

HOUSE BILL No. 2634

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning juvenile offenders; relating to prosecution as an
2 adult; amending K.S.A. 2013 Supp. 38-2347 and repealing the existing
3 section.

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

6 Section 1. K.S.A. 2013 Supp. 38-2347 is hereby amended to read as
7 follows: 38-2347. (a) (1) Except as otherwise provided in this section, at
8 any time after commencement of proceedings under this code against a
9 juvenile and prior to the beginning of an evidentiary hearing at which the
10 court may enter a sentence as provided in K.S.A. 2013 Supp. 38-2356, and
11 amendments thereto, the county or district attorney or the county or district
12 attorney's designee may file a motion requesting that the court authorize
13 prosecution of the juvenile as an adult under the applicable criminal
14 statute. The juvenile shall be presumed to be a juvenile unless good cause
15 is shown to prosecute the juvenile as an adult. *No juvenile less than 14*
16 *years of age shall be prosecuted as an adult.*

17 (2) The alleged juvenile offender shall be presumed to be an adult if
18 the alleged juvenile offender was: (A) 14, 15, 16 or 17 years of age at the
19 time of the offense or offenses alleged in the complaint, if any such
20 offense: (i) If committed by an adult, would constitute an off-grid crime, a
21 person felony or a nondrug severity level 1 through 6 felony; (ii)
22 committed prior to July 1, 2012, if committed by an adult prior to July 1,
23 2012, would constitute a drug severity level 1, 2 or 3 felony; (iii)
24 committed on or after July 1, 2012, if committed by an adult on or after
25 July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4 felony; or
26 (iv) was committed while in possession of a firearm; or (B) charged with a
27 felony or with more than one offense, one or more of which constitutes a
28 felony, after having been adjudicated or convicted in a separate juvenile
29 proceeding as having committed an offense which would constitute a
30 felony if committed by an adult and the adjudications or convictions
31 occurred prior to the date of the commission of the new act charged and
32 prior to the beginning of an evidentiary hearing at which the court may
33 enter a sentence as provided in K.S.A. 2013 Supp. 38-2356, and
34 amendments thereto. If the juvenile is presumed to be an adult, the burden
35 is on the juvenile to rebut the presumption by a preponderance of the
36 evidence.

1 (3) At any time after commencement of proceedings under this code
2 against a juvenile offender and prior to the beginning of an evidentiary
3 hearing at which the court may enter a sentence as provided in K.S.A.
4 2013 Supp. 38-2356, and amendments thereto, the county or district
5 attorney or the county or district attorney's designee may file a motion
6 requesting that the court designate the proceedings as an extended
7 jurisdiction juvenile prosecution.

8 (4) If the county or district attorney or the county or district attorney's
9 designee files a motion to designate the proceedings as an extended
10 jurisdiction juvenile prosecution and the juvenile was 14, 15, 16 or 17
11 years of age at the time of the offense or offenses alleged in the complaint
12 and: (A) Charged with an offense: (i) If committed by an adult, would
13 constitute an off-grid crime, a person felony or a nondrug severity level 1
14 through 6 felony; (ii) committed prior to July 1, 2012, if committed by an
15 adult prior to July 1, 2012, would constitute a drug severity level 1, 2 or 3
16 felony; (iii) committed on or after July 1, 2012, if committed by an adult
17 on or after July 1, 2012, would constitute a drug severity level 1, 2, 3 or 4
18 felony; or (iv) was committed while in possession of a firearm; or (B)
19 charged with a felony or with more than, one offense, one or more of
20 which constitutes a felony, after having been adjudicated or convicted in a
21 separate juvenile proceeding as having committed an act which would
22 constitute a felony if committed by an adult and the adjudications or
23 convictions occurred prior to the date of the commission of the new
24 offense charged, the burden is on the juvenile to rebut the designation of
25 an extended jurisdiction juvenile prosecution by a preponderance of the
26 evidence. In all other motions requesting that the court designate the
27 proceedings as an extended jurisdiction juvenile prosecution, the juvenile
28 is presumed to be a juvenile. The burden of proof is on the prosecutor to
29 prove the juvenile should be designated as an extended jurisdiction
30 juvenile.

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

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

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

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

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

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

8 (D) the right to subpoena witnesses;

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

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

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

21 (e) In determining whether or not prosecution as an adult should be
22 authorized or designating the proceeding as an extended jurisdiction
23 juvenile prosecution, the court shall consider each of the following factors:

24 (1) The seriousness of the alleged offense and whether the protection
25 of the community requires prosecution as an adult or designating the
26 proceeding as an extended jurisdiction juvenile prosecution;

27 (2) whether the alleged offense was committed in an aggressive,
28 violent, premeditated or willful manner;

29 (3) whether the offense was against a person or against property.
30 Greater weight shall be given to offenses against persons, especially if
31 personal injury resulted;

32 (4) the number of alleged offenses unadjudicated and pending against
33 the juvenile;

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

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

42 (7) whether there are facilities or programs available to the court
43 which are likely to rehabilitate the juvenile prior to the expiration of the

1 court's jurisdiction under this code; and

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

5 The insufficiency of evidence pertaining to any one or more of the
6 factors listed in this subsection, in and of itself, shall not be determinative
7 of the issue. Subject to the provisions of K.S.A. 2013 Supp. 38-2354, and
8 amendments thereto, written reports and other materials relating to the
9 juvenile's mental, physical, educational and social history may be
10 considered by the court.

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

17 (2) The court may designate the proceeding as an extended
18 jurisdiction juvenile prosecution upon completion of the hearing if the
19 juvenile has failed to rebut the presumption or the court finds from a
20 preponderance of the evidence that the juvenile should be prosecuted
21 under an extended jurisdiction juvenile prosecution.

22 (3) After a proceeding in which prosecution as an adult is requested
23 pursuant to subsection (a)(2), and prosecution as an adult is not authorized,
24 the court may designate the proceedings to be an extended jurisdiction
25 juvenile prosecution.

26 (4) A juvenile who is the subject of an extended jurisdiction juvenile
27 prosecution shall have the right to a trial by jury, to the effective assistance
28 of counsel and to all other rights of a defendant pursuant to the Kansas
29 code of criminal procedure. Each court shall adopt local rules to establish
30 the basic procedures for extended jurisdiction juvenile prosecution in such
31 court's jurisdiction.

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

39 (h) If the juvenile is convicted, the authorization for prosecution as an
40 adult shall attach and apply to any future prosecutions of the juvenile
41 which are or would be cognizable under this code. If the juvenile is not
42 convicted, the authorization for prosecution as an adult shall not attach and
43 shall not apply to future prosecutions of the juvenile which are or would be

1 cognizable under this code.

2 (i) If the juvenile is prosecuted as an adult under subsection (a)(2)
3 and is not convicted in adult court of an offense listed in subsection (a)(2)
4 but is convicted or adjudicated of a lesser included offense, the juvenile
5 shall be a juvenile offender and receive a sentence pursuant to K.S.A. 2013
6 Supp. 38-2361, and amendments thereto.

7 Sec. 2. K.S.A. 2013 Supp. 38-2347 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.

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