

**HOUSE BILL No. 2350**

By Committee on Judiciary

Requested by Representative Martinez on behalf of Representative Carr

2-7

1 AN ACT concerning the revised Kansas juvenile justice code; relating to  
2 the prosecution of juveniles as adults; providing that no juvenile less  
3 than 18 years of age shall be prosecuted as an adult; amending K.S.A.  
4 38-2347 and repealing the existing section.  
5

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

7 Section 1. K.S.A. 38-2347 is hereby amended to read as follows: 38-  
8 2347. (a) (1) Except as otherwise provided in this section, at any time after  
9 commencement of proceedings under this code against a juvenile and prior  
10 to the beginning of an evidentiary hearing at which the court may enter a  
11 sentence as provided in K.S.A. 38-2356, and amendments thereto, the  
12 county or district attorney or the county or district attorney's designee may  
13 file a motion requesting that the court authorize prosecution of the juvenile  
14 as an adult under the applicable criminal statute. The juvenile shall be  
15 presumed to be a juvenile, and the presumption must be rebutted by a  
16 preponderance of the evidence. No juvenile less than ~~14~~ 18 years of age  
17 shall be prosecuted as an adult.

18 (2) At any time after commencement of proceedings under this code  
19 against a juvenile offender for an offense ~~which~~ that, if committed by an  
20 adult, would constitute an off-grid felony or a nondrug severity level 1  
21 through 4 person felony, and prior to the beginning of an evidentiary  
22 hearing at which the court may enter a sentence as provided in K.S.A. 38-  
23 2356, and amendments thereto, the county or district attorney or the  
24 county or district attorney's designee may file a motion requesting that the  
25 court designate the proceedings as an extended jurisdiction juvenile  
26 prosecution.

27 (3) If the county or district attorney or the county or district attorney's  
28 designee files a motion to designate the proceedings as an extended  
29 jurisdiction juvenile prosecution, the burden of proof is on the prosecutor  
30 to prove the juvenile should be designated as an extended jurisdiction  
31 juvenile.

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

1 on the complaint.

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

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

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

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

9 (D) the right to subpoena witnesses;

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

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

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

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

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

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

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

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

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

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

43 (7) whether there are facilities or programs available to the court

1 which are likely to rehabilitate the juvenile prior to the expiration of the  
2 court's jurisdiction under this code; and

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

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

12 (e) (1) The court may authorize prosecution as an adult upon  
13 completion of the hearing if the court finds from a preponderance of the  
14 evidence that the alleged juvenile offender should be prosecuted as an  
15 adult for the offense charged. In that case, the court shall direct the alleged  
16 juvenile offender be prosecuted under the applicable criminal statute and  
17 that the proceedings filed under this code be dismissed.

18 (2) The court may designate the proceeding as an extended  
19 jurisdiction juvenile prosecution upon completion of the hearing if the  
20 court finds from a preponderance of the evidence that the juvenile should  
21 be prosecuted under an extended jurisdiction juvenile prosecution.

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

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

32 Sec. 2. K.S.A. 38-2347 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its  
34 publication in the statute book.