394, 402 (1988).

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Sentencing; authorized dispositions; sentencing; probation; costs; home rule powers. 92-90.

Prosecution of juvenile traffic offenders; detainment of juvenile in jail. 94-68.

Juvenile offenders code; new offense; dispositions; commitment to youth center; custody expense; escape from custody; definition of "custody." 94-71.

Neither a school district nor an educational cooperative may charge fees for costs of conducting educational needs assessments ordered pursuant to 38-1514 or 38-1662. 97-44.

Discretion of court to suspend mandatory minimum fine for person under 21 possessing alcoholic liquor or cereal malt beverages. 1999-12.

CASE ANNOTATIONS

1. Authority to modify restitution exists; right to examine evidence, cross-examine and confront accuser also exists. In re C.A.D., 11 K.A.2d 13, 18, 22, 711 P.2d 1336 (1985).

2. Cited; deliberations and findings necessary to establish venue of dispositional hearing outside juvenile resident county (38-1605) examined. In re A.T.K., 11 K.A.2d 174, 177, 717 P.2d 528 (1986).

3. Exclusionary clause in insurance contract for intentional acts of mentally ill insured examined; "intentional" construed. Shelter Mut. Ins. Co. v. Williams, 248 K. 17, 19, 804 P.2d 1374 (1991).

4. Cited where driving with suspended license (8-262) held not a "traffic offense" under 8-2117(d); minor over 14 years subject to code. State v. Frazier, 248 K. 963, 970, 811 P.2d 1240 (1991).

5. Cited in holding crime of aiding a felon (21-3812) applies to aiding a juvenile offender. State v. Busse, 252 K. 695, 698, 847 P.2d 1304 (1992).

6. Juvenile subject to jurisdiction of court until completion of community based program. In re Habeas Corpus Petition of S.J.K., 32 K.A.2d 1067, 94 P.3d 734 (2004).

7. District court lacks statutory authority to limit amount of good time credit a juvenile offender can earn under K.S.A. 38-16,130. In re D.T.J., 37 K.A.2d 15, 26, 148 P.3d 574 (2006).

38-1663a.

History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 92, § 29; Repealed, L. 1990, ch. 151, § 2; July 1.

38-1663b.

History: L. 1982, ch. 182, § 102; L. 1987, ch. 154, § 1; L. 1989, ch. 95, § 10; L. 1990, ch. 151, § 1; Repealed, L. 1992, ch. 312, § 41; Repealed, L. 1992, ch. 239, § 303; July 1, 1993.

38-1664.

History: L. 1982, ch. 182, § 103; L. 1989, ch. 122, § 2; L. 1990, ch. 150, § 8; L. 1994, ch. 324, § 1; L. 1996, ch. 229, § 82; L. 1999, ch. 156, § 17; L. 2000, ch. 150, § 25; L. 2006, ch. 200, § 95; Repealed, L. 2013, ch. 51, § 2; July 1.

Cross References to Related Sections:

Form of report, 38-1569.

Attorney General's Opinions:

Juvenile offenders code; new offense; dispositions; commitment to youth center; custody expense; escape from custody; definition of "custody." 94-71.

CASE ANNOTATIONS

1. Whether court has power to dictate a specific placement of child in SRS custody examined. In re C.C., 19 K.A.2d 906, 909, 878 P.2d 865 (1994).

38-1665.

History: L. 1982, ch. 182, § 104; L. 1992, ch. 312, § 22; L. 1996, ch. 229, § 83; L. 2003, ch. 66, § 1; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Within 60 days after commitment, sentencing court can enter any other appropriate sentence, including one below statutory mandatory minimum. In re T.A.L., 28 K.A.2d 396, 15 P.3d 850 (2000).

38-1666.

History: L. 1982, ch. 182, § 105; L. 1992, ch. 312, § 23; L. 1996, ch. 229, § 84; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Cited; authority to modify restitution under 38-1663 and juvenile's right to due process upheld. In re C.A.D., 11 K.A.2d 13, 15, 711 P.2d 1336 (1985).

2. Cited; deliberations and findings necessary to establish venue of dispositional hearing outside juvenile resident county (38-1605) examined. In re A.T.K., 11 K.A.2d 174, 177, 717 P.2d 528 (1986).

3. Juvenile subject to jurisdiction of court until completion of community based program. In re Habeas Corpus Petition of S.J.K., 32 K.A.2d 1067, 94 P.3d 734 (2004).

38-1667.

History: L. 1982, ch. 182, § 106; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1668.

History: L. 1994, ch. 282, § 7; L. 1994, ch. 337, § 5; L. 1996, ch. 229, § 85; L. 1997, ch. 156, § 65; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1671.

History: L. 1982, ch. 182, § 107; L. 1990, ch. 150, § 9; L. 1994, ch. 282, § 1; L. 1996, ch. 229, § 86; L. 1997, ch. 156, § 66; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Juvenile offenders code; new offense; dispositions; commitment to youth center; custody expense; escape from custody; definition of "custody." 94-71.

38-1672.

History: L. 1982, ch. 182, § 108; L. 1996, ch. 229, § 87; Repealed, L. 1997, ch. 156, § 115; July 1.

38-1673.

History: L. 1982, ch. 182, § 109; L. 1983, ch. 140, § 40; L. 1990, ch. 149, § 4; L. 1994, ch. 282, § 2; L. 1996, ch. 229, § 88; L. 1997, ch. 156, § 67; L. 1999, ch. 156, § 18; L. 2000, ch. 150, § 26; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Discharge or release of juvenile offenders, school district involvement, see 38-1677.

Attorney General's Opinions:

Discharge from commitment to youth center; notification to court. 90-39.

CASE ANNOTATIONS

1. Cited in dissent opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 484, 186 P.3d 164 (2008).

38-1674.

History: L. 1982, ch. 182, § 110; L. 1996, ch. 229, § 89; L. 1997, ch. 156, § 68; L. 1997, ch. 156, § 69; L. 2000, ch. 150, § 27; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1675.

History: L. 1982, ch. 182, § 111; L. 1990, ch. 149, § 5; L. 1994, ch. 282, § 3; L. 1996, ch. 229, § 90; L. 1997, ch. 156, § 70; L. 1997, ch. 156, § 71; L. 2000, ch. 150, § 28; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Discharge or release of juvenile offenders, school district involvement, see 38-1677.

Attorney General's Opinions:

Discharge from commitment to youth center; notification to court. 90-39.

CASE ANNOTATIONS

1. Misstatement by court concerning defendant's potential for custody after 21 not reversible error in juvenile jurisdiction waiver. State v. Kaiser, 260 K. 235, 260, 918 P.2d 629 (1996).

38-1676.

History: L. 1990, ch. 149, § 12; L. 1994, ch. 282, § 4; L. 1996, ch. 229, § 91; L. 1997, ch. 156, § 72; L. 2000, ch. 150, § 29; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Discharge or release of juvenile offenders, school district involvement, see 38-1677.

CASE ANNOTATIONS

1. Misstatement by court concerning defendant's potential for custody after 21 not reversible error in juvenile jurisdiction waiver. State v. Kaiser, 260 K. 235, 261, 918 P.2d 629 (1996).

38-1677.

History: L. 1994, ch. 282, § 12; L. 1996, ch. 229, § 92; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Discharge or release of juvenile offenders, notice to school district, see 38-1673, 38-1675 and 38-1676.

APPEALS

38-1681.

History: L. 1982, ch. 182, § 112; L. 1996, ch. 229, § 93; L. 1997, ch. 156, § 73; L. 1997, ch. 156, § 74; L. 1999, ch. 156, § 19; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Report of disposition of certain appeals, see 8-253.

Law Review and Bar Journal References:

"Juvenile Law: Juvenile Involuntarily Absent from a Waiver Hearing is Not Denied Due Process [State v. Muhammad, 237 Kan. 850, 703 P.2d 835 (1985)]," Daniel J. Gronniger, 25 W.L.J. 598, 602, 605 (1986).

"Kansas Appellate Advocacy: An Inside View of Common-Sense Strategy," Patrick Hughes, 66 J.K.B.A. No. 2, 26 (1997).

CASE ANNOTATIONS

1. Cited in holding no appellate review of refusal of jury trial in juvenile offender proceeding. Findlay v. State, 235 K. 462, 465, 681 P.2d 20 (1984).

2. Noted; proceedings waiving juvenile jurisdiction under 38-1601 et seq. in juvenile's absence discussed. State v. Muhammad, 237 K. 850, 851, 703 P.2d 835 (1985).

3. No error in failing to advise on appeal rights when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 355, 720 P.2d 1141 (1986).

4. Notice of appeal timely filed after adjudication while none filed after disposition reaches merits of adjudication. In re M.O., 13 K.A.2d 381, 382, 770 P.2d 856 (1989).

5. Cited where driving with suspended license (8-262) held not a "traffic offense" under 8-2117(d); minor over 14 years subject to code. State v. Frazier, 248 K. 963, 967, 811 P.2d 1240 (1991).

6. Adjudication and disposition are separate legal events; 38-1602(b)(3) applied to 17-year old notwithstanding no disposition made on second offense. State v. Fultz, 24 K.A.2d 242, 246, 943 P.2d 938 (1997).

7. Substantial evidence existed to authorize prosecution as adult under 38-1636 (f) notwithstanding judge's failure to mention statutory factors of 38-1636 (e). State v. Avalos, 266 K. 517, 518, 974 P.2d 97 (1999).

8. Respondent is deemed adjudicated as a juvenile offender when conviction is affirmed but order authorizing prosecution as an adult is

reversed. State v. Smith, 268 K. 222, 244, 993 P.2d 1213 (1999).

9. Section gives defendant right to appeal adjudication as adult even though defendant entered plea of nolo contendre. State v. Ransom, 268 K. 653, 999 P.2d 272 (2000).

10. Cited in holding adult convictions reversed for failure to follow juvenile code; no district court jurisdiction. State v. Breedlove, 285 K. 1006, 1010, 1014 to 1016, 179 P.3d 1115 (2008).

11. No appellate jurisdiction to consider the issues on judicial determination to waive juvenile jurisdiction despite the district court's failure to inform a juvenile of the items in 38-1636 (c)(2). State v. Ellmaker, 289 K. 1132, 221 P.3d 1105 (2009).

38-1682.

History: L. 1982, ch. 182, § 113; L. 1983, ch. 140, § 41; L. 1996, ch. 229, § 94; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Juvenile Law: Jurisdiction Under the Kansas Juvenile Code: Juvenile Adjudication or Adult Trial?" Carmen D. Tucker, 27 W.L.J. 394, 399 (1988).

CASE ANNOTATIONS

1. Cited in holding no appellate review of refusal of jury trial in juvenile offender proceeding. Findlay v. State, 235 K. 462, 465, 681 P.2d 20 (1984).

2. Appeal by prosecution under juvenile offenders code of dismissal untimely filed. In re J.D.B., 259 K. 872, 874, 915 P.2d 69 (1996).

3. Appellate court has no jurisdiction under code of criminal procedure to consider interlocutory appeal under the juvenile offenders code.In re R.L.C., 267 K. 210, 978 P.2d 285 (1999).

4. Prosecution appeal of imposition of sanctions dismissal based on untimely filing upheld. In re D.G.K., 26 K.A.2d 884, 886, 995 P.2d 413 (2000).

38-1683.

History: L. 1982, ch. 182, § 114; L. 1986, ch. 115, § 83; L. 1994, ch. 282, § 10; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. Provision that appeal to district court from multistate court to be heard de novo in 30 days is directory not mandatory; statute is not intended to be codification of right to speedy trial. In re T.K., 11 K.A.2d 632, 634, 635, 636, 637, 731 P.2d 887 (1987).

38-1684.

History: L. 1982, ch. 182, § 115; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-1685.

History: L. 1982, ch. 182, § 116; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

Attorney General's Opinions:

Neither a school district nor an educational cooperative may charge fees for costs of conducting educational needs assessments ordered pursuant to 38-1514 or 38-1662. 97-44.

CASE ANNOTATIONS

1. Right of indigent parent to counsel under 38-1505 held to be not wholly dependent on request for same. In re S.R.H., 15 K.A.2d 415, 418, 809 P.2d 1 (1991).

MISCELLANEOUS

38-1691.

History: L. 1990, ch. 150, § 7; L. 1996, ch. 229, § 95; L. 1997, ch. 156, § 75; L. 1998, ch. 187, § 10; L. 2000, ch. 150, § 30; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Detention of juvenile offenders in jail; prohibition; expense of care and custody. 92-145.

Detention of juvenile for acts constituting felony or misdemeanor if committed by an adult. 92-147.

Detention of juveniles in jail. 93-86.

Placement or detainment of juvenile in jail; detention of juvenile in the absence of a complaint. 95-50.

County contracts with out-of-state public agency for housing misdemeanants and juvenile offenders; conditions. 97-50.

38-1692.

History: L. 1993, ch. 242, § 1; L. 1995, ch. 251, § 32; L. 1996, ch. 215, § 6; L. 1997, ch. 156, § 76; L. 2001, ch. 102, § 4; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Revisor's Note:

Section was also amended by L. 1996, ch. 229, § 96, but that version was repealed by L. 1997, ch. 156, § 115.

Cross References to Related Sections:

Testing in criminal cases, see 22-2913.

38-16,111.

History: L. 1990, ch. 149, § 10; L. 1996, ch. 229, § 97; L. 1997, ch. 156, § 77; L. 1997, ch. 156, § 78; L. 1998, ch. 187, § 11; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

County contracts with out-of-state public agency for housing misdemeanants and juvenile offenders; conditions. 97-50.

CASE ANNOTATIONS

1. Sufficiency of evidence supporting determination to try juvenile as adult (38-1636) upheld. State v. Hooks, 251 K. 755, 762, 840 P.2d 483 (1992).

38-16,112.

History: L. 1990, ch. 149, § 11; L. 1992, ch. 239, § 299; L. 1993, ch. 291, § 224; Repealed, L. 1996, ch. 229, § 163; July 1, 1997.

CASE ANNOTATIONS

1. Sufficiency of evidence supporting determination to try juvenile as adult (38-1636) upheld. State v. Hooks, 251 K. 755, 762, 840 P.2d 483 (1992).

CHILD SUPPORT ORDERED UNDER THE CODE

38-16,116 to 38-16,118.

History: L. 1992, ch. 312, §§ 24 to 26; L. 1996, ch. 229, §§ 98 to 100; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,119.

History: L. 1992, ch. 312, § 27; L. 1996, ch. 229, § 101; L. 2000, ch. 171, § 13; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,120.

History: L. 1992, ch. 312, § 28; L. 1996, ch. 229, § 102; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Law Review and Bar Journal References:

"Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Court," Trey Meyer, 47 K.L.R. 1035 (1999).

38-16,126.

History: L. 1996, ch. 229, § 8; L. 1997, ch. 156, § 79; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Attorney General's Opinions:

Juvenile offenders; application of Kansas offender registration act and the juvenile offender information system. 97-101.

CASE ANNOTATIONS

1. Cited; extended jurisdiction juvenile conviction; evidence of probation violation sufficient, incarceration required. State v. J.H., 40 K.A.2d 643 to 647, 197 P.3d 467 (2008).

38-16,127.

History: L. 1996, ch. 229, § 9; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Source or Prior Law:

39-709.

38-16,128.

History: L. 1996, ch. 229, § 16; L. 1997, ch. 156, § 80; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Source or Prior Law:

39-718b.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

38-16,129.

History: L. 1997, ch. 156, § 23; L. 1998, ch. 187, § 9; L. 1999, ch. 156, § 20; L. 2000, ch. 150, § 31; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

Cross References to Related Sections:

Departure sentences, see 38-16,132.

Law Review and Bar Journal References:

"Justice and Juveniles in Kansas: Where We Have Been and Where We Are Headed," Carla J. Stovall, 47 K.L.R. 1021 (1999).

CASE ANNOTATIONS

1. Sentence for criminal deprivation of property is vacated but court's imposition of consecutive sentences for other offenses affirmed. In re W.H., 30 K.A.2d 326, 41 P.3d 891 (2002).

2. Definition of "chronic offender II" as juvenile with one percent felony adjudication and two prior misdemeanor adjudications does not require misdemeanor adjudications to be separate cases. In re J.M., 273 K. 550, 44 P.3d 429 (2002).

3. State's request for direct placement of juvenile in juvenile correctional facility denied. In re D.M., 277 K. 881, 89 P.3d 639 (2004).

4. Trial decision reversed; section clear in defining "chronic offender II, escalating felon." In re J.R.A., 38 K.A.2d 86, 87, 88, 90, 161 P.3d 231 (2007).

38-16,130.

History: L. 1997, ch. 156, § 24; Repealed, L. 2007, ch. 195, § 59; July 1.

CASE ANNOTATIONS

1. District court lacks statutory authority to limit amount of good time credit a juvenile offender can earn under K.S.A. 38-16,130. In re D.T.J., 37 K.A.2d 15, 26, 148 P.3d 574 (2006).

2. Commissioner's power to award good time credit does not violate the separation of powers doctrine. In re D.T.J., 37 K.A.2d 15, 27, 148 P.3d 574 (2006).

38-16,131.

History: L. 1997, ch. 156, § 25; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,132.

History: L. 1999, ch. 156, § 2; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

CASE ANNOTATIONS

1. No due process violation for imposition of mandatory minimum term of confinement in juvenile case. In re T.A.L., 28 K.A.2d 396, 15 P.3d 850 (2000).

38-16,133.

History: L. 2000, ch. 150, § 34; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

38-16,134, 38-16,135.

History: L. 2003, ch. 29, §§ 2, 3; Repealed, L. 2006, ch. 169, § 140; Jan. 1, 2007.

K.S.A. 38-2301 through 38-23,101
Chapter 38.—MINORS
Article 23.—REVISED KANSAS JUVENILE JUSTICE CODE

38-2301. Citation; goals of the code; policy development.

This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs; (c) be community based to the greatest extent possible; (d) be family centered when appropriate; (e) facilitate efficient and effective cooperation, coordination and collaboration among agencies of the local, state and federal government; (f) be outcome based, allowing for the effective and accurate assessment of program performance; (g) be cost-effectively implemented and administered to utilize resources wisely; (h) encourage the recruitment and retention of well-qualified, highly trained professionals to staff all components of the system; (i) appropriately reflect community norms and public priorities; and (j) encourage public and private partnerships to address community risk factors.

History: L. 2006, ch. 169, § 1; Jan. 1, 2007.

Source or Prior Law:

38-1601.

CASE ANNOTATIONS

1. Cited in discussion of changes in policy goals of the juvenile offender system; juveniles have right to jury trials. In re L.M., 286 K. 460, 466, 480, 186 P.3d 164 (2008).

2. Procedure for calculating offender's criminal history score does not violate constitutional rights. State v. Fischer, 288 K. 470, 203 P.3d 1269 (2009).

38-2302. Definitions.

As used in this code, unless the context otherwise requires:

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

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

(c) "Conditional release" means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, under conditions established by the secretary of corrections.

(d) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2018 Supp. 38-2306, and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2018 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

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

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

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

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

(i) "Graduated responses" means a system of community-based sanctions and incentives developed pursuant to K.S.A. 75-7023(h) and K.S.A. 2018 Supp. 38-2392, and amendments thereto, used to address violations of immediate interventions, terms and conditions of probation and conditional release and to incentivize positive behavior.

(j) "Immediate intervention" means all programs or practices developed by the county to hold juvenile offenders accountable while allowing such offenders to be diverted from formal court processing pursuant to K.S.A. 2018 Supp. 38-2346, and amendments thereto.

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

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

(m) "Jail" means: (1) An adult jail or lockup; or

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

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

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

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

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

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

(s) "Juvenile offender" means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 2018 Supp. 21-5102, and amendments thereto, or who violates the provisions of K.S.A. 41-727, K.S.A. 74-8810(j) or K.S.A. 2018 Supp. 21-6301(a)(14), and amendments thereto, but does not include:

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

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

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

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

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2018 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2018 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

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

(u) "Overall case length limit" when used in relation to a juvenile adjudicated a juvenile offender means the maximum jurisdiction of the court following disposition on an individual case. Pursuant to K.S.A. 2018 Supp. 38-2304, and amendments thereto, the case and the court's jurisdiction shall terminate once the overall case length limit expires and may not be extended.

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

(w) "Probation" means a period of community supervision ordered pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, overseen by either court services or community corrections, but not both.

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

(y) "Reintegration plan" means a written document prepared in consultation with the child's parent or guardian that:

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

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

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

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

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

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

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

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

(B) describes available alternatives;

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

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

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

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

(bb) "Technical violation" means an act that violates the terms or conditions imposed as part of a probation disposition pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, and that does not constitute a new juvenile offense or a new child in need of care violation pursuant to K.S.A. 2018 Supp. 38-2202(d), and amendments thereto.

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

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

History: L. 2006, ch. 169, § 2; L. 2008, ch. 101, § 1; L. 2010, ch. 4, § 2; L. 2011, ch. 30, § 158; L. 2016, ch. 46, § 29; L. 2016, ch. 102, § 17; July 1.

Source or Prior Law:

38-1602.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 468, 482, 186 P.3d 164 (2008).

2. Cited; only persons younger than 10 or older than 18 are not subject to the juvenile code. In re D.A., 40 K.A.2d 878, 879, 891, 197 P.3d 849 (2008).

3. Accused not arrested within the statute of limitations; conviction reversed. In re P.R.G., 45 K.A.2d 73, 244 P.3d 279 (2010).

4. District court provided a fair and reliable determination of probable cause for a juvenile respondent's pretrial custody. In re H.N., 45 K.A.2d 1059, 257 P.3d 821 (2011).

38-2303. Time limitations for commencement of proceeding.

(a) Proceedings under this code involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of any of the following statutes may be commenced at any time: (1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto; (2) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or subsection (b) of K.S.A. 2018 Supp. 21-5504, and amendments thereto; (3) murder as described in K.S.A. 21-3401, 21-3402 or 21-3439, prior to their repeal, or K.S.A. 2018 Supp. 21-5401, 21-5402 or 21-5403, and amendments thereto; (4) terrorism as defined in K.S.A. 21-3449, prior to its repeal, or K.S.A. 2018 Supp. 21-5421, and amendments thereto; or (5) illegal use of weapons of mass destruction as defined in K.S.A. 21-3450, prior to its repeal, or K.S.A. 2018 Supp. 21-5422, and amendments thereto.

(b) Except as provided by subsections (c) and (e), a proceeding under this code for any act committed by a juvenile which, if committed by an adult, would constitute a violation of any of the following statutes shall be commenced within five years after its commission if the victim is less than 16 years of age: (1) Lewd and lascivious behavior as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2018 Supp. 21-5513, and amendments thereto; (2) unlawful voluntary sexual relations as defined in K.S.A. 21-3522, prior to its repeal, or K.S.A. 2018 Supp. 21-5507, and amendments thereto; or (3) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or subsection (b) of K.S.A. 2018 Supp. 21-5604, and amendments thereto.

(c) Except as provided in subsection (e), a proceeding under this code for any act committed by a juvenile which, if committed by an adult, would constitute a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto:

(1) When the victim is 18 years of age or older shall be commenced within 10 years or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later; or

(2) when the victim is under 18 years of age shall be commenced within 10 years of the date the victim turns 18 years of age or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(3) For the purposes of this subsection, "DNA" means deoxyribonucleic acid.

(d) Except as provided by subsection (e), proceedings under this code not governed by subsections (a), (b) or (c) shall be commenced within two years after the act giving rise to the proceedings is committed.

(e) The period within which the proceedings must be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is so concealed within the state that process cannot be served upon the accused;

(3) the fact of the offense is concealed; or

(4) whether or not the fact of the offense is concealed by the active act or conduct of the accused, there is substantial competent evidence to believe two or more of the following factors are present: (A) The victim was a child under 15 years of age at the time of the offense; (B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted an offense; (C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the offense whether or not the parent or other legal authority is the accused; and (D) there is substantial competent expert testimony indicating the victim psychologically repressed such victim's memory of the fact of the offense, and in the expert's professional opinion the recall of such memory is accurate, free of undue manipulation, and substantial corroborating evidence can be produced

in support of the allegations contained in the complaint or information; but in no event may a proceeding be commenced as provided in subsection (e)(4) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the alleged juvenile offender committed similar acts against other persons or evidence of contemporaneous physical manifestations of the offense. Parent or other legal authority shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

(f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the alleged juvenile offender's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(g) A proceeding under this code is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such proceeding shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

History: L. 2006, ch. 169, § 3; L. 2011, ch. 30, § 159; L. 2014, ch. 123, § 1; July 1.

Source or Prior Law:

38-1603.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 473, 186 P.3d 164 (2008).

2. Accused not arrested within the statute of limitations; conviction reversed. In re P.R.G., 45 K.A.2d 73, 244 P.3d 279 (2010).

38-2304. Jurisdiction; presumption of age of juvenile; placement with department for children and families or juvenile justice authority; costs; precedence of certain orders.

(a) Except as provided in K.S.A. 2018 Supp. 38-2347, and amendments thereto, proceedings concerning a juvenile shall be governed by the provisions of this code.

(b) The district court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this code, unless the contrary is proved.

(d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

(1) The complaint is dismissed;

(2) the juvenile is adjudicated not guilty at trial;

(3) the juvenile, after being adjudicated guilty and sentenced:

(i) Successfully completes the term of probation;

(ii) is discharged by the secretary pursuant to K.S.A. 2018 Supp. 38-2376, and amendments thereto;

(iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction beyond age 21; or

(iv) reaches the overall case length limit;

(4) the court terminates jurisdiction; or

(5) the juvenile is convicted of a crime as an adult pursuant to chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

(e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd birthday if:

(1) The juvenile offender is sentenced pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, and the term of the sentence including successful completion of conditional release extends beyond the juvenile offender's 21st birthday but does not extend beyond the overall case length limit; or

(2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile justice code.

(f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution ordered.

(g) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary for children and families under the Kansas code for care of children, the sentencing court may order the continued placement of the juvenile offender as a child in need of care.

(2) Court services, community corrections and the department of corrections shall address the risks and needs of the juvenile offender according to the results of the risk and needs assessment.

(3) If the juvenile offender is placed in the custody of the secretary of corrections, the secretary for children and families shall be responsible for collaborating with the department of corrections to furnish services ordered in the child in need of care proceeding during the time of the placement pursuant to the revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing services provided by the Kansas department for children and families or any other state agency if the juvenile offender is otherwise eligible for the services.

(h) A court's order issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding under chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, a proceeding under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, a proceeding under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators, or a comparable case in another jurisdiction, except as provided by K.S.A. 2018 Supp. 23-37,101 et seq., and amendments thereto, uniform child custody jurisdiction and enforcement act.

History: L. 2006, ch. 169, § 4; L. 2007, ch. 198, § 7; L. 2008, ch. 169, § 20; L. 2010, ch. 75, § 18; L. 2011, ch. 24, § 7; L. 2012, ch. 162, § 67; L. 2014, ch. 115, § 67; L. 2016, ch. 46, § 30; L. 2017, ch. 90, § 2; July 1.

Source or Prior Law:

38-1604, 38-1615, 38-1667.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 473, 186 P.3d 164 (2008).

2. Cited; so long as juvenile's actions were not accidental or involuntary, juvenile possessed the required culpable intent. In re D.A., 40 K.A.2d 878, 892, 197 P.3d 849 (2008).

38-2305. Venue.

(a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile or electronic copy of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. The adjudicating court shall also send to the sentencing court a complete copy of the official and social files in the case by mail or electronic means within seven days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made or, if there are not any ongoing proceedings under the Kansas code for care of children, in the county of the residence of the custodial parent, parents, guardian or conservator if the adjudicating judge, upon motion, finds that it is in the interest of justice. If there are ongoing proceedings under the revised Kansas code for care of children, then the sentencing hearing shall be held in the county in which the proceedings under the revised Kansas code for care of children are being held.

History: L. 2006, ch. 169, § 5; L. 2010, ch. 5, § 4; L. 2010, ch. 155, § 14; L. 2011, ch. 48, § 2; July 1.

Source or Prior Law:

38-1605.

Revisor's Note:

Section was amended twice in the 2010 session, see also 38-2305a.

Section was also amended by L. 2010, ch. 70, § 7, and L. 2010, ch. 75, § 19, but those versions were repealed by L. 2010, ch. 155, § 26.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 186 P.3d 164 (2008).

38-2305a.

History: L. 2006, ch. 169, § 5; L. 2010, ch. 135, § 49; Repealed, L. 2011, ch. 48, § 19; July 1.

38-2306. Right to an attorney.

(a) Appointment of attorney to represent juvenile. A juvenile is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parent of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile, the parent, or both, as part of the expenses of the case.

(b) Continuation of representation. An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) Attorney fees. An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 2018 Supp. 38-2314, and amendments thereto.

History: L. 2006, ch. 169, § 6; Jan. 1, 2007.

Source or Prior Law:

38-1606.

38-2307. Court-appointed special advocate; immunity from liability; supreme court rules.

(a) In addition to the attorney appointed pursuant to K.S.A. 2018 Supp. 38-2306, and amendments thereto, the court at any stage of a proceeding pursuant to this code may appoint a volunteer court-appointed special advocate for a juvenile who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the juvenile and assist the juvenile in obtaining a permanent, safe and appropriate placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court.

(b) Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

(c) The supreme court shall promulgate rules governing court-appointed special advocate programs related to proceedings in the district courts pursuant to this code.

History: L. 2006, ch. 169, § 7; Jan. 1, 2007.

Source or Prior Law:

38-1606a.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 488, 186 P.3d 164 (2008).

38-2308. Local citizen review board; duties and powers.

(a) The local citizen review board created pursuant to K.S.A. 2018 Supp. 38-2207, and amendments thereto, shall have the duty, authority and power to:

(1) Review each case of a child who is a juvenile offender referred by the judge, receive verbal information from all persons with pertinent

knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been toward rehabilitation for the juvenile offender; and

(3) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the local citizen review board may take place any time after adjudication for a juvenile offender. A review shall occur within six months after the initial disposition hearing.

(c) The local citizen review board shall review each referred case at least once each year.

(d) The judge shall consider the local citizen review board recommendations in issuing a sentence pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto.

(e) Three members of the local citizen review board must be present to review a case.

(f) The court shall provide a place for the reviews to be held. The local citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

History: L. 2006, ch. 169, § 8; Jan. 1, 2007.

Source or Prior Law:

38-1813.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 488, 186 P.3d 164 (2008).

38-2309. Court records; disclosure; preservation of records.

(a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-6419 through 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;

(4) the juvenile's court appointed special advocate;

(5) any placement provider or potential placement provider as determined by the commissioner or court services officer;

(6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;

(8) juvenile intake and assessment workers;

(9) the commissioner;

(10) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(11) the commission on judicial performance in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

(c) Social file. Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates, juvenile community corrections officers, the juvenile's guardian ad litem, if any, or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) Preservation of records. The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

History: L. 2006, ch. 169, § 9; L. 2008, ch. 145, § 8; L. 2010, ch. 112, § 4; L. 2011, ch. 30, § 160; L. 2015, ch. 94, § 14; July 1.

Source or Prior Law:

38-1607.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 490, 186 P.3d 164 (2008).

38-2310. Records of law enforcement officers, agencies and municipal courts concerning certain juveniles; disclosure.

(a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the Kansas department for children and families;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 2018 Supp. 38-2326, and amendments thereto;

(9) juvenile intake and assessment workers;

(10) the department of corrections;

(11) juvenile community corrections officers;

(12) the interstate compact for juveniles compact administrator for the purpose of carrying out the responsibilities related to the interstate compact for juveniles;

(13) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(14) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2018 Supp. 21-6419 through 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the secretary.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the secretary, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian ad litem, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, addiction counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2018 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the educator and pupils;

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program; and

(N) the interstate compact for juveniles compact administrator for the purpose of carrying out the responsibilities related to the interstate compact for juveniles.

History: L. 2006, ch. 169, § 10; L. 2011, ch. 30, § 161; L. 2014, ch. 115, § 68; L. 2015, ch. 94, § 15; L. 2016, ch. 102, § 18; July 1.

Source or Prior Law:

38-1608.

Revisor's Note:

Section was also amended by L. 2014, ch. 131, § 2, but that version was repealed by L. 2015. ch. 94, § 27.

Section was amended twice in the 2015 session, see also 38-2310a.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 490, 186 P.3d 164 (2008).

2. Cited in attorney disciplinary proceeding where attorney showed pictures of victim of sex offense. In re Campbell, 287 K. 757, 759, 199 P.3d 776 (2009).

38-2310a.

History: L. 2006, ch. 169, § 10; L. 2011, ch. 30, § 161; L. 2014, ch. 115, § 68; L. 2015, ch. 100, § 8; Repealed, L. 2016, ch. 102, § 23; July 1.

38-2311. Records of diagnostic, treatment or medical records concerning juveniles; penalties.

(a) When the court has exercised jurisdiction over any juvenile the diagnostic, treatment or medical records shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile;

(3) when any court having jurisdiction of the juvenile orders disclosure;

(4) when authorized by K.S.A. 2018 Supp. 38-2316, and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence;

(6) upon a written request of a juvenile intake and assessment worker in regard to a juvenile when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court;

(7) upon a determination by the juvenile justice authority that disclosure of the records is necessary for further treatment of the juvenile; or

(8) upon a determination by the department of corrections that disclosure of the records is necessary for further treatment of the juvenile.

(b) Intentional violation of this section is a class C nonperson misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the juvenile has been placed in the custody of the secretary of corrections.

History: L. 2006, ch. 169, § 11; Jan. 1, 2007.

Source or Prior Law:

38-1609.

38-2312. Expungement of records; docket fee.

(a) Except as provided in subsections (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon

application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2018 Supp. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 2018 Supp. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 2018 Supp. 21-5514(a), and amendments thereto, internet trading in child pornography; K.S.A. 2018 Supp. 21-5514(b), and amendments thereto, aggravated internet trading in child pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 2018 Supp. 21-5601(a), and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 2018 Supp. 21-5602, and amendments thereto, abuse of a child; or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $176. On and after July 1, 2017, through June 30, 2019, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(e) (1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) (i) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(ii) one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419, and amendments thereto; or

(iii) the juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6203 or 21-6419, and amendments thereto, and the hearing on expungement occurred on or after the date of final discharge. The provisions of this clause shall not allow an expungement of records or files concerning acts described in subsection (b);

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the agency fails to comply with the order within a reasonable time after its receipt, such agency may be adjudged in contempt of court and punished accordingly.

(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining

qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.

History: L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 87, § 11; L. 2012, ch. 66, § 13; L. 2013, ch. 120, § 37; L. 2014, ch. 82, § 32; L. 2015, ch. 81, § 19; L. 2017, ch. 78, § 23; L. 2017, ch. 100, § 11; L. 2018, ch. 7, § 9; July 1.

Source or Prior Law:

38-1610.

Revisor's Note:

Section was amended three times in the 2011 session; see also 38-2312a and 38-2312b.

Section was also amended by L. 2011, ch. 30, § 162, but that version was repealed by L. 2011, ch. 100, § 22.

Section was amended twice in the 2013 session, see also 38-2312c.

L. 2014, ch. 82, was held to be an invalid enactment, see Solomon v. State, 303 K. 512, 364 P.3d 536 (2015).

Section was also amended by L. 2017, ch. 80, § 15, but that version was repealed by L. 2017, ch. 100, § 13.

Law Review and Bar Journal References:

"Packing Heat: The Personal and Family Protection Act," Mary D. Feighny, 76 J.K.B.A. No. 4, 21 (2007).

38-2312a.

History: L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 30, § 162; L. 2011, ch. 100, § 13; Repealed, L. 2012, ch. 66, § 21; Apr. 12.

38-2312b.

History: L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 95, § 12; Repealed, L. 2012, ch. 66, § 21; Apr. 12.

38-2312c.

History: L. 2006, ch. 169, § 12; L. 2010, ch. 62, § 11; L. 2011, ch. 87, § 11; L. 2012, ch. 66, § 13; L. 2013, ch. 125, § 13; Repealed, L. 2014, ch. 82, § 44; Repealed, L. 2016, ch. 78, § 10; July 1.

Revisor's Note:

Section was also repealed by L. 2014, ch. 82, § 44, but L. 2014, ch. 82 was held to be an invalid enactment, see Solomon v. State, 303 K. 512, 364 P.3d 536 (2015).

38-2313. Fingerprints and photographs.

(a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined in K.S.A. 2018 Supp. 21-5412(a), and amendments thereto;

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been: (A) Prosecuted as an adult pursuant to K.S.A. 2018 Supp. 38-2347, and amendments thereto; or (B) taken into custody for an offense described in K.S.A. 2018 Supp. 38-2302(s)(1) or (s)(2), and amendments thereto;

(4) fingerprints or photographs shall be taken of any juvenile admitted to a juvenile correctional facility; and

(5) photographs may be taken of any juvenile placed in a juvenile detention facility. Photographs taken under this paragraph shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency except after an escape and necessary to assist in apprehension.

(b) Fingerprints and photographs taken under subsection (a)(1) or (a)(2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections (a)(3) and (a)(4) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to the state and federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to the state and federal repository if taken under subsection (a)(2) or (a)(4); and

(3) fingerprints or photographs taken under subsection (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2018 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of K.S.A. 38-1611(a)(2), prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act, K.S.A. 2018 Supp. 23-2201 et seq., and amendments thereto.

History: L. 2006, ch. 169, § 13; L. 2007, ch. 23, § 1; L. 2011, ch. 30, § 163; L. 2012, ch. 162, § 68; L. 2016, ch. 46, § 31; July 1.

Source or Prior Law:

38-1611.

38-2314. Docket fee; authorized only by legislative enactment; expenses; assessment.

(a) Docket fee. The docket fee for proceedings under this code, if one is assessed as provided by this section, shall be $34. Only one docket fee shall be assessed in each case. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2017, through June 30, 2019, the supreme court may impose an additional charge, not to exceed $22 per docket fee, to fund the costs of non-judicial personnel.

(b) Expenses. The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) Assessment of docket fee and expenses. (1) Docket fee. The docket fee may be assessed or waived by the court conducting the initial sentencing hearing and may be assessed against the juvenile or the parent of the juvenile. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) Expenses. Expenses may be waived or assessed against the juvenile or a parent of the

juvenile. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery.

(3) Prohibited assessment. Docket fees or expenses shall not be assessed against the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state.

(d) Cases in which venue is transferred. If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportionate share of the expenses is collected by the receiving court. Unless otherwise ordered by the court, all amounts collected shall first be applied toward payment of restitution, then toward the payment of the docket fee.

History: L. 2006, ch. 169, § 14; L. 2008, ch. 95, § 10; L. 2009, ch. 116, § 18; L. 2010, ch. 62, § 12; L. 2011, ch. 87, § 12; L. 2012, ch. 66, § 14; L. 2013, ch. 125, § 14; L. 2015, ch. 81, § 20; L. 2017, ch. 80, § 16; July 1.

Source or Prior Law:

38-1613.

38-2315. Expense of care and custody of juvenile.

(a) How paid. (1) If a juvenile, subject to this code, is not eligible for assistance under K.S.A. 39-709, and amendments thereto, expenses for the care and custody of the juvenile shall be paid out of the general fund of the county in which the proceedings are initiated. Upon entry of a written order transferring venue pursuant to K.S.A. 2018 Supp. 38-2305, and amendments thereto, expenses shall be paid by the receiving county. For the purpose of this section, a juvenile who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are initiated.

(2) When the custody of a juvenile is awarded to the commissioner, the expenses for the care and custody of the juvenile from the date of custody forward shall not be paid out of the county general fund, except as provided in subsection (d) or K.S.A. 2018 Supp. 38-2373, and amendments thereto. In no event shall the payment authorized by this subsection exceed the state approved rate.

(3) Nothing in this section shall be construed to mean that any person shall be relieved of the legal responsibility to support a juvenile.

(b) Reimbursement to county general fund. (1) When expenses for the care and custody of a juvenile subject to this code have been paid out of the county general fund of any county in this state, the court may assess the expenses to the person who by law is liable to maintain, care for or support the juvenile and shall inform the person assessed the expenses of such person's right to a hearing. If a hearing is requested, it shall be granted and the court shall fix a time and place for hearing on the question of requiring payment or reimbursement of all or part of the expenses by a person who by law is liable to maintain, care for or support the juvenile.

(2) After notice to the person who by law is liable to maintain, care for or support the juvenile, the court, if requested, may hear and dispose of the matter and may enter an order relating to payment of expenses for care and custody of the juvenile. If the person willfully fails or refuses to pay the sum, the person may be adjudged in contempt of court and punished accordingly.

(3) Any county which makes payment to maintain, care for or support a juvenile subject to this code, may bring a separate action against a person who by law is liable to maintain, care for or support such juvenile for the reimbursement of expenses paid out of the county general fund for the care and custody of the juvenile.

(c) Reimbursement to the commissioner. When expenses for the care and custody of a juvenile subject to this code have been paid by the commissioner, the commissioner may recover the expenses as provided by law from any person who by law is liable to maintain, care for or support the juvenile. The commissioner shall have the power to

compromise and settle any claim due or any amount claimed to be due to the commissioner from any person who by law is liable to maintain, care for or support the juvenile. The commissioner may contract with a state agency, contract with an individual or hire personnel to collect the reimbursements required under this subsection.

(d) Interlocal agreements. When a county has made an interlocal agreement to maintain, care for or support alleged juvenile offenders or juvenile offenders who are residents of another county and such other county is a party to the interlocal agreement with the county which performs the actual maintenance, care and support of the alleged juvenile offender or juvenile offender, such county of residence may pay from its county general fund to the other county whatever amount is agreed upon in the interlocal agreement irrespective of any amount paid or to be paid by the juvenile justice authority. The juvenile justice authority shall not diminish the amount it would otherwise reimburse any such county for maintaining, caring for and supporting any such juvenile because of any payment under such an interlocal agreement.

History: L. 2006, ch. 169, § 15; Jan. 1, 2007.

Source or Prior Law:

38-1616.

38-2316. Health services.

(a) Physical care and treatment. (1) When the health or condition of a juvenile who is subject to the jurisdiction of the court requires it, the court may consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records.

(2) When the health or condition of a juvenile requires it and the juvenile has been placed in the custody of the commissioner or a person other than a parent or placed in or committed to a facility, the custodian or an agent designated by the custodian shall be the personal representative for the purpose of consenting to disclosure of otherwise protected health information and have authority to consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records, subject to terms and conditions the court considers proper. A juvenile or parent of a juvenile who is opposed to certain medical procedures authorized by this section may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may authorize or limit the performance of the proposed treatment subject to the terms and conditions the court considers proper. The provisions of this subsection shall also apply to juvenile felons, as defined in K.S.A. 38-16,112, prior to its repeal, and juveniles in the custody of the department of corrections pursuant to K.S.A. 2018 Supp. 38-2366, and amendments thereto, who have been placed in a juvenile correctional facility pursuant to K.S.A. 75-5206, and amendments thereto.

(3) Any health care provider, who in good faith renders hospital, medical, surgical or dental care or treatment to any juvenile after a consent has been obtained as authorized by this section, shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

(4) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to provide care and support for a juvenile.

(b) Mental care and treatment. If it is brought to the court's attention, while the court is exercising jurisdiction over a juvenile under this code, that the juvenile may be a mentally ill person as defined in K.S.A. 59-2946, and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 59-2957, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons; or

(2) authorize the juvenile to seek voluntary admission to a treatment facility as provided in K.S.A. 59-2949, and amendments thereto.

The application to determine whether the juvenile is a mentally ill person may be filed in the same proceedings as the petition alleging the juvenile to be a juvenile offender or may be brought in separate proceedings. In either event, the court may enter an order staying any further proceedings under this code until all proceedings have been concluded under the care and treatment act for mentally ill persons.

History: L. 2006, ch. 169, § 16; Jan. 1, 2007.

Source or Prior Law:

38-1614.

38-2317. Infectious disease testing and counseling; disclosure of results; penalties.

(a) As used in this section:

(1) "Adjudicated person" means a person found to be a juvenile offender or a person found not to be a juvenile offender because of mental disease or defect.

(2) "Laboratory confirmation" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Infectious disease test" means a test approved by the secretary of health and environment.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(6) "Infectious disease" means any disease communicable from one person to another through contact with bodily fluids.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of infectious disease testing and counseling and shall cause each alleged victim of the offense and if the alleged victim is a minor, the parent, if any, to be notified that infectious disease testing and counseling are available.

(c) If the victim of the offense or if the victim is a minor, if the victim's parent requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that such person has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests.

(d) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to infectious disease tests; or (2) shall order the adjudicated person to submit to infectious disease tests if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If an infectious disease test is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If testing for HIV or hepatitis B infection results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV or hepatitis B infection six months after the first test was administered.

(e) The results of infectious disease tests ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (d) by a victim or by the parent or legal guardian of a victim. If infectious disease tests ordered under this section results in a laboratory confirmation, the results shall be reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice, in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case of a person under 16 years of age who has been convicted as an adult, for inclusion in such person's medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 et seq., and amendments thereto, and referral for appropriate health care and services.

(f) The costs of any counseling and testing provided under subsection (e) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

(g) When a court orders an adjudicated person to submit to infectious disease tests under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of infectious disease tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.

(h) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section or authorized in writing by the juvenile to receive the results or information. Any violation of this section is a class C nonperson misdemeanor.

History: L. 2006, ch. 169, § 17; L. 2008, ch. 169, § 21; July 1.

Source or Prior Law:

38-1692.

38-2318. Determination of parentage.

When there is a dispute with respect to parentage, the court may stay child support proceedings, if any are pending in the case, until the dispute is resolved by a separate action under the Kansas parentage act, K.S.A. 2018 Supp. 23-2201 et seq., and amendments thereto. Nothing in this section shall be construed to limit the power of the court to carry out the purposes of the revised Kansas juvenile justice code.

History: L. 2006, ch. 169, § 18; L. 2012, ch. 162, § 69; May 31.

Source or Prior Law:

38-16,116.

38-2319. Determination of child support.

(a) The court shall order child support unless good cause is shown why such support should not be ordered. In determining the amount of a child support order under the revised Kansas juvenile justice code, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto.

(b) If necessary to carry out the intent of this section, the court may refer the matter to the secretary for children and families for child support enforcement.

History: L. 2006, ch. 169, § 19; L. 2014, ch. 115, § 69; July 1.

Source or Prior Law:

38-16,117.

38-2320. Journal entry for child support.

When child support is ordered pursuant to the revised Kansas juvenile justice code, a separate journal entry or judgment form shall be made for each parent ordered to pay child support. The journal entry or judgment form shall be entitled:

"In the matter of _____ and _____"
(obligee's name) (obligor's name)

and shall contain no reference to the official file or social file in the case except the facts necessary to establish personal jurisdiction over the parent, the name and date of birth of each child and findings of fact and conclusions of law directly related to the child support obligation. If the court issues an income withholding order for the parent, the order shall be captioned in the same manner.

History: L. 2006, ch. 169, § 20; Jan. 1, 2007.

Source or Prior Law:

38-16,118.

38-2321. Withholding order for child support; filing; service.

(a) A party entitled to receive child support under an order issued pursuant to the revised

Kansas juvenile justice code may file with the clerk of the district court in the county in which the judgment was rendered the original child support order and the original income withholding order, if any. If the original child support or income withholding order is unavailable for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the district court shall number the child support order as a case filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the appearance docket of the case. Registration of a child support order under this section shall be without cost or docket fee.

(b) If the number assigned to a case under the revised Kansas juvenile justice code appears in the caption of a document filed pursuant to this section, the clerk of the district court may obliterate that number and replace it with the new case number assigned pursuant to this section.

(c) The filing of the child support order shall constitute registration under this section. Upon registration of the child support order, all matters related to that order, including, but not limited to, modification of the order, shall proceed under the new case number. Registration of a child support order under this section does not confer jurisdiction in the registration case for custody or parenting time issues.

(d) The party registering a child support order shall serve a copy of the registered child support order and income withholding order, if any, upon the parties by first-class mail. The party registering the child support order shall file, in the official file for each child affected, either a copy of the registered order showing the new case number or a statement that includes the caption, new case number and date of registration of the child support order.

(e) If the commissioner of juvenile justice is entitled to receive payment under an order which may be registered under this section, the county or district attorney shall take the actions permitted or required in subsections (a) and (d) on behalf of the commissioner, unless otherwise requested by the commissioner.

(f) A child support order registered pursuant to this section shall have the same force and effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, including, but not limited to:

(1) The registered order shall become a lien on the real estate of the judgment debtor in the county from the date of registration;

(2) execution or other action to enforce the registered order may be had from the date of registration;

(3) the registered order may itself be registered pursuant to any law, including, but not limited to, the uniform interstate family support act, article 9 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(4) if any installment of support due under the registered order becomes a dormant judgment, it may be revived pursuant to K.S.A. 60-2404, and amendments thereto; and

(5) the court shall have continuing jurisdiction over the parties and subject matter and, except as otherwise provided in subsection (g), may modify any prior support order when a material change in circumstances is shown irrespective of the present domicile of the child or parent. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court.

(g) If a motion to modify the child support order is filed within three months after the date of registration pursuant to this section, if no motion to modify the order has previously been heard, and if the moving party shows that the support order was based upon a stipulation pursuant to subsection (b)(2) of K.S.A. 2018 Supp. 38-2319, and amendments thereto, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto, without requiring any party to show that a material change of circumstances has occurred, without regard to any previous presumption or stipulation used to determine the amount of the child support order, and irrespective of the present domicile of the child or parent. Nothing in this subsection shall prevent or limit enforcement of the support order during the three months after the date of registration.

History: L. 2006, ch. 169, § 21; Jan. 1, 2007.

Source or Prior Law:

38-16,119.

38-2322. Remedies supplemental not substitute.

The remedies provided in this code with respect to child support are in addition to and not in substitution for any other remedy.

History: L. 2006, ch. 169, § 22; Jan. 1, 2007.

Source or Prior Law:

38-16,120.

38-2323. Placement under juvenile justice code; assignment of support right.

(a) In any case in which the commissioner pays for the expenses of care and custody of a juvenile pursuant to the code, an assignment of all past, present and future support rights of the juvenile in custody possessed by either parent or other person entitled to receive support payments for the juvenile is, by operation of law, conveyed to the commissioner. Such assignment shall become effective upon placement of a juvenile in the custody of the commissioner or upon payment of the expenses of care and custody of a juvenile by the commissioner without the requirement that any document be signed by the parent or other person entitled to receive support payments for the juvenile. When the commissioner pays for the expenses of care and custody of a juvenile or a juvenile is placed in the custody of the commissioner, the parent or other person entitled to receive support payments for the juvenile is also deemed to have appointed the commissioner, or the commissioner's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the commissioner on behalf of the juvenile. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(b) If an assignment of support rights is deemed to have been made pursuant to subsection (a), support payments shall be made to the juvenile justice authority.

(c) If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or other person whose support rights are assigned, the commissioner shall file a notice of the assignment with the court ordering the payments without the requirement that a copy of the notice be provided to the obligee or obligor. The notice shall not require the signature of the applicant, recipient or obligee on any accompanying assignment document. The notice shall include:

(1) A statement that the assignment is in effect;

(2) the name of any juvenile and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the commissioner of juvenile justice.

(d) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward all support payments, including those made as a result of any garnishment, contempt, attachment, income withholding, income assignment or release of lien process, to the commissioner until the court receives notification of the termination of the assignment.

(e) If the claim of the commissioner for repayment of the costs of care and custody of a juvenile under the revised Kansas juvenile justice code is not satisfied when such aid is discontinued, the commissioner shall file a notice of partial termination of assignment of support rights with the court which will preserve the assignment in regard to unpaid support rights which were due and owing at the time of the discontinuance of such aid. A copy of the notice of the partial termination of the assignment need not be provided to the obligee or obligor. The notice shall include:

(1) A statement that the assignment has been partially terminated;

(2) the name of any juvenile and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) the date the assignment was partially terminated.

(f) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward to the commissioner all payments made to satisfy support arrearages due and owing as of the date the assignment of support rights was partially

terminated until the court receives notification of the termination of the assignment.

(g) If the commissioner or the commissioner's designee has a notice of assignment of support rights pursuant to subsection (c) or a notice of partial termination of assignment of support rights pursuant to subsection (e) on file with the court ordering support payments, the commissioner shall be considered a necessary party in interest concerning any legal action to enforce, modify, settle, satisfy or discharge an assigned support obligation and, as such, shall be given notice by the party filing such action in accordance with the rules of civil procedure.

(h) Upon written notification by the commissioner's designee that assigned support has been collected pursuant to K.S.A. 44-718 or 75-6201 et seq., and amendments thereto, or section 464 of title IV, part D, of the federal social security act, or any other method of direct payment to the commissioner, the clerk of the court or other record keeper where the support order was established, shall enter the amounts collected by the commissioner in the court's payment ledger or other record to insure that the obligor is credited for the amounts collected.

(i) An assignment of support rights pursuant to subsection (a) shall remain in full force and effect so long as the commissioner is providing public assistance in accordance with a plan under which federal moneys are expended on behalf of the juvenile for the expenses of a juvenile in the commissioner's care or custody pursuant to the code. Upon discontinuance of all such assistance and support enforcement services, the assignment shall remain in effect as to unpaid support obligations due and owing at the time of the discontinuance of assistance until the claim of the commissioner for repayment of the unreimbursed portion of any assistance is satisfied. Nothing herein shall affect or limit the rights of the commissioner under an assignment of rights to payment for medical care from a third party pursuant to K.S.A. 40-2,161, and amendments thereto.

History: L. 2006, ch. 169, § 23; Jan. 1, 2007.

Source or Prior Law:

38-16,127.

38-2324. Liability of parent or guardian for assistance provided juvenile, exceptions.

(a) Except as provided in subsection (b), a juvenile's parent shall be liable to repay to the commissioner of juvenile justice, or any other person or entity who provides services pursuant to a court order issued under the code, any assistance expended on the juvenile's behalf, regardless of the specific program under which the assistance is or has been provided. Such services shall include, but not be limited to, probation, conditional release, aftercare supervision, case management and community corrections. When more than one person is legally obligated to support the juvenile, liability to the commissioner or other person or entity shall be joint and several. The commissioner or other person or entity shall have the power and authority to file a civil action in the name of the commissioner or other person or entity for repayment of the assistance, regardless of the existence of any other action involving the support of the juvenile.

(b) With respect to an individual parent, the provisions of subsection (a) shall not apply to:

(1) Assistance provided on behalf of any person other than the juvenile of the parent;

(2) assistance provided during a month in which the needs of the parent were included in the assistance provided to the juvenile; or

(3) assistance provided during a month in which the parent has fully complied with the terms of an order of support for the juvenile, if a court of competent jurisdiction has considered the issue of support. For the purposes of this subsection, if an order is silent on the issue of support, it shall not be presumed that the court has considered the issue of support. Amounts paid for a particular month pursuant to a judgment under this section shall be credited against the amount accruing for the same month under any other order of support for the juvenile, up to the amount of the current support obligation for that month.

(c) When the assistance provided during a month is on behalf of more than one person, the amount of assistance provided on behalf of one person for that month shall be determined by dividing the total assistance by the number of people on whose behalf assistance was provided.

(d) Actions authorized herein are in addition to and not in substitution for any other remedies.

History: L. 2006, ch. 169, § 24; Jan. 1, 2007.

Source or Prior Law:

38-16,128.

38-2325. Juvenile offender information system; definitions.

As used in K.S.A. 2018 Supp. 38-2326, and amendments thereto, unless the context otherwise requires:

(a) "Central repository" has the meaning provided by K.S.A. 22-4701, and amendments thereto.

(b) "Director" means the director of the Kansas bureau of investigation.

(c) "Juvenile offender information" means data relating to juveniles alleged or adjudicated to be juvenile offenders and offenses committed or alleged to have been committed by juveniles in proceedings pursuant to the Kansas juvenile code, the Kansas juvenile justice code or the revised Kansas juvenile justice code, including, but not limited to:

(1) Data related to the use of detention risk assessment tool;

(2) individual level data for juveniles on probation;

(3) costs for juveniles on probation;

(4) individual level data regarding juvenile filings;

(5) risk and needs assessment override data;

(6) violation data for juveniles on probation; and

(7) the following information for juveniles who enter into an immediate intervention plan:

(A) The number of juvenile offenders who were diverted at the point of initial law enforcement contact by juvenile intake and assessment, by the county or district attorney before filing with the court and by the county or district attorney after filing with the court;

(B) the number of notice to appear citations issued and the number of school-based notice to appear citations issued in each school district;

(C) new offense referrals to juvenile court or criminal court within three years of completion of an immediate intervention, release from court jurisdiction or release from agency custody;

(D) juvenile offender adjudications or child in need of care adjudications for a status offense or conviction by a criminal court within three years of completion of the immediate intervention, release from court jurisdiction or release from agency custody;

(E) the length of supervision for immediate interventions; and

(F) rates of immediate intervention completions and failures, including the reasons for such failures.

(d) "Juvenile justice agency" means any county or district attorney, law enforcement agency of this state or of any political subdivision of this state, court of this state or of a municipality of this state, administrative agency of this state or any political subdivision of this state, juvenile correctional facility or juvenile detention facility.

(e) "Reportable event" means:

(1) Issuance of a warrant to take a juvenile into custody;

(2) taking a juvenile into custody pursuant to this code;

(3) release of a juvenile who has been taken into custody pursuant to this code, without the filing of a complaint;

(4) dismissal of a complaint filed pursuant to this code;

(5) a trial in a proceeding pursuant to this code;

(6) a sentence in a proceeding pursuant to this code;

(7) commitment to or placement in a juvenile detention facility or juvenile correctional facility pursuant to this code;

(8) release or discharge from commitment or jurisdiction of the court pursuant to this code;

(9) escaping from commitment or absconding from placement pursuant to this code;

(10) entry of a mandate of an appellate court that reverses the decision of the trial court relating to a reportable event;

(11) an order authorizing prosecution as an adult;

(12) the issuance of an intake and assessment report;

(13) the report from a reception and diagnostic center; or

(14) any other event arising out of or occurring during the course of proceedings pursuant to this code and declared to be reportable by rules and regulations of the director.

History: L. 2006, ch. 169, § 25; L. 2016, ch. 46, § 32; July 1, 2017.

Source or Prior Law:

38-1617.

38-2326. Same; establishment and maintenance.

(a) In order to properly advise the three branches of government on the operation of the juvenile justice system, there is hereby established within and as a part of the central repository, a juvenile offender information system. The system shall serve as a repository of juvenile offender information which is collected by juvenile justice agencies and reported to the system.

(b) Except as otherwise provided by this subsection, every juvenile justice agency shall report juvenile offender information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this section. A juvenile justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(c) Reporting methods may include:

(1) Submission of juvenile offender information by a juvenile justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submission to the central repository by the office of judicial administrator; or

(3) if the information can readily be collected and reported through juvenile justice agencies that are part of a geographically based information system, submission to the central repository by the agencies.

(d) The director may determine, by rules and regulations, the statutorily required reportable events to be reported by each juvenile justice agency, in order to avoid duplication in reporting.

(e) Juvenile offender information maintained in the juvenile offender information system is confidential and shall not be disseminated or publicly disclosed in a manner which enables identification of any individual who is a subject of the information, except that the information shall be open to inspection by law enforcement agencies of this state, by the Kansas department for children and families if related to an individual in the secretary's custody or control, by the juvenile justice authority if related to an individual in the commissioner's custody or control, by the department of corrections if related to an individual in the custody and control of the secretary of corrections, by educational institutions to the extent necessary to provide the safest possible environment for pupils and employees, by any educator to the extent necessary for the protection of the educator and pupils, by the officers of any public institution to which the individual is committed, by county and district attorneys, by attorneys for the parties to a proceeding under this code, by an intake and assessment worker or upon order of a judge of the district court or an appellate court. Such information shall reflect the offense level and whether such offense is a person or nonperson offense.

(f) Any journal entry of a trial of adjudication shall state the number of the statute under which the juvenile is adjudicated to be a juvenile offender and specify whether each offense, if done by an adult, would constitute a felony or misdemeanor, as defined in K.S.A. 2018 Supp. 21-5102, and amendments thereto.

(g) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(h) The director shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section.

(i) The director shall develop incentives to encourage the timely entry of juvenile offender information into the central repository.

History: L. 2006, ch. 169, § 26; L. 2011, ch. 30, § 164; L. 2014, ch. 115, § 70; July 1.

Source or Prior Law:
38-1618.

38-2327. Commencement of proceedings; duties of county or district attorney.

An action under this code shall be commenced by filing a verified complaint with the court and the issuance of process on the complaint. It shall be the duty of each county or district attorney to prepare and file the complaint alleging a juvenile to be a juvenile offender and to prosecute the case.

History: L. 2006, ch. 169, § 27; Jan. 1, 2007.

Source or Prior Law:
38-1612, 38-1621.

38-2328. Pleadings.

(a) Complaint. (1) The complaint shall be in writing and shall state:

(A)The name, date of birth and residence address of the alleged juvenile offender, if known;

(B) the name and residence address of the alleged juvenile offender's parent, if known, and, if no parent can be found, the name and address of the nearest known relative;

(C) the name and residence address of any persons having custody or control of the alleged juvenile offender;

(D) plainly and concisely the essential facts constituting the offense charged and, if the statement is drawn in the language of the statute, ordinance or resolution alleged to have been violated, it shall be considered sufficient; and

(E) for each count, the official or customary citation of the statute, ordinance or resolution which is alleged to have been violated, but error in the citation or its omission shall not be grounds for dismissal of the complaint or for reversal of an adjudication if the error or omission did not prejudice the juvenile.

(2) The proceedings shall be entitled: "In the matter of _____, a juvenile."

(3) The complaint shall contain a request that parents be ordered to pay child support in the event the juvenile is removed from the home.

(4) The precise time of the commission of an offense need not be stated in the complaint, but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable element of the offense.

(5) At the time of filing, the prosecuting attorney shall endorse upon the complaint the names of all known witnesses. The names of other witnesses that afterward become known to the prosecuting attorney may be endorsed at such times as the court prescribes by rule or otherwise.

(b) Motions. Motions may be made orally or in writing. The motion shall state with particularity the grounds for the motion and shall state the relief or order sought. Motions available in civil and criminal procedure are available to the parties under this code.

History: L. 2006, ch. 169, § 28; Jan. 1, 2007.

Source or Prior Law:
38-1622.

38-2329. Notice of defense of alibi or mental disease or defect.

A juvenile whose defense to the allegations in the complaint is that of alibi or mental disease or defect shall give written notice to the county or district attorney and the court of such juvenile's proposed defense not less than 14 days prior to the adjudicatory hearing. For good cause shown the court may allow such notice to be given at a later time. The notice shall include the names and addresses of witnesses that the juvenile plans to call to provide evidence in support of the defense. Upon receipt of the notice of the defense of mental disease or defect, the court may order an independent examination of and report on the juvenile.

History: L. 2006, ch. 169, § 29; L. 2010, ch. 135, § 50; July 1.

Source or Prior Law:
38-1623.

38-2330. Juvenile taken into custody, when; procedure; release; detention in jail; notice to appear.

(a) A law enforcement officer may take a juvenile into custody when:

(1) Any offense has been or is being committed in the officer's view;

(2) the officer has a warrant commanding that the juvenile be taken into custody;

(3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein;

(4) the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute:

(A) A felony; or

(B) a misdemeanor and: (i) The juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody; or (ii) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody;

(5) the officer has probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation; or

(6) the officer receives a written statement pursuant to subsection (c).

(b) A court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may take a juvenile into custody when: (1) There is a warrant commanding that the juvenile be taken into custody; or (2) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein.

(c) Any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may request a warrant by giving the court a written statement setting forth that the juvenile, in the judgment of the court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code:

(1) (A) Has violated the condition of the juvenile's conditional release from detention or probation, for the third or subsequent time; and

(B) poses a significant risk of physical harm to another or damage to property; or

(2) has absconded from supervision.

(d) (1) A juvenile taken into custody by a law enforcement officer or other person authorized pursuant to subsection (b) shall be brought without unnecessary delay to the custody of the juvenile's parent or other custodian, unless there are reasonable grounds to believe that such action would not be in the best interests of the child or would pose a risk to public safety or property.

(2) If the juvenile cannot be delivered to the juvenile's parent or custodian, the officer may:

(A) Issue a notice to appear pursuant to subsection (g);

(B) contact or deliver the juvenile to an intake and assessment worker for completion of the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto; or

(C) if the juvenile is determined to not be detention eligible based on a standardized detention risk assessment tool and is experiencing a mental health crisis, deliver a juvenile to a juvenile crisis intervention center, as described in K.S.A. 65-536, and amendments thereto, after written authorization by a community mental health center.

(3) It shall be the duty of the officer to furnish the county or district attorney and the juvenile intake and assessment worker if the officer has delivered the juvenile to the worker or issued a notice to appear consistent with subsection (g), with all of the information in the officer's possession pertaining to the juvenile, the juvenile's parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

(e) In the absence of a court order to the contrary, the court or officials designated by the court, the county or district attorney or the law enforcement agency taking a juvenile into custody shall direct the release prior to the time specified by K.S.A. 2018 Supp. 38-2343(a), and amendments thereto. In addition, pursuant to K.S.A. 75-7023 and K.S.A. 2018 Supp. 38-2346, and amendments thereto, a juvenile intake and assessment worker shall direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process.

(f) Whenever a person 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior

to the time the person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the provisions of this code relating to detention hearings shall not apply to that person. If such person is eligible for detention, and all suitable alternatives to detention have been exhausted, the person shall be detained in jail. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and the warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place or, at the request of the person, the person shall be taken, without delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901, and amendments thereto, relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

(g) (1) Whenever a law enforcement officer detains any juvenile and such juvenile is not immediately taken to juvenile intake and assessment services, the officer may serve upon such juvenile a written notice to appear. Such notice to appear shall contain the name and address of the juvenile detained, the crime charged and the location and phone number of the juvenile intake and assessment services office where the juvenile will need to appear with a parent or guardian.

(2) The juvenile intake and assessment services office specified in such notice to appear must be contacted by the juvenile or a parent or guardian no more than 48 hours after such notice is given, excluding weekends and holidays.

(3) The juvenile detained, in order to secure release as provided in this section, must give a written promise to call within the time specified by signing the written notice prepared by the officer. The original notice shall be retained by the officer and a copy shall be delivered to the juvenile detained and that juvenile's parent or guardian if such juvenile is under 18 years of age. The officer shall then release the juvenile.

(4) The law enforcement officer shall cause to be filed, without unnecessary delay, a complaint with juvenile intake and assessment services in which a juvenile released pursuant to paragraph (3) is given notice to appear, charging the crime stated in such notice. A copy shall also be provided to the district or county attorney. If the juvenile released fails to contact juvenile intake and assessment services as required in the notice to appear, juvenile intake and assessment services shall notify the district or county attorney.

(5) The notice to appear served pursuant to paragraph (1) and the complaint filed pursuant to paragraph (4) may be provided to the juvenile in a single citation.

History: L. 2006, ch. 169, § 30; L. 2016, ch. 46, § 33; L. 2017, ch. 90, § 3; L. 2018, ch. 107, § 6; July 1.

Source or Prior Law:

38-1624.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 486, 487, 186 P.3d 164 (2008).

2. Statutory mandates governing the detention of a juvenile must be satisfied. S.M. v. Johnson, 290 K. 11, 221 P.3d 99 (2009).

38-2331. Criteria for detention of juvenile in detention facility.

(a) The court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds that a detention risk assessment conducted pursuant to K.S.A. 75-7023(d), and amendments thereto, has assessed the juvenile as detention-eligible or there are grounds to override the results of a detention risk assessment tool and the court finds probable cause that:

(1) Community-based alternatives to detention are insufficient to:

(A) 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

(B) protect the physical safety of another person or property from serious threat if the juvenile is not detained; and

(2) The court shall state the basis for each finding in writing.

(b) Community-based alternatives to detention shall include, but not be limited to:

(1) Release on the youth's promise to appear;

(2) release to a parent, guardian or custodian upon the youth's assurance to secure such youth's appearance;

(3) release with the imposition of reasonable restrictions on activities, associations, movements and residence specifically related to securing the youth's appearance at the next court hearing;

(4) release to a voluntary community supervision program;

(5) release to a mandatory, court-ordered community supervision program;

(6) release with mandatory participation in an electronic monitoring program with minimal restrictions on the youth's movement; or

(7) release with mandatory participation in an electronic monitoring program allowing the youth to leave home only to attend school, work, court hearings or other court-approved activities.

(c) No juvenile shall be placed in a juvenile detention center solely due to:

(1) A lack of supervision alternatives or service options;

(2) a parent avoiding legal responsibility;

(3) a risk of self-harm;

(4) contempt of court;

(5) a violation of a valid court order; or

(6) technical violations of conditional release unless there is probable cause that the juvenile poses a significant risk of harm to others or damage to property or the applicable graduated responses or sanctions protocol allows such placement.

(d) No person 18 years of age or more shall be placed in a juvenile detention center.

History: L. 2006, ch. 169, § 31; L. 2011, ch. 30, § 165; L. 2012, ch. 69, § 1; L. 2016, ch. 46, § 34; Jan. 1, 2017.

Source or Prior Law:

38-1640.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 475, 486, 487, 186 P.3d 164 (2008).

2. Statutory mandates governing the detention of a juvenile must be satisfied. S.M. v. Johnson, 290 K. 11, 221 P.3d 99 (2009).

38-2332. Prohibiting placement or detention of juvenile in jail; exceptions; review of records and determination of compliance by the department of corrections.

(a) No juvenile shall be detained or placed in any jail pursuant to the revised Kansas juvenile justice code except as provided by subsections (b), (c) and (d) and subject to K.S.A. 2018 Supp. 38-2330 and 38-2331, and amendments thereto.

(b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

(c) The provisions of this section shall not apply to detention of a juvenile:

(1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant to K.S.A. 2018 Supp. 38-2347(a)(2), and amendments thereto; and (B) who has received the benefit of a detention hearing pursuant to K.S.A. 2018 Supp. 38-2331, and amendments thereto;

(2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 2018 Supp. 38-2347, and amendments thereto; or

(3) who has been convicted previously as an adult under the code of criminal procedure or the criminal laws of another state or foreign jurisdiction.

(d) The provisions of this section shall not apply to the detention of any person 18 years of age or more who is taken into custody and is being prosecuted in accordance with the provisions of the revised Kansas juvenile justice code.

(e) The department of corrections or the department's contractor shall have authority to review jail records to determine compliance with the provisions of this section.

History: L. 2006, ch. 169, § 32; L. 2016, ch. 46, § 35; Jan. 1, 2017.

Source or Prior Law:

38-1691.

38-2333. Juvenile less than 14, admission or confession from interrogation.

(a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

History: L. 2006, ch. 169, § 33; Jan. 1, 2007.

Source or Prior Law:

38-1624(c)(3).

38-2334.

History: L. 2006, ch. 169, § 34; Repealed, L. 2016, ch. 46, § 70; July 1, 2017.

38-2335.

History: L. 2006, ch. 169, § 35; L. 2014, ch. 115, § 71; Repealed, L. 2016, ch. 46, § 70; July 1, 2017.

38-2336. Proceedings upon filing of complaint.

Upon the filing of a complaint under this code, the court shall proceed by one of the following methods:

(a) At any time the juvenile is not being detained, the court may issue summons with copies of the complaint attached stating the place of the hearing and time at which the juvenile is required to appear and answer the offenses charged in the complaint. The hearing shall be within 30 days of the date the complaint is filed. The summons and the complaint shall be delivered to a law enforcement agency or a person specially appointed to serve them.

(b) If the juvenile is being detained for a detention hearing as provided in K.S.A. 2018 Supp. 38-2343, and amendments thereto, at the detention hearing a copy of the complaint shall be served on the juvenile and each parent or other person with whom the juvenile has been residing who is in attendance at the hearing and a record of the service made a part of the proceedings. The court shall announce the time that the juvenile is ordered to appear again before the court for further proceedings. If no parent appears at the hearing, the court shall summon the parent or parents as provided in subsection (a).

(c) If the court is without sufficient information to accomplish service of summons, the court may issue a warrant pursuant to K.S.A. 2018 Supp. 38-2342, and amendments thereto.

History: L. 2006, ch. 169, § 36; Jan. 1, 2007.

Source or Prior Law:

38-1625.

38-2337. Summons; persons upon whom served; form.

(a) Persons upon whom served. The summons and a copy of the complaint shall be served on the juvenile; if the juvenile's whereabouts are known, any person having legal custody of the juvenile; the person with whom the juvenile is residing; and any other person designated by the county or district attorney.

(b) Form. The summons shall be issued by the clerk, dated the day it is issued, contain the name of the court, the caption of the case and be in a form that complies with the code.

History: L. 2006, ch. 169, § 37; Jan. 1, 2007.

Source or Prior Law:

38-1626.

38-2338. Service of process.

(a) Summons, notice of hearing or other process may be served pursuant to K.S.A. 60-303, and amendments thereto, or as provided in subsection (b).

(b) Service may be made by first-class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear when served by first-class mail, the summons, notice or other process shall be pursuant to K.S.A. 60-303, and amendments thereto.

History: L. 2006, ch. 169, § 38; Jan. 1, 2007.

Source or Prior Law:

38-1627.

38-2339. Proof of service.

Proof of service shall be made as follows:

(a) Personal or residential service. (1) Every officer to whom summons or other process shall be delivered for service within the state shall make written report of the place, manner and date of service of the process.

(2) If the process, by order of the court, is delivered to a person other than an officer for service, the person shall report the place, manner and time of service by affidavit.

(b) Service by mail. The clerk or a deputy clerk shall make service by mail and shall make a written report of the service.

(c) Amendment of report. The judge may allow an amendment of a report of service at any time and upon the terms as are deemed just to correctly reflect the true manner of service.

History: L. 2006, ch. 169, § 39; Jan. 1, 2007.

Source or Prior Law:

38-1628.

38-2340. Service of other pleadings.

(a) Proceedings upon filing. Upon the filing of a subsequent pleading requesting or indicating the necessity for a hearing, the court shall fix the time and place for the hearing.

(b) Form of notice. The notice of hearing shall be given by the clerk, dated the day it is issued, contain the name of the court and the caption in the case.

(c) Method and report of service. Notice of hearing and motions or other pleadings subsequent to the complaint shall be served and report of service shall be made in the same manner as service of the complaint and summons.

History: L. 2006, ch. 169, § 40; Jan. 1, 2007.

Source or Prior Law:

38-1629.

38-2341. Subpoenas and witness fees.

(a) A party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, the subpoenas and other compulsory process shall be issued and served and the disobedience thereof shall be punished in the same manner as in other civil cases.

(b) The court shall have the power to compel the attendance of witnesses from any county in the state and from out of state for proceedings under this code.

(c) Only witnesses who have been subpoenaed shall be allowed witness fees and mileage. No witness shall be entitled to be paid the fee or mileage before the witness' actual appearance at court.

History: L. 2006, ch. 169, § 41; Jan. 1, 2007.

Source or Prior Law:
38-1630.

38-2342. Issuance of warrants.

The court may issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe: (a) That an offense was committed and it was committed by the juvenile; (b) the juvenile violated probation, conditional release, or conditions of release from detention for a third or subsequent time and the juvenile poses a significant risk of physical harm to another or damage to property; (c) the juvenile has escaped from a facility; or (d) the juvenile has absconded from supervision. The warrant shall designate where or to whom the juvenile is to be taken pursuant to K.S.A. 2018 Supp. 38-2330(d)(1), and amendments thereto, if the court is not open for the regular conduct of business. The warrant shall describe the offense or violation charged in the complaint or the applicable circumstances of the juvenile's absconding or escaping.

History: L. 2006, ch. 169, § 42; L. 2016, ch. 46, § 36; L. 2017, ch. 90, § 4; July 1.

Source or Prior Law:
38-1631.

38-2343. Detention hearing; waiver; notice; attorney for juvenile; procedure; removal from custody of parent; audio-video communications; detention review hearing.

(a) Basis for extended detention; findings and placement. Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is warranted based on the criteria in K.S.A. 2018 Supp. 38-2331, and amendments thereto.

(b) (1) If the juvenile is in custody on the basis of 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 shall determine whether there is probable cause to believe that the juvenile has committed the alleged offense.

(2) In the absence of the necessary findings, the court shall order the juvenile released.

(c) Waiver of detention hearing. The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(d) Notice of hearing. Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by K.S.A. 2018 Supp. 38-2332(c)(1), and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(e) Attorney for juvenile. At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours, excluding Saturdays, Sundays and legal holidays, to obtain attendance of the attorney appointed.

(f) Hearing. (1) The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, detention risk assessment tool results, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable.

(2) If probable cause to believe that the juvenile has committed an alleged offense is contested, the court shall allow the opportunity to present contrary evidence or information upon request.

(3) If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based, including any reasons for overriding a detention risk assessment tool score.

(g) Rehearing. (1) If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(2) Within 14 days of the detention hearing, if the juvenile had not previously presented evidence regarding the determination of probable cause to believe that the juvenile has committed an offense, the juvenile may request a rehearing to contest the determination of probable cause to believe that the juvenile has committed an offense. The rehearing request shall identify evidence or information that the juvenile could not reasonably produce at the detention hearing. If the court determines that the evidence or information could not reasonably be produced at the detention hearing, the court shall rehear the matter without unnecessary delay.

(h) Audio-video communications. All hearings conducted pursuant to this section may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

(i) Review hearing. The court shall hold a detention review hearing at least every 14 days that a juvenile is in detention to determine if the juvenile should continue to be held in detention. The provisions of this subsection shall not apply if 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 person felony. The review hearings provided in this subsection are not required for a juvenile offender held in detention awaiting disposition in such juvenile offender's case pursuant to K.S.A. 2018 Supp. 38-2360(f), and amendments thereto.

History: L. 2006, ch. 169, § 43; L. 2010, ch. 135, § 51; L. 2012, ch. 69, § 2; L. 2016, ch. 46, § 37; L. 2018, ch. 52, § 1; July 1.

Source or Prior Law:

38-1632.

Revisor's Note:

Section was also amended by L. 2010, ch. 11, § 8, but that version was repealed by L. 2010, ch. 135, § 225.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 487, 186 P.3d 164 (2008).

2. Statutory mandates governing the detention of a juvenile must be satisfied. S.M. v. Johnson, 290 K. 11, 221 P.3d 99 (2009).

3. Juvenile respondent has no right to an adversarial preliminary examination. In re D.E.R., 290 K. 306, 225 P.3d 1187 (2010).

38-2344. First appearance; plea.

(a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

(1) The nature of the charges in the complaint;

(2) the right to hire an attorney of the juvenile's own choice;

(3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent;

(4) that the court may require the juvenile or parent to pay the expense of a court appointed attorney; and

(5) the right to be offered an immediate intervention pursuant to K.S.A. 2018 Supp. 38-2346, and amendments thereto.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall promptly appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, nolo contendere or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making this requirement, the court shall inform the juvenile of the following:

(1) The nature of the charges in the complaint;

(2) the right of the juvenile to be presumed innocent of each charge;

(3) the right to jury trial without unnecessary delay;

(4) the right to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(5) the right to subpoena witnesses;

(6) the right of the juvenile to testify or to decline to testify; and

(7) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.

(c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads nolo contendere, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4), (5) and (6); and (2) that there is a factual basis for the plea.

(d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.

(e) First appearance may be conducted by two-way electronic audio-video communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

History: L. 2006, ch. 169, § 44; L. 2011, ch. 60, § 4; L. 2016, ch. 46, § 38; Jan. 1, 2017.

Source or Prior Law:

38-1633.

CASE ANNOTATIONS

1. Section held to be unconstitutional; juveniles have a right to a jury trial under the Kansas constitution. In re L.M., 286 K. 460, 461, 467, 470, 473, 482, 186 P.3d 164 (2008).

2. Cited; when court fails to inform juvenile of sentencing alternatives, juvenile's plea is not knowingly and voluntarily made. In re P.L.B., 40 K.A.2d 182, 185, 188 to 191, 194, 195, 190 P.3d 274 (2008).

38-2345. Nolo contendere.

A plea of nolo contendere is a formal declaration that the juvenile does not contest the charge. When a plea of nolo contendere is accepted the court shall adjudicate the juvenile to be a juvenile offender. The plea cannot be used against the juvenile as an admission in any other action based on the same act.

History: L. 2006, ch. 169, § 45; Jan. 1, 2007.

Source or Prior Law:

38-1634.

38-2346. Immediate intervention programs.

(a) Each director of juvenile intake and assessment services in collaboration with the county or district attorney shall adopt a policy and establish guidelines for an immediate intervention process by which a juvenile may avoid prosecution. The guidelines may include information on any offenders beyond those enumerated in subsection (b)(1) that shall be referred to immediate intervention. In addition to juvenile intake and assessment services adopting policies and guidelines for the immediate intervention process, the court, the county or district attorney, the director of the intake and assessment center and other relevant individuals or organizations, pursuant to a written agreement, shall collaboratively develop local programs to:

(1) Provide for the direct referral of cases to immediate intervention programs by the county or district attorney and the intake and assessment worker.

(2) Allow intake and assessment workers to issue a summons, as defined in subsection (e) and if juvenile intake and assessment services has adopted appropriate policies and guidelines, allow law enforcement officers to issue such a summons.

(3) Allow the intake and assessment centers and other immediate intervention program providers to directly purchase services for the juvenile and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto.

(b) (1) A juvenile who goes through the juvenile intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto, shall be offered the opportunity to participate in an immediate intervention program and avoid prosecution if the juvenile is charged with a misdemeanor that is not an offense described in article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a violation of K.S.A. 2018 Supp. 21-5507, and amendments thereto, the juvenile has no prior adjudications, and the offer is made pursuant to the guidelines developed pursuant to this section. Participation in an immediate intervention program is not required to be offered to a juvenile who was originally charged with an offense which, if committed by an adult, would constitute a felony and, as a result of a plea agreement reached between the juvenile and prosecuting attorney, the charge has been amended to a misdemeanor. A juvenile who has participated in an immediate intervention program for a previous misdemeanor may, but is not required to, be offered participation in an immediate intervention program.

(2) A juvenile may also participate in an immediate intervention program if the juvenile is referred for immediate intervention by the county or district attorney pursuant to subsection (d).

(3) Any juvenile referred to immediate intervention by juvenile intake and assessment services shall, upon acceptance, work together with court services, community corrections, juvenile intake and assessment services or any other entity designated as a part of the written agreement in subsection (a) to develop an immediate intervention plan. Such plan may be supervised or unsupervised by any of the aforementioned entities. The county or district attorneys office shall not be required to supervise juveniles participating in an immediate intervention program.

(4) The immediate intervention plan shall last no longer than six months from the date of referral, unless the plan requires the juvenile to complete an evidence-based mental health or substance abuse program that extends beyond the six-month period. In such case, the plan may be extended up to two additional months.

(5) If the juvenile satisfactorily complies with the immediate intervention plan, such juvenile shall be discharged and the charges dismissed at the end of the time period specified in paragraph (4).

(6) If the juvenile fails to satisfactorily comply with the immediate intervention plan, the case shall be referred to a multidisciplinary team for review. The multidisciplinary team created pursuant to K.S.A. 2018 Supp. 38-2393, and amendments thereto, shall review the immediate intervention plan within seven days and may revise and extend such plan or terminate the case as successful. Such plan may be extended for no more than four additional months.

(7) If the juvenile fails to satisfactorily comply with the revised plan developed pursuant to paragraph (6), the intake and assessment worker, court services officer or community corrections officer overseeing the immediate intervention shall refer the case to the county or district attorney for consideration.

(c) The parent of a juvenile may be required to be a part of the immediate intervention program.

(d) For all juveniles that have fewer than two prior adjudications, the county or district attorney shall review the case upon receipt of a complaint to determine if the case should be referred for immediate intervention or whether alternative means of adjudication should be designated pursuant to K.S.A. 2018 Supp. 38-2389, and amendments thereto. The county or district attorney shall consider any recommendation of a juvenile intake and assessment worker, court services officer or community corrections officer.

(e) "Summons" means a written order issued by an intake and assessment worker or a law enforcement officer directing that a juvenile appear before a designated court at a stated time and place to answer a pending charge.

(f) A juvenile who is eligible for an immediate intervention shall not be denied participation in such a program or terminated unsuccessfully due to an inability to pay fees or other associated costs. Fees assessed from such a program shall be retained by the program and shall not be used for any purpose, except development and operation of the program.

(g) If a juvenile substantially complies with an immediate intervention program, charges in such juvenile's case shall not be filed.

(h) The policies and guidelines developed pursuant to subsection (a) shall adhere to standards and procedures for immediate intervention developed by the department of corrections pursuant to K.S.A. 2018 Supp. 38-2395, and amendments thereto, and be based on best practices.

(i) Nothing in this section shall require a juvenile to participate in an immediate intervention program when the county or district attorney has declined to continue with prosecution of an alleged offense.

History: L. 2006, ch. 169, § 46; L. 2012, ch. 150, § 45; L. 2016, ch. 46, § 39; L. 2017, ch. 90, § 5; July 1.

Source or Prior Law:

38-1635.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 473, 487, 488, 186 P.3d 164 (2008).

38-2347. Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization.

(a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2018 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile, and the presumption must be rebutted by a preponderance of the evidence. No juvenile less than 14 years of age shall be prosecuted as an adult.

(2) At any time after commencement of proceedings under this code against a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony, and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2018 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

(3) If the county or district attorney or the county or district attorney's designee files a motion to designate the proceedings as an extended jurisdiction juvenile prosecution, the burden of proof is on the prosecutor to prove the juvenile should be designated as an extended jurisdiction juvenile.

(b) (1) Upon receiving the motion, the court shall set a time and place for hearing. The court shall give notice of the hearing to the juvenile, each parent, if service is possible, and the attorney representing the juvenile. The motion shall be heard and determined prior to any further proceedings on the complaint.

(2) At the hearing, the court shall inform the juvenile of the following:

(A) The nature of the charges in the complaint;

(B) the right of the juvenile to be presumed innocent of each charge;

(C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(D) the right to subpoena witnesses;

(E) the right of the juvenile to testify or to decline to testify; and

(F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

(c) If the juvenile fails to appear for hearing on the motion after having been served with notice of the hearing, the court may hear and determine the motion in the absence of the juvenile. If the court is unable to obtain service of process and give notice of the hearing, the court may hear and determine the motion in the absence of the alleged juvenile offender after having given notice of the hearing at least once a week for two consecutive weeks in the official county newspaper of the county where the hearing will be held.

(d) In determining whether or not prosecution as an adult should be authorized or designating the proceeding as an extended jurisdiction juvenile

prosecution, the court shall consider each of the following factors:

(1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;

(4) the number of alleged offenses unadjudicated and pending against the juvenile;

(5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;

(7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and

(8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2018 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

(e) (1) The court may authorize prosecution as an adult upon completion of the hearing if the court finds from a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

(3) After a proceeding in which prosecution as an adult is requested pursuant to subsection (a)(2), and prosecution as an adult is not authorized, the court may designate the proceedings to be an extended jurisdiction juvenile prosecution.

(4) A juvenile who is the subject of an extended jurisdiction juvenile prosecution shall have the right to a trial by jury, to the effective assistance of counsel and to all other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court shall adopt local rules to establish the basic procedures for extended jurisdiction juvenile prosecution in such court's jurisdiction.

History: L. 2006, ch. 169, § 47; L. 2012, ch. 150, § 46; L. 2014, ch. 126, § 6; L. 2016, ch. 46, § 40; July 1.

Source or Prior Law:

38-1636.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 485, 186 P.3d 164 (2008).

2. Cited; juvenile may come within juvenile code by overcoming the presumption of adulthood. In re D.A., 40 K.A.2d 878, 879, 890 to 892, 197 P.3d 849 (2008).

3. Court is required to impose the adult sentence when juvenile violates conditions of juvenile sentence under 38-2364. In re E.F., 41 K.A.2d 860, 205 P.3d 787 (2009).

4. Prior extended jurisdiction juvenile sentences not "convictions" for purposes of offender registration statute. State v. Jackson, 291 K. 34, 238 P.3d 246 (2010).

5. Presumption as an adult based on the severity of charged offense not violation of due process. State v. Jones, 44 K.A.2d 139, 234 P.3d 31 (2010).

6. The facts used by the district court in considering the eight statutory factors are supported by substantial competent evidence. In re D.D.M., 291 K. 883, 249 P.3d 5 (2011).

7. Trial court's citation to repealed adult certification statute and application of incorrect evidentiary standard did not invalidate adult certification. State v. Bailey, 292 K. 449, 255 P.3d 19 (2011).

8. The determination of whether a defendant shall be tried as an adult or a juvenile is not a matter that must be decided by a jury because it is a jurisdictional matter. State v. Potts, 304 K. 687, 705, 374 P.3d 639 (2016).

38-2348. Proceedings to determine competency.

(a) For the purpose of this section, a person charged as a juvenile is incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such person is unable to:

(1) Understand the nature and purpose of the proceedings; or

(2) make or assist in making a defense.

Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this code, such words shall refer to the standard for incompetency described in this subsection.

(b) (1) If at any time after such person has been charged as a juvenile there is reason to believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings shall be suspended and the court before whom the case is pending shall conduct a hearing to determine the competency of the juvenile. Such a hearing may be held upon the motion of the juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

(2) The court shall determine the issue of competency. To facilitate in this determination, the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B) designate a private or public mental health facility to conduct a psychiatric or psychological examination and report to the court. If the examining psychiatrist, psychologist or private or public mental health facility determines that further examination is necessary, the court may commit the juvenile for not more than 60 days to any appropriate public or private institution for examination and report to the court. For good cause shown, the commitment may be extended for another 60 days. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination is with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's health, the juvenile shall be present personally at all proceedings under this section.

(c) If the juvenile is found to be competent, the proceedings which have been suspended shall be resumed.

(d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the jurisdiction of the court and shall be committed for evaluation and treatment pursuant to K.S.A. 2018 Supp. 38-2349 and 38-2350, and amendments thereto. One or both parents of the juvenile may be ordered to pay child support pursuant to the Kansas child support guidelines. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions prescribed by the court.

(e) If at any time after proceedings have been suspended under this section, there are reasonable grounds to believe that a juvenile who has been adjudged incompetent is now competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's present mental condition. Reasonable notice of the hearings shall be given to the prosecuting attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing, finds the juvenile to be competent, the pending proceedings shall be resumed.

History: L. 2006, ch. 169, § 48; Jan. 1, 2007.

Source or Prior Law:

38-1637.

38-2349. Same; commitment of incompetent.

(a) A juvenile who is found to be incompetent pursuant to K.S.A. 2018 Supp. 38-2348, and amendments thereto, shall be committed for evaluation and treatment to any appropriate public or private institution for a period not to exceed 90 days. Within 90 days of the juvenile's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the juvenile has a substantial probability of attaining competency for hearing in the foreseeable future.

(b) If the chief medical officer of the institution certifies that a probability of attaining competency does exist, the court shall order the juvenile to remain in an appropriate public or private institution until the juvenile attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If the juvenile does not attain competency within six months from the date of the original commitment, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. If the juvenile appears to have attained competency, the institution shall promptly notify the court in which the case is pending. Upon notice the court shall hold a hearing to determine competency pursuant to subsection (e) of K.S.A. 2018 Supp. 38-2348, and amendments thereto.

(c) If the chief medical officer of the institution certifies that a probability of attaining competency does not exist, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 49; Jan. 1, 2007.

Source or Prior Law:

38-1638.

38-2350. Same; juvenile not mentally ill person.

(a) If, after proceedings as required by K.S.A. 2018 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2018 Supp. 38-2348, and amendments thereto. The secretary for children and families shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2018 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2018 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within seven days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2018 Supp. 38-2348, and amendments thereto.

History: L. 2006, ch. 169, § 50; L. 2010, ch. 135, § 52; L. 2014, ch. 115, § 72; July 1.

Source or Prior Law:

38-1639.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 473, 186 P.3d 164 (2008).

38-2351. Duty of parents and others to appear at all proceedings involving alleged juvenile offender; failure, contempt.

(a) Any parent or person with whom a juvenile resides who is served with a summons as provided

in K.S.A. 2018 Supp. 38-2337, and amendments thereto, shall appear with the juvenile at all proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

(b) Any person required by this code to be present at all juvenile proceedings who fails to comply, without good cause, with the provisions of subsection (a) may be proceeded against for indirect contempt of court pursuant to the provisions of K.S.A. 20-1204a et seq., and amendments thereto.

(c) As used in this section, "good cause" for failing to appear includes, but is not limited to, a situation where a parent:

(1) Does not have physical custody of the juvenile and resides outside of Kansas;

(2) has physical custody of the juvenile, but resides outside of Kansas and appearing in court will result in undue hardship to such parent; or

(3) resides in Kansas, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent.

(d) If the parent of any juvenile cannot be found or fails to appear, the court may proceed with the case without the presence of such parent.

History: L. 2006, ch. 169, § 51; Jan. 1, 2007.

Source or Prior Law:

38-1641.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 488, 186 P.3d 164 (2008).

38-2352. Time of hearing.

All cases filed under the code shall be heard without unnecessary delay. Continuances may be granted to either party for good cause shown.

History: L. 2006, ch. 169, § 52; Jan. 1, 2007.

Source or Prior Law:

38-1651.

38-2353. Hearings; open to the public; restrictions.

(a) All hearings shall be open to the public, unless the judge determines that opening the hearing to the public is not in the best interests of the victim or of any juvenile who at the time of the alleged offense was less than 16 years of age.

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

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

History: L. 2006, ch. 169, § 53; Jan. 1, 2007.

Source or Prior Law:

38-1652.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 469, 489, 186 P.3d 164 (2008).

38-2354. Rules of evidence.

Except as provided in K.S.A. 2018 Supp. 38-2343 and 38-2360, and amendments thereto, the rules of evidence of the code of civil procedure shall apply in all hearings pursuant to this code. The presiding judge shall not consider, read or rely upon any report not properly admitted according to the rules of evidence.

History: L. 2006, ch. 169, § 54; L. 2012, ch. 69, § 3; July 1.

Source or Prior Law:

38-1653.

38-2355. Degree of proof.

In all proceedings on complaints pursuant to the code the state must prove beyond a reasonable doubt that the juvenile committed the act or acts charged in the complaint or a lesser included offense as defined in subsection (b) of section K.S.A. 2018 Supp. 21-5109, and amendments thereto.

History: L. 2006, ch. 169, § 55; L. 2011, ch. 30, § 166; July 1.

Source or Prior Law:

38-1654.

38-2356. Adjudication.

(a) If the court finds that the evidence fails to prove an offense charged or a lesser included offense as defined in subsection (b) of K.S.A. 2018 Supp. 21-5109, and amendments thereto, the court shall enter an order dismissing the charge.

(b) If the court finds that the juvenile committed the offense charged or a lesser included offense as defined in subsection (b) of K.S.A. 2018 Supp. 21-5109, and amendments thereto, the court shall adjudicate the juvenile to be a juvenile offender and may issue a sentence as authorized by this code.

(c) If the court finds that the juvenile committed the acts constituting the offense charged or a lesser included offense as defined in subsection (b) of K.S.A. 2018 Supp. 21-5109, and amendments thereto, but is not responsible because of mental disease or defect, the juvenile shall not be adjudicated as a juvenile offender and shall be committed to the custody of the secretary for aging and disability services and placed in a state hospital. The juvenile's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a, and amendments thereto, for review of commitment of a defendant suffering from mental disease or defect, and the juvenile may be discharged or conditionally released pursuant to that section. The juvenile also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428, and amendments thereto, for discharge of or granting conditional release to a defendant found suffering from mental disease or defect. If the juvenile violates any conditions of an order of conditional release, the juvenile shall be subject to contempt proceedings and returned to custody as provided by K.S.A. 22-3428b, and amendments thereto.

(d) A copy of the court's order shall be sent to the school district in which the juvenile offender is enrolled or will be enrolled.

History: L. 2006, ch. 169, § 56; L. 2011, ch. 30, § 167; L. 2014, ch. 115, § 73; July 1.

Source or Prior Law:

38-1655.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 482, 186 P.3d 164 (2008).

38-2357. Jury trials in certain cases.

(a) Method of trial. A juvenile is entitled to a trial by one of the following means:

(1) The trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such a time requirement would cause undue hardship or prejudice to the juvenile.

(A) A jury in a felony case shall consist of 12 members. However, the parties may agree in writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(B) A jury in a misdemeanor case shall consist of six members.

(C) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall be determined by the jury.

(D) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor cases.

(2) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

(b) Selection of jury panel. (1) When a jury trial is held, the judge shall summon from the source and

in the manner provided for the summoning of other petit jurors in the district court in the county. A sufficient number of jurors shall be called so that after the exercise of peremptory challenges, as provided in this section, there will remain a sufficient number of jurors to enable the court to cause 12 jurors to be sworn in felony cases and six jurors to be sworn in misdemeanor cases. When drawn, a list of prospective jurors and their addresses shall be filed in the office of the clerk of the court and shall be a public record. The qualifications of jurors and grounds for exemption from jury service in civil cases shall be applicable in juvenile trials, except as otherwise provided by law. An exemption from service on a jury is not a basis for challenge, but is the privilege of the person exempted.

(2) The county or district attorney and the juvenile's attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the juvenile's attorney or the county or district attorney if the court believes such examination to be harassment, is causing unnecessary delay or serves no useful purpose.

(3) Each party may challenge any prospective juror for cause. All challenges for cause must be made before the jury is sworn to try the case. Challenges for cause shall be tried by the court. A juror may be challenged for cause on any of the following grounds:

(A) The juror is related to the juvenile, or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.

(B) The juror is the attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the juvenile or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was instituted.

(C) The juror is or has been a party adverse to the juvenile or the juvenile's parents in a civil action, or has complained against the juvenile in an adjudication or been accused by the juvenile in a criminal prosecution.

(D) The juror has served on a public body which has inquired into the events that are the subject of the adjudication or on any other investigatory body which inquired into the facts of the offense charged.

(E) The juror was a witness to the act or acts alleged to constitute the offense.

(F) The juror occupies a fiduciary relationship to the juvenile or the juvenile's parents or a person alleged to have been injured by the offense or the person on whose complaint the adjudication was instituted.

(G) The juror's state of mind with reference to the case or any of the parties is such that the court determines there is doubt that the juror can act impartially and without prejudice to the substantial rights of any party.

(4) Peremptory challenges shall be allowed as follows:

(A) Each juvenile charged with an offense which, if committed by an adult, would constitute:

(i) An off-grid felony or a nondrug or drug felony ranked at severity level 1 shall be allowed 12 peremptory challenges;

(ii) a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, shall be allowed eight peremptory challenges;

(iii) an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony, shall be allowed six peremptory challenges; and

(iv) a misdemeanor shall be allowed three peremptory challenges.

(B) The state shall be allowed the same number of peremptory challenges as all juveniles.

(C) The most serious penalty offense charged against each juvenile furnishes the criterion for determining the allowed number of peremptory challenges for that juvenile.

(D) Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint.

(5) After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.

(6) A trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who,

prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Such jurors may be selected at the same time as the regular jurors or after the jury has been empaneled and sworn, in the judge's discretion. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.

(7) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least five days prior to the date set for trial if the names and addresses of the panel members and the grounds for objection thereto are known to the parties or can be learned by an inspection of the records of the clerk of the district court at that time; in other cases the motion must be made prior to the time when the jury is sworn to try the case. For good cause shown, the court may entertain the motion at any time thereafter. The motion shall be in writing and shall state facts which, if true, show that the jury panel was improperly selected or drawn. If the motion states facts which, if true, show that the jury panel was improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant. If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

(8) If a juror has personal knowledge of any fact material to the case, the juror must inform the court and shall not speak of such fact to other jurors out of court. If a juror has personal knowledge of a fact material to the case, gained from sources other than evidence presented at trial and shall speak of such fact to other jurors without the knowledge of the court or the juvenile, the juror may be adjudged in contempt and punished accordingly.

(c) View of place of offense. Whenever in the opinion of the court it is proper for the jurors to have a view of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. They may be accompanied by the juvenile, the juvenile's attorney and the county or district attorney. While the jurors are thus absent, no person other than the officer and the person appointed to show them the place shall speak to them on any subject connected with the trial. The officer or person appointed to show them the place shall speak to the jurors only to the extent necessary to conduct them to and identify the place or thing in question.

(d) Submission of case to the jury. (1) At the close of the evidence, or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.

(A) The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.

(B) The judge shall instruct the jury as to the offense charged and any lesser included offense in cases where there is some evidence which would reasonably justify an adjudication for some lesser included offense that is:

(i) A lesser degree of the same offense;

(ii) an offense where all elements of the lesser offense are identical to some of the elements of the offense charged;

(iii) an attempt to commit the offense charged; or (iv) an attempt to commit an offense defined under subsection (d)(1)(B)(i) or (ii).

(C) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case. The court reporter shall record all objections to the instructions given or refused by the court, together with modifications made, and the rulings of the court. No party may assign as error the giving or failure to give an instruction, including a lesser included offense instruction, unless the party objects thereto before the jury retires to consider its verdict. The attorney making the objection shall specify the matter to which the party objects and the basis of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

(2) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the county or district attorney may commence and may conclude the argument. If there is more than one alleged juvenile offender, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.

(e) Motion for judgment of acquittal. (1) The court on motion of a juvenile or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if the evidence is insufficient to sustain a finding of guilt for such offense or offenses. If a juvenile's motion for judgment of acquittal at the close of the evidence offered by the county or district attorney is not granted, the juvenile may offer evidence without having reserved the right.

(2) If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(3) If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven days after the jury is discharged or within such further time as the court may fix during the seven-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(f) Jury deliberation. (1) When the case is finally submitted to the jury, they shall retire for deliberation. They must be kept together in some convenient place under charge of a duly sworn officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer in charge of the jury shall not communicate to the jury, or allow any communications to be made to them, unless by order of the court; and before their verdict is rendered, the officer in charge of the jury shall not communicate to any person the state of their deliberations, or the verdict agreed upon. No person other than members of the jury shall be present in the jury room during deliberations.

(2) If the jury is permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them, and that such admonition shall apply to every subsequent separation of the jury.

(3) After the jury has retired for deliberation, if they desire to be informed as to any part of the law or evidence arising in the case, they may request the officer to conduct them to the court, where the information on the point of the law shall be given, or the evidence shall be read or exhibited to them in the presence of the juvenile, unless the juvenile

is voluntarily absent, and the juvenile's attorney, after notice to the county or district attorney.

(4) The jury may be discharged by the court on account of the sickness of a juror or other accident or calamity, or other necessity to be found by the court requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

(g) Verdict, procedure. The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is the jury's verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.

(h) Mistrials. (1) The trial court may terminate the trial and order a mistrial at any time that the court finds termination is necessary because:

(A) It is physically impossible to proceed with the trial in conformity with the law;

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the juvenile requests or consents to the declaration of a mistrial;

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the juvenile or the state;

(D) the jury is unable to agree upon a verdict;

(E) false statements of a juror on voir dire prevent a fair trial; or

(F) the trial has been interrupted pending a determination of the juvenile's competency to stand trial.

(2) When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the juvenile may be held in custody pending such further proceedings pursuant to this code.

History: L. 2006, ch. 169, § 57; L. 2011, ch. 60, § 5; July 1.

Source or Prior Law:

38-1656.

CASE ANNOTATIONS

1. Section held to be unconstitutional; juveniles have a right to a jury trial under the Kansas constitution. In re L.M., 286 K. 460, 461, 470, 473, 186 P.3d 164 (2008).

38-2358. Recorded statement of child victim admissible in certain cases; limitations.

(a) In any proceeding pursuant to the code in which a child less than 13 years of age is alleged to be a victim of the offense, a recording of an oral statement of the child, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

(8) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript is provided to the parties; and

(9) the child is available to testify.

(b) If a recording is admitted in evidence under this section, any party to the proceeding may call the child to testify and be cross-examined, either in the courtroom or as provided by K.S.A. 2018 Supp. 38-2359, and amendments thereto.

History: L. 2006, ch. 169, § 58; Jan. 1, 2007.

Source or Prior Law:
38-1657.

38-2359. Record by electronic means of testimony of child victim admissible in certain cases, limitations; objections; restrictions.

(a) On motion of the attorney for any party to a proceeding pursuant to the Kansas juvenile offenders code in which a child less than 13 years of age is alleged to be a victim of the offense, the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript is provided to the parties. The state must establish by clear and convincing evidence that to require the child who is the alleged victim to testify in open court will so traumatize the child as to prevent the child from reasonably communicating to the jury or render the child unavailable to testify. The court shall make such an individualized finding before the state is permitted to proceed under this section.

(b) At the taking of testimony under this section:

(1) Only the attorneys for the juvenile, the state and the child; any person whose presence would contribute to the welfare and well-being of the child; and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them; and

(4) the court shall permit the juvenile to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the juvenile.

(c) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

(d) (1) Any objection by any party to the proceeding that the recording under subsection (a)(2) is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the proceeding. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

History: L. 2006, ch. 169, § 59; Jan. 1, 2007.

Source or Prior Law:
38-1658.

38-2360. Post-adjudication orders and hearings.

(a) At any time after the juvenile has been adjudicated to be a juvenile offender, the court shall order one or more of the tools described in this subsection to be submitted to assist the court unless the court finds that adequate and current information from a risk and needs assessment is available from a previous investigation, report or other sources:

(1) An evaluation and written report by a mental health or a qualified professional stating the psychological or emotional development or needs of the juvenile. The court also may order a report from any mental health or qualified professional who has previously evaluated the juvenile stating the psychological or emotional development needs

of the juvenile. If the court orders an evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an independent evaluation at the expense of the parent. If the evaluation indicates that the juvenile requires acute inpatient mental health or substance abuse treatment, the court shall have the authority to compel an assessment by the secretary for aging and disability services. The court may use the results to inform a treatment and payment plan according to the same eligibility process used for non-court-involved youth.

(2) A report of the medical condition and needs of the juvenile. The court also may order a report from any physician who has been attending the juvenile, stating the diagnosis, condition and treatment afforded the juvenile.

(3) An educational needs assessment of the juvenile from the chief administrative officer of the school which the juvenile attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile. The educational needs assessment may include a meeting involving any of the following: (A) The juvenile's parents; (B) the juvenile's teacher or teachers; (C) the school psychologist; (D) a school special services representative; (E) a representative of the commissioner; (F) the juvenile's court appointed special advocate; (G) the juvenile's foster parents or legal guardian; and (H) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

(4) Any other presentence investigation and report from a court services officer which includes: (A) The circumstances of the offense; (B) the attitude of the complainant, victim or the victim's family; (C) the record of juvenile offenses; (D) the social history of the juvenile; and (E) the present condition of the juvenile. Except where specifically prohibited by law, all local governmental public and private educational institutions and state agencies shall furnish to the officer conducting the predispositional investigation the records the officer requests. Predispositional investigations shall contain other information prescribed by the court.

(5) The court in its discretion may direct that the parents submit a domestic relations affidavit.

(b) A summary of the results from a risk and needs assessment shall be provided to the court post-adjudication, predisposition and used to inform supervision levels. A single, uniform risk and needs assessment shall be adopted by the office of judicial administration and the department of corrections to be used in all judicial districts. The office of judicial administration and the secretary of corrections shall establish cutoff scores determining risk levels of juveniles. Training on such risk and needs assessment shall be required for all administrators of the assessment. Data shall be collected on the results of the assessment to inform a validation study on the Kansas juvenile justice population to be conducted by June 30, 2020.

(c) Expenses for post adjudication tools may be waived or assessed pursuant to K.S.A. 2018 Supp. 38-2314(c)(2), and amendments thereto.

(d) Except as otherwise prohibited by law or policy, the court shall make any of the reports ordered pursuant to subsection (a) available to the attorneys and shall allow the attorneys a reasonable time to review the report before ordering the sentencing of the juvenile offender.

(e) At any time prior to sentencing, the judge, at the request of a party, shall hear additional evidence as to proposals for reasonable and appropriate sentencing of the case.

(f) If a juvenile is being held in detention, a dispositional hearing to sentence the juvenile offender shall take place within 45 days after such juvenile offender has been adjudicated.

History: L. 2006, ch. 169, § 60; L. 2014, ch. 126, § 7; L. 2016, ch. 46, § 41; L. 2018, ch. 52, § 2; July 1.

Source or Prior Law:

38-1661, 38-1662.

38-2361. Sentencing alternatives.

(a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2018 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2018 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2018 Supp. 38-2368, and amendments thereto, the court may impose one

or more of the following sentencing alternatives for a fixed period pursuant to K.S.A. 2018 Supp. 38-2369 and 38-2391, and amendments thereto.

(1) Place the juvenile on probation for a fixed period pursuant to K.S.A. 2018 Supp. 38-2391, and amendments thereto, subject to terms and conditions the court deems appropriate consistent with juvenile justice programs in the community. Any juvenile placed on probation shall be supervised according to the juvenile's risk and needs as determined by a risk and needs assessment. Placement of juvenile offenders to community corrections for probation supervision shall be limited to offenders adjudicated for an offense that are determined to be moderate-risk, high-risk or very high-risk on a risk and needs assessment using the cutoff scores established by the secretary pursuant to K.S.A. 2018 Supp. 38-2360, and amendments thereto.

(2) Order the juvenile to participate in a community based program available in such judicial district subject to the terms and conditions the court deems appropriate. This alternative shall not be ordered with the alternative in paragraph (11). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(3) Place the juvenile in the custody of a parent or other suitable person, which is not a group home or other facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, subject to terms and conditions consistent with juvenile justice programs in the community. This alternative shall not be ordered with the alternative in paragraph (11). Requirements pertaining to child support may apply if custody is vested with other than a parent.

(4) Order the juvenile to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (b).

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

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

(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding $1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto.

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

(11) Upon a violation of a condition of sentence, other than a technical violation pursuant to K.S.A. 2018 Supp. 38-2368, and amendments thereto, commit the juvenile to detention for a period no longer than 30 days subject to the provisions of subsection (g).

(12)If the judge finds and enters into the written record that the juvenile poses a significant risk of harm to another or damage to property, and the juvenile is otherwise eligible for commitment pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, commit the juvenile directly to the custody of the secretary of corrections for placement in a juvenile correctional facility or a youth residential facility. Placement in a youth residential facility shall only be permitted as authorized in K.S.A. 2018 Supp. 38-2369(e), and amendments thereto. If the court elects, a period of conditional release pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, may also be ordered. The period of conditional release shall be limited to a maximum of six months and shall be subject to graduated responses. Twenty-one days prior to the juvenile's release from a juvenile correctional facility, the secretary of corrections or designee shall notify the court of the juvenile's anticipated release date. This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

(13) Upon a finding by the trier of fact during adjudication that a firearm was used in the commission of an offense by the accused which, if committed by an adult, would constitute a felony, a judge may commit the juvenile directly to the custody of the secretary of corrections for placement in a juvenile correctional facility or youth residential facility for a minimum term of six months and up to a maximum term of 18 months, regardless of the risk level of such juvenile as determined by a risk and needs assessment. If the juvenile is committed to the custody of the secretary, and the court elects, a period of conditional release, pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, may also be ordered. The period of conditional release shall be limited to a maximum of six months and shall be subject to graduated responses. Twenty-one days prior to the juvenile's release from a juvenile correctional facility or youth residential facility, the secretary of corrections or the secretary's designee shall notify the court of the juvenile's anticipated release date.

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

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

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that makes such a requirement, the court shall order and, if adjudicated for any other offense, the court may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and alcohol evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program as provided herein. If the court finds that the juvenile and those legally liable for the juvenile's support are indigent, the court may waive the fee. In no event shall the fee be assessed against the secretary of corrections or the department of corrections nor shall the fee be assessed against the secretary of the department for children and families or the Kansas department for children and families if the juvenile is in the secretary's care, custody and control.

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

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile

offender who does not have a driver's license may have driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court; and

(2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state, the court may enter an order which places conditions on the juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state, a certified copy of which the juvenile offender shall be required to carry any time the juvenile offender is operating a motor vehicle on the streets and highways of this state. The order shall prescribe a definite time period for the conditions imposed. Upon entering an order restricting a juvenile offender's license, the court shall require the juvenile offender to surrender such juvenile offender's license to the court. The court shall transmit the license to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on the juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing the conditions is required to be carried by the juvenile offender when operating a motor vehicle on the streets and highways of this state. If the juvenile offender is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of the juvenile offender's state of issuance. The court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until the division issues the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the juvenile offender may apply to the division for the return of the license previously surrendered by the juvenile offender. In the event the license has expired, the juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law unless such juvenile offender's privilege to operate a motor vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any juvenile offender violates any of the conditions imposed under this subsection, the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be revoked for a period as determined by the court in which the juvenile offender is convicted of violating such conditions.

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

(1) The court shall order the juvenile to make reparation or restitution to the aggrieved party for the damage or loss caused by the juvenile offender's offense unless it finds compelling circumstances that would render a plan of reparation or restitution unworkable. If the court finds compelling circumstances that would render a plan of reparation or restitution unworkable, the court shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court may order the juvenile to perform charitable or social service for organizations performing services for the community; and

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

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

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

(2) in determining whether to impose a fine and the amount to be imposed, the court shall consider

that imposition of a fine is most appropriate in cases where the juvenile has derived pecuniary gain from the offense and that imposition of a restitution order is preferable to imposition of a fine; and

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

(f) Before the court sentences a juvenile offender pursuant to subsection (a), the court shall administer a risk assessment tool, as described in K.S.A. 2018 Supp. 38-2360, and amendments thereto, or review a risk assessment tool that was administered within the past six months to the juvenile and use the results of that assessment to inform orders made pursuant to K.S.A. 2018 Supp. 38-2369 and 38-2391, and amendments thereto.

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

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

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

(3) The court shall not order commitment to detention upon adjudication as a juvenile offender pursuant to K.S.A. 2018 Supp. 38-2356, and amendments thereto, for solely technical violations of probation, contempt, a violation of a valid court order, to protect from self-harm or due to any state or county failure to find adequate alternatives.

(4) Cumulative detention use shall be limited to a maximum of 45 days over the course of a juvenile offender's case pursuant to K.S.A. 2018 Supp. 38-2391, and amendments thereto. The court shall review any detention commitment every seven days and may shorten the initial commitment or extend the commitment. In no case, however, may the term of detention or any extension thereof exceed the cumulative detention limit of 45 days or the overall case length limit.

(5) A juvenile over 18 years of age and less than 23 years of age at sentencing shall be committed to a county jail, in lieu of a juvenile detention center, under the same time restrictions imposed by paragraph (1), but shall not be committed to or confined in a juvenile detention facility.

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

(i) In addition to the requirements of K.S.A. 2018 Supp. 38-2373, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the secretary of corrections within 30 days of final disposition.

(j) Except as further provided, if a juvenile has been adjudged to be a juvenile offender for an offense which, if committed by an adult would constitute the commission of: (1) Aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if the victim is less than 14 years of age; (2) rape, as defined in K.S.A. 2018 Supp. 21-5503(a)(3), and amendments thereto; (3) aggravated indecent liberties with a child, as defined in K.S.A. 2018 Supp. 21-5506(b)(3), and amendments thereto; (4) aggravated criminal sodomy, as defined in K.S.A. 2018 Supp. 21-5504(b)(1) or (b)(2), and amendments thereto; (5) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age; (6) sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-5510(a)(1) or (a)(4), and amendments thereto, if the victim is less than 14 years of age; or (7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in paragraphs (1) through (6); the court shall issue an order prohibiting the juvenile from attending the attendance center that the victim of the offense attends. If only one attendance center exists, for which the victim and juvenile are eligible to attend, in the school district where the victim and the juvenile reside, the court shall hear testimony and take evidence from the victim, the juvenile, their families and a representative of the school

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

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

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

(A) Aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426(b), and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in K.S.A. 2018 Supp. 21-5503, and amendments thereto;

(C) commercial sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age;

(D) sexual exploitation of a child, as defined in K.S.A. 2018 Supp. 21-5510(a)(1) or (a)(4), and amendments thereto, if the victim is less than 14 years of age;

(E) aggravated indecent liberties with a child, as defined in K.S.A. 2018 Supp. 21-5506, and amendments thereto, if the victim is less than 14 years of age; or

(F) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in paragraphs (1) through (4); and

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

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

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

The presumptive term of commitment shall not extend beyond the overall case length limit but may be modified pursuant to K.S.A. 2018 Supp. 38-2367 and 38-2397, and amendments thereto. If a child is placed outside the child's home at the dispositional hearing pursuant to this subsection and no reintegration plan is made a part of the record of the hearing, a written reintegration plan shall be prepared pursuant to K.S.A. 2018 Supp. 38-2397, and amendments thereto, and submitted to the court within 15 days of the initial order of the court.

(l) The sentencing hearing shall be open to the public as provided in K.S.A. 2018 Supp. 38-2353, and amendments thereto.

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

History: L. 2006, ch. 169, § 61; L. 2010, ch. 11, § 9; L. 2010, ch. 155, § 15; L. 2011, ch. 30, § 168; L. 2013, ch. 120, § 38; L. 2014, ch. 115, § 74; L. 2015, ch. 32, § 1; L. 2016, ch. 46, § 42; L. 2017, ch. 90, § 6; July 1.

Source or Prior Law:

38-1663.

Revisor's Note:

Section was also amended by L. 2010, ch. 75, § 20, and L. 2010, ch. 122, § 6, but those versions were repealed by L. 2010, ch. 155, § 26.

Law Review and Bar Journal References:

"Breaking the Victimization Cycle: Domestic Minor Trafficking in Kansas," Leslie Klaassen, 52 W.L.J. 581 (2013).

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 468, 482, 483, 186 P.3d 164 (2008).

2. Statutory mandates governing the detention of a juvenile must be satisfied. S.M. v. Johnson, 290 K. 11, 221 P.3d 99 (2009).

38-2362. Orders relating to parents.

(a) When sentencing a juvenile offender, the court may order a juvenile offender's parent to participate in any evidence-based program designed to rehabilitate the juvenile, including, but not limited to: (1) Counseling, mediation sessions or an alcohol and drug evaluation and treatment program ordered as part of the juvenile offender's sentence under K.S.A. 2018 Supp. 38-2361, and amendments thereto; or (2) parenting classes.

(1)[(3)] Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 14 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent.

(2)[(4)] If the parent does not request a hearing within 14 days after entry of the order, the order shall take effect at that time.

(3)[(5)] If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 2018 Supp. 38-2306, and amendments thereto.

(b) In addition to any other orders provided for by this section, the parent of a juvenile offender may be held responsible for the costs of sanctions or the support of the juvenile offender as follows:

(1) The board of county commissioners of a county may provide by resolution that the parent of any juvenile offender placed under a house arrest program pursuant to subsection (a)(9) of K.S.A. 2018 Supp. 38-2361, and amendments thereto, shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall prepare a sliding financial scale based on the ability of the parent to pay for such a program.

(2) If child support has been requested and a parent has a duty to support the juvenile offender, the court may order, and when custody is placed with the commissioner shall order, one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent already is subject to an order to pay support for the juvenile. If the parent currently is not ordered to pay support for the juvenile and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2018 Supp. 38-2319, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 2018 Supp. 23-3101 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2018 Supp. 38-2321, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

History: L. 2006, ch. 169, § 62; L. 2010, ch. 135, § 53; L. 2012, ch. 162, § 70; L. 2014, ch. 123, § 2; July 1.

Source or Prior Law:
38-1663.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 488, 186 P.3d 164 (2008).

38-2363. Duty of parents and others to aid in enforcement of court orders; failure, contempt.

A parent, or adult with whom a juvenile resides, may be ordered by the court to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or conditional release or other orders of the court or any of the above. Any person placed under an order to report any probation violations or conditional release contract violations, aid in enforcing terms and conditions of probation or

conditional release or other orders of the court or any of the above who fails to do so may be proceeded against for indirect contempt of court as provided in K.S.A. 20-1204a et seq., and amendments thereto.

History: L. 2006, ch. 169, § 63; Jan. 1, 2007.

Source or Prior Law:

38-1668.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 489, 186 P.3d 164 (2008).

38-2364. Extended jurisdiction juvenile prosecution; violating conditions of stayed juvenile sentence; hearing.

(a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) Impose one or more juvenile sentences under K.S.A. 2018 Supp. 38-2361, and amendments thereto; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender substantially comply with the provisions of the juvenile sentence and not commit a new offense.

(b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated one or more conditions of the juvenile sentence or is alleged to have committed a new offense, the court, shall notify the juvenile offender and such juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303, and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. The court shall hold a hearing on the issue at which the juvenile offender is entitled to be heard and represented by counsel. After the hearing, if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence, the court shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2) or, upon agreement of the county or district attorney and the juvenile offender's attorney of record, the court may modify the adult sentence previously ordered pursuant to subsection (a)(2). Upon such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the department of corrections, is with the adult court. The juvenile offender shall be credited for time served in a juvenile correctional or detention facility on the juvenile sentence as service on any authorized adult sanction.

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

History: L. 2006, ch. 169, § 64; L. 2010, ch. 163, § 1; L. 2011, ch. 30, § 169; L. 2016, ch. 46, § 43; July 1.

Source or Prior Law:

38-16,126.

CASE ANNOTATIONS

1.Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 485, 186 P.3d 164 (2008).

2. Cited; 21-4603d (f)(1) does not authorize consecutive sentences for an adult conviction and a juvenile adjudication under juvenile justice code. State v. Sims, 40 K.A.2d 119, 121, 190 P.3d 271 (2008).

3. Court is required to impose the adult sentence when juvenile violates conditions of juvenile sentence under 38-2364. In re E.F., 41 K.A.2d 860, 205 P.3d 787 (2009).

4. A juvenile who completes the juvenile incarceration and is granted conditional release may be ordered to serve the adult sentence if the juvenile violates the provisions of the conditional release. In re A.M.M.-H., 49 K.A.2d 647, 312 P.3d 393 (2013).

5. District judge retains discretion to determine if violation warrants revocation of the stay of adult

sentence in addition to juvenile sentence. In re A.M.M.-H., 300 K. 532, 540, 331 P.3d 755 (2014).

6.Criminal conviction not required to justify revocation of juvenile sentence; revocation may be based on other misconduct that does not result in criminal charges or conviction. In re E.J.D., 301 K. 790, 795, 348 P.3d 512 (2015).

38-2365. Juvenile offender placed in custody of commissioner; placement; permanency plan; progress report to court; hearing; notification; termination of parental rights.

(a) When a juvenile offender has been placed in the custody of the secretary, the secretary shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The secretary shall notify the court, the juvenile's attorney of record and the juvenile's parent, in writing, of the initial placement and any subsequent change of placement as soon as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court shall have no power to direct a specific placement by the secretary, but may make recommendations to the secretary. The secretary may place the juvenile offender in an institution operated by the secretary, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the secretary may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the secretary, the secretary shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If the juvenile is 14 years of age or older and the juvenile is able, the secretary shall prepare the permanency plan in consultation with the juvenile. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when:

(1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2018 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2018 Supp. 21-5403, and amendments thereto, capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2018 Supp. 21-5401, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2018 Supp. 21-5404, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily; or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2018 Supp. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the juvenile is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer. If the permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the secretary, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions

taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the secretary and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the secretary has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the secretary. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. At the permanency hearing, the court shall determine whether and, if applicable, when the juvenile will be:

(1) Reintegrated with the juvenile's parents;

(2) placed for adoption;

(3) placed with a permanent custodian; or

(4) if the juvenile is 16 years of age or older and the secretary has documented compelling reasons why it would not be in the juvenile's best interests for a placement in one of the placements pursuant to paragraphs (1), (2) or (3), placed in another planned permanent arrangement.

(f) At each permanency hearing, the court shall:

(1) Make a written finding as to whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety;

(2) make a written finding as to whether the reasonable and prudent parenting standard has been met and whether the juvenile has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The secretary shall report to the court the steps the secretary is taking to ensure that the reasonable and prudent parenting standard is being met and that the juvenile has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consultation with the juvenile in an age-appropriate manner about the opportunities of the juvenile to participate in the activities; and

(3) if the juvenile is 14 years of age or older, document the efforts made by the secretary to help the juvenile prepare for the transition from custody to a successful adulthood. The secretary shall report to the court the programs and services that are being provided to the juvenile which will help the juvenile prepare for the transition from custody to a successful adulthood.

(g) The requirements of this subsection shall apply only if the permanency goal in place at the time of the hearing is another planned permanent arrangement as described in subsection (e)(4). At each permanency hearing held with respect to the juvenile, in addition to the requirements of subsection (f), the court shall:

(1) Ask the juvenile, if the juvenile is able, by attendance at the hearing or by report to the court, about the desired permanency outcome for the juvenile;

(2) document the intensive, ongoing and, as of the date of the hearing, unsuccessful permanency efforts made by the secretary to return the juvenile home or secure a placement for the juvenile with a fit and willing relative, a legal guardian or an adoptive parent. The secretary shall report to the court the intensive, ongoing and, as of the date of the hearing, unsuccessful efforts made by the secretary to return the juvenile home or secure a placement for the juvenile with a fit and willing relative, a legal guardian or an adoptive parent, including efforts that utilize search technology, including social media, to find biological family members of the children; and

(3) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the juvenile and provide compelling reasons why it continues to not be in the best interests of the juvenile to return home, be placed for adoption, be placed with a legal guardian or be placed with a fit and willing relative.

(h) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the secretary, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. If the juvenile is 14 years of age or older, the court shall require notice of the time and place of the permanency hearing be given to the juvenile. Such notice shall request the juvenile's participation in the hearing by attendance or by report to the court. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(i) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (j). No such hearing is required when the parent voluntarily relinquishes parental rights or agrees to appointment of a permanent guardian.

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

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

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

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

(k) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist:

(1) The juvenile is in a stable placement with relatives;

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

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

History: L. 2006, ch. 169, § 65; L. 2010, ch. 163, § 2; L. 2011, ch. 30, § 170; L. 2016, ch. 102, § 19; July 1.

Source or Prior Law:

38-1664.

CASE ANNOTATIONS

1. Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 488, 186 P.3d 164 (2008).

38-2366. Juvenile offenders in custody of DOC; placement; notification to court; detainment; prohibition on admittance to juvenile correctional facility.

(a) When a juvenile offender who is:

(1) Under 16 years of age at the time of the sentencing, has been prosecuted and convicted as an adult or under the extended jurisdiction juvenile prosecution, and has been placed in the custody of the secretary of the department of corrections, the secretary shall notify the sheriff having the offender in custody to convey such juvenile offender at a time designated by the department of corrections to a juvenile correctional facility. The secretary shall notify the court, in writing, of the initial placement of the offender in the specific juvenile correctional facility as soon as the placement has been accomplished.

(2) At least 16 but less than 18 years of age at the time of sentencing, has been prosecuted and convicted as an adult or under the extended jurisdiction juvenile prosecution, and has been placed in the custody of the secretary, the secretary shall notify the sheriff having the offender in custody to convey such juvenile offender at a time designated by the department of corrections to a juvenile correctional facility or adult correctional institution. The secretary shall notify the court, in writing, of the initial placement of the offender in the specific juvenile correctional facility or adult correctional institution as soon as the placement has been accomplished.

The secretary shall not permit the juvenile offender to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, after the secretary has received the written order of the court placing the offender in the custody of the secretary. If such placement cannot be accomplished, the offender may remain in jail for an additional period of time, not exceeding 10 days, which is specified by the secretary and approved by the court.

(b) Except as provided in subsection (a), a juvenile who has been prosecuted and convicted as an adult shall not be eligible for admission to a juvenile correctional facility. All other conditions of the offender's sentence imposed under this code, including restitution orders, may remain intact.

History: L. 2006, ch. 169, § 66; L. 2010, ch. 11, § 10; L. 2015, ch. 32, § 2; Apr. 16.

Source or Prior Law:

38-16,111.

38-2367. Modification of sentence.

(a) At any time after the entry of an order of custody or placement of a juvenile offender, the court, upon the court's own motion or the motion of the secretary of corrections or parent or any party, may modify the sentence imposed. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as established in subsection (b), after the hearing, if the court finds that the sentence previously imposed is not in the best interests of the juvenile offender, the court may rescind and set aside the sentence, and enter any sentence pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, and the overall case length limit, except that a child support order which has been registered under K.S.A. 2018 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2018 Supp. 38-2321, and amendments thereto.

(b) If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) If, during the proceedings, the court determines that there is probable cause to believe that the juvenile is a child in need of care as defined in K.S.A. 2018 Supp. 38-2022 [38-2202], and amendments thereto, the court may refer the matter to the county or district attorney, who shall file a petition as provided in K.S.A. 2018 Supp. 38-2234, and amendments thereto, and refer the family to the Kansas department for children and families for services.

(d) If, during the proceedings, the court finds that a juvenile offender needs a place to live and the court does not have probable cause to believe the juvenile is a child in need of care as defined in K.S.A. 2018 Supp. 38-2022 [38-2202], and amendments thereto, or if the child is emancipated or over the age of 17, the court may authorize participation in a community integration program.

(e) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a

child support order which has been registered under K.S.A. 2018 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2018 Supp. 38-2321, and amendments thereto.

(f) Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the secretary of corrections, modify the sentence and enter any other sentence if the court determines that:

(1) The medical condition of the juvenile justifies a reduction in sentence; or

(2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

History: L. 2006, ch. 169, § 67; L. 2016, ch. 46, § 44; July 1.

Source or Prior Law:

38-1665, 38-16,131.

CASE ANNOTATIONS

1.Cited in dissenting opinion where majority of court held juveniles have constitutional right to jury trials. In re L.M., 286 K. 460, 484, 492, 186 P.3d 164 (2008).

38-2368. Violation of condition of probation or placement.

If it is alleged that a juvenile offender has violated a condition of probation or of a court-ordered placement, the county or district attorney, the current custodian of the juvenile offender, or the victim of the offense committed by the offender may file a report with the assigned community supervision officer of the juvenile offender. If, upon review by the assigned community supervision officer of the juvenile offender, it is determined that the violation is eligible under K.S.A. 2018 Supp. 38-2392, and amendments thereto, for review by the court, the assigned community supervision officer may file a report with the court describing the alleged violation. The court shall provide copies of the report to the parties to the proceeding. The court, upon the court's own motion or the motion of the secretary of corrections or any party, shall set the matter for hearing and may issue a warrant pursuant to K.S.A. 2018 Supp. 38-2342, and amendments thereto, if there is probable cause to believe that the juvenile poses a significant risk of physical harm to another or damage to property. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian of the juvenile offender and to each party to the proceeding. If the court finds by a preponderance of the evidence that the juvenile offender has absconded from supervision, violated a condition of probation or placement or committed a technical violation for a third or subsequent time, the court may, subject to the overall case length limit, extend or modify the terms of probation or placement or enter another sentence pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, except that a child support order which has been registered under K.S.A. 2018 Supp. 38-2321, and amendments thereto, may only be modified pursuant to K.S.A. 2018 Supp. 38-2321, and amendments thereto.

History: L. 2006, ch. 169, § 68; L. 2016, ch. 46, § 45; L. 2017, ch. 90, § 7; July 1.

Source or Prior Law:

38-1666.

38-2369. Sentencing juvenile offenders; placement matrix; placements based on offense committed; aftercare term.

(a) Except as provided in subsection (e) and K.S.A. 2018 Supp. 38-2361(a)(13), for the purpose of committing juvenile offenders to a juvenile correctional facility, upon a finding by the judge entered into the written order that the juvenile poses a significant risk of harm to another or damage to property, the following placements shall be applied by the judge in the cases specified in this subsection. If used, the court shall establish a specific term of commitment as specified in this subsection. The term of commitment established by the court shall not exceed the overall case length limit. Before a juvenile offender is committed to a juvenile correctional facility pursuant to this section, the court shall administer a risk assessment tool, as described in K.S.A. 2018 Supp. 38-2360, and amendments thereto, or review a risk assessment tool that was administered within the past six months to the juvenile.

(1) Violent Offenders. (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a

juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) Serious Offenders. (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 4, person felony.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months. (B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1 or 2 felony; or

(ii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony or a nondrug severity level 5 or 6 person felony.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months.

(C) The serious offender III is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may only be committed to a juvenile correctional facility if such offenders are assessed as high-risk on a risk and needs assessment. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 12 months.

(3) Chronic Offenders. (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present nonperson felony adjudication and two prior felony adjudications;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present drug severity level 3 felony adjudication and two prior felony adjudications; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior felony adjudications.

Offenders in this category may only be committed to a juvenile correctional facility if such offenders are assessed as high-risk on a risk and needs assessment. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 12 months.

(b) Conditional Release. If the court elects, a period of conditional release may also be ordered pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto. The period of conditional release shall be limited to a maximum of six months and shall be subject to graduated responses. The presumption upon release shall be a return to the juvenile's home, unless the case plan developed pursuant to K.S.A. 2018 Supp. 38-2373, and amendments thereto, recommends a different reentry plan.

(1) Upon finding the juvenile violated a requirement or requirements of conditional release, the court may enter one or more of the following orders:

(A) Recommend additional conditions be added to those of the existing conditional release.

(B) Order the offender to serve a period of detention pursuant to K.S.A. 2018 Supp. 38-2361(g), and amendments thereto.

(C) Revoke or restrict the juvenile's driving privileges as described in K.S.A. 2018 Supp. 38-2361(c), and amendments thereto.

(2) Discharge the offender from the custody of the secretary of corrections, release the secretary of corrections from further responsibilities in the case and enter any other appropriate orders.

(c)As used in this section "adjudication" includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(d) The secretary of corrections shall work with the community to provide on-going support and incentives for the development of additional evidence-based community practices and programs to ensure that the juvenile correctional facility is not frequently utilized.

(e) There shall be a rebuttable presumption that all offenders in the chronic offender category and offenders at least 10 years of age but less than 14 years of age in the serious offender II or III category, shall be placed in the custody of the secretary for placement in a youth residential facility in lieu of placement in the juvenile correctional facility. This presumption may be rebutted by a finding on the record that the juvenile offender poses a significant risk of physical harm to another.

History: L. 2006, ch. 169, § 69; L. 2012, ch. 33, § 1; L. 2012, ch. 150, § 47; L. 2014, ch. 126, § 8; L. 2015, ch. 32, § 3; L. 2016, ch. 46, § 46; L. 2017, ch. 90, § 8; July 1.

Source or Prior Law:

38-16,129.

CASE ANNOTATIONS

1. Mentioned in discussion of the definition of a "chronic offender II, escalating felon." In re J.R.A., 38 K.A.2d 86, 89, 90, 161 P.3d 231 (2007).

2. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 468, 482, 483, 484, 186 P.3d 164 (2008).

3. Juvenile's adjudication for felony theft, which occurred simultaneously and before the same court as adjudication for residential burglary, could not be counted as a prior adjudication in burglary adjudication sentencing. In re J.L.B., 44 K.A.2d 755, 241 P.3d 114 (2010).

4.A juvenile who completes the juvenile incarceration and is granted conditional release may be ordered to serve the adult sentence if the juvenile violates the provisions of the conditional release. In re A.M.M.-H., 49 K.A.2d 647, 312 P.3d 393 (2013).

38-2370. Good time credits; rules and regulations.

(a) For purposes of determining release of a juvenile offender, a system shall be developed whereby good behavior is the expected norm and negative behavior will be punished.

(b) The commissioner shall adopt rules and regulations to carry out the provisions of this section regarding good time calculations. Such rules and regulations shall provide circumstances upon which a juvenile offender may earn good time credits through participation in programs which may include, but not be limited to, education programs, work participation, treatment programs, vocational programs, activities and behavior modification. Such good time credits may also include the juvenile offender's willingness to examine and confront the past behavior patterns that resulted in the commission of the juvenile's offense.

History: L. 2006, ch. 169, § 70; L. 2014, ch. 126, § 9; July 1.

Source or Prior Law:

38-16,130.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 468, 186 P.3d 164 (2008).

38-2371. Departure sentences; hearing; order; findings of fact; limitations.

(a) (1) Whenever a person is adjudicated as a juvenile offender and sentenced to a juvenile correctional facility as a violent offender pursuant to K.S.A. 2018 Supp. 38-2369(a)(1), and amendments thereto, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, and subject to K.S.A. 2018 Supp. 38-2391, and amendments thereto. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the adjudicated person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 21 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of adjudication may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of adjudication is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in K.S.A. 2018 Supp. 21-6815 and 21-6816, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition pursuant to K.S.A. 2018 Supp. 38-2369(a)(1) and 38-2391, and amendments thereto, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence pursuant to K.S.A. 2018 Supp. 38-2369 and 38-2391, and amendments thereto, that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) The judge shall state on the record at the time of sentencing and enter into the written record the substantial and compelling reasons for the departure.

(e) A departure sentence may be appealed as provided in K.S.A. 2018 Supp. 38-2380, and amendments thereto.

History: L. 2006, ch. 169, § 71; L. 2010, ch. 135, § 54; L. 2011, ch. 30, § 171; L. 2016 ch. 46, § 47; July 1, 2017.

Source or Prior Law:

38-16,132.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 468, 483, 186 P.3d 164 (2008).

38-2372. Computation of sentence.

In any action pursuant to the revised Kansas juvenile justice code in which the juvenile is adjudicated upon a plea of guilty or trial by court or jury or upon completion of an appeal, the judge, shall direct that, for the purpose of computing the juvenile's overall case length limit and, if incarcerated, sentence and release, eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order. If incarcerated, such date shall be established to reflect and shall be computed as an allowance for the time which the juvenile has spent

incarcerated pending the disposition of the juvenile's case. In recording the date of commencement of such sentence, the date as specifically set forth by the court shall be used as the date of sentence and all good time calculations authorized by law and all earned time calculations authorized by law are to be allowed on such sentence from such date as though the juvenile were actually incarcerated in a juvenile correctional facility.

History: L. 2006, ch. 169, § 72; L. 2014, ch. 126, § 10; L. 2016, ch. 46, § 48; July 1.

Source or Prior Law:

38-16,133.

38-2373. Commitment to juvenile correctional facility; transfers.

(a) Actions by the court. (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall promptly notify the secretary of corrections of the commitment and provide the secretary with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court shall provide those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the secretary.

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

(b) Actions by the secretary. (1) Within three days, excluding Saturdays, Sundays and legal holidays, after receiving notice of commitment as provided in subsection (a), the secretary shall notify the committing court of the facility to which the juvenile offender should be conveyed, and when to effect the immediate transfer of custody and control to the department of corrections. The date of admission shall be no more than five days, excluding Saturdays, Sundays and legal holidays, after the notice to the committing court. Until received at the designated facility, the continuing detention, custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the responsibility of the committing county.

(2) Except as provided by K.S.A. 2018 Supp. 38-2332, and amendments thereto, the secretary may make any temporary out-of-home placement the secretary deems appropriate pending placement of the juvenile offender in a juvenile correctional facility, and the secretary shall notify the court, local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school of that placement.

(c) Transfers. During the time a juvenile offender remains committed to a juvenile correctional facility, the secretary may transfer the juvenile offender from one juvenile correctional facility to another.

(d) Case planning. For all juveniles committed to a juvenile correctional facility pursuant to K.S.A. 38-2361(a)(11)*, and amendments thereto, a case plan shall be developed with input from the juvenile and the juvenile's family. For all those committed upon violation of a condition of sentence pursuant to K.S.A. 2018 Supp. 38-2368, and amendments thereto, the case plan developed with the juvenile's community supervision officer shall be revised to reflect the new disposition. The department for children and families, the local school district in which the juvenile offender will be residing and community supervision officers may also participate in the development or revision of the case plan when appropriate. The case plan shall incorporate the results of the risk and needs assessment, the programs and education to complete while in custody and shall clearly define the role of each person or agency working with the juvenile. The case plan shall include a reentry section, detailing services, education, supervision or any other elements necessary for a successful transition. The reentry section of the case plan shall

also include information on reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, another viable release option. If the juvenile is to be placed on conditional release pursuant to K.S.A. 2018 Supp. 38-2369, the case plan shall be developed with the community supervision officer.

History: L. 2006, ch. 169, § 73; L. 2010, ch. 163, § 3; L. 2011, ch. 91, § 21; L. 2016, ch. 46, § 49; Jan. 1, 2017.

* Reference should be to (a)(12).

Source or Prior Law:

38-1671.

Revisor's Note:

Section was amended twice in the 2010 session, see also 38-2373a.

38-2373a.

History: L. 2006, ch. 169, § 73; L. 2010, ch. 135, § 55; Repealed, L. 2011, ch. 91, § 41; July 1.

38-2374. Same; conditional release; procedure; supervision; notification; aftercare services.

(a) When a juvenile offender has satisfactorily completed the term of incarceration at the juvenile correctional facility to which the juvenile offender was committed or placed, the person in charge of the juvenile correctional facility shall have authority to release the juvenile offender under appropriate conditions and, if conditional release has previously been ordered pursuant to K.S.A. 2018 Supp. 38-2361 or 38-2369, and amendments thereto, for a specified period of time to complete conditional release. Prior to release from a juvenile correctional facility, the secretary of corrections shall consider any recommendations made by the juvenile offender's community supervision officer.

(b) At least 21 days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the juvenile correctional facility shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released. The person in charge of the juvenile correctional facility shall notify the school district in which the juvenile offender will be residing if the juvenile is still required to attend a school. Such notification to the school shall include the name of the juvenile offender, address upon release, contact person with whom the juvenile offender will be residing upon release, anticipated date of release, anticipated date of enrollment in school, name and phone number of case worker, crime or crimes of adjudication if not confidential based upon other statutes, conditions of release and any other information the commissioner deems appropriate. To ensure the educational success of the student, the community case manager or a representative from the residential facility where the juvenile offender will reside shall contact the principal of the receiving school in a timely manner to review the juvenile offender's case. If such juvenile offender's offense would have constituted an off-grid crime, a nondrug felony crime ranked at severity level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a drug felony crime ranked at severity level 4 on or after July 1, 2012, if committed by an adult, the person in charge of the juvenile correctional facility shall notify the county or district attorney of the county where the offender was adjudicated a juvenile offender of the date and conditions upon which it is proposed the juvenile offender is to be released. The county or district attorney shall give written notice at least seven days prior to the release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

(c) Upon receipt of the notice required by subsection (b), the court shall review the terms of any proposed conditional release or case plan and may recommend modifications or additions to the terms.

(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the

juvenile correctional facility shall also give notice to the court of the county in which the juvenile offender is to be residing.

(e) To assure compliance with conditional release from a juvenile correctional facility, the commissioner shall have the authority to prescribe the manner in which compliance with the conditions shall be supervised. When requested by the secretary of corrections, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release. The secretary of corrections may require the parent of the juvenile offender to cooperate and participate with the conditional release.

(f) Conditional release programs shall include, but not be limited to, the treatment options of aftercare services.

History: L. 2006, ch. 169, § 74; L. 2010, ch. 135, § 56; L. 2012, ch. 150, § 48; L. 2016, ch. 46, § 50; July 1, 2017.

Source or Prior Law:

38-1673.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 186 P.3d 164 (2008).

38-2375. Same; conditional release; failure to obey; authorized dispositions.

If it is alleged that a juvenile offender who has been conditionally released from a juvenile correctional facility has failed to obey the specified conditions of release for the third or subsequent time or has absconded from supervision, the officer assigned to supervise compliance with the conditions of release or, upon referral from such officer, the county or district attorney may file a report with the committing court or the court of the county in which the juvenile offender resides describing the alleged violation and the juvenile's history of violations. The court shall provide copies of the report to the parties to the proceedings. The court, upon the court's own motion or the county or district attorney, shall set the matter for hearing. The movant shall provide notice of the motion and hearing to each party to the proceeding and the current custodian and placement of the juvenile offender. If the court finds that a condition of release has been violated, the court may modify or impose additional conditions of release that the court considers appropriate pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto.

History: L. 2006, ch. 169, § 75; L. 2016, ch. 46, § 51; L. 2017, ch. 90, § 9; July 1.

Source or Prior Law:

38-1674.

38-2376. Same; discharge from commitment; notification.

(a) When a juvenile offender has reached the age of 23 years, has maximized the overall case length limit, or has been convicted as an adult while serving a term of incarceration at a juvenile correctional facility, or has completed the prescribed terms of incarceration at a juvenile correctional facility, together with any conditional release following the program, the juvenile shall be discharged by the secretary of corrections from any further obligation under the commitment unless the juvenile was sentenced pursuant to an extended jurisdiction juvenile prosecution upon court order. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed.

(b) At least 45 days prior to the discharge of the juvenile offender, the juvenile justice authority shall notify the court and the county or district attorney of the county where the offender was adjudicated a juvenile offender of the pending discharge of such juvenile offender, the offense would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993, or a drug crime ranked at severity level 4 on or after July 1, 2012, if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the discharge of the juvenile offender pursuant to K.S.A. 2018 Supp. 38-2379, and amendments thereto.

History: L. 2006, ch. 169, § 76; L. 2007, ch. 198, § 8; L. 2012, ch. 150, § 49; L. 2016, ch. 46, § 52; July 1, 2017.

Source or Prior Law:
38-1675.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 467, 482, 186 P.3d 164 (2008).

2. Cited in decision holding that juvenile adjudications are excluded from cases calling for consecutive adult sentences. State v. Crawford, 39 K.A.2d 897, 903, 185 P.3d 315 (2008).

38-2377. Notification of pending release; hearing; maximum term of imprisonment.

(a) The secretary shall notify the county or district attorney, the court, the local law enforcement agency and the school district in which the juvenile offender will be residing of such pending release at least 45 days before release if the juvenile is still required to attend school, if the juvenile offender has committed an act prior to July 1, 1999, which, if committed by a person 18 years of age or over, would have constituted: (1) A class A or B felony, before July 1, 1993; or (2) an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, if the offense was committed on or after July 1, 1993, and, if such juvenile is to be released. The county or district attorney shall give written notice at least 30 days prior to discharge of the juvenile offender pursuant to K.S.A. 2018 Supp. 38-2379, and amendments thereto. The county attorney, district attorney or the court on its own motion may file a motion with the court for a hearing to determine if the juvenile offender should be placed on conditional release if not previously ordered by the court, subject to the overall case length limit. The court shall fix a time and place for hearing and shall notify each party of the time and place.

(b) Following the hearing, if the court orders a period of conditional release, the juvenile offender shall not be supervised for longer than six months of conditional release and the overall case length limit.

History: L. 2006, ch. 169, § 77; L. 2011, ch. 30, § 172; L. 2016, ch. 46, § 53; July 1, 2017.

Source or Prior Law:
38-1676.

38-2378. School district involvement in discharge plan.

The commissioner and the school district in which a juvenile offender will be residing shall plan for the juvenile offender's release or discharge if the juvenile offender is required to attend school. The commissioner shall send the educational records for the juvenile and notice of the offenses the juvenile committed to the school district that the juvenile will be attending.

History: L. 2006, ch. 169, § 78; Jan. 1, 2007.

Source or Prior Law:
38-1677.

38-2379. Written notice by county or district attorney.

(a) When a statute requires that the county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender, such notice shall be given to:

(1) Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court;

(2) the local law enforcement agency; and

(3) the school district in which the juvenile offender will be residing if the juvenile is still required to attend school.

(b) Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county of an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

History: L. 2006, ch. 169, § 79; Jan. 1, 2007.

Source or Prior Law:
38-1673, 38-1675.

38-2380. Orders appealable by juvenile; appeal of departure sentence, procedure.

(a) Order authorizing prosecution as an adult or extended jurisdiction juvenile prosecution. (1) Unless the juvenile offender has consented to the

order, a juvenile offender may take an appeal from an order authorizing prosecution as an adult. The appeal shall be taken only after conviction as an adult and in the same manner as criminal appeals, except that where the prosecution has resulted in a judgment of conviction upon a plea of guilty or nolo contendere, an appeal may be taken from the order authorizing prosecution pursuant to K.S.A. 2018 Supp. 38-2347, and amendments thereto, notwithstanding the provisions of subsection (a) of K.S.A. 22-3602, and amendments thereto.

(2) If on appeal the order authorizing prosecution as an adult is reversed but the finding of guilty is affirmed or the conviction was based on a plea of guilty or nolo contendere, the juvenile shall be deemed adjudicated to be a juvenile offender. On remand the district court shall proceed with sentencing.

(b) Orders of adjudgment and sentencing. The juvenile offender may appeal from an order of adjudication or sentencing, or both. The appeal shall be pursuant to K.S.A. 2018 Supp. 38-2382, and amendments thereto.

(1) Pending review of the sentence, the sentencing court or the appellate court may order the juvenile confined or placed on conditional release, including bond.

(2) On appeal from a judgment or conviction entered for an offense committed on or after July 1, 1999, the appellate court shall not review:

(A) Any sentence that is within the presumptive sentence for the crime; or

(B) any sentence resulting from an agreement between the state and the juvenile which the sentencing court approves on the record.

(3) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(A) Are supported by the evidence in the record; and

(B) constitute substantial and compelling reasons for departure.

(4) In any appeal, the appellate court may review a claim that:

(A) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(B) the sentencing court erred in either including or excluding recognition of prior convictions or adjudications; or

(C) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(5) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(6) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the placement. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(7) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(c) Priority. Appeals under this section shall have priority over other cases except those having statutory priority.

History: L. 2006, ch. 169, § 80; Jan. 1, 2007.

Source or Prior Law:

38-1681.

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 468, 186 P.3d 164 (2008).

2. Juvenile justice code provides no appeal from district court's order denying post appeal motion. In re D.M.-T., 292 K. 31, 249 P.3d 418 (2011).

38-2381. Appeals by prosecution.

(a) An appeal may be taken by the prosecution from an order:

(1) Dismissing proceedings when jeopardy has not attached;

(2) denying authorization to prosecute a juvenile as an adult;

(3) quashing a warrant or a search warrant;

(4) suppressing evidence or suppressing a confession or admission; or

(5) upon a question reserved by the prosecution.

(b) An appeal upon a question reserved by the prosecution shall be taken within 14 days after the juvenile has been adjudged to be a juvenile offender. Other appeals by the prosecution shall be taken within 14 days after the entry of the order appealed.

History: L. 2006, ch. 169, § 81; L. 2010, ch. 135, § 57; July 1.

Source or Prior Law:

38-1682.

Law Review and Bar Journal References:

"Waiting for Judgment Day: Negotiating the Interlocutory Appeal in 8 Easy Lessons," Jonathan Paretsky, 78 J.K.B.A. No. 4, 30 (2009).

CASE ANNOTATIONS

1. Cited in opinion holding that juveniles have a constitutional right to jury trials. In re L.M., 286 K. 460, 473, 186 P.3d 164 (2008).

2. State has no right to appeal an order granting probation in juvenile and criminal cases; questions reserved discussed. In re E.F., 41 K.A.2d 860, 205 P.3d 787 (2009).

38-2382. Appeals; procedure.

(a) An appeal from a district magistrate judge who is not regularly admitted to practice law in Kansas shall be to a district judge. The appeal shall be by trial de novo unless the parties agree to a de novo review on the record of the proceedings. The appeal shall be heard within 30 days from the date the notice of appeal was filed.

(b) Appeals from a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas, shall be to the court of appeals.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2006, ch. 169, § 82; L. 2014, ch. 71, § 5; July 1.

Source or Prior Law:

38-1683.

38-2383. Temporary orders pending appeal; status of orders appealed from.

(a) Pending the determination of an appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) While an appeal is pending, the district court may modify the order appealed from and may make temporary orders concerning the care and custody of the juvenile as the court considers advisable.

History: L. 2006, ch. 169, § 83; Jan. 1, 2007.

Source or Prior Law:

38-1684.

38-2384. Fees and expenses.

When an appeal is taken pursuant to this code, fees of an attorney appointed to represent the juvenile offender shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees and expenses against the appealing party or order that they be paid from the county general fund. When the court orders the fees and expenses assessed against the appealing party:

(a) The fees and expenses shall be paid from the county general fund, subject to reimbursement by the appealing party; and

(b) the county may enforce the order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution.

History: L. 2006, ch. 169, § 84; Jan. 1, 2007.

Source or Prior Law:

38-1685.

38-2385. Certification of juvenile corrections officers; basic course of instruction; in-service training.

(a) The commissioner may adopt rules and regulations establishing standards of training and provisions for certifying juvenile corrections officers.

(b) Except as provided in subsection (c), no person shall receive a permanent appointment as a juvenile corrections officer unless awarded a certificate by the commissioner which attests to satisfactory completion of a basic course of instruction. Such course of instruction shall be approved by the commissioner and shall consist of not less than 160 hours of instruction. The certificate shall be effective during the term of a person's employment, except that any person who has terminated employment with the commissioner for a period exceeding one year shall be required to be certified again.

(c) The commissioner may award a certificate which attests to the satisfactory completion of a basic course of instruction to any person who has been duly certified under the laws of another state or territory if, in the opinion of the commissioner, the requirements for certification in the other jurisdiction are equal to or exceed the requirements for certification in this state. The commissioner may waive any number of hours or courses required to complete the basic course of instruction for any person who, in the opinion of the commissioner, has received sufficient training or experience that such hours of instruction would be unduly burdensome or duplicitous.

(d) Every juvenile corrections officer shall receive not less than 40 hours of in-service training annually.

History: L. 2006, ch. 169, § 85; Jan. 1, 2007.

Source or Prior Law:

38-16,134.

38-2386. Law enforcement power; special investigators.

(a) The superintendent of any juvenile correctional facility operated by the commissioner, all persons on the staff of the juvenile justice authority who are in the chain of command from the commissioner of juvenile justice to the juvenile corrections officer and every juvenile corrections officer, regardless of rank and every investigator, while acting within the scope of their duties as employees of the juvenile justice authority, shall possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner and may exercise such powers and duties anywhere within the state of Kansas. Such powers and duties may be exercised outside the state of Kansas for the purpose of maintaining custody, security and control of any person in the custody of the commissioner being transported or escorted by anyone authorized to so act. Such employees of the juvenile justice authority shall be responsible to and shall be at all times under the supervision and control of the commissioner of juvenile justice or the commissioner's designee.

(b) The commissioner shall have the authority to appoint and designate special investigators. Each special investigator designated by the commissioner is hereby vested with the power and authority of peace and police officers and shall have the authority to:

(1) Make arrests;

(2) conduct searches and seizures;

(3) maintain custody, security and control of any person in the custody of the commissioner; and

(4) generally enforce all the criminal laws of the state as violations of those laws are encountered during the routine performance of duty.

(c) No special investigator may carry firearms while performing such duties without having first successfully completed the training course prescribed for law enforcement officers under the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(d) Each special investigator designated shall:

(1) Be vested with law enforcement authority;

(2) be in classified service under the Kansas civil service act; and

(3) be subject to the requirements of the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(e) The commissioner may adopt rules and regulations prescribing additional training required for such special investigators.

History: L. 2006, ch. 169, § 86; L. 2012, ch. 56, § 1; July 1.

Source or Prior Law:
38-16,135.

38-2387. Application to existing cases.

(a) In addition to all actions concerning a juvenile offender commenced on or after January 1, 2007, this code also applies to proceedings commenced before January 1, 2007, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of a party, in which case the particular provision of this code does not apply and the previous code applies.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2007, that statute continues to apply to the right, even if it has been repealed or superceded.

History: L. 2006, ch. 169, § 87; Jan. 1, 2007.

38-2388. Awarding high school diplomas; requirements.

(a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person: (1) Is at least 17 years of age; (2) is enrolled or resides in such school district; (3) is or has been a child in the custody of the commissioner at any time on or after such person's 14th birthday; and (4) has achieved at least the minimum high school graduation requirements adopted by the state board of education.

(b) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

History: L. 2011, ch. 60, § 2; July 1.

38-2389. Alternative means of adjudication; exceptions; withdrawal; appeal.

(a) Findings and purpose. The following findings and declaration of purpose apply to this section.

(1) The legislature finds that personal and familial circumstances may contribute to the commission of offenses by juveniles who represent a minimal threat to public safety and that in such cases it would further the interests of society and the juvenile to take an approach to adjudication that combines less formal procedures, appropriate disciplinary sanctions for misconduct and the provision of necessary services.

(2) It is the purpose of this section to provide prosecutors with an alternative means of adjudication for juvenile offenders who present a minimal threat to public safety and both the juvenile and society would benefit from such approach.

(b) Designation. A county or district attorney with jurisdiction over the offense who believes that proceedings under this section are appropriate may, in such county or district attorney's discretion, designate any alleged juvenile offender for adjudication under this section and not seek application of a placement within the placement matrix pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, if the alleged juvenile has fewer than two prior adjudications.

(1) The county or district attorney shall make such designation in the original complaint or by written notice filed with the court and served on the juvenile, the juvenile's counsel and the juvenile's parent or legal guardian within 14 days after the filing of the complaint.

(2) The filing of a written application for immediate intervention under K.S.A. 2018 Supp. 38-2346, and amendments thereto, shall toll the running of the 14-day period and shall resume upon the issuance of a written denial of diversion.

(3) If the county or district attorney makes such designation, the juvenile may be referred to an immediate intervention program established pursuant to K.S.A. 2018 Supp. 38-2346, and amendments thereto, and in compliance with the standards and procedures developed pursuant to K.S.A. 2018 Supp. 38-2396, and amendments thereto.

(c) Exceptions. Except as provided in this subsection, the provisions of the revised Kansas juvenile justice code, K.S.A. 2018 Supp. 38-2301 et seq., and amendments thereto, shall apply in any adjudication under this section.

(1) If during the proceedings the court determines that there is probable cause to believe

that the juvenile is a child in need of care as defined by K.S.A. 2018 Supp. 38-2202, and amendments thereto, the court shall refer the matter to the county or district attorney, who shall file a petition as provided in K.S.A. 2018 Supp. 38-2234, and amendments thereto, and refer the family to the Kansas department for children and families for services. If the child in need of care case is presided over by a different judge, the county or district attorney shall notify the court presiding over the proceedings under this section of pertinent orders entered in the child in need of care case.

(2) Notwithstanding any other provision of law, no juvenile shall be committed to a juvenile correctional facility pursuant to K.S.A. 2018 Supp. 38-2361(a)(11), and amendments thereto, for an offense adjudicated under this section or for the violation of a term or condition of the disposition for such an offense.

(3) Notwithstanding any other provision of law, no adjudication under this section or violation of the terms and conditions of the disposition shall be used against the juvenile in a proceeding on a subsequent offense committed as a juvenile or as an adult. For purposes of this section, "used against the juvenile" includes, but is not limited to, establishing an element of a subsequent offense, raising the severity level of a subsequent offense or enhancing the sentence for a subsequent offense.

(4) Upon completion of the case and the termination of the court's jurisdiction, the court shall order the adjudication expunged, and the provisions of K.S.A. 2018 Supp. 38-2312(a), (b), (c), (d), (e), (i), (k) and (l), and amendments thereto, shall not apply to such expungement.

(5) Notwithstanding any other provision of law, a juvenile shall not be required to register as an offender under the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, as a result of adjudication under this section.

(6) The provisions of K.S.A. 2018 Supp. 38-2309 and 38-2310, and amendments thereto, shall not apply to proceedings under this section.

(7) The provisions of K.S.A. 2018 Supp. 38-2347, and amendments thereto, shall not apply to proceedings under this section.

(8) The provisions of K.S.A. 2018 Supp. 38-2304(g)(1), and amendments thereto, shall not apply to proceedings under this section.

(9) The trial of offenses under this section shall be to the court and the right to a trial by jury under K.S.A. 2018 Supp. 38-2357, and amendments thereto, shall not apply.

(d) Withdrawal. At any time prior to the beginning of a hearing at which the court may enter an order adjudicating the child as a juvenile offender, the county or district attorney may withdraw the designation for proceedings under this section by providing notice to the court, the juvenile, the juvenile's attorney and guardian ad litem, if any, and the juvenile's parent or legal guardian. Upon withdrawal of the designation, this section shall no longer apply and the case shall proceed and the court shall grant a continuance upon request.

(e) Appeal. An adjudication under this section is an appealable order pursuant to K.S.A. 2018 Supp. 38-2380, and amendments thereto.

(f) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

History: L. 2014, ch. 126, § 1; L. 2016, ch. 46, § 54; July 1, 2017.

38-2390. Legislative cost study analysis of youth residential centers.

(a) On or before January 15, 2015, the secretary of corrections shall perform the actions required by this section and report on such actions to the house committee on corrections and juvenile justice, the senate committee on federal and state affairs and the joint committee on corrections and juvenile justice oversight.

(b) The secretary shall conduct a cost study analysis of all youth residential centers for juvenile offenders under contract to provide services to the department of corrections. The cost study analysis shall:

(1) Include detailed analysis of allowable expenses necessary to meet the minimum requirements for: (A) Licensure of a youth residential center by the department of health and environment; (B) service under contracts with the department of corrections; and (C) compliance with the prison rape elimination act, 42 U.S.C. § 15601 et seq.; and

(2) identify any cost associated with program or other expenses which add [adds] value to the

services provided to juvenile offenders by youth residential centers in addition to such minimum requirements.

(c) The secretary shall evaluate program needs within youth residential centers for juvenile offenders and compare such needs with program availability. The secretary shall propose modifications to the legislature which align program availability with program needs.

(d) The secretary shall develop a fee schedule for youth residential services for juvenile offenders to include daily payment rates necessary for base service and rates for program component additions to such base service.

(e) The secretary shall develop a plan for performance-based incentive payment opportunities and a plan for integration of such payment opportunities into the fee schedule developed pursuant to subsection (d). The secretary shall also develop a plan to measure performance and evaluate the effectiveness of juvenile offender service providers.

History: L. 2014, ch. 126, § 3; July 1.

38-2391. Overall case length limits.

(a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2018 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2018 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2018 Supp. 38-2368, and amendments thereto, the court may impose one or more of the sentencing alternatives under K.S.A. 2018 Supp. 38-2361, and amendments thereto, for a period of time pursuant to this section and K.S.A. 2018 Supp. 38-2369, and amendments thereto. The period of time ordered by the court shall not exceed the overall case length limit.

(b) Except as provided in subsection (c), the overall case length limit shall be calculated based on the adjudicated offense and the results of a risk and needs assessment, as follows:

(1) Offenders adjudicated for a misdemeanor may remain under the jurisdiction of the court for up to 12 months;

(2) low-risk and moderate-risk offenders adjudicated for a felony may remain under court jurisdiction for up to 15 months; and

(3) high-risk offenders adjudicated for a felony may remain under court jurisdiction for up to 18 months.

(c) There shall be no overall case length limit for a juvenile adjudicated for a felony which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony.

(d) When a juvenile is adjudicated for multiple counts, the maximum overall case length shall be calculated based on the most severe adjudicated count or any other adjudicated count at the court's discretion. The court shall not run multiple adjudicated counts consecutively.

(e) When the juvenile is adjudicated for multiple cases simultaneously, the court shall run those cases concurrently.

(f) Upon expiration of the overall case length limit as defined in subsection (b), the court's jurisdiction terminates and shall not be extended.

(g) (1) For the purposes of placing juvenile offenders on probation pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, the court shall establish a specific term of probation as specified in this subsection based on the most serious adjudicated count in combination with the results of a risk and needs assessment, as follows, except that the term of probation shall not exceed the overall case length limit:

(A) Low-risk and moderate-risk offenders adjudicated for a misdemeanor and low-risk offenders adjudicated for a felony may be placed on probation for a term up to six months;

(B) high-risk offenders adjudicated for a misdemeanor and moderate-risk offenders adjudicated for a felony may be placed on probation for a term up to nine months; and

(C) high-risk offenders adjudicated for a felony may be placed on probation for a term up to 12 months.

(2) The court may extend the term of probation if a juvenile needs time to complete an evidence-based program as determined to be necessary based on the results of a validated risk and needs assessment. The court may also extend the term of probation for good cause shown for one month for low-risk offenders, three months for moderate-risk offenders and six months for high-risk offenders. Prior to extension of the initial probationary term,

the court shall find and enter into the written record the criteria permitting extension of probation. Extensions of probation shall only be granted incrementally and shall not exceed the overall case length limit. When the court extends the term of probation for a juvenile offender, the court services officer or community correctional services officer responsible for monitoring such juvenile offender shall record the reason given for extending probation. Court services officers shall report such records to the office of judicial administration, and community correctional services officers shall report such records to the department of corrections. The office of judicial administration and the department of corrections shall report such recorded data to the Kansas juvenile justice oversight committee on a quarterly basis.

(3) The probation term limits do not apply to those offenders adjudicated for an offense which, if committed by an adult, would constitute an off-grid crime, rape as defined in K.S.A. 2018 Supp. 21-5503(a)(1), and amendments thereto, aggravated criminal sodomy as defined in K.S.A. 2018 Supp. 21-5504(b)(3), and amendments thereto, or murder in the second degree as defined in K.S.A. 2018 Supp. 21-5403, and amendments thereto. Such offenders may be placed on probation for a term consistent with the overall case length limit.

(4) The probation term limits and overall case length limits provided in this section shall be tolled during any time that the offender has absconded from supervision while on probation, and the time on such limits shall not start to run again until the offender is located and brought back to the jurisdiction.

(h) For the purpose of placing juvenile offenders in detention pursuant to K.S.A. 2018 Supp. 38-2361 and 38-2369, and amendments thereto, the court shall establish a specific term of detention. The term of detention shall not exceed the overall case length limit or the cumulative detention limit. Cumulative detention use shall be limited to a maximum of 45 days over the course of the juvenile offender's case, except that there shall be no limit on cumulative detention for juvenile offenders adjudicated for a felony which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony.

(i) The provisions of this section shall apply upon disposition or 15 days after adjudication, whichever is sooner, unless the juvenile fails to appear for such juvenile's dispositional hearing. If a juvenile fails to appear at such juvenile's dispositional hearing, the probation term limits and overall case length limits provided in this section shall not apply until the juvenile is brought before the court for disposition in such juvenile's case.

(j) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

History: L. 2016, ch. 46, § 1; L. 2017, ch. 90, § 10; L. 2018, ch. 52, § 3; July 1.

38-2392. Community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence.

(a) The department of corrections shall, in consultation with the supreme court, adopt rules and regulations by January 1, 2017, for a statewide system of structured community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence by juveniles. Such graduated responses shall be utilized by community supervision officers to provide a continuum of community-based responses. These responses shall include sanctions that are swift and certain to address violations based on the severity of the violation as well as incentives that encourage positive behaviors. Such responses shall take into account the juvenile's risks and needs.

(b) When a juvenile is placed on probation pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, community supervision officers shall utilize graduated responses, targeted to the juvenile's risks and needs based on the results of a risk and needs assessment to address technical violations. A technical violation shall only be considered by the court for revocation if: (1) It is a third or subsequent technical violation; (2) prior failed responses are documented in the juvenile's case plan; and (3) the community supervision officer has determined and documented that graduated responses to the violation will not suffice. Unless a juvenile poses a significant risk of physical harm to another or damage to property,

community supervision officers shall issue a summons rather than request a warrant on a third or subsequent technical violation subject to review by the court. Absconding from supervision shall not be considered a technical violation of probation and, after reasonable efforts to locate a juvenile that has absconded are unsuccessful, the court may issue a warrant for the juvenile pursuant to K.S.A. 2018 Supp. 38-2342, and amendments thereto.

(c) When a juvenile is placed on probation pursuant to K.S.A. 2018 Supp. 38-2361, and amendments thereto, the community supervision officer responsible for oversight of the juvenile shall develop a case plan in consultation with the juvenile and the juvenile's family. The department for children and families and local board of education may participate in the development of the case plan when appropriate.

(1) Such case plan shall incorporate the results of the risk and needs assessment, referrals to programs, documentation on violations and graduated responses and shall clearly define the role of each person or agency working with the juvenile.

(2) If the juvenile is later committed to the custody of the secretary, the case plan shall be shared with the juvenile correctional facility.

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

History: L. 2016, ch. 46, § 2; L. 2017, ch. 90, § 11; July 1.

38-2393. Multidisciplinary team for failure to comply with immediate intervention plan.

(a) (1) The court shall appoint a multidisciplinary team to review cases in which a juvenile fails to substantially comply with the development of the immediate intervention plan pursuant to K.S.A. 2018 Supp. 38-2346(b), and amendments thereto. The team may be a standing multidisciplinary team or may be appointed for a specific juvenile. (2) The supreme court shall appoint a multidisciplinary team facilitator in each judicial district. The supreme court may appoint a convener and facilitator for a multiple district multidisciplinary team.

(b) The multidisciplinary team facilitator shall invite the following individuals to be part of the multidisciplinary team:

(1) The juvenile;

(2) the juvenile's parents, guardians or custodial relative;

(3) the superintendent of schools or the superintendent's designee;

(4) a clinician who has training and experience coordinating behavioral or mental health treatment for juveniles if such clinician is available; and

(5) any other person or agency representative who is needed to assist in providing recommendations for the particular needs of the juvenile and family.

(c) Any person appointed as a member of a multidisciplinary team may decline to serve and shall incur no civil liability as a result of declining to serve.

(d) This section shall take effect on and after January 1, 2017.

History: L. 2016, ch. 46, § 3; July 1.

38-2394. Training for individuals working with juveniles adjudicated or participating in an immediate intervention.

(a) Training on evidence-based programs and practices shall be mandatory for all individuals who work with juveniles adjudicated or participating in an immediate intervention under the Kansas revised juvenile justice code. Such individuals shall include, but not be limited to:

(1) Community supervision officers;

(2) juvenile intake and assessment workers;

(3) juvenile corrections officers; and

(4) any individual who works with juveniles through a contracted organization providing services to juveniles.

(b) The department of corrections, in conjunction with the office of judicial administration shall provide training in evidence-based programs and practices on not less than a semi-annual basis to those required to receive such training pursuant to subsection (a).

History: L. 2016, ch. 46, § 5; July 1.

38-2395. Standards for immediate intervention.

(a) The department of corrections, in collaboration with the office of judicial administration, shall develop standards and procedures to guide the administration of an immediate intervention process and programs developed pursuant to K.S.A. 2018 Supp. 38-2346, and amendments thereto, and alternative means of adjudication pursuant to K.S.A. 2018 Supp. 38-2389, and amendments thereto. Such standards and procedures shall include, but not be limited to:

(1) Contact requirements;

(2) parent engagement;

(3)graduated response and discharge requirements; and

(4) process and quality assurance.

(b) This section shall take effect on and after January 1, 2017.

History: L. 2016, ch. 46, § 6; July 1.

38-2396. Reintegration plan for certain juveniles removed from the home.

(a) When a juvenile is placed outside the juvenile's home at a dispositional hearing pursuant to K.S.A. 2018 Supp. 38-2361(k), and amendments thereto, and no reintegration plan is made a part of the record of the hearing, a written reintegration plan shall be prepared and submitted to the court within 15 days of the initial order of the court.

(b) The plan shall be prepared by the person who has custody or, if directed by the court, by a community supervision officer.

(c) If there is a lack of agreement among persons necessary for the success of the plan, the person or entity having custody of the child shall notify the court, and the court shall set a hearing pursuant to K.S.A. 2018 Supp. 38-2367, and amendments thereto.

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

(e) This section shall take effect on and after July 1, 2017.

History: L. 2016, ch. 46, § 7; July 1.

38-2397. Earned time calculations.

For purposes of determining a release date of a juvenile offender from custody of the secretary of corrections, the secretary shall promulgate rules and regulations by January 1, 2017, regarding earned time calculations.

History: L. 2016, ch. 46, § 8; July 1.

38-2398. Earned discharge for juvenile probationers.

(a) For purposes of determining release of a juvenile from probation, the supreme court, in consultation with the department of corrections, shall establish rules for a system of earned discharge for juvenile probationers to be applied by all community supervision officers. A probationer shall be awarded earned discharge credits while on probation for each full calendar month of compliance with terms of supervised probation pursuant to the rules developed by the supreme court.

(b) The state of Kansas, the secretary of corrections, the secretary's agents or employees, the office of judicial administration and court services officers shall not be liable for damages caused by any negligent or wrongful act or omission in making the earned discharge credit calculations authorized by this section.

History: L. 2016, ch. 46, § 9; L. 2017, ch. 90, § 12; July 1.

38-2399. Department of corrections contracts for youth residential facility beds.

(a) The secretary of corrections may contract for use of not more than 50 non-foster home beds in youth residential facilities for placement of juvenile offenders pursuant to K.S.A. 2018 Supp. 38-2361(a)(13)*, and amendments thereto.

(b) When contracting for services, the secretary shall:

(1) Contract with facilities that have high success rates and decrease recidivism rates for juvenile offenders;

(2) consider contracting for bed space across the entire state to lower the cost of transportation of juvenile offenders; and

(3) give priority to existing facilities that are able to meet the requirements of the secretary for providing residential services to juvenile offenders.

(c) This section shall take effect on and after January 1, 2018.

History: L. 2016, ch. 46, § 17; July 1.

*Reference to 38-2361(a)(13) should be to 38-2361(a)(12).

38-23,100. Community integration programs for juveniles.

The department of corrections shall develop for use by the courts pursuant to K.S.A. 2018 Supp. 38-2367(d), and amendments thereto, community integration programs for juveniles who are ready to transition to independent living. Community integration programs shall be designed to prepare juveniles to become socially and financially independent from the program.

History: L. 2016, ch. 46, § 12; July 1.

38-23,101. Findings to be made on juvenile's first removal from home.

(a) When a juvenile is removed from the home for the first time pursuant to the revised Kansas juvenile justice code, the judge shall consider and make, if appropriate, the following findings:

(1) (A) The juvenile is likely to sustain harm if not immediately removed from the home;

(B) allowing the juvenile to remain in the home is contrary to the welfare of the juvenile; or

(C) immediate placement of the juvenile is in the juvenile's best interest; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or that an emergency exists which threatens the safety of the juvenile.

(b) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

History: L. 2017, ch. 90, § 1; July 1.