



State of Kansas

## Office of Judicial Administration

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February 8, 2017

### House Committee on Corrections and Juvenile Justice Proposed Amendments to 2016 Senate Bill 367

#### Neutral Testimony on HB 2264

Good Afternoon Chairman Jennings and Committee Members. My name is Amy Raymond and I am the Director of Trial Court Programs for the Office of Judicial Administration (OJA). I am the chair of the Judicial Branch Implementation Team for 2016 Senate Bill 367 and serve as the OJA representative on the Juvenile Justice Oversight Committee (JJOC).

OJA began implementing SB 367 in April 2016. From that point on, OJA has worked with the Kansas Department of Corrections (KDOC) to collaborate on several key sections. The intent of those sections is to create standard rules, regulations, policies, and procedures across the state for use by court services officers and community corrections officers who supervise juvenile offenders. However, from OJA's perspective, the bill does not provide the necessary authority for KDOC and the Judicial Branch to accomplish this goal. While the collaborative work between the Judicial Branch and KDOC has produced beneficial results, the statutory authority necessary for each branch of government to adopt and implement the work product is not currently in place. OJA proposes that five sections be amended to grant the authority to fully implement the work that has begun. The proposed amendments to these five sections of SB 367 – K.S.A. 38-2392 (Section 2), K.S.A. 38-2395 (Section 6), K.S.A. 38-2398 (Section 9), K.S.A. 38-2360 (Section 41) and K.S.A. 75-7023 (Section 63) – would grant both KDOC and the Judicial Branch the authority to develop rules, orders, regulations, policies, or procedures to apply to court services officers or community corrections officers, as appropriate. OJA's proposed amendments are attached.

It is important to note that, while a majority of the proposed amendments simply involve technical cleanup to SB 367 in order to grant proper authority to implement work that is already in progress, there are a few changes that are a little more substantial.

K.S.A. 38-2398 (Section 9 of SB367) does not currently establish immunity from liability for persons who calculate earned discharge credit for juvenile offenders. In the comparable context for adult offenders, K.S.A. 21-6821(f) provides that "[t]he state of Kansas, the secretary of corrections and the secretary's agents or employees shall not be liable for

damages caused by any negligent or wrongful act or omission in making the good time and program credit calculations authorized by this section." OJA's proposed amendment to K.S.A. 38-2398 would offer the same protection for persons in juvenile offender cases.

K.S.A. 38-2360 (Section 41 of SB367) states "the office of judicial administration and the secretary of corrections shall establish cutoff scores determining risk levels of juveniles." In OJA's collaborative work with KDOC, there have been discussions about the need to complete a validation study before definitive cutoff scores for the risk levels of Kansas youth are established. KDOC and OJA have both tentatively agreed to adopt the Youth Level of Service/Case Management Inventory (YLS/CMI) as a risk level assessment tool. The YLS/CMI includes standard cutoff scores for risk levels of youth. OJA's proposed amendment to K.S.A. 38-2360 would allow for the risk levels established by the YLS/CMI to be used until the Kansas validation study is completed. At that point, appropriate risk levels for Kansas youth could be definitively determined.

The final proposed amendment would postpone the effective dates for the requirements to (1) adopt a system of graduated responses under K.S.A. 38-2392 (Section 2 of SB 367), and (2) establish procedures for immediate intervention under K.S.A. 38-2395 (Section 6 of SB 367). OJA's proposed amendments would shift both deadlines from January 1, 2017, to July 1, 2017. While KDOC and the Judicial Branch have been regularly working towards meeting these requirements, additional time is needed to complete the process.

Thank you for the opportunity to offer these amendments to the committee. I am happy to stand for questions.

**38-2360. Post-adjudication orders and hearings.** (a) At any time after the juvenile has been adjudicated to be a juvenile offender, the court shall order one or more of the tools described in this subsection to be submitted to assist the court unless the court finds that adequate and current information from a risk and needs assessment is available from a previous investigation, report or other sources:

(1) An evaluation and written report by a mental health or a qualified professional stating the psychological or emotional development or needs of the juvenile. The court also may order a report from any mental health or qualified professional who has previously evaluated the juvenile stating the psychological or emotional development needs of the juvenile. If the court orders an evaluation as provided in this section, a parent of the juvenile shall have the right to obtain an independent evaluation at the expense of the parent. If the evaluation indicates that the juvenile requires acute inpatient mental health or substance abuse treatment, the court shall have the authority to compel an assessment by the secretary for aging and disability services. The court may use the results to inform a treatment and payment plan according to the same eligibility process used for non-court-involved youth.

(2) A report of the medical condition and needs of the juvenile. The court also may order a report from any physician who has been attending the juvenile, stating the diagnosis, condition and treatment afforded the juvenile.

(3) An educational needs assessment of the juvenile from the chief administrative officer of the school which the juvenile attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile. The educational needs assessment may include a meeting involving any of the following: (A) The juvenile's parents; (B) the juvenile's teacher or teachers; (C) the school psychologist; (D) a school special services representative; (E) a representative of the commissioner; (F) the juvenile's court appointed special advocate; (G) the juvenile's foster parents or legal guardian; and (H) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

(4) Any other presentence investigation and report from a court services officer which includes: (A) The circumstances of the offense; (B) the attitude of the complainant, victim or the victim's family; (C) the record of juvenile offenses; (D) the social history of the juvenile; and (E) the present condition of the juvenile. Except where specifically prohibited by law, all local governmental public and private educational institutions and state agencies shall furnish to the officer conducting the predispositional investigation the records the officer requests. Predispositional investigations shall contain other information prescribed by the court.

(5) The court in its discretion may direct that the parents submit a domestic relations affidavit.

(b) A summary of the results from a risk and needs assessment shall be provided to the court post-adjudication, predisposition and used to inform supervision levels. ~~A single, uniform risk and needs assessment shall be adopted by the office of judicial administration and the department of corrections to be used in all judicial districts. The office of judicial administration and the secretary of corrections shall establish cutoff scores determining risk levels of juveniles. Training on such risk and needs assessment shall be required for all administrators of the assessment. Data shall be collected on the results of the assessment to inform a validation study on the Kansas juvenile justice population to be conducted by June 30, 2020.~~

~~(c) Expenses for post adjudication tools may be waived or assessed pursuant to K.S.A. 2016 Supp. 38-2314(c)(2), and amendments thereto.~~

~~(d) Except as otherwise prohibited by law or policy, the court shall make any of the reports ordered pursuant to subsection (a) available to the attorneys and shall allow the attorneys a reasonable time to review the report before ordering the sentencing of the juvenile offender.~~

~~(e) At any time prior to sentencing, the judge, at the request of a party, shall hear additional evidence as to proposals for reasonable and appropriate sentencing of the case.~~

Until the results of the validation study are received, the cutoff scores for risk levels for juveniles shall be those established by the adopted risk and needs assessment.

judicial branch for use by court services officers. A uniform risk and needs assessment shall be adopted by

for use by community corrections officers. The department of corrections and the judicial branch shall collaborate in determining the risk and needs assessment to be adopted with the goal of achieving consistency in all judicial districts.

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Proposed amendments to HB 2264  
House Corrections and Juvenile Justice  
Prepared by: Natalie Scott  
Office of Revisor of Statutes

for use by community corrections officers

The judicial branch shall adopt by July 1, 2017, a system of structured community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence by juveniles for use by court services officers.

The department of corrections and the judicial branch shall collaborate on the creation of the community based graduated responses with the goal of achieving consistency in such responses.

**38-2392. Community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence.** (a) The department of corrections shall, in consultation with the supreme court, adopt rules and regulations by January 1, 2017, for a statewide system of structured community-based graduated responses for technical violations of probation, violations of conditional release and violations of a condition of sentence by juveniles. ~~Such graduated responses shall be utilized by community supervision officers to provide a continuum of community-based responses. These responses shall include sanctions that are swift and certain to address violations based on the severity of the violation as well as incentives that encourage positive behaviors. Such responses shall take into account the juvenile's risks and needs.~~  
(b) When a juvenile is placed on probation pursuant to K.S.A. 2016 Supp. 38-2361, and amendments thereto, community supervision officers shall utilize graduated responses, targeted to the juvenile's risks and needs based on the results of a risk and needs assessment to address technical violations. A technical violation shall only be considered by the court for revocation if: (1) It is a third or subsequent technical violation; (2) prior failed responses are documented in the juvenile's case plan; and (3) the community supervision officer has determined and documented that graduated responses to the violation will not suffice. Unless a juvenile poses a significant risk of physical harm to another or damage to property, community supervision officers shall issue a summons rather than request a warrant on a third or subsequent technical violation subject to review by the court.  
(c) When a juvenile is placed on probation pursuant to K.S.A. 2016 Supp. 38-2361, and amendments thereto, the community supervision officer responsible for oversight of the juvenile shall develop a case plan in consultation with the juvenile and the juvenile's family. The department for children and families and local board of education may participate in the development of the case plan when appropriate.  
(1) Such case plan shall incorporate the results of the risk and needs assessment, referrals to programs, documentation on violations and graduated responses and shall clearly define the role of each person or agency working with the juvenile.  
(2) If the juvenile is later committed to the custody of the secretary, the case plan shall be shared with the juvenile correctional facility.  
(d) This section shall be part of and supplemental to the revised Kansas juvenile justice code.

**38-2395. Standards for immediate intervention.** (a) The department of corrections, ~~in collaboration with the office of judicial administration,~~ shall develop ~~standards and~~ procedures to guide the administration of an immediate intervention process and programs developed pursuant to K.S.A. 2016 Supp. 38-2346, and amendments thereto, and alternative means of adjudication pursuant to K.S.A. 2016 Supp. 38-2389, and amendments thereto. Such ~~standards~~ and procedures shall include, but not be limited to:

- (1) Contact requirements;
  - (2) parent engagement;
  - (3) graduated response and discharge requirements; and
  - (4) process and quality assurance.
- (b) This section shall take effect on and after ~~January 1, 2017.~~

(c)

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to be used by juvenile intake and assessment services and community corrections officers. The judicial branch shall develop procedures to guide the administration of an immediate intervention process and programs developed pursuant to K.S.A. 2016 Supp. 38-2346, and amendments thereto, and alternative means of adjudication pursuant to K.S.A. 2016 Supp. 38-2389, and amendments thereto, to be used by court services officers

(b) The department of corrections and the judicial branch shall collaborate on the creation of the procedures with the goal of achieving consistency in such procedures.

**38-2398. Earned discharge for juvenile probationers.** For purposes of determining release of a juvenile from probation, the ~~supreme court, in consultation with the department of corrections,~~ shall establish rules for a system of earned discharge for juvenile probationers to be applied by all ~~community supervision officers.~~ A probationer shall be awarded earned discharge credits while on probation for each ~~full~~ calendar month of compliance with terms of supervised probation ~~pursuant to the rules developed by the supreme court.~~

judicial branch

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The department of corrections shall adopt rules and regulations for a system of earned discharge for juvenile probationers to be applied by all community corrections officers. The department of corrections and the judicial branch shall collaborate on the creation of the systems of earned discharge with the goal of achieving consistency.

. The state of Kansas, the judicial branch, the judicial administrator, the judicial branch's employees, the secretary of corrections and the secretary's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission in making the earned discharge credit calculations authorized by this section.



**75-7023. Juvenile intake and assessment system; confidentiality of records; information collected; dispositional alternatives; custody of child; conditions of release.** (a) The secretary for children and families may contract with the secretary of corrections to provide for the juvenile intake and assessment system and programs for children in need of care. Except as provided further, the secretary of corrections shall promulgate rules and regulations for the juvenile intake and assessment system and programs concerning juvenile offenders. If the secretary contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs concerning juvenile offenders, the supreme court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

(b) Except as otherwise provided in this subsection, records, reports and information obtained as a part of the juvenile intake and assessment process shall not be admitted into evidence in any proceeding and shall not be used in a child in need of care proceeding or a juvenile offender proceeding.

(1) Such records, reports and information may be used in a child in need of care proceeding for diagnostic and referral purposes and by the court in considering dispositional alternatives. If the records, reports or information are in regard to abuse or neglect, which is required to be reported under K.S.A. 2016 Supp. 38-2223, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the revised Kansas code for care of children.

(2) Such records, reports and information may be used in a juvenile offender proceeding only if such records, reports and information are in regard to the possible trafficking of a runaway. Such records, reports and information in regard to the possible trafficking of a runaway shall be made available to the appropriate county or district attorney and the court, and shall be used only for diagnostic and referral purposes.

(c) Upon a juvenile being taken into custody pursuant to K.S.A. 2016 Supp. 38-2330, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process, making release and referral determinations as required by supreme court administrative order or district court rule, or except as provided above [in] rules and regulations established by the secretary of corrections.

(d) Except as provided in subsection (g) and in addition to any other information required by the supreme court administrative order, the secretary for children and families, the secretary of corrections or by the district court of such district, the juvenile intake and assessment worker shall collect the following information either in person or over two-way audio or audio-visual communication:

(1) The results of a standardized detention risk assessment tool pursuant to K.S.A. 2016 Supp. 38-2302, and amendments thereto, if detention is being considered for the juvenile, such as the problem oriented screening instrument for teens;

- (2) criminal history, including indications of criminal gang involvement;
- (3) abuse history;
- (4) substance abuse history;
- (5) history of prior community services used or treatments provided;
- (6) educational history;
- (7) medical history;
- (8) family history; and
- (9) the results of other assessment instruments as approved by the secretary.

(e) After completion of the intake and assessment process for such child, the intake and assessment worker shall make both a release and a referral determination:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult.

(2) Conditionally release the child to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to the alternatives listed in K.S.A. 2016 Supp. 38-2331(b), and amendments thereto, and the following:

- (A) Participation of the child in counseling;
- (B) participation of members of the child's family in counseling;
- (C) participation by the child, members of the child's family and other relevant persons in mediation;
- (D) provision of outpatient treatment for the child;
- (E) referral of the child and the child's family to the secretary for children and families for services and the agreement of the child and family to accept and participate in the services offered;
- (F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;
- (G) requiring the child and members of the child's family to enter into a behavioral contract which may provide for regular school attendance among other requirements; or

(H) any special conditions necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officer's written application for a maximum stay of up to 72 hours. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 2016 Supp. 38-2232, and amendments thereto.

(4) The intake and assessment worker shall also refer the juvenile's case to one of the following:

(A) An immediate intervention program pursuant to K.S.A. 2016 Supp. 38-2346(b), and amendments thereto;

(B) the county or district attorney for appropriate proceedings to be filed, with or without a recommendation that the juvenile be considered for alternative means of adjudication programs pursuant to K.S.A. 2016 Supp. 38-2389, and amendments thereto, or immediate intervention pursuant to K.S.A. 2016 Supp. 38-2346, and amendments thereto; or

(C) refer the child and family to the secretary for children and families for investigations in regard to the allegations.

(f) The secretary of corrections, ~~in conjunction with the office of judicial administration,~~ shall develop, implement and validate on the Kansas juvenile population, a statewide detention risk assessment tool.

(1) The assessment shall be conducted for each youth under consideration for detention and may only be conducted by a juvenile intake and assessment worker who has completed training to conduct the detention risk assessment tool.

(2) The secretary and the ~~office of judicial administration shall establish cutoff scores determining eligibility for placement in a juvenile detention facility or for referral to a community-based alternative to detention and~~ shall collect and report data regarding the use of the detention risk assessment tool.

(3) The detention risk assessment tool ~~includes~~ an override function that may be approved by the court for use under certain circumstances. If approved by the court, the ~~juvenile intake and assessment worker or the court~~ may override the detention risk assessment tool score in order to direct placement in a short-term shelter facility, a community-based alternative to detention or, subject to K.S.A. 2016 Supp. 38-2331, and amendments thereto, a juvenile detention facility. Such override must be documented, include a written explanation and receive approval from the director of the intake and assessment center or the court.

(4) If a juvenile meets one or more eligibility criteria for detention or referral to a community-based alternative to detention, the person with authority to detain shall maintain discretion to release the juvenile if other less restrictive measures would be adequate.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.

(h) Every juvenile intake and assessment worker shall receive training in evidence-based practices, including, but not limited to:

- (1) Risk and needs assessments;
- (2) individualized diversions based on needs and strengths;
- (3) graduated responses;
- (4) family engagement;
- (5) trauma-informed care;
- (6) substance abuse;
- (7) mental health; and
- (8) special education.

and

to be used by juvenile intake and assessment services and community corrections officers. The judicial branch shall develop and implement a detention risk assessment tool to be used by judicial branch employees. The secretary of corrections and the judicial branch shall collaborate on the development and implementation of a detention risk assessment tool with the goal of achieving consistency.

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