



March 6, 2023

Senate Judiciary Committee
Kansas State Capitol
300 SW 10th St
Topeka, KS 66612

Re: HB 2021

Chair Sen. Warren 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.

At the time of our Assessment, which was 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

Now, HB 2021 seeks to undermine SB 367’s commitment to reform by expanding detention limits without first addressing the lack of services and data.

SB 367 was a groundbreaking initiative to address the pervasive overreliance on detention and placement throughout Kansas. The success of this revolutionary initiative relies on the creation and adequate funding of community-based alternatives to detention. 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. Detention limits should not be expanded based on anecdotal information without data to support it. Yet HB 2021 seeks to expand detention limits while acknowledging the dearth of

data collection by the Department of Corrections.

In Kansas, the core focus of the juvenile court system 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 Juvenile and Family 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

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 will lead to inequitable application, as evidenced by pre-SB 367 data.⁶
- 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, and it 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. But SB 367 has never been fully implemented, so Kansas youth and the state as a whole have not been able to reap the benefits of the law.

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. The Department of Corrections must collect data prior to consideration of any change to detention limits. HB 2021 seeks to erode progress in Kansas, before SB 367 has been

allowed to reach its full potential.

Sincerely,

Kristina C. Kersey

Kristina Kersey
Senior Youth Defense Counsel

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 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.