

REPORTS OF STANDING COMMITTEES

MADAM PRESIDENT:

The Committee on **Judiciary** recommends **SB 104** be amended on page 7, following line 35, by inserting:

"Sec. 9. K.S.A. 2014 Supp. 38-2203 is hereby amended to read as follows: 38-2203. (a) Proceedings concerning any child who may be a child in need of care shall be governed by this code, except in those instances when the court knows or has reason to know that an Indian child is involved in the proceeding, in which case, the Indian child welfare act of 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding, K.S.A. 2014 Supp. 38-2234, and amendments thereto; ex parte custody orders, K.S.A. 2014 Supp. 38-2242, and amendments thereto; temporary custody hearing, K.S.A. 2014 Supp. 38-2243, and amendments thereto; adjudication, K.S.A. 2014 Supp. 38-2247, and amendments thereto; burden of proof, K.S.A. 2014 Supp. 38-2250, and amendments thereto; disposition, K.S.A. 2014 Supp. 38-2255, and amendments thereto; permanency hearings, K.S.A. 2014 Supp. 38-2264, and amendments thereto; termination of parental rights, K.S.A. 2014 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto; establishment of permanent custodianship, K.S.A. 2014 Supp. 38-2268 and 38-2272, and amendments thereto; the placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child in a guardianship arrangement under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

(b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 2014 Supp. 23-37,101 through 23-37,405, and amendments thereto, the district court shall have

original jurisdiction of proceedings pursuant to this code.

(c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or upon issuance of an ex parte order pursuant to K.S.A. 2014 Supp. 38-2242, and amendments thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (2) been adopted; or (3) been discharged by the court. Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

(d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court, upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all parties or interested parties, shall enter an order discharging the child. Except upon request of the child pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if the child is in an out-of-home placement, is still attending high school and has not completed the child's high school education.

(e) When a petition is filed under this code, a person who is alleged to be under 18 years of age shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

(f) A court's order issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, or a comparable case in another jurisdiction, except as provided by K.S.A. 2014 Supp. 23-37,101 through 23-37,405, and amendments thereto, uniform child custody jurisdiction and enforcement act.

(g) In any proceeding under this code, the court may allow a child to appear by means of two-way electronic audio-visual communication in lieu of personal presence of the child.

Sec. 10. K.S.A. 2014 Supp. 38-2343 is hereby amended to read as follows: 38-2343. (a) *Basis for extended detention; findings and placement.* 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, that further detention is necessary because detention is warranted in light of all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2014 Supp. 38-2331, and amendments thereto, and the juvenile is dangerous to self or others or is not likely to appear for further proceedings.

(1) If the juvenile is in custody on the basis of a new offense which would be a felony or misdemeanor if committed by an adult and no prior judicial determination of probable cause has been made, the court shall determine whether there is probable cause to believe that the juvenile has committed the alleged offense.

(2) If the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate.

(3) If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

(4) In the absence of the necessary findings, the court shall order the juvenile released or placed in temporary custody as provided in subsection (g).

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the

juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by ~~subsection (e)(1)~~ of K.S.A. 2014 Supp. 38-2332(c)(1), and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(d) *Attorney for juvenile.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours, excluding Saturdays, Sundays and legal holidays, to obtain attendance of the attorney appointed.

(e) *Hearing.* The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable. If probable cause to believe that the juvenile has committed an alleged offense is contested, the court shall allow the opportunity to present contrary evidence or information upon request. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

(f) *Rehearing.* (1) If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(2) Within 14 days of the detention hearing, if the juvenile had not previously presented evidence regarding the determination of probable cause to believe that the juvenile has committed an

offense, the juvenile may request a rehearing to contest the determination of probable cause to believe that the juvenile has committed an offense. The rehearing request shall identify evidence or information that the juvenile could not reasonably produce at the detention hearing. If the court determines that the evidence or information could not reasonably be produced at the detention hearing, the court shall rehear the matter without unnecessary delay.

(g) *Temporary custody.* If the court determines that detention is not necessary but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of some suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2014 Supp. 38-2334 and 38-2335, and amendments thereto.

(h) ~~Audio-video~~ Audio-visual *communications.* Detention hearings may be conducted by two-way electronic ~~audio-video~~ audio-visual communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

Sec. 11. K.S.A. 2014 Supp. 38-2344 is hereby amended to read as follows: 38-2344. (a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right to hire an attorney of the juvenile's own choice;
- (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent; and
- (4) that the court may require the juvenile or parent to pay the expense of a court appointed

attorney.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, nolo contendere or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making this requirement, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
- (2) the right of the juvenile to be presumed innocent of each charge;
- (3) the right to jury trial without unnecessary delay;
- (4) the right to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
- (5) the right to subpoena witnesses;
- (6) the right of the juvenile to testify or to decline to testify; and
- (7) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.

(c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads nolo contendere, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4), (5) and (6); and (2) that there is a factual basis for the plea.

(d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.

(e) First appearance may be conducted by two-way electronic ~~audio-video~~ audio-visual communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.";

On page 8, in line 35, after "22-3405" by inserting ", 38-2203, 38-2343, 38-2344";

And by renumbering sections accordingly;

On page 1, in the title, in line 4, after "3405" by inserting ", 38-2203, 38-2343, 38-2344"; and the bill be passed as amended.

Chairperson