

HOUSE BILL No. 2015

By Joint Committee on Corrections and Juvenile Justice Oversight

1-13

1 AN ACT concerning the revised Kansas juvenile justice code; relating to
2 sentencing for misdemeanor offenses; amending K.S.A. 2014 Supp. 38-
3 2369 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 Supp. 38-2369 is hereby amended to read as
7 follows: 38-2369. (a) For the purpose of committing juvenile offenders to
8 a juvenile correctional facility, the following placements shall be applied
9 by the judge in felony—~~or misdemeanor~~ cases. If used, the court shall
10 establish a specific term of commitment as specified in this subsection,
11 unless the judge conducts a departure hearing and finds substantial and
12 compelling reasons to impose a departure sentence as provided in K.S.A.
13 2014 Supp. 38-2371, and amendments thereto.

14 (1) *Violent Offenders.* (A) The violent offender I is defined as an
15 offender adjudicated as a juvenile offender for an offense which, if
16 committed by an adult, would constitute an off-grid felony. Offenders in
17 this category may be committed to a juvenile correctional facility for a
18 minimum term of 60 months and up to a maximum term of the offender
19 reaching the age of 22 years, six months. The aftercare term for this
20 offender is set at a minimum term of six months and up to a maximum
21 term of the offender reaching the age of 23 years.

22 (B) The violent offender II is defined as an offender adjudicated as a
23 juvenile offender for an offense which, if committed by an adult, would
24 constitute a nondrug severity level 1, 2 or 3 felony. Offenders in this
25 category may be committed to a juvenile correctional facility for a
26 minimum term of 24 months and up to a maximum term of the offender
27 reaching the age 22 years, six months. The aftercare term for this offender
28 is set at a minimum term of six months and up to a maximum term of the
29 offender reaching the age of 23 years.

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

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

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

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

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

8 (B) The serious offender II is defined as an offender adjudicated as a
9 juvenile offender for an offense which, if committed by an adult, would
10 constitute a nondrug severity level 7, person felony with one prior felony
11 adjudication. Offenders in this category may be committed to a juvenile
12 correctional facility for a minimum term of nine months and up to a
13 maximum term of 18 months. The aftercare term for this offender is set at
14 a minimum term of six months and up to a maximum term of 24 months.

15 (C) The serious offender III is defined as an offender adjudicated as a
16 juvenile offender for an offense which, if committed by an adult, would
17 constitute a nondrug severity level 8, 9 or 10 person felony with one prior
18 felony adjudication. Offenders in this category may only be committed to a
19 juvenile correctional facility if the judge conducts a departure hearing and
20 finds substantial and compelling reasons to impose a departure sentence as
21 provided in K.S.A. 2014 Supp. 38-2371, and amendments thereto. If a
22 departure sentence is imposed, offenders in this category may be
23 committed to a juvenile correctional facility for a minimum term of nine
24 months and up to a maximum term of 18 months. The aftercare term for
25 this offender is set at a minimum term of six months and up to a maximum
26 term of 24 months.

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

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

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

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

37 Offenders in this category may only be committed to a juvenile
38 correctional facility if the judge conducts a departure hearing and finds
39 substantial and compelling reasons to impose a departure sentence as
40 provided in K.S.A. 2014 Supp. 38-2371, and amendments thereto. If a
41 departure sentence is imposed, offenders in this category may be
42 committed to a juvenile correctional facility for a minimum term of six
43 months and up to a maximum term of 18 months. The aftercare term for

1 this offender is set at a minimum term of six months and up to a maximum
2 term of 12 months.

3 (B) The chronic offender II, escalating felon is defined as an offender
4 adjudicated as a juvenile offender for an offense:

5 (i) Which, if committed by an adult, would constitute one present
6 felony adjudication and either two prior misdemeanor adjudications or one
7 prior person or nonperson felony adjudication;

8 (ii) which, if committed by an adult, would constitute one present
9 felony adjudication and two prior drug severity level 4 or 5 adjudications;

10 (iii) committed prior to July 1, 2012, which, if committed by an adult
11 prior to July 1, 2012, would constitute one present drug severity level 3
12 felony adjudication and either two prior misdemeanor adjudications or one
13 prior person or nonperson felony adjudication;

14 (iv) committed prior to July 1, 2012, which, if committed by an adult
15 prior to July 1, 2012, would constitute one present drug severity level 3
16 felony adjudication and two prior drug severity level 4 or 5 adjudications;

17 (v) committed on or after July 1, 2012, which, if committed by an
18 adult on or after July 1, 2012, would constitute one present drug severity
19 level 4 felony adjudication and either two prior misdemeanor adjudications
20 or one prior person or nonperson felony adjudication; or

21 (vi) committed on or after July 1, 2012, which, if committed by an
22 adult on or after July 1, 2012, would constitute one present drug severity
23 level 4 felony adjudication and two prior drug severity level 4 or 5
24 adjudications.

25 Offenders in this category may only be committed to a juvenile
26 correctional facility if the judge conducts a departure hearing and finds
27 substantial and compelling reasons to impose a departure sentence as
28 provided in K.S.A. 2014 Supp. 38-2371, and amendments thereto. If a
29 departure sentence is imposed, offenders in this category may be
30 committed to a juvenile correctional facility for a minimum term of six
31 months and up to a maximum term of 18 months. The aftercare term for
32 this offender is set at a minimum term of six months and up to a maximum
33 term of 12 months.

34 (C) The chronic offender III, escalating ~~misdemeanant~~ *felon* is
35 defined as an offender adjudicated as a juvenile offender for an offense:

36 ~~(i) Which, if committed by an adult, would constitute one present~~
37 ~~misdemeanor adjudication and either two prior misdemeanor adjudications~~
38 ~~or one prior person or nonperson felony adjudication and two placement~~
39 ~~failures;~~

40 ~~(ii) which, if committed by an adult, would constitute one present~~
41 ~~misdemeanor adjudication and two prior drug severity level 4 or 5 felony~~
42 ~~adjudications and two placement failures;~~

43 (iii) Which, if committed by an adult, would constitute one present

1 drug severity level 4 felony adjudication and either two prior misdemeanor
2 adjudications or one prior person or nonperson felony adjudication and
3 two placement failures;

4 ~~(iv)~~ (ii) which, if committed by an adult, would constitute one present
5 drug severity level 4 felony adjudication and two prior drug severity level
6 4 or 5 felony adjudications and two placement failures;

7 ~~(v)~~ (iii) committed on or after July 1, 2012, which, if committed by an
8 adult on or after July 1, 2012, would constitute one present drug severity
9 level 5 felony adjudication and either two prior misdemeanor adjudications
10 or one prior person or nonperson felony adjudication and two placement
11 failures; or

12 ~~(vi)~~ (iv) committed on or after July 1, 2012, which, if committed by
13 an adult on or after July 1, 2012, would constitute one present drug
14 severity level 5 felony adjudication and two prior drug severity level 4 or 5
15 adjudications and two placement failures.

16 Offenders in this category may only be committed to a juvenile
17 correctional facility if the judge conducts a departure hearing and finds
18 substantial and compelling reasons to impose a departure sentence as
19 provided in K.S.A. 2014 Supp. 38-2371, and amendments thereto. If a
20 departure sentence is imposed, offenders in this category may be
21 committed to a juvenile correctional facility for a minimum term of three
22 months and up to a maximum term of six months. The aftercare term for
23 this offender is set at a minimum term of three months and up to a
24 maximum term of six months.

25 (4) *Conditional Release Violators.* Upon finding the juvenile violated
26 a requirement or requirements of conditional release, the court may:

27 (A) Subject to the limitations in ~~subsection (a)~~ of K.S.A. 2014 Supp.
28 38-2366(a), and amendments thereto, commit the offender directly to a
29 juvenile correctional facility for a minimum term of three months and up
30 to a maximum term of six months. The aftercare term for this offender
31 shall be a minimum of two months and a maximum of six months, or the
32 length of the aftercare originally ordered, whichever is longer.

33 (B) Enter one or more of the following orders:

34 (i) Recommend additional conditions be added to those of the
35 existing conditional release.

36 (ii) Order the offender to serve a period of sanctions pursuant to
37 ~~subsection (f)~~ of K.S.A. 2014 Supp. 38-2361(f), and amendments thereto.

38 (iii) Revoke or restrict the juvenile's driving privileges as described in
39 ~~subsection (e)~~ of K.S.A. 2014 Supp. 38-2361(c), and amendments thereto.

40 (C) Discharge the offender from the custody of the commissioner,
41 release the commissioner from further responsibilities in the case and enter
42 any other appropriate orders.

43 (b) As used in this section:

1 (1) "Placement failure" means a juvenile offender in the custody of
2 the juvenile justice authority has significantly failed the terms of
3 conditional release or has been placed out-of-home in a community
4 placement accredited by the commissioner and has significantly violated
5 the terms of that placement or violated the terms of probation.

6 (2) "Adjudication" includes out-of-state juvenile adjudications. An
7 out-of-state offense, which if committed by an adult would constitute the
8 commission of a felony or misdemeanor, shall be classified as either a
9 felony or a misdemeanor according to the adjudicating jurisdiction. If an
10 offense which if committed by an adult would constitute the commission
11 of a felony is a felony in another state, it will be deemed a felony in
12 Kansas. The state of Kansas shall classify the offense, which if committed
13 by an adult would constitute the commission of a felony or misdemeanor,
14 as person or nonperson. In designating such offense as person or
15 nonperson, reference to comparable offenses shall be made. If the state of
16 Kansas does not have a comparable offense, the out-of-state adjudication
17 shall be classified as a nonperson offense.

18 (c) All appropriate community placement options shall have been
19 exhausted before a chronic offender III, escalating ~~misdemeanant~~ *felon*
20 shall be placed in a juvenile correctional facility. A court finding shall be
21 made acknowledging that appropriate community placement options have
22 been pursued and no such option is appropriate.

23 (d) The commissioner shall work with the community to provide on-
24 going support and incentives for the development of additional community
25 placements to ensure that the chronic offender III, escalating
26 ~~misdemeanant~~ *felon* sentencing category is not frequently utilized.

27 (e) Any juvenile offender committed to a juvenile correctional facility
28 who is adjudicated for an offense committed while such juvenile was
29 committed to a juvenile correctional facility, may be adjudicated to serve a
30 consecutive term of commitment in a juvenile correctional facility.

31 (f) *An offender adjudicated as a juvenile offender for an offense*
32 *which, if committed by an adult, would constitute a present misdemeanor*
33 *adjudication shall not be committed to a juvenile correctional facility.*

34 Sec. 2. K.S.A. 2014 Supp. 38-2369 is hereby repealed.

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