

March 6, 2023

Thomas E. Foster
retired Kansas District Court Judge
Written Testimony Opposed to HB 2021 Sect. (5) h & Sect. 6 (b) 4

Senate Judiciary Committee:

To The Honorable Chair Sen. Kellie Warren
Honorable Vice Chair Sen. Rick Wilborn
Honorable Minority Member Sen. Ethan Corson
and Members of the Committee

Attention: barbara.moore@senate.ks.gov

May it Please Madam Chair and Members of the Committee,

I am retired District Court Judge Thomas E. Foster. I was honored to have been on the Kansas Juvenile Justice Review Committee that recommended the passage of SB 367, chaired by then Sen. Greg Smith and Rep. Ruben. Since my retirement I have remained involved in juvenile justice issues. I continue to be a member of the National Council of Juvenile and Family Court Judges and serve on its International Law Committee and its Legislative Committee. I am also a member of the Youth Advocate Programs board of directors.

The stated goal of the Juvenile Justice code goal is to promote public safety, hold juveniles accountable, and improve their ability to live more productively and responsibly in the community. KSA 38-2301. I am concerned that HB 2021 Sect. 5(h) and Sect. 6(b) may conflict with the stated goals of the juvenile justice code.

Sec. 5 (h) would raise the maximum detention time for lower-level offenses from 45 to 90 days. 90 days is a significant amount of time for a child to be separated from their families and communities. This length of separation will result in the child establishing a new network of friends, those they meet while in detention. Stays of this length also desensitize a child to this type of experience. This length of time will also disrupt family, school, and any positive programs they might be involved in. **An offender's peer group is a leading factor as to whether or not a juvenile will reoffend. Establishing a detention centered peer group is likely to lead to a higher recidivism rate.** You want to use the right bed, for the right reason, for the right amount of time.

ACCOUNTABILITY IN A FAIR PROCESS

- Being held accountable for wrongdoing and accepting responsibility in a fair process (perceived and real) promotes healthy moral development and legal socialization.
- Being held accountable and punished in an unfair process (perceived or real) reinforces social disaffection and antisocial behavior.
- Predominantly punitive policies and programs do not foster prosocial development or reduce recidivism.
- **No convincing evidence that confinement of juvenile offenders** beyond a minimum amount required to provide intense services **reduces likelihood of subsequent offending.**
- Pattern of **racial disparities** impede efforts to provide equitable services and **contribute to perceptions of unfairness.**

unities.

There are few non-corrections eligible cases for which 45 days in detention is not an appropriate and adequate sanction.

Detention costs are significant, with daily costs estimated to be more than \$500.00 per day, or \$45,000.00 for a 90-day detention. This additional cost will be borne by county governments.

Detention centers are not qualified to serve as 'detox' centers or 'mental health' centers. Some probation officers, prosecuting attorneys, and judges use detention as a bridge or temporary placement while waiting for an alcohol and drug treatment center bed or a mental health center bed to become available. A bed for which there are often long waiting lists.

HB 2021 Sec 6 (b) 4 should also be reconsidered. Adding and increasing jail sanctions for technical violations, particularly for the first, second, and third violations are not consistent with the Kansa Juvenile Code and are not consistent with best practices. Currently, juvenile probation officers and juvenile community corrections officers use a graduated sanction tool to hold juvenile probationers accountable for bad behavior. This tool has been developed over a long period of time.

Assessing a 24-hour, 48-hour, or up to a 15-day sanction for first, second, and third technical violation such as being late for school or missing school or missing an appointment with a probation officer seems to be a disproportionate and draconian sanction for minor technical violations. I also find this section to be confusing, and in contradiction with other language in the code. Does this section unintentionally limit the sanction time now available to judges when violations are based upon new law violations. What happens if the first violation is very serious. Is the sanction limited to 24 hours?

Sect. 6 (b) would turn common child and adult mistakes, such as missing an appointment or being late for an appointment, into a jailable offense. This provision would also turn the 'graduated sanction grid' used by supervising officers upside down and add detention as the first sanction used instead using detention as a

sanction for escalating behavior. Generally, sanctions start low and are increased with increasing bad behavior and repetitive problems.

Jail sanctions for Contempt of Court would be a significant change, is seldom necessary, and will lead to a wide variety of practices across the state, and within judicial districts.

If these changes are enacted counties may need to increase their budgets for juvenile detention facilities. Not many children can make it through a six- or nine-month probation without making a few mistakes.

Placing a child into detention even for 24 hours is a significant event and would be considered an adverse childhood experience that are considered life altering are in the ace evaluation. They are subjected to bodily searches. Going through the incarceration process is traumatic. Many detention centers place a child in isolation for the first 24 hours so you would be subjecting a child to a 24-hour isolation for missing school or being late for school. Detention is an environment where a child is more likely to learn more bad behavior and make friends with the wrong people. When we sanction a child to detention we should have a reason related to public safety to justify the sanction.

I generally believe that if a child does not commit any new crime while on probation that is success. To start putting them in detention for one or two technical violations could lead to unintended results. I have not seen the data upon which the recommended amendments are based. I am also very concerned that the increase in detention sanctions for juveniles will result in disparate treatment of minorities and those with fewer economic resources. All amendments to the juvenile code should be data driven.

Thank you for your consideration.

Thomas E Foster