

SENATE BILL No. 302

By Committee on Judiciary

2-9

AN ACT concerning the Kansas juvenile justice code; relating to sentencing; amending K.S.A. 38-1663 and 38-1664 and repealing the existing sections.

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

Section 1. K.S.A. 38-1663 is hereby amended to read as follows: 38-1663. (a) When a respondent has been adjudicated to be a juvenile offender, the judge may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).

(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).

(3) Place the juvenile offender in the custody of a youth residential facility or, in the case of a chronic runaway youth, place the youth in a secure facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the commissioner, as provided in K.S.A. 38-1664, and amendments thereto *and place the juvenile offender on probation for a fixed period, subject to the terms and conditions as the court orders. This alternative is only available if the court is removing the youth from the parental home.*

(5) Commit the juvenile offender to a sanctions house for a period no longer than seven days. Following such period, the court shall review the placement. The court may continue to recommit the juvenile offender to a sanctions house for a period no longer than seven days followed by a court review. Commitment to a sanctions house shall not exceed 28 total days for the same act or transaction. If in the adjudication order, the court orders a sanctions house placement for a verifiable probation violation and such probation violation occurs, the juvenile may immediately be taken to a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and holidays, prior to court review of the placement. The court and all other interested parties shall be notified of

1 the sanctions house placement. An offender over 18 years of age or less
2 than 23 years of age at sentencing may be committed to a county jail, in
3 lieu of a sanctions house, under the same time restrictions imposed by
4 this paragraph. No offender may be committed under this paragraph un-
5 less such offender has violated the terms of probation.

6 (6) Commit the juvenile offender to a community based program
7 available in such judicial district subject to the terms and conditions the
8 court orders.

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

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

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

20 (b) (1) In addition to any other order authorized by this section, the
21 court may order the: (A) Juvenile offender and the parents of the juvenile
22 offender to:

23 (i) Attend counseling sessions as the court directs; or
24 (ii) participate in mediation as the court directs. Participants in such
25 mediation may include, but shall not be limited to, the victim, the juvenile
26 offender and the juvenile offender's parents. Mediation shall not be man-
27 datory for the victim;

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

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

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

1 appointed attorney may be allowed and assessed as provided by K.S.A.
2 38-1606, and amendments thereto.

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

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

33 (2) In lieu of suspending the driver's license or privilege to operate
34 a motor vehicle on the highways of this state of any respondent adjudi-
35 cated to be a juvenile offender, as provided in subsection (c)(1), the court
36 in which such juvenile offender was adjudicated to be a juvenile offender
37 may enter an order which places conditions on such juvenile offender's
38 privilege of operating a motor vehicle on the streets and highways of this
39 state, a certified copy of which such juvenile offender shall be required
40 to carry any time such juvenile offender is operating a motor vehicle on
41 the streets and highways of this state. Any such order shall prescribe the
42 duration of the conditions imposed and shall specify that such duration
43 shall be for a definite time period to be determined by the court. Upon

1 entering an order restricting a juvenile offender's license hereunder, the
2 court shall require such juvenile offender to surrender such juvenile of-
3 fender's driver's license to the court. The court shall transmit the license
4 to the division of vehicles, together with a copy of the order. Upon receipt
5 thereof, the division of vehicles shall issue without charge a driver's li-
6 cense which shall indicate on its face that conditions have been imposed
7 on such juvenile offender's privilege of operating a motor vehicle and that
8 a certified copy of the order imposing such conditions is required to be
9 carried by the juvenile offender for whom the license was issued any time
10 such juvenile offender is operating a motor vehicle on the streets and
11 highways of this state. If the juvenile offender is a nonresident, the court
12 shall cause a copy of the order to be transmitted to the division and the
13 division shall forward a copy of it to the motor vehicle administrator of
14 such juvenile offender's state of residence. Such court shall furnish to any
15 juvenile offender whose driver's license has had conditions imposed on
16 it under this section a copy of the order, which shall be recognized as a
17 valid Kansas driver's license until such time as the division shall issue the
18 restricted license provided for in this subsection. Upon expiration of the
19 period of time for which conditions are imposed pursuant to this subsec-
20 tion, the licensee may apply to the division for the return of the license
21 previously surrendered by such licensee. In the event such license has
22 expired, such juvenile offender may apply to the division for a new license,
23 which shall be issued immediately by the division upon payment of the
24 proper fee and satisfaction of the other conditions established by law,
25 unless such juvenile offender's privilege to operate a motor vehicle on
26 the streets and highways of this state has been suspended or revoked
27 prior thereto. If any juvenile offender shall violate any of the conditions
28 imposed under this subsection, such juvenile offender's driver's license
29 or privilege to operate a motor vehicle on the streets and highways of this
30 state shall be revoked for a period as determined by the court in which
31 such juvenile offender is convicted of violating such conditions.

32 (d) Whenever a juvenile offender is placed pursuant to subsection
33 (a)(1) or (2), the court, unless it finds compelling circumstances which
34 would render a plan of restitution unworkable, shall order the juvenile
35 offender to make restitution to persons who sustained loss by reason of
36 the offense. The restitution shall be made either by payment of an amount
37 fixed by the court or by working for the persons in order to compensate
38 for the loss. If the court finds compelling circumstances which would
39 render a plan of restitution unworkable, the court may order the juvenile
40 offender to perform charitable or social service for organizations perform-
41 ing services for the community.

42 Nothing in this subsection shall be construed to limit a court's authority
43 to order a juvenile offender to make restitution or perform charitable or

1 social service under circumstances other than those specified by this sub-
2 section or when placement is made pursuant to subsection (a)(3) or (4).

3 (e) In addition to or in lieu of any other order authorized by this
4 section, the court may order a juvenile offender to pay a fine not exceed-
5 ing \$250 for each offense. In determining whether to impose a fine and
6 the amount to be imposed, the court shall consider the following:

7 (1) Imposition of a fine is most appropriate in cases where the juve-
8 nile offender has derived pecuniary gain from the offense.

9 (2) The amount of the fine should be related directly to the serious-
10 ness of the juvenile offender's offense and the juvenile offender's ability
11 to pay.

12 (3) Payment of a fine may be required in a lump sum or installments.

13 (4) Imposition of a restitution order is preferable to imposition of a
14 fine.

15 (5) The juvenile offender's duty of payment should be limited in du-
16 ration and in no event should the time necessary for payment exceed the
17 maximum term which would be authorized if the offense had been com-
18 mitted by an adult.

19 (f) In addition to or in lieu of any other order authorized by this
20 section, if a juvenile is adjudicated to be a juvenile offender by reason of
21 a violation of K.S.A. 41-719, 41-727, 65-4101 through 65-4164 or K.S.A.
22 2000 Supp. 8-1599, and amendments thereto, the court shall order the
23 juvenile offender to submit to and complete an alcohol and drug evalua-
24 tion by a community-based alcohol and drug safety action program cer-
25 tified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a
26 fee not to exceed the fee established by that statute for such evaluation.
27 The court may waive such evaluation if the court finds that the juvenile
28 offender has completed successfully an alcohol and drug evaluation, ap-
29 proved by the community-based alcohol and drug safety action program,
30 within 12 months before sentencing. If such evaluation occurred more
31 than 12 months before sentencing, the court shall order the juvenile of-
32 fender to resubmit to and complete such evaluation and program as pro-
33 vided herein. If the court finds that the juvenile offender and those legally
34 liable for the offender's support are indigent, the fee may be waived. In
35 no event shall the fee be assessed against the commissioner or the juvenile
36 justice authority. The court may require the parent or guardian of the
37 juvenile offender to attend such program with the juvenile offender.

38 (g) The board of county commissioners of a county may provide by
39 resolution that the parents or guardians of any juvenile offender placed
40 under a house arrest program pursuant to subsection (a)(9) shall be re-
41 quired to pay to the county the cost of such house arrest program. The
42 board of county commissioners shall prepare a sliding financial scale
43 based on the ability of the parents to pay for such a program.

1 (h) In addition to any other order authorized by this section, if child
2 support has been requested and the parent or parents have a duty to
3 support the respondent the court may order, and when custody is placed
4 with the commissioner shall order, one or both parents to pay child sup-
5 port. The court shall determine, for each parent separately, whether the
6 parent already is subject to an order to pay support for the respondent.
7 If the parent currently is not ordered to pay support for the respondent
8 and the court has personal jurisdiction over the parent, the court shall
9 order the parent to pay child support in an amount determined under
10 K.S.A. 38-16,117, and amendments thereto. Except for good cause
11 shown, the court shall issue an immediate income withholding order pur-
12 suant to K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent
13 ordered to pay support under this subsection, regardless of whether a
14 payor has been identified for the parent. A parent ordered to pay child
15 support under this subsection shall be notified, at the hearing or other-
16 wise, that the child support order may be registered pursuant to K.S.A.
17 38-16,119, and amendments thereto. The parent also shall be informed
18 that, after registration, the income withholding order may be served on
19 the parent's employer without further notice to the parent and the child
20 support order may be enforced by any method allowed by law. Failure
21 to provide this notice shall not affect the validity of the child support
22 order.

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

25 (j) In addition to the requirements of K.S.A. 38-1671, and amend-
26 ments thereto, if a person is under 18 years of age and convicted of a
27 felony or adjudicated as a juvenile offender for an offense if committed
28 by an adult would constitute the commission of a felony, the court shall
29 forward a signed copy of the journal entry to the commissioner within 30
30 days of final disposition.

31 (k) The sentencing hearing shall be open to the public as provided in
32 K.S.A. 38-1652, and amendments thereto.

33 Sec. 2. K.S.A. 38-1664 is hereby amended to read as follows: 38-
34 1664. (a) Prior to placing a juvenile offender in the custody of the com-
35 missioner and recommending out-of-home placement, the court shall
36 consider and determine that, where consistent with the need for protec-
37 tion of the community:

38 (1) Reasonable efforts have been made to maintain the family unit
39 and prevent unnecessary removal of a juvenile offender from the juvenile
40 offender's home, as long as the juvenile offender's safety is assured, or
41 an emergency exists which threatens the safety of the juvenile offender.
42 If the juvenile offender is in the custody of the secretary of social and
43 rehabilitation services under the Kansas code for the care of children, the

1 secretary shall prepare a report for the court documenting such reason-
2 able efforts. If the juvenile offender is in the custody of the commissioner,
3 the commissioner shall prepare a report for the court documenting such
4 reasonable efforts. Otherwise, the predisposition investigation writer shall
5 prepare a report to the court documenting such reasonable efforts. Reason-
6 able efforts are not required prior to removal if the court finds:

7 (A) A court of competent jurisdiction has determined that the parent
8 has subjected the juvenile offender to aggravated circumstances;

9 (B) a court of competent jurisdiction has determined that the parent
10 has been convicted of a murder of another child of the parent; voluntary
11 manslaughter of another child of the parent; aiding or abetting, attempt-
12 ing, conspiring or soliciting to commit such a murder of such a voluntary
13 manslaughter; or a felony assault that results in serious bodily injury to
14 the juvenile offender or another child of the parent; or

15 (C) the parental rights of the parent with respect to a sibling have
16 been terminated involuntarily.

17 Such findings must be included in the court's order.

18 (2) The juvenile offender's removal from the home must be the result
19 of a judicial determination to the effect that continuation of residence in
20 the home would be contrary to the welfare, or that placement would be
21 in the best interests, of the juvenile offender. The contrary to the welfare
22 determination must be made in the first court ruling that sanctions the
23 removal of a juvenile offender from the home.

24 (3) A permanency plan must be presented at disposition or within 30
25 days thereafter. If a permanency plan is in place under a child in need of
26 care proceeding, the court may adopt the plan under the present pro-
27 ceeding. If the juvenile offender is placed in the custody of the commis-
28 sioner, the commissioner shall prepare the plan. The plan must comply
29 with the requirements of subsection (a) of K.S.A. 38-1565, and amend-
30 ments thereto. The court shall have the authority to require any person
31 or entity agreeing to participate in the plan to perform as set out in the
32 plan.

33 (4) The court must determine that reasonable efforts have been made
34 and what progress has been made to finalize the permanency plan that is
35 in effect within 12 months of the date the juvenile offender is considered
36 to have entered foster care and at least once every 12 months thereafter
37 while the juvenile offender is in foster care.

38 (5) The court must reflect reasonable efforts and contrary to the wel-
39 fare findings in orders awarding custody to the commissioner temporarily,
40 at sentencing and at modification hearings. If the juvenile offender is
41 placed in the custody of the commissioner, the court shall provide the
42 commissioner with a written copy of any orders entered upon making the
43 order for the purpose of documenting the orders.

1 (6) If the juvenile offender is placed in the commissioner's custody,
2 the commissioner shall document in writing the reasonable efforts that
3 have been made and the progress made to finalize the permanency plan,
4 before each hearing reviewing the plan.

5 (b) When a juvenile offender has been placed in the custody of the
6 commissioner, the commissioner shall notify the court in writing of the
7 initial placement of the juvenile offender as soon as the placement has
8 been accomplished. The court shall have no power to direct a specific
9 placement by the commissioner, but may make recommendations to the
10 commissioner. The commissioner may place the juvenile offender in an
11 institution operated by the commissioner, a youth residential facility or a
12 community mental health center. If the court has recommended an out-
13 of-home placement, the commissioner may not return the juvenile of-
14 fender to the home from which removed without first notifying the court
15 of the plan.

16 (c) During the time a juvenile offender remains in the custody of the
17 commissioner, the commissioner shall report to the court at least each six
18 months as to the current living arrangement and social and mental de-
19 velopment of the juvenile offender and document in writing the reason-
20 able efforts that have been made and the progress made to finalize the
21 permanency plan.

22 (d) *If The court may not place custody with the commissioner unless*
23 *the court removes the youth from the parental home. When the juvenile*
24 *offender is placed outside the juvenile offender's parental home, a per-*
25 *manency hearing shall be held not more than 12 months after the juvenile*
26 *offender is placed outside the juvenile offender's home and, if reintegration*
27 *is a viable alternative, every 12 months thereafter. The court may*
28 *appoint a guardian ad litem to represent the juvenile offender at the*
29 *permanency hearing. Juvenile offenders who have been in extended out*
30 *of home placement shall be provided a permanency hearing within 30*
31 *days of a request from the commissioner. If reintegration is not a viable*
32 *alternative and either adoption or permanent guardianship might be in*
33 *the best interests of the juvenile offender the county or district attorney*
34 *shall file a petition alleging the juvenile is a child in need of care and*
35 *requesting termination of parental rights or the appointment of a per-*
36 *manent guardian pursuant to the Kansas code for care of children. If the*
37 *juvenile offender is placed in foster care, the foster parent or parents shall*
38 *submit to the court, at least every six months, a report in regard to the*
39 *juvenile offender's adjustment, progress and condition. The juvenile jus-*
40 *tice authority shall notify the foster parent or parents of the foster parents'*
41 *or parent's duty to submit such report, on a form provided by the juvenile*
42 *justice authority, at least two weeks prior to the date when the report is*
43 *due, and the name of the judge and the address of the court to which the*

1 report is to be submitted. Such report shall be confidential and shall only
2 be reviewed by the court and the child's attorney.

3 (e) The report made by foster parents and provided by the commis-
4 sioner of juvenile justice, pursuant to this section, shall be in substantially
5 the following form:

6 REPORT FROM FOSTER PARENTS

7 CONFIDENTIAL

8 _____

9 Child's Name Current Address

10 _____

11 Parent's Name Foster Parents

12 _____

13 Primary Social Worker

14 Please circle the word which best describes the child's progress

- 15 1. Child's adjustment in the home
- 16 excellent good satisfactory needs improvement
- 17 2. Child's interaction with foster parents and family members
- 18 excellent good satisfactory needs improvement
- 19 3. Child's interaction with others
- 20 excellent good satisfactory needs improvement
- 21 4. Child's respect for property
- 22 excellent good satisfactory needs improvement
- 23 5. Physical and emotional condition of the child
- 24 excellent good satisfactory needs improvement
- 25 6. Social worker's interaction with the child and foster family
- 26 excellent good satisfactory needs improvement
- 27 7. School status of child:

28 _____

29 School Grade

30 Grades Good _____ Fair _____ Poor _____

31 Attendance Good _____ Fair _____ Poor _____

32 Behavior Good _____ Fair _____ Poor _____

33 8. If visitation with parents has occurred, describe the frequency of visits, with whom,
34 supervised or unsupervised, and any significant events which have occurred. _____

35 _____

36 9. Your opinion regarding the overall adjustment, progress and condition of the child: _____

37 _____

38 10. Do you have any special concerns or comments with regard to the child not addressed

39 by this form? Please specify. _____

40 _____

41 Sec. 3. K.S.A. 38-1663 and 38-1664 are hereby repealed.

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