



KANSAS APPLESEED
Justice for all.

TESTIMONY OF BENET MAGNUSON
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BEFORE THE KANSAS HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

REGARDING POTENTIAL REVISIONS TO 2016 SENATE BILL 367

FEBRUARY 8, 2017

My name is Benet Magnuson; I am the Executive Director of the Kansas Appleseed Center for Law and Justice, a nonprofit, nonpartisan organization that advocates for systemic solutions for the problems facing vulnerable or disadvantaged Kansans. Because few Kansans are as potentially vulnerable as kids in the custody of the state, our advocacy focuses especially on youth in the foster care and juvenile justice systems. Our goal is for every kid in Kansas to have a safe and secure childhood and a hopeful future.

Kansas Appleseed is a member of Kansans United for Youth Justice, a statewide coalition of nonprofit organizations and concerned members of the public who supported 2016 Senate Bill 367. A list of Kansans United for Youth Justice members is included at the end of this testimony.

Kansas Appleseed recommends against any revisions to 2016 Senate Bill 367 that would undo the progress our state is making in building a more effective, more consistent, and more sustainable juvenile justice system.

2016 Senate Bill 367 was exhaustively researched and debated, received nearly unanimous legislative approval, and is supported by the vast majority of Kansans.¹ These reforms were necessary because the juvenile justice system in Kansas had become badly broken:

Ineffective: 54 percent of Kansas youth sent to out-of-home, non-secure juvenile justice facilities were not successfully discharged,² and 42 percent of Kansas youth sent to a secure juvenile prison were incarcerated again within three years of release.³

Inconsistent: Youth supervision officers in Kansas reported a lack of uniformity in the factors guiding responses to technical violations of probation, a third of youth on case management were sent to seven or more out-of-home placements, 25 percent of Kansas youth released from prison in the previous year had been convicted of misdemeanors only, and more than one in

¹ See Kansans United State Poll: February 2016 (<http://www.kansansunitedforyouthjustice.org/resources/>) and Kansans for Smart Justice Poll: September 2016 (<https://www.aclukansas.org/en/publications/criminal-justice-reform-poll>)

² Kansas Department of Corrections “Cost Study of Youth Residential Centers for Juvenile Offenders – Pursuant to Senate Substitute for House Bill 2588” January 2015.

³ Council of State Governments “Reducing Recidivism for Youth in the Juvenile Services Division of the Kansas Department of Corrections: Analyses and Recommendations” March 2015.

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five entries into juvenile prisons in Kansas was a return admission due to a technical violation of conditional release.⁴

Unsustainable: Prisons and out-of-home placements are the most expensive and least effective ways to respond to offenses committed by children. It costs more than \$240 per day to place a youth in one of Kansas's juvenile prisons; it costs more than \$130 per day to place a youth in other out-of-home facilities; but it costs only \$16 per day to place a youth under intensive supervision probation in the community.⁵ Intensive community interventions for juvenile offenders provide a more cost effective response to offenses committed by children: Functional Family Therapy saves states over \$13 dollars for every dollar invested, and Life Skills Training saves states more than \$25 dollars for every dollar invested.⁶ Proven prevention programs reduce youth recidivism by 20 percent on average and save \$2 to \$10 for every \$1 invested.⁷

Prior to 2016 Senate Bill 367, more than two thirds of the state's juvenile justice budget was spent on juvenile prisons or out-of-home placements, while less than one percent was dedicated specifically to evidence-based community rehabilitation programs.⁸

2016 Senate Bill 367 provides realistic, workable solutions to these problems, including a sustainable re-investment funding mechanism. Implementation progress since the bill passed in 2016 shows the legislation works in practice, not just theory: With the thorough research that went into the policy framework of 2016 Senate Bill 367, and with the \$2 million investment from last year, Kansas has already seen significant benefits from the juvenile justice reforms, including more effective responses for youth with high needs. The state has built an additional 295-youth capacity through new statewide Functional Family Therapy, Youth Advocate Program, and sex offender treatment programs funded by re-investment dollars that otherwise would have gone to incarceration.

Together with increased training for probation officers and other stakeholders, Kansas saw a 42% reduction in the state's juvenile offender custody population from November 2015 to November 2016.⁹ This rapid decrease in custodial placements - even before the majority of the policy provisions in 2016 Senate Bill 367 have gone into effect - is consistent with the experiences of other states that have passed similar reform legislation: As systems and practitioners receive more training and revise policies and procedures in preparation for the statewide policy changes, they reduce reliance on incarceration.¹⁰

⁴ Pew Charitable Trusts, Presentations to Kansas inter-branch Juvenile Justice Workgroup, 2015.

⁵ Kansas Department of Corrections "Annual Report" 2013.

⁶ Washington State Institute for Public Policy "Benefits and Costs of Prevention and Early Intervention Programs for Youth" 2004.

⁷ Colorado Department of Public Safety "What Works: Effective Recidivism Reduction and Risk-Focused Prevention Programs: A Compendium of Evidence-Based Options for Preventing New and Persistent Criminal Behavior" 2008; Washington State Institute for Public Policy "Benefits and Costs of Prevention and Early Intervention Programs for Youth" 2004.

⁸ Kansas Division of the Budget "FY 2016 Comparison Report" Updated September 2015.

⁹ Kansas Department of Corrections Juvenile Services (<https://www.doc.ks.gov/juvenile-services>)

¹⁰ See, e.g., Office of Juvenile Justice and Delinquency Prevention "Smart on Juvenile Justice Initiative: Implementation Update" (<https://www.ojjdp.gov/newsletter/248712/topstory.html>)

Rolling back provisions in 2016 Senate Bill 367 would threaten to undo this progress and to create problematic uncertainty and confusion among practitioners and families. Because methodical implementation necessarily requires time and consistency, Kansas Applesseed recommends tasking the new Kansas Juvenile Justice Oversight Committee with studying any implementation problems that may arise and developing solutions.

Kansas Applesseed recommends additions to 2016 Senate Bill 367 regarding concerns that were not fully addressed in those reforms:

1. 2016 Senate Bill 367 requires the new Kansas Juvenile Justice Oversight Committee to make "recommendations for continued improvements to the juvenile justice system." Kansas Applesseed recommends the legislature add a specific requirement that the Oversight Committee study and make recommendations by January 1, 2019, to address the disparate treatment of, and inadequate resources for, youth with mental health needs and youth with disabilities, as well as the disproportionate punishment of youth of color.

The federal Substance Abuse and Mental Health Services Administration reports that approximately 50 percent to 70 percent of youth in the juvenile justice system nationally have a mental illness, approximately 60 percent have a substance use disorder, and approximately 30 percent of youth who have both mental illness and substance use disorders experience severe disorders that impair their ability to function.¹¹

As in other states, research in Kansas has shown youth of color are punished more frequently and more harshly than white youth at each step of the state's juvenile justice system. A 2016 study in Johnson County, for example, showed African American youth are seven times more likely than white youth to be detained and Latino youth are three times more likely than white youth to be detained in that county.¹²

2. A national study of 328 exoneration cases found 44 percent of exonerated juveniles had falsely confessed, including 75 percent of exonerated youth aged 12 to 15.¹³ Current law only requires parental representation during interrogation for youth younger than 14.¹⁴ Kansas Applesseed recommends amending K.S.A. 38-2333 to require parental representation during interrogation of all youth.

Extensive national research suggests ineffective responses to student misbehavior at school is a major force that pushes many students out of school and onto the street, often to later criminal involvement – a chain reaction of bad student outcomes often referred to as the “school to prison pipeline.” An in-depth longitudinal study of a million public school students by the Council of State Governments found that suspension or expulsion significantly increases the likelihood that a student will fail to graduate and will instead become involved in the justice

¹¹ See Underwood and Washington “Mental Illness and Juvenile Offenders” 2016. (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772248/>)

¹² See Kansas City Star “County studying racial disparity in juvenile justice system” January 18, 2017. (<http://www.kansascity.com/news/local/community/joco-913/article127204054.html>)

¹³ Gross, Matheson, et al “Exonerations in the United States, 1989 through 2003” 2005.

¹⁴ K.S.A. 38-2333

system.¹⁵ Current law only requires a formal hearing before suspensions longer than 10 days,¹⁶ and requires campus police officers to enforce school rules, in effect criminalizing school discipline and classroom management.¹⁷ Kansas Appleseed recommends amending K.S.A. 72-8902 to require a formal hearing before all suspension decisions and amending K.S.A. 72-8222 to require campus police officers to enforce criminal laws, not school rules.

3. Several district courts in Kansas regularly restrain every youth brought to the court from local juvenile detention facilities. This practice of indiscriminate shackling of youth during court proceedings – which usually involves use of leg irons, belly chains, and handcuffs – raises serious concerns related to the youths’ due process rights and psychological health and offers only de minimis security benefits. In the past few years, at least 16 states have banned the indiscriminate shackling of juvenile defendants in the courtroom, and the American Bar Association, the National Council of Juvenile and Family Court Judges, the American Academy of Child and Adolescent Psychiatry, and other child-focused organizations have urged all states to create a presumption against the use of restraints on juveniles in court.¹⁸ Kansas Appleseed recommends the legislature create a presumption against the use of restraints on juveniles in court, permitting the use of restraints on a juvenile in court only after providing the juvenile’s attorney with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.

Thank you for your leadership on this important issue. The progress our state is making to improve its juvenile justice system will give Kansas kids a better path to a brighter future.

Respectfully submitted,

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¹⁵ Council of State Governments Justice Center “Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement” 2011.

¹⁶ K.S.A. 72-8902

¹⁷ K.S.A. 72-8222

¹⁸ Kansas Appleseed “Report and Recommendation to the Kansas Supreme Court Regarding the Indiscriminate Shackling of Youth in Kansas Courts” 2015. (<http://www.kansasappleseed.org/juvenileshackling.html>)

Organizational Members of Kansans United for Youth Justice:

- Kansas Children's Service League
- Keys for Networking
- IBSA, Inc.
- Down Syndrome Guild of Greater Kansas City
- Susan J. Whitfield Harding, PA
- Kansas Association of Community Action Programs
- Kansas Action for Children
- Kansas Appleseed Center for Law and Justice
- Mid-Kansas Community Action Program
- HandsOn Kansas State
- Community Action, Inc.
- RESULTS K-State
- Kansas Action for Children
- Thrive Allen County
- National Alliance on Mental Illness – NAMI Kansas
- Disability Rights Center of Kansas
- ACLU of Kansas
- Kansas/Missouri Dream Alliance
- NAACP - Kansas
- RESULTS KC
- Equality Kansas
- Urban League of Kansas
- Stop Gap, Inc.
- Equality Kansas
- Economic Opportunity Foundation
- Southeast Kansas Community Action
- Big Brothers Big Sisters of Finney & Kearny Counties
- Kansas Center for Economic Growth
- Sunflower Community Action
- Oread Friends Meeting
- Communities Creating Opportunity
- Kansas Association of Criminal Defense Lawyers
- American Civil Liberties Union Kansas
- East Central Community Action Program
- Southeast Kansas Independent Living Resource Center
- Kansas Enrichment Network

In addition to these organizational members, hundreds of Kansans from across the state are grassroots members of Kansans United for Youth Justice

