



January 26, 2023

House Committee on Corrections & Juvenile Justice
Kansas State Capitol
300 SW 10th St
Topeka, KS 66612

Submitted via email: colette.niehues@house.ks.gov

Re: HB 2021

Chair Owens and Members of the Committee:

The Gault Center (formerly the National Juvenile Defender Center), a nonprofit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in youth defense, urges Kansas to uphold its commitment to Kansas youth made in SB 367 and oppose the efforts in HB 2021 to weaken those protections.

In December 2020, we released “Limited Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Kansas,” an in-depth assessment of the state of youth defense that was funded by the Kansas Department of Corrections.¹ In developing detailed findings and recommendations, the Assessment included data, court observations, and interviews with judges, youth defense attorneys, district and county attorneys, juvenile probation staff, court administrators, facility directors, policymakers, and other juvenile legal system experts.

In 2020, at the time of our Assessment and four years after the passage of SB 367, counties reported that the community-based programs and services promised by the reform had yet to be implemented, leaving the juvenile court system in many jurisdictions without the promised continuum of services. Several prosecutors reported that they had “expected services would be in place when the law was implemented, but they were not,” and that “the law has been in place long enough that the programs should be in place.”²

A discussion about the success or failure of the reforms in SB 367 is meaningless if it is not rooted in empirical data and research. The use of detention should not be the answer for a jurisdiction with an under-resourced or a still-developing continuum of care. In Kansas, the core focus of the juvenile court is to improve a youth’s ability to live more productively and responsibly in the community.³ Kansas should focus on best practices of ensuring that each county develops a continuum of care to meet the needs of its youth as opposed to expanding the draconian, ineffective, and harmful use of detention and confinement.

The National Council of Family and Juvenile Court Judges urges investment in graduated responses and sanctions and a reduced reliance on detention, citing “overwhelming evidence that even short periods of confinement can and do cause serious lasting harm to young people, and that confinement does nothing to reduce future arrests or protect public safety.”⁴ In addition to being disruptive to mental health, education and employment, it negatively impacts rates of recidivism: “In 2019, a study in Washington found that every day a young person spends in detention is associated with an increase in the likelihood of a new delinquency referral.”⁵

The Gault Center supports Kansas Debt Free Justice for Youth⁶ in its effort to eliminate fines and fees levied upon youth with juvenile court involvement. The innumerable fines, fees, and costs levied on young people and families by the juvenile court system interfere with children’s right to counsel and access to diversion, and burden youth and families with insurmountable debt that follows them long after the young person’s involvement in the juvenile legal system has ended. Earlier this week, we provided written testimony in support of HB 2073, which would eliminate fines and fees imposed on youth in Kansas.⁷ HB 2021, however, would permit youth to be placed in a detention center for failure to pay fines, fees, and other financial obligations not eliminated by HB 2073. While we are heartened by the Committee’s consideration of fines and fees reform in HB 2073, we urge you to not to take steps back in other areas of the juvenile legal system.

We strongly urge this Committee to:

- Strike the provisions of HB 2021 that expand the use of detention, which would double the cumulative detention duration limit for youth.
- Strike the provision of HB 2021 that allows extension of overall case length limits for the completion of a program when failure to complete the program is *due to delay by the juvenile*. This language is nebulous and could be relied upon in situations where the youth is not at fault, like lack of transportation or unwillingness or inability of a parent to participate. Additionally, it will lead to inconsistent and inequitable application, as evidenced by pre-SB 367 data.⁸
- Strike the provision of HB 2021 that allows detention for a violation of probation, including technical violations.

SB 367 embodies Kansas’ commitment to juvenile legal reform. It provides for a continuum of care to ensure youth receive the services they need to be successful. It also provides protections to end overreliance on detention and begin to curb the disturbing racial and ethnic disparities that exist in the Kansas juvenile legal system.

The proponents of HB 2021 cite individual stories to support the bill, but anecdotal examples are not a sufficient reason to return to overreliance on costly, harmful detention for youth. The cost to the lives of young people is too great. Before the legislature considers any amendments

to SB 367, there must be an analysis of how SB 367 has been funded, implemented, and supported. HB 2021 seeks to erode progress in Kansas, before SB 367 has been allowed to reach its full potential.

Sincerely,

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¹ NAT'L JUV. DEF. CTR., LIMITED JUSTICE: AS ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN KANSAS (2020), <http://defendyouthrights.org/wp-content/uploads/Kansas-Assessment-Web.pdf>.

² Id. at 75.

³ KAN. STAT. ANN. §38-2301.

⁴ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, THE ROLE OF THE JUDGE IN TRANSFORMING JUVENILE PROBATION: A TOOLKIT FOR LEADERSHIP (2021), https://www.ncjfcj.org/wp-content/uploads/2022/04/NCJFCJ_AECF_Juvenile_Probation_0422_Final.pdf.

⁵ Id. at 53.

⁶ Kansas Debt Free Justice Coalition, <https://www.debtfreejusticeks.org/>.

⁷ HB 2073, http://www.kslegislature.org/li/b2023_24/measures/hb2073/.

⁸ Prior to the reforms of SB 367, the Kansas juvenile legal system contained disturbing racial and ethnic disparities: Between 2006 and 2013, the disparity rate for Black youth arrests dropped 21 percent nationally but increased 51 percent in Kansas. Indigenous youth were 98 percent more likely to be referred to court than white youth. Black and Latina/o Kansas youth were about 75 percent more likely to be detained than white youth, compared to a national disparity rate of approximately 30 percent. NAT'L JUV. DEF. CTR., LIMITED JUSTICE: AS ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL IN KANSAS (2020) at 70.