



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

MARC BENNETT
District Attorney

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March 10, 2014

**Senate Judiciary Committee
Attention: Jeff King, Chair
State Capitol, Rm. 346-S
Topeka, KS 66612**

Dear Chairman King:

Thank you for the opportunity to submit written testimony in *opposition* to House Bill 2633 as it relates to changes in the juvenile placement matrix and as it seeks to limit the age of juveniles who may be prosecuted as an adult pursuant to a Motion for Adult Prosecution. For the reasons set forth below, the Sedgwick County District Attorney concurs with the position taken by the Johnson County District Attorney, the Wyandotte County District Attorney and the Kansas County and District Attorneys Association on these matters.

In short, the proposed amendments appear to be solutions to problems that do not exist. Our office agrees that the commitment of a juvenile to a correctional facility should be a tool of last resort. We make every effort to recommend dispositions on juvenile offender cases that utilize community based supervision programs. History has demonstrated that community based interventions are often more successful and typically less costly. To that end, our jurisdiction, like many others, has developed a continuum of community based programs including, but not limited to; diversion, probation and intensive supervision probation. Rarely is a juvenile offender directly committed to a juvenile correctional facility following adjudication. Typically a direct commitment occurs only after several failed attempts at community based supervision.

On occasion, there are offenders adjudicated of lower level crimes who do not take the opportunity provided to them on community based supervision. When this occurs, we see individuals who ignore the rules of probation and of society, often culminating in escalating negative behaviors. It is important that prosecutors and the courts have at their disposal a mechanism to ensure the safety of the community and safety of the child. Moreover, in order to be effective, the system of juvenile justice must have in place a process of accountability for a juvenile who will not conform his

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behaviors to the laws of the state and to the norms of society.

If the amendment is motivated out of concern for the high cost associated with juvenile offender commitments, it is a concern that data does not support as an issue in this state. Trends in available data indicate that juvenile offender arrests here in Sedgwick County are at a ten year low. In 2003, 3,480 juveniles were arrested here in Sedgwick County. In 2013, 1,877 juveniles were arrested in Sedgwick County. *See Attachment A.* Moreover, the number of juveniles going into state custody from this jurisdiction is at a ten year low. In calendar year 2000, 336 juveniles were admitted into state custody. In 2013 the number of juveniles entering state custody from Sedgwick County declined to 146. The trend in Sedgwick County is consistent with the downward trend throughout the state.

In 2007 there were 1,414 juveniles in custody statewide compared to 1,092 juveniles in custody statewide in 2013. From Sedgwick County there were 562 juveniles in state custody in 2007 compared to 262 juveniles in custody from our jurisdiction in 2013. *See Attachment B.* Prosecutors and judges must have the flexibility and discretion to recommend and impose dispositions that are in the best interests of the child and society. This proposed change in the law eliminates the flexibility required. The data set forth above clearly indicates that prosecutors, the courts and caseworkers are making prudent decisions in placement of juvenile offenders.

The bill also seeks to prohibit any juvenile under the age of 14 from being prosecuted as an adult. This proposed amendment is unnecessary. Currently, any juvenile is presumed to be a juvenile if under the age of 14, *unless* the state files a motion and puts on sufficient evidence the juvenile should be prosecuted as an adult. The state bears the burden of proof on this type of motion. In certain circumstances, a juvenile who is charged with certain offenses identified by statute and who is 14 years of age or older is presumed to be an adult and may be prosecuted as an adult upon the court granting a motion filed by the state. *Please note, many juvenile offenders who fall within the category of adult prosecution are never prosecuted as an adult because the prosecutor elects not to pursue adult prosecution.* The law currently in effect serves the interests of society while protecting the juvenile. In my 14 years as chief of the juvenile division, I recall two cases in which our office filed homicide charges against 12 year old juvenile offenders. In neither case did this office pursue or threaten adult prosecution as it was not appropriate *under the facts* of either case. There could however be circumstances which warrant the adult prosecution of a youthful offender to protect the public. Juveniles subject to direct commitments to juvenile correctional facilities are eligible to receive 30% good time credit. Sadly, there have been incidents of crime in this country perpetrated by youthful offenders wherein the safety of society can only be ensured by lengthy incapacitation not available in the juvenile justice system.

The current statute regarding Motions for Adult Prosecution already has numerous safeguards in place. It would not be prudent to limit the discretion of the prosecutor in the manner proposed by this change in the law. My colleagues from the Johnson County District Attorney and Wyandotte County District Attorney have both set forth illustrations in their testimony regarding how this could be detrimental to public safety and could leave victims of violent crime without redress.

Changing the law in the manner proposed could result in public outcry if a horrible set of facts

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presents itself. This would no doubt result in a review by the legislature to re-examine the law. Unfortunately it would leave the victims of the instant crime without redress. There is no indication the current law is being abused by prosecutors.

Sincerely,

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