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The Honorable Chairman Greg Smith
Senate Committee on Corrections and Juvenile Justice
Statehouse, Room 441-E
Topeka, Kansas 66612

Senator Smith and members of the Senate Corrections and Juvenile Justice Committee:

Thank you for the opportunity to bring to your attention concerns related to Senate Bill 367 on behalf of the Kansas County and District Attorney's Association.

While the KCDAA supports many of the goals of SB 367 -- increasing public safety; reducing the number of juvenile offenders in out-of-home placement statewide; and enhancing community based alternatives to out-of-home placement -- we cannot support SB 367 in its current form for the following reasons:

First, **Scope**: this bill has been circulated as a "reform" package. Now that we've seen the bill draft, it is clear that SB 367 constitutes a wholesale, seismic change in juvenile justice in this state.

With every aspect of the juvenile system impacted by SB 367, how will we know what segments of the bill, if any, were successful? A doctor doesn't diagnose a problem by throwing every conceivable treatment at a patient unless life saving measures are required. SB 367 is akin to prescribing 100 medications, invasive surgery and chemotherapy all at once. If the patient is cured, it's anybody's guess as to what worked. The patient in our situation is a juvenile justice system that, since 2000, has seen a roughly 50% drop in juvenile offender cases statewide. This is hardly a patient waiting at death's door, in need of an all-or-nothing approach. In fact, by any measure, the past 15 years in Kansas juvenile corrections have been a marked success. If we want to improve the areas where improvement is needed, let's do that. One step at a time. To that point, in 2014, the legislature passed an amendment to KSA 38-2389. This legislation holds opportunity for much improvement, especially for jurisdictions currently without diversion programs, but we haven't given it time to work.

If the legislature wants to scrap the current juvenile justice system, then SB 367 gives it that opportunity with wholesale slashing as to the length

of supervision/jurisdiction; the length of penalties; the infusion of risk assessment tools into nearly every aspect of the system; and a diluted role for prosecutors and judges in favor of a heretofore unknown layer of committee-level bureaucracy.

If, on the other hand, the goal of this committee is to build upon existing improvements, the KCDAA urges that the legislation be pared down to the portions that address establishing both alternatives to out of home placements to benefit jurisdictions where they are currently needed the most and, most importantly, the funding to sustain said programs.

Second, **Cost**: SB 367 carries significant costs. For instance, risk assessment tools are currently used in initial bond-setting but SB 367 contemplates their use to set levels of supervision and to access probation violations. These tools will have to be established and "normed" for jurisdictions around the state, which costs money. A far larger concern is the cost associated with the development of community-based alternatives to out-of-home placement. While the KCDAA supports the availability of these programs, their current lack of availability is largely the result of a lack of recourses. While the bill attempts to identify certain funding streams to support the use of these programs, how long will it take to fund that account? Is it sustainable? The success of any juvenile reform or re-alignment is dependent on the success of this fund and it will take time to answer these questions. To impose the other systemic changes proposed by SB 367 at the inception of this fund before the money is there is akin to saving for the down payment after the house has been purchased.

Third, **best practices**: all agree the underlying goal of the juvenile justice system should be to reform as many juvenile offenders as possible and correct behavior to ensure public safety is enhanced and fewer kids pipeline into the adult system. For low risk offenders, the length and scope of supervision may need to be very low. Fewer contacts with the system the better. But risk is a larger question than the relative severity of their crime. For kids who have other issues like a history of abuse or a chaotic family life, with drugs, alcohol, domestic violence and systemic incarceration -- 9 or 12 months of probation may be wholly inadequate no matter how "serious" the underlying crime. Studies show that treatment for juvenile sex offenders can be very impactful. But successful treatment requires 12-36 months once the juvenile can get into said treatment programs which are simply not available in parts of the state and available only after waiting periods in others. Drug and alcohol treatment, individualized counseling, and family counseling models can all be very successful but they take time. Simply put - best practices suggest that success is achieved with an approach tailored to the needs of the offender. Simply cutting the amount of time a court can exercise jurisdiction over any juvenile offender based solely on the severity level of their crime and their score on an initial actuarial risk assessment, and then expressly limiting the ability of the court to extend supervision even after the supervision officers get to know the juvenile -- these are not consistent with a tailored approach.

Fourth, **one size fits all**: too often, legislation is driven by anecdotes. A juvenile locked up for a misdemeanor for months in one jurisdiction raises eyebrows. But do we know the back story? Was this the first time this juvenile had been in trouble? Had the judge warned him not to reoffend? Was his or her home life chaotic or was it stable? Did the judge have other options in that community other than removal from the home? Do we know the answers to any of these

questions? If we are simply saying that the public policy of this state is that juvenile offenders will not be locked up for misdemeanors, or low level, non-violent offenders, then we should be up front and say that to our citizens. Instead, SB 367 gives passing attention to consequences for penalties for these crimes while stripping punishment elsewhere in the form of drastically reduced initial penalties; proscriptions on the discretion to punish probation violations; and granting month for month "good time."

Fifth, **criminal history**. The justice system in Kansas has long placed significance on the criminal history of offenders be they adult or juvenile. SB 367 abandons that principle with respect to juveniles. A juvenile who commits his first auto burglary is treated the same as one who commits his 10th l, dependent only on a risk assessment tool. If the goal of our system is to reform a juveniles behavior - what message does that send?

Sixth, **Separation of Powers**: in many places the bill seeks to dilute the power of elected prosecutors relative to charging and of prosecutors and judges to make decisions relative to placement both at the time of sentencing as well as probation violations. Prosecutors cannot and should not abrogate the discretion to charge crimes in their communities to a committee no matter how well-intended. To be sure, the more information available to a prosecutor who makes charging decisions, the better - be that the results of risk assessments; risk assessments as to the family; grades; attendance records; et cetera. But a prosecutor cannot hand over that authority to a committee even incrementally. Further, the added time associated with this added level of bureaucracy is inconsistent with the notion of swift and sure consequences to which juveniles best respond.

Finally, it has been said that the effort behind SB 367 was a bipartisan effort comprised of stakeholders from across the state and included support of the "prosecutors." The implication seems to be that this bill is the product of a full and robust vetting process. The reality is that the working group included a single prosecutor from one, relatively small jurisdiction in northwest Kansas. While this prosecutor undoubtedly added a prosecutor's perspective to the discussion, her experience is not the experience of larger jurisdictions where the vast majority of serious/violent juvenile crime is committed. Further, the effort of this prosecutor and other members of the working group last summer lead to a 40+ point policy paper promulgated in December. Policy ideas are one thing, but the details of SB 367 were finalized after the start of the legislative session. We've had this 116 page draft a matter of a few weeks.

The KCDAA proposes that a change to the juvenile justice system this consequential, this profound, deserves more time to consider the details and propose a measured, incremental roll out. Start with the sections of the bill that proposes to establish funding.

We recognize that time and effort went into this effort and there is a strong desire to see action. But if legislature passes the funding sources first, within one year we will see if the proposal is on pace to generate adequate funds to support the alternatives to incarceration. The reason is that it is the availability of these alternative programs that will determine the success of any "reform" contained in SB 367. If the local, community-based alternatives to incarceration are not available, then we will have set up several hundred juvenile offenders each year for failure.

We would remind the committee of the circumstances surrounding the passage of HB 2170 two years ago, where time spent on the effort that previous summer seemed to guarantee the passage of that bill--touted as providing improvement and cost savings to the adult criminal system. At that time, the KCDAA urged caution and offered testimony that the proposal had not received enough vetting. The bill proceeded in spite of our admonitions and two years in, we are yet to see the projected savings and reductions in incarceration.

Good questions have been raised by this effort - namely, (1) how often and under what circumstances should juvenile misdemeanants and low level felons be incarcerated? (2) what can we do to expand the availability of non-adjudicating alternatives for juveniles, like diversion? (3) how do we foster and then continue to fund community-based alternatives to incarceration in parts of the state where they do not currently exist?

But in our zeal to improve the system, SB 367 undermines significant progress that has already been made in many jurisdictions. Please see written testimony from individual jurisdictions.

If a window leaks in your house, you fix that window. That may require working on the wall around the window or even shoring up the foundation or fixing a leaky roof. SB 367 proposes we tear the entire house down and start over. This is unnecessary and ignores significant improvements already made to our current system.

Thank you and we strongly urge you to reject SB 367 in its current form until further, significant work has been made to this bill.

Thank you
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