HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Hon. J. Russell Jennings, Chair
Hon. John Whitmer, Vice-Chair
Hon. Dennis "Boog" Highberger, Ranking Minority Member

February 8, 2017

Chief Judge Merlin G. Wheeler
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WRITTEN TESTIMONY IN OPPOSITION OF HB 2264

Mr. Chairman and Members of the House Corrections and Juvenile Justice Committee:

Thank you for the opportunity to provide written testimony regarding the provisions of HB 2264. I am Merlin G. Wheeler, Chief Judge of the Fifth Judicial District and a member of the Executive Board of the Kansas District Judges Association (KDJA). I offer this testimony in both my representative capacity of KDJA and as an individual. I have served on the bench for over 26 years, nearly 20 of which as Chief Judge. My caseload includes a multitude of case types including both Juvenile Offender and Child In Need of Care cases. During my tenure I have seen a variety of attempts to improve our juvenile justice system, some of which have been successful while others have not.

On March 9, 2016, the Hon. Patricia Macke Dick, Chief Judge of the 27th Judicial District and currently President of KDJA appeared before this committee to express the opposition of our organization and the vast majority of judges of this state to the passage of juvenile justice reform legislation which was embodied in 2016 SB 367. While expressing full support of policies to improve the juvenile justice system, she pointed out the difficulties in the practical application of SB 367. I have attached a copy of her testimony for review by those committee members who were not present for her 2016 presentation. While not attempting to belabor the issues, I would

point out that the issues raised in 2016 regarding the implementation of reform under SB 367 are not addressed in any significant way by the provisions of HB 2264.

We understand that HB 2264, in its present form, is intended to serve as a "shell" bill for later inclusion of changes to SB 367 that may be identified during these committee proceedings. Representatives Jennings and Finch have kept our organization and other stakeholders informed of several possible additional provisions. These include:

1. Addition of a special sentencing rule when a firearm is used in the commission of a crime.
2. Establishing a data base for IIP participants.
3. Restoring to prosecutors the option to offer IIP to sex offenders as opposed to IIP being required.
4. Providing for long term out-of-home placement when offenders and the victim might otherwise be residing together.
5. Tolling case length limits during the period a child is an absconder.
6. Making discretionary with prosecutors the grant of a second or subsequent IIP.
7. Expansion of Extended Juvenile Jurisdiction Prosecutions (EJJP).
8. Deferring review of any statutory provisions of SB 367 that do not become effective until 2019.
9. Clarifying that probation length limits date from date of disposition, not adjudication and that the 45 day detention limit applies only to post-adjudication detention.

Although we have not seen a draft of specific language regarding any of these suggested revisions, with one exception, KDJA does not express any particular objection to the concepts described for us by Representatives Jennings and Finch. The exception is a fiscal comment that it should be understood that an expansion of EJJP proceedings will likely increase the burden on

counties which fund the defense costs for indigent juveniles charged with criminal activity. Even though a felony is involved in the proposed EJJP expansion, defense costs are not borne by our Board of Indigents Defense Services, but rather by the individual counties. The majority of our juvenile offenders qualify for indigent defense services and therefore, this increased burden on the counties should not be disregarded lightly.

One short-coming of SB 367 that has not been slated for correction is what I will call the self-harm issue. Under the current statute, a judge may remove a child from a home for harm to others or property, but not if exhibiting only self-harm. As Judge Macke Dick previously stated it is just as important that we have the means to protect the child as we do to protect others or property. It may be true that in some instances a child exhibiting self-harming behaviors may be removed under the CINC code, but there are also times when the provisions of the CINC code do not apply. We consider that an amendment filling this gap is important.

Judge Macke Dick pointed out to this committee that the very first concern about SB 367–and by extension the provisions of HB 2264– was the adequacy of funding. She detailed for the members the fact that funding sources had not been identified or, if identified, realizable in time for implementation of the SB 367 changes. To date, a year later, those issues have not been resolved or the adequacy of funding addressed.

For the above and foregoing reasons, I advocate today that the un-remedied deficiencies of SB 367 remain and its implementation should, at the very least, be delayed until further study and projections regarding the implication of its provisions and assurances of adequate funding are accomplished.

On behalf of the District Judges of Kansas, I thank you for your time.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Hon. John Rubin, Chairman
Hon. Ramon Gonzales, Vice Chairman
Hon. Dennis "Boog" Highberger, R.M. Member
March 9, 2016
9:30 a.m.
Room 152-S

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TESTIMONY IN OPPOSITION OF SB 367

Thank you, Mr. Chairman, and this honorable committee for this opportunity to testify in opposition to SB 367. I am Patricia Macke Dick, Chief Judge of the 27th Judicial District, and the president-elect of the Executive Board of the Kansas District Judge's Association (KDJA.) I am testifying in my individual capacity and as a representative for the KDJA.

I started practicing in a general law firm in Hutchinson 35 years ago and found my passion in juvenile court helping children and families. I am now in my 28th year of hearing all of the juvenile cases in Reno County and have served on many committees and task forces regarding juvenile law. My testimony is from historical memory and actual experience of attempts made over a period of decades to improve juvenile justice. I have been involved in modifications that have succeeded and those that have not.

I support policies presented to the legislature to improve the juvenile justice system and inherently the lives of families. I am not here to testify about policy changes. I am, however, gravely concerned, as is the Kansas District Judges Association, about the practical application this law will have on the legal system and the administration of juvenile justice.

In the late 90's the Koch Crime Commission funded a sweeping review of the juvenile justice system. "Communities That Care" was the research based program of the day and each district had a convener, facilitator, and stakeholders who met repeatedly over many months to complete a community risk and needs assessment and develop programs for the system. Those included prevention, intermediate intervention, and subsequent intervention and sanctions programs. Programs were funded in grant format through the Juvenile Corrections Advisory Boards that were formed. The funding has since dwindled substantially.

Sometime in that era, I was invited to testify by then Representative David Adkins about a pipe dream juvenile justice system. After reviewing my testimony, I realized some of the problems I identified in my first decade as a judge are still problems today, nearly two decades later.

Though juvenile crime appears to have decreased, I have observed troublesome kids become increasingly incorrigible. Some are sociopaths whose criminal propensities are probably not effectively alterable. But even for those that can make changes, many of their families show absolutely no respect for authority, and haven't for generations. Those are the hardest children to change.

The legislation being considered was developed by the PEW Charitable Trusts, an organization outside of Kansas. The law before you is a product of a collaborative effort between a small group of Kansans led by PEW and incorporates changes that other states have adopted. Regrettably, the legislation has the potential to harm children by eliminating discretionary option to offer children *true justice*: what they need, not what they deserve. The Work Group that operated with PEW is not unanimously supporting this law.

One concern with the bill is funding. It will require substantial initial expenditures to allow agencies, branches of government, and communities to implement the contemplated paradigm shift. Georgia, for example, advanced millions of dollars for startup costs. The anticipated shift of funding resulting from a reduction in out-of-home placements will not be realized until there are new evidence-

based programs operating in the communities for those returning offenders. By definition, those youth will have already unsuccessfully experienced the full continuum of current interventions in their community. Communities need to be safe with their return. The amended version of the bill slows down some of the changes and allocates certain funds for the purpose of developing these programs, but the source of such funds is not identifiable.

Effective parenting techniques are fundamental in juvenile cases, because these offenders are still children. Consequences for bad decisions need to be immediate. Those of you who are parents know that some children are much easier to redirect than others. The same is predictably true in juvenile justice. Identical programs yield different results with different children. While research based risk assessments should be used to help make sentencing determinations, the real needs of the child and the family are better defined during local supervision. Eliminating discretion and certain sanctions will result in more children failing and greater risk to the community. I cannot, for example, in good conscience condone an approach that prevents effective intervention until a juvenile probationer is found using meth or K2 three times (technical violations.) One time can be, and was in Reno County, fatal. No doubt different jurisdictions have unique problems that are not necessarily experienced on a state-wide basis, but we need the discretion to help the entire population, rather than just certain districts.

The new standard requires that children must be exhibiting harm to others (but not themselves) before a law enforcement officer may take them into custody. That standard eliminates a sometimes effective intervention in which the child is placed in custody and held in a safe setting pending development of an action plan. Though the senate amended the bill to include danger to property as a trigger allowing proactive intervention, the amendment did not address the fundamentally important issue of dangerousness to one's self. The current law does not include property as a protected item.

These are children. They make bad choices. They need us to protect them. Surely you cannot believe property is more important than human lives.

Another example from my court is a young girl who sent nude pictures of herself to older men. One of these men picked her up and they left town. Once she was found in Wichita (after her anguished parents posted signs all over two cities) and the protective custody order was served she returned to our detention facility, testing positive for drugs but unwilling to admit she had been in any danger. She openly stated she would go again as soon as she could. The new law would not permit her detention as a safety net. With the risk of human trafficking ever increasing, it is crucial to have children in these circumstances held where we know they are safe. The proposed legislation would limit placement of kids in a secure facility, of which there is one in Kansas, with 12 beds and only for girls.

Closing all group homes is not a panacea. There are good group homes in Kansas, those that are mediocre and those that aren't effective at all. There are very obvious, long-standing problems with group homes that should have been corrected long ago by those administering the facilities. A strict "no eject, no reject" policy should apply. This very phrase was one I used in my testimony in the 1990's. High risk children should be segregated from those of lower risk and placed in structured, higher staff ratio placements. Lower risk children can and should be placed together in facilities with more opportunities for healthy decision making. Where is the research on how to improve group homes and replicate those that have good outcomes? If our goal with children is rehabilitation, after trying every local program there must be an option to get the children away from their communities for the sake of not just the child, but the safety of citizens. Recommendations for out-of-home placements for juvenile offenders in my district come primarily from KDOC-JS supervising officers, not from Phoenix and Philadelphia, which was the basis of the research presented to the workgroup recommending the closure of group homes.

Most juvenile offenders were children in need of care about whom concerns were either screened out by DCF or we didn't see in court until they committed a crime, sometimes after many trips to juvenile intake and assessment. With some of these families, there is little doubt the lack of ability to respect boundaries or authority did not start with today's juvenile but reflects a multigenerational problem. I see grandchildren of juveniles I represented in the 1980's. Each generation has become increasingly entrenched in criminal activities, parameters have essentially disappeared. Parents share drugs with their children, education is not valued and there are instances where the children and parents commit crimes together. This bill contemplates such children being left in their homes, which means the entire family would need to be amenable to change, or that the child be declared a child in need of care. Please know that these are not families where parents simply fail to attend parent-teacher conferences with their child. They are instead families where the parents would not be able to pick their child's teachers out of a lineup. They don't know the last names of their children's friends. They don't know where their child spends his or her time. If the home is not appropriate, with the proposed law these juvenile offenders could be placed with children in need of care, most of whom are no risk, not just low risk. Many JO's are still children in need of care, but we are too late to change the things that led to that and they have crossed the line into the realm of rehabilitation and the need for structured, consistent environments to change their behavior. There are times I have to determine what a child is mostly, a child in need of care or a juvenile offender, and issue orders accordingly. But that is the exception, not the rule.

Finally, it is imperative for you to know that judges are not rushing to take kids out of their homes, or detaining children unnecessarily. It's discouraging and even a little demeaning for supporters of this bill to insinuate that most of the stakeholders do not have or exercise common sense and fail to implement a logical progression of interventions and sanctions. Even in Western Kansas we operate with best practices. There are parts of the bill that no one would hesitate to try, but that is the key. This law

should be studied and the parts that are adopted incrementally. The whole of Kansas does not need to be a test site for an outside interest; changes can be made in an orderly manner with pilot projects and not total disruption, loss of resources, and extreme expense.

The incentive for juveniles to modify their behavior and be kept safe will dissipate with the reduction of discretion of those who work in the juvenile justice system to provide different approaches for different children. I urge this committee not to pass this bill on without further consideration of the consequences. On behalf of all the Kansas District Court Judges, I thank you for your time.