

HOUSE BILL No. 2231

By Committee on Judiciary

1-31

AN ACT concerning juvenile offenders; relating to the right to an attorney during the intake and assessment process; amending K.S.A. 38-1606 and K.S.A. 2000 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 K.S.A. 38-1624, and amendments thereto, is entitled to have a parent or guardian present or the assistance of an attorney during the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto. The intake and assessment worker shall inform the juvenile and the juvenile's parents or guardian of the right to employ an attorney.*

(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.

(3) 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 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. 2000 Supp. 75-7023 is hereby amended to read as follows: 75-7023. (a) The supreme court through administrative orders shall provide for the establishment of a juvenile intake and assessment system and for the establishment and operation of juvenile intake and assessment programs in each judicial district. On and after July 1, 1997,

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

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

22 (c) (1) Upon a juvenile being taken into custody pursuant to K.S.A.
23 38-1624, and amendments thereto, a juvenile intake and assessment
24 worker shall complete the intake and assessment process as required by
25 supreme court administrative order or district court rule prior to July 1,
26 1997, or except as provided above rules and regulations established by
27 the commissioner of juvenile justice on and after July 1, 1997.

28 (2) *Prior to beginning the intake and assessment process, the intake*
29 *and assessment worker shall inform the juvenile and the juvenile's parents*
30 *or guardian of the right to employ an attorney pursuant to K.S.A. 38-*
31 *1606, and amendments thereto.*

32 (d) Except as provided in subsection (g) and in addition to any other
33 information required by the supreme court administrative order, the sec-
34 retary, the commissioner or by the district court of such district, the ju-
35 venile intake and assessment worker shall collect the following
36 information:

37 (1) A standardized risk assessment tool, such as the problem oriented
38 screening instrument for teens;

39 (2) criminal history, including indications of criminal gang
40 involvement;

41 (3) abuse history;

42 (4) substance abuse history;

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

- 1 (6) educational history;
- 2 (7) medical history; and
- 3 (8) family history.

4 (e) After completion of the intake and assessment process for such
5 child, the intake and assessment worker may:

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

10 (2) Conditionally release the child to the child's parent, other legal
11 guardian or another appropriate adult if the intake and assessment worker
12 believes that if the conditions are met, it would be in the child's best
13 interest to release the child to such child's parent, other legal guardian
14 or another appropriate adult; and the intake and assessment worker has
15 reason to believe that it might be harmful to the child to release the child
16 to such child's parents, other legal guardian or another appropriate adult
17 without imposing the conditions. The conditions may include, but not be
18 limited to:

19 (A) Participation of the child in counseling;

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

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

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

24 (E) referral of the child and the child's family to the secretary of social
25 and rehabilitation services for services and the agreement of the child and
26 family to accept and participate in the services offered;

27 (F) referral of the child and the child's family to available community
28 resources or services and the agreement of the child and family to accept
29 and participate in the services offered;

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

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

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

40 (4) Refer the child to the county or district attorney for appropriate
41 proceedings to be filed or refer the child and family to the secretary of
42 social and rehabilitation services for investigations in regard to the
43 allegations.

1 (5) Make recommendations to the county or district attorney con-
2 cerning immediate intervention programs which may be beneficial to the
3 juvenile.

4 (f) The commissioner may adopt rules and regulations which allow
5 local juvenile intake and assessment programs to create a risk assessment
6 tool, as long as such tool meets the mandatory reporting requirements
7 established by the commissioner.

8 (g) Parents, guardians and juveniles may access the juvenile intake
9 and assessment programs on a voluntary basis. The parent or guardian
10 shall be responsible for the costs of any such program utilized.

11 Sec. 3. K.S.A. 38-1606 and K.S.A. 2000 Supp. 75-7023 are hereby
12 repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.

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