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To: Hon. Senator Greg Smith, Chair, Senate Committee on Corrections and Juvenile Justice
From: Alice L. Walker, Assistant District Attorney and Charles E. Branson, Douglas County District Attorney
Date: February 2, 2016

Re: Opposition of SB 367

Hon. Chairman Smith and members of the Senate Committee on Corrections and Juvenile Justice:

Thank you for the opportunity to provide written testimony in opposition of SB 367. My name is Alice L. Walker and I am an Assistant District Attorney in Douglas County. I have been a prosecutor for five and a half years, with the majority of that time spent prosecuting juvenile offender cases. In my time as the Juvenile Prosecutor in Douglas County, I had the opportunity to serve on a statewide reform committee that started the process of a creating a statewide Risk Assessment Tool for Juvenile Intake. I also had the opportunity to travel to several Annie E. Casey Foundation conferences. Through those experiences, as well as my experience prosecuting juvenile offender cases, I appreciate the overall concerns regarding the current juvenile justice code and the attempts to resolve those through SB 367. However, I write in opposition of SB 367 as its complete overhaul of the juvenile justice code has severe practical implications that I fear will ultimately result in higher recidivism, less accountability for juveniles, and a higher number of waiver requests by juvenile prosecutors. Based on these concerns, I write in opposition of SB 367 for the following reasons:

Section 1 of the bill only allows for one reason to extend a juvenile's probation. The wording prohibits extension if the juvenile never starts a program, runs away, commits a new crime, does not pay restitution, or any other reason other than not completing an evidence based program the juvenile has already "begun". This strips the discretion of Juvenile Courts and communities to continue supervision of a juvenile they believe needs continued supervision to complete probation requirements, make a victim whole based on the juvenile's actions, or continue to work with the juvenile to maintain community safety. In my experience with juvenile offenders, it is very common for them to run away while under Court supervision, often attempting to do so until they are 18 with the hope that they will not have to comply with conditions of probation. If a juvenile were to run under the proposed changes, probation officers, prosecutors, and Courts would not have the discretion to extend probation, possibly without the juvenile partaking in any rehabilitative services.

Section 1 also limits the amount of time a juvenile can spend in detention to 30 days total following disposition. This will require probation officers, prosecutors and judges to guess or speculate if such sanction would be needed again in the future. I understand the want and need to

limit juvenile's time in detention, and to encourage graduated responses to probation violations; however, there are times where detention is necessary for safety or as a consequence for non-compliance. Limiting the maximum time over a probation period, when there is no underlying sentence, limits the Judges ability to hold juveniles accountable for compliance with probation.

Section 27 removes a prosecutor's ability to designate a case as an Extended Jurisdiction Juvenile Prosecution (EJJP). Removing this option for prosecutors ultimately removes an alternative to prosecuting a juvenile as an adult. As a juvenile prosecutor, I resolved four cases using EJJP and only one case with an adult waiver. Only one of my EJJP cases resulted in the juvenile having to serve the adult sentence. Having EJJP as an option gives juveniles more accountability when they have committed a higher level or more severe crime or have a long history in the juvenile justice system. Rather than waiving a juvenile to adult status, EJJP is often used to encourage the juvenile to strive for rehabilitation and holds them more accountable when they are a higher risk to the community. Without this option, more high risk juveniles will be facing waiver and adult consequences.

Section 27 also removes youth residential centers, or group homes. A full review of SB 367 appears to remove out-of-home placement options for juveniles in the juvenile justice system. Removing group homes and foster homes limits services and reasonable alternatives for juveniles. Without out-of-home placement options through a juvenile offender case, the juvenile is more likely to reoffend. Several of those programs are treatment based or more secure than a home setting, keeping an offender more accountable while helping to rehabilitate them and return them home. Unfortunately, far too often the home environment of a juvenile is the reason they are in the juvenile offender system. Removing the juvenile from the home may be the only way to get them out of a situation where illegal activity is acceptable and encouraged. Furthermore, there are often times that parents are unable to keep a juvenile safe or out of trouble while in the home. Especially in situations where a juvenile constantly runs away from home, placing them in a group home or residential facility that has 24/7 supervision may be the only alternative to detention and way to keep the juvenile safe. Additionally, and an even greater concern, is that often the victim of a juvenile crime may reside in the home. Sometimes this is sex crimes, often it is battery cases, but in either situation it may not be appropriate to have the juvenile in the same house as the victim, and could lead to further victimization. If this is prior to adjudication, and the juvenile cannot be placed in out of home placement, the only option is detention in order to maintain the safety of that victim. I had numerous cases like this where the victim resided in the home, for obvious safety reasons the parents were not willing to have the juvenile return to the home, and community agencies were able to locate an out-of-home placement that would appropriately house the juvenile while a case was pending, or until the juvenile could complete treatment and the safety of the victim could be assured.

Section 32 limits the ability of probation officers and specifically does not allow them to arrest. Although it may be appropriate to limit the number of arrests for technical violations, removing all power from the probation officer hinders their ability to protect the juvenile and the community. One of the reasons to request a warrant is if they pose a "significant risk of physical harm to another". What if this is occurring on a weekend or after hours and a warrant cannot be expedited; removing the ability to arrest would result in an officer not being able to act on that safety concern. In addition, there are unfortunately numerous times where a juvenile shows up to an appointment under the influence of drugs or alcohol, this section limits the probation officers ability to protect that juvenile and would result in them simply having to let the juvenile walk out of the office and potentially continue to use illegal substances.

Another concern regarding section 32 is that it encourages law enforcement to take a juvenile immediately to their parent, unless that is not in the juvenile's best interest. However, altering this section removes officer discretion to protect the community and suggests an officer has the ability to ignore a Court order. Reading the entire section together, the first part talks about when an officer can take a juvenile into "custody", but section (d)(1) states that an officer taking a juvenile into custody shall take them to their parents. The section even specifically talks about section (b) which is discussing taking a juvenile into custody on a warrant. A juvenile taken into custody on a warrant should be delivered to the detention facility as commanded by the Court, not taken to their parents. Additional language stating "*other than as provided in section (a)"*, would not undermine the Court's authority to direct the detention of juveniles or a law enforcement officer's ability to make arrest decisions for the safety of the community.

Section 32(e) gives juvenile intake the ability to release a juvenile prior to a detention hearing. If there is a detention hearing, then a request has been made by the State to extend detention, and a Court has agreed to hear that motion. Juvenile intake should not have the ability to release a juvenile while that is pending. Intake workers may not know the extent of a criminal case or the actions of a juvenile. Typically intake workers are only given a brief synopsis from the arresting officer and the juvenile's version of events regarding an arrest. Without the entire police report, juvenile's history, and other circumstances relevant to detention, an intake worker is not qualified to make the community safety decision regarding the juvenile and should not have the authority to release that juvenile if a detention hearing has been requested by the State.

Section 32(g) gives officers the ability to do a notice to appear rather than taking a juvenile to juvenile intake. This is something Douglas County already does and has worked relatively well in our county. The current process in Douglas County recognizes that low risk juveniles do not need to go to intake immediately, and instead those juveniles can set up an appointment and go through juvenile intake at a later time. Law enforcement, juvenile intake, and the District Attorney's office have worked together to determine what will happen if a juvenile fails to comply with the notice to appear. The proposed addition requires the parent or juvenile to contact juvenile intake and provide a written promise to appear. However, SB 367 does not provide guidance on what happens if the juvenile fails to comply. Without guidance and without a consequence for non compliance, the purpose of the NTA is moot, as it will most likely not be used by officers and if it is used, will likely be disregarded by juveniles and their parents.

Section 35 does not give the Court the authority to issue a warrant if a juvenile is a runaway. Unfortunately, in my experience, that is a major problem in juvenile cases, and is a situation where it is inappropriate to send a summons. If the whereabouts of a juvenile are unknown, the only way to ensure that juvenile's safety and accountability is by issuing a warrant for their arrest.

Section 36 removes temporary State custody as an alternative to detention. As previously discussed, this is often used when a victim resides in the home and it is unsafe for the juvenile to return home. Without other reasonable alternatives, the State and the Court will have no other option but to require a juvenile to remain in detention until the case is resolved and a safe option is available. This will contradict what the new code is trying to do and could result in more juveniles being held in detention.

Section 38 would be a welcomed addition to the juvenile code, and sounds similar to a program in Douglas County called a Pre-Filed Diversion. However, there are several concerns regarding this section. The section requires communities to create policies and guidelines for the program, but does not give a timeframe of when that must be done. In addition, this section gives the authority to intake workers to make a decision to refer the juvenile to that program without a district attorney's office reviewing the case. I recall when I was on the initial committee discussing the risk assessment tool, small counties in western Kansas talked about not having access to certain databases to know if kids had prior law enforcement contact. With concerns about intake workers not have a full history of a juvenile, my suggestion would be that this section be amended to allow intake workers to make a recommendation to the district attorney's office that a juvenile be referred to an immediate intervention program.

Section 39 creates an age limit for prosecution as an adult, and specifically prohibits prosecuting juveniles under age 14 as adults. I understand not wanting to subject such young juveniles to the adult criminal system, but if they are committing adult crimes (i.e. murder, rape), the system must allow counties to protect their citizens and prosecute these juveniles as adults.

Allowing Section 40 (e)(11) to limit conditional release to 6 months for all crimes is not feasible. There are high risk offenders that may need more assistance once being released from the Juvenile Correctional Facility and should have longer periods of post-release supervision. The juvenile code is currently written to allow the Court that works with the juvenile and knows the juvenile to set the conditional release time period based on the nature of the crime and the juvenile's history. This function should be left to the Court so that it may set an appropriate time frame to allow for successful reintegration, rehabilitation and ensure community safety.

Section 44 discusses violation of a court-ordered placement. However, all other sections have removed out-of-home placement options, which under the current juvenile code are considered court-ordered placement. SB 367 does not provide guidance on what a court-order placement under the new code would be. Section 44 also contradicts Section 1 and the ability to extend probation. This section gives the Court more authority to extend a juvenile's probation. The contradictions will result in inconsistent treatment of juveniles across the State.

Section 45 severely limits what juveniles can be placed at a Correctional Facility, the amount of time juveniles can be placed there and removes conditional release violators from being eligible for the Juvenile Correctional Facility. I understand and appreciate the desire to remove the ability to place low risk offenders in the correctional facility, but with the removal of all other alternatives from SB 367, this poses a significant safety risk for the community. Unfortunately, many juveniles continue to commit crimes even after being in the juvenile justice system. In my time as a juvenile prosecutor, I saw a lot of repeat juveniles continuing to commit violent crimes against others, but maybe not necessarily to the felony level. Removing the ability to send misdemeanor offenders to the correctional facility, and limiting the total length of detention to 30 days post-sentencing, will only give prosecutors the option to waive juveniles to adult status. This would be the only option to protect the community from continued violent offenders. Furthermore, removing the conditional release violator gives no incentive for a juvenile to get out of a correctional facility and comply with conditional release. If the juvenile does not comply with reintegration efforts or other conditions of conditional release, there is really no recourse for the Court or the community. Although the underlying idea of this section

is commendable, the practical implication of this section will be increased safety risk to communities and likely increased requests for prosecution of juveniles as adults.

Section 45 hits at the core of the desire for juvenile reform. I agree that there needs to be more evidence based community programs available for juveniles. However, this should be done first before all alternatives are stripped from the juvenile code. Without those programs already in place, we are setting our juveniles up to fail. They will be placed into a system that has no options and no services for them, no means to hold them accountable for their behaviors, and no ability to assist them in rehabilitation. Until adequate programs are available, current programs like out-of-home placement need to remain so that service providers have options and access to sufficient services to aid juveniles. I fear without that, juveniles will continue to remain in the criminal justice system and the safety of our communities will be at stake.

Section 56 appears to remove school resource officers (local law enforcement) from public schools. I do not think it is safe or appropriate for a school district to give their own security guards the powers of law enforcement officers. There are current security guards in Lawrence schools, but their abilities do not reach the level of trained law enforcement officers. The separation needs to remain for the safety and security of our schools. Unfortunately, with today's world, it is reckless to remove armed law enforcement officers from public school buildings.

The other major practical concern deals with the numerous committees that must be created and used throughout communities. SB 367 gives very little guidance on when the committees must be established, how long individuals must serve on these committees, when these committees must complete their respective tasks, etc. We have a duty to our juveniles to first encourage counties to set up these committees to look for and create new evidence based programs and alternatives for juveniles. SB 367 is putting the cart before the horse. There is the immediate desire to remove all potential detention of juveniles and place them in rehabilitative services; however, there are not sufficient rehabilitative services currently available, and no funding to create them at this time. Without more community programs available we are doing our juveniles a disservice by severely limiting options in juvenile cases, and possibly subjecting them to the adult criminal system in more cases than under the current juvenile code.

Thank you for the opportunity to provide written testimony in opposition of SB 367.

Respectfully submitted,

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