

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2454

By Joint Committee on Corrections and Juvenile Justice Oversight

1-10

1 AN ACT concerning children and minors; relating to the revised Kansas  
2 juvenile justice code; review hearings; **dispositional hearing**;  
3 amending K.S.A. 2017 Supp. 38-2343 **and 38-2360** and repealing the  
4 existing ~~section~~ **sections**.

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

7 Section 1. K.S.A. 2017 Supp. 38-2343 is hereby amended to read as  
8 follows: 38-2343. (a) *Basis for extended detention; findings and*  
9 *placement.* Whenever a juvenile is taken into custody, the juvenile shall  
10 not remain in detention for more than 48 hours, excluding Saturdays,  
11 Sundays, legal holidays, and days on which the office of the clerk of the  
12 court is not accessible, from the time the initial detention was imposed,  
13 unless the court determines after hearing, within the 48-hour period, that  
14 further detention is warranted based on the criteria in K.S.A. 2017 Supp.  
15 38-2331, and amendments thereto.

16 (b) (1) If the juvenile is in custody on the basis of a new offense  
17 which would be a felony or misdemeanor if committed by an adult and no  
18 prior judicial determination of probable cause has been made, the court  
19 shall determine whether there is probable cause to believe that the juvenile  
20 has committed the alleged offense.

21 (2) In the absence of the necessary findings, the court shall order the  
22 juvenile released.

23 (c) *Waiver of detention hearing.* The detention hearing may be  
24 waived in writing by the juvenile and the juvenile's attorney with approval  
25 of the court. The right to a detention hearing may be reasserted in writing  
26 by the juvenile or the juvenile's attorney or parent at anytime not less than  
27 48 hours prior to trial.

28 (d) *Notice of hearing.* Whenever it is determined that a detention  
29 hearing is required the court shall immediately set the time and place for  
30 the hearing. Except as otherwise provided by K.S.A. 2017 Supp. 38-  
31 2332(c)(1), and amendments thereto, notice of the detention hearing shall  
32 be given at least 24 hours prior to the hearing, unless waived.

33 When there is insufficient time to give written notice, oral notice may  
34 be given and is completed upon filing a certificate of oral notice with the  
35 clerk.

36 (e) *Attorney for juvenile.* At the time set for the detention hearing if

1 no retained attorney is present to represent the juvenile, the court shall  
2 appoint an attorney, and may recess the hearing for 24 hours, excluding  
3 Saturdays, Sundays and legal holidays, to obtain attendance of the attorney  
4 appointed.

5 (f) *Hearing.* (1) The detention hearing is an informal procedure to  
6 which the ordinary rules of evidence do not apply. The court may consider  
7 affidavits, detention risk assessment tool results, professional reports and  
8 representations of counsel to make the necessary findings, if the court  
9 determines that these materials are sufficiently reliable.

10 (2) If probable cause to believe that the juvenile has committed an  
11 alleged offense is contested, the court shall allow the opportunity to  
12 present contrary evidence or information upon request.

13 (3) If the court orders the juvenile to be detained in a juvenile  
14 detention facility, the court shall record the specific findings of fact upon  
15 which the order is based, including any reasons for overriding a detention  
16 risk assessment tool score.

17 (g) *Rehearing.* (1) If detention is ordered and the parent was not  
18 notified of the hearing and did not appear and later requests a rehearing,  
19 the court shall rehear the matter without unnecessary delay.

20 (2) Within 14 days of the detention hearing, if the juvenile had not  
21 previously presented evidence regarding the determination of probable  
22 cause to believe that the juvenile has committed an offense, the juvenile  
23 may request a rehearing to contest the determination of probable cause to  
24 believe that the juvenile has committed an offense. The rehearing request  
25 shall identify evidence or information that the juvenile could not  
26 reasonably produce at the detention hearing. If the court determines that  
27 the evidence or information could not reasonably be produced at the  
28 detention hearing, the court shall rehear the matter without unnecessary  
29 delay.

30 (h) *Audio-video communications.* ~~Detention~~ All hearings conducted  
31 pursuant to this section may be conducted by two-way electronic audio-  
32 video communication between the juvenile and the judge in lieu of  
33 personal presence of the juvenile or the juvenile's attorney in the  
34 courtroom from any location within Kansas in the discretion of the court.  
35 The juvenile may be accompanied by the juvenile's attorney during such  
36 proceedings or the juvenile's attorney may be personally present in court as  
37 long as a means of confidential communication between the juvenile and  
38 the juvenile's attorney is available.

39 (i) *Review hearing.* The court shall hold a detention review hearing at  
40 least every 14 days that a juvenile is in detention to determine if the  
41 juvenile should continue to be held in detention. ~~Each detention review~~  
42 ~~hearing may be waived in writing by the juvenile and the juvenile's~~  
43 ~~attorney with approval of the court.~~ The provisions of this subsection shall

1 not apply if the juvenile is charged with a crime that, if committed by an  
2 adult, would constitute an off-grid felony or a nondrug severity level 1  
3 through 4 person felony. **The review hearings provided in this**  
4 **subsection are not required for a juvenile offender held in detention**  
5 **awaiting disposition in such juvenile offender's case pursuant to**  
6 **K.S.A. 2017 Supp. 38-2360(f), and amendments thereto.**

7 **Sec. 2. K.S.A. 2017 Supp. 38-2360 is hereby amended to read as**  
8 **follows: 38-2360. (a) At any time after the juvenile has been**  
9 **adjudicated to be a juvenile offender, the court shall order one or**  
10 **more of the tools described in this subsection to be submitted to assist**  
11 **the court unless the court finds that adequate and current information**  
12 **from a risk and needs assessment is available from a previous**  
13 **investigation, report or other sources:**

14 **(1) An evaluation and written report by a mental health or a**  
15 **qualified professional stating the psychological or emotional**  
16 **development or needs of the juvenile. The court also may order a**  
17 **report from any mental health or qualified professional who has**  
18 **previously evaluated the juvenile stating the psychological or**  
19 **emotional development needs of the juvenile. If the court orders an**  
20 **evaluation as provided in this section, a parent of the juvenile shall**  
21 **have the right to obtain an independent evaluation at the expense of**  
22 **the parent. If the evaluation indicates that the juvenile requires acute**  
23 **inpatient mental health or substance abuse treatment, the court shall**  
24 **have the authority to compel an assessment by the secretary for aging**  
25 **and disability services. The court may use the results to inform a**  
26 **treatment and payment plan according to the same eligibility process**  
27 **used for non-court-involved youth.**

28 **(2) A report of the medical condition and needs of the juvenile.**  
29 **The court also may order a report from any physician who has been**  
30 **attending the juvenile, stating the diagnosis, condition and treatment**  
31 **afforded the juvenile.**

32 **(3) An educational needs assessment of the juvenile from the chief**  
33 **administrative officer of the school which the juvenile attends or**  
34 **attended to provide to the court information that is readily available**  
35 **which the school officials feel would properly indicate the educational**  
36 **needs of the juvenile. The educational needs assessment may include a**  
37 **meeting involving any of the following: (A) The juvenile's parents; (B)**  
38 **the juvenile's teacher or teachers; (C) the school psychologist; (D) a**  
39 **school special services representative; (E) a representative of the**  
40 **commissioner; (F) the juvenile's court appointed special advocate; (G)**  
41 **the juvenile's foster parents or legal guardian; and (H) other persons**  
42 **that the chief administrative officer of the school, or the officer's**  
43 **designee, deems appropriate.**

1       **(4) Any other presentence investigation and report from a court**  
2 **services officer which includes: (A) The circumstances of the offense;**  
3 **(B) the attitude of the complainant, victim or the victim's family; (C)**  
4 **the record of juvenile offenses; (D) the social history of the juvenile;**  
5 **and (E) the present condition of the juvenile. Except where specifically**  
6 **prohibited by law, all local governmental public and private**  
7 **educational institutions and state agencies shall furnish to the officer**  
8 **conducting the predispositional investigation the records the officer**  
9 **requests. Predispositional investigations shall contain other**  
10 **information prescribed by the court.**

11       **(5) The court in its discretion may direct that the parents submit**  
12 **a domestic relations affidavit.**

13       **(b) A summary of the results from a risk and needs assessment**  
14 **shall be provided to the court post-adjudication, predisposition and**  
15 **used to inform supervision levels. A single, uniform risk and needs**  
16 **assessment shall be adopted by the office of judicial administration**  
17 **and the department of corrections to be used in all judicial districts.**  
18 **The office of judicial administration and the secretary of corrections**  
19 **shall establish cutoff scores determining risk levels of juveniles.**  
20 **Training on such risk and needs assessment shall be required for all**  
21 **administrators of the assessment. Data shall be collected on the results**  
22 **of the assessment to inform a validation study on the Kansas juvenile**  
23 **justice population to be conducted by June 30, 2020.**

24       **(c) Expenses for post adjudication tools may be waived or**  
25 **assessed pursuant to K.S.A. 2017 Supp. 38-2314(c)(2), and**  
26 **amendments thereto.**

27       **(d) Except as otherwise prohibited by law or policy, the court**  
28 **shall make any of the reports ordered pursuant to subsection (a)**  
29 **available to the attorneys and shall allow the attorneys a reasonable**  
30 **time to review the report before ordering the sentencing of the**  
31 **juvenile offender.**

32       **(e) At any time prior to sentencing, the judge, at the request of a**  
33 **party, shall hear additional evidence as to proposals for reasonable**  
34 **and appropriate sentencing of the case.**

35       **(f) *If a juvenile is being held in detention, a dispositional hearing to***  
36 ***sentence the juvenile offender shall take place within 45 days after such***  
37 ***juvenile offender has been adjudicated.***

38       ~~Sec. 2.~~ **3. K.S.A. 2017 Supp. 38-2343-is and 38-2360 are hereby**  
39 **repealed.**

40       ~~Sec. 3.~~ **4. This act shall take effect and be in force from and after its**  
41 **publication in the statute book.**