

CORRECTED
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SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2588

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2588 would create a new section in the Revised Kansas Juvenile Justice Code establishing an alternative adjudication procedure for misdemeanor-level juvenile offenses.

The bill would state the Legislature's findings that certain circumstances may lead to offenses by juveniles who are a minimal threat to public safety, and in such cases it would further the interests of society and the juvenile to use an adjudication approach with less formal procedures, appropriate disciplinary sanctions, and provision of necessary services. The bill would declare its purpose is to provide prosecutors with an alternative means of adjudication for juvenile offenders who are a minimal threat to public safety, for the benefit of the juvenile and society.

The bill would allow a county or district attorney with jurisdiction over a misdemeanor-level offense to designate the alleged offender for the alternative adjudication either through the original complaint or by written notice filed with the court and services on the juvenile, juvenile's counsel, and juvenile's parent or legal guardian within 14 days of filing the complaint. Filing of a written application for diversion would toll the running of the 14-day period and resume upon written denial of diversion.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would specify that the Revised Juvenile Justice Code would apply in the adjudication, with the following exceptions:

- If the court determines during the proceeding that there is probable cause to believe the child is a child in need of care (CINC), the court shall refer the matter to the county or district attorney, who shall file a CINC petition. The court shall also refer the family to the Department for Children and Families (DCF) for services. If the court finds the juvenile should be removed from the home, the court would be allowed to place the juvenile in the temporary custody of the Secretary for Children and Families or any person willing to accept temporary custody, other than the child's parent. If the CINC case is presided over by a different judge, the county or district attorney would be required to notify the court presiding over the proceeding under this section of pertinent orders in the CINC case;
- The court could not commit the juvenile to a juvenile correctional facility for the offense or for a violation of a term or condition of disposition;
- The adjudication or violation of the terms and conditions of disposition, including placement failure, could not be used against the juvenile in a proceeding for a subsequent juvenile or adult offense. "Used against the juvenile" would be defined;
- Upon completion of the case and termination of the court's jurisdiction, the court would be required to order the adjudication expunged, the adjudication would not be subject to provisions for retention in court files or law enforcement records, and other expungement requirements, limitations, and disclosure provisions would not apply.

- The juvenile could not be required to register as an offender as a result of the adjudication;
- The juvenile could not be prosecuted as an adult or under extended jurisdiction juvenile provisions;
- Limitations on continued out of home placement would not apply; and
- Trial under the alternative adjudication procedure would be to the court and the right to trial by jury would not apply.

The county or district attorney could withdraw the designation for alternative adjudication proceedings at any time prior to the beginning of a hearing at which the court could enter an order adjudicating the child as a juvenile offender, by providing notice to the court, the juvenile, the juvenile's attorney and guardian *ad litem*, if any, and the juvenile's parent or legal guardian. The section would no longer apply, the case would proceed, and the court would be able to grant a continuance upon request.

An adjudication under this procedure would be an appealable order under the Code.

Finally, the bill would amend the Revised Kansas Code for Care of Children to remove the Secretary of Children and Families as a permanent custody option upon the relinquishment of parental rights.

Background

The bill was introduced by the House Committee on Judiciary at the request of the Kansas Judicial Council.

In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas Judicial Council testified in support of the bill, explaining the new juvenile adjudication procedure and noting the removal of the

Secretary of Children and Families as a permanent custody option would resolve a statutory conflict. A representative of DCF testified as a neutral conferee.

The House Committee amended the bill to remove the term “low-risk” from the findings and purpose subsection.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, DCF indicates the bill would shift some youth from juvenile services to DCF custody, although there is no estimate of the number of youth that might be shifted. Each child shifted to DCF custody would cost \$17,676 per year. The Department of Corrections indicated it would transfer the funding associated with any youth shifted to DCF to offset such costs. This funding transfer would result in a net fiscal effect of zero. The elimination of DCF as a possible permanent custodian would have no fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.