

## Juvenile Jury Trials

1 AN ACT concerning juvenile offenders; relating to jury trials; amending K.S.A. 38-2344  
2 and 38-2357 and repealing the existing section.

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

4  
5 **Sec. 1.** K.S.A. 38-2344 is hereby amended to read as follows: **38-2344. First appearance;**  
6 **plea.** (a) When the juvenile appears without an attorney in response to a complaint, the court  
7 shall inform the juvenile of the following:

- 8 (1) The nature of the charges in the complaint;
- 9 (2) the right to hire an attorney of the juvenile's own choice;
- 10 (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the  
11 juvenile or parent; and
- 12 (4) that the court may require the juvenile or parent to pay the expense of a court appointed  
13 attorney.

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

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

- 23 (1) The nature of the charges in the complaint;
- 24 (2) the right of the juvenile to be presumed innocent of each charge;
- 25 (3) the right to a **jury** trial without unnecessary delay **and**;
- 26 (4) **the right** to confront and cross-examine witnesses appearing in support of the  
27 allegations of the complaint;
- 28 ~~(4)~~ **(5)** the right to subpoena witnesses;
- 29 ~~(5)~~ **(6)** the right of the juvenile to testify or to decline to testify; and
- 30 ~~(6)~~ **(7)** the sentencing alternatives the court may select as the result of the juvenile  
31 being adjudicated a juvenile offender.

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

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

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

45  
46 **Sec. 2.** K.S.A. 38-2357 is hereby amended to read as follows: **38-2357. In all cases**  
47 **involving offenses committed by a juvenile which, if done by an adult, would make the**  
48 **person liable to be arrested and prosecuted for the commission of a felony, the judge may**  
49 **upon motion, order that the juvenile be afforded a trial by jury. Upon the juvenile being**  
50 **adjudged to be a juvenile offender, the court shall proceed with sentencing.**

51 ~~(a) Method of Trial. (1) For any offense, which if done by an adult, would make the~~  
52 ~~person liable to be arrested and prosecuted for the commission of a felony, the juvenile~~  
53 ~~and the county or district attorney, with the consent of the court, may submit the trial of any~~  
54 ~~felony to the court. All other trials of felony cases such offenses shall be by jury. A jury in a~~  
55 ~~felony case shall consist of twelve members. However the parties may agree in writing, at any~~  
56 ~~time before the verdict, with the approval of the court, that the jury shall consist of any number~~

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1 less than twelve. When the trial is to a jury, questions of law shall be decided by the court and  
2 issues of fact shall be determined by the jury. A juvenile is entitled to a trial by one of the following  
3 means: (a) The trial of a felony or misdemeanor case shall be to the court unless the juvenile  
4 requests a jury trial in writing within 30 days from the date of the juvenile's entry of a plea of not  
5 guilty. The time requirement provided in this subsection regarding when a jury trial shall be  
6 requested may be waived in the discretion of the court upon a finding that imposing such time  
7 requirement would cause undue hardship or prejudice to the juvenile.

8 (1) A jury in a felony case shall consist of 12 members. However the parties may agree in  
9 writing, at any time before the verdict, with the approval of the court, that the jury shall consist of  
10 any number less than 12.

11 (2) A jury in a misdemeanor case shall consist of six members.

12 (3) When the trial is to a jury, questions of law shall be decided by the court and issues of fact  
13 shall be determined by the jury.

14 ~~(2) The trial of misdemeanor cases shall be to the court unless a jury trial is requested in~~  
15 ~~writing by the juvenile not later than seven days after first notice of trial assignment is given to the~~  
16 ~~juvenile or such juvenile's counsel. The time requirement provided in this subsection regarding~~  
17 ~~when a jury trial shall be requested may be waived in the discretion of the court upon a finding~~  
18 ~~that imposing such time requirement would cause undue hardship or prejudice to the juvenile. A~~  
19 ~~jury in a misdemeanor case shall consist of six members.~~ (4) Except as otherwise provided by  
20 law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in  
21 misdemeanor cases.

22 (3) ~~(5) Trials in the municipal court of a city shall be to the court.~~

23 (4) ~~(6) (5) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the~~  
24 court.

25 (b) *Selection of Jury Panel.* (1) When a jury trial is held, the judge shall summon from the  
26 source and in the manner provided for the summoning of other petit jurors in the district court in  
27 the county. A sufficient number of jurors shall be called so that after the exercise of peremptory  
28 challenges as provided in this section there will remain a sufficient number of jurors to enable the  
29 court to cause 12 jurors to be sworn in felony cases and 6 jurors to be sworn in misdemeanor  
30 cases. When drawn, a list of prospective jurors and their addresses shall be filed in the office of  
31 the clerk of the court and shall be a public record. The qualifications of jurors and grounds for  
32 exemption from jury service in civil cases shall be applicable in juvenile trials, except as otherwise  
33 provided by law. An exemption from service on a jury is not a basis for challenge, but is the  
34 privilege of the person exempted.

35 (2) The county or district attorney and the juvenile's or his attorney shall conduct the  
36 examination of prospective jurors. The court may conduct an additional examination. The court  
37 may limit the examination by the juvenile, the juvenile's attorney or the county or district attorney  
38 if the court believes such examination to be harassment, is causing unnecessary delay or serves  
39 no useful purpose.

40 (3) Each party may challenge any prospective juror for cause. All challenges for cause must  
41 be made before the jury is sworn to try the case. Challenges for cause shall be tried by the court.  
42 A juror may be challenged for cause on any of the following grounds:

43 (A) ~~He or she~~ The juror is related to the juvenile, or a person alleged to have been injured by  
44 the offense charged or the person on whose complaint the adjudication was begun, by  
45 consanguinity within the sixth degree, or is the spouse of any person so related.

46 (B) ~~He or she~~ The juror is the attorney, client, employer, employee, landlord, tenant, debtor,  
47 creditor or a member of the household of the juvenile or a person alleged to have been injured by  
48 the offense charged or the person on whose complaint the adjudication was instituted.

49 (C) ~~He or she~~ The juror is or has been a party adverse to the juvenile or the juvenile's  
50 parents in a civil action, or has complained against the juvenile in an adjudication or been  
51 accused by the juvenile in a criminal prosecution.

52 (D) ~~He or she~~ The juror has served on the grand jury which returned the indictment or on a  
53 coroner's jury which inquired into the death of a person whose death is a public body which has  
54 inquired into the events that are the subject of the adjudication, or on any other investigatory body  
55 which inquired into the facts of the offense charged.

56 (E) ~~He or she was a juror at a former trial of the same cause.~~

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1 ~~(F) He or she was a juror in a civil action against the juvenile arising out of the act charged~~  
2 ~~as an offense.~~

3 ~~(G) (E) He or she~~ The juror was a witness to the act or acts alleged to constitute the offense.

4 ~~(H) (F) He or she~~ The juror occupies a fiduciary relationship to the juvenile ~~or the juvenile's~~  
5 ~~parents~~ or a person alleged to have been injured by the offense or the person on whose  
6 complaint the adjudication was instituted.

7 ~~(I) (G) He or she~~ The juror's state of mind with reference to the case or any of the parties is  
8 such that the court determines there is doubt that ~~he or she~~ the juror can act impartially and  
9 without prejudice to the substantial rights of any party.

10 (4) Peremptory challenges shall be allowed as follows: (A) Each juvenile charged with an  
11 offense which, if committed by an adult, would constitute an off-grid felony or a nondrug or drug  
12 felony ranked at severity level 1 shall be allowed 12 peremptory challenges.

13 (B) Each juvenile charged with an offense which, if committed by an adult, would constitute a  
14 nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2  
15 or 3, shall be allowed 8 peremptory challenges.

16 (C) Each juvenile charged with an offense which, if committed by an adult, would constitute  
17 **an unclassified felony**, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony  
18 shall be allowed six peremptory challenges.

19 (D) Each juvenile charged with an offense which, if committed by an adult, would constitute a  
20 misdemeanor shall be allowed three peremptory challenges.

21 (E) The ~~prosecution state~~ shall be allowed the same number of peremptory challenges as all  
22 juveniles.

23 (F) The most serious penalty offense charged against each juvenile furnishes the criterion for  
24 determining the allowed number of peremptory challenges for that juvenile.

25 (G) Additional peremptory challenges shall not be allowed when separate counts are  
26 charged in the complaint.

27 (5) After the parties have interposed all of their challenges to jurors, or have waived further  
28 challenges, the jury shall be sworn to try the case. A trial judge may empanel one or more  
29 alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to  
30 have such jurors available to replace jurors who, prior to the time the jury retires to consider its  
31 verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in  
32 the same manner, have the same qualifications, and be subject to the same examination and  
33 challenges and take the same oath and have the same functions, powers and privileges as the  
34 regular jurors. Such jurors may be selected at the same time as the regular jurors or after the jury  
35 has been empaneled and sworn, in the judge's discretion. Each party shall be entitled to one  
36 peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the  
37 other jurors, with equal power and facilities for seeing and hearing the proceedings in the case,  
38 and they must attend at all times upon the trial of the cause in company with the other jurors.  
39 They shall obey the orders of and be bound by the admonition of the court upon each  
40 adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the  
41 cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final  
42 submission of the case to the jury, the alternate jurors may be discharged or they may be  
43 retained separately and not discharged until the final decision of the jury. If the alternate jurors  
44 are not discharged on final submission of the case and if any regular juror shall be discharged  
45 from jury service in any such action prior to the jury reaching its verdict, the court shall draw the  
46 name of an alternate juror who shall replace the juror so discharged and be subject to the same  
47 rules and regulations as though such juror had been selected as one of the original jurors.

48 (6) Any objection to the manner in which a jury panel has been selected or drawn shall be  
49 raised by a motion to discharge the jury panel. The motion shall be made at least five days prior  
50 to the date set for trial if the names and addresses of the panel members and the grounds for  
51 objection thereto are known to the parties or can be learned by an inspection of the records of the  
52 clerk of the district court at that time; in other cases the motion must be made prior to the time  
53 when the jury is sworn to try the case. For good cause shown, the court may entertain the motion  
54 at any time thereafter. The motion shall be in writing and shall state facts which, if true, show that  
55 the jury panel was improperly selected or drawn. If the motion states facts which, if true, show  
56 that the jury panel has been improperly selected or drawn, it shall be the duty of the court to

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1 conduct a hearing. The burden of proof shall be on the movant. If the court finds that the jury  
2 panel was improperly selected or drawn, the court shall order the jury panel discharged and the  
3 selection or drawing of a new panel in the manner provided by law.

4 (7) If a juror has personal knowledge of any fact material to the case, ~~he or she~~ *the juror*  
5 must inform the court and shall not speak of such fact to other jurors out of court. If a juror has  
6 personal knowledge of a fact material to the case, gained from sources other than evidence  
7 presented at trial and shall speak of such fact to other jurors without the knowledge of the court or  
8 the juvenile, he may be adjudged in contempt and punished accordingly.

9 (c) *View of place of offense.* Whenever in the opinion of the court it is proper for the jurors to  
10 have a view of the place in which any material fact occurred, it may order them to be conducted in  
11 a body under the charge of an officer to the place, which shall be shown to them by some person  
12 appointed by the court for that purpose. They may be accompanied by the juvenile, ~~his~~ *the*  
13 ~~juvenile's counsel attorney~~ and the ~~prosecuting county or district~~ attorney. While the jurors are  
14 thus absent, no person other than the officer and the person appointed to show them the place  
15 shall speak to them on any subject connected with the trial. The officer or person appointed to  
16 show them the place shall speak to the jurors only to the extent necessary to conduct them to and  
17 identify the place or thing in question.

18 (d) *Submission of Case to the Jury.* (1) At the close of the evidence or at such earlier time  
19 during the trial as the judge reasonably directs, any party may file written requests that the court  
20 instruct the jury on the law as set forth in the requests.

21 (A) The judge shall instruct the jury at the close of the evidence before argument and the  
22 judge, in the judge's discretion, after the opening statements, may instruct the jury on such  
23 matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.  
24 In cases where there is some evidence which would reasonably justify ***an adjudication for***  
25 ***conviction of*** some lesser included offense ***that is (i) A lesser degree of the same crime***  
26 ***offense; (ii) an crime offense where all elements of the lesser crime offense are identical to***  
27 ***some of the elements of the crime offense charged; (iii) an attempt to commit the crime***  
28 ***offense charged; or (iv) an attempt to commit an crime offense defined under subsection***  
29 ***(d)(1)(A)(i) or (ii) as provided in subsection (2) of K.S.A. 21-3107 and amendments thereto,***  
30 the judge shall instruct the jury as to the offense charged and any such lesser included offense.

31 (B) The court shall pass upon the objections to the instructions and shall either give each  
32 instruction as requested or proposed or refuse to do so, or give the requested instruction with  
33 modification. All instructions given or requested must be filed as a part of the record of the case.  
34 The court reporter shall record all objections to the instructions given or refused by the court,  
35 together with modifications made, and the rulings of the court. No party may assign as error the  
36 giving or failure to give an instruction, including a lesser included offense instruction, unless the  
37 party objects thereto before the jury retires to consider its verdict. ~~stating distinctly~~ *The attorney*  
38 *making the objection shall specify* the matter to which the party objects and the ~~grounds~~ *basis*  
39 of the objection unless the instruction or the failure to give an instruction is clearly erroneous.  
40 Opportunity shall be given to make the objections out of the hearing of the jury.

41 (C) When the jury has been instructed, unless the case is submitted to the jury on either side  
42 or on both sides without argument, the county or district attorney may commence and may  
43 conclude the argument. If there is more than one alleged juvenile offender, the court shall  
44 determine their relative order in presentation of evidence and argument. In arguing the case,  
45 comment may be made upon the law of the case as given in the instructions, as well as upon the  
46 evidence.

47 (e) *Motion for judgment of acquittal.* (1) The court on motion of a juvenile or on its own  
48 motion shall order the entry of judgment of acquittal of one or more offenses charged in the  
49 complaint after the evidence on either side is closed if the evidence is insufficient to sustain a  
50 ***conviction of finding of guilt for*** such offense or offenses. If a juvenile's motion for judgment of  
51 acquittal at the close of the evidence offered by the county or district attorney is not granted, the  
52 juvenile may offer evidence without having reserved the right.

53 (2) If a motion for judgment of acquittal is made at the close of all the evidence, the court  
54 may reserve decision on the motion, submit the case to the jury and decide the motion either  
55 before the jury returns a verdict or after it returns a verdict of guilty or is discharged without  
56 having returned a verdict.

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1 (3) If the jury returns a verdict of guilty or is discharged without having returned a verdict, a  
2 motion for judgment of acquittal may be made or renewed within seven days after the jury is  
3 discharged or within such further time as the court may fix during the seven-day period. If a  
4 verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment  
5 of acquittal. It shall not be necessary to the making of such a motion that a similar motion has  
6 been made prior to the submission of the case to the jury.

7 (f) *Jury Deliberation.* (1) When the case is finally submitted to the jury, they shall retire for  
8 deliberation. They must be kept together in some convenient place under charge of a duly sworn  
9 officer until they agree upon a verdict, or ~~be are~~ discharged by the court, subject to the discretion  
10 of the court to permit them to separate temporarily at night, and at their meals. The officer ~~having~~  
11 ~~them under his charge~~ *in charge of the jury* shall not allow any communications to be made to  
12 them, or make any himself, unless by order of the court; and before their verdict is rendered he  
13 shall not communicate to any person the state of their deliberations, or the verdict agreed upon.  
14 No person other than members of the jury shall be present in the jury room during deliberations.

15 (2) If the jury is permitted to separate, either during the trial or after the case is submitted to  
16 them, they shall be admonished by the court that it is their duty not to converse with, or allow  
17 themselves to be addressed by any other person on any subject of the trial, and that it is their  
18 duty not to form or express an opinion thereon until the case is finally submitted to them, and that  
19 such admonition shall apply to every subsequent separation of the jury.

20 (3) After the jury has retired for deliberation, if they desire to be informed as to any part of the  
21 law or evidence arising in the case, they may request the officer to conduct them to the court,  
22 where the information on the point of the law shall be given, or the evidence shall be read or  
23 exhibited to them in the presence of the juvenile, unless ~~he~~ *the juvenile is* voluntarily absents  
24 ~~himself, and his~~ *the juvenile's counsel attorney*, and after notice to the ~~prosecuting county or~~  
25 ~~district~~ attorney.

26 (4) The jury may be discharged by the court on account of the sickness of a juror, or other  
27 accident or calamity, or other necessity to be found by the court requiring their discharge, or by  
28 consent of both parties, or after they have been kept together until it satisfactorily appears that  
29 there is no probability of their agreeing.

30 (g) *Verdict, procedure.* The verdict shall be written, signed by the presiding juror and read by  
31 the clerk to the jury, and the inquiry made whether it is the jury's verdict. If any juror disagrees,  
32 the jury must be sent out again; but if no disagreement is expressed, and neither party requires  
33 the jury to be polled, the verdict is complete and the jury discharged from the case. If the verdict  
34 is defective in form only, it may be corrected by the court, with the assent of the jury, before it is  
35 discharged.

36 (h) *Mistrials.* (1) The trial court may terminate the trial and order a mistrial at any time that  
37 the court finds termination is necessary because:

38 (A) It is physically impossible to proceed with the trial in conformity with law; or

39 (B) There is a legal defect in the proceedings which would make any judgment entered upon  
40 a verdict reversible as a matter of law and the juvenile requests or consents to the declaration of  
41 a mistrial; or

42 (C) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the  
43 trial without injustice to either the juvenile or the ~~prosecution state~~; or

44 (D) The jury is unable to agree upon a verdict; or

45 (E) False statements of a juror on *voir dire* prevent a fair trial; or

46 (F) The trial has been interrupted pending a determination of the juvenile's competency to  
47 stand trial.

48 (2) When a mistrial is ordered, the court shall direct that the case be retained on the docket  
49 for trial or such other proceedings as may be proper and that the juvenile *may* be held in custody  
50 pending such further proceedings ~~pursuant to this code, unless he is released pursuant to the~~  
51 ~~terms of an appearance bond.~~

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