

Senate Substitute for HOUSE BILL No. 2588

AN ACT concerning children and minors; relating to the revised Kansas juvenile justice code; revised Kansas code for care of children; placement in juvenile detention facilities; permanent custodians; juvenile offenders; alternative adjudication; youth residential centers and services; prosecution as an adult; risk assessment; sentencing; good time credits; amending K.S.A. 2013 Supp. 21-6607, 38-2268, 38-2347, 38-2360, 38-2369, 38-2370 and 38-2372 and repealing the existing sections.

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

New Section 1. (a) *Findings and purpose.* The following findings and declaration of purpose apply to this section.

(1) The legislature finds that personal and familial circumstances may contribute to the commission of offenses by juveniles who represent a minimal threat to public safety and that in such cases it would further the interests of society and the juvenile to take an approach to adjudication that combines less formal procedures, appropriate disciplinary sanctions for misconduct and the provision of necessary services.

(2) It is the purpose of this section to provide prosecutors with an alternative means of adjudication for juvenile offenders who present a minimal threat to public safety and both the juvenile and society would benefit from such approach.

(b) *Designation.* A county or district attorney with jurisdiction over the offense who believes that proceedings under this section are appropriate may, in such county or district attorney's discretion, designate an alleged juvenile offender for adjudication under this section and not seek application of a placement within the placement matrix pursuant to K.S.A. 2013 Supp. 38-2369, and amendments thereto, if the alleged juvenile offender's act, if committed by an adult, would constitute a misdemeanor.

(1) The county or district attorney shall make such designation in the original complaint or by written notice filed with the court and served on the juvenile, the juvenile's counsel and the juvenile's parent or legal guardian within 14 days after the filing of the complaint.

(2) The filing of a written application for diversion under K.S.A. 2013 Supp. 38-2346, and amendments thereto, shall toll the running of the 14-day period and shall resume upon the issuance of a written denial of diversion.

(c) *Exceptions.* Except as provided in this subsection, the provisions of the revised Kansas juvenile justice code, K.S.A. 2013 Supp. 38-2301 et seq., and amendments thereto, shall apply in any adjudication under this section.

(1) If during the proceedings the court determines that there is probable cause to believe that the juvenile is a child in need of care as defined by 2013 Supp. K.S.A. 38-2202, and amendments thereto, the court shall refer the matter to the county or district attorney, who shall file a petition as provided in K.S.A. 2013 Supp. 38-2234, and amendments thereto, and refer the family to the Kansas department for children and families for services.

(A) If the court presiding over the proceeding under this section finds, in accordance with K.S.A. 2013 Supp. 38-2334 and 38-2335, and amendments thereto, that the juvenile should be removed from the home, the court may place the juvenile in the temporary custody of the secretary for children and families or any person, other than the child's parent, willing to accept temporary custody.

(B) If the child in need of care case is presided over by a different judge, the county or district attorney shall notify the court presiding over the proceedings under this section of pertinent orders entered in the child in need of care case.

(2) Notwithstanding any other provision of law, no juvenile shall be committed to a juvenile correctional facility pursuant to subsection (a)(12) of K.S.A. 2013 Supp. 38-2361, and amendments thereto, for an offense adjudicated under this section or for the violation of a term or condition of the disposition for such an offense.

(3) Notwithstanding any other provision of law, no adjudication under this section or violation of the terms and conditions of the disposition, including a placement failure, shall be used against the juvenile in a proceeding on a subsequent offense committed as a juvenile or as an adult. For purposes of this section, "used against the juvenile" includes, but is not limited to, establishing an element of a subsequent offense, raising the severity level of a subsequent offense or enhancing the sentence for a subsequent offense.

(4) Upon completion of the case and the termination of the court's jurisdiction, the court shall order the adjudication expunged, and the provisions of subsections (a), (b), (c), (d), (e), (i), (k) and (l) of K.S.A. 2013 Supp. 38-2312, and amendments thereto, shall not apply to such expungement.

(5) Notwithstanding any other provision of law, a juvenile shall not be required to register as an offender under the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, as a result of adjudication under this section.

(6) The provisions of K.S.A. 2013 Supp. 38-2309 and 38-2310, and amendments thereto, shall not apply to proceedings under this section.

(7) The provisions of K.S.A. 2013 Supp. 38-2347, and amendments thereto, shall not apply to proceedings under this section.

(8) The provisions of subsection (g)(1) of K.S.A. 2013 Supp. 38-2304, and amendments thereto, shall not apply to proceedings under this section.

(9) The trial of offenses under this section shall be to the court and the right to a trial by jury under K.S.A. 2013 Supp. 38-2357, and amendments thereto, shall not apply.

(d) *Withdrawal.* At any time prior to the beginning of a hearing at which the court may enter an order adjudicating the child as a juvenile offender, the county or district attorney may withdraw the designation for proceedings under this section by providing notice to the court, the juvenile, the juvenile's attorney and guardian ad litem, if any, and the juvenile's parent or legal guardian. Upon withdrawal of the designation, this section shall no longer apply and the case shall proceed and the court shall grant a continuance upon request.

(e) *Appeal.* An adjudication under this section is an appealable order pursuant to K.S.A. 2013 Supp. 38-2380, and amendments thereto.

(f) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

New Sec. 2. (a) Notwithstanding any other provision of law, no child alleged or found to be a child in need of care may be placed in a juvenile detention facility unless:

(1) Such placement is necessary to protect the safety of the child and is authorized by subsection (b) of K.S.A. 2013 Supp. 38-2232, and amendments thereto, or K.S.A. 2013 Supp. 38-2242, 38-2243 or 38-2260, and amendments thereto; or

(2) the child is also alleged to be a juvenile offender and such placement is authorized by K.S.A. 2013 Supp. 38-2330 or 38-2343, and amendments thereto.

(b) This section shall be part of and supplemental to the revised Kansas code for care of children.

New Sec. 3. (a) On or before January 15, 2015, the secretary of corrections shall perform the actions required by this section and report on such actions to the house committee on corrections and juvenile justice, the senate committee on federal and state affairs and the joint committee on corrections and juvenile justice oversight.

(b) The secretary shall conduct a cost study analysis of all youth residential centers for juvenile offenders under contract to provide services to the department of corrections. The cost study analysis shall:

(1) Include detailed analysis of allowable expenses necessary to meet the minimum requirements for: (A) Licensure of a youth residential center by the department of health and environment; (B) service under contracts with the department of corrections; and (C) compliance with the prison rape elimination act, 42 U.S.C. § 15601 et seq.; and

(2) identify any cost associated with program or other expenses which add value to the services provided to juvenile offenders by youth residential centers in addition to such minimum requirements.

(c) The secretary shall evaluate program needs within youth residential centers for juvenile offenders and compare such needs with program availability. The secretary shall propose modifications to the legislature which align program availability with program needs.

(d) The secretary shall develop a fee schedule for youth residential services for juvenile offenders to include daily payment rates necessary for base service and rates for program component additions to such base service.

(e) The secretary shall develop a plan for performance-based incentive payment opportunities and a plan for integration of such payment opportunities into the fee schedule developed pursuant to subsection (d). The secretary shall also develop a plan to measure performance and evaluate the effectiveness of juvenile offender service providers.

Sec. 4. K.S.A. 2013 Supp. 21-6607 is hereby amended to read as follows: 21-6607. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to K.S.A. 2013 Supp. 21-6609, and amendments thereto;

(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or

(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

(c) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program,

the court shall order the defendant to comply with each of the following conditions:

(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;

(2) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;

(3) (A) pay a correctional supervision fee of \$60 if the person was convicted of a misdemeanor or a fee of \$120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;

(B) the correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision;

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

(5) be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and

(6) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.

(d) Any law enforcement officer conducting a search pursuant to subsection (c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(e) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for: (1) The implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as

specified by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto; (2) *the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument for juveniles adjudicated to be juvenile offenders*; and ~~for~~ (3) evidence-based *adult and juvenile* offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support *adult and juvenile* offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

Sec. 5. K.S.A. 2013 Supp. 38-2268 is hereby amended to read as follows: 38-2268. (a) Prior to a hearing to consider the termination of parental rights, if the child's permanency plan is either adoption or appointment of a custodian, with the consent of the guardian ad litem and the secretary, either or both parents may relinquish parental rights to the child, consent to an adoption or consent to appointment of a permanent custodian.

(b) *Relinquishment of child to secretary.* (1) Any parent or parents may relinquish a child to the secretary, and if the secretary accepts the relinquishment in writing, the secretary shall stand in loco parentis to the child and shall have and possess over the child all rights of a parent, including the power to place the child for adoption and give consent thereto.

(2) All relinquishments to the secretary shall be in writing, in substantial conformity with the form for relinquishment contained in the appendix of forms following K.S.A. 59-2143, and amendments thereto, and shall be executed by either parent of the child.

(3) The relinquishment shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the relinquishment is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the relinquishing parent of the consequences of the relinquishment.

(4) Except as otherwise provided, in all cases where a parent has relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments thereto, all the rights of the parent shall be terminated, including the right to receive notice in a subsequent adoption proceeding involving the child. Upon such relinquishment, all the rights of the parents to such child, including such parent's right to inherit from or through such child, shall cease.

(5) If a parent has relinquished a child to the secretary based on a belief that the child's other parent would relinquish the child to the secretary or would be found unfit, and this does not occur, the rights of the parent who has relinquished a child to the secretary shall not be terminated.

(6) A parent's relinquishment of a child shall not terminate the right of the child to inherit from or through the parent.

(c) *Permanent custody.* (1) A parent may consent to appointment of ~~the secretary or~~ an individual as permanent custodian and if ~~the secretary or~~ individual accepts the consent, ~~the secretary or~~ such individual shall stand in loco parentis to the child and shall have and possess over the child all the rights of a legal guardian. ~~When the consent is to the secretary, the secretary shall have the right to place the child in the permanent custody of an individual who is appointed permanent custodian.~~

(2) All consents to appointment of a permanent custodian shall be in writing and shall be executed by either parent of the child.

(3) The consent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the consent is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the consenting parent of the consequences of the consent.

(4) If a parent has consented to appointment of a permanent custodian based upon a belief that the child's other parent would so consent

or would be found unfit, and this does not occur, the consent shall be null and void.

(d) *Adoption.* If the parental rights of one parent have been terminated or that parent has relinquished parental rights to the secretary, the other parent may consent to the adoption of the child by persons approved by the secretary or approved by the court. The consent shall follow the form contained in the appendix of forms following K.S.A. 59-2143, and amendments thereto.

Sec. 6. K.S.A. 2013 Supp. 38-2347 is hereby amended to read as follows: 38-2347. (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2013 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile unless good cause is shown to prosecute the juvenile as an adult. *No juvenile less than 12 years of age shall be prosecuted as an adult.*

(2) The alleged juvenile offender shall be presumed to be an adult if the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint, if any such offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony or a nondrug severity level 1 through 6 felony; (ii) committed prior to July 1, 2012, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or (iv) was committed while in possession of a firearm; or (B) charged with a felony or with more than one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an offense which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new act charged and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2013 Supp. 38-2356, and amendments thereto. If the juvenile is presumed to be an adult, the burden is on the juvenile to rebut the presumption by a preponderance of the evidence.

(3) At any time after commencement of proceedings under this code against a juvenile offender and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2013 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

(4) If the county or district attorney or the county or district attorney's designee files a motion to designate the proceedings as an extended jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint and: (A) Charged with an offense: (i) If committed by an adult, would constitute an off-grid crime, a person felony or a nondrug severity level 1 through 6 felony; (ii) committed prior to July 1, 2012, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony; (iii) committed on or after July 1, 2012, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or (iv) was committed while in possession of a firearm; or (B) charged with a felony or with more than, one offense, one or more of which constitutes a felony, after having been adjudicated or convicted in a separate juvenile proceeding as having committed an act which would constitute a felony if committed by an adult and the adjudications or convictions occurred prior to the date of the commission of the new offense charged, the burden is on the juvenile to rebut the designation of an extended jurisdiction juvenile prosecution by a preponderance of the evidence. In all other motions requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution, the juvenile is presumed to be a juvenile. The burden of proof is on the prosecutor

to prove the juvenile should be designated as an extended jurisdiction juvenile.

(b) The motion also may contain a statement that the prosecuting attorney will introduce evidence of the offenses alleged in the complaint and request that, on hearing the motion and authorizing prosecution as an adult or designating the proceedings as an extended jurisdiction juvenile prosecution under this code, the court may make the findings required in a preliminary examination provided for in K.S.A. 22-2902, and amendments thereto, and the finding that there is no necessity for further preliminary examination.

(c) (1) Upon receiving the motion, the court shall set a time and place for hearing. The court shall give notice of the hearing to the juvenile, each parent, if service is possible, and the attorney representing the juvenile. The motion shall be heard and determined prior to any further proceedings on the complaint.

(2) At the hearing, the court shall inform the juvenile of the following:

(A) The nature of the charges in the complaint;

(B) the right of the juvenile to be presumed innocent of each charge;

(C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(D) the right to subpoena witnesses;

(E) the right of the juvenile to testify or to decline to testify; and

(F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

(d) If the juvenile fails to appear for hearing on the motion after having been served with notice of the hearing, the court may hear and determine the motion in the absence of the juvenile. If the court is unable to obtain service of process and give notice of the hearing, the court may hear and determine the motion in the absence of the alleged juvenile offender after having given notice of the hearing at least once a week for two consecutive weeks in the official county newspaper of the county where the hearing will be held.

(e) In determining whether or not prosecution as an adult should be authorized or designating the proceeding as an extended jurisdiction juvenile prosecution, the court shall consider each of the following factors:

(1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;

(4) the number of alleged offenses unadjudicated and pending against the juvenile;

(5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;

(7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and

(8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2013 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

(f) (1) The court may authorize prosecution as an adult upon com-

pletion of the hearing if the court finds from a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the juvenile has failed to rebut the presumption or the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

(3) After a proceeding in which prosecution as an adult is requested pursuant to subsection (a)(2), and prosecution as an adult is not authorized, the court may designate the proceedings to be an extended jurisdiction juvenile prosecution.

(4) A juvenile who is the subject of an extended jurisdiction juvenile prosecution shall have the right to a trial by jury, to the effective assistance of counsel and to all other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court shall adopt local rules to establish the basic procedures for extended jurisdiction juvenile prosecution in such court's jurisdiction.

(g) If the juvenile is present in court and the court also finds from the evidence that it appears a felony has been committed and that there is probable cause to believe the felony has been committed by the juvenile, the court may direct that there is no necessity for further preliminary examination on the charges as provided for in K.S.A. 22-2902, and amendments thereto. In that case, the court shall order the juvenile bound over to the district judge having jurisdiction to try the case.

(h) If the juvenile is convicted, the authorization for prosecution as an adult shall attach and apply to any future prosecutions of the juvenile which are or would be cognizable under this code. If the juvenile is not convicted, the authorization for prosecution as an adult shall not attach and shall not apply to future prosecutions of the juvenile which are or would be cognizable under this code.

(i) If the juvenile is prosecuted as an adult under subsection (a)(2) and is not convicted in adult court of an offense listed in subsection (a)(2) but is convicted or adjudicated of a lesser included offense, the juvenile shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2013 Supp. 38-2361, and amendments thereto.

Sec. 7. K.S.A. 2013 Supp. 38-2360 is hereby amended to read as follows: 38-2360. (a) At any time after the juvenile has been adjudicated to be a juvenile offender, the court shall order one or more of the tools described in this subsection to be submitted to assist the court unless the court finds that adequate and current information is available from a previous investigation, report or other sources:

(1) An evaluation and written report by a mental health or a qualified professional stating the psychological or emotional development or needs of the juvenile. The court also may order a report from any mental health or qualified professional who has previously evaluated the juvenile stating the psychological or emotional development needs of the juvenile. If the court orders an evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an independent evaluation at the expense of the parent.

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

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

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

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

(b) Expenses for post adjudication tools may be waived or assessed pursuant to subsection (c)(2) of K.S.A. 2013 Supp. 38-2314, and amendments thereto.

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

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

Sec. 8. K.S.A. 2013 Supp. 38-2369 is hereby amended to read as follows: 38-2369. (a) For the purpose of committing juvenile offenders to a juvenile correctional facility, the following placements shall be applied by the judge in felony or misdemeanor cases. If used, the court shall establish a specific term of commitment as specified in this subsection, unless the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2013 Supp. 38-2371, and amendments thereto.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute a nondrug severity level 4, 5 or 6 person felony;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1 or 2 felony; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) *The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, person felony with one prior felony adjudication. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a*

maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(C) The serious offender ~~H-III~~ is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7-8, 9 or 10 person felony with one prior felony adjudication. *Offenders in this category may only be committed to a juvenile correctional facility if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2013 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed, offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.*

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present nonperson felony adjudication and two prior felony adjudications;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present drug severity level 3 felony adjudication and two prior felony adjudications; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior felony adjudications.

Offenders in this category may only be committed to a juvenile correctional facility if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2013 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed, offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(ii) which, if committed by an adult, would constitute one present felony adjudication and two prior drug severity level 4 or 5 adjudications;

(iii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present drug severity level 3 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(iv) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present drug severity level 3 felony adjudication and two prior drug severity level 4 or 5 adjudications;

(v) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication; or

(vi) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior drug severity level 4 or 5 adjudications.

Offenders in this category may only be committed to a juvenile correctional facility if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2013 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed, offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(C) The chronic offender III, escalating misdemeanant is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present misdemeanor adjudication and either two prior misdemeanor adjudica-

tions or one prior person or nonperson felony adjudication and two placement failures;

(ii) which, if committed by an adult, would constitute one present misdemeanor adjudication and two prior drug severity level 4 or 5 felony adjudications and two placement failures;

(iii) Which, if committed by an adult, would constitute one present drug severity level 4 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(iv) which, if committed by an adult, would constitute one present drug severity level 4 felony adjudication and two prior drug severity level 4 or 5 felony adjudications and two placement failures;

(v) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 5 felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures; or

(vi) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 5 felony adjudication and two prior drug severity level 4 or 5 adjudications and two placement failures.

Offenders in this category may only be committed to a juvenile correctional facility if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2013 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed, offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(4) *Conditional Release Violators.* Upon finding the juvenile violated a requirement or requirements of conditional release, the court may:

(A) Subject to the limitations in subsection (a) of K.S.A. 2013 Supp. 38-2366, and amendments thereto, commit the offender directly to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender shall be a minimum of two months and a maximum of six months, or the length of the aftercare originally ordered, whichever is longer.

(B) Enter one or more of the following orders:

(i) Recommend additional conditions be added to those of the existing conditional release.

(ii) Order the offender to serve a period of sanctions pursuant to subsection (f) of K.S.A. 2013 Supp. 38-2361, and amendments thereto.

(iii) Revoke or restrict the juvenile's driving privileges as described in subsection (c) of K.S.A. 2013 Supp. 38-2361, and amendments thereto.

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.

(b) As used in this section:

(1) "Placement failure" means a juvenile offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) All appropriate community placement options shall have been exhausted before a chronic offender III, escalating misdemeanant shall be

placed in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been pursued and no such option is appropriate.

(d) The commissioner shall work with the community to provide ongoing support and incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanor sentencing category is not frequently utilized.

(e) Any juvenile offender committed to a juvenile correctional facility who is adjudicated for an offense committed while such juvenile was committed to a juvenile correctional facility, may be adjudicated to serve a consecutive term of commitment in a juvenile correctional facility.

Sec. 9. K.S.A. 2013 Supp. 38-2370 is hereby amended to read as follows: 38-2370. (a) For purposes of determining release of a juvenile offender, a system shall be developed whereby good behavior is the expected norm and negative behavior will be punished.

(b) The commissioner shall adopt rules and regulations to carry out the provisions of this section regarding good time calculations. Such rules and regulations shall provide circumstances upon which a juvenile offender may earn good time credits through participation in programs which may include, but not be limited to, education programs, work participation, treatment programs, vocational programs, activities and behavior modification. Such good time credits may also include the juvenile offender's willingness to examine and confront the past behavior patterns that resulted in the commission of the juvenile's offense.

~~(c) If the placement sentence established in K.S.A. 2013 Supp. 38-2369, and amendments thereto, is used by the court, the juvenile offender shall serve no less than the minimum term authorized under the specific category of such placement sentence.~~

Sec. 10. K.S.A. 2013 Supp. 38-2372 is hereby amended to read as follows: 38-2372. In any action pursuant to the revised Kansas juvenile justice code in which the juvenile is adjudicated upon a plea of guilty or trial by court or jury or upon completion of an appeal, the judge, if sentencing the juvenile to incarceration, shall direct that, for the purpose of computing juvenile's sentence and release, eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order. Such date shall be established to reflect and shall be computed as an allowance for the time which the juvenile has spent incarcerated pending the disposition of the juvenile's case. In recording the date of commencement of such sentence, the date as specifically set forth by the court shall be used as the date of sentence and all good time calculations authorized by law are to be allowed on such sentence from such date as though the juvenile were actually incarcerated in a juvenile correctional facility. ~~Such credit shall not reduce the minimum term of incarceration authorized by law for the offense of which the juvenile has been adjudicated.~~

Sec. 11. K.S.A. 2013 Supp. 21-6607, 38-2268, 38-2347, 38-2360, 38-2369, 38-2370 and 38-2372 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.