

## 2018 Kansas Statutes

**38-2343. Detention hearing; waiver; notice; attorney for juvenile; procedure; removal from custody of parent; audio-video communications; detention review hearing.** (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 warranted based on the criteria in K.S.A. 2018 Supp. 38-2331, and amendments thereto.

(b) (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) In the absence of the necessary findings, the court shall order the juvenile released.

(c) *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.

(d) *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 K.S.A. 2018 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.

(e) *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.

(f) *Hearing.* (1) The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, detention risk assessment tool results, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable.

(2) 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.

(3) 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, including any reasons for overriding a detention risk assessment tool score.

(g) *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.

(h) *Audio-video communications.* All hearings conducted pursuant to this section may be conducted by two-way electronic audio-video 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.

(i) *Review hearing.* 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. The provisions of this subsection shall not apply if the juvenile is charged with a crime that, if committed by an adult, would constitute an off-grid felony or a nondrug severity level 1 through 4 person felony. The review hearings provided in this subsection are not required for a juvenile offender held in detention awaiting disposition in such juvenile offender's case pursuant to K.S.A. 2018 Supp. 38-2360(f), and amendments thereto.

**History:** L. 2006, ch. 169, § 43; L. 2010, ch. 135, § 51; L. 2012, ch. 69, § 2; L. 2016, ch. 46, § 37; L. 2018, ch. 52, § 1; July 1.

**Revisor's Note:**

Section was also amended by L. 2010, ch. 11, § 8, but that version was repealed by L. 2010, ch. 135, § 225.