

## 2023 Kansas Statutes

**38-2389. Alternative means of adjudication; exceptions; withdrawal; appeal.** (a) Findings and purpose. The following findings and declaration of purpose apply to this section.

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

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

(b) Designation. A county or district attorney with jurisdiction over the offense who believes that proceedings under this section are appropriate may, in such county or district attorney's discretion, designate any alleged juvenile offender for adjudication under this section and not seek application of a placement within the placement matrix pursuant to K.S.A. 38-2369, and amendments thereto, if the alleged juvenile has fewer than two prior adjudications.

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

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

(3) If the county or district attorney makes such designation, the juvenile may be referred to an immediate intervention program established pursuant to K.S.A. 38-2346, and amendments thereto, and in compliance with the standards and procedures developed pursuant to K.S.A. 38-2396, and amendments thereto.

(c) Exceptions. Except as provided in this subsection, the provisions of the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto, shall apply in any adjudication under this section.

(1) If during the proceedings the court determines that there is probable cause to believe that the juvenile is a child in need of care as defined by K.S.A. 38-2202, and amendments thereto, the court shall refer the matter to the county or district attorney, who shall file a petition as provided in K.S.A. 38-2234, and amendments thereto, and refer the family to the Kansas department for children and families for services. If the child in need of care case is presided over by a different judge, the county or district attorney shall notify the court presiding over the proceedings under this section of pertinent orders entered in the child in need of care case.

(2) Notwithstanding any other provision of law, no juvenile shall be committed to a juvenile correctional facility pursuant to K.S.A. 38-2361(a)(11), and amendments thereto, for an offense adjudicated under this section or for the violation of a term or condition of the disposition for such an offense.

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

(4) Upon completion of the case and the termination of the court's jurisdiction, the court shall order the adjudication expunged, and the provisions of K.S.A. 38-2312(a), (b), (c), (d), (e), (i), (k) and (l), and amendments thereto, shall not apply to such expungement.

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

(6) The provisions of K.S.A. 38-2309 and 38-2310, and amendments thereto, shall

not apply to proceedings under this section.

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

(8) The provisions of K.S.A. 38-2304(g)(1), and amendments thereto, shall not apply to proceedings under this section.

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

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

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

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

**History:** L. 2014, ch. 126, § 1; L. 2016, ch. 46, § 54; July 1, 2017.