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*To: Committee on Corrections and Juvenile Justice*
*From: Donald W. Hymer Jr, Assistant District Attorney, Johnson County, Kansas, Juvenile Section Head for KCDAA*
*Date: February 8, 2017*

*Re: House Bill 2264*

*Chairman Jennings and members of the Committee on Corrections and Juvenile Justice*

Thank you for this opportunity to present testimony on this very important issue of juvenile justice reform in Kansas. My name is Donald W. Hymer Jr., and I am a prosecutor in Johnson County, Kansas where I have prosecuted juvenile justice cases for over 26 years. I am here today to offer testimony concerning House Bill 2264 and amendments to SB 367 and Juvenile Justice Reform on behalf of the Kansas County and District Attorneys Association.

Juvenile Justice Reform of 2016 sought to reduce the number of low level offenders entering into the juvenile justice system and offer non-court programs for low level offenders. The reform also sought to modify the system of probation and sanctions for those who violate probation.

The bill also sought to minimize and phase out group home placements for juvenile offenders in favor of community based sanctions and services. Included in the reform was a proposed funding mechanism for creating such local services in smaller communities. One of the chief goals of this reform was a reduced reliance on secure detention as a penalty or sanction for juvenile offenders.

Each of these goals are laudable and should be sought by a system that should always be seeking to improve the services to juvenile offenders.

The issues with Senate Bill 367 concern the mandatory nature of the bill and changes to not only low level offenders but also felony offenders. The bill greatly restricts the ability to protect the community from repeat offenders based on the limitations of probation staff to utilize secure detention. The bill also presents a "one size fits all" solution to problems within our communities. Local jurisdictions need to have the ability to address issues each community faces within a general frame work, not a mandatory structure which limits law enforcement, the court, prosecutors and probation officers.

To accomplish the stated goals of Juvenile Justice Reform, KCDAA would propose the following amendments to Senate Bill 367:

1. Modification of the Juvenile Sentencing Matrix:
   Section 45 of SB 367 amended K.S.A. 38-2368 which outlines those offenses for which an offender may be sentenced to the juvenile correctional facility. This change will take place on July 1, 2017. The current "matrix" allows for felons and misdemeanants to be committed to the correctional facility. The amended matrix allows for only level 1-6 person felons and certain drug offenses to be eligible for placement.

   The KCDAA agrees that misdemeanor offenders need not be eligible for placement in a correctional facility. However to require a departure and special findings based on a risk assessment to commit a juvenile who has committed a leve1 7-10 felony is not appropriate and can place a community as risk. For example, a drive-by shooting into a home and burglary to a dwelling are level 7 felonies and the system needs the ability to sentence such an offender to the correctional facility when appropriate.

   Proposed amendment:
   Return to the matrix grid that was became effective July 1, 2014, with following modifications:
   - Remove the "Chronic III Escalating Misdemeanant" box from the matrix
   - Allow up to 90 days as a sanction for misdemeanor offenses to be served at the local juvenile detention center. (This would require an amendment to the detention limit in SB 367 which caps detention at 45 days)

   These amendments remove misdemeanors offenders from the correctional facilities and still allows for the court to sentence the appropriate felony offenders to the correctional facility.

   Before implementation of SB 367, the number of offenders sent to correctional facilities in Kansas have been steadily decreasing over the decade and this trend has taken place using the current matrix for sentencing.

2. Case and probation term limits:
   [Section 1 of SB 367 amending K.S.A. 38-2356; K.S.A. 38-2361; K.S.A. 38-2267 and K.S.A. 38-2269]

   Commensurate with the modified matrix for sentencing, the case and probation limits for felony offenses would be amended back to the pre-367 limits. Again the misdemeanor limits as contained in SB 367 would remain in place (12 month case length limit and 6 month probation length limit)

   The case limits are too short for felony offenses. The length of the case and the probation should be determined after consideration of the risk assessment rather than being solely controlled by the risk assessment as contained in SB 367. Many offenders with mental

health or substance abuse issues cannot complete their treatment during the reduced supervision periods under current law.

The case lengths and probation lengths need to be in accord with the sentencing matrix as modified.

3. Waiver to adult status and Extended Juvenile Jurisdiction Prosecution (EJJP):
[Section 40 of SB 367 amending K.S.A. 38-2347]

   Kansas had one of most restrictive statutes pertaining to waiver to adult status in the United States prior to the changes that became effective July 1, 2016, as a part of the SB 367 Juvenile Justice Reform.

   This section of the bill should be amended and returned to the pre-SB 367 law.

   - Currently EJJP is only available for level 1-4 person felonies and off-grid felonies
   - Waiver to adult status no longer has a presumption of waiver regardless of the severity and violence of the offense. (Most states have some form of an automatic waiver to serious offenses committed by juveniles above a certain age)
   - The court may no longer choose the option to conduct a preliminary hearing at the same time as the waiver hearing resulting in the potential for the victim to testify on multiple occasions before trial.

4. Memorandum of Understanding (MOU) for the school districts within each judicial district:
[Sections 56, 57, and 58 of SB 367 amending primarily K.S.A. 72-89b03(i)]

   Effective July 1, 2017, SB 367 requires each school district to develop a MOU in collaboration with the courts, county or district attorney, and law enforcement to determine which "school based activities" are referred to law enforcement or the juvenile justice system. Compliance with the MOUs will be monitored by the Kansas Department of Corrections the Office of Judicial Administration pursuant to reports provided by the school districts.

   Proposed amendment:

   In each school district there shall be communication and collaboration with the local law enforcement and the county and district attorney to determine which school based activities are to be reported pursuant to the Kansas Safe Schools and Security Act, K.S.A. 72-89c02, if the child is over 13 years of age.

   - No evidence too many cases are being referred by schools.

- Many districts (including all in Johnson County) employ school resource officers in the school buildings and there is constant collaboration concerning school safety and the cases that are referred for prosecution.

5. Detention Risk Assessment Tool:
[Section 62 of SB 367 amending K.S.A. 75-7023 and the duties of juvenile intake and assessment (JIAC)]

Effective July 1, 2017, JIAC will determine when a juvenile is placed on immediate intervention, referred to the county or district attorney for prosecution, or detained, all pursuant to a detention risk assessment tool. Essentially a number calculated by the assessment tool determines whether the juvenile will detained and also whether the case is forwarded for prosecution.

Proposed amendment:

Undo all the changes implemented by Section 62 of SB 367. And remove the detention risk assessment requirement at a detention hearing pursuant to section 34 of SB 367 amending K.S.A. 38-2231.

- Detention number are continuing to decrease.
- The authority granted to JIAC in this section conflicts with the duties of the county and district attorneys granted in the Juvenile Justice Code. It is the duty of the county or district attorney to file complaints and determine the cases that should be prosecuted. (see K.S.A. 38-2327)
- The Court should not have to override an assessment to place an offender in detention.

6. Immediate Intervention Programs (IIP) also referred to as diversion in many jurisdictions
[Sections 3, 6, and 39 of SB 367 see proposed amendments below]

This provision of SB 367 became effective January 1, 2017, and seeks to mandate that all juvenile offenders with no priors, who commit a misdemeanor offense are offered a non-court sanction that will not include restitution regardless of the amount of loss or the severity of the offense.

- A misdemeanor theft of up to $1,500 would be automatically granted diversion or IIP without court intervention.
- JIAC decides which cases are prosecuted
- Victims are left without court orders to protect their need for restitution
- The Kansas Department of Corrections oversees the program instead of local control to county and district attorneys or the district court.
- Requires an MDT to revoke an IIP or diversion.

Proposed amendments:

- Require only that each district have some program for an IIP or diversion
- Leave the oversight at the local level. Do not dictate what the program must entail
- Do away with the mandatory MDT meetings and make such meetings a tool that can be used based on the needs of the case.

7. The ability to place an offender in secure detention
    a. When on probation
    b. When on House Arrest
    c. When the safety of the offender is at risk

SB 367 restricts when an offender may be placed in secure detention even when the juvenile is on court ordered supervision.
[Sections 33 and 34 of SB 367 amending K.S.A. 38-2330 and 38-2331]

Effective January 1, 2017, a juvenile offender on any form of court ordered supervision may not be placed in detention by the supervising agency (Community Corrections or Court Services) without seeking a warrant. This includes when the offender absconds, fails to report, tests positive for dangerous, illegal drugs such as cocaine, heroin, or methamphetamine. Law enforcement may arrest a juvenile for a new law violation or for failing to comply with house arrest, but the supervising agency may not do so. Often law enforcement is not available when the offender has contact with the supervising agency.

Proposed amendments:

- Add "harm to self" back into the available findings for removal of a juvenile from home to be placed in detention.
- Allow supervising agency to have the ability to "arrest and detain" as contained in the code prior to SB 367.
- Do away with the requirement of two prior violations of probation before secure detention can be utilized in cases where the safety of the community, the juvenile, or property is in jeopardy.
- This would allow us to protect juveniles who abscond or are runaways from self-harm, including those who could be subject to trafficking.

These proposed amendments would allow the vast majority of provisions under SB 367 to go into effect, while giving local jurisdictions the flexibility to implement policies consistent with the needs of their communities.

Sincerely,

Donald W. Hymer Jr.
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Juvenile Section Head, KCDAA