Proposed Amendments to SB 367 - King 2
Senate Committee on Corrections and Juvenile Justice
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Session of 2016

SENATE BILL No. 367

By Committee on Corrections and Juvenile Justice

1-26

AN ACT concerning children and minors; relating to juvenile justice; amending K.S.A. 12-4112 and 20-167 and K.S.A. 2015 Supp. 8-241, 8-2110, 12-4117, 38-2202, 38-2232, 38-2242, 38-2243, 38-2255, 38-2260, 38-2288, 38-2302, 38-2304, 38-2313, 38-2325, 38-2330, 38-2331, 38-2332, 38-2342, 38-2343, 38-2344, 38-2346, 38-2347, 38-2360, 38-2361, 38-2366, 38-2367, 38-2368, 38-2369, 38-2371, 38-2372, 38-2373, 38-2374, 38-2375, 38-2376, 38-2377, 38-2389, 65-5603, 72-1113, 72-8222, 72-89b03, 72-89c02, 74-4914, 75-7023, 75-7038, 75-7044, 75-7046 and 79-4803 and repealing the existing sections; also repealing K.S.A. 2015 Supp. 38-2334, 38-2335, 38-2364 and 38-2365.

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

New Section 1. (a) Upon adjudication as a juvenile offender pursuant to K.S.A. 2015 Supp. 38-2356, and amendments thereto, modification of sentence pursuant to K.S.A. 2015 Supp. 38-2367, and amendments thereto, or violation of a condition of sentence pursuant to K.S.A. 2015 Supp. 38-2368, and amendments thereto, the court may impose one or more of the sentencing alternatives under K.S.A. 2015 Supp. 38-2361, and amendments thereto, for a period of time pursuant to this section and K.S.A. 2015 Supp. 38-2369, and amendments thereto. The period of time ordered by the court shall not exceed the overall case length limit.

(b) The overall case length limit shall be calculated based on the adjudicated offense and the results of a risk and needs assessment, as follows:

(1) Offenders adjudicated for a misdemeanor may remain under the jurisdiction of the court for up to 12 months;

(2) low-risk and moderate-risk offenders adjudicated for a felony may remain under court jurisdiction for up to 15 months; and

(3) high-risk offenders adjudicated for a felony may remain under court jurisdiction for up to 18 months, except that:

(A) Any offender, regardless of risk level, adjudicated for a felony that, if committed by an adult, would constitute a severity level 1 through 3, person felony, may be under court jurisdiction for up to 30 months, except as provided in subparagraph (B); and

(B) any offender, regardless of risk level, adjudicated for a felony

that, if committed by an adult, would constitute an off-grid felony, rape as defined in K.S.A. 2015 Supp. 21-5503, and amendments thereto, aggravated criminal sodomy as defined in K.S.A. 2015 Supp. 21-5504(b)(3), and amendments thereto, or murder in the second degree as defined in K.S.A. 2015 Supp. 21-5403, and amendments thereto, may be under court jurisdiction for up to 42 months or up to 66 months if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2015 Supp. 38-2371, and amendments thereto.

(c) When a juvenile is adjudicated for multiple counts, the maximum overall case length shall be calculated based on the most severe adjudicated count or any other adjudicated count at the court's discretion. The court shall not run multiple adjudicated counts consecutively.

(d) When the juvenile is adjudicated for multiple cases simultaneously, the court shall run those cases concurrently.

(e) Upon expiration of the overall case length limit as defined in subsection (b), the court's jurisdiction terminates and shall not be extended.

(f) (1) ~~For the purposes of placing~~ Except as provided in paragraph (2), juvenile offenders on probation pursuant to K.S.A. 2015 Supp. 38-2361, and amendments thereto, the court shall establish a specific term of probation as specified in this subsection based on the most serious adjudicated count in combination with the results of a risk and needs assessment, as follows, except that the term of probation shall not exceed the overall case length limit:

(A) Low-risk and moderate-risk offenders adjudicated for a misdemeanor and low-risk offenders adjudicated for a felony may be placed on probation for a term up to six months;

(B) high-risk offenders adjudicated for a misdemeanor and moderate-risk offenders adjudicated for a felony may be placed on probation for a term up to nine months;

(C) high-risk offenders adjudicated for a felony may be placed on probation for a term up to 12 months.

(2) ~~The court may only extend the term of probation if a juvenile needs time to complete an evidence-based program that the juvenile has already begun. Prior to extension of the initial probationary term, the court shall find and enter into the written record the criteria permitting extension of probation. Extensions of probation shall only be granted incrementally and shall not exceed the overall case length limit.~~ The overall case length limits in paragraph (1) shall only apply to juveniles who complete an evidence-based program while on probation. The court shall extend the term of probation for a juvenile offender who has not completed an evidence-based program, to allow for completion of such program.

(3) The probation term limits do not apply to those offenders adjudicated for an off-grid crime, rape as defined in K.S.A. 2015 Supp. 21-5503(a)(1), and amendments thereto, aggravated criminal sodomy as defined in K.S.A. 2015 Supp. 21-5504(b)(3), and amendments thereto, or murder in the second degree as defined in K.S.A. 2015 Supp. 21-5403, and

amendments thereto. Such offenders may be placed on probation for a term consistent with the overall case length limit.

(g) For the purpose of placing juvenile offenders in detention pursuant to K.S.A. 2015 Supp. 38-2361 and 38-2369, and amendments thereto, the court shall establish a specific term of detention. The term of detention shall not exceed the overall case length limit or the ~~cumulative~~ detention limit. ~~Cumulative~~ detention use shall be limited to a maximum of 30 days over the course of the juvenile offender's case.

(h) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

New Sec. 2. (a) The department of corrections shall, in consultation with the supreme court, adopt rules and regulations for a statewide system of structured community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence by juveniles. Such graduated responses shall be utilized by community supervision officers to provide a continuum of community-based responses. These responses shall include sanctions that are swift and certain to address violations based on the severity of the violation as well as incentives that encourage positive behaviors. Such responses shall take into account the juvenile's risks and needs.

(b) When a juvenile is placed on probation pursuant to K.S.A. 2015 Supp. 38-2361, and amendments thereto, community supervision officers shall utilize graduated responses, targeted to the juvenile's risks and needs based on the results of a risk and needs assessment to address technical violations. A technical violation shall only be considered by the court for revocation if: (1) It is a third or subsequent technical violation; (2) prior failed responses are documented in the juvenile's case plan; and (3) the community supervision officer has determined and documented that graduated responses to the violation will not suffice. Unless a juvenile poses a significant risk of physical harm to another, community supervision officers shall issue a summons rather than request a warrant on a third or subsequent technical violation subject to review by the court.

(c) When a juvenile is placed on probation pursuant to K.S.A. 2015 Supp. 38-2361, and amendments thereto, the community supervision officer responsible for oversight of the juvenile shall develop a case plan in consultation with the juvenile and the juvenile's family. The department for children and families and local board of education may participate in the development of the case plan when appropriate.

(1) Such case plan shall incorporate the results of the risk and needs assessment, referrals to programs, documentation on violations and graduated responses and shall clearly define the role of each person or agency working with the juvenile.

(2) If the juvenile is later committed to the custody of the secretary,

For all juveniles adjudicated for a misdemeanor and low-risk and moderate-risk juveniles adjudicated for a crime that, if committed by an adult, would constitute a nondrug severity level 7 through 10 felony,

~~from the court, a licensed juvenile detention facility may serve as a sanctions house.~~

~~(s)~~*(z) "Secretary" means the secretary of corrections or the secretary's designee.*

(aa) "Technical violation" means an act that violates the terms or conditions imposed as part of a probation disposition pursuant to K.S.A. 2015 Supp. 38-2361, and amendments thereto, and that does not constitute a new juvenile offense or a new child in need of care violation pursuant to K.S.A.2015 Supp. 38-2202(d), and amendments thereto.

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

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

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Sec. 29. K.S.A. 2015 Supp. 38-2304 is hereby amended to read as follows: 38-2304. (a) Except as provided in K.S.A. 2015 Supp. 38-2347, and amendments thereto, proceedings concerning a juvenile shall be governed by the provisions of this code.

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

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

(d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

(1) The complaint is dismissed;

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

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

(i) Successfully completes the term of probation~~or order of assignment to community corrections~~;

(ii) is discharged by the ~~commissioner~~ *secretary* pursuant to K.S.A. 2015 Supp. 38-2376, and amendments thereto;

(iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction beyond age 21; *or*

(iv) reaches the overall case length limit;

(4) the court terminates jurisdiction; or

(5) the ~~offender is convicted of a new felony while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2015 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony~~ *juvenile is convicted of a crime as an adult*

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(7) Order the juvenile to make appropriate reparation or restitution pursuant to subsection (d).

(8) Order the juvenile to pay a fine not exceeding $1,000 pursuant to subsection (e).

(9) Place the juvenile under a house arrest program administered by the court pursuant to K.S.A. 2015 Supp. 21-6609, and amendments thereto.

~~(10) Place the juvenile in the custody of the secretary of corrections as provided in K.S.A. 2015 Supp. 38-2365, and amendments thereto. This alternative shall not be ordered with the alternative in paragraph (3) or (12). Except for a mandatory drug and alcohol evaluation, when this alternative is ordered with alternatives in paragraphs (2), (4) and (9), such orders shall constitute a recommendation by the court. Requirements pertaining to child support shall apply under this alternative.~~

(10) Place the juvenile in a youth residential facility only if in-home placement is not considered by the court to be an appropriate placement, and there is no other appropriate community-based alternative.

~~(11)~~ *Upon a violation of a condition of sentence, other than a technical violation pursuant to K.S.A. 2015 Supp. 38-2368, and amendments thereto,* commit the juvenile to ~~a sanctions house~~ *detention* for a period no longer than ~~28~~ *30* days subject to the provisions of subsection (g).

~~(12)~~*(11) If the judge finds and enters into the written record that the juvenile poses a significant risk of harm to another, and the juvenile is otherwise eligible for commitment pursuant to K.S.A. 2015 Supp. 38-2369, and amendments thereto,* commit the juvenile directly to the custody of the secretary of corrections for a period of confinement in a juvenile correctional facility ~~and~~. *If the court elects,* a period of ~~aftercare~~ *conditional release* pursuant to K.S.A. 2015 Supp. 38-2369, and amendments thereto, *may also be ordered.* ~~The provisions of K.S.A. 2015 Supp. 38-2365, and amendments thereto, shall not apply to juveniles committed pursuant to this provision, provided however, that 21~~ *The period of conditional release shall be limited to a maximum of six months and shall be subject to graduated responses. Twenty-one* days prior to the juvenile's release from a juvenile correctional facility, the secretary of corrections or designee shall notify the court of the juvenile's anticipated release date. ~~The court shall set and hold a permanency hearing pursuant to K.S.A. 2015 Supp. 38-2365, and amendments thereto, within seven days after the juvenile's release.~~ This alternative may be ordered with the alternative in paragraph (7). Requirements pertaining to child support shall apply under this alternative.

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

(1) The court may order the juvenile offender to participate in

correctional facility pursuant to this section, the court shall administer a risk assessment tool, as described in K.S.A. 2015 Supp. 38-2360, and amendments thereto, or review a risk assessment tool that was administered within the past six months to the juvenile.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for ~~a minimum term of 60 months and up to~~ a maximum term of ~~the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years~~ *36 months, unless the judge conducts a departure hearing pursuant to K.S.A. 2015 Supp. 38-2371, and amendments thereto, and finds substantial and compelling reasons to impose a departure sentence of up to 66 months*.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of ~~24~~ *12* months and up to a maximum term of ~~the offender reaching the age 22 years, six~~ *24* months. ~~The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years~~ *If, however, the offender is adjudicated for an offense that if committed by an adult would constitute rape as defined in K.S.A. 2015 Supp. 21-5503(a)(1), and amendments thereto, aggravated sodomy, as defined in K.S.A. 2015 Supp. 21-5504(b)(3), and amendments thereto, or murder in the second degree, as defined in K.S.A. 2015 Supp. 21-5403, and amendments thereto, the court may impose the eligible term of commitment for violent offenders pursuant to subsection (a)(1).*

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense:

~~(i)~~ Which, if committed by an adult, would ~~constitute~~ a nondrug severity level 4, 5 or 6 person felony;

~~(ii)~~ committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute a drug severity level 1 or 2 felony; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute a drug severity level 1, 2 or 3 felony.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of ~~18~~ *nine* months and up to a maximum term of ~~36~~ *18* months. ~~The aftercare term for this offender is set at a minimum~~

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Offenders in this category may be committed to a juvenile correctional facility for a minimum of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense:

~~term of six months and up to a maximum term of 24 months.~~

III

~~(B)~~ The serious offender ~~II~~ ~~is defined~~ as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, person felony with one prior felony adjudication. *Offenders in this category may only be committed to a juvenile correctional facility if they are assessed as high-risk on a risk and needs assessment.* Offenders in this category may be committed to a juvenile correctional facility for a minimum term of ~~nine~~ *six* months and up to a maximum term of ~~18~~ *12* months. ~~The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.~~

IV

~~(C)~~ The serious offender ~~III~~ ~~is defined~~ as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may only be committed to a juvenile correctional facility ~~if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2015 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed,~~ *such offenders are assessed as high-risk on a risk and needs assessment.* Offenders in this category may be committed to a juvenile correctional facility for a minimum term of ~~nine~~ *six* months and up to a maximum term of ~~18~~ *12* months. ~~The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.~~

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense:

(i) Which, if committed by an adult, would constitute one present nonperson felony adjudication and two prior felony adjudications;

(ii) committed prior to July 1, 2012, which, if committed by an adult prior to July 1, 2012, would constitute one present drug severity level 3 felony adjudication and two prior felony adjudications; or

(iii) committed on or after July 1, 2012, which, if committed by an adult on or after July 1, 2012, would constitute one present drug severity level 4 felony adjudication and two prior felony adjudications.

Offenders in this category may only be committed to a juvenile correctional facility ~~if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in K.S.A. 2015 Supp. 38-2371, and amendments thereto. If a departure sentence is imposed,~~ *such offenders are assessed as high-risk on a risk and needs assessment.* Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of ~~18~~ *12* months. ~~The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12~~

MAY WRITER

PETTEY - ELIMINATE GROUP HOMES FOR OFFENDERS
REDUCES THINGS CUT ON MONDAY
WITH POSITIVE IMPACT TO REINVESTMENT

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