

HOUSE BILL No. 2471

By Joint Committee on Corrections and Juvenile Justice Oversight

1-10

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

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

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

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

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

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

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

21 (2) If an officer of the court or the county or district attorney
22 recommends the use of restraints on a juvenile, the officer or attorney shall
23 provide written notice to the court and the juvenile's attorney of the
24 specific circumstances that support such recommendation. Such notice
25 shall also be made part of the record.

26 (3) The court shall allow the juvenile's attorney and, if applicable, the
27 officer or attorney recommending the use of restraints to be heard before
28 the court makes a ruling on the use of restraints.

29 (4) If the court orders the use of restraints on a juvenile, the court
30 shall:

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

32 (B) only order the least restrictive restraints necessary and allow the
33 juvenile sufficient movement of the hands to be able to read and handle
34 documents and writings necessary to the hearing.

35 (c) (1) The use of any restraints necessary for purposes of security
36 and courtroom decorum shall properly account for the care, protection, and

1 positive mental and physical development of the juvenile.

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

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

6 Sec. 2. K.S.A. 38-2302 is hereby amended to read as follows: 38-
7 2302. As used in this code, unless the context otherwise requires:

8 (a) "Commissioner" means the secretary of corrections or the
9 secretary's designee.

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

14 (c) "Conditional release" means release from a term of commitment
15 in a juvenile correctional facility for an aftercare term pursuant to K.S.A.
16 38-2369, and amendments thereto, under conditions established by the
17 secretary of corrections.

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

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

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

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

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

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

42 (j) "Immediate intervention" means all programs or practices
43 developed by the county to hold juvenile offenders accountable while

1 allowing such offenders to be diverted from formal court processing
2 pursuant to K.S.A. 38-2346, and amendments thereto.

3 (k) "Institution" means the Larned juvenile correctional facility and
4 the Kansas juvenile correctional complex.

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

10 (m) "Jail" means:

11 (1) An adult jail or lockup; or

12 (2) a facility in the same building as an adult jail or lockup, unless the
13 facility meets all applicable licensure requirements under law and there is:

14 (A) Total separation of the juvenile and adult facility spatial areas
15 such that there could be no haphazard or accidental contact between
16 juvenile and adult residents in the respective facilities;

17 (B) total separation in all juvenile and adult program activities within
18 the facilities, including recreation, education, counseling, health care,
19 dining, sleeping and general living activities; and

20 (C) separate juvenile and adult staff, including management, security
21 staff and direct care staff such as recreational, educational and counseling.

22 (n) "Juvenile" means a person to whom one or more of the following
23 applies, the person:

24 (1) Is 10 or more years of age but less than 18 years of age;

25 (2) is alleged to be a juvenile offender; or

26 (3) has been adjudicated as a juvenile offender and continues to be
27 subject to the jurisdiction of the court.

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

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

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

39 (r) "Juvenile intake and assessment worker" means a responsible
40 adult trained and authorized to perform intake and assessment services as
41 part of the intake and assessment system established pursuant to K.S.A.
42 75-7023, and amendments thereto.

43 (s) "Juvenile offender" means a person who commits an offense while

1 10 or more years of age but less than 18 years of age which if committed
2 by an adult would constitute the commission of a felony or misdemeanor
3 as defined by K.S.A. 2021 Supp. 21-5102, and amendments thereto, or
4 who violates the provisions of K.S.A. 41-727, K.S.A. 74-8810(j) or K.S.A.
5 2021 Supp. 21-6301(a)(14), and amendments thereto, but does not include:

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

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

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

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

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

15 (C) convicted or sentenced as an adult in another state or foreign
16 jurisdiction under substantially similar procedures described in K.S.A. 38-
17 2347, and amendments thereto, or because of attaining the age of majority
18 designated in that state or jurisdiction.

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

23 (u) "Overall case length limit" when used in relation to a juvenile
24 adjudicated a juvenile offender means the maximum jurisdiction of the
25 court following disposition on an individual case. Pursuant to K.S.A. 38-
26 2304, and amendments thereto, the case and the court's jurisdiction shall
27 terminate once the overall case length limit expires and may not be
28 extended.

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

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

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

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

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

1 (ff) "Restraints" means handcuffs, leg shackles, leg irons, belly belts,
2 belly chains or other restraint devices used to restrict a minor's free
3 movement of limbs or appendages, including those made of cloth and
4 leather.

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

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

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

24 Sec. 4. K.S.A. 38-2302 and 38-2353 are hereby repealed.

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