

As Amended by House Committee

Session of 2012

SENATE BILL No. 320

By Committee on Judiciary

1-24

1 AN ACT concerning the revised Kansas juvenile justice code; relating to
2 probable cause determinations; amending K.S.A. 2011 Supp. 38-2331,
3 38-2343 and 38-2354 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2011 Supp. 38-2331 is hereby amended to read as
7 follows: 38-2331. (a) If no prior order removing a juvenile from the
8 juvenile's home pursuant to K.S.A. 2011 Supp. 38-2334 or 38-2335, and
9 amendments thereto, has been made, the court shall not enter an order
10 removing a juvenile from the custody of a parent pursuant to this section
11 unless the court first finds probable cause that:

12 (1) (A) The juvenile is likely to sustain harm if not immediately
13 removed from the home;

14 (B) allowing the juvenile to remain in home is contrary to the welfare
15 of the juvenile; or

16 (C) immediate placement of the juvenile is in the juvenile's best
17 interest; and

18 (2) reasonable efforts have been made to maintain the family unit and
19 prevent the unnecessary removal of the juvenile from the juvenile's home
20 or that an emergency exists which threatens the safety of the juvenile. The
21 court shall state the basis for each finding in writing.

22 (b) Except as provided in subsection (c), a juvenile may be placed in
23 a juvenile detention facility pursuant to subsection (c) or (d) of K.S.A.
24 2011 Supp. 38-2330 or subsection (e) of K.S.A. 2011 Supp. 38-2343, and
25 amendments thereto, if one or more of the following conditions are met:

26 (1) There is oral or written verification that the juvenile is a fugitive
27 sought for an offense in another jurisdiction, that the juvenile is currently
28 an escapee from a juvenile detention facility or that the juvenile has
29 absconded from a placement that is court ordered or designated by the
30 juvenile justice authority.

31 ~~The juvenile is alleged to have~~ *There is probable cause to believe*
32 *that the juvenile has* committed an offense which if committed by an adult
33 would constitute a felony or any crime described in article 55 of chapter 21
34 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-6419 through
35 21-6421, and amendments thereto.

36 (3) The juvenile has been adjudicated for a nonstatus offense and is

1 awaiting final court action on that offense.

2 (4) The juvenile has a record of failure to appear in court or there is
3 probable cause to believe that the juvenile will flee the jurisdiction of the
4 court.

5 (5) The juvenile has a history of violent behavior toward others.

6 (6) The juvenile exhibited seriously assaultive or destructive behavior
7 or self-destructive behavior at the time of being taken into custody.

8 (7) The juvenile has a record of adjudication or conviction of one or
9 more offenses which if committed by an adult would constitute a felony.

10 (8) The juvenile is a juvenile offender who has been expelled from
11 placement in a nonsecure facility as a result of the current alleged offense.

12 (9) The juvenile has been taken into custody by any court services
13 officer, juvenile community corrections officer or other person authorized
14 to supervise juveniles subject to this code pursuant to subsection (b) of
15 K.S.A. 2011 Supp. 38-2330, and amendments thereto.

16 (10) The juvenile has violated probation or conditions of release.

17 (c) No person 18 years of age or more shall be placed in a juvenile
18 detention center.

19 Sec. 2. K.S.A. 2011 Supp. 38-2343 is hereby amended to read as
20 follows: 38-2343. (a) ~~Length of detention~~ **Basis for extended detention;**
21 **findings and placement.** Whenever a juvenile is taken into custody, the
22 juvenile shall not remain in detention for more than 48 hours, excluding
23 Saturdays, Sundays, legal holidays, and days on which the office of the
24 clerk of the court is not accessible, from the time the initial detention was
25 imposed, unless the court determines after hearing, within the 48-hour
26 period, that further detention is necessary: ~~because:—(1) detention is~~
27 ~~warranted in light of all relevant factors, including, but not limited to, the~~
28 ~~criteria listed in K.S.A. 2011 Supp. 38-2331, and amendments thereto;~~
29 ~~and (2) the juvenile is dangerous to self or others or is not likely to appear~~
30 ~~for further proceedings.~~

31 ~~(A) (1) If the juvenile is in custody on the basis of a new offense~~
32 ~~which would be a felony or misdemeanor if committed by an adult and no~~
33 ~~prior judicial determination of probable cause has been made, the court~~
34 ~~shall determine whether there is probable cause to believe that the~~
35 ~~juvenile has committed the alleged offense.~~

36 ~~(B) (2) If the court finds the juvenile is dangerous to self or others,~~
37 ~~the juvenile may be detained in a juvenile detention facility or youth~~
38 ~~residential facility which the court shall designate.~~

39 ~~(C) (3) If the court finds the juvenile is not likely to appear for further~~
40 ~~proceedings, the juvenile may be detained in a juvenile detention facility~~
41 ~~or youth residential facility which the court shall designate or may be~~
42 ~~released upon the giving of an appearance bond in an amount specified by~~
43 ~~the court and on the conditions the court may impose, in accordance with~~

1 *the applicable provisions of article 28 of chapter 22 of the Kansas Statutes*
2 *Annotated, and amendments thereto.*

3 ~~(D)~~ **(4)** *In the absence of the necessary findings, the court shall order*
4 *the juvenile released or placed in temporary custody as provided in*
5 *subsection (g).*

6 (b) *Waiver of detention hearing. The detention hearing may be*
7 *waived in writing by the juvenile and the juvenile's attorney with approval*
8 *of the court. The right to a detention hearing may be reasserted in writing*
9 *by the juvenile or the juvenile's attorney or parent at anytime not less than*
10 *48 hours prior to trial.*

11 (c) *Notice of hearing. Whenever it is determined that a detention*
12 *hearing is required the court shall immediately set the time and place for*
13 *the hearing. Except as otherwise provided by subsection (c)(1) of K.S.A.*
14 *2011 Supp. 38-2332, and amendments thereto, notice of the detention*
15 *hearing shall be given at least 24 hours prior to the hearing, unless waived.*

16 ~~(d) Oral notice.~~ *When there is insufficient time to give written notice,*
17 *oral notice may be given and is completed upon filing a certificate of oral*
18 *notice with the clerk.*

19 ~~(e) (d) Hearing, finding, bond Attorney for juvenile.~~ *At the time set*
20 *for the detention hearing if no retained attorney is present to represent the*
21 *juvenile, the court shall appoint an attorney, and may recess the hearing for*
22 *24 hours, excluding Saturdays, Sundays and legal holidays, to obtain*
23 *attendance of the attorney appointed. At the detention hearing, if the court*
24 *finds the juvenile is dangerous to self or others, the juvenile may be*
25 *detained in a juvenile detention facility or youth residential facility which*
26 *the court shall designate. If the court finds the juvenile is not likely to*
27 *appear for further proceedings, the juvenile may be detained in a juvenile*
28 *detention facility or youth residential facility which the court shall*
29 *designate or may be released upon the giving of an appearance bond in an*
30 *amount specified by the court and on the conditions the court may impose,*
31 *in accordance with the applicable provisions of article 28 of chapter 22 of*
32 *the Kansas Statutes Annotated, and amendments thereto. In the absence of*
33 *either finding, the court shall order the juvenile released or placed in*
34 *temporary custody as provided in subsection (f).*

35 ~~In determining whether to place a juvenile in a juvenile detention~~
36 ~~facility pursuant to this subsection, the court shall consider all relevant~~
37 ~~factors, including, but not limited to, the criteria listed in K.S.A. 2011~~
38 ~~Supp. 38-2331, and amendments thereto.~~

39 (e) *Hearing. The detention hearing is an informal procedure to which*
40 *the ordinary rules of evidence do not apply. The court may consider*
41 *affidavits, professional reports and representations of counsel to make the*
42 *necessary findings, if the court determines that these materials are*
43 *sufficiently reliable. If probable cause to believe that the juvenile has*

1 *committed an alleged offense is contested, the court shall allow the*
2 *opportunity to present contrary evidence or information upon request. If*
3 *the court orders the juvenile to be detained in a juvenile detention facility,*
4 *the court shall record the specific findings of fact upon which the order is*
5 *based.*

6 *(f) Rehearing. (1) If detention is ordered and the parent was not*
7 *notified of the hearing and did not appear and later requests a rehearing,*
8 *the court shall rehear the matter without unnecessary delay.*

9 *(2) Within 14 days of the detention hearing, if the juvenile had not*
10 *previously presented evidence regarding the determination of probable*
11 *cause to believe that the juvenile has committed an offense, the juvenile*
12 *may request a rehearing to contest the determination of probable cause to*
13 *believe that the juvenile has committed an offense. The rehearing request*
14 *shall identify evidence or information that the juvenile could not*
15 *reasonably produce at the detention hearing. If the court determines that*
16 *the evidence or information could not reasonably be produced at the*
17 *detention hearing, the court shall rehear the matter without unnecessary*
18 *delay.*

19 ~~(f)~~ *(g) Temporary custody. If the court determines that detention is*
20 *not necessary but finds that release to the custody of a parent is not in the*
21 *best interests of the juvenile, the court may place the juvenile in the*
22 *temporary custody of a youth residential facility, some other suitable*
23 *person willing to accept temporary custody or the commissioner. Such*
24 *finding shall be made in accordance with K.S.A. 2011 Supp. 38-2334 and*
25 *38-2335, and amendments thereto.*

26 ~~(g)~~ *(h) Audio-video communications. Detention hearings may be*
27 *conducted by two-way electronic audio-video communication between the*
28 *juvenile and the judge in lieu of personal presence of the juvenile or the*
29 *juvenile's attorney in the courtroom from any location within Kansas in the*
30 *discretion of the court. The juvenile may be accompanied by the juvenile's*
31 *attorney during such proceedings or the juvenile's attorney may be*
32 *personally present in court as long as a means of confidential*
33 *communication between the juvenile and the juvenile's attorney is*
34 *available.*

35 Sec. 3. K.S.A. 2011 Supp. 38-2354 is hereby amended to read as
36 follows: 38-2354. ~~In all hearings pursuant to the code~~ *Except as provided*
37 *in K.S.A. 2011 Supp. 38-2343 and 38-2360, and amendments thereto, the*
38 *rules of evidence of the code of civil procedure shall apply in all hearings*
39 *pursuant to this code. The presiding judge shall not consider, read or rely*
40 *upon any report not properly admitted according to the rules of evidence.*

41 Sec. 4. K.S.A. 2011 Supp. 38-2331, 38-2343 and 38-2354 are hereby
42 repealed.

43 Sec. 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.