

# Key Changes to the Kansas Juvenile Code: A Practical Guide

The comprehensive 2016 Kansas Juvenile Justice Reform Act, commonly referred to as SB 367, ushered in a significant number of changes to the Kansas Juvenile Justice Code. This summary provides an overview of key changes and citations to where they currently reside within the Kansas Code. While these reforms were phased in gradually, unless otherwise noted, all of the following was in effect as of January 1, 2018.

Please note that this is not an exhaustive list of changes under SB 367. For full language of the bill as passed, please visit: [http://kslegislature.org/li\\_2016/b2015\\_16/measures/documents/sb367\\_enrolled.pdf](http://kslegislature.org/li_2016/b2015_16/measures/documents/sb367_enrolled.pdf). Please also note that the footnote citations herein reflect the Kansas Juvenile Code as of March 1, 2018. Any changes in the statutes after that date are not reflected in this document.

## DETENTION

- The court **“shall not” order the removal of a child from a parent’s custody** without first:
  1. finding that a detention risk assessment deems the child “detention-eligible” or there are reasonable grounds to override the detention risk assessment, and
  2. finding probable cause that alternatives to detention are insufficient to:
    - ensure the youth returns to court, based on evidence of a “demonstrable record of recent failures to appear at juvenile court proceedings and an exhaustion of detention alternatives”; or
    - protect others or the property of others from “serious threat” if the youth is not detained.<sup>1</sup>
  
- The court shall state the basis for detention of any youth in writing.<sup>2</sup>
  
- **No youth 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<sup>3</sup> of conditional release unless there is probable cause that the youth poses a significant risk of harm to others or damage to property or the applicable graduated responses or sanctions protocol allows such placement.<sup>4</sup>

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<sup>1</sup> K.S.A. 38-2331(a)(1).

<sup>2</sup> K.S.A. 38-2331(a)(2).

<sup>3</sup> “Technical Violations” are now defined by statute as any violation not based on a new offense or child in need of care charge. *See* K.S.A. 38-2302(bb).

<sup>4</sup> K.S.A. 38-2331(c).

- **If someone is asking that the youth be detained based on a new felony or misdemeanor charge:**
  - ☐ the youth may not be detained longer than 48 hours without a judicial finding of *probable cause* that the youth in question committed the charged offense.<sup>5</sup>
  - ☐ if no such finding is made within 48 hours, the court *must* order the child released.<sup>6</sup>
- **Review of Detention:** “The court shall hold a detention review hearing *at least every 14 days* that a juvenile is in detention to determine if the juvenile should continue to be held in detention.”<sup>7</sup> (This does not apply to youth accused of off-grid felonies or a nondrug severity level 1 - 4 person felony.)
- **Waiver of the Detention Hearing:**
  - ☐ No waiver of a detention hearing is permitted without written consent by the youth and the youth’s attorney, as well as permission of the court. The waiver may be withdrawn by the youth, in writing, at any time.<sup>8</sup>

## COMMUNITY-BASED ALTERNATIVES TO DETENTION

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;
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.<sup>9</sup>

## DISPOSITION

- **Risk and Needs Assessments:** The court must receive a summary of a post-adjudication, predisposition risk and needs assessment to inform which level of supervision may be appropriate.<sup>10</sup> The court shall make this and all other disposition reports available to the attorneys and allow sufficient time for review prior to sentencing.<sup>11</sup>

<sup>5</sup> K.S.A. 38-2343(a), (b)(1).

<sup>6</sup> K.S.A. 38-2343(b)(2).

<sup>7</sup> K.S.A. 38-2343(i) (*emphasis added*).

<sup>8</sup> K.S.A. 38-2343(c).

<sup>9</sup> K.S.A. 38-2331(b).

<sup>10</sup> K.S.A. 38-2360(b) (establishing that a singular, uniform risk and needs assessment used for this purpose be created by the Kansas Department of Corrections and the Office of Judicial Administration).

<sup>11</sup> K.S.A. 38-2360(d).

LENGTH OF DISPOSITION		
There are now maximum time limits youth adjudicated in juvenile court can remain under court jurisdiction following a disposition		
Offense	Risk Level	Case Limit Following Disposition
Misdemeanor	Any	Up to 12 months <sup>12</sup>
Felony	Low-risk	Up to 15 months <sup>13</sup>
Felony	Medium-risk	Up to 15 months <sup>14</sup>
Felony	High-risk	Up to 18 months <sup>15</sup>
Off-Grid <sup>16</sup> Felony	Any	No case length limit <sup>17</sup>
Nondrug Severity 1-4 Felony	Any	No case length limit <sup>18</sup>

- **Dispositions must run concurrently:**

- If a youth is adjudicated for multiple *counts*, the maximum overall case length is calculated based on the most severe count, or any other count at the court's discretion.
- If a youth is adjudicated for multiple *cases* simultaneously, the court shall run those cases concurrently.
- In either case, consecutive dispositions are not permitted.<sup>19</sup>

- **Juvenile Court jurisdiction terminates** once the overall case length limit expires, and jurisdiction *may not be extended*.<sup>20</sup>

PROBATION LIMITS		
Probation limits are determined by risk and offense levels		
Risk Level	Offense Level	Time Limit of Probation
Low-risk	Misdemeanor	Up to 6 months <sup>21</sup>
Low-risk	Felony	Up to 6 months <sup>22</sup>
Moderate-risk	Misdemeanor	Up to 6 months <sup>23</sup>
Moderate-risk	Felony	Up to 9 months <sup>24</sup>
High-risk	Misdemeanor	Up to 9 months <sup>25</sup>
High-risk	Felony	Up to 12 months <sup>26</sup>
Regardless of risk level	Off-grid crimes, rape, aggravated criminal sodomy, or second-degree murder	Up to the overall case length limits <sup>27</sup>

<sup>12</sup> K.S.A. 38-2391(b)(1).

<sup>13</sup> K.S.A. 38-2391(b)(2).

<sup>14</sup> *Id.*

<sup>15</sup> K.S.A. 38-2391(b)(3).

<sup>16</sup> *See generally* K.S.A. 21-6806.

<sup>17</sup> K.S.A. 38-2391(c).

<sup>18</sup> *Id.*

<sup>19</sup> K.S.A. 38-2391(d), (e).

<sup>20</sup> K.S.A. 38-2391(f).

<sup>21</sup> K.S.A. 38-2391(g)(1)(A).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> K.S.A. 38-2391(g)(1)(B).

<sup>25</sup> *Id.*

<sup>26</sup> K.S.A. 38-2391(g)(1)(C).

<sup>27</sup> K.S.A. 38-2391(g)(3).

- **Probation extensions** are possible under two specific circumstances:
  1. If extra time is needed to complete an evidence-based program that a validated risk and needs assessment has determined is necessary, or
  2. If there is “good cause shown” that an extension is necessary:
    - For up to 1 month for youth assessed as low-risk;
    - For up to 3 months for youth assessed moderate-risk; and
    - For up to 6 months for youth assessed high-risk.
- Prior to any extension, the court must make findings on the record as to why extension is required.
- Extensions can only be made incrementally and may not exceed the overall case limit (see chart on page 3).<sup>28</sup>

## JUVENILE SENTENCING ALTERNATIVES

- The court may sentence a youth to a combination of options outlined by Kan. Stat. Ann. § 38-2361. Several key changes to sentencing options resulted from SB 367 and are currently in effect. These changes include:
  - Placement with a parent or other suitable person:** no longer includes group homes or facilities licensed by the state.<sup>29</sup>
  - Probation:** the court may choose to place the youth on probation under supervision in accordance with their risk and needs assessment findings. Community Corrections supervision is not permissible with youth found to be at low-risk.<sup>30</sup>
  - Commitment:** As of January 1, 2018, the court shall not commit a child directly to the custody of the secretary of corrections unless:
    - the judge finds and enters into the written record that the youth poses a *significant risk of harm to another or damage to property*, and the youth is otherwise eligible for commitment;<sup>31</sup> or
    - the court finds the youth committed the equivalent of a *felony using a firearm*. Under this finding, if the court chooses to commit the youth, it shall be for a minimum term of 6 months and up to a maximum term of 18 months, regardless of the risk level of such juvenile as determined by a risk and needs assessment.<sup>32</sup>
    - Conditional release from commitment in either scenario shall be limited to 6 months and subject to graduated responses.<sup>33</sup>
    - For a commitment placement matrix based on the category of offenses, see pages 6-7.
- **Sentencing Detention Limits:** Court findings that a youth has violated a term of a sentence may now only subject the youth to up to a maximum of 30 days of detention.<sup>34</sup>
  - Detention is not permitted, however:
    1. based on “solely technical violations of probation, contempt, a violation of a valid court order, to protect from self-harm or due to any state or county failure to find adequate alternatives.”<sup>35</sup> and
    2. unless the court finds both that:
      - all other options have been exhausted<sup>36</sup> and
      - the youth “poses a significant risk of harm to another or damage to property, is charged with a new felony offense, or violates conditional release”<sup>37</sup>

<sup>28</sup> K.S.A. 38-2391(g)(2).

<sup>29</sup> K.S.A. 38-2361(a)(3).

<sup>30</sup> K.S.A. 38-2361(a)(1).

<sup>31</sup> K.S.A. 38-2361(a)(12).

<sup>32</sup> K.S.A. 38-2361(a)(13).

<sup>33</sup> K.S.A. 38-2361(a)(12)-(13).

<sup>34</sup> K.S.A. 38-2361(a)(11).

<sup>35</sup> K.S.A. 38-2361(g)(3).

- The total cumulative time permissible for detention for a sentencing violation cannot exceed 45 days over the life of a case, nor can it exceed the case time limits.<sup>38</sup> Such detention must be reviewed every 7 days to determine if it should be shortened or extended.<sup>39</sup>

## EARNED TIME CREDIT ON PROBATION

- Youth on probation “shall be awarded earned discharge credits while on probation for each full calendar month of compliance with terms of supervised probation.”<sup>40</sup> This earned credit will be applied toward early discharge from probation.<sup>41</sup>
- Credits are earned for “substantial compliance” with conditions of probation. “Substantial compliance” is defined as:
  - significant progress in meeting the conditions of probation; and
  - no violations allegations filed with the court under.<sup>42</sup>
- For each full calendar month of substantial compliance with probation conditions, a juvenile will earn 7 days of credit to be taken off their term of probation.<sup>43</sup>

## PROBATION GRADUATED RESPONSES

- “**Technical violation**’ means an act that violates the terms or conditions imposed as part of a probation disposition ... and that does not constitute a new juvenile offense or a new child in need of care violation.”<sup>44</sup>
- Community supervision officers shall use a “structured community-based graduated response” system, developed by the KDOC and the Supreme Court in responding to technical violations of probation.<sup>45</sup>
- Courts should not consider technical violations as a basis for probation revocation unless all three of the following are true:
  1. it is a third or subsequent technical violation;
  2. prior failed responses are documented in the youth’s case plan; *and*
  3. the community supervision officer has determined and documented that graduated responses to the violation will not suffice.<sup>46</sup>
- Community supervision officers seeking the court to consider a third or subsequent technical violation of probation shall issue a summons to the youth, rather than seek their detention, unless a youth poses a significant risk of physical harm to another or damage to property.<sup>47</sup>

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<sup>36</sup> K.S.A. 38-2361(g)(1).

<sup>37</sup> K.S.A. 38-2361(g)(2).

<sup>38</sup> K.S.A. 38-2361(g)(4).

<sup>39</sup> K.S.A. 38-2361(g)(4).

<sup>40</sup> K.S.A. 38-2398(a).

<sup>41</sup> Kan. Ct. R. 1801(a).

<sup>42</sup> Kan. Ct. R. 1801(b)(1).

<sup>43</sup> Kan. Ct. R. 1801(b)(2).

<sup>44</sup> K.S.A. 38-2302(bb).

<sup>45</sup> K.S.A. 38-2392(a), (b). A copy of the KDOC structured community-based graduated response grid is available at: <https://www.doc.ks.gov/juvenile-services/library/responses-and-incentives/graduated-responses-grid/view>.

<sup>46</sup> K.S.A. 38-2392(b).

<sup>47</sup> *Id.*

## REINTEGRATION PLANS FOR YOUTH PLACED OUTSIDE THE HOME

- If the court places a youth outside of the home at disposition, a plan for reintegrating that youth in their home and community must either:
  - be part of the disposition hearing record; *or*
  - submitted in writing to the court by the person with custody of the child (or by the community supervision officer, if the court so directs) within 15 days of the dispositional order. If anyone necessary for the success of that plan does not agree to it, the court shall hold a hearing on the matter.<sup>48</sup>

## COMMITMENT FOR YOUTH

- The court may *only* commit a youth to a juvenile correction facility if the court:
  - affirmatively finds on the record that the adjudicated youth “poses a significant risk of harm to another or damage to property”<sup>49</sup> or
  - adjudicates the youth for a firearm felony.<sup>50</sup>

The placement matrix that defines the category of offenses and terms of commitment has been modified by SB 367. The categories and terms of commitment are as follows:

Category	Those Adjudicated for:	Commitment Terms	Aftercare Terms
<b>Violent Offenders 1</b>	An off-grid felony	<ul style="list-style-type: none"> <li>• minimum: 60 months</li> <li>• maximum: up to age 22 years, 6 months<sup>51</sup></li> </ul>	Aftercare is required in this category: <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to age 23<sup>52</sup></li> </ul>
<b>Violent Offenders 2</b>	A nondrug severity level 1, 2 or 3 felony	<ul style="list-style-type: none"> <li>• minimum: 24 months</li> <li>• maximum: up to age 22 years, 6 months<sup>53</sup></li> </ul>	Aftercare is required in this category: <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to age 23<sup>54</sup></li> </ul>
<b>Serious Offenders 1</b>	A nondrug severity level 4, person felony	<ul style="list-style-type: none"> <li>• minimum: 18 months</li> <li>• maximum: 36 months<sup>55</sup></li> </ul>	Aftercare is required in this category: <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to 24 months<sup>56</sup></li> </ul>
<b>Serious Offenders 2</b>	A drug severity level 1, 2 or 3 felony or a nondrug severity level 5 or 6 person felony	<ul style="list-style-type: none"> <li>• minimum: 9 months</li> <li>• maximum: 18 months<sup>57</sup></li> </ul>	Conditional Release is optional: <ul style="list-style-type: none"> <li>• maximum: 6 months<sup>58</sup></li> </ul>

<sup>48</sup> K.S.A. 38-2396.

<sup>49</sup> K.S.A. 38-2369(a).

<sup>50</sup> K.S.A. 38-2361(a)(13).

<sup>51</sup> K.S.A. 38-2369(a)(1)(A).

<sup>52</sup> *Id.*

<sup>53</sup> K.S.A. 38-2369(a)(1)(B).

<sup>54</sup> *Id.*

<sup>55</sup> K.S.A. 38-2369(a)(2)(A).

<sup>56</sup> *Id.*

<sup>57</sup> K.S.A. 38-2369(a)(2)(B).

<sup>58</sup> K.S.A. 38-2369(b).

Category	Those Adjudicated for:	Commitment Terms	Aftercare Terms
<b>Serious Offenders 3</b>	A nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication	“may only be committed to a juvenile correctional facility if such offenders are <b>assessed as high-risk</b> on a risk and needs assessment.” <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to 12 months<sup>59</sup></li> </ul>	Conditional Release is optional: <ul style="list-style-type: none"> <li>• maximum: 6 months<sup>60</sup></li> </ul>
<b>Chronic Offenders</b>	1. one present nonperson felony adjudication and two prior felony adjudications; or 2. one present drug severity level 4 felony adjudication and two prior felony adjudications	“may only be committed to a juvenile correctional facility if such offenders are <b>assessed as high-risk</b> on a risk and needs assessment.” <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to 12 months<sup>61</sup></li> </ul>	Conditional Release is optional: <ul style="list-style-type: none"> <li>• maximum: 6 months<sup>62</sup></li> </ul>
<b>Firearm Felony</b>	If the trier of fact determines at adjudication the youth used a firearm during a felony, the court <i>may</i> commit that youth, <i>but is not required to do so</i> . <sup>63</sup>	Regardless of the risk level: <ul style="list-style-type: none"> <li>• minimum: 6 months</li> <li>• maximum: up to 18 months<sup>64</sup></li> </ul>	Conditional Release is optional: <ul style="list-style-type: none"> <li>• maximum: 6 months<sup>65</sup></li> </ul>

- **Optional Conditional Release** for “serious offenders” categories 2 and 3, “chronic offenders”, and firearm felonies is subject to graduated responses and presumes the youth will be released to their home.<sup>66</sup>
- For all “**chronic offenders**” or for **youth age 10-14** who are committed, there is a presumption that the youth shall be placed in a juvenile residential facility, rather than a juvenile correction facility. Such presumption may only be rebutted by a finding that the youth poses a significant risk of physical harm to another.<sup>67</sup>
- The court may only consider **departure sentences** for youth in the “violent offender” categories.<sup>68</sup>
- **Alternative Means of Adjudication:** the County Attorney may seek, at their own discretion, an adjudication that does not seek placement under this matrix if the youth has *fewer than two adjudications*.<sup>69</sup>

<sup>59</sup> K.S.A. 38-2369(a)(2)(C) (emphasis added).

<sup>60</sup> K.S.A. 38-2369(b).

<sup>61</sup> K.S.A. 38-2369(a)(3) (emphasis added).

<sup>62</sup> K.S.A. 38-2369(b).

<sup>63</sup> K.S.A. 38-2361(a)(13).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> K.S.A. 38-2369(b).

<sup>67</sup> K.S.A. 38-2369(e).

<sup>68</sup> K.S.A. 38-2371(a)(1).

<sup>69</sup> K.S.A. 38-2389(b); S.B. 367, 2015-2016 Reg. Sess. (Kan. 2016) (enacted) (prior to enactment, this provision had been limited only to misdemeanors).

## JUVENILE FINES AND FEES

- While courts may still impose fees upon youth and/or their families for costs related to their supervision in the juvenile justice system, failure to pay these fees can no longer be used to prevent the youth from being discharged from supervision.<sup>70</sup>
- The court may waive any fees for supervision upon a showing that the payments are an undue hardship for the youth or the youth's family.<sup>71</sup>

## STATUS OFFENSES

(To become effective July 1, 2019)

- Youth alleged or adjudicated as a child in need of care may not be held in a juvenile detention facility unless that child is also alleged to be a "juvenile offender" who is eligible for such placement. The change removes the ability to detain children in need of services in a juvenile facility solely for their own safety.
- A child in need of care may be held in a "secure facility", which by definition is not to be a juvenile detention facility or any other facility for youth accused or adjudicated in juvenile proceedings.<sup>72</sup>

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<sup>70</sup> K.S.A. 20-167; S.B. 367, 2015-2016 Reg. Sess. (Kan. 2016) (enacted) (removing language of the statute that had previously read: "[t]he juvenile offender shall not be eligible for early release from supervision unless the supervision fee has been paid").

<sup>71</sup> K.S.A. 20-167(e).

<sup>72</sup> K.S.A. 38-2202 (o), (ee).