

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2588

By Committee on Judiciary

2-7

1 AN ACT concerning children and minors; relating to the revised Kansas
2 juvenile justice code; revised Kansas code for care of children;
3 amending K.S.A. 2013 Supp. 38-2268 and repealing the existing
4 section.

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

7 New Section 1. (a) *Findings and purpose.* The following findings and
8 declaration of purpose apply to this section.

9 (1) The legislature finds that personal and familial circumstances may
10 contribute to the commission of offenses by juveniles who represent a
11 minimal threat to public safety and that in such cases it would further the
12 interests of society and the juvenile to take an approach to adjudication
13 that combines less formal procedures, appropriate disciplinary sanctions
14 for misconduct and the provision of necessary services.

15 (2) It is the purpose of this section to provide prosecutors with an
16 alternative means of adjudication for ~~low-risk~~ juvenile offenders who
17 present a minimal threat to public safety and both the juvenile and society
18 would benefit from such approach.

19 (b) *Designation.* A county or district attorney with jurisdiction over
20 the offense who believes that proceedings under this section are
21 appropriate may, in such county or district attorney's discretion, designate
22 an alleged juvenile offender for adjudication under this section and not
23 seek application of a placement within the placement matrix pursuant to
24 K.S.A. 2013 Supp. 38-2369, and amendments thereto, if the alleged
25 juvenile offender's act, if committed by an adult, would constitute a
26 misdemeanor.

27 (1) The county or district attorney shall make such designation in the
28 original complaint or by written notice filed with the court and served on
29 the juvenile, the juvenile's counsel and the juvenile's parent or legal
30 guardian within 14 days after the filing of the complaint.

31 (2) The filing of a written application for diversion under K.S.A.
32 2013 Supp. 38-2346, and amendments thereto, shall toll the running of the
33 14-day period and shall resume upon the issuance of a written denial of
34 diversion.

35 (c) *Exceptions.* Except as provided in this subsection, the provisions
36 of the revised Kansas juvenile justice code, K.S.A. 2013 Supp. 38-2301 et

1 seq., and amendments thereto, shall apply in any adjudication under this
2 section.

3 (1) If during the proceedings the court determines that there is
4 probable cause to believe that the juvenile is a child in need of care as
5 defined by 2013 Supp. K.S.A. 38-2202, and amendments thereto, the court
6 shall refer the matter to the county or district attorney, who shall file a
7 petition as provided in K.S.A. 2013 Supp. 38-2234, and amendments
8 thereto, and refer the family to the Kansas department for children and
9 families for services.

10 (A) If the court presiding over the proceeding under this section
11 finds, in accordance with K.S.A. 2013 Supp. 38-2334 and 38-2335, and
12 amendments thereto, that the juvenile should be removed from the home,
13 the court may place the juvenile in the temporary custody of the secretary
14 or any person, other than the child's parent, willing to accept temporary
15 custody.

16 (B) If the child in need of care case is presided over by a different
17 judge, the county or district attorney shall notify the court presiding over
18 the proceedings under this section of pertinent orders entered in the child
19 in need of care case.

20 (2) Notwithstanding any other provision of law, no juvenile shall be
21 committed to a juvenile correctional facility pursuant to subsection (a)(12)
22 of K.S.A. 2013 Supp. 38-2361, and amendments thereto, for an offense
23 adjudicated under this section or for the violation of a term or condition of
24 the disposition for such an offense.

25 (3) Notwithstanding any other provision of law, no adjudication under
26 this section or violation of the terms and conditions of the disposition,
27 including a placement failure, shall be used against the juvenile in a
28 proceeding on a subsequent offense committed as a juvenile or as an adult.
29 For purposes of this section, "used against the juvenile" includes, but is not
30 limited to, establishing an element of a subsequent offense, raising the
31 severity level of a subsequent offense or enhancing the sentence for a
32 subsequent offense.

33 (4) Upon completion of the case and the termination of the court's
34 jurisdiction, the court shall order the adjudication expunged, and the
35 provisions of K.S.A. 2013 Supp. 38-2309, 38-2310 and 38-2312, and
36 amendments thereto, shall not apply.

37 (5) Notwithstanding any other provision of law, a juvenile shall not
38 be required to register as an offender under the Kansas offender
39 registration act, K.S.A. 22-4901 et seq., and amendments thereto, as a
40 result of adjudication under this section.

41 (6) The provisions of K.S.A. 2013 Supp. 38-2347, and amendments
42 thereto, shall not apply to proceedings under this section.

43 (7) The provisions of K.S.A. 2013 Supp. 38-2304(g)(1), and

1 amendments thereto, shall not apply to proceedings under this section.

2 (8) The trial of offenses under this section shall be to the court and
3 the right to a trial by jury under K.S.A. 2013 Supp. 38-2357, and
4 amendments thereto, shall not apply.

5 (d) *Withdrawal*. At any time prior to the beginning of a hearing at
6 which the court may enter an order adjudicating the child as a juvenile
7 offender, the county or district attorney may withdraw the designation for
8 proceedings under this section by providing notice to the court, the
9 juvenile, the juvenile's attorney and guardian ad litem, if any, and the
10 juvenile's parent or legal guardian. Upon withdrawal of the designation,
11 this section shall no longer apply and the case shall proceed and the court
12 shall grant a continuance upon request.

13 (e) *Appeal*. An adjudication under this section is an appealable order
14 pursuant to K.S.A. 2013 Supp. 38-2380, and amendments thereto.

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

17 Sec. 2. K.S.A. 2013 Supp. 38-2268 is hereby amended to read as
18 follows: 38-2268. (a) Prior to a hearing to consider the termination of
19 parental rights, if the child's permanency plan is either adoption or
20 appointment of a custodian, with the consent of the guardian ad litem and
21 the secretary, either or both parents may relinquish parental rights to the
22 child, consent to an adoption or consent to appointment of a permanent
23 custodian.

24 (b) *Relinquishment of child to secretary*. (1) Any parent or parents
25 may relinquish a child to the secretary, and if the secretary accepts the
26 relinquishment in writing, the secretary shall stand in loco parentis to the
27 child and shall have and possess over the child all rights of a parent,
28 including the power to place the child for adoption and give consent
29 thereto.

30 (2) All relinquishments to the secretary shall be in writing, in
31 substantial conformity with the form for relinquishment contained in the
32 appendix of forms following K.S.A. 59-2143, and amendments thereto,
33 and shall be executed by either parent of the child.

34 (3) The relinquishment shall be in writing and shall be acknowledged
35 before a judge of a court of record or before an officer authorized by law
36 to take acknowledgments. If the relinquishment is acknowledged before a
37 judge of a court of record, it shall be the duty of the court to advise the
38 relinquishing parent of the consequences of the relinquishment.

39 (4) Except as otherwise provided, in all cases where a parent has
40 relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-
41 2143, and amendments thereto, all the rights of the parent shall be
42 terminated, including the right to receive notice in a subsequent adoption
43 proceeding involving the child. Upon such relinquishment, all the rights of

1 the parents to such child, including such parent's right to inherit from or
2 through such child, shall cease.

3 (5) If a parent has relinquished a child to the secretary based on a
4 belief that the child's other parent would relinquish the child to the
5 secretary or would be found unfit, and this does not occur, the rights of the
6 parent who has relinquished a child to the secretary shall not be
7 terminated.

8 (6) A parent's relinquishment of a child shall not terminate the right
9 of the child to inherit from or through the parent.

10 (c) *Permanent custody.* (1) A parent may consent to appointment of
11 ~~the secretary or~~ an individual as permanent custodian and if the ~~secretary~~
12 ~~or individual~~ accepts the consent, ~~the secretary or~~ such individual shall
13 stand in loco parentis to the child and shall have and possess over the child
14 all the rights of a legal guardian. ~~When the consent is to the secretary, the~~
15 ~~secretary shall have the right to place the child in the permanent custody of~~
16 ~~an individual who is appointed permanent custodian.~~

17 (2) All consents to appointment of a permanent custodian shall be in
18 writing and shall be executed by either parent of the child.

19 (3) The consent shall be in writing and shall be acknowledged before
20 a judge of a court of record or before an officer authorized by law to take
21 acknowledgments. If the consent is acknowledged before a judge of a
22 court of record, it shall be the duty of the court to advise the consenting
23 parent of the consequences of the consent.

24 (4) If a parent has consented to appointment of a permanent custodian
25 based upon a belief that the child's other parent would so consent or would
26 be found unfit, and this does not occur, the consent shall be null and void.

27 (d) *Adoption.* If the parental rights of one parent have been terminated
28 or that parent has relinquished parental rights to the secretary, the other
29 parent may consent to the adoption of the child by persons approved by the
30 secretary or approved by the court. The consent shall follow the form
31 contained in the appendix of forms following K.S.A. 59-2143, and
32 amendments thereto.

33 Sec. 3. K.S.A. 2013 Supp. 38-2268 is hereby repealed.

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