

5
6 **HOUSE BILL No. 2328**

7
8 By Committee on Judiciary

9
10 2-5

11
12 AN ACT concerning ~~crimes and punishment~~ **[substance abuse]**; relat-
13 ing to abusing toxic vapors]; **concerning possession of a controlled**
14 **substance; amending K.S.A. 38-1663 and K.S.A. 2000 Supp. 65-**
15 **4162 and repealing the existing sections].**

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. (a) (1) Abusing toxic vapors is knowingly possessing, buy-
19 ing, using, smelling or inhaling the fumes of toxic vapors or knowingly
20 aiding any other person to use any such substance ~~for the purpose~~ **with**
21 **the intent** of causing a condition of euphoria, excitement, exhilaration,
22 stupefaction, or dulled senses of the nervous system.

23 (2) This subsection shall not apply to the inhalation of anesthesia or
24 other substances for medical or dental purposes.

25 (b) Abusing toxic vapors is a class B nonperson misdemeanor. In ad-
26 dition to any sentence or fine imposed, the court shall enter an order
27 which requires that the person enroll in and successfully complete an
28 alcohol and drug safety action education program or treatment program
29 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
30 ucation and treatment programs.

31 (c) For the purposes of this section, the term "toxic vapors" means
32 the following substances or products containing such substances:

- 33 (1) Alcohols, including methyl, isopropyl, propyl or butyl;
34 (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cel-
35 losolve acetate;
36 (3) Acetone;
37 (4) Benzene;
38 (5) Carbon tetrachloride;
39 (6) Cyclohexane;
40 (7) Freons, including freon 11 and freon 12;
41 (8) Hexane;
42 (9) Methyl ethyl ketone;
43 (10) Methyl isobutyl ketone;

- 1 (11) Naptha;
- 2 (12) Perchloroethylene;
- 3 (13) Toluene;
- 4 (14) Trichloroethane; or
- 5 (15) Xylene.

6 (d) In a prosecution for a violation of this section, evidence that a
7 container lists one or more of the substances described in subsection (c)
8 as one of its ingredients shall be *prima facie* evidence that the substance
9 in such container contains toxic vapors and emits the fumes thereof.

10 **[Sec. 2. K.S.A. 38-1663 is hereby amended to read as follows:**
11 **38-1663. (a) When a respondent has been adjudicated to be a ju-**
12 **venile offender, the judge may select from the following**
13 **alternatives:**

14 **[(1) Place the juvenile offender on probation for a fixed period,**
15 **subject to the terms and conditions the court deems appropriate**
16 **based on the juvenile justice programs in the community, includ-**
17 **ing a requirement of making restitution as required by subsection**
18 **(d).**

19 **[(2) Place the juvenile offender in the custody of a parent or**
20 **other suitable person, subject to the terms and conditions the court**
21 **orders based on the juvenile justice programs in the community,**
22 **including a requirement of making restitution as required by sub-**
23 **section (d).**

24 **[(3) Place the juvenile offender in the custody of a youth resi-**
25 **dential facility or, in the case of a chronic runaway youth, place**
26 **the youth in a secure facility, subject to the terms and conditions**
27 **the court orders.**

28 **[(4) Place the juvenile offender in the custody of the commis-**
29 **sioner, as provided in K.S.A. 38-1664, and amendments thereto.**

30 **[(5) Commit the juvenile offender to a sanctions house for a**
31 **period no longer than seven days. Following such period, the court**
32 **shall review the placement. The court may continue to recommit**
33 **the juvenile offender to a sanctions house for a period no longer**
34 **than seven days followed by a court review. Commitment to a sanc-**
35 **tions house shall not exceed 28 total days for the same act or trans-**
36 **action. If in the adjudication order, the court orders a sanctions**
37 **house placement for a verifiable probation violation and such pro-**
38 **bation violation occurs, the juvenile may immediately be taken to**
39 **a sanctions house and detained for no more than 48 hours, exclud-**
40 **ing Saturdays, Sundays and holidays, prior to court review of the**
41 **placement. The court and all other interested parties shall be no-**
42 **tified of the sanctions house placement. An offender over 18 years**
43 **of age or less than 23 years of age at sentencing may be committed**

1 to a county jail, in lieu of a sanctions house, under the same time
2 restrictions imposed by this paragraph. No offender may be com-
3 mitted under this paragraph unless such offender has violated the
4 terms of probation.

5 [(6) Commit the juvenile offender to a community based pro-
6 gram available in such judicial district subject to the terms and
7 conditions the court orders.

8 [(7) Impose any appropriate combination of paragraphs (1)
9 through (6) of this subsection and make other orders directed to
10 the juvenile offender as the court deems appropriate.

11 [(8) Commit the juvenile offender to a juvenile correctional
12 facility as provided by the placement matrix established in K.S.A.
13 38-16,129, and amendments thereto. The provisions of K.S.A. 38-
14 1664, and amendments thereto, shall not apply to juvenile offend-
15 ers committed directly to a juvenile correctional facility.

16 [(9) Place the juvenile offender under a house arrest program
17 administered by the court pursuant to K.S.A. 21-4603b, and
18 amendments thereto.

19 [(b) (1) In addition to any other order authorized by this sec-
20 tion, the court may order the: (A) Juvenile offender and the parents
21 of the juvenile offender to:

22 [(i) Attend counseling sessions as the court directs; or

23 [(ii) participate in mediation as the court directs. Participants
24 in such mediation may include, but shall not be limited to, the
25 victim, the juvenile offender and the juvenile offender's parents.
26 Mediation shall not be mandatory for the victim;

27 [(B) parents of the juvenile offender to participate in parenting
28 classes; or

29 [(C) juvenile offender to participate in a program of education
30 offered by a local board of education including placement in an
31 alternative educational program approved by a local board of
32 education.

33 [(2) Upon entering an order requiring a juvenile offender's
34 parent to attend counseling sessions or mediation, the court shall
35 give the parent notice of the order. The notice shall inform the
36 parent of the parent's right to request a hearing within 10 days
37 after entry of the order and the parent's right to employ an attor-
38 ney to represent the parent at the hearing or, if the parent is fi-
39 nancially unable to employ an attorney, the parent's right to re-
40 quest the court to appoint an attorney to represent the parent. If
41 the parent does not request a hearing within 10 days after entry
42 of the order, the order shall take effect at that time. If the parent
43 requests a hearing, the court shall set the matter for hearing and,

1 if requested, shall appoint an attorney to represent the parent. The
2 expense and fees of the appointed attorney may be allowed and
3 assessed as provided by K.S.A. 38-1606, and amendments thereto.

4 [(3) The costs of any counseling or mediation may be assessed
5 as expenses in the case. No mental health center shall charge a fee
6 for court-ordered counseling greater than what the center would
7 have charged the person receiving the counseling if the person
8 had requested counseling on the person's own initiative. No me-
9 diator shall charge a fee for court-ordered mediation greater than
10 what the mediator would have charged the person participating in
11 the mediation if the person had requested mediation on the per-
12 son's own initiative.

13 [(c) (1) If a respondent has been adjudged to be a juvenile of-
14 fender, the court, in addition to any other order authorized by this
15 section, may suspend the juvenile offender's driver's license or
16 privilege to operate a motor vehicle on the streets and highways
17 of this state. The duration of the suspension ordered by the court
18 shall be for a definite time period to be determined by the court.
19 Upon suspension of a license pursuant to this subsection, the court
20 shall require the juvenile offender to surrender the license to the
21 court. The court shall transmit the license to the division of motor
22 vehicles of the department of revenue, to be retained until the
23 period of suspension expires. At that time, the licensee may apply
24 to the division for return of the license. If the license has expired,
25 the juvenile offender may apply for a new license, which shall be
26 issued promptly upon payment of the proper fee and satisfaction
27 of other conditions established by law for obtaining a license unless
28 another suspension or revocation of the juvenile offender's privi-
29 lege to operate a motor vehicle is in effect. As used in this subsec-
30 tion, "highway" and "street" have the meanings provided by K.S.A.
31 8-1424 and 8-1473, and amendments thereto. Any respondent who
32 is adjudicated to be a juvenile offender who does not have a
33 driver's license may have such juvenile offender's driving privi-
34 leges revoked. No Kansas driver's license shall be issued to a ju-
35 venile offender whose driving privileges have been revoked pur-
36 suant to this section for a definite time period to be determined
37 by the court.

38 [(2) In lieu of suspending the driver's license or privilege to
39 operate a motor vehicle on the highways of this state of any re-
40 spondent adjudicated to be a juvenile offender, as provided in sub-
41 section (c)(1), the court in which such juvenile offender was adju-
42 dicated to be a juvenile offender may enter an order which places
43 conditions on such juvenile offender's privilege of operating a mo-

1 tor vehicle on the streets and highways of this state, a certified
2 copy of which such juvenile offender shall be required to carry any
3 time such juvenile offender is operating a motor vehicle on the
4 streets and highways of this state. Any such order shall prescribe
5 the duration of the conditions imposed and shall specify that such
6 duration shall be for a definite time period to be determined by
7 the court. Upon entering an order restricting a juvenile offender's
8 license hereunder, the court shall require such juvenile offender
9 to surrender such juvenile offender's driver's license to the court.
10 The court shall transmit the license to the division of vehicles, to-
11 gether with a copy of the order. Upon receipt thereof, the division
12 of vehicles shall issue without charge a driver's license which shall
13 indicate on its face that conditions have been imposed on such
14 juvenile offender's privilege of operating a motor vehicle and that
15 a certified copy of the order imposing such conditions is required
16 to be carried by the juvenile offender for whom the license was
17 issued any time such juvenile offender is operating a motor vehicle
18 on the streets and highways of this state. If the juvenile offender
19 is a nonresident, the court shall cause a copy of the order to be
20 transmitted to the division and the division shall forward a copy of
21 it to the motor vehicle administrator of such juvenile offender's
22 state of residence. Such court shall furnish to any juvenile offender
23 whose driver's license has had conditions imposed on it under this
24 section a copy of the order, which shall be recognized as a valid
25 Kansas driver's license until such time as the division shall issue
26 the restricted license provided for in this subsection. Upon expi-
27 ration of the period of time for which conditions are imposed pur-
28 suant to this subsection, the licensee may apply to the division for
29 the return of the license previously surrendered by such licensee.
30 In the event such license has expired, such juvenile offender may
31 apply to the division for a new license, which shall be issued im-
32 mediately by the division upon payment of the proper fee and sat-
33 isfaction of the other conditions established by law, unless such
34 juvenile offender's privilege to operate a motor vehicle on the
35 streets and highways of this state has been suspended or revoked
36 prior thereto. If any juvenile offender shall violate any of the con-
37 ditions imposed under this subsection, such juvenile offender's
38 driver's license or privilege to operate a motor vehicle on the
39 streets and highways of this state shall be revoked for a period as
40 determined by the court in which such juvenile offender is con-
41 victed of violating such conditions.

42 [(d) Whenever a juvenile offender is placed pursuant to sub-
43 section (a)(1) or (2), the court, unless it finds compelling circum-

1 stances which would render a plan of restitution unworkable, shall
2 order the juvenile offender to make restitution to persons who
3 sustained loss by reason of the offense. The restitution shall be
4 made either by payment of an amount fixed by the court or by
5 working for the persons in order to compensate for the loss. If the
6 court finds compelling circumstances which would render a plan
7 of restitution unworkable, the court may order the juvenile of-
8 fender to perform charitable or social service for organizations
9 performing services for the community.

10 [Nothing in this subsection shall be construed to limit a court's
11 authority to order a juvenile offender to make restitution or per-
12 form charitable or social service under circumstances other than
13 those specified by this subsection or when placement is made pur-
14 suant to subsection (a)(3) or (4).

15 [(e) (1) *Except as provided in paragraph (2), in addition to or in*
16 *lieu of any other order authorized by this section, the court may*
17 *order a juvenile offender to pay a fine not exceeding \$250 for each*
18 *offense. In determining whether to impose a fine and the amount*
19 *to be imposed, the court shall consider the following:*

20 [(1) (A) *Imposition of a fine is most appropriate in cases where*
21 *the juvenile offender has derived pecuniary gain from the offense.*

22 [(2) (B) *The amount of the fine should be related directly to*
23 *the seriousness of the juvenile offender's offense and the juvenile*
24 *offender's ability to pay.*

25 [(3) (C) *Payment of a fine may be required in a lump sum or*
26 *installments.*

27 [(4) (D) *Imposition of a restitution order is preferable to im-*
28 *position of a fine.*

29 [(5) (E) *The juvenile offender's duty of payment should be lim-*
30 *ited in duration and in no event should the time necessary for*
31 *payment exceed the maximum term which would be authorized if*
32 *the offense had been committed by an adult.*

33 [(2) *In addition to or in lieu of any other order authorized by this*
34 *section, if a juvenile is adjudicated to be a juvenile offender by reason of*
35 *a violation of K.S.A. 2000 Supp. 65-4162, and amendments thereto, if the*
36 *substance involved was marijuana or tetrahydrocannabinol as designated*
37 *in subsection (d) of K.S.A. 65-4105, and amendments thereto, the court*
38 *shall order a juvenile offender to pay a fine of not less than \$200 nor more*
39 *than \$500.*

40 [(f) *In addition to or in lieu of any other order authorized by*
41 *this section, if a juvenile is adjudicated to be a juvenile offender*
42 *by reason of a violation of K.S.A. 41-719, 41-727, 65-4101 through*
43 *65-4164 or K.S.A. 2000 Supp. 8-1599, and amendments thereto,*

1 the court shall order the juvenile offender to submit to and com-
2 plete an alcohol and drug evaluation by a community-based alco-
3 hol and drug safety action program certified pursuant to K.S.A. 8-
4 1008, and amendments thereto, and to pay a fee not to exceed the
5 fee established by that statute for such evaluation. The court may
6 waive such evaluation if the court finds that the juvenile offender
7 has completed successfully an alcohol and drug evaluation, ap-
8 proved by the community-based alcohol and drug safety action
9 program, within 12 months before sentencing. If such evaluation
10 occurred more than 12 months before sentencing, the court shall
11 order the juvenile offender to resubmit to and complete such eval-
12 uation and program as provided herein. If the court finds that the
13 juvenile offender and those legally liable for the offender's support
14 are indigent, the fee may be waived. In no event shall the fee be
15 assessed against the commissioner or the juvenile justice authority.
16 The court may require the parent or guardian of the juvenile of-
17 fender to attend such program with the juvenile offender.

18 [(g) The board of county commissioners of a county may pro-
19 vide by resolution that the parents or guardians of any juvenile
20 offender placed under a house arrest program pursuant to sub-
21 section (a)(9) shall be required to pay to the county the cost of such
22 house arrest program. The board of county commissioners shall
23 prepare a sliding financial scale based on the ability of the parents
24 to pay for such a program.

25 [(h) In addition to any other order authorized by this section,
26 if child support has been requested and the parent or parents have
27 a duty to support the respondent the court may order, and when
28 custody is placed with the commissioner shall order, one or both
29 parents to pay child support. The court shall determine, for each
30 parent separately, whether the parent already is subject to an or-
31 der to pay support for the respondent. If the parent currently is
32 not ordered to pay support for the respondent and the court has
33 personal jurisdiction over the parent, the court shall order the par-
34 ent to pay child support in an amount determined under K.S.A.
35 38-16,117, and amendments thereto. Except for good cause shown,
36 the court shall issue an immediate income withholding order pur-
37 suant to K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each
38 parent ordered to pay support under this subsection, regardless of
39 whether a payor has been identified for the parent. A parent or-
40 dered to pay child support under this subsection shall be notified,
41 at the hearing or otherwise, that the child support order may be
42 registered pursuant to K.S.A. 38-16,119, and amendments thereto.
43 The parent also shall be informed that, after registration, the in-

1 come withholding order may be served on the parent's employer
2 without further notice to the parent and the child support order
3 may be enforced by any method allowed by law. Failure to provide
4 this notice shall not affect the validity of the child support order.

5 [(i) Any order issued by the judge pursuant to this section shall
6 be in effect immediately upon entry into the court's journal.

7 [(j) In addition to the requirements of K.S.A. 38-1671, and
8 amendments thereto, if a person is under 18 years of age and con-
9 victed of a felony or adjudicated as a juvenile offender for an of-
10 fense if committed by an adult would constitute the commission of
11 a felony, the court shall forward a signed copy of the journal entry
12 to the commissioner within 30 days of final disposition.

13 [(k) The sentencing hearing shall be open to the public as pro-
14 vided in K.S.A. 38-1652, and amendments thereto.

15 [Sec. 3. K.S.A. 2000 Supp. 65-4162 is hereby amended to read
16 as follows: 65-4162. (a) Except as authorized by the uniform con-
17 trolled substances act, it shall be unlawful for any person to possess
18 or have under such person's control:

19 [(1) Any depressant designated in subsection (e) of K.S.A. 65-
20 4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of
21 K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amend-
22 ments thereto;

23 [(2) any stimulant designated in subsection (f) of K.S.A. 65-
24 4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsec-
25 tion (e) of K.S.A. 65-4109, and amendments thereto;

26 [(3) any hallucinogenic drug designated in subsection (d) of
27 K.S.A. 65-4105 and amendments thereto or designated in subsec-
28 tion (g) of K.S.A. 65-4107 and amendments thereto or designated
29 in subsection (g) of K.S.A. 65-4109 and amendments thereto;

30 [(4) any substance designated in subsection (g) of K.S.A. 65-
31 4105, and amendments thereto, and designated in subsection (c),
32 (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

33 [(5) any anabolic steroids as defined in subsection (f) of K.S.A.
34 65-4109, and amendments thereto.

35 [Except as otherwise provided, any person who violates this sub-
36 section shall be guilty of a class A nonperson misdemeanor. If any
37 person has a prior conviction under this section, a conviction for
38 a substantially similar offense from another jurisdiction or a con-
39 viction of a violation of an ordinance of any city or resolution of
40 any county for a substantially similar offense if the substance in-
41 volved was marijuana or tetrahydrocannabinol as designated in
42 subsection (d) of K.S.A. 65-4105 and amendments thereto, then
43 such person shall be guilty of a drug severity level 4 felony. *In*

1 *addition to any term of imprisonment the court may impose, any person*
2 *less than 18 years of age who violates this section if the substance involved*
3 *was marijuana or tetrahydrocannabinol as designated in subsection (d)*
4 *of K.S.A. 65-4105, and amendments thereto, the court shall require the*
5 *offender to pay a fine of not less than \$200 nor more than \$500.*

6 **[(b) It shall not be a defense to charges arising under this sec-**
7 **tion that the defendant was acting in an agency relationship on**
8 **behalf of any other party in a transaction involving a controlled**
9 **substance.**

10 **[(c) For purposes of the uniform controlled substances act, the**
11 **prohibitions contained in this section shall apply to controlled sub-**
12 **stance analogs as defined in subsection (bb) of K.S.A. 65-4101 and**
13 **amendments thereto.**

14 **[(d) The provisions of this section shall be part of and supple-**
15 **mental to the uniform controlled substances act.**

16 **[Sec. 4. K.S.A. 38-1663 and K.S.A. 2000 Supp. 65-4162 are**
17 **hereby repealed.]**

18 ~~Sec. 2.~~ **[5.]** This act shall take effect and be in force from and after
19 its publication in the statute book.

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