

Douglas County Legal Aid Society, Inc.

Legal Aid Clinic ♦ University of Kansas School of Law ♦ Green Hall, Room 105
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Professor Melanie DeRousse, Director ♦ Professor Meredith Schnug, Associate Director

February 7, 2017

Chairman Russell Jennings
House Corrections and Juvenile Justice Committee
State of Kansas
300 SW 10th Ave Ste B
Topeka, KS 66612

Re: H.B. 2264; Three technical violations for probation revocation

Chairman Jennings,

As a professor at the University of Kansas School of Law, I direct the Legal Aid Clinic, also known as the Douglas County Legal Aid Society. We engage advanced law students, operating with a student practice license from the Kansas Supreme Court, in the challenging work of representing clients who cannot otherwise afford attorneys. A large part of our work – at least 60% - involves representing children charged with misdemeanors in Douglas County, Kansas. We employ and teach best practices in juvenile representation, taking time to consider the unique backgrounds and experiences of the children we serve. Because we have the dual luxuries of an eager, disciplined student-attorney workforce and lower case volume, we are able to teach and practice client-centered, trauma-informed representation, and we often find ourselves painstakingly advocating for the children we represent: looking into school records, understanding learning disabilities, listening to histories of abuse and neglect, and trying to find supportive adults to help our clients succeed.

Because of my work representing children charged with crimes – and teaching law students to do so, as well – I would like to comment on a possible amendment to S.B. 367, so that the members of the Committee may, through my testimony, gain a closer understanding of how proposed amendments may affect the children involved.

Specifically, I am submitting testimony opposing any changes to the current protections for children on probation. S.B. 367 appropriately protects children from unnecessary (and sometimes arbitrary) court, law enforcement, and detention center contact by creating a threshold of three technical violations that must be met before an officer may request a warrant or a probation violation hearing.

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As you are all aware, through the excellent work that you have done, S.B. 367 allows Kansas to build stronger support networks and services for children in the juvenile justice system, to reduce the time they spend in institutional settings, and to allow children, families, and communities to experience the rehabilitative aspects of community placement. The provisions of S.B. 367 that protect children from immediate probation revocation for technical violations – things such as failing to show up for an appointment, failing to turn in a work schedule, missing a court date – are in keeping with the spirit of the law, which is to reduce unnecessary and harmful juvenile justice system contact.

I understand that H.B. 2264 may seek to amend S.B. 367 by adjusting these protective provisions to allow for immediate warrant or probation revocation in the event a child fails to appear. To the extent the Committee seeks to amend these provisions, I would respectfully suggest that such amendments be narrowly sculpted so that the spirit of these protections may remain. I voice my support of this protective measure – and my concern about any attempt to amend it – because children are often not in control of the forces in their lives that can lead to “technical” probation violations, and they should not be unduly subjected to the well-documented risks of negative contact with the juvenile justice system for mere technical violations.

In considering the impact of a change to allow for immediate consequences through warrant issuance or probation revocation for a failure to appear, I urge you to keep the following children’s stories in mind (identifying details, of course, changed to protect child-clients):

Charlie, age 10, was charged with disorderly conduct for an incident that arose at his elementary school when he became upset with a teacher for correcting his pronunciation of a word. Charlie suffered from extreme learning disabilities, including reading at a first grade level and having other behavioral disabilities. He had an Individualized Education Plan in place, and it is unclear whether school staff followed the steps in his plan on the date in question. He had a temper tantrum and tried to leave the classroom and grabbed at a teacher’s arm while doing so. The school could not reach his mother because her phone was disconnected for inability to pay. When the school eventually made contact with her, she could not make it there to pick Charlie up, so he was taken in a police car to the detention center for booking. Throughout our representation of Charlie, communication was difficult due to mom’s poverty and Charlie’s immature age. Mom struggled and brought Charlie to our office for meetings when she could. Sometimes she arrived at court with Charlie quite late – or not at all - because it took some time to secure a ride. We managed, in this case, to obtain continuances where necessary, so that Charlie was buffered against possible court action for his failures to appear while the

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case was pending. Charlie's case was eventually dismissed by the prosecutor through negotiation – but if Charlie's case had gone forward, and he ended up on probation, how would he, a ten year old, have been punished for his absences due to his mother's poverty?

Consider another child – Janice. She came to us when she was fifteen for a case involving marijuana found during a traffic stop while she was a passenger in her older brother's car. Interestingly, Janice did not ever smoke marijuana and throughout all court involvement, she never once tested positive for marijuana. Nonetheless, she pleaded guilty to the possession charge and was placed on six months' probation, among other things. Her probation officer was very involved, cared deeply about her work, and believed Janice could make big improvements while working with her. The probation officer set up an intensive schedule of meetings because she thought the more she met with her, the better Janice could do. Janice had always struggled at school and had been diagnosed with ADHD, for which she was medicated. Her parents were off to work before she left for school, so she often forgot to take her medication in the morning. At school, Janice had a number of plans, reminders, and other supports from teachers to help her get through her day and turn in assignments on time. She attended a portion of the school day in a special classroom where she would have additional help.

As part of Janice's probation, she needed to meet with her probation officer weekly – but there was no set scheduled time. Instead, each appointment was scheduled at the conclusion of the prior appointment. Janice worked two jobs – so she also needed to submit work schedules so the probation officer would know when Janice might be home for drop-in visits. Janice's mother and father both worked and had used up most of their paid time off to attend court dates with Janice earlier in the year. So, when Janice needed to meet her probation officer, she needed to take a series of buses from her home to the detention center on the other side of town. Due to her disability, Janice had trouble remembering dates and times. Much to the probation officer's frustration, she frequently appeared at the probation office a day early, a few hours early, a few hours late, or even a day late. She struggled to turn in her work schedule as required. While she made valiant efforts to comply with the terms of her probation, the combination of oddly-scheduled appointments, lengthy travel on public transportation, and lack of parental involvement resulted in many "technical" probation violations for Janice. Janice's probation was eventually revoked and she was sent to the juvenile detention center, where she served a "sanction" sentence of ten days.

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These are extremely common stories within our client population. They highlight the vast differences between the world we live in and the world these children experience. We live in a world where we are able to call if we are running late, and where we consider even ten minutes late worthy of calling about. We are attached to our phones, and they usually work and we can also email, text, or write a letter if necessary. We write down appointments, get appointment calls, maintain paper or electronic calendars – or both. We don't have to borrow a phone, hitch a ride, borrow a car, catch a bus or three, or depend on an unreliable parent to get us where we need to be. In our world, it is relatively easy to prioritize commitments such as court or probation officer meetings when making our plans, and so we tend to see these children's inability to make it to court as something worthy of punishment. But that is not how it works in their worlds. They do not have control of the communication or transportation necessary to be successful every time they are summoned to a meeting or appearance. It is simply unfair to hold children in these circumstances strictly accountable for the occasional failures of the adults in their lives to help them show up.

Allowing three technical violations before a probation revocation proceeding may commence provides an important safeguard for children who do not have control of the behavior or resources of the adults in their lives as well as for children who, by virtue of immaturity, disability, or other aspects of development, less equipped to follow through on commitments and appointments.

For these reasons, if this Committee considers amending or creating an exception to the three-technical-violations threshold, I would encourage the Committee to draft the exception or amendment as narrowly as possible to avoid triggering probation revocation proceedings for children who simply fail to appear in court or at appointments. If the Committee's concern is with the possibility of a child absconding, my suggestion would be to consider what evidence a judge would need to hear, and what burden of proof would need to be met, before a child is considered an absconder from probation such that the three technical violation threshold could be waived.

Respectfully,

/s/ Melanie DeRousse