

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; overall**
3 **case length limits; absconders; Kansas juvenile justice oversight**
4 **committee;** amending K.S.A. 2017 Supp. 38-2343-~~and~~, **38-2360, 38-**
5 **2391 and 75-52,161** and repealing the existing ~~section~~ **sections.**
6

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

8 Section 1. K.S.A. 2017 Supp. 38-2343 is hereby amended to read as
9 follows: 38-2343. (a) *Basis for extended detention; findings and*
10 *placement.* Whenever a juvenile is taken into custody, the juvenile shall
11 not remain in detention for more than 48 hours, excluding Saturdays,
12 Sundays, legal holidays, and days on which the office of the clerk of the
13 court is not accessible, from the time the initial detention was imposed,
14 unless the court determines after hearing, within the 48-hour period, that
15 further detention is warranted based on the criteria in K.S.A. 2017 Supp.
16 38-2331, and amendments thereto.

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

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

24 (c) *Waiver of detention hearing.* The detention hearing may be
25 waived in writing by the juvenile and the juvenile's attorney with approval
26 of the court. The right to a detention hearing may be reasserted in writing
27 by the juvenile or the juvenile's attorney or parent at anytime not less than
28 48 hours prior to trial.

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

34 When there is insufficient time to give written notice, oral notice may

1 be given and is completed upon filing a certificate of oral notice with the
2 clerk.

3 (e) *Attorney for juvenile.* At the time set for the detention hearing if
4 no retained attorney is present to represent the juvenile, the court shall
5 appoint an attorney, and may recess the hearing for 24 hours, excluding
6 Saturdays, Sundays and legal holidays, to obtain attendance of the attorney
7 appointed.

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

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

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

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

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

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

42 (i) *Review hearing.* The court shall hold a detention review hearing at
43 least every 14 days that a juvenile is in detention to determine if the

1 juvenile should continue to be held in detention. ~~Each detention review~~
2 ~~hearing may be waived in writing by the juvenile and the juvenile's~~
3 ~~attorney with approval of the court.~~ The provisions of this subsection shall
4 not apply if the juvenile is charged with a crime that, if committed by an
5 adult, would constitute an off-grid felony or a nondrug severity level 1
6 through 4 person felony. **The review hearings provided in this**
7 **subsection are not required for a juvenile offender held in detention**
8 **awaiting disposition in such juvenile offender's case pursuant to**
9 **K.S.A. 2017 Supp. 38-2360(f), and amendments thereto.**

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

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

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

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

1 the juvenile's foster parents or legal guardian; and (H) other persons
2 that the chief administrative officer of the school, or the officer's
3 designee, deems appropriate.

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

14 (5) The court in its discretion may direct that the parents submit
15 a domestic relations affidavit.

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

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

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

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

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

41 *Sec. 3. K.S.A. 2017 Supp. 38-2391 is hereby amended to read as*
42 *follows: 38-2391. (a) Upon adjudication as a juvenile offender pursuant*
43 *to K.S.A. 2017 Supp. 38-2356, and amendments thereto, modification of*

1 *sentence pursuant to K.S.A. 2017 Supp. 38-2367, and amendments*
2 *thereto, or violation of a condition of sentence pursuant to K.S.A. 2017*
3 *Supp. 38-2368, and amendments thereto, the court may impose one or*
4 *more of the sentencing alternatives under K.S.A. 2017 Supp. 38-2361,*
5 *and amendments thereto, for a period of time pursuant to this section*
6 *and K.S.A. 2017 Supp. 38-2369, and amendments thereto. The period of*
7 *time ordered by the court shall not exceed the overall case length limit.*

8 *(b) Except as provided in subsection (c), the overall case length*
9 *limit shall be calculated based on the adjudicated offense and the results*
10 *of a risk and needs assessment, as follows:*

11 *(1) Offenders adjudicated for a misdemeanor may remain under the*
12 *jurisdiction of the court for up to 12 months;*

13 *(2) low-risk and moderate-risk offenders adjudicated for a felony*
14 *may remain under court jurisdiction for up to 15 months; and*

15 *(3) high-risk offenders adjudicated for a felony may remain under*
16 *court jurisdiction for up to 18 months.*

17 *(c) There shall be no overall case length limit for a juvenile*
18 *adjudicated for a felony which, if committed by an adult, would*
19 *constitute an off-grid felony or a nondrug severity level 1 through 4*
20 *person felony.*

21 *(d) When a juvenile is adjudicated for multiple counts, the*
22 *maximum overall case length shall be calculated based on the most*
23 *severe adjudicated count or any other adjudicated count at the court's*
24 *discretion. The court shall not run multiple adjudicated counts*
25 *consecutively.*

26 *(e) When the juvenile is adjudicated for multiple cases*
27 *simultaneously, the court shall run those cases concurrently.*

28 *(f) Upon expiration of the overall case length limit as defined in*
29 *subsection (b), the court's jurisdiction terminates and shall not be*
30 *extended.*

31 *(g) (1) For the purposes of placing juvenile offenders on probation*
32 *pursuant to K.S.A. 2017 Supp. 38-2361, and amendments thereto, the*
33 *court shall establish a specific term of probation as specified in this*
34 *subsection based on the most serious adjudicated count in combination*
35 *with the results of a risk and needs assessment, as follows, except that*
36 *the term of probation shall not exceed the overall case length limit:*

37 *(A) Low-risk and moderate-risk offenders adjudicated for a*
38 *misdemeanor and low-risk offenders adjudicated for a felony may be*
39 *placed on probation for a term up to six months;*

40 *(B) high-risk offenders adjudicated for a misdemeanor and*
41 *moderate-risk offenders adjudicated for a felony may be placed on*
42 *probation for a term up to nine months; and*

43 *(C) high-risk offenders adjudicated for a felony may be placed on*

1 *probation for a term up to 12 months.*

2 *(2) The court may extend the term of probation if a juvenile needs*
3 *time to complete an evidence-based program as determined to be*
4 *necessary based on the results of a validated risk and needs assessment.*
5 *The court may also extend the term of probation for good cause shown*
6 *for one month for low-risk offenders, three months for moderate-risk*
7 *offenders and six months for high-risk offenders. Prior to extension of*
8 *the initial probationary term, the court shall find and enter into the*
9 *written record the criteria permitting extension of probation. Extensions*
10 *of probation shall only be granted incrementally and shall not exceed*
11 *the overall case length limit. When the court extends the term of*
12 *probation for a juvenile offender, the court services officer or*
13 *community correctional services officer responsible for monitoring such*
14 *juvenile offender shall record the reason given for extending probation.*
15 *Court services officers shall report such records to the office of judicial*
16 *administration, and community correctional services officers shall*
17 *report such records to the department of corrections. The office of*
18 *judicial administration and the department of corrections shall report*
19 *such recorded data to the Kansas juvenile justice oversight committee on*
20 *a quarterly basis.*

21 *(3) The probation term limits do not apply to those offenders*
22 *adjudicated for an offense which, if committed by an adult, would*
23 *constitute an off-grid crime, rape as defined in K.S.A. 2017 Supp. 21-*
24 *5503(a)(1), and amendments thereto, aggravated criminal sodomy as*
25 *defined in K.S.A. 2017 Supp. 21-5504(b)(3), and amendments thereto, or*
26 *murder in the second degree as defined in K.S.A. 2017 Supp. 21-5403,*
27 *and amendments thereto. Such offenders may be placed on probation*
28 *for a term consistent with the overall case length limit.*

29 *(4) The probation term limits and overall case length limits*
30 *provided in this section shall be tolled during any time that the offender*
31 *has absconded from supervision while on probation, and the time on*
32 *such limits shall not start to run again until the offender is located and*
33 *brought back to the jurisdiction.*

34 *(h) For the purpose of placing juvenile offenders in detention*
35 *pursuant to K.S.A. 2017 Supp. 38-2361 and 38-2369, and amendments*
36 *thereto, the court shall establish a specific term of detention. The term of*
37 *detention shall not exceed the overall case length limit or the cumulative*
38 *detention limit. Cumulative detention use shall be limited to a maximum*
39 *of 45 days over the course of the juvenile offender's case, except that*
40 *there shall be no limit on cumulative detention for juvenile offenders*
41 *adjudicated for a felony which, if committed by an adult, would*
42 *constitute an off-grid felony or a nondrug severity level 1 through 4*
43 *person felony.*

1 ***(i) The provisions of this section shall apply upon disposition or 15***
2 ***days after adjudication, whichever is sooner, unless the juvenile fails to***
3 ***appear for such juvenile's dispositional hearing. If a juvenile fails to***
4 ***appear at such juvenile's dispositional hearing, the probation term limits***
5 ***and overall case length limits provided in this section shall not apply until***
6 ***the juvenile is brought before the court for disposition in such juvenile's***
7 ***case.***

8 ***(j) This section shall be part of and supplemental to the revised***
9 ***Kansas juvenile justice code.***

10 ***Sec. 4. K.S.A. 2017 Supp. 75-52,161 is hereby amended to read as***
11 ***follows: 75-52,161. (a) There is hereby established the Kansas juvenile***
12 ***justice oversight committee for the purpose of overseeing the***
13 ***implementation of reform measures intended to improve the state's***
14 ***juvenile justice system.***

15 ***(b) The Kansas juvenile justice oversight committee shall be***
16 ***composed of 21 members including the following individuals:***

17 ***(1) The governor or the governor's designee;***

18 ***(2) one member of the house of representatives appointed by the***
19 ***speaker of the house of representatives;***

20 ***(3) one member of the house of representatives appointed by the***
21 ***minority leader of the house of representatives;***

22 ***(4) one member of the senate appointed by the president of the***
23 ***senate;***

24 ***(5) one member of the senate appointed by the minority leader of***
25 ***the senate;***

26 ***(6) the secretary of corrections or the secretary's designee;***

27 ***(7) the secretary for children and families or the secretary's***
28 ***designee;***

29 ***(8) the commissioner of education or the commissioner's designee;***

30 ***(9) the deputy secretary of juvenile services at the department of***
31 ***corrections or the deputy's designee;***

32 ***(10) the director of community-based services at the department of***
33 ***corrections, or the director's designee;***

34 ***(11) two district court judges appointed by the chief justice of the***
35 ***supreme court;***

36 ***(12) one chief court services officer appointed by the chief justice of***
37 ***the supreme court;***

38 ***(13) one member of the office of judicial administration appointed***
39 ***by the chief justice of the supreme court;***

40 ***(14) one juvenile defense attorney appointed by the chief justice of***
41 ***the supreme court;***

42 ***(15) one juvenile crime victim advocate appointed by the governor;***

43 ***(16) one member from a local law enforcement agency appointed***

1 *by the attorney general;*

2 *(17) one attorney from a prosecuting attorney's office appointed by*
3 *the attorney general;*

4 *(18) one member from a community corrections agency appointed*
5 *by the governor;*

6 *(19) one youth member of the Kansas advisory group on juvenile*
7 *justice and delinquency prevention appointed by the chair of the Kansas*
8 *advisory group on juvenile justice and delinquency prevention; and*

9 *(20) one director of a juvenile detention facility appointed by the*
10 *attorney general.*

11 *(c) The committee shall be appointed by September 1, 2016, and*
12 *shall meet within 60 days after appointment and at least quarterly*
13 *thereafter, upon notice by the chair. The committee shall select a*
14 *chairperson and vice-chairperson, and 11 members shall be considered*
15 *a quorum.*

16 *(d) The committee shall perform the following duties:*

17 *(1) Guide and evaluate the implementation of the changes in law*
18 *relating to juvenile justice reform;*

19 *(2) define performance measures and recidivism;*

20 *(3) approve a plan developed by court services and the department*
21 *of corrections instituting a uniform process for collecting and reviewing*
22 *performance measures and recidivism, costs and outcomes of programs;*

23 *(4) consider utilizing the Kansas criminal justice information*
24 *system for data collection and analyses;*

25 *(5) ensure system integration and accountability;*

26 *(6) monitor the fidelity of implementation efforts to programs and*
27 *training efforts;*

28 *(7) ~~evaluate~~ monitor any state expenditures that have been avoided*
29 *by reductions in the number of youth placed in out-of-home placements*
30 *to recommend to the governor and the legislature reinvestment of funds*
31 *into:*

32 *(A) Evidence-based practices and programs in the community*
33 *pursuant to K.S.A. 2017 Supp. 38-2302, and amendments thereto, for*
34 *use by intake and assessment services, immediate intervention, probation*
35 *and conditional release;*

36 *(B) training on evidence-based practices for juvenile justice system*
37 *staff, including, but not limited to, training in cognitive behavioral*
38 *therapies, family-centered therapies, substance abuse, sex offender*
39 *therapy and other services that address a juvenile's risks and needs; and*

40 *(C) monitor the plan from the department of corrections for the*
41 *prioritization of funds pursuant to K.S.A. 2017 Supp. 75-52,164(d), and*
42 *amendments thereto;*

43 *(8) continue to review any additional topics relating to the*

1 *continued improvement of the juvenile justice system, including:*

2 *(A) The confidentiality of juvenile records;*

3 *(B) the reduction of the financial burden placed on families*
4 *involved in the juvenile justice system;*

5 *(C) juvenile due process rights, including, but not limited to, the*
6 *development of rights to a speedy trial and preliminary hearings;*

7 *(D) the improvement of conditions of confinement for juveniles;*

8 *(E) the removal from the home of children in need of care for non-*
9 *abuse or neglect, truancy, running away or additional child behavior*
10 *problems when there is no court finding of parental abuse or neglect;*
11 *and*

12 *(F) the requirement for youth residential facilities to maintain sight*
13 *and sound separation between children in need of care that have an*
14 *open juvenile offender case and children in need of care that do not*
15 *have an open juvenile offender case;*

16 *(9) adhere to the goals of the juvenile justice code as provided in*
17 *K.S.A. 2017 Supp. 38-2301, and amendments thereto;*

18 *(10) analyze and investigate gaps in the juvenile justice system and*
19 *explore alternatives to out-of-home placement of juvenile offenders in*
20 *youth residential facilities;*

21 *(11) identify evidence-based training models, needs and resources*
22 *and make appropriate recommendations;*

23 *(12) study and create a plan to address the disparate treatment and*
24 *availability of resources for juveniles with mental health needs in the*
25 *juvenile justice system; and*

26 *(13) review portions of juvenile justice reform that require the*
27 *department of corrections and the office of judicial administration to*
28 *cooperate and make recommendations when there is not consensus*
29 *between the two agencies.*

30 *(e) The committee shall issue an annual report to the governor, the*
31 *president of the senate, the speaker of the house of representatives and*
32 *the chief justice of the supreme court on or before November 30 each*
33 *year starting in 2017. Such report shall include:*

34 *(1) An assessment of the progress made in implementation of*
35 *juvenile justice reform efforts;*

36 *(2) a summary of the committee's efforts in fulfilling its duties as*
37 *set forth in this section;*

38 *(3) an analysis of the recidivism data obtained by the committee*
39 *pursuant to this section;*

40 *(4) a summary of the averted costs—calculated by the committee—*
41 *determined pursuant to this section and a recommendation for any*
42 *reinvestment of the averted costs to fund services or programs to expand*
43 *Kansas' continuum of alternatives for juveniles who would otherwise be*

1 *placed in out-of-home placements;*

2 *(5) an analysis of detention risk-assessment data to determine if any*
3 *disparate impacts resulted at any stage of the juvenile justice system*
4 *based on race, sex, national origin or economic status;*

5 *(6) recommendations for continued improvements to the juvenile*
6 *justice system;*

7 *(7) data pertaining to the completion of training on evidence-based*
8 *practices in juvenile justice, including, but not limited to, the number of*
9 *judges, district and county attorneys and appointed defense attorneys,*
10 *that participated in training; and*

11 *(8) data received from the office of judicial administration and the*
12 *department of corrections, pursuant to K.S.A. 2017 Supp. 38-2391, and*
13 *amendments thereto, pertaining to extensions of probation for juvenile*
14 *offenders and an analysis of such data to identify how probation*
15 *extensions are being used and conclusions regarding the effectiveness of*
16 *such extensions.*

17 *(f) After initial appointment, members appointed to this committee*
18 *by the governor, the president of the senate, the speaker of the house of*
19 *representatives or the chief justice of the supreme court pursuant to*
20 *subsection (b), shall serve for a term of two years and shall be eligible*
21 *for reappointment to such position. All members appointed to the*
22 *committee shall serve until a successor has been duly appointed.*

23 *(g) The staff of the Kansas department of corrections shall provide*
24 *such assistance as may be requested by the committee. To facilitate the*
25 *organization of the meetings of the committee, the Kansas department of*
26 *corrections shall provide administrative assistance.*

27 ~~Sec. 2-3.~~ 5. K.S.A. 2017 Supp. 38-2343 ~~is and, 38-2360, 38-2391~~
28 ~~and 75-52,161~~ are hereby repealed.

29 ~~Sec. 3-4.~~ 6. This act shall take effect and be in force from and after
30 its publication in the statute book.