

# SB367 & SB42



# Agenda

- A juvenile's first contact with the system. Arrest/JIAC/Release/IIP
- Pretrial matters.
- Trial matters.
- Sentencing.
- Post Sentencing.

# Section One

A juvenile's first contact  
with the system.

Arrest/JIAC/Release/IIP

# Anatomy of initial LE contact

## ■ K.S.A. 38-2330

(a) A law enforcement officer may take a juvenile into custody when:

- (1) Any offense has been or is being committed in the officer's view;
- (2) the officer has a warrant commanding that the juvenile be taken into custody;
- (3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein;
- (4) the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute:
  - (A) A felony; or
  - (B) a misdemeanor and: (i) The juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody; or (ii) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody;

# Anatomy of initial LE contact

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

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

(b) A court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may take a juvenile into custody when: (1) There is a warrant commanding that the juvenile be taken into custody; or (2) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein.

# Anatomy of initial LE contact

(c) Any court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code, may request a warrant by giving the court a written statement setting forth that the juvenile, in the judgment of the court services officer, juvenile community corrections officer or other person authorized to supervise juveniles subject to this code,

(1)A) Has violated the condition of the juvenile's conditional release from detention or probation, for the third or subsequent time; and

(B) poses a significant risk of physical harm to another or damage to property; or

(2) has absconded from supervision.

# Anatomy of initial LE contact

**\*\*Release to Parent is the default option\*\***

(d) (1) A juvenile taken into custody by a law enforcement officer or other person authorized pursuant to subsection (b) shall be brought without unnecessary delay to the custody of the juvenile's parent or other custodian, unless there are reasonable grounds to believe that such action would not be in the best interests of the child or would pose a risk to public safety or property.

# Anatomy of initial LE contact

(2) If the juvenile cannot be delivered to the juvenile's parent or custodian, the officer may:

(A) Issue a notice to appear pursuant to subsection (g); or

(B) contact or deliver the juvenile to an intake and assessment worker for completion of the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto.



# Notice to Appear

## ■ K.S.A. 38-2330(g)

(1) Whenever a law enforcement officer detains any juvenile and such juvenile is not immediately taken to juvenile intake and assessment services, the officer may serve upon such juvenile a written notice to appear. Such notice to appear shall contain the name and address of the juvenile detained, the crime charged and the location and phone number of the juvenile intake and assessment services office where the juvenile will need to appear with a parent or guardian.

(2) The juvenile intake and assessment services office specified in such notice to appear must be contacted by the juvenile or a parent or guardian no more than 48 hours after such notice is given, excluding weekends and holidays.

(3) The juvenile detained, in order to secure release as provided in this section, must give a written promise to call within the time specified by signing the written notice prepared by the officer. The original notice shall be retained by the officer and a copy shall be delivered to the juvenile detained and that juvenile's parent or guardian if such juvenile is under 18 years of age. The officer shall then release the juvenile.

# Notice to Appear

(4) The law enforcement officer shall cause to be filed, without unnecessary delay, a complaint with juvenile intake and assessment services in which a juvenile released pursuant to paragraph (3) is given notice to appear, charging the crime stated in such notice. A copy shall also be provided to the district or county attorney. If the juvenile released fails to contact juvenile intake and assessment services as required in the notice to appear, juvenile intake and assessment services shall notify the district or county attorney.

(5) The notice to appear served pursuant to paragraph (1) and the complaint filed pursuant to paragraph (4) may be provided to the juvenile in a single citation.

# Intake and Assessment Duties

## ■ K.S.A. 75-7023

(c) Upon a juvenile being taken into custody pursuant to K.S.A. 2016 Supp. 38-2330, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process, making release and referral determinations as required by supreme court administrative order or district court rule, or except as provided above in rules and regulations established by the secretary of corrections.

# Intake and Assessment Process

(d) Except as provided in subsection (g) and in addition to any other information required by the supreme court administrative order, the secretary for children and families, the secretary of corrections or by the district court of such district, the juvenile intake and assessment worker shall collect the following information either in person or over two-way audio or audio-visual communication:

# Intake and Assessment Process

- (1) The results of a standardized detention risk assessment tool pursuant to K.S.A. 2016 Supp. 38-2302, and amendments thereto, if detention is being considered for the juvenile, such as the problem oriented screening instrument for teens;
- (2) criminal history, including indications of criminal gang involvement;
- (3) abuse history;
- (4) substance abuse history;
- (5) history of prior community services used or treatments provided;
- (6) educational history;
- (7) medical history;
- (8) family history; and
- (9) the results of other assessment instruments as approved by the secretary.

# Intake and Assessment Process

(e) After completion of the intake and assessment process for such child, the intake and assessment worker shall make both a release and a referral determination.

There are numerous options for release and referral.

# Intake and Assessment Release

## Three Options

- (1) **Release the child** to the custody of the child's parent, other legal guardian or another appropriate adult.
- (2) **Conditionally release the child** to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to the alternatives listed in K.S.A. 2016 Supp. 38-2331(b), and amendments thereto, and the following:

# Intake and Assessment Release

- (A) Participation of the child in counseling;
- (B) participation of members of the child's family in counseling;
- (C) participation by the child, members of the child's family and other relevant persons in mediation;
- (D) provision of outpatient treatment for the child;
- (E) referral of the child and the child's family to the secretary for children and families for services and the agreement of the child and family to accept and participate in the services offered;
- (F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;
- (G) requiring the child and members of the child's family to enter into a behavioral contract which may provide for regular school attendance among other requirements; or
- (H) any special conditions necessary to protect the child from future abuse or neglect.



# Intake and Assessment Release

K.S.A. 38-2331(b) options for release conditions:

(b) Community-based alternatives to detention shall include, but not be limited to:

- (1) Release on the youth's promise to appear;
- (2) release to a parent, guardian or custodian upon the youth's assurance to secure such youth's appearance;
- (3) release with the imposition of reasonable restrictions on activities, associations, movements and residence specifically related to securing the youth's appearance at the next court hearing;
- (4) release to a voluntary community supervision program;
- (5) release to a mandatory, court-ordered community supervision program;

# Intake and Assessment Release

K.S.A. 38-2331(b) options for release conditions (cont.):

(6) release with mandatory participation in an electronic monitoring program with minimal restrictions on the youth's movement; or

(7) release with mandatory participation in an electronic monitoring program allowing the youth to leave home only to attend school, work, court hearings or other court-approved activities.

## Intake and Assessment Release

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officer's written application for a maximum stay of up to 72 hours. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 2016 Supp. 38-2232, and amendments thereto.

# Intake and Assessment Referral

(4) The intake and assessment worker shall also refer the juvenile's case to one of the following:

(A) An immediate intervention program pursuant to K.S.A. 2016 Supp. 38-2346(b), and amendments thereto;

(B) the county or district attorney for appropriate proceedings to be filed, with or without a recommendation that the juvenile be considered for alternative means of adjudication programs pursuant to K.S.A. 2016 Supp. 38-2389, and amendments thereto, or immediate intervention pursuant to K.S.A. 2016 Supp. 38-2346, and amendments thereto; or

(C) refer the child and family to the secretary for children and families for investigations in regard to the allegations.

# Intake and Assessment Detention Risk Assessment

(f) The secretary of corrections, in conjunction with the office of judicial administration, shall develop, implement and validate on the Kansas juvenile population, a statewide detention risk assessment tool.

(1) The assessment shall be conducted for each youth under consideration for detention and may only be conducted by a juvenile intake and assessment worker who has completed training to conduct the detention risk assessment tool.

(2) The secretary and the office of judicial administration shall establish cutoff scores determining eligibility for placement in a juvenile detention facility or for referral to a community-based alternative to detention and shall collect and report data regarding the use of the detention risk assessment tool.

# Intake and Assessment Detention Risk Assessment

(3) The detention risk assessment tool includes an override function that may be approved by the court for use under certain circumstances. If approved by the court, the juvenile intake and assessment worker or the court may override the detention risk assessment tool score in order to direct placement in a short-term shelter facility, a community-based alternative to detention or, subject to K.S.A. 2016 Supp. 38-2331, and amendments thereto, a juvenile detention facility. Such override must be documented, include a written explanation and receive approval from the director of the intake and assessment center or the court.

(4) If a juvenile meets one or more eligibility criteria for detention or referral to a community-based alternative to detention, the person with authority to detain shall maintain discretion to release the juvenile if other less restrictive measures would be adequate.

# I & A Issues

## K.S.A. 75-7023...

(b) Except as otherwise provided in this subsection, records, reports and information obtained as a part of the juvenile intake and assessment process shall not be admitted into evidence in any proceeding and shall not be used in a child in need of care proceeding or a juvenile offender proceeding.

(1) Such records, reports and information may be used in a child in need of care proceeding for diagnostic and referral purposes and by the court in considering dispositional alternatives. If the records, reports or information are in regard to abuse or neglect, which is required to be reported under K.S.A. 2016 Supp. 38-2223, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the revised Kansas code for care of children.

(2) Such records, reports and information may be used in a juvenile offender proceeding only if such records, reports and information are in regard to the possible trafficking of a runaway. **Such records, reports and information in regard to the possible trafficking of a runaway shall be made available to the appropriate county or district attorney and the court, and shall be used only for diagnostic and referral purposes.**

## I & A Issues (cont'd)

### Attorney General Opinion No. 2016-19

A juvenile intake and assessment center never obtains legal custody over a juvenile brought to the center by a law enforcement officer.

\*\*No fiscal, custody or transport duties.



# Detention

K.S.A. 38-2343

Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, based on the criteria in K.S.A. 2016 Supp. 38-2331, and amendments thereto.

## Detention Criteria –K.S.A. 38-2331

(a) The court shall not enter an order removing a juvenile from the custody of a parent pursuant to this section unless the court first finds that a detention risk assessment conducted pursuant to K.S.A. 75-7023(d), and amendments thereto, has assessed the juvenile as detention-eligible or there are grounds to override the results of a detention risk assessment tool and the court finds probable cause that:

# Detention Criteria –K.S.A. 38-2331

(1) Community-based alternatives to detention are insufficient to:

(A) Secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent failures to appear at juvenile court proceedings and an exhaustion of detention alternatives; or

(B) protect the physical safety of another person or property from serious threat if the juvenile is not detained; and

(2) The court shall state the basis for each finding in writing.

# Detention Criteria –K.S.A. 38-2331

K.S.A. 38-2331(b) options for release conditions:

(b) Community-based alternatives to detention shall include, but not be limited to:

- (1) Release on the youth's promise to appear;
- (2) release to a parent, guardian or custodian upon the youth's assurance to secure such youth's appearance;
- (3) release with the imposition of reasonable restrictions on activities, associations, movements and residence specifically related to securing the youth's appearance at the next court hearing;
- (4) release to a voluntary community supervision program;
- (5) release to a mandatory, court-ordered community supervision program;

# Detention Criteria –K.S.A. 38-2331

K.S.A. 38-2331(b) options for release conditions (cont.):

(6) release with mandatory participation in an electronic monitoring program with minimal restrictions on the youth's movement; or

(7) release with mandatory participation in an electronic monitoring program allowing the youth to leave home only to attend school, work, court hearings or other court-approved activities.

# Detention Criteria –K.S.A. 38-2331

(c) No juvenile shall be placed in a juvenile detention center solely due to:

- (1) A lack of supervision alternatives or service options;
- (2) a parent avoiding legal responsibility;
- (3) a risk of self-harm;
- (4) contempt of court;
- (5) a violation of a valid court order; or
- (6) technical violations of conditional release unless there is probable cause that the juvenile poses a significant risk of harm to others or damage to property or the applicable graduated responses or sanctions protocol allows such placement.

# Detention Criteria –Jail

K.S.A. 38-3832

\*Can be held in an adult jail:

1. No more than 6 hours with sight and sound separation from adult inmates and only for identifying and processing.
2. If a waiver to adult court motion has been filed and a detention hearing held.
3. Adult waiver or EJJ has been authorized by the court.
4. Has previously been convicted as an adult (by age or waiver) in this or another state.
5. Is over 18 years of age.

# Fingerprints and photographs

## K.S.A. 38-2313

(a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

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

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined in K.S.A. 2016 Supp. 21-5412(a), and amendments thereto;



# Fingerprints and photographs

## K.S.A. 38-2313

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been: (A) Prosecuted as an adult pursuant to K.S.A. 2016 Supp. 38-2347, and amendments thereto; or (B) taken into custody for an offense described in K.S.A. 2016 Supp. 38-2302(s)(1) or (s)(2), and amendments thereto;

(4) fingerprints or photographs shall be taken of any juvenile admitted to a juvenile correctional facility; and

(5) photographs may be taken of any juvenile placed in a juvenile detention facility.

## IIP – K.S.A. 38-2346

1. The I&A Director w/ the County/District Attorney shall develop an IIP process and guidelines.
2. The I&A Director, the Court, the County/District Attorney, other “relevant individuals or organizations” shall develop local programs to:

## IIP – K.S.A. 38-2346

(1) Provide for the direct referral of cases to immediate intervention programs by the county or district attorney and the intake and assessment worker.

(2) Allow intake and assessment workers to issue a summons, as defined in subsection (e) and if juvenile intake and assessment services has adopted appropriate policies and guidelines, allow law enforcement officers to issue such a summons.

## IIP – K.S.A. 38-2346

(3) Allow the intake and assessment centers and other immediate intervention program providers to directly purchase services for the juvenile and the juvenile's family.

(4) Allow intake and assessment workers to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto.

# IIP – K.S.A. 38-2346

Juveniles shall be offered IIP if:

1. Charged with a misdemeanor other than a sex offense (excluding the “romeo and Juliet crime, 21-5507)
2. Has no prior adjudications.

Discretionary IIP for previous IIP juveniles or fewer than two prior adjudications.

## IIP – K.S.A. 38-2346

The IIP shall last no longer than 6 months (or 8 if mental health or substance abuse program requires the additional time).

# IIP – K.S.A. 38-2346

## IIP Failure

(6) If the juvenile fails to satisfactorily comply with the immediate intervention plan, the case shall be referred to a multidisciplinary team for review. The multidisciplinary team created pursuant to K.S.A. 2016 Supp. 38-2393, and amendments thereto, shall review the immediate intervention plan within seven days and may revise and extend such plan or terminate the case as successful. Such plan may be extended for no more than four additional months.

(7) If the juvenile fails to satisfactorily comply with the revised plan developed pursuant to paragraph (6), the intake and assessment worker, court services officer or community corrections officer overseeing the immediate intervention shall refer the case to the county or district attorney for consideration.

# IIP – K.S.A. 38-2393

## Multidisciplinary team

Courts SHALL appoint MT to review cases in which a JO fails to substantially comply with IIP. MT can be standing or one offs. Supreme Court shall appoint MT facilitators for each JD.

MT facilitator shall invite the following to be a part of the MT:

1. JO, parents, guardians or custodial relative
2. School superintendent.
3. Mental health clinician.
4. Any other person or agency rep.



# IIP – K.S.A. 38-2394

## IIP Training

Training on evidence based programs and practices is mandatory for anyone working with JO's adjudicated or under IIP.

Training is mandatory on not less than a semi-annual basis.

# IIP – K.S.A. 38-2346

## IIP Success and statutory confusion

K.S.A. 38-2346(b)(5) If the juvenile satisfactorily complies with the immediate intervention plan, such juvenile shall be discharged and the charges dismissed at the end of the time period specified in paragraph (4).

Compare with:

K.S.A. 38-2346(g) If a juvenile substantially complies with an immediate intervention program, charges in such juvenile's case shall not be filed.

Substantially complies vs. satisfactorily complies?

Pre-filing vs. post-filing?

## Section Two

# Pretrial matters

# Right to an Attorney

## K.S.A. 38-2306

A juvenile is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parent of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile.

**Appointed attorneys shall continue representation of the juvenile, including appellate proceedings, until relieved by the court.**

# Court Appointed Special Advocate

K.S.A. 38-2307

Court may appoint a CASA who advocates for the best interests of the juvenile and assists in obtaining permanent, safe and appropriate placement. (An attorney's advocacy does not involve "best interest" considerations)

**\*\*Very rare for this to occur.**

## First Appearance – K.S.A. 38-2344

Without an attorney: Court advises juvenile of the charges, right to hire an attorney, appointment of an attorney if one not hired, notice that appointed attorney costs may be taxed to juvenile or parent, and right to be offered IIP.

# First Appearance – K.S.A. 38-2344

With an attorney: Juvenile advised of rights:

1. Nature of charges.
2. Presumption of innocence.
3. Right to jury trial
4. Right to X-exam witnesses.
5. Right to subpoena witnesses.
6. Right to testify or not testify.
7. Sentencing options if EJJ is imposed.

# First Appearance – K.S.A. 38-2344

## PLEAS

1. Not Guilty. Trial is scheduled.
2. Guilty. Court must first determine that there has been a voluntary waiver of the juvenile's rights and that there is a factual basis for the plea. Disposition is scheduled.
3. Nolo Contendere. "No Contest" Juvenile does not contest charges. Juvenile is adjudicated to be an offender on this plea. Advantage is plea cannot be used as an admission in any other action (civil) K.S.A. 38-2345
4. Alford plea. Not in statute. Judicially created plea whereby a juvenile doesn't admit guilt and asserts innocence but concedes the state has enough evidence to adjudicate.



# Pretrial Hearings/Activity

If a juvenile is going to assert an alibi or mental disease or defect defense shall give notice of such defense to the county/district attorney no less than 14 days prior to trial.

# Pretrial Hearings/Activity

## Competency to stand trial

### K.S.A. 38-2348, 2349 and 2350

Any time after a juvenile has been charged there is reason to believe that the juvenile is incompetent, the proceedings shall be suspended and a competency hearing held. The hearing is to determine if the juvenile is unable to:

1. Understand the nature and purpose of the proceedings; or
2. Make or assist in making a defense.

# Pretrial Hearings/Activity

## Competency to stand trial

### K.S.A. 38-2348, 2349 and 2350

To make the determination, the court can appoint a psychiatrist/psychologist or a mental health facility to conduct a psychiatric or psychological exam. If further examination is required the court may commit the juvenile to a public or private institution for up to 120 days.

# Pretrial Hearings/Activity

## Competency to stand trial

### K.S.A. 38-2348, 2349 and 2350

1. If the juvenile is found to be competent, proceedings are resumed.
2. If the juvenile is found incompetent the court may commit the juvenile to public or private institution for up to 90 days for treatment.
  - a. if the institution certifies to the court that a probability exists of competency being achieved, the juvenile will remain at the institution for up to 6 months. If after 6 months the juvenile remains incompetent or the institution certifies that there is no probability of achieving competency, a Chapter 59 care and treatment case is commenced.
  - b. An incompetency finding results in either a suspension of the case or a dismissal without prejudice. The SOL does not run and proceedings can be resumed whenever the juvenile regains competency.

# Pretrial Hearings/Activity

## Waiver to adult court/EJJ - K.S.A. 38-2347

...any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2016 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile, and the presumption must be rebutted by a preponderance of the evidence. No juvenile less than 14 years of age shall be prosecuted as an adult.

# Pretrial Hearings/Activity

## Waiver to adult court/EJJ - K.S.A. 38-2347

...any time after commencement of proceedings under this code against a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony, and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2016 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

# Pretrial Hearings/Activity

## Waiver to adult court/EJJ - K.S.A. 38-2347

### **Factors:**

- (1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;
- (4) the number of alleged offenses unadjudicated and pending against the juvenile;

# Pretrial Hearings/Activity

## Waiver to adult court/EJJ - K.S.A. 38-2347

### **Factors:**

(5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;

(7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and

(8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.



## Section Three

# Trial Matters

# Trial matters.

1. Trials shall be heard without unnecessary delay. K.S.A. 38-2352. No statutory speedy trial right.
2. Trial is open to the public unless not in the best interest of the victim or the juvenile who was less than 16 on the date of offense. K.S.A. 38-2353

## Trial matters.

1. The rules of civil (not criminal) procedure apply to juvenile trials. K.S.A. 38-2354
2. Charges must be proved beyond a reasonable doubt. K.S.A. 38-2355.
3. Juveniles must request a jury trial 30 days from date of plea, otherwise it's a trial to the court. Felony jury trial has 12 jurors, misdemeanor has 6. Verdict must be unanimous. K.S.A. 38-2357.

## Trial matters.

If the court determines that a victim, less than 13 years of age, would be traumatized by testifying in court, the court may authorize the testimony to be conducted by closed circuit in another room or prerecorded outside of the courtroom for viewing by the trier of fact.

K.S.A. 38-2359

# Trial matters.

## Adjudication – K.S.A. 38-2356

1. If the evidence fails to prove an offense or lesser included offense the court shall dismiss the charge.
2. If the evidence proves an offense or lesser included offense, the juvenile is adjudicated as an offender.
3. If the evidence proves an offense or lesser included offense, but the juvenile is not responsible because of mental disease or defect, the juvenile is not adjudicated as an offender but committed to the custody of KDADS for placement in a state hospital.

# Post adjudication orders.

K.S.A. 38-2360. To assist at sentencing the court may order:

1. A mental health evaluation.
2. Substance abuse evaluation.
3. Medical evaluation.
4. Educational needs assessment.
5. A presentence investigation from a CSO.
6. Parents to submit a domestic relations affidavit (for child support).

The Court SHALL be provided a risk and needs assessment.

## Section Four

# Sentencing

## Sentencing options K.S.A. 38-2361

1. Place the juvenile on probation for a fixed period of time.
2. Order the juvenile to participate in a community based program.
3. Place the juvenile in the custody of a parent or other suitable person.
4. Order the juvenile to attend counseling, mediation or drug evaluation.



## Sentencing options K.S.A. 38-2361

5. Suspend or restrict driver's license.
6. Order the juvenile to perform charitable or community service work.
7. Order the juvenile to make reparation or restitution.
8. Order the juvenile to pay a fine not to exceed \$1000.00
9. Place the juvenile under house arrest.

## Sentencing options K.S.A. 38-2361

10. Place the juvenile into the custody of the secretary of corrections. (Option expires on January 1, 2018.)

11. If sentence is for violation of a condition of sentence, other than a tech violation, order detention for up to 30 days.

## Sentencing options K.S.A. 38-2361

12. Commit the juvenile to the secretary for placement in a JCF or youth residential facility.

13. If a firearm was used and the court elects JCF or youth residential facility, the minimum term shall be 6 months and the maximum term 18 months regardless of risk level.

## Sentencing options – EJJ K.S.A. 38-2364

1. Juveniles adjudicated as EJJ shall receive one or more juvenile sentences under K.S.A. 38-2361 and an adult sentence under the KSGA which is stayed on the condition the juvenile substantially complies with the juvenile sentence and not commit a new offense.
2. If after a hearing it's proved that a juvenile, by a preponderance of the evidence, has violated a condition of the juvenile sentence or committed a new offense, the juvenile sentence is revoked, the adult sentence is imposed and the juvenile court jurisdiction is terminated.

# Sentencing options - JCF

See Matrix Chart Hand Out

# Sentencing Options

## Youth Residential Facility

38-2361(a)(12) &(13)

1. JO poses a significant risk of harm to another or property and,
2. Otherwise eligible for a JCF placement

May be placed into a YRF instead of a JCF.

# Sentencing Options

## Youth Residential Facility

38-2369(e)

Rebuttable assumption that ALL chronic offenders and ALL Serious II & III offenders 10-14 YOA shall be placed in a YRF.

Presumption can be rebutted by a finding that the JO poses a significant risk of physical harm to another.

# Sentencing Options Youth Residential Facility

38-2399

KDOC may only contract for not more than  
50 non-foster home beds in YRF's



## Overall Case Length Limits – K.S.A. 38-2391

...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.

## Overall Case Length Limits – K.S.A. 38-2391

1.) There is no overall case length limit for a juvenile adjudicated for a felony which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony.

2.) On multiple count cases only the most severe count is used for length limit (court may use lessor count) No consecutive count or cases. Cases are concurrent.

## Overall Case Length Limits – K.S.A. 38-2391

For probation cases the following limits apply:

(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.

## Overall Case Length Limits – K.S.A. 38-2391

Probation terms may be extended to complete an evidenced based program.

Probation terms can also be extended for any good cause shown for one month for low-risk offenders, three months for moderate-risk offenders and six months for high-risk offenders.

No probation term limits for off grid crimes, rape, agg. criminal sodomy or 2<sup>nd</sup> degree murder.

## Overall Case Length Limits – K.S.A. 38-2391

Term limits are tolled during any period the juvenile absconds while on probation.

When detention is used as a sentence the cumulative amount of detention is limited to 45 days over the course of the juvenile's case. No such detention limit for off grid and nondrug severity level 1-4 person felonies.

Term limits begin upon disposition or 15 days after adjudication, whichever is sooner.

# Earned discharge for probationers

38-2398

A system of earned discharge for probationers shall be developed by Supreme Court rule. Credits are earned monthly and determined and applied by community supervision officers. Law effective 7/1/17. To date the Supreme Court has not promulgated any rules for this.

12/22/2017

# Reintegration Plans for certain JO's

38-2396

When a JO has been sentenced under 38-2361 (k) [short term alternative placement in either emergency shelter, therapeutic foster home or community integration program] person having custody or community supervision officer shall submit a reintegration plan to the court w/i 15 days of the order

12/22/2017

Section Five

# Post Sentencing



# Post Sentencing

Modification of sentence. K.S.A. 38-2367

At any time after the entry of an order of custody or placement of a juvenile offender, the court, upon the court's own motion or the motion of the secretary of corrections or parent or any party, may modify the sentence imposed. A new sentence may be imposed, a CINC action may be ordered or participation in a community integration program (38-23,100) authorized.

# Post Sentencing

Modification of sentence. K.S.A. 38-2367

Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the secretary of corrections, modify the sentence and enter any other sentence if the court determines that:

- (1) The medical condition of the juvenile justifies a reduction in sentence; or
- (2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

# Post Sentencing

## Violation of probation or placement

### K.S.A. 38-2368 and 2392

If the court, by preponderance of the evidence finds:

1. New offense(s) and/or,
2. 3 or more technical violations and/or
3. Absconded from supervision

The court may, subject to overall case limit, extend probation, modify terms of probation or enter another sentence under 38-2361.

# Post Sentencing

## Violation of conditional release K.S.A. 38-2369

If the court finds a violation of one or more CR terms, the court may enter one or more of the following orders:

- \* Recommend additional conditions be added to those of the existing conditional release.
- \* Order the offender to serve a period of detention pursuant to K.S.A. 2016 Supp. 38-2361(g), and amendments thereto.
- \* Revoke or restrict the juvenile's driving privileges as described in K.S.A. 2016 Supp. 38-2361(c), and amendments thereto.
- \* Discharge the offender from the custody of the secretary of corrections, release the secretary of corrections from further responsibilities in the case and enter any other appropriate orders.

# Post Sentencing

38-2392 – Graduated responses.

KDOC shall issue rules and regulations to provide for this. K.A.R. 123-17-101.

\*\*Tucked away in the statute at (c) is a requirement for community supervision officers to develop a case plan for probationers.

# Post Sentencing

38-2392(c)

- Case plan to be developed in consultation with JO and family. DCF and local BOE may participate.
- Case plan shall incorporate risk & Needs assessment, program referrals, documentation of violations and response and define roles of each person or agency working with JO