

38-2347. Prosecution as an adult; extended jurisdiction juvenile prosecution; burden of proof; authorization. (a) (1) Except as otherwise provided in this section, at any time after commencement of proceedings under this code against a juvenile and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2016 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court authorize prosecution of the juvenile as an adult under the applicable criminal statute. The juvenile shall be presumed to be a juvenile, and the presumption must be rebutted by a preponderance of the evidence. No juvenile less than 14 years of age shall be prosecuted as an adult.

(2) At any time after commencement of proceedings under this code against a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony, and prior to the beginning of an evidentiary hearing at which the court may enter a sentence as provided in K.S.A. 2016 Supp. 38-2356, and amendments thereto, the county or district attorney or the county or district attorney's designee may file a motion requesting that the court designate the proceedings as an extended jurisdiction juvenile prosecution.

(3) If the county or district attorney or the county or district attorney's designee files a motion to designate the proceedings as an extended jurisdiction juvenile prosecution, the burden of proof is on the prosecutor to prove the juvenile should be designated as an extended jurisdiction juvenile.

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

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

- (A) The nature of the charges in the complaint;
- (B) the right of the juvenile to be presumed innocent of each charge;
- (C) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
- (D) the right to subpoena witnesses;
- (E) the right of the juvenile to testify or to decline to testify; and
- (F) the sentencing alternatives the court may select as the result of the juvenile being prosecuted under an extended jurisdiction juvenile prosecution.

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

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

- (1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult or designating the proceeding as an extended jurisdiction juvenile prosecution;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether the offense was against a person or against property. Greater weight shall be given to offenses against persons, especially if personal injury resulted;
- (4) the number of alleged offenses unadjudicated and pending against the juvenile;
- (5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender under this code or the Kansas juvenile justice code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living or desire to be treated as an adult;
- (7) whether there are facilities or programs available to the court which are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction under this code; and
- (8) whether the interests of the juvenile or of the community would be better served by criminal prosecution or extended jurisdiction juvenile prosecution.

The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection, in and of itself, shall not be determinative of the issue. Subject to the provisions of K.S.A. 2016 Supp. 38-2354, and amendments thereto, written reports and other materials relating to the juvenile's mental, physical, educational and social history may be considered by the court.

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

(2) The court may designate the proceeding as an extended jurisdiction juvenile prosecution upon completion of the hearing if the court finds from a preponderance of the evidence that the juvenile should be prosecuted under an extended jurisdiction juvenile prosecution.

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

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

History: L. 2006, ch. 169, § 47; L. 2012, ch. 150, § 46; L. 2014, ch. 126, § 6; L. 2016, ch. 46, § 40; July 1.