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To: Hon. Senator Smith, Chair, House Corrections and Juvenile Justice Committee

From: Mandy Johnson, Assistant Finney County Attorney in conjunction with
Susan H. Richmeier, Finney County Attorney.

Date: February 2, 2016

Re: Opposition for SB 367

Hon. Chairman Smith and members of the House Corrections and Juvenile Justice
Committee

Thank you for the opportunity to provide written testimony in opposition of SB 367. My name is Susan Richmeier and I am currently Finney County Attorney. I am a former educator, private practice attorney and now I serve the people of Finney County as their county attorney. I have experience teaching special education, including children with behavioral issues, severe learning disabilities, learning disabilities, and, the gifted and talented. As a private practitioner I have worked in all capacities of the child in need of care and juvenile system as a guardian *ad litem*, juvenile attorney and parent's attorney. As county attorney, my office is responsible for reviewing, charging and prosecuting juveniles, as well as reviewing and determining children in need of care. Part of that process is the ability of our office to work with local agencies in both the child in need of care and juvenile justice system to determine alternatives to sentencing, adjudication and programming for juveniles and families.

Mandy Johnson is responsible for reviewing, filing and managing Child in Need of Care and Juvenile Offender cases within Finney County.

Mandy and I are appearing as individuals and in our capacity as county attorneys. We would like to address the concerns our office has regarding the proposals made in SB 367. We are in opposition of SB 367.

I. Statutes Affected

- a. SB 367 would amend K.S.A..... K.S.A. 12-4112 and 20-167 and K.S.A. 2015 Supp. 8-241, 8-2110, 12-4117, 38-2202, 38-2232, 38-2242, 38-2243, 38-2255, 38-2260, 38-2288, 38-2302, 38-2304, 38-2313, 38-

2325, 38-2330, 38-2331, 38-2332, 38-2342, 38-2343, 38-2344, 38-2346, 38-2347, 38-2360, 38-2361, 38-2366, 38-2367, 38-2368, 38-2369, 38-2371, 38-2372, 38-2373, 38-2374, 38-2375, 38-2376, 38-2377, 38-2389, 658 5603, 72-1113, 72-8222, 72-89b03, 72-89c02, 74-4914, 75-7023, 759 7038, 75-7044, 75-7046 and 79-4803 and repealing the existing sections; also repealing K.S.A. 2015 Supp. 38-2334, 38-2335, 38-2364 and 38-2365.

II. Questions for committee consideration.

- a. Why does the current statute need to be amended?
- b. What is the problem the committee feels needs to be corrected?
- c. How do you feel these amendments solve the problems you believe need to be corrected?
- d. When applying statistics you must consider the variables being measured during the research and for whom those variables are directed, along with the purpose of data collection. A good book for reference purposes is: "How to Lie with Statistics"
- e. Through research, we have found the following information:
 - The in-custody juvenile population is on the decline and has been since 2012.
 - Juvenile crime rate is down since 2012.
 - Indicators point to a currently successful juvenile justice code.
- f. What is causing the decline?
 - Is it removing the juvenile from the home and from the environment they were in when they committed the crimes.
 - Is it the related to education?
 - Is it due to the number of options available in the current system, allowing for some tailoring to the needs of each individual?
 - Perhaps it is a combination of all the above and the threat of potential removal from the home and community, along with the other options has a direct correlation to the decrease in crime rate.
 - Current studies are not consistent with reference to cause of the decline in the juvenile crime rate.

III. Current Juvenile Justice System:

- a. 81.6 % of the juveniles at the JCF have been adjudicated for **person** crimes.
- b. Placement at a JCF requires a juvenile to have met certain criteria and is typically punishment of last resort for juveniles with significant criminal history.
- c. The current Juvenile Justice Code, K.S.A. 38-2346, already has a graduated sanction process in place. A matrix grid is in place containing criteria which must be met prior to a juvenile being placed at the JCF.
- d. For juveniles with significant criminal history the JCF offers classes such as substance abuse, anger management, cognitive classes, sex offender treatment, and schooling to include college credits. This is more cost efficient because juveniles from across the state are receiving more intensive services geared toward their particular issues at a centralized location instead of attempting to have those services offered within each separate county.
- e. JJA and Youth Services also offer many of these classes on a smaller scale in an attempt to educate and rehabilitate within a juveniles community prior to the need for removal from the home or JCF placement. Many of these classes are required when a juvenile is placed on diversion, probation, or out of home and is being closely monitored by the Juvenile Justice Authority (JJA).
- f. JJA housing costs less than JCF placement and is a less confining environment.
- g. While in JJA placement, whether at the JCF or a foster home, the juvenile's behavior has a direct impact on them being returned home. At this time, if a child is placed in JCF or a foster home, the juvenile must show improvement in behavior, school, parent/child relationships, mental health, drug and alcohol improvement (if that is an issue) prior to being reintegrated back into the home.
- h. The current options available for juvenile offenders are more meaningful for the juvenile offender than those available for CINC children as they are specifically designed to address the problems a juvenile offender is facing.
- i. JJA and Youth Services are better equipped to handle a juvenile offender than DCF and the CINC facilities and yet, there are still not enough options available. By dismantling the current juvenile justice system, what we do have available will be eliminated, leaving fewer options available to help educate and rehabilitate our troubled youth.
- j. In Finney County, there is currently a FIT/Deferred prosecution program in place. This program is a pre-filing program that deals with first-time offenders. Diversion is generally a post-filing program and

occasionally our office provides additional education for juveniles with a deferred prosecution agreement.

IV. Problems with the current proposal

- a. Secure placement of juvenile offenders in child and therapeutic foster homes through the Department of Children and Families (DCF) is not currently feasible.
- b. DCF foster homes are not equipped to handle the juvenile offender population. Practically speaking, juvenile offenders will be placed with children that have suffered medical, physical and sexual abuse, thus, potentially placing a juvenile sex offender with children who are susceptible as victims.
- c. After doing some limited research; available secure facilities as temporary placement for child and therapeutic foster homes (which are currently intended for use by children in need of care (CINC)) are limited in number. Those that are available for secured placement appear to be mostly privately owned and a child has to be screened in prior to placement.
- d. At last inquiry there were two (2) such secure placement facilities available; both are on the eastern side of Kansas, one for boys and one for girls. The limited availability of these placements and their capacities will not be sufficient for housing juveniles from across the state as SB 367 suggests.
- e. There is currently a shortage of therapeutic foster homes them for DCF cases. If you were to add in juvenile offenders it will cause additional strain on an already overwhelmed placement option.
- f. The proposed changes insinuate a new program will be created. Who will be in charge of the new program? What will it consist of? And, how will it be different and better than what we currently have?

V. Practical effect of SB 367 as written.

- a. This new program essentially does away with the prosecution of juvenile offenders and practically ends the removal of a juvenile offender from the home.
- b. The suggested Intermediate intervention program is currently offered for first time offenders who are charged with misdemeanors and some felonies depending on severity level. This is called the Family Impact Team (FIT) program.
- c. Currently, second time offenses (if the juvenile qualifies) are offered Diversion. The diversion program is similar to FIT but is supervised by a diversion coordinator and the court. The length of diversion is generally six (6) months for misdemeanors and twelve (12) months for felonies. This time structure allows for payment of restitution and

completion of drug & alcohol classes, or other classes determined to be in the best interest of the juvenile.

- d. The proposed change will limit have a four (4) month time limitation for both. Four (4) months may not allow for completion of all terms and conditions of a diversion agreement or payment of restitution to a victim of the juveniles crime.
- e. The SB367 immediate intervention program will offer FIT, or a similar program for an **unlimited** number of misdemeanor infractions committed by a single juvenile, as well as the crime of unlawful voluntary sexual relations felonies, as long as the juvenile is successful in the program.
- f. The new changes mean:
 - i. A juvenile can have sex with your 14 year old daughter and knock her up as many times as they want as long as they are good for four (4) months.
 - ii. A juvenile will now be able to shoplift, steal from you, use your credit card, steal your car, or, damage your property as many times as they want as long as they are good for four (4) months and the amount is under \$1000.00.
 - iii. Currently, restitution is required in order for the case to be dismissed (Terminate Successfully). The new proposal does not require paying any restitution as it is not considered a term of being good for four (4) months.
 - iv. ABOVE ALL, there is no accountability with the new proposal, there is also no consideration for the victim.
 - v. The new proposal removes the ability of the County or District attorney to utilize discretion regarding the initial charging of the juvenile.
 - vi. Charges that are not adequate and should not be charged will go unnoticed. Staff that is not trained in law will decide the outcome of the cases for misdemeanors and unlawful voluntary sexual relations
 - vii. The proposed changes will require a lot more staff, all of which needs to be trained and willing to work underpaid in remote locations. In the western portion of KS we are currently unable to keep teachers, nurses, attorneys, DCF workers, and social workers.
 - viii. In addition, the proposed changes speak frequently about taking the money out of the current juvenile justice system and reallocating it. Also it appears the money for the training, etc, will only be available once there is money available from not removing the juvenile.
 - ix. It will still cost approximately the same amount to place juveniles in DCF custody that is if they have any placements available and willing to take them.

- x. Graduated sanctions are currently used in adult cases, and haven't proven to be effective.

VI. Effect on communities.

- a. The proposed changes will eliminate a majority of the current juvenile justice placement options.
- b. The proposed changes leave the only real option for placement after removing the juvenile from the home, is to place the Juveniles in DCF custody, safe house or therapeutic foster home (if one is available) and this is only for *temporary* placement. This is a major safety concern. **It will require potentially placing victims in child in need of care cases with juvenile offenders.**
- c. Placing juveniles that have committed a crime with victims that have already been victimized is inherently a bad idea. Victims of crimes are more at risk to become victims again.
- d. DCF and the agencies contracted by DCF to provide services for CINC cases are not designed for, nor are the employees trained to deal with juvenile offenders.
- e. Current placement options available through the juvenile justice system provide multiple options. Group housing provides the services recommended by the assessment and evaluation tools utilized for juvenile offenders. The services are provided on site as well as school options. In addition, the services are required to be completed prior to the juvenile reintegrating back at home. Removing this resource from the juvenile, removes the likelihood of the juvenile completing the required services prior to release from the court's jurisdiction. Further, in order for a juvenile to obtain and complete their services, the new plan will most likely end with the juvenile being confined in the JCF (meaning more money).
- f. DCF already has a shortage of foster homes. Upon shifting juvenile offenders into the current DCF foster care system, many foster parents will cease providing foster care services or they will demand to only have CINC children, furthering the loss of adequate options for juvenile offenders and leaving no alternative but the JCF when the offender needs to be removed from their current environment.
- g. The proposed changes eliminate the discretion of the court to place juveniles in a secure facility or detention even if they are a risk to public safety or themselves.
- h. Once a juvenile is considered a risk to themselves, they must still screen as an immediate danger in order for involuntary confinement to occur. This generally requires some form of mental illness in order to obtain therapeutic placement. Further, a bed in a therapeutic placement will need to be available. Beds are difficult to come by in the current system. What will happen once services are reduced and who will end up providing those services?

- i. In order to be placed in DCF custody you have to meet certain criteria. Without rewriting the CINC code, DCF can only take children. Juveniles in custody that are 16 or 17 years of age must meet one of the requirements:
 - child has no identifiable parental or family resources
 - or shows signs of physical, mental, emotional or sexual abuse.
 - A juvenile that is 16-17 that is not emancipated has no placement options that are less severe than JCF.
- j. With the proposed changes a juvenile who refuses to remain at placement or home, will not be allowed to be detained, even if the juvenile's safety is at risk. This furthers the potential for runaways and juveniles to take control of their own destiny, a consequence no community would like to have.
- k. By removing the current out of home placement option, more juveniles will be sent to the JCF. Which will mean the expenditure of more money on lock down facilities.
- l. Generally, Finney County will not send a juvenile to a JCF unless all options have been exhausted, as stated in the current juvenile justice code. By removing the out of home placement option, the legislature is effectively removing a lesser restrictive option prior to JCF placement, thereby forcing counties to utilize a JCF more quickly in order to provide "teeth" to the process.
- m. This will also remove one of the most successful tools/resources available for rehabilitating juveniles, which helps decrease recidivism. It is anticipated, lack of consequences will increase the juvenile crime rate and those who reoffend.

VII. End result.

- a. The proposed changes do not allow for true follow through. There are no real consequences for the juvenile offender.
- b. The proposed changes only allow a maximum penalty for most crimes to be 30 days cumulative for detention. So, if a juvenile chooses not to comply with the resources offered this will be their consequence. It only changes if a high level felony has been committed.
- c. If this bill passes as is there are no real consequences. The way it is written, there is a maximum time a juvenile can be supervised, regardless of their actions.
- d. The maximum time cannot be extended beyond the case life, unless the juvenile is actually participating in an evidence based program. Once the juveniles figure out it is immaterial whether or not they participate, the juveniles will cease attending their programs and supervision will cease due to the maximum time limitations.

- e. By participating in programming, the juvenile is actually submitting themselves to extension of their supervision. No extension if they don't participate. The opposite result of what we should be aiming for.
- f. Once juveniles realize there are no consequences, the crime rate and seriousness of the crimes committed will increase. All parents are familiar with the term "testing the waters". After passage of the bill, there will be no consequences for the juvenile who does test the water and determines they can get away with murder and only suffer a nominal amount of punishment.
- g. Certain crimes will never be charged no matter how many times a juvenile commits them, as long as the juvenile can complete a four (4) month supervision period. Thus creating a cycle: commit a crime, be supervised, be released, and commit a crime.... An endless cycle of nominal consequences.
- h. The length of time a juvenile may be housed at a JCF is decreased and is not impacted as much by the juvenile's behavior.
- i. A juvenile can kill, rape and will only have a three (3) year consequence (can be argued up to 5). That is right they can rape and kill your 5 year old daughter and only go away for 3-5 years w/ a max of six (6) months aftercare so once released back into society will only have supervision for six (6) months, which with the proposed change will be in their home.
- j. In addition to being revoked, a juvenile must violate probation more than three (3) times in that six (6) month period of time before a court can even look at revoking probation.
- k. A juvenile under the age of fourteen (14), no matter how bad the crime cannot serve time for more than five (5) years. With this bill, a juvenile under the age of fourteen (14) cannot be charged as an adult, regardless of the crime committed.
- l. This bill takes away any presumptions for being charged as an adult. There are still factors to be considered, but no presumptions, as currently enumerated in the juvenile justice code.
- m. The proposed changes eliminate EJJ, which is a tool used instead of placing a juvenile into the adult system.
- n. With the current system, we are able to keep juveniles out of the JCF with group homes, which is an effective rehabilitation tool and is less restrictive on the juvenile's rights. It also requires utilization of the resources available for rehabilitation. With the proposed changes, the only way we can assure juveniles will be provided the necessary tools to try and rehabilitate the juvenile will be at the JCF.
- o. A Juvenile is about \$277 a day at the JCF, adults are only \$69 a day to house in prison. This bill seems more concerned with the juvenile passing time until they are eighteen (18), so it costs less to house them as adults, than actually rehabilitating the juveniles when they are still minors in an attempt to correct a behavior so the juvenile can become a productive adult citizen.

- p. In order to provide consequences, county attorneys will be forced to allow fewer plea deals and seek more convictions for serious crimes in order to obtain better sentencing options for the juvenile. This will result in an increase in criminal history scores for the juveniles. It will also increase the numbers at JCF, which will increase the amount of money spent.
- q. Currently, the Finney County Attorney's office, works with local agencies and the juveniles attorney to find the best alternative for a particular juvenile to succeed. Some cases are plead and juveniles are placed out of home in order for the juvenile to be removes from the bad influences in their life and around more positive influences, along with being given the resources to help them become educated and rehabilitated. This will no longer be an option if this bill passes.
- r. Not holding the juvenile responsible will negatively impact the juvenile and the community at large.
- s. Currently, juvenile sentences must run concurrently. The proposed changes will only allow for consecutive sentences.
- t. The proposed changes to K.S.A. 38-2360(1) state if acute impatient, or drug and alcohol treatment is needed and the juvenile is not in custody then it will be paid the same as non-court involvement youth. Meaning the juveniles and/or their families must pay for it themselves. Most families the court deals with cannot pay and therefore a majority of the juveniles will not receive treatment under the proposed changes.
- u. Later, the proposed changes of K.S.A. 75-7023 (e)(2)(D) removes inpatient treatment altogether as an option.
- v. We have 14-15 years of age children using methamphetamines and some children who are even younger are experimenting with other drugs and alcohol. Services must be provided at the outset and be mandatory in an attempt to stop the problem before it becomes a life-long addiction.
- w. Results are failure to complete a high school education, lack of employment as an adult and increase in the need for social services, food stamps, and housing assistance for those juveniles which are now adults who did not receive adequate services as youth.
- x. An increase in juvenile felony convictions affects more than just reoffending as juveniles and adults. It also means the inability of the juvenile to be accepted into the military, colleges, it reduces the ability to become employed and many other options typically open to our youth as they join the work force. This also affects how these juveniles come of age and contribute to society for life. In effect, the thought process of the juvenile becomes:
 - i. They will have already messed up their chances as a juvenile so why even try
 - ii. More felony convictions = less positive outcomes as an adult

- y. Increase in liability for the state. By ignoring all the safety issues of placing the juvenile back in society or by creating dangerous situations by placing juveniles in DCF custody, the state will increase its liability. Which will also mean more money.

VIII. Reduction in Judicial Efficiency.

- a. The only way to ensure a juvenile is receiving services they need for rehabilitation will be through a felony conviction and placement at JCF. Court have lost their progressive punishment options.
- b. JCF placement will be the only way to enforce completion of classes and/or treatment. This is the best way to achieve positive results for both the juvenile and the community. Forcing the court to spend more time monitoring the juvenile's progress.
- c. With the increased use of felony prosecution to achieve consequences for the juvenile, the court can expect additional bench trials, jury trials and pre-trial hearings to ensure the juveniles' rights are being protected. This will lead to an increase in court time and additional crowding to an already busy docket schedule.
- d. Rather than use of the EJJ process, potentially prosecutors will need to utilize the waiver process and certify juveniles as adults in order to obtain an appropriate punishment for the crime committed. An increase in certification waivers to adult status will increase money spent by the court (minimum two (2) attorneys and a judge), and an increase in the adult prison population which is not in the best interest of the state or the juvenile.
- e. Increased jury trials + increased money (minimum 2 attorney's and a judge) = crowded courtrooms and delay in the judicial process.
- f. The proposed changes focus on the idea of immediate consequences for the juvenile, which studies have shown to have positive results. In reality, the changes provide no immediate consequences for failure to appear or violations of sentencing orders which will delay the same immediate consequences sought with the changes. The notice requirement for due process which further delay immediate consequences. All adding additional steps to the court process, increasing court time.

IX. School Involvement.

- a. One of the few positive changes seen in SB 367 is the inclusion of school districts in the process.
- b. Juvenile offenders need a strong education, proper guidance and training in order to achieve rehabilitation and a change in their behavior. Having all of those things will bolster the outcomes and possibly prevent them from re-offending and creating a positive person who can contribute to their community as adults.

- c. If a juvenile is long term expelled, under most cases the school should be required to provide some form of alternative education during the period of expulsion.

Thank you for the opportunity to offer written opposition to SB 367.

We respectfully request the committee not advance the bill for passage.

I am available for questions at the above number and will volunteer my services and expertise to the committee upon request.

Respectfully submitted,

Susan H. Richmeier
Finney County Attorney

Mandy Johnson
Assistant Finney County Attorney