

HOUSE BILL No. 2454

By Joint Committee on Corrections and Juvenile Justice Oversight

1-10

1 AN ACT concerning children and minors; relating to the revised Kansas
2 juvenile justice code; review hearings; amending K.S.A. 2017 Supp.
3 38-2343 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 38-2343 is hereby amended to read as
7 follows: 38-2343. (a) *Basis for extended detention; findings and*
8 *placement.* Whenever a juvenile is taken into custody, the juvenile shall
9 not remain in detention for more than 48 hours, excluding Saturdays,
10 Sundays, legal holidays, and days on which the office of the clerk of the
11 court is not accessible, from the time the initial detention was imposed,
12 unless the court determines after hearing, within the 48-hour period, that
13 further detention is warranted based on the criteria in K.S.A. 2017 Supp.
14 38-2331, and amendments thereto.

15 (b) (1) If the juvenile is in custody on the basis of a new offense
16 which would be a felony or misdemeanor if committed by an adult and no
17 prior judicial determination of probable cause has been made, the court
18 shall determine whether there is probable cause to believe that the juvenile
19 has committed the alleged offense.

20 (2) In the absence of the necessary findings, the court shall order the
21 juvenile released.

22 (c) *Waiver of detention hearing.* The detention hearing may be
23 waived in writing by the juvenile and the juvenile's attorney with approval
24 of the court. The right to a detention hearing may be reasserted in writing
25 by the juvenile or the juvenile's attorney or parent at anytime not less than
26 48 hours prior to trial.

27 (d) *Notice of hearing.* Whenever it is determined that a detention
28 hearing is required the court shall immediately set the time and place for
29 the hearing. Except as otherwise provided by K.S.A. 2017 Supp. 38-
30 2332(c)(1), and amendments thereto, notice of the detention hearing shall
31 be given at least 24 hours prior to the hearing, unless waived.

32 When there is insufficient time to give written notice, oral notice may
33 be given and is completed upon filing a certificate of oral notice with the
34 clerk.

35 (e) *Attorney for juvenile.* At the time set for the detention hearing if
36 no retained attorney is present to represent the juvenile, the court shall

1 appoint an attorney, and may recess the hearing for 24 hours, excluding
2 Saturdays, Sundays and legal holidays, to obtain attendance of the attorney
3 appointed.

4 (f) *Hearing.* (1) The detention hearing is an informal procedure to
5 which the ordinary rules of evidence do not apply. The court may consider
6 affidavits, detention risk assessment tool results, professional reports and
7 representations of counsel to make the necessary findings, if the court
8 determines that these materials are sufficiently reliable.

9 (2) If probable cause to believe that the juvenile has committed an
10 alleged offense is contested, the court shall allow the opportunity to
11 present contrary evidence or information upon request.

12 (3) If the court orders the juvenile to be detained in a juvenile
13 detention facility, the court shall record the specific findings of fact upon
14 which the order is based, including any reasons for overriding a detention
15 risk assessment tool score.

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

19 (2) Within 14 days of the detention hearing, if the juvenile had not
20 previously presented evidence regarding the determination of probable
21 cause to believe that the juvenile has committed an offense, the juvenile
22 may request a rehearing to contest the determination of probable cause to
23 believe that the juvenile has committed an offense. The rehearing request
24 shall identify evidence or information that the juvenile could not
25 reasonably produce at the detention hearing. If the court determines that
26 the evidence or information could not reasonably be produced at the
27 detention hearing, the court shall rehear the matter without unnecessary
28 delay.

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

38 (i) *Review hearing.* The court shall hold a detention review hearing at
39 least every 14 days that a juvenile is in detention to determine if the
40 juvenile should continue to be held in detention. *Each detention review*
41 *hearing may be waived in writing by the juvenile and the juvenile's*
42 *attorney with approval of the court.* The provisions of this subsection shall
43 not apply if the juvenile is charged with a crime that, if committed by an

1 adult, would constitute an off-grid felony or a nondrug severity level 1
2 through 4 person felony.

3 Sec. 2. K.S.A. 2017 Supp. 38-2343 is hereby repealed.

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