

HB 2505 Smith 2.18.2020

I'm Judge Kevin Smith of the 18th judicial district, but I appear here in my individual capacity and not as a representative of the district court. Thank you for the opportunity to testify about this very important bill. Governor Brownback appointed me to the bench December 2015 and I was sworn in January 2016. From then until January 2, 2020, I was assigned to the juvenile court and presided over juvenile offender and child in need of care cases. Sedgwick County has the highest volume of juvenile offender cases of any county in the state with 4 district court judges sharing the burden. At any given time, I had several hundred open cases on my docket, and each of the 4 judges had similar case loads.

We needed juvenile justice reform. Before SB 367, a juvenile convicted for disorderly conduct, a class C misdemeanor, which for adults caps out at 30 days in jail, faces a 28 day sanction in a juvenile detention center for *each* alleged probation violation. So with 3 minor, technical violations, such a youth could be incarcerated for 84 days. Judges who exercised such discretion were undoubtedly inflicting more damage on youths than good.

Under SB 367, juvenile judges can no longer tell juveniles that they will face significant consequences if they continue to use illegal drugs, drop out of school, refuse to report to their probation officer, attend drug and alcohol treatment, or remain in their parents' homes. All of these are so-called technical violations. Indeed, a judge cannot bring a juvenile into court for such violations until they accumulate three. Even then, judges cannot legally impose *any* detention sanction unless he has a good faith belief that not doing so places others or others' property at risk of harm, and has exhausted community resources. He can tell the juvenile to not do it again and reinstate probation—or close the case.

On my docket I saw juveniles appear multiple times for such violations and with similar outcomes, much more often than I experienced before SB 367. I also saw an uptick in motions for adult prosecution and more levels 1-4 person felonies filed than before.

Sedgwick County DA Marc Bennett provided us with data on arrest rates. Part of the logic behind eliminating judicial discretion to incarcerate juveniles is that it allegedly doesn't decrease recidivism rates. However, Mr. Bennett's data indicates that Sedgwick County has experienced a 50% increase in class B misdemeanor charges and double-digit increases in most mid- and low-level felony cases since implementation of SB 367. More juveniles are committing minor crimes because they know there will be little if any consequence. When they become adults and find themselves facing presumptive prison due to juvenile convictions, they will learn otherwise.

48 hours for a 4th violation sends a message some youth need to hear. Up to 5 days for 5th or more violation sends a slightly louder message. More important, 5 days off the streets can protect youths from dangers none of us will ever face.

We should not return to the days when judges could hold the sword of justice over juveniles' heads until they turned 18, and with that the threat of seemingly indefinite incarceration for the most minor violations. But HB 2505 doesn't permit these outcomes. It limits sanction time by (1) not allowing it until the 4th violation, (2) capping it at 48 hours for a 4th, and (3) capping it at 5 days for each subsequent violation. By giving judges the ability to make very real promises of incarceration when juveniles don't comply with probation terms and conditions and get their lives on track to respect and obey authority, we will do them more good than a scheme that has no teeth.

For these reasons I hope this committee will allow the full house to debate this important tweak to SB 367. Thank you for your time and careful consideration.