

## HOUSE BILL No. 2639

By Committee on Corrections and Juvenile Justice

Requested by Representative Maughan on behalf of Kansas Appleeased

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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.

1 (d) This section shall be a part of and supplemental to the revised  
2 Kansas juvenile justice code.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (m) "Jail" means:

9 (1) An adult jail or lockup; or

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

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

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

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

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

36 (r) "Juvenile intake and assessment worker" means a responsible  
37 adult trained and authorized to perform intake and assessment services as  
38 part of the intake and assessment system established pursuant to K.S.A.  
39 75-7023, and amendments thereto.

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

1 the provisions of K.S.A. 41-727, 74-8810(j) or 21-6301(a)(14), and  
2 amendments thereto, but does not include:

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

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

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

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

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

12 (C) convicted or sentenced as an adult in another state or foreign  
13 jurisdiction under substantially similar procedures described in K.S.A. 38-  
14 2347, and amendments thereto, or because of attaining the age of majority  
15 designated in that state or jurisdiction.

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

20 (u) "Overall case length limit" when used in relation to a juvenile  
21 adjudicated a juvenile offender means the maximum jurisdiction of the  
22 court following disposition on an individual case. Pursuant to K.S.A. 38-  
23 2304, and amendments thereto, the case and the court's jurisdiction shall  
24 terminate once the overall case length limit expires and may not be  
25 extended.

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

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

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

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

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

- 1 (2) describes the child's level of physical health, mental and  
2 emotional health and educational functioning;
- 3 (3) provides an assessment of the needs of the child and family;
- 4 (4) describes the services to be provided to the child, the child's  
5 family and the child's foster parents, if appropriate;
- 6 (5) includes a description of the tasks and responsibilities designed to  
7 achieve the plan and to whom assigned;
- 8 (6) includes measurable objectives and time schedules for achieving  
9 the plan; and
- 10 (7) if the child is in an out of home placement:
- 11 (A) Provides a statement for the basis of determining that  
12 reintegration is determined not to be a viable option if such a  
13 determination is made and includes a plan for another permanent living  
14 arrangement;
- 15 (B) describes available alternatives;
- 16 (C) justifies the alternative placement selected, including a  
17 description of the safety and appropriateness of such placement; and
- 18 (D) describes the programs and services that will help the child  
19 prepare to live independently as an adult.
- 20 (z) "Risk and needs assessment" means a standardized instrument  
21 administered on juveniles to identify specific risk factors and needs shown  
22 to be statistically related to a juvenile's risk of reoffending and, when  
23 properly addressed, can reduce a juvenile's risk of reoffending.
- 24 (aa) "Secretary" means the secretary of corrections or the secretary's  
25 designee.
- 26 (bb) "Technical violation" means an act that violates the terms or  
27 conditions imposed as part of a probation disposition pursuant to K.S.A.  
28 38-2361, and amendments thereto, and that does not constitute a new  
29 juvenile offense or a new child in need of care violation pursuant to K.S.A.  
30 38-2202(d), and amendments thereto.
- 31 (cc) "Warrant" means a written order by a judge of the court directed  
32 to any law enforcement officer commanding the officer to take into  
33 custody the juvenile named or described therein.
- 34 (dd) "Youth residential facility" means any home, foster home or  
35 structure ~~which~~ that provides 24-hour-a-day care for juveniles and ~~which~~  
36 is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of  
37 the Kansas Statutes Annotated, and amendments thereto.
- 38 (ee) "Behavioral health crisis" means behavioral and conduct issues  
39 that impact the safety or health of a juvenile, members of the juvenile's  
40 household or family or members of the community, including, but not  
41 limited to, non-life threatening mental health and substance abuse  
42 concerns.
- 43 (ff) *"Hearing" means any court proceeding held under this code,*

1 *including, but not limited to, detention, first appearance, adjudicatory,*  
2 *dispositional and sentencing hearings.*

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

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

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

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

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

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