

**REVISED KANSAS  
JUVENILE JUSTICE CODE**

**(Including Comments)**

***JUDICIAL COUNCIL  
JUVENILE OFFENDER/CHILD IN NEED OF CARE  
ADVISORY COMMITTEE***

***As Approved***  
**October 21, 2004**

## REVISED JUVENILE OFFENDER CODE

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## **General Comments to Revised Kansas Juvenile Justice Code**

### **BACKGROUND**

Near the end of the 2000 Legislature the Senate passed Senate Resolution No. 1862 which was a resolution establishing a study group to make recommendations as to the Kansas Juvenile Offenders Code and the Kansas Code for Care of Children.

The Legislative leadership subsequently decided that rather than establish the group contemplated by the resolution, that it would request that the Judicial Council undertake a study of the Kansas Juvenile Offender's Code and the Kansas Code for Care of Children. The Judicial Council agreed to undertake the study and appointed the Juvenile Offender/Child in Need of Care Advisory Committee to conduct the study. The members of the Juvenile Offender/Child in Need of Care Advisory Committee are:

### **ADVISORY COMMITTEE MEMBERS**

The members of the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee are:

**Honorable C. Fred Lorentz**, Chair, Fredonia. Judge Lorentz is a district judge and member of the Judicial Council.

**Senator Barbara P. Allen**, Overland Park. Senator Allen is a state senator and member of the Senate Judiciary Committee.

**Charles H. Apt, III**, Iola. Mr. Apt is a practicing lawyer who practices in the juvenile area and has extensive experience as a guardian ad litem.

**Wade H. Bowie, Jr.**, Topeka. Mr. Bowie is an attorney for the Kansas Juvenile Justice Authority.

**Honorable Kathryn Carter**, Concordia. Judge Carter is a district magistrate judge.

**Senator Greta Goodwin**, Winfield. Senator Goodwin is a state senator and ranking minority member of the Senate Judiciary Committee.

**Donald W. Hymer**, Olathe. Mr. Hymer is an assistant district attorney in Johnson County and practices exclusively in the area of juvenile law. He is a frequent presenter at continuing legal education programs on juvenile law and related subjects.

**William E. Kennedy, III**, Manhattan. Mr. Kennedy is County Attorney in Riley County and handles the juvenile matters in that office.

**Representative Brenda Landwehr**, Wichita. Representative Landwehr is a state representative from Wichita and Vice-Chair of the Joint Committee on Children's Issues.

**Professor Richard E. Levy**, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

**Sue Lockett**, Topeka. Mrs. Lockett has served as Executive Director of C.A.S.A. of Shawnee County.

**Roberta Sue McKenna**, Topeka. Mrs. McKenna was previously an attorney for Children and Family Policy with Kansas Department of Social and Rehabilitation Services and is now the Assistant Director for Foster Care and Adoption.

**Representative Janice L. Pauls**, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

**Senator Edward W. Pugh**, Wamego. Senator Pugh is an attorney, state senator and vice-chair of the Senate Judiciary Committee. Senator Pugh is the sponsor of the resolution that led to the creation of the committee.

**Honorable Steven M. Roth**, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

**Donavon Rutledge**, Topeka. Mr. Rutledge is the recently retired Director of Evaluation and Program Improvement for the Kansas Department of Social and Rehabilitation Services. Previously Mr. Rutledge taught in the School of Social Work at Wichita State University.

**Sarah Sargent**, Topeka. Ms. Sargent is an attorney for the Kansas Children's Service League.

**Honorable Jean F. Shepherd**, Lawrence. Judge Shepherd is a member of the Judicial Council and a district judge, and handles juvenile matters in Douglas County.

The Committee also acknowledges the contributions of Representative Kathe Decker, Michael George, Lisa Mendosa and Helen Pedigo, who served on the Committee but are no longer members.

## **METHODOLOGY**

The Committee began its meetings in August of 2000 and has met nearly monthly since that time. The meetings have included consideration of both the Kansas Juvenile Justice Code and consideration of the Kansas Code for Care of Children.

The Committee agreed that its goals were to simplify the code, reorganize the code in a more logical manner and be certain that all changes are consistent with the goals of the code and are constitutionally permissible.

In 2003, the Committee introduced 2003 HB 2270 which extensively amended the Kansas Juvenile Justice Code. Hearings were held on the bill in the House Corrections and Juvenile Justice Committee. The bill was later withdrawn from further consideration, at the request of the Judicial Council, because the new staff at the Juvenile Justice Authority had a number of suggestions it requested the Judicial Council Advisory Committee to consider. The Committee has completed its consideration of those suggestions and the proposed bill reflects the additional changes that were adopted.

The 2005 bill proposed by the Judicial Council differs from the previous proposal in that the bill proposes repeal of the existing Kansas Juvenile Justice Code and its replacement with the "Revised Kansas Juvenile Justice Code". The 2003 bill amended the existing code.

## **CHANGES IN THE REVISED CODE**

**Technical changes.** A majority of the differences between the current Kansas Juvenile Justice Code and the proposed Revised Kansas Juvenile Justice Code are technical changes. These changes include changes in style, language, grammar, terminology, cross-references and other similar changes. Some of these technical changes may be discussed in the comments to the individual sections, but most are not because the changes clarify the sections, but are not generally significant.

**Reorganization.** The proposed act contains a number of organizational changes which are intended to implement the Committee goal of reorganizing the code in a more logical manner. Sections are moved within the code, material is reorganized within sections and material from two or more sections is combined. These changes themselves do not alter the law, but are merely a reorganization of the order in which the code is presented. Most of these changes are identified in the comments to the individual sections.

**Policy Changes.** A number of policy changes are contained in the proposed code. Most of the policy changes are minor. The Committee's proposal that juveniles in felony cases be granted the right to trial by jury, upon request, is a significant policy change. It is discussed in the comment to section 57 of the proposed act.

The following is a brief description of the policy changes, with the section or sections of the code in which the policy changes are found noted. Most of the policy changes listed are discussed more fully in the comments to the individual sections of the proposed code.

The statute of limitations has been changed to generally parallel the adult criminal code and to lengthen the statute of limitations in certain instances. (Section 3)

Termination of jurisdiction has no effect on the juvenile offenders continuing responsibility to pay restitution. (Section 4)

As to court records, there is a limitation on the victim's records going to the Kansas Racing Commission; court appointed special advocates and juvenile community corrections offices are added to the list of persons who may inspect the social file and there are certain time and age changes with respect to records in the custody of the Kansas State Historical Society. (Section 9)

Juvenile community correction officers are added to the list of persons who may obtain law enforcement and municipal court records of juveniles under 14 years of age. (Section 10)

Disclosure of diagnostic, treatment or medical facilities records of juvenile offenders by the Juvenile Justice Authority and the Department of Corrections is authorized to the extent necessary for treatment of the juvenile. (Section 11)

Rape is added to the list of acts committed by a juvenile which may not be expunged. (Section 12)

Fingerprinting and photographing of alleged juvenile offenders is allowed in more limited circumstances than under current law. (Section 13)

Reimbursement of expenses of care or custody of juveniles is changed to state that when a county has paid expenses for an alleged or adjudicated juvenile offender, those expenses may be assessed to the person legally responsible for the care of the juvenile. The hearing for challenging such an assessment is no longer automatic, but must be requested. (Section 15)

Language has been inserted to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). (Section 16)

Parents of minor victims are added to the list of persons who get notice of availability of AIDS testing and are given the right to request the person charged be tested. (Section 17)

The time requirement for giving notice of alibi or mental disease or defect is changed from within five days of the initial appearance, to not less than 10 days prior to the adjudicatory hearing. (Section 29)

Juvenile Justice Authority supervising officers are added to the list of persons who may take a juvenile into custody. (Section 30)

Language implementing the Adoption and Safe Families Act of 1997 is inserted throughout the code. (Sections 31, 34, 35, 61, 67 and 68)

The current requirement that if a juvenile is taken into custody for exhibiting assaultive or destructive behavior, such behavior must continue after the juvenile is taken into custody for the juvenile to be placed into a detention facility, is removed and self-destructive behavior is added to the list of behaviors. (Section 31)

The service of process section was changed to refer to service of process under the civil code. This is a slight expansion of present authority but will simplify service and keep this code consistent with future changes in the Civil Code. (Section 38)

The name of the hearing held under current K.S.A. 38-1633 is changed from "pre-trial hearing" to "first-appearance". (Section 44)

Law enforcement officers are allowed to issue a summons under the immediate intervention program statutes if the local prosecutor has adopted policies and guidelines giving that authority. (Section 46)

The designee of the county or district attorney (not just the county or district attorney) is authorized to file a motion for prosecution as an adult and if the juvenile is not convicted, the authorization for prosecution as an adult does not automatically apply to future prosecutions. (Section 47)

The court appoints one, rather than two, licensed psychiatrists or psychologists to examine the juvenile to determine competency and the court is allowed to excuse the alleged juvenile offender from the hearing if it would be injurious to his or her health to attend. (Section 48)

The best interests of the victim may be considered in deciding if a hearing should be closed. Currently, only the best interests of the alleged juvenile offender are mentioned in the statute. (Section 53)

Juveniles in felony cases are granted the right to trial by jury, upon request. This is a significant policy change. Under current law, a juvenile may receive a jury trial at

the discretion of the court. The comment following section 56 discusses the reasons for the change and quotes extensively from the Louisiana Supreme Court case of State v. Brown. (Section 57)

The statutory requirement for designation of a state-wide sentencing risk assessment tool is eliminated and the statute is changed to allow the court to address expenses with reference to all four information gathering tools, not just psychological evaluations. (Section 60)

Several policy changes are made in the sentencing area. Restitution orders are declared to be judgements, which may be enforced by civil process, even after termination of the court's jurisdiction over the juvenile; the maximum amount of a fine has been increased from \$250 to \$1000 and a fine is a judgement against a juvenile offender that may be enforced by civil process, even after termination of the court's jurisdiction. (Section 61)

The term for the initial commitment to a sanctions house is increased from 7 to 28 days. (Section 61)

The provisions relating to foster parent reporting are made discretionary. (Section 65)

The requirement that a hearing automatically be held on an alleged probation or placement violation is changed. The hearing will be held only if requested by the commissioner, a parent, one of the parties or on the court's own motion. (Section 68)

Prior person or nonperson felonies will now be counted the same as two misdemeanors. (Section 69)

The Juvenile Justice Authority is required, rather than authorized, to adopt rules and regulations relating to good time credits. (Section 70)

The date of admission to a Juvenile Justice Authority facility is required to be no more than five days after the notice to the committing court. (Section 73)

Non-drug crimes ranked a severity level 4 or 5 and drug crimes ranked at severity level 3 are added to the list of crimes which, if committed by the juvenile offender, require the commissioner to give notice to certain persons, if the juvenile is still required to attend school and his or her release is nearing. In addition, the victim is added to the list of persons who receive notice of discharge. (Section 77)

Appeals from district magistrate judges are to be by trial *de novo* unless parties agree to a *de novo* review on the record of the proceedings. The right of the juvenile to call witnesses on appeal is eliminated. (Section 82)

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

New Section 1. This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs; (c) be community based to the greatest extent possible; (d) be family centered when appropriate; (e) facilitate efficient and effective cooperation, coordination and collaboration among agencies of the local, state and federal government; (f) be outcome based, allowing for the effective and accurate assessment of program performance; (g) be cost-effectively implemented and administered to utilize resources wisely; (h) encourage the recruitment and retention of well-qualified, highly trained professionals to staff all components of the system; (i) appropriately reflect community norms and public priorities; and (j) encourage public and private partnerships to address community risk factors.

2

## COMMENT

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Section 1 relating to citation of and the goals of the code is nearly identical to current K.S.A. 38-1601. The name of the code is changed to the "The Revised Kansas Juvenile Justice Code" to distinguish it from the current code. The section continues to contain the goals of the code and lists policies contained in the code to accomplish the goals.

2 New Sec. 2 . As used in this code, unless the context otherwise requires:

3 (a) "Commissioner" means the commissioner of juvenile justice.

4 (b) "Conditional release" means release from a term of commitment in a juvenile  
5 correctional facility for an aftercare term pursuant to section 69, and amendments thereto, under  
6 conditions established by the commissioner.

7 (c) "Court-appointed special advocate" means a responsible adult, other than an attorney  
8 appointed pursuant to section 6, and amendments thereto, who is appointed by the court to represent  
9 the best interests of a child, as provided in section 7, and amendments thereto, in a proceeding  
10 pursuant to this code.

11 (d) "Educational institution" means all schools at the elementary and secondary levels.

12 (e) "Educator" means any administrator, teacher or other professional or paraprofessional  
13 employee of an educational institution who has exposure to a pupil specified in subsections (a)(1)  
14 through (5) of K.S.A. 72-89b03, and amendments thereto.

15 (f) "Institution" means the following institutions: the Atchison juvenile correctional facility,  
16 the Beloit juvenile correctional facility, the Larned juvenile correctional facility, the Topeka juvenile  
17 correctional facility, and the Kansas juvenile correctional complex.

18 (g) "Investigator" means an employee of the juvenile justice authority assigned by the  
19 commissioner with the responsibility for investigations concerning employees at the juvenile  
20 correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional  
21 facility.

22 (h) "Jail" means: (1) an adult jail or lockup; or

2 (2) a facility in the same building as an adult jail or lockup, unless the facility meets all  
3 applicable licensure requirements under law and there is: (A) total separation of the juvenile and  
4 adult facility spatial areas such that there could be no haphazard or accidental contact between  
5 juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult  
6 program activities within the facilities, including recreation, education, counseling, health care,  
7 dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including  
8 management, security staff and direct care staff such as recreational, educational and counseling.

9 (i) "Juvenile" means a person to whom one or more of the following applies, the person: (1)  
10 is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or  
11 (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the  
12 court.

13 (j) "Juvenile correctional facility" means a facility operated by the commissioner for the  
14 commitment of juvenile offenders.

15 (k) "Juvenile corrections officer" means a certified employee of the juvenile justice authority  
16 working at a juvenile correctional facility assigned by the commissioner with responsibility for  
17 maintaining custody, security and control of juveniles in the custody of the commissioner at a  
18 juvenile correctional facility.

19 (l) "Juvenile detention facility" means a public or private facility licensed pursuant to article  
20 5 of Chapter 65 of the Kansas Statutes Annotated which is used for the lawful custody of alleged or  
21 adjudicated juvenile offenders.

2 (m) "Juvenile intake and assessment worker" means a responsible adult authorized to  
3 perform intake and assessment services as part of the intake and assessment system established  
4 pursuant to K.S.A. 75-7023, and amendments thereto.

5 (n) "Juvenile offender" means a person who commits an offense while 10 or more years of  
6 age but less than 18 years of age which if committed by an adult would constitute the commission  
7 of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates  
8 the provisions of K.S.A. 21-4204a or 41-727 or subsection (j) of K.S.A. 74-8810, and amendments  
9 thereto, but does not include: (1) a person 14 or more years of age who commits a traffic offense,  
10 as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

11 (2) a person 16 years of age or over who commits an offense defined in chapter 32 of the  
12 Kansas Statutes Annotated, and amendments thereto;

13 (3) a person under 18 years of age who previously has been: (A) convicted as an adult under  
14 the Kansas criminal code;

15 (B) sentenced as an adult under the Kansas criminal code following termination of status as  
16 an extended jurisdiction juvenile pursuant to section 64, and amendments thereto; or

17 (C) convicted or sentenced as an adult in another state or foreign jurisdiction under  
18 substantially similar procedures described in section 47, and amendments thereto, or because of  
19 attaining the age of majority designated in that state or jurisdiction.

20 (o) "Law enforcement officer" means any person who by virtue of that person's office or  
21 public employment is vested by law with a duty to maintain public order or to make arrests for  
22 crimes, whether that duty extends to all crimes or is limited to specific crimes.

2 (p) "Parent," when used in relation to a juvenile, includes a guardian and every person who  
3 is, by law, liable to maintain, care for, or support the juvenile.

4 (q) " Risk assessment tool" means an instrument administered to juveniles which delivers  
5 a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to  
6 the community.

7 (r) "Sanctions house" means a facility which is operated or structured so as to ensure that  
8 all entrances and exits from the facility are under the exclusive control of the staff of the facility,  
9 whether or not the person being detained has freedom of movement within the perimeters of the  
10 facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control  
11 the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may  
12 serve as a sanctions house.

13 (s) "Warrant" means a written order by a judge of the court directed to any law enforcement  
14 officer commanding the officer to take into custody the juvenile named or described therein.

15 (t) "Youth residential facility" means any home, foster home or structure which provides  
16 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article  
17 70 of Chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

18  
19 **COMMENT**

20 Section two relating to definitions is substantially similar in content to current K.S.A. 38-  
21 1602. The section has been reorganized by placing it in alphabetical order.

22  
23 No current definitions are deleted. A definition of "conditional release" in subsection (b) is  
24 new because the term is used in the code and has not previously been defined.  
25

2           The current definitions of several terms are changed.

3  
4           In subsection (f) the definition of "institution" is changed to include the Kansas juvenile  
5 correctional complex.

6  
7           In subsection (i) the definition of "juvenile" is broadened to be consistent with its current  
8 usage and to lessen the need to frequently use a longer descriptive phrase to be technically correct.

9  
10          In subsection (j), "juvenile correctional facility," the phrase "the commitment of" is added.

11  
12          In subsection (l), the definition of "juvenile detention facility" is clarified by the addition of  
13 the phrase "licensed pursuant to article 5 of the Kansas Statutes Annotated."

14  
15          In subsection (n), the definition of "juvenile offender" is changed to be consistent with the  
16 change in the definition of "juvenile."

17  
18          In subsection (p) the definition of "parent" is changed by striking the term "conservator"  
19 because conservators deal only with financial matters.

20  
21          In subsection (t), the definition of "youth residential facility" is changed by inserting  
22 reference to article 70 of chapter 75 of K.S.A. as a second source for licensing.

2           New Sec.3 . (a) Proceedings under this code involving acts committed by a juvenile which,  
3 if committed by an adult, would constitute a violation of K.S.A. 21-3401 or 21-3402, and  
4 amendments thereto, may be commenced at any time.

5           (b) Except as provided by subsections (d) and (f), a proceeding under this code for any act  
6 committed by a juvenile which, if committed by an adult, would constitute a violation of any of the  
7 following statutes shall be commenced within five years after its commission if the victim is less  
8 than 16 years of age: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, and  
9 amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and  
10 amendments thereto; (3) lewd and lascivious behavior as defined in K.S.A. 21-3508, and  
11 amendments thereto; (4) indecent solicitation of a child as defined in K.S.A. 21-3510, and  
12 amendments thereto; (5) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511,  
13 and amendments thereto; (6) sexual exploitation of a child as defined in K.S.A. 21-3516, and  
14 amendments thereto; (7) unlawful voluntary relations as defined in K.S.A. 21-3522, and amendments  
15 thereto; or (8) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto.

16           (c) Except as provided by subsections (d) and (f), a prosecution for rape, as defined in K.S.A.  
17 21-3502, and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506,  
18 and amendments thereto, shall be commenced within five years after its commission.

19           (d) (1) Except as provided in subsection (f), a prosecution for any offense provided in  
20 subsection (b) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto,  
21 shall be commenced within the limitation of time provided by the law pertaining to such offense or

2 one year from the date on which the identity of the suspect is conclusively established by DNA  
3 testing, whichever is later.

4 (2) For the purposes of this subsection, "DNA" means deoxyribonucleic acid.

5 (e) Except as provided by subsection (f), proceedings under this code not governed by  
6 subsections (a), (b), (c) or (d) shall be commenced within two years after the act giving rise to the  
7 proceedings is committed.

8 (f) the period within which the proceedings must be commenced shall not include any period  
9 in which:

10 (1) The accused is absent from the state;

11 (2) the accused is so concealed within the state that process cannot be served upon the  
12 accused;

13 (3) the fact of the offense is concealed; or

14 (4) whether or not the fact of the offense is concealed by the active act or conduct of the  
15 accused, there is substantial competent evidence to believe two or more of the following factors are  
16 present: (A) the victim was a child under 15 years of age at the time of the offense; (B) the victim  
17 was of such age or intelligence that the victim was unable to determine that the acts constituted an  
18 offense; (C) the victim was prevented by a parent or other legal authority from making known to law  
19 enforcement authorities the fact of the offense whether or not the parent or other legal authority is  
20 the accused; and (D) there is substantial competent expert testimony indicating the victim  
21 psychologically repressed such victim's memory of the fact of the offense, and in the expert's  
22 professional opinion the recall of such memory is accurate, free of undue manipulation, and

2 substantial corroborating evidence can be produced in support of the allegations contained in the  
3 complaint or information; but in no event may a proceeding be commenced as provided in subsection  
4 (f)(4) later than the date the victim turns 28 years of age. Corroborating evidence may include, but  
5 is not limited to, evidence the alleged juvenile offender committed similar acts against other persons,  
6 or evidence of contemporaneous physical manifestations of the offense. Parent or other legal  
7 authority shall include, but not be limited to. natural and stepparents, grandparents, aunts, uncles or  
8 siblings.

9 **COMMENT**

10 New Section 3, relating to statute of limitations, is similar to current K.S.A. 38-1603. The  
11 section has been changed to generally parallel the adult criminal code and to lengthen the statute of  
12 limitations in certain instances. The changes add lewd and lascivious behavior under K.S.A. 21-  
13 3508 and unlawful voluntary sexual relations under K.S.A. 21-3522 to a list of crimes that, if the  
14 victim is less than 16 years of age, have a 5 year statute of limitations. This section is further  
15 changed so rape and aggravated sodomy have a 5 year statute of limitations regardless of the age of  
16 the victim.

17  
18 The changes add a one year extension to the statute of limitations from the date of identity,  
19 if the identity of the suspect is conclusively established by DNA testing. The statute is also changed  
20 to add language similar to K.S.A. 21-3106(f), extending the statute of limitations to age 28, if certain  
21 qualifying circumstances exist.

2           New Sec.4 . (a) Except as provided in section 47, and amendments thereto, proceedings  
3 concerning a juvenile shall be governed by the provisions of this code.

4           (b) The district court shall have original jurisdiction to receive and determine proceedings  
5 under this code.

6           (c) When a complaint is filed under this code, the juvenile shall be presumed to be subject  
7 to this code, unless the contrary is proved.

8           (d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except  
9 as otherwise provided in (d) below, jurisdiction shall continue until whichever of the following  
10 occurs:

11           (1) the complaint is dismissed:

12           (2) the juvenile is adjudicated not guilty at trial;

13           (3) the juvenile, after being adjudicated guilty and sentenced:

14           (i) successfully completes the term of probation or order of assignment to community  
15 corrections

16           (ii) is discharged by the commissioner pursuant to section 76, and amendments thereto, or

17           (iii) reaches her/his twenty-first birthday and no exception(s) apply that extend jurisdiction  
18 beyond age 21

19           (4) the court terminates jurisdiction

20           (e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall  
21 continue beyond the juvenile offender's twenty-first (21<sup>st</sup>) birthday but no later than the juvenile  
22 offender's twenty-third (23<sup>rd</sup>) birthday if either or both of the following conditions apply:

2 (1) the juvenile offender is sentenced pursuant to section 69, and amendments thereto, and  
3 the term of the sentence including successful completion of aftercare extends beyond the juvenile  
4 offender's twenty-first (21<sup>st</sup>) birthday; or

5 (2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile  
6 prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas  
7 juvenile justice code.

8 (f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile  
9 offender's continuing responsibility to pay restitution ordered.

10 (g)(1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the  
11 custody of the secretary of social and rehabilitation services under the Kansas code for care of  
12 children or the revised Kansas code for care of children, the sentencing court may order the  
13 continued placement of the juvenile offender as a child in need of care unless the offender was  
14 adjudicated for a felony or a second, or subsequent, misdemeanor. If the adjudication was for a  
15 felony or a second or subsequent misdemeanor, the continued placement cannot be ordered unless  
16 the court finds there are compelling circumstances which require, in the best interest of the juvenile  
17 offender, that the placement should be continued. In considering whether compelling circumstances  
18 exist, the court shall consider the reports and recommendations of the foster placement, the contract  
19 provider, the secretary of social and rehabilitation services, the presentence investigation and all  
20 other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement  
21 the court shall not order continued placement as a child in need of care.

2 (2) If a placement with the secretary of social and rehabilitation services is continued after  
3 sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

4 (3) If the juvenile offender is placed in the custody of the juvenile justice authority, the  
5 secretary of social and rehabilitation services shall not be responsible for furnishing services ordered  
6 in the child in need of care proceeding during the time of the placement pursuant to the revised  
7 Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from  
8 accessing other services provided by the department of social and rehabilitation services or any other  
9 state agency if the juvenile offender is otherwise eligible for the services. (h)The  
10 provisions of this code shall govern with respect to offenses committed on or after July 1, 1997.

11 **COMMENT**

12 Section 4 relates to jurisdiction, is substantially similar to current K.S.A 38-1604 and in  
13 subsection (c) contains former K.S.A. 38-1615.

14  
15 Subsection (d) contains language that was previously in K.S.A. 38-1667, requiring  
16 designation of a date of termination. Changes in the section clarify that the court's jurisdiction ends  
17 at age 21 unless other provisions apply and that termination of jurisdiction pursuant to this section  
18 has no effect on the juvenile offender's continuing responsibility to pay restitution pursuant to 60  
19 of this act [(formerly K.S.A. 38-1663(b)].  
20









2           New Sec. 9 . (a) *Official file*. The official file of proceedings pursuant to this code shall  
3 consist of the complaint, process, service of process, orders, writs and journal entries reflecting  
4 hearings held, judgments, and decrees entered by the court. The official file shall be kept separate  
5 from other records of the court.

6           (b) The official file shall be open for public inspection, unless the judge determines that  
7 opening the official file for public inspection is not in the best interests of a juvenile who is less than  
8 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in  
9 K.S.A. chapter 21, article 35, shall not be disclosed or open to public inspection under any  
10 circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense  
11 from voluntarily disclosing his or her identity. An official file closed pursuant to this section and  
12 information identifying the victim or alleged victim of any sex offense shall be disclosed only to the  
13 following :

14           (1) A judge of the district court and members of the staff of the court designated by the  
15 judge;

16           (2) parties to the proceedings and their attorneys;

17           (3) any individual or any public or private agency or institution: (A) having custody of the  
18 juvenile under court order; or (B) providing educational, medical or mental health services to the  
19 juvenile;

20           (4) a court appointed special advocate for the juvenile ;

21           (5) any placement provider or potential placement provider as determined by the  
22 commissioner or court services officer;

2 (6) law enforcement officers or county or district attorneys or their staff when necessary for  
3 the discharge of their official duties;

4 (7) the Kansas racing commission, upon written request of the commission chairperson, for  
5 the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information  
6 identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this  
7 subsection;

8 (8) the juvenile intake and assessment workers;

9 (9) the commissioner ; and

10 (10 any other person when authorized by a court order, subject to any conditions imposed  
11 by the order.

12 (c) *Social file*. Reports and information received by the court other than the official file shall  
13 be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment  
14 workers, court appointed special advocates and juvenile community corrections officers or upon  
15 order of a judge of the district court, or appellate court. The reports shall not be further disclosed  
16 without approval of the court or by being presented as admissible evidence.

17 (d) *Preservation of records*. The Kansas state historical society shall be allowed to take  
18 possession for preservation in the state archives of any court records related to proceedings under  
19 the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records  
20 otherwise would be destroyed. The Kansas state historical society shall make available for public  
21 inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or  
22 more years of age at the time an offense is alleged to have been committed by the juvenile. No other

2 such records in the custody of the Kansas state historical society shall be disclosed directly or  
3 indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b)  
4 and (c). A judge of the district court may allow inspection for research purposes of any court records  
5 in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile  
6 justice code or the revised Kansas juvenile justice code.

7 (e) Relevant information, reports and records, shall be made available to the department of  
8 corrections upon request, and a showing that the former juvenile has been convicted of a crime and  
9 placed in the custody of the secretary of the department of corrections.

10 **COMMENT**

11 Section 9, relating to court records, is similar to K.S.A 38-1607. In subsection (b)(4), the  
12 correct term "court appointed special advocate" is inserted. In subsection (b)(7), there is a limitation  
13 on the content of the victim's records going to the Kansas racing commission.

14 In subsection (c), court appointed special advocates and juvenile community corrections  
15 officers are added to the list of persons who may inspect the social file.

16  
17 In subsection (d), relating to records in the possession of the Kansas state historical society,  
18 the lowering of the age of confidentiality from 16 years to 14 years is consistent with previous  
19 legislative action. The change of 80 years after creation to 70 years after creation, as to when the  
20 records may be disclosed, is constant with K.S.A. 45-221(f).

2           New Sec. 10. (a) All records of law enforcement officers and agencies and municipal courts  
3 concerning an offense committed or alleged to have been committed by a juvenile under 14 years  
4 of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed  
5 to anyone except:

6           (1) the judge and members of the court staff designated by the judge of a court having the  
7 juvenile before it in any proceedings;

8           (2) parties to the proceedings and their attorneys;

9           (3) the department of social and rehabilitation services;

10          (4) the juvenile's court appointed special advocate, any officer of a public or private agency  
11 or institution, or any individual having custody of a juvenile under court order or providing  
12 educational, medical or mental health services to a juvenile ;

13          (5) any educational institution, to the extent necessary to enable the educational institution  
14 to provide the safest possible environment for its pupils and employees;

15          (6) any educator, to the extent necessary to enable the educator to protect the personal safety  
16 of the educator and the educator's pupils;

17          (7) law enforcement officers, or county or district attorneys, or their staff, when necessary  
18 for the discharge of their official duties;

19          (8) the central repository, as defined by K.S.A. 22-4701 and amendments thereto, for use  
20 only as a part of the juvenile offender information system established under 26 and amendments  
21 thereto;

22          (9) juvenile intake and assessment workers;

2 (10) the juvenile justice authority;

3 (11) juvenile community corrections officers;

4 (12) any other person when authorized by a court order, subject to any conditions imposed  
5 by the order; and

6 (13) as provided in subsection (c).

7 (b) The provisions of this section shall not apply to records concerning:

8 (1) a violation, by a person 14 or more years of age, of any provision of chapter 8 of the  
9 Kansas Statutes Annotated or of any city ordinance or county resolution which relates to the  
10 regulation of traffic on the roads, highways or streets or the operation of self-propelled or  
11 nonself-propelled vehicles of any kind;

12 (2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the  
13 Kansas Statutes Annotated; or

14 (3) an offense for which the juvenile is prosecuted as an adult.

15 (c) All records of law enforcement officers and agencies and municipal courts concerning  
16 an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall  
17 be subject to the same disclosure restrictions as the records of adults. Information identifying  
18 victims and alleged victims of sex offenses, as defined in K.S.A. chapter 21, article 35, shall not be  
19 disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit  
20 the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

2 (d) Relevant information, reports and records, shall be made available to the department of  
3 corrections upon request and a showing that the former juvenile has been convicted of a crime and  
4 placed in the custody of the secretary of the department of corrections.

5 (e) All records, reports, and information obtained as a part of the juvenile intake and  
6 assessment process for juveniles shall be confidential, and shall not be disclosed except as provided  
7 by statutory law and rules and regulations promulgated by the commissioner thereunder.

8 (1) Any court of record may order the disclosure of such records, reports and other  
9 information to any person or entity.

10 (2) The head of any juvenile intake and assessment program, certified by the commissioner  
11 of juvenile justice, may authorize disclosure of such records, reports and other information to:

12 (A) a person licensed to practice the healing arts who has before that person a juvenile  
13 whom the person reasonably suspects may be abused or neglected;

14 (B) a court-appointed special advocate for a juvenile or an agency having the legal  
15 responsibility or authorization to care for, treat or supervise a juvenile;

16 (C) a parent or other person responsible for the welfare of a juvenile, or such person's legal  
17 representative, with protection for the identity of persons reporting and other appropriate persons;

18 (D) the juvenile, the attorney, and a guardian ad litem, if any, for such juvenile;

19 (E) the police or other law enforcement agency;

20 (F) an agency charged with the responsibility of preventing or treating physical, mental or  
21 emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has

2 standards of confidentiality as strict or stricter than the requirements of the revised Kansas code for  
3 care of children or the revised Kansas juvenile justice code, whichever is applicable;

4 (G) members of a multidisciplinary team under this code;

5 (H) an agency authorized by a properly constituted authority to diagnose, care for, treat or  
6 supervise a child who is the subject of a report or record of child abuse or neglect;

7 (I) any individual, or public or private agency authorized by a properly constituted authority  
8 to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child  
9 abuse or neglect , specifically including the following: physicians, psychiatrists, nurses, nurse  
10 practitioners, psychologists, licensed social workers, child development specialists, physicians'  
11 assistants, community mental health workers, alcohol and drug abuse counselors and licensed or  
12 registered child care providers;

13 (J) a citizen review board pursuant to K.S.A. 38-1812, and amendments thereto;

14 (K) an educational institution to the extent necessary to enable such institution to provide  
15 the safest possible environment for pupils and employees of the institution; and

16 (L) any educator to the extent necessary for the protection of the educator and pupils; and

17 (M) any juvenile intake and assessment worker of another certified juvenile intake and  
18 assessment program.

19 COMMENT

20 Section 10, relating to law enforcement and municipal court records of juveniles, is  
21 substantially similar to current K.S.A 38-1608. Subsection (a) is changed to add juvenile community  
22 corrections officers to the list of persons who may obtain records of juveniles under 14 years of age.  
23

24 Changes in subsections (e)(2)(K) and (L) utilize language similar to K.S.A 38-1507(d)(11)  
25 and (12), relating to disclosure to educational institutions and educators.

2           New Sec.11. (a) When the court has exercised jurisdiction over any juvenile the diagnostic,  
3 treatment or medical records shall be privileged and shall not be disclosed except:

4           (1) upon the written consent of the former juvenile or, if the juvenile is under 18 years of  
5 age, by the parent of the juvenile;

6           (2) upon a determination by the head of the treatment facility, who has the records, that  
7 disclosure is necessary for the further treatment of the juvenile ;

8           (3) when any court having jurisdiction of the juvenile orders disclosure;

9           (4) when authorized by section 16 and amendments thereto;

10          (5) when requested orally or in writing by any attorney representing the juvenile , but the  
11 records shall not be further disclosed by the attorney unless approved by the court or presented as  
12 admissible evidence;

13          (6) upon a written request of a juvenile intake and assessment worker in regard to a juvenile  
14 when the information is needed for screening and assessment purposes or placement decisions, but  
15 the records shall not be further disclosed by the worker unless approved by the court;

16          (7) upon a determination by the juvenile justice authority that disclosure of the records is  
17 necessary for further treatment of the juvenile; or

18          (8) upon a determination by the department of corrections that disclosure of the records is  
19 necessary for further treatment of the juvenile.

20          (b) Intentional violation of this section is a class C nonperson misdemeanor.

21          (c) Nothing in this section shall operate to extinguish any right of a juvenile established by  
22 attorney-client, physician-patient, psychologist-client or social worker-client privileges.

2 (d) Relevant information, reports and records shall be made available to the department of  
3 corrections upon request and a showing that the juvenile has been placed in the custody of the  
4 secretary of the department of corrections.

5 **COMMENT**

6 Section 11, relating to the records of diagnostic, treatment or medical facilities of juvenile  
7 offenders is substantially similar to current K.S.A. 38-1609. Subsections (a) (7) and (8) have been  
8 added to allow disclosure of the records by the juvenile justice authority and department of  
9 corrections, to the extent necessary for treatment of the juvenile.  
10

2           New Sec.12. (a) Except as provided in subsection (b), any records or files specified in this  
3 code concerning a juvenile may be expunged upon application to a judge of the court of the county  
4 in which the records or files are maintained. The application for expungement may be made by the  
5 juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's  
6 parent or next friend.

7           (b) There shall be no expungement of records or files concerning acts committed by a  
8 juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401 murder in  
9 the first degree, 21-3402, murder in the second degree, 21-3403, voluntary manslaughter, 21-3404,  
10 involuntary manslaughter, 21-3439, capital murder, 21-3442, involuntary manslaughter while driving  
11 under the influence of alcohol or drugs, 21-3502, rape, 21-3503, indecent liberties with a child,  
12 21-3504, aggravated indecent liberties with a child, 21-3506, aggravated criminal sodomy, 21-3510,  
13 indecent solicitation of a child, 21-3511, aggravated indecent solicitation of a child, 21-3516, sexual  
14 exploitation, 21-3603, aggravated incest, 21-3608, endangering a child or 21-3609, abuse of a child,  
15 and amendments thereto or that would constitute an attempt to commit a violation of any of the  
16 offenses specified in this subsection.

17           (c) When a petition for expungement is filed, the court shall set a date for a hearing on the  
18 petition and shall give notice thereof to the county or district attorney. The petition shall state: (1)  
19 the juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different  
20 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was  
21 adjudicated; (5) the date of the trial; and (6) the identity of the trial court. There shall be no docket  
22 fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in

2 the original action. Any person who may have relevant information about the petitioner may testify  
3 at the hearing. The court may inquire into the background of the petitioner.

4 (d) (1) After hearing, the court shall order the expungement of the records and files if the  
5 court finds that:

6 (A) The juvenile has reached 23 years of age or that two years have elapsed since the final  
7 discharge ;

8 (B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony  
9 or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the  
10 revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or  
11 adjudication; and

12 (C) the circumstances and behavior of the petitioner warrant expungement.

13 (2) The court may require that all court costs, fees and restitution shall be paid.

14 (e) Upon entry of an order expunging records or files, the offense which the records or files  
15 concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication  
16 in a subsequent action under this code the offense may be considered in determining the sentence  
17 to be imposed. The petitioner, the court and all law enforcement officers and other public offices  
18 and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile.  
19 Inspection of the expunged files or records thereafter may be permitted by order of the court upon  
20 petition by the person who is the subject thereof. The inspection shall be limited to inspection by the  
21 person who is the subject of the files or records and the person's designees.

2 (f) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public  
3 officer and agency in the county having possession of any records or files ordered to be expunged.  
4 If the officer or agency fails to comply with the order within a reasonable time after its receipt, the  
5 officer or agency may be adjudged in contempt of court and punished accordingly.

6 (g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the  
7 provisions of this section.

8 (h) Nothing in this section shall be construed to prohibit the maintenance of information  
9 relating to an offense after records or files concerning the offense have been expunged if the  
10 information is kept in a manner that does not enable identification of the juvenile.

11 (i) Nothing in this section shall be construed to permit or require expungement of files or  
12 records related to a child support order registered pursuant to the revised Kansas juvenile justice  
13 code.

14 (j) Whenever the records or files of any adjudication have been expunged under the  
15 provisions of this section, the custodian of the records or files of adjudication relating to that offense  
16 shall not disclose the existence of such records or files, except when requested by:

17 (1) The person whose record was expunged;

18 (2) a private detective agency or a private patrol operator, and the request is accompanied  
19 by a statement that the request is being made in conjunction with an application for employment with  
20 such agency or operator by the person whose record has been expunged;

21 (3) a court, upon a showing of a subsequent conviction of the person whose record has been  
22 expunged;

2 (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the  
3 purpose of obtaining information relating to employment in an institution, as defined in K.S.A.  
4 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any  
5 person whose record has been expunged;

6 (5) a person entitled to such information pursuant to the terms of the expungement order;

7 (6) the Kansas lottery, and the request is accompanied by a statement that the request is  
8 being made to aid in determining qualifications for employment with the Kansas lottery or for work  
9 in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the  
10 Kansas lottery;

11 (7) the governor or the Kansas racing commission, or a designee of the commission, and the  
12 request is accompanied by a statement that the request is being made to aid in determining  
13 qualifications for executive director of the commission, for employment with the commission, for  
14 work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the  
15 commission or for licensure, renewal of licensure or continued licensure by the commission; or

16 (8) the Kansas sentencing commission.

17 **COMMENT**

18 Section 12, relating to expungement, is substantially similar to K.S.A. 38-1610.

19 In subsection (b), the crime of rape, K.S.A. 21-3502, is added to the list of acts committed  
20 by a juvenile, which may not be expunged. The change is consistent with K.S.A 21-4619(c), which  
21 relates to crimes adults may not expunge, and includes rape. Reference to K.S.A. 21-3509, which  
22 was repealed in 1993, is omitted.  
23  
24  
25  
26

2           New Sec.13. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken  
3 into custody for any purpose, except that:

4           (1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the  
5 district court having jurisdiction;

6           (2) after adjudication, fingerprints and photographs shall be taken of all juvenile offenders  
7 adjudicated because of commission of an offense which if committed by an adult would constitute  
8 the commission of a felony or any of the following misdemeanors: A violation of K.S.A. 21-3424,  
9 criminal restraint, when the victim is less than 18 years of age; a violation of subsection (a)(1) of  
10 K.S.A. 21-3503, indecent liberties with a child; a violation of K.S.A. 21-3507, adultery, when one  
11 of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3508, lewd and  
12 lascivious behavior; a violation of subsection (b)(1) of K.S.A. 21-3513, promoting prostitution, when  
13 one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, sexual  
14 battery, and amendments thereto; and including an attempt, conspiracy or criminal solicitation, as  
15 defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of  
16 any of the offenses specified in this subsection;

17           (3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501 and  
18 amendments thereto if the juvenile has been prosecuted as an adult by reason of section 47, and  
19 amendments thereto; an

20           (4) fingerprints or photographs may be taken of any juvenile admitted to a juvenile  
21 correctional facility.

2 (b) Fingerprints and photographs taken under subsection (a)(1) shall be kept readily  
3 distinguishable from those of persons of the age of majority. Fingerprints and photographs taken  
4 under subsections (a)(2), (a)(3) and (a)(4) may be kept in the same manner as those of persons of  
5 the age of majority.

6 (c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal  
7 repository, except that:

8 (1) Fingerprints and photographs may be sent to a state or federal repository if authorized  
9 by a judge of the district court having jurisdiction; and

10 (2) fingerprints or photographs taken under subsections (a)(2), (a)(3) and (a)(4) shall be  
11 processed and disseminated in the same manner as those of persons of the age of majority.

12 (d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice  
13 agency, as defined by section 25 and amendments thereto, if the other agency has a legitimate need  
14 for the fingerprints or photographs.

15 (e) Any fingerprints or photographs of an alleged juvenile offender taken under the  
16 provisions of subsection (a)(2) as it existed before the effective date of this act may be sent to a state  
17 or federal repository on or before December 31, 2005.

18 (f) Any law enforcement agency that willfully fails to submit any fingerprints or  
19 photographs required by this section shall be liable to the state for the payment of a civil penalty,  
20 recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each  
21 report not made. Any civil penalty recovered under this subsection shall be paid into the state general  
22 fund.

2 (g) The director of the Kansas bureau of investigation shall adopt any rules and regulations  
3 necessary to implement, administer and enforce the provisions of this section, including time limits  
4 within which fingerprints shall be sent to a state or federal repository when required by this section.

5 (h) Nothing in this section shall preclude the custodian of a juvenile from authorizing  
6 photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

7 **COMMENT**

8 Section 13, relating to fingerprints and photographs, is changed from current K.S.A. 38-1611,  
9 which relates to the same subject. The section was amended to allow fingerprinting and  
10 photographing of an alleged juvenile offender in more limited circumstances than under current law.  
11

12 Subsections (a)(2), which currently provides for mandatory fingerprinting and permissive  
13 photographing, was amended to limit the taking of fingerprints and photographs to juvenile  
14 offenders, but to require that both fingerprints and photographs be taken after adjudication, if any  
15 felony or certain other crimes were committed. The list of crimes was taken from K.S.A. 21-2511  
16 and is the same list of crimes that requires those adults who commit them to submit specimens for  
17 DNA testing.  
18

19 Subsection (a)(3) and (4), which provide for permissive fingerprinting and photographing,  
20 were changed so that they apply only to an alleged juvenile offender who has previously been  
21 prosecuted as an adult, or to a juvenile who has been admitted to a juvenile corrections facility.  
22 Subsections (b) and (c) were changed to allow fingerprints and photographs taken pursuant to  
23 subsection (a)(2) (felony cases), (a)(3) (juvenile offender who has been prosecuted as an adult) and  
24 (a)(4) (juvenile who has been admitted to a juvenile corrections facility) to be kept and designated  
25 in the same manner as those of adults.  
26

27 Subsection (e) is changed to allow fingerprints on file prior to the effective date of this act  
28 to be sent to a state or federal repository.  
29

2           New Sec.14. (a) *Docket fee*. The docket fee for proceedings under this code, if one is  
3 assessed as provided by this section, shall be \$25. Only one docket fee shall be assessed in each case.

4           (b) *Expenses*. The expenses for proceedings under this code, including fees and mileage  
5 allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid  
6 by the board of county commissioners from the general fund of the county.

7           (c) *Assessment of docket fee and expenses*. (1) *Docket fee*. The docket fee may be assessed  
8 or waived by the court conducting the initial sentencing hearing and may be assessed against the  
9 juvenile or the parent of the juvenile . Any docket fee received shall be remitted to the state treasurer  
10 pursuant to K.S.A. 20-362, and amendments thereto.

11           (2) *Expenses*. Expenses may be waived or assessed against the juvenile or a parent of the  
12 juvenile . When expenses are recovered from a party against whom they have been assessed the  
13 general fund of the county shall be reimbursed in the amount of the recovery.

14           (3) *Prohibited assessment*. Docket fees or expenses shall not be assessed against the state,  
15 a political subdivision of the state, an agency of the state or of a political subdivision of the state or  
16 a person acting in the capacity of an employee of the state or of a political subdivision of the state.

17           (d) *Cases in which venue is transferred*. If venue is transferred from one county to another,  
18 the court from which the case is transferred shall send to the receiving court a statement of expenses  
19 paid from the general fund of the sending county. If the receiving court collects any of the expenses  
20 owed in the case, the receiving court shall pay to the sending court an amount proportional to the  
21 sending court's share of the total expenses owed to both counties. The expenses of the sending  
22 county shall not be an obligation of the receiving county except to the extent that the sending

2 county's proportionate share of the expenses is collected by the receiving court. Unless otherwise  
3 ordered by the court, all amounts collected shall first be applied toward payment of the docket fee.

4 **COMMENT**

5 Section 14, relating to docket fee and expenses, is substantially similar to current K.S.A.38-  
6 1613. Subsection (c) is changed to provide that the docket fee and expenses may no longer be  
7 assessed against the complaining witness or person initiating the prosecution. This reflects actual  
8 practice. The Committee notes that if proceedings are filed in a frivolous manner, the civil statutes  
9 relating to filing a frivolous lawsuit apply.

10 Subsection (d) is rewritten to allow the court to order payment of restitution occur first.  
11  
12  
13  
14  
15

2           New Sec. 15. (a) *How paid.* (1) If a juvenile subject to this code is not eligible for  
3 assistance under K.S.A. 39-709 and amendments thereto, expenses for the care and custody of the  
4 juvenile shall be paid out of the general fund of the county in which the proceedings are initiated.  
5 Upon entry of a written order pursuant to section 5, and amendments thereto, transferring venue,  
6 expenses shall be paid by the receiving county. For the purpose of this section, a juvenile who is a  
7 nonresident of the state of Kansas or whose residence is unknown shall have residence in the county  
8 where the proceedings are initiated.

9           (2) When the custody of a juvenile is awarded to the commissioner, the expenses for the  
10 care and custody of the juvenile from the date of custody forward shall not be paid out of the county  
11 general fund, except as provided in subsection (d) or section 73, and amendments thereto. In no  
12 event shall the payment authorized by this subsection exceed the state approved rate.

13           (3) Nothing in this section shall be construed to mean that any person shall be relieved of  
14 legal responsibility to support a juvenile.

15           (b) *Reimbursement to county general fund.* (1) When expenses for the care and custody of  
16 a juvenile subject to this code have been paid out of the county general fund of any county in this  
17 state, the court may assess the expenses to the person who by law is liable to maintain, care for or  
18 support the juvenile and shall inform the person assessed the expenses of such person's right to a  
19 hearing. If a hearing is requested, it shall be granted and the court shall fix a time and place for  
20 hearing on the question of requiring payment or reimbursement of all or part of the expenses by a  
21 person who by law is liable to maintain, care for or support the juvenile.

2 (2) After notice to the person who by law is liable to maintain, care for or support the  
3 juvenile, the court, if requested, may hear and dispose of the matter and may enter an order relating  
4 to payment of expenses for care and custody of the juvenile. If the person willfully fails or refuses  
5 to pay the sum, the person may be adjudged in contempt of court and punished accordingly.

6 (3) Any county which makes payment to maintain, care for or support a juvenile subject  
7 to this code may bring a separate action against a person who by law is liable to maintain, care for  
8 or support such juvenile for the reimbursement of expenses paid out of the county general fund for  
9 the care and custody of the juvenile.

10 (c) *Reimbursement to the commissioner.* When expenses for the care and custody of a  
11 juvenile subject to this code have been paid by the commissioner, the commissioner may recover  
12 the expenses as provided by law from any person who by law is liable to maintain, care for or  
13 support the juvenile. The commissioner shall have the power to compromise and settle any claim due  
14 or any amount claimed to be due to the commissioner from any person who by law is liable to  
15 maintain, care for or support the juvenile. The commissioner may contract with a state agency,  
16 contract with an individual or hire personnel to collect the reimbursements required under this  
17 subsection.

18 (d) When a county has made an interlocal agreement to maintain, care for or support alleged  
19 juvenile offenders or juvenile offenders who are residents of another county and such other county  
20 is a party to the interlocal agreement with the county which performs the actual maintenance, care  
21 and support of the alleged juvenile offender or juvenile offender, such county of residence may pay  
22 from its county general fund to the other county whatever amount is agreed upon in the interlocal

2 agreement irrespective of any amount paid or to be paid by the juvenile justice authority. The  
3 juvenile justice authority shall not diminish the amount it would otherwise reimburse any such  
4 county for maintaining, caring for and supporting any such juvenile because of any payment under  
5 such an interlocal agreement.

6 **COMMENT**

7 Section 15, relating to the expense of care and custody of juveniles, is similar to current  
8 K.S.A 38-1616. Subsection (a) is changed to clarify that expenses for the care and custody of the  
9 juvenile are to be paid by the county in which proceedings are initiated. However, if venue of the  
10 case is transferred, those expenses are to be paid by the receiving county. Current 38-1616(a)(2)  
11 was deleted because it has no current application.  
12

13 Subsection (b), which deals with reimbursement of expenses, was changed to state that when  
14 a county has paid the expenses of a person accused of being, or adjudicated to be, a juvenile offender  
15 the court may assess those expenses to the person legally responsible for the care of the juvenile.  
16 The court must also inform the person assessed the expenses of the right to a hearing and shall grant  
17 such hearing, if requested. Currently the hearing is automatic.

2           New Sec. 16. (a) *Physical care and treatment.* (1) When the health or condition of a juvenile  
3 who is subject to the jurisdiction of the court requires it, the court may consent to hospital, medical,  
4 surgical or dental treatment or procedures including the release and inspection of medical or dental  
5 records.

6           (2) When the health or condition of a juvenile requires it and the juvenile has been placed  
7 in the custody of the commissioner or a person other than a parent or placed in or committed to a  
8 facility, the custodian or an agent designated by the custodian shall be the personal representative  
9 for the purpose of consenting to disclosure of otherwise protected health information and have  
10 authority to consent to hospital, medical, surgical or dental treatment or procedures including the  
11 release and inspection of medical or dental records, subject to terms and conditions the court  
12 considers proper. A juvenile or parent of a juvenile who is opposed to certain medical procedures  
13 authorized by this section may request an opportunity for a hearing thereon before the court.  
14 Subsequent to the hearing, the court may authorize or limit the performance of the proposed  
15 treatment subject to the terms and conditions the court considers proper. The provisions of this  
16 subsection shall also apply to juvenile felons, as defined in K.S.A. 38-16,112, prior to its repeal, and  
17 juveniles in the custody of the department of corrections pursuant to section 66, and amendments  
18 thereto, who have been placed in a juvenile correctional facility pursuant to K.S.A. 75-5206, and  
19 amendments thereto.

20           (3) Any health care provider, who in good faith renders hospital, medical, surgical or dental  
21 care or treatment to any juvenile after a consent has been obtained as authorized by this section, shall  
22 not be liable in any civil or criminal action for failure to obtain consent of a parent.

2 (4) Nothing in this section shall be construed to mean that any person shall be relieved of  
3 legal responsibility to provide care and support for a juvenile.

4 (b) *Mental care and treatment.* If it is brought to the court's attention, while the court is  
5 exercising jurisdiction over the person of a juvenile under this code, that the juvenile may be a  
6 mentally ill person as defined in K.S.A. 2004 Supp. 59-2946 and amendments thereto, the court  
7 may:

8 (1) Direct or authorize the county or district attorney or the person supplying the information  
9 to file the petition provided for in K.S.A. 2004 Supp. 59-2957 and amendments thereto, and proceed  
10 to hear and determine the issues raised by the application as provided in the care and treatment act  
11 for mentally ill persons; or

12 (2) authorize the juvenile to seek voluntary admission to a treatment facility as provided in  
13 K.S.A. 2004 Supp. 59-2949 and amendments thereto.

14 The application to determine whether the juvenile is a mentally ill person may be filed in the  
15 same proceedings as the petition alleging the juvenile to be a juvenile offender or may be brought  
16 in separate proceedings. In either event, the court may enter an order staying any further proceedings  
17 under this code until all proceedings have been concluded under the care and treatment act for  
18 mentally ill persons.  
19

2 **COMMENT**

3 Section 16, relating to health services, is similar to current K.S.A. 38-1614.  
4

5 In subsection (a)(2) language has been inserted to comply with the requirements of the federal  
6 Health Insurance Portability and Accountability Act of 1996. The subsection also clarifies that the  
7 juvenile justice authority, as custodian, may consent to medical treatment for a juvenile prosecuted  
8 as an adult who has committed a felony, is under 16 years of age, is in the legal custody of the  
9 department of corrections, but because of his or her age was placed in a juvenile justice authority  
10 facility.  
11

2 New Sec. 17. (a) As used in this section:

3 (1) "Adjudicated person" means a person found to be a juvenile offender or a person found  
4 not to be a juvenile offender because of mental disease or defect.

5 (2) "Laboratory confirmation of HIV or hepatitis B infection" means positive test results  
6 from a confirmation test approved by the secretary of health and environment.

7 (3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the  
8 mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this  
9 definition contact involving the penis occurs upon penetration, however slight.

10 (4) "Test for HIV or hepatitis B infection" means a test approved by the secretary of health  
11 and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome  
12 or hepatitis B.

13 (5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly  
14 contaminated with blood.

15 (b) At the time of the first appearance before the court of a person charged with an offense  
16 involving a sexual act committed while the person was a juvenile, or in which it appears from the  
17 nature of the charge that the transmission of body fluids from one person to another may have been  
18 involved, the judge shall inform the person or the parent or legal guardian of the person of the  
19 availability of testing for HIV or hepatitis B infection and counseling and shall cause each alleged  
20 victim of the offense and if the alleged victim is a minor, the parent, if any, to be notified that testing  
21 for HIV or hepatitis B infection and counseling is available.

2 (c) If the victim of the offense or if the victim is a minor, the victim's parent requests the  
3 court to order infectious disease tests of the alleged offender or if the person charged with the offense  
4 stated to law enforcement officers that such person has an infectious disease or is infected with an  
5 infectious disease, or used words of like effect, the court shall order the person charged with the  
6 offense to submit to infectious disease tests as defined in K.S.A. 65-6001 and amendments thereto.

7 (d) For any offense by an adjudicated person which the court determines, from the facts of  
8 the case, involved or was likely to have involved the transmission of body fluids from one person  
9 to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to a  
10 test for HIV or hepatitis B infection; or (2) shall order the adjudicated person to submit to a test for  
11 HIV or hepatitis B infection if a victim of the offense, or the parent or legal guardian of the victim  
12 if the victim is a minor, requests the court to make such order. If a test for HIV or hepatitis B  
13 infection is ordered under this subsection, a victim who is an adult shall designate a health care  
14 provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the  
15 parent or legal guardian of the victim shall designate the health care provider or counselor to receive  
16 the information. If the test results in a negative reaction, the court shall order the adjudicated person  
17 to submit to another test for HIV or hepatitis B infection six months after the first test was  
18 administered.

19 (e) The results of any test for HIV or hepatitis B infection ordered under this section shall  
20 be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal  
21 guardian of the adjudicated person, and to each person designated under subsection (d) by a victim  
22 or by the parent or legal guardian of a victim. If a test for HIV or hepatitis B infection ordered under

2 this section results in a laboratory confirmation of HIV or hepatitis B infection, the results shall be  
3 reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice,  
4 in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for  
5 inclusion in such offender's or person's medical file; or (2) the secretary of corrections, in the case  
6 of a person under 16 years of age who has been convicted as an adult, for inclusion in such person's  
7 medical file. The secretary of health and environment shall provide to each victim of the crime or  
8 sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and  
9 hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 *et seq.* and  
10 amendments thereto and referral for appropriate health care and services.

11 (f) The costs of any counseling and testing provided under subsection (e) by the secretary  
12 of health and environment shall be paid from amounts appropriated to the department of health and  
13 environment for that purpose. The court shall order the adjudicated person to pay restitution to the  
14 department of health and environment for the costs of any counseling provided under this section  
15 and the costs of any test ordered or otherwise performed under this section.

16 (g) When a court orders an adjudicated person to submit to a test for HIV or hepatitis B  
17 infection under this section, the withdrawal of the blood may be performed only by: (1) A person  
18 licensed to practice medicine and surgery or a person acting under the supervision of any such  
19 licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified  
20 medical technician. No person authorized by this subsection to withdraw blood, no person assisting  
21 in the performance of the test for HIV or hepatitis B infection nor any medical care facility where  
22 blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be

2 liable in any civil or criminal action when the test is performed in a reasonable manner according  
3 to generally accepted medical practices.

4 (h) The results of tests or reports, or information therein, obtained under this section shall  
5 be confidential and shall not be divulged to any person not authorized by this section to receive the  
6 results or information. Any violation of this section is a class C nonperson misdemeanor.

7 **COMMENT**

8 Section 17, relating to AIDS testing and counseling, is substantially similar to current K.S.A.  
9 38-1692. A change is made in subsection (a)(1) for clarification. The only change of substance was  
10 made to include parents of minor victims in the list of those who get notice of availability of AIDS  
11 testing and to give minor victim's parents the right to request AIDS testing of the person charged.  
12

13 The section is moved from it's current location near the end of the code because it more  
14 logically follows section 15 which relates to health services for juveniles.  
15

16

17

2           New Sec. 18. When there is a dispute with respect to parentage, the court may stay child  
3 support proceedings, if any are pending in the case, until the dispute is resolved by a separate action  
4 under the Kansas parentage act. Nothing in this section shall be construed to limit the power of the  
5 court to carry out the purposes of the revised Kansas juvenile justice code.

6

7

#### **COMMENT**

8           Section 18, relating to determination of parentage, is substantially similar to current  
9 K.S.A.38-16,116. The section is moved to this location in the revised code because it is a more  
10 logical placement for the subject matter. Subsection (b) is stricken because authority to consent is  
11 contained in the parentage act, which is referenced in subsection (a).





2           New Sec. 21. (a) A party entitled to receive child support under an order issued pursuant  
3 to the revised Kansas juvenile justice code may file with the clerk of the district court in the county  
4 in which the judgment was rendered the original child support order and the original income  
5 withholding order, if any. If the original child support or income withholding order is unavailable  
6 for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the  
7 district court shall number the child support order as a case filed under chapter 60 of the Kansas  
8 Statutes Annotated and enter the numbering of the case on the appearance docket of the case.  
9 Registration of a child support order under this section shall be without cost or docket fee.

10           (b) If the number assigned to a case under the revised Kansas juvenile justice code appears  
11 in the caption of a document filed pursuant to this section, the clerk of the district court may  
12 obliterate that number and replace it with the new case number assigned pursuant to this section.

13           (c) The filing of the child support order shall constitute registration under this section. Upon  
14 registration of the child support order, all matters related to that order, including, but not limited to  
15 modification of the order, shall proceed under the new case number. Registration of a child support  
16 order under this section does not confer jurisdiction in the registration case for custody or parenting  
17 time issues.

18           (d) The party registering a child support order shall serve a copy of the registered child  
19 support order and income withholding order, if any, upon the parties by first-class mail. The party  
20 registering the child support order shall file, in the official file for each child affected, either a copy  
21 of the registered order showing the new case number or a statement that includes the caption, new  
22 case number and date of registration of the child support order.

2 (e) If the commissioner of juvenile justice is entitled to receive payment under an order  
3 which may be registered under this section, the county or district attorney shall take the actions  
4 permitted or required in subsections (a) and (d) on behalf of the commissioner, unless otherwise  
5 requested by the commissioner.

6 (f) A child support order registered pursuant to this section shall have the same force and  
7 effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated  
8 including, but not limited to:

9 (1) The registered order shall become a lien on the real estate of the judgment debtor in the  
10 county from the date of registration;

11 (2) execution or other action to enforce the registered order may be had from the date of  
12 registration;

13 (3) the registered order may itself be registered pursuant to any law, including, but not  
14 limited to, the uniform interstate family support act;

15 (4) if any installment of support due under the registered order becomes a dormant judgment,  
16 it may be revived pursuant to K.S.A. 60-2404, and amendments thereto; and

17 (5) the court shall have continuing jurisdiction over the parties and subject matter and,  
18 except as otherwise provided in subsection (g), may modify any prior support order when a material  
19 change in circumstances is shown irrespective of the present domicile of the child or parent. The  
20 court may make a modification of child support retroactive to a date at least one month after the date  
21 that the motion to modify was filed with the court.

2 (g) If a motion to modify the child support order is filed within three months after the date  
3 of registration pursuant to this section, if no motion to modify the order has previously been heard,  
4 and if the moving party shows that the support order was based upon one or more of the  
5 presumptions provided in section 19, and amendments thereto, or upon a stipulation pursuant to  
6 subsection (c) of section 19, and amendments thereto, the court shall apply the Kansas child support  
7 guidelines adopted pursuant to K.S.A. 20-165 and amendments thereto without requiring any party  
8 to show that a material change of circumstances has occurred, without regard to any previous  
9 presumption or stipulation used to determine the amount of the child support order, and irrespective  
10 of the present domicile of the child or parent. Nothing in this subsection shall prevent or limit  
11 enforcement of the support order during the three months after the date of registration.

12 **COMMENT**

13 Section 21, relating to the withholding order for child support under the code, is nearly  
14 identical to current K.S.A. 38-16,119. The only changes are technical, the section was moved to this  
15 location in the revised code because it is a more logical place for the subject matter.  
16



2 New Sec.23. On and after July 1, 1997:

3 (a) In any case in which the commissioner pays for the expenses of care and custody of a  
4 juvenile pursuant to section 1 *et seq.*, and amendments thereto, an assignment of all past, present  
5 and future support rights of the juvenile in custody possessed by either parent or other person  
6 entitled to receive support payments for the juvenile is, by operation of law, conveyed to the  
7 commissioner. Such assignment shall become effective upon placement of a juvenile in the custody  
8 of the commissioner or upon payment of the expenses of care and custody of a juvenile by the  
9 commissioner without the requirement that any document be signed by the parent or other person  
10 entitled to receive support payments for the juvenile. When the commissioner pays for the expenses  
11 of care and custody of a juvenile or a juvenile is placed in the custody of the commissioner, the  
12 parent or other person entitled to receive support payments for the juvenile is also deemed to have  
13 appointed the commissioner, or the commissioner's designee, as attorney in fact to perform the  
14 specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable  
15 instruments representing support payments received by the commissioner on behalf of the juvenile.  
16 This limited power of attorney shall be effective from the date the assignment to support rights  
17 becomes effective and shall remain in effect until the assignment of support rights has been  
18 terminated in full.

19 (b) If an assignment of support rights is deemed to have been made pursuant to subsection  
20 (a), support payments shall be made to the juvenile justice authority.

21 (c) If a court has ordered support payments to be made to an applicant for or recipient of  
22 financial assistance or other person whose support rights are assigned, the commissioner shall file

2 a notice of the assignment with the court ordering the payments without the requirement that a copy  
3 of the notice be provided to the obligee or obligor. The notice shall not require the signature of the  
4 applicant, recipient or obligee on any accompanying assignment document. The notice shall include:

5 (1) A statement that the assignment is in effect;

6 (2) the name of any juvenile and the caretaker or other adult for whom support has been  
7 ordered by the court;

8 (3) the number of the case in which support was ordered; and

9 (4) a request that the payments ordered be made to the commissioner of juvenile justice.

10 (d) Upon receipt of the notice and without the requirement of a hearing or order, the court  
11 shall forward all support payments, including those made as a result of any garnishment, contempt,  
12 attachment, income withholding, income assignment or release of lien process, to the commissioner  
13 until the court receives notification of the termination of the assignment.

14 (e) If the claim of the commissioner for repayment of the costs of care and custody of a  
15 juvenile under the revised Kansas juvenile justice code is not satisfied when such aid is discontinued  
16 the commissioner shall file a notice of partial termination of assignment of support rights with the  
17 court which will preserve the assignment in regard to unpaid support rights which were due and  
18 owing at the time of the discontinuance of such aid. A copy of the notice of the partial termination  
19 of the assignment need not be provided to the obligee or obligor. The notice shall include:

20 (1) A statement that the assignment has been partially terminated;

21 (2) the name of any juvenile and the caretaker or other adult for whom support has been  
22 ordered by the court;

2 (3) the number of the case in which support was ordered; and

3 (4) the date the assignment was partially terminated.

4 (f) Upon receipt of the notice and without the requirement of a hearing or order, the court  
5 shall forward to the commissioner all payments made to satisfy support arrearages due and owing  
6 as of the date the assignment of support rights was partially terminated until the court receives  
7 notification of the termination of the assignment.

8 (g) If the commissioner or the commissioner's designee has a notice of assignment of support  
9 rights pursuant to subsection (c) or a notice of partial termination of assignment of support rights  
10 pursuant to subsection (e) on file with the court ordering support payments, the commissioner shall  
11 be considered a necessary party in interest concerning any legal action to enforce, modify, settle,  
12 satisfy or discharge an assigned support obligation and, as such, shall be given notice by the party  
13 filing such action in accordance with the rules of civil procedure.

14 (h) Upon written notification by the commissioner's designee that assigned support has been  
15 collected pursuant to K.S.A. 44-718 or 75-6201 *et seq.*, and amendments thereto, or section 464 of  
16 title IV, part D, of the federal social security act, or any other method of direct payment to the  
17 commissioner, the clerk of the court or other record keeper where the support order was established,  
18 shall enter the amounts collected by the commissioner in the court's payment ledger or other record  
19 to insure that the obligor is credited for the amounts collected.

20 (i) An assignment of support rights pursuant to subsection (a) shall remain in full force and  
21 effect so long as the commissioner is providing public assistance in accordance with a plan under  
22 which federal moneys are expended on behalf of the juvenile for the expenses of a juvenile in the

2 commissioner's care or custody pursuant to section 1 *et seq.*, and amendments thereto. Upon  
3 discontinuance of all such assistance and support enforcement services, the assignment shall remain  
4 in effect as to unpaid support obligations due and owing at the time of the discontinuance of  
5 assistance until the claim of the commissioner for repayment of the unreimbursed portion of any  
6 assistance is satisfied. Nothing herein shall affect or limit the rights of the commissioner under an  
7 assignment of rights to payment for medical care from a third party pursuant to K.S.A. 40-2,161, and  
8 amendments thereto.

9 **COMMENT**

10 Section 23, relating to assignment of support rights when a juvenile is placed under the  
11 juvenile justice code, is nearly identical to current K.S.A. 38-16,127. The only changes are technical  
12 and the section was moved to this location the revised code because it is a more logical place for the  
13 subject matter.  
14

15

16

2           New Sec. 24. (a) Except as provided in subsection (b), a juvenile's parent shall be liable  
3 to repay to the commissioner of juvenile justice, or any other person or entity who provides services  
4 pursuant to a court order issued under the juvenile justice code, any assistance expended on the  
5 juvenile's behalf, regardless of the specific program under which the assistance is or has been  
6 provided. Such services shall include, but not be limited to, probation, conditional release, aftercare  
7 supervision, case management and community corrections. When more than one person is legally  
8 obligated to support the juvenile, liability to the commissioner or other person or entity shall be joint  
9 and several. The commissioner or other person or entity shall have the power and authority to file  
10 a civil action in the name of the commissioner or other person or entity for repayment of the  
11 assistance, regardless of the existence of any other action involving the support of the juvenile.

12           (b) With respect to an individual parent , the provisions of subsection (a) shall not apply to:

13           (1) assistance provided on behalf of any person other than the juvenile of the parent ;

14           (2) assistance provided during a month in which the needs of the parent were included in  
15 the assistance provided to the juvenile; or

16           (3) assistance provided during a month in which the parent has fully complied with the  
17 terms of an order of support for the juvenile, if a court of competent jurisdiction has considered the  
18 issue of support. For the purposes of this subsection, if an order is silent on the issue of support, it  
19 shall not be presumed that the court has considered the issue of support. Amounts paid for a  
20 particular month pursuant to a judgment under this section shall be credited against the amount  
21 accruing for the same month under any other order of support for the juvenile, up to the amount of  
22 the current support obligation for that month.

2 (c) When the assistance provided during a month is on behalf of more than one person, the  
3 amount of assistance provided on behalf of one person for that month shall be determined by  
4 dividing the total assistance by the number of people on whose behalf assistance was provided.

5 (d) Actions authorized herein are in addition to and not in substitution for any other  
6 remedies.

7 **COMMENT**

8 Section 24, relating to liability of parent or guardian for assistance provided child, is nearly  
9 identical to current K.S.A. 38-16,128 and is placed at this location in the revised code because it is  
10 a more logical place for the subject matter.  
11

2           New Sec. 25. As used in section 26 and amendments thereto, unless the context otherwise  
3 requires:

4           (a) "Central repository" has the meaning provided by K.S.A. 22-4701 and amendments  
5 thereto.

6           (b) "Director" means the director of the Kansas bureau of investigation.

7           (c) "Juvenile offender information" means data relating to juveniles alleged or adjudicated  
8 to be juvenile offenders and offenses committed or alleged to have been committed by juveniles in  
9 proceedings pursuant to the Kansas juvenile code, the Kansas juvenile justice code or the revised  
10 Kansas juvenile justice code.

11           (d) "Juvenile justice agency" means any county or district attorney, law enforcement agency  
12 of this state or of any political subdivision of this state, court of this state or of a municipality of this  
13 state, administrative agency of this state or any political subdivision of this state, juvenile  
14 correctional facility or juvenile detention facility.

15           (e) "Reportable event" means:

16           (1) Issuance of a warrant to take a juvenile into custody;

17           (2) taking a juvenile into custody pursuant to this code;

18           (3) release of a juvenile who has been taken into custody pursuant to this code, without the  
19 filing of a complaint;

20           (4) dismissal of a complaint filed pursuant to this code;

21           (5) a trial in a proceeding pursuant to this code;

22           (6) a sentence in a proceeding pursuant to this code;

2 (7) commitment to or placement in a youth residential facility, juvenile detention facility or  
3 juvenile correctional facility pursuant to this code;

4 (8) release or discharge from commitment or jurisdiction of the court pursuant to this code;

5 (9) escaping from commitment or absconding from placement pursuant to this code;

6 (10) entry of a mandate of an appellate court that reverses the decision of the trial court  
7 relating to a reportable event;

8 (11) an order authorizing prosecution as an adult;

9 (12) the issuance of an intake and assessment report;

10 (13) the report from a reception and diagnostic center; or

11 (14) any other event arising out of or occurring during the course of proceedings pursuant  
12 to this code and declared to be reportable by rules and regulations of the director.

13 **COMMENT**

14 Section 25, relating to the juvenile offender information system, is nearly identical to the  
15 current K.S.A 38-1617. The only changes are technical.

2           New Sec. 26. (a) In order to properly advise the three branches of government on the  
3 operation of the juvenile justice system, there is hereby established within and as a part of the central  
4 repository, as defined by K.S.A. 22-4701 and amendments thereto, a juvenile offender information  
5 system. The system shall serve as a repository of juvenile offender information which is collected  
6 by juvenile justice agencies and reported to the system.

7           (b) Except as otherwise provided by this subsection, every juvenile justice agency shall  
8 report juvenile offender information, whether collected manually or by means of an automated  
9 system, to the central repository, in accordance with rules and regulations adopted pursuant to this  
10 section. A juvenile justice agency shall report to the central repository those reportable events  
11 involving a violation of a county resolution or city ordinance only when required by rules and  
12 regulations adopted by the director.

13           (c) Reporting methods may include:

14           (1) Submission of juvenile offender information by a juvenile justice agency directly to the  
15 central repository;

16           (2) if the information can readily be collected and reported through the court system,  
17 submission to the central repository by the office of judicial administrator; or

18           (3) if the information can readily be collected and reported through juvenile justice agencies  
19 that are part of a geographically based information system, submission to the central repository by  
20 the agencies.

21           (d) The director may determine, by rule and regulation, the statutorily required reportable  
22 events to be reported by each juvenile justice agency, in order to avoid duplication in reporting.

2 (e) Juvenile offender information maintained in the juvenile offender information system  
3 is confidential and shall not be disseminated or publicly disclosed in a manner which enables  
4 identification of any individual who is a subject of the information, except that the information shall  
5 be open to inspection by law enforcement agencies of this state, by the department of social and  
6 rehabilitation services if related to an individual in the secretary's custody or control, by the juvenile  
7 justice authority if related to an individual in the commissioner's custody or control, by the  
8 department of corrections if related to an individual in the custody and control of the secretary of  
9 the department of corrections to the extent necessary to provide the safest possible environment for  
10 pupils and employees, by any educator to the extent necessary for the protection of the educator and  
11 pupils, by the officers of any public institution to which the individual is committed, by county and  
12 district attorneys, by attorneys for the parties to a proceeding under this code, by an intake and  
13 assessment worker or upon order of a judge of the district court or an appellate court and shall reflect  
14 the offense level and whether a person or nonperson offense.

15 (f) Any journal entry of a trial of adjudication shall state the number of the statute under  
16 which the juvenile is adjudicated to be a juvenile offender and specify whether each offense, if done  
17 by an adult, would constitute a felony or misdemeanor, as defined by K.S.A. 21-3105 and  
18 amendments thereto.

19 (g) Any law enforcement agency that willfully fails to make any report required by this  
20 section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought  
21 by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty  
22 recovered under this subsection shall be paid into the state general fund.

2 (h) The director shall adopt any rules and regulations necessary to implement, administer  
3 and enforce the provisions of this section.

4 (i) ) The director shall develop incentives to encourage the timely entry of juvenile offender  
5 information into the central repository.

6 **COMMENT**

7 Section 26, relating to establishment and maintenance of the juvenile justice information  
8 system, is nearly identical to K.S.A. 38-1618. The only changes are technical.



2 New Sec. 28. (a) *Complaint.* (1) The complaint shall be in writing and shall state:

3 (A) The name, date of birth and residence address of the alleged juvenile offender, if known;

4 (B) the name and residence address of the alleged juvenile offender's parent, if known, and,  
5 if no parent can be found, the name and address of the nearest known relative;

6 (C) the name and residence address of any persons having custody or control of the alleged  
7 juvenile offender;

8 (D) plainly and concisely the essential facts constituting the offense charged and, if the  
9 statement is drawn in the language of the statute, ordinance or resolution alleged to have been  
10 violated, it shall be considered sufficient; and

11 (E) for each count, the official or customary citation of the statute, ordinance or resolution  
12 which is alleged to have been violated, but error in the citation or its omission shall not be grounds  
13 for dismissal of the complaint or for reversal of an adjudication if the error or omission did not  
14 prejudice the juvenile.

15 (2) The proceedings shall be entitled: "In the matter of \_\_\_\_\_, a juvenile."

16 (3) The complaint shall contain a request that parents be ordered to pay child support in the  
17 event the juvenile is removed from the home.

18 (4) The precise time of the commission of an offense need not be stated in the complaint,  
19 but it is sufficient if shown to have been within the statute of limitations, except where the time is  
20 an indispensable element of the offense.

2 (5) At the time of filing the prosecuting attorney shall endorse upon the complaint the names  
3 of all known witnesses . The names of other witnesses that afterward become known to the  
4 prosecuting attorney may be endorsed at such times as the court prescribes by rule or otherwise.

5 (b) *Motions*. Motions may be made orally or in writing. The motion shall state with  
6 particularity the grounds for the motion and shall state the relief or order sought. Motions available  
7 in civil and criminal procedure are available to the parties under this code.

#### 8 **COMMENT**

9 Section 28, relating to pleadings, is substantially similar to current K.S.A 38-1622.  
10 Subsection (a)(1) was amended by deleting requirements regarding who may file the complaint.  
11 Subsection (a)(2) was amended to delete "respondent" from the title of juvenile proceedings and  
12 replaced it with "a juvenile". Subsection (a)(3) was amended to provide that the complaint must  
13 notify the parents that they may be required to pay child support if the child is removed from the  
14 home.

15  
16 Subsection (b) was changed to provide that the same motions available in civil and criminal  
17 proceedings are available under the juvenile justice code. The existing code is silent on this matter  
18 and the amendment reflects current practice.



2 New Sec. 30. (a) A law enforcement officer may take a juvenile into custody when:

3 (1) Any offense has been or is being committed in the officer's view;

4 (2) the officer has a warrant commanding that the juvenile be taken into custody;

5 (3) the officer has probable cause to believe that a warrant or order commanding that the  
6 juvenile be taken into custody has been issued in this state or in another jurisdiction for an act  
7 committed therein;

8 (4) the officer has probable cause to believe that the juvenile is committing or has committed  
9 an act which, if committed by an adult, would constitute:

10 (A) A felony; or

11 (B) a misdemeanor and (i) the juvenile will not be apprehended or evidence of the offense  
12 will be irretrievably lost unless the juvenile is immediately taken into custody or (ii) the juvenile may  
13 cause injury to self or others or damage to property or may be injured unless immediately taken into  
14 custody;

15 (5) the officer has probable cause to believe that the juvenile has violated an order for  
16 electronic monitoring as a term of probation; or

17 (6) the officer receives a written statement pursuant to subsection (c).

18 (b) A court services officer, juvenile community corrections officer, or other person  
19 authorized to supervise juveniles subject to this code, may take a juvenile into custody when: (1)  
20 There is a warrant commanding that the juvenile be taken into custody; (2) the officer has probable  
21 cause to believe that a warrant or order commanding that the juvenile be taken into custody has been

2 issued in this state or in another jurisdiction for an act committed therein; or (3) there is probable  
3 cause to believe that the juvenile has violated a term of probation or placement.

4 (c) Any court services officer, juvenile community corrections officer or other person  
5 authorized to supervise juveniles subject to this code, may arrest a juvenile without a warrant or may  
6 request any other officer with power of arrest to arrest a juvenile without a warrant by giving the  
7 officer a written statement setting forth that the juvenile, in the judgment of the court services officer  
8 or juvenile community corrections officer, has violated the condition of the juvenile's release. The  
9 written statement delivered with the juvenile by the arresting officer to the official in charge of a  
10 juvenile detention facility or other place of detention shall be sufficient warrant for the detention of  
11 the juvenile.

12 (d) (1) A juvenile taken into custody by a law enforcement officer shall be brought without  
13 unnecessary delay to an intake and assessment worker if an intake and assessment program exists  
14 in the jurisdiction, or before the court for proceedings in accordance with this code or, if the court  
15 is not open for the regular conduct of business, to a court services officer, a juvenile intake and  
16 assessment worker, a juvenile detention facility or youth residential facility which the court or the  
17 commissioner shall have designated. The officer shall not take the juvenile to a juvenile detention  
18 facility unless the juvenile meets one or more of the criteria listed in section 31(b), and amendments  
19 thereto. If the juvenile meets one or more of such criteria, the officer shall first consider whether  
20 taking the juvenile to an available nonsecure facility is more appropriate.

21 (2) It shall be the duty of the officer to furnish the county or district attorney and the juvenile  
22 intake and assessment worker if the officer has delivered the juvenile to the worker, with all of the

2 information in the officer's possession pertaining to the juvenile; the juvenile's parent, or other  
3 persons interested in or likely to be interested in the juvenile; and all other facts and circumstances  
4 which caused the juvenile to be arrested or taken into custody.

5 (e) In the absence of a court order to the contrary, the court or officials designated by the  
6 court, the county or district attorney or the law enforcement agency taking a juvenile into custody  
7 shall have the authority to direct the release prior to the time specified by subsection (a) of section  
8 43 and amendments thereto. In addition, if an agreement is established pursuant to section 46, and  
9 amendments thereto, a juvenile intake and assessment worker shall have the authority to direct the  
10 release of a juvenile prior to a detention hearing after the completion of the intake and assessment  
11 process if the juvenile intake and assessment worker has reason to believe that if released the  
12 juvenile will appear for further proceedings and will not be dangerous to self or others.

13 (f) Whenever a person 18 years of age or more is taken into custody by a law enforcement  
14 officer for an alleged offense which was committed prior to the time the person reached the age of  
15 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code,  
16 except that the provisions of this code relating to detention hearings shall not apply to that person.  
17 If detention is necessary, the person shall be detained in jail. Unless the law enforcement officer took  
18 the person into custody pursuant to a warrant issued by the court and the warrant specifies the  
19 amount of bond or indicates that the person may be released on personal recognizance, the person  
20 shall be taken before the court of the county where the alleged act took place or, at the request of the  
21 person, the person shall be taken, without delay, before the nearest court. The court shall fix the  
22 terms and conditions of an appearance bond upon which the person may be released from custody.

2 The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901 and  
3 amendments thereto relating to appearance bonds and review of conditions and release shall be  
4 applicable to appearance bonds provided for in this section.

5 **COMMENT**

6 Section 30, relating to juvenile taken into custody, is similar to current K.S.A 38-1624.  
7 Subsection (a) was amended by adding a new subsection (6) which refers to the written statement  
8 discussed in subsection (c).  
9

10 Subsection (b) was amended to allow probation officers as well as juvenile justice authority  
11 supervising officers to issue arrest and detain orders on probation violators as they do with adults.  
12 Because not all juvenile justice authority supervising officers are community correction officers, the  
13 language is broadened to juvenile community corrections officer.  
14

15 Subsection (c)(3)(A) and (B), relating to the admission of evidence of a confession made  
16 while in custody were stricken and will appear at section 33, which deals with custodial  
17 interrogation.  
18

2           New Sec. 31. (a) If no prior order removing a juvenile from the juvenile's home pursuant  
3 to section 34 or 35, and amendments thereto, has been made, before ordering the juvenile into a  
4 detention facility, the court shall determine whether: (1) Reasonable efforts have been made to  
5 maintain the juvenile in the juvenile's family or an emergency exists making reasonable efforts  
6 unnecessary; and (2) it is contrary to the welfare of the juvenile to remain in the home. The court  
7 shall state the basis for each finding in writing.

8           (b) Except as provided in subsection (c), a juvenile may be placed in a juvenile detention  
9 facility pursuant to subsection (c) of section 30 or subsection (e) of section 43, and amendments  
10 thereto, if one or more of the following conditions are met:

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

15           (2) The juvenile is alleged to have committed an offense which if committed by an adult  
16 would constitute a felony or any crime described in article 35 of chapter 21 of the Kansas Statutes  
17 Annotated, and amendments thereto.

18           (3) The juvenile has been adjudicated for a nonstatus offense and is awaiting final court  
19 action on that offense .

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

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

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

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

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

8 (9) The juvenile has been arrested by any court services officer or juvenile community  
9 corrections officer pursuant to subsection (b) of section 30 and amendments thereto.

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

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

12 **COMMENT**

13 Section 31, relating to criteria for detention of juveniles in detention facility, is substantially  
14 similar to current K.S.A 38-1640. The section was moved from its current location in the code  
15 because it more logically follows section 30, which deals with taking a juvenile into custody. The  
16 section sets out the criteria for detaining a juvenile in a detention facility.

17  
18 Subsection (a) is the first occurrence of language implementing the Adoption and Safe  
19 Families Act of 1997. Compliance with the act is required to qualify for federal financial  
20 participation, under section IV-B of the social security act, in the cost of juvenile offender programs.  
21 Similar language is included, where appropriate, throughout the code.

22  
23 Subsection (b)(2) was changed to delete all references to crimes committed prior to 1993.  
24 Those references are no longer necessary because if the crime was committed by a juvenile prior to  
25 1993, the offender would now be over 18 years of age and may not be held in a juvenile detention  
26 center. Subsection (b)(6) is amended to not require that assaultive, destructive or self-destructive  
27 behavior continue after the juvenile is taken into custody for the juvenile to be placed in a juvenile  
28 detention center.

2           New Sec. 32. (a) No juvenile shall be detained or placed in any jail pursuant to the revised  
3 Kansas juvenile justice code except as provided by subsections (b), (c) and (d).

4           (b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in  
5 quarters with sight and sound separation from adult prisoners, for the purpose of identifying and  
6 processing the juvenile and transferring the juvenile to a youth residential facility or juvenile  
7 detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained  
8 only for the minimum time necessary, not to exceed six hours, and in no case overnight.

9           (c) The provisions of this section shall not apply to detention of a juvenile:

10           (1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant  
11 to section 47 (a)(2), and amendments thereto; and (B) who has received the benefit of a detention  
12 hearing pursuant to section 31, and amendments thereto;

13           (2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has  
14 been authorized pursuant to section 47, and amendments thereto; or

15           (3) who has been convicted previously as an adult under the code of criminal procedure or  
16 the criminal laws of another state or foreign jurisdiction.

17           (d) The provisions of this section shall not apply to the detention of any person 18 years of  
18 age or more who is taken into custody and is being prosecuted in accordance with the provisions of  
19 the revised Kansas juvenile justice code.

20           (e) The Kansas juvenile justice authority or the authority's contractor shall have authority  
21 to review jail records to determine compliance with the provisions of this section.

2

## COMMENT

3

Section 32, relating to probation of placement or detention of a juvenile in a jail, is nearly identical to current K.S.A. 38-1691. The change is technical.

4

5

6

The section is moved from its current location near the end of the code because it more logically follows section 31 which relates to detention of juveniles in a detention facility.

7

8



2            Subsection (c) is new language to clarify that after an attorney has been appointed for the  
3 juvenile, the parents may not waive his or her rights.  
4



2           New Sec. 35. (a) The court shall in the first warrant or order authorizing or requiring  
3 removal of the juvenile from the juvenile's home, determine whether reasonable efforts were made  
4 to maintain the family unit and prevent unnecessary removal of the juvenile from the home and  
5 include its determination in the court's warrant or order.

6           (1) If the juvenile is in the custody of the commissioner, the commissioner shall prepare a  
7 report for the court documenting such reasonable efforts.

8           (2) If the juvenile is in the custody of the secretary of social and rehabilitation services under  
9 the Kansas code for the care of children, the secretary shall prepare a report for the court  
10 documenting such reasonable efforts.

11           (3) In all other cases the person preparing the predisposition report shall include  
12 documentation of such reasonable efforts in the report.

13           (b) If the court determines that reasonable efforts to maintain the family unit and prevent  
14 unnecessary removal of a juvenile were not made, the court shall determine whether such reasonable  
15 efforts were unnecessary because: (1) A court of competent jurisdiction has determined that the  
16 parent has subjected the juvenile to aggravated circumstances;

17           (2) a court of competent jurisdiction has determined that the parent has been convicted of  
18 a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding  
19 or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary  
20 manslaughter; or a felony assault that results in serious bodily injury to the juvenile or another child  
21 of the parent;

2 (3) the parental rights of the parent with respect to a sibling have been terminated  
3 involuntarily; or

4 (4) an emergency exists requiring protection of the juvenile and efforts to maintain the  
5 family unit and prevent unnecessary removal of the juvenile from the home were not possible.

6 (c) Nothing in this section shall be construed to prohibit the court from issuing a warrant or  
7 entering an order authorizing or requiring removal of the juvenile from the home for the safety of  
8 the community.

9 (d) When the juvenile has been in foster care and has been placed at home or allowed a trial  
10 home visit for a period of six months or more and is again removed from the home, the court shall  
11 again make a determination pursuant to subsections (a) and (b).

12 **COMMENT**

13 Section 35, relating to initial removal from juvenile's home, is a new section drafted to  
14 comply with the Adoption and Safe Families Act of 1997. Compliance with the act is required to  
15 qualify for federal participation under section IV-B of the social security act in the cost of juvenile  
16 offender programs.  
17



2 New Sec. 37. (a) *Persons upon whom served.* The summons and a copy of the complaint  
3 shall be served on the juvenile; and, if his or her whereabouts are known, any person having legal  
4 custody of the juvenile; the person with whom the juvenile is residing, and any other person  
5 designated by the county or district attorney.

6 (b) *Form.* The summons shall be issued by the clerk, dated the day it is issued, contain the  
7 name of the court , the caption of the case and be in substantially the following form:

8 (Name of Court)  
9 In the Matter of  
10 \_\_\_\_\_, a juvenile  
11 Case No. \_\_\_\_\_  
12 Date of birth \_\_\_\_\_  
13 A \_\_ male \_\_ female .

14  
15  
16 S U M M O N S

17 TO:  
18 \_\_\_\_\_  
19 (Juvenile)  
20 \_\_\_\_\_  
21 (Father)  
22 \_\_\_\_\_  
23 (Mother)  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 (Other having custody- (Address)  
27 relationship)

28 A complaint has been filed in this court, a copy of which is attached.  
29 On \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_m. the above-named juvenile and a parent and any other person  
30 having legal custody are required to appear before this court at \_\_\_\_\_. Failure to appear may cause the  
31 juvenile to be taken into custody and brought before the court.

32 The juvenile will be required to plead guilty or not guilty to the statements in the complaint. You have the right  
33 to hire an attorney to represent the above juvenile. If you do not hire an attorney, the court will appoint an attorney for  
34 the juvenile. The juvenile, parent or other person having legal custody of the juvenile may be required to repay the court  
35 for the expense of the appointed attorney. The court may order one or both parents to pay child support.

36 Date: \_\_\_\_\_, 20\_\_\_\_ Clerk of the District Court  
37 by \_\_\_\_\_

38  
39 (Seal)  
40

2  
3  
4  
5  
6  
7  
8  
9

**COMMENT**

Section 37, relating to summons, is substantially similar to current K.S.A. 38-1626. Subsection (a) was rewritten and changed by deleting the requirement that the summons be served on a parent "who may be ordered to pay child support" because at the initial summons stage, child support is not generally a concern and it is unlikely that those causing the issuance of the summons would know who would be liable for a support order. Other changes are technical.



2 New Sec. 39. K.S.A. 38-1628 is hereby amended to read as follows: 38-1628. Proof of  
3 service shall be made as follows:

4 (a) *Personal or residential service.* (1) Every officer to whom summons or other process  
5 shall be delivered for service within the state shall make written report of the place, manner and date  
6 of service of the process in substantially the following form:

7  
8 REPORT OF SERVICE  
9

10 I certify that a true copy of the above summons and a copy of the complaint were served on the persons above  
11 named in the manner and on the dates indicated below:  
12

13  
14 Name Location of Service Manner of Service Date of Service  
15

16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 Date Returned: \_\_\_\_\_, \_\_\_\_

21  
22 Sheriff of \_\_\_\_\_ County, Kansas  
23

24 by \_\_\_\_\_  
25 \_\_\_\_\_

26 (Title)  
27  
28

29 (2) If the process is, by order of the court, delivered to a person other than an officer for  
30 service, the person shall report the place, manner and time of service by affidavit.

31 (b) *Service by mail.* The clerk or a deputy clerk shall make service by mail and shall make  
32 a written report of the service in substantially the following form:

33 CERTIFICATE OF MAILING  
34

35 On \_\_\_\_\_, I mailed a copy of the above (summons or other process) and a copy of the (complaint or other  
36 pleading) described therein to each of the parties named therein at the address indicated on the process:  
37

38 \* By placing in an envelope properly addressed and delivering the same to the United States Postal Service  
39 for delivery with postage prepaid.



2 New Sec. 40. (a) *Proceedings upon filing.* Upon the filing of a subsequent pleading  
3 requesting or indicating the necessity for a hearing, the court shall fix the time and place for the  
4 hearing.

5 (b) *Form of notice.* The notice of hearing shall be given by the clerk, dated the day it is  
6 issued, contain the name of the court and the caption in the case and be substantially in the following  
7 form:

8 (Name of Court)

9  
10 (Caption of Case)

11 NOTICE OF HEARING

12 TO:

13  
14  
15  
16 \_\_\_\_\_  
17 (Juvenile)  
18 \_\_\_\_\_  
19 (Father)  
20 \_\_\_\_\_  
21 (Mother)  
22 \_\_\_\_\_  
23 (Other having custody- (Address)  
24 relationship)

25  
26 This court has received a \_\_\_\_\_,  
27 (describe pleading)  
28 a copy of which is attached, which will require a hearing before the court.

29 On \_\_\_\_\_, at \_\_ o'clock \_\_m. at \_\_\_\_\_, the court will hear this matter.

30 The above named juvenile and a parent and any other person having legal custody of the juvenile are required  
31 to be present. Failure to appear may cause the juvenile to be taken into custody and brought before the court.

32 Date: \_\_\_\_\_, Clerk of the District Court by \_\_\_\_\_

33  
34  
35  
36  
37 (Seal)  
38









2 (Other having custody- (Address)

3 relationship)

4 On \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, at \_\_\_o'clock \_\_m.

5 (day) (date) (year)

6 there will be a hearing for the court to determine if there is a need for further detention of the above named juvenile. Each  
7 parent or other person having legal custody of the juvenile should be present at the hearing which will be held at  
8 \_\_\_\_\_.

9 You have the right to hire an attorney to represent the above juvenile. Upon failure to hire an attorney the court  
10 will appoint an attorney for the juvenile and the juvenile, parent or other person having legal custody of the juvenile may  
11 be required to repay the court for the expense of the appointed attorney. The court may order one or both parent to pay  
12 child support.

13 Date: \_\_\_\_\_, \_\_\_\_\_

14 Clerk of the District Court  
15 by \_\_\_\_\_

16 (Seal)

17 REPORT OF SERVICE

18 I certify that I have delivered a true copy of the above notice on the persons above named in the manner and  
19 at the times indicated below:

20 Name	Location of Service	Manner of Service	Date	Time
21 (other than above)				
22 _____	_____	_____	_____	_____
23 _____	_____	_____	_____	_____

24 Date Returned: \_\_\_\_\_, \_\_\_\_\_ \_\_\_\_\_

25 (Signature)  
26 \_\_\_\_\_

27 (Title)

28

2 (d) *Oral notice*. When there is insufficient time to give written notice, oral notice may be  
3 given and is completed upon filing a certificate of oral notice with the clerk in substantially the  
4 following form:

5 (Name of Court)  
6 (Caption of Case) CERTIFICATE OF ORAL NOTICE OF DETENTION HEARING  
7 I gave oral notice that the court will hold a hearing at \_\_\_\_\_ o'clock \_\_m. on \_\_\_\_\_, \_\_\_\_\_, to the persons  
8 listed, in the manner and at the times indicated below:  
9  
10 Name Relationship Date Time Method of Communication  
11 (in person or telephone)  
12 \_\_\_\_\_  
13 \_\_\_\_\_

- 14 I advised each of the above named persons that:  
15 (1) The hearing is to determine if the above named juvenile shall be detained;  
16 (2) each parent or person having legal custody should be present at the hearing;  
17 (3) they have the right to hire an attorney of their own choice for the juvenile;  
18 (4) if an attorney is not hired, the court will appoint an attorney for the juvenile;  
19 (5) the juvenile, parent or other person having custody of the juvenile may be required to repay the court for the expense  
20 of the appointed attorney; and  
21 (6) the court may order one or both parents to pay child support.

22 \_\_\_\_\_  
23 (Signature)  
24 \_\_\_\_\_  
25 (Name Printed)  
26 \_\_\_\_\_  
27 (Title)  
28

29 (e) *Hearing, finding, bond*. At the time set for the detention hearing if no retained attorney  
30 is present to represent the juvenile, the court shall appoint an attorney , and may recess the hearing  
31 for 24 hours to obtain attendance of the attorney appointed . At the detention hearing, if the court  
32 finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention  
33 facility or youth residential facility which the court shall designate. If the court finds the juvenile is  
34 not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention  
35 facility or youth residential facility which the court shall designate or may be released upon the  
36 giving of an appearance bond in an amount specified by the court and on the conditions the court  
37 may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas

2 Statutes Annotated and amendments thereto. In the absence of either finding, the court shall order  
3 the juvenile released or placed in temporary custody as provided in subsection (f).

4 In determining whether to place a juvenile in a juvenile detention facility pursuant to this  
5 subsection, the court shall consider all relevant factors, including but not limited to the criteria listed  
6 in section 31 and amendments thereto. If the court orders the juvenile to be detained in a juvenile  
7 detention facility, the court shall record the specific findings of fact upon which the order is based.

8 If detention is ordered and the parent was not notified of the hearing and did not appear and  
9 later requests a rehearing, the court shall rehear the matter without unnecessary delay.

10 (f) *Temporary custody.* If the court determines that detention is not necessary but finds that  
11 release to the custody of a parent is not in the best interests of the juvenile, the court may place the  
12 juvenile in the temporary custody of a youth residential facility, some other suitable person willing  
13 to accept temporary custody or the Commissioner. Such finding shall be made in accordance with  
14 section 34 and section 35, and amendments thereto.

15 (g) *Audio-video communications.* Detention hearings may be conducted by two-way  
16 electronic audio-video communication between the juvenile and the judge in lieu of personal  
17 presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas  
18 in the discretion of the court. The juvenile may be accompanied by the juvenile's counsel during such  
19 proceedings or counsel may be personally present in court as long as a means of confidential  
20 communication between the juvenile and the juvenile's attorney is available .

#### 21 **COMMENT**

22 Section 43, relating to detention hearing, is substantially similar to current to K.S.A.  
23 38-1632. The changes in the section are for clarification or are technical changes. The current  
24 subsections relating to juveniles being held in jails are omitted because that is no longer an option  
25 at this stage of the proceeding.

2           New Sec. 44. (a) When the juvenile appears without an attorney in response to a complaint,  
3 the court shall inform the juvenile of the following:

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

5           (2) the right to hire an attorney of the juvenile's own choice;

6           (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the  
7 juvenile or parent; and

8           (4) that the court may require the juvenile or parent to pay the expense of a court appointed  
9 attorney.

10           Upon request the court shall give the juvenile or parent an opportunity to hire an attorney.  
11 If no request is made or the juvenile or parent is financially unable to hire an attorney, the court  
12 shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an  
13 opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of  
14 the complaint.

15           (b) When the juvenile appears with an attorney in response to a complaint, the court shall  
16 require the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the  
17 complaint , unless there is an application for and approval of an immediate intervention program.  
18 Prior to making this requirement, the court shall inform the juvenile of the following:

19           (1) The nature of the charges in the complaint;

20           (2) the right of the juvenile to be presumed innocent of each charge;

21           (3) the right to trial without unnecessary delay and to confront and cross-examine witnesses  
22 appearing in support of the allegations of the complaint;

23           (4) the right to subpoena witnesses;

2 (5) the right of the juvenile to testify or to decline to testify; and

3 (6) the sentencing alternatives the court may select as the result of the juvenile being  
4 adjudicated a juvenile offender.

5 (c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo*  
6 *contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That  
7 there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4) and (5); and  
8 (2) that there is a factual basis for the plea.

9 (d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the  
10 court.

11 (e) First appearance may be conducted by two-way electronic audio-video communication  
12 between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's  
13 attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile  
14 may be accompanied by the juvenile's attorney during such proceedings or the attorney may be  
15 personally present in court as long as a means of confidential communication between the juvenile  
16 and the juvenile's attorney is available .

17 **COMMENT**

18 Section 44, relating to first appearance, is substantially similar to current K.S.A. 38-1633.  
19 The policy change contained in this section is the reference to this hearing as "first appearance"  
20 instead of the previous term "pre-trial hearing".  
21



1           New Sec. 46. (a) Except as provided in subsection (b), each county or district attorney may  
2 adopt a policy and establish guidelines for an immediate intervention program by which a juvenile  
3 may avoid prosecution . In addition to the county or district attorney adopting policies and guidelines  
4 for the immediate intervention programs, the court, the county or district attorney and the director  
5 of the intake and assessment center, pursuant to a written agreement, may develop local programs  
6 to:

7           (1) Provide for the direct referral of cases by the county or district attorney or the intake and  
8 assessment worker, or both, to youth courts, restorative justice centers, hearing officers, or other  
9 local programs as sanctioned by the court.

10           (2) Allow intake and assessment workers to issue a summons, as defined in subsection (e)  
11 or if the county or district attorney has adopted appropriate policies and guidelines, allow law  
12 enforcement officers to issue such a summons.

13           (3) Allow the intake and assessment centers to directly purchase services for the juvenile  
14 and the juvenile's family.

15           (4) Allow intake and assessment workers to direct the release of a juvenile prior to a  
16 detention hearing after the completion of the intake and assessment process if the juvenile intake and  
17 assessment worker has reason to believe that if released the juvenile will appear for further  
18 proceedings and is not dangerous to self or others.

19           (b) An immediate intervention program shall provide that an alleged juvenile offender is  
20 ineligible for such program if the juvenile faces pending charges as a juvenile offender, for  
21 committing acts which, if committed by an adult, would constitute:

1 (1) A violation of K.S.A. 8-1567 and amendments thereto and the juvenile: (A) Has  
2 previously participated in an immediate intervention program instead of prosecution of a complaint  
3 alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts  
4 prohibited by that statute; (B) has previously been adjudicated of a violation of that statute or a  
5 violation of a law of another state or of a political subdivision of this or any other state, which law  
6 prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was  
7 involved in a motor vehicle accident or collision resulting in personal injury or death; or

8 (2) a violation of an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or  
9 drug severity level 1 or 2 felony for drug crimes.

10 (c) An immediate intervention program may include a stipulation, agreed to by the juvenile,  
11 the juvenile's attorney and the attorney general or county or district attorney, of the facts upon which  
12 the charge is based and a provision that if the juvenile fails to fulfill the terms of the specific  
13 immediate intervention agreement and the immediate intervention proceedings are resumed, the  
14 proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation  
15 of facts.

16 (d) The county or district attorney may require the parent of a juvenile to be a part of the  
17 immediate intervention program .

18 (e) "Summons" means a written order issued by an intake and assessment worker or a law  
19 enforcement officer directing that a juvenile appear before a designated court at a stated time and  
20 place to answer a pending charge.

1 (f) The provisions of this section shall not be applicable in judicial districts that adopt district  
2 court rules pursuant to K.S.A. 20-342, and amendments thereto, for the administration of immediate  
3 intervention programs by the district court.

4 **COMMENT**

5 Section 46, relating to immediate intervention programs, is substantially similar to current  
6 K.S.A. 38-1635. In subsection (a)(2), a policy change now allows law enforcement officers to issue  
7 summons if a local prosecutor has adopted appropriate policies and guidelines.  
8

1           New Sec. 47. (a) (1) Except as otherwise provided in this section, at any time after  
2 commencement of proceedings under this code against a juvenile and prior to the beginning of an  
3 evidentiary hearing at which the court may enter a sentence as provided in section 56, and  
4 amendments thereto, the county or district attorney or the county or district attorney's designee may  
5 file a motion requesting that the court authorize prosecution of the juvenile as an adult under the  
6 applicable criminal statute. The juvenile shall be presumed to be a juvenile unless good cause is  
7 shown to prosecute the juvenile as an adult.

8           (2) The alleged juvenile offender shall be presumed to be an adult if the alleged juvenile  
9 offender was: (A) 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the  
10 complaint, if any such offense: (i) If committed by an adult, would constitute an off-grid crime, a  
11 person felony, a nondrug severity level 1 through 6 felony or any drug severity level 1, 2 or 3 felony;  
12 or (ii) was committed while in possession of a firearm; or (B) charged with a felony or with more  
13 than one offense, one or more of which constitutes a felony, after having been adjudicated or  
14 convicted in a separate juvenile proceeding as having committed an offense which would constitute  
15 a felony if committed by an adult and the adjudications or convictions occurred prior to the date of  
16 the commission of the new act charged and prior to the beginning of an evidentiary hearing at which  
17 the court may enter a sentence as provided in section 56, and amendments thereto. If the juvenile  
18 is presumed to be an adult, the burden is on the juvenile to rebut the presumption by a  
19 preponderance of the evidence.

20           (3) At any time after commencement of proceedings under this code against a juvenile  
21 offender and prior to the beginning of an evidentiary hearing at which the court may enter a sentence  
22 as provided in 56, and amendments thereto, the county or district attorney or the county or district

1 attorney's designee may file a motion requesting that the court designate the proceedings as an  
2 extended jurisdiction juvenile prosecution .

3 (4) If the county or district attorney or the county or district attorney's designee files a motion  
4 to designate the proceedings as an extended jurisdiction juvenile prosecution and the juvenile was  
5 14, 15, 16 or 17 years of age at the time of the offense or offenses alleged in the complaint and: (A)  
6 charged with an offense: (i) If committed by an adult, would constitute an off-grid crime, a person  
7 felony, a nondrug severity level 1 through 6 felony or any drug severity level 1 , 2 or 3 felony; or (ii)  
8 was committed while in possession of a firearm; or (B) charged with a felony or with more than, one  
9 offense , one or more of which constitutes a felony, after having been adjudicated or convicted in  
10 a separate juvenile proceeding as having committed an act which would constitute a felony if  
11 committed by an adult and the adjudications or convictions occurred prior to the date of the  
12 commission of the new offense charged, the burden is on the juvenile to rebut the designation of  
13 an extended jurisdiction juvenile prosecution by a preponderance of the evidence. In all other  
14 motions requesting that the court designate the proceedings as an extended jurisdiction juvenile  
15 prosecution, the juvenile is presumed to be a juvenile. The burden of proof is on the prosecutor to  
16 prove the juvenile should be designated as an extended jurisdiction juvenile.

17 (b) The motion also may contain a statement that the prosecuting attorney will introduce  
18 evidence of the offenses alleged in the complaint and request that, on hearing the motion and  
19 authorizing prosecution as an adult or designating the proceedings as an extended jurisdiction  
20 juvenile prosecution under this code, the court may make the findings required in a preliminary  
21 examination provided for in K.S.A. 22-2902, and amendments thereto, and the finding that there is  
22 no necessity for further preliminary examination.

1 (c) (1) Upon receiving the motion , the court shall set a time and place for hearing . The  
2 court shall give notice of the hearing to the juvenile, each parent , if service is possible, and the  
3 attorney representing the juvenile. The motion shall be heard and determined prior to any further  
4 proceedings on the complaint.

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

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

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

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

10 (D) the right to subpoena witnesses;

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

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

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

20 (e) In determining whether or not prosecution as an adult should be authorized or designating  
21 the proceeding as an extended jurisdiction juvenile prosecution, the court shall consider each of the  
22 following factors: (1) The seriousness of the alleged offense and whether the protection of the

1 community requires prosecution as an adult or designating the proceeding as an extended jurisdiction  
2 juvenile prosecution; (2) whether the alleged offense was committed in an aggressive, violent,  
3 premeditated or willful manner; (3) whether the offense was against a person or against property.  
4 Greater weight shall be given to offenses against persons, especially if personal injury resulted; (4)  
5 the number of alleged offenses unadjudicated and pending against the juvenile; (5) the previous  
6 history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender  
7 under this code and, if so, whether the offenses were against persons or property, and any other  
8 previous history of antisocial behavior or patterns of physical violence; (6) the sophistication or  
9 maturity of the juvenile as determined by consideration of the juvenile's home, environment,  
10 emotional attitude, pattern of living or desire to be treated as an adult; (7) whether there are facilities  
11 or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration  
12 of the court's jurisdiction under this code; and (8) whether the interests of the juvenile or of the  
13 community would be better served by criminal prosecution or extended jurisdiction juvenile  
14 prosecution. The insufficiency of evidence pertaining to any one or more of the factors listed in this  
15 subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of  
16 section 54, and amendments thereto, written reports and other materials relating to the juvenile's  
17 mental, physical, educational and social history may be considered by the court.

18 (f) (1) The court may authorize prosecution as an adult upon completion of the hearing if the  
19 court finds from a preponderance of the evidence that the alleged juvenile offender should be  
20 prosecuted as an adult for the offense charged. In that case, the court shall direct the alleged  
21 juvenile offender be prosecuted under the applicable criminal statute and that the proceedings filed  
22 under this code be dismissed.

1           (2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution  
2 upon completion of the hearing if the juvenile has failed to rebut the presumption or the court finds  
3 from a preponderance of the evidence that the juvenile should be prosecuted under an extended  
4 jurisdiction juvenile prosecution. A juvenile who is the subject of an extended jurisdiction juvenile  
5 prosecution shall have the right to a trial by jury, to the effective assistance of counsel and to all  
6 other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court shall adopt  
7 local rules to establish the basic procedures for extended juvenile jurisdiction prosecution in their  
8 jurisdictions.

9           (3) After a proceeding in which prosecution as an adult is requested pursuant to subsection  
10 (a)(2), and prosecution as an adult is not authorized, the court may designate the proceedings to be  
11 an extended juvenile jurisdiction prosecution. A juvenile who is the subject of an extended juvenile  
12 jurisdiction prosecution shall have the right to a trial by jury, to the effective assistance of counsel  
13 and to all other rights of a defendant pursuant to the Kansas code of criminal procedure. Each court  
14 shall adopt local rules to establish the basic procedures for extended juvenile jurisdiction prosecution  
15 in their jurisdictions.

16           (g) If the juvenile is present in court and the court also finds from the evidence that it  
17 appears a felony has been committed and that there is probable cause to believe the felony has been  
18 committed by the juvenile, the court may direct that there is no necessity for further preliminary  
19 examination on the charges as provided for in K.S.A. 22-2902, and amendments thereto. In that case,  
20 the court shall order the juvenile bound over to the district judge having jurisdiction to try the case.

21           (h) If the juvenile is convicted, the authorization for prosecution as an adult shall attach and  
22 apply to any future prosecutions of the juvenile which are or would be cognizable under this code.

1 If the juvenile is not convicted, the authorization for prosecution as an adult shall not attach and shall  
2 not apply to future prosecutions of the juvenile which are or would be recognizable under this code.

3 (i) If the juvenile is prosecuted as an adult under subsection (a)(2) and is not convicted in  
4 adult court of an offense listed in subsection (a)(2) but is convicted or adjudicated of a lesser  
5 included offense, the juvenile shall be a juvenile offender and receive a sentence pursuant to section  
6 60, and amendments thereto.

7 **COMMENT**

8 Section 47, relating to prosecution as an adult, is similar to current K.S.A. 38-1636.  
9

10 This section differs from current K.S.A 38-1636 in subsection (a) by including language  
11 which allows, not only the county or district attorney, but his or her designee to file a motion for  
12 prosecution as an adult. Subsection (a)(2) adds severity level 3 drug felonies to a list of offenses for  
13 which a juvenile is presumed to be an adult or presumed to be subject to an extended juvenile  
14 jurisdiction prosecution.  
15

16 Subsection (a)(4) and (f)(1)and (2) clarify that when a juvenile is presumed to be an adult or  
17 presumed to be subject to an extended jurisdiction juvenile prosecution that the juvenile has the  
18 burden to rebut the presumption by a preponderance of the evidence.  
19

20 In subsection (h), language is included to provide that if the juvenile is not convicted, the  
21 authorization for prosecution as an adult shall not attach and shall not automatically apply to future  
22 prosecutions.  
23

1           New Sec. 48. (a) For the purpose of this section, a person charged as a juvenile is  
2 incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such  
3 person is unable:

- 4           (1) To understand the nature and purpose of the proceedings; or
- 5           (2) to make or assist in making a defense.

6           Whenever the words "competent," "competency," "incompetent" and "incompetency" are  
7 used without qualification in this code, they shall refer to the standard for incompetency described  
8 in this subsection.

9           (b) (1) If at any time after such person has been charged as a juvenile there is reason to  
10 believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings  
11 shall be suspended and the court before whom the case is pending shall conduct a hearing to  
12 determine the competency of the juvenile. Such a hearing may be held upon the motion of the  
13 juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

14           (2) The court shall determine the issue of competency. To facilitate in this determination,  
15 the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B)  
16 designate a private or public mental health facility to conduct a psychiatric or psychological  
17 examination and report to the court. If the examining psychiatrist, psychologist or private or public  
18 mental health facility determines that further examination is necessary, the court may commit the  
19 juvenile for not more than 60 days to any appropriate public or private institution for examination  
20 and report to the court. For good cause shown, the commitment may be extended for another 60  
21 days. No statement made by the juvenile in the course of any examination provided for by this

1 section, whether the examination is with or without the consent of the juvenile, shall be admitted  
2 in evidence against the juvenile in any hearing.

3 (3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's  
4 health, the juvenile shall be present personally at all proceedings under this section.

5 (c) If the juvenile is found to be competent, the proceedings which have been suspended  
6 shall be resumed.

7 (d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the  
8 jurisdiction of the court and shall be committed for evaluation and treatment pursuant to section 49  
9 and section 50, and amendments thereto. One or both parents of the juvenile may be ordered to pay  
10 child support pursuant to the Kansas child support guidelines. Upon application of the juvenile and  
11 in the discretion of the court, the juvenile may be released to any appropriate private institution upon  
12 terms and conditions prescribed by the court.

13 (e) If at any time after proceedings have been suspended under this section, there are  
14 reasonable grounds to believe that a juvenile who has been adjudged incompetent is now  
15 competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's  
16 present mental condition. Reasonable notice of the hearings shall be given to the prosecuting  
17 attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing,  
18 finds the juvenile to be competent, the pending proceedings shall be resumed.

19 **COMMENT**

20 Section 48, relating to proceeding to determine competency, is similar to current K.S.A 38-  
21 1637. The section contains two policy changes. In subsection (b)(2)(A), the change allows the court  
22 to appoint one, rather than two, licensed psychiatrists or psychologists to examine the juvenile.  
23

1            In subsection (b)(3), a policy change allows the court to excuse the presence of the alleged  
2 juvenile offender if attendance at the proceedings would be injurious to the juvenile's health.

3  
4            Subsection (d) was changed to clarify that even if an alleged juvenile offender is found to be  
5 incompetent, he or she remains subject to the court's jurisdiction.





1 person under K.S.A. 59-2946(f). This situation may arise because the standard for competence as  
2 defined in section 48 of this act, refers a juvenile offender's ability to understand the proceedings  
3 and assist in his or her defense, while the standard for mentally ill persons excludes certain  
4 untreatable conditions such as mental retardation. The changes in this section are in style or are  
5 technical.

1 New Sec. 51. (a) Any parent or person with whom a juvenile resides who is served with a  
2 summons as provided in section 37, and amendments thereto, shall appear with the juvenile at all  
3 proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

4 (b) Any person required by this act to be present at all juvenile proceedings who fails to  
5 comply, without good cause, with the provisions of subsection (a) may be proceeded against for  
6 indirect contempt of court pursuant to the provisions of K.S.A. 20-1204a *et seq.*, and amendments  
7 thereto.

8 (c) As used in this section, "good cause" for failing to appear includes, but is not limited to,  
9 a situation where a parent :

10 (1) Does not have physical custody of the juvenile and resides outside of Kansas;

11 (2) has physical custody of the juvenile, but resides outside of Kansas and appearing in court  
12 will result in undue hardship to such parent ; or

13 (3) resides in Kansas, but is outside of the state at the time of the juvenile proceeding for  
14 reasons other than avoiding appearance before the court and appearing in court will result in undue  
15 hardship to such parent .

16 (d) If the parent of any juvenile cannot be found or fails to appear, the court may proceed  
17 with the case without the presence of such parent .

18 **COMMENT**

19 Section 51 is substantially similar to current K.S.A. 38-1641, relating to the duty of parents  
20 to appear at proceedings. This section differs from current statute by deleting the term "guardian"  
21 in several places because the term is already included in the definition of "parent" in section 2 and  
22 deleting the definition of "parent" that appears in this section also because the term is defined in  
23 section 2.  
24









1           New Sec. 56. (a) If the court finds that the evidence fails to prove an offense charged or an  
2 included offense as defined in subsection (2) of K.S.A. 21-3107 and amendments thereto, the court  
3 shall enter an order dismissing the charge.

4           (b) If the court finds that the juvenile committed the offense charged or an included offense  
5 as defined in subsection (2) of K.S.A. 21-3107 and amendments thereto, the court shall adjudicate  
6 the juvenile to be a juvenile offender and may issue a sentence as authorized by this code.

7           (c) If the court finds that the juvenile committed the acts constituting the offense charged  
8 or an included offense as defined in subsection (2) of K.S.A. 21-3107 and amendments thereto but  
9 is not responsible because of mental disease or defect, the juvenile shall not be adjudicated as a  
10 juvenile offender and shall be committed to the custody of the secretary of social and rehabilitation  
11 services and placed in a state hospital. The juvenile's continued commitment shall be subject to  
12 annual review in the manner provided by K.S.A. 22-3428a and amendments thereto for review of  
13 commitment of a defendant suffering from mental disease or defect, and the juvenile may be  
14 discharged or conditionally released pursuant to that section. The juvenile also may be discharged  
15 or conditionally released in the same manner and subject to the same procedures as provided by  
16 K.S.A. 22-3428 and amendments thereto for discharge of or granting conditional release to a  
17 defendant found suffering from mental disease or defect. If the juvenile violates any conditions of  
18 an order of conditional release, the juvenile shall be subject to contempt proceedings and returned  
19 to custody as provided by K.S.A. 22-3428b and amendments thereto.

20           (d) A copy of the court's order shall be sent to the school district in which the juvenile  
21 offender is enrolled or will be enrolled.

**COMMENT**

1  
2  
3  
4

Section 56, relating to adjudication, is nearly identical to current K.S.A. 38-1655. The only changes are technical.

1 New Sec. 57. In all cases involving offenses committed by a juvenile which, if done by an  
2 adult, would make the person liable to be arrested and prosecuted for the commission of a felony,  
3 the judge shall, upon motion, order that the juvenile be afforded a trial by jury. Upon the juvenile  
4 being adjudged to be a juvenile offender, the court shall proceed with sentencing.

#### 5 COMMENT

6 Section 57, relating to jury trials in certain cases, contains a substantial change from current  
7 K.S.A. 38-1656. This section contains a policy change which grants juveniles in felony cases the  
8 right to trial by jury upon request. Under current law, a juvenile may receive a jury trial at the  
9 discretion of the court. Neither the United States Supreme Court nor the Kansas Supreme Court has  
10 afforded juveniles the right to trial by jury. However, because juvenile adjudications are included  
11 in adult criminal history, it is believed to be appropriate to give juveniles the right to jury trials in  
12 felony cases.

13  
14 The Louisiana Supreme Court recently held in the case of State v. Brown, 879 So2d 1276  
15 (2004) that it is not constitutionally permissible to use a juvenile adjudication, in which the juvenile  
16 had not been afforded the right to a trial by jury, to enhance a sentence committed by an adult. The  
17 Committee is of the opinion that language from the Louisiana case is of interest to persons  
18 considering the proposed changes in this section.

19  
20 The Louisiana Supreme Court stated that it has well established that juvenile adjudications  
21 are sufficiently reliable, even without a jury trial, to support dispositions within the juvenile justice  
22 system. However, *Apprendi* raised the issue of whether such adjudications, rendered without the  
23 right to a jury trial are sufficiently reliable to support enhanced sentencing for adults. The Louisiana  
24 Supreme Court found they are not for the following reasons:

25  
26 "Under the guise of *parens patriae*, juvenile courts emphasize treatment,  
27 supervision, and control rather than punishment. The hallmark of special juvenile  
28 procedures is their non-criminal nature.

29  
30 Louisiana's juvenile system was founded upon the premise that retributive  
31 punishment was deemed inappropriate and the juvenile system dispositions should  
32 be individually tailored to address the needs and abilities of the juvenile in question.

33  
34 Because of the unique nature of the juvenile system manifested in its non-  
35 criminal or 'civil' nature, its focus on rehabilitation and individual treatment rather  
36 than retribution, and the state's role as *parens patriae* in managing the welfare of the  
37 juvenile in its custody, the United States Supreme Court held, despite

1           disappointments, failures and shortcomings in the juvenile court system, juveniles  
2           were not constitutionally entitled to jury trials.

3  
4           Even though it was argued that because (1) the juvenile justice system had  
5           taken on more of the trappings of the criminal justice system; (2) the role of  
6           punishment had increased in the juvenile system; and (3) the legislative amendments  
7           opening the proceedings to the public and allowing juvenile adjudications to serve  
8           as predicate offenses for adult felony sentence enhancement, due process required  
9           juveniles receive a jury trial, the Louisiana Supreme Court continued to uphold that  
10          the State Constitution does not afford a juvenile the right to a jury trial in a juvenile  
11          proceeding.

12  
13          Among the state high court's reasons for its continued holding is that even  
14          with the changes in the juvenile justice system, there remains a great disparity in the  
15          severity of penalties faced by a juvenile charged with delinquency and an adult  
16          defendant charged with the same crime. To allow these adjudications to serve as  
17          "prior convictions" for purposes of sentence enhancement for adult felony offenses  
18          would lessen this disparity and contribute to blurring the distinction between juvenile  
19          and adult procedures.

20  
21          The Louisiana Supreme Court finds there is a difference between a "prior  
22          conviction" and a prior juvenile adjudication. A prior conviction must itself have  
23          been established through procedures satisfying the fair notice, reasonable doubt and  
24          jury trial guarantees.

25  
26          The Louisiana Supreme Court's prior holdings that due process does not  
27          require juveniles be afforded all the guarantees afforded adult criminals under the  
28          constitution have been premised upon the "civil nature" of a juvenile adjudication,  
29          its focus on rehabilitation and the state's role as *parens patriae*.

30  
31          If a juvenile adjudication, with its lack of a right to a jury trial which is  
32          afforded to adult criminals, can then be counted as a predicate offense the same as  
33          a felony conviction for purposes of Louisiana's Habitual Offender Law, then the  
34          entire claim of *parens patriae* becomes a hypocritical mockery.

35  
36          A juvenile adjudication is not a conviction of any crime. Therefore, this  
37          adjudication should not be counted as a "prior conviction for *Apprendi* purposes.

38  
39          The determination that a jury trial was not constitutionally required in  
40          juvenile adjudications was predicated upon the non-criminal treatment of the  
41          adjudicated juvenile delinquent.

1           It would be incongruous and illogical to allow the non-criminal adjudication  
2 of a juvenile delinquent to serve as a criminal sentencing enhancer.  
3

4           To equate this adjudication with a conviction as a predicate offense for  
5 purposes of the Habitual Offender Law would subvert the civil trappings of the  
6 juvenile adjudication to an extent to make it fundamentally unfair and thus, violative  
7 of due process.  
8

9           In order to continue holding a trial by jury is not constitutionally required, the  
10 state high court cannot allow these adjudications, with their civil trappings, to be  
11 treated as predicate offenses the same as felony convictions.  
12

13           It seems contradictory and fundamentally unfair to provide youths with fewer  
14 procedural safeguards in the name of rehabilitation and then to use adjudications  
15 obtained for treatment purposes to punish them more severely as adults.  
16

17           It is inconsistent to consider juvenile adjudications civil for one purpose and  
18 therefore not constitutionally entitled to a jury trial, but then to consider them  
19 criminal for the purpose of classifying them as "prior convictions," which can be  
20 counted as predicate offenses for purposes of the Habitual Offender Law.  
21

22           The Louisiana Supreme Court does not agree that because the procedures of  
23 juvenile adjudications are sufficiently reliable for juvenile dispositions, they are  
24 therefore reliable to justify the much harsher consequences of their use as criminal  
25 sentence enhancements.  
26

27           The Louisiana Supreme Court finds that recidivism is distinct as a sentencing  
28 factor and therefore as an exception to the general rule that any fact that increases the  
29 penalty for a crime beyond the prescribed statutory maximum must be submitted to  
30 a jury, and proved beyond a reasonable doubt, because unlike virtually any other  
31 consideration used to enlarge the possible penalty for an offense, a prior conviction  
32 must itself have been established through procedures satisfying the fair notice,  
33 reasonable doubt, and jury trial guarantees.  
34

35           Because a juvenile adjudication is not established through a procedure  
36 guaranteeing a jury trial, it cannot be excepted from *Apprendi's* general rule; the use  
37 of these adjudications to increase the penalty beyond the statutory maximum violates  
38 the defendant's Due Process right guaranteed by the Fourteenth Amendment of the  
39 United States Constitution."  
40

1           New Sec. 58. (a) In any proceeding pursuant to the revised Kansas juvenile justice code in  
2 which a child less than 13 years of age is alleged to be a victim of the offense, a recording of an oral  
3 statement of the child, made before the proceeding began, is admissible in evidence if:

4           (1) The court determines that the time, content and circumstances of the statement provide  
5 sufficient indicia of reliability;

6           (2) no attorney for any party is present when the statement is made;

7           (3) the recording is both visual and aural and is recorded on film or videotape or by other  
8 electronic means;

9           (4) the recording equipment is capable of making an accurate recording, the operator of the  
10 equipment is competent and the recording is accurate and has not been altered;

11           (5) the statement is not made in response to questioning calculated to lead the child to make  
12 a particular statement or is clearly shown to be the child's statement and not made solely as a result  
13 of a leading or suggestive question;

14           (6) every voice on the recording is identified;

15           (7) the person conducting the interview of the child in the recording is present at the  
16 proceeding and is available to testify or be cross-examined by any party;

17           (8) each party to the proceeding is afforded an opportunity to view the recording before it  
18 is offered into evidence, and a copy of a written transcript is provided to the parties; and

19           (9) the child is available to testify.

20           (b) If a recording is admitted in evidence under this section, any party to the proceeding may  
21 call the child to testify and be cross-examined, either in the courtroom or as provided by section 59,  
22 and amendments thereto.

1

**COMMENT**

2

Section 58, related to the admissibility of the recorded statement of a child, is nearly identical to current K.S.A. 38-1657. The only change is technical.

3

1           New Sec.59. (a) On motion of the attorney for any party to a proceeding pursuant to the  
2 Kansas juvenile offenders code in which a child less than 13 years of age is alleged to be a victim  
3 of the offense, the court may order that the testimony of the child be taken:

4           (1) In a room other than the courtroom and be televised by closed-circuit equipment in the  
5 courtroom to be viewed by the court and the finder of fact in the proceeding; or

6           (2) outside the courtroom and be recorded for showing in the courtroom before the court and  
7 the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on  
8 film or videotape or by other electronic means; (B) the recording equipment is capable of making  
9 an accurate recording, the operator of the equipment is competent and the recording is accurate and  
10 has not been altered; (C) every voice on the recording is identified; and (D) each party to the  
11 proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and  
12 a copy of a written transcript is provided to the parties. The state must establish by clear and  
13 convincing evidence that to require the child who is the alleged victim to testify in open court will  
14 so traumatize the child as to prevent the child from reasonably communicating to the jury or render  
15 the child unavailable to testify. The court shall make such an individualized finding before the state  
16 is permitted to proceed under this section.

17           (b) At the taking of testimony under this section:

18           (1) Only the attorneys for the juvenile, the state and the child, any person whose presence  
19 would contribute to the welfare and well-being of the child and persons necessary to operate the  
20 recording or closed-circuit equipment may be present in the room with the child during the child's  
21 testimony;

22           (2) only the attorneys may question the child;

1 (3) the persons operating the recording or closed-circuit equipment shall be confined to an  
2 adjacent room or behind a screen or mirror that permits them to see and hear the child during the  
3 child's testimony but does not permit the child to see or hear them; and

4 (4) the court shall permit the juvenile to observe and hear the testimony of the child in  
5 person, but shall ensure that the child cannot hear or see the juvenile.

6 (c) If the testimony of a child is taken as provided by this section, the child shall not be  
7 compelled to testify in court during the proceeding.

8 (d) (1) Any objection by any party to the proceeding to a recording under subsection (a)(2)  
9 is inadmissible must be made by written motion filed with the court at least seven days before the  
10 commencement of the proceeding. An objection under this subsection shall specify the portion of  
11 the recording which is objectionable and the reasons for the objection. Failure to file an objection  
12 within the time provided by this subsection shall constitute waiver of the right to object to the  
13 admissibility of the recording unless the court, in its discretion, determines otherwise.

14 (2) The provisions of this subsection (d) shall not apply to any objection to admissibility for  
15 the reason that the recording has been materially altered.

16 **COMMENT**

17 Section 59, relating to admissibility of video taped testimony of a child, is nearly identical  
18 to current K.S.A. 38-1658, with the exception of the last two sentences of subsection (a)(2), which  
19 adds the language of the counterpart of the section in the adult code, K.S.A. 22-3434(b).  
20

1           New Sec. 60. (a) At any time after the juvenile has been adjudicated to be a juvenile  
2 offender, the court shall order one or more of the tools described in this section to be submitted to  
3 assist the court unless the court finds that adequate and current information is available from a  
4 previous investigation, report or other sources:

5           (1) An evaluation and written report by a mental health or a qualified professional stating  
6 the psychological or emotional development or needs of the juvenile. The court also may order a  
7 report from any mental health or qualified professional who has previously evaluated the juvenile  
8 stating the psychological or emotional development needs of the juvenile. If the court orders an  
9 evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an  
10 independent evaluation at the expense of the parent.

11           (2) A report of the medical condition and needs of the juvenile. The court also may order a  
12 report from any physician who has been attending the juvenile, stating the diagnosis, condition and  
13 treatment afforded the juvenile.

14           (3) An educational needs assessment of the juvenile from the chief administrative officer of  
15 the school which the juvenile attends or attended to provide to the court information that is readily  
16 available which the school officials feel would properly indicate the educational needs of the  
17 juvenile. The educational needs assessment may include a meeting involving any of the following:  
18 (A) The juvenile's parents; (B) the juvenile's teacher or teachers; (C) the school psychologist; (D)  
19 a school special services representative; (E) a representative of the commissioner; (F) the juvenile's  
20 court appointed special advocate; (G) the juvenile's foster parents or legal guardian; and (H) other  
21 persons that the chief administrative officer of the school, or the officer's designee, deems  
22 appropriate.

1 (4) Any other presentence investigation and report from a court services officer which  
2 includes the circumstances of the offense; the attitude of the complainant, victim or the victim's  
3 family; and the record of juvenile offenses, the social history and the present condition of the  
4 juvenile. Except where specifically prohibited by law, all local governmental public and private  
5 educational institutions and state agencies shall furnish to the officer conducting the predispositional  
6 investigation the records the officer requests. Predispositional investigations shall contain other  
7 information prescribed by the court.

8 (5) The court in its discretion may direct that the parents submit a domestic relations  
9 affidavit.

10 (b) Expenses for post adjudication tools may be waived or assessed pursuant to subsection  
11 (c)(2) of section 14, and amendments thereto.

12 (c) The court shall make any of the reports ordered pursuant to subsection (a) available to  
13 the attorneys and shall allow the attorneys a reasonable time to review them before ordering the  
14 sentencing of the juvenile offender.

15 (d) At any time prior to sentencing, the judge, at the request of a party, shall hear additional  
16 evidence as to proposals for reasonable and appropriate sentencing of the case.

## 17 COMMENT

18 Section 60, relating to post adjudication orders and hearings, replaces current sections K.S.A.  
19 38-1661, relating to pre-sentencing and 38-1662, relating to evaluation of development or needs.  
20 Because both of the current statutory sections refer to information gathering tools used for  
21 sentencing, the Committee combined the contents of those sections into section 60.  
22

23 Section 60 also eliminates the statutory requirement for designation of a state-wide  
24 sentencing risk assessment tool because the current tool was designated for use by court services  
25 officers and not intended for judges to use in sentencing. In addition, the Committee was concerned  
26 with language in current K.S.A 38-1661(a), which makes use of sentencing reports discretionary and

1 seems to conflict with language in subsection (b), which can be interpreted as making the use of the  
2 sentencing risk assessment tool mandatory.

3  
4 This section also allows the courts to address expenses with reference to all four information  
5 gathering tools, as opposed to the current statute, which only provides for expenses relating only to  
6 psychological evaluations. The Committee uses the term "post-adjudication" as opposed to "pre-  
7 sentencing" to allow the court more flexibility in use of the information gathering tools.

1           New Sec. 61. (a) Upon adjudication as a juvenile offender pursuant to section 56,  
2           modification of sentence pursuant to section 67 or violation of a condition of sentence pursuant to  
3           section 68 and subject to subsection (a) of section 65, and amendments thereto, the court may  
4           impose one or more of the following sentencing alternatives. In the event that any sentencing  
5           alternative chosen constitutes an order authorizing or requiring removal of the juvenile from the  
6           juvenile's home and such findings either have not previously been made or the findings are not or  
7           may no longer be current, the court shall make determinations as required by sections 34 and 35, and  
8           amendments thereto:

9           (1) Place the juvenile on probation through court services or community corrections for a  
10          fixed period, subject to terms and conditions the court deems appropriate consistent with juvenile  
11          justice programs in the community;

12          (2) Order the juvenile to participate in a community based program available in such judicial  
13          district subject to the terms and conditions the court deems appropriate. This option shall not be  
14          combined with option (12) and when combined with option (10) shall constitute a recommendation.  
15          Requirements pertaining to child support may apply if custody is vested with other than a parent.

16          (3) place the juvenile in the custody of a parent or other suitable person, subject to terms and  
17          conditions consistent with juvenile justice programs in the community. This option shall not be  
18          combined with options (10) or (12). Requirements pertaining to child support may apply if custody  
19          is vested with other than a parent;

20          (4) order the juvenile to attend counseling, educational, mediation or other sessions, or to  
21          undergo a drug evaluation pursuant to subsection (b);

1 (5) suspend or restrict the juvenile's driver's license or privilege to operate a motor vehicle  
2 on the streets and highways of this state pursuant to subsection (c);

3 (6) order the juvenile to perform charitable or community service work;

4 (7) order the juvenile to make appropriate reparation or restitution pursuant to subsection  
5 (d);

6 (8) order the juvenile to pay a fine not exceeding \$1,000 pursuant to subsection (e);

7 (9) place the juvenile under a house arrest program administered by the court pursuant to  
8 K.S.A. 21-4603b, and amendments thereto;

9 (10) Place the juvenile in the custody of the commissioner as provided in section 65 and  
10 amendments thereto. This option shall not be combined with options (3) or (12) and when included  
11 under this subparagraph options (2) and (9) and, except for a drug and alcohol evaluation mandated  
12 by statute, option (4) shall constitute a recommendation by the court. Requirements pertaining to  
13 child support shall apply under this option.

14 (11) commit the juvenile to a sanctions house for a period no longer than 28 days subject to  
15 the provisions of subsection (f); or

16 (12) commit the juvenile directly to the custody of the commissioner for a period of  
17 confinement in a juvenile correctional facility and a period of aftercare pursuant to section 69, and  
18 amendments thereto. The provisions of section 65, and amendments thereto, shall not apply to  
19 juveniles committed pursuant to this provision. This option may be combined with option (7).  
20 Requirements pertaining to child support shall apply under this option.

1 (b) If the court orders the juvenile to attend counseling, educational, mediation or other  
2 sessions, or to undergo a drug and alcohol evaluation pursuant to subsection (a)(4), the following  
3 provisions apply:

4 (1) The court may order the juvenile offender to participate in counseling or mediation  
5 sessions or a program of education, including placement in an alternative educational program  
6 approved by a local school board. The costs of any counseling or mediation may be assessed as  
7 expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater  
8 than what the center would have charged the person receiving the counseling if the person had  
9 requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered  
10 mediation greater than what the mediator would have charged the person participating in the  
11 mediation if the person had requested mediation on the person's own initiative. Mediation may  
12 include the victim but shall not be mandatory for the victim; and

13 If the juvenile has been adjudicated to be a juvenile by reason of a violation of a statute that  
14 makes such a requirement, the court shall order and, if adjudicated for any other offense, the court  
15 may order the juvenile to submit to and complete a drug and alcohol evaluation by a community-  
16 based drug and alcohol safety action program certified pursuant to K.S.A. 8-1008, and amendments  
17 thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The  
18 court may waive the mandatory evaluation if the court finds that the juvenile completed a drug and  
19 alcohol evaluation, approved by the community-based alcohol and drug safety action program,  
20 within 12 months before sentencing. If the evaluation occurred more than 12 months before  
21 sentencing, the court shall order the juvenile to resubmit to and complete the evaluation and program  
22 as provided herein. If the court finds that the juvenile and those legally liable for his or her support

1 are indigent, the court may waive the fee. In no event shall the fee be assessed against the  
2 commissioner or the juvenile justice authority nor shall the fee be assessed against the secretary of  
3 the department of social and rehabilitation services or the agency if the juvenile is in the secretary's  
4 care, custody and control.

5 (c) If the court orders suspension or restriction of a juvenile offender's driver's license or  
6 privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection  
7 (a)(5), the following provisions apply:

8 (1) The duration of the suspension ordered by the court shall be for a definite time period  
9 to be determined by the court. Upon suspension of a license pursuant to this subsection, the court  
10 shall require the juvenile offender to surrender the license to the court. The court shall transmit the  
11 license to the division of motor vehicles of the department of revenue, to be retained until the period  
12 of suspension expires. At that time, the licensee may apply to the division for return of the license.  
13 If the license has expired, the juvenile offender may apply for a new license, which shall be issued  
14 promptly upon payment of the proper fee and satisfaction of other conditions established by law for  
15 obtaining a license unless another suspension or revocation of the juvenile offender's privilege to  
16 operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the  
17 meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any juvenile offender  
18 who does not have a driver's license may have driving privileges revoked. No Kansas driver's license  
19 shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this  
20 section for a definite time period to be determined by the court; and

21 (2) in lieu of suspending a juvenile offender's driver's license or privilege to operate a motor  
22 vehicle on the highways of this state, the court may enter an order which places conditions on the

1 juvenile offender's privilege of operating a motor vehicle on the streets and highways of this state,  
2 a certified copy of which the juvenile offender shall be required to carry any time the juvenile  
3 offender is operating a motor vehicle on the streets and highways of this state. The order shall  
4 prescribe a definite time period for the conditions imposed. Upon entering an order restricting a  
5 juvenile offender's license, the court shall require the juvenile offender to surrender such juvenile  
6 offender's license to the court. The court shall transmit the license to the division of vehicles,  
7 together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without  
8 charge a driver's license which shall indicate on its face that conditions have been imposed on the  
9 juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order  
10 imposing the conditions is required to be carried by the juvenile offender when operating a motor  
11 vehicle on the streets and 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 division shall forward a copy  
13 of it to the motor vehicle administrator of the juvenile offender's state of issuance. The court shall  
14 furnish to any juvenile offender whose driver's license has had conditions imposed on it under this  
15 section a copy of the order, which shall be recognized as a valid Kansas driver's license until the  
16 division issues the restricted license provided for in this subsection. Upon expiration of the period  
17 of time for which conditions are imposed pursuant to this subsection, the juvenile offender may  
18 apply to the division for the return of the license previously surrendered by the juvenile offender. In  
19 the event the license has expired, the juvenile offender may apply to the division for a new license,  
20 which shall be issued immediately by the division upon payment of the proper fee and satisfaction  
21 of the other conditions established by law unless such juvenile offender's privilege to operate a motor  
22 vehicle on the streets and highways of this state has been suspended or revoked prior thereto. If any

1 juvenile offender violates any of the conditions imposed under this subsection, the juvenile  
2 offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this  
3 state shall be revoked for a period as determined by the court in which the juvenile offender is  
4 convicted of violating such conditions.

5 (d) The following provisions apply to the court's determination of whether to order  
6 reparation or restitution pursuant to subsection (a)(7):

7 (1) The court shall order the juvenile to make reparation or restitution to the aggrieved party  
8 for the damage or loss caused by the juvenile offender's offense unless it finds compelling  
9 circumstances that would render a plan of reparation or restitution unworkable. If the court finds  
10 compelling circumstances that would render a plan of reparation or restitution unworkable, the court  
11 shall enter such findings with particularity on the record. In lieu of reparation or restitution, the court  
12 may order the juvenile to perform charitable or social service for organizations performing services  
13 for the community; and

14 (2) restitution may include, but shall not be limited to, the amount of damage or loss caused  
15 by the juvenile's offense. Restitution may be made by payment of an amount fixed by the court or  
16 by working for the parties sustaining loss in the manner ordered by the court. An order of monetary  
17 restitution shall be a judgment against the juvenile that may be collected by the court by garnishment  
18 or other execution as on judgments in civil cases. Such judgment shall not be affected by the  
19 termination of the court's jurisdiction over the juvenile offender.

20 (e) If the court imposes a fine pursuant to subsection (a)(8), the following provisions apply:

1 (1) The amount of the fine may not exceed \$1,000 for each offense. The amount of the fine  
2 should be related to the seriousness of the offense and the juvenile's ability to pay. Payment of a fine  
3 may be required in a lump sum or installments;

4 (2) in determining whether to impose a fine and the amount to be imposed, the court shall  
5 consider that imposition of a fine is most appropriate in cases where the juvenile has derived  
6 pecuniary gain from the offense and that imposition of a restitution order is preferable to imposition  
7 of a fine; and

8 (3) any fine imposed by court shall be a judgment against the juvenile that may be collected  
9 by the court by garnishment or other execution as on judgments in civil cases. Such judgment shall  
10 not be affected by the termination of the court's jurisdiction over the juvenile.

11 (f) If the court commits the juvenile to a sanctions house pursuant to subsection (a)(11), the  
12 following provisions shall apply:

13 (1) The court may order commitment for up to 28 days for the same offense or violation of  
14 sentencing condition. The court shall review the commitment every seven days and, may shorten the  
15 initial commitment or, if the initial term is less than 28 days, may extend the commitment;

16 (2) if, in the sentencing order, the court orders a sanctions house placement for a verifiable  
17 probation violation and such probation violation occurs, the juvenile may immediately be taken to  
18 a sanctions house and detained for no more than 48 hours, excluding Saturdays, Sundays and  
19 holidays, prior to court review of the placement. The court and all parties shall be notified of the  
20 sanctions house placement; and

21 (3) a juvenile over 18 years of age and less than 23 years of age at sentencing shall be  
22 committed to a county jail, in lieu of a sanctions house, under the same time restrictions imposed by

1 subsection (1) of this section, but shall not be committed to or confined in a juvenile detention  
2 facility.

3 (g) Any order issued by the judge pursuant to this section shall be in effect immediately upon  
4 entry in to the court's minutes.

5 (h) In addition to the requirements of section 73, and amendments thereto, if a person is  
6 under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense  
7 if committed by an adult would constitute the commission of a felony, the court shall forward a  
8 signed copy of the journal entry to the commissioner within 30 days of final disposition.

9 (i) The sentencing hearing shall be open to the public as provided in section 53, and  
10 amendments thereto.

### 11 COMMENT

12 Section 61, relating to sentencing alternatives, replaces current K.S.A 38-1663. Subsection  
13 (a) has been rewritten to provide a master list of sentencing alternatives, roughly in the order of  
14 increasing severity of sanctions. In addition, subsection (a) cross-references provisions requiring  
15 findings related to Adoption and Safe Families Act of 1997.

16  
17 Provisions of subsections (b) and (e) and all of subsection (g) and (h) have been moved to  
18 a new section 62 of this act, which combines orders relating to parents into one section.

19  
20 Subsection (d) includes language that states a restitution order represents a judgement  
21 against the juvenile offender and may be enforced by civil process, even after termination of the  
22 court's jurisdiction over the juvenile.

23  
24 Subsection (e) has also been changed to increase the maximum amount of a fine to \$1,000  
25 and provide that a fine is a judgement against a juvenile offender and may be enforced by civil  
26 process, even after termination of the court's jurisdiction.

27  
28 Subsection (f) changes the initial commitment to a sanctions house, for up to the entire 28  
29 day maximum, subject to review every seven days. This is a change from current law, which permits  
30 commitment for only increments of seven days or less, up to the 28 day maximum. In addition, the  
31 section allows the judge, in the original sentence, may provide for immediate sanctions house  
32 placement.

1 New Sec. 62. a) When sentencing a juvenile offender, the court may order a juvenile  
2 offender's parent , as defined in section 2, and amendments thereto, to participate in counseling,  
3 mediation sessions or an alcohol and drug evaluation and treatment program ordered as part of the  
4 juvenile offender's sentence under section 61, and amendments thereto, or to participate in parenting  
5 classes.

6 (1) Upon entering an order requiring a juvenile offender's parent to attend counseling  
7 sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the  
8 parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's  
9 right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable  
10 to employ an attorney, the parent's right to request the court to appoint an attorney to represent the  
11 parent.

12 (2) If the parent does not request a hearing within 10 days after entry of the order, the order  
13 shall take effect at that time.

14 (3) If the parent requests a hearing, the court shall set the matter for hearing and, if requested,  
15 shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may  
16 be allowed and assessed as provided by section 6, and amendments thereto.

17 (b) In addition to any other orders provided for by this section, the parent of a juvenile  
18 offender may be held responsible for the costs of sanctions or the support of the juvenile offender  
19 as follows:

20 (1) The board of county commissioners of a county may provide by resolution that the  
21 parent, or adult of any juvenile offender placed under a house arrest program pursuant to subsection  
22 (a)(9) shall be required to pay to the county the cost of such house arrest program. The board of

1 county commissioners shall prepare a sliding financial scale based on the ability of the parent to pay  
2 for such a program.

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

18 **COMMENT**

19 Section 62, concerning orders relating to parents, is a new section. It consolidates various  
20 provisions found in current K.S.A. 38-1663 concerning orders relating to parents into a separate  
21 stand-alone section.

22  
23 Subsection (a) addresses the court's authority to order parental participation in counseling,  
24 mediation, drug and alcohol evaluation sessions, or parenting classes. It contains relevant provisions  
25 of current K.S.A. 38-1663(b)(1) and (2) and (f).

1           New subsection (b) addresses orders imposing financial responsibility on parents, including  
2 costs of house arrest and child support. The provisions are carried forward from current K.S.A. 38-  
3 1663(g) and (h).  
4



1 New Sec. 64. On and after January 1, 1998:

2 (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt,  
3 the court shall:

4 (1) Impose one or more juvenile sentences under section 61, and amendments thereto; and

5 (2) impose an adult criminal sentence, the execution of which shall be stayed on the  
6 condition that the juvenile offender not violate the provisions of the juvenile sentence and not  
7 commit a new offense.

8 (b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated  
9 the conditions of the juvenile sentence or is alleged to have committed a new offense, the court,  
10 without notice, may revoke the stay and probation and direct that the juvenile offender be  
11 immediately taken into custody and delivered to the secretary of corrections pursuant to K.S.A.  
12 21-4621, and amendments thereto. The court shall notify the juvenile offender and such juvenile  
13 offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303, and  
14 amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for  
15 revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the  
16 reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be  
17 heard and represented by counsel. After the hearing, if the court finds by substantial evidence that  
18 conditions of the juvenile's sentence have been violated, the court shall revoke the juvenile sentence  
19 and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2). Upon  
20 such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction  
21 is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the  
22 department of corrections, is with the adult court. The juvenile offender shall be credited for time

1 served in a juvenile correctional or detention facility on the juvenile sentence as service on any  
2 authorized adult sanction.

3 (c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to  
4 subsection (a) and is serving the juvenile sentence, may move for a court hearing to review the  
5 sentence. If the sentence is continued, the court shall set a date of further review in no later than 36  
6 months.

7 **COMMENT**

8 Section 64, relating to extended jurisdiction juvenile prosecution, is nearly identical to  
9 current K.S.A.38-16,126. The only changes are technical.

10

1           New Sec. 65. (a) When a juvenile offender has been placed in the custody of the  
2 commissioner, the commissioner shall have a reasonable time to make a placement. If the juvenile  
3 offender has not been placed, any party who believes that the amount of time elapsed without  
4 placement has exceeded a reasonable time may file a motion for review with the court. In  
5 determining what is a reasonable amount of time, matters considered by the court shall include, but  
6 not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile  
7 offender and the availability of a suitable placement. The commissioner shall notify the court and  
8 the juvenile offender's parent in writing of the initial placement and any subsequent change of  
9 placement as soon as the placement has been accomplished. The notice to the juvenile offender's  
10 parent shall be sent to such parent's last known address or addresses. The court shall have no power  
11 to direct a specific placement by the commissioner, but may make recommendations to the  
12 commissioner. The commissioner may place the juvenile offender in an institution operated by the  
13 commissioner, a youth residential facility or any other appropriate placement. If the court has  
14 recommended an out-of-home placement, the commissioner may not return the juvenile offender to  
15 the home from which removed without first notifying the court of the plan.

16           (b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and  
17 present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already  
18 in place under a child in need of care proceeding, the court may adopt the plan under the present  
19 proceeding. The written permanency plan shall provide for reintegration of the juvenile into such  
20 juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the  
21 juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a  
22 court to have committed murder in the first degree, K.S.A. 21-3401, and amendments thereto,

1 murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A.  
2 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments  
3 thereto or violated a law of another state which prohibits such murder or manslaughter of a child;

4 (2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or  
5 voluntary manslaughter of a child;

6 (3) the parent committed a felony battery that resulted in bodily injury to the juvenile who  
7 is the subject of this proceeding or another child;

8 (4) the parent has subjected the juvenile who is the subject of this proceeding or another  
9 child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

10 (5) the parental rights of the parent to another child have been terminated involuntarily; or

11 (6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 38-1502,  
12 and amendments thereto.

13 (c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared  
14 and submitted by the commissioner. If the juvenile is placed in the custody of a facility or person  
15 other than the commissioner, the plan shall be prepared and submitted by a court services officer.  
16 If the permanency goal is reintegration into the family, the permanency plan shall include measurable  
17 objectives and time schedules for reintegration.

18 (d) During the time a juvenile remains in the custody of the commissioner, the commissioner  
19 shall submit to the court, at least every six months, a written report of the progress being made  
20 toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the  
21 specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster  
22 care, the court may request the foster parent to submit to the court, at least every six months, a report

1 in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of  
2 the juvenile's court social file. The court shall review the plan submitted by the commissioner and  
3 the report, if any, submitted by the foster parent and determine whether reasonable efforts and  
4 progress have been made to achieve the goals of the permanency plan. If the court determines that  
5 progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing  
6 pursuant to subsection (e).

7 (e) When the commissioner has custody of the juvenile, a permanency hearing shall be held  
8 no more than 12 months after the juvenile is first placed outside such juvenile's home and at least  
9 every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement  
10 shall be provided a permanency hearing within 30 days of a request from the commissioner. The  
11 court may appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing.  
12 At each hearing, the court shall make a written finding whether reasonable efforts have been made  
13 to accomplish the permanency goal and whether continued out-of-home placement is necessary for  
14 the juvenile's safety.

15 (f) Whenever a hearing is required under subsection (e), the court shall notify all interested  
16 parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives  
17 providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this  
18 subsection shall not be made a party to the action solely on the basis of this notice and opportunity  
19 to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall  
20 determine whether the juvenile's needs are being adequately met; whether services set out in the  
21 permanency plan necessary for the safe return of the juvenile have been made available to the parent

1 with whom reintegration is planned; and whether reasonable efforts and progress have been made  
2 to achieve the goals of the permanency plan.

3 (g) If the court finds reintegration continues to be a viable alternative, the court shall  
4 determine whether and, if applicable, when the juvenile will be returned to the parent. The court may  
5 rescind any of its prior dispositional orders and enter any dispositional order authorized by this code  
6 or may order that a new plan for the reintegration be prepared and submitted to the court. If  
7 reintegration cannot be accomplished as approved by the court, the court shall be informed and shall  
8 schedule a hearing pursuant to subsection (f). No such hearing is required when the parent  
9 voluntarily relinquish parental rights or agree to appointment of a permanent guardian.

10 (h) When the court finds any of the following conditions exist, the county or district attorney  
11 or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in  
12 need of care and requesting termination of parental rights pursuant to the Revised Kansas code for  
13 care of children: (1) The court determines that reintegration is not a viable alternative and either  
14 adoption or permanent guardianship might be in the best interests of the juvenile;

15 (2) the goal of the permanency plan is reintegration into the family and the court determines  
16 after 12 months from the time such plan is first submitted that progress is inadequate; or

17 (3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last  
18 22 months, excluding trial home visits and juvenile in runaway status.

19 Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior  
20 to the expiration of 12 months.

21 (i) A petition to terminate parental rights is not required to be filed if one of the following  
22 exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

1 (2) services set out in the case plan necessary for the safe return of the juvenile have not been  
2 made available to the parent with whom reintegration is planned; or

3 (3) there are one or more documented reasons why such filing would not be in the best  
4 interests of the juvenile. Documented reasons may include but are not limited to: The juvenile has  
5 close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or  
6 older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination  
7 of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal  
8 or compelling foreign policy reasons precluding termination of parental rights.

9 **COMMENT**

10 Section 65, relating to juvenile offenders placed in the custody of the commissioner, replaces  
11 current K.S.A. 38-1664. This section omits the Adoption and Safe Families Act requirements  
12 because those now appear in new sections 31, 34 and 35.  
13

14 The provisions relating to permanency planning are rewritten for clarification and  
15 incorporate the written requirements and limitations currently found in K.S.A. 38-1565 of the  
16 Kansas Code for Care of Children, rather than simply referring to them by citing the CINC Code  
17 section. This should do away with the need to refer to the CINC Code when reviewing the  
18 requirements and limitations involved in permanency planning.  
19

20 The entire section was reorganized for further clarification by placing those general  
21 provisions dealing with the actual placement of the juvenile with the commissioner at the beginning  
22 of this section, rather than after the portion dealing with permanency planning. This is because  
23 permanency planning would not take place until after placement with the commissioner. The section  
24 also allows the commissioner reasonable time to make a placement once a juvenile is placed in JJA  
25 custody.  
26

27 The provisions setting out the requirements for foster parent reporting and forms of the  
28 reports were made discretionary. It is the experience of the Committee members that those reports  
29 were rarely received by the court and that if a party wishes to hear from a foster parent, they may  
30 subpoena that person.



1           New Sec. 67. (a) At any time after the entry of an order of custody or placement of a juvenile  
2 offender, the court, upon the court's own motion or the motion of the commissioner or parent or any  
3 party, may modify the sentence imposed. Upon receipt of the motion, the court shall fix a time and  
4 place for hearing and provide notice to the movant and to the current custodian and placement of the  
5 juvenile offender and to each party to the proceeding. Except as set out in subsection (b), after the  
6 hearing, if the court finds that the sentence previously imposed is not in the best interests of the  
7 juvenile offender, the court may rescind and set aside the sentence, and enter any sentence pursuant  
8 to section 61, and amendments thereto, except that a child support order which has been registered  
9 under section 21, and amendments thereto, may only be modified pursuant to section 21, and  
10 amendments thereto.

11           (b) If the court determines that it is in the best interests of the juvenile offender to be returned  
12 to the custody of the parent or parents, the court shall so order.

13           (c) The court shall rescind an order granting custody to a parent only upon finding that: (1)  
14 Reasonable efforts have been made to maintain the juvenile in such juvenile's family or an  
15 emergency exists making reasonable efforts unnecessary; and (2) it is contrary to the welfare of the  
16 juvenile to remain at home. The court shall state the basis of each finding.

17           (d) Any time within 60 days after a court has committed a juvenile offender to a juvenile  
18 correctional facility the court may modify the sentence and enter any other sentence, except that a  
19 child support order which has been registered under section 21 and amendments thereto may only  
20 be modified pursuant to section 21 and amendments thereto.

1 (e) Any time after a court has committed a juvenile offender to a juvenile correctional  
2 facility, the court may, upon motion by the commissioner, modify the sentence and enter any other  
3 sentence if the court determines that:

4 (1) the medical condition of the juvenile justifies a reduction in sentence; or

5 (2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

6 **COMMENT**

7 Section 67, relating to modification of sentence, is similar to current K.S.A 38-1665. The  
8 section contains no substantiative changes

9  
10 Subsection (b) states that if the court determines it is in the best interests of the juvenile  
11 offender to be returned to the custody of the parents, it shall make such an order.

12  
13 Subsection (c) contains language implementing the Adoption of Safe Families Act of 1997

14 .  
15 Subsection (e) is a modification of language currently found at K.S.A. 38-16,131 and adds  
16 an exception for exceptional behavior.

1 New Sec. 68. (a) If it is alleged that a juvenile offender has violated a condition of probation  
2 or of a court-ordered placement , the county or district attorney, the victim of the offense committed  
3 by the offender, the assigned court services officer or the current custodian and placement of the  
4 juvenile offender may file a report with the court describing the alleged violation . The court shall  
5 provide copies of the report to the parties to the proceeding. The court, upon the court's own motion  
6 or the motion of the commissioner or any party, shall set the matter for hearing and may issue a  
7 warrant pursuant to section 42, and amendments thereto. Upon receipt of the motion, the court shall  
8 fix a time and place for hearing and provide notice to the movant and to the current custodian and  
9 placement of the juvenile offender and to each party to the proceeding. Except as set out in  
10 subsection (b), if the court finds at the hearing that the juvenile offender violated a condition of  
11 probation or placement, the court may extend or modify the terms of probation or placement or enter  
12 another sentence pursuant to section 61, and amendments thereto, except that a child support order  
13 which has been registered under section 21 and amendments thereto may only be modified pursuant  
14 to section 21 and amendments thereto.

15 (b) The court shall enter an order removing custody from a parent only upon finding: (1)  
16 Reasonable efforts have been made to maintain a juvenile in such juvenile's family or an emergency  
17 exists making reasonable efforts unnecessary; and (2) it is contrary to the welfare of the juvenile to  
18 remain at home. The court shall state the basis of each finding in writing.

19 **COMMENT**

20 Section 68, relating to violation of condition of probation or placement, is similar to current  
21 K.S.A. 38-1666.  
22

1           This section was changed and rather than requiring an automatic hearing on the alleged  
2 probation or placement violation, the hearing will be held only if requested by the commissioner, a  
3 parent, one of the parties, or on the court's own motion.  
4

5           Subsection (b) contains language implementing the Adoption of Safe Families Act of 1997.

1           New Sec. 69. On and after July 1, 1999: (a) For the purpose of committing juvenile offenders  
2 to a juvenile correctional facility, the following placements shall be applied by the judge in felony  
3 or misdemeanor cases for offenses committed on or after July 1, 1999. If used, the court shall  
4 establish a specific term of commitment as specified in this subsection, unless the judge conducts  
5 a departure hearing and finds substantial and compelling reasons to impose a departure sentence as  
6 provided in section 71 and amendments thereto.

7           (1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a  
8 juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony.  
9 Offenders in this category may be committed to a juvenile correctional facility for a minimum term  
10 of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months.  
11 The aftercare term for this offender is set at a minimum term of six months and up to a maximum  
12 term of the offender reaching the age of 23 years.

13           (B) The violent offender II is defined as an offender adjudicated as a juvenile offender for  
14 an offense which, if committed by an adult, would constitute a nondrug level 1, 2 or 3 felony.  
15 Offenders in this category may be committed to a juvenile correctional facility for a minimum term  
16 of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The  
17 aftercare term for this offender is set at a minimum term of six months and up to a maximum term  
18 of the offender reaching the age of 23 years.

19           (2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as  
20 a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug  
21 severity level 4, 5 or 6 person felony or a severity level 1 or 2 drug felony. Offenders in this category  
22 may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a

1 maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six  
2 months and up to a maximum term of 24 months.

3 (B) The serious offender II is defined as an offender adjudicated as a juvenile offender for  
4 an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10  
5 person felony with one prior felony adjudication. Offenders in this category may be committed to  
6 a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18  
7 months. The aftercare term for this offender is set at a minimum term of six months and up to a  
8 maximum term of 24 months.

9 (3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender  
10 adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

- 11 (i) One present nonperson felony adjudication and two prior felony adjudications; or  
12 (ii) one present severity level 3 drug felony adjudication and two prior felony adjudications.

13 Offenders in this category may be committed to a juvenile correctional facility for a minimum  
14 term of six months and up to a maximum term of 18 months. The aftercare term for this offender is  
15 set at a minimum term of six months and up to a maximum term of 12 months.

16 (B) The chronic offender II, escalating felon is defined as an offender adjudicated as a  
17 juvenile offender for an offense which, if committed by an adult, would constitute:

18 (i) One present felony adjudication and either two prior misdemeanor adjudications or one  
19 prior person or nonperson felony adjudication;

20 (ii) one present felony adjudication and two prior severity level 4 drug adjudications;

21 (iii) one present severity level 3 drug felony adjudication and either two prior misdemeanor  
22 adjudications or one prior person or nonperson felony adjudication; or

1 (iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug  
2 adjudications.

3 Offenders in this category may be committed to a juvenile correctional facility for a minimum  
4 term of six months and up to a maximum term of 18 months. The aftercare term for this offender is  
5 set at a minimum term of six months and up to a maximum term of 12 months.

6 (C) The chronic offender III, escalating misdemeanor is defined as an offender adjudicated  
7 as a juvenile offender for an offense which, if committed by an adult, would constitute:

8 (i) One present misdemeanor adjudication and either two prior misdemeanor adjudications  
9 or one prior person or nonperson felony adjudication and two placement failures;

10 (ii) one present misdemeanor adjudication and two prior severity level 4 drug felony  
11 adjudications and two placement failures;

12 (iii) one present severity level 4 drug felony adjudication and either two prior misdemeanor  
13 adjudications or one prior person or non person felony adjudication and two placement failures; or

14 (iv) one present severity level 4 drug felony adjudication and two prior severity level 4 drug  
15 felony adjudications and two placement failures.

16 Offenders in this category may be committed to a juvenile correctional facility for a minimum  
17 term of three months and up to a maximum term of six months. The aftercare term for this offender  
18 is set at a minimum term of three months and up to a maximum term of six months.

19 (4) Conditional Release Violators. Upon finding the juvenile violated a requirement or  
20 requirements of conditional release, the court may:

1 (A) Subject to the limitations in section 66(a), and amendments thereto, commit the offender  
2 directly to a juvenile correctional facility for a minimum term of three months and up to a maximum  
3 term of six months. The aftercare term for this offender shall be a minimum of two months and a  
4 maximum of six months, or the length of the aftercare originally ordered, which ever is longer.

5 (B) Enter one or more of the following orders:

6 (i) Recommend additional conditions be added to those of the existing conditional release.

7 (ii) Order the offender to serve a period of sanctions pursuant to section 61(f), and  
8 amendments thereto.

9 (iii) Revoke or restrict the juvenile's driving privileges as described in section 61(c), and  
10 amendments thereto.

11 (C) Discharge the offender from the custody of the commissioner, release the commissioner  
12 from further responsibilities in the case and enter any other appropriate orders.

13 (b) As used in this section: (1) "Placement failure" means a juvenile offender in the custody  
14 of the juvenile justice authority has significantly failed the terms of conditional release or has been  
15 placed out-of-home in a community placement accredited by the commissioner and has significantly  
16 violated the terms of that placement or violated the terms of probation.

17 (2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense  
18 which if committed by an adult would constitute the commission of a felony or misdemeanor shall  
19 be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an  
20 offense which if committed by an adult would constitute the commission of a felony is a felony in  
21 another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense,  
22 which if committed by an adult would constitute the commission of a felony or misdemeanor, as

1 person or nonperson. In designating such offense as person or nonperson, reference to comparable  
 2 offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state  
 3 adjudication shall be classified as a nonperson offense.

4 (c) All appropriate community placement options shall have been exhausted before a chronic  
 5 offender III, escalating misdemeanor shall be placed in a juvenile correctional facility. A court  
 6 finding shall be made acknowledging that appropriate community placement options have been  
 7 pursued and no such option is appropriate.

8 (d) The commissioner shall work with the community to provide on-going support and  
 9 incentives for the development of additional community placements to ensure that the chronic  
 10 offender III, escalating misdemeanor sentencing category is not frequently utilized.

11 (e) The following is a placement matrix which sets forth in chart form the placements  
 12 provided for in subsection (a):

### 13 PLACEMENT MATRIX CHART

14 <b>Offender Type</b>	15 <b>Offense Level</b>	16 <b>Length of Stay</b>	17 <b>Aftercare</b>
18 <b>Violent I</b> section 69(a)(1)(A)	19 Off-grid	20 60 mo-22½ yoa	21 6 mo-23 yoa
22 <b>Violent II</b> section 69(a)(1)(B)	1 - 3 Person Felony	24 mo-22½ yoa	6 mo-23 yoa
23 <b>Serious I</b> section 69(a)(2)(A)	4-6 Person Felony <b>OR</b> 1-2 Drug Felony	18 - 36 mo	6 - 24 mo
24 <b>Serious II</b> section 69(a)(2)(B)	7 - 10 Person Felony <b>AND</b> Prior Felony	9 - 18 mo	6 - 24 mo

1 2 3	<b>Chronic I –</b> Chronic Felon section 69(a)(3)(A)	Present: Non Person Felony <b>OR</b> Level 3 Drug Felony Prior: 2 prior felony adjudications	6 - 18 mo	6 - 12 mo
4 5 6	<b>Chronic II –</b> Escalating Felon section 69(a)(3)(B)	Present: Felony <b>OR</b> Level 3 Drug Felony Prior: 2 prior misdemeanor <b>OR</b> 1 prior person or nonperson felony <b>OR</b> 2 level 4 Drug Felonies	6 - 18 mo	6 - 12 mo
7 8 9 10	<b>Chronic III –</b> Escalating Misdemeanant section 69(a)(3)(C)	Present: Misdemeanor <b>OR</b> Level 4 Drug Felony Prior: 2 prior misdemeanor or 1 prior person or nonperson felonies <b>OR</b> 2 level 4 Drug Felony <b>PLUS</b> 2 placement failures <b>PLUS</b> finding	3 - 6 mo	3 - 6 mo
11 12 13	<b>Conditional Release</b> <b>Violator</b> section 69(a)(4)	All	3 - 6 mo	2 - 6 mo

14  
15  
16 **COMMENT**  
17

18 Section 69, relating to sentencing juvenile offenders, is similar to current K.S.A. 38-16,129.  
19 The section was changed to include a prior person or nonperson felony as counting the same as two  
20 misdemeanors. Under the current code, the court may directly commit an offender to a juvenile  
21 correctional facility when the juvenile is newly adjudicated for a misdemeanor, if the juvenile has  
22 two prior misdemeanors adjudications and two placement failures. However, if the same newly  
23 adjudicated offender has two placement failures, one or more prior felony adjudications and none  
24 or one prior misdemeanor adjudications, the court cannot commit the juvenile to a juvenile  
25 correctional facility. Thus, under the present law, the court has fewer options in sentencing a  
26 juvenile with a more serious criminal history. It is the Committee's view that, when calculating  
27 criminal history, each prior, felony adjudication should be comparable to two misdemeanors.  
28

29 The section relating to conditional release violators has been clarified and the definition of  
30 "placement failure" has been expanded to include a juvenile offender who was placed in the custody  
31 of the juvenile justice authority and has significantly failed the terms of conditional release. In  
32 addition, a placement matrix chart was prepared as a part of the statute.

1 New Sec. 70. On and after July 1, 1999:

2 (a) For purposes of determining release of a juvenile offender for an offense committed on  
3 or after July 1, 1999, a system shall be developed whereby good behavior is the expected norm and  
4 negative behavior will be punished.

5 (b) The commissioner of juvenile justice shall adopt rules and regulations to carry out the  
6 provisions of this section regarding good time calculations. Such rules and regulations shall provide  
7 circumstances upon which a juvenile offender may earn good time credits through participation in  
8 programs which may include, but not be limited to, education programs, work participation,  
9 treatment programs, vocational programs, activities and behavior modification. Such good time  
10 credits may also include the juvenile offender's willingness to examine and confront the past  
11 behavior patterns that resulted in the commission of the juvenile's offense.

12 (c) If the placement sentence established in section 69, and amendments thereto, is used by  
13 the court, the juvenile offender shall serve no less than the minimum term authorized under the  
14 specific category of such placement sentence.

15 **COMMENT**

16 Section 70, relating to good time credits, is substantially similar to current K.S.A 38-16,130.  
17 The section contains a policy change that requires, rather than authorizes, the juvenile justice  
18 authority to adopt rules and regulations. The Committee is of the opinion that such rules and  
19 regulations should be available to a juvenile offender entering a juvenile correction facility.  
20

1           New Sec. 71. (a) (1) Whenever a person is adjudicated as a juvenile offender, the court upon  
2 motion of the state, shall hold a hearing to consider imposition of a departure sentence. The motion  
3 shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be  
4 scheduled so that the parties have adequate time to prepare and present arguments regarding the  
5 issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the  
6 right to be present at the hearing for the convicted person by the county or district attorney. The  
7 parties may submit written arguments to the court prior to the date of the hearing and may make oral  
8 arguments before the court at the hearing. The court shall review the victim impact statement, if  
9 available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile  
10 offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

11           (2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue  
12 findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter  
13 an appropriate order.

14           (3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine  
15 crime severity, that aspect of the current crime of conviction may be used as an aggravating factor  
16 only if the criminal conduct constituting that aspect of the current crime of conviction is significantly  
17 different from the usual criminal conduct captured by the aspect of the crime. Subject to this  
18 provision, the nonexclusive lists of aggravating factors provided in subsection (b)(2) of K.S.A.  
19 21-4716, and amendments thereto, and in subsection (a) of K.S.A. 21-4717, and amendments  
20 thereto, may be considered in determining whether substantial and compelling reasons exist.

21           (b) If the court decides to depart on its own volition, without a motion from the state, the  
22 court must notify all parties of its intent and allow reasonable time for either party to respond if they

1 request. The notice shall state that a departure is intended by the court and the reasons and factors  
2 relied upon.

3 (c) In each case in which the court imposes a sentence that deviates from the presumptive  
4 sentence, the court shall make findings of fact as to the reasons for departure regardless of whether  
5 a hearing is requested.

6 (d) If the sentencing judge departs from the presumptive sentence, the judge shall state on  
7 the record at the time of sentencing the substantial and compelling reasons for the departure. When  
8 a departure sentence is appropriate, the sentencing judge may depart from the matrix as provided in  
9 this section. When a sentencing judge departs in setting the duration of a presumptive term of  
10 imprisonment:

11 (1) The presumptive term of imprisonment set in such departure shall not total more than  
12 double the maximum duration of the presumptive imprisonment term;

13 (2) the court shall have no authority to reduce the minimum term of confinement as defined  
14 within the sentencing matrix; and

15 (3) the maximum term for commitment of any juvenile offender to a juvenile correctional  
16 facility is age 22 years, 6 months.

17 (e) A departure sentence may be appealed as provided in section 80, and amendments  
18 thereto.

19 **COMMENT**

20 Section 71, relating to departure sentences, is nearly identical to current K.S.A. 38-16,132.  
21 The changes are technical.  
22



1           New Sec. 73. (a) *Actions by the court.* (1) When a juvenile offender has been committed to  
2 a juvenile correctional facility, the clerk of the court shall forthwith notify the commissioner of the  
3 commitment and provide the commissioner with a certified copy of the complaint, the journal entry  
4 of the adjudication and sentencing. The court shall provide those items from the social file which  
5 could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile  
6 offender in a specific juvenile correctional facility, the recommendation shall be included in the  
7 sentence. After the court has received notice of the juvenile correctional facility designated as  
8 provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the  
9 juvenile offender to the facility at the time designated by the commissioner.

10           (2) When a juvenile offender is residing in a juvenile correctional facility and is required to  
11 go back to court for any reason, the county demanding the juvenile's presence shall be responsible  
12 for transportation, detention, custody and control of such offender. In these cases, the county sheriff  
13 shall be responsible for all transportation, detention, custody and control of such offender.

14           (b) *Actions by the commissioner.* (1) Within three days after receiving notice of commitment  
15 as provided in subsection (a), the commissioner shall notify the committing court of the facility to  
16 which the juvenile offender should be conveyed, and when to effect the immediate transfer of study  
17 and control to the juvenile justice authority. The date of admission shall be no more than 5 days after  
18 the notice to the committing court. Until received at the designated facility, the continuing detention,  
19 custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a  
20 juvenile correctional facility shall be the responsibility of the committing county.

21           (2) Except as provided by section 85, and amendments thereto, the commissioner may make  
22 any temporary out-of-home placement the commissioner deems appropriate pending placement of

1 the juvenile offender in a juvenile correctional facility, and the commissioner shall notify the court,  
2 local law enforcement agency and school district in which the juvenile will be residing if the juvenile  
3 is still required to attend a secondary school of that placement.

4 (c) *Transfers.* During the time a juvenile offender remains committed to a juvenile  
5 correctional facility, the commissioner may transfer the juvenile offender from one juvenile  
6 correctional facility to another.

7 **COMMENT**

8 Section 73, relating to commitment to a juvenile correction facility, is similar to current  
9 K.S.A. 38-1671. In subsection (b), within three days after receiving notice of commitment, the  
10 commissioner is required to notify the court of the facility to which the juvenile offender should be  
11 conveyed, and when to effect the transfer. The amendment also states that the date of admission to  
12 a JJA facility shall be no more than five days after the notice to the committing court and clarifies  
13 that until received at the designated facility, the detention, physical custody, control and transport  
14 of the juvenile offender is the responsibility of the committing county.  
15

1           New Sec. 74. (a) When a juvenile offender has satisfactorily completed the term of  
2 incarceration at the juvenile correctional facility to which the juvenile offender was committed or  
3 placed, the person in charge of the juvenile correctional facility shall have authority to release the  
4 juvenile offender under appropriate conditions and for a specified period of time. Prior to release  
5 from a juvenile correctional facility, the commissioner shall consider any recommendations made  
6 by the juvenile offender's community case management officer.

7           (b) At least 20 days prior to releasing a juvenile offender as provided in subsection (a), the  
8 person in charge of the juvenile correctional facility shall notify the committing court of the date and  
9 conditions upon which it is proposed the juvenile offender is to be released. The person in charge  
10 of the juvenile correctional facility shall notify the school district in which the juvenile offender will  
11 be residing if the juvenile is still required to attend a school. Such notification to the school shall  
12 include the name of the juvenile offender, address upon release, contact person with whom the  
13 juvenile offender will be residing upon release, anticipated date of release, anticipated date of  
14 enrollment in school, name and phone number of case worker, crime or crimes of adjudication if not  
15 confidential based upon other statutes, conditions of release, and any other information the  
16 commissioner deems appropriate. To ensure the educational success of the student, the community  
17 case manager or a representative from the residential facility where the juvenile offender will reside  
18 shall contact the principal of the receiving school in a timely manner to review the juvenile offender's  
19 case. If such juvenile offender's offense would have constituted an off-grid crime, nondrug felony  
20 crime ranked at severity level 1, 2, 3, 4 or 5, or a drug felony crime ranked at severity level 1, 2 or  
21 3, on or after July 1, 1993, if committed by an adult, the person in charge of the juvenile correctional  
22 facility shall notify the county or district attorney of the county where the offender was adjudicated

1 a juvenile offender of the date and conditions upon which it is proposed the juvenile offender is to  
2 be released. The county or district attorney shall give written notice at least five days prior to the  
3 release of the juvenile offender to: (1) Any victim of the juvenile offender's crime who is alive and  
4 whose address is known to the court or, if the victim is deceased, to the victim's family if the family's  
5 address is known to the court; and (2) the local law enforcement agency. Failure to notify pursuant  
6 to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause  
7 of action against the state or county or an employee of the state or county acting within the scope of  
8 the employee's employment as a result of the failure to notify pursuant to this section.

9 (c) Upon receipt of the notice required by subsection (b), the court shall review the terms of  
10 the proposed conditional release and may recommend modifications or additions to the terms.

11 (d) If, during the conditional release, the juvenile offender is not returning to the county from  
12 which committed, the person in charge of the juvenile correctional facility shall also give notice to  
13 the court of the county in which the juvenile offender is to be residing.

14 (e) To assure compliance with conditional release from a juvenile correctional facility, the  
15 commissioner shall have the authority to prescribe the manner in which compliance with the  
16 conditions shall be supervised. When requested by the commissioner, the appropriate court may  
17 assist in supervising compliance with the conditions of release during the term of the conditional  
18 release. The commissioner may require the parent of the juvenile offender to cooperate and  
19 participate with the conditional release.

20 (f) For acts committed before July 1, 1999, the juvenile justice authority shall notify at least  
21 45 days prior to the discharge of the juvenile offender the county or district attorney of the county  
22 where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if

1 such juvenile offender's offense would have constituted a class A, B or C felony before July 1, 1993,  
2 or an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked  
3 at severity level 1, 2 or 3, on or after July 1, 1993, if committed by an adult. The county or district  
4 attorney shall give written notice at least 30 days prior to the release of the juvenile offender to: (1)  
5 Any victim of the juvenile offender's crime who is alive and whose address is known to the court or,  
6 if the victim is deceased, to the victim's family if the family's address is known to the court; and (2)  
7 the local law enforcement agency. Failure to notify pursuant to this section shall not be a reason to  
8 postpone a release. Nothing in this section shall create a cause of action against the state or county  
9 or an employee of the state or county acting within the scope of the employee's employment as a  
10 result of the failure to notify pursuant to this section.

11 (g) Conditional release programs shall include, but not be limited to, the treatment options  
12 of aftercare services.

13 **COMMENT**

14 Section 74, relating to conditional release, is nearly identical to current K.S.A. 38-1673. The  
15 only changes are technical.  
16



1 New Sec. 76. (a) When a juvenile offender has reached the age of 23 years or has completed  
2 the prescribed terms of incarceration at a juvenile correctional facility, together with any conditional  
3 release following the program, the juvenile shall be discharged by the commissioner from any further  
4 obligation under the commitment unless the juvenile was sentenced pursuant to an extended  
5 jurisdiction juvenile prosecution upon court order and the commissioner transfers the juvenile to the  
6 custody of the secretary of corrections. The discharge shall operate as a full and complete release  
7 from any obligations imposed on the juvenile offender arising from the offense for which the  
8 juvenile offender was committed.

9 (b) At least 45 days prior to the discharge of the juvenile offender, the juvenile justice  
10 authority shall notify the court and the county or district attorney of the county where the offender  
11 was adjudicated a juvenile offender of the pending discharge of such juvenile offender, the offense  
12 would have constituted a class A, B or C felony before July 1, 1993, or an off-grid crime, a nondrug  
13 crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or  
14 after July 1, 1993, if committed by an adult. The county or district attorney shall give written notice  
15 at least 30 days prior to the discharge of the juvenile offender pursuant to section 79, and  
16 amendments thereto.

17 **COMMENT**

18 Section 76, relating to discharge from commitment and notification, is similar to current  
19 K.S.A. 38-1675. There is no substantive change in this section, but language deleted from the last  
20 half of subsection (b) was moved to new section 79.

1           New Sec. 77. (a) The commissioner shall notify the county or district attorney, the court,  
2 the local law enforcement agency and the school district in which the juvenile offender will be  
3 residing of such pending release at least 45 days before release if the juvenile is still required to  
4 attend school, if the juvenile offender has committed an act prior to July 1, 1999, which, if  
5 committed by a person 18 years of age or over, would have constituted: (1) A class A or B felony,  
6 before July 1, 1993, or (2) an off-grid crime, a nondrug crime ranked at severity level 1, 2, 3, 4 or  
7 5 or a drug crime ranked at severity level 1, 2 or 3, if the offense was committed on or after July 1,  
8 1993, and, if such juvenile is to be released. The county or district attorney shall give written notice  
9 at least 30 days prior to discharge of the juvenile offender pursuant to section 79, and amendments  
10 thereto. The county attorney, district attorney or the court on its own motion may file a motion with  
11 the court for a hearing to determine if the juvenile offender should be retained in the custody of the  
12 commissioner, pursuant to section 76, and amendments thereto. The court shall fix a time and place  
13 for hearing and shall notify each party of the time and place.

14           (b) Following the hearing if the court orders the commissioner to retain custody, the juvenile  
15 offender shall not be held in a juvenile correctional facility for longer than the maximum term of  
16 imprisonment which could be imposed upon an adult convicted of the offense or offenses which the  
17 juvenile offender has been adjudicated to have committed.

18           (c) As used in this section, "maximum term of imprisonment" means the greatest maximum  
19 sentence authorized by K.S.A. 21-4501 and amendments thereto, applying any enhanced penalty  
20 which would be applicable under K.S.A. 21-4504 and amendments thereto and computing terms as  
21 consecutive when required by K.S.A. 21-4608 and amendments thereto.

1 **COMMENT**

2 Section 77, relating to release of juvenile offenders for acts committed before  
3 July 1, 1999, is similar to current K.S.A. 38-1676. Subsection (a) is reorganized and changed to  
4 require notice if the juvenile offender committed a non-drug crime ranked a severity level 4 or 5, or  
5 a drug crime ranked at severity level 3. In addition, the reference to section 79 adds the victim to  
6 a list of persons who receive notice of discharge. The other changes are technical.  
7

8



1 New Sec. 79. (a) When a statute requires that the county or district attorney shall give written  
2 notice at least 30 days prior to the release of the juvenile offender, such notice shall be given to:

3 (1) Any victim of the juvenile offender's crime who is alive and whose address is known to  
4 the court or, if the victim is deceased, to the victim's family if the family's address is known to the  
5 court;

6 (2) the local law enforcement agency; and

7 (3) the school district in which the juvenile offender will be residing if the juvenile is still  
8 required to attend school.

9 (b) Failure to notify pursuant to this section shall not be a reason to postpone a release.  
10 Nothing in this section shall create a cause of action against the state or county of an employee of  
11 the state or county acting within the scope of the employee's employment as a result of the failure  
12 to notify pursuant to this section.

13 **COMMENT**

14 Section 79. This is a new section relating to written notice by county or district attorney.  
15 The section was drafted to replace identical provisions, which were previously contained in sections  
16 K.S.A. 38-1673(f) and K.S.A. 38-1675(b). There is no substantive change from current law.  
17

1           Sec. 80. (a) *Order authorizing prosecution as an adult or extended jurisdiction juvenile*  
2 *prosecution.* (1) Unless the juvenile offender has consented to the order, a juvenile offender may  
3 take an appeal from an order authorizing prosecution as an adult. The appeal shall be taken only after  
4 conviction as an adult and in the same manner as criminal appeals, except that where the  
5 prosecution has resulted in a judgment of conviction upon a plea of guilty or *nolo contendere*, an  
6 appeal may be taken from the order authorizing prosecution pursuant to section 47, and amendments  
7 thereto, notwithstanding the provisions of subsection (a) of K.S.A. 22-3602 and amendments thereto.

8           (2) If on appeal the order authorizing prosecution as an adult is reversed but the finding of  
9 guilty is affirmed or the conviction was based on a plea of guilty or *nolo contendere*, the juvenile  
10 shall be deemed adjudicated to be a juvenile offender. On remand the district court shall proceed  
11 with sentencing.

12           (b) *Orders of adjudgment and sentencing.* The juvenile offender may appeal from an order  
13 of adjudication or sentencing, or both. The appeal shall be pursuant to section 82, and amendments  
14 thereto.

15           (1) Pending review of the sentence, the sentencing court or the appellate court may order the  
16 juvenile confined or placed on conditional release, including bond.

17           (2) On appeal from a judgment or conviction entered for an offense committed on or after  
18 July 1, 1999, the appellate court shall not review:

19           (A) Any sentence that is within the presumptive sentence for the crime; or

20           (B) any sentence resulting from an agreement between the state and the juvenile which the  
21 sentencing court approves on the record.

1           (3) In any appeal from a judgment of conviction imposing a sentence that departs from the  
2 presumptive sentence, sentence review shall be limited to whether the sentencing court's findings  
3 of fact and reasons justifying a departure:

4           (A) Are supported by the evidence in the record; and

5           (B) constitute substantial and compelling reasons for departure.

6           (4) In any appeal, the appellate court may review a claim that:

7           (A) A sentence that departs from the presumptive sentence resulted from partiality,  
8 prejudice, oppression or corrupt motive;

9           (B) the sentencing court erred in either including or excluding recognition of prior  
10 convictions or adjudications; or

11           (C) the sentencing court erred in ranking the crime severity level of the current crime or in  
12 determining the appropriate classification of a prior conviction or juvenile adjudication for criminal  
13 history purposes.

14           (5) The appellate court may reverse or affirm the sentence. If the appellate court concludes  
15 that the trial court's factual findings are not supported by evidence in the record or do not establish  
16 substantial and compelling reasons for a departure, it shall remand the case to the trial court for  
17 resentencing.

18           (6) The appellate court shall issue a written opinion whenever the judgment of the sentencing  
19 court is reversed. The court may issue a written opinion in any other case when it is believed that a  
20 written opinion will provide guidance to sentencing judges and others in implementing the  
21 placement. The appellate courts may provide by rule for summary disposition of cases arising under  
22 this section when no substantial question is presented by the appeal.











1           New Sec. 85. Certification of juvenile corrections officers; basic course of instruction;  
2 inservice training. (a) The commissioner may adopt rules and regulations establishing standards of  
3 training and provisions for certifying juvenile corrections officers as defined in section 2 of this code,  
4 and amendments thereto.

5           (b) Except as provided in subsection (c), no person shall receive a permanent appointment as a  
6 juvenile corrections officer unless awarded a certificate by the commissioner which attests to  
7 satisfactory completion of a basic course of instruction. Such course of instruction shall be approved  
8 by the commissioner and shall consist of not less than 160 hours of instruction. The certificate shall  
9 be effective during the term of a person's employment, except that any person who has terminated  
10 employment with the commissioner for a period exceeding one year shall be required to be certified  
11 again.

12           (c) The commissioner may award a certificate which attests to the satisfactory completion of a basic  
13 course of instruction to any person who has been duly certified under the laws of another state or  
14 territory if, in the opinion of the commissioner, the requirements for certification in the other  
15 jurisdiction are equal to or exceed the requirements for certification in this state. The commissioner  
16 may waive any number of hours or courses required to complete the basic course of instruction for  
17 any person who, in the opinion of the commissioner, has received sufficient training or experience  
18 that such hours of instruction would be unduly burdensome or duplicitous.

19           (d) Every juvenile corrections officer shall receive not less than 40 hours of in-service training  
20 annually.

1

**COMMENT**

2

Section 85, relating to juvenile corrections officers, is nearly identical to current K.S.A. 38-

3

16,134.



1           Sec. 87. This act shall take effect and be in force from and after January 1, 2006 and its  
2 publication in the statute book.

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