

SENATE BILL No. 439

By Committee on Judiciary

2-1

1 AN ACT concerning the revised Kansas juvenile justice code; prohibiting
2 the use of restraints during hearings; authorizing exceptions if the court
3 makes certain findings on the record; defining hearing under the code;
4 amending K.S.A. 38-2353 and K.S.A. 2023 Supp. 38-2302 and
5 repealing the existing sections.

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

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

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

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

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

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

22 (2) If an officer of the court or the county or district attorney
23 recommends the use of restraints on a juvenile, such recommendation shall
24 be made part of the record.

25 (3) If the court orders the use of restraints on a juvenile, the court
26 shall:

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

28 (B) order the use of the least restrictive restraints necessary and allow
29 the juvenile sufficient movement of the hands to be able to read and handle
30 documents and writings necessary to the hearing.

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

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

36 (d) This section shall be a part of and supplemental to the revised

1 Kansas juvenile justice code.

2 Sec. 2. K.S.A. 2023 Supp. 38-2302 is hereby amended to read as
3 follows: 38-2302. As used in this code, unless the context otherwise
4 requires:

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

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

11 (c) "Conditional release" means release from a term of commitment
12 in a juvenile correctional facility for an aftercare term pursuant to K.S.A.
13 38-2369, and amendments thereto, under conditions established by the
14 secretary of corrections.

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

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

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

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

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

34 (i) "Graduated responses" means a system of community-based
35 sanctions and incentives developed pursuant to K.S.A. 38-2392 and 75-
36 7023(h) and ~~38-2392~~, and amendments thereto, used to address violations
37 of immediate interventions, terms and conditions of probation and
38 conditional release and to incentivize positive behavior.

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

43 (k) "Institution" means the Larned juvenile correctional facility and

1 the Kansas juvenile correctional complex.

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

7 (m) "Jail" means:

8 (1) An adult jail or lockup; or

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

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

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

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

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

35 (r) "Juvenile intake and assessment worker" means a responsible
36 adult trained and authorized to perform intake and assessment services as
37 part of the intake and assessment system established pursuant to K.S.A.
38 75-7023, and amendments thereto.

39 (s) "Juvenile offender" means a person who commits an offense while
40 10 or more years of age but less than 18 years of age which if committed
41 by an adult would constitute the commission of a felony or misdemeanor
42 as defined by K.S.A. 21-5102, and amendments thereto, or who violates
43 the provisions of K.S.A. 21-6301(a)(14), 41-727, 74-8810(j) ~~or 21-6301(a)~~

1 (14), and amendments thereto, but does not include:

- 2 (1) A person 14 or more years of age who commits a traffic offense,
3 as defined in K.S.A. 8-2117(d), and amendments thereto;
- 4 (2) a person 16 years of age or over who commits an offense defined
5 in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
- 6 (3) a person under 18 years of age who previously has been:
- 7 (A) Convicted as an adult under the Kansas criminal code;
- 8 (B) sentenced as an adult under the Kansas criminal code following
9 termination of status as an extended jurisdiction juvenile pursuant to
10 K.S.A. 38-2364, and amendments thereto; or
- 11 (C) convicted or sentenced as an adult in another state or foreign
12 jurisdiction under substantially similar procedures described in K.S.A. 38-
13 2347, and amendments thereto, or because of attaining the age of majority
14 designated in that state or jurisdiction.
- 15 (t) "Law enforcement officer" means any person who by virtue of that
16 person's office or public employment is vested by law with a duty to
17 maintain public order or to make arrests for crimes, whether that duty
18 extends to all crimes or is limited to specific crimes.
- 19 (u) "Overall case length limit" when used in relation to a juvenile
20 adjudicated a juvenile offender means the maximum jurisdiction of the
21 court following disposition on an individual case. Pursuant to K.S.A. 38-
22 2304, and amendments thereto, the case and the court's jurisdiction shall
23 terminate once the overall case length limit expires and may not be
24 extended.
- 25 (v) "Parent" when used in relation to a juvenile, includes a guardian
26 and every person who is, by law, liable to maintain, care for or support the
27 juvenile.
- 28 (w) "Probation" means a period of community supervision ordered
29 pursuant to K.S.A. 38-2361, and amendments thereto, overseen by either
30 court services or community corrections, but not both.
- 31 (x) "Reasonable and prudent parenting standard" means the standard
32 characterized by careful and sensible parental decisions that maintain the
33 health, safety and best interests of a child while at the same time
34 encouraging the emotional and developmental growth of the child, that a
35 caregiver shall use when determining whether to allow a child in foster
36 care under the responsibility of the state to participate in extracurricular,
37 enrichment, cultural and social activities.
- 38 (y) "Reintegration plan" means a written document prepared in
39 consultation with the child's parent or guardian that:
- 40 (1) Describes the reintegration goal, which, if achieved, will most
41 likely give the juvenile and the victim of the juvenile a permanent and safe
42 living arrangement;
- 43 (2) describes the child's level of physical health, mental and

1 emotional health and educational functioning;

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

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

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

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

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

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

14 (B) describes available alternatives;

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

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

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

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

25 (bb) "Technical violation" means an act that violates the terms or
26 conditions imposed as part of a probation disposition pursuant to K.S.A.
27 38-2361, and amendments thereto, and that does not constitute a new
28 juvenile offense or a new child in need of care violation pursuant to K.S.A.
29 38-2202(d), and amendments thereto.

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

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

37 (ee) "Behavioral health crisis" means behavioral and conduct issues
38 that impact the safety or health of a juvenile, members of the juvenile's
39 household or family or members of the community, including, but not
40 limited to, non-life threatening mental health and substance abuse
41 concerns.

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

1 *dispositional and sentencing hearings.*

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

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

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

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

25 Sec. 4. K.S.A. 38-2353 and K.S.A. 2023 Supp. 38-2302 are hereby
26 repealed.

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