

SENATE BILL No. 608

By Committee on Judiciary

2-15

AN ACT concerning juvenile offenders; relating to intake and assessment; custody and arrest; rights; amending K.S.A. 38-1606 and 38-1624 and K.S.A. 2001 Supp. 75-7023 and repealing the existing sections.

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

Section 1. K.S.A. 38-1606 is hereby amended to read as follows: 38-1606. (a) *Appointment of attorney to represent juvenile. (1) A juvenile who is taken into custody and taken to an intake and assessment program pursuant to the provisions of K.S.A. 38-1624, and amendments thereto, is entitled to have the assistance of an attorney during the intake and assessment process pursuant to the provisions of K.S.A. 75-7023, and amendments thereto.*

(2) A juvenile charged under this code 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 parents 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 or 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) *Attorneys' fees.* Attorneys appointed ~~hereunder~~ 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. 38-1613, and amendments thereto.

Sec. 2. K.S.A. 38-1624 is hereby amended to read as follows: 38-1624. (a) *By a law enforcement officer.* A law enforcement officer may take an alleged juvenile offender into custody when:

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

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

1 into custody;

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

5 (4) the officer has probable cause to believe that the juvenile is com-
6 mitting or has committed an act which, if committed by an adult, would
7 constitute:

8 (A) A felony; or

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

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

16 (b) *By a court services officer or juvenile community corrections of-*
17 *ficer.* A court services officer or juvenile community corrections officer
18 may take a juvenile into custody when there is a warrant commanding
19 that the juvenile be taken into custody, when the officer has probable
20 cause to believe that a warrant or order commanding that the juvenile be
21 taken into custody has been issued in this state or in another jurisdiction
22 for an act committed therein or when there is probable cause to believe
23 that the juvenile has violated an order for electronic monitoring as a term
24 of probation. Any court services officer or juvenile community correction
25 officer may arrest a juvenile without a warrant or may deputize any other
26 officer with power of arrest to arrest a juvenile without a warrant by giving
27 the officer a written statement setting forth that the juvenile, in the judg-
28 ment of the court services officer or juvenile community correction of-
29 ficer, has violated the condition of the juvenile's release. The written
30 statement delivered with the juvenile by the arresting officer to the official
31 in charge of a juvenile detention facility or other place of detention shall
32 be sufficient warrant for the detention of the juvenile.

33 (c) *Procedure.* (1) When any law enforcement officer takes an al-
34 leged juvenile offender into custody, the juvenile shall be taken without
35 unnecessary delay to an intake and assessment worker if an intake and
36 assessment program exists in the jurisdiction, or before the court for pro-
37 ceedings in accordance with this code or, if the court is not open for the
38 regular conduct of business, to a court services officer, a juvenile intake
39 and assessment worker, a juvenile detention facility or youth residential
40 facility which the court or the commissioner shall have designated. The
41 officer shall not take the juvenile to a juvenile detention facility unless
42 the juvenile meets one or more of the criteria listed in K.S.A. 38-1640,
43 and amendments thereto. Even if the juvenile meets one or more of such

1 criteria, the officer shall first consider whether taking the juvenile to an
2 available nonsecure facility is more appropriate.

3 (2) It shall be the duty of the officer to furnish the county or district
4 attorney or the juvenile intake and assessment worker if the officer has
5 delivered such juvenile to the worker, with all of the information in the
6 possession of the officer pertaining to the juvenile; the juvenile's parents,
7 or other persons interested in or likely to be interested in the juvenile;
8 and all other facts and circumstances which caused the juvenile to be
9 arrested or taken into custody; *and with an acknowledgment that the*
10 *juvenile was advised of the juvenile's rights pursuant to this section.*

11 (3) (A) When the juvenile is less than 14 years of age, no in-custody
12 or arrest admission or confession resulting from interrogation may be
13 admitted into evidence unless the confession or admission was made fol-
14 lowing a consultation between the juvenile and the juvenile's parents,
15 guardian or attorney as to whether the juvenile will waive such juvenile's
16 right to an attorney and right against self-incrimination. It shall be the
17 duty of the facility where the juvenile has been delivered to make a rea-
18 sonable effort to contact the parent or guardian immediately upon such
19 juvenile's arrival unless such parent or guardian is the alleged victim or
20 alleged codefendant of the crime under investigation.

21 (B) When a parent or guardian is the alleged victim or alleged cod-
22 efendant of the crime under investigation and the juvenile is less than 14
23 years of age, no in-custody or arrest admission or confession may be ad-
24 mitted into evidence unless the confession or admission was made fol-
25 lowing a consultation between the juvenile and a parent or guardian who
26 is not involved in the investigation of the crime, or an attorney as to
27 whether the juvenile will waive such juvenile's right to an attorney and
28 right against self-incrimination. It shall be the duty of the facility where
29 the juvenile has been delivered to make reasonable effort to contact a
30 parent or guardian who is not involved in the investigation of the crime
31 immediately upon such juvenile's arrival.

32 (4) (A) *When an officer takes an alleged juvenile offender into cus-*
33 *tody or arrests an alleged juvenile offender, the juvenile shall be advised*
34 *that:*

35 (i) *The juvenile has a right to remain silent;*

36 (ii) *any statement the juvenile does make can be and may be used*
37 *against the juvenile;*

38 (iii) *the juvenile has a right to have a parent or guardian present*
39 *during questioning; and*

40 (iv) *the juvenile has a right to consult with an attorney and that one*
41 *will be appointed for the juvenile if the juvenile is not represented and*
42 *wants representation.*

43 (B) *Such officer shall provide a written acknowledgment that the al-*

1 *leged juvenile offender was advised of such rights.*

2 (C) *If the juvenile indicates in any manner and at any stage of ques-*
3 *tioning pursuant to this subsection that the juvenile does not wish to be*
4 *questioned further, the officer shall cease questioning.*

5 (D) *Before admitting any statement resulting from custodial inter-*
6 *rogation into evidence, the judge shall find that the juvenile knowingly,*
7 *willingly and understandingly waived the juvenile's rights.*

8 (E) *The provisions of this subsection shall not apply to juveniles who*
9 *have been adjudicated pursuant to article 15 of chapter 38 of the Kansas*
10 *Statutes Annotated, and amendments thereto.*

11 (d) *Release prior to detention hearing.* In the absence of a court order
12 to the contrary, the court or officials designated by the court, the county
13 or district attorney or the law enforcement agency taking a juvenile into
14 custody shall have the authority to direct the release of the juvenile prior
15 to the time specified by subsection (a) of K.S.A. 38-1632 and amendments
16 thereto. In addition, if an agreement is established pursuant to K.S.A. 38-
17 1635, and amendments thereto, a juvenile intake and assessment worker
18 shall have the authority to direct the release of a juvenile prior to a de-
19 tention hearing after the completion of the intake and assessment process
20 if the juvenile intake and assessment worker has reason to believe that if
21 released the juvenile will appear for further proceedings and will not be
22 dangerous to self or others.

23 (e) *Person 18 or over taken into custody; detention and release.*
24 Whenever a person 18 years of age or more is taken into custody by a
25 law enforcement officer for an alleged offense which was committed prior
26 to the time the person reached the age of 18, the officer shall notify and
27 refer the matter to the court for proceedings pursuant to this code, except
28 that the provisions of this code relating to detention hearings shall not
29 apply to that person. If detention is necessary, the person shall be de-
30 tained in jail. Unless the law enforcement officer took the person into
31 custody pursuant to a warrant issued by the court and the warrant spec-
32 ifies the amount of bond or indicates that the person may be released on
33 personal recognizance, the person shall be taken before the court of the
34 county where the alleged act took place or, at the request of the person,
35 the person shall be taken, without delay, before the nearest court. The
36 court shall fix the terms and conditions of an appearance bond upon which
37 the person may be released from custody. The provisions of article 28 of
38 chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901 and
39 amendments thereto relating to appearance bonds and review of condi-
40 tions and release shall be applicable to appearance bonds provided for in
41 this section.

42 Sec. 3. K.S.A. 2001 Supp. 75-7023 is hereby amended to read as
43 follows: 75-7023. (a) The supreme court through administrative orders

1 shall provide for the establishment of a juvenile intake and assessment
2 system and for the establishment and operation of juvenile intake and
3 assessment programs in each judicial district. On and after July 1, 1997,
4 the secretary of social and rehabilitation services may contract with the
5 commissioner of juvenile justice to provide for the juvenile intake and
6 assessment system and programs for children in need of care. Except as
7 provided further, on and after July 1, 1997, the commissioner of juvenile
8 justice shall promulgate rules and regulations for the juvenile intake and
9 assessment system and programs concerning juvenile offenders. If the
10 commissioner contracts with the office of judicial administration to ad-
11 minister the juvenile intake and assessment system and programs con-
12 cerning juvenile offenders, the supreme court administrative orders shall
13 be in force until such contract ends and the rules and regulations con-
14 cerning juvenile intake and assessment system and programs concerning
15 juvenile offenders have been adopted.

16 ~~(b) No records, reports and information obtained as a part of the~~
17 ~~juvenile intake and assessment process may be admitted into evidence in~~
18 ~~any proceeding and may not be used in a child in need of care proceeding~~
19 ~~except for diagnostic and referral purposes and by the court in considering~~
20 ~~dispositional alternatives. However, if the records, reports or information~~
21 ~~are in regard to abuse or neglect, which is required to be reported under~~
22 ~~K.S.A. 38-1522, and amendments thereto, such records, reports or infor-~~
23 ~~mation may then be used for any purpose in a child in need of care~~
24 ~~proceeding pursuant to the Kansas code for care of children.~~

25 ~~—(e) (1) Upon a juvenile being taken into custody pursuant to K.S.A.~~
26 ~~38-1624, and amendments thereto, a juvenile intake and assessment~~
27 ~~worker shall complete the intake and assessment process as required by~~
28 ~~supreme court administrative order or district court rule prior to July 1,~~
29 ~~1997, or except as provided above rules and regulations established by~~
30 ~~the commissioner of juvenile justice on and after July 1, 1997.~~

31 ~~(2) Prior to commencement of the juvenile intake and assessment pro-~~
32 ~~cess, the juvenile intake and assessment worker shall provide the juvenile~~
33 ~~with a written statement of the juvenile's rights as provided in K.S.A. 38-~~
34 ~~1624, and amendments thereto. It shall be the duty of the juvenile intake~~
35 ~~and assessment worker to make reasonable effort to contact the juvenile's~~
36 ~~parent or legal guardian at the initiation of the juvenile intake and as-~~
37 ~~essment process unless such parent or legal guardian is the alleged victim~~
38 ~~or alleged codefendant of the crime under investigation in which case~~
39 ~~reasonable effort to contact another responsible adult shall be made.~~

40 ~~(d) (c) Except as provided in subsection (g) or when a juvenile de-~~
41 ~~clines to participate and in addition to any other information required by~~
42 ~~the supreme court administrative order, the secretary, the commissioner~~
43 ~~or by the district court of such district, the juvenile intake and assessment~~

1 worker shall collect the following information:

2 (1) A standardized, *validated* risk assessment tool, such as the prob-
3 lem-oriented screening instrument for teens;

4 (2) criminal history, including indications of criminal gang
5 involvement;

6 (3) *physical, sexual and emotional* abuse history;

7 (4) substance abuse history;

8 (5) history of prior community services used or treatments provided;

9 (6) educational history;

10 (7) medical history; and

11 (8) family history.

12 ~~(c)~~ (d) After completion of the intake and assessment process for such
13 child, the intake and assessment worker may:

14 (1) Release the child to the custody of the child's parent, other legal
15 guardian or another appropriate adult if the intake and assessment worker
16 believes that it would be in the best interest of the child and it would not
17 be harmful to the child to do so.

18 (2) Conditionally release the child to the child's parent, other legal
19 guardian or another appropriate adult if the intake and assessment worker
20 believes that if the conditions are met, it would be in the child's best
21 interest to release the child to such child's parent, other legal guardian
22 or another appropriate adult; and the intake and assessment worker has
23 reason to believe that it might be harmful to the child to release the child
24 to such child's parents, other legal guardian or another appropriate adult
25 without imposing the conditions. The conditions may include, but not be
26 limited to:

27 (A) Participation of the child in counseling;

28 (B) participation of members of the child's family in counseling;

29 (C) participation by the child, members of the child's family and other
30 relevant persons in mediation;

31 (D) provision of inpatient treatment for the child;

32 (E) referral of the child and the child's family to the secretary of social
33 and rehabilitation services for services and the agreement of the child and
34 family to accept and participate in the services offered;

35 (F) referral of the child and the child's family to available community
36 resources or services and the agreement of the child and family to accept
37 and participate in the services offered;

38 (G) requiring the child and members of the child's family to enter
39 into a behavioral contract which may provide for regular school attend-
40 ance among other requirements; or

41 (H) any special conditions necessary to protect the child from future
42 abuse or neglect.

43 (3) Deliver the child to a shelter facility or a licensed attendant care

1 center along with the law enforcement officer's written application. The
2 shelter facility or licensed attendant care facility shall then have custody
3 as if the child had been directly delivered to the facility by the law en-
4 forcement officer pursuant to K.S.A. 38-1528, and amendments thereto.

5 (4) Refer the child to the county or district attorney for appropriate
6 proceedings to be filed or refer the child and family to the secretary of
7 social and rehabilitation services for investigations in regard to the
8 allegations.

9 (5) Make recommendations to the county or district attorney con-
10 cerning immediate intervention programs which may be beneficial to the
11 juvenile.

12 ~~(e)~~ (e) The commissioner may adopt rules and regulations which allow
13 local juvenile intake and assessment programs to create a *standardized,*
14 *validated* risk assessment ~~tool~~, as long as such ~~tool~~ *assessment* meets the
15 mandatory reporting requirements established by the commissioner.

16 ~~(e)~~ (f) Parents, guardians and juveniles may access the juvenile intake
17 and assessment programs on a voluntary basis. The parent or guardian
18 shall be responsible for the costs of any such program utilized.

19 Sec. 4. K.S.A. 38-1606 and 38-1624 and K.S.A. 2001 Supp. 75-7023
20 are hereby repealed.

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

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43